

# Internal Revenue bulletin

Bulletin No. 2004-11  
March 15, 2004

## HIGHLIGHTS OF THIS ISSUE

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

### INCOME TAX

#### **Rev. Rul. 2004-23, page 585.**

**Section 355; stock distribution.** This ruling examines whether a distribution that is expected to increase aggregate stock value satisfies the business purpose requirement of section 355 of the Code when the increased value is expected to serve both a corporate business purpose and a shareholder purpose.

#### **Rev. Rul. 2004-25, page 587.**

**Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate.** For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for March 2004.

#### **Rev. Rul. 2004-26, page 598.**

**Interest rates; underpayments and overpayments.** The rate of interest determined under section 6621 of the Code for the calendar quarter beginning April 1, 2004, will be 5 percent for overpayments (4 percent in the case of a corporation), 5 percent for underpayments, and 7 percent for large corporate underpayments. The rate of interest paid on the portion of a corporate overpayment exceeding \$10,000 will be 2.5 percent.

#### **Rev. Rul. 2004-37, page 583.**

**Reduction in stated principal amount of a recourse note issued by employee to employer to acquire employer stock.** This ruling provides guidance in cases where an employer and employee reduce the stated principal amount of a recourse note issued by an employee to the employer to acquire employer stock. This ruling holds that the employee recognizes compensation income equal to the amount of the reduction.

#### **T.D. 9114, page 589.**

Final regulations provide for the voluntary electronic furnishing of statements on Forms W-2, *Wage and Tax Statement*, under sections 6041 and 6051 of the Code, and statements on Forms 1098-T, *Tuition Statement*, and Forms 1098-E, *Student Loan Interest Statement*, under section 6050S.

#### **Notice 2004-17, page 605.**

This notice provides that benefits received under the Smallpox Emergency Personnel Protection Act of 2003 (SEPPA) are exempt from income and employment taxes.

#### **Notice 2004-19, page 606.**

This notice withdraws Notice 98-5, but announces that the IRS will continue to scrutinize abusive transactions that are designed to generate foreign tax credits and will challenge the claimed tax consequences of such transactions under principles of existing law. The notice also describes the approach that Treasury and the IRS are using to address transactions involving inappropriate foreign tax credit results. Notice 98-5 withdrawn and Notice 2003-76 modified.

#### **Notice 2004-20, page 608.**

This notice describes a transaction involving the purported acquisition of stock of a foreign target corporation, an election under section 338, and a prearranged plan to sell the target corporation's assets in a transaction that gives rise to foreign tax without corresponding income for U.S. tax purposes. The notice identifies this transaction, and substantially similar transactions, as listed transactions that are subject to reporting, registration, and list maintenance requirements.

(Continued on the next page)

Finding Lists begin on page ii.



Department of the Treasury  
Internal Revenue Service

**Notice 2004-21, page 609.****Low-income housing tax credit; private activity bonds.**

Resident populations of the 50 states, the District of Columbia, Puerto Rico, and the insular areas are provided for purposes of determining the 2004 calendar year (1) state housing credit ceiling under section 42(h) of the Code, (2) private activity bond volume cap under section 146, and (3) private activity bond volume limit under section 142(k)(5).

## **EXEMPT ORGANIZATIONS**

**Announcement 2004-15, page 612.**

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

## **EMPLOYMENT TAX**

**Rev. Rul. 2004-37, page 583.****Reduction in stated principal amount of a recourse note issued by employee to employer to acquire employer stock.**

This ruling provides guidance in cases where an employer and employee reduce the stated principal amount of a recourse note issued by an employee to the employer to acquire employer stock. This ruling holds that the employee recognizes compensation income equal to the amount of the reduction.

**Notice 2004-17, page 605.**

This notice provides that benefits received under the Smallpox Emergency Personnel Protection Act of 2003 (SEPPA) are exempt from income and employment taxes.

## **ADMINISTRATIVE**

**Notice 2004-18, page 605.**

This notice requests public comment regarding the proper treatment of capitalized amounts that facilitate an acquisition of a trade or business, change in the capital structure of a business entity, and certain other transactions.

# The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by

applying the tax law with integrity and fairness to all.

## Introduction

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

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

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

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations,

court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

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

### **Part II.—Treaties and Tax Legislation.**

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

### **Part III.—Administrative, Procedural, and Miscellaneous.**

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

### **Part IV.—Items of General Interest.**

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last 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 last Bulletin of each semiannual period.\*

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

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

\* **Beginning with Internal Revenue Bulletin 2003-43**, we are publishing the index at the end of the month, rather than at the beginning.

# 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 March 2004. See Rev. Rul. 2004-25, page 587.

## Section 83.—Property Transferred in Connection With Performance of Services

26 CFR 1.83-4: *Special rules.*  
(Also §§ 108, 3121, 3306, 3401, 1.1001-3.)

**Reduction in stated principal amount of a recourse note issued by employee to employer to acquire employer stock.** This ruling provides guidance in cases where an employer and employee reduce the stated principal amount of a recourse note issued by an employee to the employer to acquire employer stock. This ruling holds that the employee recognizes compensation income equal to the amount of the reduction.

### Rev. Rul. 2004-37

#### ISSUE

If an employee issued a recourse note to his or her employer in satisfaction of the exercise price of an option to acquire the employer's stock and the employer and employee subsequently agree to reduce the stated principal amount of the note, does the employee recognize compensation income under § 83 of the Internal Revenue Code?

#### FACTS

In Year 1, Employer, a corporation, grants a nontransferable, nonstatutory option to its Employee to purchase 1,000 shares of Employer common stock at an exercise price of \$75 per share, the fair market value of a share of Employer stock at the time the option is granted. Employee may exercise the option only during employment with Employer or within 90 days after cessation of employment.

On January 1 of Year 2, when the fair market value of 1,000 shares of Employer stock is \$100,000, Employee exercises the

option and purchases 1,000 shares of Employer stock in exchange for a nontransferable recourse note ("Note") secured by the stock Employee receives on the exercise of the option. The Note has a stated principal amount of \$75,000, which is payable at maturity on December 31 of Year 11. The Note also provides for payments of interest on December 31 of each year the Note is outstanding. The interest rate is one-year LIBOR (determined as of January 1 of each year the Note is outstanding) plus 25 basis points. The interest rate on the Note is not less than the appropriate applicable Federal rate (AFR) on the date the Note is issued. The stock is not subject to a substantial risk of forfeiture within the meaning of § 83(c).

In Year 2, Employee includes \$25,000 as compensation income under § 83(a). Employer reports \$25,000 of compensation income on the Form W-2 issued to Employee for Year 2 and claims a corresponding deduction in Year 2 under § 83(h).

In Years 2 and 3, Employee makes the required interest payments under the Note. On January 1 of Year 4, the fair market value of the Employer stock has declined to \$50,000 and Employer and Employee agree to reduce the stated principal amount of the Note from \$75,000 to \$50,000. The interest rate on the Note is not less than the appropriate AFR on the date the Note is modified.

#### LAW

Section 83(a) provides that if, in connection with the performance of services, property is transferred to any person other than the person for whom such services are performed, the excess of the fair market value of the property at the first time that the rights to the property are either transferable or not subject to a substantial risk of forfeiture ("substantially vested"), whichever occurs earlier, over the amount paid for the property is included in the gross income of the service provider in the first taxable year in which the rights to the property are substantially vested.

Section 83(e)(3) provides that § 83 does not apply to the transfer of an option

without a readily ascertainable fair market value.

Section 83(h) provides that, in the case of a transfer of property to which § 83 applies, the person for whom were performed the services in connection with which the property was transferred is allowed a deduction in an amount equal to the amount included under § 83(a), (b), or (d)(2) in the gross income of the person who performed the services. Such deduction is allowed for the taxable year of such person in which or with which ends the taxable year in which such amount is included in the gross income of the person who performed such services.

Section 1.83-3(a)(1) of the Income Tax Regulations provides that a "transfer" of property occurs when a person acquires a beneficial ownership interest in the property. A person acquires a beneficial ownership interest in property when he or she has been transferred both the right to share in an increase in the value of the property and the obligation to share in the risk of loss in its value. Whether a transfer has in fact occurred is based on all the facts and circumstances.

Section 1.83-3(g) provides that the term "amount paid" refers to the value of any money or property paid for the transfer of property to which § 83 applies. For this purpose, value does not include any stated or unstated interest.

Section 1.83-4(c) provides that, if an indebtedness that has been treated as an "amount paid" for purposes of § 83 is subsequently cancelled, forgiven, or satisfied for an amount less than the amount of such indebtedness, the amount that is not, in fact, paid is includible in the gross income of the service provider for the taxable year in which such cancellation, forgiveness, or satisfaction occurs.

Section 1.83-7(a) provides that the grant of a nonqualified stock option is taxable to the extent that the option has a readily ascertainable fair market value, determined in accordance with § 1.83-7(b). Under § 1.83-7(b), an option that is not traded on an established market does not have a readily ascertainable value at the time of grant unless certain specific conditions are all satisfied (including the option

being transferable, the option not being subject to a condition that has a significant effect on the fair market value of the option, and the fair market value of the option privilege being readily ascertainable). Under § 1.83-7(a), if the option does not have a readily ascertainable value at the time of grant, §§ 83(a) and 83(b) apply at such time as the option is exercised or otherwise disposed of, even though the fair market value of such option may have become readily ascertainable before such time.

Section 61(a)(12) provides that, in general, gross income includes income from the discharge of indebtedness.

Section 108(a)(1)(B) provides an exclusion from gross income for any amount that would be includible in gross income by reason of the discharge of indebtedness of the taxpayer if the discharge occurs when the taxpayer is insolvent.

Under § 108(e)(5), for solvent and non-bankrupt taxpayers, if debt owed by a purchaser to a seller is reduced, the reduction is a purchase price adjustment and not income from discharge of indebtedness. Under § 108(e)(5)(C), § 108(e)(5) only applies to reductions that, but for the application of § 108(e)(5), would be treated as income to the purchaser from the discharge of indebtedness.

Not every indebtedness that is cancelled results in the debtor realizing gross income by reason of discharge of indebtedness within the meaning of §§ 61(a)(12) and 108(a). "Debt discharge that is only a medium for some other form of payment, such as a gift or salary, is treated as that form of payment, rather than under the debt discharge rules." S. Rep. No. 1035, 96th Cong., 2d Sess. 8 n.6 (1980), 1980-2 C.B. 620, 624 n.6.

Section 1.1001-3 provides rules to determine whether a modification of the terms of a debt instrument results in an exchange of the original debt instrument for a modified instrument that differs materially either in kind or in extent. If the modification results in an exchange, the adequacy of the interest rate on the modified debt instrument generally is retested under the applicable Code section, such as § 483.

Under § 1.1001-3(b), a modification of a debt instrument results in an exchange for purposes of § 1.1001-1(a) if the modification is significant. Under

§ 1.1001-3(c), a modification means any alteration, including any deletion or addition, in whole or in part, of a legal right or obligation of the issuer or a holder of a debt instrument, whether the alteration is evidenced by an express agreement (oral or written), conduct of the parties, or otherwise.

Section 1.1001-3(e) provides rules for determining whether a modification is "significant." Under § 1.1001-3(e)(2), a change in the yield of a debt instrument is a significant modification if the yield computed under § 1.1001-3(e)(2)(iii) varies from the annual yield on the unmodified debt instrument (determined as of the date of the modification) by more than the greater of 1/4 of one percent (25 basis points) or 5 percent of the annual yield of the unmodified debt instrument (.05 x annual yield).

Sections 3101 and 3111 impose Federal Insurance Contributions Act (FICA) taxes on "wages," as that term is defined in § 3121(a). FICA taxes consist of the Old-Age, Survivors and Disability Insurance tax (social security tax) and the Hospital Insurance tax (Medicare tax). These taxes are imposed both on the employer under § 3111(a) and (b) and on the employee under § 3101(a) and (b). Section 3102(a) provides that the employee portion of FICA tax must be collected by the employer of the taxpayer by deducting the amount of the tax from the wages as and when paid. Section 31.3102(a)-1(a) of the Employment Tax Regulations provides that the employer is required to collect the tax, notwithstanding that wages are paid in something other than money. The term "wages" is defined in § 3121(a) for FICA purposes as all remuneration for employment including the cash value of all remuneration (including benefits) paid in any medium other than cash, with certain specific exceptions. Section 3121(b) defines "employment" for FICA purposes as any service, of whatever nature, performed by an employee for the person employing him, with certain specific exceptions.

Rules similar to the FICA rules apply with respect to Federal Unemployment Tax Act (FUTA) tax under §§ 3301, 3306(b), and 3306(c).

Section 3402(a), relating to income tax withholding, generally requires every employer making a payment of wages to deduct and withhold upon these wages

a tax determined in accordance with prescribed tables or computational procedures. Section 3401(a) provides that "wages" for income tax withholding purposes means all remuneration for services performed by an employee for his employer, including the cash value of all remuneration (including benefits) paid in any medium other than cash, with certain specific exceptions. Under § 31.3402(a)-1(c), an employer is required to deduct and withhold income tax notwithstanding that the wages are paid in something other than money (for example, wages paid in stock or bonds) and to pay over the tax in money. If the wages are paid in property other than money, the employer should make necessary arrangements to insure that the amount of the tax required to be withheld is available for payment in money.

Sections 31.3121(a)-1(e), 31.3306(b)-1(e), and 31.3401(a)-1(a)(4) provide that in general the medium in which the remuneration is paid is immaterial. It may be paid in cash or other than in cash. Remuneration paid in any medium other than cash is computed on the basis of the fair market value of such items at the time of payment. Sections 31.3121(a)-1(i), 31.3306(b)-1(i), and 31.3401(a)-1(a)(5) provide that, unless specifically excepted, remuneration for employment constitutes wages even though at the time paid the relationship of employer and employee no longer exists between the person in whose employ the services were performed and the individual who performed the services.

In Rev. Rul. 79-305, 1979-2 C.B. 350, a corporation transferred common stock to an employee subject to a substantial risk of forfeiture. The ruling holds that, under § 83, the fair market value of the stock at the time the risk lapses is includible in the employee's gross income for the year in which risk lapses. The ruling also holds that the fair market value of the stock at the time the risk lapses is wages for purposes of §§ 3121(a), 3306(b), and 3401(a).

## ANALYSIS

Under § 1.83-7(b), the option granted to Employee did not have a readily ascertainable fair market value at the time of grant. Therefore, § 83 applies when the option is exercised and stock is transferred to Employee.

Employee acquired beneficial ownership of the shares of Employer stock in Year 2 because, at that time, Employee acquired both the right to enjoy any increase in the value of the shares and the risk of a decline in the value of the shares. Accordingly, for purposes of § 83, the shares were transferred to Employee in Year 2. Employee's Note, with an issue price of \$75,000, constituted the amount paid by Employee for the shares under § 1.83-3(g) in Year 2. Employee included \$25,000 in gross income under § 83(a) in Year 2, the excess of the fair market value of Employer stock at the time of transfer over the amount paid.

Under § 1.83-4(c), if an indebtedness that has been treated as an "amount paid" for purposes of § 83 is subsequently cancelled, forgiven, or satisfied for an amount less than the amount of such indebtedness, the amount that is not, in fact, paid is includible in the gross income of the service provider for the taxable year in which such cancellation, forgiveness, or satisfaction occurs. Thus, if the reduction of the stated principal amount of the Note is a cancellation, forgiveness, or satisfaction of the indebtedness for an amount less than the amount of such indebtedness, the reduction of the stated principal amount is a medium for payment of compensation by Employer to Employee, and any income resulting from the reduction is not income to Employee from the discharge of indebtedness subject to the provisions of section 108. Accordingly, the tax consequences of the reduction are governed by § 83 and § 1.83-4(c), and not by § 108(a)(1)(B) or § 108(e)(5).

Whether the reduction of the stated principal amount of the Note is a cancellation, forgiveness, or satisfaction for an amount less than the amount of the Note, and, thus, whether an amount is includible in income under § 1.83-4(c), is determined in accordance with § 1.1001-3. Under § 1.1001-3(e)(2), if a modification to the stated principal amount of a note produces a significant change in the note's yield, the modification is significant. A significant modification results in an exchange of the unmodified note for the modified note, which, depending on the issue price of the modified note and the adjusted issue price of the unmodified note, may have tax consequences for both the issuer and holder of the note.

In this case, the reduction in the stated principal amount of the Note is a significant modification under § 1.1001-3(e)(2). As a result, there is an exchange of the unmodified Note for the modified Note between Employee and Employer and a satisfaction of the original indebtedness. Under § 1.83-4(c), the amount that is not, in fact, paid, and thus the amount includible as compensation by Employee, is the excess of the adjusted issue price of the unmodified Note over the issue price of the modified Note.

The modified Note has adequate stated interest under § 483. Under § 1273(b)(4), the modified Note has an issue price of \$50,000. The adjusted issue price of the unmodified Note is \$75,000. See § 1.1275-1(b). As a result, under § 1.83-4(c), Employee recognizes compensation income of \$25,000 (the excess of the adjusted issue price of the unmodified Note (\$75,000) over the issue price of the modified Note (\$50,000)). This amount is recognized in Year 4, the taxable year in which the modification occurred.

#### HOLDING

If an employee issued a recourse note to his or her employer in satisfaction of the exercise price of an option to acquire the employer's stock and the employer and employee subsequently agree to reduce the stated principal amount of the note, the employee generally recognizes compensation income under § 83 at the time of the reduction. Thus, under the facts described above, Employee recognizes \$25,000 of compensation income on January 1 of Year 4 under § 1.83-4(c). If Employer and Employee instead were, for example, to reduce the interest rate on the Note or change the Note from recourse to non-recourse, that modification also generally would result in compensation income for Employee.

In addition, the compensation is wages for purposes of FICA, FUTA, and income tax withholding.

#### DRAFTING INFORMATION

The principal authors of this revenue ruling are Jean M. Casey of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) and Rebecca Asta of the Associate Chief Counsel (Financial Institutions

and Products). For further information regarding § 83, contact Ms. Casey at (202) 622-6030 and for further information regarding § 1.1001-3, contact Ms. Asta at (202) 622-3930 (not toll-free calls).

---

## Section 108.—Income From Discharge of Indebtedness

What are the income and employment tax consequences when an employer and employee reduce the stated principal of a recourse note issued by the employee to the employer to acquire employer stock? See Rev. Rul. 2004-37, page 583.

---

## Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of March 2004. See Rev. Rul. 2004-25, page 587.

---

## Section 355.—Distributions of Stock and Securities of a Controlled Corporation

26 CFR 1.355-2: Limitations.

**Section 355; stock distribution.** This ruling examines whether a distribution that is expected to increase aggregate stock value satisfies the business purpose requirement of section 355 of the Code when the increased value is expected to serve both a corporate business purpose and a shareholder purpose.

### Rev. Rul. 2004-23

#### ISSUE

Whether a distribution that is expected to cause the aggregate value of the stock of a distributing corporation and the stock of a controlled corporation to exceed the pre-distribution value of the distributing corporation's stock satisfies the corporate business purpose requirement of § 355 of the Internal Revenue Code and § 1.355-2(b) of the Income Tax Regulations when the increased value is expected to serve a corporate business purpose of either the distributing corporation or the controlled corporation (or both), even if it benefits the shareholders of the distributing corporation.

## FACTS

D is a corporation that indirectly conducts Business 1 and Business 2 through its subsidiaries. Some subsidiaries engage only in Business 1 and others only in Business 2. D's common stock is widely held and publicly traded.

