Internal Revenue
bulletin

Bulletin No. 1998–49
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HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

Ct.D. 2063, page 6.
The publication of the Supreme Court's decision in United States v. Estate of Francis J. Romani, *et al.*, in 1998–36 I.R.B. 13, is corrected.

Rev. Rul. 98–57, page 4.
Federal rates; adjusted federal rates; adjusted federal long-term rate; and long-term exempt rate. For purposes of sections 1274, 1288, 382, and other sections of the Code, tables set forth the rates for December 1998.

EMPLOYEE PLANS

Announcement 98–105, page 21.
The Service intends to delay the effective date of the cafeteria plan temporary regulation 1.125–4T and proposed regulation 1.125–4. Until further guidance is issued, taxpayers may continue to rely on the change in election provisions in temporary regulation 1.125–4T as well as the change in election provisions in section 1.125–2 of the pre-1990 proposed regulations.

EXEMPT ORGANIZATIONS

Notice 98–58, page 13.
Administrative appeal of adverse determination of tax-exempt status of bond issue. This notice provides a proposed revenue procedure that, when finalized, will provide the procedures for issuers to request an administrative appeal of an adverse determination by the Employee Plans/Exempt Organizations Key District that interest on their debt obligations is not excludable from gross income under section 103 of the Code. Beginning December 7, 1998, issuers may use the procedures set forth in the proposed revenue procedure until it is finalized. Comments are welcome.

EMPLOYMENT TAX

Notice 98–60, page 16.
This notice provides tables which show the amount of an individual's income that is exempt from a notice of levy used to collect delinquent tax in 1999.

ADMINISTRATIVE

Notice 98–59, page 16.
Information reporting; Hope Credit; lifetime learning credit. Educational institutions are informed that the Service will not require information returns to be filed under section 6050S of the Code for 1998 or 1999 to report tuition received with respect to students taking only noncredit courses. Also, no reporting is required for 1998 or 1999 with respect to tuition paid by nonresident alien students, unless requested by the student.

Rev. Proc. 98–58, page 19.
Alternative minimum tax; change in accounting method. A procedure is provided to allow taxpayers to automatically change their method of accounting under section 446 of the Code for certain deferred payment sales contracts (relating to property used or produced in the trade or business of farming) to the installment method for alternative minimum tax purposes.

Finding Lists begin on page 23.

Department of the Treasury
Internal Revenue Service

The IRS Mission

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

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 semiannual basis and are published in the first Bulletin of the succeeding semiannual period, respectively.

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

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

Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 1998. See Rev. Rul. 98–57, page 4.

Section 56.—Adjustments in Computing Alternative Minimum Taxable Income

What procedures should taxpayers follow to obtain automatic consent to change their method of accounting for certain deferred payment sales contracts (relating to property used or produced in the trade or business of farming) to the installment method for alternative minimum tax purposes. See Rev. Proc. 98–58, page 19.

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of December 1998. See Rev. Rul. 98–57, page 4.

Section 382.—Limitation on Net Operating Loss Carryforwards and Certain Built-In Losses Following Ownership Change

The adjusted federal long-term rates is set forth for the month of December 1998. See Rev. Rul. 98–57, page 4.

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 1998. See Rev. Rul. 98–57, page 4.

Section 467.—Certain Payments for the Use of Property or Services

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 1998. See Rev. Rul. 98–57, page 4.

Section 468.—Special Rules for Mining and Solid Waste Reclamation and Closing Costs

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 1998. See Rev. Rul. 98–57, page 4.

Section 482.—Allocation of Income and Deductions Among Taxpayers

Federal short-term, mid-term, and long-term rates are set forth for the month of December 1998. See Rev. Rul. 98–57, page 4.

Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 1998. See Rev. Rul. 98–57, page 4.

Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of December 1998. See Rev. Rul. 98–57, page 4.

Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 1998. See Rev. Rul. 98–57, page 4.

Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 1998. See Rev. Rul. 98–57, page 4.

Section 1274.—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

(Also sections 42, 280G, 382, 412, 467, 468, 482, 483, 642, 807, 846, 1288, 7520, 7872.)

Federal rates; adjusted federal rates; adjusted federal long-term rate; and long-term exempt rate. For purposes of sections 1274, 1288, 382, and other sections of the Code, tables set forth the rates for December 1998.

Rev. Rul. 98–57

This revenue ruling provides various prescribed rates for federal income tax purposes for December 1998 (the current month.) Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(2) for buildings placed in service during the current month. Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520. Finally, Table 6 contains the 1999 interest rate for purposes of sections 846 and 807.

REV. RUL. 98–57 TABLE 1

Applicable Federal Rates (AFR) for December 1998

	Period for Compounding			
	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-Term				
AFR	4.33%	4.28%	4.26%	4.24%
110% AFR	4.77%	4.71%	4.68%	4.66%
120% AFR	5.21%	5.14%	5.11%	5.09%
130% AFR	5.64%	5.56%	5.52%	5.50%
Mid-Term				
AFR	4.52%	4.47%	4.45%	4.43%
110% AFR	4.98%	4.92%	4.89%	4.87%
120% AFR	5.43%	5.36%	5.32%	5.30%
130% AFR	5.89%	5.81%	5.77%	5.74%
150% AFR	6.82%	6.71%	6.65%	6.62%
175% AFR	7.97%	7.82%	7.75%	7.70%
Long-Term				
AFR	5.25%	5.18%	5.15%	5.12%
110% AFR	5.78%	5.70%	5.66%	5.63%
120% AFR	6.32%	6.22%	6.17%	6.14%
130% AFR	6.84%	6.73%	6.67%	6.64%

REV. RUL. 98–57 TABLE 2

Adjusted AFR for December 1998

	Period for Compounding			
	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-term adjusted AFR	3.20%	3.17%	3.16%	3.15%
Mid-term adjusted AFR	3.89%	3.85%	3.83%	3.82%
Long-term adjusted AFR	4.67%	4.62%	4.59%	4.58%

REV. RUL. 98–57 TABLE 3

Rates Under Section 382 for December 1998

Adjusted federal long-term rate for the current month	4.67%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months).	4.80%

REV. RUL. 98–57 TABLE 4	
Appropriate Percentages Under Section 42(b)(2) for December 1998	
Appropriate percentage for the 70% present value low-income housing credit	8.14%
Appropriate percentage for the 30% present value low-income housing credit	3.49%

REV. RUL. 98–57 TABLE 5	
Rate Under Section 7520 for December 1998	
Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest	5.4%

REV. RUL. 98-57 TABLE 6	
Rate Under Sections 846 and 807	
Applicable rate of interest for 1999 for purposes of sections 846 and 807	6.3%

Section 1288.—Treatment of Original Issue Discount on Tax-Exempt Obligations

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 1998. See Rev. Rul. 98–57, page 4.

Section 6321.—Lien for Taxes

Ct.D. 2063*

SUPREME COURT
OF THE UNITED STATES

No. 96–1613

UNITED STATES v. ESTATE OF FRANCIS J. ROMANI ET AL.

523 U.S. __ (1998)

CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA, WESTERN DISTRICT

APRIL 19,1998

Syllabus

After a third party perfected a $400,000 judgment lien under Pennsylvania law on Francis Romani's Cambria County real property, the Internal Revenue Service filed notices of tax liens on the property, totaling some $490,000. When Mr. Romani died, his entire estate consisted of real estate worth only $53,001. Because the property was encumbered by both the judgment lien and the federal tax liens, the estate's administrator sought the county court's permission to transfer the property to the judgment creditor in lien of execution. The court authorized the conveyance, overruling the Federal Government's objection that the transfer violated the federal priority statute, 31 U.S.C. §3713(a), which provides that a Government claim "shall be paid first" when a decedent's estate cannot pay all of its debts. The Superior Court of Pennsylvania affirmed, as did the Pennsylvania Supreme Court. The latter court determined that there was a "plain inconsistency" between §3713 and the Federal Tax Lien Act of 1966, which provides that a federal tax lien "shall not be valid" against judgment lien creditors until a prescribed notice has been given, 26 U.S.C. §6323(a). The court concluded that the 1966 Act effectively limited §3713's operation as to tax debts, relying on *United States* v. *Kimbell Foods, Inc.*, 440 U.S. 715, 738, which noted that the 1966 Act modified the Government's preferred position in the tax area and recognized the priority of many state claims over federal tax liens.

Held: Section 3713(a) does not require that a federal tax claim be given preference over a judgment creditor's perfected lien on real property. Pp. 4–17.

(a) There is no dispute about the meaning of either the Pennsylvania lien statute or the Tax Lien Act. It is undisputed that, under the state law, the judgment creditor acquired a valid lien on Romani's real property before his death and before the Government served notice of its tax liens. That lien was therefore perfected in the sense that there is nothing more to be done to have a choate lien. *E.g., United States* v. *City of New Britain*, 347 U.S. 81, 84. And a review of the Tax Lien Act's history reveals that each time Congress has revisited the federal tax lien, it has ameliorated pre-existing harsh consequences for the delinquent taxpayer's other secured creditors. Here, all agree that by §6323(a)'s terms, the Government's liens are not valid as against the earlier recorded judgment lien. Pp. 4–7.

