Internal Revenue
bulletin

Bulletin No. 2007-34
August 20, 2007

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

REG–149036–04, page 411.

Proposed regulations under section 6404 of the Code concern the suspension of interest, penalties, additions to tax, or additional amounts under section 6404(g) and explain the general rules for suspension as well as exceptions to those general rules. A public hearing is scheduled for October 11, 2007.

Notice 2007–64, page 385.

2007 Section 43 inflation adjustment factor. This notice announces the inflation adjustment factor and phase-out amount for the enhanced oil recovery credit for the 2007 calendar year.

Notice 2007–65, page 386.

2007 marginal production rates. The notice announces the applicable percentage under section 613A of the Code to be used in determining percentage depletion for marginal properties for the 2007 calendar year.

EMPLOYEE PLANS

T.D. 9334, page 382.
REG–142039–06, page 415.

Final, temporary, and proposed regulations under section 4965 of the Code provide guidance relating to the requirement of a return to accompany payment of excise taxes, the time for filing that return, and entity-level and manager-level excise taxes with respect to prohibited tax shelter transactions to which tax-exempt entities are parties.

T.D. 9335, page 380.

Temporary regulations under section 6033 of the Code provide rules regarding the form, manner, and timing of disclosure obligations with respect to prohibited tax shelter transactions to which tax-exempt entities are parties. The text of these regulations also serves as the text of the proposed regulations (REG–142039–06; REG–139268–06) in this Bulletin.

EXEMPT ORGANIZATIONS

T.D. 9334, page 382.
REG–142039–06, page 415.

Final, temporary, and proposed regulations under section 4965 of the Code provide guidance relating to the requirement of a return to accompany payment of excise taxes, the time for filing that return, and entity-level and manager-level excise taxes with respect to prohibited tax shelter transactions to which tax-exempt entities are parties.

T.D. 9335, page 380.

Temporary regulations under section 6033 of the Code provide rules regarding the form, manner, and timing of disclosure obligations with respect to prohibited tax shelter transactions to which tax-exempt entities are parties. The text of these regulations also serves as the text of the proposed regulations (REG–142039–06; REG–139268–06) in this Bulletin.

(Continued on the next page)

Announcements of Disbarments and Suspensions begin on page 429.
Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

Announcement 2007–73, page 435.
The IRS has revoked its determination that The Dale and Johanna Brunken Foundation of Salt Lake City, UT; Osterville Village Association of Osterville, MA; Epley Family Foundation of Salt Lake City, UT; Ohio Veterans Coalition, Inc., of Akron, OH; United States Historical Society of Richmond, VA; MOP Non-Profit, Inc., of Detroit, MI; and Del Sol Foundation of Downey, CA, qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Code.

EXCISE TAX

T.D. 9334, page 382.
REG–142039–06, page 415.
Final, temporary, and proposed regulations under section 4965 of the Code provide guidance relating to the requirement of a return to accompany payment of excise taxes, the time for filing that return, and entity-level and manager-level excise taxes with respect to prohibited tax shelter transactions to which tax-exempt entities are parties.

T.D. 9335, page 380.
Temporary regulations under section 6033 of the Code provide rules regarding the form, manner, and timing of disclosure obligations with respect to prohibited tax shelter transactions to which tax-exempt entities are parties. The text of these regulations also serves as the text of the proposed regulations (REG–142039–06; REG–139268–06) in this Bulletin.

ADMINISTRATIVE

REG–149036–04, page 411.
Proposed regulations under section 6404 of the Code concern the suspension of interest, penalties, additions to tax, or additional amounts under section 6404(g) and explain the general rules for suspension as well as exceptions to those general rules. A public hearing is scheduled for October 11, 2007.

Notice 2007–66, page 387.
The Service is providing an extension of time under section 42(j)(4)(E) of the Code for the restoration of low-income housing credit projects located within the Gulf Opportunity Zone (GO Zone) that were damaged by Hurricane Katrina.

Rev. Proc. 2007–56, page 388.
This procedure provides an updated list of time-sensitive acts, the performance of which may be postponed under sections 7508 and 7508A of the Code. Section 7508 postpones specified acts for individuals serving in the Armed Forces of the United States, or in support of such Armed Forces in a combat zone, or with respect to a contingency operation (as defined in 10 U.S.C. section 101(a)(13)). Section 7508A permits a postponement to perform specified acts for taxpayers affected by a Presidentially declared disaster or a terroristic or military action. The list of acts in this procedure supplements the list of postponed acts in section 7508(a)(1) of the Code and section 301.7508A–1(c)(1)(vii) of the regulations. Rev. Proc. 2005–27 superseded.

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 compiled 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.

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

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

Section 6033.—Returns by Exempt Organizations

26 CFR 1.6033–5T: Disclosure by tax-exempt entities that are parties to certain reportable transactions (temporary).

T.D. 9335

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Parts 1 and 301

Disclosure Requirements With Respect to Prohibited Tax Shelter Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations under section 6033(a)(2) of the Internal Revenue Code (Code) that provide rules regarding the form, manner and timing of disclosure obligations with respect to prohibited tax shelter transactions to which tax-exempt entities are parties. These temporary regulations affect a broad array of tax-exempt entities, including charities, state and local government entities, Indian Tribal governments and employee benefit plans, as well as entity managers of these entities. This action is necessary to implement section 516 of the Tax Increase Prevention and Reconciliation Act of 2005. The text of the temporary regulations also serves as the text of the proposed regulations (REG–142039–06; REG–139268–06) published elsewhere in the Bulletin.

DATES: *Effective Date:* These regulations are effective on July 6, 2007.

Applicability Date: For dates of applicability, see §1.6033–5T(g).

FOR FURTHER INFORMATION CONTACT: Galina Kolomietz, (202) 622–6070, or Michael Blumenfeld, (202) 622–1124 (not toll-free numbers). For questions specifically relating to qualified pension plans, individual retirement accounts, and similar tax-favored savings arrangements, contact Dana Barry, (202) 622–6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The Tax Increase Prevention and Reconciliation Act of 2005, Public Law 109–222 (120 Stat. 345) (TIPRA), enacted on May 17, 2006, defines certain transactions as prohibited tax shelter transactions and imposes excise taxes and disclosure requirements with respect to prohibited tax shelter transactions to which a tax-exempt entity is a party. TIPRA creates new section 4965 and amends sections 6033(a)(2) and 6011(g) of the Code. The amended section 6033(a)(2) requires every tax-exempt entity to which section 4965 applies that is a party to a prohibited tax shelter transaction to disclose to the IRS (in such form and manner and at such time as determined by the Secretary) the following information: (a) that such entity is a party to the prohibited tax shelter transaction; and (b) the identity of any other party to the transaction which is known to the tax-exempt entity. The amended section 6011(g) requires any taxable party to a prohibited tax shelter transaction to disclose by statement to any tax-exempt entity to which section 4965 applies that is a party to such transaction that such transaction is a prohibited tax shelter transaction.

On July 11, 2006, the IRS released Notice 2006–65, 2006–31 I.R.B. 102, which alerted taxpayers to the new provisions. On February 7, 2007, the IRS released Notice 2007–18, 2007–9 I.R.B. 608, which provided interim guidance regarding the circumstances under which a tax-exempt entity will be treated as a party to a prohibited tax shelter transaction for purposes of sections 4965, 6033(a)(2) and 6011(g) and regarding the allocation to various periods of net income and proceeds attributable to a prohibited tax shelter transaction, including amounts received prior to the effective date of the section 4965 tax. See §601.601(d)(2)(ii)(*b*) of this chapter.

These temporary regulations are being issued concurrently with proposed regulations under sections 4965, 6033(a)(2) and 6011(g) published elsewhere in the Bulletin.

Explanation of Provisions

These temporary regulations contain rules concerning disclosure requirements imposed by section 6033(a)(2) on tax-exempt entities that are parties to prohibited tax shelter transactions. Proposed regulations providing rules concerning disclosure requirements under section 6033(a)(2) are being issued concurrently with these temporary regulations.

Effective Date

These temporary regulations are applicable with respect to transactions entered into by a tax-exempt entity after May 17, 2006.

Special Analyses

It has been determined that this Treasury decision is 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 temporary regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the cross-referencing notice of proposed rulemaking published in this issue of the Bulletin. Pursuant to section 7805(f) of the Code, these temporary regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are Galina Kolomietz and Dana Barry, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.6033–5T is added to read as follows:

§1.6033–5T Disclosure by tax-exempt entities that are parties to certain reportable transactions (temporary).

(a) *In general*. Every tax-exempt entity (as defined in section 4965(c)) shall file with the IRS on Form 8886–T, "*Disclosure by Tax-Exempt Entity Regarding Prohibited Tax Shelter Transaction*" (or a successor form), in accordance with this section and the instructions to the form, a disclosure of—

(1) Such entity's being a party (as defined in paragraph (b) of this section) to a prohibited tax shelter transaction (as defined in section 4965(e)); and

(2) The identity of any other party (whether taxable or tax-exempt) to such transaction that is known to the tax-exempt entity.

(b) *Definition of tax-exempt party to a prohibited tax shelter transaction*—(1) *In general*. For purposes of section 6033(a)(2), a tax-exempt entity is a party to a prohibited tax shelter transaction if the entity—

(i) Facilitates a prohibited tax shelter transaction by reason of its tax-exempt, tax indifferent or tax-favored status;

(ii) Enters into a listed transaction and the tax-exempt entity's tax return (whether an original or an amended return) reflects a reduction or elimination of its liability for applicable Federal employment, excise or unrelated business income taxes that is derived directly or indirectly from tax consequences or tax strategy described in the published guidance that lists the transaction; or

(iii) Is identified in published guidance, by type, class or role, as a party to a prohibited tax shelter transaction.

(2) Published guidance may identify which tax-exempt entities, by type, class or role, will not be treated as a party to a prohibited tax shelter transaction for purposes of section 6033(a)(2).

(c) *Frequency of disclosure*. A single disclosure is required for each prohibited tax shelter transaction.

(d) *By whom disclosure is made*—(1) *Tax-exempt entities referred to in section 4965(c)(1), (2) or (3)*. In the case of tax-exempt entities referred to in section 4965(c)(1), (2) or (3), the disclosure required by this section must be made by the entity.

(2) *Tax-exempt entities referred to in section 4965(c)(4), (5), (6) or (7)*. In the case of tax-exempt entities referred to in section 4965(c)(4), (5), (6) or (7), including a fully self-directed qualified plan, IRA, or other savings arrangement, the disclosure required by this section must be made by the entity manager (as defined in section 4965(d)(2)) of the entity.

(e) *Time and place for filing*—(1) *Tax-exempt entities described in paragraph (b)(1)(i)*—(i) *In general*. The disclosure required by this section shall be filed on or before May 15 of the calendar year following the close of the calendar year during which the tax-exempt entity entered into the prohibited tax shelter transaction.

(ii) *Subsequently listed transactions*. In the case of subsequently listed transactions (as defined in section 4965(e)(2)), the disclosure required by this section shall be filed on or before May 15 of the calendar year following the close of the calendar year during which the transaction was identified by the Secretary as a listed transaction.

(2) *Tax-exempt entities described in paragraph (b)(1)(ii)*. The disclosure required by this section shall be filed on or before the date on which the first tax return (whether an original or an amended return) is filed which reflects a reduction or elimination of the tax-exempt entity's liability for applicable Federal employment, excise or unrelated business income taxes that is derived directly or indirectly from tax consequences or tax strategy described in the published guidance that lists the transaction.

(3) *Transition rule*. If a tax-exempt entity entered into a prohibited tax shelter transaction after May 17, 2006 and before January 1, 2007, the disclosure required by this section shall be filed—

(i) In the case of tax-exempt entities described in paragraph (b)(1)(i), on or before November 5, 2007;

(ii) In the case of tax-exempt entities described in paragraph (b)(1)(ii), on or before the later of—

(A) November 5, 2007; or

(B) The date on which the first tax return (whether an original or an amended return) is filed which reflects a reduction or elimination of the tax-exempt entity's liability for applicable Federal employment, excise or unrelated business income taxes that is derived directly or indirectly from tax consequences or tax strategy described in the published guidance that lists the transaction.

(4) Disclosure is not required with respect to any prohibited tax shelter transaction entered into by a tax-exempt entity on or before May 17, 2006.

(f) *Penalty for failure to provide disclosure statement*. See section 6652(c)(3) for penalties applicable to failure to disclose a prohibited tax shelter transaction in accordance with this section.

(g) *Effective date*—(1) *Applicability date*. This section applies with respect to transactions entered into by a tax-exempt entity after May 17, 2006.

(2) *Expiration date*. This section will expire on July 6, 2010.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 3. The authority citation for part 301 continues to read, in part, as follows:

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

Par. 4. Section 301.6033–5T is added to read as follows:

§301.6033–5T Disclosure by tax-exempt entities that are parties to certain reportable transactions (temporary).

(a) *In general*. For provisions relating to the requirement of the disclosure by a tax-exempt entity that it is a party to certain reportable transactions, see §1.6033–5 of this chapter (Income Tax Regulations).

(b) *Effective date*—(1) *Applicability date*. This section applies with respect to transactions entered into by a tax-exempt entity after May 17, 2006.

(2) Expiration date. This section will expire on July 6, 2010.

Kevin M. Brown,
Deputy Commissioner for Services and Enforcement.

Approved June 21, 2007.

Eric Solomon,
Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on July 5, 2007, 8:45 a.m., and published in the issue of the Federal Register for July 6, 2007, 72 F.R. 36869)

Section 6071.—Time for Filing Returns and Other Documents

26 CFR 53.6071–1: Time for filing returns.

T.D. 9334

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Parts 53 and 54

Requirement of Return and Time for Filing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations providing guidance relating to the requirement of a return to accompany payment of excise taxes under section 4965 of the Internal Revenue Code (Code) and the time for filing that return. These regulations affect a broad array of tax-exempt entities, including charities, state and local government entities, Indian tribal governments and employee benefit plans, as well as entity managers of these entities. This action is necessary to implement section 516 of the Tax Increase Prevention and Reconciliation Act of 2005. The text of the temporary regulations also serves as the text of the proposed regulations (REG–142039–06; REG–139268–06) published elsewhere in the Bulletin.

DATES: *Effective date:* These regulations are effective on July 6, 2007.

Applicability date: For dates of applicability, see §§53.6071–1T(g) and 54.6011–1T(c) of these regulations.

FOR FURTHER INFORMATION CONTACT: Galina Kolomietz, (202) 622–6070, Michael Blumenfeld, (202) 622–1124, or Dana Barry, (202) 622–6060 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The Tax Increase Prevention and Reconciliation Act of 2005, Public Law 109–222 (120 Stat. 345) (TIPRA), enacted on May 17, 2006, added section 4965 to the Code. Section 4965 affects a broad array of tax-exempt entities as defined in section 4965(c). Tax-exempt entities described in section 4965(c)(1), (2), or (3) (referred to herein as "non-plan entities") include entities described in section 501(c), religious or apostolic associations or corporations described in section 501(d), entities described in section 170(c), including states, possessions of the United States, the District of Columbia, political subdivisions of states and political subdivisions of possessions of the United States (but not including the United States), and Indian tribal governments within the meaning of section 7701(a)(40). Tax-exempt entities described in section 4965(c)(4), (c)(5), (c)(6), or (c)(7) (referred to herein as "plan entities") include tax-favored retirement plans, individual retirement arrangements, and savings arrangements described in section 401(a), 403(a), 403(b), 529, 457(b), 408(a), 220(d), 408(b), 530 or 223(d).

Section 4965 imposes two new excise taxes, one on the tax-exempt entity (the entity-level tax) and the other on certain of the tax-exempt entity's managers (the manager-level tax). The entity-level tax is imposed on non-plan entities that are parties to prohibited tax shelter transactions. The entity-level tax does not apply to plan entities. Prohibited tax shelter transactions are transactions that are identified by the IRS as "listed transactions" (within the meaning of section 6707A(c)(2)) and reportable transactions that are confidential transactions or transactions with contractual protection (as defined in section 6707A(c)(1) and §1.6011–4(b) of this chapter).

The entity-level tax applies to each taxable year during which the non-plan entity is a party to a prohibited tax shelter transaction and has net income or proceeds attributable to the transaction which are properly allocable to that taxable year. The amount of the entity-level tax depends on whether the non-plan entity knew or had reason to know that the transaction was a prohibited tax shelter transaction at the time the entity became a party to the transaction. If the non-plan entity did not know (and did not have reason to know) that the transaction was a prohibited tax shelter transaction at the time the entity became a party to the transaction, the tax is the highest rate of tax under section 11 (currently 35 percent) multiplied by the greater of: (i) the entity's net income with respect to the prohibited tax shelter transaction (after taking into account any tax imposed by Subtitle D, other than by this section, with respect to such transaction) for the taxable year or (ii) 75 percent of the proceeds received by the entity for the taxable year that are attributable to such transaction. If the non-plan entity knew or had reason to know that the transaction was a prohibited tax shelter transaction at the time the entity became a party to the transaction, the tax is the greater of (i) 100 percent of the entity's net income with respect to the transaction (after taking into account any tax imposed by Subtitle D, other than by this section, with respect to such transaction) for the taxable year or (ii) 75 percent of the proceeds received by the entity for the taxable year that are attributable to such transaction. In the case of a transaction that becomes a prohibited tax shelter transaction by reason of becoming a listed transaction after the non-plan entity has become a party to such transaction (subsequently listed transactions), the amount of tax is based on the net income or proceeds attributable to such transaction that are properly allocable to the period beginning on the date the transaction became listed or the first day of the entity's taxable year, whichever is later. No entity-level tax applies to any income or proceeds that are properly allocable to a period ending on or before August 15, 2006.

The manager-level tax is imposed on entity managers (as defined in section 4965(d)) of all tax-exempt entities de-

scribed in section 4965(c) who approve the entity as a party (or otherwise cause the entity to be a party) to a prohibited tax shelter transaction and know or have reason to know that the transaction is a prohibited tax shelter transaction. In the case of non-plan entities, the term *entity manager* means the person with authority or responsibility similar to that exercised by an officer, director or trustee, and, with respect to any act, the person having authority or responsibility with respect to such act. In the case of plan entities, the term *entity manager* means the person who approves or otherwise causes the entity to be a party to the prohibited tax shelter transaction. An individual beneficiary (including a plan participant) or owner of the tax-favored retirement plans, individual retirement arrangements, and savings arrangements described in section 401(a), 403(a), 403(b), 529, 457(b), 408(a), 220(d), 408(b), 530 or 223(d), may be liable as an entity manager if the individual beneficiary or owner has broad investment authority under the arrangement. The amount of the manager-level tax is $20,000 for each approval or other act causing the entity to be a party to a prohibited tax shelter transaction. The manager-level tax applies separately to each entity manager.

These final and temporary regulations are being issued concurrently with proposed regulations under sections 4965, 6033(a)(2) and 6011(g) published elsewhere in the Bulletin.

Explanation of Provisions

The regulations provide that non-plan entities (including exempt organizations and governments) that are liable for section 4965 excise taxes and entity managers of non-plan entities who are liable for section 4965 excise taxes as entity managers are required to file a return on Form 4720, "*Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code*." The entity return is due on or before the date the non-plan entity's annual return under section 6033(a)(1) (for example, Form 990, "*Return of Organization Exempt From Income Tax*") is due, if the non-plan entity is required to file such a return. In all other cases, the entity return is due on or before the 15th day of the fifth month after the end of the non-plan entity's accounting period for which the liability under section 4965 was incurred. In the case of a non-plan entity manager, the entity manager return is due on or before the 15th day of the fifth month following the close of the manager's taxable year during which the entity entered into a prohibited tax shelter transaction.

The regulations also provide that entity managers of plan entities who are liable for section 4965 taxes as entity managers are required to file a return on Form 5330, "*Return of Excise Taxes Related to Employee Benefit Plans*." For section 4965 taxes, the Form 5330 is due on or before the 15th day of the fifth month following the close of the manager's taxable year during which the entity entered into a prohibited tax shelter transaction.

The regulations provide a transition rule that returns of section 4965 taxes that are or were due on or before October 4, 2007 will be deemed timely if the return is filed and the tax is paid before that date.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the cross-referencing notice of proposed rulemaking published in this issue of the Bulletin. Pursuant to section 7805(f) of the Code, these final and temporary regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on business.

Drafting Information

The principal authors of these regulations are Galina Kolomietz and Dana Barry, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 53 and 54 are amended as follows:

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

Paragraph 1. The authority citation for part 53 continues to read, in part, as follows:

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

§53.6011–1 [Amended]

Par. 2. In §53.6011–1, paragraph (b) is amended by:

1. Removing from the first sentence, the language "or 4958(a)," and adding "4958(a), or 4965(a)," in its place.

2. Removing from the last sentence, the language "or 4958(a)," and adding "4958(a), or 4965(a)," in its place.

Par. 3. Section 53.6071–1 is amended by adding and reserving paragraph (g) and adding paragraph (h) to read as follows:

§53.6071–1 Time for filing returns.

* * * * *

(g) [Reserved]. For further guidance, see §53.6071–1T(g).

(h) *Effective/applicability date*. For the applicability date of paragraph (g) of this section, see §53.6071–1T(h).

Par. 4. Section 53.6071–1T is added to read as follows:

§53.6071–1T Time for filing returns (temporary).

(a) through (f) [Reserved]. For further guidance, see §53.6071–1(a) through (f).

(g) *Taxes imposed with respect to prohibited tax shelter transactions to which tax-exempt entities are parties*—(1) *Returns by certain tax-exempt entities*. A Form 4720, "*Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code*," required by §53.6011–1(b) for a tax-exempt entity described in section 4965(c)(1), (c)(2) or (c)(3) that is a party to a prohibited tax shelter transaction and is liable for tax imposed by section 4965(a)(1) shall be filed on or before the due date (not including extensions) for filing the tax-exempt entity's annual information return under section 6033(a)(1). If the tax-exempt entity is

not required to file an annual information return under section 6033(a)(1), the Form 4720 shall be filed on or before the 15th day of the fifth month after the end of the tax-exempt entity's taxable year or, if the entity has not established a taxable year for Federal income tax purposes, the entity's annual accounting period.

