Internal Revenue
bulletin

Bulletin No. 2002–38
September 23, 2002

HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

Court Decision 2075, page 548.
Tax Liens. The Supreme Court has concluded that under section 6321 of the Code the husband's interests in the entireties property constitute "property" or "rights to property" to which a federal tax lien may attach. United States v. Craft.

Rev. Rul. 2002–58, page 541.
This ruling clarifies that amounts reimbursed under a self-insured medical expense reimbursement plan for medical expenses incurred by an employee prior to the adoption of the plan are not excludable from the gross income of the employee under section 105(b) of the Code.

Rev. Rul. 2002–59, page 557.
Interest rates; underpayments and overpayments. The rate of interest determined under section 6621 of the Code for the calendar quarter beginning October 1, 2002, will be 6 percent for overpayments (5 percent in the case of a corporation), 6 percent for underpayments, and 8 percent for large corporate underpayments. The rate of interest paid on the portion of a corporate overpayment exceeding $10,000 will be 3.5 percent.

T.D. 9013, page 542.
Final regulations under section 469 of the Code recharacterize a percentage of certain portfolio income and expense as passive income and expense when a taxpayer engages in a lending transaction with a partnership or S corporation in which the taxpaer owns a direct or indirect interest and the loan proceeds are used in a passive activity.

Announcement 2002–83, page 564.
This document contains corrections to final regulations (T.D. 9003, 2002–32 I.R.B. 294) providing guidance to married individuals filing joint returns who seek relief from joint and several liability.

EMPLOYEE PLANS

Rev. Rul. 2002–58, page 541.
This ruling clarifies that amounts reimbursed under a self-insured medical expense reimbursement plan for medical expenses incurred by an employee prior to the adoption of the plan are not excludable from the gross income of the employee under section 105(b) of the Code.

Notice 2002–61, page 563.
Weighed average interest rate update. The weighted average interest rate for September 2002 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.

EXEMPT ORGANIZATIONS

Announcement 2002–88, page 564.
A list is provided of organizations now classified as private foundations.

Announcements of Disbarments and Suspensions begin on page 564.
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 to 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.—Terms of General Interest. This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

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

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

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

Section 105.—Amounts Received Under Accident and Health Plans

Accident and health plans. This ruling clarifies that amounts reimbursed under a self-insured medical expense reimbursement plan for medical expenses incurred by an employee prior to the adoption of the plan are not excludable from the gross income of the employee under section 105(b) of the Code.

Rev. Rul. 2002–58

ISSUE

Whether amounts reimbursed under a self-insured medical expense reimbursement plan for medical expenses incurred by an employee prior to the establishment of the plan are excludable from the gross income of the employee under section 105(b) of the Internal Revenue Code.

FACTS

Employer M establishes a self-insured medical expense reimbursement plan on December 1 of a year. The plan provides that it is effective as of January 1 of that year. Under the plan, a participating employee is eligible for reimbursement of medical expenses incurred by the employee, the employee's spouse, and dependents (as defined in section 152) during the plan year (January 1 through December 31). Employee A becomes a participant in the plan upon its establishment on December 1.

Prior to the establishment of the plan, Employee A had incurred medical expenses that qualify for reimbursement under the plan and submits those claims for reimbursement to the employer in December. M reimburses A for the medical expenses incurred prior to the establishment of the plan in accordance with the terms of the plan.

LAW AND ANALYSIS

Section 61(a) provides that, except as otherwise provided by law, gross income means all income from whatever source derived.

Section 105(a) provides that, generally, amounts received by an employee through accident or health insurance for personal injuries or sickness shall be included in gross income to the extent such amounts (1) are attributable to contributions by the employer which were not includible in the gross income of the employee or (2) are paid by the employer.

However, section 105(b) provides an exception to the general rule of inclusion under section 105(a). Section 105(b) provides that gross income does not include amounts paid, directly or indirectly, to the taxpayer to reimburse the taxpayer for expenses incurred by him for the medical care (as defined in section 213(d)) of the taxpayer, his spouse, and his dependents (as defined in section 152).

Section 105(e) provides that amounts received under an accident or health plan for employees will be treated as amounts received through accident or health insurance for purposes of sections 105(a) and (b). Section 1.105–5(a) of the Income Tax Regulations provides that an accident or health plan is an arrangement for the payment of amounts to employees in the event of personal injuries or sickness.

In Rev. Rul. 71–403, 1971–2 C.B. 91, an employer established a plan for its employees that qualified as an accident and health plan. All of the employees were covered under the plan and had an enforceable right to be reimbursed for medical expenses from and after the inception of the plan, but not before the inception of the plan. A number of the employees were absent from work on account of personal injury or sickness when the plan went into effect. The ruling held that reimbursements to employees for medical expenses incurred after the inception of the employer's accident and health plan were excludable from gross income even though the employees were unable to work because of injury or sickness when the plan went into effect.

In *American Family Mutual Insurance Co. v. U.S.*, 815 F. Supp. 1206 (W.D. Wis. 1992), the employer established a medical expense reimbursement plan to which section 105 applied. The plan was established in November and made retroactive to January 1 of that same year. Employees were reimbursed for medical expenses incurred before the plan was established. The court concluded that the retroactive accident and health plan was invalid. Thus, reimbursements of medical expenses incurred prior to the establishment of the plan were includible in the employee's gross income and not excludable under section 105(b).

In *Wollenberg v. U.S.*, 75 F. Supp. 2d 1032 (D. Neb. 1999), a calendar year accident and health plan was established in December of the calendar plan year. The plan was effective from January of the plan year. The court held that reimbursements for medical expenses incurred prior to the establishment of the medical expense reimbursement plan were not excludable under section 105(b).

A self-insured medical expense reimbursement plan is treated as accident and health insurance under section 105(e). Thus, medical expense reimbursements that are paid under a plan are excludable from the employee's gross income under section 105(b). However, reimbursements of medical expenses incurred prior to the establishment of a plan are not paid or received under an accident or health plan. Therefore, those amounts are not excludable from an employee's gross income under section 105(b).

HOLDING

Amounts reimbursed under a self-insured medical expense reimbursement plan for medical expenses incurred by an employee prior to the establishment of the plan are not excludable from the gross income of the employee under section 105(b).

EFFECT ON OTHER REVENUE RULINGS

None

DRAFTING INFORMATION

The principal author of this revenue ruling is Shoshanna Chaiton of the office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this revenue ruling, contact her at (202) 622–6080 (not a toll-free call).

Section 469.— Passive Activity Losses and Credits Limited

26 CFR 1.469–7: Treatment of self-charged items of interest income and deduction.

T.D. 9013

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

Limitations on Passive Activity Losses and Credits— Treatment of Self-charged Items of Income and Expense

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: These regulations provide guidance on the treatment of self-charged items of income and expense under section 469. The regulations recharacterize a percentage of certain portfolio income and expense as passive income and expense (self-charged items) when a taxpayer engages in a lending transaction with a partnership or an S corporation (passthrough entity) in which the taxpayer owns a direct or indirect interest and the loan proceeds are used in a passive activity. Similar rules apply to lending transactions between two identically owned passthrough entities. These final regulations affect taxpayers subject to the limitations on passive activity losses and credits.

DATES: *Effective Date:*These regulations are effective August 21, 2002.

*Applicability Date:*For dates of applicability of these regulations, see § 1.469–11 of these regulations.

FOR FURTHER INFORMATION CONTACT: Danielle M. Grimm at (202) 622–3070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1244. Responses to this collection of information are required to obtain the benefit of self-charged treatment of income and expense under section 469.

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

The estimated annual burden per respondent varies from 5 minutes to 15 minutes, depending on individual circumstances, with an estimated average of 6 minutes.

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

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

Background

Section 469(a)(1)(A) of the Internal Revenue Code (Code) provides that if aggregate losses from passive activities exceed aggregate income from passive activities for the taxable year, the excess losses are not allowable for that taxable year. Under section 469(e)(1), passive activity income does not include income from interest, dividends, annuities, and royalties not derived in the ordinary course of a trade or business. However, under the rules of § 1.163–8T, if borrowed funds are used in a passive activity, the interest expense is treated as a passive activity deduction. Consequently, in certain lending transactions, a taxpayer may have interest income that is characterized as portfolio income under section 469(e)(1) and interest expense that is characterized as a passive activity deduction under § 1.163–8T. The legislative history of section 469 indicates that this result is inappropriate because the items of interest income and expense are essentially "self-charged" and thus lack economic significance.

On April 5, 1991, the IRS published in the **Federal Register** a notice of proposed rulemaking (PS–39–89, 1991–1 C.B. 983 [56 FR 14034]) proposing amendments to 26 CFR part 1 under section 469 of the Code relating to the treatment of self-charged items of income and expense for purposes of applying the limitations on passive activity losses and passive activity credits.

A number of public comments were received and a public hearing was held on September 6, 1991. Given the significant period of time that had elapsed since the former comment period, additional comments were solicited in Notice 2001–47 (2001–36 I.R.B. 212). After consideration of all of the comments received, the proposed regulations are adopted, as revised by this Treasury decision.

Explanation of Revisions and Summary of Comments

The proposed regulations provide self-charged treatment for items of interest income and interest expense in lending transactions between a taxpayer and a passthrough entity in which the taxpayer holds a direct or qualifying indirect interest. Several commentators suggested that the regulations should also apply to lending transactions between related passthrough entities such as brother-sister entities in which the taxpayer owns interests because such transactions also may result in mismatched income and expense for purposes of section 469. In response to the suggestions, the self-charged rules are extended to identically owned passthrough entities. This extension is limited to identically owned entities because of concerns regarding the difficulty of identifying self-charged items in transactions between less closely related or unrelated entities.

Certain commentators requested the removal of the qualifying indirect interest rule in the proposed regulations. The qualifying indirect interest rule provides that a taxpayer must have at least a 10-percent indirect interest in a passthrough entity to qualify for self-charged treatment. Commentators noted that a taxpayer that owns less than a 10 percent interest nevertheless may receive large amounts of self-charged income and expense. This suggestion has been adopted. Accordingly, the regulations no longer contain the qualifying indirect interest rule.

Noting that Congress authorized the Secretary to identify other situations in which self-charged treatment is appropriate, several commentators suggested that self-charged treatment be extended to other transactions involving rental real estate activities, such as the payment of management fees and salaries. After publication of the proposed regulations, Congress considered the impact of section 469 on rental real estate transactions and enacted specific relief in section 469(c)(7) for certain real estate professionals for taxable years beginning after 1993. There was no indication in the legislative history of section 469(c)(7) that Congress considered additional relief for real estate transactions necessary or desirable. Moreover, there is less justification for the complexity of a self-charged rule in this area after the enactment of section 469(c)(7) because that change substantially reduced the number of real estate transactions that would benefit from a self-charged rule. Accordingly, the regulations do not extend the self-charged treatment to other transactions involving rental real estate. A number of comments suggested that the regulations clarify whether the self-charged rules apply to guaranteed payments to a partner for the use of capital. Section 1.469–2(e)(2)(ii) of the regulations treats these payments as interest income. Accordingly, the regulations clarify that lending transactions include guaranteed payments for the use of capital under section 707(c).

Some comments requested clarification on the types of interest eligible for self-charged treatment. The comments noted that the examples in the regulations may be interpreted as precluding certain types of interest because the introductory language states that the lending transactions described in the examples do not result in foregone interest (within the meaning of section 7872(e)(2)), original issue discount (within the meaning of section 1273), or total unstated interest (within the meaning of section 483(b)). Accordingly, the regulations clarify that the examples assume, solely for purposes of simplifying the presentation, that the lending transactions do not involve foregone interest, original issue discount, or total unstated interest.

A few comments responded to the notice of proposed rulemaking's solicitation for suggestions on the proper treatment of items recognized in different taxable years. One comment suggested the use of a suspense account. Under this suggestion, in the year in which the taxpayer identifies the corresponding item of self-charged income or expense, that item would be netted against the self-charged item in the suspense account. Another comment suggested that where the recognition of passive interest expense precedes the recognition of passive income, the taxpayer could elect to treat the income as passive when ultimately recognized. Another suggestion was to allow the taxpayer to recharacterize interest income or expense equal to the amount calculated on a cumulative basis. The commentators recognize that to implement the above methods would require more complex regulations.

After consideration of these comments, the final regulations adopt the rule of the proposed regulations that the self-charged rules apply only to self-charged items recognized in the same taxable year. This rule is consistent with the legislative history and avoids the complexity of the other suggested methods. For similar reasons, comments suggesting special rules for capitalized expenses are not adopted.

Certain commentators requested that the regulations be extended to apply to transactions between taxpayers and their trusts, estates, REMICs and housing cooperatives. The regulations address the transactions identified by Congress involving S corporations and partnerships (including entities classified as partnerships for federal tax purposes). Application of the self-charged rules to other types of entities would require a significant expansion of the scope of these regulations to address broader issues concerning the manner in which section 469 applies to those entities.

The applicability date of the final regulations is consistent with the applicability date as proposed. However, certain clarifications have been made to the transition rule. In the transition period, a taxpayer may use any reasonable method to offset items of interest income and interest expense from lending transactions.

Effective Date

These regulations are applicable for taxable years beginning after December 31, 1986. However, for taxable years beginning before June 4, 1991, a taxpayer that owns an interest in a passthrough entity is not required to apply these provisions and may use any reasonable method to offset items of interest income and interest expense from lending transactions between the passthrough entity and its owners or between certain passthrough entities. Items from nonlending transactions cannot be offset under the self-charged rules.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12886. 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) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

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

* * * * *

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Section 1.469–7 also issued under 26 U.S.C. 469(l). * * *

Par. 2. Section 1.469–0 is amended by:

1. Revising the entry for § 1.469–7.

2. Adding entries for § 1.469–7(a) through (h).

3. Revising the entries for § 1.469–11(c)(1) and (c)(1)(i).

4. Adding an entry for § 1.469–11, paragraph (c)(1)(iii).

The additions and revisions read as follows:

§ 1.469–0 Table of contents.

* * * * *

§ 1.469–7 Treatment of self-charged items of interest income and deduction.

§ 1.469–11 Effective date and transition rules.

* * * * *

Par. 3. Section 1.469–7 is amended by:

(3) Revising the section heading.

(4) Adding paragraphs (a) through (h).

The revision and additions read as follows:

§ 1.469–7 Treatment of self-charged items of interest income and deduction.

(a) *In general*—(1) *Applicability and effect of rules*. This section sets forth rules that apply, for purposes of section 469 and the regulations thereunder, in the case of a lending transaction (including guaranteed payments for the use of capital under section 707(c)) between a taxpayer and a passthrough entity in which the taxpayer owns a direct or indirect interest, or between certain passthrough entities. The rules apply only to items of interest income and interest expense that are recognized in the same taxable year. The rules—

(i) Treat certain interest income resulting from these lending transactions as passive activity gross income;

(ii) Treat certain deductions for interest expense that is properly allocable to the interest income as passive activity deductions; and

(iii) Allocate the passive activity gross income and passive activity deductions resulting from this treatment among the taxpayer's activities. (2) *Priority of rules in this section*. The character of amounts treated under the rules of this section as passive activity gross income and passive activity deductions and the activities to which these amounts are allocated are determined under the rules of this section and not under the rules of §§ 1.163–8T, 1.469–2(c) and (d), and 1.469–2T(c) and (d).

(b) *Definitions*. The following definitions set forth the meaning of certain terms for purposes of this section:

(1) *Passthrough entity*. The term *passthrough entity* means a partnership or an S corporation.

(2) *Taxpayer's share.* A *taxpayer's share* of an item of income or deduction of a passthrough entity is the amount treated as an item of income or deduction of the taxpayer for the taxable year under section 702 (relating to the treatment of distributive shares of partnership items as items of partners) or section 1366 (relating to the treatment of pro rata shares of S corporation items as items of shareholders).

(3) *Taxpayer's indirect interest.* The taxpayer has an indirect interest in an entity if the interest is held through one or more passthrough entities.

(4) *Entity taxable year.* In applying this section for a taxable year of a taxpayer, the term *entity taxable year* means the taxable year of the passthrough entity for which the entity reports items that are taken into account under section 702 or section 1366 for the taxpayer's taxable year.

(5) *Deductions for a taxable year.* The term *deductions for a taxable year* means deductions that would be allowable for the taxable year if the taxpayer's taxable income for all taxable years were determined without regard to sections 163(d), 170(b), 469, 613A(d), and 1211.

(c) *Taxpayer loans to passthrough entity*—(1) *Applicability.* Except as provided in paragraph (g) of this section, this paragraph (c) applies with respect to a taxpayer's interest in a passthrough entity (borrowing entity) for a taxable year if—

(i) The borrowing entity has deductions for the entity taxable year for interest charged to the borrowing entity by persons that own direct or indirect interests in the borrowing entity at any time during the entity taxable year (the borrowing entity's self-charged interest deductions);

(ii) The taxpayer owns a direct or an indirect interest in the borrowing entity at any time during the entity taxable year and has gross income for the taxable year from interest charged to the borrowing entity by the taxpayer or a passthrough entity through which the taxpayer holds an interest in the borrowing entity (the taxpayer's income from interest charged to the borrowing entity); and

(iii) The taxpayer's share of the borrowing entity's self-charged interest deductions includes passive activity deductions.

