Internal Revenue
bulletin

Bulletin No. 1997–41
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HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

Rev. Rul. 97–42, page 4.

Last-in, first-out inventories, automobile dealers. A franchised automobile dealer that elected the LIFO inventory method violates the LIFO conformity requirement of section 472 of the Code by providing to the credit subsidiary of its franchisor an income statement that fails to reflect the LIFO inventory method in the computation of net income.

EMPLOYEE PLANS

Del. Order 97 (Rev. 34), page 14.

The authority delegated by the Commissioner of Internal Revenue to the Assistant Commissioner (Employee Plans and Exempt Organizations), to enter into and approve certain closing agreements, may be redelegated to special assistants and division directors reporting directly to the Assistant Commissioner. Del. Order 97 (Rev. 33) superseded.

Announcement 97–102, page 15.

This announcement provides revised instructions for sponsors and adopters of regional prototype and volume submitter retirement plans. Additionally, practitioner comments are solicited regarding the future direction of these programs.

EXEMPT ORGANIZATIONS

Announcement 97–101, page 13.

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

ADMINISTRATIVE

Notice 97–54, page 7.

The Work Opportunity Tax Credit (WOTC) under section 51 of the Code has been revised and expanded, effective October 1, 1997, and the Welfare-to-Work Tax Credit goes into effect on January 1, 1998.

Rev. Proc. 97–44, page 8.

Last-in, first-out inventories, automobile dealers. Relief is provided for automobile dealers that violate the LIFO inventory requirement of section 472 of the Code by providing, for credit purposes, an income statement prepared in a format required by, or on a preprinted form supplied by, their franchisor, covering any taxable year ended before October 14, 1997, that fails to reflect the LIFO inventory method.

Rev. Proc. 97–45, page 10.

Optional rules are provided under which an employee of a federal government agency who is reimbursed for ordinary and necessary business expenses relating to travel, entertainment, gifts, or listed property (such as an employee's automobile) may make an adequate accounting to the employer to substantiate those expenses by submitting only an account book, diary, log, etc., without submitting documentary evidence such as receipts.

Announcement 98–103, page 16.

Public comments are requested on the optional procedures, provided in Rev. Proc. 97–45, for substantiating the reimbursement of employee expenses.

Department of the Treasury
Internal Revenue Service

Mission of the Service

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

Statement of Principles of Internal Revenue Tax Administration

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

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

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

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

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

Introduction

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

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

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

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

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

Section 62.—Adjusted Gross Income Defined

26 CFR 1.62–2: Reimbursements and other expense allowance arrangements.

Optional rules are provided under which an employee of a federal government agency who is reimbursed for ordinary and necessary business expenses relating to travel, entertainment, gifts, listed property (such as an employee's automobile) may make an adequate accounting to the employer to substantiate those expenses by submitting an account book, diary, log, etc., alone, without submitting documentary evidence such as receipts. See Rev. Proc. 97–45 page 10.

Section 162.—Trade or Business Expenses

26 CFR 1.162–17: Reporting and substantiation of certain business expenses of employees.

Optional rules are provided under which an employee of a federal government agency who is reimbursed for ordinary and necessary business expenses relating to travel, entertainment, gifts, listed property (such as an employee's automobile) may make an adequate accounting to the employer to substantiate those expenses by submitting an account book, diary, log, etc., alone, without submitting documentary evidence such as receipts. See Rev. Proc. 97–45 page 10.

Section 274.—Disallowance of Certain Entertainment, Etc., Expenses

26 CFR 1.274–5T: Substantiation requirements (temporary).

Optional rules are provided under which an employee of a federal government agency who is reimbursed for ordinary and necessary business expenses relating to travel, entertainment, gifts, listed property (such as an employee's automobile) may make an adequate accounting to the employer to substantiate those expenses by submitting an account book, diary, log, etc., alone, without submitting documentary evidence such as receipts. See Rev. Proc. 97–45 page 10.

26 CFR 1.274(d)–1: Substantiation requirements.

Optional rules are provided under which an employee of a federal government agency who is reimbursed for ordinary and necessary business expenses relating to travel, entertainment, gifts, listed property (such as an employee's automobile) may make an adequate accounting to the employer to substantiate those expenses by submitting an account book, diary, log, etc., alone, without submitting documentary evidence such as receipts. See Rev. Proc. 97–45 page 10.

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

26 CFR 1.472-2(e): LIFO conformity requirement.

Last-in, first-out inventories, automobile dealers. A franchised automobile dealer that elected the LIFO inventory method violates the LIFO conformity requirement of Code section 472 by providing to the credit subsidiary of its franchisor an income statement that fails to reflect the LIFO inventory method in the computation of net income.

Rev. Rul. 97–42

ISSUE

Whether a franchised automobile dealer that elected the last-in, first-out (LIFO) inventory method for federal income tax purposes violates the LIFO conformity requirement of § 472(c) or (e)(2) of the Internal Revenue Code by providing certain monthly income statements to the credit subsidiary of its franchisor (an automobile manufacturer).

FACTS

A, B, and *C* are franchised automobile dealers engaged in the purchase, sale, and service of automobiles manufactured by *X*. *A, B,* and C regularly finance their purchases of new automobiles through *Y*, a subsidiary of *X*.

For federal income tax purposes, *A, B,* and *C* use the accrual method of accounting and a calendar taxable year. Each dealer elected to use the LIFO inventory method to account for its automobile inventory beginning with its taxable year ended December 31, 1970.

Pursuant to the terms of the franchise agreements with *X* and the financing agreements with *Y, X* and *Y* must receive balance sheets and income statements from *A, B,* and *C* within 10 days after the end of each month. The income statements are prepared in a format required by *X* or on pre-printed forms supplied by *X* and present the dealers' operating results for both the month and the calendar year-to-date.

During 1996, *A, B,* and *C*'s monthly financial statements were received by *X* and *Y*. In the January through November income statements, *A, B,* and *C* calculated their Cost of Goods Sold using the specific identification inventory method instead of the LIFO inventory method. Under the specific identification method, the cost of the dealers'beginning and ending inventories is determined by reference to *X*'s actual invoice price for the automobiles on hand.

Situation 1 — LIFO Reflected in Gross Profit. A provided the following income statement to *X* and *Y* for the month of December:

INCOME STATEMENT
December 1996

	Month	*Year-to-Date*
Sales of Automobiles	$ 300x	$ 3,600x
Cost of Goods Sold	(255x)	(2,400x)
Gross Profit	$ 45x	$ 1,200x
Variable Expenses	(12x)	(144x)
Fixed Expenses	(18x)	(216x)
Net Income	$ 15x	$ 840x

A calculated its Cost of Goods Sold for the year and the month as follows. First, *A* used the specific identification inventory method to calculate a tentative cost of goods sold for the year ($2,340x) and the month ($195x). Then, *A* made an adjustment of $60x (representing a $60x increase in *A*'s LIFO reserve for 1996) to the tentative cost of goods sold to arrive at Cost of Goods Sold for the year ($2,400x) and the month ($255x), respectively.

Situation 2 — LIFO Reflected in Net Income. B provided the following income statement to *X* and *Y* for the month of December:

B used the specific identification inventory method to calculate its Cost of Goods Sold and Gross Profit for both the year and month without adjusting for a $60x increase in *B*'s LIFO reserve for 1996. On

INCOME STATEMENT
December 1996

	Month	*Year-to-Date*
Sales of Automobiles	$ 300x	$ 3,600x
Cost of Goods Sold	(195x)	(2,340x)
Gross Profit	$ 105x	$ 1,260x
Variable Expenses	(12x)	(144x)
Fixed Expenses	(18x)	(216x)
Operating Profit	$ 75x	$ 900x
Other Income & Expenses	(60x)	(60x)
Net Income	$ 15x	$ 840x

the Other Income and Expenses line, B reduced Operating Profit in the Year-to-Date column by $60x (representing the $60x increase in *B*'s LIFO reserve for 1996) and in the Month column by $60x to arrive at *B*'s Net Income for the year ($840x) and the month ($15x), respectively.