(2) *Returns by entity managers of tax-exempt entities described in section 4965(c)(1), (c)(2) or (c)(3).* A Form 4720, required by §53.6011–1(b) for an entity manager of a tax-exempt entity described in section 4965(c)(1), (c)(2) or (c)(3) who is liable for tax imposed by section 4965(a)(2) shall be filed on or before the 15th day of the fifth month following the close of the entity manager's taxable year during which the entity entered into the prohibited tax shelter transaction.

(3) *Transition rule.* A Form 4720, for a section 4965 tax that is or was due on or before October 4, 2007 will be deemed to have been filed on the due date if it is filed by October 4, 2007 and if all section 4965 taxes required to be reported on that Form 4720 are paid by October 4, 2007.

(h) *Effective/applicability date*—(1) *In general.* Paragraph (g) of this section is applicable on July 6, 2007.

(2) *Expiration date.* Paragraph (g) of this section will expire on July 6, 2010.

PART 54—PENSION EXCISE TAXES

Par. 5. The authority citation for part 54 continues to read, in part, as follows:

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

Par. 6. Section 54.6011–1 is amended by adding and reserving paragraph (c) and adding paragraph (d) to read as follows:

§54.6011–1 General requirement of return, statement, or list.

* * * * *

(c) [Reserved]. For further guidance, see §54.6011–1T(c).

(d) *Effective/applicability date.* For the applicability date of paragraph (c) of this section, see §54.6011–1T(d).

Par. 7. Section 54.6011–1T is amended as follows:

1. The undesignated text is designated as paragraph (a) and a paragraph heading is added.

2. Paragraph (b) is added and reserved.

3. Paragraphs (c) and (d) are added.

§54.6011–1T General requirement of return, statement or list (temporary).

(a) *Tax on reversions of qualified plan assets to employer.* * * *

(b) [Reserved].

(c) *Entity manager tax on prohibited tax shelter transactions*—(1) *In general.* Any entity manager of a tax-exempt entity described in section 4965(c)(4), (c)(5), (c)(6), or (c)(7) who is liable for tax under section 4965(a)(2) shall file a return on Form 5330, "*Return of Excise Taxes Related to Employee Benefit Plans*," on or before the 15th day of the fifth month following the close of such entity manager's taxable year during which the entity entered into the prohibited tax shelter transaction, and shall include therein the information required by such form and the instructions issued with respect thereto.

(2) *Transition rule.* A Form 5330, "*Return of Excise Taxes Related to Employee Benefit Plans*," for an excise tax under section 4965 that is or was due on or before October 4, 2007 will be deemed to have been filed on the due date if it is filed by October 4, 2007 and if the section 4965 tax that was required to be reported on that Form 5330 is paid by October 4, 2007.

(d) *Effective/applicability date*—(1) *In general.* Paragraph (c) of this section is applicable on July 6, 2007.

(2) *Expiration date.* Paragraph (c) of this section will expire on July 6, 2010.

Kevin M. Brown,
Deputy Commissioner for Services and Enforcement.

Approved June 21, 2007.

Eric Solomon,
Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on July 5, 2007, 8:45 a.m., and published in the issue of the Federal Register for July 6, 2007, 72 F.R. 36871)

Part III. Administrative, Procedural, and Miscellaneous

2007 Section 43 Inflation Adjustment

Notice 2007–64

Section 43(b)(3)(B) of the Internal Revenue Code requires the Secretary to publish an inflation adjustment factor. The enhanced oil recovery credit under § 43 for any taxable year is reduced if the "reference price," determined under § 45K(d)(2)(C), for the calendar year preceding the calendar year in which the taxable year begins is greater than $28 multiplied by the inflation adjustment factor for that year. The credit is phased out in any taxable year in which the reference price for the preceding calendar year exceeds $28 (as adjusted) by at least $6.

The term "inflation adjustment factor" means, with respect to any calendar year, a fraction the numerator of which is the GNP implicit price deflator for the preceding calendar year and the denominator of which is the GNP implicit price deflator for 1990.

Because the reference price for the 2006 calendar year ($59.68) exceeds $28 multiplied by the inflation adjustment factor for the 2006 calendar year ($39.82) by $19.86, the enhanced oil recovery credit for qualified costs paid or incurred in 2007 is phased out completely.

Table 1 contains the GNP implicit price deflator used for the 2007 calendar year, as well as the previously published GNP implicit price deflators used for the 1991 through 2006 calendar years.

Notice 2007–64 TABLE 1

GNP IMPLICIT PRICE DEFLATORS

Calendar Year	*GNP Implicit Price Deflator*	
1990	112.9	(used for 1991)
1991	117.0	(used for 1992)
1992	120.9	(used for 1993)
1993	124.1	(used for 1994)
1994	126.0	(used for 1995)*
1995	107.5	(used for 1996)
1996	109.7	(used for 1997)**
1997	112.35	(used for 1998)
1998	112.64	(used for 1999)***
1999	104.59	(used for 2000)
2000	106.89	(used for 2001)
2001	109.31	(used for 2002)
2002	110.63	(used for 2003)
2003	105.67	(used for 2004)****
2004	108.23	(used for 2005)
2005	112.129	(used for 2006)
2006	116.036	(used for 2007)

* Beginning in 1995, the GNP implicit price deflator was rebased relative to 1992. The 1990 GNP implicit price deflator used to compute the 1996 § 43 inflation adjustment factor is 93.6.

** Beginning in 1997, two digits follow the decimal point in the GNP implicit price deflator. The 1990 GNP price deflator used to compute the 1998 § 43 inflation adjustment factor is 93.63.

*** Beginning in 1999, the GNP implicit price deflator was rebased relative to 1996. The 1990 GNP implicit price deflator used to compute the 2000 § 43 inflation adjustment factor is 86.53.

**** Beginning in 2003, the GNP implicit price deflator was rebased, and the 1990 GNP implicit price deflator used to compute the 2004 § 43 inflation adjustment factor is 81.589.

Table 2 contains the inflation adjustment factor and the phase-out amount for taxable years beginning in the 2007 calendar year as well as the previously published inflation adjustment factors and phase-out amounts for taxable years beginning in the 1991 through 2006 calendar years.

Notice 2007–64 TABLE 2

INFLATION ADJUSTMENT FACTORS AND PHASE-OUT AMOUNTS

Calendar Year	*Inflation Adjustment Factor*	*Phase-out Amount*
1991	1.0000	0
1992	1.0363	0
1993	1.0708	0
1994	1.0992	0
1995	1.1160	0
1996	1.1485	0
1997	1.1720	0
1998	1.1999	0
1999	1.2030	0
2000	1.2087	0
2001	1.2353	0
2002	1.2633	0
2003	1.2785	0
2004	1.2952	0
2005	1.3266	0
2006	1.3743	100 percent
2007	1.4222	100 percent

DRAFTING INFORMATION

The principal author of this notice is Jaime C. Park of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Ms. Park at (202) 622–3110 (not a toll-free call).

2007 Marginal Production Rates

Notice 2007–65

This notice announces the applicable percentage under § 613A of the Internal Revenue Code to be used in determining percentage depletion for marginal properties for the 2007 calendar year.

Section 613A(c)(6)(C) defines the term "applicable percentage" for purposes of determining percentage depletion for oil and gas produced from marginal properties. The applicable percentage is the percentage (not greater than 25 percent) equal to the sum of 15 percent, plus one percentage point for each whole dollar by which $20 exceeds the reference price (determined under § 45K(d)(2)(C)) for crude oil for the calendar year preceding the calendar year in which the taxable year begins. The reference price determined under § 45K(d)(2)(C) for the 2006 calendar year is $59.68.

Table 1 contains the applicable percentages for marginal production for taxable years beginning in calendar years 1991 through 2007.

Notice 2007–65 Table 1

APPLICABLE PERCENTAGE FOR MARGINAL PRODUCTION

Calendar Year	*Applicable Percentage*
1991	15 percent
1992	18 percent
1993	19 percent
1994	20 percent
1995	21 percent
1996	20 percent
1997	16 percent
1998	17 percent
1999	24 percent
2000	19 percent
2001	15 percent
2002	15 percent
2003	15 percent

Notice 2007–65 Table 1

APPLICABLE PERCENTAGE FOR MARGINAL PRODUCTION – Continued

Calendar Year	*Applicable Percentage*
2004	15 percent
2005	15 percent
2006	15 percent
2007	15 percent

The principal author of this notice is Jaime C. Park of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Ms. Park at (202) 622–3110 (not a toll-free call).

Relief From Certain Low-Income Housing Credit Requirements Due to Hurricane Katrina

Notice 2007–66

I. PURPOSE

This notice is to advise owners of qualified low-income buildings and State housing credit agencies located in the Gulf Opportunity Zone (GO Zone) of relief from certain requirements under § 42 of the Internal Revenue Code. This relief is being granted pursuant to the Service's authority under § 42(n) and § 1.42–13(a) of the Income Tax Regulations.

II. BACKGROUND

Owners of qualified low-income buildings may claim a tax credit under § 42(a). For any taxable year in a 10-year credit period, the amount of credit is equal to the applicable percentage of the qualified basis of each qualified low-income building.

Under § 42(j)(1) and (2) if, at the close of any taxable year in the compliance period, the building's qualified basis with respect to the taxpayer is less than the basis as of the close of the preceding taxable year, then the taxpayer is liable for additional tax (recapture) in an amount equal to the accelerated portion of credits allowed in earlier years with respect to the reduction in qualified basis, plus interest.

Section 42(j)(4)(E) provides that the increase in tax under § 42(j) shall not apply to a reduction in qualified basis by reason of a casualty loss to the extent such loss is restored by reconstruction or replacement within a reasonable period established by the Secretary.

Rev. Proc. 95–28, 1995–1 C.B. 704, and Rev. Proc. 2007–54, 2007–31 I.R.B. 293, which supersedes Rev. Proc. 95–28, allow temporary relief from certain requirements under § 42 to owners of qualified low-income buildings and housing credit agencies of States or possessions of the United States in major disaster areas declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Title 42 U.S.C. 5121–5206 (2000 and Supp. IV 2004) (Stafford Act).

Section 7.01 of Rev. Proc. 95–28, and § 7.01 of Rev. Proc. 2007–54, provide that an owner of a building that is beyond the first year of the credit period will not be subject to recapture or loss of credit if the building's qualified basis suffered a reduction because of a disaster that caused the President to issue a major disaster declaration, provided the building's qualified basis is restored within a reasonable period. Both revenue procedures provide that the housing credit agency may determine what constitutes a reasonable period for purposes of § 42(j)(4)(E), but in no instance will the period end later than 24 months after the end of the calendar year in which the President issued a major disaster declaration for the area where the building is located. If a building's qualified basis is restored within the period determined by the housing credit agency, the building will not be subject to recapture, and the building may continue to earn credit during that restoration period.

Under § 1.42–13, the Secretary may provide guidance to carry out the purposes of § 42 through various publications in the Internal Revenue Bulletin.

The Gulf Opportunity Zone Act of 2005 (Public Law 109–135, 119 Stat. 25) (GOZA) added §§ 1400M and 1400N to the Code to provide certain tax benefits to those areas affected by Hurricane Katrina. Section 1400M(1) defines the GO Zone as that portion of the Hurricane Katrina disaster area determined by the President to warrant individual or individual and public assistance from the Federal Government under the Stafford Act by reason of Hurricane Katrina. Section 1400M(2) defines the term "Hurricane Katrina disaster area" as an area with respect to which a major disaster has been declared by the President before September 14, 2005, under section 401 of the Stafford Act by reason of Hurricane Katrina. Because of the widespread damage to housing caused by Hurricane Katrina and the difficulty in rebuilding, the Service has determined that it is appropriate to extend the restoration period provided under Rev. Proc. 95–28 for qualified low-income buildings located in the GO Zone.

III. AFFECTED PROJECTS

The reasonable restoration period for purposes of § 42(j)(4)(E) provided in this notice applies to qualified low-income buildings located in the GO Zone, as defined in § 1400M(1), that are (1) beyond the first year of the credit period, and (2) that, because of Hurricane Katrina and its aftermath, suffered a reduction in qualified basis that would cause it to be subject to recapture and loss of credit.

IV. RELIEF PROVIDED

For qualified low-income buildings subject to this notice, a housing credit agency may determine what constitutes a reasonable restoration period for purposes of § 42(j)(4)(E), but in no instance will it end later than 48 months after the end of calendar year 2005. In order to qualify for this period, the owner must have been engaged in the restoration of the building's qualified basis during the restoration period provided in § 7.01 of Rev. Proc. 95–28. The term "engaged in

the restoration of the building's qualified basis" means, with respect to the qualified low-income building, ongoing physical repairs; having entered into binding, written contracts for the repair or restoration to be completed within the restoration period; or, active negotiation of contracts for the repair or restoration, including obtaining permits for construction.

If a building's qualified basis is restored within the period determined by the housing credit agency, not to exceed 48 months, the building will not be subject to recapture, and the building may continue to earn credit during that restoration period. If the owner of the building fails to restore the building within the reasonable restoration period determined by the state housing credit agency, the owner shall lose all credit claimed during the restoration period and suffer recapture for any prior years of claimed credit under the provisions of § 42(j)(1).

The state housing credit agency may determine the appropriate period, not to extend beyond 48 months after the end of the calendar year 2005 on a building-by-building basis. Sections 7.02 through 7.04 of Rev. Proc. 95–28 continue to apply to qualified low-income buildings subject to this notice.

V. DRAFTING INFORMATION

The principal author of this notice is Jack Malgeri of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Mr. Malgeri at (202) 622–3040 (not a toll-free call).

---

26 CFR 301.7508–1: Time for performing certain acts postponed by reason of service in a combat zone or a Presidentially declared disaster.
(Also: Part I, §§ 7508, 7508A; §§ 301.7508–1, 301.7508A–1.)

Rev. Proc. 2007–56

SECTION 1. PURPOSE AND NATURE OF CHANGES

.01 This revenue procedure provides an updated list of time-sensitive acts, the performance of which may be postponed under sections 7508 and 7508A of the Internal Revenue Code (Code). Section 7508 postpones specified acts for individuals serving in the Armed Forces of the United States or serving in support of such Armed Forces, in a combat zone, or serving with respect to a contingency operation (as defined in 10 U.S.C. § 101(a)(13)). Section 7508A permits a postponement of the time to perform specified acts for taxpayers affected by a Presidentially declared disaster or a terroristic or military action. The list of acts in this revenue procedure supplements the list of postponed acts in section 7508(a)(1) and section 301.7508A–1(c)(1)(vii) of the Procedure and Administration Regulations. Rev. Proc. 2005–27 is superseded.

.02 This revenue procedure does not, by itself, provide any postponements under section 7508A. In order for taxpayers to be entitled to a postponement of any act listed in this revenue procedure, the IRS generally will publish a notice or issue other guidance (including an IRS News Release) providing relief with respect to a Presidentially declared disaster, or a terroristic or military action. See section 4.01 of this revenue procedure.

.03 For purposes of section 7508, this revenue procedure sets forth such other acts as contemplated by section 7508(a)(1)(K). Unlike section 7508A, when a taxpayer qualifies under section 7508, all the acts listed in section 7508(a)(1) are postponed. Therefore, when a taxpayer qualifies under section 7508, the acts listed in this revenue procedure are also postponed for that taxpayer, whether or not the IRS publishes a notice or issues other guidance.

.04 This revenue procedure will be updated as needed when the IRS determines that additional acts should be included in the list of postponed acts or that certain acts should be removed from the list. Also, taxpayers may recommend that additional acts be considered for postponement under sections 7508 and 7508A. See section 19 of this revenue procedure.

.05 *Significant Changes*. When a Presidentially declared disaster occurs, the IRS guidance usually postpones the time to perform the acts in section 301.7508A–1(c)(1) as well as this revenue procedure. However, because these acts are only listed in the regulations under the disaster relief provision, when an individual qualifies for relief by virtue of service in a combat zone, the time for performing those acts are not postponed. Thus, to ensure that individuals serving in or serving in support of the Armed Forces in a combat zone or contingency operation receive a postponement of time to perform these acts this revenue procedure now includes these acts.

Certain acts, such as filing Tax Court petitions in innocent spouse and other nondeficiency cases, and making certain distributions from, contributions to, recharacterizations of, and certain transactions involving qualified retirement plans (as defined in section 4974(c)), have been added to this revenue procedure even though they are also listed as acts postponed under section 301.7508A–1(c)(1).

SECTION 2. BACKGROUND

.01 Section 7508(a)(1) of the Code permits a postponement of certain time-sensitive acts for individuals serving in the Armed Forces of the United States or serving in support of such Armed Forces in an area designated by the President as a combat zone under section 112(c)(2) or serving with respect to a contingency operation (as defined in 10 U.S.C. § 101(a)(13)). Among these acts are the filing of certain returns, the payment of certain taxes, the filing of a Tax Court petition for redetermination of a deficiency, and the filing of a refund claim. In the event of service in a combat zone or service with respect to a contingency operation, the acts specified in section 7508(a)(1) are automatically postponed. This revenue procedure sets forth such other acts as contemplated by section 7508(a)(1)(K). Thus, the acts listed in this revenue procedure are also automatically postponed. In addition, the Service may include acts not listed in this revenue procedure in any other published guidance (including an IRS News Release) related to the combat zone or contingency operation.

.02 Section 7508A provides that certain acts performed by taxpayers and the government may be postponed if the taxpayer is affected by a Presidentially declared disaster or a terroristic or military action. A "Presidentially declared disaster" is defined in section 1033(h)(3). A "terroristic or military action" is defined in section 692(c)(2). Section 301.7508A–1(d)(1) defines seven types of affected taxpayers, including any individual whose principal residence (for purposes of section

1033(h)(4)) is located in a "covered disaster area" and any business entity or sole proprietor whose principal place of business is located in a "covered disaster area." Postponements under section 7508A are not available simply because a disaster or a terroristic or military action has occurred. Generally, the IRS will publish a notice or issue other guidance (including an IRS News Release) authorizing the postponement. See section 4.01 of this revenue procedure.

SECTION 3. SCOPE

This revenue procedure applies to individuals serving in the Armed Forces of the United States in a combat zone, or serving in support of such Armed Forces, individuals serving with respect to contingency operations, affected taxpayers by reason of Presidentially declared disasters within the meaning of section 301.7508A–1(d)(1), and taxpayers whom the IRS determines are affected by a terroristic or military action. Section 17 of this revenue procedure also applies to transferors who are not affected taxpayers but who are involved in a section 1031 like-kind exchange transaction and are entitled to relief under section 17.02(2) of this revenue procedure.

SECTION 4. APPLICATION

.01 As provided by section 301.7508A–1(e), in the event of a Presidentially declared disaster or terroristic or military action, the IRS will issue a news release or other guidance authorizing the postponement of acts described in this revenue procedure and that will define which taxpayers are considered to be "affected taxpayers" and will describe the acts postponed, the duration of the postponement, and the location of the covered disaster area. See, for example, Notice 2005–73, 2005–2 C.B. 723 (summarizing the relief provided for Hurricane Katrina in news releases IR–2005–84, IR–2005–91, IR–2005–96, and IR–2005–103). The guidance may provide for postponement of only certain acts listed in this revenue procedure based on the time when the disaster occurred, its severity, and other factors. Unless the notice or other guidance for a particular disaster provides that the relief is limited, the guidance will generally postpone all of the acts listed in the regulations and this revenue procedure.

.02 Provisions of the internal revenue laws requiring the timely performance of specified acts that may be postponed under sections 7508 and 7508A are listed in the tables below. In addition, section 17 of this revenue procedure expands the categories of taxpayers qualifying for relief to include transferors of certain property and provides additional postponements of deadlines solely with respect to section 1031 like-kind exchange transactions that are affected by a Presidentially declared disaster. If an IRS News Release or other guidance is issued with respect to a specific Presidentially declared disaster and authorizes postponement of acts in this revenue procedure, affected taxpayers may use the postponement rules provided in section 17 in lieu of section 6. Transferors who are covered by the like-kind exchange rules of section 17, but who are not "affected taxpayers" as defined by the IRS News Release or other guidance or section 301.7508A–1(d)(1) are not eligible for relief under section 7508A or other sections of this revenue procedure.

.03 The following tables may, but do not necessarily, include acts specified in sections 7508 or 7508A and the regulations thereunder. Thus, for example, no mention is made in the following tables of the filing of tax returns or the payment of taxes (or an installment thereof) because these acts are already covered by sections 7508 and 7508A and the applicable regulations. Also, the following tables generally do not refer to the making of elections required to be made on tax returns or attachments thereto. Reference to these elections is not necessary because postponement of the filing of a tax return automatically postpones the making of any election required to be made on the return or an attachment thereto.

This revenue procedure, however, does include acts that are postponed under section 301.7508A–1(c)(1). The regulation lists acts that may be postponed when there has been a Presidentially declared disaster, but does not apply to postpone acts for individuals serving in, or serving in support of, the Armed Forces of the United States in a combat zone or contingency operation. For example, section 301.7508A–1(c)(1)(iii) provides a postponement for certain contributions to, distributions from qualified retirement plans. This revenue procedure also includes these acts to reflect that they are postponed for individuals serving in, or serving in support of, the Armed Forces of the United States in a combat zone or contingency operation.

.04 The following tables refer only to postponement of acts performed by taxpayers. Additional guidance will be published in the Internal Revenue Bulletin if a decision is made that acts performed by the government may be postponed under section 7508A. See, for example, Notice 2005–82, 2005–2 C.B. 978.