The two businesses attract different investors, some of which are averse to investing in D because of the presence of the other business. Therefore, D believes, and D's investment banker has advised D, that if each business were conducted in a separate and independent corporation, the stock of the two corporations likely would trade publicly for a higher price, in the aggregate, than the stock of D if it continued to represent an interest in both businesses. The expected increase in the aggregate trading price of the stock of D and C over the pre-distribution trading price of D would not, however, derive in any significant respect from any Federal tax advantage made available to either D or C by the transaction.

With the intent and expectation of increasing the aggregate trading price of the common stock representing Business 1 and Business 2, D transfers the subsidiaries that engage in Business 2 to a newly formed corporation, C, in exchange for all of the C stock and distributes the C stock to its common shareholders, *pro rata*. D's remaining subsidiaries will continue to conduct Business 1.

Increasing the aggregate trading price of the D and C common stock over the trading price of the pre-distribution D common stock is expected to confer a benefit to existing shareholders. In deciding whether to undertake the distribution, D's directors consider this expected benefit to the shareholders, as well as the expected benefits to the corporation described below. However, D's directors do not effect the distribution to facilitate any particular shareholder's disposition of the stock of either D or C.

Apart from the issue of whether the business purpose requirement of § 1.355-2(b) is satisfied, the distribution meets the requirements of §§ 368(a)(1)(D) and 355.

*Situation 1.* D uses equity-based incentives as a significant part of its program to compensate a significant number of employees of both Business 1 and Busi-

ness 2. D's directors wish to enhance the value of employee compensation and have considered either granting additional equity-based incentives or making cash payments in lieu of additional equity incentives. However, granting additional equity-based incentives would unacceptably dilute D's existing shareholders' interests, and making cash payments would be unduly expensive. Therefore, D undertakes the separation of Business 2 from Business 1 with the expectation that its stock value will increase and such increase will enhance the value of its equity-based compensation, providing D with a real and substantial benefit.

*Situation 2.* As part of its overall strategic planning, D has expanded both Business 1 and Business 2 through acquisitions of assets and the stock of other corporations. In some of these acquisitions, D has used its stock, either in whole or in part, as consideration. D's directors expect to continue expanding Business 1 as appropriate acquisition opportunities are identified in the future. D expects to offer its common stock as consideration, either in whole or in part, in connection with future acquisitions. Therefore D undertakes the separation of Business 2 from Business 1 with the expectation that its stock value will increase and such increase may permit D to effect such acquisitions in a manner that preserves capital with significantly less dilution of the existing shareholders' interests, providing D with a real and substantial benefit.

## LAW

Section 355 provides that if certain requirements are met, a corporation may distribute stock and securities in a controlled corporation to its shareholders and security holders without causing the distributees to recognize gain or loss.

In addition to the statutory requirements, the regulations provide that § 355 will apply to a transaction only if it is carried out for one or more corporate business purposes. Section 1.355-2(b)(1). A transaction is carried out for a corporate business purpose if it is motivated, in whole or substantial part, by one or more corporate business purposes. *Id.* A corporate business purpose is a real and substantial non-Federal tax purpose germane to the business of the distribut-

ing corporation, the controlled corporation, or the affiliated group (as defined in § 1.355-3(b)(4)(iv)) to which the distributing corporation belongs. Section 1.355-2(b)(2). The principal reason for the business purpose requirement is to provide nonrecognition treatment only to distributions that are incident to readjustments of corporate structures required by business exigencies and that effect only readjustments of continuing interests in property under modified corporate forms. Section 1.355-2(b)(1). If a corporate business purpose can be achieved through a nontaxable transaction that does not involve the distribution of stock of a controlled corporation and that is neither impractical nor unduly expensive, then the separation is not carried out for that corporate business purpose. Section 1.355-2(b)(3).

A shareholder purpose (for example, the personal planning purposes of a shareholder) is not a corporate business purpose. Section 1.355-2(b)(2). Depending upon the facts of a particular case, however, a shareholder purpose for a transaction may be so nearly coextensive with a corporate business purpose as to preclude any distinction between them. *Id.* In such a case, the transaction is carried out for one or more corporate business purposes. *Id.* A transaction motivated in substantial part by a corporate business purpose does not fail the business purpose requirement merely because it is motivated in part by non-Federal tax shareholder purposes. *See* § 1.355-2(b)(5), Example (2).

## ANALYSIS

*Situation 1.* Because D believes that the increased value of its stock expected to result from the separation will enhance the value of its employee compensation, providing a real and substantial benefit to D, the distribution is motivated by a real and substantial non-Federal tax purpose germane to the business of D. Section 1.355-2(b)(1) and (2). Further, because this purpose cannot be achieved through another nontaxable transaction that is neither impractical nor unduly expensive, the distribution is carried out for a corporate business purpose. Section 1.355-2(b)(2) and (3). Although the increase in stock value is expected to benefit the shareholders by increasing the amount they would

realize on a sale of their shares, this shareholder purpose is so nearly coextensive with the corporate business purpose as to preclude any distinction between them. Section 1.355-2(b)(2). Therefore, the distribution is treated as carried out for a corporate business purpose. *Id.*

*Situation 2.* Because D expects that the increased value of its stock expected to result from the separation may permit D to effect future acquisitions in a manner that preserves capital with significantly less dilution of the existing shareholders' interests, providing D with a real and substantial benefit, the distribution is motivated by a real and substantial non-Federal tax purpose germane to the business of D. Section 1.355-2(b)(1) and (2). Further, because this purpose cannot be achieved through another nontaxable transaction that is neither impractical nor unduly expensive, the distribution is carried out for a corporate business purpose. Section 1.355-2(b)(2) and (3). Although the increase in stock value is expected to benefit the shareholders by increasing the amount they would realize on a sale of their shares, this shareholder purpose is so nearly coextensive with the corporate business purpose as to preclude any distinction between them. Section 1.355-2(b)(2). Therefore, the distribution is treated as carried out for a corporate business purpose. *Id.*

#### HOLDING

A distribution that is expected to cause the aggregate value of the stock of a distributing corporation and the stock of a controlled corporation to exceed the pre-distribution value of the distributing corporation's stock satisfies the corporate business purpose requirement of § 355 and § 1.355-2(b) when the increased value is expected to serve a corporate business purpose of either the distributing corporation or the controlled corporation (or both), even if it benefits the shareholders of the distributing corporation.

#### DRAFTING INFORMATION

The principal author of this revenue ruling is Jeffrey B. Fienberg of the Office of Associate Chief Counsel (Corporate). For further information regarding this rev-

enue ruling, contact Mr. Fienberg at (202) 622-7930 (not a toll-free call).

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

The adjusted applicable federal long-term rate is set forth for the month of March 2004. See Rev. Rul. 2004-25, page 587.

### Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2004. See Rev. Rul. 2004-25, page 587.

### 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 March 2004. See Rev. Rul. 2004-25, page 587.

### 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 March 2004. See Rev. Rul. 2004-25, page 587.

### 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 March 2004. See Rev. Rul. 2004-25, page 587.

### 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 March 2004. See Rev. Rul. 2004-25, page 587.

### Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of March 2004. See Rev. Rul. 2004-25, page 587.

### 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 March 2004. See Rev. Rul. 2004-25, page 587.

### 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 March 2004. See Rev. Rul. 2004-25, page 587.

### Section 1001.—Determination of Amount of and Recognition of Gain or Loss

26 CFR 1.1001-3: Modifications of debt instruments.

What are the income and employment tax consequences when an employer and employee reduce the stated principal of a recourse note issued by the employee to the employer to acquire employer stock? See Rev. Rul. 2004-37, page 583.

### 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 the long-term exempt rate.** For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for March 2004.

### Rev. Rul. 2004-25

This revenue ruling provides various prescribed rates for federal income tax purposes for March 2004 (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. Finally,

Table 5 contains the federal rate for determining the present value of annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 2004-25 TABLE 1

Applicable Federal Rates (AFR) for March 2004

	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
<i>Short-Term</i>				
AFR	1.58%	1.57%	1.57%	1.56%
110% AFR	1.74%	1.73%	1.73%	1.72%
120% AFR	1.89%	1.88%	1.88%	1.87%
130% AFR	2.05%	2.04%	2.03%	2.03%
<i>Mid-Term</i>				
AFR	3.34%	3.31%	3.30%	3.29%
110% AFR	3.67%	3.64%	3.62%	3.61%
120% AFR	4.01%	3.97%	3.95%	3.94%
130% AFR	4.35%	4.30%	4.28%	4.26%
150% AFR	5.03%	4.97%	4.94%	4.92%
175% AFR	5.87%	5.79%	5.75%	5.72%
<i>Long-Term</i>				
AFR	4.84%	4.78%	4.75%	4.73%
110% AFR	5.33%	5.26%	5.23%	5.20%
120% AFR	5.82%	5.74%	5.70%	5.67%
130% AFR	6.31%	6.21%	6.16%	6.13%

REV. RUL. 2004-25 TABLE 2

Rates Under Section 382 for March 2004

	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
Short-term adjusted AFR	1.30%	1.30%	1.30%	1.30%
Mid-term adjusted AFR	2.47%	2.45%	2.44%	2.44%
Long-term adjusted AFR	4.19%	4.15%	4.13%	4.11%

REV. RUL. 2004-25 TABLE 3

Rates Under Section 382 for March 2004

Adjusted federal long-term rate for the current month	4.19%
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.)	4.40%

REV. RUL. 2004-25 TABLE 4

Appropriate Percentages Under Section 42(b)(2) for March 2004

Appropriate percentage for the 70% present value low-income housing credit	7.95%
Appropriate percentage for the 30% present value low-income housing credit	3.41%

REV. RUL. 2004-25 TABLE 5

Rate Under Section 7520 for March 2004

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	4.0%
---	------

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2004. See Rev. Rul. 2004-25, page 587.

## Section 3121.—Definitions

26 CFR 31.3121(a)-1: *Wages*.

What are the income and employment tax consequences when an employer and employee reduce the stated principal of a recourse note issued by the employee to the employer to acquire employer stock? See Rev. Rul. 2004-37, page 583.

## Section 3306.—Definitions

26 CFR 31.3306(b)-1: *Wages*.

What are the income and employment tax consequences when an employer and employee reduce the stated principal of a recourse note issued by the employee to the employer to acquire employer stock? See Rev. Rul. 2004-37, page 583.

## Section 3401.—Definitions

26 CFR 31.3401(a)-1: *Wages*.

What are the income and employment tax consequences when an employer and employee reduce the

stated principal of a recourse note issued by the employee to the employer to acquire employer stock? See Rev. Rul. 2004-37, page 583.

## Section 6051.—Receipts for Employees

26 CFR 31.6051-1: *Statements for employees*.

## T.D. 9114

### DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1, 31, 301, and 602

## Electronic Payee Statements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the voluntary electronic furnishing of statements on Forms W-2, *Wage and Tax Statement*, under sections 6041 and 6051, and statements on Forms 1098-T, *Tuition Statement*, and Forms 1098-E, *Student Loan Interest Statement*, under section 6050S. These

final regulations affect businesses, other for-profit institutions, and eligible educational institutions that wish to furnish these required statements electronically. The regulations will also affect individuals (recipients), principally employees, students, and borrowers, who consent to receive these statements electronically.

**DATES: Effective Date:** These regulations are effective February 18, 2004.

**Applicability Date:** These regulations apply to statements and reports required to be furnished after February 13, 2004. The rules relating to maintenance of access to website statements also apply to statements and reports required to be furnished after December 31, 2003.

**FOR FURTHER INFORMATION CONTACT:** Michael E. Hara at (202) 622-4910 (not a toll-free number).

## SUPPLEMENTARY INFORMATION:

### Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1729. Responses to this collection

of information are required to obtain the benefit of providing payee statements electronically.

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

The estimated annual burden per respondent or recordkeeper varies depending on individual circumstances, with an estimated average of 6 minutes.

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

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

## Background

On February 14, 2001, the IRS published a notice of proposed rulemaking (by cross reference to temporary regulations, T.D. 8942, 2001-1 C.B. 929) and a notice of public hearing (REG-107186-00, 2001-1 C.B. 973 [66 FR 10247]). The regulations proposed to permit the voluntary electronic furnishing of (1) statements on Form W-2 under sections 6041 and 6051, (2) “*Tuition Statements*” (Form 1098-T) under section 6050S, and (3) “*Student Loan Interest Statements*” (Form 1098-E) under section 6050S. These proposed amendments were intended (1) to increase electronic filing consistent with section 2001 of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105-206 (July 22, 1998); and (2) to facilitate the use of electronic communication and record keeping consistent with the Electronic Signatures in Global and National Commerce Act (E-SIGN Act) Public Law No. 106-229, 114 Stat. 464 (2000), 15 U.S.C. sections

7001 through 7006 (2000). The IRS received written comments on the proposed regulations. A public hearing was held on July 25, 2001. After consideration of all the comments, the proposed regulations are adopted as revised by this Treasury Decision. The temporary regulations under sections 6041, 6050S, 6051, and 6724 are removed.

On December 18, 2002, final regulations were issued under section 6050S (T.D. 9029, 2003-1 C.B. 403), addressing information reporting for qualified tuition payments and reimbursements; T.D. 9029 also renumbered the regulations under section 6050S.

## Explanation of Revisions and Summary of Comments

### 1. Expansion to Additional Statements, Notices, and Reports

Five commentators recommended that the regulations be expanded to allow the electronic furnishing of additional statements and reports, including Forms 5498 and 1099-R. After the IRS issued the proposed regulations, Congress enacted the Job Creation and Worker Assistance Act of 2002 (JCWAA), Public Law 107-147 (March 9, 2002). Section 401 of JCWAA permits the electronic furnishing of any statement required under subpart B of part III of subchapter A of chapter 61 of Title 26 (sections 6041 through 6050T). Section 401 of JCWAA specifically eliminated the first-class-mailing requirement that prevented electronic furnishing of statements under sections 6042(c), 6044(e), and 6049(c)(2). In addition, Congress expressed its support for electronic furnishing of all statements required by the Code. See Joint Committee on Taxation Staff, Technical Explanation of the “Job Creation and Worker Assistance Act of 2002,” 107th Cong., 2d Sess. (2002) at page 27.

Section 401 of JCWAA permits the electronic furnishing of all statements required under sections 6041 through 6050T, if the recipient consents to receive the statement in a manner similar to the one permitted by regulations under section 6051 or in such other manner as provided by the Secretary. Because section 401 of JCWAA authorizes the electronic furnishing of all statements required un-

der sections 6041 through 6050T, final regulations are not necessary to allow the voluntary electronic furnishing of statements required under sections 6041 through 6050T, as long as the recipient consents to receive the statement in a manner similar to the one permitted under these final regulations. In addition, Notice 2004-10 (2004-6 I.R.B. 433) permits electronic furnishing of the Form 1099-R, *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*, Form 1099-MSA, *Distributions From an Archer MSA or Medicare+Choice MSA*, Form 1099-Q, *Payments From Qualified Education Programs (Under Sections 529 and 530)*, Form 5498, *Individual Retirement Arrangement Contribution Information*, Form 5498-ESA, *Coverdell ESA Contribution Information*, and Form 5498-MSA, *Archer MSA or Medicare+Choice MSA Information*, payee statements.

### 2. Electronic Mail Attachments

The only method of electronic furnishing specifically authorized by the proposed regulations required posting on websites. Two commentators recommended that the regulations allow taxpayers to send statements as attachments to e-mail. One commentator stated that some organizations might not wish to provide tax statements by e-mail because of security and privacy concerns.

The final regulations do not restrict furnishers solely to the use of website technology. Treasury and the IRS believe that website technology currently provides the most secure method of furnishing statements electronically but do not intend to limit the technology to be used in furnishing statements electronically. Accordingly, under the final regulations, taxpayers are permitted to furnish statements through any electronic means to which the recipient consents, including by e-mail.

### 3. Standards to Ensure Confidentiality of Taxpayer Information

One commentator recommended that the IRS adopt security requirements that require simply a sign-on and a password. Two commentators recommended against

adoption of specific standards. The final regulations do not adopt specific security standards to ensure the confidentiality of recipient information. Rather, the final regulations leave room for security methodologies to evolve through advances in technology.

#### *4. Consent Consistent With the E-SIGN Act's Notice and Consent Provisions*

The proposed regulations adopted notice and consent requirements consistent with the E-SIGN Act. Three commentators stated that the notice and consent requirements of the regulation should not apply to the electronic transmission of statements between employers and employees. One commentator observed that the notice and consent requirement will require the employer to modify existing databases and/or create a separate data base to distinguish between employees who have consented to receive statements electronically and those who will receive a paper statement. The commentator asserted that the cost of these database changes would offset any savings from electronic furnishing. Two commentators stated that credit unions could not efficiently provide statements to their employees electronically, if the credit unions were subject to the regulation's (E-SIGN Act's) notice and consent requirements.

The final regulations retain the notice and consent requirements. The notice and consent requirements are justified on tax administration grounds; it is important that taxpayers be able to demonstrate the ability to receive the tax statements electronically and then actually receive them. Moreover, the IRS and Treasury continue to believe that electronic furnishing should be voluntary for recipients as well as furnishers to accommodate recipients who prefer to receive their statements by traditional paper delivery for perceived security and privacy reasons. Section 401 of JCWAA, which adopted the notice and consent requirements in the temporary regulations, suggests that Congress also believes that electronic furnishing should be voluntary.

#### *5. Verification of Receipt*

Two commentators stated that, since the recipient chooses whether to receive information electronically, the recipient should

be responsible for having the hardware and software necessary to receive the information electronically. The commentators pointed out that electronic mail systems are not standardized and some systems do not provide verification of delivery.

The regulations were not changed to reflect these comments. Both the furnisher and the recipient must voluntarily participate in the electronic delivery system. Both parties are responsible for ensuring that the system complies with the requirements of the regulations.

#### *6. Consent Demonstrating Ability to Obtain Statements*

One commentator recommended clarification of the example provided in the regulations regarding consent from the recipient. The commentator noted that a recipient's being able to receive and send e-mail does not necessarily prove that the recipient can access a website and download the statement. The commentator recommended an example describing alternatives to consent by e-mail.

The rule for consent requires that the recipient demonstrate the ability to access statements, which is done in the regulation's example by opening the attachment. However, the IRS agrees with the commentator's observation and has added two examples of alternative methods of providing consent in the final regulation.

#### *7. Posting Despite Lack of Consent to Electronic Delivery*

Two commentators recommended that the regulations expressly permit furnishers to post all their statements to a website and to send each recipient his/her statement as an e-mail attachment, even if the recipient has not consented to electronic furnishing. The furnisher could then provide paper copies of the statements to recipients who did not consent to electronic furnishing. The commentators cited the ease and economy of total versus piecemeal posting.

The final regulations do not expressly adopt the recommendation. However, the regulations do not prohibit a furnisher from storing all statements on the web server. Whether the furnisher stores all statements or only those statements for which consents are received is a business decision for the furnisher.

#### *8. Contact Information of Person to Whom a Withdrawal of Consent Should Be Furnished*

Three commentators noted that providing the contact information for a specific individual to whom withdrawal of consent should be furnished may cause confusion, because in many large companies no single individual can accommodate communications from a potentially large number of recipients. The commentators suggest that the regulations provide that the recipients may be provided the name, address, phone number and e-mail address of an individual or department, such as a Human Resources Department, or Payroll Department on the disclosure statement. The regulations have been amended to provide that either the name of an individual or of a department may be included in the disclosure statement.