(b) Because this Court has never definitively resolved the basic question whether the federal priority statute gives the United States a preference only over

*Corrected due to typographical errors in *United States* v. *Estate of Francis J. Romani, et al.*, 1998–36 I.R.B. 13.

other unsecured creditors, or whether it also applies to the antecedent perfected liens of secured creditors, see, *e.g., United States* v. *Vermont,* 377 U.S. 351, 358, n. 8, it does not seem appropriate to view the issue here as whether the Tax Lien Act has implicitly amended or repealed §3713(a). Instead, the proper inquiry is how best to harmonize the two statutes' impact on the Government's power to collect delinquent taxes. Pp. 7–12.

(c) Nothing in the federal priority statute's text or its long history justifies the conclusion that it authorizes the equivalent of a secret lien as a substitute for the expressly authorized tax lien that the Tax Lien Act declares "shall not be valid" in a case of this kind. On several occasions, this Court has concluded that a specific policy embodied in a later federal statute should control interpretation of the older federal priority statute, despite that law's literal, unconditional text and the fact that it had not been expressly amended by the later Act. See, *e.g., Cook County Nat. Bank* v. *United States,* 107 U.S. 445, 448–451. *United States* v. *Emory,* 314 U.S. 423, 429–433, and *United States* v. *Key,* 397 U.S. 322, 324–333, distinguished. So too here, there are sound reasons for treating the Tax Lien Act as the governing statute. That Act is the later statute, the more specific statute, and its provisions are comprehensive, reflecting an obvious attempt to accommodate the strong policy objections to the enforcement of secret liens. It represents Congress' detailed judgment as to when the Government's claims for unpaid taxes should yield to many different sorts of interests (including, *e.g.,* judgment liens, mechanic's liens, and attorneys' liens) in many different types of property (including, *e.g.,* real property, securities, and motor vehicles). See §6323. Indeed, given this Court's unambiguous determination that the federal interest in the collection of taxes is paramount to its interest in enforcing other claims, see *Kimbell Foods, Inc.,* 440 U.S., at 733–735, it would be anomalous to conclude that Congress intended the priority statute to impose greater burdens on the citizen than those specifically crafted for tax collection purposes. Pp. 12–17.

___ Pa. ___, 688 A. 2d 703, affirmed.

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

SUPREME COURT OF THE UNITED STATES

No. 96–1613

UNITED STATES, PETITIONER *v.* ESTATE OF FRANCIS J. ROMANI ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA, WESTERN DISTRICT

[April, 29, 1998]

JUSTICE STEVENS delivered the opinion of the Court.

The federal priority statute, 31 U.S.C. §3713(a), provides that a claim of the United States Government "shall be paid first" when a decedent's estate cannot pay all of its debts.[1] The question presented is whether that statute requires that a federal tax claim be given preference over a judgment creditor's perfected lien on real property even though such a preference is not authorized by the Federal Tax Lien Act of 1966, 26 U. S. C. §6321 *et seq.*

I

On January 25, 1985, the Court of Common Pleas of Cambria County, Pennsylvania, entered a judgment for $400,000 in favor of Romani Industries, Inc., and against Francis J. Romani. The judgment was recorded in the clerk's office and therefore, as a matter of Pennsylvania law, it became a lien on all of the defendant's real property in Cambria County. Thereafter, the Internal Revenue Service filed a series of notices of tax liens on Mr. Romani's property. The claims for unpaid taxes, interest and penalties described in those notices amounted to approximately $490,000.

When Mr. Romani died on January 13, 1992, his entire estate consisted of real estate worth only $53,001. Because the property was encumbered by both the judgment lien and the federal tax liens, the estate's administrator sought permission from the Court of Common Pleas to transfer the property to the judgment creditor, Romani Industries, in lieu of execution. The Federal Government acknowledged that its tax liens were not valid as against the earlier judgment lien; but, giving new meaning to Franklin's aphorism that "in this world nothing can be said to be certain, except death and taxes,"[2] it opposed the transfer on the ground that the priority statute (§3713) gave it the right to "be paid first."

The Court of Common Pleas overruled the Government's objection and authorized the conveyance. The Superior Court of Pennsylvania affirmed, and the Supreme Court of the State also affirmed. 547 Pa. 41, 688 A. 2d 703 (1997). That court first determined that there was a "Plain inconsistency" between §3713, which appears to give the United States "absolute priority" over all competing claims, and the Tax Lien Act of 1966, which provides that the federal tax lien "shall not be valid" against judgment lien creditors until a prescribed notice has been given. *Id.,* at 45, 688 A. 2d, at 705.[3] Then, relying on the reasoning in *United*

[1] "§3713. Priority of Government claims

"(a)(1) A claim of the United States Government shall be paid first when—

"(A) a person indebted to the Government is insolvent and—

"(i) the debtor without enough property to pay all debts makes a voluntary assignment of property;

"(ii) property of the debtor, if absent, is attached; or

"(iii) an act of bankruptcy is committed; or

"(B) the estate of a deceased debtor, in the custody of the executor or administrator, is not enough to pay all debts of the debtor.

"(2) This subsection does not apply to a case under title ll." 31 U.S.C. §3713.

The present statute is the direct descendent of §3466 of the Revised Statutes, which had been codified in 31 U. S. C. §191.

[2] Letter of November 13, 1789 to Jean Baptiste Le Roy, in 10 The Writings of Benjamin Franklin 69 (A. Smyth ed. 1907). As is often the case, the original meaning of the aphorism is clarified somewhat by its context: "Our new Constitution is now established, and has an appearance that promises permanency; but in this world nothing can be said to be certain, except death and taxes." *Ibid.*

[3] The Federal Tax Lien Act of 1966, 26 U.S.C. §6321 *et seq.*, provides in pertinent part:

"§6321. Lien for taxes

"If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and

States v. *Kimbell Foods, Inc.*, 440 U. S. 715 (1979), which had noted that the Tax Lien Act of 1966 modified the Federal Government's preferred position in the tax area and recognized the priority of many state claims over federal tax liens, *id.*, at 738, the court concluded that the 1966 Act had the effect of limiting the operation of §3713 as to tax debts.

The decision of the Pennsylvania Supreme Court conflicts with two federal court of appeals decisions, *Kentucky ex rel. Luckett* v. *United States*, 383 F. 2d 13 (CA6 1967), and *Nesbitt* v. *United States*, 622 F. 2d 433 (CA9 1980). Moreover, in its petition for certiorari, the Government submitted that the decision is inconsistent with our holding in *Thelusson* v. *Smith*, 2 Wheat. 396 (1817), and with the admonition that "'[o]nly the plainest inconsistency would warrant our finding an implied exception to the operation of so clear a command as that of [31 U.S.C. §3713],'" *United States* v. *Key*, 397 U.S. 322, 324–325 (1970) (quoting *United States* v. *Emory*, 314 U.S. 423, 433 (1941)). We granted certiorari, 521 U.S. __ (1997), to resolve the conflict and to consider whether *Thelusson*, *Key*, or any of our other cases construing the priority statute requires a different result.

II

There is no dispute about the meaning of two of the three statutes that control the disposition of this case. It is therefore appropriate to comment on the Pennsylvania lien statute and the Federal Tax Lien Act before considering the applicability of the priority statute to property encumbered by an antecedent judgment creditor's lien.

The Pennsylvania statute expressly provides that a judgment shall create a lien against real property when it is recorded in the county where the property is located. 42 Pa. Cons. Stat. §4303(a) (1995). After the judgment has been recorded, the judgment creditor has the same right to notice of a tax sale as a mortgagee.[4] The recording in one county does not, of course, create a lien on property located elsewhere. In this case, however, it is undisputed that the judgment creditor acquired a valid lien on the real property in Cambria County before the judgment debtor's death and before the Government served notice of its tax liens. Romani Industries' lien was "perfected in the sense that there is nothing more to be done to have a choate lien—when the identity of the lienor, the property subject to the lien, and the amount of the lien are established." *United States* v. *City of New Britain*, 347 U.S. 81, 84 (1954); see also *Illinois ex rel. Gordon* v. *Campbell*, 329 U.S. 362, 375 (1946).

The Federal Government's right to a lien on a delinquent taxpayer's property has been a part of our law at least since 1865.[5] Originally the lien applied, without exception, to all property of the taxpayer immediately upon the neglect or failure to pay the tax upon demand.[6] An unrecorded tax lien against a delinquent taxpayer's property was valid even against a bona fide purchaser who had no notice of the lien. *United States* v. *Snyder*, 149 U.S. 210, 213–215 (1893). In 1913, Congress amended the statute to provide that the federal tax lien "shall not be valid as against any mortgagee, purchaser, or judgment creditor" until notice has been filed with the clerk of the federal district court or with the appropriate local authorities in the district or county in which the property subject to the lien is located. Act of Mar. 4, 1913, 37 Stat. 1016. In 1939, Congress broadened the protection against unfiled tax liens to include pledgees and the holders of certain securities. Act of June 29, 1939, §401, 53 Stat. 882–883. The Federal Tax Lien Act of 1966 again broadened that protection to encompass a variety of additional secured transactions, and also included detailed provisions protecting certain secured interests even when a notice of the federal lien previously has been filed. 80 Stat. 1125–1132, as amended, 26 U.S.C. §6323.