(2) *General rule.* If any of the borrowing entity's self-charged interest deductions are allocable to an activity for a taxable year in which this paragraph (c) applies, the passive activity gross income and passive activity deductions from that activity are determined under the following rules—

(i) The applicable percentage of each item of the taxpayer's income for the taxable year from interest charged to the borrowing entity is treated as passive activity gross income from the activity; and

(ii) The applicable percentage of each deduction for the taxable year for interest expense that is properly allocable (within the meaning of paragraph (f) of this section) to the taxpayer's income from the interest charged to the borrowing entity is treated as a passive activity deduction from the activity.

(3) *Applicable percentage.* In applying this paragraph (c) with respect to a taxpayer's interest in a borrowing entity, the applicable percentage is separately determined for each of the taxpayer's activities. The percentage applicable to an activity for a taxable year is obtained by dividing—

(i) The taxpayer's share for the taxable year of the borrowing entity's self-charged interest deductions that are treated as passive activity deductions from the activity by

(ii) The greater of—

(A) The taxpayer's share for the taxable year of the borrowing entity's aggregate self-charged interest deductions for all activities (regardless of whether these deductions are treated as passive activity deductions); or

(B) The taxpayer's aggregate income for the taxable year from interest charged to the borrowing entity for all activities of the borrowing entity.

(d) *Passthrough entity loans to taxpayer*—(1) *Applicability.* Except as provided in paragraph (g) of this section, this paragraph (d) applies with respect to a taxpayer's interest in a passthrough entity (lending entity) for a taxable year if—

(i) The lending entity has gross income for the entity taxable year from interest charged by the lending entity to persons that own direct or indirect interests in the lending entity at any time during the entity taxable year (the lending entity's self-charged interest income);

(ii) The taxpayer owns a direct or an indirect interest in the lending entity at any time during the entity taxable year and has deductions for the taxable year for interest charged by the lending entity to the taxpayer or a passthrough entity through which the taxpayer holds an interest in the lending entity (the taxpayer's deductions for interest charged by the lending entity); and(iii) The taxpayer's deductions for interest charged by the lending entity include passive activity deductions.

(2) *General rule.* If any of the taxpayer's deductions for interest charged by the lending entity are allocable to an activity for a taxable year in which this paragraph (d) applies, the passive activity gross income and passive activity deductions from that activity are determined under the following rules—

(i) The applicable percentage of the taxpayer's share for the taxable year of each item of the lending entity's self-charged interest income is treated as passive activity gross income from the activity.

(ii) The applicable percentage of the taxpayer's share for the taxable year of each deduction for interest expense that is properly allocable (within the meaning of paragraph (f) of this section) to the lending entity's self-charged interest income is treated as a passive activity deduction from the activity.

(3) *Applicable percentage.* In applying this paragraph (d) with respect to a taxpayer's interest in a lending entity, the applicable percentage is separately determined for each of the taxpayer's activities. The percentage applicable to an activity for a taxable year is obtained by dividing—

(i) The taxpayer's deductions for the taxable year for interest charged by the lending entity, to the extent treated as passive activity deductions from the activity; by

(ii) The greater of—

(A) The taxpayer's aggregate deductions for all activities for the taxable year for interest charged by the lending entity (regardless of whether these deductions are treated as passive activity deductions); or

(B) The taxpayer's aggregate share for the taxable year of the lending entity's self-charged interest income for all activities of the lending entity.

(e) *Identically-owned passthrough entities*—(1) *Applicability.* Except as provided in paragraph (g) of this section, this paragraph (e) applies with respect to lending transactions between passthrough entities if each owner of the borrowing entity has the same proportionate ownership interest in the lending entity.

(2) *General rule.* To the extent an owner shares in interest income from a loan between passthrough entities described in paragraph (e)(1) of this section, the owner is treated as having made the loan to the borrowing passthrough entity and paragraph (c) of this section applies to determine the applicable percentage of portfolio income or properly allocable interest expense that is recharacterized as passive.

(3) *Example.* The following example illustrates the application of this paragraph (e):

Example. (i) A and B, both calendar year taxpayers, each own a 50-percent interest in the capital and profits of partnerships RS and XY, both calendar year partnerships. Under the partnership agreements of RS and XY, A and B are each entitled to a 50-percent distributive share of each partnership's income, gain, loss, deduction, or credit. RS makes a $20,000 loan to XY and XY pays RS $2,000 of interest for the taxable year. A's distributive share of interest income attributable to this loan is $1,000 (50 percent x $2,000). XY uses all of the proceeds received from RS in a passive activity. A's distributive share of interest expense attributable to the loan is $1,000 (50 percent x $2,000).

(ii) This paragraph (e) applies in determining A's passive activity gross income because RS and XY are identically-owned passthrough entities as described in paragraph (e)(1) of this section. Under paragraph (e)(2) of this section, the RS-to-XY loan is treated as if A made the loan to XY. Therefore, A must apply paragraph (c) of this section to determine the applicable percentage of portfolio income that is recharacterized as passive income.

(iii) Paragraph (c) of this section applies in determining A's passive activity gross income because: XY has deductions for interest charged to XY by RS for the taxable year (XY's self-charged interest deductions); A owns an interest in XY during XY's taxable year and has gross income for the taxable year from interest charged to XY by RS; and A's share of XY's self-charged interest deductions includes passive activity deductions. See paragraph (c)(1) of this section.

(iv) Under paragraph (c)(2)(i) of this section, the applicable percentage of A's interest income is recharacterized as passive activity gross income from the activity. Paragraph (c)(3) of this section provides that the applicable percentage is obtained by dividing A's share for the taxable year of XY's self-charged interest deductions that are treated as passive activity deductions from the activity ($1,000) by the greater of A's share for the taxable year of XY's self-charged interest deductions ($1,000), or A's income for the year from interest charged to XY ($1,000). Thus, A's applicable percentage is 100 percent ($1,000/ $1,000), and $1,000 (100 percent x $1,000) of A's income from interest charged to XY is treated as passive activity gross income from the passive activity.

(f) *Identification of properly allocable deductions.* For purposes of this section, interest expense is properly allocable to an item of interest income if the interest expense is allocated under §1.163–8T to an expenditure that—

(1) Is properly chargeable to capital account with respect to the investment producing the item of interest income; or

(2) May reasonably be taken into account as a cost of producing the item of interest income.

(g) *Election to avoid application of the rules of this section*—(1) *In general.* Paragraphs (c),(d) and (e) of this section shall not apply with respect to any taxpayer's interest in a passthrough entity for a taxable year if the passthrough entity has made, under this paragraph (g), an election that applies to the entity's taxable year.

(2) *Form of election.* A passthrough entity makes an election under this paragraph (g) by attaching to its return (or amended return) a written statement that includes the name, address, and taxpayer identification number of the passthrough entity and a declaration that an election is being made under this paragraph (g).

(3) *Period for which election applies.* An election under this paragraph (g) made with a return (or amended return) for a taxable year applies to that taxable year and all subsequent taxable years that end before the date on which the election is revoked.

(4) *Revocation.* An election under this paragraph (g) may be revoked only with the consent of the Commissioner.

(h) *Examples.* The following examples illustrate the principles of this section. The examples assume for purposes of simplifying the presentation, that the lending transactions described do not result in foregone interest (within the meaning of section 7872(e)(2)), original issue discount (within the meaning of section 1273), or total unstated interest (within the meaning of section 483(b)).

Example 1. (i) A and B, two calendar year individuals, each own 50-percent interests in the capital, profits and losses of AB, a calendar year partnership. AB is engaged in a single rental activity within the meaning of § 1.469–1T(e)(3). AB borrows $50,000 from A and uses the loan proceeds in the rental activity. AB pays $5,000 of interest to A for the taxable year. A and B each incur $2,500 of interest expense as their distributive share of AB's interest expense.

(ii) AB has self-charged interest deductions for the taxable year (*i.e.*, the deductions for interest charged to AB by A); A owns a direct interest in AB during AB's taxable year and has income for A's taxable year from interest charged to AB; and A's share of AB's self-charged interest deductions includes passive activity deductions. Accordingly, paragraph (c) of this section applies in determining A's passive activity gross income. See paragraph (c)(1) of this section.

(iii) Under paragraph (c)(2)(i) of this section, the applicable percentage of A's interest income is recharacterized as passive activity gross income from AB's rental activity. Paragraph (c)(3) of this section provides that the applicable percentage is obtained by dividing A's share for the taxable year of AB's self-charged interest deductions that are treated as passive activity deductions from the activity ($2,500) by the greater of A's share for the taxable year of AB's self-charged interest deductions ($2,500), or A's income for the taxable year from interest charged to AB ($5,000). Thus, A's applicable percentage is 50 percent ($2,500/$5,000), and $2,500 (50 percent x $5,000) of A's income from interest charged to AB is treated as passive activity gross income from the passive activity A conducts through AB.

(iv) Because B does not have any gross income for the year from interest charged to AB, this section does not apply to B. See paragraph (c)(1)(ii) of this section.

Example 2. (i) C and D, two calendar year taxpayers, each own 50-percent interests in the capital and profits of CD, a calendar year partnership. CD is engaged in a single rental activity, within the meaning of § 1.469–1T(e)(3). C obtains a $10,000 loan from a third-party lender, and pays the lender $900 in interest for the taxable year. C lends the $10,000 to CD, and receives $1,000 of interest income from CD for the taxable year. D lends $20,000 to CD and receives $2,000 of interest income from CD for the taxable year. CD uses all of the proceeds in the rental activity. C and D are each allocated $1,500 (50 percent x $3,000) of interest expense as their distributive share of CD's interest expense for the taxable year.

(ii) CD has self-charged interest deductions for the taxable year (*i.e.*, deductions for interest charged to CD by C and D); C and D each own direct interests in CD during CD's taxable year and have gross income for the taxable year from interest charged to CD; and both C's and D's shares of CD's self-charged interest deductions include passive activity deductions. Accordingly, paragraph (c) of this section applies in determining C's and D's passive activity gross income. See paragraph (c)(1) of this section.

(iii) Under paragraph (c)(2)(i) of this section, the applicable percentage of each partner's interest income is recharacterized as passive activity gross income from CD's rental activity. Paragraph (c)(3) of this section provides that C's applicable percentage is obtained by dividing C's share for the taxable year of CD's self-charged interest deductions that are treated as passive activity deductions from the activity ($1,500) by the greater of C's share for the taxable year of CD's self-charged interest deductions ($1,500), or C's income for the taxable year from interest charged to CD ($1,000). Thus, C's applicable percentage is 100 percent ($1,500/$1,500), and all of C's income from interest charged to CD ($1,000) is treated as passive activity gross income from the passive activity C conducts through CD. Similarly, D's applicable percentage is obtained by dividing D's share for the taxable year of CD's self-charged interest deductions that are treated as passive activity deductions from the activity ($1,500) by the greater of D's share for the taxable year of CD's self-charged interest deductions ($1,500), or D's income for the taxable year from interest charged to CD ($2,000). Thus, D's applicable percentage is 75 percent ($1,500/$2,000), and $1,500 (75 percent x $2,000) of D's income from interest charged to CD is treated as passive activity gross income from the rental activity.

(iv) The $900 of interest expense that C pays to the third-party lender is allocated under § 1.163–8T(c)(1) to an expenditure that is properly chargeable to capital account with respect to the loan to CD. Thus, the expense is properly allocable to the interest income C receives from CD (see paragraph (f) of this section). Under paragraph (c)(2)(ii) of this section, the applicable percentage of C's deductions for the taxable year for interest expense that is properly allocable to C's income from interest charged to CD is recharacterized as a passive activity deduction from CD's rental activity. Accordingly, all of C's $900 interest deduction is treated as a passive activity deduction from the rental activity.

Example 3. (i) E and F, calendar year taxpayers, each own 50 percent of the stock of X, a calendar year S corporation. E borrows $30,000 from X, and pays X $3,000 of interest for the taxable year. E uses $15,000 of the loan proceeds to make a personal expenditure (as defined in § 1.163–8T(b)(5)), and uses $15,000 of loan proceeds to purchase a trade or business activity in which E does not materially participate (within the meaning of § 1.469–5T) for the taxable year. E and F each receive $1,500 as their *pro rata* share of X's interest income from the loan for the taxable year.

(ii) X has gross income for X's taxable year from interest charged to E (X's self-charged interest income); E owns a direct interest in X during X's taxable year and has deductions for the taxable year for interest charged by X; and E's deductions for interest charged by X include passive activity deductions. Accordingly, paragraph (d) of this section applies in determining E's passive activity gross income. See paragraph (d)(1) of this section.

(iii) Under the rules in paragraph (d)(2)(i) of this section, the applicable percentage of E's share of X's self-charged interest income is recharacterized as passive activity gross income from the activity. Paragraph (d)(3) of this section provides that the applicable percentage is obtained by dividing E's deductions for the taxable year for interest charged by X, to the extent treated as passive activity deductions from the activity ($1,500), by the greater of E's deductions for the taxable year for interest charged by X, regardless of whether those deductions are treated as passive activity deductions ($3,000), or E's share for the taxable year of X's self-charged interest income ($1,500). Thus, E's applicable percentage is 50 percent ($1,500/$3,000), and $750 (50 percent x $1,500) of E's share of X's self-charged interest income is treated as passive activity gross income.

(iv) Because F does not have any deductions for the taxable year for interest charged by X, this section does not apply to F. See paragraph (d)(1)(ii) of this section.

Example 4. (i) This *Example 4* illustrates the application of this section to a partner that has a different taxable year from the partnership. The facts are the same as in *Example 1* except as follows: Partnership AB has properly adopted a fiscal year ending June 30 for federal tax purposes; AB borrows the $50,000 from A on October 1, 1990; and under the terms of the loan, AB must pay A $5,000 in interest annually, in quarterly installments, for a term of 2 years.

(ii) For A's taxable years from 1990 through 1993 and AB's corresponding entity taxable years (as defined in paragraph (b)(4) of this section) A's interest income and AB's interest deductions from the loan are as follows:

	A's Interest Income	*AB's Interest Deductions*
1990	$1,250	0
1991	$5,000	$3,750
1992	$3,750	$5,000
1993	0	$1,250

(iii) For A's taxable year ending December 31, 1990, the corresponding entity taxable year is AB's taxable year ending June 30, 1990. Because AB does not have any deductions for the entity taxable year for interest charged to AB by A, paragraph (c) of this section does not apply in determining A's passive activity gross income for 1990 (see paragraph (c)(1)(i) of this section). Accordingly, A reports $1,250 of portfolio income on A's 1990 income tax return.

(iv) For A's taxable year ending December 31, 1991, the corresponding entity taxable year ends on June 30, 1991. AB has $3,750 of deductions for the entity taxable year for interest charged to AB by A (AB's self-charged interest deductions); A owns a direct interest in AB during the entity taxable year and has $5,000 of interest income for A's taxable year from interest charged to AB; and A's share of AB's self-charged interest deductions includes passive activity deductions. Accordingly, paragraph (c) of this section applies in determining A's passive activity gross income.

(v) Under paragraph (c)(2)(i) of this section, the applicable percentage of A's 1991 interest income is recharacterized as passive activity gross income from the activity. Paragraph (c)(3) of this section provides that the applicable percentage is obtained by dividing A's share for A's 1991 taxable year of AB's self-charged interest deductions that are treated as passive activity deductions from the activity (50 percent x $3,750 = $1,875) by the greater of A's share for A's taxable year of AB's self-charged interest deductions ($1,875), or A's income for A's taxable year from interest charged to AB ($5,000). Thus, A's applicable percentage is 37.5 percent ($1,875/$5,000), and $1,875 (37.5 percent x $5,000) of A's income from interest charged to AB is treated as passive activity gross income from the passive activity A conducts through AB.

(vi) For A's taxable year ending December 31, 1992, the corresponding entity taxable year ends on June 30, 1992. AB has $5,000 of deductions for the entity taxable year for interest charged to AB by A (AB's self-charged interest deductions); A owns a direct interest in AB during the entity taxable year and has $3,750 of gross income for A's taxable year from interest charged to AB; and A's share of AB's self-charged interest deductions includes passive activity deductions. Accordingly, paragraph (c) of this section applies in determining A's passive activity gross income.

(vii) The applicable percentage for 1992 is obtained by dividing A's share for A's 1992 taxable year of AB's self-charged interest deductions that are treated as passive activity deductions from the activity ($2,500) by the greater of A's share for A's taxable year of AB's self-charged interest deductions ($2,500), or A's income for A's taxable year from interest charged to AB ($3,750). Thus, A's applicable percentage is 66 2/3 percent ($2,500/$3,750), and $2,500 (66 2/3 percent x $3,750) of A's income from interest charged to AB is treated as passive activity gross income from the passive activity A conducts through AB.