#### *9. Definition of High Importance*

Two commentators requested clarification of the term *high importance* in proposed §§1.6050S-1(a)(6)(i), 1.6050S-2(a)(6)(i), and 31.6051-1(j)(6)(i). The commentators noted that if this term refers to assigning a high priority to the e-mail, as some e-mail software allows, there must be allowances made for e-mail software that does not have that capability. The commentators suggest that in a case where the sending or receiving software does not offer or recognize levels of priority, the regulations should allow the use of a subject line stating "HIGH IMPORTANCE — IMPORTANT TAX RETURN DOCUMENT AVAILABLE."

The final regulations do not require furnishers to assign high priority to e-mail because some software does not have this capability and the IRS and Treasury do not intend to favor any particular technology. Accordingly, furnishers will not be required to use e-mail software with the capability of assigning high priority.

#### *10. Use of Other Subject Lines*

One commentator expressed concern that requiring use of the language "IMPORTANT TAX RETURN DOCUMENT AVAILABLE" on the subject line of e-mail notices could be exploited to spread a computer virus through e-mails with the same subject line. The commentator suggests

that each organization be permitted to create its own subject line containing the name of the issuing organization.

The regulations have not been amended to include this modification of the subject line. It is important to use standard language to identify the statement. Moreover, to prevent the spread of computer viruses, the recipient need only monitor who sent the e-mail.

#### 11. *Undeliverable Notice*

One commentator suggested that when an electronic notice is returned and the furnisher notifies the recipient, the recipient may give the furnisher a corrected electronic address to receive the statement electronically. The consent rule in the final regulations allows the furnisher to obtain a new address from the recipient and resend the notice.

#### 12. *Allowable Period to Deliver Paper Statement*

Two commentators recommended that if the recipient states that he or she no longer has an e-mail address or internet access, and desires a paper statement, the furnisher should construe the recipient's statement as a withdrawal of consent. Furnishers will then be allowed a certain number of days to furnish the paper statement to the recipient. In addition, several members of the information reporting industry requested that a cut-off date be provided for withdrawing consent.

The final regulations retain the rules regarding withdrawal of consent, but allow the furnisher to treat a request for a paper statement as a withdrawal of consent. Treasury and the IRS do not think the regulations should impose a cut-off date for withdrawing consent. Furnishers may, however, provide that a withdrawal of consent takes effect either on the date it is received by the furnisher or on a subsequent date, thereby imposing their own cut-off date for withdrawing consents.

The final regulations retain the rule that a withdrawal of consent will not affect a statement that has been furnished electronically. Thus, if the withdrawal takes effect after the statement is furnished electronically, the statement will be considered timely if it was furnished electronically by the applicable due date. The final regulations also provide that if the withdrawal of

consent takes effect before the statement is furnished electronically a paper statement must be furnished. In this case, a paper statement furnished after the statement due date will be considered timely if furnished within 30 days after the date the withdrawal of consent is received by the furnisher. This extension of time eliminates the need to address reasonable cause for late filing under section 6724. Therefore, the proposed amendment to the regulations under section 6724 is not adopted and temporary regulation §301.6724-1T is removed.

#### 13. *Corrected Statements*

Two commentators requested that the furnisher be able to post both Forms W-2c and replacement Forms W-2 on the website. The commentators noted that an employer may prefer to completely replace an employee's W-2, if it can be done before W-2s are filed with the Social Security Administration, thereby avoiding the W-2c process. The regulations have not been amended to allow a replacement Form W-2 if a Form W-2c is otherwise required. The purpose of the regulations is to describe the manner in which statements may be furnished electronically. The regulations are not intended to change the established procedures for correcting statements. Employers should consult IRS forms and instructions for the appropriate correction procedures.

#### 14. *Access Period*

Two commentators recommended shortening the period of time during which statements can be accessed by changing the period's end date from October 15th to April 30th (or August 15) to reduce the amount of time computer hackers will have to access the confidential information on the website. One commentator noted that even if a recipient intends to apply for two extensions, it is highly likely that the recipient will have accessed the Form W-2 on the website by April 15 to determine whether a payment was necessary by that date. One commentator suggested that furnishers have the option to maintain statements on the website until April 30, as long as they provide replacements through October 15 by paper or as attachments to an e-mail.

The final regulations do not change the access period. It is the responsibility of the furnisher to maintain a secure website. It is important to allow access to the website during the entire filing season (including the period of extensions) to enable taxpayers to import the information directly to their returns if they choose to file electronically.

### **Special Analyses**

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

### **Final Regulatory Flexibility Analysis**

The collection of information contained in §§1.6041-2, 1.6050S-2, 1.6050S-4, and 31.6051-1 is required if a person required to furnish a taxpayer with a statement wishes to furnish the statement electronically. This information will be used to determine that the recipient has consented to receive the statement electronically. The objectives of these final regulations are to provide uniform, practicable, and administrable rules for providing information statements electronically. The types of small entities to which the regulations may apply are small eligible educational institutions (such as colleges and universities), small corporations and partnerships, and small employers.

There are no known Federal rules that duplicate, overlap, or conflict with these regulations. The regulations impose the least economic burden on small entities of all of the alternatives considered. The collection of information is required only from persons receiving the statements electronically using a method authorized by the final regulations.

### **Drafting Information**

The principal author of these final regulations is Michael E. Hara, of the Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. However, other personnel from the IRS

and Treasury Department participated in their development.

\* \* \* \* \*

## Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 31, 301, and 602 are amended as follows:

### PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entries for “Section 1.6041–2T,” “Section 6050S–4T,” and “Section 6050S–2T” and adding entries in numerical order to read in part as follows:

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

Section 1.6041–2 also issued under 26 U.S.C. 6041(d). \* \* \*

Section 1.6050S–2 also issued under 26 U.S.C. 6050S(g). \* \* \*

Section 1.6050S–4 also issued under 26 U.S.C. 6050S(g). \* \* \*

Par. 2. Section 1.6041–2(a)(5) is added to read as follows:

*§1.6041–2 Return of information as to payments to employees.*

(a) \* \* \*

(5) *Statement for employees.* An employer required under this paragraph (a) to file Form W–2 with respect to an employee is also required under sections 6041(d) and 6051 to furnish a written statement to the employee. This written statement must be furnished on Form W–2 in accordance with section 6051 and the regulations.

\* \* \* \* \*

### §1.6041–2T [Removed]

Par. 3. Section 1.6041–2T is removed.

Par. 4. Section 1.6050S–2 is added to read as follows:

*§1.6050S–2 Information reporting for payments and reimbursements or refunds of qualified tuition and related expenses.*

(a) *Electronic furnishing of statements—(1) In general.* A person required by section 6050S(d) to furnish a written statement regarding payments and reimbursements or refunds of qualified tuition and related expenses (furnisher) to

the individual to whom it is required to be furnished (recipient) may furnish the statement in an electronic format in lieu of a paper format. A furnisher who meets the requirements of paragraphs (a)(2) through (6) of this section is treated as furnishing the required statement.

(2) *Consent—(i) In general.* The recipient must have affirmatively consented to receive the statement in an electronic format. The consent may be made electronically in any manner that reasonably demonstrates that the recipient can access the statement in the electronic format in which it will be furnished to the recipient. Alternatively, the consent may be made in a paper document if it is confirmed electronically.

(ii) *Withdrawal of consent.* The consent requirement of this paragraph (a)(2) is not satisfied if the recipient withdraws the consent and the withdrawal takes effect before the statement is furnished. The furnisher may provide that a withdrawal of consent takes effect either on the date it is received by the furnisher or on a subsequent date. The furnisher may also provide that a request for a paper statement will be treated as a withdrawal of consent.

(iii) *Change in hardware or software requirements.* If a change in the hardware or software required to access the statement creates a material risk that the recipient will not be able to access the statement, the furnisher must, prior to changing the hardware or software, provide the recipient with a notice. The notice must describe the revised hardware and software required to access the statement and inform the recipient that a new consent to receive the statement in the revised electronic format must be provided to the furnisher. After implementing the revised hardware and software, the furnisher must obtain from the recipient, in the manner described in paragraph (a)(2)(i) of this section, a new consent or confirmation of consent to receive the statement electronically.

(iv) *Examples.* The following examples illustrate the rules of this paragraph (a)(2):

*Example 1.* Furnisher F sends Recipient R a letter stating that R may consent to receive statements required by section 6050S(d) electronically on a website instead of in a paper format. The letter contains instructions explaining how to consent to receive the statements electronically by accessing the website, downloading the consent document, completing the consent document and e-mailing the completed consent back to F. The consent document posted on the

website uses the same electronic format that F will use for the electronically furnished statements. R reads the instructions and submits the consent in the manner provided in the instructions. R has consented to receive the statements electronically in the manner described in paragraph (a)(2)(i) of this section.

*Example 2.* Furnisher F sends Recipient R an e-mail stating that R may consent to receive statements required by section 6050S(d) electronically instead of in a paper format. The e-mail contains an attachment instructing R how to consent to receive the statements electronically. The e-mail attachment uses the same electronic format that F will use for the electronically furnished statements. R opens the attachment, reads the instructions, and submits the consent in the manner provided in the instructions. R has consented to receive the statements electronically in the manner described in paragraph (a)(2)(i) of this section.

*Example 3.* Furnisher F posts a notice on its website stating that Recipient R may receive statements required by section 6050S(d) electronically instead of in a paper format. The website contains instructions on how R may access a secure webpage and consent to receive the statements electronically. By accessing the secure webpage and giving consent, R has consented to receive the statements electronically in the manner described in paragraph (a)(2)(i) of this section.

(3) *Required disclosures—(i) In general.* Prior to, or at the time of, a recipient's consent, the furnisher must provide to the recipient a clear and conspicuous disclosure statement containing each of the disclosures described in paragraphs (a)(3)(ii) through (viii) of this section.

(ii) *Paper statement.* The recipient must be informed that the statement will be furnished on paper if the recipient does not consent to receive it electronically.

(iii) *Scope and duration of consent.* The recipient must be informed of the scope and duration of the consent. For example, the recipient must be informed whether the consent applies to statements furnished every year after the consent is given until it is withdrawn in the manner described in paragraph (a)(3)(v)(A) of this section or only to the statement required to be furnished on or before the January 31 immediately following the date on which the consent is given.

(iv) *Post-consent request for a paper statement.* The recipient must be informed of any procedure for obtaining a paper copy of the recipient's statement after giving the consent described in paragraph (a)(2)(i) of this section and whether a request for a paper statement will be treated as a withdrawal of consent.

(v) *Withdrawal of consent.* The recipient must be informed that—

(A) The recipient may withdraw a consent by writing (electronically or on paper) to the person or department whose name, mailing address, telephone number, and e-mail address is provided in the disclosure statement;

(B) The furnisher will confirm the withdrawal and the date on which it takes effect in writing (either electronically or on paper); and

(C) A withdrawal of consent does not apply to a statement that was furnished electronically in the manner described in this paragraph (a) before the date on which the withdrawal of consent takes effect.

(vi) *Notice of termination.* The recipient must be informed of the conditions under which a furnisher will cease furnishing statements electronically to the recipient.

(vii) *Updating information.* The recipient must be informed of the procedures for updating the information needed by the furnisher to contact the recipient. The furnisher must inform the recipient of any change in the furnisher's contact information.

(viii) *Hardware and software requirements.* The recipient must be provided with a description of the hardware and software required to access, print, and retain the statement, and the date when the statement will no longer be available on the website.

(4) *Format.* The electronic version of the statement must contain all required information and comply with applicable revenue procedures relating to substitute statements to recipients.

(5) *Notice—(i) In general.* If the statement is furnished on a website, the furnisher must notify the recipient that the statement is posted on a website. The notice may be delivered by mail, electronic mail, or in person. The notice must provide instructions on how to access and print the statement. The notice must include the following statement in capital letters, "IMPORTANT TAX RETURN DOCUMENT AVAILABLE." If the notice is provided by electronic mail, the foregoing statement must be on the subject line of the electronic mail.

(ii) *Undeliverable electronic address.* If an electronic notice described in paragraph (a)(5)(i) of this section is returned as undeliverable, and the correct electronic address cannot be obtained from the fur-

nisher's records or from the recipient, then the furnisher must furnish the notice by mail or in person within 30 days after the electronic notice is returned.

(iii) *Corrected statements.* If the furnisher has corrected a recipient's statement that was furnished electronically, the furnisher must furnish the corrected statement to the recipient electronically. If the recipient's statement was furnished through a website posting and the furnisher has corrected the statement, the furnisher must notify the recipient that it has posted the corrected statement on the website within 30 days of such posting in the manner described in paragraph (a)(5)(i) of this section. The corrected statement or the notice must be furnished by mail or in person if—

(A) An electronic notice of the website posting of an original statement was returned as undeliverable; and

(B) The recipient has not provided a new e-mail address.

(6) *Access Period.* Statements furnished on a website must be retained on the website through October 15 of the year following the calendar year to which the statements relate (or the first business day after such October 15, if October 15 falls on a Saturday, Sunday, or legal holiday). The furnisher must maintain access to corrected statements that are posted on the website through October 15 of the year following the calendar year to which the statements relate (or the first business day after such October 15, if October 15 falls on a Saturday, Sunday, or legal holiday) or the date 90 days after the corrected statements are posted, whichever is later.

(b) *Paper statements after withdrawal of consent.* If a recipient withdraws consent to receive a statement electronically and the withdrawal takes effect before the statement is furnished electronically, a paper statement must be furnished. A paper statement furnished after the statement due date under this paragraph (b) will be considered timely if furnished within 30 days after the date the withdrawal of consent is received by the furnisher.

(c) *Effective date.* This section applies to statements required to be furnished after February 13, 2004. Paragraph (a)(6) of this section also applies to statements required to be furnished after December 31, 2003.

## **§1.6050S-4T [Removed]**

Par. 5. Section 1.6050S-4T is removed.

Par. 6. Section 1.6050S-4 is added to read as follows:

### *§1.6050S-4 Information reporting for payments of interest on qualified education loans.*

(a) *Electronic furnishing of statements—(1) In general.* A person required by section 6050S(d) to furnish a written statement regarding payments of interest on qualified education loans (furnisher) to the individual to whom it is required to be furnished (recipient) may furnish the statement in an electronic format in lieu of a paper format. A furnisher who meets the requirements of paragraphs (a)(2) through (6) of this section is treated as furnishing the required statement.

(2) *Consent—(i) In general.* The recipient must have affirmatively consented to receive the statement in an electronic format. The consent may be made electronically in any manner that reasonably demonstrates that the recipient can access the statement in the electronic format in which it will be furnished to the recipient. Alternatively, the consent may be made in a paper document if it is confirmed electronically.

(ii) *Withdrawal of consent.* The consent requirement of this paragraph (a)(2) is not satisfied if the recipient withdraws the consent and the withdrawal takes effect before the statement is furnished. The furnisher may provide that a withdrawal of consent takes effect either on the date it is received by the furnisher or on a subsequent date. The furnisher may also provide that a request for a paper statement will be treated as a withdrawal of consent.

(iii) *Change in hardware or software requirements.* If a change in the hardware or software required to access the statement creates a material risk that the recipient will not be able to access the statement, the furnisher must, prior to changing the hardware or software, provide the recipient with a notice. The notice must describe the revised hardware and software required to access the statement and inform the recipient that a new consent to receive the statement in the revised electronic format must be provided to the furnisher. After im-

plementing the revised hardware and software, the furnisher must obtain from the recipient, in the manner described in paragraph (a)(2)(i) of this section, a new consent or confirmation of consent to receive the statement electronically.

(iv) *Examples.* The following examples illustrate the rules of this paragraph (a)(2):

*Example 1.* Furnisher F sends Recipient R a letter stating that R may consent to receive statements required by section 6050S(d) electronically on a website instead of in a paper format. The letter contains instructions explaining how to consent to receive the statements electronically by accessing the website, downloading the consent document, completing the consent document and e-mailing the completed consent back to F. The consent document posted on the website uses the same electronic format that F will use for the electronically furnished statements. R reads the instructions and submits the consent in the manner provided in the instructions. R has consented to receive the statements electronically in the manner described in paragraph (a)(2)(i) of this section.

*Example 2.* Furnisher F sends Recipient R an e-mail stating that R may consent to receive statements required by section 6050S(d) electronically instead of in a paper format. The e-mail contains an attachment instructing R how to consent to receive the statements electronically. The e-mail attachment uses the same electronic format that F will use for the electronically furnished statements. R opens the attachment, reads the instructions, and submits the consent in the manner provided in the instructions. R has consented to receive the statements electronically in the manner described in paragraph (a)(2)(i) of this section.

*Example 3.* Furnisher F posts a notice on its website stating that Recipient R may receive statements required by section 6050S(d) electronically instead of in a paper format. The website contains instructions on how R may access a secure webpage and consent to receive the statements electronically. By accessing the secure webpage and giving consent, R has consented to receive the statements electronically in the manner described in paragraph (a)(2)(i) of this section.

(3) *Required disclosures*—(i) *In general.* Prior to, or at the time of, a recipient's consent, the furnisher must provide to the recipient a clear and conspicuous disclosure statement containing each of the disclosures described in paragraphs (a)(3)(ii) through (viii) of this section.

(ii) *Paper statement.* The recipient must be informed that the statement will be furnished on paper if the recipient does not consent to receive it electronically.

(iii) *Scope and duration of consent.* The recipient must be informed of the scope and duration of the consent. For example, the recipient must be informed whether the consent applies to statements furnished every year after the consent is given until it is withdrawn in the manner described in

paragraph (a)(3)(v)(A) of this section or only to the statement required to be furnished on or before the January 31 immediately following the date on which the consent is given.

(iv) *Post-consent request for a paper statement.* The recipient must be informed of any procedure for obtaining a paper copy of the recipient's statement after giving the consent described in paragraph (a)(2)(i) of this section and whether a request for a paper statement will be treated as a withdrawal of consent.

(v) *Withdrawal of consent.* The recipient must be informed that—

(A) The recipient may withdraw a consent by writing (electronically or on paper) to the person or department whose name, mailing address, telephone number, and e-mail address is provided in the disclosure statement;

(B) The furnisher will confirm the withdrawal and the date on which it takes effect in writing (either electronically or on paper); and

(C) A withdrawal of consent does not apply to a statement that was furnished electronically in the manner described in this paragraph (a) before the date on which the withdrawal of consent takes effect.

(vi) *Notice of termination.* The recipient must be informed of the conditions under which a furnisher will cease furnishing statements electronically to the recipient.

(vii) *Updating information.* The recipient must be informed of the procedures for updating the information needed by the furnisher to contact the recipient. The furnisher must inform the recipient of any change in the furnisher's contact information.

(viii) *Hardware and software requirements.* The recipient must be provided with a description of the hardware and software required to access, print, and retain the statement, and the date when the statement will no longer be available on the website.

(4) *Format.* The electronic version of the statement must contain all required information and comply with applicable revenue procedures relating to substitute statements to recipients.

(5) *Notice*—(i) *In general.* If the statement is furnished on a website, the furnisher must notify the recipient that the statement is posted on a website. The notice may be delivered by mail, electronic

mail, or in person. The notice must provide instructions on how to access and print the statement. The notice must include the following statement in capital letters, "IMPORTANT TAX RETURN DOCUMENT AVAILABLE." If the notice is provided by electronic mail, the foregoing statement must be on the subject line of the electronic mail.