Situation 3 — LIFO Not Reflected on the Income Statement. C provided the following income statement to *X* and *Y* for the month of December:

C used the specific identification inventory method to calculate its Cost of Goods Sold, Gross Profit, and Net Income for the year and month without adjusting for a $60x increase in *C*'s LIFO reserve for 1996. Thus, the December 1996 income statement does not reflect *C*'s use of the LIFO inventory method.

LAW AND ANALYSIS

Section 472(a) authorizes a taxpayer to use the LIFO inventory method in accordance with regulations prescribed by the Secretary.

Section 472(c) provides that a taxpayer may not elect to use the LIFO inventory method unless it establishes to the satisfaction of the Commissioner that it used no method other than the LIFO method in inventorying goods to ascertain the income, profit, or loss of the first taxable year for which the LIFO method is to be used, for the purpose of a report or statement covering that taxable year to shareholders, partners, other proprietors, or beneficiaries, or for credit purposes.

Section 472(e) provides that a taxpayer electing to use the LIFO inventory method must continue to use the LIFO inventory method unless the taxpayer: (1) obtains the consent of the Commissioner to change to a different method; or (2) is required by the Commissioner to change to a different method because the taxpayer has used some inventory method other than LIFO to ascertain the income, profit, or loss of any subsequent taxable year in a report or statement covering that taxable year (a) to shareholders, partners, other proprietors, or beneficiaries, or (b) for credit purposes.

Section 1.472–2(e)(1) of the Income Tax Regulations provides that a taxpayer electing to use the LIFO inventory method must establish to the satisfaction of the Commissioner that the taxpayer, in ascertaining the income, profit, or loss of the taxable year for which the LIFO inventory method is first used, or for any subsequent taxable year, for credit purposes or for purposes of reports to shareholders, partners, other proprietors, or beneficiaries, has not used any inventory method other than LIFO.

INCOME STATEMENT
December 1996

	Month	*Year-to-Date*
Sales of Automobiles	$ 300x	$ 3,600x
Cost of Goods Sold	(195x)	(2,340x)
Gross Profit	$ 105x	$ 1,260x
Variable Expenses	(12x)	(144x)
Fixed Expenses	(18x)	(216x)
Operating Profit	$ 75x	$ 900x
Other Income & Expenses	–0–	–0–
Net Income	$ 75x	$ 900x

Section 1.472–2(e)(1) generally provides exceptions to the LIFO conformity requirement. Under § 1.472–2(e)(1)(iv), a taxpayer is not at variance with the LIFO conformity requirement if it uses an inventory method other than LIFO in a report or statement covering a period of less than an entire taxable year.

However, § 1.472–2(e)(6) provides that a series of credit statements or financial reports is considered a single statement or report covering an entire taxable year if the statements or reports in the series are prepared using a single inventory method and can be combined to disclose the income, profit, or loss for the entire taxable year. For this purpose a taxable year includes any one-year period that both begins and ends in a taxable year for which the taxpayer used the LIFO inventory method. § 1.472–2(e)(2). Thus, income statements prepared on the basis of a calendar year may be subject to the LIFO conformity requirement even though the taxpayer employs a fiscal year for federal income tax purposes.

Under § 1.472–2(e)(2)(vi), a taxpayer is not at variance with the LIFO conformity requirement if it uses costing methods or accounting methods to ascertain income, profit, or loss in financial statements for credit purposes if such methods are not inconsistent with the LIFO inventory method. The use of cost estimates is an example of a costing method that is not inconsistent with the LIFO inventory method. § 1.472–2(e)(8)(ix).

The financial statements received by *Y* are "for credit purposes" within the meaning of §§ 472(c) and (e)(2) because they were issued to a creditor with whom *A*, *B*, and *C* maintain continuing credit relationships. Thus, under §§ 472(c), 472(e)(2), and § 1.472–2(e)(1), *A*, *B*, and *C* violated the LIFO conformity requirement if they used a method other than LIFO in inventorying goods to ascertain the income, profit, or loss for the taxable year covered by the financial statements provided to *Y*.

In *Situations 1 and 2*, *A* and *B* did not violate the LIFO conformity requirement in their statements to *Y* because they used the LIFO method in inventorying goods to ascertain their net income in the

Month and Year-to-Date columns of the December income statement. The results in *Situations 1 and 2* would be the same if the $60x LIFO adjustment reflected in the Month and Year-to-Date columns of the December 1996 income statement had been a reasonable estimate of the change in LIFO reserve for the year. Further, if *A* or *B* had employed a fiscal taxable year, the results in Situations 1 and 2 would be the same if *A* or *B* made either an adjustment for the change in the LIFO reserve that occurred during the calendar year in the Month and Year-to-Date column of the December income statement or an adjustment for the change in the LIFO reserve that occurred during the fiscal year in the Month and Year-to-Date columns of the income statements provided for the last month of the fiscal year.

In *Situation 3*, *C* violated the LIFO conformity requirement in its statements to *Y* because *C* used a method other than LIFO in inventorying goods to ascertain its net income in the Year-to-Date column of the December income statement. Further, *C* violated the LIFO conformity requirement because the January through November income statements can be combined with the December income statement to ascertain *C*'s net income for the year using a single inventory method other than LIFO. The result in *Situation 3* would be the same even if *C*'s December 31, 1996 Balance Sheet had reflected a 1996 adjustment to *C*'s LIFO reserve.

HOLDING

A franchised automobile dealer that elected the LIFO inventory method for federal income tax purposes violates the LIFO conformity requirement of § 472(c) or (e)(2) by providing to the credit subsidiary of its franchisor (an automobile manufacturer) an income statement for the taxable year that fails to reflect the LIFO inventory method in the computation of net income.

DRAFTING INFORMATION

The principal author of this revenue ruling is Jeffery G. Mitchell of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Mitchell on (202) 622-4970 (not a toll free call).

Work Opportunity Tax Credit and Welfare-to-Work Tax Credit

Notice 97–54

The Taxpayer Relief Act of 1997, Pub. L. No. 105–34, (the Act) was enacted on August 5, 1997. The Act extended and amended the Work Opportunity Tax Credit (WOTC) under section 51 of the Internal Revenue Code and created the Welfare-to-Work tax credit under new section 51A of the Code. This notice describes the principal statutory changes. It also announces the release of a new Form 8850 (issued September 1997) for use in pre-screening job applicants and requesting certifications in connection with both credits and a transition period for using the earlier version of Form 8850 (issued September 1996), which does not reflect the changes contained in the Act.

WOTC Overview

The WOTC is a tax credit for employers who hire individuals belonging to one of the targeted groups listed in section 51 of the Code. For purposes of the credit, an individual is not a member of a targeted group unless the individual is certified as such by the State employment security agency (SESA). *See* section 51(d)(11) of the Code and Notice 96-52, 1996-2 C.B. 218.