In sum, each time Congress revisited the federal tax lien, it ameliorated its original harsh impact on other secured creditors of the delinquent taxpayer.[7] In this case, it is agreed that by the terms of §6323(a), the Federal Government's liens are not valid as against the lien created by

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rights to property, whether real or personal, belonging to such person."

"§6323. Validity and priority against certain persons

"(a) Purchasers, holders of security interests, mechanic's lienors, and judgment lien creditors

"The lien imposed by section 6321 shall not be valid as against any purchaser, holder of a security interest, mechanic's lienors, or judgment lien creditor until notice thereof which meets the requirements of subsection (f) has been filed by the Secretary."

Section 6323(f)(1)(A)(i) provides that the required notice 'shall be filed . . . [i]n the case of real property, in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated." If the State has not designated such an office, notice is to be filed with the clerk of the federal district court "for the judicial district in which the property subject to the lien is situated." §6323(f)(1)(B).

[4]The Pennsylvania Supreme Court has elaborated:

"We must now decide whether judgment creditors are also entitled to personal or general notice by the [County Tax Claim] Bureau as a matter of due process of law.

"Judgment liens are a product of centuries of statutes which authorize a judgment creditor to seize and sell the land of debtors at a judicial sale to satisfy their debts out of the proceeds of the sale. The judgment represents a binding judicial determination of the rights and duties between the parties, and establishes their debtor-creditor relationship for all the world to notice when the judgment is recorded in a Prothonotary's Office. When entered of record, the judgment also operates as a lien upon all real property of the debtor in that county." *In re Upset Sale, Tax Claim Bureau of Berks County*, 505 Pa. 327, 334, 479 A. 2d 940, 943 (1984).

[5]The post-Civil War Reconstruction Congress imposed a tax of three cents per pound on "the producer, owner, or holder" of cotton and a lien on the cotton until the tax was paid. Act of July 13, 1866, §l, 14 Stat. 98. The same statute also imposed a general lien on all of a delinquent taxpayer's property, see §9, 14 Stat. 107, which was nearly identical to a provision in the revenue act of Mar. 3, 1865, 13 Stat. 470–471, quoted in n. 6, *infra*.

[6]The 1865 revenue act contained the following sentence: "And if any person, bank, association, company, or corporation, liable to pay any duty, shall neglect or refuse to pay the same after demand, the amount shall be a lien in favor of the United States from the time it was due until paid, with the interests, penalties, and costs that may accrue in addition thereto, upon all property and rights to property; and the collector, after demand, may levy or by warrant may authorize a deputy collector to levy upon all property and rights to property belonging to such person, bank, association, company, or corporation, or on which the said lien exists, for the payment of the sum due as aforesaid, with interest and penalty for non-payment, and also of such further sum as shall be sufficient for the fees, costs, and expenses of such levy." 13 Stat. 470–471. This provision, as amended, became §3186 of the Revised Statutes.

[7]For a more thorough description of the early history and of Congress' reactions to this Court's tax lien decisions, see Kennedy, The Relative Priority of the Federal Government: The Pernicious Career of the Inchoate and General Lien, 63 Yale L.J. 905, 919–922 (1954) (hereinafter Kennedy).

the earlier recording of Romani Industries' judgment.

III

The text of the priority statute on which the Government places its entire reliance is virtually unchanged since its enactment in 1797.[8] As we pointed out in *United States* v. *Moore*, 423 U.S. 77 (1975), not only were there earlier versions of the statute,[9] but "its roots reach back even further into the English common law," *id.*, at 80. The sovereign prerogative that was exercised by the English Crown and by many of the States as "an inherent incident of sovereignty," *ibid.*, applied only to unsecured claims. As Justice Brandeis noted in *Marshall* v. *New York*, 254 U.S. 380, 384 (1920), the common law priority "[did] not obtain over a specific lien created by the debtor before the sovereign undertakes to enforce its right." Moreover, the statute itself does not create a lien in favor of the United States.[10] Given this background, respondent argues that the statute should be read as giving the United States a preference over other unsecured creditors but not over secured creditors.[11]

There are dicta in our earlier cases that support this contention as well as dicta that tend to refute it. Perhaps the strongest support is found in Justice Story's statement:

> "What then is the nature of the priority, thus limited and established in favour of the United States? Is it a right, which supersedes and overrules the assignment of the debtor, as to any property which the United States may afterwards elect to take in execution, so as to prevent such property from passing by virtue of such assignment to the assignees? Or, is it a mere right of prior payment, out of the general funds of the debtor, in the hands of the assignees? We are of opinion that it clearly falls, within the latter description. The language employed is that which naturally would be employed to express such an intent; and it must be strained from its ordinary import, to speak any other." *Conard* v. *Atlantic Ins. Co. of N.Y.*, 1 Pet. 386,439 (1828).

Justice Story's opinion that the language employed in the statute "must be strained" to give it any other meaning is entitled to special respect because he was more familiar with 18th-century usage than judges who view the statute from a 20th-century perspective.

We cannot, however, ignore the Court's earlier judgment in *Thelusson* v. *Smith*, 2 Wheat. 396, 426 (1817), or the more recent dicta in *United States* v. *Key*, 397 U.S. 322, 324–325 (1970). In *Thelusson*, the Court held that the priority statute gave the United States a preference over the claim of a judgment creditor who had a general lien on the debtor's real property. The Court's brief opinion[12] is subject to the interpretation that the statutory priority always accords the Government a preference over judgment creditors. For two reasons, we do not accept that reading of the opinion.

First, as a factual matter, in 1817 when the case was decided, there was no procedure for recording a judgment and thereby creating a choate lien on a specific parcel of real estate. See generally 2 L. Dembitz, A Treatise on Land Titles in the United States §127, pp. 948–952 (1895). Notwithstanding the judgment, a bona fide purchaser could have acquired the debtor's property free from any claims of the judgment creditor. See *Semple* v. *Burd*, 7 Serg. & Rawle 286, 291 (Pa. 1821) ("The prevailing object of the Legislature, has uniformly been, to support the security of a judgment creditor, by confirming his lien, except when it interferes with the circulation of property by embarrassing a fair purchaser"). That is not the case with respect to Romani Industries' choate lien on the property in Cambria County.

Second, and of greater importance, in his opinion for the Court in the *Conard*

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[8]The Act of Mar. 3, 1797, §5, 1 Stat. 515, provided:

"*And be it further enacted*, That where any revenue officer, or other person hereafter becoming indebted to the United States, by bond or otherwise, shall become insolvent, or where the estate of any deceased debtor, in the hands of executors or administrators, shall be insufficient to pay all the debts due from the deceased, the debt due to the United States shall be first satisfied; and the priority hereby established shall be deemed to extend, as well to cases in which a debtor, not having sufficient property to pay all his debts, shall make a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor, shall be attached by process of law, as to cases in which an act of legal bankruptcy shall be committed." Compare §3466 of the Revised Statutes, and the present statute quoted in n. 1, *supra.*

It has long been settled that the federal priority covers the Government's claims for unpaid taxes. *Price* v. *United States*, 269 U.S. 492, 499–502 (1926); *Massachusetts* v. *United States*, 333 U.S. 611, 625–626, and n. 24 (1948).

[9]"The earliest priority statute was enacted in the Act of July 31, 1789, 1 Stat. 29, which dealt with bonds posted by importers in lieu of payment of duties for release of imported goods. It provided that the 'debt due to the United States' for such duties shall be discharged first 'in all cases of insolvency, or where any estate in the hands of executors or administrators shall be insufficient to pay all the debts due from the deceased . . . .' §21, 1 Stat. 42. A 1792 enactment broadened the Act's coverage by providing that the language 'cases of insolvency, should be taken to include cases in which a debtor makes a voluntary assignment for the benefit of creditors, and the other situations that §3466, 31 U.S.C.§191, now covers. l Stat. 263." *United States* v. *Moore*, 423 U.S., at 81.

[10]"In construing the statutes on this subject, it has been stated by the court, on great deliberation, that the priority to which the United States are entitled, does not partake of the character of a lien on the property of public debtors. This distinction is always to be recollected." *United States* v. *Hooe*, 3 Cranch 73, 90 (1805).

[11]Although this argument was not presented to the state courts, respondent may defend the judgment on a ground not previously raised. *Heckler* v. *Campbell*, 461 U.S. 458, 468–469, n. 12 (1983). We will rarely consider such an argument, however. *Ibid.;* see also *Matsushita Elec. Industrial Co.* v. *Epstein*, 516 U.S. 367, 379, n. 5 (1996).

[12]The relevant portion of the opinion reads, in full, as follows:

"These [statutory] expressions are as general as any which could have been used, and exclude all debts due to individuals, whatever may be their dignity. . . . The law makes no exception in favour of prior judgment creditors; and no reason has been, or we think can be, shown to warrant this court in making one. . . .