(ii) *Undeliverable electronic address.* If an electronic notice described in paragraph (a)(5)(i) of this section is returned as undeliverable, and the correct electronic address cannot be obtained from the furnisher's records or from the recipient, then the furnisher must furnish the notice by mail or in person within 30 days after the electronic notice is returned.

(iii) *Corrected statements.* If the furnisher has corrected a recipient's statement that was furnished electronically, the furnisher must furnish the corrected statement to the recipient electronically. If the recipient's statement was furnished through a website posting and the furnisher has corrected the statement, the furnisher must notify the recipient that it has posted the corrected statement on the website within 30 days of such posting in the manner described in paragraph (a)(5)(i) of this section. The corrected statement or the notice must be furnished by mail or in person if—

(A) An electronic notice of the website posting of an original statement or the corrected statement was returned as undeliverable; and

(B) The recipient has not provided a new e-mail address.

(6) *Access Period.* Statements furnished on a website must be retained on the website through October 15 of the year following the calendar year to which the statements relate (or the first business day after such October 15, if October 15 falls on a Saturday, Sunday, or legal holiday). The furnisher must maintain access to corrected statements that are posted on the website through October 15 of the year following the calendar year to which the statements relate (or the first business day after such October 15, if October 15 falls on a Saturday, Sunday, or legal holiday) or the date 90 days after the corrected statements are posted, whichever is later.

(b) *Effective date.* This section applies to statements required to be furnished after February 13, 2004. Paragraph (a)(6) of this



section also applies to statements required to be furnished after December 31, 2003.

#### **§1.6050S-2T [Removed]**

Par. 7. Section 1.6050S-2T is removed.

#### **PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE**

Par. 8. The authority citation for part 31 is amended by revising the entry for “31.6051-1(d)” and removing the entry for “Section 31.6051-1T” to read, in part, as follows:

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

Section 31.6051-1 also issued under 26 U.S.C. 6051. \* \* \*

Par. 9. In §31.6051-1, paragraph (j) is added to read as follows:

#### *§31.6051-1 Statements for employees.*

\* \* \* \* \*

(j) *Electronic furnishing of statements*—(1) *In general.* A person required by section 6051 to furnish a written statement on Form W-2 (furnisher) to the individual to whom it is required to be furnished (recipient) may furnish the Form W-2 in an electronic format in lieu of a paper format. A furnisher who meets the requirements of paragraphs (j)(2) through (6) of this section is treated as furnishing the Form W-2 in a timely manner.

(2) *Consent*—(i) *In general.* The recipient must have affirmatively consented to receive the Form W-2 in an electronic format. The consent may be made electronically in any manner that reasonably demonstrates that the recipient can access the Form W-2 in the electronic format in which it will be furnished to the recipient. Alternatively, the consent may be made in a paper document if it is confirmed electronically.

(ii) *Withdrawal of consent.* The consent requirement of this paragraph (j)(2) is not satisfied if the recipient withdraws the consent and the withdrawal takes effect before the statement is furnished. The furnisher may provide that a withdrawal of consent takes effect either on the date it is received by the furnisher or on a subsequent date. The furnisher may also provide that a request for a paper statement will be treated as a withdrawal of consent.

(iii) *Change in hardware or software requirements.* If a change in hardware or software required to access the Form W-2 creates a material risk that the recipient will not be able to access the Form W-2, the furnisher must, prior to changing the hardware or software, provide the recipient with a notice. The notice must describe the revised hardware and software required to access the Form W-2 and inform the recipient that a new consent to receive the Form W-2 in the revised electronic format must be provided to the furnisher. After implementing the revised hardware and software, the furnisher must obtain from the recipient, in the manner described in paragraph (j)(2)(i) of this section, a new consent or confirmation of consent to receive the Form W-2 electronically.

(iv) *Examples.* The following examples illustrate the rules of this paragraph (j)(2):

*Example 1.* Furnisher F sends Recipient R a letter stating that R may consent to receive Form W-2 electronically on a website instead of in a paper format. The letter contains instructions explaining how to consent to receive Form W-2 electronically by accessing the website, downloading the consent document, completing the consent document and e-mailing the completed consent back to F. The consent document posted on the website uses the same electronic format that F will use for the electronically furnished Form W-2. R reads the instructions and submits the consent in the manner provided in the instructions. R has consented to receive the statements electronically in the manner described in paragraph (j)(2)(i) of this section.

*Example 2.* Furnisher F sends Recipient R an e-mail stating that R may consent to receive Form W-2 electronically instead of in a paper format. The e-mail contains an attachment instructing R how to consent to receive Form W-2 electronically. The e-mail attachment uses the same electronic format that F will use for the electronically furnished Form W-2. R opens the attachment, reads the instructions, and submits the consent in the manner provided in the instructions. R has consented to receive Form W-2 electronically in the manner described in paragraph (j)(2)(i) of this section.

*Example 3.* Furnisher F posts a notice on its website stating that Recipient R may receive Form W-2 electronically instead of in a paper format. The website contains instructions on how R may access a secure webpage and consent to receive the statements electronically. By accessing the secure webpage and giving consent, R has consented to receive Form W-2 electronically in the manner described in paragraph (j)(2)(i) of this section.

(3) *Required disclosures*—(i) *In general.* Prior to, or at the time of, a recipient's consent, the furnisher must provide to the recipient a clear and conspicuous disclosure statement containing each of the disclosures described in paragraphs (j)(3)(ii) through (viii) of this section.

(ii) *Paper statement.* The recipient must be informed that the Form W-2 will be furnished on paper if the recipient does not consent to receive it electronically.

(iii) *Scope and duration of consent.* The recipient must be informed of the scope and duration of the consent. For example, the recipient must be informed whether the consent applies to each Form W-2 required to be furnished after the consent is given until it is withdrawn in the manner described in paragraph (j)(3)(v)(A) of this section or only to the first Form W-2 required to be furnished following the date on which the consent is given.

(iv) *Post-consent request for a paper statement.* The recipient must be informed of any procedure for obtaining a paper copy of the recipient's statement after giving the consent described in paragraph (j)(2)(i) of this section and whether a request for a paper statement will be treated as a withdrawal of consent.

(v) *Withdrawal of consent.* The recipient must be informed that—

(A) The recipient may withdraw a consent by writing (electronically or on paper) to the person or department whose name, mailing address, telephone number, and e-mail address is provided in the disclosure statement;

(B) The furnisher will confirm the withdrawal and the date on which it takes effect in writing (either electronically or on paper); and

(C) A withdrawal of consent does not apply to a statement that was furnished electronically in the manner described in this paragraph (j) before the date on which the withdrawal of consent takes effect.

(vi) *Notice of termination.* The recipient must be informed of the conditions under which a furnisher will cease furnishing statements electronically to the recipient (for example, termination of the recipient's employment with furnisher-employer).

(vii) *Updating information.* The recipient must be informed of the procedures for updating the information needed by the furnisher to contact the recipient. The furnisher must inform the recipient of any change in the furnisher's contact information.

(viii) *Hardware and software requirements.* The recipient must be provided with a description of the hardware and software required to access, print, and retain the Form W-2, and the date when

the Form W-2 will no longer be available on the website. The recipient must be informed that the Form W-2 may be required to be printed and attached to a Federal, State, or local income tax return.

(4) *Format.* The electronic version of the Form W-2 must contain all required information and comply with applicable revenue procedures relating to substitute statements to recipients.

(5) *Notice*—(i) *In general.* If the statement is furnished on a website, the furnisher must notify the recipient that the statement is posted on a website. The notice may be delivered by mail, electronic mail, or in person. The notice must provide instructions on how to access and print the statement. The notice must include the following statement in capital letters, “IMPORTANT TAX RETURN DOCUMENT AVAILABLE.” If the notice is provided by electronic mail, the foregoing statement must be on the subject line of the electronic mail.

(ii) *Undeliverable electronic address.* If an electronic notice described in paragraph (j)(5)(i) of this section is returned as undeliverable, and the correct electronic address cannot be obtained from the furnisher’s records or from the recipient, then the furnisher must furnish the notice by mail or in person within 30 days after the electronic notice is returned.

(iii) *Corrected Form W-2.* If the furnisher has corrected a recipient’s Form W-2 that was furnished electronically, the furnisher must furnish the corrected Form W-2 to the recipient electronically. If the recipient’s Form W-2 was furnished

through a website posting and the furnisher has corrected the Form W-2, the furnisher must notify the recipient that it has posted the corrected Form W-2 on the website within 30 days of such posting in the manner described in paragraph (j)(5)(i) of this section. The corrected Form W-2 or the notice must be furnished by mail or in person if—

(A) An electronic notice of the website posting of an original Form W-2 or the corrected Form W-2 was returned as undeliverable; and

(B) The recipient has not provided a new e-mail address.

(6) *Access period.* Forms W-2 furnished on a website must be retained on the website through October 15 of the year following the calendar year to which the Forms W-2 relate (or the first business day after October 15, if October 15 falls on a Saturday, Sunday, or legal holiday). The furnisher must maintain access to corrected Forms W-2 that are posted on the website through October 15 of the year following the calendar year to which the Forms W-2 relate (or the first business day after such October 15, if October 15 falls on a Saturday, Sunday, or legal holiday) or the date 90 days after the corrected forms are posted, whichever is later.

(7) *Paper statements after withdrawal of consent.* If a recipient withdraws consent to receive a statement electronically and the withdrawal takes effect before the statement is furnished electronically, a paper statement must be furnished. A paper statement furnished after the statement due date under this paragraph (j)(7) will

be considered timely if furnished within 30 days after the date the withdrawal of consent is received by the furnisher.

(8) *Effective date.* This paragraph (j) applies to Forms W-2 required to be furnished after February 13, 2004. Paragraph (j)(6) of this section also applies to Forms W-2 required to be furnished after December 31, 2003.

#### §31.6051-1T [Removed]

Par. 10. Section 31.6051-1T is removed.

### PART 301—REGULATIONS ON PROCEDURE AND ADMINISTRATION

Par. 11. The authority citation for part 301 continues to read, in part, as follows:

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

#### §301.6724-1T [Removed]

Par. 12. Section 301.6724-1T is removed.

### PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 13. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 14. In §602.101, paragraph (b) is amended by:

1. Removing the following entries from the table:

1.6041-2T.....	1545-1729
1.6050S-2T .....	1545-1729
1.6050S-4T .....	1545-1729
31.6051-1T.....	1545-1729

2. Revising the entry for “31.6051-1” in the table to read as follows:

§602.101 OMB Control numbers.

(b) \* \* \*

\* \* \* \* \*

CFR part or section where identified and described	Current OMB control No.
* * * * *	
31.6051-1 .....	1545-0008
.....	1545-0182
.....	1545-0458
.....	1545-1729
* * * * *	

3. Adding the following entries in numerical order to the table to read as follows:

§602.101 OMB Control numbers.

(b) \* \* \*

\* \* \* \* \*

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.6041-2 .....	1545-1729
* * * * *	
1.6050S-2 .....	1545-1729
1.6050S-4 .....	1545-1729
* * * * *	

Mark E. Matthews,  
*Deputy Commissioner for  
Services and Enforcement.*

Approved February 12, 2004.

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

(Filed by the Office of the Federal Register on February 13, 2004, 10:16 a.m., and published in the issue of the Federal Register for February 18, 2004, 69 F.R. 7567)

## Section 6621.—Determination of Interest Rate

26 CFR 301.6621-1: Interest rate.

**Interest rates; underpayments and overpayments.** The rate of interest determined under section 6621 of the Code for the calendar quarter beginning April 1, 2004, will be 5 percent for overpayments (4 percent in the case of a corporation), 5 percent for underpayments, and 7 percent for large corporate underpayments. The

rate of interest paid on the portion of a corporate overpayment exceeding \$10,000 will be 2.5 percent.

## Rev. Rul. 2004-26

Section 6621 of the Internal Revenue Code establishes the rates for interest on tax overpayments and tax underpayments. Under section 6621(a)(1), the overpayment rate beginning April 1, 2004, is the sum of the federal short-term rate plus 3 percentage points (2 percentage points in the case of a corporation), except the rate for the portion of a corporate overpayment of tax exceeding \$10,000 for a taxable period is the sum of the federal short-term rate plus 0.5 of a percentage point for interest computations made after December 31, 1994. Under section 6621(a)(2), the underpayment rate is the sum of the federal short-term rate plus 3 percentage points.

Section 6621(c) provides that for purposes of interest payable under section

6601 on any large corporate underpayment, the underpayment rate under section 6621(a)(2) is determined by substituting “5 percentage points” for “3 percentage points.” See section 6621(c) and section 301.6621-3 of the Regulations on Procedure and Administration for the definition of a large corporate underpayment and for the rules for determining the applicable date. Section 6621(c) and section 301.6621-3 are generally effective for periods after December 31, 1990.

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

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

Section 6621(b)(2)(B) provides that in determining the addition to tax under section 6654 for failure to pay estimated tax

for any taxable year, the federal short-term rate that applies during the third month following such taxable year also applies during the first 15 days of the fourth month following such taxable year.

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

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

pursuant to section 6622, is subject to daily compounding.

Rounded to the nearest full percent, the federal short-term rate based on daily compounding determined during the month of January 2004 is 2 percent. Accordingly, an overpayment rate of 5 percent (4 percent in the case of a corporation) and an underpayment rate of 5 percent are established for the calendar quarter beginning April 1, 2004. The overpayment rate for the portion of a corporate overpayment exceeding \$10,000 for the calendar quarter beginning April 1, 2004, is 2.5 percent. The underpayment rate for large corporate underpayments for the calendar quarter beginning April 1, 2004, is 7 percent. These rates apply to amounts bearing interest during that calendar quarter.

Under section 6621(b)(2)(B), the 4 percent rate that applies to estimated tax underpayments for the first calendar quar-

ter in 2004, as provided in Rev. Rul. 2003-126, 2003-52 I.R.B. 1249, also applies to such underpayments for the first 15 days in April 2004.

Interest factors for daily compound interest for annual rates of 2.5 percent, 4 percent, 5 percent, and 7 percent are published in Tables 58, 61, 63, and 67 of Rev. Proc. 95-17, 1995-1 C.B. 556, 612, 615, 617, and 621.

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

#### DRAFTING INFORMATION

The principal author of this revenue ruling is Crystal Foster of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue ruling, contact Ms. Foster at (202) 622-7326 (not a toll-free call).

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

PERIOD	RATE	In 1995-1 C.B. DAILY RATE TABLE
Before Jul. 1, 1975	6%	Table 2, pg. 557
Jul. 1, 1975—Jan. 31, 1976	9%	Table 4, pg. 559
Feb. 1, 1976—Jan. 31, 1978	7%	Table 3, pg. 558
Feb. 1, 1978—Jan. 31, 1980	6%	Table 2, pg. 557
Feb. 1, 1980—Jan. 31, 1982	12%	Table 5, pg. 560
Feb. 1, 1982—Dec. 31, 1982	20%	Table 6, pg. 560
Jan. 1, 1983—Jun. 30, 1983	16%	Table 37, pg. 591
Jul. 1, 1983—Dec. 31, 1983	11%	Table 27, pg. 581
Jan. 1, 1984—Jun. 30, 1984	11%	Table 75, pg. 629
Jul. 1, 1984—Dec. 31, 1984	11%	Table 75, pg. 629
Jan. 1, 1985—Jun. 30, 1985	13%	Table 31, pg. 585
Jul. 1, 1985—Dec. 31, 1985	11%	Table 27, pg. 581
Jan. 1, 1986—Jun. 30, 1986	10%	Table 25, pg. 579
Jul. 1, 1986—Dec. 31, 1986	9%	Table 23, pg. 577

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

	OVERPAYMENTS			UNDERPAYMENTS		
	1995-1 C.B.			1995-1 C.B.		
	RATE	TABLE	PG	RATE	TABLE	PAGE
Jan. 1, 1987—Mar. 31, 1987	8%	21	575	9%	23	577
Apr. 1, 1987—Jun. 30, 1987	8%	21	575	9%	23	577
Jul. 1, 1987—Sep. 30, 1987	8%	21	575	9%	23	577

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

	OVERPAYMENTS			UNDERPAYMENTS		
	1995–1 C.B.			1995–1 C.B.		
	RATE	TABLE	PG	RATE	TABLE	PAGE
Oct. 1, 1987—Dec. 31, 1987	9%	23	577	10%	25	579
Jan. 1, 1988—Mar. 31, 1988	10%	73	627	11%	75	629
Apr. 1, 1988—Jun. 30, 1988	9%	71	625	10%	73	627
Jul. 1, 1988—Sep. 30, 1988	9%	71	625	10%	73	627
Oct. 1, 1988—Dec. 31, 1988	10%	73	627	11%	75	629
Jan. 1, 1989—Mar. 31, 1989	10%	25	579	11%	27	581
Apr. 1, 1989—Jun. 30, 1989	11%	27	581	12%	29	583
Jul. 1, 1989—Sep. 30, 1989	11%	27	581	12%	29	583
Oct. 1, 1989—Dec. 31, 1989	10%	25	579	11%	27	581
Jan. 1, 1990—Mar. 31, 1990	10%	25	579	11%	27	581
Apr. 1, 1990—Jun. 30, 1990	10%	25	579	11%	27	581
Jul. 1, 1990—Sep. 30, 1990	10%	25	579	11%	27	581
Oct. 1, 1990—Dec. 31, 1990	10%	25	579	11%	27	581
Jan. 1, 1991—Mar. 31, 1991	10%	25	579	11%	27	581
Apr. 1, 1991—Jun. 30, 1991	9%	23	577	10%	25	579
Jul. 1, 1991—Sep. 30, 1991	9%	23	577	10%	25	579
Oct. 1, 1991—Dec. 31, 1991	9%	23	577	10%	25	579
Jan. 1, 1992—Mar. 31, 1992	8%	69	623	9%	71	625
Apr. 1, 1992—Jun. 30, 1992	7%	67	621	8%	69	623
Jul. 1, 1992—Sep. 30, 1992	7%	67	621	8%	69	623
Oct. 1, 1992—Dec. 31, 1992	6%	65	619	7%	67	621
Jan. 1, 1993—Mar. 31, 1993	6%	17	571	7%	19	573
Apr. 1, 1993—Jun. 30, 1993	6%	17	571	7%	19	573
Jul. 1, 1993—Sep. 30, 1993	6%	17	571	7%	19	573
Oct. 1, 1993—Dec. 31, 1993	6%	17	571	7%	19	573
Jan. 1, 1994—Mar. 31, 1994	6%	17	571	7%	19	573
Apr. 1, 1994—Jun. 30, 1994	6%	17	571	7%	19	573
Jul. 1, 1994—Sep. 30, 1994	7%	19	573	8%	21	575
Oct. 1, 1994—Dec. 31, 1994	8%	21	575	9%	23	577
Jan. 1, 1995—Mar. 31, 1995	8%	21	575	9%	23	577
Apr. 1, 1995—Jun. 30, 1995	9%	23	577	10%	25	579
Jul. 1, 1995—Sep. 30, 1995	8%	21	575	9%	23	577
Oct. 1, 1995—Dec. 31, 1995	8%	21	575	9%	23	577
Jan. 1, 1996—Mar. 31, 1996	8%	69	623	9%	71	625
Apr. 1, 1996—Jun. 30, 1996	7%	67	621	8%	69	623
Jul. 1, 1996—Sep. 30, 1996	8%	69	623	9%	71	625
Oct. 1, 1996—Dec. 31, 1996	8%	69	623	9%	71	625
Jan. 1, 1997—Mar. 31, 1997	8%	21	575	9%	23	577
Apr. 1, 1997—Jun. 30, 1997	8%	21	575	9%	23	577
Jul. 1, 1997—Sep. 30, 1997	8%	21	575	9%	23	577
Oct. 1, 1997—Dec. 31, 1997	8%	21	575	9%	23	577
Jan. 1, 1998—Mar. 31, 1998	8%	21	575	9%	23	577
Apr. 1, 1998—Jun. 30, 1998	7%	19	573	8%	21	575
Jul. 1, 1998—Sep. 30, 1998	7%	19	573	8%	21	575
Oct. 1, 1998—Dec. 31, 1998	7%	19	573	8%	21	575