(viii) Paragraph (c) of this section does not apply in determining A's passive activity gross income for the taxable year ending December 31, 1993, because A has no gross income for the taxable year from interest charged to AB (see paragraph (c)(1)(ii) of this section). A's share of AB's self-charged interest deductions for the entity taxable year ending June 30, 1993 ($625) is taken into account as a passive activity deduction on A's 1993 income tax return.

(ix) Because B does not have any gross income from interest charged to AB for any of the taxable years, this section does not apply to B. See paragraph (c)(1)(ii) of this section.

Example 5. (i) This *Example 5* illustrates the application of the rules of this section in the case of a taxpayer who has an indirect interest in a partnership. G, a calendar year taxpayer, is an 80-percent partner in partnership UTP. UTP owns a 25-percent interest in the capital and profits of partnership LTP. UTP and LTP are both calendar year partnerships. The partners of LTP conduct a single passive activity through LTP. UTP obtains a $10,000 loan from a bank, and pays the bank $1,000 of interest per year. G's distributive share of the interest paid to the bank is $800 (80 percent x $1,000). UTP uses the $10,000 debt proceeds and another $10,000 of cash to make a loan to LTP, and LTP pays UTP $2,000 of interest for the taxable year. G's distributive share of interest income attributable to the UTP-to-LTP loan is $1,600 (80 percent x $2,000). LTP uses all of the proceeds received from UTP in the passive activity. UTP's distributive share of interest expense attributable to the UTP-to-LTP loan is $500 (25 percent x $2,000). G's distributive share of interest expense attributable to the UTP-to-LTP loan is $400 (80 percent x $500).

(ii) LTP has deductions for interest charged to LTP by UTP for the taxable year (LTP's self-charged interest deductions); G owns an indirect interest in LTP during LTP's taxable year and has gross income for the taxable year from interest charged to LTP by a passthrough entity (UTP) through which G owns an interest in LTP; and G's share of LTP's self-charged interest deductions includes passive activity deductions. Accordingly, paragraph (c) of this section applies in determining G's passive activity gross income. See paragraph (c)(1) of this section.

(iii) Under paragraph (c)(2)(i) of this section, the applicable percentage of G's interest income is recharacterized as passive activity gross income from the activity. Paragraph (c)(3) of this section provides that the applicable percentage is obtained by dividing G's share for the taxable year of LTP's self-charged interest deductions that are treated as passive activity deductions from the activity ($400) by the greater of G's share for the taxable year of LTP's self-charged interest deductions ($400), or G's income for the year from interest charged to LTP ($1,600). Thus, G's applicable percentage is 25 percent ($400/$1,600), and $400 (25 percent x $1,600) of G's income from interest charged to LTP is treated as passive activity gross income from the passive activity that G conducts through UTP and LTP.

(iv) G's $800 distributive share of the interest expense that UTP pays to the third-party lender is allocated under § 1.163–8T(c)(1) to an expenditure that is properly chargeable to capital account with respect to the loan to LTP. Thus, the expense is a deduction properly allocable to the interest income that G receives as a result of the UTP-to-LTP loan (see paragraph (f) of this section). Under paragraph (c)(2)(ii) of this section, the applicable percentage of G's deductions for the taxable year for interest expense that is properly allocable to G's income from interest charged by UTP to LTP is recharacterized as a passive activity deduction from LTP's passive activity. Accordingly, $200 (25 percent x $800) of G's interest deduction is treated as a passive activity deduction from LTP's activity.

Example 6. (i) This *Example 6* illustrates the application of the rules of this section in the case of a taxpayer who conducts two passive activities through a passthrough entity. J, a calendar year taxpayer, is the 100-percent shareholder of Y, a calendar year S corporation. J conducts two passive activities through Y: a rental activity and a trade or business activity in which J does not materially participate. Y borrows $80,000 from J, and uses $60,000 of the loan proceeds in the rental activity and $20,000 of the loan proceeds in the passive trade or business activity. Y pays $8,000 of interest to J for the taxable year, and J incurs $8,000 of interest expense as J's distributive share of Y's interest expense.

(ii) Y has self-charged interest deductions for the taxable year (*i.e.*, the deductions for interest charged to Y by J); J owns a direct interest in Y during Y's taxable year and has gross income for J's taxable year from interest charged to Y; and J's share of Y's self-charged interest deductions includes passive activity deductions. Accordingly, paragraph (c) of this section applies in determining J's passive activity gross income. See paragraph (c)(1) of this section.

(iii) Under paragraph (c)(2)(i) of this section, the applicable percentage of J's interest income is recharacterized as passive activity gross income attributable to the rental activity. Paragraph (c)(3) of this section provides that the applicable percentage is obtained by dividing J's share for the taxable year of Y's self-charged interest deductions that are treated as passive activity deductions from the rental activity ($6,000) by the greater of J's share for the taxable year of Y's self-charged interest deductions ($8,000), or J's income for the taxable year from interest charged to Y ($8,000). Thus, J's applicable percentage is 75 percent ($6,000/$8,000), and $6,000 (75 percent x $8,000) of J's income from interest charged to Y is treated as passive activity gross income from the rental activity J conducts through Y.

(iv) Under paragraph (c)(2)(i) of this section, the applicable percentage of J's interest income is recharacterized as passive activity gross income attributable to the passive trade or business activity. Paragraph (c)(3) of this section provides that the applicable percentage is obtained by dividing J's share for the taxable year of Y's self-charged interest deductions that are treated as passive activity deductions from the passive trade or business activity ($2,000) by the greater of J's share for the taxable year of Y's self-charged interest deductions ($8,000), or J's income for the taxable year from interest charged to Y ($8,000). Thus, J's applicable percentage is 25 percent ($2,000/$8,000), and $2,000 of J's income from interest charged to Y is treated as passive activity gross income from the passive trade or business activity J conducts through Y.

Par. 4. Section 1.469–11 is amended as follows:

1. Paragraph (a)(3) is amended by removing the language "and" at the end of the paragraph.

2. Paragraph (a)(4) is redesignated as paragraph (a)(5) and a new paragraph (a)(4) is added.

3. The paragraph headings for (c)(1) and (c)(1)(i) are revised.

4. Paragraph (c)(1)(iii) is added.

5. The added and revised provisions read as follows:

§ 1.469–11 Effective date and transition rules.

(a) * * *

(4) The rules contained in § 1.469–7 apply for taxable years ending after December 31, 1986; and

* * * * *

(c) * * *

(1) *Application of certain income recharacterization rules and self-charged rules*—(i) *Certain recharacterization rules inapplicable in 1987.* * * *

* * * * *

(iii) *Self-charged rules.* For taxable years beginning before June 4, 1991—

(*1*) A taxpayer is not required to apply the rules in § 1.469–7 in computing the taxpayer's passive activity loss and passive activity credit; and

(*2*) A taxpayer that owns an interest in a passthrough entity may use any reasonable method of offsetting items of interest income and interest expense from lending transactions between the passthrough entity and its owners or between identically-owned passthrough entities (as defined in § 1.469–7(e)) to compute the taxpayer's passive activity loss and passive activity credit. Items from nonlending transactions cannot be offset under the self-charged rules.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 5. The authority citation for the part 602 continues to read:

Authority: 26 U.S.C. 7805.

Par. 6. In § 602.101, paragraph (b) is amended by adding the following entry in numerical order to the table to read as follows:

§ 602.101 OMB Control Numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control number
* * * * *	
1.469–7	1545–1244
* * * * *	

Robert E Wenzel,
Deputy Commissioner of Internal Revenue.

Approved July 31, 2002.

Pamela F. Olson,
Acting Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on August 20, 2002, 8:45 a.m., and published in the issue of the Federal Register for August 21, 2002, 67 F.R. 54087)

Section 6321.—Lien for Taxes

Ct. D. 2075

SUPREME COURT OF THE UNITED STATES

No. 00–1831

UNITED STATES *v.* CRAFT

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

April 17, 2002

Syllabus

When respondent's husband failed to pay federal income tax liabilities assessed against him, a federal tax lien attached to "all [of his] property and rights to property." 26 U.S.C. Sec. 6321. After the notice of the lien was filed, respondent and her husband jointly executed a quitclaim deed purporting to transfer to her his interest in a piece of real property in Michigan that they owned as tenants by the entirety. Subsequently the Internal Revenue Service (IRS) agreed to release the lien and allow respondent to sell the property with half the net proceeds to be held in escrow pending determination of the Government's interest in the property. She brought this action to quiet title to the escrowed proceeds. The Government claimed, among other things, that its lien had attached to the husband's interest in the tenancy by the entirety. The District Court granted the Government summary judgment, but the Sixth Circuit held that no lien attached because the husband had no separate interest in the entireties property under Michigan law, and remanded the case for consideration of an alternative claim not at issue here. In affirming the District Court's decision on remand, the Sixth Circuit held that its prior opinion on the issue whether the lien attached to the husband's entireties property was the law of the case.

Held: the husband's interests in the entireties property constitute "property" or "rights to property" to which a federal tax lien may attach. Pp. 3–15.

(a) Because the federal tax lien statute itself creates no property rights, *UnitedStates v. Bess*, 357 U.S. 51, 55, this Court looks initially to state law to determine what rights the taxpayer has in the property the Government seeks to reach and then to federal law to determine whether such state-delineated rights qualify as property or rights to property under Sec. 6321, *Drye v. United States*, 528 U.S. 49, 58. A common idiom describes property as a "bundle of sticks" — a collection of individual rights which, in certain combinations, constitute property. State law determines which sticks are in a person's bundle, but federal law determines whether those sticks constitute property for federal tax lien purposes. In looking to state law, this Court must consider the substance of the state law rights, not the labels the State gives them or the conclusions it draws from them. Pp. 3–4.

(b) Michigan law gave respondent's husband, among other rights, the right to use the entireties property, the right to exclude others from it, the right of survivorship, the right to become a tenant in common with equal shares upon divorce, the right to sell the property with respondent's consent and to receive half the proceeds from such a sale, the right to encumber the property with respondent's consent, and the right to block respondent from selling or encumbering the property unilaterally. Pp. 4–8.

(c) The rights Michigan law granted respondent's husband qualify as "property" or "rights to property" under Sec. 6321. The broad statutory language authorizing the tax lien reveals that Congress meant to reach every property interest that a taxpayer might have. *United States v. National Bank of Commerce*, 472 U.S. 713, 719–720. The husband's rights of use, exclusion, and income alone may be sufficient to subject his entireties interest to the lien, for they gave him a substantial degree of control over the property. See *Drye, supra*, at 61. He also had the right to alienate the property with respondent's consent. The unilateral alienation stick is not essential to "property." Federal tax liens may attach to property that cannot be unilaterally alienated, *United States v. Rodgers*, 461 U.S. 677, and excluding such property would exempt a rather large amount of what is commonly thought of as property. A number of the sticks in respondent's husband's bundle were presently existing, so it is not necessary to consider whether his survivorship right alone, which respondent claims is an expectancy, would qualify as property or rights to property. Were this Court to reach a contrary conclusion, the entireties property would belong to no one for Sec. 6321 purposes, because respondent had no more interest in the property than her husband. Such a result seems absurd, and would allow spouses to shield their property from federal taxation by classifying it as entireties property, facilitating abuse of the federal tax system. Legislative history does not support respondent's position that Congress did not intend that a federal tax lien attach to an entireties property interest. And the common law background of the tax lien statute's enactment is not enough to overcome the broad language Congress actually used. Pp. 8–14.

(d) That Michigan makes a different choice with respect to state law creditors does not dictate the choice here. Because Sec. 6321's interpretation is a federal question, this Court is in no way bound by state courts' answers to similar questions involving state law. P. 14.

233 F.3d 358 reversed and remanded.

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

SUPREME COURT OF THE UNITED STATES

No. 00–1831

UNITED STATES *v.* SANDRA L. CRAFT

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

April 17, 2002

JUSTICE O'CONNOR delivered the opinion of the Court.

This case raises the question whether a tenant by the entirety possesses "property" or "rights to property" to which a federal tax lien may attach. 26 U.S.C. Sec. 6321. Relying on the state law fiction that a tenant by the entirety has no separate interest in entireties property, the United States Court of Appeals for the Sixth Circuit held that such property is exempt from the tax lien. We conclude that, despite the fiction, each tenant possesses individual rights in the estate sufficient to constitute "property" or "rights to property" for the purposes of the lien, and reverse the judgment of the Court of Appeals.

I

In 1988, the Internal Revenue Service (IRS) assessed $482,446 in unpaid income tax liabilities against Don Craft, the husband of respondent Sandra L. Craft, for failure to file federal income tax returns for the years 1979 through 1986. App. to Pet. for Cert. 45a, 72a. When he failed to pay, a federal tax lien attached to "all property and rights to property, whether real or personal, belonging to" him. 26 U.S.C. Sec. 6321.

At the time the lien attached, respondent and her husband owned a piece of real property in Grand Rapids, Michigan, as tenants by the entirety. App. to Pet. for Cert. 45a. After notice of the lien was filed, they jointly executed a quitclaim deed purporting to transfer the husband's interest in the property to respondent for one dollar. *Ibid*. When respondent attempted to sell the property a few years later, a title search revealed the lien. The IRS agreed to release the lien and allow the sale with the stipulation that half of the net proceeds be held in escrow pending determination of the Government's interest in the property. *Ibid*.

Respondent brought this action to quiet title to the escrowed proceeds. The Government claimed that its lien had attached to the husband's interest in the tenancy by the entirety. It further asserted that the transfer of the property to respondent was invalid as a fraud on creditors. *Id*., at 46a–47a. The District Court granted the Government's motion for summary judgment, holding that the federal tax lien attached at the moment of the transfer to respondent, which terminated the tenancy by the entirety and entitled the Government to one-half of the value of the property. No. 1:93–CV–306, 1994 WL 669680, *3 (WD Mich., Sept. 12, 1994).

Both parties appealed. The Sixth Circuit held that the tax lien did not attach to the property because, under Michigan state law, the husband had no separate interest in property held as a tenant by the entirety. 140 F.3d 638, 643 (1998). It remanded to the District Court to consider the Government's alternative claim that the conveyance should be set aside as fraudulent. *Id*., at 644.

On remand, the District Court concluded that where, as here, state law makes property exempt from the claims of creditors, no fraudulent conveyance can occur. 65 F.Supp.2d 651, 657–658 (WD Mich. 1999). It found, however, that respondent's husband's use of nonexempt funds to pay the mortgage on the entireties property, which placed them beyond the reach of creditors, constituted a fraudulent act under state law, and the court awarded the IRS a share of the proceeds of the sale of the property equal to that amount. *Id.*, at 659.

Both parties appealed the District Court's decision, the Government again claiming that its lien attached to the husband's interest in the entireties property. The Court of Appeals held that the prior panel's opinion was law of the case on that issue. 233 F.3d 358, 363–369 (CA6 2000). It also affirmed the District Court's determination that the husband's mortgage payments were fraudulent. *Id.*, at 369–375.

We granted certiorari to consider the Government's claim that respondent's husband had a separate interest in the entireties property to which the federal tax lien attached. 533 U.S. 976 (2001).

II

Whether the interests of respondent's husband in the property he held as a tenant by the entirety constitutes "property and rights to property" for the purposes of the federal tax lien statute, 26 U.S.C. Sec. 6321 is ultimately a question of federal law. The answer to this federal question, however, largely depends upon state law. The federal tax lien statute itself "creates no property rights, but merely attaches consequences, federally defined, to rights created under state law." *United States v. Bess*, 357 U.S. 51, 55 (1958); see also *United States v. National Bank of Commerce*, 472 U.S. 713, 722 (1985). Accordingly,

"[w]e look initially to state law to determine what rights the taxpayer has in the property the Government seeks to reach, then to federal law to determine whether the taxpayer's state — delineated rights qualify as "property" or "rights to property" within the compass of the federal tax lien legislation. *Drye v. United States*, 528 U.S. 49, 58 (1999).

A common idiom describes property as a "bundle of sticks" — a collection of individual rights which, in certain combinations, constitute property. See B. Cardozo, Paradoxes of Legal Science 129 (1928) (reprint 2000); see also *Dickman v. Commissioner*, 465 U.S. 330, 336 (1984). State law determines only which sticks are in a person's bundle. Whether those sticks qualify as "property" for purposes of the federal tax lien statute is a question of federal law.

In looking to state law, we must be careful to consider the substance of the rights state law provides, not merely the labels the State gives these rights or the conclusions it draws from them. Such state law labels are irrelevant to the federal question of which bundles of rights constitute property that may be attached by a federal tax lien. In *Drye v. United States*, *supra*, we considered a situation where state law allowed an heir subject to a federal tax lien to disclaim his interest in the estate. The state law also provided that such a disclaimer would "creat[e] the legal fiction" that the heir had predeceased the decedent and would correspondingly be deemed to have had no property interest in the estate. *Id.*, at 53. We unanimously held that this state law fiction did not control the federal question and looked instead to the realities of the heir's interest. We concluded that, despite the State's characterization, the heir possessed a "right to property" in the estate — the right to accept the inheritance or pass it along to another — to which the federal lien could attach. *Id.*, at 59–61.

III

We turn first to the question of what rights respondent's husband had in the entireties property by virtue of state law. In order to understand these rights, the tenancy, by the entirety must first be placed in some context.

