Internal Revenue
bulletin

Bulletin No. 1997–51
December 22, 1997

HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

Rev. Proc. 97–55, page 22.
Advance rulings on production payments. This procedure sets forth the conditions under which the Service will consider issuing an advance ruling that a right to mineral is a production payment as defined in section 1.636–3(a) of the Income Tax Regulations.

EMPLOYEE PLANS

T.D. 8738, page 4.
REG–243025–96, page 25.
Temporary and proposed regulations under section 125 of the Code provide guidance on the circumstances under which a cafeteria plan participant may revoke an existing election and make a new election during a period of coverage.

Notice 97–74, page 18.
Weighted average interest rate update. Guidelines are set for determining for December 1997, the weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability for purposes of the full funding limitation of section 412(c)(7) of the Code as amended by the Omnibus Budget Reconciliation Act of 1987 and by the Uruguay Round Agreements Act (GATT).

Notice 97–75, page 18.
Minimum distributions; age 70½; SBJPA. This notice sets forth additional guidance with respect to the amendments to the minimum distribution rules of section 401(a)(9) of the Code made by section 1404 of the Small Business Job Protection Act of 1996.

EXEMPT ORGANIZATIONS

Announcement 97–123, page 28.
A list is provided of organizations now classified as private foundations.

ADMINISTRATIVE

T.D. 8737, page 11.
REG–252936–96, page 27.
Final, temporary, and proposed regulations under section 7623 of the Code relate to the rewards for information regarding violations of the Internal Revenue laws.

T.D. 8739, page 8.
REG–103330–97, page 24.
Final, temporary, and proposed regulations under section 6109 of the Code relate to the IRS Adoption Taxpayer Identification Number. A public hearing on the proposed regulations will be held on March 4, 1998.

Notice 97–65, page 14.
Due diligence; paid preparers; earned income credit. Paid preparers of 1997 federal income tax returns and claims for refund that involve the Earned Income Tax Credit are informed of the due diligence requirements that apply for purposes of the penalty under section 6695(g) of the Code, as added by the Taxpayer Relief Act of 1997.

Notice 97–73, page 16.
Information reporting; Hope Scholarship Credit; Lifetime Learning Credit. Educational institutions are informed of the information reporting requirements for 1998 under section 6050S of the Code, as added by the Taxpayer Relief Act of 1997, in connection with the Hope Scholarship Credit and Lifetime Learning Credit.

Finding Lists begin on page 31.

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 25A.—Hope and Lifetime Learning Credits

What information reporting requirements apply to educational institutions for 1998 under § 6050S of the Code, as added by the Taxpayer Relief Act of 1997, in connection with the Hope Scholarship Credit and the Lifetime Learning Credit. See Notice 97–73, page 16.

Section 125.—Cafeteria Plans

26 CFR 1.125–4T: Permitted election changes (temporary).

T.D. 8738

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Tax Treatment of Cafeteria Plans

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Temporary regulations

SUMMARY: This document contains temporary regulations that clarify the circumstances under which an employer may permit a cafeteria plan participant to revoke an existing election and make a new election during a period of coverage. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the REG–243025–96, page 25.

DATES: These regulations are effective on December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Sharon Cohen, (202) 622-6080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 125. These temporary regulations provide guidance relating to the circumstances under which a cafeteria plan participant may revoke an existing election and make a new election during a period of coverage.

Explanation of Provisions

A "cafeteria plan" under section 125 allows an employee to choose between cash and certain nontaxable benefits, such as accident or health coverage. Section 125 generally permits the employee to choose the nontaxable benefit (rather than the available cash) without the employee having to include the available cash in gross income. The temporary regulations:

- Permit a cafeteria plan to allow an employee, during a plan year, to change his or her health coverage election to conform with the new special enrollment rights provided under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and
- Permit a cafeteria plan to allow a change in coverage election for a variety of other changes in status.

These regulations are designed to provide clear, administrable guidelines for determining when changes can be made in cafeteria plan elections during a plan year.

These regulations are effective for plan years beginning after December 31, 1998. However, taxpayers may rely on the guidance in the temporary regulations (or on the existing proposed regulations) for prior periods.

Summary

Section 125 generally provides that an employee in a cafeteria plan will not have an amount included in gross income solely because the employee may choose among two or more benefits consisting of cash and "qualified benefits." A qualified benefit generally is any benefit that is excludable from gross income because of an express provision of the Code, including coverage under an employer-provided accident or health plan under sections 105 and 106, group-term life insurance under section 79, elective contributions under a qualified cash or deferred arrangement within the meaning of section 401(k), dependent care assistance under section 129, and adoption assistance under section 137.[1] Under §§1.125–1 and 1.125–2 of the existing proposed regulations,[2] an employee is permitted to make an election between cash and qualified benefits before the beginning of the period of coverage (which generally is the plan year of the cafeteria plan); changes in the election during the plan year are permitted only in limited circumstances.

The temporary regulations clarify the circumstances under which a cafeteria plan may permit an employee to change his or her cafeteria plan election with respect to accident or health coverage or group-term life insurance coverage during the plan year. Proposed regulations are also being published that cross-reference these temporary regulations, and that replace the change in family status provisions in Q&A–6 of proposed §1.125–2 with respect to accident or health plans and group-term life insurance.

HIPAA Special Enrollment Rules.

The temporary regulations conform the cafeteria plan rules to the new special enrollment rights provided under HIPAA (which generally require group health plans to permit individuals to be enrolled for coverage following the loss of other health coverage, or if a person becomes the spouse or dependent of an employee through birth, marriage, adoption, or placement for adoption).[3] Under the regulations, if an employee has a right to enroll in an employer's group health plan or to add coverage for a family member under HIPAA, the employee can make a conforming election under the cafeteria plan. This allows required contributions for such health coverage to be paid on a pre-tax basis.

Changes in Status.

The temporary regulations include rules for other events, called "changes in

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[1]The following are not qualified benefits: products advertised, marketed, or offered as long-term care insurance; medical savings accounts under section 106(b); qualified scholarships under section 117; educational assistance programs under section 127; and fringe benefits under section 132.

[2]Published as proposed rules at 49 FR 19321 (May 7, 1984) and 54 FR 9460 (March 7, 1989), respectively.

[3]See section 9801(f). Similar provisions are set forth in section 701(f) of the Employee Retirement Income Security Act of 1974 (ERISA), and section 2701(f) of the Public Health Service Act. Regulations under these provisions are set forth in Treas. Reg. §54.9801–6T; 29 C.F.R. §2590.701–6; and 45 C.F.R. §146.117.

status," under which a cafeteria plan may allow an employee to change his or her election during the plan year. The events that constitute changes in status under the regulations are changes in legal marital status, number of dependents, employment status, work schedule, and residence or worksite, and cases where the dependent satisfies or ceases to satisfy the requirements for unmarried dependents.

The regulations permit a cafeteria plan to allow a change of election during the plan year if a change in status occurs that affects eligibility for coverage and the election change corresponds with the effect on eligibility. For example, if under the terms of an accident or health plan a child of an employee loses eligibility for coverage upon graduation from college, the cafeteria plan may allow the employee to cease payment for the child's coverage when the child graduates and coverage ceases.

Certain of these changes in status (marriage, birth, adoption, and placement for adoption) overlap with the special enrollment events under HIPAA. The regulations include examples that clarify the relationship between HIPAA's special enrollment rights and these change in status rules. In addition, if a change in status occurs that entitles an employee or family member to "COBRA" continuation coverage (or coverage under a similar State program) with respect to the employer's plan, the regulations permit payments for the continuation coverage to be made on a pre-tax basis under a cafeteria plan.

Other Events.

The regulations allow a corresponding cafeteria plan change if a plan receives a court order, such as a qualified medical child support order under section 609 of ERISA. In addition, if an employee, spouse, or dependent becomes entitled to Medicare or Medicaid, a cafeteria plan can permit a corresponding election change.

Elective Contributions Under a Qualified Cash or Deferred Arrangement.

The temporary regulations, in provisions similar to those of the existing proposed regulations (proposed §1.125–2(f)), make clear that the rules of section 401(k) and (m), rather than the rules in these temporary regulations (which apply to other qualified benefits), govern changes in elections under a qualified cash or deferred arrangement (within the meaning of section 401(k)) or with respect to employee after-tax contributions subject to section 401(m).

Scope of Temporary Regulations and Reliance on Proposed Regulations.

The temporary regulations do not address certain provisions concerning cafeteria plan election changes that are included in the existing proposed regulations. Guidance on these provisions is reserved at paragraphs (f)–(i) of the temporary regulations.

For example, future guidance under the significant cost change provision (reserved at paragraph (g) of the temporary regulations), rather than the change in status rules, would determine whether an employee who switches from full-time to part-time employment and who remains eligible under the employer's health plan could make an election change if the part-time employee is required to pay significantly higher amounts for the coverage. The temporary regulations also reserve guidance with respect to provisions set forth in the existing proposed regulations that permit an election change in the case of a significant change in coverage (which includes a significant change in the health coverage of the employee or spouse attributable to the spouse's employment[4]). Other matters not addressed in the temporary regulations include the application of the cafeteria plan election change rules to qualified benefits other than accident or health coverage and group-term life insurance coverage (for example, dependent care assistance programs), and special rules concerning changes in elections by employees taking leave under the Family and Medical Leave Act of 1993 (Public Law 103-3)[5]. Pending further guidance, taxpayers can continue to rely on the existing proposed regulations[6] concerning these and other matters not addressed in the temporary regulations.[7]

The temporary regulations are effective for plan years beginning after December 31, 1998. Prior to that date, however, taxpayers can rely on the guidance provided in the temporary regulations (as well as on the guidance provided in the existing proposed regulations that relates to matters addressed in the temporary regulations) in order to comply with the provisions of section 125.

Special Analyses

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

Drafting Information

The principal authors of these regulations are Catherine Fuller and Sharon Cohen, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. §1.125–4T is added to read as follows:

[4]See the second-to-last sentence in Q&A-6(c) of proposed §1.125–2.

[5]See §1.125–3, published as a proposed rule at 60 FR 66229 (December 21, 1995).

[6]See also §1.125–2T, published at 51 FR 4312 (January 29, 1986), which describes benefits that may be offered under a cafeteria plan.

[7]See the preambles to proposed §§1.125–1 and 1.125–2 and Q&A-8 of proposed §1.125–3.

§1.125–4T Permitted election changes (temporary).

(a) *Election changes.* A cafeteria plan may permit an employee to revoke an election during a period of coverage and to make a new election only as provided in paragraphs (b) through (i) of this section. See paragraph (j) of this section for special provisions relating to qualified cash or deferred arrangements.

(b) *Special enrollment rights.* A cafeteria plan may permit an employee to revoke an election for accident or health coverage during a period of coverage and make a new election that corresponds with the special enrollment rights provided in section 9801(f), whether or not the change in election is permitted under paragraph (c) of this section.

(c) *Changes in status for accident or health coverage and group-term life.* (1) *In general.* A cafeteria plan may permit an employee to revoke an election for accident or health coverage or group-term life insurance coverage during a period of coverage and make a new election for the remaining portion of the period if, under the facts and circumstances—

(i) A change in status occurs; and

(ii) The election change satisfies the consistency requirement in paragraph (c)(3) of this section (consistency rule for accident or health coverage) or (c)(4) of this section (consistency rule for group-term life insurance coverage).

(2) *Change in status events.* The following events are changes in status for purposes of this paragraph (c):

(i) *Legal marital status.* Events that change an employee's legal marital status, including marriage, death of spouse, divorce, legal separation, or annulment;

(ii) *Number of dependents.* Events that change an employee's number of dependents (as defined in section 152), including birth, adoption, placement for adoption (as defined in regulations under section 9801), or death of a dependent;

(iii) *Employment status.* A termination or commencement of employment by the employee, spouse, or dependent;

(iv) *Work schedule.* A reduction or increase in hours of employment by the employee, spouse, or dependent, including a switch between part-time and full-time, a strike or lockout, or commencement or return from an unpaid leave of absence;

(v) *Dependent satisfies or ceases to satisfy the requirements for unmarried dependents.* An event that causes an employee's dependent to satisfy or cease to satisfy the requirements for coverage due to attainment of age, student status, or any similar circumstance as provided in the accident or health plan under which the employee receives coverage; and

(vi) *Residence or Worksite.* A change in the place of residence or work of the employee, spouse, or dependent.

(3) *Consistency rule for accident or health coverage.* (i) *General rule.* (A) An employee s revocation of a cafeteria plan election during a period of coverage and new election for the remaining portion of the period (referred to below as an "election change") is consistent with a change in status if, and only if —

(1) The change in status results in the employee, spouse, or dependent gaining or losing eligibility for accident or health coverage under either the cafeteria plan or an accident or health plan of the spouse's or dependent's employer; and

(2) The election change corresponds with that gain or loss of coverage.

(B) A change in status results in an employee, spouse, or dependent gaining (or losing) eligibility for coverage under a plan only if the individual becomes eligible (or ineligible) to participate in the plan. A cafeteria plan may treat an individual as gaining (or losing) eligibility for coverage if the individual becomes eligible (or ineligible) for a particular benefit package option under a plan (e.g., a change in status results in an individual becoming eligible for a managed care option or an indemnity option). If, as a result of a change in status, the individual gains eligibility for elective coverage under a plan of the spouse's or dependent's employer, the consistency rule of this paragraph (c)(3)(i) is satisfied only if the individual elects the coverage under the spouse's or dependent's employer. See the Examples in paragraph (k) of this section for illustrations of the consistency rule.

(ii) *Exception for COBRA.* Notwithstanding paragraph (c)(3)(i) of this section, if the employee, spouse, or dependent becomes eligible for continuation coverage under the employer's group health plan as provided in section 4980B or any similar State law, the employee may elect to increase payments under the employer's cafeteria plan in order to pay for the continuation coverage.

(4) *Consistency rule for group-term life insurance coverage.* Except as provided in this paragraph (c)(4), the provisions of paragraph (c)(3)(i) of this section apply to group-term life insurance coverage. In the case of marriage, birth, adoption, or placement for adoption, a cafeteria plan can allow an election change to increase (but not to reduce) the amount of the employee's life insurance coverage. In the case of divorce, legal separation, annulment, or death of a spouse or dependent, a cafeteria plan may allow an election change to reduce (but not to increase) the amount of the employee s life insurance coverage.