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

		1995–1 C.B.	
	RATE	TABLE	PAGE
Jan. 1, 1999—Mar. 31, 1999	7%	19	573
Apr. 1, 1999—Jun. 30, 1999	8%	21	575
Jul. 1, 1999—Sep. 30, 1999	8%	21	575
Oct. 1, 1999—Dec. 31, 1999	8%	21	575
Jan. 1, 2000—Mar. 31, 2000	8%	69	623
Apr. 1, 2000—Jun. 30, 2000	9%	71	625
Jul. 1, 2000—Sep. 30, 2000	9%	71	625
Oct. 1, 2000—Dec. 31, 2000	9%	71	625
Jan. 1, 2001—Mar. 31, 2001	9%	23	577
Apr. 1, 2001—Jun. 30, 2001	8%	21	575
Jul. 1, 2001—Sep. 30, 2001	7%	19	573
Oct. 1, 2001—Dec. 31, 2001	7%	19	573
Jan. 1, 2002—Mar. 31, 2002	6%	17	571
Apr. 1, 2002—Jun. 30, 2002	6%	17	571
Jul. 1, 2002—Sep. 30, 2002	6%	17	571
Oct. 1, 2002—Dec. 31, 2002	6%	17	571
Jan. 1, 2003—Mar. 31, 2003	5%	15	569
Apr. 1, 2003—Jun. 30, 2003	5%	15	569
Jul. 1, 2003—Sep. 30, 2003	5%	15	569
Oct. 1, 2003—Dec. 31, 2003	4%	13	567
Jan. 1, 2004—Mar. 31, 2004	4%	61	615
Apr. 1, 2004—Jun. 31, 2004	5%	63	617

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

	OVERPAYMENTS			UNDERPAYMENTS		
	1995–1 C.B.			1995–1 C.B.		
	RATE	TABLE	PG	RATE	TABLE	PAGE
Jan. 1, 1999—Mar. 31, 1999	6%	17	571	7%	19	573
Apr. 1, 1999—Jun. 30, 1999	7%	19	573	8%	21	575
Jul. 1, 1999—Sep. 30, 1999	7%	19	573	8%	21	575
Oct. 1, 1999—Dec. 31, 1999	7%	19	573	8%	21	575
Jan. 1, 2000—Mar. 31, 2000	7%	67	621	8%	69	623
Apr. 1, 2000—Jun. 30, 2000	8%	69	623	9%	71	625
Jul. 1, 2000—Sep. 30, 2000	8%	69	623	9%	71	625
Oct. 1, 2000—Dec. 31, 2000	8%	69	623	9%	71	625
Jan. 1, 2001—Mar. 31, 2001	8%	21	575	9%	23	577
Apr. 1, 2001—Jun. 30, 2001	7%	19	573	8%	21	575
Jul. 1, 2001—Sep. 30, 2001	6%	17	571	7%	19	573
Oct. 1, 2001—Dec. 31, 2001	6%	17	571	7%	19	573
Jan. 1, 2002—Mar. 31, 2002	5%	15	569	6%	17	571
Apr. 1, 2002—Jun. 30, 2002	5%	15	569	6%	17	571
Jul. 1, 2002—Sep. 30, 2002	5%	15	569	6%	17	571
Oct. 1, 2002—Dec. 31, 2002	5%	15	569	6%	17	571
Jan. 1, 2003—Mar. 31, 2003	4%	13	567	5%	15	569

TABLE OF INTEREST RATES  
FROM JANUARY 1, 1999 – PRESENT  
CORPORATE OVERPAYMENTS AND UNDERPAYMENTS — Continued

	OVERPAYMENTS			UNDERPAYMENTS		
	1995–1 C.B.			1995–1 C.B.		
	RATE	TABLE	PG	RATE	TABLE	PAGE
Apr. 1, 2003—Jun. 30, 2003	4%	13	567	5%	15	569
Jul. 1, 2003—Sep. 30, 2003	4%	13	567	5%	15	569
Oct. 1, 2003—Dec. 31, 2003	3%	11	565	4%	13	567
Jan. 1, 2004—Mar. 31, 2004	3%	59	613	4%	61	615
Apr. 1, 2004—Jun. 31, 2004	4%	61	615	5%	63	617

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

	1995–1 C.B.		
	RATE	TABLE	PAGE
Jan. 1, 1991—Mar. 31, 1991	13%	31	585
Apr. 1, 1991—Jun. 30, 1991	12%	29	583
Jul. 1, 1991—Sep. 30, 1991	12%	29	583
Oct. 1, 1991—Dec. 31, 1991	12%	29	583
Jan. 1, 1992—Mar. 31, 1992	11%	75	629
Apr. 1, 1992—Jun. 30, 1992	10%	73	627
Jul. 1, 1992—Sep. 30, 1992	10%	73	627
Oct. 1, 1992—Dec. 31, 1992	9%	71	625
Jan. 1, 1993—Mar. 31, 1993	9%	23	577
Apr. 1, 1993—Jun. 30, 1993	9%	23	577
Jul. 1, 1993—Sep. 30, 1993	9%	23	577
Oct. 1, 1993—Dec. 31, 1993	9%	23	577
Jan. 1, 1994—Mar. 31, 1994	9%	23	577
Apr. 1, 1994—Jun. 30, 1994	9%	23	577
Jul. 1, 1994—Sep. 30, 1994	10%	25	579
Oct. 1, 1994—Dec. 31, 1994	11%	27	581
Jan. 1, 1995—Mar. 31, 1995	11%	27	581
Apr. 1, 1995—Jun. 30, 1995	12%	29	583
Jul. 1, 1995—Sep. 30, 1995	11%	27	581
Oct. 1, 1995—Dec. 31, 1995	11%	27	581
Jan. 1, 1996—Mar. 31, 1996	11%	75	629
Apr. 1, 1996—Jun. 30, 1996	10%	73	627
Jul. 1, 1996—Sep. 30, 1996	11%	75	629
Oct. 1, 1996—Dec. 31, 1996	11%	75	629
Jan. 1, 1997—Mar. 31, 1997	11%	27	581
Apr. 1, 1997—Jun. 30, 1997	11%	27	581
Jul. 1, 1997—Sep. 30, 1997	11%	27	581
Oct. 1, 1997—Dec. 31, 1997	11%	27	581
Jan. 1, 1998—Mar. 31, 1998	11%	27	581
Apr. 1, 1998—Jun. 30, 1998	10%	25	579
Jul. 1, 1998—Sep. 30, 1998	10%	25	579
Oct. 1, 1998—Dec. 31, 1998	10%	25	579
Jan. 1, 1999—Mar. 31, 1999	9%	23	577
Apr. 1, 1999—Jun. 30, 1999	10%	25	579
Jul. 1, 1999—Sep. 30, 1999	10%	25	579

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

		1995–1 C.B.	
	RATE	TABLE	PAGE
Oct. 1, 1999—Dec. 31, 1999	10%	25	579
Jan. 1, 2000—Mar. 31, 2000	10%	73	627
Apr. 1, 2000—Jun. 30, 2000	11%	75	629
Jul. 1, 2000—Sep. 30, 2000	11%	75	629
Oct. 1, 2000—Dec. 31, 2000	11%	75	629
Jan. 1, 2001—Mar. 31, 2001	11%	27	581
Apr. 1, 2001—Jun. 30, 2001	10%	25	579
Jul. 1, 2001—Sep. 30, 2001	9%	23	577
Oct. 1, 2001—Dec. 31, 2001	9%	23	577
Jan. 1, 2002—Mar. 31, 2002	8%	21	575
Apr. 1, 2002—Jun. 30, 2002	8%	21	575
Jul. 1, 2002—Sep. 30, 2002	8%	21	575
Oct. 1, 2002—Dec. 30, 2002	8%	21	575
Jan. 1, 2003—Mar. 31, 2003	7%	19	573
Apr. 1, 2003—Jun. 30, 2003	7%	19	573
Jul. 1, 2003—Sep. 30, 2003	7%	19	573
Oct. 1, 2003—Dec. 31, 2003	6%	17	571
Jan. 1, 2004—Mar. 31, 2004	6%	65	619
Apr. 1, 2004—Mar. 31, 2004	7%	67	621

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

		1995–1 C.B.	
	RATE	TABLE	PAGE
Jan. 1, 1995—Mar. 31, 1995	6.5%	18	572
Apr. 1, 1995—Jun. 30, 1995	7.5%	20	574
Jul. 1, 1995—Sep. 30, 1995	6.5%	18	572
Oct. 1, 1995—Dec. 31, 1995	6.5%	18	572
Jan. 1, 1996—Mar. 31, 1996	6.5%	66	620
Apr. 1, 1996—Jun. 30, 1996	5.5%	64	618
Jul. 1, 1996—Sep. 30, 1996	6.5%	66	620
Oct. 1, 1996—Dec. 31, 1996	6.5%	66	620
Jan. 1, 1997—Mar. 31, 1997	6.5%	18	572
Apr. 1, 1997—Jun. 30, 1997	6.5%	18	572
Jul. 1, 1997—Sep. 30, 1997	6.5%	18	572
Oct. 1, 1997—Dec. 31, 1997	6.5%	18	572
Jan. 1, 1998—Mar. 31, 1998	6.5%	18	572
Apr. 1, 1998—Jun. 30, 1998	5.5%	16	570
Jul. 1, 1998—Sep. 30, 1998	5.5%	16	570
Oct. 1, 1998—Dec. 31, 1998	5.5%	16	570
Jan. 1, 1999—Mar. 31, 1999	4.5%	14	568
Apr. 1, 1999—Jun. 30, 1999	5.5%	16	570
Jul. 1, 1999—Sep. 30, 1999	5.5%	16	570
Oct. 1, 1999—Dec. 31, 1999	5.5%	16	570



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

		1995–1 C.B.	
	RATE	TABLE	PAGE
Jan. 1, 2000—Mar. 31, 2000	5.5%	64	618
Apr. 1, 2000—Jun. 30, 2000	6.5%	66	620
Jul. 1, 2000—Sep. 30, 2000	6.5%	66	620
Oct. 1, 2000—Dec. 31, 2000	6.5%	66	620
Jan. 1, 2001—Mar. 31, 2001	6.5%	18	572
Apr. 1, 2001—Jun. 30, 2001	5.5%	16	570
Jul. 1, 2001—Sep. 30, 2001	4.5%	14	568
Oct. 1, 2001—Dec. 31, 2001	4.5%	14	568
Jan. 1, 2002—Mar. 31, 2002	3.5%	12	566
Apr. 1, 2002—Jun. 30, 2002	3.5%	12	566
Jul. 1, 2002—Sep. 30, 2002	3.5%	12	566
Oct. 1, 2002—Dec. 31, 2002	3.5%	12	566
Jan. 1, 2003—Mar. 31, 2003	2.5%	10	564
Apr. 1, 2003—Jun. 30, 2003	2.5%	10	564
Jul. 1, 2003—Sep. 30, 2003	2.5%	10	564
Oct. 1, 2003—Dec. 31, 2003	1.5%	8	562
Jan. 1, 2004—Mar. 31, 2004	1.5%	56	610
Apr. 1, 2004—Mar. 31, 2004	2.5%	58	612

## Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2004. See Rev. Rul. 2004-25, page 587.

## 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 March 2004. See Rev. Rul. 2004-25, page 587.

## Part III. Administrative, Procedural, and Miscellaneous

### Federal Tax Treatment of Benefits Received Under the Smallpox Emergency Personnel Protection Act of 2003

#### Notice 2004-17

##### I. PURPOSE

This notice provides guidance regarding the Federal income and employment tax treatment of benefits received under the Smallpox Emergency Personnel Protection Act of 2003 (SEPPA).

##### II. BACKGROUND

On December 13, 2002, the President announced that, in light of the threat of bioterrorism, a smallpox vaccine would be made available on a voluntary basis to medical professionals, emergency personnel, and others who may be first responders in a smallpox emergency. To implement that decision, the Secretary of Health and Human Services (the Secretary), on January 24, 2003, issued a Declaration Regarding Administration of Smallpox Countermeasures. The Declaration provides that certain countermeasures should be taken for the prevention or treatment of smallpox, or to control or treat the adverse effects of smallpox vaccination. The Declaration recommends the administration of the smallpox vaccine, on a voluntary basis, to specified categories of individuals.

The Smallpox Emergency Personnel Protection Act of 2003 (SEPPA), Pub. L. No. 108-20, 117 Stat. 638, authorizes the Secretary, through the Smallpox Vaccination Injury Compensation Program, to provide benefits to eligible individuals who sustain covered injuries as a result of the administration of covered countermeasures (including the smallpox vaccine) or as a result of accidental contact with such persons. In general, SEPPA authorizes the payment of or a reimbursement for medical items and services as reasonable and necessary to treat a covered injury, the payment of employment income lost as a result of a covered injury, and the payment of a death benefit with respect to

an eligible individual whose death results from a covered injury.

##### III. FEDERAL TAX TREATMENT OF BENEFITS

Payments received under SEPPA by eligible individuals for covered injuries are excluded from gross income for Federal income tax purposes (except for amounts attributable to, and not in excess of, deductions allowed under § 213 (relating to medical, etc. expenses) for any prior taxable year). Additionally, such payments do not constitute wages and are not subject to withholding for FICA, FUTA, and Federal income tax withholding purposes, and do not constitute net earnings from self-employment for SECA purposes.

In addition, a payor is not required to issue Forms 1099 and Forms W-2 under §§ 6041 and 6051 for SEPPA payments it makes to eligible individuals (or their survivors, in the case of death benefits).

##### DRAFTING INFORMATION

The principal author of this notice is Barbara E. Pie of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice, contact Barbara Pie at (202) 622-6080 or Sheldon Iskow at (202) 622-4920 (not toll-free calls).

---

### Request for Comments Concerning the Treatment of Amounts Required to Be Capitalized in Certain Transactions to Which Section 1.263(a)-5 Applies

#### Notice 2004-18

On December 22, 2003, the Treasury Department and Internal Revenue Service issued final regulations (T.D. 9107, 2004-7 I.R.B. 447 [69 FR 436]) under § 263(a) of the Internal Revenue Code requiring capitalization of certain amounts that facilitate the creation or acquisition of an intangible asset and under § 167

providing a 15-year safe harbor amortization period for certain intangible assets described in § 263(a). The final regulations under § 263(a) also provide guidance on the treatment of amounts required to be capitalized under § 263(a) in certain acquisitions of a trade or business. For example, § 1.263(a)-5(g)(2) provides that amounts required to be capitalized by an acquirer in an acquisition, merger, or consolidation that is not described in § 368 are added to the basis of the acquired assets (in the case of a transaction that is treated as an acquisition of the assets of the target for federal income tax purposes) or the acquired stock (in the case of a transaction that is treated as an acquisition of the stock of the target for federal income tax purposes).

The final regulations under § 263(a) do not address the treatment of amounts required to be capitalized in certain other transactions to which the regulations apply (for example, amounts required to be capitalized in tax-free transactions, costs of a target in a taxable stock acquisition, and stock issuance costs). The preamble to the final regulations states that the Service and Treasury Department intend to issue separate guidance to address the treatment of these amounts and will consider at that time whether such amounts should be eligible for the 15-year safe harbor amortization period described in § 1.167(a)-3(b).

The Service and Treasury Department are aware that there is continuing controversy as to the proper treatment of certain costs that facilitate certain tax-free and taxable transactions and other restructurings and that are required to be capitalized under § 263(a) and § 1.263(a)-5. The Service and Treasury Department also are aware that, under current law, capitalized costs that facilitate tax-free and taxable transactions that are similar may be treated differently. For example, § 1.263(a)-5(g)(2) provides that the acquirer's capitalized transaction costs that facilitate a taxable asset acquisition increase the basis of the acquired assets. Some commentators, however, have expressed differing views as to how an acquirer's capitalized transaction costs that facilitate a tax-free asset acquisition are treated. In addition, the Service and Treasury Department are

aware that, under current law, similar costs may be treated differently depending on which party incurs the costs. Commentators have suggested that capitalized transaction costs incurred by an acquirer and target to facilitate a tax-free stock acquisition may be treated differently.

To reduce the prospect of future controversy, the Service and Treasury Department intend to propose regulations to address the treatment of amounts that facilitate certain tax-free and taxable transactions and other restructurings and that are required to be capitalized under § 263(a) and § 1.263(a)-5. The Service and Treasury Department intend to develop a set of rules that are clear and administrable.

The Service and Treasury Department are considering the treatment of capitalized costs that facilitate the following transactions:

(1) Tax-free asset acquisitions and dispositions (for example, reorganizations under § 368(a)(1)(A), (C), (D), (G));

(2) Taxable asset acquisitions and dispositions (see § 1.263(a)-5(g) for the treatment of certain transaction costs in taxable asset acquisitions);

(3) Tax-free stock acquisitions and dispositions (for example, reorganizations under § 368(a)(1)(B));

(4) Taxable stock acquisitions and dispositions (see § 1.263(a)-5(g) for the treatment of certain transaction costs in taxable stock acquisitions);

(5) Tax-free distributions of stock (for example, distributions of stock to which § 305(a) or § 355(a) applies);

(6) Tax-free distributions of property (for example, distributions to which §§ 332 and 337 apply);

(7) Taxable distributions of property (for example, distributions to which §§ 331 and 336 apply and distributions of stock to which § 311 applies);

(8) Organizations of corporations, partnerships, and entities that are disregarded as separate from their owner (for example, transfers described in § 351 or § 721);

(9) Corporate recapitalizations (for example, reorganizations under § 368(a)(1)(E));

(10) Reincorporations of corporations in a different state (for example, in a reorganization under § 368(a)(1)(F)); and

(11) Issuances of stock.

There are specific issues raised by each of these types of transactions. The Service

and Treasury Department previously have requested comments more generally on the treatment of capitalized costs that facilitate certain of these transactions. In this notice, the Service and Treasury Department request additional comments, including comments focusing on the following issues.

## ISSUES ON WHICH COMMENTS ARE REQUESTED

### (1) Treatment of capitalized costs.

Section 263(a) and the regulations thereunder require that certain amounts that facilitate the transactions listed above be capitalized. The Service and Treasury Department request comments regarding whether the particular capitalized costs that facilitate transactions for which the Service and Treasury Department are considering guidance should (a) increase the basis of a particular asset or assets (and, if the basis of multiple assets should be increased, the methodology for allocating the costs among the assets), (b) be treated as giving rise to a new asset the basis of which may not be amortized, (c) be treated as giving rise to a new asset the basis of which may be amortizable, (d) reduce an amount realized, or (e) be treated as an adjustment to equity. To the extent that capitalized costs should be treated as giving rise to a new asset the basis of which may be amortizable, the Service and Treasury Department request comments regarding the appropriate amortizable useful life. For example, an appropriate amortizable useful life might be 15 years, a useful life consistent with that afforded to certain intangibles under § 1.167(a)-3(b) and § 197. Additionally, if such costs are treated as giving rise to a new, amortizable asset, the Service and Treasury Department also request comments as to the treatment of such costs if a specific event (e.g., a liquidation) occurs prior to the expiration of the amortization period.