• *Extension and Amendment of WOTC*

Prior to amendment, (1) the WOTC was scheduled to expire on September 30, 1997, (2) there were seven targeted groups, (3) the credit was 35 percent of first-year wages up to $6,000 (for a maximum credit of $2,100 per individual), and (4) the minimum employment period was generally 400 hours or 180 days. Act section 603 made several changes to the WOTC. First, it extended the credit to cover individuals who begin work by June 30, 1998. The Act modified the definitions of two targeted groups: (i) qualified recipients of benefits under Aid to Families with Dependent Children (AFDC) or a successor program and (ii) qualified veterans. It added a new targeted group consisting of certain individuals who receive supplemental security income (SSI) benefits under the Social Security Act. It increased the credit percentage to 40 percent for certified workers who work at least 400 hours (for a maximum credit of $2,400 per individual). Finally, the Act amended the minimum employment period so that employers may also claim the WOTC for certified workers who work at least 120 hours but less than 400 hours. Workers who meet this minimum work requirement will entitle the employer to a credit of 25 percent of qualified wages. No credit is available for workers who work less than 120 hours.

• *Certification Process*

There are two ways an employer can satisfy the requirement to obtain a certification that a worker is a member of a targeted group. First, the employer can obtain a certification from the SESA, on or before the day the individual begins work, stating that the individual belongs to a targeted group. Section 51(d)(11)(A)(i) of the Code.

Alternatively, the employer can complete a "pre-screening notice" with respect to the prospective employee on or before the day the individual is offered employment. Then, within 21 days after the individual begins work, the employer submits that notice to the SESA as part of a request for certification. Section 51(d)(11)(A)(ii). For this purpose, employers have been using Form 8850, *Work Opportunity Tax Credit Pre-Screening Notice and Certification Request* (issued September 1996). (See Revised Form 8850 discussion on page 8.)

Welfare-to-Work Tax Credit Overview

The new Welfare-to-Work tax credit, added by section 801 of the Act, is a tax credit for employers who hire individuals certified by the SESAas long-term family assistance recipients. The credit is effective for wages paid to such individuals who begin work after December 31, 1997, and before May 1, 1999. Long-term family assistance recipients are (1) members of a family that has received family assistance (AFDC or a successor program) for at least 18 consecutive months ending on the hiring date; (2) members of a family that has received family assistance for a total of at least 18 months (whether or not consecutive) after August 5, 1997; and (3) members of a family that ceases after August 5, 1997, to be eligible for family assistance because of either federal or state time limits.

The Welfare-to-Work tax credit is 35 percent of qualifying first-year wages and 50 percent of qualifying second-year wages. For this purpose (although not for the WOTC), wages include certain tax-exempt amounts relating to accident and health coverage, educational assistance programs, and dependent care assistance programs. For each employment year, up to $10,000 of wages (in contrast with the $6,000 maximum for the WOTC) may be considered in determining the amount of the Welfare-to-Work tax credit.

Although the substantive requirements are different for the WOTC and the Welfare-to-Work tax credit, the certification process is the same. Thus, the employer must either receive a certification from the SESA on or before the day the individual begins work, stating that the individual is a long-term family assistance recipient, or the employer must complete a "pre-screening notice" on or before the day the individual is offered employment. In the latter case the employer must, within 21 days after the individual begins work, submit that notice to the SESA as part of a request for certification.

Coordination of WOTC and Welfare-to-Work Tax Credit

The Welfare-to-Work tax credit is coordinated with the WOTC so that in any one taxable year an employer cannot claim both credits with respect to the same individual. For example, assume that an individual begins work on March 1, 1998, and works at least 400 hours for an employer whose taxable year is the calendar year. The employer pays "first-year wages" from March 1998 through February 1999, and pays "second-year wages" from March 1999 through February 2000. If the individual is certified as both a member of one of the WOTC targeted groups and a long-term family assistance recipient and the requirements for both credits are otherwise satisfied, the employer will have the following choices. For 1998, the employer may claim either the WOTC (40 percent of wages up to $6,000) or the

Welfare-to-Work tax credit (35 percent of wages as defined in section 51A(b)(5) of the Code up to $10,000). For 1999, the employer may choose again which credit to claim. The WOTC would be based solely on the amount of first-year wages (up to the $6,000 limit) paid in 1999, during the balance of the first employment year (i.e., January and February 1999). The Welfare-to-Work tax credit would have two components: 35 percent of the amount of first-year wages (up to the $10,000 limit) paid in January and February 1999, and 50 percent of the amount of the second-year wages (up to a separate $10,000 limit) paid in March through December 1999. For 2000, the taxpayer could claim only the Welfare-to-Work tax credit, based on the amount of second-year wages (up to the second $10,000 limit) paid in January and February 2000.

Revised Form 8850

On September 20, 1997, the IRS issued a revised and renamed Form 8850, *Pre-Screening Notice and Certification Request for the Work Opportunity and Welfare-to-Work Credits.* The changes to the WOTC and the enactment of the Welfare-to-Work tax credit are reflected on a single form to simplify the certification process for prospective employees, employers, and SESAs.

How to Get the Revised Form 8850

The new form is available to computer users through the IRS home page on the World Wide Web, http://www.irs.ustreas.gov, and by modem directly at 703-321-8020 (not a toll-free number). Employers may also request Form 8850 by calling 1-800-TAX-FORM (1-800-829-3676).

Transition Relief

Employers should begin using the new Form 8850 for employees whose first day of work is on or after October 1, 1997 (for the WOTC), or on or after January 1, 1998 (for the Welfare-to-Work tax credit). Employers may continue to use the old Form 8850, however, for individuals who are in one of the original seven WOTC targeted groups and begin work before January 1, 1998.

Employers that submit Forms 8850 to SESAs are not entitled to the applicable credits unless the employers receive the required certifications. Before claiming the WOTC or the Welfare-to-Work tax credit with respect to an individual, the employer must receive a certification from the SESA that the individual is, in fact, a member of a targeted group or a long-term family assistance recipient, as the case may be.

The principal author of this notice is Robert Wheeler of the Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations). For further information regarding this notice contact Mr. Wheeler on (202) 622-6060 (not a toll-free call).

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26 CFR 1.472–2: Requirements incident to adoption and use of LIFO inventory method.
(Also Part I, § 472; § 1.472-1.)

Rev. Proc. 97–44

SECTION 1. PURPOSE

This revenue procedure provides relief for automobile dealers that elected the last-in, first-out (LIFO) inventory method and violated the LIFO conformity requirement of § 472(c) or (e)(2) of the Internal Revenue Code by providing, for credit purposes, an income statement prepared in a format required by the franchisor or on a pre-printed form supplied by the franchisor (an automobile manufacturer), covering any taxable year ended on or before October 14, 1997, that fails to reflect the LIFO inventory method. *See, e.g.*, Rev. Rul. 97–42, 1997–41 I.R.B. *(Situation 3).* Automobile dealers that comply with this revenue procedure will not be required to change from the LIFO inventory method to another inventory method as a result of such LIFO conformity violation.

SECTION 2. BACKGROUND

.01 Section 472(a) authorizes a taxpayer to use the LIFO inventory method in accordance with regulations prescribed by the Secretary.

.02 Section 472(c) provides that a taxpayer may not elect to use the LIFO inventory method unless it establishes to the satisfaction of the Commissioner that it used no method other than the LIFO method in inventorying goods to ascertain the income, profit, or loss of the first taxable year for which the LIFO method is to be used, for the purpose of a report or statement covering that taxable year to shareholders, partners, other proprietors, or beneficiaries, or for credit purposes.