"The United States are to be first satisfied; but then it must be out of the debtor's estate. If, therefore, before the right of preference has accrued to the United States, the debtor has made a *bona fide* conveyance of his estate to a third person, or has mortgaged the same to secure a debt; or if his property has been seized under a *fi. fa.*, the property is devested out of the debtor, and cannot be made liable to the United States. A judgment gives to the judgment creditor a lien on the debtor's lands, and a preference over all subsequent judgment creditors. But the act of congress defeats this preference in favour of the United States, in the cases specified in the 65th section of the act of 1799." *Thelusson* v. *Smith*, 2 Wheat. 396, 425–426 (1817).

In the later *Conard* case, Justice Story apologized for *Thelusson:* "The reasons for that opinion are not, owing to accidental circumstances, as fully given as they are usually given in this Court." *Conard* v. *Atlantic Ins. Co. of N.Y.*, 1 Pet. 386, 442 (1828).

case, which was joined by Justice Washington, the author of *Thelusson*,[13] Justice Story explained why that holding was fully consistent with his interpretation of the text of the priority statute:

> "The real ground of the decision, was, that the judgment creditor had never perfected his title, by any execution and levy on the Sedgely estate; that he had acquired no title to the proceeds as his property, and that if the proceeds were to be deemed general funds of the debtor, the priority of the United States to payment had attached against all other creditors; and that a mere potential lien on land, did not carry a legal title to the proceeds of a sale, made under an adverse execution. This is the manner in which this case has been understood, by the Judges who concurred in the decision; and it is obvious, that it established no such proposition, as that a specific and perfected lien, can be displaced by the mere priority of the United States; since that priority is not of itself equivalent to a lien." *Conard*, 1 Pet., at 444.[14]

The Government also relies upon dicta from our opinion in *United States* v. *Key*, 397 U.S., at 324–325, which quoted from our earlier opinion in *United States* v. *Emory*, 314 U.S., at 433: "Only the plainest inconsistency would warrant our finding an implied exception to the operation of so clear a command as that of [§3713]." Because both *Key* and *Emory* were cases in which the competing claims were unsecured, the statutory command was perfectly clear even under Justice Story's construction of the statute. The statements made in that context, of course, shed no light on the clarity of the command when the United States relies on the statute as a basis for claiming a preference over a secured creditor. Indeed, the *Key* opinion itself made this specific point: "This case does not raise the question, never decided by this Court, whether §3466 grants the Government priority over the prior specific liens of secured creditors. See *United States* v. *Gilbert Associates, Inc.*, 345 U.S. 361, 365–366 (1953)." 397 U.S., at 332, n. 11.

The *Key* opinion is only one of many in which the Court has noted that despite the age of the statute, and despite the fact that it has been the subject of a great deal of litigation, the question whether it has any application to antecedent perfected liens has never been answered definitively. See *United States* v. *Vermont*, 377 U.S. 351, 358, n. 8 (1964) (citing cases). In his dissent in the *Gilbert Associates* case, Justice Frankfurter referred to the Court's reluctance to decide the issue "not only today but for almost a century and a half." 345 U.S., at 367.

The Government's priority as against specific, perfected security interests is, if possible, even less settled with regard to real property. The Court has sometimes concluded that a competing creditor who has not "divested" the debtor of "either title or possession" has only a "general, unperfected lien" that is defeated by the Government's priority. *E.g., id.*, at 366. Assuming the validity of this "title or possession" test for deciding whether a lien on personal property is sufficiently choate for purposes of the priority statute (a question of federal law, see *Illinois ex rel. Gordon* v. *Campbell*, 329 U.S., at 371), we are not aware of any decisions since *Thelusson* applying that theory to claims for real property, or of any reason to require a lienor or mortgagee to acquire possession in order to perfect an interest in real estate.

Given the fact that this basic question of interpretation remains unresolved, it does not seem appropriate to view the issue in this case as whether the Tax Lien Act of 1966 has implicitly amended or repealed the priority statute. Instead, we think the proper inquiry is how best to harmonize the impact of the two statutes on the Government's power to collect delinquent taxes.

IV

In his dissent from a particularly harsh application of the priority statute, Justice Jackson emphasized the importance of considering other relevant federal policies. Joined by three other Justices, he wrote:

> "This decision announces an unnecessarily ruthless interpretation of a statute that at its best is an arbitrary one. The statute by which the Federal Government gives its own claims against an insolvent priority over claims in favor of a state government must be applied by courts, not because federal claims are more meritorious or equitable, but only because that Government has more power. But the priority statute is an assertion of federal supremacy as against any contrary state policy. It is not a limitation on the Federal Government itself, not an assertion that the priority policy shall prevail over all other federal policies. Its generalities should not lightly be construed to frustrate a specific policy embodied in a later federal statute." *Massachusetts* v. *United States*, 333 U.S. 611, 635 (1948) (Jackson, J., dissenting).

On several prior occasions the Court had followed this approach and concluded that a specific policy embodied in a later federal statute should control our construction of the priority statute, even though it had not been expressly amended. Thus, in *Cook County Nat. Bank* v. *United States*, 107 U. S. 445, 448–451 (1883), the Court concluded that the priority statute did not apply to federal claims against national banks because the National Bank Act comprehensively regulated banks' obligations and the distribution of insolvent banks' assets. And in *United States* v. *Guaranty Trust Co. of N.Y.*, 280 U.S. 478, 485 (1930), we determined that the Transportation Act of 1920 had effectively superseded the priority statute with respect to federal claims against the railroads arising under that Act.

The bankruptcy law provides an additional context in which another federal statute was given effect despite the priority statute's literal, unconditional text. The early federal bankruptcy statutes had accorded to "'all debts due to the United States, and all taxes and assessments under the laws thereof'" a preference that was "coextensive" with that established by the priority statute. *Guarantee Title &*

[13]Justice Washington's opinion for this Court in *Thelusson* affirmed, and was essentially the same as, his own opinion delivered in the Circuit Court as a Circuit Justice. 2 Wheat., at 426, n. h.

[14]Relying on this and several other cases, in 1857 the Attomey General of the United States issued an opinion concluding that *Thelusson* "has been distinctly overruled" and that the priority of the United States under this statute "will not reach back over any lien, whether it be general or specific." 9 Op. Att. Gen. 28, 29. See also Kennedy 908–911 (advancing this same interpretation of the early priority act decisions).

Trust Co. v. *Title Guaranty & Surety Co.*, 224 U.S. 152, 158 (1992) (quoting the Bankruptcy Act of 1867, Rev. Stat. §5101). As such, the priority act and the bankruptcy laws "were to be regarded as *in pari materia* and both were unqualified; . . . as neither contained any qualification, none could be interpolated." *Ibid.* The Bankruptcy Act of 1898, however, subordinated the priority of the Federal Government's claims (except for taxes due) to certain other kinds of debts. This Court resolved the tension between the new bankruptcy provisions and the priority statute by applying the former and thus treating the Government like any other general creditor. *Id.,* at 158–160; *Davis* v. *Pringle,* 268 U.S. 315, 317–319 (1925).[15]

There are sound reasons for treating the Tax Lien Act of 1966 as the governing statute when the Government is claiming a preference in the insolvent estate of a delinquent taxpayer. As was the case with the National Bank Act, the Transportation Act of 1920, and the Bankruptcy Act of 1898, the Tax Lien Act is the later statute, the more specific statute, and its provisions are comprehensive, reflecting an obvious attempt to accommodate the strong policy objections to the enforcement of secret liens. It represents Congress' detailed judgment as to when the Government's claims for unpaid taxes should yield to many different sorts of interests (including, for instance, judgment liens, mechanic's liens, and attorneys' liens) in many different types of property (including, for example, real property, securities, and motor vehicles). See 26 U.S.C. §6323. Indeed, given our unambiguous determination that the federal interest in the collection of taxes is paramount to its interest in enforcing other claims, see *United States* v. *Kimbell Foods' Inc.*, 440 U.S., at 733–735, it would be anomalous to conclude that Congress intended the priority statute to impose greater burdens on the citizen than those specifically crafted for tax collection purposes.

Even before the 1966 amendments to the Tax Lien Act, this Court assumed that the more recent and specific provisions of that Act would apply were they to conflict with the older priority statute. In the *Gilbert Associates* case, which concerned the relative priority of the Federal Government and a New Hampshire town to funds of an insolvent taxpayer, the Court first considered whether the town could qualify as a "judgment creditor" entitled to preference under the Tax Lien Act. 345 U.S., at 363–364. Only after deciding that question in the negative did the Court conclude that the United States obtained preference by operation of the priority statute. *Id.,* at 365–366. The Government would now portray *Gilbert Associates* as a deviation from two other relatively recent opinions in which the Court held that the priority statute was not trumped by provisions of other statutes: *United States* v. *Emory,* 314 U.S., at 429–433 (the National Housing Act), and *United States* v. *Key,* 397 U.S., at 324–333 (Chapter X of the Bankruptcy Act). In each of those cases, however, there was no "plain inconsistency" between the commands of the priority statute and the other federal act, nor was there reason to believe that application of the priority statute would frustrate Congress' intent. *Id.,* at 329. The same cannot be said in the present suit.