(2) **Consistent treatment of capitalized costs that facilitate similar taxable and tax-free transactions.** The regulations promulgated under § 263(a) provide rules regarding the treatment of amounts that facilitate a taxable acquisition of stock and assets and a taxable disposition of assets. The Service and Treasury Department request comments regarding

whether, as a policy matter, capitalized costs that facilitate a tax-free transaction should be treated in the same manner as the capitalized costs that facilitate a similar taxable transaction.

### (3) Consistent treatment of all capitalized costs that facilitate a transaction.

The Service and Treasury Department request comments regarding whether, as a policy matter, capitalized costs that facilitate a transaction, regardless of the type of cost and the party to the transaction that incurs such cost, should be treated similarly.

**DATES:** Written and electronic comments must be submitted by April 19, 2004.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (Notice 2004-18), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (Notice 2004-18), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC. Alternatively, taxpayers may send submissions electronically directly to the Service at: *Notice.comments@irs.counsel.treas.gov* All materials submitted will be available for public inspection and copying.

**FOR FURTHER INFORMATION CONTACT:** Concerning submissions, Guy Traynor (202) 622-7180; concerning this notice, Andrew J. Keyso, (202) 622-4800 (not toll-free numbers).

## Foreign Tax Credit Abuse

### Notice 2004-19

#### PURPOSE

The purpose of this notice is to describe the approach that the Treasury Department and the Internal Revenue Service (IRS) are using to address transactions involving inappropriate foreign tax credit results and to withdraw Notice 98-5, 1998-1 C.B. 334, because Treasury and the IRS do not intend to issue regulations in the form described in that notice.

## BACKGROUND

Notice 98-5 announced that Treasury and IRS intended to issue regulations that would apply an economic profit test to address abusive tax-motivated transactions that generate foreign tax credits that can be used to reduce residual U.S. tax on other foreign source income. Part II of Notice 98-5 describes two classes of transactions that create the potential for foreign tax credit abuse. The first class includes transactions that effectively transfer a foreign tax liability through the acquisition of an asset that generates an income stream subject to foreign gross basis taxes such as withholding taxes. The second class includes cross-border tax arbitrage transactions that effectively permit the duplication of tax benefits. Notice 98-5 contemplated that regulations would apply an economic profit test to disallow credits for foreign taxes generated in an arrangement such as those described above if the reasonably expected economic profit were determined to be insubstantial compared to the value of the foreign tax credits expected to be obtained as a result of the arrangement. Notice 2003-76, 2003-49 I.R.B. 1181, and its predecessors identified transactions that are the same as or substantially similar to transactions described in Part II of Notice 98-5 as listed transactions for purposes of the tax shelter disclosure, registration, and list maintenance requirements of § 1.6011-4 of the Income Tax Regulations and §§ 301.6111-2 and 301.6112-1 of the Procedure and Administration Regulations.

## DISCUSSION

Treasury and the IRS do not intend to issue regulations in the form described in Notice 98-5. Accordingly, Notice 98-5 is withdrawn. Consistent with this withdrawal, Notice 2003-76 is modified by eliminating the reference to Notice 98-5 in the identification of listed transactions. Accordingly, transactions will not be considered listed transactions for purposes of §§ 1.6011-4(b)(2), 301.6111-2(b)(2), and 301.6112-1(b)(2) solely because they are the same as or substantially similar to the transactions or arrangements described in Part II of Notice 98-5. No inference is intended, however, as to whether such transactions are otherwise subject to the disclo-

sure requirements of section 6011, the registration requirements of section 6111, or the list maintenance requirements of section 6112.

Treasury and the IRS remain concerned about transactions that involve inappropriate foreign tax credit results. The tax benefits claimed in these transactions are inconsistent with the purposes of the foreign tax credit provisions, including the foreign tax credit limitation of section 904, which are intended to reduce or eliminate double taxation of income.

The IRS will continue to scrutinize abusive transactions that are designed to generate foreign tax credits. In appropriate circumstances, the IRS will challenge the claimed tax consequences of such transactions under the following principles of existing law: the substance over form doctrine, the step transaction doctrine, debt-equity principles, section 269, the partnership anti-abuse rules of § 1.701-2, and the substantial economic effect rules of § 1.704-1.

Treasury also has proposed legislative changes to address transactions involving inappropriate foreign tax credit results. Section 901(k), which was enacted in 1997, disallows a credit for certain foreign taxes paid with respect to a dividend if the recipient of the dividend does not meet certain holding period requirements or is under an obligation to make related payments with respect to substantially similar or related property. The Administration's FY 2005 Budget includes a proposal to expand section 901(k) to apply to foreign taxes with respect to income or gain other than dividends (such as interest, rents, and royalties), disallowing a credit for foreign withholding taxes if the recipient of the income or gain does not meet certain holding period requirements with respect to the asset generating the income or is under an obligation to make related payments with respect to substantially similar or related property. See Department of the Treasury, General Explanation of the Administration's Fiscal Year 2005 Revenue Proposals at 113 (Feb. 2004). This proposed expansion of section 901(k) addresses the first class of transactions described in Notice 98-5. This proposal was also included in the Administration's FY 2004 Budget and has been incorporated in pending proposed legislation. See Department of the Treasury, General Explanation of the Ad-

ministration's Fiscal Year 2004 Revenue Proposals, at 103 (Feb. 2003); American Jobs Creation Act, H.R. 2896, 108<sup>th</sup> Cong. § 3022 (2003); Jumpstart Our Business Strength Act, S. 1637, 108<sup>th</sup> Cong. § 456 (2003).

The Administration's FY 2005 Budget also includes a proposal for broad regulatory authority to address transactions that involve inappropriate separation of foreign taxes from the related foreign income in cases where foreign taxes are imposed on any person with respect to income of an entity. The regulations that would be issued under this proposed authority may provide for the disallowance of a credit for all or a portion of the foreign taxes or for the allocation of the foreign taxes among the participants in the transaction in a manner that is more consistent with the underlying economics of the transaction. The Administration's FY 2005 Budget proposal to expand existing regulatory authority is intended to provide additional mechanisms for Treasury and the IRS to address the second class of transactions described in Notice 98-5 as well as other abusive transactions involving foreign tax credits.

Treasury and the IRS will use existing authority under section 901 and other provisions of the Code to address transactions or structures that produce inappropriate foreign tax credit results. The 2004 business plan for published guidance includes regulations addressing the allocation of foreign taxes by a partnership under section 704. In particular, the regulations will address situations involving special allocations of foreign taxes among the partners that are inconsistent with the allocation of the related foreign income. Treasury and the IRS expect to issue these regulations shortly. Treasury and the IRS also are working on guidance under section 901 concerning the application of the legal liability rule of § 1.901-2(f) in certain circumstances, including, for example, in the case of consolidated tax reporting systems in foreign countries. These regulations are intended to provide rules that make the allocation of foreign taxes imposed on the combined income of two or more persons more consistent with each person's respective share of the foreign income to which the tax relates.

Notice 2004-20, issued concurrently with this notice, identifies as a listed transaction for purposes of the tax shelter

disclosure, registration, and list maintenance regulations a purported stock acquisition that is intended to generate credits for foreign taxes paid on gain that is not subject to tax in the United States. That notice provides that the IRS will challenge the purported foreign tax credit results where a domestic corporation purportedly acquires the stock of a foreign target corporation, makes a 338 election, and then, pursuant to a prearranged plan, sells all or substantially all of the target corporation's assets in a transaction that generates a taxable gain for foreign tax purposes (but not for U.S. tax purposes). Treasury and the IRS also are considering amending § 1.338-9(d) (concerning the allocation of foreign taxes of a target that accrue after the stock acquisition and section 338 election) to address cases in which the target is liquidated (either in a liquidation under local law or by making an election under § 301.7701-3 to treat the target as a disregarded entity) before the end of its foreign taxable year and to address the allocation of foreign taxes imposed on post-acquisition sales in order to prevent inappropriate foreign tax credit results. Treasury and the IRS anticipate that such amendments only would apply prospectively.

In addition, Treasury and the IRS are working on modifications to the tax shelter disclosure regulations of § 1.6011-4(b) (identifying transactions subject to the disclosure requirements) to ensure that the regulations require appropriate reporting of potentially abusive transactions involving foreign tax credits. In particular, Treasury and the IRS are considering revisions to the tax shelter disclosure regulations to require reporting of transactions that effectively separate foreign taxes from the related foreign income, including transactions that create a mismatch in the timing of recognition for U.S. tax purposes of foreign taxes and the related foreign income.

#### EFFECT ON OTHER DOCUMENTS

Notice 98-5 is withdrawn. Notice 2003-76 is modified by eliminating the reference to Notice 98-5 in the identification of listed transactions. Effective for taxable years for which the due date of the return (including extensions, whether or not actually requested) is after February 17, 2004, transactions will not be consid-

ered listed transactions for purposes of §§ 1.6011-4(b)(2) and 301.6112-1(b)(2) solely because they are the same as or substantially similar to the transactions or arrangements described in Part II of Notice 98-5. Effective for offers made after February 17, 2004, transactions will not be considered listed transactions for purposes of § 301.6111-2(b)(2) solely because they are the same as or substantially similar to the transactions or arrangements described in Part II of Notice 98-5. No inference is intended, however, as to whether such transactions are otherwise subject to the disclosure requirements of section 6011, the registration requirements of section 6111, or the list maintenance requirements of section 6112.

#### DRAFTING INFORMATION

The principal author of this notice is Ginny Chung of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact Ms. Chung at (202) 622-3850 (not a toll-free call).

### Abusive Foreign Tax Credit Intermediary Transaction

#### Notice 2004-20

The Internal Revenue Service and the Treasury Department are aware of a type of transaction, described below, in which, pursuant to a prearranged plan, a domestic corporation purports to acquire stock in a foreign target corporation and make an election under section 338 of the Internal Revenue Code before selling all or substantially all of the target corporation's assets in a transaction that is subject to foreign income tax. This notice alerts taxpayers and their representatives that these transactions are tax avoidance transactions and identifies these transactions, and substantially similar transactions, as listed transactions for purposes of § 1.6011-4(b)(2) of the Income Tax Regulations and §§ 301.6111-2(b)(2) and 301.6112-1(b)(2) of the Procedure and Administration Regulations. This notice also alerts parties involved with these transactions to certain responsibilities that may arise from their involvement with these transactions.

#### FACTS

The transaction generally involves four parties: a person or persons (X) that plans to sell the stock or assets of a foreign corporation or group of foreign corporations (Target) that is not engaged in a U.S. trade or business, a domestic corporation that acts as an intermediary (Midco), and a person or persons (Y) that plans to purchase the assets of Target. Pursuant to a prearranged plan, the parties undertake the following steps. X purports to sell the stock of Target to Midco. Midco then makes an election under section 338 to treat the stock purchase as resulting in a deemed sale by Target (Old Target) of its assets and an acquisition of those assets by a deemed new corporation, New Target, providing New Target with a stepped-up basis in the assets. Midco then may cause New Target to liquidate, either in a liquidation under local law or by making an election under § 301.7701-3 to treat New Target as a disregarded entity. As a result of the liquidation (or deemed liquidation), Midco inherits New Target's assets with a stepped-up basis. Shortly thereafter, pursuant to the prearranged plan, Y purchases all or substantially all of New Target's assets. Alternatively, if Midco does not liquidate New Target (or elect to treat New Target as a disregarded entity), New Target pays a dividend to Midco after the asset sale.

The asset sale generates a taxable gain for foreign tax purposes (but not for U.S. tax purposes), and Midco claims a credit under section 901 with respect to the foreign income tax imposed on the asset sale. If Midco does not liquidate New Target (or elect to treat New Target as a disregarded entity), Midco claims a credit under section 902 for the foreign income tax imposed on the asset sale when New Target pays a dividend.

#### DISCUSSION

The transaction described above does not produce the tax benefits claimed by Midco. The transaction is intended to shift the foreign tax credits to Midco through the purported acquisition of assets that, when sold pursuant to a prearranged plan, triggers a foreign tax on built-in gain that is not subject to U.S. tax. The tax benefits purportedly derived from the transaction by Midco are inconsistent with the

purposes of the foreign tax credit provisions, including the foreign tax credit limitation of section 904, which are intended to reduce or eliminate double taxation of income.

The Service will challenge the purported tax results to Midco of the transaction described in this notice by applying principles of existing law. See Notice 2001-16, 2001-1 C.B. 730 (announcing that the Service may challenge the purported tax consequences of a purported sale of stock to a tax-indifferent intermediary corporation that then purports to sell the target's assets). For example, the Service may challenge the purported tax results to Midco under the step transaction doctrine or the substance over form doctrine. "A sale by one person cannot be transformed for tax purposes into a sale by another by using the latter as a conduit through which to pass title. To permit the true nature of a transaction to be disguised by mere formalisms, which exist solely to alter tax liabilities, would seriously impair the effective administration of the tax policies of Congress." *Commissioner v. Court Holding Co.*, 324 U.S. 331, 334 (1945) (citations omitted). Cf. *Aiken Industries, Inc. v. Commissioner*, 56 T.C. 925 (1971) (treating interest payments to a conduit entity as paid directly to the beneficial owner). Accordingly, Midco would not be treated for U.S. tax purposes as having purchased the stock of Target. The Service also may challenge the purported tax results to Midco of this transaction under the provisions of section 269 applicable to acquisitions made with the principal purpose of evading or avoiding income tax, or by applying agency principles to disregard Midco's ownership of Target.

Transactions that are the same as, or substantially similar to, the transaction described in this notice are identified as "listed transactions" for purposes of § 1.6011-4(b)(2), § 301.6111-2(b)(2), and § 301.6112-1(b)(2) effective February 17, 2004, the date this notice was released to the public. In addition, independent of their classification as "listed transactions" for purposes of §§ 1.6011-4(b)(2), 301.6111-2(b)(2), and 301.6112-1(b)(2), transactions that are the same as, or substantially similar to, the transaction described in this notice may already be subject to the disclosure requirements of section 6011 (§ 1.6011-4), the tax shelter

registration requirements of section 6111 (§ 301.6111-1T and § 301.6111-2), or the list maintenance requirements of section 6112 (§ 301.6112-1). For purposes of the disclosure requirements of section 6011, only a taxpayer that acted as an intermediary (*i.e.*, Midco) in the listed transaction described in this notice will be considered to have participated in the transaction within the meaning of § 1.6011-4(c)(3). No inference is intended, however, as to whether the other parties to such a transaction have participated in a transaction that is the same as or substantially similar to the transactions described in Notice 2001-16. Persons who are required to register these tax shelters under section 6111 but have failed to do so may be subject to the penalty under section 6707(a). Persons who are required to maintain lists of investors under section 6112 but have failed to do so (or who fail to provide those lists when requested by the Service) may be subject to the penalty under section 6708(a). In addition, the Service may impose penalties on parties involved in these transactions or substantially similar transactions, including the accuracy-related penalty under section 6662.

#### DRAFTING INFORMATION

The principal author of this notice is Ginny Chung of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact Ms. Chung at (202) 622-3850 (not a toll-free call).

---

## 2004 Calendar Year Resident Population Estimates

### Notice 2004-21

This notice informs (1) state and local housing credit agencies that allocate low-income housing tax credits under § 42 of the Internal Revenue Code and (2) states and other issuers of tax-exempt private activity bonds under § 141, of the proper population figures to be used for calculating the 2004 calendar year population-based component of the state housing credit ceiling (Credit Ceiling) under § 42(h)(3)(C)(ii), the 2004 calendar year volume cap (Volume Cap) under

§ 146, and the 2004 volume limit (Volume Limit) under § 142(k)(5).

The population figures both for the population-based component of the Credit Ceiling and for the Volume Cap are determined by reference to § 146(j). That section provides generally that determinations of population for any calendar year are made on the basis of the most recent census estimate of the resident population of a state (or issuing authority) released by the Bureau of the Census before the beginning of such calendar year. Section 142(k)(5) provides that the Volume Limit is based on the State population.

The population-based component of the Credit Ceiling and the Volume Cap are adjusted for inflation pursuant to §§ 42(h)(3)(H) and 146(d)(2), respectively. The adjustments for the 2004 calendar year were published in Rev. Proc. 2003-85, 2003-49 I.R.B. 1184. Section 3.07 of Rev. Proc. 2003-85 provides that, for calendar years beginning in 2004, the amounts used under § 42(h)(3)(C)(ii) to calculate the Credit Ceiling is the greater of \$1.80 multiplied by the State population (see the resident population figures provided below) or \$2,075,000. Further, section 3.15 of Rev. Proc. 2003-85 provides that the amounts used under § 146(d)(1) to calculate the Volume Cap for calendar year 2004 is the greater of \$80 multiplied by the State population (see the resident population figures provided below) or \$233,795,000.

The proper population figures for calculating the Credit Ceiling, the Volume Cap, and the Volume Limit for the 2004 calendar year are the estimates of the resident population of the 50 states, the District of Columbia, and Puerto Rico released by the Bureau of the Census on December 18, 2003, in Press Release CB03-197. The proper population figures for calculating the Credit Ceiling, the Volume Cap, and the Volume Limit for the 2004 calendar year for the insular areas (American Samoa, Guam, Northern Mariana Islands, and U.S. Virgin Islands) are the figures released electronically by the Bureau of the Census on July 17, 2003, and referenced in Census Bureau Tip Sheet TP03-14, dated July 11, 2003. For convenience, these estimates are reprinted below.

*Resident Population Figures*

Alabama	4,500,752
Alaska	648,818
American Samoa	57,844
Arizona	5,580,811
Arkansas	2,725,714
California	35,484,453
Colorado	4,550,688
Connecticut	3,483,372
Delaware	817,491
D.C.	563,384
Florida	17,019,068
Georgia	8,684,715
Guam	163,593
Hawaii	1,257,608
Idaho	1,366,332
Illinois	12,653,544
Indiana	6,195,643
Iowa	2,944,062
Kansas	2,723,507
Kentucky	4,117,827
Louisiana	4,496,334
Maine	1,305,728
Maryland	5,508,909
Massachusetts	6,433,422
Michigan	10,079,985
Minnesota	5,059,375
Mississippi	2,881,281
Missouri	5,704,484
Montana	917,621
Nebraska	1,739,291
Nevada	2,241,154
New Hampshire	1,287,687
New Jersey	8,638,396
New Mexico	1,874,614
New York	19,190,115
North Carolina	8,407,248
North Dakota	633,837
Northern Mariana Islands	76,129
Ohio	11,435,798
Oklahoma	3,511,532
Oregon	3,559,596
Pennsylvania	12,365,455
Puerto Rico	3,878,532
Rhode Island	1,076,164
South Carolina	4,147,152
South Dakota	764,309

Tennessee	5,841,748
Texas	22,118,509
U.S. Virgin Islands	108,814
Utah	2,351,467
Vermont	619,107
Virginia	7,386,330
Washington	6,131,445
West Virginia	1,810,354
Wisconsin	5,472,299
Wyoming	501,242

The principal authors of this notice are Christopher J. Wilson, Office of the Associate Chief Counsel (Passthroughs and Special Industries) and Timothy L. Jones, Office of the Division Counsel/Associate Chief Counsel (Tax-Exempt and Government Entities). For further information regarding this notice, contact Mr. Wilson at (808) 539-2874 or Susan Reaman at (202) 622-3040 (not toll-free calls).