.03 Section 472(e) provides that a taxpayer electing to use the LIFO inventory method must continue to use the LIFO inventory method unless the taxpayer: (1) obtains the consent of the Commissioner to change to a different method; or (2) is required by the Commissioner to change to a different method because the taxpayer has used some inventory method other than LIFO to ascertain the income, profit, or loss of any subsequent taxable year in a report or statement covering that taxable year (a) to shareholders, partners, other proprietors, or beneficiaries, or (b) for credit purposes.

.04 Section 1.472–2(e)(1) of the Income Tax Regulations provides that a taxpayer electing to use the LIFO inventory method must establish to the satisfaction of the Commissioner that the taxpayer, in ascertaining the income, profit, or loss of the taxable year for which the LIFO inventory method is first used, or for any subsequent taxable year, for credit purposes or for purposes of reports to shareholders, partners, other proprietors, or beneficiaries, has not used any inventory method other than LIFO.

.05 Rev. Rul. 97–42 holds that a franchised automobile dealer that elected the LIFO inventory method violates the LIFO conformity requirement by providing to a credit subsidiary of its franchisor (an automobile manufacturer) an income statement covering a taxable year that fails to reflect the LIFO inventory method in the computation of net income.

.06 Rev. Proc. 79–23, 1979–1 C.B. 564, provides that a violation of the LIFO conformity requirement warrants termination of a taxpayer's LIFO election.

SECTION 3. SCOPE

This revenue procedure applies to any taxpayer engaged in the purchase, sale, and service of automobiles or light-duty trucks that violated the LIFO conformity requirement by providing, for credit purposes, an income statement prepared in a format required by the franchisor or on a pre-printed form supplied by the franchisor (an automobile manufacturer), covering any taxable year ended on or before October 14, 1997, that fails to reflect the

LIFO inventory method in the computation of net income, regardless of whether the taxpayer is currently under examination, before an appeals office, or before a federal court. For this purpose, the term "taxpayer" has the same meaning as the term "person" defined in § 7701(a)(1) (rather than the meaning of the term "taxpayer" defined in § 7701(a)(14)). The term "taxpayer" includes a corporation that is included in an affiliated group of corporations as defined in § 1504.

SECTION 4. RELIEF

.01 A taxpayer within the scope of this revenue procedure that satisfies all the requirements for relief set forth herein is hereby granted the following relief: the district director will not terminate the LIFO election of the taxpayer because of a LIFO conformity violation described in section 3 of this revenue procedure.

.02 The relief granted under this revenue procedure extends only to LIFO conformity violations described in section 3 of this revenue procedure that occurred on or before October 14, 1997. Accordingly, the district director may, upon examination, terminate a taxpayer's LIFO election for:

(1) other LIFO conformity violations, including those described in section 3 of this revenue procedure that occur after October 14, 1997; or

(2) any other action that may warrant termination of a taxpayer's LIFO election.

.03 The district director may, upon examination, verify the accuracy of the taxpayer's settlement amount calculation and otherwise determine whether the taxpayer has fully satisfied the requirements of this revenue procedure. The district director may terminate a taxpayer's LIFO election for any violation year ended within the look-back period if the taxpayer failed to fully satisfy the requirements of this revenue procedure.

.04 Nothing in this revenue procedure will prohibit the district director from making adjustments to a taxpayer's LIFO inventory method of accounting.

SECTION 5. REQUIREMENTS FOR RELIEF

.01 A taxpayer within the scope of this revenue procedure for which any violation year ended within the look-back period is entitled to relief only if the taxpayer: (1) pays the settlement amount at the time and in the manner set forth in section 5.03 of this revenue procedure; (2) submits the accompanying memorandum at the time and in the manner set forth in sections 5.03 and 5.04 of this revenue procedure; and (3) satisfies the additional requirements set forth in section 7 of this revenue procedure. A taxpayer within the scope of this revenue procedure that does not have a violation year that ends in the look-back period is automatically granted relief and is not required to satisfy any of the requirements of this revenue procedure.

.02 *Settlement Amount.* (1) *In general.* A taxpayer applying for relief under this revenue procedure must pay a "settlement amount," which is intended to approximate the after-tax, time value of money benefit that the taxpayer will derive from continuing to use the LIFO inventory method for a period of years. The settlement amount is not treated as interest under § 163(a) and may not be capitalized or deducted under any provision of the Code. Moreover, the settlement amount is not refundable or creditable against any federal tax liability of the taxpayer.

(2) *Calculating the settlement amount.* The settlement amount equals 4.7% of the difference between the LIFO carrying value and the non-LIFO carrying value (for example, the value using the actual invoice cost or the first-in, first-out method) of the taxpayer's inventory (the "LIFO reserve") on the last day of the taxpayer's last taxable year ended on or before October 14, 1997. For this purpose, the taxpayer's inventory includes only inventory related to the purchase, sale, and service of automobiles and light-duty trucks. A taxpayer determines the LIFO reserve on the last day of its last taxable year ended on or before October 14, 1997, using the method of accounting that it used on its original federal income tax return for that taxable year.

.03 *Time and Manner of Payment.* (1) *In general.* The settlement amount must be paid in three equal installments. Except as provided in section 5.03(2) or (3) of this revenue procedure, the first installment and the memorandum described in section 5.04 of this revenue procedure, are due on or before May 31, 1998. The remaining installments and memoranda are due on or before January 31 of the two succeeding calendar years. Payments, together with the original memorandum, must be sent to the Internal Revenue Service, Cincinnati Service Center, 201 W. River Center Blvd., Stop 31, Unit 21, Covington, KY 41019. A copy of each memorandum must be sent to the national office addressed to the Commissioner of Internal Revenue, Attention: CC:DOM:IT&A, P.O. Box 7604, Benjamin Franklin Station, Washington, DC 20044 (or, in the case of a private delivery service: Commissioner of Internal Revenue, Attention: CC:DOM:IT&A, 1111 Constitution Avenue, NW, Washington, DC 20224).

(2) *Taxpayers under examination, before appeals, or before a federal court.* If any federal income tax return of a taxpayer is under examination, before an appeals office, or before a federal court on October 14, 1997, the first installment of the settlement amount and the memorandum described in section 5.04 of this revenue procedure are due on or before December 1, 1997. For this purpose, the terms "under examination," "before an appeals office," and "before a federal court" have the same meaning as provided in Rev. Proc. 97–27, 1997–21 I.R.B. 10. The taxpayer must notify the examining agent(s), appeals officer, or the counsel for the government, whichever is applicable, in writing on or before December 15, 1997, that it has applied for relief under this revenue procedure. Evidence that the first installment has been paid and a copy of the memorandum described in section 5.04 of this revenue procedure must be provided as part of this written notification.

(3) *Option to pay settlement amount in one installment.* A taxpayer may elect to pay the entire settlement amount in one installment. If a taxpayer makes this election, the entire settlement amount and the original memorandum described in section 5.04 of this revenue procedure are due on or before May 31, 1998, or, if any federal income tax return of the taxpayer is under examination, before an appeals office, or before a federal court, on or before December 1, 1997. In addition, if applicable, the written notification required in section 5.03(2) of this revenue procedure must be satisfied. A copy of the memorandum must be sent to the national office as required by section 5.03(1) of this revenue procedure.

.04 *Accompanying Memorandum.* Each installment payment must be accompanied by a memorandum providing the following information:

(1) the taxpayer's name, address, and EIN number;

(2) the amount of the taxpayer's LIFO reserve calculated under section 5.02(2) of this revenue procedure;

(3) the total settlement amount calculated under section 5.02(2) of this revenue procedure;

(4) the amount of the installment being paid;

(5) a statement identifying the payment as the first, second, or third installment (or a statement that the taxpayer elects to pay the entire settlement amount in a single installment); and

(6) a statement that the taxpayer agrees to all of the terms of this revenue procedure.