Statute or Regulation	Act Postponed
1. Chapter 1, Subchapter E of the Code	Any act relating to the adoption, election, retention, or change of any accounting method or accounting period, or to the use of an accounting method or accounting period, that is required to be performed on or before the due date of a tax return (including extensions). Examples of such acts include (a) the requirements in Rev. Procs. 2006–45, 2006–45 I.R.B. 851, 2006–46, 2006–45 I.R.B. 859, and 2002–39, 2002–1 C.B. 1046, and 2003–62, 2003–2 C.B. 299, that Form 1128, *Application To Adopt, Change, or Retain a Tax Year*, be filed with the Director, Internal Revenue Service Center, on or before the due date (or the due date including extensions) of the tax return for the short period required to effect the change in accounting period; and (b) the requirement in Rev. Proc. 2002–9, 2002–1 C.B. 327, section 6.02(3) that a copy of *Application for Change in Accounting Method* (Form 3115) must be filed with the national office no later than when the original Form 3115 is filed with the timely filed tax return for the year of the accounting method change.
2. Treas. Reg. § 1.381(c)(4)–1(d)(2)	If the acquiring corporation is not permitted to use the method of accounting previously used by it, or the method of accounting used by the distributor/transferor corporation, or the principal method of accounting; or if the corporation wishes to use a new method of accounting, then the acquiring corporation must apply to the Commissioner to use another method. Section 1.381(c)(4)–1(d)(2) requires applications to be filed not later than 90 days after the date of distribution or transfer. Rev. Proc. 2005–63, 2005–2 C.B. 491, provides that applications are due by the later of (1) the last day of the tax year in which the distribution or transfer occurred, or (2) the earlier of (a) the day that is 180 days after the date of distribution or transfer, or (b) the day on which the taxpayer files its federal income tax return for the taxable year in which the distribution or transfer occurred.
3. Treas. Reg. § 1.381(c)(5)–1(d)(2)	If the acquiring corporation is not permitted to use the inventory method previously used by it, or the inventory method used by the distributor/transferor corporation, or the principal inventory method of accounting, or wishes to use a new inventory method of accounting, then the acquiring corporation must apply to the Commissioner to use another method. Section 1.381(c)(5)–1(d)(2) requires applications to be filed not later than 90 days after the date of distribution or transfer. Rev. Proc. 2005–63 provides that applications are due by the later of (1) the last day of the taxable year in which the distribution or transfer occurred, or (2) the earlier of (a) the day that is 180 days after the date of distribution or transfer, or (b) the day on which the taxpayer files its federal income tax return for the tax year in which the distribution or transfer occurred.
4. Treas. Reg. § 1.442–1(b)(1)	In order to secure prior approval of an adoption, change, or retention of a taxpayer's annual accounting period, the taxpayer generally must file an application on Form 1128, *Application To Adopt, Change, or Retain a Tax Year*, with the Commissioner within such time as is provided in administrative procedures published by the Commissioner from time to time. See, for example, Rev. Procs. 2006–45, 2006–46, 2002–39 and 2003–62.
5. Treas. Reg. § 1.444–3T(b)(1)	A section 444 election must be made by filing Form 8716, *Election To Have a Tax Year Other Than a Required Tax Year*, with the Service Center. Generally, Form 8716 must be filed by the earlier of (a) the 15th day of the fifth month following the month that includes the first day of the taxable year for which the election will first be effective, or (b) the due date (without regard to extensions) of the income tax return resulting from the section 444 election.
6. Treas. Reg. § 1.446–1(e)(2)(i)	Section 6 of Rev. Proc. 2002–9, at 341, allows a taxpayer to change a method of accounting within the terms of the revenue procedure by attaching the application form to the timely filed return for the year of change. Section 6.02(3)(b)(i) grants an automatic extension of 6 months within which to file an amended return with the application for the change following a timely filed original return for the year of change.

Statute or Regulation	Act Postponed
7. Treas. Reg. § 1.446–1(e)(3)(i)	To secure the Commissioner's consent to a change in method of accounting, the taxpayer must file an application on Form 3115, *Application for Change in Accounting Method*, with the Commissioner during the taxable year in which the taxpayer desires to make the change in method of accounting (*i.e.*, must be filed by the last day of such taxable year). This filing requirement is also in Rev. Proc. 97–27, 1997–1 C.B. 680. (But see Rev. Proc. 2002–9 for automatic changes in method of accounting that can be made with the return.)
8. Sec. 451(e)	Section 451(e) permits a taxpayer using the cash receipts and disbursements method of accounting who derives income from the sale or exchange of livestock in excess of the number he would sell if he followed his usual business practices to elect (which election is deemed valid if made within the period described in section 1033(e)(2)) to include such income for the taxable year following the taxable year of such sale or exchange if, under his usual business practices, the sale or exchange would not have occurred if it were not for drought, flood, or other weather-related conditions and that such conditions resulted in the area being designated as eligible for Federal assistance.
9. Treas. Reg. § 1.461–1(c)(3)(ii)	A taxpayer may elect, with the consent of the Commissioner, to accrue real property taxes ratably in accordance with section 461(c). A written request for permission to make such an election must be submitted within 90 days after the beginning of the taxable year to which the election is first applicable. Rev. Proc. 2005–63 provides that a request to adopt the method of accounting described in § 1.461–1(c)(3)(ii) may be submitted during the taxable year in which the taxpayer desires to make the change in method of accounting.
10. Treas. Reg. § 1.7519–2T(a)(2), (3) and (4)	A partnership or S corporation must file the Form 8752, *Required Payment or Refund Under Section 7519*, if the taxpayer has made an election under section 444 to use a taxable year other than its required taxable year and the election is still in effect. The Form 8752 must be filed and any required payment must be made by the date stated in the instructions to Form 8752.
11. Rev. Proc. 92–29, Section 6.02	A developer of real estate requesting the Commissioner's consent to use the alternative cost method must file a private letter ruling request within 30 days after the close of the taxable year in which the first benefited property in the project is sold. The request must include a consent extending the period of limitation on the assessment of income tax with respect to the use of the alternative cost method.

SECTION 6. BUSINESS AND INDIVIDUAL TAX ISSUES

Statute or Regulation	Act Postponed
1. Treas. Reg. § 1.71–1T(b), Q&A-7	A payer spouse may send cash to a third party on behalf of a spouse that qualifies for alimony or separate maintenance payments if the payments are made to the third party at the written request or consent of the payee spouse. The request or consent must state that the parties intend the payment to be treated as an alimony payment to the payee spouse subject to the rules of section 71. The payer spouse must receive the request or consent prior to the date of filing of the payer spouse's first return of tax for the taxable year in which the payment was made.
2. Treas. Reg. § 1.77–1	A taxpayer who receives a loan from the Commodity Credit Corporation may elect to include the amount of the loan in his gross income for the taxable year in which the loan is received. The taxpayer in subsequent taxable years must include in his gross income all amounts received during those years as loans from the Commodity Credit Corporation, unless he secures the permission of the Commissioner to change to a different method of accounting. Section 1.77–1 requires such requests to be filed within 90 days after the beginning of the taxable year of change. Rev. Proc. 2005–63 provides that a request for consent to adopt the method of accounting described in § 1.77–1 may be submitted during the taxable year in which the taxpayer desires to make the change in method of accounting; however, taxpayers within the scope of Rev. Proc. 2002–9 for the requested year of change that desire to make the changes in method described in § 1.77–1 must follow the procedures in Rev. Proc. 2002–9.
3. Treas. Reg. § 1.110–1(b)(4)(ii)(A)	The lessee must expend its construction allowance on the qualified long-term real property within eight and one-half months after the close of the taxable year in which the construction allowance was received.

Statute or Regulation	Act Postponed
4. Sec. 118(c)(2)	A contribution in aid of construction received by a regulated public utility that provides water or sewerage disposal services must be expended by the utility on qualifying property before the end of the second taxable year after the year in which it was received by the utility.
5. Sec. 170(f)(12)(C)	A taxpayer claiming a charitable contribution deduction of more than $500 for a gift of a qualified vehicle must obtain a written acknowledgment of the contribution by the donee organization within 30 days of the contribution or the sale of the vehicle by the donee organization, as applicable.
6. Treas. Reg. § 1.170A–5(a)(2)	A contribution of an undivided present interest in tangible personal property shall be treated as made upon receipt by the donee of a formally executed and acknowledged deed of gift. The period of initial possession by the donee may not be deferred for more than one year.
7. Sec. 172(b)(3)	A taxpayer entitled to a carryback period under section 172(b)(1) may elect to relinquish the entire carryback period with respect to a net operating loss for any taxable year. The taxpayer must make the election by the due date of the taxpayer's federal income tax return (including extensions) for the taxable year of the net operating loss for which the election is to be effective.
8. Sec. 172(f)(6)	A taxpayer entitled to a 10-year carryback under section 172(b)(1)(C) (relating to certain specified liability losses) from any loss year may elect to have the carryback period with respect to such loss year determined without regard to that section. The taxpayer must make the election by the due date of the taxpayer's federal income tax return (including extensions) for the taxable year of the net operating loss.
9. Sec. 172(i)(3)	A taxpayer entitled to a 5-year carryback period under section 172(b)(1)(G) (relating to certain farming losses) from any loss year may elect to have the carryback period with respect to such loss year determined without regard to that section. The taxpayer must make the election by the due date of the taxpayer's federal income tax return (including extensions) for the taxable year of the net operating loss.
10. Sec. 468A(g)	A taxpayer that makes payments to a nuclear decommissioning fund with respect to a taxable year must make the payments within 2½-months after the close of such taxable year (the deemed payment date).
11. Treas. Reg. § 1.468A–3(h)(1)(v)	A taxpayer must file a request for a schedule of ruling amounts for a nuclear decommissioning fund by the deemed payment date (2½-months after the close of the taxable year for which the schedule of ruling amounts is sought).
12. Treas. Reg. § 1.468A–3(h)(1)(vii)	A taxpayer has 30 days to provide additional requested information with respect to a request for a schedule of ruling amounts. If the information is not provided within the 30 days, the request will not be considered filed until the date the information is provided.
13. Sec. 529(c)(3)(C)(i)	A rollover contribution to another qualified tuition program must be made no later than the 60th day after the date of a distribution from a qualified tuition program.
14. Sec. 530(b)(5)	An individual shall be deemed to have made a contribution to a Coverdell education savings account on the last day of the preceding taxable year if the contribution is made on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (not including extensions thereof).
15. Sec. 530(d)(4)(C)(i)	Excess contributions (and any earnings on the excess) to a Coverdell education savings account must be distributed before the first day of the sixth month of the following taxable year.
16. Sec. 530(d)(5)	A rollover contribution to another Coverdell education savings account must be made no later than the 60th day after the date of a payment or distribution from a Coverdell education savings account.
17. Sec. 530(h)	A trustee of a Coverdell education savings account must provide certain information concerning the account to the beneficiary by January 31 following the calendar year to which the information relates. In addition, Form 5498–ESA, *Coverdell ESA Contribution Information*, must be filed with the IRS by May 31 following the calendar year to which the information relates.
18. Sec. 563(a)	In the determination of the dividends paid deduction for purposes of the accumulated earnings tax imposed by section 531, a dividend paid after the close of any taxable year and on or before the 15th day of the third month following the close of such taxable year shall be considered as paid during such taxable year. The close of the taxable year is not affected by this revenue procedure; the 3½-month period within which the dividend is paid is the period extended.

Statute or Regulation	Act Postponed
19. Sec. 563(b)	In the determination of the dividends paid deduction for purposes of the personal holding company tax imposed by section 541, a dividend paid after the close of any taxable year and on or before the 15th day of the third month following the close of such taxable year shall, to the extent the taxpayer elects in its return for the taxable year, be considered as paid during such taxable year. The close of the taxable year is not affected by this revenue procedure; the 3½-month period within which the dividend is paid is the period extended.
20. Sec. 563(d)	For the purpose of applying section 562(a), with respect to distributions under subsection (a) or (b) of section 562, a distribution made after the close of the taxable year and on or before the 15th day of the third month following the close of the taxable year shall be considered as made on the last day of such taxable year. The close of the taxable year is not affected by this revenue procedure; the 3½-month period within which the dividend is paid is the period extended.
21. Sec. 1031(a)(3)	In a deferred exchange, property otherwise qualified as like-kind property under section 1031 is treated as like-kind property if the 45-day identification period and the 180-day exchange period requirements under section 1031(a)(3) and section 1.1031(k)–1(b)(2) are met. See also section 17 of this revenue procedure.
22. Sec. 1031	Property held in a qualified exchange accommodation arrangement may qualify as "replacement property" or "relinquished property" under section 1031 if the requirements of section 4 of Rev. Proc. 2000–37, 2000–2 C.B. 308, modified by Rev. Proc. 2004–51, 2004–2 C.B. 294, are met, including the 5-business day period to enter into a qualified exchange accommodation agreement (QEAA), the 45-day identification period, the 180-day exchange period, and the 180-day combined time period. See also section 17 of this revenue procedure.
23. Sec. 1033	An election respecting the nonrecognition of gain on the involuntary conversion of property (section 1.1033(a)–2(c)(1) and (2)) is required to be made within the time periods specified in section 1.1033(a)–2(c)(3), section 1.1033(g)–1(c), section 1033(e)(2)(A), or section 1033(h)(1)(B), as applicable.
24. Sec. 1043(a)	If an eligible person (as defined under section 1043(b)) sells any property pursuant to a certificate of divestiture, then at the election of the taxpayer, gain from such sale shall be recognized only to the extent that the amount realized on such sale exceeds the cost of any permitted property purchased by the taxpayer during the 60-day period beginning on the date of such sale.
25. Sec. 1045(a)	A taxpayer other than a corporation may elect to roll over gain from the sale of qualified small business stock held for more than six months if other qualified small business stock is purchased by the taxpayer during the 60-day period beginning on the date of sale.
26. Sec. 1382(d)	An organization, to which section 1382(d) applies, is required to pay a patronage dividend within 8½-months after the close of the year.
27. Sec. 1388(j)(3)(A)	Any cooperative organization that exercises its option to net patronage gains and losses, is required to give notice to its patrons of the netting by the 15th day of the 9th month following the close of the taxable year.
28. Treas. Reg. § 301.7701–3(c)	The effective date of an entity classification election (Form 8832, *Entity Classification Election*) cannot be more than 75 days prior to the date on which the election is filed.
29. Treas. Reg. § 301.9100–2(a)(1)	An automatic extension of 12 months from the due date for making a regulatory election is granted to make certain elections described in section 301.9100–2(a)(2), including the election to use other than the required taxable year under section 444, and the election to use the last-in, first out (LIFO) inventory method under section 472.
30. Treas. Reg. §§ 301.9100–2(b)–(d)	An automatic extension of 6 months from the due date of a return, excluding extensions, is granted to make the regulatory or statutory elections whose due dates are the due date of the return or the due date of the return including extensions (for example, a taxpayer has an automatic 6 month extension to file an application to change a method of accounting under Rev. Proc. 2002–9), provided the taxpayer (a) timely filed its return for the year of election, (b) within that 6-month extension period, takes the required corrective action to file the election in accordance with the statute, regulations, revenue procedure, revenue ruling, notice, or announcement permitting the election, and (c) writes at the top of the return, statement of election or other form "FILED PURSUANT TO § 301.9100–2."

Statute or Regulation	Act Postponed
1. Sec. 302(e)(1)	A corporation must complete a distribution in pursuance of a plan of partial liquidation of a corporation within the specified period.
2. Sec. 303 and Treas. Reg. § 1.303–2	A corporation must complete the distribution of property to a shareholder in redemption of all or part of the stock of the corporation which (for Federal estate tax purposes) is included in determining the estate of a decedent. Section 303 and section 1.303–2 require, among other things, that the distribution occur within the specified period.
3. Sec. 304(b)(3)(C)	If certain requirements are met, section 304(a) does not apply to a transaction involving the formation of a bank holding company. One requirement is that within a specified period (generally 2 years) after control of a bank is acquired, stock constituting control of the bank is transferred to a bank holding company in connection with the bank holding company's formation.
4. Sec. 316(b)(2)(A) and (B)(ii) and Treas. Reg. § 1.316–1(b)(2)	A personal holding company may designate as a dividend to a shareholder all or part of a distribution in complete liquidation described in section 316(b)(2)(B) and section 1.316–1(b) within 24 months after the adoption of a plan of liquidation by, *inter alia*, following the procedure provided by Treas. Reg. § 1.316–1(b)(5).
5. Sec. 332(b) and Treas. Reg. §§ 1.332–3 and 1.332–4	A corporation must completely liquidate a corporate subsidiary within the specified period.
6. Sec. 338(d)(3) and (h), and Treas. Reg. § 1.338–2	An acquiring corporation must complete a "qualified stock purchase" of a target corporation's stock within the specified acquisition period.
7. Sec. 338(g) and Treas. Reg. § 1.338–2	An acquiring corporation may elect to treat certain stock purchases as asset acquisitions. The election must be made within the specified period.
8. Sec. 338(h)(10) and Treas. Reg. § 1.338(h)(10)–1(c)	An acquiring corporation and selling group of corporations may elect to treat certain stock purchases as asset purchases, and to avoid gain or loss upon the stock sale. The election must be made within the specified period.
9. Treas. Reg. § 1.381(c)(17)–1(c)	An acquiring corporation files a Form 976, *Claim for Deficiency Dividends Deductions by a Personal Holding Company, Regulated Investment Company, or Real Estate Investment Trust*, within 120 days after the date of the determination under section 547(c) to claim a deduction of a deficiency dividend.
10. Treas. Reg. § 1.441–3(b)	A personal service corporation may obtain the approval of the Commissioner to adopt, change, or retain an annual accounting period by filing Form 1128, *Application To Adopt, Change, or Retain a Tax Year*, within such time as is provided in the administrative procedures published by the Commissioner. See Rev. Procs. 2006–46, 2006–45 I.R.B. 859, and Rev. Proc. 2002–39, 2002–1 C.B. 1046.
11. Sec. 562(b)(1)(B)	In the case of a complete liquidation (except in the case of a complete liquidation of a personal holding company) occurring within 24 months after the adoption of a plan of liquidation, any distribution within such period pursuant to such plan shall, to the extent of the earnings and profits (computed without regard to capital losses) of the corporation for the taxable year in which such distribution is made, be treated as a dividend for purposes of computing the dividends paid deduction.
12. Sec. 562(b)(2)	In the case of a complete liquidation of a personal holding company occurring within 24 months after the adoption of a plan of liquidation, the amount of any distribution within such period pursuant to such plan shall be treated as a dividend for purposes of computing the dividends paid deduction to the extent that such is distributed to corporate distributees and represents such corporate distributees' allocable share of the undistributed personal holding company income for the taxable year of such distribution.

Statute or Regulation	Act Postponed
13. Sec. 597 and Treas. Reg. § 1.597–4(g)	A consolidated group of which an Institution (as defined by section 1.591–1(b)) is a subsidiary may elect irrevocably not to include the Institution in its affiliated group if the Institution is placed in Agency (as defined by section 1.591–1(b)) receivership (whether or not assets or deposit liabilities of the Institution are transferred to a Bridge Bank (as defined by section 1.591–1(b)). Except as otherwise provided in section 1.597–4(g)(6), a consolidated group makes the election by sending a written statement by certified mail to the affected Institution on or before the later of 120 days after its placement in Agency (as defined by section 1.591–1(b)) receivership or May 31, 1996.
14. Sec. 1502 and Treas. Reg. § 1.1502–75(c)(1)(i)	A common parent must apply for permission to discontinue filing consolidated returns within a specified period after the date of enactment of a law affecting the computation of tax liability.
15. Sec. 6425 and Treas. Reg. § 1.6425–1	Corporations applying for an adjustment of an overpayment of estimated income tax must file Form 4466, *Corporation Application for Quick Refund of Overpayment of Estimated Tax*, on or before the 15th day of the third month after the taxable year, or before the date the corporation first files its income tax return for such year, whichever is earlier.
16. Rev. Proc. 2003–33, Section 5	If the filer complies with the procedures set forth in the revenue procedure, including a requirement that the filer file Form 8023, *Elections Under Section 338 for Corporations Making Qualified Stock Purchases*, within the specified period, the filer gets an automatic extension under section 301.9100–3 to file an election under section 338.

SECTION 8. EMPLOYEE BENEFIT ISSUES

Statute or Regulation	Act Postponed
1. Sec. 72(p)(2)(B) and (C), and Treas. Reg. § 1.72(p)–1, Q&A-10	A loan from a qualified employer plan to a participant in, or a beneficiary of, such plan must be repaid according to certain time schedules specified in section 72(p)(2)(B) and (C) (including, if applicable, any grace period granted pursuant to section 1.72(p)–1, Q&A-10).
2. Sec. 72(t)(2)(A)(iv)	Under section 72(t)(2)(A)(iv), to avoid the imposition of a 10-percent additional tax on a distribution from a qualified retirement plan, the distribution must be part of a series of substantially equal periodic payments, made at least annually.
3. Sec. 72(t)(2)(F)	To avoid the imposition of a 10-percent additional tax on a distribution from an individual retirement arrangement (IRA) for a first-time home purchase, such distribution must be used within 120 days of the distribution to pay qualified acquisition costs or rolled into an IRA.
4. Sec. 72(t)(2)(G)	Under section 72(t)(2)(G), all or part of a distribution from a retirement plan to an individual called to active duty may be repaid into an IRA within 2 years after the active duty period ends (or later, if section 72(t)(2)(G)(iv) applies).
5. Sec. 83(b) and Treas. Reg. § 1.83–2(b)	If substantially nonvested property to which section 83 applies is transferred to any person, the service provider may elect to include the excess of the fair market value of the property over the amount paid (if any) for the property in gross income for the taxable year in which such property is transferred. This election must occur not later than 30 days after the date the property was transferred.
6. Proposed Treas. Reg. § 1.125–1, Q&A-15	Cafeteria plan participants will avoid constructive receipt of the taxable amounts if they elect the benefits they will receive before the beginning of the period during which the benefits will be provided.
7. Proposed Treas. Reg. § 1.125–1, Q&A-14 and Proposed Treas. Reg. § 1.125–2, Q&A-7	Cafeteria plan participants will not be in constructive receipt if, at the end of the plan year, they forfeit amounts elected but not used during the plan year.
8. Proposed Treas. Reg. § 1.125–2, Q&A-5	Cafeteria plan participants may receive in cash the value of unused vacation days on or before the earlier of the last day of the cafeteria plan year or the last day of the employee's taxable year to which the unused days relate.