The Government emphasizes that when Congress amended the Tax Lien Act in 1966, it declined to enact the American Bar Association's proposal to modify the federal priority statute, and Congress again failed to enact a similar proposal in 1970. Both proposals would have expressly provided that the Government's priority in insolvency does not displace valid liens and security interests, and therefore would have harmonized the priority statute with the Tax Lien Act. See Hearings on H.R. 11256 and 11290 before the House Committee on Ways and Means, 89th Cong., 2d Sess., 197 (1966) (hereinafter Hearings); S. 2197, 92d Cong., lst Sess. (1971). But both proposals also would have significantly changed the priority statute in many other respects to follow the priority scheme created by the bankruptcy laws. See Hearings, at 85, 198; Plumb 10, n. 53, 33–37. The earlier proposal may have failed because its wide-ranging subject matter was beyond the House Ways and Means Committee's jurisdiction. Plumb 8. The failure of the 1970 proposal in the Senate Judiciary Committee—explained by no reports or hearings—might merely reflect disagreement with the broad changes to the priority statute, or an assumption that the proposal was not needed because, as Justice Story had believed, the priority statute does not apply to prior perfected security interests, or any number of other views. Thus, the Committees' failures to report the proposals to the entire Congress do not necessarily indicate that any legislator thought that the priority statute should supersede the Tax Lien Act in the adjudication of federal tax claims. They provide no support for the hypothesis that both Houses of Congress silently endorsed that position.

The actual measures taken by Congress provide a superior insight regarding its intent. As we have noted, the 1966 amendments to the Tax Lien Act bespeak a strong condemnation of secret liens, which unfairly defeat the expectations of innocent creditors and frustrate "the needs of our citizens for certainty and convenience in the legal rules governing their commercial dealings." 112 Cong. Rec. 22227 (1966) (remarks of Rep. Byrnes); cf. *United States* v. *Speers,* 382 U.S. 266, 275 (1965) (referring to the general policy against secret liens"). These policy concerns shed light on how Congress would want the conflicting statutory provisions to be harmonized:

> "Liens may be a dry-as-dust part of the law, but they are not without significance in an industrial and commercial community where construction and credit are thought to have importance. One does not readily impute to Congress the intention that many common commercial liens should be congenitally unstable." E. Brown, The Supreme Court, 1957 Term—Foreword: Process of Law, 72 Harv. L. Rev. 77, 87 (1958) (footnote omitted).

In sum, nothing in the text or the long history of interpreting the federal priority

[15]Congress amended the priority statute in 1978 to make it expressly inapplicable to Title 11 bankruptcy cases. Pub. L. 95–598, §322(b), 92 Stat. 2679, codified in 31 U.S.C. §3713(a)(2). The differences between the bankruptcy laws and the priority statute have been the subject of criticism: "as a result of the continuing discrepancies between the bankruptcy and insolvency rules, some creditors have had a distinct incentive to throw into bankruptcy a debtor whose case might have been handled, with less expense and less burden on the federal courts, in another form of proceeding." Plumb, The Federal Priority in Insolvency: Proposals for Reform, 70 Mich. L. Rev. 3, 8–9 (1971) (hereinafter Plumb).

statute justifies the conclusion that it authorizes the equivalent of a secret lien as a substitute for the expressly authorized tax lien that Congress has said "shall not be valid" in a case of this kind.

The judgment of the Pennsylvania Supreme Court is affirmed.

It is so ordered.

JUSTICE SCALIA, concurring in part and concurring in the judgment.

I join the opinion of the Court except that portion which takes seriously, and thus encourages in the future, an argument that should be laughed out of court. The Government contended that 31 U.S.C. §3713(a) must have priority over the Federal Tax Lien Act of 1966, because in 1966 and again in 1970 Congress "failed to enact" a proposal put forward by the American Bar Association that would have subordinated §3713(a) to the Tax Lien Act, citing hearings before the House Committee on Ways and Means, and a bill proposed in, but not passed by, the Senate. See Brief for United States 25–27, and n. 10 (citing American Bar Association, Final Report of the Committee on Federal Liens 7, 122–124 (1959), contained in Hearings on H.R. 11256 and 11290 before the House Committee an Ways and Means, 89th Cong., 2d Sess., 85, 199 (1966); S. 2197, 92d Cong., lst Sess. (1971)). The Court responds that these rejected proposals "provide no support for the hypothesis that both Houses of Congress silently endorsed" the supremacy of §3713, *ante,* at 16, because those proposals contained other provisions as well, and might have been rejected because of those other provisions, or because Congress thought the existing law already made §3713 supreme. This implies that, if the proposals had not contained those additional features, or if Members of Congress (or some part of them) had somehow made clear in the course of rejecting them that they wanted the existing supremacy of the Tax Lien Act to subsist, the rejection *would* "provide support" for the Government's case.

That is not so, for several reasons. First and most obviously, Congress can not express its will by a *failure* to legislate. The act of refusing to enact a law (if that can be called an act) has utterly no legal effect, and thus has utterly no place in a serious discussion of the law. The Constitution sets forth the only manner in which the Members of Congress have the power to impose their will upon the country: by a bill that passes both Houses and is either signed by the President or repassed by a supermajority after his veto. Art. I, §7. Everything else the Members of Congress do is either prelude or internal organization. Congress can no more express its will by not legislating than an individual Member can express his will by not voting.

Second, even if Congress *could* express its will by not legislating, the will of a later Congress that a law enacted by an earlier Congress should bear a particular meaning is of no effect whatever. The Constitution puts Congress in the business of writing new laws, not interpreting old ones. "[L]ater-enacted laws . . . do not declare the meaning of earlier law." *Almendarez-Torres* v. *United States,* 523 U.S. __ (1998) (slip op., at 12); *id.,* at __ (SCALIA, J., dissenting) ("This later amendment can of course not cause [the statute] to have meant, at the time of petitioner's conviction, something different from what it then said") (slip op., at 23). If the *enacted* intent of a later Congress cannot change the meaning of an earlier statute, then it should go without saying that the later *unenacted intent* cannot possibly do so. It should go without saying, and it should go without arguing as well.

I have in the past been critical of the Court's using the so-called legislative history of an enactment (hearings, committee reports, and floor debates) to determine its meaning. See, *e.g., Conroy* v. *Aniskoff,* 507 U.S. 511, 518–529 (1993) (SCALIA, J., concurring in judgment); *United States* v. *Thompson/Center Arms Co.,* 504 U.S. 505, 521 (1992) (SCALIA, J., concurring in judgment); *Blanchard* v. *Bergeron,* 489 U.S. 87, 98–100 (1989) (SCALIA, J., concurring in part and concurring in judgment). Today, however, the Court's fascination with the files of Congress (we must consult them, because they are there) is carried to a new silly extreme. Today's opinion ever-so-carefully analyzes, not legislative history, but the history of legislation-that-never-was. If we take this sort of material seriously, we require conscientious counsel to investigate (at clients' expense) not only the hearings, committee reports, and floor debates pertaining to the history of the law at issue (which is bad enough), but to find, and then investigate the hearings, committee reports, and floor debates pertaining to, later bills on the same subject that were never enacted. This is beyond all reason, and we should say so.

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 1998. See Rev. Rul. 98–57, page 4.

Section 7872.—Treatment of Loans With Below-Market Interest Rates

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 1998. See Rev. Rul. 98–57, page 4.

Administrative Appeal of Adverse Determination of Tax-Exempt Status of Bond Issue

Notice 98–58

This notice provides a proposed revenue procedure that, when finalized, will provide the procedures for issuers to request an administrative appeal of an adverse determination by the Employee Plans/Exempt Organizations Key District (District) that interest on their debt obligations (Bond Issue) is not excludable from gross income under § 103 of the Internal Revenue Code. Beginning December 7, 1998, issuers may use the procedures set forth in the proposed revenue procedure until it is finalized. The revenue procedure also modifies the Internal Revenue Service's existing procedures that the District must receive a technical advice memorandum from Assistant Chief Counsel (Financial Institutions & Products) that is unfavorable to the issuer prior to declaring that the interest on the Bond Issue is not excludable from gross income under § 103 of the Code, and makes other modifications to the examination process made appropriate by the Internal Revenue Service Restructuring and Reform Act of 1998, P.L. 105–206 (the Act).

Section 3105 of the Act directs the Service to modify its administrative procedures to allow issuers to appeal an adverse determination. The Act requires that the appeals be heard by senior officers of the Office of Appeals (Appeals) having experience in resolving complex cases. An issuer, having received an adverse determination following an examination of its Bond Issue, may protest the determination to Appeals before the interest on the Bond Issue is declared not excludable from gross income under § 103 of the Code. The appeal is optional and is initiated by the issuer.

Section 3465 of the Act provides that the Service shall prescribe procedures by which a taxpayer may request early referral of one or more unresolved issues to Appeals. Certain issues arising during an examination of a Bond Issue may be appropriate for early referral. For an example of how early referral operates, see Rev. Proc. 96–9, 1996–1 C.B. 575, which describes the method by which a Coordinated Examination Program taxpayer requests early referral of one or more unagreed issues from Examination to Appeals. The Service is developing new procedures for early referral and seeks comments regarding the applicability of early referral procedures to examinations of Bond Issues.