Each memorandum must be signed under penalties of perjury by an individual with authority to bind the taxpayer in such matters. The following language must be either typed or legibly printed at the top of the first page of each memorandum: "PAYMENT OF SETTLEMENT AMOUNT UNDER REV. PROC. 97–44."

SECTION 6. DEFINITIONS

.01 *Violation year.* A violation year is any taxable year for which a taxpayer violated the LIFO conformity requirement under the facts described in section 3 of this revenue procedure. However, solely for purposes of this revenue procedure, a taxable year will not be treated as a violation year if it ended on or before October 14, 1997, and the taxpayer replaced the twelfth monthly income statement for that year with a "thirteenth period income statement" that:

(1) covered the same period as the twelfth monthly income statement;

(2) reflected the LIFO inventory method; and

(3) was provided, before the first monthly income statement of the following year, to each creditor that received the twelfth monthly income statement.

.02 *Look-back period.* For purposes of this revenue procedure, the "look-back period" consists of the taxpayer's six most recent taxable years ended on or before October 14, 1997.

SECTION 7. ADDITIONAL TERMS OF RELIEF

.01 A taxpayer that fails to pay each installment of the settlement amount timely, or to submit the memorandum timely, has not satisfied the requirements of this revenue procedure. Accordingly, the relief provided under section 4 of this revenue procedure is not available.

.02 A taxpayer that ceases to engage in the trade or business of purchase, sale, and service of automobiles or light-duty trucks or terminates its existence must pay the remaining balance of the settlement amount within 45 days of the cessation or termination. A taxpayer is treated as ceasing to engage in a trade or business if the operations of the trade or business cease, or substantially all the assets of the trade or business are transferred to another taxpayer in a taxable or non-taxable transfer. For this purpose, "substantially all" has the same meaning as in section 3.01 of Rev. Proc. 77–37, 1977–2 C.B. 568. No acceleration of the settlement amount is required under this section 7.02 when a C corporation elects to be treated as an S corporation, or an S corporation terminates its S election and is then treated as a C corporation. However, acceleration of the settlement amount is required if a sole proprietor incorporates and immediately elects to be treated as an S corporation.

.03 A taxpayer that makes one or more payments under this revenue procedure may not change from the LIFO inventory method pursuant to Rev. Proc. 97–37, 1997–33 I.R.B. 18, for a taxable year beginning before the date that the entire settlement amount is paid in accordance with this revenue procedure. A taxpayer requesting to change from the LIFO method for a taxable year beginning before the date that the entire settlement amount is paid, must file a Form 3115 in accordance with Rev. Proc. 97–27. The Commissioner will not grant consent to change from the LIFO method unless the taxpayer agrees to accelerate any remaining payments of the settlement amount.

SECTION 8. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 97–37 is modified.

SECTION 9. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1559.

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

The collection of information in this revenue procedure is in section 5 of this revenue procedure. This information is required to ensure that the settlement amount required to be paid under this revenue procedure is accurately computed and timely paid. The likely respondents are businesses engaged in the retail sale of new automobiles.

The estimated total annual reporting burden is 100,000 hours.

The estimated annual burden per respondent will vary from 10 hours to 30 hours, depending on individual circumstances, with an estimated average of 20 hours. The estimated number of respondents is 5,000.

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

DRAFTING INFORMATION

The principal author of this revenue procedure is Jeffery G. Mitchell of the Office of Assistant Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Mr. Mitchell on (202) 622-4970 (not a toll-free call).

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26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also Part I, §§ 62, 162, 274; 1.62-2, 1.162–17, 1.274–5T, 1.274(d)–1.)

Rev. Proc. 97–45

SECTION 1. PURPOSE

This revenue procedure provides optional rules under which an employee of a

federal government agency who is reimbursed for ordinary and necessary business expenses relating to travel, entertainment, gifts, or listed property (such as an employee's automobile) may make an adequate accounting to the employer to substantiate those expenses (under §§ 1.274–5T(f)(2) and (4)(ii) of the temporary Income Tax Regulations) by submitting an account book, diary, log, etc., alone, without submitting documentary evidence such as receipts. These rules generally apply to employees of the executive and judicial branches, and certain employees of the legislative branch, of the federal government.

SECTION 2. BACKGROUND

.01 Section 162(a) of the Internal Revenue Code allows a deduction for all ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including traveling expenses (including amounts expended for meals and lodging) while away from home in pursuit of a trade or business.

.02 Section 1.62–2(c)(2) provides that reimbursements by an employer to an employee for business expenses paid or incurred by the employee are paid under an "accountable plan" if the reimbursement arrangement meets the requirements of business purpose, substantiation, and returning amounts in excess of expenses. Amounts failing to meet these requirements are treated as paid under a nonaccountable plan. Section 1.62–2(c)(3).

.03 Amounts treated as paid under an accountable plan are excluded from the employee's gross income, are not reported as wages or other compensation on the employee's Form W–2, and are exempt from the withholding and payment of employment taxes. Section 1.62–2(c)(4). Conversely, amounts treated as paid under a nonaccountable plan are included in the employee's gross income, must be reported as wages or other compensation on the employee's Form W–2, and are subject to the withholding and payment of employment taxes. Section 1.62–2(c)(5).

.04 An employee may satisfy the substantiation requirement of a § 1.62–2(c)(2) accountable plan by substantiating the expenses to the employer in accordance with § 274(d) and the regulations thereunder. Section 1.62–2(e)(2).

.05 Section 274(d) disallows a deduction under § 162 for any travel (including meals and lodging), entertainment, gift, or listed property expense, unless the taxpayer substantiates the elements of the expense by adequate records or by sufficient evidence.

.06 Under § 1.274–5T(c)(2), a taxpayer must maintain two types of records to satisfy the "adequate records" requirement: (1) a summary of expenses (account book, diary, log, statement of expense, trip sheets, or similar record) made at or near the time the expenses are incurred (as provided in § 1.274–5T(c)(2)(ii)), and (2) documentary evidence (such as receipts, paid bills, or similar evidence as provided in § 1.274–5T(c)(2)(iii)). Section 1.274–5T(c)(2)(iii) generally requires that a taxpayer have documentary evidence to substantiate (A) any expenditure for lodging, and (B) any other expenditure of $75 or more ($25 or more for expenses paid or incurred before October 1, 1995). Together, these records must establish the elements of amount, time, place, and business purpose (and, for gifts and entertainment, business relationship of the recipient or persons entertained) for each expenditure or use. Section 1.274–5T(b).

.07 Section 1.274–5T(f)(4)(i) requires an employee substantiating expenses (or making an "adequate accounting" of expenses) to the employer to submit to the employer records that satisfy the "adequate records" requirements of § 1.274–5T(c)(2). However, § 1.274–5T(f)(4)(ii) provides that the Commissioner may prescribe rules under which an employee may make an adequate accounting to the employer by submitting an account book, diary, log, etc., alone, without submitting documentary evidence.

SECTION 3. SCOPE

This revenue procedure provides rules pursuant to § 1.274–5T(f)(4)(ii) under which an employee of a federal government agency may make an adequate accounting to the employer to substantiate the employee's expenses for travel, entertainment, gifts, or listed property, by submitting an account book, diary, log, statement of expense, trip sheet, or similar record, without submitting documentary evidence.

SECTION 4. DEFINITIONS

.01 *Documentary evidence*. The term "documentary evidence" means receipts, paid bills, or similar evidence (whether on paper or in electronic form) sufficient to support an expenditure (as provided in § 1.274–5T(c)(2)(iii)).