(d) *Judgment, decree, or order.* This paragraph (d) applies to a judgment, decree, or order ("order") resulting from a divorce, legal separation, annulment, or change in legal custody (including a qualified medical child support order defined in section 609 of the Employee Retirement Income Security Act of 1974) that requires accident or health coverage for an employee's child. Notwithstanding the provisions of paragraph (c) of this section, a cafeteria plan may—

(1) Change the employee s election to provide coverage for the child if the order requires coverage under the employee's plan; or

(2) Permit the employee to make an election change to cancel coverage for the child if the order requires the former spouse to provide coverage.

(e) *Entitlement to Medicare or Medicaid.* If an employee, spouse, or dependent who is enrolled in an accident or health plan of the employer becomes entitled to coverage (i.e., enrolled) under Part A or Part B of Title XVIII of the Social Security Act (Medicare) or Title XIX of the Social Security Act (Medicaid), other than coverage consisting solely of benefits under section 1928 of the Social Security Act (the program for distribution of pediatric vaccines), a cafeteria plan may permit the employee to make an election change to cancel coverage of that employee, spouse or dependent under the accident or health plan.

(f) *Changes in status for other qualified benefits.* [Reserved].

(g) *Significant coverage or cost changes.* [Reserved].

(1) *Employer's plan.* [Reserved].

(2) *Plan of spouse's or dependent's employer.* [Reserved].

(h) *Cessation of required contributions.* [Reserved].

(i) *Special requirements concerning the Family and Medical Leave Act.* [Reserved].

(j) *Elective contributions under a qualified cash or deferred arrangement.* The provisions of this section do not apply with respect to elective contributions under a qualified cash or deferred arrangement (within the meaning of section 401(k)) or employee contributions subject to section 401(m). Thus, a cafeteria plan may permit an employee to modify or revoke elections in accordance with sections 401(k) and 401(m) and the regulations thereunder.

(k) *Examples.* The following examples illustrate the rules of this section. In each case involving an accident or health plan, assume that the plan is subject to section 9801(f) (providing for special enrollment rights under certain group health plans).

Example 1. (i) Employer M provides health coverage for its employees under which employees may elect either employee-only coverage or family coverage. M also maintains a calendar year cafeteria plan under which qualified benefits, including health coverage, are funded through salary reduction. M's employee, A, elects employee-only health coverage before the beginning of the calendar year. During the year, A adopts a child, C. Within 30 days thereafter, A wants to revoke A's election for employee-only health coverage and obtain family health coverage, as of the date of C's adoption. A satisfies the conditions for special enrollment of an employee with a new dependent under section 9801(f)(2), so that A may enroll in family coverage under M's accident or health plan in order to provide coverage for C, effective as of the date of C's adoption.

(ii) In this *Example 1,* M's cafeteria plan may permit A to change the employee s salary reduction election to family coverage for salary not yet currently available. The increased salary reduction could reflect the cost of family coverage from the date of adoption. (The adoption of C is also a change in status, and the election of family coverage is consistent with that change in status. Thus, under the change in status provisions of paragraph (c) of this section, M's cafeteria plan could permit A to elect family coverage prospectively in order to cover C for the remaining portion of the coverage period.)

Example 2. (i) The employer plans and permissible coverage are the same as in *Example 1.* Before the beginning of the calendar year, Employee A elects employee-only health coverage under M's cafeteria plan. A marries B during the plan year. B's employer, N, offers health coverage to N's employees, and, prior to the marriage, B had elected employee-only coverage. A wants to revoke the election for employee-only coverage, and is considering electing family health coverage under M's plan or obtaining family health coverage under N's plan.

(ii) In this *Example 2,* A's marriage to B is a change in status. Two possible election changes by A would be consistent with the change in status: to cover A and B by electing family health coverage under M's plan, or to cancel coverage under M's plan (with B electing family health coverage under N's plan in order to cover A and B). Thus, M's cafeteria plan may permit A to make either change in election. (M's cafeteria plan could also permit A to change A's salary reduction election to reflect the change to family coverage under M's group health plan in accordance with paragraph (b) of this section because the marriage would also create special enrollment rights under section 9801(f), pursuant to which an election of family coverage under M's plan would be required to be effective no later than the first day of the first calendar month beginning after the completed request for enrollment is received by the plan.)

Example 3. (i) Employee G, a single parent, elects family health coverage under a calendar year cafeteria plan maintained by Employer O. G and G's 21-year old child, H, are covered under O's health plan. During the year, H graduates from college. Under the terms of the health plan, dependents over the age of 19 must be full-time students to receive coverage. G wants to revoke G's election for family health coverage and obtain employee-only coverage under O's cafeteria plan.

(ii) In this *Example 3,* H's loss of eligibility for coverage under the terms of the health plan is a change in status. A revocation of G s election for family coverage and new election of employee-only coverage is consistent with the change in status. Thus, O's cafeteria plan may permit G to elect employee-only coverage.

Example 4. (i) Employee J is married to K and they have one child, S. A calendar year cafeteria plan maintained by Employer P allows employees to elect no health coverage, employee-only coverage, employee-plus-one-dependent coverage, or family coverage. Under the plan, before the beginning of the calendar year, J elects family health coverage for J, K, and S. J and K divorce during the year and, under the terms of P s accident or health plan, K loses eligibility for P's health coverage. S does not lose eligibility for health coverage under P s plan upon the divorce. J now wants to revoke J's election under the cafeteria plan and elect no coverage.

(ii) In this *Example 4,* the divorce is a change in status. A change in the cafeteria plan election to cancel health coverage for K is consistent with that change in status. However, the divorce does not affect J's or S's eligibility for health coverage. Therefore, an election change to cancel J's or S's health coverage is not consistent with the change in status. The cafeteria plan, however, may permit J to elect employee-plus-one-dependent health coverage.

Example 5. (i) The facts are the same as *Example 4,* except that, before the beginning of the year, Employee J elected employee-only health coverage (rather than family coverage). Pursuant to J's divorce agreement with K, P's health plan receives a qualified medical child support order (as defined in section 609 of the Employee Retirement Income Security Act) during the plan year. The order requires P's health plan to cover S.

(ii) In this *Example 5,* P's cafeteria plan may change J's election from employee-only health coverage to employee-plus-one-dependent coverage in order to cover S.

Example 6. (i) Before the beginning of the coverage period, Employee L elects to participate in a cafeteria plan maintained by L's Employer, Q. However, in order to change the election during the coverage period so as to cancel coverage, and by prior understanding with Q, L terminates employment and resumes employment one week later.

(ii) In this *Example 6,* under the facts and circumstances, in which a principal purpose of the termination of employment was to alter the election and reinstatement of employment was understood at the time of termination, L does not have a change in status. However, L's termination of employment would constitute a change in status, permitting a cancellation of coverage during the period of unemployment, if L's original cafeteria plan election was reinstated upon resumption of employment (for example, because of a cafeteria plan provision requiring an employee who resumes employment within 30 days, without any other intervening event that would permit a change in election, to return to the election in effect prior to termination of employment).

Example 7. (i) Employer R maintains a calendar year cafeteria plan under which full-time employees may elect coverage under one of three benefit package options provided under an accident or health plan: an indemnity option or either of two HMO options for employees that work in the respective service areas of the two HMOs. Employee T, who works in the service area of HMO #1, elects the HMO #1 option. During the year, T is transferred to another work location which is outside the HMO #1 service area and inside the HMO #2 service area.

(ii) In this *Example 7,* the transfer is a change in status and, under the consistency rule, the cafeteria plan may permit T to make an election change to either the indemnity option or HMO #2, or to cancel accident or health coverage.

Example 8. (i) A calendar year cafeteria plan maintained by Employer S allows employees to elect coverage under an accident or health plan providing indemnity coverage and under a flexible spending arrangement (FSA). Prior to the beginning of the calendar year, Employee U elects employee-only indemnity coverage, and coverage under the FSA for up to $600 of reimbursements for the year to be funded by salary reduction contributions of $600 during the year. U's spouse, V, has employee-only coverage under an accident or health plan maintained by V's employer. During the year, V terminates employment and loses coverage under that plan. U now wants to elect family coverage under S's accident or health plan and increase U's FSA election.

(ii) In this *Example 8,* V's termination of employment is a change in status. The cafeteria plan may permit U to elect family coverage under S's accident or health plan, and to increase U's FSA coverage.

Example 9. (i) Employer T provides group-term life insurance coverage as described under section 79. Under T's plan, an employee may elect life insurance coverage in an amount up to the lesser of his or her salary or $50,000. T also maintains a calendar year cafeteria plan under which qualified benefits,

including the group-term life insurance coverage, are funded through salary reduction. Before the beginning of the calendar year, Employee W elects $10,000 of life insurance coverage, with W's spouse, X, as the beneficiary. During the year, a child is placed for adoption with W and X. W wants to increase W's election for life insurance coverage to $50,000 (without changing the designation of X as the beneficiary).

(ii) In this *Example 9*, the placement of a child for adoption with W is a change in status. The increase in coverage is consistent with the change in status. Thus, W's cafeteria plan may permit W to increase W's life insurance coverage.

(l) *Effective Date.* This section is applicable for plan years beginning after December 31, 1998.

Michael P. Dolan,
Acting Commissioner of Internal Revenue.

Donald C. Lubick,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on November 6, 1997, 8:45 a.m., and published in the issue of the Federal Register for November 7, 1997, 62 F.R. 60165)

Section 6109.—Identifying Numbers

26 CFR 301.6109–1: Identifying numbers.

T.D. 8739

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

IRS Adoption Taxpayer Identification Numbers

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations under section 6109 relating to taxpayer identifying numbers. The final regulations include a cross reference to the temporary regulations, which provide rules for obtaining and using IRS adoption taxpayer identification numbers. The temporary regulations assist individuals who are in the process of adopting children and wish to claim certain tax benefits with respect to those children. The text of these temporary regulations also serves as the text of REG–103330–97, page 24.

DATES: These regulations are effective November 24, 1997.

FOR FURTHER INFORMATION CONTACT: Michael L. Gompertz, (202) 622-4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These final and temporary regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1564. Responses to this collection of information are required to obtain a taxpayer identification number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of REG–103330–97.

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.

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

This document contains amendments to the Regulations on Procedure and Administration (26 CFR Part 301) relating to identifying numbers under section 6109. Section 6109(a)(1) provides that any person required to make a return, statement, or other document must include in the document such identifying number as may be prescribed for securing proper identification of the person. Section 6109(a)(2) provides that any person with respect to whom a return, statement, or other document is required to be made by another person or whose identifying number must be shown on a return of another person, must furnish to the other person such identifying number as may be prescribed for securing the person's proper identification. Section 6109(d) provides that an individual must use a social security number as the individual's taxpayer identification number unless the Secretary prescribes otherwise by regulations.

Currently, there are three types of taxpayer identification numbers (TINs) assigned to individuals: (1) a social security number (SSN), (2) an IRS individual taxpayer identification number (ITIN) assigned to an alien individual who is ineligible to obtain an SSN, and (3) an employer identification number (EIN) assigned to an individual who is engaged in a trade or business as a sole proprietor. An SSN is assigned by the Social Security Administration. An ITIN or an EIN is assigned by the IRS.

Section 1615 of the Small Business Job Protection Act of 1996 (Public Law 104–188, 110 Stat. 1755, 1853 (1996)) added sections 21(e)(10) and 151(e) to deny the dependent care credit and the deduction for the dependency exemption if the TIN (as defined by section 6109 and the regulations thereunder) of the dependent is not included on the return claiming the credit or deduction. Sections 21(e)(10) and 151(e) generally are effective for tax returns due (without regard to extensions) after September 18, 1996.

In addition, section 101 of the Taxpayer Relief Act of 1997 (Public Law 105–34, 111 Stat. 788, 796 (1997)) added section 24 to the Code to provide a child tax credit for each qualifying child, effective for taxable years beginning after December 31, 1997. Pursuant to section 24(e), the taxpayer will be denied the credit if the qualifying child's TIN is not included on the return claiming the credit.

In most cases, taxpayers can meet the TIN requirements of sections 21, 24, and 151 by including a child's SSN on the return claiming the credit or deduction. In the case of adoption, however, a child may not have an SSN or, if the child does

have an SSN, the taxpayer adopting the child (the prospective adoptive parent) may be unable to obtain the SSN because of confidentiality laws. See H.R. Rep. No. 542, 104th Cong., 2d Sess. 20 (1996); S. Rep. No. 412, 103d Cong., 2d Sess. 163 (1994).

Explanation of Provisions

These temporary regulations authorize the IRS to assign a new form of taxpayer identification number, the IRS adoption taxpayer identification number (ATIN), to a child who is in the process of being adopted (a prospective adoptive child). The regulations are effective for income tax returns due (without regard to extension) on or after April 15, 1998.

The temporary regulations provide that an ATIN is a temporary taxpayer identification number that expires two years after the date of issuance. However, upon application, the IRS may grant an extension of the ATIN. A prospective adoptive parent may apply for an ATIN for a child if: (1) the prospective adoptive parent is eligible to claim a personal exemption under section 151 with respect to the child; (2) the child is placed with the prospective adoptive parent for legal adoption by an authorized placement agency (as defined in §1.152–2(c)); (3) the Social Security Administration will not assign the prospective adoptive parent an SSN for the child (for example, because the adoption is not final); and (4) the prospective adoptive parent has used all reasonable means to obtain the child's assigned SSN, if any, but has been unsuccessful in obtaining this number (for example, because the birth parent who obtained the number is not legally required to disclose the number to the prospective adoptive parent).

The temporary regulations provide that an application for an ATIN must be made on the Form W–7A, *Application for Taxpayer Identification Number for Pending Adoptions,* or such other form prescribed by the IRS. The ATIN application must be accompanied by documentary evidence to establish that an authorized placement agency placed the child in the prospective adoptive parent's household for legal adoption by the parent. Such documentary evidence may include: a copy of a placement agreement entered into between the prospective adoptive parent and an authorized placement agency; an affidavit signed by the adoption attorney or government official who placed the child for legal adoption pursuant to state law; a document authorizing the release of a newborn child from a hospital to a prospective adoptive parent for adoption; or a court document ordering or approving the placement of a child for adoption.

When an adoption becomes final, the adoptive parent must apply for an SSN for the child. Once obtained, the SSN, rather than the ATIN, must be used as the child's TIN on all future returns, statements, or other documents required by the Code.

An ATIN may be used by the prospective adoptive parents to meet the TIN requirements of sections 21(e)(10), 24(e), and 151(e), relating to the dependent care credit, the child tax credit, and the dependency exemption, respectively. Also, as may be prescribed by forms, instructions, or otherwise, an ATIN may be used to meet the TIN requirements under sections 23(f) and 137(e), relating to qualified adoption expenses. The ATIN may not be used to meet the TIN requirement of section 32. See section 32(l).