The Service welcomes comments on the proposed revenue procedure provided in this notice and on the application of the early referral program to Bond Issues. Comments should be submitted by March 7, 1999, either to:

National Director of Appeals
901 D Street, S.W.
Box 68
Washington, D.C. 20024
Attn: C:AP:ADR&CS, Room 236

or electronically via: http:/www.irs.ustreas.gov/prod/tax_regs/comments.html (the Service Internet site).

Part IV - Items of General Interest

ADMINISTRATIVE APPEAL OF ADVERSE DETERMINATION OF TAX-EXEMPT STATUS OF BOND ISSUE

PROPOSED REVENUE PROCEDURE

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SECTION 1. PURPOSE

As required by § 3105 of the Internal Revenue Service Restructuring and Reform Act of 1998, P.L. 105–206 (the Act), this revenue procedure provides procedures for issuers to request an administrative appeal to the Office of Appeals (Appeals) of an adverse determination by an Employee Plans/Exempt Organizations Key District (the District) that the interest on their debt obligations (the Bond Issue) is not excludable from gross income under § 103 of the Internal Revenue Code. This revenue procedure also modifies the Internal Revenue Service's existing procedures that the District must receive a technical advice memorandum from Assistant Chief Counsel (Financial Institutions & Products) that is unfavorable to the issuer prior to declaring that the interest on the Bond Issue is not excludable from gross income under § 103 of the Code, and makes other modifications to the examination process made appropriate by the Act.

SECTION 2. BACKGROUND

Examination procedures set forth in Announcement 95-61, 1995-33 I.R.B. 25,

provide that an agent may, in consultation with District Counsel, arrive at a preliminary adverse determination that interest on a Bond Issue is not excludable from gross income under § 103 of the Code. If the District determines that a closing agreement is appropriate, the agent generally will inform the issuer, orally or in writing, of the agent's preliminary adverse determination and give the issuer an opportunity to enter into a closing agreement. If the issuer and the District fail to reach an agreement, Internal Revenue Manual section 7(10)7(11) and the examination procedures require that prior to declaring that the interest on a Bond Issue is not excludable from gross income under § 103 of the Code, the District must receive a technical advice memorandum from Assistant Chief Counsel (Financial Institutions & Products) that is unfavorable to the issuer. If the technical advice memorandum concludes that interest on the Bond Issue is not excludable from gross income under § 103 of the Code, the District may proceed with its determination that interest on the Bond Issue is not excludable from gross income when received or accrued by bondholders. Under existing procedures, the issuer may not request an appeal of the District's adverse determination.

Section 3105 of the Act directs the Service to modify its administrative procedures to allow issuers to appeal an adverse determination. An issuer, having received an adverse determination following an examination of its Bond Issue, may protest the determination to Appeals before the interest on the Bond Issue is declared not excludable from gross income under § 103 of the Code.

SECTION 3. SCOPE

.01 In general. All issues raised by the District during an examination of a Bond Issue that would cause the interest on the Bond Issue not to be excludable from gross income under § 103 of the Code are appropriate for consideration by Appeals. The appeal is optional and is initiated by the issuer as described below.

.02 Issuers may request technical advice referral. For purposes of examining Bond Issues, issuers are treated as taxpayers. Thus, the procedures for requesting technical advice referral that apply to all taxpayers apply to issuers of Bond Issues under examination. See § 601.105 *et seq.* of the Statement of Procedural Rules and Rev. Proc. 98–2, 1998–1 I.R.B. 74, or subsequent procedure.

.03 Early referral. Section 3465 of the Act provides that the Service shall prescribe procedures by which a taxpayer may request early referral of one or more unresolved issues to Appeals. Prior to the adoption of generally applicable early referral procedures, an issuer may make a separate request to the District for the early referral to Appeals of one or more issues regarding a Bond Issue set forth in section 3.01.

SECTION 4. ADMINISTRATIVE APPEAL PROCESS

.01 In general. Sections 4.03, 4.04, and 4.05 describe the circumstances in which an issuer may appeal an adverse determination by the District that interest on a Bond Issue is not excludable from gross income under § 103 of the Code. Following the receipt of a written notice from the District described in sections 4.03(b), 4.04(b), or 4.05(b), the issuer may request an appeal in accordance with section 5.

.02 Consultations with District Counsel. Prior to issuing a preliminary adverse determination to the issuer regarding the excludability of interest on the Bond Issue from gross income under § 103 of the Code, the District will consult with District Counsel regarding whether technical advice should be requested by the District. Technical advice should be requested, for example, when there is a lack of uniformity regarding the disposition of an issue or when an issue is unusual or complex enough to warrant consideration by the National Office.

.03 The District requests technical advice. (a) If the District, in consultation with District Counsel, determines that technical advice is warranted, the District will follow the procedures for requesting technical advice set forth in § 601.105 *et seq.* of the Statement of Procedural Rules and Rev. Proc. 98–2, 1998–1 I.R.B. 74. If the National Office issues a technical advice memorandum to the District, the District will notify the issuer, in writing, of its determination.

(b) The written notice will identify the Bond Issue under examination, include a copy of the technical advice memorandum and, if the District's determination is adverse to the issuer, inform the issuer of the availability of an administrative appeal of the adverse determination.

.04 The issuer requests technical advice referral. (a) If the District, after consultation with District Counsel, determines that technical advice is not necessary, the District will notify the issuer, in writing, of its preliminary adverse determination that the interest on the Bond Issue is not excludable from gross income under § 103 of the Code, and provide the issuer with an opportunity to have closing agreement discussions. The notice will also inform the issuer that it may request technical advice referral in accordance with § 601.105 *et seq.* of the Statement of Procedural Rules. If the issuer requests technical advice referral, such request will be made, and considered, in accordance with the procedures set forth in § 601.105 *et seq.* of the Statement of Procedural Rules and Rev. Proc. 98–2, 1998–1 I.R.B. 74, or subsequent procedure. If the National Office issues a technical advice memorandum to the District, the District will notify the issuer, in writing, of its determination.

(b) The written notice will identify the Bond Issue under examination, include a copy of the technical advice memorandum and, if the District's determination is adverse to the issuer, inform the issuer of the availability of an administrative appeal of the adverse determination.

.05 Technical advice not requested. (a) If, after receiving notice of the District's preliminary adverse determination described in section 4.04(a), the issuer does not request technical advice referral or if the issuer's request is denied, the District will provide the issuer with an opportunity to have closing agreement discussions. If closing agreement discussions between the issuer and the District are unsuccessful, the District will send the issuer a written notice to the effect that the District has made an adverse determination that the interest on the Bond Issue under examination is not excludable from gross income under § 103 of the Code.

(b) The written notice will identify the Bond Issue under examination, state the District's reasons for its adverse determination and inform the issuer of the availability of an administrative appeal of the District's adverse determination.

.06 Closing agreement with the District. The District will retain jurisdiction over the Bond Issue until the issuer has made a request to appeal the District's adverse determination that interest on the Bond Issue is not excludable from gross income under § 103 of the Code and the agent's file has been sent to Appeals in accordance with section 6. Prior to requesting an appeal, the issuer may enter into closing agreement discussions with the District and execute a closing agreement with respect to the Bond Issue. The District will generally prepare a closing agreement using the model closing agreement provided in Announcement 95–61, 1995–33 I.R.B. 25.

SECTION 5. HOW TO REQUEST AN APPEAL

.01 In general. Established Appeals procedures, including those governing submissions and taxpayer conferences, apply to requesting an appeal of an adverse determination that interest on a Bond Issue is not excludable from gross income under § 103 of the Code. *See* § 601.106 *et seq.* of the Statement of Procedural Rules.

.02 The issuer's request for appeal and response to the District's notice. The issuer's appeal request must be in writing. In addition, the issuer must provide a detailed written response to the District's notice of the District's adverse determination, and include any further explanation of the issuer's position regarding the issue(s) in dispute. The issuer's written appeal request and detailed written response must be submitted to the District within 30 days of the date of the notice from the District regarding its adverse determination. This 30-day requirement may be extended by the District. For both the request and response, the issuer must satisfy the declaration and signature requirements below:

(1) Declaration:

Under penalties of perjury, I declare that I have examined this request [or submission], including accompanying documents, and to the best of my knowledge and belief, the facts presented are true, correct, and complete.

This declaration must be signed and dated by the issuer, not the issuer's representative. A stamped signature is not permitted.

(2) Signatures: An appeal request and response must be signed by the issuer or the issuer's authorized representative. It is preferred that Form 2848, Power of Attorney and Declaration of Representative, be used to designate an authorized representative when making an appeal request under this revenue procedure.

SECTION 6. THE DISTRICT FORWARDS CASE FILE TO APPEALS

After the issuer has requested an appeal and has responded in writing to the notice of an adverse determination, the District will forward the agent's file to Appeals. The file should include copies of the following:

1. the technical advice memorandum, if any;
2. all information received by the agent from the issuer regarding the Bond Issue;
3. all work papers of the agent examining the Bond Issue;
4. the District's notice;
5. the issuer's written appeal request;
6. the issuer's written response to the notice; and
7. the District's response to the issuer's position, if any.