.02 *Employee.* The term "employee" has the same meaning as in 5 U.S.C. § 5701(2). The term "employee" also includes members of the uniformed services (as defined in 37 U.S.C. § 101(3)) and members of the Foreign Service (as defined in 22 U.S.C. § 3903).

.03 *Employer*. The term "employer" means a federal government agency (within the meaning of section 4.06 of this revenue procedure) that reimburses its employees under a reimbursement arrangement for their expenses for travel, entertainment, gifts, or listed property.

.04 *Expenses or expenditures.* The terms "expenses" or "expenditures" mean expenses under § 274(d) for travel (including meals and lodging away from home), entertainment, gifts, or listed property, incurred by an employee in connection with the performance of services as an employee.

.05 *Expense voucher.* The term "expense voucher" means an account book, diary, log, statement of expense, trip sheet, or similar record (within the meaning of § 1.274–5T(c)(2)(ii), and whether on paper or in electronic form).

.06 *Federal government agency.* The term "federal government agency" has the same meaning as "agency" in 5 U.S.C. § 5701(1).

.07 *Reimbursement.* The term "reimbursement" includes advances, reimbursements, or allowances for expenses.

SECTION 5. APPLICATION

.01 *In general* An employee of a federal government agency may make an adequate accounting to the employer to substantiate the employee's expenses (under §§ 1.274–5T(f)(2) and (4)(ii)) without submitting documentary evidence, provided the employer makes the reimbursement pursuant to a written policy that includes all the procedures set forth in section 5.02 of this revenue procedure. An adequate accounting made pursuant to these procedures satisfies the substantiation requirements applicable to accountable plans under § 1.62–2(c)(2). However, an employer must comply with the other requirements of § 1.62–2 in order to treat reimbursements as paid under an accountable plan.

.02 *Required procedures*

(1) The types and amounts of expenses paid or incurred by the employee, or to be paid or incurred by the employee, must be approved by an appropriate official of the employer (who is not the employee incurring the expenses), either in advance of, or after, the employee pays or incurs the expenses.

(2) Within a reasonable time after paying or incurring the expenses, the employee must submit to the employer an expense voucher sufficient to establish the elements of amount, time, place, and business purpose (and, for gifts and entertainment, business relationship of the recipient or persons entertained) for each expenditure or use.

(3) Except as provided in Rev. Proc. 96–63, 1996–2 C.B. 420, or Rev. Proc. 96–64, 1996–2 C.B. 427, or any successors, the employee must obtain and retain for a period of four years after submitting the expense voucher, documentary evidence for (a) expenditures of $75 or more, and (b) all expenditures for lodging, and produce the documentary evidence when requested by the employer or the Service. The employer must timely inform an employee receiving reimbursements of these requirements.

(4) The employer must conduct periodic audits of a representative sample of the expense vouchers submitted (including related documentary evidence), selected on a statistically sound basis. Compliance with the applicable requirements of the General Accounting Office is sufficient.

(5) The employer must either (a) collect from an employee any amount discovered on audit or otherwise to have been reimbursed in excess of the amount supported by the documentary evidence required under section 5.02(3) of this revenue procedure, or (b) treat such excess as paid under a nonaccountable plan.

(6) The employer's policy and procedures (including audit procedures) for reimbursing employees for expenses must be subject to review by an independent government authority (such as its Inspector General or the General Accounting Office).

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective October 1, 1997.

DRAFTING INFORMATION

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

Part IV. Items of General Interest

Foundations Status of Certain Organizations

Announcement 97–101

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:

Advisory Committee of the Burton E. Stevenson Endowment Fund, Chillicothe, OH
Albina Head Start, Inc., Portland, OR
Animal Rescue and Rehabilitation Foundation LTD, Savona, NY
Brooklyn Gastroenterological Association, Brooklyn, NY
Broome County Chapter American Institute of Banking, Binghamton, NY
Circolo Culturale Jazz, Inc., Staten Island, NY
Evergreen Network, Inc., Southport, CT
Family Life Center, Inc., Aliquippa, PA
Firedrake Inc., New York, NY
Foundation for Research in Cardiac Surgery and Cardiovascular Biology, Inc., New York, NY
Friends of Families, Buena Park, CA
Hip Hoppin Corporation, Brooklyn, NY
Hope Alliance for Animals, Branford, CT
International Institute for Trade and Education, Inc., Brookline, MA
International Womens Club of New England, Cape Neddick, ME
Inwood Heights Housing Development Fund Corporation, Bronx, NY
Iota Kappa Lambda Schola, Syracuse, NY
Iscomp Technical Institute, Los Angeles, CA
Jose Napoleon Duarte Foundation, Inc., Great Falls, VA
Kundalini Yoga Ashram of New York, Inc., New York, NY
La Coalicion Deportiva Hispano Americana, Inc., New York, NY
Lao International Community Development Center of CT., Inc., Hartford, CT
La Paloma, Inc., Watertown, CT
Las Puertas Housing Corporation, Bronx, NY
Latin American Womens Association of Connecticut, Inc., Hamden, CT
Latino Community Volunteers Corps., Inc., Middleborough, MA
Latino Peace Officers Association of Massachusetts, Charlestown, MA
Lawrence D. Bell Aerospace Museum, Williamsville, NY
Lechendor Arts Group, Inc., New York, NY
Lewis Foundation for Disadvantaged Children, Inc., New York, NY
Ley, Staten Island, NY
Lift Up a Standard Ministries, Inc., Copiague, NY
Lights on Deaf Theater, Ltd., Rochester, NY
Lions Youth Hockey Association, Ltd., Glen Head, NY
Living Farms, Inc., Bronx, NY
Local Education Alternatives Resource Network, Inc., New York, NY
Long Island Animal Advocates, Inc., Rockville Centre, NY
Long Island Society Prevention of Cruelty Children County Nassau, Inc., Mineola, NY
Maat, Inc., Brooklyn, NY
Madonna of the Streets, Inc., Buffalo, NY
Mahasatipatthana Meditation Center, Inc., Brooklyn, NY
Maine Respite Home, Portland, ME
Making Ends Meet Foundation, Inc., Marblehead, MA
Management Corps for the Emerging East, Inc., Wellesley, MA
Mariners Harbor Improvement Corporation, Staten Island, NY
Mark A. Kent Scholarship Fund, Inc., Hingham, MA
The Mayors Committee for a Better Community, Las Vegas, NV
Mount Eve Land Trust, Inc., Goshen, NY
Naked Theatre, Inc., New Haven, CT
Nantucket Education Trust, Inc., Mamticlet, MA
Napa State Hospital Volunteer Community Advisory Board, Napa, CA
National Aids Memorial, Jersey City, NJ
National Association for Orphans & Abandoned Children, Glenn Dale, MD
National Business Council for Family Daycare, Inc., Kensington, CT
National Educational Technologies Research Institute, Inc., Groton, CT
National Incarcerated Aids Network, Leominster, MA
National Infertility Network Exchange, East Meadow, NY
National Youth Achievement Foundation, Bronx, NY
Neighborhood Assistance Center Corporation, Woodhaven, NY
Nelson Memorial Playground Assn., Inc., Plymouth, MA
Ner Sarah Childrens Fund, Inc., Lawrence, NY
New England Alliance of Multiracial Families, Inc., Medford, MA
New England Environmental Law Society, Inc., Boston, MA
New Haven River Anglers, Inc., Bristol, VT
New Haven Womens Aids Coalition, Inc., New Haven, CT
New Hope, Lake Wood, CA
New Rochelle Opera Guild, New Rochelle, NY
New Visions, Inc., Washington Mills, NY
Nightingale Research Foundation, Inc., Ogdensburg, NY
Non Hunters Rights Alliance, Rockland, ME
Norman A. Fennell Memorial Scholarship Foundation, Inc., Harwichport, MA
Northeast Bronx Redevelopment Corporation, Bronx, NY
Nutmeg BMX, Inc., Bridgeport, CT
Ocean State Knitting Guild, Cranston, RI
Onteora Babe Ruth League, Inc., New York, NY
Optimum Professional Achievement Foundation, Inc., Port Washington, NY
Organization for the Retirement of People, Inc., Far Rockaway, NY
Our Daily Blessings, Albion, NY
Our Lady of Mt. Carmel Development Corporation, New York, NY
Our Place Drop in Center, Bellows Falls, VT
Paramus Affordable Housing Corporation, Paramus, NJ
People Helping People with Christ, Inc., Wareham, MA