## Part IV. Items of General Interest

### Foundations Status of Certain Organizations

#### Announcement 2004–15

The following organizations have failed to establish or have been unable to maintain their status as public charities or as operating foundations. Accordingly, grantors and contributors may not, after this date, rely on previous rulings or designations in the Cumulative List of Organizations (Publication 78), or on the presumption arising from the filing of notices under section 508(b) of the Code. This listing does *not* indicate that the organizations have lost their status as organizations described in section 501(c)(3), eligible to receive deductible contributions.

*Former Public Charities.* The following organizations (which have been treated as organizations that are not private foundations described in section 509(a) of the Code) are now classified as private foundations:

96th Street Workshop, New York, NY  
167th Street Housing Development Fund Corp., Bronx, NY  
500 Club, Inc., Rockville Centre, NY  
Academy of Art & Theatre, Inc., Gloucester, MA  
Action Against Poverty International, Inc., Randolph, MA  
Action for Childrens Education, Inc., Acton, MA  
Action for Lawrence-Methuen-Arlington, Inc., Lawrence, MA  
Acton-Boxborough Youth Softball Association, Inc., Boxborough, MA  
Adventure in Learning, Inc., Revere, MA  
African Childrens Jamboree, Bronx, NY  
Agency for Christian Concerns Outreach Relief and Development, Bronx, NY  
Al Diwan, Inc., New York, NY  
Amber Housing Development Fund Corporation, New York, NY  
American-Asian Heritage Society Corp., Flushing, NY  
American Friend of Yeshiva Bais Eliyaho, Brooklyn, NY  
American Friends of Hamaayan Fountain of Jewish Culture Institute, Brooklyn, NY  
American Hand Fire Engine Society, Inc., Newbury, MA

American Manage Home Care, Inc., Brooklyn, NY  
Antioch Development Corporation, Brooklyn, NY  
Aretha and Matthew Barrett Community Empowerment, Inc., Brooklyn, NY  
Armenian Childrens Chorus of Greater Boston, Inc., Belmont, MA  
Arthur Hare Scholarship Fund, Jefferson, ME  
Arts & Cultural Trust, New Haven, CT  
Asociacion Puertorriquena Pro Proceres Boricuas, Incorporated, New York, NY  
Aspiring Youth, Inc., Brooklyn, NY  
Association for our Childrens Future, Inc., Brooklyn, NY  
Atlantic Symphony Orchestra, Inc., New York, NY  
Atomic Veterans Radiation Research Institute, Portland, ME  
Azza Mass Choir, Inc., Bronx, NY  
Bamboo Mountain Center, Inc., Hicksville, NY  
Bangladesh American Association for Rehabilitation in New York, Woodside, NY  
Bar Harbor Film Festival, Bar Harbor, ME  
Baseball for Youth, Inc., New York, NY  
Bayswater Community ERUV Association, Bayswater, NY  
Bernard Doc Schoenbaum Memorial Youth Lacrosse, Inc., New York, NY  
Bethlehem Boys Club, Inc., Mineola, NY  
Beyond Labels, Inc., Brooklyn, NY  
Bible Hill Ministries, Franklin, NH  
Bikur Cholim of Monsey, Inc., Monsey, NY  
Bishop Revitalization Community Renewal Association BRCRA, Bridgeport, CT  
Black F B I, Worcester, MA  
Black Knights Boosters Club, Inc., Stoughton, MA  
Bnei Reem, Brooklyn, NY  
Boston Civil Rights Foundation, Inc., West Roxbury, MA  
Bounty on CF, Inc., New York, NY  
Braintree Healthy People 2000, Inc., Norfolk, MA  
Breslov Center for Spirituality and Inner Growth, Brooklyn, NY  
Brian & Matthew Mintz Scholarship Fund, Highland Mills, NY  
Bridgewater Antiphonal Brass Society, Inc., Randolph, MA

Bristol County Foundation for the Arts, Bristol, RI  
Broad Hollow Bioscience Park, Inc., Farmingdale, NY  
Brookhaven Youth Orchestra, Inc., Brookhaven, NY  
Brookline Public Schools Music Boosters, Inc., Boston, MA  
Burrington Foundation, Inc., Burlington, VT  
Camp Hart - Jr. Golf Program, Washington, DC  
Cape Cod 2000, Inc., Hyannis, MA  
Center for Technology Solutions, Inc., Brooklyn, NY  
Center for the Development and Protection of Dominicans, Inc., Bronx, NY  
Central Islip Soccer Club, Deer Park, NY  
Central Massachusetts Senior Assistance Corporation, Webster, MA  
Child & Adult Care Resource & Referral, Inc., Cambria Heights, NY  
Child Care Consortium, Inc., Sandy Hook, CT  
Children of China Pediatrics Foundation PSC, New York, NY  
Children Outreach International, Inc., Bussards Bay, MA  
Childrens National Electronic Search Team, Coventry, RI  
Childrens Pompe Foundation, Princeton, NJ  
Chin Yun Chinese Opera Association, Inc., W. Windsor, NJ  
Cirque Pour Tous USA, Inc., New York, NY  
Citizens of Aroostook Valley, Inc., Ft. Fairfield, ME  
Clarendon George Park Association, Rutland, VT  
Clay Ave Tenants Associates, Bronx, NY  
Clinton Girls Fastpitch Softball Association, Clinton, CT  
Clover Housing Development Fund Corporation, New York, NY  
Club Athletico Mexicano De Nueva York, Inc., New York, NY  
Col. Crawford Eagles All Sports Booster Club, Bucyrus, OH  
Colchester Concerned Citizens, Inc., Colchester, CT  
Coltsville Heritage Park, Inc., Fairfield, CT  
Committee for Sag Harbors Old Burying Ground, Sag Harbor, NY

Community Builders, New York, NY  
 Community Communication Concept, Inc., Fort Worth, TX  
 Community House of Long Island, Inc., North Babylon, NY  
 Community Wellness Council of the Bellmores & Merricks, Inc., North Merrick, NY  
 Concerned Citizens for 25A, Inc., Cold Spring Hbr, NY  
 Connection, Inc., Weston, MA  
 Council Development Corp., New York, NY  
 Courier, Inc., Framingham, MA  
 Covenant Housing Development Fund Corp., Bronx, NY  
 Creative Artists Laboratories Theatre, Inc., New York, NY  
 Cultural Property Research Foundation, Inc., New York, NY  
 Cypress Homes Housing Development Fund Corporation, Brooklyn, NY  
 D. Livingston Reid Foundation, New York, NY  
 Dance Online, Inc., New York, NY  
 Darul-Uloom, Inc., Jamaica, NY  
 David Appel Institute for Human Rehabilitation, Inc., Somerville, MA  
 De Sales Assisted Living Development Corp., New York, NY  
 Deaf Projects, Inc., Monson, MA  
 Dhaka Ahsania Mission U S A, Inc., Brooklyn, NY  
 Dirigo Prevention Coalition, Bangor, ME  
 Divine Power, Inc., Glen Cove, NY  
 Don Luigi Sturzo Political Science Academy, Ltd., Brooklyn, NY  
 Donald Fermaglich Fund, Inc., New York, NY  
 Dorchester Community Center for the Visual Arts, Inc., Dorchester, MA  
 Down Syndrome International Fund, Inc., Pawling, NY  
 Dr. James Arther Jones Multi-Purpose Center, Inc., New Haven, CT  
 Dr. John J. Williams Charitable Foundation, Inc., New York, NY  
 Drugrisk Awareness, Inc., Portland, ME  
 Eagles of Brighton Beach Soccer Club, Inc., Brooklyn, NY  
 East Providence Charity Ball Committee, Inc., East Providence, RI  
 Ecumbe, Inc., Yonkers, NY  
 Eddy Farm School for Horse and Rider Corporation, Middlebury, VT  
 Edo Group, Inc., Brooklyn, NY  
 Educational Resource Foundation, Inc., Larchmont, NY

El Centro Cultural Social Y Deportivo Regional Santiago, Inc., Bronx, NY  
 El Yunque Housing Development Fund Corporation, New York, NY  
 Elan International Music Festival at Stowe, Stowe, VT  
 Elm City Ensemble, Inc., New Haven, CT  
 Enfield Community Policing Steering Committee, Enfield, CT  
 Environmental Voters Education Fund, Portsmouth, NH  
 Equal, Inc., Tewksbury, MA  
 Eric Breindel Memorial Foundation, New York, NY  
 Evergreen Foundation, Inc., Bedford Hills, NY  
 Eves Fund, Inc., West Hartford, CT  
 Eye on the Sparrow, Inc., Boston, MA  
 Faithworks International, Inc., Forest Hills, NY  
 Fathers World, Inc., Massapequa, NY  
 Feng Shui Across America Lighting the Way, Inc., Brooklyn, NY  
 Field Guide Project, Inc., Somerville, MA  
 Fitness and Education Center, Inc., New York, NY  
 Flaim Foundation, Inc., Boston, MA  
 For the Love of Dylan Foundation, Inc., Peabody, MA  
 Foundation to Green, Inc., Greenwich, CT  
 Franciscan Center for Urban Ministry, Inc., Hartford, CT  
 Franciscan Pilgrims Society, Inc., New York, NY  
 Franz Schubert Society, Inc., New York, NY  
 Fresh Start Program, Inc., Brooklyn, NY  
 Friends for Children, Inc., Dorchester, MA  
 Friends for Syringomyelia Victims, Inc., New York, NY  
 Friends of CCHS Swimming & Diving, Concord, MA  
 Friends of Chatham Animals, Inc., W. Chatham, MA  
 Friends of El Fondo De Becas Don Gustavo A Caballero, Inc., New York, NY  
 Friends of Fenway Studios, Inc., Boston, MA  
 Friends of George Bryant Scholarship Fund, Vly Cottage, NY  
 Friends of Hull – Scouting, Inc., Hull, MA  
 Friends of Ken, Inc., Hauppauge, NY  
 Friends of Oyster River Track, Durham, NH  
 Friends of the Concord Area Visitors Center, Inc., Concord, MA

Friends of the New Leadership Charter School, Inc., Springfield, MA  
 Friends of the Oxford Library Inc., Killington, VT  
 Friends of the Sculpture Center, Inc., New York, NY  
 Friends of Tyy Square Jerusalem, New Square, NY  
 Friends of Westbrook Rescue, Inc., Scarborough, ME  
 Fund for the Restoration of Byzantine Art, Inc., New York, NY  
 Future Childrens Center, Inc., Dorchester, MA  
 Gabriels Community Services Organization, Brooklyn, NY  
 Gads Hill, Inc., New York, NY  
 Gail M. Southworth Scholarship Fund, East Providence, RI  
 Garvey House, Inc., South Berwick, ME  
 Ghanaian Association of Westchester, Yonkers, NY  
 Ghanian-American Alternative Healings Association, Inc., Hempstead, NY  
 Girlsri, Inc., Warwick, RI  
 Glastonbury Junior Tomahawks, Glastonbury, CT  
 Global Eye Care, Inc., Englewood, NJ  
 Global Role Models Fund, Inc., New York, NY  
 Golden Age of Trucking Museum, Inc., Middlebury, CT  
 Golden Opportunities Networking, Inc., New York, NY  
 Golden Years Funds for Aged-Infirm, Inc., Brooklyn, NY  
 Good Death Initiative, Inc., New York, NY  
 Good Earth School, Inc., Columbia Fls, ME  
 Grace Repertory Theater, Inc., Mineola, NY  
 Grace Theatre Company, Inc., Wilton, CT  
 Gracie Point Neighbors, Inc., New York, NY  
 Grad Nite Live, Marshfield, MA  
 Great Romania, Inc., Long Island City, NY  
 Greater Worcester Vietnamese Community, Inc., Worcester, MA  
 Green Hill Services, Washington Green, CT  
 Greenie Park Association, Newton, NH  
 Guild Foundation, Inc., Woodbridge, CT  
 H-Impact 1998, Inc., Boston, MA  
 Hachnosas Orchim Meron, Brooklyn, NY  
 Harari Fund for Academic Excellence, Inc., Bronx, NY  
 Harvard China Review, Inc., Cambridge, MA

Harvard Readers Guild, Inc.,  
 Cambridge, MA  
 Help the Blind American Fund,  
 Incorporated, Centerport, NY  
 Heritage Cape Cod Association, Inc.,  
 Hyannis, MA  
 Hhosneedy, Inc., Mineola, NY  
 Holistic Health & Healing Foundation,  
 Inc., New York, NY  
 H O M E R I C Federation, Inc.,  
 Bayside, NY  
 H O O P, Inc., Honoring Our Own  
 Power Healing Our Own Priorities,  
 Newport, RI  
 Hopkinton Community Endowment, Inc.,  
 Hopkinton, MA  
 Hudson Valley Community Development  
 Council, Inc., Monsey, NY  
 Hudson Youth Athletic Association,  
 Hudson, MA  
 Human Rights Documentation Center,  
 Inc., New Haven, CT  
 Hylan Manor Center, Inc.,  
 Staten Island, NY  
 IDRIS Broadcasting Foundation, Inc.,  
 Cambridge, MA  
 Imagine If Productions, Inc., Salem, MA  
 India Center of Art and Culture, Inc.,  
 New York, NY  
 Indigenous Peoples Media Network, Inc.,  
 Tappan, NY  
 Inertia Productions, Inc., New York, NY  
 Initiatives for Educational Success, Inc.,  
 Springfield, MA  
 Institute for Compost Quality,  
 Augusta, ME  
 Institute for Patient Advocacy,  
 Incorporated, New York, NY  
 Inter City Kids Foundation U S A  
 International, Inc., Bethpage, NY  
 International Association of Medical Bike  
 Units, Inc., Jamaica, NY  
 International Christian Family Festival,  
 Inc., Bronx, NY  
 International Health Professionals  
 Network, Inc., New Rochele, NY  
 International Institute for Social  
 and Economic Development, Inc.,  
 Woburn, MA  
 International Resource Center Corp.,  
 Brooklyn, NY  
 Ipswich Arts Collaborative, Ipswich, MA  
 Irish American Legislative Caucus  
 Educational Fund, Inc., Hartford, CT  
 Isaac Foundation, Sparkill, NY  
 Italian American Cultural Arts Corp.,  
 Yonkers, NY  
 Jackson Center for Training, Inc.,  
 Mount Vernon, NY  
 Jason Milne Charitable Tr., Hoboken, NJ  
 Jericho Housing Project, Inc.,  
 Baldwin, NY  
 Jericho Road, Inc., Brooklyn, NY  
 Jerry Alleyne Memorial Fund Non Profit  
 Corp., Hartsdale, NY  
 Jesus Family Houses, Inc., Burlington, VT  
 Jewish Alliance for Performing Arts, Inc.,  
 New York, NY  
 John Moran Music and Theatrical  
 Productions, Inc., Brooklyn, NY  
 Johnson After School Program,  
 Incorporated, Johnson, VT  
 Julia Melantha Yurwitz Foundation,  
 City Island, NY  
 Just About Music, Inc., Chilmark, MA  
 Justice Seekers, Inc., New York, NY  
 Kelly-Smith Educational Advancement  
 Center, Inc., Bronx, NY  
 Keren Noach Hersh Foundation, Inc.,  
 Monsey, NY  
 Kings College Alumni Association, Inc.,  
 Tuxedo, NY  
 Kollel Mekor Habrachah, Inc.,  
 Rego Park, NY  
 Korean American Community  
 Empowerment Council, Inc.,  
 Flushing, NY  
 Kyle Arthur Williams Foundation K A W,  
 Columbia, SC  
 Lake Zoar Water Ski Club, Bethel, CT  
 Lancaster Main Street Program,  
 Lancaster, NH  
 Latin Knights Drum & Bugle Corps, Inc.,  
 Bronx, NY  
 Lechaim Institute, Inc., Brooklyn, NY  
 Lending a Hand to the Future, Inc.,  
 Mt. Vernon, NY  
 Leo J. Ryan Education Foundation,  
 Bridgeport, CT  
 Levitical Communication, Inc.,  
 Springfield Gardens, NY  
 Lewisboro Basketball Federation, Inc.,  
 South Salem, NY  
 Lezion Goale, Inc., Brooklyn, NY  
 Links Program for Deaf and Hard of  
 Hearing, Inc., N. Quincy, MA  
 Little Angel Foundation, Inc.,  
 Belmont, MA  
 Machon Lev Yom, Brooklyn, NY  
 Mad River Valley Television, Inc.,  
 Waitsfield, VT  
 Maine Mutal Theatre, Rockland, ME  
 Mame-Loshn-Ltd., Spring Valley, NY  
 Manyu Rural Development Foundation,  
 Linn, MA  
 Marthas Vineyard Track and Field  
 Scholarship Fund, Vineyard Haven, MA  
 Mashpee 2000 Committee, Mashpee, MA  
 Matthew Ames Life Foundation,  
 Rockland, ME  
 Merchants of Third Ave. Civic  
 Improvement Assoc., Inc.,  
 Brooklyn, NY  
 Mi Casa Housing Development Fund  
 Corp., New York, NY  
 Mid-Hudson Crime Prevention  
 Association, Inc., Albany, NY  
 Milton Athletic Association, Milton, NH  
 Mini-Grant Tr., Inc., Beverly, MA  
 Mission Maine — Luis Palau, Inc.,  
 N. Yarmouth, ME  
 Mitzvah Outreach International, Inc.,  
 Brooklyn, NY  
 Moebius Corporation, New York, NY  
 Monadnock, Millennium, Inc., Keene, NH  
 Morningside Park East Coalition, Inc.,  
 New York, NY  
 Mosdos Kashow Yerushalayim Hasaad  
 Haruchani, Brooklyn, NY  
 Moving Education, Inc., New York, NY  
 Narrow Road Ministry, East Machias, ME  
 National Black MBA Association Boston  
 Chapter, Inc., Newton, MA  
 Native Fish Conversancy, Inc., Barre, VT  
 New American Alliance, Inc.,  
 Floral Park, NY  
 New Britain Youth Baseball, Inc.,  
 New Britain, CT  
 New Canaan Environmental Group, Inc.,  
 New Canaan, CT  
 New Cassel-Westbury Neighborhood  
 Advisory Council, Westbury, NY  
 New Century Community Development  
 Corporation, Far Rockaway, NY  
 New England Blues Society, Beverly, MA  
 New England Haven for Animals, Inc.,  
 Plano, TX  
 New Ensemble Theatre Co., Inc.,  
 Sunnyside, NY  
 New Hampshire ESGR, Inc.,  
 Manchester, NH  
 New Hampshire Fencing Foundation,  
 Farmington, NH  
 New Hampshire Pride, Inc., Danville, NH  
 New Hampshire Youth Enrichment  
 Services, Inc., Somersworth, NH  
 New York City Partners in Climb, Inc.,  
 New York, NY  
 New York Community Development  
 Council, Inc., New York, NY  
 New York Performance Alliance, Inc.,  
 New York, NY