After the agent's file is sent to Appeals, Appeals will have jurisdiction over the Bond Issue.

SECTION 7. PROCESSING AN APPEAL REQUEST

An appeal by an issuer of an adverse determination will be assigned to a senior Appeals officer, who will make every effort to resolve the case as expeditiously as possible.

SECTION 8. RESOLVING AN APPEAL ISSUE(S)

.01 In general. Established Appeals procedures, including those governing submissions and taxpayer conferences, apply to resolving appeals regarding Bond Issues. *See* § 601.106 *et seq.* of the Statement of Procedural Rules. The procedures in sections 8.03 and 8.04, specifically apply to bond issues.

.02 New information provided. If the issuer provides additional information not previously given to the District, Appeals will forward the information to the District for its comments.

.03 If agreement is reached. If Appeals and the issuer agree that no action is necessary with respect to the Bond Issue, Appeals will notify the District and close the case. If Appeals and the issuer reach an agreement with respect to the Bond Issue, Appeals will generally prepare a closing agreement using the model closing agreement provided in Announcement 95–61, 1995–33 I.R.B. 25.

.04 If agreement is not reached. (a) If Appeals and the issuer fail to reach an agreement with respect to an appeal, Appeals will close the appeal file, return jurisdiction over the Bond Issue to the District for appropriate action, and send a copy of the Appeals Case Memorandum with respect to the Bond Issue to the District.

(b) Appeals will not reconsider an unagreed appeal unless there has been a substantial change in the circumstances regarding the appeal issue.

SECTION 9. NO USER FEE

There is no user fee for an appeal request.

SECTION 10. EFFECTIVE DATE

These procedures are generally effective with respect to adverse determinations made by the District on or after July 22, 1998, and in the case of a technical advice memorandum the public release of which occurred within one year prior to July 22, 1998, an appeal may be requested not later than 90 days after the publication of this revenue procedure in the Internal Revenue Bulletin.

DRAFTING INFORMATION

The principal authors of this revenue procedure are Thomas Carter Louthan, Director, Office of Alternative Dispute Resolution & Customer Service Programs, National Office Appeals; Sunita B. Lough, Senior Trial Attorney, Office of Assistant Chief Counsel (Field Service Division); and Joseph Grabowski, Analyst, Exempt Organizations Division. For further information regarding this revenue procedure, please contact Mr. Louthan at (202) 401-4098, Ms. Lough at (202) 622-7870, or Mr. Grabowski at (202) 622-7761 (not toll-free numbers).

Returns Relating to Higher Education Tuition and Related Expenses

Notice 98–59

PURPOSE

This notice modifies Notice 97–73, 1997–2 C.B. 335, and Notice 98–46, 1998–36 I.R.B. 21, by providing that the Internal Revenue Service will not require an eligible educational institution to file information returns under § 6050S of the Internal Revenue Code for 1998 or 1999 with respect to students who are enrolled during the year only in courses for which the student receives no academic credit from the institution. In addition, this notice modifies Notice 97–73 and Notice 98–46 by providing that eligible educational institutions are not required to file information returns for 1998 or 1999 with respect to nonresident alien students, unless requested to do so by the student.

BACKGROUND

Section 6050S, enacted by the Taxpayer Relief Act of 1997, Pub. L. No. 105-–34, § 201(c), 111 Stat. 804, requires the filing of information returns to assist taxpayers and the Service in determining the Hope Scholarship credit and the Lifetime Learning credit that taxpayers may claim pursuant to § 25A of the Code. Section 6050S requires that eligible educational institutions file the specified information returns with the Service and provide a corresponding statement to the individuals named on the information return showing the information that has been reported.

The requirements of § 6050S are generally described in Notice 97–73, along with the specific information reporting requirements for 1998. The Service announced in Notice 98–46 that it is extending the application of Notice 97–73 to information returns required under § 6050S for 1999.

Notice 97–73 provides that an eligible educational institution that receives payments of qualified tuition and related expenses must file a Form 1098–T, Tuition Payments Statement, with the Service with respect to the student on whose behalf the payments were received. Consequently, information reporting is required even if the student is enrolled during the year only in courses for which the student receives no academic credit from the institution, because the payments may be for qualified tuition and related expenses that are eligible for the Lifetime Learning credit (although not for the Hope Scholarship credit). Further, information reporting is required even if the student is a nonresident alien for any portion of the year.

DISCUSSION

Treasury may exempt educational institutions from the reporting requirements of § 6050S with respect to certain categories of students, such as non-degree students enrolled in a course for which the institution grants no academic credit, provided the exemptions do not undermine the overall compliance objectives of § 6050S. See H.R. Conf. Rep. No. 599, 105th Cong., 2d Sess. at 322 (June 24, 1998). Pending the issuance of regulations under § 6050S, and consistent with the limited information reporting required by Notice 97–73 and Notice 98–46, the Service will not require eligible educational institutions to file Forms 1098–T for 1998 or 1999 with respect to students who are enrolled during the year only in courses for which the students receive no academic credit from the institution. In addition, such institutions are not required to file Forms 1098–T for 1998 or 1999 with respect to nonresident alien students, unless requested to do so by the student.

The Treasury Department intends to issue regulations on the information reporting requirements of § 6050S. The Service will not impose penalties on an institution if it complies with Notice 97–73, as modified by this notice, for 1998 and 1999.

EFFECT ON OTHER DOCUMENTS

Notice 97–73 and Notice 98–46 are modified.

DRAFTING INFORMATION

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

Tables for Figuring Amount Exempt From Levy on Wages, Salary, and Other Income

Notice 98–60

1. Table for Figuring Amount Exempt From Levy on Wages, Salary, and Other Income (Forms 668–W, 668–W(c), & 668–W(c)(DO)) 1999

Publication 1494, shown below, provides tables which show the amount of an individual's income that is exempt from a notice of levy used to collect delinquent tax in 1999.

(Amounts are for each pay period.)

Filing Status: Single							
Pay Period	Number of Exemptions Claimed on Statement						
	1	2	3	4	5	6	More Than 6
Daily	27.12	37.69	48.27	58.85	69.42	80.00	16.54 plus 10.58 for each exemption
Weekly	135.58	188.46	241.35	294.23	347.12	400.00	82.69 plus 52.88 for each exemption
Biweekly	271.15	376.92	482.69	588.46	694.23	800.00	165.38 plus 105.77 for each exemption
Semi-monthly	293.75	408.33	522.92	637.50	752.08	866.67	179.17 plus 114.58 for each exemption
Monthly	587.50	816.67	1045.83	1275.00	1504.17	1733.33	358.33 plus 229.17 for each exemption

Filing Status: Unmarried Head of Household							
Pay Period	Number of Exemptions Claimed on Statement						
	1	2	3	4	5	6	More Than 6
Daily	35.00	45.58	56.15	66.73	77.31	87.88	24.42 plus 10.58 for each exemption
Weekly	175.00	227.88	280.77	333.65	386.54	439.42	122.12 plus 52.88 for each exemption
Biweekly	350.00	455.77	561.54	667.31	773.08	878.85	244.23 plus 105.77 for each exemption
Semi-monthly	379.17	493.75	608.33	722.92	837.50	952.08	264.58 plus 114.58 for each exemption
Monthly	758.33	987.50	1216.67	1445.83	1675.00	1904.17	529.17 plus 229.17 for each exemption

Filing Status: Married Filing Joint (and Qualifying Widow(er)s)							
Pay Period	Number of Exemptions Claimed on Statement						
	1	2	3	4	5	6	More Than 6
Daily	38.27	48.85	59.42	70.00	80.58	91.15	27.69 plus 10.58 for each exemption
Weekly	191.35	244.23	297.12	350.00	402.88	455.77	138.46 plus 52.88 for each exemption
Biweekly	382.69	488.46	594.23	700.00	805.77	911.54	276.92 plus 105.77 for each exemption
Semi-monthly	414.58	529.17	643.75	758.33	872.92	987.50	300.00 plus 114.58 for each exemption
Monthly	829.17	1058.33	1287.50	1516.67	1745.83	1975.00	600.00 plus 229.17 for each exemption

Filing Status: Married Filing Separate							
Pay Period	Number of Exemptions Claimed on Statement						
	1	2	3	4	5	6	More Than 6
Daily	24.42	35.00	45.58	56.15	66.73	77.31	13.85 plus 10.58 for each exemption
Weekly	122.12	175.00	227.88	280.77	333.65	386.54	69.23 plus 52.88 for each exemption
Biweekly	244.23	350.00	455.77	561.54	667.31	773.08	138.46 plus 105.77 for each exemption
Semi-monthly	264.58	379.17	493.75	608.33	722.92	837.50	150.00 plus 114.58 for each exemption
Monthly	529.17	758.33	987.50	1216.67	1445.83	1675.00	300.00 plus 229.17 for each exemption

2. Table for Figuring Additional Exempt Amount for Taxpayers at Least 65 Years Old and/or Blind

Additional Exempt Amount

Filing Status	*	Daily	Wkly	Bi-Wkly	Semi-Mo	Monthly
Single or Head of Household	1	4.04	20.19	40.38	43.75	87.50
	2	8.08	40.38	80.77	87.50	175.00
Any Other Filing Status	1	3.27	16.35	32.69	35.42	70.83
	2	6.54	32.69	65.38	70.83	141.67
	3	9.81	49.04	98.08	106.25	212.50
	4	13.08	65.38	130.77	141.67	283.33

* ADDITIONAL STANDARD DEDUCTION claimed on Parts 3, 4, & 5 of levy.