Region 15 PTO Perpetual Fund, Southbury, CT
Sepharadic Heritage Alliance, Inc., Great Neck, NY
Spokane Chamber Choir, Colville, WA
Zanesville Green Commission, Inc., Zanesville, OH

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.

Delegation Order No. 97 (Rev. 34)

Delegation of Authority

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Delegation of Authority

SUMMARY: The authority delegated by the Commissioner of Internal Revenue to the Assistant Commissioner (Employee Plans and Exempt Organizations), to enter into and approve certain closing agreements, may be redelegated to special assistants and division directors reporting directly to the Assistant Commissioner (Employee Plans and Exempt Organizations). The text of the delegation order appears below.

EFFECTIVE DATE: August 18, 1997

FOR FURTHER INFORMATION CONTACT: John H. Turner, CP:E:EP:P:2, Room 6702, 1111 Constitution Avenue, NW, Washington, DC 20224, (202) 622-6214 (not a toll-free number).

Effective: August 18, 1997

Closing Agreements Concerning Internal Revenue Tax Liability (Supplemented by Delegation Orders No. 236, 245, 247 and 248)

1. Authority: To enter into and approve a written agreement with any person relating to the internal revenue tax liability of such person (or of the person or estate for whom he or she acts) in respect to any prospective transactions or completed transactions if the request to the Chief Counsel for determination or ruling was made before any affected returns have been filed. This does not include the authority to set aside any closing agreement.

Delegated to: The Chief Counsel in cases under his/her jurisdiction.

Redelegation: This authority may be redelegated no lower than the Deputy Associate Chief Counsels for cases under their respective jurisdictions and to the Assistant Chief Counsels for cases under their respective jurisdictions that do not involve precedent issues.

2. Authority: To enter into and approve a written agreement with any person relating to the internal revenue tax liability of such person (or of the person or estate for whom he or she acts) for a taxable period or periods ended prior to the date of agreement and related specific items affecting other taxable periods. This does not include the authority to set aside any closing agreement.

Delegated to: The Associate Chief Counsels and the Assistant Commissioners (Examination) and (International) for matters under their respective jurisdictions.

Redelegation: The authority delegated to the Associate Chief Counsels may be redelegated, by the Deputy Chief Counsel, to the Deputy Associate Chief Counsels. The authority delegated to the Assistant Commissioners (Examination) and (International) may be redelegated, respectively, to the Deputy Assistant Commissioners (Examination) and (International).

3. Authority: To enter into and approve a written agreement with any person relating to the internal revenue tax liability of such person (or of the person or estate for whom he or she acts) with respect to the performance of his or her functions as the competent authority under the tax conventions of the United States. This does not include the authority to set aside any closing agreement.

Delegated to: The Assistant Commissioner (International).

Redelegation: This authority may be redelegated to the Deputy Assistant Commissioner (International).

4. Authority: To enter into and approve a written agreement with any person relating to the internal revenue tax liability of such person (or of the person or estate for whom he or she acts). This does not include the authority to set aside any closing agreement.

Delegated to: The Assistant Commissioner (Employee Plans and Exempt Organizations) in cases under his or her jurisdiction.

Redelegation: This authority may be redelegated to special assistants and division directors reporting directly to the assistant commissioner.

5. Authority: To enter into and approve a written agreement with any person relating to the internal revenue tax liability of such person (or of the person or estate for whom he or she acts), for a taxable period or periods ended prior to the date of the agreement and related specific items affecting other taxable periods. This does not include the authority to set aside any closing agreement.

Delegated to: In cases under their jurisdiction (but excluding cases docketed before the United States Tax Court), the Assistant Commissioner (International); regional commissioners; regional counsel; regional chief compliance officers; service center directors; district directors; regional directors of appeals; assistant regional directors of appeals; chiefs and associate chiefs of appeals offices; and appeals team chiefs with respect to their team cases.

Redelegation: 1. Service center directors and the Director, Austin Compliance Center, may redelegate this authority no lower than the Chief, Examination Support Unit, with respect to agreements concerning the administrative disposition of certain tax shelter cases, and no lower than the Chief, Windfall Profit Tax Staff, Austin Service Center or Austin Compliance Center, with respect to entering into and approving a written agreement with the Tax Matters Partner/Person (TMP) and one or more partners or shareholders with respect to whether the partnership or S corporation, acting through its TMP, is duly authorized to act on behalf of the partners or shareholders in the determination of partnership or S corporation items for purposes of the tax imposed by Chapter 45, and for purposes of assessment and collection of the windfall profit tax for such partnership or S corporation taxable year.

2. The Assistant Commissioner (International) and district directors may redelegate this authority no lower than the Chief, Quality Review Staff/Section with respect to all matters, and not below the Chief, Examination Support Staff/Section, or Chief, Planning and Special Programs Branch/Section, with respect to agreements concerning the administrative disposition of certain tax shelter cases, or Chief, Special Procedures function, with respect to the waiver of right to claim refunds for those responsible officers who pay the corporate liability in lieu of a trust fund recovery penalty assessment under IRC 6672.

6. Authority: In cases under their jurisdiction docketed in the United States Tax Court and in other Tax Court cases upon the request of Chief Counsel or his/her delegate, to enter into and approve a written agreement with any person relating to the internal revenue tax liability of such person (or of the person or estate for whom he or she acts), but only in respect to related specific items affecting other taxable periods. This does not include the authority to set aside any closing agreement.

Delegated to: The associate chief counsels; the Assistant Commissioners (Employee Plans and Exempt Organizations) and (International); regional commissioners; regional counsel; regional directors of appeals; assistant regional directors of appeals; chiefs and associate chiefs of appeals offices; and appeals team chiefs with respect to their team cases.

Redelegation: This authority may not be redelegated.

7. Authority: In cases under the jurisdiction of the Assistant Commissioner (International), to enter into and approve a written agreement with any person relating to the internal revenue tax liability of such person (or of the person or estate for whom he/she acts), and to provide for the mitigation of economic double taxation under section 3 of Revenue Procedure 64–54, 1964–2 C.B. 1008, under Revenue Procedure 72–22, 1972–1 C.B. 747, and under Revenue Procedure 69–13, 1969–1 C.B. 402, and to enter into and approve a written agreement providing the treatment available under Revenue Procedure 65–17, 1965–1 C.B. 833. This does not include the authority to set aside any closing agreement.

Delegated to: The Assistant Commissioner (International).

Redelegation: This authority may not be redelegated.

Sources of Authority: 26 CFR 301.7121–1(a); Treasury Order No. 150–07; Treasury Order No. 150–09; and Treasury Order No. 150–17, subject to the transfer of authority covered in Treasury Order No. 120–01, as modified by Treasury Order No. 150–27, as revised.