Statute or Regulation	Act Postponed
9. Treas. Reg. § 1.162–27(e)(2)	A performance goal is considered preestablished if it is established in writing by the corporation's compensation committee not later than 90 days after the commencement of the period of service to which the performance goal relates if the outcome is substantially uncertain at the time the compensation committee actually establishes the goal. In no event, however, will the performance goal be considered pre-established if it is established after 25 percent of the period of service has elapsed.
10. Sec. 219(f)(3)	A contribution to an individual retirement account shall be deemed to have been made by the taxpayer on the last day of the preceding taxable year if the contribution is made on account of such taxable year and is made not later than the time prescribed for filing the return (not including extensions thereof) for such taxable year.
11. Sec. 220(f)(5)	A rollover contribution to an Archer MSA must be made no later than the 60th day after the day on which the holder receives a payment or distribution from an Archer MSA.
12. Sec. 220(h)	A trustee or custodian of an MSA (Archer MSA or Medicare+Choice MSA) must provide certain information concerning the MSA to the account holder by January 31 following the calendar year to which the information relates. In addition, MSA contribution information must be furnished to the account holder, and Form 5498–SA filed with the IRS, by May 31 following the calendar year to which the information relates.
13. Sec. 223(f)(5)	A rollover contribution to a Health Savings Accounts (HSA) must be made no later than the 60th day after the day on which the account beneficiary receives a payment or distribution from a HSA.
14. Sec. 223(h)	A trustee or custodian of a HSA must provide certain information concerning the HSA to the account beneficiary by January 31 following the calendar year to which the information relates. In addition, HSA contribution information must be furnished to the account beneficiary, and Form 5498–SA filed with the IRS, by May 31 following the calendar year to which the information relates.
15. Secs. 401(a)(9), 403(a)(1), 403(b)(10), 408(a)(6), 408(b)(3) and 457(d)(2), and Treas. Reg. § 1.401(a)(9)–4 & 1.401(a)(9)–8, Q&A-2	The first required minimum distribution from plans subject to the rules in section 401(a)(9) must be made no later than the required beginning date. Subsequent required minimum distributions must be made by the end of each distribution calendar year.
16. Sec. 401(a)(28)(B)(i)	A qualified participant in an ESOP (as defined in section 401(a)(28)(B)(iii)) may elect within 90 days after the close of each plan year in the qualified election period (as defined in section 401(a)(28)(B)(iv)) to direct the plan as to the investment of at least 25 percent of the participant's account in the plan (50 percent in the case of the last election).
17. Sec. 401(a)(28)(B)(ii)	A plan must distribute the portion of the participant's account covered by an election under section 401(a)(28)(B)(i) within 90 days after the period during which an election can be made; or the plan must offer at least 3 investment options (not inconsistent with regulations prescribed by the Secretary) to each participant making the election under section 401(a)(28)(B)(i) and within 90 days after the period during which the election may be made, the plan must invest the portion of the participant's account in accordance with the participant's election.
18. Sec. 401(a)(30) and Treas. Reg. § 1.401(a)–30 and § 1.402(g)–1	Excess deferrals for a calendar year, plus income attributable to the excess, must be distributed no later than the first April 15 following the calendar year.
19. Sec. 401(b) and Treas. Reg. § 1.401(b)–1	A retirement plan that fails to satisfy the requirements of section 401(a) or section 403(a) on any day because of a disqualifying provision will be treated as satisfying such requirements on such day if, prior to the expiration of the applicable remedial amendment period, all plan provisions necessary to satisfy the requirements of section 401(a) or 403(a) are in effect and have been made effective for the whole of such period.
20. Sec. 401(k)(8)	A cash or deferred arrangement must distribute excess contributions for a plan year, plus income attributable to the excess, pursuant to the terms of the arrangement no later than the close of the following plan year.

Statute or Regulation	Act Postponed
21. Sec. 401(m)(6)	A plan subject to section 401(m) must distribute excess aggregate contributions for a plan year, plus income attributable to the excess, pursuant to the terms of the plan no later than the close of the following plan year.
22. Secs. 402(c), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)(B)	An eligible rollover distribution may be rolled over to an eligible retirement plan no later than the 60th day following the day the distributee received the distributed property. A similar rule applies to IRAs.
23. Sec. 402(g)(2)(A) and Treas. Reg. § 1.402(g)–1	An individual with excess deferrals for a taxable year must notify a plan, not later than a specified date following the taxable year that excess deferrals have been contributed to that plan for the taxable year. A distribution of excess deferrals identified by the individual, plus income attributable to the excess, must be accomplished no later than the first April 15 following the taxable year of the excess.
24. Secs. 404(a)(6), 404(h)(1)(B), and 404(m)(2)	A contribution to a qualified retirement plan (other than an individual retirement account) shall be deemed to have been made by the taxpayer on the last day of the preceding taxable year if the contribution is made on account of such taxable year and is made not later than the time prescribed for filing the return for such taxable year.
25. Sec. 404(k)(2)(A)(ii)	An ESOP receiving dividends on stock of the C corporation maintaining the plan must distribute the dividend in cash to participants or beneficiaries not later than 90 days after the close of the plan year in which the dividend was paid.
26. Sec. 408(d)(4)	A distribution of any contribution made for a taxable year to an individual retirement or for an individual retirement annuity shall be included in gross income unless such distribution (and attributable earnings) is received on or before the day prescribed by law (including extensions of time) for filing such individual's return for such taxable year.
27. Sec. 408A(d)(6)(A)	If, on or before the date prescribed by law (including extensions of time) for filing the taxpayer's return for such taxable year, a taxpayer transfers in a trustee-to-trustee transfer any contribution to an individual retirement plan made during such taxable year from such plan to any other individual retirement plan, then such contribution shall be treated as having been made to the transferee plan (and not the transferor plan).
28. Secs. 408(i) and 6047(c)	A trustee or issuer of an individual retirement arrangement (IRA) must provide certain information concerning the IRA to the IRA owner by January 31 following the calendar year to which the information relates. In addition, IRA contribution information must be furnished to the owner, and Form 5498 filed with the IRS, by May 31 following the calendar year to which the information relates.
29. Sec. 409(h)(4)	An employer required to repurchase employer securities under section 409(h)(1)(B) must provide a put option for a period of at least 60 days following the date of distribution of employer securities to a participant, and if the put option is not exercised, for an additional 60-day period in the following plan year. A participant who receives a distribution of employer securities under section 409(h)(1)(B) must exercise the put option provided by that section within a period of at least 60 days following the date of distribution, or if the put option is not exercised within that period, for an additional 60-day period in the following plan year.
30. Sec. 409(h)(5)	An employer required to repurchase employer securities distributed as part of a total distribution must pay for the securities in substantially equal periodic payments (at least annually) over a period beginning not later than 30 days after the exercise of the put option and not exceeding 5 years.
31. Sec. 409(h)(6)	An employer required to repurchase employer securities distributed as part of an installment distribution must pay for the securities not later than 30 days after the exercise of the put option under section 409(h)(4).
32. Sec. 409(o)	An ESOP must commence the distribution of a participant's account balance, if the participant elects, not later than 1 year after the close of the plan year — i) in which the participant separates from service by reason of attaining normal retirement age under the plan, death or disability; or ii) which is the 5th plan year following the plan year in which the participant otherwise separates from service (except if the participant is reemployed before distribution is required to begin).

Statute or Regulation	Act Postponed
33. Sec. 1042(a)(2)	A taxpayer must purchase qualified replacement property (defined in section 1042(c)(4)) within the replacement period, defined in section 1042(c)(3) as the period which begins 3 months before the date of the sale of qualified securities to an ESOP and ends 12 months after the date of such sale.
34. Sec. 4972(c)(3)	Nondeductible plan contributions must be distributed prior to a certain date to avoid a 10 percent tax.
35. Sec. 4979 and Treas. Reg. § 54.4979–1	A 10 percent tax on the amount of excess contributions and excess aggregate contributions under a plan for a plan year will be imposed unless the excess, plus income attributable to the excess is distributed (or, if forfeitable, forfeited) no later than 2½-months after the close of the plan year. In the case of an employer maintaining a SARSEP, employees must be notified of the excess by the employer within the 2½-month period to avoid the tax.
36. Secs. 6033, 6039D, 6047, 6057, 6058, and 6059	Form 5500, *Annual Return/Report of Employee Benefit Plan*, and Form 5500–EZ, *Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan*, which are used to report annual information concerning employee benefit plans and fringe benefit plans, must be filed by a specified time. *General Advice* Affected filers are advised to follow the instructions accompanying the Form 5500 series (or other guidance published on the postponement) regarding how to file the forms when postponements are granted pursuant to section 7508 or section 7508A. *Combat Zone Postponements under Section 7508* Individual taxpayers who meet the requirements of section 7508 are entitled to a postponement of time to file the Form 5500 or Form 5500–EZ under section 7508. The postponement of the Form 5500 series filing due date under section 7508 will also be permitted by the Department of Labor and the Pension Benefit Guaranty Corporation (PBGC) for similarly situated individuals who are plan administrators. *Postponements for Presidentially-Declared Disasters and Terroristic or Military Actions under Section 7508A* In the case of "affected taxpayers," as defined in section 301.7508A–1(d), the IRS may permit a postponement of the filing of the Form 5500 or Form 5500–EZ. Taxpayers who are unable to obtain on a timely basis information necessary for completing the forms from a bank, insurance company, or any other service provider because such service providers' operations are located in a covered disaster area will be treated as "affected taxpayers." Whatever postponement of the Form 5500 series filing due date is permitted by the IRS under section 7508A will also be permitted by the Department of Labor and PBGC for similarly situated plan administrators and direct filing entities.
37. Rev. Proc. 2006–27, Sections 9.02(1) and (2)	The correction period for self-correction of operational failures is the last day of the second plan year following the plan year for which the failure occurred. The correction period for self-correction of operational failures for transferred assets does not end until the last day of the first plan year that begins after the corporate merger, acquisition, or other similar employer transaction.
38. Rev. Proc. 2006–27, 2003–44, Section 12.07	If the submission involves a plan with transferred assets and no new incidents of the failures in the submission occurred after the end of the second plan year that begins after the corporate merger, acquisition, or other similar employer transaction, the plan sponsor may calculate the amount of plan assets and number of plan participants based on the Form 5500 information that would have been filed by the plan sponsor for the plan year that includes the employer transaction if the transferred assets were maintained as a separate plan.
39. Rev. Proc. 2006–27, Section 14.03	If an examination involves a plan with transferred assets and the IRS determines that no new incidents of the failures that relate to the transferred assets occurred after the end of the second plan year that begins after the corporate merger, acquisition, or other similar employer transaction, the sanction under Audit CAP will not exceed the sanction that would apply if the transferred assets were maintained as a separate plan.

Statute or Regulation	Act Postponed
1. Sec. 643(g)	The trustee may elect to treat certain payments of estimated tax as paid by the beneficiary. The election shall be made on or before the 65th day after the close of the taxable year of the trust.
2. Sec. 645 and Treas. Reg. § 1.645–1(c)	An election to treat a qualified revocable trust as part of the decedent's estate must be made by filing Form 8855, *Election To Treat a Qualified Revocable Trust as Part of an Estate*, by the due date (including extensions) of the estate's Federal income tax return for the estate's first taxable year, if there is an executor, or by the due date (including extensions) of the trust's Federal income tax return for the trust's first taxable year (treating the trust as an estate), if there is no executor.
3. Sec. 663(b) and Treas. Reg. § 1.663(b)–2	The fiduciary of a trust or estate may elect to treat any amount properly paid or credited to a beneficiary within the first 65 days following the close of the taxable year as an amount that was properly paid or credited on the last day of such taxable year. If a return is required to be filed for the taxable year for which the election is made, the election shall be made on such return no later than the time for making such return (including extensions). If no return is required to be filed, the election shall be made in a separate statement filed with the internal revenue office with which a return would have been filed, no later than the time for making a return (including extensions).
4. Sec. 2011(c)	The executor of a decedent's estate must file a claim for a credit for state estate, inheritance, legacy or succession taxes by filing a claim within 4 years of filing Form 706, *United States Estate (and Generation-Skipping Transfer) Tax Return*. (Section 2011 does not apply to estates of decedents dying after December 31, 2004; see section 2058).
5. Sec. 2014(e)	The executor of a decedent's estate must file a claim for foreign death taxes within 4 years of filing Form 706.
6. Sec. 2016 and Treas. Reg. § 20.2016–1	If an executor of a decedent's estate (or any other person) receives a refund of any state or foreign death taxes claimed as a credit on Form 706, the IRS must be notified within 30 days of receipt. (Section 2016 is amended effective for estates of decedents dying after December 31, 2004; see section 2058).
7. Sec. 2031(c)	If an executor of a decedent's estate elects on Form 706 to exclude a portion of the value of land that is subject to a qualified conservation easement, agreements relating to development rights must be implemented within 2 years after the date of the decedent's death.
8. Sec. 2032(d)	The executor of a decedent's estate may elect an alternate valuation on a late filed Form 706 if the Form 706 is not filed later than 1 year after the due date.
9. Sec. 2032A(c)(7)	A qualified heir, with respect to specially valued property, is provided a two-year grace period immediately following the date of the decedent's death in which the failure by the qualified heir to begin using the property in a qualified use will not be considered a cessation of qualified use and therefore will not trigger additional estate tax.
10. Sec. 2032A(d)(3)	The executor of a decedent's estate has 90 days after notification of incomplete information/signatures to provide the information/signatures to the IRS regarding an election on Form 706 with respect to specially valued property.
11. Sec. 2046	A taxpayer may make a qualified disclaimer no later than 9 months after the date on which the transfer creating the interest is made, or the date the person attains age 21.
12. Sec. 2053(d) and Treas. Reg. §§ 20.2053–9(c) and 10(c)	If the executor of a decedent's estate elects to take a deduction for state and foreign death tax imposed upon a transfer for charitable or other uses, the executor must file a written notification to that effect with the IRS before expiration of the period of limitations on assessments (generally 3 years). (Section 2053 is amended effective for estates of decedents dying after December 31, 2004, to apply only with respect to foreign death taxes).
13. Sec. 2055(e)(3)	A party in interest must commence a judicial proceeding to change an interest into a qualified interest no later than the 90th day after the estate tax return (Form 706) is required to be filed or, if no return is required, the last date for filing the income tax return for the first taxable year of the trust.

Statute or Regulation	Act Postponed
14. Sec. 2056(d)	A qualified domestic trust (QDOT) election must be made on Form 706, Schedule M, and the property must be transferred to the trust before the date on which the return is made. Any reformation to determine if a trust is a QDOT requires that the judicial proceeding be commenced on or before the due date for filing the return.
15. Sec. 2056A(b)(2)	The trustee of a QDOT must file a claim for refund of excess tax no later than 1 year after the date of final determination of the decedent's estate tax liability.
16. Sec. 2057(i)(3)(G)	A qualified heir, with respect to qualified family owned business, has a two-year grace period immediately following the date of the decedent's death in which the failure by the qualified heir to begin using the property in a qualified use will not be considered a cessation of qualified use and therefore will not trigger additional estate tax. (The section 2057 election is not available to estates of decedents dying after December 31, 2004).
17. Sec. 2057(i)(3)(H)	The executor of a decedent's estate has 90 days after notification of incomplete information/signatures to provide the information/signatures to the IRS regarding an election on Form 706 with respect to specially valued property.
18. Sec. 2058(b)	The executor of a decedent's estate may deduct estate, inheritance, legacy, or succession taxes actually paid to any state or the District of Columbia from the decedent's gross estate. With certain exceptions, the deduction is only allowed provided the taxes are actually paid and the deduction claimed within 4 years of filing Form 706.
19. Sec. 2516	The IRS will treat certain transfers as made for full and adequate consideration in money or money's worth where husband and wife enter into a written agreement relative to their marital and property rights and divorce actually occurs within the 3-year period beginning on the date 1 year before such agreement is entered into.
20. Sec. 2518(b)	A taxpayer may make a qualified disclaimer no later than 9 months after the date on which the transfer creating the interest is made, or the date the person attains age 21.

SECTION 10. EXEMPT ORGANIZATION ISSUES

Statute or Regulation	Act Postponed
1. Sec. 501(h)	Under section 501(h), certain eligible 501(c)(3) organizations may elect on Form 5768, *Election/Revocation of Election by an Eligible Section 501(c)(3) Organization To Make Expenditures To Influence Legislation*, to have their legislative activities measured solely by expenditures. Form 5768 is effective beginning with a taxable period, provided it is filed before the end of the organization's taxable period.
2. Sec. 505(c)(1)	An organization must give notice by filing Form 1024, *Application for Recognition of Exemption Under Section 501(a)*, to be recognized as an organization exempt under section 501(c)(9) or section 501(c)(17). Generally, if the exemption is to apply for any period before the giving of the notice, section 1.505(c)–1T, Q&A-6, of the regulations requires that Form 1024 be filed within 15 months from the end of the month in which the organization was organized.
3. Sec. 508 and Treas. Reg. § 1.508–1	A purported section 501(c)(3) organization must generally file Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, to qualify for exemption. Generally, if the exemption is to apply for any period before the giving of the notice, the Form 1023 must be filed within 15 months from the end of the month in which the organization was organized.
4. Sec. 527(i)(2)	Certain political organizations shall not be treated as tax-exempt section 527 organizations unless each such organization electronically files a notice (Form 8871, *Political Organization Notice of Section 527 Status*) not less than 24 hours after the date on which the organization is established, or, in the case of a material change in the information required, not later than 30 days after such material change.

Statute or Regulation	Act Postponed
5. Sec. 527(j)(2)	Under section 527(j)(2), certain tax-exempt political organizations that accept contributions or make expenditures for an exempt function under section 527 during a calendar year are required to file periodic reports on Form 8872, *Political Organization Report of Contributions and Expenditures*, beginning with the first month or quarter in which they accept contributions or make expenditures, unless excepted. In addition, tax-exempt political organizations that make contributions or expenditures with respect to an election for federal office may be required to file pre-election reports for that election. A tax-exempt political organization that does not file the required Form 8872, or that fails to include the required information, must pay an amount calculated by multiplying the amount of the contributions or expenditures that are not disclosed by the highest corporate tax rate.
6. Sec. 6033(g)(1) and Treas. Reg. § 1.6033–2(e)	Annual information returns, Forms 990, *Return of Organization Exempt From Income Tax*, of certain tax-exempt political organizations described under section 527 must be filed on or before the 15th day of the 5th month following the close of the taxable year.
7. Sec. 6034 and Treas. Reg. § 1.6034–1(c)	Annual information returns, Forms 1041–A, *U.S. Information Return Trust Accumulation of Charitable Amounts*, of trusts claiming charitable or other deductions under section 642(c) must be filed on or before the 15th day of the 4th month following the close of the taxable year of the trust.
8. Sec. 6072(e) and Treas. Reg. § 1.6033–2(e)	Annual returns of organizations exempt or treated in the same manner as organizations exempt from tax under section 501(a) must be filed on or before the 15th day of the 5th month following the close of the taxable year.
9. Rev. Proc. 80–27, Section 6.01	The central organization of a group ruling is required to report information regarding the status of members of the group annually (at least 90 days before the close of its annual accounting period).

SECTION 11. EXCISE TAX ISSUES

Statute or Regulation	Act Postponed
1. Treas. Reg. § 48.4101–1(h)(v)	A registrant must notify the IRS of any change in the information a registrant has submitted within 10 days.
2. Sec. 4101(d) and Treas. Reg. § 48.4101–2	Each information return under section 4101(d) must be filed by the last day of the first month following the month for which the report is made.
3. Sec. 4221(b) and Treas. Reg. § 48.4221–2(c)	A manufacturer is allowed to make a tax-free sale of articles for resale to a second purchaser for use in further manufacture. This rule ceases to apply six months after the earlier of the sale or shipment date unless the manufacturer receives certain proof.
4. Sec. 4221(b) and Treas. Reg. § 48.4221–3(c)	A manufacturer is allowed to make a tax-free sale of articles for export. This rule ceases to apply six months after the earlier of the sale or shipment date unless the manufacturer receives certain proof.
5. Sec. 4221(e)(2)(A) and Treas. Reg. § 48.4221–7(c)	A manufacturer is allowed to make a tax-free sale of tires for use by the purchaser in connection with the sale of another article manufactured or produced by the purchaser. This rule ceases to apply six months after the earlier of the sale or shipment date unless the manufacturer receives certain proof.

SECTION 12. INTERNATIONAL ISSUES

Statute or Regulation	Act Postponed
1. Sec. 482 and Treas. Reg. § 1.482–1(g)(4)(ii)(C)	A claim for a setoff of a section 482 allocation by the IRS must be filed within 30 days of either the date of the IRS's letter transmitting an examination report with notice of the proposed adjustment or the date of a notice of deficiency.
2. Sec. 482 and Treas. Reg. § 1.482–1(j)(2)	A claim for retroactive application of the final section 482 regulations, otherwise effective only for taxable years beginning after October 6, 1994, must be filed prior to the expiration of the statute of limitations for the year for which retroactive application is sought.

Statute or Regulation	Act Postponed
3. Sec. 482 and Treas. Reg. § 1.482–7(j)(2)	A participant in a cost-sharing arrangement must provide documentation regarding the arrangement, as well as documentation specified in sections 1.482–7(b)(4) and 1.482–7(c)(1), within 30 days of a request by the IRS.
4. Treas. Reg. § 1.882–5(d)(2)(ii)(A)(2)	Liabilities of a foreign corporation that is not a bank must be entered on a set of books at a time reasonably contemporaneous with the time the liabilities are incurred.
5. Treas. Reg. § 1.882–5(d)(2)(iii)(A)(1)	Liabilities of foreign corporations that are engaged in a banking business must be entered on a set of books relating to an activity that produces ECI before the close of the day on which the liability is incurred.
6. Treas. Reg. § 1.884–2T(b)(3)(i)	Requirement that marketable securities be identified on the books of a U.S. trade or business within 30 days of the date an equivalent amount of U.S. assets ceases to be U.S. assets. This requirement applies when a taxpayer has elected to be treated as remaining engaged in a U.S. trade or business for branch profits tax purposes.
7. Treas. Reg. § 1.884–4(b)(3)(ii)(B)	Requirement that a foreign corporation which identifies liabilities as giving rise to U.S. branch interest, send a statement to the recipients of such interest within two months of the end of the calendar year in which the interest was paid, stating that such interest was U.S. source income (if the corporation did not make a return pursuant to section 6049 with respect to the interest payment).
8. Treas. Reg. § 1.922–1(i) (Q&A-13)	The quarterly income statements for the first three quarters of the FSC year must be maintained at the FSC's office no later than 90 days after the end of the quarter. The quarterly income statement for the fourth quarter of the FSC year, the final year-end income statement, the year-end balance sheet, and the final invoices (or summaries) or statements of account must be maintained at the FSC's office no later than the due date, including extensions, of the FSC tax return for the applicable taxable year.
9. Sec. 922(a)(1)(E) and Treas. Reg. § 1.922–1(j) (Q&A-19)	The FSC must appoint a new non-U.S. resident director within 30 days of the date of death, resignation, or removal of the former director, in the event that the sole non-U.S. resident director of a FSC dies, resigns, or is removed.
10. Sec. 924(b)(2)(B) and Treas. Reg. § 1.924(a)–1T(j)(2)(i)	A taxpayer must execute an agreement regarding unequal apportionment at a time when at least 12 months remain in the period of limitations (including extensions) for assessment of tax with respect to each shareholder of the small FSC in order to apportion unequally among shareholders of a small FSC the $5 million foreign trading gross receipts used to determine exempt foreign trade income.
11. Sec. 924(c)(2) and Treas. Reg. § 1.924(c)–1(c)(4)	The FSC must open a new qualifying foreign bank account within 30 days of the date of termination of the original bank account, if a FSC's qualifying foreign bank account terminates during the taxable year due to circumstances beyond the control of the FSC.
12. Sec. 924(c)(3) and Treas. Reg. § 1.924(c)–1(d)(1)	The FSC must transfer funds from its foreign bank account to its U.S. bank account, equal to the dividends, salaries, or fees disbursed, and such transfer must take place within 12 months of the date of the original disbursement from the U.S. bank account, if dividends, salaries, or fees are disbursed from a FSC's U.S. bank account.
13. Sec. 924(c)(3) and Treas. Reg. § 1.924(c)–1(d)(2)	The FSC must reimburse from its own bank account any dividends or other expenses that are paid by a related person, on or before the due date (including extensions) of the FSC's tax return for the taxable year to which the reimbursement relates.
14. Sec. 924(c)(3) and Treas. Reg. § 1.924(c)–1(d)(3)	If the Commissioner determines that the taxpayer acted in good faith, the taxpayer may comply with the reimbursement requirement by reimbursing the funds within 90 days of the date of the Commissioner's determination, notwithstanding a taxpayer's failure to meet the return-filing-date reimbursement deadline in section 1.924(c)–1(d)(2).
15. Sec. 924(e)(4) and Treas. Reg. § 1.924(e)–1(d)(2)(iii)	If a payment with respect to a transaction is made directly to the FSC or the related supplier in the United States, the funds must be transferred to and received by the FSC bank account outside the United States no later than 35 days after the receipt of good funds (*i.e.*, date of check clearance) on the transaction.