English common law provided three legal structures for the concurrent ownership of property that have survived into modern times: tenancy in common, joint tenancy, and tenancy by the entirety. 1 G. Thompson, Real Property Sec. 4.06(g) (D. Thomas ed. 1994) (hereinafter Thompson). The tenancy in common is now the most common form of concurrent ownership. 7 R. Powell & P. Rohan, Real Property Sec. 51.01[3] (M. Wolf ed. 2001) (hereinafter Powell). The common law characterized tenants in common as each owning a separate fractional share in undivided property. *Id.*, Sec. 50.01[1]. Tenants in common may each unilaterally alienate their shares through sale or gift or place encumbrances upon these shares. They also have the power to pass these shares to their heirs upon death. Tenants in common have many other rights in the property, including the right to use the property, to exclude from third parties from it, and to receive a portion of any income produced from it. Id., Secs. 50.03–50.06.

Joint tenancies were the predominant form of concurrent ownership at common law, and still persist in some States today. 4 Thompson Sec. 31.05. The common law characterized each joint tenant as possessing the entire estate, rather than a fractional share: "[J]oint tenants have one and the same interest . . . held by one and the same undivided possession." 2 W. Blackstone, Commentaries on the Laws of England 180 (1766). Joint tenants possess many of the rights enjoyed by tenants in common: the right to use, to exclude, and to enjoy a share of the property's income. The main difference between a joint tenancy and a tenancy in common is that a joint tenant also has a right of automatic inheritance known as "survivorship." Upon the death of one joint tenant, that tenant's share in the property does not pass through will or the rules of intestate succession; rather, the remaining tenant or tenants automatically inherit it. *Id.*, at 183; 7 Powell Sec. 51.01[3]. Joint tenants' right to alienate their individual shares is also somewhat different. In order for one tenant to alienate his or her individual interest in the tenancy, the estate must first be severed — that is, converted to a tenancy in common with each tenant possessing an equal fractional share. *Id.*, Sec. 51.04[1]. Most States allowing joint tenancies facilitate alienation, however, by allowing severance to automatically accompany a conveyance of that interest or any other overt act indicating an intent to sever. *Ibid*.

A tenancy by the entirety is a unique sort of concurrent ownership that can only exist between married persons. 4 Thompson Sec. 33.02. Because of the common law fiction that the husband and wife were one person at law (that person, practically speaking, was the husband, see J. Cribbet et al., Cases and Materials on Property 329 (6th ed. 1990)), Blackstone did not characterize the tenancy by the entirety as a form of concurrent ownership at all. Instead, he thought that entireties property was a form of single ownership by the marital unity.

Orth, Tenancy by the Entirety: The Strange Career of the Common law Marital Estate, 1997 B.Y.U.L.Rev. 35, 38–39. Neither spouse was considered to own any individual interest in the estate; rather, it belonged to the couple.

Like joint tenants, tenants by the entirety enjoy the right of survivorship. Also like a joint tenancy, unilateral alienation of a spouse's interest in entireties property is typically not possible without severance. Unlike joint tenancies, however, tenancies by the entirety cannot easily be severed unilaterally. 4 Thompson Sec. 33.08(b). Typically, severance requires the consent of both spouses, *id.*, Sec. 33.08(a), or the ending of the marriage in divorce, *id.*, Sec. 33.08(d). At common law, all of the other rights associated with the entireties property belonged to the husband: as the head of the household, he could control the use of the property and the exclusion of others from it and enjoy all of the income produced from it. Id., Sec. 33.05. The husband's control of the property was so extensive that, despite the rules on alienation, the common law eventually provided that he could unilaterally alienate entireties property without severance subject only to the wife's survivorship interest. *Orth, supra*, at 40–41.

With the passage of the Married Women's Property Acts in the late 19th century granting women distinct rights with respect to marital property, most States either abolished the tenancy by the entirety or altered it significantly. 7 Powell Sec. 52.01[2]. Michigan's version of the estate is typical of the modern tenancy by the entirety. Following Blackstone, Michigan characterizes its tenancy by the entirety as creating no individual rights whatsoever: "It is well settled under the law of this state that one tenant by the entirety has no interest separable from that of the other. . .. Each is vested with an entire title. *Long v. Earle,* 277 Mich. 505, 517, 269 N.W. 577, 581 (1936). And yet, in Michigan, each tenant by the entirety possesses the right of survivorship. Mich. Comp. Laws Ann. Sec. 554.872(g) (West Supp. 1997), recodified at Sec. 700.2901(2)(g) (West Supp. Pamphlet 2001). Each spouse — the wife as well as the husband — may also use the property, exclude third parties from it, and receive an equal share of the income produced by it. See Sec. 557.71 (West 1988). Neither spouse may unilaterally alienate or encumber the property, *Long v. Earle*, *supra*, at 517, 269 N.W. at 581; *Rogers v. Rogers*, 136 Mich. App. 125, 134, 356 N.W. 2d 288, 292 (1984), although this may be accomplished with mutual consent, *Eadus v. Hunter,* 249 Mich. 190, 228 N.W. 782 (1930). Divorce ends the tenancy by the entirety, generally giving each spouse an equal interest in the property as a tenant in common unless the divorce decree specifies otherwise. Mich. Comp. Laws Ann. Sec. 552.102 (West 1988).

In determining whether respondent's husband possessed "property" or "rights to property" within the meaning of 26 U.S.C. Sec. 6321, we look to the individual rights created by these state law rules. According to Michigan law, respondent's husband had, among other rights, the following rights with respect to the entireties property: the right to use the property, the right to exclude third parties from it, the right to a share of income produced from it, the right of survivorship, the right to become a tenant in common with equal shares upon divorce, the right to sell the property with the respondent's consent and to receive half the proceeds from such a sale, the right to place an encumbrance on the property with the respondent's consent, and the right to block respondent from selling or encumbering the property unilaterally.

IV

We turn now to the federal question of whether the rights Michigan law granted to respondent's husband as a tenant by the entirety qualify as "property" or "rights to property" under Sec. 6321. The statutory language authorizing the tax lien "is broad and reveals on its face that Congress meant to reach every interest in property that a taxpayer might have." *United States v. National Bank of Commerce*, 472 U.S. at 719–720. "Stronger language could hardly have been selected to reveal a purpose to assure the collection of taxes." *Glass City Bank v. United States*, 326 U.S. 265, 267 (1945). We conclude that the husband's rights in the entireties property fall within this broad statutory language.

Michigan law grants a tenant by the entirety some of the most essential property rights: the right to use the property, to receive income produced by it, and to exclude others from it. See *Dolan v. City of Tigard*, 512 U.S. 374, 384 (1994) ("[T]he right to exclude others" is "one of the most essential sticks in the bundle of rights that are commonly characterized as property") (quoting *Kaiser Aetna v. United States*, 444 U.S. 164, 176 (1979)); *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435 (1982) (including "use" as one of the "[p]roperty rights in a physical thing"). These rights alone may be sufficient to subject the husband's interest in the entireties property to the federal tax lien. They gave him a substantial degree of control over the entireties property, and, as we noted in *Drye*, "in determining whether a federal taxpayer's state law rights constitute "property" or "rights to property," [t]he important consideration is the breadth of the control the [taxpayer] could exercise over the property. 528 U.S. at 61 (internal quotation marks omitted).

The husband's rights in the estate, however, went beyond use, exclusion, and income. He also possessed the right to alienate (or otherwise encumber) the property with the consent of respondent, his wife. *Loretto, supra*, at 435 (the right to "dispose" of an item is a property right). It is true, as respondent notes, that he lacked the right to unilaterally alienate the property, a right that is often in the bundle of property rights. See also *post* at 7. There is no reason to believe, however, that this one stick — the right of unilateral alienation — is essential to the category of "property."

This Court has already stated that federal tax liens may attach to property that cannot be unilaterally alienated. In *United States v. Rodgers*, 461 U.S. 677 (1983), we considered the Federal Government's power to foreclose homestead property attached by a federal tax lien. Texas law provided that "'the owner or claimant of the property claimed as homestead [may not], if married, sell or abandon the homestead without the consent of the other spouse.'" *Id.*, at 684–685 (quoting Tex. Const., Art. 16, Sec. 50). We nonetheless stated that "[i]n the homestead context . . . , there is no doubt . . . that not only do *both* spouses (rather than neither) have an independent interest in the homestead property, but that a federal tax lien can at least *attach* to each of those interests. 461 U.S. at 703, n. 31; cf. *Drye, supra*, at 60, n. 7 (noting that "an interest in a spendthrift trust has been held to constitute 'property for purposes of Sec. 6321' even though the beneficiary may not transfer that interest to third parties").

Excluding property from a federal tax lien simply because the taxpayer does not have the power to unilaterally alienate it would, moreover, exempt a rather large amount of what is commonly thought of as property. It would exempt not only the type of property discussed in *Rodgers*, but also some community property. Community property states often provide that real community property cannot be alienated without the consent of both spouses. See, *e.g.*, Ariz. Rev. Stat. Ann. Sec. 25–214(C) (2000); Cal. Fam. Code Ann. Sec. 1102 (West 1994); Idaho Code Sec. 32–912 (1996); La. Civ. Code Ann., Art. 2347 (West Supp. 2002); Nev. Rev. Stat. Sec. 123.230(3) (1995); N.M. Stat. Ann. Sec. 40–3–13 (1999); Wash. Rev. Code Sec. 26.16.030(3) (1994). Accordingly, the fact that respondent's husband could not unilaterally alienate the property does not preclude him from possessing "property and rights to property" for the purposes of Sec. 6321.

Respondent's husband also possessed the right of survivorship — the right to automatically inherit the whole of the estate should his wife predecease him. Respondent argues that this interest was merely an expectancy, which we suggested in *Drye* would not constitute "property" for the purposes of a federal tax lien. 528 U.S. at 60, n. 7 ("[We do not mean to suggest] that an expectancy that has pecuniary value . . . would fall within Sec. 6321 prior to the time it ripens into a present estate"). *Drye* did not decide this question, however, nor do we need to do so here. As we have discussed above, a number of the sticks in respondent's husband's bundle were presently existing. It is therefore not necessary to decide whether the right to survivorship alone would qualify as "property" or "rights to property" under Sec. 6321.

That the rights of respondent's husband in the entireties property constitute "property" or "rights to property" "belonging to" him is further underscored by the fact that if the conclusion were otherwise, the entireties property would belong to no one for the purposes of Sec. 6321. Respondent had no more interest in the property than her husband; if neither of them had a property interest in the entireties property, who did? This result not only seems absurd, but would also allow spouses to shield their property from federal taxation by classifying it as entireties property, facilitating abuse of the federal tax system. Johnson, After *Drye*: The Likely Attachment of the Federal Tax Lien to Tenancy by the Entireties Interests, 75 Ind.L.J. 1163, 1171 (2000).

JUSTICE SCALIA's and JUSTICE THOMAS' dissents claim that the conclusion that the husband possessed an interest in the entireties property to which the federal tax lien could attach is in conflict with the rules for tax liens relating to partnership property. See *post* at 1; see also *post* at 6, n. 4. This is not so. As the authorities cited by JUSTICE THOMAS reflect, the federal tax lien does attach to an individual partner's interest in the partnership, that is, to the fair market value of his or her share in the partnership assets. *Ibid*. (citing B. Bittker & M. McMahon, Federal Income Taxation of Individuals ¶44.5[4][a] (2d ed. 1995 and 2000 Cum.Supp.)); see also A. Bromberg & L. Ribstein, Partnership Sec. 3.05(d) (2002–1 Supp.) (hereinafter Bromberg & Ribstein) (citing Uniform Partnership Act Sec. 28, 6 U.L.A. 744 (1995)). As a holder of this lien, the Federal Government is entitled to "receive . . . the profits to which the assigning partner would otherwise be entitled," including predissolution distributions and the proceeds from dissolution. Uniform Partnership Act Sec. 27(1), *id.*, at 736.

There is, however, a difference between the treatment of entireties property and partnership assets. The Federal Government may not compel the sale of partnership assets (although it may foreclose on the partner's interest, Bromberg & Ribstein Sec. 3.05(d)(3)(iv)). It is this difference that is reflected in JUSTICE SCALIA's assertion that partnership property cannot be encumbered by individual partner's debts. See *post* at 1. This disparity in treatment between the two forms of ownership, however, arises from our decision in *United States v. Rodgers*, 461 U.S. 677 (1983) (holding that the Government may foreclose on property even where the co-owners lack the right of unilateral alienation), and not our holding today. In this case, it is instead the dissenters' theory that departs from partnership law, as it would hold that the Federal Government's lien does not attach to the husband's interest in the entireties property at all, whereas the lien may attach to an individual's interest in partnership property.

Respondent argues that whether or not we would conclude that respondent's husband had an interest in the entireties property, legislative history indicates that Congress did not intend that a federal tax lien should attach to such an interest. In 1954, the Senate rejected a proposed amendment to the tax lien statute that would have provided that the lien attach to "property or rights to property (including the interest of such person as tenant by the entirety)." S.Rep. No. 1622, 83d Cong., 2d Sess., p. 575 (1954). We have elsewhere held, however, that failed legislative proposals are "a particularly dangerous ground on which to rest an interpretation of a prior statute," *Pension Benefit Guaranty Corporation v. LTV Corp.*, 496 U.S. 633, 650 (1990), reasoning that "'[c]ongressional inaction lacks persuasive significance because several equally tenable inferences may be drawn from such inaction, including the inference that the existing legislation already incorporated the offered change,'" *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 187 (1994). This case exemplifies the risk of relying on such legislative history. As we noted in *United States v. Rodgers*, 461 U.S. at 704, n. 31, some legislative history surrounding the 1954 amendment indicates that the House intended the amendment to be nothing more than a "clarification" of existing law, and that the Senate rejected the amendment only because it found it "superfluous." See H.R. Rep. No. 1337, 83d Cong., 2d Sess., A406 (1954) (noting that the amendment would "clarif[y] the term 'property and rights to property' by expressly including therein the interest of the delinquent taxpayer in an estate by the entirety"); S. Rep. No. 1622, 83d Cong., 2d Sess., 575 (1954) ("It is not clear what change in existing law would be made by the parenthetical phrase. The deletion of the phrase is intended to continue the existing law").

The same ambiguity that plagues the legislative history accompanies the common law background of Congress' enactment of the tax lien statute. Respondent argues that Congress could not have intended the passage of the federal tax lien statute to alter the generally accepted rule that liens could not attach to entireties property. See *Astoria Fed. Sav. & Loan Assn. v. Solimino*, 501 U.S. 104, 108 (1991) ("[W]here a common law principle is well established . . .

the courts may take it as given that Congress has legislated with an expectation that the principle will apply except 'when a statutory purpose to the contrary is evident'"). The common law rule was not so well established with respect to the application of a federal tax lien that we must assume that Congress considered the impact of its enactment on the question now before us. There was not much of a common law background on the question of the application of federal tax liens, as the first court of appeals cases dealing with the application of such a lien did not arise until the 1950's. *United States v. Hutcherson*, 188 F.2d 326 (CA8 1951); *Raffaele v. Granger*, 196 F.2d 620 (CA3 1952). This background is not sufficient to overcome the broad statutory language Congress did enact, authorizing the lien to attach to "all property and rights to property" a taxpayer might have.

We therefore conclude that respondent's husband's interest in the entireties property constituted "property" or "rights to property" for the purposes of the federal tax lien statute. We recognize that Michigan makes a different choice with respect to state law creditors: "[L]and held by husband and wife as tenants by entirety is not subject to levy under execution on judgment rendered against either husband or wife alone." *Sanford v. Bertrau*, 204 Mich. 244, 247, 169 N.W. 880, 881 (1918). But that by no means dictates our choice. The interpretation of 26 U.S.C. Sec. 6321 is a federal question, and in answering that question we are in no way bound by state courts' answers to similar questions involving state law. As we elsewhere have held, "'exempt status under state law does not bind the federal collector.'" *Drye v. United States*, 528 U.S. at 51. See also *Rodgers, supra*, at 701 (clarifying that the Supremacy Clause "provides the underpinning for the Federal Government's right to sweep aside state-created exemptions").

V

We express no view as to the proper valuation of respondent's husband's interest in the entireties property, leaving this for the Sixth Circuit to determine on remand. We note, however, that insofar as the amount is dependent upon whether the 1989 conveyance was fraudulent, see *post* at 1, n. 1 (THOMAS, J., dissenting), this case is somewhat anomalous. The Sixth Circuit affirmed the District Court's judgment that this conveyance was not fraudulent, and the Government has not sought certiorari review of that determination. Since the District Court's judgment was based on the notion that because the federal tax lien could not attach to the property, transferring it could not constitute an attempt to evade the Government creditor, 65 F.Supp.2d at 657–659, in future cases, the fraudulent conveyance question will no doubt be answered differently.

The judgment of the United States Court of Appeals for the Sixth Circuit is accordingly reversed, and the case is remanded for proceedings consistent with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 00–1831

UNITED STATES PETITIONER *v.* SANDRA L.CRAFT

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

April 17, 2002

JUSTICE SCALIA, with whom JUSTICE THOMAS joins, dissenting.