The ATIN procedures do not apply to adoptions involving alien children. Generally, the Social Security Administration will assign an SSN to an alien child if all the requirements for assigning a number are met. When the Social Security Administration cannot assign an SSN, the child generally will be eligible for an ITIN.

In addition to adoptions involving alien children, there are two other types of adoptions to which the ATIN procedures may not apply. If the child placed for adoption is a foster child or is otherwise in the custody of a government agency or court (because, for example, the birth parents' rights were previously terminated for abuse or neglect), the government agency or court will generally obtain an SSN for the child and can make the SSN available to the prospective adoptive parent. Also, the prospective adoptive parent may be able to obtain the child's SSN from the birth parents (or other person) in the case of an adoption by the child's relatives or an adoption in which the adoptive parent and birth parent share information about the child and themselves.

Taxpayers are invited to comment on two issues partially addressed by the temporary regulations. First, comments are requested regarding what types of documents are available to establish that a child has been placed in the prospective adoptive parent's household for legal adoption. Also, comments are requested as to whether certain types of adoptions (in addition to foreign adoptions) should be completely excluded from the ATIN process. In particular, comments are requested regarding whether a prospective adoptive parent is always able to obtain a prospective adoptive child's SSN if the child is a foster child or is otherwise in the custody of a government agency or court.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Only individuals may receive ATINs under this Treasury decision, and an individual is not a small entity as defined in the Regulatory Flexibility Act. See 5 U.S.C. 601(6).

Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Michael L. Gompertz of the Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 301 and 602 are amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding entries in numerical order to read as follows:

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

Section 301.6109–1T also issued under 26 U.S.C. 6109;

Section 301.6109–3T also issued under 26 U.S.C. 6109; * * *

Par. 2 Section 301.6109–1 is amended by adding paragraph (h)(2)(iii) to read as follows:

§301.6109–1 Identifying numbers.

* * * * *

(h) * * *

(2) * * *

(iii) Paragraphs (a)(1)(i), (a)(1)(ii)(A), and (a)(1)(ii)(B) of this section do not apply after November 24, 1997. For further guidance after November 24,1997, see §301.6109–1T(a)(1)(i), (a)(1)(ii) introductory text, and (a)(1)(ii)(A) and (B).

Par. 3. Sections 301.6109–1T is added to read as follows:

§301.6109–1T Identifying numbers (temporary).

(a) *In general*—(1) *Taxpayer identifying numbers*—(i) *Principal types.* There are four principal types of taxpayer identifying numbers: social security numbers, Internal Revenue Service (IRS) individual taxpayer identification numbers, employer identification numbers, and IRS adoption taxpayer identification numbers. Social security numbers take the form 000-00-0000. IRS individual taxpayer identification numbers and IRS adoption taxpayer identification numbers also take the form 000-00-0000 but include a specific number or specific numbers designated by the IRS. Employer identification numbers take the form 00-0000000.

(ii) *Uses.* Social security numbers, IRS individual taxpayer identification numbers, and IRS adoption taxpayer identification numbers are used to identify individual persons. For the definition of social security number and employer identification number, see §§301.7701–11 and 301.7701–12, respectively. For the definition of IRS individual taxpayer identification number, see §301.6109–1 (d)(3). For the definition of IRS adoption taxpayer identification number, see §301.6109–3T. Except as otherwise provided in applicable regulations under this title or on a return, statement, or other document, and related instructions, taxpayer identifying numbers must be used as follows—

(A) Except as otherwise provided in §301.6109–1(a)(1)(ii)(D), paragraph (a)(1)(ii)(B) of this section, and §301.6109–3T, an individual required to furnish a taxpayer identifying number must use a social security number.

(B) Except as otherwise provided in §301.6109–1(a)(1)(ii)(D) and §301.6109–3T, an individual required to furnish a taxpayer identifying number but who is not eligible to obtain a social security number must use an IRS individual taxpayer identification number.

(a)(1)(ii)(C) through (g) [**Reserved**]. For further guidance, see §301.6109–1(a)(1)(ii)(C) through (g).

(h) *Effective date.* Paragraphs (a)(1)(i), (a)(1)(ii) introductory text, (a)(1)(ii)(A), and (a)(1)(ii)(B) of this section are applicable after November 24, 1997. For further guidance, prior to November 24, 1997, see §301.6109–1(a)(1)(i), (a)(1)(ii)-(A) and (a)(1)(ii)(B).

Par. 4. Section 301.6109-3T is added to read as follows:

§301.6109–3T IRS adoption taxpayer identification numbers (temporary).

(a) *In general*—(1) *Definition.* An *IRS Adoption Taxpayer Identification Number* (ATIN) is a temporary taxpayer identifying number assigned by the Internal Revenue Service (IRS) to a child (other than an alien individual as defined in §301.6109–1(d)(3)(i)) who has been placed, by an authorized placement agency, in the household of a prospective adoptive parent for legal adoption. An ATIN is assigned to the child upon application for use in connection with filing requirements under this title. When an adoption becomes final, the adoptive parent must apply for a social security number for the child. After the social security number is assigned, that number, rather than the ATIN, must be used as the child's taxpayer identification number on all returns, statements, or other documents required under this title.

(2) *Expiration and extension.* An ATIN automatically expires two years after the number is assigned. However, upon request, the IRS may grant an extension if the IRS determines the extension is warranted.

(b) *Definitions.* The following definitions apply for purposes of this section—

(1) *Authorized placement agency* has the same meaning as in §1.152–2(c) of this chapter;

(2) *Prospective adoptive child* or *child* refers to a child who has not been adopted, but who has been placed in the household of a prospective adoptive parent for legal adoption by an authorized placement agency; and

(3) *Prospective adoptive parent* or *parent* refers to an individual in whose household a prospective adoptive child is placed by an authorized placement agency for legal adoption.

(c) *General rule for obtaining a number*—(1) *Who may apply.* A prospective adoptive parent may apply for an ATIN for a child if—

(i) The prospective adoptive parent is eligible to claim a personal exemption under section 151 with respect to the child;

(ii) An authorized placement agency places the child with the prospective adoptive parent for legal adoption;

(iii) The Social Security Administration will not process an application for an SSN by the prospective adoptive parent on behalf of the child (for example, because the adoption is not final); and

(iv) The prospective adoptive parent has used all reasonable means to obtain the child's assigned social security number, if any, but has been unsuccessful in obtaining this number (for example, because the birth parent who obtained the number is not legally required to disclose the number to the prospective adoptive parent).

(2) *Procedure for obtaining an ATIN.* If the requirements of paragraph (c)(1) of this section are satisfied, the prospective adoptive parent may apply for an ATIN for a child on Form W–7A, *Application for Taxpayer Identification Number for Pending Adoptions* (or such other form as may be prescribed by the IRS). An application for an ATIN should be made far enough in advance of the first intended use of the ATIN to permit issuance of the ATIN in time for such use. An application for an ATIN must include the information required by the form and accompanying instructions, including the name and address of each prospective adoptive parent and the child's name and date of birth. In addition, the application must include such documentary evidence as the IRS may prescribe to establish that a child

was placed in the prospective adoptive parent's household by an authorized placement agency for legal adoption. Examples of acceptable documentary evidence establishing placement for legal adoption by an authorized placement agency may include—

(i) A copy of a placement agreement entered into between the prospective adoptive parent and an authorized placement agency;

(ii) An affidavit signed by the adoption attorney or government official who placed the child for legal adoption pursuant to state law;

(iii) A document authorizing the release of a newborn child from a hospital to a prospective adoptive parent for adoption; and

(iv) A court document ordering or approving the placement of a child for adoption.

(d) *Effective date.* The provisions of this section apply to income tax returns due (without regard to extension) on or after April 15, 1998.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

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

Authority: 26 U.S.C. 7805.

Par. 6. Section 602.101(c) is amended by adding an entry in numerical order to the table to read as follows:

§602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control Number
* * * * *	
301.6109–3T	1545–1564
* * * * *	

Michael P. Dolan,
Acting Commissioner of Internal Revenue.

Approved October 24, 1997.

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

(Filed by the Office of the Federal Register on November 21, 1997, 8:45 a.m., and published in the issue of the Federal Register for November 24, 1997, 62 F.R. 62518)

Section 6721.—Failure To File Correct Information Returns

26 CFR 301.6721–1: Failure to file correct information returns.

What information reporting requirements apply to educational institutions for 1998 under § 6050S of the Code, as added by the Taxpayer Relief Act of 1997, in connection with the Hope Scholarship Credit and the Lifetime Learning Credit. See Notice 97–73, page 16.

Section 6722.—Failure To Furnish Correct Payee Statements

26 CFR 301.6722–1: Failure to furnish correct payee statements.

What information reporting requirements apply to educational institutions for 1998 under § 6050S of the Code, as added by the Taxpayer Relief Act of 1997, in connection with the Hope Scholarship Credit and the Lifetime Learning Credit. See Notice 97–73, page 16.

Section 7623.—Expenses of Detection of Underpayments and Fraud, Etc.

26 CFR 301.7623–1: Rewards for information relating to violations of Internal Revenue laws.

T.D. 8737

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

Rewards for Information Relating to Violations of Internal Revenue Laws

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary regulations relating to rewards for information that relates to violations of the internal revenue laws. The regulations reflect changes to the law made by the Taxpayer Bill of Rights 2 and affect persons that are eligible to receive an informant's reward.

The text of these regulations also serves as the text of the proposed regulations set forth in REG–252936–96, page 27.

DATE: These regulations are effective October 14, 1997.

For dates of applicability, see §301.7623–1T(g).

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

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1534. Responses to the collection of information are voluntary with respect to the provision of information relating to violations of the internal revenue laws, but are required to obtain a benefit with respect to filing a claim for reward.

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

For further information concerning these collections of information, and where to submit comments on the collections of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in REG–252936–96.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and

tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to the Procedure and Administration Regulations (26 CFR part 301) under section 7623 relating to rewards for information that relates to violations of the internal revenue laws. This section was amended by section 1209 of the Taxpayer Bill of Rights 2 (TBOR 2) (Public Law 104–168, 110 Stat. 1452 (1996)).

Explanation of Provisions

Section 7623 provides the Secretary with the authority, by regulation, to pay rewards for information that relates to violations of the internal revenue laws. Section 1209 of TBOR 2 amended section 7623 to clarify that rewards may be paid for information relating to civil, as well as criminal, violations. TBOR 2 also provided that the rewards are to be paid out of the proceeds of amounts (other than interest) collected by reason of the information. These temporary regulations reflect those amendments.

In addition, these temporary regulations incorporate and update §301.7623– 1. For example, the regulations increase the limit on awards from 10% to 15% and provide new titles and addresses to which persons should submit information relating to violations of the internal revenue laws.

Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that the regulations in this document will not have a significant economic impact on a substantial number of small entities. This certification is based on a determination that in the past approximately 10,000 persons have filed claims for reward on an annual basis. Of these persons, almost all have been individuals. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, this Treasury Decision will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comments on its impact on small businesses.

Drafting Information

The principal author of these regulations is Judith A. Lintz, Office of Assistant Chief Counsel (Income Tax & Accounting), Internal Revenue Service. However, other personnel from the IRS and Treasury Department participated in their development.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 301 and 602 are amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

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

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

Par. 2. §301.7623–1 is amended by adding paragraph (g) to read as follows:

§301.7623-1 Rewards for information relating to violations of internal revenue laws.

* * * * *

(g) *Effective date.* This section is applicable with respect to rewards paid on or before January 29, 1997. See §301.7623–1T for rewards paid after January 29, 1997.

Par. 3. Section 301.7623–1T is added to read as follows:

§301.7623–1T Rewards for information relating to violations of internal revenue laws (temporary).

(a) *In general.* In cases where rewards are not otherwise provided for by law, a district or service center director may approve a reward, in a suitable amount, for information that leads to the detection of underpayments of tax, or the detection and bringing to trial and punishment of persons guilty of violating the internal revenue laws or conniving at the same. The rewards provided for by section 7623 and this section will be paid from the proceeds of amounts (other than interest) collected by reason of the information provided.

(b) *Eligibility to file claim for reward*— (1) *In general.* Any person, other than certain present or former federal employees described in paragraph (b)(2) of this section, that submits, in the manner described in paragraph (d) of this section, information relating to the violation of an internal revenue law is eligible to file a claim for reward under section 7623 and this section.

(2) *Federal employees.* No person who was an officer or employee of the Department of the Treasury at the time the individual came into possession of information relating to violations of the internal revenue laws, or at the time the individual divulged such information, is eligible for a reward under section 7623 and this section. Any other current or former federal employee is eligible to file a claim for reward if the information provided came to the individual's knowledge other than in the course of the individual's official duties.

(3) *Deceased informants.* A claim for reward may be filed by an executor, administrator, or other legal representative on behalf of a deceased informant if, prior to the informant's death, the informant was eligible to file a claim for such reward under section 7623 and this section. Certified copies of the letters testamentary, letters of administration, or other similar evidence must be attached to the claim for reward on behalf of a deceased informant in order to show the authority of the legal representative to file the claim.

(c) *Amount and payment of reward.* All relevant factors, including the value of the information furnished in relation to the facts developed by the investigation of the violation, will be taken into account by a district or service center director in determining whether a reward will be paid, and, if so, the amount of the reward. The amount of a reward will represent what the district or service center director deems to be adequate compensation in the particular case, generally not to exceed fifteen percent of the amounts (other than interest) collected by reason of the information. Payment of a reward will be made as promptly as the circumstances of the case permit, but not until the taxes, penalties, or fines involved have been col-

lected. However, if the informant waives any claim for reward with respect to an uncollected portion of the taxes, penalties, or fines involved, the claim may be immediately processed. Partial reward payments, without waiver of the uncollected portion of the taxes, penalties, or fines involved, may be made when a criminal fine has been collected prior to completion of the civil aspects of a case, and also when there are multiple tax years involved and the deficiency for one or more of the years has been paid in full. No person is authorized under these regulations to make any offer, or promise, or otherwise to bind a district or service center director with respect to the payment of any reward or the amount of the reward.

(d) *Submission of information.* A person that desires to claim a reward under section 7623 and this section may submit information relating to violations of the internal revenue laws, in person, to the office of a district director, preferably to a representative of the Criminal Investigation Division. Such information may also be submitted in writing to the Commissioner of Internal Revenue, Attention: Assistant Commissioner (Criminal Investigation), 1111 Constitution Avenue, NW, Washington, DC 20224, to any district director, Attention: Chief, Criminal Investigation Division, or to any service center director. If the information is submitted in person, either orally or in writing, the name and official title of the person to whom it is submitted and the date on which it is submitted must be included in the formal claim for reward.