Statute or Regulation	Act Postponed
16. Temp. Treas. Reg. § 1.925(a)–1T(e)(4)	A FSC and its related supplier may redetermine a transfer pricing method, the amount of foreign trading gross receipts, and costs and expenses, provided such redetermination occurs before the expiration of the statute of limitations for claims for refund for both the FSC and related supplier, and provided the statute of limitations for assessment applicable to the party that has a deficiency in tax on account of the redetermination is open. See Treas. Reg. § 1.925(a)–1(c)(8)(i) for time limitations with respect to FSC administrative pricing grouping redeterminations and for a cross-reference to section 1.925(a)–1T(e)(4).
17. Sec. 927(f)(3)(A) and Treas. Reg. § 1.927(f)–1(b) (Q&A-12)	A corporation may terminate its election to be treated as a FSC or a small FSC by revoking the election during the first 90 days of the FSC taxable year (other than the first year in which the election is effective) in which the revocation was to take effect.
18. Sec. 927 and Temp. Treas. Reg. § 1.927(a)–1T (d)(2)(i)(B)	A taxpayer may satisfy the destination test with respect to property sold or leased by a seller or lessor if such property is delivered by the seller or lessor (or an agent of the seller or lessor) within the United States to a purchaser or lessee, if the property is ultimately delivered outside the United States (including delivery to a carrier or freight forwarder for delivery outside the United States) by the purchaser or lessee (or a subsequent purchaser or sublessee) within one year after the sale or lease.
19. Sec. 927 and Temp. Treas. Reg. § 1.927(b)–1T(e)(2)(i)	A taxpayer that claims FSC commission deductions must designate the sales, leases, or rentals subject to the FSC commission agreement no later than the due date (as extended) of the tax return of the FSC for the taxable year in which the transaction(s) occurred.
20. Sec. 927 and Treas. Reg. § 1.927(f)–1(a) (Q&A 4)	A transferee or other recipient of shares in the corporation (other than a shareholder that previously consented to the election) must consent to be bound by the prior election within 90 days of the first day of the FSC's taxable year to preserve the status of a corporation that previously qualified as a FSC or as a small FSC.
21. Sec. 936 and Treas. Reg. § 1.936–11	A taxpayer that elects retroactive application of the regulation regarding separate lines of business for taxable years beginning after December 31, 1995, must elect to do so prior to the expiration of the statute of limitations for the year in question.
22. Treas. Reg. §§ 1.964–1T(c)(3)	An election, adoption or change in a method of accounting or tax year on behalf of a CFC or noncontrolled section 902 corporation by its controlling domestic shareholders requires the filing of a statement with the shareholder's return for its year with or within which ends the foreign corporation's taxable year for which the election is made or the method or tax year is adopted or changed, and the filing of a written notice on or before the filing date of the shareholder's return.
23. Sec. 982(c)(2)(A)	Any person to whom a formal document request is mailed shall have the right to bring a proceeding to quash such request not later than the 90th day after the day such request was mailed.
24. Treas. Reg. § 1.988–1(a)(7)(ii)	An election to have section 1.988–1(a)(2)(iii) apply to regulated futures contracts and nonequity options must be made on or before the first day of the taxable year, or if later, on or before the first day during such taxable year on which the taxpayer holds a contract described in section 988(c)(1)(D)(ii) and section 1.988–1(a)(7)(ii). A late election may be made within 30 days after the time prescribed for the election.
25. Sec. 988(c)(1)(E)(iii)(V) (qualified fund) and Treas. Reg. § 1.988–1(a)(8)(i)(E)	A qualified fund election must be made on or before the first day of the taxable year, or if later, on or before the first day during such taxable year on which the partnership holds an instrument described in section 988(c)(1)(E)(i).
26. Treas. Reg. § 1.988–3(b)	An election to treat (under certain circumstances) any gain or loss recognized on a contract described in section 1.988–2(d)(1) as capital gain or loss must be made by clearly identifying such transaction on taxpayer's books and records on the date the transaction is entered into.
27. Treas. Reg. § 1.988–5(a)(8)(i)	Taxpayer must establish a record, and before the close of the date the hedge is entered into, the taxpayer must enter into the record for each qualified hedging transaction the information contained in sections 1.988–5(a)(8)(i)(A) through (E).
28. Treas. Reg. § 1.988–5(b)(3)(i)	Taxpayer must establish a record and before the close of the date the hedge is entered into, the taxpayer must enter into the record a clear description of the executory contract and the hedge.

Statute or Regulation	Act Postponed
29. Treas. Reg. § 1.988–5(c)(2)	Taxpayer must identify a hedge and underlying stock or security under the rules of section 1.988–5(b)(3).
30. Sec. 991	A corporation that elects IC-DISC treatment (other than in the corporation's first taxable year) must file Form 4876–A, *Election To Be Treated as an Interest Charge DISC*, with the regional service center during the 90-day period prior to the beginning of the tax year in which the election is to take effect.
31. Sec. 991 and Treas. Reg. § 1.991–2(g)(2)	A corporation that filed a tax return as a DISC, but subsequently determines that it does not wish to be treated as a DISC, must notify the Commissioner more than 30 days before the expiration of period of limitations on assessment applicable to the tax year.
32. Sec. 992 and Treas. Reg. § 1.992–2(a)(1)(i)	A qualifying corporation must file Form 4876–A or attachments thereto, containing the consent of every shareholder of the corporation to be treated as a DISC as of the beginning of the corporation's first taxable year.
33. Sec. 992 and Treas. Reg. § 1.992–2(e)(2)	A corporation seeking to revoke a prior election to be treated as a DISC, must file a statement within the first 90 days of the taxable year in which the revocation is to take effect with the service center with which it filed the election or, if the corporation filed an annual information return, by filing the statement at the service center with which it filed its most recent annual information return.
34. Sec. 992 and Treas. Reg. § 1.992–3(c)(3)	A DISC that makes a deficiency distribution with respect to the 95 percent of gross receipts test or the 95 percent assets test, or both tests, for a particular taxable year, must make such distribution within 90 days of the date of the first written notification from the IRS that the DISC failed to satisfy such test(s).
35. Sec. 993 and Treas. Reg. § 1.993–3(d)(2)(i)(b)	In certain cases, property may not qualify as export property for DISC purposes unless, among other things, such property is ultimately delivered, directly used, or directly consumed outside the U.S. within one year of the date of sale or lease of the property.
36. Sec. 1445 Treas. Reg. § 1.1445–1	Form 8288, *U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests*, must be filed by a buyer or other transferee of a U.S. real property interest, and a corporation, partnership, or fiduciary that is required to withhold tax. The amount withheld is to be transmitted with Form 8288, which is generally to be filed by the 20th day after the date of transfer.
37. Sec. 1446	All partnerships with effectively connected gross income allocable to a foreign partner in any tax year must file Forms 8804, *Annual Return for Partnership Withholding Tax (Section 1446)*, and 8805, *Foreign Partner's Information Statement of Section 1446 Withholding Tax*, on or before the 15th day of the 4th month following the close of the partnership's taxable year.
38. Sec. 1446	Form 8813, *Partnership Withholding Tax Payment Voucher (Section 1446)*, is used to pay the withholding tax under section 1446 for all partnerships with effectively connected gross income allocable to a foreign partner in any tax year. Form 8813, *Partnership Withholding Tax Payment Voucher (Section 1446)*, must accompany each payment of section 1446 tax made during the partnership's taxable year. Form 8813 is to be filed on or before the 15th day of the 4th, 6th, 9th, and 12th months of the partnership's taxable year for U.S. income tax purposes.
39. Sec. 6038A(d)(2) and Treas. Reg. § 1.6038A–4(d)(1)	A reporting corporation must cure any failure to furnish information or failure to maintain records within 90 days after the IRS gives notice of the failure to avoid the continuation penalty.
40. Sec. 6038A(d)(2) and Treas. Reg. § 1.6038A–4(d)(1)	A reporting corporation must cure any failure to furnish information or failure to maintain records before the beginning of each 30-day period after expiration of the initial 90-day period to avoid additional continuation penalties.
41. Sec. 6038A(a) and Treas. Reg. § 1.6038A–2(d)	A reporting corporation must file a duplicate Form 5472 at the same time it files its income tax return unless Form 5472 is filed electronically.
42. Sec. 6038A(e)(1) and Treas. Reg. § 1.6038A–5(b)	A reporting corporation must furnish an authorization of agent within 30 days of a request by the IRS to avoid a penalty.
43. Sec. 6038A(e)(4)(A)	A reporting corporation must commence any proceeding to quash a summons filed by the IRS in connection with an information request within 90 days of the date the summons is issued.

Statute or Regulation	Act Postponed
44. Sec. 6038A(e)(4)(B)	A reporting corporation must commence any proceeding to review the IRS's determination of noncompliance with a summons within 90 days of the IRS's notice of noncompliance.
45. Sec. 6038A and Treas. Reg. § 1.6038A–3(b)(3)	A reporting corporation must supply an English translation of records provided pursuant to a request for production within 30 days of a request by the IRS for a translation to avoid a penalty.
46. Sec. 6038A and Treas. Reg. § 1.6038A–3(f)(2)	A reporting corporation must, within 60 days of a request by the IRS for records maintained outside the United States, either provide the records to the IRS, or move them to the United States and provide the IRS with an index to the records to avoid a penalty.
47. Sec. 6038A and Treas. Reg. § 1.6038A–3(f)(2)(i)	A reporting corporation must supply English translations of documents maintained outside the United States within 30 days of a request by the IRS for translation to avoid a penalty.
48. Sec. 6038A and Treas. Reg. § 1.6038A–3(f)(4)	A reporting corporation must request an extension of time to produce or translate documents maintained outside the United States beyond the period specified in the regulations within 30 days of a request by the IRS to avoid a penalty.
49. Secs. 6038, 6038B, and 6046A	The filing of Form 8865, *Return of U.S. Persons With Respect to Certain Foreign Partnerships*, for those taxpayers who do not have to file an income tax return. The form is due at the time that an income tax return would have been due had the taxpayer been required to file an income tax return or at the time any required information return is due.
50. Secs. 6039F and 6048	Form 3520, *Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts*, must be filed by the due date of the U.S. person's income tax return, including extensions.
51. Sec. 6662(e) and Treas. Reg. § 1.6662–6(d)(2)(iii)(A)	A taxpayer must provide, within 30 days of a request by the IRS, specified "principal documents" regarding the taxpayer's selection and application of transfer pricing method to avoid potential penalties in the event of a final transfer pricing adjustment by the IRS. See also Treas. Reg. § 1.6662–6(d)(2)(iii)(C) (similar requirement re: background documents).

SECTION 13. PARTNERSHIP AND S CORPORATION ISSUES

Statute or Regulation	Act Postponed
1. Treas. Reg. §§ 1.442–1(b)(1) and (3) and 1.706–1(b)(8)	A partnership may obtain approval of the Commissioner to adopt, change or retain an annual accounting period by filing Form 1128, *Application To Adopt, Change, or Retain a Tax Year*, within such time as provided in administrative procedures published by the Commissioner. See Rev. Procs. 2006–46, 2006–45 I.R.B. 859, and 2002–39, 2002–1 C.B. 1046.
2. Treas. Reg. § 1.743–1(k)(2)	A transferee that acquires, by sale or exchange, an interest in a partnership with an election under section 754 in effect for the taxable year of the transfer, must notify the partnership, in writing, within 30 days of the sale or exchange. A transferee that acquires, on the death of a partner, an interest in a partnership with an election under section 754 in effect for the taxable year of the transfer, must notify the partnership, in writing, within one year of the death of the deceased partner.
3. Treas. Reg. § 1.754–1(c)(1)	Generally, a partnership may revoke a section 754 election by filing the revocation no later than 30 days after the close of the partnership taxable year with respect to which the revocation is intended to take effect.
4. Treas. Reg. § 1.761–2(b)(3)	A partnership may generally elect to be excluded from subchapter K. The election will be effective unless within 90 days after the formation of the organization any member of the organization notifies the Commissioner that the member desires subchapter K to apply to such organization and also advises the Commissioner that he has so notified all other members of the organization. In addition, an application to revoke an election to be excluded from subchapter K must be submitted no later than 30 days after the beginning of the first taxable year to which the revocation is to apply.
5. Treas. Reg. § 1.761–2(c)	A partnership requesting permission to be excluded from certain provisions of subchapter K must submit the request to the Commissioner no later than 90 days after the beginning of the first taxable year for which partial exclusion is desired.

Statute or Regulation	Act Postponed
6. Sec. 1361(e)	In general, the trustee of the electing small business trust (ESBT) must file the ESBT election within the 2-month and 16-day period beginning on the day the stock is transferred to the trust. See Treas. Reg. § 1.1361–1(m)(2)(ii).
7. Treas. Reg. § 1.1361–1(j)(6)	The current income beneficiary of a qualified subchapter S trust (QSST) must make a QSST election within the 2-month and 16-day period from one of the dates prescribed in section 1.1361–1(j)(6)(iii).
8. Treas. Reg. § 1.1361–1(j)(10)	The successive income beneficiary of a QSST may affirmatively refuse to consent to the QSST election. The beneficiary must sign the statement and file the statement with the IRS within 15 days and 2 months after the date on which the successive income beneficiary becomes the income beneficiary.
9. Treas. Reg. § 1.1361–3(a)(4)	If an S corporation elects to treat an eligible subsidiary as a qualified subchapter S subsidiary (QSUB), the election cannot be effective more than 2 months and 15 days prior to the date of filing the election.
10. Treas. Reg. § 1.1361–3(b)(2)	An S corporation may revoke a QSUB election by filing a statement with the service center. The effective date of a revocation of a QSUB election cannot be more than 2 months and 15 days prior to the filing date of the revocation.
11. Treas. Reg. § 1.1362–2(a)(2), (4)	If a corporation revokes its subchapter S election after the first 2½-months of its taxable year, the revocation will not be effective until the following taxable year. An S corporation may rescind a revocation of an S election at any time before the revocation becomes effective.
12. Sec. 1362(b)(1)	An election under section 1362(a) to be an S corporation may be made by a small business corporation for any taxable year at any time during the preceding taxable year, or at any time during the taxable year and on or before the 15th day of the 3rd month of the taxable year.
13. Rev. Proc. 2003–43	This revenue procedure provides a simplified method for taxpayers requesting relief for late S corporation elections, Qualified Subchapter S Subsidiary (QSUB) elections, Qualified Subchapter S Trust (QSST) elections, and Electing Small Business Trust (ESBT) elections. Generally, this revenue procedure provides that certain eligible entities may file late elections within 24 months of the due date of the election.
14. Rev. Proc. 2004–48	This revenue procedure provides a simplified method for taxpayers to request relief for a late S corporation election and a late corporate classification election which was intended to be effective on the same date that the S corporation election was intended to be effective. This revenue procedure provides that within 6 months after the due date for the tax return, excluding extensions, for the first year the entity intended to be an S corporation, the corporation must file a properly completed Form 2553, *Election by a Small Business Corporation*, with the applicable service center.
15. Sec. 1378(b) and Treas. Reg. § 1.1378–1(c)	An S or electing S corporation may obtain the approval of the Commissioner to adopt, change or retain an annual accounting period by filing Form 1128, *Application To Adopt, Change, or Retain a Tax Year*, within such time as is provided in administrative procedures published by the Commissioner. See Rev. Procs. 2006–46 and 2002–39.

SECTION 14. PROCEDURE & ADMINISTRATION ISSUES

.01 Bankruptcy and Collection

Statute or Regulation	Act Postponed
1. Treas. Reg. § 301.6036–1(a)(2) and (3)	A court-appointed receiver or fiduciary in a non-bankruptcy receivership, a fiduciary in aid of foreclosure who takes possession of substantially all of the debtor's assets, or an assignee for benefit of creditors, must give written notice within ten days of his appointment to the IRS as to where the debtor will file his tax return.
2. Sec. 6320(a)(3)(B) and (c) and Treas. Reg. § 301.6320–1(b), (c) and (f)	A taxpayer has 30 days after receiving a notice of a lien to request a Collection Due Process (CDP) administrative hearing. After a determination at the CDP hearing, the taxpayer may appeal this determination within 30 days to the United States Tax Court or a United States district court.

Statute or Regulation	Act Postponed
3. Sec. 6330(a)(3)(B) and (d)(1) and Treas. Reg. § 301.6330–1(b), (c) and (f)	The taxpayer must request a Collections Due Process (CDP) administrative hearing within 30 days after the IRS sends notice of a proposed levy. After a determination at the CDP hearing, the taxpayer may appeal this determination within 30 days to the United States Tax Court or a United States district court.
4. Sec. 6331(k)(1) and Treas. Reg. § 301.7122–1(g)(2)	If a taxpayer submits a good-faith revision of a rejected offer in compromise within 30 days after the rejection, the Service will not levy to collect the liability before deciding whether to accept the revised offer.
5. Sec. 6331(k)(2) and Treas. Reg. § 301.6331–4(a)(1)	If, within 30 days following the rejection or termination of an installment agreement, the taxpayer files an appeal with the IRS Office of Appeals, no levy may be made while the rejection or termination is being considered by Appeals.
6. Rev. Proc. 2005–34, Sec. 4.01	If the Service determines that a taxpayer is liable for the trust fund recovery penalty under section 6672, the Service will provide the taxpayer an opportunity to dispute the proposed assessment by appealing the proposed assessment within 60 days of the date on the notice (75 days if the notice is addressed to the taxpayer outside of the United States).
7. Sec. 7122(d)(2) and Treas. Reg. § 301.7122–1(f)(5)(i)	A taxpayer must request administrative review of a rejected offer in compromise within 30 days after the date on the letter of rejection.

.02 Information Returns

Statute or Regulation	Act Postponed
1. Sec. 6050I	Any person engaged in a trade or business receiving more than $10,000 cash in one transaction (or 2 or more related transactions) must file an information return, Form 8300, *Report of Cash Payments Over $10,000 Received in a Trade or Business*, by the 15th day after the date the cash was received. Additionally, a statement must be provided to the person with respect to whom the information is required to be furnished by Jan. 31st of the year following.
2. Sec. 6050K and Treas. Reg. 1.6050K–1(f)(2)	A partnership notified of an exchange after the partnership has filed its Form 1065 for the taxable year with respect to which the exchange should have been reported shall file its Form 8308 with the service center where its Form 1065 was filed on or before the 30th day after the partnership is notified of the exchange.
3. Sec. 6050L	Returns relating to certain dispositions of donated property, Forms 8282, *Donee Information Return*, must be filed within 125 days of the disposition.

.03 Miscellaneous

Statute or Regulation	Act Postponed
1. Sec. 1314(b)	A taxpayer may file a claim for refund or credit of tax based upon the mitigation provisions of sections 1311 through 1314 if, as of the date a determination (as defined in section 1313(a)) is made, one year remains on the period for filing a claim for refund.
2. Sec. 6015	A requesting spouse must request relief under section 6015 within 2 years of the first collection activity against the requesting spouse.
3. Sec. 6015(e)	A requesting spouse may petition the Tax Court to determine the appropriate relief under this section if such petition is filed not later than the close of the 90th day after the Service mails, by certified or registered mail, notice of the Service's final determination of relief available to the individual.

Statute or Regulation	Act Postponed
4. Sec. 6411	Taxpayers applying for a tentative carryback adjustment of the tax for the prior taxable year must file Form 1139, *Corporation Application for Tentative Refund*, (for corporations) or Form 1045, *Application for Tentative Refund*, (for entities other than corporations) within 12 months after the end of such taxable year that generates such net operating loss, net capital loss, or unused business credit from which the carryback results.
5. Sec. 6656(e)(2)	A taxpayer who is required to deposit taxes and fails to do so is subject to a penalty under section 6656. Under section 6656(e)(2), the taxpayer may, within 90 days of the date of the penalty notice, designate to which deposit period within a specified tax period the deposits should be applied.