I join JUSTICE THOMAS' dissent, which points out (to no relevant response from the Court) that a State's decision to treat the marital partnership as a separate legal entity, whose property cannot be encumbered by the debts of its individual members, is no more novel and no more "artificial" than a State's decision to treat the commercial partnership as a separate legal entity, whose property cannot be encumbered by the debts of its individual members.

I write separately to observe that the Court nullifies (insofar as federal taxes are concerned, at least) a form of property ownership that was of particular benefit to the stay-at- home spouse or mother. She is overwhelmingly likely to be the survivor that obtains title to the unencumbered property, and she (as opposed to her business-world husband) is overwhelmingly unlikely to be the source of the individual indebtedness against which a tenancy by the entirety protects. It is regrettable that the Court has eliminated a large part of this traditional protection retained by many States.

SUPREME COURT OF THE UNITED STATES

No. 00–1831

UNITED STATES PETITIONER *v.* SANDRA L. CRAFT

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

April 17, 2002

JUSTICE THOMAS, with whom JUSTICE STEVENS and JUSTICE SCALIA join, dissenting.

The Court today allows the Internal Revenue Service (IRS) to reach proceeds from the sale of real property that did not belong to the taxpayer, respondent's husband, Don Craft,[1] because, in the Court's view, he "possesse[d] individual rights in the [tenancy by the entirety] estate sufficient to constitute 'property and rights to property' for the purposes of the lien" created by 26 U.S.C. Sec. 6321. *Ante*, at 1. The Court does not contest that the tax liability the IRS seeks to satisfy is Mr. Craft's alone, and does not claim that, under Michigan law, real property held as a tenancy by the entirety belongs to either spouse individually. Nor does the Court suggest that the federal tax lien attaches to particular "rights to property" held individually by Mr. Craft. Rather, borrowing the metaphor of "property as a 'bundle of sticks' — a collection of individual rights which, in certain combinations constitute property," *ante*, at 4, the Court proposes that so long as suf-

[1] The Grand Rapids property was tenancy by the entirety property owned by Mr. and Mrs. Craft when the tax lien attached, but was conveyed by the Crafts to Mrs. Craft by quitclaim deed in 1989. That conveyance terminated the entirety estate. Mich. Comp. Laws Ann. Sec. 557.101 (West 1988); see also *United States v. Certain Real Property Located at 2525 Leroy Lane*, 910 F.2d 343, 351 (CA6 1990). The District Court and Court of Appeals both held that the transfer did not constitute a fraudulent conveyance, a ruling the Government has not appealed. The IRS is undoubtedly entitled to any proceeds that Mr. Craft received or to which he was entitled from *the 1989 conveyance* of the tenancy by the entirety property for $1.00; at that point, the tenancy by the entirety estate was destroyed and at least half of the proceeds, or 50 cents, was "property" or "rights to property" "belonging to" Mr. Craft. By contrast, the proceeds that the IRS claims here are from *Mrs. Craft's 1992 sale* of the property to a third party. At the time of the sale, she owned the property in fee simple, and accordingly Mr. Craft neither received nor was entitled to these funds.

ficient "sticks" in the bundle of "rights to property" "belong to" a delinquent taxpayer, the lien can attach as if the property itself belonged to the taxpayer. *Ante*, at 11.

This amorphous construct ignores the primacy of state law in defining property interests, eviscerates the statutory distinction between "property" and "rights to property" drawn by Sec. 6321, and conflicts with an unbroken line of authority from this Court, the lower courts, and the IRS. Its application is all the more unsupportable in this case because, in my view, it is highly unlikely that the limited individual "rights to property" recognized in a tenancy by the entirety under Michigan law are themselves subject to lien. I would affirm the Court of Appeals and hold that Mr. Craft did not have "property" or "rights to property" to which the federal tax lien could attach.

I

Title 26 U.S.C. Sec. 6321 provides that a federal tax lien attaches to "all property and rights to property, whether real or personal, belonging to" a delinquent taxpayer. It is uncontested that a federal tax lien itself "creates no property rights but merely attaches consequences, federally defined, to rights created under state law." *United States v. Bess*, 357 U.S. 51, 55 (1958) (construing the 1939 version of the federal tax lien statute). Consequently the Government's lien under Sec. 6321 "cannot extend beyond the property interests held by the delinquent taxpayer," *United States v. Rodgers*, 461 U.S. 677, 690–691 (1983), under state law. Before today, no one disputed that the IRS, by operation of Sec. 6321, "steps into the taxpayer's shoes," and has the same rights as the taxpayer in property or rights to property subject to the lien. B. Bittker & M. McMahon, Federal Income Taxation of Individuals ¶44.5[4][a] (2d ed. 1995 and 2000 Cum. Supp.) (hereinafter Bittker). I would not expand "'the nature of the legal interest'" the taxpayer has in the property beyond those interests recognized under state law. *Aquilino v. United States*, 363 U.S. 509, 513 (1960) (citing *Morgan v. Commissioner*, 309 U.S. 78, 82 (1940)).

A

If the Grand Rapids property "belong[ed] to" Mr. Craft under state law prior to the termination of the tenancy by the entirety, the federal tax lien would have attached to the Grand Rapids property. But that is not this case. As the Court recognizes, pursuant to Michigan law, as under English common law, property held as a tenancy by the entirety does not belong to either spouse, but to a single entity composed of the married persons. See *ante*, at 6–7. Neither spouse has "any separate interest in such an estate." *Sanford v. Bertrau*, 204 Mich. 244, 249, 169 N.W. 880, 882 (1918); see also *Long v. Earle*, 277 Mich. 505, 517, 269 N.W. 577, 581 (1936) ("Each [spouse] is vested with an entire title and, as against the one who attempts alone to convey or encumber such real estate, the other has an absolute title"). An entireties estate constitutes an indivisible "sole tenancy." See *Budwit v. Herr*, 339 Mich. 265, 272, 63 N.W.2d 841, 844 (1954); see also *Tyler v. United States*, 281 U.S. 497, 501 (1930) ("[T]he tenants constitute a unit; neither can dispose of any part of the estate without the consent of the other, and the whole continues in the survivor"). Because Michigan does not recognize a separate spousal interest in the Grand Rapids property, it did not "belong" to either respondent or her husband individually when the IRS asserted its lien for Mr. Craft's individual tax liability. Thus, the property was not property to which the federal tax lien could attach for Mr. Craft's tax liability.

The Court does not dispute this characterization of Michigan's law with respect to the essential attributes of the tenancy by the entirety estate. However, relying on *Drye v. United States*, 528 U.S. 49, 59 (1999), which in turn relied upon *United States v. Irvine*, 511 U.S. 224 (1994), and *United States v. Mitchell*, 403 U.S. 190 (1971), the Court suggests that Michigan's definition of the tenancy by the entirety estate should be overlooked because federal tax law is not controlled by state legal fictions concerning property ownership. *Ante*, at 4. But the Court misapprehends the application of *Drye* to this case.

Drye, like *Irvine* and *Mitchell* before it, was concerned not with whether state law recognized "property" as belonging to the taxpayer in the first place, but rather with whether state laws could disclaim or exempt such property from federal tax liability after the property interest was created. *Drye* held only that a state law disclaimer could not retroactively undo a vested right in an estate that the taxpayer already held, and that a federal lien therefore attached to the taxpayer's interest in the estate. 528 U.S. at 61 (recognizing that a disclaimer does not restore the *status quo ante* because the heir "determines who will receive the property—himself if he does not disclaim, a known other if he does"). Similarly, in *Irvine*, the Court held that a state law allowing an individual to disclaim a gift could not force the Court to be "struck blind" to the fact that the transfer of "property" or "property rights" for which the gift tax was due had already occurred; "*state property transfer rules* do not transfer into federal taxation rules." 511 U.S. at 239–240 (emphasis added). See also *Mitchell*, *supra*, at 204 (holding that right to renounce a marital interest under state law does not indicate that the taxpayer had no right to property before the renunciation).

Extending this Court's "state law fiction" jurisprudence to determine whether property or rights to property *exist* under state law in the first place works a sea change in the role States have traditionally played in "creating and defining" property interests. By erasing the careful line between state laws that purport to disclaim or exempt property interests after the fact, which the federal tax lien does not respect, and state laws' definition of property and property rights, which the federal tax lien does respect, the Court does not follow *Drye*, but rather creates a new federal common law of property. This contravenes the previously settled rule that the definition and scope of property is left to the States. See *Aquilino*, *supra*, at 513, n. 3 (recognizing unsoundness of leaving the definition of property interests to a nebulous body of federal law, "because it ignores the long-established role that the States have played in creating property interests and places upon the courts the task of attempting to ascertain a taxpayer's property rights under an undefined rule of federal law").

B

That the Grand Rapids property does not belong to Mr. Craft under Michigan law does not end the inquiry, however, since the federal tax lien attaches not only to "property," but also to any "rights to property" belonging to the taxpayer. While the Court concludes that a laundry list of "rights to property" belonged to Mr. Craft as a tenant by the entirety, [2] it does not suggest that the tax lien attached to any of these particular rights.[3] Instead, the Court gathers these rights together and opines that there were sufficient sticks to form a bundle, so that "respondent's husband's interest in the entireties property constituted 'property' or 'rights to property' for the purposes of the federal tax lien statute." *Ante* at 11,13.

But the Court's "sticks in a bundle" metaphor collapses precisely because of the distinction expressly drawn by the statute, which distinguishes between "property" and "rights to property." The Court refrains from ever stating whether this case involves "property" or "rights to property" even though Sec. 6321 specifically provides that the federal tax lien attaches to "property" and "rights to property" "belonging to" the delinquent taxpayer, and not to an imprecise construct of "individual rights in the estate sufficient to constitute 'property and rights to property' for the purposes of the lien." *Ante*, at 1.[4]

Rather than adopt the majority's approach, I would ask specifically, as the statute does, whether Mr. Craft had any particular "rights to property" to which the federal tax lien could attach. He did not.[5] Such "rights to property" that have been subject to the Sec. 6321 lien are valuable and "pecuniary," *i.e*., they can be attached, and levied upon or sold by the Government.[6] *Drye*, 528 U.S. at 58—60, and n. 7. With such rights subject to lien, the taxpayer's interest has "ripen[ed] into a present estate" of some form and is more than a mere expectancy, *id*., at 60, n. 7, and thus the taxpayer has an apparent right "to channel that value to [another]," *id*., at 61.

In contrast, a tenant in a tenancy by the entirety not only lacks a present divisible vested interest in the property and control with respect to the sale, encumbrance, and transfer of the property, but also does not possess the ability to devise any portion of the property because it is subject to the other's indestructible right of survivorship. *Rogers v. Rogers*, 136 Mich. App. 125, 135–137, 356 N.W.2d 288, 293–294 (1984). This latter fact makes the property significantly different from community property, where each spouse has a present one-half vested interest in the whole, which may be devised by will or otherwise to a person other than the spouse. See 4 G. Thompson, Real Property Sec. 37.14(a) (D. Thomas ed. 1994) (noting that a married person's power to devise one-half of the community property is "consistent with the fundamental characteristic of community property": "community ownership means that each spouse owns 50% of each community asset").[7] See also *Drye*, 528 U.S. at 61 ("[I]n determining whether a federal taxpayer's state law rights constitute 'property' or 'rights to property,' the *important consideration is the breadth of the control the taxpayer could exercise over the property*" (emphasis added, citation and brackets omitted).

It is clear that some of the individual rights of a tenant in entireties property are primarily personal, dependent upon the taxpayer's status as a spouse, and similarly not susceptible to a tax lien. For example, the right to use the property in conjunction with one's spouse and to exclude all others appears particularly ill suited to being transferred to another, see *ibid*., and to lack "exchangeable value," *id*., at 56.

Nor do other identified rights rise to the level of "rights to property" to which a Sec. 6321 lien can attach, because they represent, at most, a contingent future interest, or an "expectancy" that has not "ripen[ed] into a present estate." Id. at 60, n. 7 ("Nor do we mean to suggest that an expectancy that has pecuniary value and is transferable under state law would fall within Sec. 6321 prior to the time it ripens into a present estate"). Cf. *Bess*, 357 U.S. at 55—56 (holding that no federal tax lien could attach to proceeds of the taxpayer's life insurance policy because "[i]t would be anomalous to view as 'property' subject to lien proceeds never within the insured's reach to enjoy"). By way of example, the survivorship right wholly depends upon one spouse outliving the other at which time the survivor gains "substantial rights, in respect of the property, theretofore never enjoyed by [the] survivor." *Tyler*, 281 U.S. at 503. While the Court explains that it is "not necessary to decide whether the right to survivorship alone would qualify as 'property' or 'rights to property'" under Sec. 6321, *ante*, at 11, the facts of this case demonstrate that it would not. Even assuming both that the right of survivability continued after the demise of the tenancy estate and that the tax lien could attach to such a contingent future right, creating a lienable interest upon the death of the nonliable spouse, it would not help the IRS here; respondent's husband predeceased her in 1998, and there is no right of survivorship at issue in this case.

---

[2] The parties disagree as to whether Michigan law recognizes the "rights to property" identified by the Court as *individual* rights "belonging to" each tenant in entireties property. Without deciding a question better resolved by the Michigan courts, for the purposes of this case, I will assume, *arguendo*, that Michigan law recognizes separate interests in these "rights to property."

[3] Nor does the Court explain how such "rights to property" survived the destruction of the tenancy by the entirety, although, for all intents and purposes, it acknowledges that such rights as it identifies exist by virtue of the tenancy by the entirety estate. Even Judge Ryan's concurrence in the Sixth Circuit's first ruling in this matter is best read as making the Federal Government's right to execute its lien dependent upon the factual finding that the conveyance was a fraudulent transaction. See 140 F.3d 638, 648–649 (1998).

[4] The Court's reasoning that because a taxpayer has rights to property a federal tax lien can attach not only to those rights but also to the property itself could have far-reaching consequences. As illustration, in the partnership setting as elsewhere, the Government's lien under Sec. 6321 places the Government in no better position than the taxpayer to whom the property belonged: "[F]or example, the lien for a partner's unpaid income taxes attaches to his interest in the firm, not to the firm's assets." Bittker ¶44.5[4][a]. Though partnership property currently is "not subject to attachment or execution, except on a claim against the partnership," Rev.Rul. 73–24, 1973–1 Cum. Bull. 602; cf. *United States v. Kaufman*, 267 U.S. 408 (1925), under the logic of the Court's opinion partnership property could be attached for the tax liability of an individual partner. Like a tenant in a tenancy by the entirety, the partner has significant rights to use, enjoy, and control the partnership property in conjunction with his partners. I see no principled way to distinguish between the propriety of attaching the federal tax lien to partnership property to satisfy the tax liability of a partner, in contravention of current practice, and the propriety of attaching the federal tax lien to tenancy by the entirety property in order to satisfy the tax liability of one spouse, also in contravention of current practice. I do not doubt that a tax lien may attach to a partner's partnership interest to satisfy his individual tax liability, but it is well settled that the lien does not thereby attach to property belonging to the partnership. The problem for the IRS in this case is that, unlike a partnership interest, such limited rights that Mr. Craft had in the Grand Rapids property are not the kind of rights to property to which a lien can attach, and the Grand Rapids property itself never "belong[ed] to" him under Michigan law.

[5] Even such rights as Mr. Craft arguably had in the Grand Rapids property bear no resemblance to those to which a federal tax lien has ever attached. See W. Elliott, Federal Tax Collections, Liens, and Levies ¶¶9.09[3][a]–[f] (1995 and 2000 Cum. Supp.) (hereinafter Elliott) (listing examples of rights to property to which a federal tax lien attaches, such as the right to compel payment; the right to withdraw money from a bank account, or to receive money from accounts receivable; wages earned but not paid; installment payments under a contract of sale of real estate; annuity payments; a beneficiary's rights to payment under a spendthrift trust; a liquor license; an asement; the taxpayer's interest in a timeshare; options; the taxpayer's interest in an employee benefit plan or individual retirement account).

[6] See 26 U.S.C. Sections 6331 6335–6336.

[7] And it is similarly different from the situation in *United States v. Rodgers*, 461 U.S. 677 (1983), where the question was not whether a vested property interest in the family home to which the federal tax lien could attach "belong[ed] to" the taxpayer. Rather, in *Rodgers*, the only question was whether the federal tax lien for the husband's tax liability could be *foreclosed* against the property under 26 U.S.C. Sec. 7403 despite his wife's homestead right under state law. See 461 U.S. at 701–703, and n. 31.

Similarly, while one spouse might escape the absolute limitations on individual action with respect to tenancy by the entirety property by obtaining the right to one-half of the property upon divorce, or by agreeing with the other spouse to sever the tenancy by the entirety, neither instance is an event of sufficient certainty to constitute a "right to property" for purposes of Sec. 6321. Finally, while the federal tax lien could arguably have attached to a tenant's right to any "rents, products, income, or profits" of real property held as tenants by the entirety, Mich. Comp. Laws Ann. Sec. 557.71 (West 1988), the Grand Rapids property created no rents, products, income, or profits for the tax lien to attach to.