(e) *Identification of informant.* No unauthorized person will be advised of the identity of an informant.

(f) *Filing claim for reward.* An informant that intends to claim a reward under section 7623 and this section should notify the person to whom the information is submitted of such intention, and must file a formal claim on Form 211, Application for Reward for Original Information, signed by the informant in the informant's true name, as soon as practicable after the submission of the information. If other than the informant's true name was used in furnishing the information, satisfactory proof of identity as that of the informant must be included with the claim for reward.

(g) *Effective date.* This section is applicable with respect to rewards paid after January 29, 1997. See §301.7623–1 for rewards paid on or before January 29, 1997.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. In §602.101, paragraph (c) is amended by adding anentry in numerical order to the table to read as follows:

§602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control Number
* * * * *	
301.7623–1T	1545–1534
* * * * *	

Michael P. Dolan,
Acting Commissioner of Internal Revenue.

Approved August 26, 1997.

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

(Filed by the Office of the Federal Register on October 10, 1997, 8:45 a.m., and published in the issue of the Federal Register for October 14, 1997, 62 F.R. 53230)

Income Tax Return Preparer Penalties—1997 Federal Income Tax Returns Due Diligence Requirements for Earned Income Credit (EIC)

Notice 97–65

PURPOSE

This notice sets forth due diligence requirements that paid preparers of federal income tax returns or claims for refund (preparers) that involve the Earned Income Tax Credit (EIC) must meet to avoid imposition of the penalty under § 6695(g) of the Internal Revenue Code for 1997 returns and claims for refund. The Treasury Department intends to issue temporary regulations under § 6695(g) that will incorporate the requirements set forth in this notice and that will apply to 1997 returns and claims for refund. However, these regulations may impose different due diligence requirements for returns and claims for taxable years beginning after 1997. Comments are requested regarding possible alternatives for meeting the due diligence requirements in the future.

BACKGROUND

Section 6695(g), as added by section 1085(a)(2) of the Taxpayer Relief Act of 1997, Pub. L. No. 105–34, 111 Stat. 788 (August 5, 1997), imposes a $100 penalty on a preparer with respect to any return or claim for refund for each failure to comply with the due diligence requirements imposed by regulations with respect to determining a taxpayer's eligibility for the EIC or the amount of any allowable EIC. This new penalty is effective for taxable years beginning after December 31, 1996, and is in addition to any other penalty imposed under present law.

DUE DILIGENCE REQUIREMENTS FOR 1997

For each 1997 income tax return or claim for refund involving the EIC, a preparer will be liable for the § 6695(g) penalty unless all of the following due diligence requirements are met:

(1) The preparer must either (a) complete the "Earned Income Credit (EIC) Eligibility Checklist" (attached to this notice) or (b) otherwise record in the preparer's paper or electronic files the information that would be necessary to complete the Checklist ("alternate eligibility record"). The preparer's completion of the Checklist or alternate eligibility record must be based on information provided by the taxpayer to the preparer or otherwise reasonably obtained by the preparer. The alternate eligibility record may consist of one or more documents containing the required information.

(2) The preparer must either (a) complete the "Earned Income Credit Worksheet" in the 1997 Form 1040 instructions, or (b) otherwise record in the preparer's paper or electronic files the preparer's EIC computation, including the method and information used to make that computation ("alternate computation record"). The preparer's completion of the Worksheet or alternate computation record must be based on information provided by the taxpayer to the preparer or otherwise reasonably obtained by the preparer. The alternate computation record may consist of one or more documents containing the required information.

(3) The preparer must not know or have reason to know that any information used by the preparer in determining the taxpayer's eligibility for the EIC or in computing the EIC is incorrect. The preparer may not ignore the implications of information furnished to, or known by, the preparer, and must make reasonable inquiries if the information furnished to, or known by, the preparer appears to be incorrect, inconsistent, or incomplete;

(4) The preparer must retain (a) the completed Checklist (or alternate eligibility record); (b) a copy of the Worksheet (or alternate computation record); and (c) a record of how and when the information was obtained by the preparer, including the identity of any person furnishing such information. These items must be retained for three years after the June 30th following the date the return was presented to the taxpayer for signature, and may be retained on magnetic media consistent with Rev. Proc. 81–46, 1981–2 C.B. 621, or in an electronic storage media system consistent with Rev. Proc. 97–22, 1997–13 I.R.B. 9.

The § 6695(g) penalty will not be applied with respect to a particular return or claim for refund if the preparer can demonstrate to the satisfaction of the Service that, considering all the facts and circumstances, the preparer's normal office procedures are reasonably designed and routinely followed to ensure compliance with the 1997 due diligence requirements, and the failure to meet the 1997 due diligence requirements with respect to the return or claim for refund in question was isolated and inadvertent.

REQUEST FOR COMMENTS ON FUTURE GUIDANCE

The Service and Treasury Department invite public comment on the due diligence requirements in § 6695(g) for tax years after 1997. Comments are requested by May 15, 1998. An original and eight copies of written comments should be sent to:

Internal Revenue Service
Attn: CC:DOM:CORP:R
Room 5228 (IT&A:Br4)
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044,

or hand delivered between the hours of 8:00 a.m. and 5:00 p.m. to:

Courier's Desk
Internal Revenue Service
Attn: CC:DOM:CORP:R
Room 5228 (IT&A:Br4)
1111 Constitution Ave., NW
Washington, DC

Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to http://www.irs.ustreas.gov./prod/tax_regs/comments.html (the IRS Internet site). All comments will be available for public inspection and copying in their entirety.

PAPERWORK REDUCTION ACT

The collections of information contained in this notice 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 1545–1570.

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

The collections of information in this notice are contained under the heading "DUE DILIGENCE REQUIREMENTS FOR 1997" in this notice. This information is required to implement § 6695(g), and verify that preparers have exercised due diligence in preparing any return or claim for refund for taxable year 1997 that involves the EIC. The likely recordkeepers are preparers.

In 1998, the estimated total annual recordkeeping burden will be 160,000 hours.

The estimated annual burden per recordkeeper will vary from 0 minutes to 16 minutes, depending on individual circumstances, with an estimated average of 8 minutes.

The estimated number of recordkeepers is 1,200,000.

Books or records relating to the collection of information in this notice must be retained for three years after the June 30th following the date the return was presented to the taxpayer for signature. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

DRAFTING INFORMATION

The principal author of this notice is Celia Gabrysh, Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this notice, contact Celia Gabrysh at (202) 622-4940 (not a toll-free number).

EARNED INCOME CREDIT (EIC) ELIGIBILITY CHECKLIST

For use by income tax return preparers in preparing 1997 tax returns and claims for refund

Taxpayer may claim the earned income credit if all the following questions are answered YES:

1. Do the taxpayer, spouse, and qualifying child each have a social security number?

___ YES ___ NO

2. Is the taxpayer's total taxable and nontaxable earned income at least $1 but less than:

* $9,770 if the taxpayer does not have a qualifying child?
* $25,760 if the taxpayer has one qualifying child?
* $29,290 if the taxpayer has more than one qualifying child?

___ YES ___ NO

3. Is the taxpayer's modified AGI less than:

* $9,770 if the taxpayer does not have a qualifying child?
* $25,760 if the taxpayer has one qualifying child?
* $29,290 if the taxpayer has more than one qualifying child?

___ YES ___ NO

4. Is the taxpayer's investment income $2,250 or less?

___ YES ___ NO

5. Is the taxpayer's filing status one of the following: married filing jointly, head of household, qualifying widow(er), or single?

___ YES ___ NO

6. If the taxpayer is a nonresident alien, is the filing status married filing jointly? (If taxpayer is not a nonresident alien, answer YES).

___ YES ___ NO

7. Answer YES if the taxpayer (and spouse if filing a joint return) is not a qualifying child of another person.

___ YES ___ NO

8. Answer YES if the taxpayer (and spouse if filing a joint return) is not filing Form 2555 or Form 2555–EZ to exclude from gross income any income earned in foreign countries or to deduct or exclude a foreign housing amount.

___ YES ___ NO

STOP: If the taxpayer has a qualifying child, answer question 9 and skip 10. If the taxpayer does not have a qualifying child, skip 9 and answer 10.

9. (a) Does the child meet the age, relationship, and residence tests for a qualifying child? See Form 1040 instructions for Line 56a.

___ YES ___ NO

(b) Answer YES if the qualifying child is also a qualifying child for one or more other persons and the taxpayer's modified AGI is higher than each other person's. Answer YES if the child is a qualifying child only for the taxpayer.

___ YES ___ NO

(c) If the qualifying child is married, is the taxpayer claiming the child as a dependent? (If the qualifying child is not married, answer YES.)

___ YES ___ NO

OR

10. (a) Was the taxpayer's main home (and the spouse's if filing a joint return) in the United States for more than half the year? Military personnel on extended active duty outside the United States are considered to be living in the United States.

___ YES ___ NO

(b) Was the taxpayer (or spouse, if filing a joint return) at least age 25 but under 65 at the end of 1997?

___ YES ___ NO

(c) No one can claim the taxpayer (or spouse if filing a joint return) as a dependent on their return. If the taxpayer (and spouse if filing a joint return) is not eligible to be a dependent on anyone else's return, answer YES. If taxpayer (or spouse if filing a joint return) is eligible to be claimed as a dependent on someone else's return, answer NO.

___ YES ___ NO

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*PERSONS WITH A QUALIFYING CHILD: If the taxpayer answered YES to questions 1 through 9(a), (b), and (c), the taxpayer can claim the credit. Remember to fill out Schedule EIC and attach it to the taxpayer's Form 1040 or 1040A.

*PERSONS WITHOUT A QUALIFYING CHILD: If the taxpayer answered YES to questions 1 through 8 and 10(a), (b), and (c), taxpayer can claim the credit.

IF THE TAXPAYER ANSWERED NO TO ANY QUESTION, TAXPAYER IS NOT ELIGIBLE FOR THE CREDIT.

Returns Relating to Higher Education Tuition and Related Expenses

Notice 97–73

PURPOSE

This notice describes the information reporting requirements for 1998 under § 6050S of the Internal Revenue Code (as enacted by the Taxpayer Relief Act of 1997, Pub. L. No. 105–34, § 201(c), 111 Stat. 804 (the Act)) that apply to certain educational institutions in connection with the Hope Scholarship Credit and the Lifetime Learning Credit. The Treasury Department intends to issue regulations on the information reporting required under § 6050S. Pending the issuance of those regulations, this notice describes who must report information, and the nature of the information that will be required to be reported under § 6050S for 1998.

BACKGROUND

A. The Hope Scholarship and Lifetime Learning Credits.

Section 201(a) of the Act, 111 Stat. 799, added § 25A to the Code. Section 25A allows certain taxpayers who pay qualified tuition and related expenses to an eligible educational institution to claim a Hope Scholarship Credit or a Lifetime Learning Credit against their federal income tax liability. The Hope Scholarship Credit is available for qualified tuition and related expenses paid after December 31, 1997, in taxable years ending after that date for education furnished in academic periods beginning after December 31, 1997. The Lifetime Learning Credit is available for qualified tuition and related expenses paid after June 30, 1998, in taxable years ending after that date for education furnished in academic periods beginning after June 30, 1998. The term "academic period" includes a semester, trimester, quarter, or any other period designated as a period of instructional time by the educational institution. For this purpose, an academic period begins on the first day of classes, and does not include periods of student orientation, counseling, or vacation.

For a taxpayer to be eligible for the Hope Scholarship Credit or the Lifetime Learning Credit, qualified tuition and related expenses must be paid by the taxpayer to an eligible educational institution for the taxpayer, the taxpayer's spouse or any dependents. Payments by a taxpayer's dependents are to be treated as having been made by the taxpayer. The Hope Scholarship Credit is available only for the qualified tuition and related expenses of students enrolled at least half-time in the first two years of postsecondary education and can be claimed in no more than two years for each student.

Qualified tuition and related expenses are the tuition and fees an individual is required to pay in order to be enrolled at or attend an eligible educational institution. Amounts paid for any course or other education involving sports, games, or hobbies are not eligible for the credit, unless the course or other education is part of the student's degree program. Charges and fees associated with room, board, student activities, athletics, insurance, books, equipment, transportation, and similar personal, living, or family expenses are not qualified tuition and related expenses.

An eligible educational institution is a college, university, vocational school, or other postsecondary educational institution that is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088) and, therefore, is eligible to participate in the student aid programs administered by the Department of Education. This category includes virtually all accredited public, nonprofit, and proprietary postsecondary institutions.

Notice 97–60, 1997–46 I.R.B. 8, provides additional information about the Hope Scholarship Credit and the Lifetime Learning Credit.

B. *Information Reporting Relating to Qualified Tuition and Related Expenses.*

Section 6050S(a) requires eligible educational institutions that receive payments of qualified tuition and related expenses or make reimbursements or refunds of qualified tuition and related expenses to submit an annual information report to the Service with respect to each student on whose behalf the payments are received or the reimbursements or refunds are made. Section 6050S(a) also requires each person engaged in a trade or business who makes a reimbursement or refund of qualified tuition and related expenses to submit an annual information report to the Service with respect to each student on whose behalf the reimbursements or refunds are paid. The terms "eligible educational institution" and "qualified tuition and related expenses" have the same meanings for purposes of § 6050S as they do for purposes of the Hope Scholarship Credit and the Lifetime Learning Credit.

Section 6050S(b) provides that the return of information must be in the form prescribed by the Secretary and contain:

(1) the name, address, and taxpayer identification number (TIN) of the individual with respect to whom the qualified tuition and related expenses were received or the reimbursement or refund was paid,

(2) the name, address, and TIN of any individual certified by the individual named in the first item as the taxpayer who will claim that individual as a dependent for purposes of the deduction under § 151 for any taxable year ending with or within the year for which the information return is filed,

(3) the aggregate amount of payments of qualified tuition and related expenses received by the eligible educational institution or the aggregate amount of reimbursements or refunds (or similar amounts) paid during the calendar year with respect to the individual named in the first item, and

(4) such other information as the Secretary may prescribe.

Section 6050S(d) provides that every person required to make an information return under § 6050S(a) shall furnish to each individual whose name is required to be included in the return a written statement showing the name, address, and phone number of the reporting person's information contact, and the aggregate amounts required to be included in the return.