Examples

These tables show the amount exempt from a levy on wages, salary, and other income. For example:

1. A single taxpayer who is paid weekly and claims three exemptions (including one for the taxpayer) has $241.35 exempt from levy.

2. If the taxpayer in number 1 is over 65 and writes 1 in the ADDITIONAL STANDARD DEDUCTION space on Parts 3, 4, & 5 of the levy, $261.54 is exempt from this levy ($241.35 plus $20.19).

3. A taxpayer who is married, files jointly, is paid bi-weekly, and claims two exemptions (including one for the taxpayer) has $488.46 exempt from levy.

4. If the taxpayer in number 3 is over 65 and has a spouse who is blind, this taxpayer should write 2 in the ADDITIONAL STANDARD DEDUCTION space on Parts 3, 4, & 5 of the levy. Then, $553.84 is exempt from this levy ($488.46 plus $65.38).

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26 CFR 601.204: Changes in accounting periods and in methods of accounting.
(Also Part I, § 56; 446; 1.446–1.)

Rev. Proc. 98–58

SECTION 1. PURPOSE

This revenue procedure provides procedures to allow a taxpayer to automatically change its method of accounting under § 446 of the Internal Revenue Code for certain deferred payment sales ("DPS") contracts (relating to property used or produced in the trade or business of farming) to the installment method for alternative minimum tax (AMT) purposes. This change will allow a taxpayer to comply with § 403 of the Taxpayer Relief Act of 1997 (TRA 1997), Pub. L. No. 105–34, 111 Stat. 788 (Aug. 5, 1997), which repealed § 56(a)(6) of the Code, relating to the AMT adjustment for installment sales, effective generally for dispositions in taxable years beginning after December 31, 1986.

SECTION 2. BACKGROUND

.01 Section 446 (e) and § 1.446–1(e) state that, except as otherwise provided, a taxpayer must secure the consent of the Commissioner before changing a method of accounting for federal income tax purposes. Section 1.446–1(e)(2)(i) of the Income Tax regulations provides that the taxpayer must secure such consent whether or not the method is proper or permitted under the Code or regulations. While such consent is ordinarily obtained by filing Form 3115, Application for Change in Accounting Method, § 1.446–1(e)(3)(ii) authorizes the Commissioner to prescribe administrative procedures setting forth the limitations, terms, and conditions necessary to obtain the Commissioner's consent to change the taxpayer's method of accounting.

.02 Prior to the enactment of TRA 1997, § 56(a)(6) provided that, in computing alternative minimum taxable income (AMTI), income from the disposition of property described in § 1221(1) (including farm products) was determined without regard to the installment method under § 453. Thus, a farmer using the cash method who sold farm products under a DPS contract was required under § 56(a)(6) to include the fair market value (or the issue price) of the DPS obligation in AMTI in the taxable year of sale. For regular tax purposes, such a farmer generally was allowed to report the income from the DPS contract as payments were received by the farmer, pursuant to the installment method under § 453.

.03 Section 403 of the TRA 1997 repealed § 56(a)(6) retroactively to 1987. As a result, a taxpayer who reports income from a DPS contract using the installment method for regular tax purposes

should also use the installment method to report income from the contract for AMT purposes. A change from applying former § 56(a)(6) to using the installment method for AMT purposes for DPS contracts is a change in method of accounting within the meaning of § 446(e) and the regulations thereunder.

SECTION 3. SCOPE

This revenue procedure applies to taxpayers who properly report income from DPS contracts using the installment method under § 453 for regular tax purposes, but apply former § 56(a)(6) to report income from such contract for AMT purposes. However, this revenue procedure does not apply to any taxpayer described in the preceding sentence for any taxable year that is subject to a closing agreement concerning the treatment of DPS contracts. *See* § 7121(b).

SECTION 4. PROCEDURE

.01 *In General.*

A change to the installment method of accounting under § 453 for DPS contracts for AMT purposes is made on a cut-off basis either prospectively, beginning with the current taxable year (generally, the 1998 taxable year), or retroactively, beginning with an earlier taxable year by filing amended returns. No Form 3115 is required to be filed. For further information in preparing 1998 returns, and amended returns, see Publication 225, Farmer's Tax Guide.

.02 *Prospective Change.*

To make the change in method of accounting prospectively, the installment method is used to report income from DPS contracts entered into in the current taxable year and all subsequent taxable years for AMT purposes if such method is used for the contract for regular tax purposes. No AMT adjustment should be made for these contracts related to the use of the installment method. Any amount of income from a DPS contract entered into prior to the year of change (i.e. prior to the current taxable year) that was reported in a prior taxable year for AMT purposes, must be reflected as a negative AMT adjustment in the taxable year that amount of income is reported for regular tax purposes. Taxpayers who made a prospective change in method of accounting for DPS contracts in 1997 are deemed to have complied with the requirements of this section 4.02.

.03 *Retroactive Change.*

To make the change in method of accounting retroactively, amended returns must be filed for any earlier open taxable year that the taxpayer selects after which there is no closed taxable year and all affected subsequent taxable years for which a return has been filed. An entity (including a limited liability company) treated as a partnership or an S corporation for federal income tax purposes ("passthrough entity") may not file an amended return for any taxable year ending prior to the beginning of the earliest open taxable year of its partners, members, or shareholders after which there is no closed taxable year. The installment method must be used to report income from DPS contracts entered into in the year of change (i.e. the earliest taxable year for which an amended return is filed), and for all subsequent taxable years for AMT purposes if such method is used for the contract for regular tax purposes. The installment method may not be used to report income from DPS contracts entered into prior to the year of change for AMT purposes. Any amount of income from a DPS contract entered into prior to the year of change that was reported in a prior taxable year for AMT purposes, must be reflected as a negative AMT adjustment in the taxable year that amount of income is reported for regular tax purposes. Additionally, the minimum tax credit, if any, reported on Form 8801, for the amended return years must be recalculated. Passthrough entities must reflect all adjustments on the Schedule K-1 issued to partners, members, or shareholders.

SECTION 5. CONSENT TO CHANGE METHOD OF ACCOUNTING

Taxpayers within the scope of this revenue procedure that comply with the procedures set forth in Section 4 of this revenue procedure have the consent of the Commissioner to change to the installment method of accounting under § 453 for DPS contracts for AMT purposes.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for taxable years beginning after December 31, 1986.

DRAFTING INFORMATION

The principal author of this revenue procedure is Jonathan Strum of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Mr. Strum at (202) 622-4960 (not a toll-free call).

Part IV. Items of General Interest

Cafeteria Plans Election Changes

Announcement 98–105

PURPOSE

The purpose of this document is to announce that the Internal Revenue Service will delay the effective date of the cafeteria plan temporary regulations (1.125–4T) and proposed regulations (1.125–4) published on November 7, 1997 at 62 F.R. 60165 and 62 F.R. 60196, respectively.

BACKGROUND

In 1984, the Service issued proposed regulations that address certain issues under section 125 of the Internal Revenue Code. See 49 F.R. 19321. The proposed regulations were amended in 1989. See 49 F.R. 50733. The proposed regulations include rules relating to the circumstances under which an employer can permit a cafeteria plan participant to revoke an existing election with respect to accident or health coverage or group term life insurance coverage and make a new election during a cafeteria plan year. In 1997, the Service issued proposed and temporary regulations that modify and clarify the change in election provisions of the pre-1990 proposed regulations. The 1997 temporary regulations provide that they will become effective for plan years beginning after December 31, 1998. The preamble to the 1997 temporary regulations states that, pending this effective date, taxpayers can rely on the 1997 temporary regulations as well as the pre-1990 proposed regulations.

The Service will amend the effective date of the 1997 temporary regulations and the 1997 proposed regulations so that they will not be effective before plan years beginning at least 120 days after further guidance is issued. Thus, for example, in the case of a calendar year plan, the 1997 temporary and proposed regulations will not be effective for 1999. Until further guidance is issued, taxpayers can rely on the change in election provisions of the 1997 temporary regulations as well as the change in election provisions of section 1.125–2 of the pre-1990 proposed regulations, and both alternatives are available regardless of whether the plan document has been amended to conform with the 1997 temporary regulations.

Questions regarding this announcement may be directed to Felix Zech in the Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations) at (202) 622-4606 (not a toll-free number).

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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Key to Abbreviations:

RR	Revenue Ruling
RP	Revenue Procedure
TD	Treasury Decision
CD	Court Decision
PL	Public Law
EO	Executive Order
DO	Delegation Order
TDO	Treasury Department Order
TC	Tax Convention
SPR	Statement of Procedural Rules
PTE	Prohibited Transaction Exemption

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