In any event, all such rights to property, dependent as they are upon the existence of the tenancy by the entirety estate, were likely destroyed by the quitclaim deed that severed the tenancy. See n. 1, *supra*. Unlike a lien attached to the property itself, which would survive a conveyance, a lien attached to a "right to property" falls squarely within the maxim that "the tax collector not only steps into the taxpayer's shoes, but must go barefoot if the shoes wear out." Bittker ¶44.5[4][a] (noting that "a state judgment terminating the taxpayer's rights to an asset also extinguishes the federal tax lien attached thereto"). See also Elliott ¶9.09[3][d][i] (explaining that while a tax lien may attach to a taxpayer's option on property, if the option terminates, the Government's lien rights would terminate as well).

Accordingly, I conclude that Mr. Craft had neither "property" nor "rights to property" to which the federal tax lien could attach.

II

That the federal tax lien did not attach to the Grand Rapids property is further supported by the consensus among the lower courts. For more than 50 years, every federal court reviewing tenancies by the entirety in States with a similar understanding of tenancy by the entirety as Michigan has concluded that a federal tax lien cannot attach to such property to satisfy an individual spouse's tax liability.[8] This consensus is supported by the IRS' consistent recognition, arguably against its own interest, that a federal tax lien against one spouse cannot attach to property or rights to property held as a tenancy by the entirety.[9]

That the Court fails to so much as mention this consensus, let alone address it or give any reason for overruling it, is puzzling. While the positions of the lower courts and the IRS do not bind this Court, one would be hard pressed to explain why the combined weight of these judicial and administrative sources — including the IRS' instructions to its own employees — do not constitute relevant authority.

III

Finally, while the majority characterizes Michigan's view that the tenancy by the entirety property does not belong to the individual spouses as a "state law fiction," *ante*, at 1, our precedents, including *Drye*, 528 U.S. at 58–60, hold that state, not federal, law defines property interests. Ownership by "the marriage" is admittedly a fiction of sorts, but so is a partnership or corporation. There is no basis for ignoring this fiction so long as federal law does not define property, particularly since the tenancy by the entirety property remains subject to lien for the tax liability of *both* tenants.

Nor do I accept the Court's unsupported assumption that its holding today is necessary because a contrary result would "facilitat[e] abuse of the federal tax system." *Ante*, at 11. The Government created this straw man, Brief for United States 30–32, suggesting that the property transfer from the tenancy by the entirety to respondent was somehow improper, see *id*., at 30–31, n. 20 (characterizing scope of "[t]he tax avoidance scheme sanctioned by the court of appeals in this case"), even though it chose *not* to appeal the lower court's contrary assessment. But the longstanding consensus in the lower courts that tenancy by the entirety property is *not* subject to lien for the tax liability of one spouse, combined with the Government's failure to adduce any evidence that this has led to wholesale tax fraud by married individuals, suggests that the Court's policy rationale for its holding is simply unsound.

Just as I am unwilling to overturn this Court's longstanding precedent that States define and create property rights and forms of ownership, *Aquilino*, 363 U.S. at 513, n. 3, I am equally unwilling to redefine or dismiss as fictional forms of property ownership that the State has recognized in favor of an amorphous federal common law definition of property. I respectfully dissent.

[8] See *IRS v. Gaster*, 42 F.3d 787, 791 (CA3 1994) (concluding that the IRS is not entitled to a lien on property owned as a tenancy by the entirety to satisfy the tax obligations of one spouse); *Pitts v. United States*, 946 F.2d 1569, 1571–1572 (CA4 1991) (same); *United States v. American Nat. Bank of Jacksonville*, 255 F.2d 504, 507 (CA5), cert. denied, 358 U.S. 835 (1958) (same); *Raffaele v. Granger*, 196 F.2d 620, 622–623 (CA3 1952) (same); *United States v. Hutcherson*, 188 F.2d 326, 331 (CA8 1951) (explaining that the interest of one spouse in tenancy by the entirety property "is not a right to property or property in any sense"); *United States v. Nathanson*, 60 F. Supp. 193, 194 (ED Mich. 1945) (finding no designation in the Federal Revenue Act for imposing tax upon property held by the entirety for taxes due from one person alone); *Shaw v. United States*, 94 F. Supp. 245, 246 (WD Mich. 1939) (recognizing that the nature of the estate under Michigan law precludes the tax lien from attaching to tenancy by the entirety property for the tax liability of one spouse). See also *Benson v. United States*, 442 F.2d 1221, 1223 (CADC 1971) (recognizing the Government's concession that property owned by the parties as tenants by the entirety cannot be subjected to a tax lien for the debt of one tenant); *Cole v. Cardoza*, 441 F.2d 1337, 1343 (CA6 1971) (noting Government concession that, under Michigan law, it had no valid claim against real property held by tenancy by the entirety).

[9] See, *e.g.*, Internal Revenue Manual Sec. 5.8.4.2.3 (RIA 2002), available at WESTLAW, RIA–IRM database (Mar. 29, 2002) (listing "property owned as tenants by the entirety" as among the assets beyond the reach of the Government's tax lien); *id.*, Sec. 5.6.1.2.3 (recognizing that a *consensual* lien may be appropriate "when the federal tax lien does not attach to the property in question. For example, an assessment exists against only one spouse and the federal tax lien does not attach to real property held as tenants by the entirety."); IRS Chief Counsel Advisory (Aug. 17, 2001) (noting that consensual iens, or mortgages, are to be used "as a means of securing the Government's right to collect from property the assessment lien does not attach to, such as *real property held as a tenancy by the entirety*" (emphasis added)); IRS Litigation Bulletin No. 407 (Aug. 1994) ("Traditionally, the government has taken the view that a federal tax lien against a single debtor-spouse does not attach to property or rights to property held by both spouses as tenants by the entirety."); IRS Litigation Bulletin No. 388 (Jan. 1993) (explaining that neither the Department of Justice nor IRS chief counsel interpreted *United States v. Rodgers*, 461 U.S. 677 (1983), to mean that a federal tax lien against one spouse encumbers his or her interest in entireties property, and noting that it "do[es] not believe the Department will again argue the broader interpretation of *Rodgers*," which would extend the reach of the federal tax lien to property held by the entireties); *Benson, supra*, at 1223; *Cardoza, supra*, at 1343.

Section 6621.—Determination of Interest Rates

26 CFR 301.6621–1: Interest rate.

Interest rates; underpayments and overpayments. The rate of interest determined under section 6621 of the Code for the calendar quarter beginning October 1, 2002, will be 6 percent for overpayments (5 percent in the case of a corporation), 6 percent for underpayments, and 8 percent for large corporate underpayments. The rate of interest paid on the portion of a corporate overpayment exceeding $10,000 will be 3.5 percent.

Rev. Rul. 2002–59

Section 6621 of the Internal Revenue Code establishes the rates for interest on tax overpayments and tax underpayments. Under § 6621(a)(1), the overpayment rate beginning October 1, 2002, is the sum of the federal short-term rate plus 3 percentage points (2 percentage points in the case of a corporation), except the rate for the portion of a corporate overpayment of tax exceeding $10,000 for a taxable period is the sum of the federal short-term rate plus 0.5 of a percentage point for interest computations made after December 31, 1994. Under § 6621(a)(2), the underpayment rate is the sum of the federal short-term rate plus 3 percentage points.

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

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

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

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

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

Rounded to the nearest full percent, the federal short-term rate based on daily compounding determined during the month of July 2002 is 3 percent. Accordingly, an overpayment rate of 6 percent (5 percent in the case of a corporation) and an underpayment rate of 6 percent are established for the calendar quarter beginning October 1, 2002. The overpayment rate for the portion of a corporate overpayment exceeding $10,000 for the calendar quarter beginning October 1, 2002, is 3.5 percent. The underpayment rate for large corporate underpayments for the calendar quarter beginning October 1, 2002, is 8 percent. These rates apply to amounts bearing interest during that calendar quarter.

Interest factors for daily compound interest for annual rates of 3.5 percent, 5 percent, 6 percent, and 8 percent are published in Tables 12, 15, 17, and 21 of Rev. Proc. 95–17, 1995–1 C.B. 556, 566, 569, 571, and 575.

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

DRAFTING INFORMATION

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

TABLE OF INTEREST RATES
PERIODS BEFORE JUL. 1, 1975 – PERIODS ENDING DEC. 31, 1986
OVERPAYMENTS AND UNDERPAYMENTS

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

TABLE OF INTEREST RATES
PERIODS BEFORE JUL. 1, 1975 – PERIODS ENDING DEC. 31, 1986
OVERPAYMENTS AND UNDERPAYMENTS—CONTINUED

PERIOD	RATE	In 1995–1 C.B. DAILY RATE TABLE
Jan. 1, 1985—Jun. 30, 1985	13%	Table 31, pg. 585
Jul. 1, 1986—Dec. 31, 1986	9%	Table 23, pg. 577

TABLE OF INTEREST RATES
FROM JAN. 1, 1987 – Dec. 31, 1998

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

TABLE OF INTEREST RATES
FROM JAN. 1, 1987 – Dec. 31, 1998—CONTINUED

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

TABLE OF INTEREST RATES
FROM JANUARY 1, 1999 – PRESENT
NONCORPORATE OVERPAYMENTS AND UNDERPAYMENTS

		1995–1 C.B.	
	RATE	TABLE	PAGE
Jan. 1, 1999—Mar. 31, 1999	7%	19	573
Apr. 1, 1999—Jun. 30, 1999	8%	21	575
Jul. 1, 1999—Sep. 30, 1999	8%	21	575
Oct. 1, 1999—Dec. 31, 1999	8%	21	575
Jan. 1, 2000—Mar. 31, 2000	8%	69	623
Apr. 1, 2000—Jun. 30, 2000	9%	71	625
Jul. 1, 2000—Sep. 30, 2000	9%	71	625
Oct. 1, 2000—Dec. 31, 2000	9%	71	625
Jan. 1, 2001—Mar. 31, 2001	9%	23	577
Apr. 1, 2001—Jun. 30, 2001	8%	21	575
Jul. 1, 2001—Sep. 30, 2001	7%	19	573
Oct. 1, 2001—Dec. 31, 2001	7%	19	573
Jan. 1, 2002—Mar. 31, 2002	6%	17	571
Apr. 1, 2002—Jun. 30, 2002	6%	17	571
Jul. 1, 2002—Sep. 30, 2002	6%	17	571
Oct. 1, 2002—Dec. 31, 2002	6%	17	571

TABLE OF INTEREST RATES
FROM JAN. 1, 1999 – PRESENT
CORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	OVERPAYMENTS			UNDERPAYMENTS		
	1995–1 C.B.			*1995–1 C.B.		
	RATE	TABLE	PG	RATE	TABLE	PG
Jan. 1, 1999—Mar. 31, 1999	6%	17	571	7%	19	573
Apr. 1, 1999—Jun. 30, 1999	7%	19	573	8%	21	575
Jul. 1, 1999—Sep. 30, 1999	7%	19	573	8%	21	575
Oct. 1, 1999—Dec. 31, 1999	7%	19	573	8%	21	575
Jan. 1, 2000—Mar. 31, 2000	7%	67	621	8%	69	623
Apr. 1, 2000—Jun. 30, 2000	8%	69	623	9%	71	625
Jul. 1, 2000—Sep. 30, 2000	8%	69	623	9%	71	625
Oct. 1, 2000—Dec. 31, 2000	8%	69	623	9%	71	625
Jan. 1, 2001—Mar. 31, 2001	8%	21	575	9%	23	577
Apr. 1, 2001—Jun. 30, 2001	7%	19	573	8%	21	575
Jul. 1, 2001—Sep. 30, 2001	6%	17	571	7%	19	573
Oct. 1, 2001—Dec. 31, 2001	6%	17	571	7%	19	573
Jan. 1, 2002—Mar. 31, 2002	5%	15	569	6%	17	571
Apr. 1, 2002—Jun. 30, 2002	5%	15	569	6%	17	571
Jul. 1, 2002—Sep. 30, 2002	5%	15	569	6%	17	571
Oct. 1, 2002—Dec. 31, 2002	5%	15	569	6%	17	571

TABLE OF INTEREST RATES FOR
LARGE CORPORATE UNDERPAYMENTS
FROM JANUARY 1, 1991 – PRESENT

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

TABLE OF INTEREST RATES FOR
LARGE CORPORATE UNDERPAYMENTS
FROM JANUARY 1, 1991 – PRESENT—CONTINUED

	RATE	1995–1 C.B. TABLE	PAGE
Jan. 1, 1996—Mar. 31, 1996	11%	75	629
Apr. 1, 1996—Jun. 30, 1996	10%	73	627
Jul. 1, 1996—Sep. 30, 1996	11%	75	629
Oct. 1, 1996—Dec. 31, 1996	11%	75	629
Jan 1, 1997—Mar. 31, 1997	11%	27	581
Apr. 1, 1997—Jun. 30, 1997	11%	27	581
Jul. 1, 1997—Sep. 30, 1997	11%	27	581
Oct. 1, 1997—Dec. 31, 1997	11%	27	581
Jan. 1, 1998—Mar. 31, 1998	11%	27	581
Apr. 1, 1998—Jun. 30, 1998	10%	25	579
Jul. 1, 1998—Sep. 30, 1998	10%	25	579
Oct. 1, 1998—Dec. 31, 1998	10%	25	579
Jan. 1, 1999—Mar. 31, 1999	9%	23	577
Apr. 1, 1999—Jun. 30, 1999	10%	25	579
Jul. 1, 1999—Sep. 30, 1999	10%	25	579
Oct. 1, 1999—Dec. 31, 1999	10%	25	579
Jan. 1, 2000—Mar. 31, 2000	10%	73	627
Apr. 1, 2000—Jun. 30, 2000	11%	75	629
Jul. 1, 2000—Sep. 30, 2000	11%	75	629
Oct. 1, 2000—Dec. 31, 2000	11%	75	629
Jan. 1, 2001—Mar. 31, 2001	11%	27	581
Apr. 1, 2001—Jun. 30, 2001	10%	25	579
Jul. 1, 2001—Sep. 30, 2001	9%	23	577
Oct. 1, 2001—Dec. 31, 2001	9%	23	577
Jan. 1, 2002—Mar. 31, 2002	8%	21	575
Apr. 1, 2002—Jun. 30, 2002	8%	21	575
Jul. 1, 2002—Sep. 30, 2002	8%	21	575
Oct. 1, 2002—Dec. 30, 2002	8%	21	575

TABLE OF INTEREST RATES FOR
CORPORATE OVERPAYMENTS EXCEEDING $10,000
FROM JANUARY 1, 1995 – PRESENT

	RATE	1995–1 C.B. TABLE	PAGE
Jan. 1, 1995—Mar. 31, 1995	6.5%	18	572
Apr. 1, 1995—Jun. 30, 1995	7.5%	20	574
Jul. 1, 1995—Sep. 30, 1995	6.5%	18	572
Oct. 1, 1995—Dec. 31, 1995	6.5%	18	572
Jan. 1, 1996—Mar. 31, 1996	6.5%	66	620
Apr. 1, 1996—Jun. 30, 1996	5.5%	64	618
Jul. 1, 1996—Sep. 30, 1996	6.5%	66	620
Oct. 1, 1996—Dec. 31, 1996	6.5%	66	620
Jan. 1, 1997—Mar. 31, 1997	6.5%	18	572
Apr. 1, 1997—Jun. 30, 1997	6.5%	18	572

TABLE OF INTEREST RATES FOR
CORPORATE OVERPAYMENTS EXCEEDING $10,000
FROM JANUARY 1, 1995 – PRESENT—CONTINUED

	RATE	1995–1 C.B. TABLE	PAGE
Jul. 1, 1997—Sep. 30, 1997	6.5%	18	572
Oct. 1, 1997—Dec. 31, 1997	6.5%	18	572
Jan. 1, 1998—Mar. 31, 1998	6.5%	18	572
Apr. 1, 1998—Jun. 30, 1998	5.5%	16	570
Jul. 1, 1998—Sep. 30, 1998	5.5%	16	570
Oct. 1, 1998—Dec. 31, 1998	5.5%	16	570
Jan. 1, 1999—Mar. 31, 1999	4.5%	14	568
Apr. 1, 1999—Jun. 30, 1999	5.5%	16	570
Jul. 1, 1999—Sep. 30, 1999	5.5%	16	570
Oct. 1, 1999—Dec. 31, 1999	5.5%	16	570
Jan. 1, 2000—Mar. 31, 2000	5.5%	64	618
Apr. 1, 2000—Jun. 30, 2000	6.5%	66	620
Jul. 1, 2000—Sep. 30, 2000	6.5%	66	620
Oct. 1, 2000—Dec. 31, 2000	6.5%	66	620
Jan. 1, 2001—Mar. 31, 2001	6.5%	18	572
Apr. 1, 2001—Jun. 30, 2001	5.5%	16	570
Jul. 1, 2001—Sep. 30, 2001	4.5%	14	568
Oct. 1, 2001—Dec. 31, 2001	4.5%	14	568
Jan. 1, 2002—Mar. 31, 2002	3.5%	12	566
Apr. 1, 2002—Jun. 30, 2002	3.5%	12	566
Jul. 1, 2002—Sep. 30, 2002	3.5%	12	566
Oct. 1, 2002—Dec. 31, 2002	3.5%	12	566

Part III. Administrative, Procedural, and Miscellaneous

Weighted Average Interest Rate Update

Notice 2002–61

Sections 412(b)(5)(B) and 412(l)(7)(C)(i) of the Internal Revenue Code provide that the interest rates used to calculate current liability for purposes of determining the full funding limitation under § 412(c)(7) and the required contribution under § 412(l) must be within a permissible range around the weighted average of the rates of interest on 30-year Treasury securities during the four-year period ending on the last day before the beginning of the plan year.