DISCUSSION

A. *Who Must File for 1998.*

For 1998, an eligible educational institution that receives payments of qualified tuition and related expenses in 1998 must file an information return with the Service with respect to each student on whose behalf payments were received. An eligible educational institution that makes reim-

bursements or refunds of tuition or related expenses to a student during 1998, that equal or exceed payments of qualified tuition or related expenses received on behalf of that student during 1998, is not required to file an information return or furnish a statement with respect to that student for 1998.

An institution is not required to provide a report with respect to a student whose tuition and related expenses were waived in their entirety or paid entirely with scholarships because it will have received no payments of qualified tuition and related expenses on behalf of such a student.

Persons, other than eligible educational institutions, engaged in a trade or business and making reimbursements or refunds of qualified tuition and related expenses will not be required to file information returns or furnish statements of reimbursements or refunds for 1998.

For purposes of providing these information reports, an eligible educational institution should provide reports on students who are enrolled in the institution for any academic term beginning in 1998. An institution should determine its enrollment for each term as of any of the following three dates:

(a) 30 days after the first day of the academic term;

(b) a date during the term on which enrollment data must be collected for purposes of the Integrated Postsecondary Education Data System administered by the Department of Education; or

(c) a date during the term on which the institution must report enrollment data to the State, the institution's governing board or some other external governing body.

An institution should provide a single information report for each student on whose behalf qualified tuition and related expenses have been received in 1998 even if the institution receives more than one payment on that student's behalf during 1998.

B. *Information Required for 1998.*

Eligible educational institutions required under this notice to file information returns for 1998 must properly complete Form 1098–T, Tuition Payments, for each student with respect to whom information reporting is required. For 1998, a properly completed Form 1098–T filed with the Service must include:

(1) the name, address, and TIN of the eligible educational institution,

(2) the name, address, and TIN of the individual with respect to whom payments of qualified tuition and related expenses were received during 1998,

(3) an indication as to whether the individual named in the second item was enrolled for at least half the full-time academic workload during any academic period commencing in 1998, and

(4) an indication as to whether the individual named in the second item was enrolled exclusively in a program or programs leading to a graduate-level degree, graduate-level certificate, or other recognized graduate-level educational credential.

For purposes of section 25A and the reporting required under § 6050S, a student will be considered to be enrolled at least half-time if the student is enrolled for at least half the full-time academic workload for the course of study the student is pursuing as determined under the standards of the institution where the student is enrolled. The institution's standard for a full-time workload must equal or exceed the standards established by the Department of Education under the Higher Education Act and set forth in 34 C.F.R. § 674.2(b).

Although in the future institutions will be required to provide the additional information specified in § 6050S *(e.g.,* the amount of qualified tuition and related expenses received and/or reimbursed), the IRS will not impose penalties on an institution that does not provide this information for 1998.

C. *When To File*

The information returns required under § 6050S for 1998 must be sent to the Service by March 1, 1999.

D. *Manner of Filing*

Eligible educational institutions may file the information returns required by § 6050S for 1998 on paper or by magnetic media. Additional guidance will be issued providing further information on how to file returns by magnetic media. In addition, the Service is exploring electronic filing options and will issue further guidance when such options become available.

E. *Statements To Be Provided to Students*

Each eligible educational institution must provide each student with respect to whom an information return is filed a statement containing the same information that is provided to the Service on the information return required by § 6050S. In addition, the statement provided to the student must contain the phone number of the individual serving as information contact at the eligible educational institution that made the return. The statement with respect to qualified tuition and related expenses paid in 1998 must be provided to the student by February 1, 1999. The statement may be a copy of Form 1098–T or an acceptable substitute statement.

F. *Collecting Information*

The Service is developing an optional Form W–9S for use in collecting information for the purpose of complying with § 6050S. Eligible educational institutions will be able to use the form to collect a student's name, address, and TIN. The form is being designed so that it can also be used to collect any information necessary to meet the information reporting requirements associated with the student loan interest deduction provided by new § 221. Eligible educational institutions will be able to collect information from students for 1998 information reporting purposes on a paper or an electronic version of Form W–9S (or an acceptable substitute). The eligible educational institution also may collect the necessary information by using its own forms and procedures.

Eligible educational institutions that are also federal, state or local government agencies are required to provide certain disclosures under the Privacy Act when collecting social security numbers from individuals. *See* 5 U.S.C. § 552a. The Form W–9S will contain a Privacy Act disclosure statement.

G. *Waiver of Penalties.*

The Treasury Department intends to issue regulations under § 6050S providing guidance on how institutions are to comply with the requirements of the statute. Until the regulations are adopted, no penalties will be imposed under

§§ 6721 and 6722 for failure to file correct information returns with the Service or to furnish correct statements to the individuals with respect to whom information reporting is required under § 6050S. Furthermore, even after the regulations are adopted, no penalties will be imposed under §§ 6721 and 6722 for failure to file correct information returns or furnish correct written statements for 1998 as required by § 6050S if the institution made a good faith effort to file information returns and furnish statements in accordance with this notice.

DRAFTING INFORMATION

The principal author of this notice is John McGreevy of the Office of the Assistant Chief Counsel (Income Tax & Accounting). For further information regarding this notice contact him on (202) 622-4910 (not a toll-free call).

Weighted Average Interest Rate Update

Notice 97–74

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

The average yield on the 30-year Treasury Constant Maturities for November 1997 is 6.11 percent.

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

Month	Year	Weighted Average	90% to 107% Permissible Range	90% to 110% Permissible Range
December	1997	6.79	6.11 to 7.26	6.11 to 7.47

Drafting Information

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

Minimum Distribution Requirements

Notice 97–75

I. PURPOSE

This notice provides guidance relating to the amendments to the minimum distribution requirements of § 401(a)(9) of the Internal Revenue Code ("Code") made by § 1404 of the Small Business Job Protection Act of 1996, Pub. L. 104–188 ("SBJPA"). Specifically, this notice:

• Answers questions regarding the actuarial increase that must be provided under a defined benefit plan for an employee who retires after age 70½, and the interaction of this actuarial increase with § 411.

• Coordinates the § 401(a)(4) nondiscrimination requirements with the § 401(a)(9) requirement that certain preretirement distribution options be available to an employee at age 70½.

• Permits plans to allow participants who commenced distributions under pre-SBJPA § 401(a)(9) to stop receiving those distributions, and provides guidance on the applicable notice and spousal consent requirements.

• Clarifies the extent to which distributions made after 1996 to an employee who has attained age 70½ will be considered eligible rollover distributions under § 402(c)(4)(B).

• Gives relief from the direct rollover requirements of § 401(a)(31), the written explanation requirement under § 402(f) and the mandatory 20-percent withholding requirement under § 3405(c) for certain distributions made in 1997.

• Provides an optional rule under which an employee's required beginning date under pre-SBJPA § 401(a)(9) may be retained.

II. BACKGROUND

Section 401(a)(9) provides that, in order for a plan to be qualified under § 401(a), distributions of each employee's interest in the plan must commence no later than the "required beginning date" for the employee. Prior to the amendments made by the SBJPA, § 401(a)(9)(C) generally defined the required beginning date for an employee as the April 1 of the calendar year following the calendar year in which the employee attained age 70½. This meant that an employee who attained age 70½ was required to commence receiving distributions from the plan during the following year, even if the employee had not retired from employment with the employer maintaining the plan.

Section 1404(a) of the SBJPA amended § 401(a)(9) of the Code to provide that, in the case of an employee who is not a 5-percent owner, the required beginning date for minimum distributions from a qualified plan is April 1 of the calendar year following the later of the calendar year in which the employee attains age 70½ or the calendar year in which the employee retires. In the case of an employee who is a 5-percent owner, the required beginning date continues to be the April 1 of the calendar year following the calendar year in which the employee attains age 70½. An employee is treated as a 5-percent owner for purposes of § 401(a)(9) as amended by the SBJPA if such employee is a 5-percent owner (as defined in § 416) with respect to the plan year ending with or within the calendar year in which such owner attains age 70½. Once an employee is a 5-percent owner described in the preceding sentence, distributions must continue to such employee even if such employee ceases to own more than 5 percent of the employer in a subsequent year.

Section 1404(a) of the SBJPA also amended § 401(a)(9) of the Code to provide that an employee's accrued benefit shall be actuarially increased to take into account the period after age 70½ in which the employee was not receiving any benefits under the plan. The amendments to § 401(a)(9) of the Code apply to years beginning after December 31, 1996.

The amendments retain the existing rules relating to the determination of the required beginning date for distributions

from an individual retirement account or individual retirement annuity under § 408, and the determination of the required beginning date for church plans and government plans.

Notice 96–67, 1996–2 C.B. 235, provides guidance on the application of the amendments to § 401(a)(9)(C) made by the SBJPA to employees who attained age 70½ in 1996 but did not retire by the end of 1996.

Announcement 97–24, 1997–11 I.R.B. 24, provides that an employer may offer employees (other than 5-percent owners) who attain age 70½ after 1995 and have not retired, an option to defer commencement of benefit distributions under a qualified plan rather than to begin receiving benefits from the plan by April 1, 1997, even if the plan has not yet been amended to provide for the option.

Announcement 97–70, 1997–29 I.R.B. 14, provides transition relief for a plan under which certain distributions required under the terms of the plan were not made to an employee (other than a 5-percent owner) who attained age 70½ in 1996 and who did not retire from employment with the employer maintaining the plan by the end of 1996.

Section 1.411(d)–4, Q&A 10, of the proposed Income Tax Regulations, 62 F.R. 35752 (July 2, 1997), would provide relief from § 411(d)(6) for certain plan amendments that eliminate preretirement distributions commencing at age 70½.

Rev. Proc. 97–41, 1997–33 I.R.B. 51, provides guidance to sponsors of plans that are qualified under § 401(a) with respect to the date by which they must adopt amendments to comply with changes in the law, including a remedial amendment period for amendments to reflect changes to the qualification requirements made by the SBJPA.

This notice provides guidance on additional issues relating to the amendments to § 401(a)(9)(C) made by the SBJPA.

III. QUESTIONS AND ANSWERS

(1) *ACTUARIAL INCREASE FOR DEFINED BENEFIT PLANS*

Q–1: If an employee retires in a calendar year after the calendar year in which the employee attains age 70½, for what period must the employee's accrued benefit under a defined benefit plan be actuarially increased?

A–1: (a) *Actuarial increase starting date.* Under § 401(a)(9)(C)(iii), in the case of an employee (other than a 5-percent owner) who retires in a calendar year after the calendar year in which the employee attains age 70½, the employee's accrued benefit under a defined benefit plan must be actuarially increased in order to take into account the period after age 70½ in which the employee is not receiving benefits under the plan. If an employee retires at age 70½, then, in order to satisfy § 401(a)(9), the distribution of the employee's benefits is required to begin no later than the April 1 following the calendar year in which the employee attains age 70½. Thus, if an employee retires after the calendar year in which the employee attains age 70½, the actuarial increase required to satisfy § 401(a)(9) to reflect the delay in payment must be provided for the period starting on the April 1 following the calendar year in which the employee attains age 70½. In the case of an employee who attained age 70½ prior to 1996, the starting date for the period of actuarial increase is January 1, 1997.

(b) *Actuarial increase ending date.* The period for which the actuarial increase must be provided ends on the date on which benefits commence after retirement in an amount sufficient to satisfy § 401(a)(9).

(c) *Nonapplication to defined benefit plans using optional rule.* If, pursuant to the optional rule of Q&A–10, minimum distributions under a plan to an employee commence no later than April 1 of the calendar year following the calendar year in which the employee attains age 70½, in an amount sufficient to satisfy § 401(a)(9) as in effect prior to amendment by the SBJPA, no actuarial increase is required under § 401(a)(9)(C)(iii).

(d) *Nonapplication to defined contribution plans.* The actuarial increase required under this Q&A–1 does not apply to defined contribution plans.

Q–2: What amount of actuarial increase is required under § 401(a)(9)(C)-(iii)?

A–2: In order to satisfy § 401(a)(9)-(C)(iii), the retirement benefits payable with respect to an employee as of the end of the period for actuarial increases (described in Q&A–1) must be no less than: the actuarial equivalent of the employee's retirement benefits that would have been payable as of the date the actuarial increase must commence under Q&A–1 (i.e., the later of the April 1 following the calendar year in which the employee attained 70½ or January 1, 1997) if benefits had commenced on that date; plus the actuarial equivalent of any additional benefits accrued after that date; reduced by the actuarial equivalent of any distributions made with respect to the employee's retirement benefits after that date. Actuarial equivalence is determined using the plan's assumptions for determining actuarial equivalence for purposes of satisfying § 411.

Q–3: How does the actuarial increase required under § 401(a)(9)(C)(iii) relate to the actuarial increase required under § 411?

A–3: As reflected in § 1.411(c)–1(f)(2) of the proposed Income Tax Regulations, in order for an employee's accrued benefit to be nonforfeitable as required by § 411, a defined benefit plan must make an actuarial adjustment to an accrued benefit the payment of which is deferred past normal retirement age. The only exception to this rule is that generally no actuarial adjustment is required to reflect the period during which a benefit is suspended as permitted under section 203(a)(3)(B) of the Employee Retirement Income Security Act of 1974 (ERISA). The actuarial increase required under § 401(a)(9) of the Code for the period described in Q&A–1 is generally the same as, and not in addition to, the actuarial increase required for that same period under § 411 to reflect any delay in the payment of retirement benefits after normal retirement age. However, unlike the actuarial increase required under § 411, the actuarial increase required under § 401(a)(9)(C) must be provided even during the period during which an employee is in section 203(a)(3)(B) service.

Q–4: To what extent may additional accruals required under § 411(b)(1)(H) be reduced by actuarial increases required under § 401(a)(9)(C)(iii)?

A–4: For purposes of § 411(b)(1)(H)–(iii)(II), the actuarial increase required under § 401(a)(9)(C)(iii) will be treated as an adjustment attributable to the delay in distribution of benefits after the attainment of normal retirement age. Accordingly, to

the extent permitted under § 411(b)(1)(H), the actuarial increase required under § 401(a)(9)(C)(iii) may reduce the benefit accrual otherwise required under § 411(b)–(1)(H)(i). However, the rule in the last sentence of § 1.411(b)–2(b)(4)(iii)(B) of the proposed Income Tax Regulations regarding the actuarial adjustment in the case of a plan that suspends benefits in accordance with § 203(a)(3)(B) of ERISA and the regulations thereunder is not applicable to the calculation of additional accruals for the period of time for which actuarial increases are required under § 401(a)-(9)(C)(iii).