SECTION 15. TAX CREDIT ISSUES

Statute or Regulation	Act Postponed
1. Sec. 42(e)(3)(A)(ii)	A taxpayer has a 24-month measuring period in which the requisite amount of rehabilitation expenditures has to be incurred in order to qualify for treatment as a separate new building.
2. Treas. Reg. § 1.42–5(c)(1)	The taxpayer must make certain certifications at least annually to the Agency.
3. Treas. Reg. § 1.42–5(c)(1)(iii)	The taxpayer must receive an annual income certification from each low-income tenant with documentation to support the certification.
4. Treas. Reg. § 1.42–8(a)(3)(v)	The taxpayer and an Agency may elect to use an appropriate percentage under section 42(b)(2)(A)(ii)(I) by notarizing a binding agreement by the 5th day following the end of the month in which the binding agreement was made.
5. Treas. Reg. § 1.42–8(b)(1)(vii)	The taxpayer and an Agency may elect an appropriate percentage under section 42(b)(2)(A)(ii)(II) by notarizing a binding agreement by the 5th day following the end of the month in which the tax-exempt bonds are issued.
6. Sec. 42(d)(2)(D)(ii)(IV)	In order to claim section 42 credits on an existing building, section 42(d)(2)(B)(ii)(I) requires that the building must have been placed in service at least ten years before the date the building was acquired by the taxpayer. A building is not considered placed in service for purposes of section 42(d)(2)(B)(ii) if the building is resold within a 12-month period after acquisition by foreclosure of any purchase-money security interest.
7. Sec. 42(g)(3)(A)	A building shall be treated as a qualified low-income building only if the project meets the minimum set aside requirement by the close of the first year of the credit period of the building.
8. Sec. 42(h)(6)(J)	A low-income housing agreement commitment must be in effect as of the beginning of the year for a building to receive credit. If such a commitment was not in effect, the taxpayer has a one-year period for correcting the failure.
9. Sec. 42(h)(1)(E) and (F)	The taxpayer's basis in the building project, as of the later of the date which is 6 months after the date the allocation was made or the close of the calendar year in which the allocation is made, must be more than 10 percent of the taxpayer's reasonably expected basis in the project.
10. Sec. 47(c)(1)(C) and Treas. Reg. § 1.48–12(b)(2)	A taxpayer has a 24- or 60-month measuring period in which the requisite amount of rehabilitation expenditures have to be incurred in order to satisfy the "substantial rehabilitation" test.
11. Treas. Reg. § 1.48–12(d)(7)	In the historic rehabilitation context, if the taxpayer fails to receive final certification of completed work prior to the date that is 30 months after the date that the taxpayer filed the return on which the credit is claimed, the taxpayer must, prior to the last day of the 30th month, consent to extending the statute of limitations by submitting a written statement to the Service.
12. Sec. 51(d)(12)(A)(ii)(II) and 51A(d)(1)	An employer seeking the Work Opportunity Credit with respect to an individual must submit Form 8850, *Pre-Screening Notice and Certification Request for the Work Opportunity Credit*, to the State Employment Security Agency (State Workforce Agency) not later than the 28th day after the individual begins work for the employer.

SECTION 16. TAX-EXEMPT BOND ISSUES

Statute or Regulation	Act Postponed
1. Treas. Reg. § 1.25–4T(c)	On or before the date of distribution of mortgage credit certificates under a program or December 31, 1987, the issuer must file an election not to issue an amount of qualified mortgage bonds. An election may be revoked, in whole or on part, at any time during the calendar year in which the election was made.
2. Treas. Reg. §§ 1.141–12(d)(3) and 1.142–2(c)(2)	An issuer must provide notice to the Commissioner of the establishment of a defeasance escrow within 90 days of the date such defeasance escrow is established in accordance with sections 1.141–12(d)(1) or 1.142–2(c)(1).
3. Sec. 142(d)(7)	An operator of a multi-family housing project for which an election was made under section 142(d) must submit to the Secretary an annual certification as to whether such project continues to meet the requirements of section 142(d).
4. Sec. 142(f)(4) and Treas. Reg. § 1.142(f)(4)–1	A person engaged in the local furnishing of electric energy or gas (a local furnisher) that uses facilities financed with exempt facility bonds under section 142(a)(8) and expands its service area in a manner inconsistent with the requirements of sections 142(a)(8) and 142(f), may make an election to ensure that those bonds will continue to be treated as exempt facility bonds. The election must be filed with the IRS on or before 90 days after the date of the service area expansion that causes the bonds to cease to meet the applicable requirements.
5. Sec. 146(f) and Notice 89–12	If an issuing authority's volume cap for any calendar year exceeds the aggregate amount of tax-exempt private activity bonds issued during such calendar year by such authority, such authority may elect to treat all (or any portion) of such excess as a carryforward for 1 or more carryforward purposes. Such election must be filed by the earlier of (1) February 15 of the calendar year following the year in which the excess amount arises, or (2) the date of issue of bonds issued pursuant to the carryforward election.
6. Sec. 148(f)(3) and Treas. Reg. § 1.148–3(g)	An issuer of a tax-exempt municipal obligation must make any required rebate payment no later than 60 days after the computation date to which the payment relates. A rebate payment is paid when it is filed with the IRS at the place or places designated by the Commissioner. A payment must be accompanied by the form provided by the Commissioner for this purpose.
7. Treas. Reg. § 1.148–5(c)	An issuer of a tax-exempt municipal obligation must make a yield reduction payment on or before the date of required rebate installment payments as described in section 1.148–3(f), (g), and (h).
8. Sec. 148(f)(4)(C)(xvi) and Treas. Reg. § 1.148–7(k)(1)	As issuer of a tax-exempt municipal obligation that elects to pay certain penalties in lieu of rebate must make any required penalty payments not later than 90 days after the period to which the penalty relates.
9. Sec. 149(e)	An issuer of a tax-exempt municipal obligation must submit to the Secretary a statement providing certain information regarding the municipal obligation not later than the 15th day of the 2nd calendar month after the close of the calendar quarter in which the municipal obligation is issued.

SECTION 17. SPECIAL RULES FOR SECTION 1031 LIKE-KIND EXCHANGE TRANSACTIONS

.01 Taxpayers are provided the relief described in this section if an IRS news release or other guidance provides relief for acts listed in this revenue procedure (unless the news release or other guidance specifies otherwise).

.02 (1) The last day of a 45-day identification period set forth in section 1.1031(k)–1(b)(2) of the Income Tax Regulations, the last day of a 180-day exchange period set forth in section 1.1031(k)–1(b)(2), and the last day of a period set forth in section 4.02(3) through (6) of Rev. Proc. 2000–37, modified by Rev. Proc. 2004–51, that fall on or after the date of a Presidentially declared disaster, are postponed by 120 days or to the last day of the general disaster extension period authorized by an IRS News Release or other guidance announcing tax relief for victims of the specific Presidentially declared disaster, whichever is later. However, in no event may a postponement period extend beyond: (a) the due date (including extensions) of the taxpayer's tax return for the year of the transfer (See Treas. Reg. § 1.1031(k)–1(b)(2)); or (b) one year (See IRC § 7508A(a)).

(2) A taxpayer who is a transferor qualifies for a postponement under this section only if—

(a) The relinquished property was transferred on or before the date of the Presidentially declared disaster, or in a transaction governed by Rev. Proc. 2000–37, modified by Rev. Proc. 2004–51, qualified *indicia* of ownership were transferred to the

exchange accommodation titleholder on or before that date; and

(b) The taxpayer (transferor)—

(i) Is an "affected taxpayer" as defined in the IRS News Release or other guidance announcing tax relief for the victims of the specific Presidentially declared disaster; or

(ii) Has difficulty meeting the 45-day identification or 180-day exchange deadline set forth in section 1.1031(k)–1(b)(2), or a deadline set forth in section 4.02(3) through (6) of Rev. Proc. 2000–37, modified by Rev. Proc. 2004–51, due to the Presidentially declared disaster for the following or similar reasons:

(A) The relinquished property or the replacement property is located in a covered disaster area (as defined in section 301.7508A–1(d)(2)) as provided in the IRS News Release or other guidance (the covered disaster area);

(B) The principal place of business of any party to the transaction (for example, a qualified intermediary, exchange accommodation titleholder, transferee, settlement attorney, lender, financial institution, or a title insurance company) is located in the covered disaster area;

(C) Any party to the transaction (or an employee of such a party who is involved in the section 1031 transaction) is killed, injured, or missing as a result of the Presidentially declared disaster;

(D) A document prepared in connection with the exchange (for example, the agreement between the transferor and the qualified intermediary or the deed to the relinquished property or replacement property) or a relevant land record is destroyed, damaged, or lost as a result of the Presidentially declared disaster;

(E) A lender decides not to fund either permanently or temporarily a real estate closing due to the Presidentially declared disaster or refuses to fund a loan to the taxpayer because flood, disaster, or other hazard insurance is not available due to the Presidentially declared disaster; or

(F) A title insurance company is not able to provide the required title insurance policy necessary to settle or close a real estate transaction due to the Presidentially declared disaster.

.03 The postponement described in this section also applies to the last day of a 45-day identification period described in section 1.1031(k)–1(b)(2) and the last day of a 45-day identification period described in section 4.05(4) of Rev. Proc. 2000–37, modified by Rev. Proc. 2004–51, that falls prior to the date of a Presidentially declared disaster if an identified replacement property (in the case of an exchange described in section 1.1031(k)–1), or an identified relinquished property (in the case of an exchange described in Rev. Proc. 2000–37, modified by Rev. Proc. 2004–51) is substantially damaged by the Presidentially declared disaster.

.04 If the taxpayer (transferor) qualifies for relief under this section for any reason other than section 17.02(2)(b)(i), then such taxpayer is not considered an affected taxpayer for purposes of any other act listed in this revenue procedure or for any acts listed in an IRS News Release or other published guidance related to the specific Presidentially declared disaster.

SECTION 18. INQUIRIES

If you wish to recommend that other acts qualify for postponement, please write to the Office of Associate Chief Counsel, Procedure and Administration CC:PA:B7, 1111 Constitution Avenue, NW, Washington, DC 20224. Please mark "7508A List" on the envelope. In the alternative, e-mail your comments to: *Notice.Comments@irscounsel.treas.gov*, and refer to Rev. Proc. 2005–27 in the Subject heading.

SECTION 19. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 2005–27, 2005–1 C.B. 1050, is superseded.

SECTION 20. EFFECTIVE DATE

This revenue procedure is effective for acts that may be performed or disasters which occur on or after August 20, 2007.

SECTION 21. DRAFTING INFORMATION

The principal author of this revenue procedure is Melissa Quale in Branch 7, of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding section 1031 like-kind exchange postponements under section 17 of this revenue procedure, contact Peter J. Baumgarten or Michael F. Schmit of the Office of Associate Chief Counsel (Income Tax and Accounting) at (202) 622–4920 (not a toll-free call) or (202) 622–4960 (not a toll-free call), respectively. For further information regarding other sections of this revenue procedure, contact Ms. Quale at (202) 622–4570 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking and Notice of Public Hearing

Application of Section 6404(g) of the Internal Revenue Code Suspension Provisions

REG–149036–04

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document proposes regulations for the suspension of interest, penalties, additions to tax, or additional amounts under section 6404(g) of the Internal Revenue Code (Code) that explain the general rules for suspension as well as exceptions to those general rules. The proposed regulations reflect changes to the law made by the Internal Revenue Service Restructuring and Reform Act of 1998, the American Jobs Creation Act of 2004, the Gulf Opportunity Zone Act of 2005, the Tax Relief and Health Care Act of 2006, and the Small Business Work Opportunity Tax Act of 2007. The proposed regulations affect individual taxpayers who file timely income tax returns with respect to whom the IRS does not timely provide a notice specifically stating an additional tax liability and the basis for that liability. This document also provides a notice of public hearing on the proposed regulations.

DATES: Written or electronic comments must be received by September 19, 2007. Outlines of topics to be discussed at the public hearing scheduled for October 11, 2007, at 10 a.m. must be received by September 20, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–149036–04), room 5203, Internal Revenue Service, PO 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 (REG–149036–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–149036–04). The public hearing will be held in the Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Stuart Spielman, (202) 622–7950; concerning submissions of comments, the hearing, or to be placed on the building access list to attend the hearing, Richard Hurst, (202) 622–7180 (not toll-free numbers) or *Richard.A.Hurst@irscounsel.treas.gov*.

SUPPLEMENTARY INFORMATION:

Background

This document amends the Procedure and Administration Regulations (26 CFR part 301) by adding rules relating to the suspension of interest, penalties, additions to tax, or additional amounts under section 6404(g). Section 6404(g) was added to the Code by section 3305 of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206 (112 Stat. 685, 743) (RRA 98), effective for taxable years ending after July 22, 1998. Section 6404(g) was amended by section 903(c) of the American Jobs Creation Act of 2004, Public Law 108–357 (118 Stat. 1418, 1652) (AJCA), enacted on October 22, 2004; by section 303 of the Gulf Opportunity Zone Act of 2005, Public Law 109–135 (119 Stat. 2577, 2608–09) (GOZA), enacted on December 21, 2005; by section 426(b) of the Tax Relief and Health Care Act of 2006, Public Law 109–432 (120 Stat. 2922, 2975), enacted on December 20, 2006; and by section 8242 of the Small Business and Work Opportunity Tax Act of 2007, Public Law 110–28 (121 Stat. 190, 200), enacted on May 25, 2007. The Treasury Department and the Internal Revenue Service are aware that questions have been raised regarding the effective date of the changes made by the Small Business and Work Opportunity Act of 2007 and are considering further guidance. These regulations are prescribed under section 7805.

Explanation of Provisions

General Rule

If an individual taxpayer files a Federal income tax return on or before the due date for that return (including extensions), and if the IRS does not timely provide a notice to that taxpayer specifically stating the taxpayer's liability and the basis for that liability, then the IRS must suspend any interest, penalty, addition to tax, or additional amount with respect to any failure relating to the return that is computed by reference to the period of time the failure continues and that is properly allocable to the suspension period. A notice is timely if provided before the close of the eighteen-month period (thirty-six month period, in the case of notices provided after November 25, 2007) beginning on the later of the date on which the return is filed or the due date of the return without regard to extensions. The suspension period begins on the day after the close of the eighteen-month period (or thirty-six month period) and ends twenty-one days after the IRS provides the notice. This suspension rule applies separately with respect to each item or adjustment.

Amended Returns

The proposed regulations provide guidance on applying section 6404(g) to amended returns and other signed documents that show an increased tax liability, as well as to amended returns that show a decreased tax liability. If, on or after December 21, 2005, a taxpayer provides to the IRS an amended return or other signed written document showing an additional tax liability, then the eighteen-month period (or thirty-six month period) does not begin to run with respect to the items that gave rise to the additional tax liability until that return or other signed written document is provided to the IRS. This rule is mandated by GOZA section 303(b). Except as provided in GOZA section 303(b), the filing of an amended return has no effect on the running of the eighteen-month period (or thirty-six month period) under

section 6404(g). Accordingly, if a taxpayer files an amended return or other signed written document showing a decrease in tax liability and the IRS at any time proposes to adjust the changed item or items, any interest, penalty, addition to tax, or additional amount with respect to the changed item or items on the amended return or other signed written document will not be suspended. If married taxpayers file a return claiming a change in filing status to married filing jointly, the general rule authorizing suspension will not apply unless each spouse's separate return, if required to be filed, was timely. An amended return or other written document is provided to the IRS for purposes of these proposed regulations when it is received by the IRS.

Notice of Liability and the Basis for Liability

Notice to the taxpayer must be in writing and specifically state the amount of the liability and the basis for the liability. The notice must provide the taxpayer with sufficient information to identify which items of income, deduction, loss, or credit the IRS has adjusted or proposes to adjust, and the reason for that adjustment. Administrative proceedings pertaining to adjustments to partnership items of partnerships subject to the unified audit and litigation procedures of Subchapter C of Chapter 63 of Subtitle F of the Internal Revenue Code (TEFRA) occur at the partnership level. Each partner has the right to participate in partnership-level administrative proceedings. The tax matters partner (TMP) of a TEFRA partnership has a fiduciary relationship to the partners and must provide the partners with information concerning significant administrative proceedings and actions within 30 days of the action or the receipt of information concerning the partnership matter. TEFRA partnership administrative proceedings at the partnership level concern the treatment of partnership items and the partners' allocable shares of those items rather than the specific tax liability of each partner attributable to the partnership items. Partners can, however, compute the specific tax attributable to adjustments to partnership items based on their interests in the partnership, so notice to the TMP concerning the treatment of partnership items constitutes notice to the partners under section 6404(g).

Exceptions to the General Rule for Suspension

The general rule for suspension does not apply to (1) any penalty imposed by section 6651 for failing to file a tax return or for failing to pay tax; (2) any interest, penalty, addition to tax, or additional amount in a case involving fraud; (3) any interest, penalty, addition to tax, or additional amount with respect to any tax liability shown on a return; (4) any interest, penalty, addition to tax, or additional amount with respect to any gross misstatement; (5) any interest, penalty, addition to tax, or additional amount with respect to any reportable transaction not meeting the disclosure requirement of section 6664(d)(2)(A) or any listed transaction as defined in section 6707A(c); and (6) any criminal penalty.

The proposed regulations limit the exception pertaining to a case involving fraud to the taxpayer and the taxable year in issue. The proposed regulations also provide that the exception in section 6404(g) for "a case involving fraud" means that fraud on the return with respect to any item will preclude suspension under section 6404(g) with respect to all items on the return.

AJCA section 903(b) added subparagraph (D), pertaining to gross misstatements, to section 6404(g)(2), effective for taxable years beginning after December 31, 2003. The proposed regulations define "gross misstatement" as the reporting of any item on the original or any amended return if that item is attributable to a gross valuation misstatement as defined in section 6662(h), a substantial omission of income as described in section 6501(e)(1) or section 6229(c), or a frivolous position or a desire to delay or impede the administration of the Federal income tax laws as described in section 6702.

Special Rules

Section 6404(g)(2)(C) provides that interest suspension does not apply to any tax liability shown on a return. Consistent with this exception, any interest, penalty, addition to tax, or additional amount with respect to an erroneous tentative carryback or refund adjustment will not be suspended because the disallowance of the erroneous tentative carryback or refund adjustment does not change the tax liability originally shown on the taxpayer's return. An election under section 183(e) to defer the determination as to whether the presumption applies that an activity is engaged in for profit tolls the notification period and the suspension period described in section 6404(g)(1), in that the election calls for the IRS to defer proposing adjustments regarding the activity.

Proposed Effective Date

The regulations, as proposed, apply as of the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is 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, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be made available for public inspection and copying.

A public hearing has been scheduled for October 11, 2007, beginning at 10 a.m. in the Auditorium, Internal Revenue Build-

ing, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments on September 19, 2007, and an outline of the topics to be discussed, and the time to be devoted to each topic (signed original and eight (8) copies) by September 20, 2007. A period of ten minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Stuart Spielman of the Office of Associate Chief Counsel (Procedure and Administration).

* * * * *

Proposed Amendments to the Regulations

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

PART 301 PROCEDURE AND ADMINISTRATION

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

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

Par. 2. Section 301.6404–0 is amended as follows:

1. The introductory text is revised.

2. Entries are added for §301.6404–4.

The addition reads as follows:

§301.6404–0 Table of contents.

This section lists the paragraphs contained in §§301.6404–1 through 301.6404–4.

* * * * *

§301.6404–4 Suspension of interest and certain penalties where the Internal Revenue Service does not contact the taxpayer.

(a) Suspension.

(1) In general.

(2) Treatment of amended returns and other documents.

(i) Amended returns filed on or after December 21, 2005, that shows an increase in tax liability.

(ii) Amended returns that show a decrease in tax liability.

(iii) Amended return and other documents as notice.

(iv) Joint return after filing separate return.

(3) Separate application.

(4) Duration of suspension period.

(5) Example.

(6) Notice of liability and the basis for the liability.

(i) In general.

(ii) Tax attributable to TEFRA partnership items.

(iii) Examples.

(7) Providing notice by the IRS.

(i) In general.

(ii) Providing notice in TEFRA partnership proceedings.

(b) Exceptions.

(1) Failure to file tax return or to pay tax.

(2) Fraud.

(3) Tax shown on return.

(4) Gross misstatement.

(i) Description.

(5) [Reserved].

(c) Special rules.

(1) Tentative carryback and refund adjustments.

(2) Election under section 183(e).

(d) Effective/applicability date.

Par. 3. Section 301.6404–4 is added to read as follows:

§301.6404–4 Suspension of interest and certain penalties where the Internal Revenue Service does not contact the taxpayer.

(a) *Suspension*—(1) *In general*. Except as provided in paragraph (b) of this section, if an individual taxpayer files a return of tax imposed by subtitle A on or before the due date for the return (including extensions) and the Internal Revenue Service (IRS) does not timely provide the taxpayer with a notice specifically stating the amount of any increased liability and the basis for that liability, then the IRS must suspend any interest, penalty, addition to tax, or additional amount with respect to any failure relating to the return. This suspension is computed by reference to the period of time the failure continues to exist. The notice described in this paragraph (a)(1) is timely if provided before the close of the eighteen-month period (thirty-six month period in the case of notices provided after November 25, 2007) beginning on the later of the date on which the return is filed or the due date of the return without regard to extensions.

(2) *Treatment of amended returns and other documents*—(i) *Amended returns filed on or after December 21, 2005, that show an increase in tax liability*. If a taxpayer, on or after December 21, 2005, provides to the IRS an amended return or one or more other signed written documents showing an increase in tax liability, the date on which the return was filed will, for purposes of this paragraph (a), be the date on which the last of the documents was provided. Documents described in this paragraph (a)(2)(i) are provided on the date that they are received by the IRS.

(ii) *Amended returns that show a decrease in tax liability*. If a taxpayer provides to the IRS an amended return or other signed written document that shows a decrease in tax liability, any interest, penalty, addition to tax, or additional amount will not be suspended if the IRS at any time proposes to adjust the changed item or items on the amended return or other signed written document.

(iii) *Amended return and other documents as notice*. As to the items reported, an amended return or one or more other signed written documents showing that the taxpayer owes an additional amount of tax for the taxable year serves as the notice described in paragraph (a)(1) of this section.

(iv) *Joint return after filing separate return*. A joint return filed under section 6013(b) is subject to the rules for amended returns described in this paragraph (a)(2). The IRS will not suspend any interest, penalty, addition to tax, or additional amount on a joint return filed under section 6013(b) unless each spouse, if required to file a return, filed a timely separate return.

(3) *Separate application*. This paragraph (a) shall be applied separately with respect to each item or adjustment.

(4) *Duration of suspension period*. The suspension period described in paragraph (a)(1) of this section begins the day after the close of the eighteen-month period (thirty-six month period, in the case of notices provided after November 25, 2007) beginning on the later of the date on which the return is filed or the due date of the return without regard to extensions. The suspension period ends twenty-one days after the earlier of the date on which the IRS mails the required notice to the taxpayer's last known address, the date on which the required notice is hand-delivered to the taxpayer, or the date on which the IRS receives an amended return or other signed written document showing an increased liability.