Notice 88–73, 1988–2 C.B. 383, 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 Code.

Section 417(e)(3)(A)(ii)(II) of the Code defines the applicable interest rate, which must be used for purposes of determining the minimum present value of a participant's benefit under § 417(e)(1) and (2), as the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or such other time as the Secretary may by regulations prescribe. Section 1.417(e)-1(d)(3) of the Income Tax Regulations provides that the applicable interest rate for a month is the annual interest rate on 30-year Treasury securities as specified by the Commissioner for that month in revenue rulings, notices or other guidance published in the Internal Revenue Bulletin.

The rate of interest on 30-year Treasury Securities for August 2002 is 5.08 percent. Pursuant to Notice 2002–26, 2002–15 I.R.B. 743, the Service has determined this rate as the monthly average of the daily determination of yield on the 30-year Treasury bond maturing in February 2031.

Section 405 of the Job Creation and Worker Assistance Act of 2002 amended § 412(l)(7)(C) of the Code to provide that for plan years beginning in 2002 and 2003 the permissible range is extended to 120 percent.

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

Month	Year	Weighted Average	90% to 110% Permissible Range	90% to 120% Permissible Range
September	2002	5.63	5.07 to 6.20	5.07 to 6.76

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 contact the Employee Plans' taxpayer assistance telephone service at 1–877–829–5500 (a toll-free number), between the hours of 8:00 a.m. and 6:30 p.m. Eastern time, Monday through Friday. Mr. Newman may be reached at 1–202–283–9888 (not a toll-free number).

Part IV. Items of General Interest

Releif From Joint and Several Liability; Correction

Announcement 2002–83

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations (T.D. 9003, 2002–32 I.R.B. 294) that were published in the **Federal Register** on Thursday, July 18, 2002 (67 FR 47278), relating to relief from joint and several liability.

DATES: This correction is effective July 18, 2002.

FOR FURTHER INFORMATION CONTACT: Charles A. Hall (202) 622-4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction is under section 6015 of the Internal Revenue Code.

Need for Correction

As published, the final regulations contains an error that my prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (T.D. 9003), that were the subject of FR Doc. 02–17866, is corrected as follows:

On page 47294, column 3, § 1.6015–5(b)(3), line 10, the language "CDP hearing procedures under sections" is corrected to read "CDP hearing procedures under section".

Cynthia E.Grigsby,
Chief, Regulations Unit,
Associate Chief Counsel
(Income Tax & Accounting).

(Filed by the Office of the Federal Register on August 23, 2002, 8:45 a.m., and published in the issue of the Federal Register for August 26, 2002, 67 F.R. 54735)

Foundations Status of Certain Organizations

Announcement 2002–88

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:

Adoption Assistance Foundation, Inc., Methuen, MA
Affordable Neighborhood Economic Development, Inc., Jacksonville, FL
American Education Institute, Big Fork, MT
Aquarius International Village Water Project, Davis, CA
Arab American Community Center, Coldwater, MI
Arc of the Keys, Inc., Tavernier, FL
Artists Direct Chicago, Chicago, IL
Artists Theatre Project, Inc., New Smyrna Beach, FL
Associate, Inc., Cordova, TN
Bartlesville High School Auditorium Complex Foundation, Inc., Bartlesville, OK
Belize Foundation, Golden, CO
Berlin Airlift Foundation, Inc., Ennis, TX
Beverly Hills Charitable Foundation, Beverly Hills, CA
Black Ebony Loquat, Inc., Princeton, NJ
Camp Bluebird of West Michigan, Inc., Grand Haven, MI
BMKB Memorial Scholarship Fund, Virginia Beach, VA
Brighthope Alliance, Asheville, NC
Castmaster Ministries, Allen, TX
Center for American Studies and Culture, Santa Monica, CA
Charles W. Dunn Jr., Inc., Altadena, CA
Classic Yacht Preservation, Inc., Eureka, CA
Coalition of Progressive Professionals, Cincinnati, OH
Compassion Ministries, Beaverton, OR
Congressional Legacies Project, Inc., Falls Church, VA
Cornerstone Charities Community Tr., Salinas, CA
Count Me In Foundation, Brooklyn, NY
Creative Decisions Foundation, Pittsburgh, PA
Credit Bureau of San Joaquin County Charitable Foundation, Stockton, CA
Dean Sueltenfuss Journalism Scholarship Trust, Boerne, TX
Digital Preserve, Silver Spring, MD
Dog's Best Friend, Inc., Santa Barbara, CA
Double Portion Development, Houston, TX
Dr. O. H. Damron Charitable Trust, Clinton, MO
Dutta Foundation, Santa Fe, NM
East Side Community Development Corporation, Bridgeport, CT
El Fortress, Long Beach, CA
Encouragement Ministries, Inc., Norcross, GA
EOC Housing Development, Blytheville, AR
Fancap U S, Inc., Guatemala, Ciudad
Focus Foundation, Inc., Leonard, MI
For the Children International, Inc., Laredo, TX
Frank Morrison Family Educational Foundation, Lincoln, NE
Free Enterprise Foundation, Inc., Princeton, NJ
Friends of Lankershim Center for the Arts, North Hollywood, CA
Fulfilling the Lives of Children, Inc., San Antonio, TX
Gates Avenue Youth Program Inc., for Sports and Cultural Events, Hillcreast Heights, MD
Gateway Charities an Arizona Non-profit Corporation, Tempe, AZ
Gethsemane Economic & Educational Ministry, Inc., Eustis, FL
Great Resolutions, Inc., Atlanta, GA
Green Nicaragua, Inc., Austin, TX
Green Research, Inc., Nevada City, CA
Grundy County Christian Daycare Center, Coalmont, TN
Help Handicapped Veterans, Inc.,
St. Louis, MO
House of Win, Inc., Longview, TX
Housing America, Mercer Island, WA

Indoor Air Matters, Inc., West Hartford, VT
International Buddhist Culture Television Foundation, Bellevue, WA
International Community Awareness Redevelopment Exchange (ICARE), Jackson, MS
Ivers Foundation, Westport, CT
Jazz as a Motivational Tool, Inc., Medford, MA
Kentucky Youth Academy, Inc., Ashcamp, KY
King Solomon Community Development and Youth Programs, Inc., Ft. Wayne, IN
Kountze Educational Foundation, Inc., Kountze, TX
Life Changing Centers, Inc., Detroit, MI
Lithonia Cadets Parents Organization, Inc., Lithonia, GA
Little House, Inc., Tucson, AZ
Martin L. King Jr. Annual Womens Basketball Tournament, Inc., Washington, DC
MASRAD Research and Development, Inc., Las Vegas, NV
McGrane Self-Esteem Center, Inc., Villa Hills, KY
Michigan Chiropractic Foundation, Lansing, MI
Michigan Citizens for Animal Welfare, Dimondale, MI
Micki Rainey Scholarship Fund, Inc., Martinez, CA
Midland ISD Educational Foundation, Midland, TX
Missouri River Frontier Museum, Parkville, MO
Monroe City Missouri Community Foundation, Monroe City, MO
National Childrens Foundation, Center, CO
National Viet Nam War Museum, Inc., Mineral Wells, TX
New Coalition of Africans From South of the Sahara, New York, NY
New Jersey Council For Recovering Pharmacists, Inc., Mahwah, NJ
Newton County Trail-Path Foundation, Inc., Covington, GA
Northern Housing Associates, Inc., North Providence, RI
Noxid, Inc., Hollywood, CA
OFC of Ortonville, Inc., Ortonville, MN
Onaway House, Inc., Sallisaw, OK
One B L O O D Black Latino Oasis of Donors Foundation, Inc., Cambria Heights, NY
Peggy Thorns Ministries, Inc., Charlotte, NC
Pennsylvania Association for Continuing Education, Pittsburgh, PA
P H D Center, Inc., Parents Home of Diversity, Jonesboro, GA
Phoenix Housing and Development Services, Inc., Queensbury, NY
Positive Images Southwest Mississippi Community Outreach, Inc., Tylertown, MS
Project Education International USA/South Africa, Fullerton, CA
Purrfect Haven, Inc., Greenville, OH
Raymond W. Farkas Foundation, Inc., Douglaston, NY
Reachout Organization, Los Angeles, CA
Reilly Family Foundation, Arlington, TX
Renaissance Drug & Alcohol Recovery House, Inc., Matteson, IL
RMDC Assisted Living, Inc., Helena, MT
Save Our Coast-Malibu Dolphin Watch Foundation, Malibu, CA
Sing for Joy Music Ministries, Hayes, VA
Singout, Woodinville, WA
Sonic Children Fund, San Pedro, CA
South Carolina Heart Center Foundation, Inc., Columbia, SC
Southeastern Colorado Institute of Natural History, La Junta, CO
Southern Sports Commission, Danville, VA
Stark County Urban Minority Alcoholism and Drug Outreach Project, Canton, OH
Step by Step Home Care Services, Inc., Brooklyn, NY
Strickland Ministries, Inc., Tallahassee, FL
Sussex Court Residential Services, Inc., Atlanta, GA
Tattnall County Family Connection, Inc., Reidville, GA
Tenderheart Family Child Care, Inc., Amery, WI
Texas Sex Institute Sex Information Education Council of Texas, The Woodlands, TX
Theresa and Sabrina, Inc., New York, NY
Top Prospects, Inc., Los Angeles, CA
Tucson Velodrome Association, Tucson, AZ
Utah Theatre For Youth, Salt Lake City, UT
Video Gaming Certification, Charlotte, NC
Volunteer Services to Animals, Encino, CA
W. Seavey Joyce S J Award, Hull MA
Whitney National Trust for Historical Preservation, Los Angeles, CA
Whiz Kidz Learning Center, Inc., Chicago, IL
Wholistic Research and Development, Inc., Rutherfordton, NC
Wonderful Days, Fort Worth, TX
Zee Rides, Incorporated, Zuni, NM

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.

Announcement of Disciplinary Actions Involving Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries—Suspensions, Disbarments, and Resignations

Under Title 31, Code of Federal Regulations, Part 10, attorneys, certified public accountants, enrolled agents, and enrolled actuaries may not accept assistance from, or assist, any person who is under disbarment or suspension from practice before the Internal Revenue Service if the assistance relates to a matter constituting practice before the Internal Revenue Service and may not knowingly aid or abet another person to practice before the Internal Revenue Service during a period of suspension, disbarment, or ineligibility of such other person.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify persons to whom these restrictions apply, the Director of Practice will announce in the Internal Revenue Bulletin their names, their city and state, their professional designation, the effective date of disciplinary action, and the period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks.

Suspensions From Practice Before the Internal Revenue Service After Notice and an Opportunity for a Proceeding

Under Title 31, Code of Federal Regulations, Part 10, after notice and an opportunity for a proceeding before an administrative law judge, the following individuals have been placed under suspension from practice before the Internal Revenue Service:

Name	Address	Designation	Effective Date
McKnight, James A.	Tequesta, FL	Enrolled Agent	April 12, 2001 to October 11, 2002
Donnelly, Edward	Melville, NY	CPA	April 17, 2002 to July 16, 2003

Disbarments From Practice Before the Internal Revenue Service After Notice and an Opportunity for a Proceeding

Under Title 31, Code of Federal Regulations, Part 10, after notice and an opportunity for a proceeding before an administrative law judge, the following individuals have been disbarred from practice before the Internal Revenue Service:

Name	Address	Designation	Effective Date
Schmeiser, Larry W.	Limon, CO	Attorney	September 1, 2000
Sayre, Charles L.	Ann Arbor, MI	Attorney	January 2, 2001
Young, Dennis	Lewiston, ID	CPA	January 2, 2001
Buckley, Francis M.	Marlborough, CT	Attorney	January 18, 2001
Dugovich, Frank A.	Middleburg Heights, OH	CPA	January 29, 2001
Kiss, Philip M.	Liberyville, IL	Enrolled Agent	March 1, 2001
Mellner, Michael	Scranton, PA	CPA	June 11, 2001
Davis, Jerry A.	Leonard, TX	CPA	June 13, 2001
Thornton, John L.	Fayetteville, AR	CPA	June 21, 2001
Campbell, David G.	Reading, PA	Attorney	July 10, 2001
Schlabach, John J.	Colbert, WA	CPA	July 16, 2001

Name	Address	Designation	Effective Date
Belin, Leon	Southfield, MI	CPA	August 7, 2001
Simpson, James	Elmhurst, IL	Attorney	September 24, 2001
Berg, Richard L.	Vadnais Heights, MN	CPA	October 3, 2001
Riesenmy, David	Joplin, MO	Attorney	October 15, 2001
Andrade, Rodrigo	El Paso, TX	Enrolled Agent	November 20, 2001
Miller, Larry Charles	Philadelphia, PA	Attorney	January 10, 2002
Melton, Andrew I.	Detroit, MI	CPA	February 13, 2002
Daily, J. Michael	Clearwater, FL	CPA	March 29, 2002
Klimkowski, Joseph R.	Florham, NJ	CPA	March 29, 2002
Greene, William M.	Center Sandwich, NH	Attorney	March 29, 2002
Bart, Adrian	Tulsa, OK	CPA	April 17, 2002

Consent Suspensions From Practice Before the Internal Revenue Service

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

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

Name	Address	Designation	Date of Suspension
McDaniel III, Troy J.	Atlanta, GA	CPA	Indefinite from June 6, 2000
Levine, Paul	Los Angeles, CA	CPA	February 1, 2001 to January 31, 2003
Hammons, Patrick B.	Mesa, AZ	Enrolled Agent	February 1, 2001 to January 31, 2004
Price, Russell S.	Washington, DC	CPA	February 17, 2001 to August 16, 2003
Donohue, Robert M.	Ellicott City, MD	CPA	May 15, 2001 to May 14, 2005
Havranek, Ronald J.	Deerfield, IL	CPA	July 30, 2001 to July 29, 2003
Harding III, Leon H.	Roanoke, VA	CPA	Indefinite from August 7, 2001

Name	Address	Designation	Date of Suspension
Noone, Patrick	Orland Park, IL	CPA	August 23, 2001 to February 22, 2004
Sefton, David L.	Austin, TX	CPA	August 31, 2001 to February 27, 2003
Zuccarelli, Silvio	Coconut Creek, FL	Enrolled Agent	September 18, 2001 to December 17, 2004
DeFazio, James P.	Sacramento, CA	CPA	October 1, 2001 to March 31, 2003
Levenson, Martin J.	New York, NY	CPA	October 15, 2001 to April 14, 2004
Donchatz, Charles	Columbia, SC	CPA	October 25, 2001 to October 24, 2004
Smith, Virga A.	Rochester, IN	CPA	November 1, 2001 to October 31, 2003
Fuller, Don B.	Minneapolis, MN	Attorney	November 15, 2001 to November 14, 2004
Retzlaff, Gene A.	Hortonville, WI	Enrolled Agent	Indefinite from December 27, 2001
Kime, Robert L.	Collinsville, IL	CPA	December 6, 2001 to December 5, 2003
King, John C.	Wichita, KS	Attorney	January 1, 2002 to June 30, 2003
Carter, Lloyd C.	St. George, UT	CPA	January 15, 2002 to October 14, 2002
Dennis, Paul J.	Milwaukee, WI	Enrolled Agent	January 28, 2002 to January 27, 2005
Jones, Ricky A.	Greenfield, OH	CPA	March 15, 2002 to March 14, 2003
Price, Richard A.	Novato, CA	CPA	May 1, 2002 to April 30, 2005
Burnett, Bradley P.	Wheat Ridge, CO	Attorney	May 1, 2002 to April 30, 2004

Name	Address	Designation	Date of Suspension
Leone, Anthony	Des Plaines, IL	CPA	April 1, 2002 to September 30, 2003
Groskin, Lawrence J.	Tuxedo Park, NY	Attorney	May 1, 2002 to April 30, 2003
Homnick, Cory	San Diego, CA	CPA	June 1, 2002 to May 31, 2003
Herring, Chester L.	University Park, IL	CPA	June 1, 2002 to November 30, 2003
Cutcher, Edward W.	Clinton, OH	CPA	June 1, 2002 to February 28, 2003
Gisser, Arthur S.	Glenwood Landing, NY	CPA	July 1, 2002 to December 31, 2002
Garlikov, Mark B.	Dayton, OH	Attorney	July 1, 2002 to October 30, 2005
Foust, John Franklin	Des Moines, IA	CPA	July 1, 2002 to June 30, 2003
Byock, Matthew I.	Red Bank, NJ	CPA	August 1, 2002 to March 31, 2003

Expedited Suspensions From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, the Director of Practice is authorized to immediately suspend from practice before the Internal Revenue Service any practitioner who, within five years from the date the expedited proceeding is instituted (1) has had a license to practice as an attorney, certified public accountant, or actuary suspended for revoked for cause or (2) has been convicted of certain crimes.