(2) *COORDINATION OF SECTION 401(a)(4) AND SECTION 401(a)(9) FOR CERTAIN PRERETIREMENT AGE 70½ DISTRIBUTION OPTIONS*

Q–5: Are there special rules that coordinate the implementation of the SBJPA changes to § 401(a)(9) with the nondiscriminatory current and effective availability requirements of § 1.401(a)(4)–4 of the Income Tax Regulations?

A–5: (a) *Aggregation of optional forms of benefit.* Solely for purposes of determining whether a plan satisfies the nondiscriminatory current and effective availability requirements of § 1.401(a)-(4)–4, a preretirement age 70½ distribution option that is only available to required group members is permitted to be aggregated with another optional form of benefit that provides for commencement in the retirement period and the two optional forms of benefit may be treated as a single optional form of benefit. This aggregation treatment is permitted only if the other optional form of benefit is the same optional form of benefit as the preretirement age 70½ distribution option except for the difference in the timing of the commencement of payments.

(b) *Interim minimum distributions.* In the case of a defined contribution plan, if a preretirement age 70½ distribution option is available only to required group members and provides for payment of installment payments equal to the minimum amount (calculated in accordance with a method specified in the plan) necessary to satisfy § 401(a)(9) (before or after amendment by the SBJPA) with payment commencing during the 70½ period and ending by the end of the retirement period, and this form of payment does not apply to benefit payments after the end of the retirement period, this preretirement distribution option is treated as satisfying the requirements of § 1.401(a)(4)–4.

(c) *Definitions.* The following definitions apply only for purposes of this Q&A–5:

(i) *70½ period.* The 70½ period is the period beginning on January 1 of the year in which the employee attains age 70½ and ending on the April 1 of the following year.

(ii) *Retirement period.* The retirement period is the period beginning on January 1 of the year in which the employee retires from employment with the employer maintaining the plan and ending on April 1 of the following year.

(iii) *Preretirement age* 70½ *distribution option.* A preretirement age 70½ distribution option is an optional form of benefit under which benefits payable in a particular distribution form (including any modifications that may be elected after benefit commencement) commence during the 70½ period prior to the employee's retirement from employment with the employer maintaining the plan.

(iv) *Required group member.* An employee who is a 5-percent owner for purposes of section 401(a)(9) is a required group member. If a plan is amended to eliminate a preretirement age 70½ distribution option with respect to all employees (other than 5-percent owners) who attain age 70½ after a specified calendar year, and the plan satisfied § 1.401(a)(4)–4 with respect to availability of the preretirement age 70½ distribution option immediately before the amendment, then employees who attained age 70½ in or before the specified calendar year are also required group members with respect to the preretirement age 70½ distribution option under the plan even if the employees are not 5-percent owners for purposes of section 401(a)(9).

(3) *ISSUES RELATING TO EMPLOYEES WHO ATTAINED AGE 70½ BEFORE JANUARY 1, 1997*

Q–6: For purposes of § 401(a)(9)(C) after amendment by the SBJPA, what is the required beginning date for an employee (other than a 5-percent owner) who attained age 70½ before 1997, but did not retire from employment with the employer maintaining the plan before January 1, 1997?

A–6: For purposes of determining the amount of minimum distributions required after December 31, 1996, the required beginning date for an employee who did not retire from employment with the employer maintaining the plan before January 1, 1997 is determined under § 401(a)(9)(C), as amended by the SBJPA. Accordingly, as described in Q&A–2 of Notice 96–67, in the case of an employee (other than a 5-percent owner) who attained age 70½ in 1996 and retired from employment with the employer maintaining the plan on or after January 1, 1997, the required beginning date is April 1 of the calendar year following the year in which the employee retires from employment with the employer maintaining the plan. Furthermore, an employee (other than a 5-percent owner) who attained age 70½ prior to 1996, and retires from employment with the employer maintaining the plan on or after January 1, 1997, has a required beginning date for purposes of determining minimum distributions that are required on or after January 1, 1997 that is different from the required beginning date for the employee for purposes of determining minimum distributions that were required prior to January 1, 1997. Thus, for example, an employee (other than a 5-percent owner) who attained age 70½ in 1995, and retired from employment with the employer maintaining the plan in 1997, has a required beginning date of April 1, 1998. See Q&A–10 of this notice for a special rule permitting an employee's required beginning date determined without regard to the SBJPA amendments to be treated as the required beginning date for purposes of determining the minimum distributions required after January 1, 1997.

Q–7: May a plan permit an employee who attained age 70½ before 1997 but did not retire from employment with the employer maintaining the plan before January 1, 1997 to elect to stop current distributions?

A–7: (a) *Election to stop permitted.* An employee who attained age 70½ before 1997, but did not retire from employment with the employer maintaining the plan before January 1, 1997 has a new required

beginning date as described in Q&A–6. Accordingly, distributions are not required to be made to that employee after December 31, 1996 and prior to the employee's new required beginning date in order to satisfy § 401(a)(9). A plan may provide that such an employee may affirmatively elect to stop distributions at any time until the employee retires, subject to the terms of an applicable qualified domestic relations order (QDRO), within the meaning of § 414(p).

(b) *Compliance with sections 401(a)(11) and 417.* An employee's election to stop and recommence distributions under paragraph (a) of this Q&A–7 is subject to the requirements of §§ 401(a)(11) and 417, if the plan is otherwise subject to those rules. However, a plan that permits an employee to stop distributions in accordance with paragraph (a) of this Q&A–7 and that complies with either of the alternatives set forth in Q&A–8, will not violate § 401(a)(11) and § 417 on account of the employee's cessation and recommencement of those distributions.

Q–8: What special alternatives are available for a plan that is subject to § 401(a)(11) and § 417 in order to satisfy those sections with respect to an employee who, pursuant to Q&A–7, elects to stop and recommence distributions?

A–8 (a): *In general.* A plan will not violate § 401(a)(11) and § 417 on account of an employee's cessation and recommencement of distributions in accordance with Q&A–7(a) if the plan operationally complies with either paragraph (b) or (c) of this Q&A–8, the plan is amended within the remedial amendment period for the plan for SBJPA changes to reflect that operational compliance, and the distributions stop prior to the end of that remedial amendment period.

(b) *No new annuity starting date upon recommencement.*

(i) Under this alternative, the plan provides that there is no new annuity starting date under § 417 upon recommencement of benefits. In such case, no spousal consent is required for an employee to elect to stop distributions pursuant to Q&A–7(a). Moreover, no spousal consent is required when payments recommence to the employee if:

(A) payments recommence to the employee with the same beneficiary and in a form of benefit that is the same but for the cessation of distributions,

(B) the individual who was the employee's spouse on the annuity starting date executed a general consent within the meaning of § 1.401(a)–20, A–31 of the Income Tax Regulations, or

(C) the individual who was the employee's spouse on the annuity starting date executed a specific consent to waive a QJSA within the meaning of § 1.401(a)–20, A–31, and the employee is not married to that individual when benefits recommence.

(ii) However, in order to comply with this paragraph (b), consent of the individual who was the employee's spouse on the annuity starting date is required prior to recommencement if the employee chooses to recommence benefits either in a different form than the form in which they were being distributed prior to the cessation of distributions or with a different beneficiary and if:

(A) the original form was a qualified joint and survivor annuity (QJSA) within the meaning of § 417(b), or

(B) the individual who was the employee's spouse on the annuity starting date originally executed a specific consent to waive a QJSA within the meaning of § 1.401(a)–20, A–31, of the Income Tax Regulations, and the employee is still married to that individual when benefits recommence.

(c) *New annuity starting date upon recommencement.* Under this alternative, the plan provides that there is a new annuity starting date under § 417 upon recommencement of benefits. In such case, no spousal consent is required for an employee to elect to stop distributions pursuant to Q&A–7(a), except where such distributions are being paid in the form of a qualified joint and survivor annuity (QJSA) within the meaning of § 417(b). Where such distributions are being paid in the form of a QJSA, in order to comply with this paragraph (c), the person who was the employee's spouse on the original annuity starting date must consent to the election to stop distributions under Q&A–7(a) and the spouse's consent must acknowledge the effect of the election. Because there is a new annuity starting date upon recommencement of benefits, the plan, in order to satisfy this paragraph (c), must comply with all of the requirements of § 417 upon such recommencement, including payment of a qualified preretirement survivor annuity (QPSA) if the employee dies before the new annuity starting date.

(4) *ISSUES RELATING TO ELIGIBILITY FOR ROLLOVERS*

Q–9: If distributions are made under a plan to an employee (other than a 5-percent owner) who did not retire before January 1, 1997 from employment with the employer maintaining the plan, is any portion of a distribution made after attainment of age 70½ a required distribution under § 401(a)(9) for purposes of § 402(c)(4)(B)?

A–9: (a) *General rule.* Section 402(c)–(4)(B) provides that a distribution is not an eligible rollover distribution to the extent that it is required under § 401(a)(9). As noted in Q&A–6, for purposes of determining the amount of minimum distributions that are required after December 31, 1996, the required beginning date for an employee who did not retire before January 1, 1997 from employment with the employer maintaining the plan is redetermined under § 401(a)(9)(C), as amended by the SBJPA. Therefore, whether or not a plan allows an employee who attained age 70½ before January 1, 1997, but did not retire from employment with the employer maintaining the plan before that date, to stop receiving distributions in accordance with Q&A–7, a distribution to such an employee prior to the year the employee retires is not a required distribution under § 401(a)(9). Such a distribution is an eligible rollover distribution unless it is excepted for some other reason. An exception is provided under § 402(c)(4)(A) for a series of substantially equal periodic payments made for the life (or life expectancy) of the employee or the joint lives (or joint life expectancy) of the employee and the employee's designated beneficiary, or for a specified period of 10 years or more. If an employee's benefit is being distributed in a series of annual payments that would equal the required minimum distribution determined in accordance with Q&A F–1 of § 1.401(a)(9)–1 of the proposed Income Tax Regulations, then the series of payments will be considered a series of substantially equal payments over the life (or life expectancy) of the employee or

the joint lives (or joint life expectancy) of the employee and the employee's designated beneficiary, or for a specified period of 10 years or more, in accordance with Q&A–5 of § 1.402(c)–2 of the Income Tax Regulations. Therefore, payments under such a series of payments are not eligible rollover distributions.

(b) *Treatment of 1996 distributions for employees who attained age 70½ in 1996.* As provided in Q&A–3 of Notice 96–67, if a distribution is made during 1996 to an employee who attained age 70½ in 1996, whether that distribution is a required distribution under § 401(a)(9) is determined by applying § 401(a)(9) as in effect prior to amendment by the SBJPA.

(c) *Transition rule for 1997 distributions.* A plan will not fail to satisfy § 401(a)(31) merely because the plan administrator or payor did not offer an employee (other than a 5-percent owner), who has attained age 70½ but has not retired from employment with the employer maintaining the plan, a direct rollover option with respect to the eligible rollover distributions described in this paragraph (c). A distribution is described in this paragraph (c) if it is paid in calendar year 1997 and, under pre-SBJPA § 401(a)(9), the distribution would not have been an eligible rollover distribution because it would have been a required minimum distribution. In addition, with respect to such a distribution, a plan will not be required to satisfy the written explanation requirement under § 402(f) or the mandatory 20-percent withholding requirement under § 3405(c).

(5) *PLANS MAINTAINING PRE-SBJPA REQUIRED BEGINNING DATE*

Q–10: Will a plan satisfy § 401(a)(9) as amended by SBJPA if it provides for minimum required distributions for an employee commencing no later than an employee's required beginning date of April 1 of the calendar year following the calendar year the employee attained age 70½, regardless of whether the employee is a 5-percent owner?

A–10: (a) A plan will not fail to satisfy § 401(a)(9) as amended by SBJPA merely because it provides for minimum distributions commencing no later than an employee's pre-SBJPA required beginning date of April 1 of the calendar year following the calendar year the employee attained age 70½, regardless of whether the employee is a 5-percent owner. For example, a plan may provide, in the case of all employees who attained age 70½ before 1999, that minimum required distributions will commence by the pre-SBJPA required beginning date of April 1 of the calendar year following the calendar year the employee attained age 70½.

(b) If, pursuant to this Q&A–10, the plan provides for minimum distributions commencing no later than an employee's required beginning date of April 1 of the calendar year following the calendar year in which the employee attained age 70½, both the employee's designated beneficiary and whether recalculation of life expectancy applies will be determined based on any elections in effect as of that date. Furthermore, an employee who dies after the required beginning date determined under the plan terms is treated as dying after the required beginning date within the meaning of § 401(a)(9)(C). Thus, to determine the distributions after such a death, § 401(a)(9)(B)(i) (and not § 401(a)(9)(B)(ii)) applies, requiring the remaining portion of the employee's interest to be distributed at least as rapidly as under the method being used under § 401(a)(9)(A)(ii) as of the employee's date of death. See Q&As B–4 and F–3A of § 1.401(a)(9)–1 of the proposed Income Tax Regulations for guidance on satisfying the requirements of § 401(a)(9)(B)(i).

(c) Regardless of whether, pursuant to this Q&A–10, the plan provides for minimum distributions commencing no later than an employee's required beginning date of April 1 of the calendar year following the calendar year the employee attained age 70½, the employee's required beginning date for purposes of § 4974 (excise tax on excess accumulations) and § 402(c) (definition of eligible rollover distribution) is determined in accordance with § 401(a)(9) as amended by the SBJPA. Thus, in the case of an employee who is not a 5-percent owner, no excise tax under § 4974 will apply prior to the calendar year in which the employee retires. However, beginning with that year, the amount that is required to be distributed each year to satisfy § 401(a)(9), as amended by the SBJPA, for purposes of § 4974 and § 402(c), will be determined using the required beginning date under the plan.

IV. COMMENTS

The Treasury and the Service invite comments and suggestions regarding the matters discussed in this notice. Comments can be addressed to CC:DOM:CORP:R (Notice 97–75), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, comments may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (Notice 97–75), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may transmit comments electronically via the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html.

V. DRAFTING INFORMATION

The principal authors of this notice are Ingrid Grinde of the Employee Plans Division and Cheryl Press of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the Service and Treasury contributed to its development. For further information regarding this notice, please contact the Employee Plans Division's taxpayer assistance telephone service at (202) 622-6074/6075 between the hours of 1:30 p.m. and 3:30 p.m. Eastern Time, Monday through Thursday. Alternatively, please call Thomas Foley at (202) 622-6050 or Ingrid Grinde at (202) 622-6214. These telephone numbers are not toll-free.