(5) *Example*. The following example illustrates the rules of this paragraph (a):

Example. An individual taxpayer timely files an income tax return for taxable year 2004 on the due date of the return, April 15, 2005. On December 11, 2006, the taxpayer mails to the IRS an amended return reporting an additional item of income and an increased tax liability for taxable year 2004. The IRS receives the amended return on December 13, 2006. On January 16, 2007, the IRS provides the taxpayer with a notice stating that the taxpayer has an additional tax liability based on the disallowance of a deduction the taxpayer claimed on his original return and did not change on his amended return. The date the amended return was received substitutes for the date that the original return was filed with respect to the additional item of tax liability reported on the amended return. Thus, the IRS will not suspend interest, penalties, additions to tax, or additional amounts with respect to the additional item of income and the increased tax liability reported on the amended return. The suspension period for the additional tax liability based on the IRS' disallowance of the deduction begins on October 15, 2006, so the IRS will suspend interest, penalties, additions to tax, and additional amounts with respect to the disallowed deduction and additional tax liability from that date through February 6, 2007, which is twenty-one days after the IRS provided notice of the additional tax liability and the basis for that liability.

(6) *Notice of liability and the basis for the liability*—(i) *In general*. Notice to the taxpayer must be in writing and specifically state the amount of the liability and the basis for the liability. The notice must provide the taxpayer with sufficient information to identify which items of income, deduction, loss, or credit the IRS has adjusted or proposes to adjust, and the reason for that adjustment. Notice of the reason for the adjustment does not require a detailed explanation or a citation to any Internal Revenue Code section or other legal authority. The IRS does not have to incorporate all the information necessary to satisfy the notice requirement within a single document or provide all the information at the same time. Documents that may contain information sufficient to qualify as notice, either alone or in conjunction with other documents, include, but are not limited to, statutory notices of deficiency, examination reports (for example, Forms 4549 "*Income Tax Examination Changes*," Forms 886–A "*Explanation of Items*"), Forms 870 "*Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment*," notices of proposed deficiency that allow the taxpayer an opportunity for review in the Office of Appeals (30-day letters), notices pursuant to section 6213(b) (mathematical or clerical errors), and notice and demand for payment of a jeopardy assessment under section 6861.

(ii) *Tax attributable to TEFRA partnership items*. Notice to the partner or the tax matters partner (TMP) of a partnership subject to the Unified Audit and Litigation Procedures of subchapter C of chapter 63 of subtitle F of the Internal Revenue Code (TEFRA) that provides specific information about the basis for the adjustments to partnership items is sufficient notice if a partner could reasonably compute the specific tax attributable to the partnership item based on the proposed adjustments as applied to the partner's individual tax situation. Documents provided by the IRS during a TEFRA partnership proceeding that may contain information sufficient to satisfy the notice requirements include, but are not limited to, a Notice of Final Partnership Administrative Adjustment, examination reports (for example, Forms 4549, Forms 886–A), or a letter that allows the partners an opportunity for review in the Office of Appeals (60-day letter).

(iii) *Examples*. The following examples illustrate the rules of this paragraph (a)(6).

Example 1. During an audit of Taxpayer A's 2005 taxable year return, the IRS questions a charitable deduction claimed on the return. The IRS provides A with a "30-day letter" that proposes a deficiency of $1,000 based on the disallowance of the charitable deduction and informs A that A may file a written protest of the proposed deficiency to the Office of Appeals within 30 days. The letter includes as an attachment a copy of the revenue agent's report that states that "It has not been established that the amount shown on your return as a charitable contribution was paid during the tax year. Therefore, this deduction is not allowable." The information in the 30-day letter and attachment provides A with notice of the specific amount of the liability and the basis for that liability as described in this paragraph (a).

Example 2. Taxpayer B is a partner in partnership P, a TEFRA partnership for taxable year 2005. B claims a distributive share of partnership income on B's Federal income tax return for 2005 filed on April 17, 2006. On October 1, 2007, during the course of a partnership audit of P for taxable year 2005, the IRS provides P's TMP a "60-day letter" proposing to adjust P's income by $10,000. The IRS had previously provided the TMP with a copy of the examination report explaining that the adjustment was based on $10,000 of unreported net income. On October 31, 2007, P's TMP informs B of the proposed adjustment as required by §301.6223(g)–1(b). By accounting for B's distributive share of the $10,000 of unreported income from P with B's other income tax items, B can determine B's tax attributable to the $10,000 partnership adjustment. The information in the 60-day letter and the examination report allows B to compute the specific amount of the liability attributable to the adjustment to the partnership item and the basis for that adjustment and therefore satisfies the notice requirement of paragraph (a). Because the IRS provided that notice to the TMP, B's agent under the TEFRA partnership provisions, within eighteen months of the April 17, 2006, filing date of B's return, any interest, penalty, addition to tax, or additional amount with respect to B's tax liability attributable to B's distributive share of the $10,000 of unreported partnership income will not be suspended under section 6404(g).

(7) *Providing notice by the IRS*—(i) *In general*. The IRS may provide notice by mail or in person to the taxpayer or the taxpayer's representative. If the IRS mails the notice, it must be sent to the taxpayer's last known address under rules similar to section 6212(b), except that certified or registered mail is not required. Notice is considered provided as of the date of mailing or delivery in person.

(ii) *Providing notice in TEFRA partnership proceedings*. In the case of TEFRA partnership proceedings, the IRS must provide notice of final partnership administrative adjustments (FPAA) by mail to those partners specified in section 6223. Within 60 days of an FPAA being mailed, the TMP is required to forward notice of

the FPAA to those partners not entitled to direct notice from the IRS under section 6223. Certain partners with small interests in partnerships with more than 100 partners may form a Notice Group and designate a partner to receive the FPAA on their behalf. The IRS may provide other information after the beginning of the partnership administrative proceeding to the TMP who, in turn, must provide that information to the partners specified in §301.6223(g)–1 within 30 days of receipt. Pass-thru partners who receive notices and other information from the IRS or the TMP must forward that notice or information within 30 days to those holding an interest through the pass-thru partner. Information provided by the IRS to the TMP is deemed to be notice for purposes of this section to those partners specified in §301.6223(g)–1 as of the date the IRS provides that notice to the TMP. A similar rule applies to notice provided to the designated partner of a Notice Group, and to notice provided to a pass-thru partner. In the foregoing situations, the TMP, designated partner, and pass-thru partner are agents for direct and indirect partners. Consequently, notice to these agents is deemed to be notice to the partners for whom they act.

(b) *Exceptions*—(1) *Failure to file tax return or to pay tax*. Paragraph (a) of this section does not apply and interest will not be suspended with respect to any penalty imposed by section 6651.

(2) *Fraud*. Paragraph (a) of this section does not apply and interest will not be suspended with respect to any interest, penalty, addition to tax, or additional amount in a case involving fraud. Fraud has the same meaning in this paragraph (b) as in section 6501(c)(1) and is not attributed from one taxpayer to another taxpayer. If a taxpayer files a fraudulent return for one year, paragraph (a) of this section may apply to any other tax year of the taxpayer that does not involve fraud. Fraud affecting one item on a return precludes paragraph (a) of this section from applying to any other items on that return.

(3) *Tax shown on return*. Paragraph (a) of this section does not apply and interest will not be suspended with respect to any interest, penalty, addition to tax, or additional amount with respect to any tax liability shown on a return.

(4) *Gross misstatement*—(i) *Description*. Paragraph (a) of this section does not apply and interest will not be suspended with respect to any interest, penalty, addition to tax, or additional amount with respect to a gross misstatement. A *gross misstatement* for purposes of this paragraph (b) means—

(A) A substantial omission of income as described in section 6501(e)(1) or section 6229(c)(2);

(B) A gross valuation misstatement within the meaning of section 6662(h); or

(C) A misstatement to which the penalty under section 6702(a) applies.

(ii) If a gross misstatement occurs, then interest will not be suspended with respect to any items of income omitted from the return and with respect to overstated deductions, even though one or more of the omitted items would not constitute a substantial omission, gross valuation misstatement, or misstatement to which section 6702(a) applies.

(5) [Reserved].

(c) *Special rules*—(1) *Tentative carryback and refund adjustments*. If an amount applied, credited, or refunded under section 6411 exceeds the overassessment properly attributable to a tentative carryback or refund adjustment, any interest, penalty, addition to tax, or additional amount with respect to the excess will not be suspended.

(2) *Election under section 183(e)*. If a taxpayer elects under section 183(e) to defer the determination as to whether the presumption applies that an activity is engaged in for profit, the 18-month (or 36-month) notification period described in paragraph (a)(1) of this section or, if that period has passed as of the date the election is made, the suspension period described in paragraph (a)(4) of this section will be tolled for the period to which the election applies. Tolling will begin on the date the election is made and end on the later of the date the return for the last taxable year to which the election applies is filed or is due without regard to extensions.

(d) *Effective/applicability date*. The rules of this section apply as of the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

Kevin M. Brown,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on June 20, 2007, 8:45 a.m., and published in the issue of the Federal Register for June 21, 2007, 72 F.R. 34199)

Notice of Proposed Rulemaking by Reference to Temporary Regulations and Notice of Proposed Rulemaking

Excise Taxes on Prohibited Tax Shelter Transactions and Related Disclosure Requirements; Disclosure Requirements With Respect to Prohibited Tax Shelter Transactions; Requirement of Return and Time for Filing

REG–142039–06; REG–139268–06

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by reference to temporary regulations and notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance under section 4965 of the Internal Revenue Code (Code), relating to entity-level and manager-level excise taxes with respect to prohibited tax shelter transactions to which tax-exempt entities are parties; sections 6033(a)(2) and 6011(g), relating to certain disclosure obligations with respect to such transactions; and sections 6011 and 6071, relating to the requirement of a return and time for filing with respect to section 4965 taxes. In this issue of the Bulletin, the IRS is issuing cross-referencing temporary regulations that provide guidance under section 6033(a)(2), relating to certain disclosure obligations with respect to prohibited tax shelter transactions (T.D. 9335); and sections 6011 and 6071, relating to the requirement of a return and time for filing with respect to section 4965 taxes (T.D. 9334). This action is necessary to implement section 516 of the Tax Increase Prevention Reconciliation Act of 2005. These proposed regulations affect a broad array of tax-exempt entities, including charities,

state and local government entities, Indian tribal governments and employee benefit plans, as well as entity managers of these entities.

DATES: Written or electronic comments and requests for a public hearing must be received by October 4, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–142039–06; REG–139268–06), room 5203, Internal Revenue Service, PO 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 (REG–142039–06, REG–139268–06), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS-REG–142039–06; REG–139268–06). A public hearing may be scheduled if requested.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Galina Kolomietz, (202) 622–6070 or Michael Blumenfeld, (202) 622–1124; concerning submission of comments and requests for a public hearing, Richard Hurst, *Richard.A.Hurst@irscounsel.treas.gov* (not toll-free numbers). For questions specifically relating to qualified pension plans, individual retirement accounts, and similar tax-favored savings arrangements, contact Dana Barry, (202) 622–6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

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

The collection of information in this proposed regulation is in §301.6011(g)–1. The collection of information in §301.6011(g)–1 flows from section 6011(g) which requires a taxable party to a prohibited tax shelter transaction to disclose to any tax-exempt entity that is a party to the transaction that the transaction is a prohibited tax shelter transaction. The likely recordkeepers are taxable entities or individuals that participate in prohibited tax shelter transactions. Estimated number of recordkeepers: 1250 to 6500. The information that is required to be collected for purposes of §301.6011(g)–1 is a subset of information that is required to be collected in order to complete and file Form 8886, "*Reportable Transaction Disclosure Statement*." The estimated paperwork burden for taxpayers filling out Form 8886 is approved under OMB number 1545–1800 and is as follows:

Recordkeeping	6 hr., 13 min.
Learning about the law or the form	4 hr., 28 min.
Preparing, copying, assembling, and sending the form to the IRS	4 hr., 46 min.

Based on the numbers above, the total estimated burden per recordkeeper complying with the disclosure requirement in §301.6011(g)–1 will not exceed 15 hr., 27 min. This burden has been submitted to the Office of Management and Budget for review.

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

Background

The Tax Increase Prevention and Reconciliation Act of 2005, Public Law 109–222 (120 Stat. 345) (TIPRA), enacted on May 17, 2006, defines certain transactions as prohibited tax shelter transactions and imposes excise taxes and disclosure requirements with respect to prohibited tax shelter transactions to which a tax-exempt entity is a party. Section 516 of TIPRA creates new section 4965 and amends sections 6033(a)(2) and 6011(g) of the Code.

On July 11, 2006, the IRS released Notice 2006–65, 2006–31 I.R.B. 102, which alerted taxpayers to the new provisions and solicited comments regarding these provisions. One hundred written comments and numerous phone calls were received in response to the request for comments contained in Notice 2006–65. On February 7, 2007, the IRS released Notice 2007–18, 2007–9 I.R.B. 608, which provided interim guidance regarding the circumstances under which a tax-exempt entity will be treated as a party to a prohibited tax shelter transaction and regarding the allocation to various periods of net income and proceeds attributable to a prohibited tax shelter transaction, including amounts received prior to the effective date of the section 4965 tax. Notice 2007–18 also solicited comments from the public regarding these and other issues raised by section 4965. Eight written comments and numerous phone calls were received in response to the request for comments contained in Notice 2007–18. See §601.601(d)(2)(ii)(*b*).

The comments received in response to Notice 2006–65 and Notice 2007–18 addressed all aspects of the new excise taxes and disclosure requirements. While some comments discussed the implications of a broad application of the new excise taxes and disclosure requirements, commentators generally responded favorably to Congress' effort to restrict tax-exempt entities from being involved in Federal tax avoidance schemes. Commentators noted the lack of meaningful penalties prior to TIPRA for tax-exempt entities involved in tax shelter transactions and the need for disclosure in the case where a tax-exempt entity is improperly using its tax-exempt status to facilitate a tax shelter transaction. After consideration of all comments received, the IRS and the Treasury Department are issuing the following proposed regulations and soliciting comments thereon. The major areas of comments and the IRS and Treasury Department's responses thereto are discussed in the following sections.

Explanation of Provisions

Covered Tax-Exempt Entities

Section 4965(c) defines the term "tax-exempt entity" for section 4965 purposes by reference to sections 501(c), 501(d), 170(c), 7701(a)(40), 4979(e) (paragraphs (1), (2) and (3)), 529, 457(b), and 4973(a). The proposed regulations describe the types of entities captured by the statutory cross-references in section 4965(c).

Definition of Prohibited Tax Shelter Transactions

Section 4965(e) defines the term "prohibited tax shelter transaction" by reference to section 6707A(c)(1) and (c)(2). In accordance with the statutory definition, the proposed regulations define the term "prohibited tax shelter transaction" by reference to the definition of the term "reportable transaction" in section 6707A(c)(1) and (c)(2) and the regulations under section 6011. The proposed regulations define a subsequently listed transaction as a transaction (other than a reportable transaction within the meaning of section 6707A(c)(1)) to which a tax-exempt entity becomes a party before the transaction becomes a listed transaction within the meaning of section 6707A(c)(2).

Several commentators expressed concern over the severe penalties imposed on tax-exempt entities and entity managers for participating in many common and legitimate transactions which have no tax avoidance purpose, yet may fall within the definition of prohibited tax shelter transaction. The commentators suggested that the IRS and the Treasury Department carve out certain types of transactions from the definition of "prohibited tax shelter transaction" or revise current listing procedures to give taxpayers an opportunity to object to the identification of a specific transaction as a tax avoidance transaction. Some commentators recommended that any future published guidance which designates a transaction as a listed or reportable transaction be issued with a prospective effective date and state that it will not apply retroactively. Several commentators requested that the proposed regulations identify listed, subsequently listed, confidential and contractual protection transactions that would not be treated as prohibited tax shelter transactions for purposes of section 4965. The above recommendations are not adopted in these proposed regulations because section 4965 defines the term "prohibited tax shelter transaction" by reference to the existing reportable transaction regime. Any additions to, or exclusions from, the definition of reportable transactions, or any changes to the current listing procedures, must be made within the framework of section 6011 rather than section 4965.

One commentator suggested that the term "reportable transaction" should be narrowly interpreted for purposes of section 4965. However, this term already has been defined under section 6011, and consequently, these proposed regulations interpret it consistently for section 4965 and section 6011 purposes.

Definition of Tax-Exempt Party to a Prohibited Tax Shelter Transaction

Excise taxes under section 4965 apply only if a tax-exempt entity is a party to a prohibited tax shelter transaction. A number of commentators requested guidance in determining when a tax-exempt entity is a party to a prohibited tax shelter transaction. Notice 2007–18 defined the term *party* as a tax-exempt entity that facilitates a prohibited tax shelter transaction by reason of its tax-exempt, tax indifferent or tax-favored status. The proposed regulations incorporate this definition of the term *party*. Notice 2007–18 also notified the public that the IRS and the Treasury Department would provide a broader definition of the term *party* in future guidance in accordance with section 4965. Consistent with Notice 2007–18, the proposed regulations define the term *party* for purposes of sections 4965 and 6033(a)(2) to include a tax-exempt entity that enters into a listed transaction and reflects on its tax return a reduction or elimination of its liability for applicable Federal employment, excise or unrelated business income taxes that is derived directly or indirectly from tax consequences or tax strategy described in the published guidance that lists the transaction.

Several commentators specifically requested that the proposed regulations address under what circumstances, if any, a tax-exempt entity may be treated as a party to a prohibited tax shelter transaction if the tax-exempt entity is an investor in a partnership, hedge fund or other conduit. Invoking the language in the legislative history to section 4965, commentators recommended that the IRS and Treasury Department establish a rule or a safe harbor that would treat an investor in an indirect investment activity as being a party for section 4965 purposes only in limited circumstances.

As illustrated by an example in the proposed regulations, a tax-exempt entity does not become a party to a prohibited tax shelter transaction solely because it invests in an entity that in turn becomes involved in a prohibited tax shelter transaction. To be considered a "party" under the proposed regulations, the tax-exempt entity must either facilitate the prohibited tax shelter transaction by reason of its tax-exempt, tax indifferent or tax-favored status, or must treat the prohibited tax shelter transaction on its tax return as reducing or eliminating its own Federal tax liability. The IRS and the Treasury Department request comments on any further clarifications that may be helpful in reflecting the intended application of the statute as expressed in the legislative history.

Entity Managers and Related Definitions

The proposed regulations clarify the definition of the term "entity manager" in section 4965(d) and provide guidance on persons who could be entity managers pursuant to a delegation of authority from other entity managers.

The proposed regulations also define the term "approve or otherwise cause." Under section 4965(a)(2), an entity manager may be liable for the manager-level excise tax only if the manager "approves such entity as (or otherwise causes such entity to be) a party" to a prohibited tax shelter transaction and knows or has reason to know the transaction is a prohibited tax shelter transaction. The proposed regulations generally limit the definition of "approving or otherwise causing" to affirmative actions of persons who, individually or as members of a collective body, have the authority to commit the entity to the transaction.

One commentator requested guidance on whether entity managers may be liable

for section 4965 taxes in successor-in-interest situations. Several commentators requested guidance on the consequences under section 4965 of the exercise or nonexercise of certain options pursuant to the terms of the transaction. In response to these comments, the proposed regulations provide rules for successor-in-interest situations and the consequences of the exercise or nonexercise of certain options.

Meaning of "Knows or Has Reason to Know"

The level of tax imposed on the tax-exempt entity under section 4965(b)(1) depends upon whether the entity knows or has reason to know, at the time it enters into the transaction, that it is becoming a party to a prohibited tax shelter transaction. The liability of the entity manager for the tax under section 4965(b)(2) depends on whether the entity manager knows or has reason to know that the transaction is a prohibited tax shelter transaction at the time of approving or otherwise causing the entity to be a party to the transaction. The proposed regulations treat the entity as knowing or having reason to know if its manager(s) knew or had to reason to know and provide rules for determining whether entity managers knew or had reason to know. The "reason-to-know" rules in these proposed regulations are consistent with the "reason-to-know" and "should have known" standards under other provisions of the Code.

Commentators recommended that the IRS and the Treasury Department not treat receipt of a disclosure statement regarding a transaction by the tax-exempt entity as conclusive evidence that the tax-exempt entity knew or had reason to know that the transaction was a prohibited tax shelter transaction. The proposed regulations adopt this recommendation and provide that receipt by an entity manager of a disclosure statement in advance of a transaction is a relevant factor but, by itself, does not necessarily demonstrate that the tax-exempt entity or any of its managers knew or had reason to know that the transaction was a prohibited tax shelter transaction.

Taxes on Prohibited Tax Shelter Transactions

Section 4965(b)(1) provides the rules for computing the entity-level excise tax with respect to prohibited tax shelter transactions. Section 4965(b)(2) imposes a flat $20,000 excise tax on any entity manager that approved or otherwise caused the entity to become a party to a prohibited tax shelter transaction. The proposed regulations follow the computational rules in the statute, define the term "taxable year" for purposes of determining the entity-level tax under section 4965, and clarify the timing of the entity manager taxes under section 4965. The proposed regulations provide that entity manager liability for section 4965 taxes is not joint and several.

Definition of Net Income and Proceeds and Their Allocation to Various Periods

The proposed regulations define the terms "net income" and "proceeds" for section 4965 purposes and provide rules regarding the allocation of net income or proceeds attributable to a prohibited tax shelter transaction to various periods, including the appropriate treatment of net income or proceeds received prior to the effective date of the section 4965(a) tax.

Commentators recommended that net income for purposes of section 4965 be determined in a manner consistent with the determination of net income for other purposes of the Code. The proposed regulations adopt this recommendation.

Numerous commentators requested guidance in determining what amounts constitute proceeds for section 4965 purposes and urged the IRS and the Treasury Department to limit the definition of proceeds to the tax-exempt entity's economic return from the transaction. One commentator recommended that return of basis and return of capital be excluded from the definition of proceeds as these amounts are arguably not "attributable to" a prohibited tax shelter transaction. Several commentators recommended that the IRS and the Treasury Department adopt a rule that would exclude from proceeds earnings on certain set-aside amounts that are used to defease the tax-exempt entity's obligations under so-called sale-in, lease-out (SILO) and lease-in, lease-out (LILO) transactions. See Notice 2000–15, 2000–1 C.B. 826, and Notice 2005–13, 2005–1 C.B. 630. Several commentators suggested that nonexercise of options to repurchase in the SILO / LILO context should not be treated as giving rise to net income or proceeds.