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

Name	Address	Designation	Date of Suspension
Brenner, William A.	Grahamsville, NY	Attorney	Indefinite from February 2, 2001
Pope, Ray P.	Pensacola, FL	Attorney	Indefinite from February 23, 2001
Dudnick, Howard A.	Princeton, NY	CPA	Indefinite from June 25, 2001

Name	Address	Designation	Date of Suspension
Griffiths, Brian D.	North Andover, MA	CPA	Indefinite from June 25, 2001
Yerardi, Michael J.	East Walpole, MA	Attorney	Indefinite from June 25, 2001
Cheesman, Michael S.	Mill Creek, WA	CPA	Indefinite from July 20, 2001
Devereaux, Ross	Jackson, MI	CPA	Indefinite from July 20, 2001
Gaskill, Todd	Lompoc, CA	Attorney	Indefinite from July 20, 2001
Gross, Peter Sam	Kerrville, TX	Attorney	Indefinite from July 20, 2001
Hausman, Stanley	Livingston, NJ	Attorney	Indefinite from July 20, 2001
Jones, Peter C.	Seattle, WA	CPA	Indefinite from July 20, 2001
Koss, Lewis M.	Calabasas, CA	Attorney	Indefinite from July 20, 2001
Maxey, Michael	Mishawaka, IN	CPA	Indefinite from July 20, 2001
Meaney, Richard A.	Harwich Port, MA	Attorney	Indefinite from July 20, 2001
Shaver, Howard D.	Leawood, KS	Attorney	Indefinite from July 20, 2001
Sims, Thomas	Tonka Bay, MN	CPA	Indefinite from July 20, 2001
Wallin, Hans	Arthur, ND	Attorney	Indefinite from July 20, 2001
Freeman, Dale L.	North Royalton, OH	CPA	Indefinite from August 6, 2001
Huffman, Richard E.	Riverside, CA	CPA	Indefinite from August 6, 2001

Name	Address	Designation	Date of Suspension
Lawrence, William E.	Salinas, CA	CPA	Indefinite from August 6, 2001
Marks, William J.	New York, NY	CPA	Indefinite from August 6, 2001
Parker, George	Honolulu, HI	Attorney	Indefinite from August 6, 2001
Pham, Van Luong	Houston, TX	Enrolled Agent	Indefinite from August 6, 2001
Pirro, Jr., Albert J.	Rye, NY	Attorney	Indefinite from August 6, 2001
Pollacheck, Mark E.	Califon, NJ	Enrolled Agent	Indefinite from August 6, 2001
Price, Padget C.	Corona, CA	Attorney	Indefinite from August 6, 2001
Ragusa, Sebastian	Hicksville, NY	Attorney	Indefinite from August 6, 2001
Ranum, Karl M.	Stillwater, MN	Attorney	Indefinite from August 6, 2001
Ross, Daniel P.	Ashtabula, OH	CPA	Indefinite from August 6, 2001
Shea, Michael P.	Myrtle Beach, SC	CPA	Indefinite from August 6, 2001
Tatman, Elizabeth A.	Mission Viejo, CA	CPA	Indefinite from August 6, 2001
Taylor, Murray E.	Houston, TX	CPA	Indefinite from August 6, 2001
Truex, Anthony J.	Port Hueneme, CA	CPA	Indefinite from August 6, 2001
Utterback, Thomas M.	Gerald, MO	Attorney	Indefinite from August 6, 2001
Zauft, Steven J.	San Antonio, TX	Attorney	Indefinite from August 6, 2001

Name	Address	Designation	Date of Suspension
Hancock, George B.	New Bern, NC	CPA	Indefinite from June 24, 2002
Nadale, Richard D.	Petaluma, CA	CPA	Indefinite from June 24, 2002

Resignations of Enrolled Agents

Under Title 31, Code of Federal Regulations, Part 10, an enrolled agent, in order to avoid the institution or conclusion of a proceeding for his or her disbarment or suspension from practice before the Internal Revenue Service, may offer his or her resignation as an enrolled agent. The Director of Practice, in his discretion, may accept the offered resignation.

The Director of Practice has accepted offers of resignation as an enrolled agent from the following individuals:

Name	Address	Date of Resignation
Fuener, Donald C	Springfield, IL	Effective December 31, 2001
Clark, Robert A.	Chico, CA	Effective January 1, 2002
Sarmiento, Romulo B.	San Francisco, CA	Effective March 31, 2002
Goetz, Roger H.	Waseca, MN	Effective June 24, 2002

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.

Numerical Finding List[1]

Bulletin 2002–26 through 2002–37

Announcements:

Notices:

Proposed Regulations:

Proposed Regulations:—Continued

Revenue Procedures:

Revenue Rulings:

Treasury Decisions:

Treasury Decisions:—Continued

[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2002–1 through 2002–25 is in Internal Revenue Bulletin 2002–26, dated July 1, 2002.

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

Bulletin 2002–26 through 2002–37

Announcements:

REG–208280–86
Withdrawn by
REG–136311–01, 2002–36 I.R.B. *485*

98–99
Superseded by
Rev. Proc. 2002–44, 2002–26 I.R.B. *10*

2000–4
Modified by
Ann. 2002–60, 2002–26 I.R.B. *28*

2001–9
Superseded by
Rev. Proc. 2002–44, 2002–26 I.R.B. *10*

Proposed Regulations:

REG–209114–90
Corrected by
Ann. 2002–65, 2002–29 I.R.B. *182*

REG–209813–96
Withdrawn by
REG–106871–00, 2002–30 I.R.B. *190*

REG–103823–99
Corrected by
Ann. 2002–67, 2002–30 I.R.B. *237*
Ann. 2002–79, 2002–36 I.R.B. *515*

REG–103829–99
Corrected by
Ann. 2002–82, 2002–37 I.R.B. *533*

REG–105885–99
Corrected by
Ann. 2002–67, 2002–30 I.R.B. *237*

REG–105369–00
Clarified by
Notice 2002–52, 2002–30 I.R.B. *187*
Corrected by
Ann. 2002–67, 2002–30 I.R.B. *237*

REG–118861–00
Corrected by
Ann. 2002–67, 2002–30 I.R.B. *237*

REG–126100–00
Withdrawn by
REG–133254–02, 2002–34 I.R.B. *412*

REG–136193–01
Corrected by
Ann. 2002–67, 2002–30 I.R.B. *237*

REG–161424–01
Corrected by
Ann. 2002–67, 2002–30 I.R.B. *237*

Proposed Regulations—Continued:

REG–165706–01
Corrected by
Ann. 2002–67, 2002–30 I.R.B. *237*

REG–102740–02
Corrected by
Ann. 2002–67, 2002–30 I.R.B. *237*

REG–106359–02
Corrected by
Ann. 2002–81, 2002–37 I.R.B. *533*

REG–108697–02
Corrected by
Ann. 2002–84, 2002–37 I.R.B. *533*

REG–123305–02
Corrected by
Ann. 2002–69, 2002–31 I.R.B. *283*

Revenue Procedures:

88–10
Superseded by
Rev. Proc. 2002–48, 2002–37 I.R.B. *531*

91–23
Modified and superseded by
Rev. Proc. 2002–52, 2002–31 I.R.B. *242*

91–26
Modified and superseded by
Rev. Proc. 2002–52, 2002–31 I.R.B. *242*

95–18
Superseded by
Rev. Proc. 2002–51, 2002–29 I.R.B. *175*

96–13
Modified and superseded by
Rev. Proc. 2002–52, 2002–31 I.R.B. *242*

96–14
Modified and superseded by
Rev. Proc. 2002–52, 2002–31 I.R.B. *242*

96–53
Amplified by
Rev. Proc. 2002–52, 2002–31 I.R.B. *242*

2001–12
Obsoleted by
T.D. 9004, 2002–33 I.R.B. *331*

2001–17
Modified and superseded by
Rev. Proc. 2002–47, 2002–29 I.R.B. *133*

2001–26
Superseded by
Rev. Proc. 2002–53, 2002–31 I.R.B. *253*

2002–9
Modified and amplified by
Rev. Proc. 2002–46, 2002–28 I.R.B. *105*
Amplified, clarified, and modified by
Rev. Proc. 2002–54, 2002–35 I.R.B. *432*

Revenue Procedures—Continued:

2002–13
Modified by
Rev. Proc. 2002–45, 2002–27 I.R.B. *40*

2002–19
Amplified and clarified by
Rev. Proc. 2002–54, 2002–35 I.R.B. *432*

Revenue Rulings:

54–571
Obsoleted by
T.D. 9010, 2002–33 I.R.B. *341*

55–606
Obsoleted by
T.D. 9010, 2002–33 I.R.B. *341*

59–328
Obsoleted by
T.D. 9010, 2002–33 I.R.B. *341*

64–36
Obsoleted by
T.D. 9010, 2002–33 I.R.B. *341*

65–129
Obsoleted by
T.D. 9010, 2002–33 I.R.B. *341*

67–197
Obsoleted by
T.D. 9010, 2002–33 I.R.B. *341*

69–259
Modified and superseded by
Rev. Rul. 2002–50, 2002–32 I.R.B. *292*

69–595
Obsoleted in part by
T.D. 9010, 2002–33 I.R.B. *341*

70–608
Obsoleted in part by
T.D. 9010, 2002–33 I.R.B. *341*

73–232
Obsoleted by
T.D. 9010, 2002–33 I.R.B. *341*

76–225
Revoked by
REG–115781–01, 2002–33 I.R.B. *380*

77–53
Obsoleted by
T.D. 9010, 2002–33 I.R.B. *341*

85–50
Obsoleted by
T.D. 2002–33 I.R.B. *341*

92–17
Amplified by
Rev. Rul. 2002–49, 2002–32 I.R.B. *288*

[1] A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2002–1 through 2002–25 is in Internal Revenue Bulletin 2002–26, dated July 1, 2002.

Revenue Rulings—Continued:

92–75
Clarified by
Rev. Proc. 2002–52, 2002–31 I.R.B. *242*

93–70
Obsoleted by
T.D. 9010, 2002–33 I.R.B. *341*

94–76
Amplified by
Rev. Rul. 2002–42, 2002–28 I.R.B. *76*

Treasury Decisions:

8997
Corrected by
Ann. 2002–68, 2002–31 I.R.B. *283*

8999
Corrected by
Ann. 2002–71, 2002–32 I.R.B. *323*

United States Government INFORMATION
PUBLICATIONS ★ PERIODICALS ★ ELECTRONIC PRODUCTS

Internal Revenue Cumulative Bulletins Publications and Subscription Order Form

Order Processing Code
3333

Easy Secure Internet:
bookstore.gpo.gov

Toll Free: (866) 512–1800
Phone: (202) 512–1800
Fax: (202) 512–2250

Mail: Superintendent of Documents
PO Box 371954
Pittsburgh, PA 15250–7954

Publications

Qty	Stock Number	Title	Price Each	Total Price
	021-066-00108-3	Subject Bibliography listing Cum. Bulletin available thru Aug. 1, 2001	FREE	FREE
	048-004-02376-8	Cum. Bulletin 1996-2 (July-Dec)	$60	
	048-004-02385-7	Cum. Bulletin 1997-1 (Jan-June)	$79	
	048-004-02397-1	Cum. Bulletin 1997-2 (July-Dec)	$71.50	
	048-004-02424-1	Cum. Bulletin 1997-3	$65	
	048-004-02425-0	Cum. Bulletin 1997-4 Vol. 1	$77.50	
	048-004-02430-6	Cum. Bulletin 1997-4 Vol. 2	$84	
	048-004-02405-5	Cum. Bulletin 1998-1 (Jan-June)	$82	
	048-004-02422-5	Cum. Bulletin 1998-2 (July-Dec)	$81	
	048-004-02438-1	Cum. Bulletin 1998-3	$70	
	048-004-02451-9	Cum. Bulletin 1998-4	$69	
	048-004-02432-2	Cum. Bulletin 1999-1	$86	
	048-004-02433-1	Cum. Bulletin 1999-2 (July-Dec)	$64	
	048-004-02455-1	Cum. Bulletin 2000-1 (Jan-June)	$78	
	048-004-02453-5	Cum. Bulletin 2000-2 (July-Dec)	$55	
			Total for Publications	

Standing Order Service*

To automatically receive future editions of *Internal Revenue Cumulative Bulletins* without having to initiate a new purchase order, sign below for Standing Order Service.

Qty	Standing Order	Title
	ZIRSC	Internal Revenue Cumulative Bulletins

Authorization

I hereby authorize the Superintendent of Documents to charge my account for Standing Order Service:
(enter account information at right)

❑ VISA ❑ MasterCard ❑ Discover/NOVUS ❑ American Express

❑ Superintendent of Documents (SOD) Deposit Account

Authorizing signature (Standing orders not valid unless signed.)

Please print or type your name.

Daytime phone number (______) ____________

SuDocs Deposit Account

A Deposit Account will enable you to use Standing Order Service to receive subsequent volumes quickly and automatically. For an initial desposit of $50 you can establish your Superintendent of Documents Deposit Account.

❑ **YES!** Open a SOD Deposit Account for me so I can order future publications quickly and easily.
I'm enclosing the $50 initial deposit.

Subscriptions

Qty	List ID	Title	Price Each	Total Price
	IRB	Internal Revenue Bulletin	$215	
		Optional – Add $50 to open Deposit Account		
		Total for Subscriptions		
		Total for Publications and Subscriptions		

NOTE: Price includes regular shipping and handling and is subject to change. International customers please add 40 percent.

VISA MasterCard DISCOVER NOVUS AMERICAN EXPRESS

Check method of payment:

❑ Check payable to *Superintendent of Documents*

❑ SOD Deposit Account ☐☐☐☐☐☐☐ — ☐

❑ VISA ❑ MasterCard ❑ Discover/NOVUS ❑ AMEX

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (expiration date) ***Thank you for your Order!***

Authorizing signature 05/02

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, Zip code

E-mail address

Daytime phone including area code

Purchase order number (optional)

*** Standing Order Service**
Just sign the authorization above to charge selected items to your existing Deposit Account, VISA or MasterCard, Discover/NOVUS, American Express account. Or open a Deposit Account with an initial deposit of $50 or more. Your account will be charged only as each volume is issued and mailed. Sufficient money must be kept in your account to insure that items are shipped. Service begins with the next issue released of each item you select.

You will receive written acknowledgement for each item you choose to receive by Standing Order Service.
If you wish to cancel your Standing Order Service, please notify the Superintendant of Documents in writing (telephone cancellations are accepted but must be followed up with a written cancellation with 10 days).

Important: Please include this completed order form with your payment.

INTERNAL REVENUE BULLETIN

The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletin is sold on a yearly subscription basis by the Superintendent of Documents. Current subscribers are notified by the Superintendent of Documents when their subscriptions must be renewed.

CUMULATIVE BULLETINS

The contents of this weekly Bulletin are consolidated semiannually into a permanent, indexed, Cumulative Bulletin. These are sold on a single copy basis and *are not* included as part of the subscription to the Internal Revenue Bulletin. Subscribers to the weekly Bulletin are notified when copies of the Cumulative Bulletin are available. Certain issues of Cumulative Bulletins are out of print and are not available. Persons desiring available Cumulative Bulletins, which are listed on the reverse, may purchase them from the Superintnedent of Documents.

ACCESS THE INTERNAL REVENUE BULLETIN ON THE INTERNET

You may view the Internal Revenue Bulletin on the Internet at www.irs.gov. Under contents, select Businesses. Under topics, select more topics. Then select Internal Revenue Bulletins.

INTERNAL REVENUE BULLETINS ON CD–ROM

Internal Revenue Bulletins are available annually as part of Publication 1796 (Tax Products CD–ROM). The CD–ROM can be purchased from National Technical Information Service (NTIS) on the Internet at www.irs.gov/cdorders (discount for on-line orders) or by calling 1-877-233-6767. The first release is available in mid-December and the final release is available in late January.

HOW TO ORDER

Check the publications and/or subscription(s) desired on the reverse, complete the order blank, enclose the proper remittance, detach entire page, and mail to the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Please allow two to six weeks, plus mailing time, for delivery.

WE WELCOME COMMENTS ABOUT THE INTERNAL REVENUE BULLETIN

If you have comments concerning the format or production of the Internal Revenue Bulletin or suggestions for improving it, we would be pleased to hear from you. You can e-mail us your suggestions or comments through the IRS Internet Home Page (www.irs.gov) or write to the IRS Bulletin Unit, W:CAR:MP:FP, Washington, DC 20224.

Internal Revenue Service
Washington, DC 20224

Official Business
Penalty for Private Use, $300