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26 CFR 601.201: Rulings and determination letters. (Also Part I, § 636; 1.636–3.)

Rev. Proc. 97–55

SECTION 1. PURPOSE

This revenue procedure sets forth the conditions under which the Internal Revenue Service will consider issuing an advance ruling that a right to mineral is a production payment as defined in § 1.636–3(a) of the Income Tax Regulations.

SECTION 2. BACKGROUND

Section 1.636–3(a)(1) defines a production payment as a right to a specified share of the production from mineral in place, which is an economic interest in mineral in place and which has an expected economic life (at the time of its creation) of shorter duration than the economic life of the burdened property. The right may be limited by a dollar amount, a quantum of mineral, or a period of time. It may not reasonably be expected to extend in substantial amounts over the entire productive life of the burdened property.

SECTION 3. SCOPE

This revenue procedure applies to any production payment described in § 636 of the Internal Revenue Code.

SECTION 4. APPLICATION

The Internal Revenue Service generally will issue an advance ruling that a right to mineral is a production payment if the following conditions are met:

.01 The right is an economic interest in mineral in place as defined in § 1.611–1(b), without regard to the application of § 636;

.02 The right is limited by a specified dollar amount, a specified quantum of mineral, or a specified period of time;

.03 It is reasonably expected, at the time the right is created, that it will terminate upon the production of not more than 90 percent of the reserves then known to exist; and

.04 The present value of the production expected to remain after the right terminates is 5 percent or more of the present value of the entire burdened property (determined at the time the right is created). The determination of present value takes into account all the facts and circumstances, in accordance with the provisions of § 1.611–2(e).

DRAFTING INFORMATION

The principal author of this revenue procedure is Brenda M. Stewart of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure contact Roger E. Baker on (202) 622-3120 (not a toll-free call).

Notice of Proposed Rulemaking and Notice of Public Hearing

IRS Adoption Taxpayer Identification Numbers

REG–103330–97

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In T.D. 8739, page 8, the IRS is issuing temporary regulations under section 6109 relating to taxpayer identifying numbers. The temporary regulations provide rules for obtaining and using IRS adoption taxpayer identification numbers. The temporary regulations assist individuals who are in the process of adopting children and wish to claim certain tax benefits with respect to these children. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by February 23, 1998. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for March 4, 1998, at 10:00 a.m., must be received by February 11, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–103330–97), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–103330–97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC.

Taxpayers may also submit comments electronically via the internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in Room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Michael L. Gompertz, (202) 622-4910; concerning submissions and the hearing, Michael Slaughter, (202) 622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent 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, with copies to the **Internal Revenue Service,** Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received by February 23, 1998. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the **Internal Revenue Service,** including whether the collection will have a practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in §301.6109–3T(c). This information is required by the IRS to assign IRS adoption taxpayer identification numbers (ATINs) to children who are in the process of being adopted. Unless an ATIN is assigned to a prospective adoptive child, the prospective adoptive parent cannot claim a dependency exemption for the child under section 151, a dependent care credit for the child under section 21, or, for taxable years beginning after December 31, 1997, a child tax credit under section 24. The collection of information in §301.6109–3T is thus required to obtain a benefit. The likely respondents are individuals.

The collection of information in §301.6109–3T is satisfied by including the required information on Form W–7A or other form as may be prescribed by the IRS to apply for an ATIN. The burden for this requirement is reflected in the burden estimate for Form W–7A.

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

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

Background

Temporary regulations in T.D. 8739 amend the Regulations on Procedure and Administration (26 CFR part 301) relating to section 6109. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Wednesday, March 4, 1998, at 10:00 a.m. in Room 2615. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by February 23, 1998 and submit requests to speak and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by February 11, 1998.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Michael L. Gompertz, Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding entries in numerical order to read as follows:

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

Section 301.6109–1 also issued under 26 U.S.C. 6109;

Section 301.6109–3 also issued under 26 U.S.C. 6109; * * *

Par. 2. Section 301.6109–1 is amended by revising paragraphs (a)(1)(i), (a)(1)(ii) introductory text, (a)(1)(ii)(A), and (a)(1)(ii)(B) to read as follows:

§301.6109–1 Identifying numbers.

(a) * * * (1) *Taxpayer identifying numbers*—(i) [The text of proposed paragraph (a)(1)(i) is the same as the text of §301.6109–1T(a)(1)(i) published in T.D. 8739.]

(ii) [The text of proposed paragraph (a)(1)(ii) introductory text is the same as the text of §301.6109–1T(a)(1)(ii) introductory text published in T.D. 8739.]

(A) and (B) [The text of proposed (a)(1)(ii)(A) and (B) are the same as the text of §301.6109–1T(a)(1)(ii)(A) and (B) published in T.D. 8739.]

* * * * *

Par. 3. Section 301.6109–3 is added to read as follows:

§301.6109–3 IRS adoption taxpayer identification numbers.

[The text of this proposed section is the same as the text of §301.6109–3T published in T.D. 8739.]

Michael P. Dolan,
Acting Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on November 21, 1997, at 8:45 a.m., and published in the issue of the Federal Register for November 24, 1997, 62 F.R. 62538).

Notice of Proposed Rulemaking and Partial Withdrawal of Notice of Proposed Rulemaking

Tax Treatment of Cafeteria Plans

REG–243025–96

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of notice of proposed rulemaking, amendment to notice of proposed rulemaking, and notice of proposed rulemaking by cross reference to temporary regulations.

SUMMARY: This document withdraws portions of the notice of proposed rulemaking published in the **Federal Register** (54 FR 9460) on March 7, 1989 and amends proposed regulations relating to change in family status. In T.D. 8738, page 4, the IRS is issuing temporary regulations that provide guidance on the circumstances under which a cafeteria plan participant may revoke an existing election and make a new election during a period of coverage. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written comments and requests for public hearing must be received by February 5, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–243025–96), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–243025–96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Sharon Cohen, (202) 622-6080; concerning submissions or to request a public hearing, Evangelista Lee, (202) 622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Q&A–8 of §1.125–1[1] and Q&A–6(c) and (d) of §1.125–2[2] provide that a participant may make benefit election changes pursuant to changes in family status and separation from service. The

[1]Published as a proposed rule at 49 FR 19321 (May 7, 1984).

[2]Published as a proposed rule at 54 FR 9460 (March 7, 1989).

temporary regulations set forth the standards under which a cafeteria plan can allow an employee to change his or her health coverage election during a period of coverage to conform with the special enrollment rights under the Health Insurance Portability and Accountability Act of 1996, and to change his or her health coverage or group-term life insurance coverage in a variety of other change in status situations. Thus, these proposed regulations modify A&A–8 of §1.125–1 and Q&A–6(c) and (d) of §1.125–2, and clarify that the "change in family status rules" in the existing proposed regulations continue to apply to qualified benefits (including dependent care assistance under section 129 and adoption assistance under section 137) other than accident or health coverage and group-term life insurance coverage. Election changes continue to be permitted where there has been a significant change in the health coverage of the employee or spouse attributable to the spouses's employment.

In addition, the temporary regulations provide that the rules of section 401(k) and (m), rather than the rules in the temporary regulations that apply to other qualified benefits, govern election changes under a qualified cash or deferred arrangement (within the meaning of section 401(k)) or with respect to employee contributions under section 401(m). Therefore, the proposed regulations withdraw Q&A–7(f) of §1.125–2.

T.D. 8738 amends the Income Tax Regulations (26 CFR part 1) relating to section 125. The temporary regulations contain rules relating to the circumstances under which a cafeteria plan participant may revoke an existing election and make a new election during a period of coverage.

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

Special Analyses

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

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register.**

Drafting Information

The principal authors of these regulations are Catherine Fuller and Sharon Cohen, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

Partial Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, §1.125–2 Q&A–6(f) in the notice of proposed rulemaking that was published on March 7, 1989 (54 FR 9460) is withdrawn.

* * * * *

Amendments Previously Proposed Rules

Accordingly, the proposed rules published on May 7, 1984 (49 FR 19321) and March 7, 1989 (54 FR 9460) are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. In §1.125–1, as proposed May 7, 1984 (49 FR 19321), in Q&A–8, Q–8 is republished and A–8 is amended by revising the last sentence to read as follows:

§1.125–1 Questions and answers relating to cafeteria plan.

* * * * *

Q–8: What requirements apply to participants' elections under a cafeteria plan?

A–8: *** However, except for benefit elections relating to accident or health plans and group-term life insurance coverage, a cafeteria plan may permit a participant to revoke a benefit election after the period of coverage has commenced and to make a new election with respect to the remainder of the period of coverage if both the revocation and the new election are on account of and consistent with a change in family status (e.g., marriage, divorce, death of spouse or child, birth or adoption of child, and termination of employment of spouse).

* * * * *

Par. 2. In §1.125–2, as proposed March 7, 1989 (54 FR 9460), in Q&A–6, Q–6 is republished and A 6 is amended by revising A–6(c) and (d) to read as follows:

§1.125–2 Miscellaneous cafeteria plan questions and answers.

* * * * *

Q–6: In what circumstance may participants revoke existing elections and make new elections under a cafeteria plan?

A–6: ***

* * * * *

(c) Certain Changes in Family Status. Except as otherwise provided, in the case of benefits other than accident or health plan coverage and group-term life insurance coverage, a cafeteria plan may permit a participant to revoke a benefit election during a period of coverage and to make a new election for the remaining portion of the period if the revocation and new election are both on account of a change in family status and are consistent with such change in family status. For purposes of this paragraph (c) of Q&A–6, examples of changes in family status for which a benefit election change may be permitted include the marriage or divorce of the employee, the death of the employee's spouse or a dependent, the birth

or adoption of a child of the employee, the termination of employment (or the commencement of employment) of the employee';s spouse, the switching from part-time to full-time employment status or from full-time to part-time status by the employee or the employee's spouse, and the taking of an unpaid leave of absence by the employee or the employee's spouse. Benefit election changes are consistent with family status changes only if the election changes are necessary or appropriate as a result of the family status changes. In the case of accident or heath plans, election changes are permitted where there has been a significant change in the health coverage of the employee or spouse attributable to the spouse's employment. For additional rules governing cafeteria plan election changes with respect to accident or health plan coverage and group-term life insurance coverage, see §1.125–4T.

(d) Separation from Service. Except with respect to accident or health plan coverage and group-term life insurance coverage, a cafeteria plan may permit an employee who separates from the service of the employer during a period of coverage to revoke existing benefit elections and terminate the receipt of benefits for the remaining portion for the coverage period. The plan must prohibit the employee, if the employee should return to service for the employer, from making new benefit elections for the remaining portion of the period of coverage. For rules governing cafeteria plan election changes with respect to accident or health plan coverage and group-term life insurance coverage, see §1.125–4T.

* * * * *

Proposed Amendments to the Regulations

In addition, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX

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

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

Par. 2. Section 1.125–4 is added to read as follows:

[The text of this proposed section is the same as the text of §1.125–4T published in T.D. 8738.]

Michael P. Dolan,
Acting Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on November 6, 1997, 8:45 a.m., and published in the issue of the Federal Register for November 7, 1997, 62 F.R. 60196)

Notice of Proposed Rulemaking

Rewards for Information Relating to Violations of Internal Revenue Laws

REG–252936–96

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In T.D. 8737, page 11, the IRS is issuing temporary regulations relating to rewards for information that relates to violations of the internal revenue laws. The text of the temporary regulations also serves as the text of these proposed regulations.

DATES: Written comments and requests for a public hearing must be received by January 16, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (REG–252936–96), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (REG–252936–96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS internet site at:http://www.irs.ustreas.gov/prod/tax_regs/comments.html.

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

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent 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, with copies to the **Internal Revenue Service,** Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collections of information should be received by December 15, 1997. Comments are specifically requested concerning: Whether the proposed collections of information are necessary for the proper performance of the functions of the **Internal Revenue Service,** including whether the information will have practical utility; the accuracy of the estimated burden associated with the proposed collections of information (see below); how the quality, utility, and clarity of the information to be collected may be enhanced; how the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collections of information in this proposed regulation are in §§301.7623–1T(b)(3), 301.7623–1T(d), and 301.7623–1T(f). The collections of information are required to provide information relating to violations of the internal revenue laws, and to identify the proper claimant of a reward. The collection of information is voluntary with respect to the provision of information relating to violations of the internal revenue laws. The collections of information are required to obtain a benefit with respect to filing a claim for reward. The likely respondents are individuals, although non-individual claimants are also allowed.

Estimated total annual reporting burden: 30,000 hours.

Estimated average annual burden hours per respondent: 3 hours.

Estimated number of respondents: 10,000.

Estimated annual frequency of responses: on occasion.

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

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

Background

Temporary regulations in T.D. 8737 amend the Procedure and Administration Regulations (26 CFR part 301) relating to section 7623. The temporary regulations contain rules relating to rewards for information that relates to violations of the internal revenue laws. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that the regulations in this document will not have a significant economic impact on a substantial number of small entities. This certification is based on a determination that in the past approximately 10,000 persons have filed claims for reward on an annual basis. Of these persons, almost all have been individuals. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comments on its impact on small businesses.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing may be scheduled if requested in writing by any person who timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the Federal Register.

Drafting Information

The principal author of the regulations is Judith A. Lintz, Office of Assistant Chief Counsel (Income Tax & Accounting), Internal Revenue Service. However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

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

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

Par. 2. Section 301.7623–1 is revised to read as follows:

§301.7623–1 Rewards for information relating to violations of internal revenue laws.

[The text of this proposed revised section is the same as the text of §301.7623–1T published in T.D. 8737.]

Michael P. Dolan,
Acting Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on October 10, 1997, 8:45 a.m., and published in the Federal Register for October 14, 1997, 62 F.R. 53274.)