New York St. Patricks Day Ball, Inc.,  
 New York, NY  
 North American People of the Dawn  
 Sovereign Nation, Bellows Falls, VT  
 North Brooklyn Coalition Against Family  
 Violence, Inc., Brooklyn, NY  
 North Country Healthy Communities,  
 Greenville, ME  
 Northeast Osteopathic Medical Education  
 Network, Biddeford, ME  
 Northeastern Eco Art Center, Wells, ME  
 Northern Manhattan Development Corp.,  
 New York, NY  
 Nortrice Video Productions, Inc.,  
 Bay Shore, NY  
 Nymlaas, Inc., New York, NY  
 NYPD Emerald Society, Inc.,  
 New York, NY  
 Oasis for Children Day Care,  
 Brooklyn, NY  
 Old Lion Martial Life Arts Association,  
 Queens, NY  
 On Board, Inc., Springfield, MA  
 Once Upon a Time in NYC, Inc.,  
 New York, NY  
 Outlet Theater Company, Brooklyn, NY  
 Oxford Lchaim Society, New York, NY  
 P B H Housing of Plainfield, Inc.,  
 Putnam, CT  
 Padre Betos Hounduran Relief Fund, Inc.,  
 Brooklyn, NY  
 PAH Foundation, Providence, RI  
 Panimbrian Benevolent Society Imbros,  
 Inc., Brooklyn, NY  
 Pearl White Place Housing Development  
 Fund Corporation, Bronx, NY  
 Penn Monto Field Hockey Foundation,  
 Inc., Hadley, MA  
 Pennies From Heaven, Inc.,  
 North Kingstown, RI  
 People Against Violent Episodes,  
 Colebrook, NH  
 People in Motion, Incorporated,  
 Queens Village, NY  
 Persian Rescue and Placement,  
 Windham, ME  
 Pestalozzi U S Childrens Charity, Inc.,  
 New York, NY  
 Pittsfield Festivals, Incorporated,  
 Pittsfield, MA  
 Positive Impressions, Inc., Malden, MA  
 Potters Table, Inc., Staten Island, NY  
 Prabhu Foundation, Roslyn Heights, NY  
 Presencia Taina, Inc., Bronx, NY  
 Program Solutions, Inc., Norwich, CT  
 Project Angel Food a Food Recovery  
 Program, Inc., South Burlington, VT  
 Project Imagine, Inc., Halifax, MA  
 Puddingstone Place, Inc., Bloomfield, CT  
 Rahob Foundation, Nashua, NH  
 Raiders Softball, Inc., Lynn, MA  
 Rainbow Bridge Productions, Inc.,  
 Woodside, NY  
 Raising Our Childrens Children,  
 Dorchester, MA  
 Ralph W. Sparks Youth Development  
 Corporation, Brooklyn, NY  
 Reading Community Television, Inc.,  
 Reading, MA  
 Reading Friends of Historic Preservation,  
 Inc., Reading, MA  
 Reality Chek Foundation, Inc.,  
 Brooklyn, NY  
 Reinaldo Eric Soto Scholarship Fund,  
 Bridgeport, CT  
 Renaissance Foundation for the Healing  
 Arts & Sciences, Ltd., Gardner, MA  
 Renaissance Health Care Network  
 Auxiliary, Inc., New York City, NY  
 Research and Education Fund of  
 Suffolk Cty Womens Bus Enterprise,  
 Smithtown, NY  
 Roberta S. Kaufman Memorial  
 Scholarship Fund, Inc., Plainview, NY  
 R O C K, Inc., Mineola, NY  
 Rosner Foundation, Providence, RI  
 Roxbury Land Conservation Association,  
 Inc., Roxbury, VT  
 RSL Enterprises Corp., New Haven, CT  
 Rush Unlimited, Inc., Wyandanch, NY  
 Russian Spirit Center, Inc., Brooklyn, NY  
 Russian Web Girls, Inc., New York, NY  
 San Cristobal, Inc., New York, NY  
 Sandlot International Baseball  
 Association, Dobbs Ferry, NY  
 Sav-A-Dog Foundation, Inc.,  
 Red Hook, NY  
 Seackonke Wampanoag Tribe  
 Wampanoag Nation, Inc.,  
 W. Greenwich, RI  
 Seacoast Community Chamber Orchestra,  
 Newington, NH  
 Sephardic Orthodox Union, Inc.,  
 New York, NY  
 Sergio Vargas Foundation, Inc.,  
 New York, NY  
 Sgt. Richard A. Smith Memorial  
 Foundation, Bronx, NY  
 Shannon Briggs Memorial Scholarship  
 Fund, Oyster Bay, NY  
 Sharing in Adoption, Inc., Portland, ME  
 Shawmut Education, Inc., Roxbury, MA  
 Shelburne Community Education Fund,  
 Shelburne, VT  
 Shoquata Atdhetare Dibrane,  
 Staten Island, NY  
 Silent Oceans Trust, Inc., Litchfield, CT  
 Silverlining Group, Inc., New York, NY  
 Sino-American Network for Educational  
 Exchange, Inc., Amherst, MA  
 Siuna Foundation, Vineyard Haven, MA  
 Snug Harbor Community Chorus, Inc.,  
 Duxbury, MA  
 Society for Children in Need,  
 Harwich, MA  
 Song of the Spirit Ministries, Houston, TX  
 Southeastern Massachusetts Triathlon  
 Club, Inc., Taunton, MA  
 Southern Maine Autism Resource Center,  
 S. Portland, ME  
 Southern New Hampshire Youth Ballet,  
 Bedford, NH  
 Sovereign Events Corp.,  
 Howard Beach, NY  
 S P C E Jumpstart, Inc., Portland, ME  
 Springfield Sickle Cell Disease Chapter,  
 Springfield, MA  
 St. Jude Mediation & Counseling  
 Services, Inc., Flushing, NY  
 STK Theatre Group, Inc., New York, NY  
 Sunset Park-Redhook Local Development  
 Corporation, Brooklyn, NY  
 Tewksbury Teen Center, Tewksbury, MA  
 Thank U, Inc., Southampton, NY  
 Theatre Museum of Boston, Inc.,  
 Boston, MA  
 Theater on the Green, Inc.,  
 Washington, CT  
 Thrift Avenue, Inc., W. Islip, NY  
 Trails of Discovery, Inc., Rutland, VT  
 Traveling Church of Jesus Christ, Inc.,  
 Wyandanch, NY  
 Triumph Foundation, Inc., Bronx, NY  
 True Buddas Society, Scarborough, ME  
 Turtle Hospital of New England,  
 Upton, MA  
 Unap Childrens Hospital Fund,  
 Providence, RI  
 Union Senior Citizens Plaza, Inc.,  
 Hempstead, NY  
 Unique Passage Foundation,  
 New York, NY  
 United African Congress, Incorporated,  
 Mineola, NY  
 United Black Women for Change,  
 St. Albans, NY  
 United Safety Marshalls, Inc.,  
 Manchester, NH  
 United States Naval Academy Alumni  
 Association CT Chapter, Ivoryton, CT  
 Upper Room Unlimited, Inc.,  
 New Haven, CT  
 Vaad Migola Lgeulah, Passaic, NJ  
 Vatra Foundation, Inc., New York, NY

Verlene Foundation, Inc., New York, NY  
Vermont Wellness Institute, Inc.,  
Woodstock, VT  
Victory Care Center, Inc.,  
Richmond Hill, NY  
Vision Missionnaire Montiale 2000, Inc.,  
Brooklyn, NY  
Vision Star, Inc.,  
Indian Harbour Beach, FL  
Voice of the Tenants, Inc., New York, NY  
Walton School Playground & Home Field,  
Inc., Wakefield, MA  
Waymakers, Inc., Brookline, MA

Westchester Housing Development Corp.,  
Yonkers, NY  
Wild Thing Rescue and Rehab, Inc.,  
Cortlandy Manor, NY  
W I N Long Island, Inc., Centerport, NY  
Winding River Land Conservancy, Inc.,  
Westfield, MA  
Woodson Foundation, Valley Stream, NY  
Works for Me Arts Foundation, Inc.,  
New York, NY  
World Animal Net, Inc., Boston, MA  
World Connection, Inc., Winchester, MA  
Youth for Youth, Somersworth, NH

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

# Definition of Terms

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

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

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

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

*Modified* is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

*Obsoleted* describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws 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 a new ruling.

*Superseded* describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance

of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

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

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

## Abbreviations

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

A—Individual.  
Acq.—Acquiescence.  
B—Individual.  
BE—Beneficiary.  
BK—Bank.  
B.T.A.—Board of Tax Appeals.  
C—Individual.  
C.B.—Cumulative Bulletin.  
CFR—Code of Federal Regulations.  
CI—City.  
COOP—Cooperative.  
Ct.D.—Court Decision.  
CY—County.  
D—Decedent.  
DC—Dummy Corporation.  
DE—Donee.  
Del. Order—Delegation Order.  
DISC—Domestic International Sales Corporation.  
DR—Donor.  
E—Estate.  
EE—Employee.  
E.O.—Executive Order.

ER—Employer.  
ERISA—Employee Retirement Income Security Act.  
EX—Executor.  
F—Fiduciary.  
FC—Foreign Country.  
FICA—Federal Insurance Contributions Act.  
FISC—Foreign International Sales Company.  
FPH—Foreign Personal Holding Company.  
FR—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.—Statement of Procedural Rules.  
Stat.—Statutes at Large.  
T—Target Corporation.  
T.C.—Tax Court.  
T.D.—Treasury Decision.  
TFE—Transferee.  
TFR—Transferor.  
T.I.R.—Technical Information Release.  
TP—Taxpayer.  
TR—Trust.  
TT—Trustee.  
U.S.C.—United States Code.  
X—Corporation.  
Y—Corporation.  
Z—Corporation.

## Numerical Finding List<sup>1</sup>

Bulletins 2004–1 through 2004–11

### Announcements:

2004-1, 2004-1 I.R.B. 254  
2004-2, 2004-3 I.R.B. 322  
2004-3, 2004-2 I.R.B. 294  
2004-4, 2004-4 I.R.B. 357  
2004-5, 2004-4 I.R.B. 362  
2004-6, 2004-3 I.R.B. 322  
2004-7, 2004-4 I.R.B. 365  
2004-8, 2004-6 I.R.B. 441  
2004-9, 2004-6 I.R.B. 441  
2004-10, 2004-7 I.R.B. 501  
2004-11, 2004-10 I.R.B. 581  
2004-12, 2004-9 I.R.B. 541  
2004-13, 2004-9 I.R.B. 543  
2004-14, 2004-10 I.R.B. 582  
2004-15, 2004-11 I.R.B. 612

### Notices:

2004-1, 2004-2 I.R.B. 268  
2004-2, 2004-2 I.R.B. 269  
2004-3, 2004-5 I.R.B. 391  
2004-4, 2004-2 I.R.B. 273  
2004-5, 2004-7 I.R.B. 489  
2004-6, 2004-3 I.R.B. 308  
2004-7, 2004-3 I.R.B. 310  
2004-8, 2004-4 I.R.B. 333  
2004-9, 2004-4 I.R.B. 334  
2004-10, 2004-6 I.R.B. 433  
2004-11, 2004-6 I.R.B. 434  
2004-12, 2004-10 I.R.B. 556  
2004-14, 2004-9 I.R.B. 526  
2004-15, 2004-9 I.R.B. 526  
2004-16, 2004-9 I.R.B. 527  
2004-17, 2004-11 I.R.B. 605  
2004-18, 2004-11 I.R.B. 605  
2004-19, 2004-11 I.R.B. 606  
2004-20, 2004-11 I.R.B. 608  
2004-21, 2004-11 I.R.B. 609

### Proposed Regulations:

REG-116664-01, 2004-3 I.R.B. 319  
REG-122379-02, 2004-5 I.R.B. 392  
REG-139845-02, 2004-5 I.R.B. 397  
REG-126459-03, 2004-6 I.R.B. 437  
REG-126967-03, 2004-10 I.R.B. 566  
REG-156232-03, 2004-5 I.R.B. 399  
REG-156421-03, 2004-10 I.R.B. 571  
REG-167217-03, 2004-9 I.R.B. 540

### Revenue Procedures:

2004-1, 2004-1 I.R.B. 1  
2004-2, 2004-1 I.R.B. 83

### Revenue Procedures— Continued:

2004-3, 2004-1 I.R.B. 114  
2004-4, 2004-1 I.R.B. 125  
2004-5, 2004-1 I.R.B. 167  
2004-6, 2004-1 I.R.B. 197  
2004-7, 2004-1 I.R.B. 237  
2004-8, 2004-1 I.R.B. 240  
2004-9, 2004-2 I.R.B. 275  
2004-10, 2004-2 I.R.B. 288  
2004-11, 2004-3 I.R.B. 311  
2004-12, 2004-9 I.R.B. 528  
2004-13, 2004-4 I.R.B. 335  
2004-14, 2004-7 I.R.B. 489  
2004-15, 2004-7 I.R.B. 490  
2004-16, 2004-10 I.R.B. 559  
2004-17, 2004-10 I.R.B. 562  
2004-18, 2004-9 I.R.B. 529  
2004-19, 2004-10 I.R.B. 563

### Revenue Rulings:

2004-1, 2004-4 I.R.B. 325  
2004-2, 2004-2 I.R.B. 265  
2004-3, 2004-7 I.R.B. 486  
2004-4, 2004-6 I.R.B. 414  
2004-5, 2004-3 I.R.B. 295  
2004-6, 2004-4 I.R.B. 328  
2004-7, 2004-4 I.R.B. 327  
2004-8, 2004-10 I.R.B. 544  
2004-9, 2004-6 I.R.B. 428  
2004-10, 2004-7 I.R.B. 484  
2004-11, 2004-7 I.R.B. 480  
2004-12, 2004-7 I.R.B. 478  
2004-13, 2004-7 I.R.B. 485  
2004-14, 2004-8 I.R.B. 511  
2004-15, 2004-8 I.R.B. 515  
2004-16, 2004-8 I.R.B. 503  
2004-17, 2004-8 I.R.B. 516  
2004-18, 2004-8 I.R.B. 509  
2004-19, 2004-8 I.R.B. 510  
2004-20, 2004-10 I.R.B. 546  
2004-21, 2004-10 I.R.B. 544  
2004-22, 2004-10 I.R.B. 553  
2004-23, 2004-11 I.R.B. 585  
2004-24, 2004-10 I.R.B. 550  
2004-25, 2004-11 I.R.B. 587  
2004-26, 2004-11 I.R.B. 598  
2004-37, 2004-11 I.R.B. 583

### Tax Conventions:

2004-3, 2004-7 I.R.B. 486

### Treasury Decisions:

9099, 2004-2 I.R.B. 255  
9100, 2004-3 I.R.B. 297  
9101, 2004-5 I.R.B. 376  
9102, 2004-5 I.R.B. 366

### Treasury Decisions— Continued:

9103, 2004-3 I.R.B. 306  
9104, 2004-6 I.R.B. 406  
9105, 2004-6 I.R.B. 419  
9106, 2004-5 I.R.B. 384  
9107, 2004-7 I.R.B. 447  
9108, 2004-6 I.R.B. 429  
9109, 2004-8 I.R.B. 519  
9110, 2004-8 I.R.B. 504  
9111, 2004-8 I.R.B. 518  
9112, 2004-9 I.R.B. 523  
9113, 2004-9 I.R.B. 524  
9114, 2004-11 I.R.B. 589

<sup>1</sup> A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2003–27 through 2003–52 is in Internal Revenue Bulletin 2003–52, dated December 29, 2003.

## Findings List of Current Actions on Previously Published Items<sup>1</sup>

Bulletins 2004–1 through 2004–11

### Announcements:

#### 2003-56

Modified by

Ann. 2004-11, 2004-10 I.R.B. 581

### Notices:

#### 98-5

Withdrawn by

Notice 2004-19, 2004-11 I.R.B. 606

#### 2003-76

Modified by

Notice 2004-19, 2004-11 I.R.B. 606

### Proposed Regulations:

#### REG-110896-98

Corrected by

Ann. 2004-14, 2004-10 I.R.B. 582

#### REG-115037-00

Corrected by

Ann. 2004-7, 2004-4 I.R.B. 365

#### REG-143321-02

Withdrawn by

REG-156232-03, 2004-5 I.R.B. 399

#### REG-146893-02

Corrected by

Ann. 2004-7, 2004-4 I.R.B. 365

#### REG-163974-02

Corrected by

Ann. 2004-13, 2004-9 I.R.B. 543

### Revenue Procedures:

#### 87-19

Obsoleted in part by

Rev. Proc. 2004-18, 2004-9 I.R.B. 529

#### 93-15

Obsoleted in part by

Rev. Proc. 2004-18, 2004-9 I.R.B. 529

#### 94-41

Superseded by

Rev. Proc. 2004-15, 2004-7 I.R.B. 490

#### 94-55

Obsoleted in part by

Rev. Proc. 2004-18, 2004-9 I.R.B. 529

#### 98-16

Suspended by

Notice 2004-12, 2004-10 I.R.B. 556

### Revenue Procedures— Continued:

#### 2000-38

Modified by

Rev. Proc. 2004-11, 2004-3 I.R.B. 311

#### 2000-50

Modified by

Rev. Proc. 2004-11, 2004-3 I.R.B. 311

#### 2002-9

Modified and amplified by

Rev. Rul. 2004-18, 2004-8 I.R.B. 509

Modified by

Rev. Proc. 2004-11, 2004-3 I.R.B. 311

#### 2002-71

Superseded by

Rev. Proc. 2004-13, 2004-4 I.R.B. 335

#### 2003-1

Superseded by

Rev. Proc. 2004-1, 2004-1 I.R.B. 1

#### 2003-2

Superseded by

Rev. Proc. 2004-2, 2004-1 I.R.B. 83

#### 2003-3

As amplified by Rev. Proc. 2003-14, and as modified by Rev. Proc. 2003-48 superseded by

Rev. Proc. 2004-3, 2004-1 I.R.B. 114

#### 2003-4

Superseded by

Rev. Proc. 2004-4, 2004-1 I.R.B. 125

#### 2003-5

Superseded by

Rev. Proc. 2004-5, 2004-1 I.R.B. 167

#### 2003-6

Superseded by

Rev. Proc. 2004-6, 2004-1 I.R.B. 197

#### 2003-7

Superseded by

Rev. Proc. 2004-7, 2004-1 I.R.B. 237

#### 2003-8

Superseded by

Rev. Proc. 2004-8, 2004-1 I.R.B. 240

#### 2003-23

Modified and superseded by

Rev. Proc. 2004-14, 2004-7 I.R.B. 489

#### 2003-26

Supplemented by

Rev. Proc. 2004-17, 2004-10 I.R.B. 562

#### 2004-1

Corrected by

Ann. 2004-8, 2004-6 I.R.B. 441

### Revenue Procedures— Continued:

#### 2004-4

Modified by

Rev. Proc. 2004-15, 2004-7 I.R.B. 490

#### 2004-5

Modified by

Rev. Proc. 2004-15, 2004-7 I.R.B. 490

#### 2004-6

Modified by

Rev. Proc. 2004-15, 2004-7 I.R.B. 490

### Revenue Rulings:

#### 55-748

Modified and superseded by

Rev. Rul. 2004-20, 2004-10 I.R.B. 546

#### 92-19

Supplemented in part by

Rev. Rul. 2004-14, 2004-8 I.R.B. 511

#### 94-38

Clarified by

Rev. Rul. 2004-18, 2004-8 I.R.B. 509

#### 98-25

Clarified by

Rev. Rul. 2004-18, 2004-8 I.R.B. 509

<sup>1</sup> A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2003–27 through 2003–52 is in Internal Revenue Bulletin 2003–52, dated December 29, 2003.