To the extent that the authority previously exercised consistent with this order may require ratification, it is hereby affirmed and ratified.

This order supersedes Delegation Order No. 97 (Rev. 33), which was effective March 15, 1996.

Approved August 18, 1997.

Michael P. Dolan
Deputy Commissioner

Changes to Volume Submitter and Regional Prototype Programs

Announcement 97–102

A. Introduction

Because the Internal Revenue Service (Service) is consolidating its determination letter processing program at the Ohio Key District Office in Cincinnati, changes in the Volume Submitter and Regional Prototype Programs are necessary. Previously, each key district office managed its own program.

However, effective with the date of publication of this announcement, all requests for Volume Submitter Advisory letters and Regional Prototype Notification letters may only be submitted to the Ohio Key District Office in Cincinnati. All existing Notification and Advisory letters remain valid. In addition, requests for determination letters by employers who adopt a Regional Prototype or Volume submitter plan may only be submitted to the Ohio Key District Office.

This Announcement provides practitioners with specific instructions for submitting requests for approval of Volume Submitter and Regional Prototype plans (both new or amended). In addition, the Announcement provides instructions for the submission of determination letter requests for adopters of these types of plans.

B. Background

The Volume Submitter Program enables the Service to expedite the issuance of determination letters in response to applications for approval of certain individually designed retirement plans. Under the program, previously administered by each key district office, a practitioner who meets the standards in C below, may request the Service to issue an advisory letter regarding the volume submitter specimen plan. A specimen plan is a sample plan of a practitioner (rather than the actual plan of an employer) that contains provisions that are identical or substantially similar to the provisions in plans that the practitioner's clients have adopted or are expected to adopt. Once the Service approves the specimen plan, the practitioner is able to file determination letter requests on behalf of employers adopting substantially similar plans. These determination letter requests ordinarily will be processed more quickly than requests for other individually designed plans. The requirements for the Volume Submitter Program are described more fully in Rev. Proc. 97–6, 1997–1 I.R.B. 153.

A Regional Prototype Plan is a plan that is made available by a regional sponsor for adoption by employers. A Regional Prototype Plan consists of a basic plan document, an adoption agreement, and (with certain exceptions) a trust or custodial account document. Once the Service has approved the plan, an employer is able to request a determination letter, if needed for reliance. These determination letters ordinarily will be processed more quickly than requests pertaining to individually designed plans. The requirements for the Regional Prototype Program are described more fully in Rev. Proc. 89–13, 1989–1 C.B. 801, as modified.

C. Approval of Volume Submitter Plans

Once a Volume Submitter practitioner's specimen plan is approved by the Ohio Key District (whether as a new specimen plan or as an amendment to a previously approved specimen plan) the approved plan may be marketed throughout the country.

See F. below for Where To File.

D. Approval of Regional Prototype Plans

Since the Regional Prototype Program is a national program with uniform rules across the country, there will be no change in the requirements for this program. Sponsors of Regional Prototype Plans seeking a notification letter and adopting employers seeking a determination letter should continue to follow the instructions contained in Rev. proc. 89–13, as modified.

As of the date of the publication of this Announcement, Regional Prototype sponsors may market approved Regional Prototype plans throughout the country.

See F. Below for Where to File.

E. Registration of Regional Prototype Plans

Sponsors of Regional Prototype Plans must continue to meet the registration requirement of Section 14 of Rev. Proc. 89–13, as modified by Rev. Proc. 95–42 1995–2 C.B. 411.

F. Where to File

A request for approval of a volume submitter specimen plan should be submitted to the Volume Submitter Coordinator in the Ohio Key District Office at the following address:

Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201
ATTN: VSC Coordinator
Room 4106

Practitioners who (1) sponsor Regional Prototype Plans, (2) adopt the plans of mass submitters approved by Headquarters after the date of this Announcement, or (3) amend plans previously approved by the Service, must submit their applications for notification letters to the Ohio Key District Office.

Adopters of previously approved Volume Submitter and Regional Prototype plans should address requests for determination letters to the Ohio Key District Office at the following address:

Internal Revenue Service
P.O. Box 192
Covington, KY 41012-0192

Applications shipped by Express Mail or by a delivery service should be sent to:

Internal Revenue Service
201 West Rivercenter Boulevard
ATTN: Extracting Stop 312
Covington, KY 41011

G. Reliance

Practitioners who already have Service approved Volume Submitter and/or Regional Prototype plans may continue to rely on their advisory/notification letters. Similarly, adopters of such plans who have determination letters or are entitled to rely on a notification letter, may continue to rely on them.

In certain instances, most notable a large influx of applications, the application review may take place in an office other than the Cincinnati office.

H. Comments

The Service is presently considering the feasibility of maintaining three separate volume type programs (Master and Prototype, Regional Prototype and Volume Submitter). The Service is seeking input from practitioners as to what, if any, changes should be made to the programs. Any practitioner wishing to comment on this matter should address comments to:

Internal Revenue Service
1111 Constitution Avenue, NW
Washington DC 20224
ATTN: CP:E:EP:FC
Room 2236

Comments will be accepted until sixty (60) days after the publication of this Announcement.

Optional Procedures for Substantiating Certain Travel, Etc., Expenses — Public Comments Requested

Announcement 97–103

Rev. Proc. 97–45, page 10, provides optional rules under which an employee of a federal government agency who is reimbursed for ordinary and necessary business expenses relating to travel, entertainment, gifts, or listed property (such as an employee's automobile) may make an adequate accounting to the employer to substantiate those expenses (under §§ 1.274–5T(f) (2) and (4) (ii) of the temporary Income Tax Regulations) by submitting an account book, diary, log, etc., alone, without submitting documentary evidence such as receipts. These rules generally apply to employees of the executive and judicial branches, and certain employees of the legislative branch, of the federal government. The Service requests comments from federal government agencies on the procedure in Rev. Proc. 97–45.

In addition, the Service will continue to accept public comments (originally requested in connection with the publication of § 1.274–5T(f) (4) (ii)) regarding whether there are circumstances or conditions (including the use of internal controls) under which the Service could extend procedures like those in Rev. Proc. 97–45 to employers that are not federal government agencies.

Comments should be submitted by December 31, 1997 to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044, Attn: CC:DOM:CORP:T:R (IT&A Branch 2), Room 5228. All materials submitted will be available for public inspection and copying.

Section 7428(c) Validation of Certain Contributions Made During Pendency of Declaratory Judgment Proceedings

This announcement serves notice to potential donors that the organizations listed below have recently filed timely declaratory judgment suits under section 7428 of the Code, challenging revocation of their status as eligible donees under section 170(c)(2).

Protection under section 7428(c) of the Code begins on the date that the notice of revocation is published in the Internal Revenue Bulletin and ends on the date on which a court first determines that an organization is not described in section 170(c)(2), as more particularly set forth in section 7428(c)(1). In the case of individual contributors, maximum amount of contributions protected during this period is limited to $1,000, with a husband and wife being treated as one contributor. This protection is not extended to any individual who was responsible, in whole or in part, for the acts or omissions of the organization that were the basis for the revocation. This protection also applies (but without limitation as to amount) to organizations described in section 170(c)(2) which are exempt from tax under section 501(a). If the organization ultimately prevaisl in its declaratory judgment suit, deductibility of contributions would be subject to the normal limitations set forth under section 170.

Oriana House, Inc., Akron, Ohio
Don Stewart Association, Phoenix, AZ

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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

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

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