Foundations Status of Certain Organizations

Announcement 97–123

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:

Arizona Institute for Public Policy Research, Flagstaff, AZ
Arizona Love Project Inc., Tucson, AZ
Arizona Teachings Inc., Tucson, AZ
Arizona Therapeutic Photo Graphics, Inc., Mesa, AZ
Ark Environmental Foundation US Inc., N. Miami Beach, FL
Ark Foundation Inc., Cleveland, OH
Arkansas African American Art Museum Foundation, Inc., Little Rock, AR
Arkansas Recycling Coalition Inc., Little Rock, AR
Armageddon Ministries Foundation, Inc., Delbarton, WV
Apocalypse Ministries Inc., Zionsville, IN
Around the Coyote Inc., Chicago, IL
Art Deco Society of Northern Ohio, Woodmere, OH
Art Levis Foundation, Washington, DC
Arts in the Park, Alpena, MI
Ascension Tabernacle Ministries of the Apostolic Faith, Dolton, IL
Ashiwi A Wan Museum and Heritage Center, Zuni, NM
Ashland Answer Inc., Ashland, OH
Asian-American Community Incorporated, Fort Wayne, IN
Asian Happy Nest Organization Inc., Grand Rapids, MI
Asociacion De La Conunidad Mexicana, Norcross, GA

Aspen Allergy Conference, Denver, CO
Aspen Ridiculous Theatre Company, Aspen, CO
Assisi Village Inc., Baton Rouge, LA
Assisting Community Towards Success Acts, Austin, TX
Assistive Devices Foundation, New Iberia, LA
Association for AIDS Education and Prevention, Inc., Detroit, MI
Association for Unmanned Vehicle Systems Foundation, Inc., Washington, DC
Association for Young Athletes, Woodville, TX
Association of Disabled American, Golfers, Inc., Englewood, CO
Association of Humanitarian Aid & Development International, Inc., East Orange, NJ
Association of Lisp Users Alu Inc., Sterling, VA
Association of Oklahoma Narcotic Enforcers, Inc., Oklahoma City, OK
Association to Promote Intercultural Relations, Inc., Climax, MI
Atalissa Betterment Committee, Iowa City, IA
Athletic Success Programs Inc., Greensboro, NC
Augusta Community Caring Center Inc., Augusta, KS
Auralia Foundation, Masonville, CO
Austin Adelaide Sister City Committee, Austin, TX
Austin Boxing Against Drugs, Austin, TX
Austin Community Resource Center, Chicago, IL
Austin Downtown Development Corporation, Austin, TX
Austin Public Education Foundation, Austin, TX
Automobile Collector Museum of Greater Louisville, Inc., Louisville, KY
Award Foundation of the Nations Capital, Inc., Potomac, MD
Aware and Serene, Detroit, MI
Aztec Cultural Arts Center Inc., Eagle Pass, TX
C H O I C E, Southfield, MI
C R E A T E Inc., New Orleans, LA
C R O S S Ministries Inc., Grand Rivers, KY
C Y Association Inc., Fort Worth, TX
CAF Ministries, Friendswood, TX
Cairo Fire Association Inc., Cairo, OH
Caldwell County Courthouse Restoration Corporation, Inc., Lockhart, TX
Caldwell County Firefighters Association, Dale, TX
Calhoun Community Organization, Letohatchee, AL
Calhoun Gordon Arts Council Inc., Calhoun, GA
Calico Rock Communitycare Program, Calico Rock, AR
California Compact Inc., Phoenix, AZ
Camp Discovery Inc., Galveston, TX
Camp Leo Council of South Carolina Inc., Hilton Head Island, SC
Camp Michi-Mac, Hudson, MI
Campaign for the Prevention of Head Injury, Bozeman, MT
Campaign to End Racism in America, Prospect Hts, IL
Canaan Land Ministries of St. Clair Missouri, St. Clair, MO
Canadian River Racing Club Inc., Norman, OK
Cancer Alley Reconstruction Fund, Inc., New Orleans, LA
Cancer Network Foundation of America, State College, PA
Cancer Prevention Coalition, Chicago, IL
Cancernet Inc., W. Des Moines, IA
Candlelighters of Indiana Inc., Indianapolis, IN
Caney Community Youth Center, Clay Hole, KY
Canton Rotary Foundation Inc., Canton, MI
Capal Life Foundation Inc., Orange Park, FL
Cape Atlantic Area Service Office Inc., Atlantic City, NJ
Cape Coral Gridiron Club Inc., Cape Coral, FL
Capital Area Families Helping Families Inc., Baton Rouge, LA
Capital Charities Corporation, Silver Spring, MD
Capital City Transit Coalition, Reynoldsburg, OH
Capitol City Opera Company Inc., Atlanta, GA
Capitol Nutrition, Inc., Cary, NC
CAPS Ministries Inc., Holt, MI
Captive Ministries Inc., Edwardsville, IL
Carbondale Crimestoppers, Carbondale, IL
Cardozo Club Inc., Washington, DC
Care for Kids Foundation, Orem, UT
Care Group & Associates Inc., Whittaker, MI
Caring Adults Inc., Grinnell, IA
Carolina Association for Passenger Trains, Charlotte, NC
Carolina Foundation for Oral Health, Charlotte, NC
Carolina Place Inc., Rock Hill, SC
Carolina Regional Community Development Corporation, Durham, NC
Carolina Youth Football League Inc., Charlotte, NC
Carriere Health Care Services Inc., Canton, OH
Carroll Housing Opportunities Inc., Carrollton, OH
Carrollton College Educational Foundation, Inc., Carrollton, KY
Carrolton Community Economic Development Corporation, New Orleans, LA
Carter County Junior Livestock Show, Ardmore, OK
Cary Ministerial Association, Cary, NC
Casmi Educational Foundation, Highland Park, IL
Cass County Helpline Inc., Logansport, IN
Catanduanes International Association Inc., Hillside, IL
Catch-22 Youth Ranch Inc., Brownwood, TX

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.

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. Proc..—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statements of Procedral Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

Numerical Finding List[1]

Bulletins 1997–27 through 1997–50

Announcements:

97–61, 1997–29 I.R.B. *13*
97–67, 1997–27 I.R.B. *37*
97–68, 1997–28 I.R.B. *13*
97–69, 1997–28 I.R.B. *13*
97–70, 1997–29 I.R.B. *14*
97–71, 1997–29 I.R.B. *15*
97–72, 1997–29 I.R.B. *15*
97–73, 1997–30 I.R.B. *86*
97–74, 1997–31 I.R.B. *16*
97–75, 1997–32 I.R.B. *28*
97–76, 1997–32 I.R.B. *28*
97–77, 1997–33 I.R.B. *58*
97–78, 1997–34 I.R.B. *11*
97–79, 1997–35 I.R.B. *8*
97–80, 1997–34 I.R.B. *12*
97–81, 1997–34 I.R.B. *12*
97–82, 1997–34 I.R.B. *12*
97–83, 1997–34 I.R.B. *13*
97–84, 1997–34 I.R.B. *13*
97–85, 1997–35 I.R.B. *8*
97–86, 1997–35 I.R.B. *9*
97–87, 1997–35 I.R.B. *9*
97–88, 1997–35 I.R.B. *9*
97–89, 1997–36 I.R.B. *10*
97–90, 1997–36 I.R.B. *10*
97–91, 1997–37 I.R.B. *25*
97–92, 1997–37 I.R.B. *26*
97–93, 1997–36 I.R.B. *11*
97–94, 1997–36 I.R.B. *12*
97–95, 1997–36 I.R.B. *12*
97–96, 1997–39 I.R.B. *15*
97–97, 1997–38 I.R.B. *22*
97–98, 1997–39 I.R.B. *15*
97–99, 1997–40 I.R.B. *7*
97–100, 1997–40 I.R.B. *8*
97–101, 1997–41 I.R.B. *13*
97–102, 1997–41 I.R.B. *15*
97–103, 1997–41 I.R.B. *16*
97–104, 1997–42 I.R.B. *39*
97–105, 1997–42 I.R.B. *40*
97–106, 1997–45 I.R.B. *11*
97–107, 1997–43 I.R.B. *25*
97–108, 1997–43 I.R.B. *25*
97–109, 1997–45 I.R.B. *12*
97–110, 1997–45 I.R.B. *14*
97–111, 1997–47 I.R.B. *15*
97–112, 1997–46 I.R.B. *20*
97–113, 1997–46 I.R.B. *21*
97–114, 1997–46 I.R.B. *21*
97–115, 1997–47 I.R.B. *17*
97–116, 1997–48 I.R.B. *25*
97–117, 1997–49 I.R.B. *12*
97–118, 1997–49 I.R.B. *13*
97–119, 1997–50 I.R.B. *61*
97–120, 1997–50 I.R.B. *61*
97–121, 1997–50 I.R.B. *62*
97–122, 1997–50 I.R.B. *63*

Court Decisions:

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

Delegation Orders:

97 (Rev. 34), 1997–41 I.R.B. *14*

Delegation Orders—Continued

172 (Rev. 5), 1997–28 I.R.B. *6*

Notices:

97–37, 1997–27 I.R.B. *4*
97–38, 1997–27 I.R.B. *8*
97–39, 1997–27 I.R.B. *8*
97–40, 1997–28 I.R.B. *6*
97–41, 1997–28 I.R.B. *6*
97–42, 1997–29 I.R.B. *12*
97–43, 1997–30 I.R.B. *9*
97–44, 1997–31 I.R.B. *15*
97–45, 1997–33 I.R.B. *7*
97–46, 1997–34 I.R.B. *10*
97–47, 1997–35 I.R.B. *5*
97–48, 1997–35 I.R.B. *5*
97–49, 1997–36 I.R.B. *8*
97–50, 1997–37 I.R.B. *21*
97–51, 1997–38 I.R.B. *20*
97–52, 1997–38 I.R.B. *20*
97–53, 1997–40 I.R.B. *6*
97–54, 1997–41 I.R.B. *7*
97–55, 1997–40 I.R.B. *6*
97–56, 1997–43 I.R.B. *19*
97–57, 1997–43 I.R.B. *19*
97–58, 1997–45 I.R.B. *7*
97–59, 1997–45 I.R.B. *7*
97–60, 1997–46 I.R.B. *8*
97–61, 1997–48 I.R.B. *8*
97–62, 1997–49 I.R.B. *8*
97–63, 1997–47 I.R.B. *6*
97–64, 1997–47 I.R.B. *7*
97–66, 1997–48 I.R.B. *8*
97–67, 1997–48 I.R.B. *10*
97–68, 1997–48 I.R.B. *11*
97–69, 1997–48 I.R.B. *12*
97–70, 1997–49 I.R.B. *9*
97–71, 1997–49 I.R.B. *9*
97–72, 1997–50 I.R.B. *7*

Railroad Retirement Quarterly Rate:

1997–28 I.R.B. *5*

Public Laws

105–35, 1997–43 I.R.B. *13*

Proposed Regulations:

REG–104893–97, 1997–29 I.R.B. *13*
REG–105160–97, 1997–37 I.R.B. *22*
REG–105162–97, 1997–48 I.R.B. *13*
REG–106043–97, 1997–37 I.R.B. *24*
REG–107644–97, 1997–32 I.R.B. *24*
REG–107872–97, 1997–47 I.R.B. *11*
REG–114000–97, 1997–47 I.R.B. *13*
REG–208151–91, 1997–38 I.R.B. *21*
REG–246250–96, 1997–42 I.R.B. *30*
REG–251985–96, 1997–48 I.R.B. *18*

Revenue Procedures:

97–32, 1997–27 I.R.B. *9*
97–32A, 1997–34 I.R.B. *10*
97–33, 1997–30 I.R.B. *10*
97–34, 1997–30 I.R.B. *14*
97–35, 1997–33 I.R.B. *11*
97–36, 1997–33 I.R.B. *14*
97–37, 1997–33 I.R.B. *18*
97–38, 1997–33 I.R.B. *43*
97–39, 1997–33 I.R.B. *48*

Revenue Procedures–Continued

97–40, 1997–33 I.R.B. *50*
97–41, 1997–33 I.R.B. *5*
97–42, 1997–33 I.R.B. *57*
97–43, 1997–39 I.R.B. *12*
97–44, 1997–41 I.R.B. *8*
97–45, 1997–41 I.R.B. *10*
97–46, 1997–42 I.R.B. *10*
97–47, 1997–42 I.R.B. *19*
97–48, 1997–43 I.R.B. *19*
97–49, 1997–43 I.R.B. *22*
97–50, 1997–45 I.R.B. *8*
97–51, 1997–45 I.R.B. *9*
97–52, 1997–46 I.R.B. *17*
97–53, 1997–47 I.R.B. *10*
97–54, 1997–50 I.R.B. *8*

Revenue Rulings:

97–27, 1997–27 I.R.B. *4*
97–28, 1997–28 I.R.B. *4*
97–29, 1997–28 I.R.B. *4*
97–30, 1997–31 I.R.B. *12*
97–31, 1997–32 I.R.B. *4*
97–32, 1997–33 I.R.B. *4*
97–33, 1997–34 I.R.B. *4*
97–34, 1997–34 I.R.B. *14*
97–35, 1997–35 I.R.B. *4*
97–36, 1997–36 I.R.B. *5*
97–37, 1997–37 I.R.B. *15*
97–38, 1997–38 I.R.B. *14*
97–39, 1997–39 I.R.B. *4*
97–40, 1997–39 I.R.B. *8*
97–41, 1997–40 I.R.B. *4*
97–42, 1997–41 I.R.B. *4*
97–43, 1997–42 I.R.B. *8*
97–44, 1997–45 I.R.B. *5*
97–45, 1997–46 I.R.B. *4*
97–46, 1997–46 I.R.B. *7*
97–47, 1997–47 I.R.B. *4*
97–48, 1997–49 I.R.B. *5*
97–49, 1997–48 I.R.B. *4*
97–50, 1997–49 I.R.B. *5*
97–51, 1997–49 I.R.B. *4*
97–52, 1997–50 I.R.B. *4*

Treasury Decisions:

8722, 1997–29 I.R.B. *4*
8723, 1997–30 I.R.B. *4*
8724, 1997–36 I.R.B. *4*
8725, 1997–37 I.R.B. *16*
8726, 1997–34 I.R.B. *7*
8727, 1997–34 I.R.B. *5*
8728, 1997–37 I.R.B. *4*
8729, 1997–38 I.R.B. *4*
8730, 1997–38 I.R.B. *16*
8731, 1997–42 I.R.B. *6*
8732, 1997–42 I.R.B. *4*
8733, 1997–43 I.R.B. *8*
8734, 1997–44 I.R.B. *5*
8735, 1997–43 I.R.B. *4*
8736, 1997–50 I.R.B. *5*

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

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

Bulletins 1997–27 through 1997–50

*Denotes entry since last publication

Notices:

97–9
Modified by
97–70, 1997–49 I.R.B. *9*

Revenue Procedures:

82–36
Modified and superseded by
97–49, 1997–43 I.R.B. *22*

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

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

96–48
Superseded by
97–54, 1997–50 I.R.B. *8*

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

Revenue Rulings:

73–67
Revoked by
97–46, 1997–46 I.R.B. *7*

75–7
Revoked by
97–48, 1997–49 I.R.B. 5

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

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

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

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