The proposed regulations define the term proceeds separately for tax-exempt entities that are involved in prohibited tax shelter transactions to facilitate the tax avoidance of others and tax-exempt entities that are involved in listed transactions for their own tax benefit. In the case of tax-exempt entities that are involved in prohibited tax shelter transactions to facilitate the tax avoidance of others, the proposed regulations define proceeds as the gross amount of the tax-exempt entity's consideration for facilitating the transaction, not reduced by any costs or expenses attributable to the transaction. This definition subjects the tax-exempt party's economic return from the transaction to the entity-level excise tax. In the case of tax-exempt entities that are involved in listed transactions to reduce or eliminate their own tax liability, the proposed regulations define the term proceeds as tax savings purportedly generated by the transaction and claimed by the tax-exempt entity in the tax year.

In Notice 2007–18, the IRS and Treasury Department provided that the allocation of net income and proceeds is determined according to normal tax accounting rules. The proposed regulations incorporate this rule both for purposes of allocating amounts to pre- and post-effective date periods, and allocating amounts to pre- and post-listing periods where a subsequently listed transaction is involved. Under the proposed regulations, tax-exempt entities that have not adopted a method of accounting are required to use the cash method. Several commentators recommended that the IRS adopt a position that net income or proceeds from pre-enactment transactions would not be properly allocable to any periods after the effective date of the section 4965(a) tax. The IRS and the Treasury Department decline to adopt this blanket rule because such rule would be inconsistent with established principles of tax accounting and would conflict with the plain language of the effective date provisions in section 516 of TIPRA.

Effective Dates of the Taxes

In accordance with section 516(d) of TIPRA, the proposed regulations provide that the taxes under section 4965 are effective for taxable years ending after May 17, 2006, with respect to transactions entered into before, on or after such date, except that no tax under section 4965(a) applies with respect to income or proceeds that are properly allocable to any period ending on or before August 15, 2006. The proposed regulations also provide that the 100 percent entity-level tax under section 4965(b)(1)(B) with respect to knowing transactions does not apply to prohibited tax shelter transactions entered into by a tax-exempt entity on or before May 17, 2006 and that the IRS will not assert an entity manager tax under section 4965(b)(2) with respect to any prohibited tax shelter transaction entered into by a tax-exempt entity on or before May 17, 2006. In addition, the proposed regulations provide that the 100 percent entity-level tax under section 4965(b)(1)(B) and the entity manager tax under section 4965(b)(2) do not apply with respect to any subsequently listed transaction.

Numerous commentators questioned whether it would be appropriate to apply the new excise taxes to pre-enactment transactions that already have closed and advocated a narrow application of the new excise taxes to pre-enactment transactions. The commentators argued that it would be unfair to apply the new excise taxes to pre-enactment transactions that have already closed and subject tax-exempt entities to unforeseen, harsh penalties. The commentators recommended that all transactions closed prior to May 17, 2006 be "delisted" for purposes of section 4965. The proposed regulations do not adopt these recommendations as they are inconsistent with the statutory effective date of section 4965 and the statutory definition of prohibited tax shelter transaction.

When finalized, the regulations under section 4965 are proposed to be applicable for taxable years ending after July 6, 2007. Taxpayers may rely on these proposed regulations for periods ending on or before such date.

Disclosure by Tax-exempt Entities that Are Parties to Certain Reportable Transactions

Section 6033(a)(2), as amended by TIPRA, requires every tax-exempt entity that is a party to a prohibited tax shelter transaction to disclose to the IRS, in such form and manner and at such time as determined by the Secretary, such entity's being a party to such transaction and the identity of any other party to the transaction which is known to the tax-exempt entity. The statute gives the IRS discretion with respect to the form, manner and timing of this disclosure. The proposed regulations provide rules regarding the form, manner and timing of this disclosure. With respect to the due date for the disclosure, the proposed regulations provide that, in the case of tax-exempt entities that are involved in prohibited tax shelter transactions to facilitate the tax avoidance of others, the disclosure must be filed by May 15 of the calendar year following the close of the calendar year during which the tax-exempt entity entered into the prohibited tax shelter transaction (or, in the case of subsequently listed transactions, by May 15 of the calendar year following the close of the calendar year during which the transaction was identified by the Secretary as a listed transaction). In the case of tax-exempt entities that are involved in listed transactions to reduce or eliminate their own tax liability, the proposed regulations provide that the disclosure must be filed on or before the date on which the first tax return (whether an original or an amended return) is filed on which the tax-exempt entity reflects a reduction or elimination of its liability for applicable Federal employment, excise or unrelated business income taxes that is derived directly or indirectly from tax consequences or tax strategy described in the published guidance that lists the transaction.

Temporary regulations providing the same rules are being issued concurrently with these proposed regulations.

The temporary regulations under section 6033(a)(2) apply to disclosures with respect to transactions entered into by a tax-exempt entity after May 17, 2006. Transition relief is provided with respect to transactions entered into during a transition period beginning on May 18, 2006 and ending on December 31, 2006. The due date for the disclosure with respect to the transactions entered into during the transition period is November 5, 2007 or, in the case of tax-exempt entities that are involved in listed transactions to reduce or eliminate their own tax liability, the later of: the date on which the first tax return (whether an original or an amended return) is filed on which the tax-exempt entity reflects a reduction or elimination of its liability for applicable Federal employment, excise or unrelated business income taxes that is derived directly or indirectly from tax consequences or tax strategy described in the published guidance that lists the transaction; or November 5, 2007.

Disclosure by Taxable Party to the Tax-exempt Entity

Section 6011(g), as amended by TIPRA, requires any taxable party to a prohibited tax shelter transaction to notify any tax-exempt entity which is a party to such transaction that the transaction is a prohibited tax shelter transaction. The statute is silent as to how and when the section 6011(g) disclosure needs to be made. The proposed regulations provide rules regarding the form, timing and frequency of the section 6011(g) disclosure. The proposed regulations also explain to whom the section 6011(g) disclosure must be made. With respect to the due date for the disclosure, the proposed regulations provide that the disclosure to each tax-exempt entity that is a party to the transaction must be made within 60 days after the last to occur of: (1) the date the taxable person becomes a taxable party to the transaction; or (2) the date the taxable party knows or has reason to know that the tax-exempt entity is a party to the transaction. No disclosure is required if the taxable party does not know or have reason to know that the tax-exempt entity is a party to the transaction on or before the first date on which the transaction is required to be disclosed by the taxable party under §§1.6011–4, 20.6011–4, 25.6011–4, 31.6011–4, 53.6011–4, 54.6011–4, or 56.6011–4.

One commentator recommended that the IRS provide an exception to the disclosure requirements for any transactions for which there would be no income or proceeds subject to the taxes imposed by section 4965. The proposed regulations

do not adopt this recommendation because one of the purposes of section 6011(g) disclosure is to notify the tax-exempt entity that it may have a disclosure obligation under section 6033(a)(2) with respect to the transaction.

When finalized, the proposed regulations under section 6011(g) will apply to disclosures with respect to transactions entered into by a tax-exempt entity after May 17, 2006.

Payment of Section 4965 Taxes

The proposed regulations amend the existing regulations under sections 6011 and 6071 to specify the forms that must be used to pay section 4965 taxes and to provide the due dates for filing these forms. With respect to the due dates, the proposed regulations provide that a return of the entity-level excise tax under section 4965 must be made on or before the due date (not including extensions) for filing the tax-exempt entity's annual information return under section 6033(a)(1). If the tax-exempt entity is not required to file an annual information return, the return of section 4965 taxes must be made on or before the 15th day of the fifth month after the end of the tax-exempt entity's annual accounting period. A return of manager-level excise tax under section 4965 must be made on or before the 15th day of the fifth month following the close of the entity manager's taxable year during which the entity entered into the prohibited tax shelter transaction.

Temporary regulations providing the same rules are being issued concurrently with these proposed regulations.

A commentator recommended that the IRS and the Treasury Department not make the section 4965 excise taxes effective prior to the issuance of final regulations in cases where application of the new law or provisions of the new law is unclear. The proposed regulations do not adopt this recommendation because the effective date for the section 4965 taxes is statutory.

One commentator recommended that the IRS waive the excise taxes under section 4965 in appropriate circumstances. The proposed regulations do not adopt this recommendation as the obligation to pay section 4965 taxes flows directly from the statute, which does not authorize the IRS to waive the entity-level or manager-level taxes.

The amendments and additions to the regulations under sections 6011 and 6071 will be effective on July 6, 2007. Transition relief is provided with respect to returns of section 4965 taxes due on or before October 4, 2007. These returns will be deemed timely if the return is filed and the tax paid before October 4, 2007.

Special Analyses

It has been determined that this notice of proposed rulemaking is 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 this notice of proposed rulemaking. It is hereby certified that the collection of information in §301.6011(g)–1 will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601) (RFA) is not required.

The effect of these proposed regulations on small entities flows directly from the statutes these regulations implement. Section 6011(g), as amended by TIPRA, requires any taxable party to a prohibited tax shelter transaction to notify any tax-exempt entity which is a party to such transaction that the transaction is a prohibited tax shelter transaction. In implementing this statute, §301.6011(g)–1 of the proposed regulations requires every taxable party to a prohibited tax shelter transaction (or a single taxable party acting by designation on behalf of other taxable parties) to provide to every tax-exempt entity that the taxable party knows or has reason to know is a party to the transaction a single statement disclosing that the transaction is a prohibited tax shelter transaction within 60 days after the last to occur: (1) the date the taxable person becomes a taxable party to the transaction; or (2) the date the taxable party knows or has reason to know that the tax-exempt entity is a party to the transaction. Moreover, it is unlikely that a significant number of small businesses will engage in transactions that are subject to disclosure under 301.6011(g). The IRS and the Treasury Department request comments concerning the likelihood that small businesses are engaging in transactions subject to disclosure under this provision.

Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments (a signed original and eight (8) copies) that are submitted timely to the IRS at the address listed in the Addresses section of this document. The IRS and the Treasury Department specifically request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

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

Drafting Information

The principal authors of these regulations are Galina Kolomietz and Dana Barry, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1, 53, 54, and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.6033–5 is added to read as follows:

§1.6033–5 Disclosure by tax-exempt entities that are parties to certain reportable transactions.

[The text of the proposed amendment to §1.6033–5(a) through (g)(1) is the same as the text of §1.6033–5T (a) through (g)(1) published elsewhere in this issue of the Bulletin].

PART 53— FOUNDATION AND SIMILAR EXCISE TAXES

Par. 3. The authority citation for part 53 continues to read, in part, as follows:

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

Par. 4. Sections 53.4965–1 through 53.4965–9 are added to read as follows:

§53.4965–1 Overview.

(a) *Entity-level excise tax.* Section 4965 imposes two excise taxes with respect to certain tax shelter transactions to which tax-exempt entities are parties. Section 4965(a)(1) imposes an entity-level excise tax on certain tax-exempt entities that are parties to "prohibited tax shelter transactions," as defined in section 4965(e). See §53.4965–2 for the discussion of covered tax-exempt entities. See §53.4965–3 for the definition of prohibited tax shelter transactions. See §53.4965–4 for the definition of tax-exempt party to a prohibited tax shelter transaction. The entity-level excise tax under section 4965(a)(1) is imposed on a specified percentage of the entity's net income or proceeds that are attributable to the transaction for the relevant tax year (or a period within that tax year). The rate of tax depends on whether the entity knew or had reason to know that the transaction was a prohibited tax shelter transaction at the time the entity became a party to the transaction. See §53.4965–7(a) for the discussion of the entity-level excise tax under section 4965(a)(1). See §53.4965–6 for the discussion of "knowing or having reason to know." See §53.4965–8 for the definition of net income and proceeds and the standard for allocating net income and proceeds that are attributable to a prohibited tax shelter transaction to various periods.

(b) *Manager-level excise tax.* Section 4965(a)(2) imposes a manager-level excise tax on "entity managers," as defined in section 4965(d), of tax-exempt entities who approve the entity as a party (or otherwise cause the entity to be a party) to a prohibited tax shelter transaction and know or have reason to know, at the time the tax-exempt entity enters into the transaction, that the transaction is a prohibited tax shelter transaction. See §53.4965–5 for the definition of entity manager and the meaning of "approving or otherwise causing," and §53.4965–6 for the discussion of "knowing or having reason to know." See §53.4965–7(b) for the discussion of the manager-level excise tax under section 4965(a)(2).

(c) *Effective/applicability dates.* See §53.4965–9 for the discussion of the relevant effective dates.

§53.4965–2 Covered tax-exempt entities

(a) *In general.* Under section 4965(c), the term "tax-exempt entity" refers to entities that are described in sections 501(c), 501(d), or 170(c) (other than the United States), Indian tribal governments (within the meaning of section 7701(a)(40)), and tax-qualified pension plans, individual retirement arrangements and similar tax-favored savings arrangements that are described in sections 4979(e)(1), (2) or (3), 529, 457(b), or 4973(a). The tax-exempt entities referred to in section 4965(c) are divided into two broad categories, non-plan entities and plan entities.

(b) *Non-plan entities.* Non-plan entities are—

(1) Entities described in section 501(c);

(2) Religious or apostolic associations or corporations described in section 501(d);

(3) Entities described in section 170(c), including states, possessions of the United States, the District of Columbia, political subdivisions of states and political subdivisions of possessions of the United States (but not including the United States); and

(4) Indian tribal governments within the meaning of section 7701(a)(40).

(c) *Plan entities.* Plan entities are—

(1) Entities described in section 4979(e)(1) (qualified plans under section 401(a), including qualified cash or deferred arrangements under section 401(k) (including a section 401(k) plan that allows designated Roth contributions));

(2) Entities described in section 4979(e)(2) (annuity plans described in section 403(a));

(3) Entities described in section 4979(e)(3) (annuity contracts described in section 403(b), including a section 403(b) arrangement that allows Roth contributions);

(4) Qualified tuition programs described in section 529;

(5) Eligible deferred compensation plans under section 457(b) that are maintained by a governmental employer as defined in section 457(e)(1)(A);

(6) Arrangements described in section 4973(a) which include—

(i) Individual retirement plans defined in sections 408(a) and (b), including—

(A) Simplified employee pensions (SEPs) under section 408(k);

(B) Simple individual retirement accounts (SIMPLEs) under section 408(p);

(C) Deemed individual retirement accounts or annuities (IRAs) qualified under a qualified plan (deemed IRAs) under section 408(q)); and

(D) Roth IRAs under section 408A.

(ii) Arrangements described in section 220(d) (Archer Medical Savings Accounts (MSAs));

(iii) Arrangements described in section 403(b)(7) (custodial accounts treated as annuity contracts);

(iv) Arrangements described in section 530 (Coverdell education savings accounts); and

(v) Arrangements described in section 223(d) (health savings accounts (HSAs)).

§53.4965–3 Prohibited tax shelter transactions.

(a) *In general.* Under section 4965(e), the term *prohibited tax shelter transaction* means—

(1) Listed transactions within the meaning of section 6707A(c)(2), including subsequently listed transactions described in paragraph (b) of this section; and

(2) Prohibited reportable transactions, which consist of the following reportable transactions within the meaning of section 6707A(c)(1)—

(i) Confidential transactions, as described in §1.6011–4(b)(3) of this chapter; or

(ii) Transactions with contractual protection, as described in §1.6011–4(b)(4) of this chapter.

(b) *Subsequently listed transactions.* A subsequently listed transaction for pur-

poses of section 4965 is a transaction that is identified by the Secretary as a listed transaction after the tax-exempt entity has entered into the transaction and that was not a prohibited reportable transaction (within the meaning of section 4965(e)(1)(C) and paragraph (a)(2) of this section) at the time the entity entered into the transaction.

(c) *Cross-reference*. The determination of whether a transaction is a listed transaction or a prohibited reportable transaction for section 4965 purposes shall be made under the law applicable to section 6707A(c)(1) and (c)(2).

§53.4965–4 Definition of tax-exempt party to a prohibited tax shelter transaction.

(a) *In general*. For purposes of sections 4965 and 6033(a)(2), a tax-exempt entity is a party to a prohibited tax shelter transaction if the entity—

(1) Facilitates a prohibited tax shelter transaction by reason of its tax-exempt, tax indifferent or tax-favored status;

(2) Enters into a listed transaction and the tax-exempt entity's tax return (whether an original or an amended return) reflects a reduction or elimination of its liability for applicable Federal employment, excise or unrelated business income taxes that is derived directly or indirectly from tax consequences or tax strategy described in the published guidance that lists the transaction; or

(3) Is identified in published guidance, by type, class or role, as a party to a prohibited tax shelter transaction.

(b) Published guidance may identify which tax-exempt entities, by type, class or role, will not be treated as a party to a prohibited tax shelter transaction for purposes of sections 4965 and 6033(a)(2).

(c) *Examples*. The following examples illustrate the principles of this section:

Example 1. A tax-exempt entity enters into a transaction (Transaction A) with an S corporation. Transaction A is the same as or substantially similar to the transaction identified by the Secretary as a listed transaction in Notice 2004–30, 2004–1 C.B. 828. The tax-exempt entity's role in Transaction A is similar to the role of the tax-exempt party, as described in Notice 2004–30. Under the terms of the transaction, as described in Notice 2004–30, the tax-exempt entity receives the S corporation stock and, due to the tax-exempt entity's tax-exempt status, aids the S corporation and its shareholders in avoiding taxable income. The tax-exempt entity facilitates Transaction A by reason of its tax-exempt, tax indifferent or tax-favored status. Accordingly, the tax-exempt entity is a party to Transaction A for purposes of sections 4965 and 6033(a)(2). See §601.601(d)(2)(ii)(*b*) of this chapter.

Example 2. A tax-exempt entity is a partner in a partnership. The partnership has a number of other taxable and tax-exempt partners. The tax-exempt entity does not control the partnership. The partnership enters into a number of transactions, including a transaction (Transaction B) which is the same as or substantially similar to the transaction identified by the Secretary as a listed transaction in Notice 2002–35, 2002–1 C.B. 992 (as clarified and modified by Notice 2006–16, 2006–1 C.B. 538). The partnership's role in Transaction B is similar to the role of T, as described in Notice 2002–35, that is, the role of the taxpayer claiming the tax benefits from the transaction. The tax-exempt entity's tax returns do not reflect a reduction or elimination of its liability for applicable Federal taxes as a result of Transaction B. The tax and economic consequences from Transaction B to the other partners are not dependent on the tax-exempt entity's tax-exempt, tax indifferent or tax-favored status. Accordingly, the tax-exempt entity does not facilitate Transaction B by reason of its tax-exempt, tax indifferent or tax-favored status. Because the tax-exempt entity's tax returns do not reflect a reduction or elimination of its liability for applicable Federal taxes that is derived directly or indirectly from tax consequences or tax strategy described in the published guidance that lists the transaction, the tax-exempt entity is not a party to Transaction B by reason of paragraph (a)(2) of this section. The tax-exempt entity also has not been identified, by type, class or role, as a party to a prohibited tax shelter transaction in published guidance. Therefore, the tax-exempt entity is not a party to Transaction B for purposes of sections 4965 and 6033(a)(2). See §601.601(d)(2)(ii)(*b*) of this chapter.

(d) *Effective dates*. See §53.4965–9 for the discussion of the relevant applicability dates.

§53.4965–5 Entity managers and related definitions.

(a) *Entity manager of a non-plan entity*—(1) *In general*. Under section 4965(d)(1), an entity manager of a non-plan entity is—

(i) A person with the authority or responsibility similar to that exercised by an officer, director, or trustee of an organization (that is, the non-plan entity); and

(ii) With respect to any act, the person who has final authority or responsibility (either individually or as a member of a collective body) with respect to such act.

(2) *Definition of officer*. For purposes of paragraph (a)(1)(i) of this section, a person is considered to be an officer of the non-plan entity (or to have similar authority or responsibility) if the person—

(i) Is specifically designated as such under the certificate of incorporation, by-laws, or other constitutive documents of the non-plan entity; or

(ii) Regularly exercises general authority to make administrative or policy decisions on behalf of the non-plan entity.

(3) *Exception for acts requiring approval by a superior*. With respect to any act, any person is not described in paragraph (a)(2)(ii) of this section if the person has authority merely to recommend particular administrative or policy decisions, but not to implement them without approval of a superior.

(4) *Delegation of authority*. A person is an entity manager of a non-plan entity within the meaning of paragraph (a)(1)(ii) of this section if, with respect to any prohibited tax shelter transaction, such person has been delegated final authority or responsibility with respect to such transaction (including by transaction type or dollar amount) by a person described in paragraph (a)(1)(i) of this section or the governing board of the entity. For example, an investment manager is an entity manager with respect to a prohibited tax shelter transaction if the non-plan entity's governing body delegated to the investment manager the final authority to make certain investment decisions and, in the exercise of that authority, the manager committed the entity to the transaction. To be considered an entity manager of a non-plan entity within the meaning of paragraph (a)(1)(ii) of this section, a person need not be an employee of the entity. A person is not described in paragraph (a)(1)(ii) of this section if the person is merely implementing a decision made by a superior.

(b) *Entity manager of a plan entity*—(1) *In general*. Under section 4965(d)(2), an entity manager of a plan entity is the person who approves or otherwise causes the entity to be a party to the prohibited tax shelter transaction.

(2) *Special rule for plan participants and beneficiaries who have investment elections*—(i) *Fully self-directed plans or arrangements*. In the case of a fully self-directed qualified plan, IRA, or other savings arrangement (including the case where a plan participant or beneficiary is given a list of prohibited investments, such as collectibles), if the plan participant or beneficiary selected a certain investment and, therefore, approved the plan entity to become a party to a prohibited tax shelter transaction, the plan

participant or the beneficiary is an entity manager.

(ii) *Plans or arrangements with limited investment options*. In the case of a qualified plan, IRA, or other savings arrangement where a plan participant or beneficiary is offered a limited number of investment options from which to choose, the person responsible for determining the pre-selected investment options is an entity manager and the plan participant or the beneficiary generally is not an entity manager.

(c) *Meaning of "approves or otherwise causes"*—(1) *In general*. A person is treated as approving or otherwise causing a tax-exempt entity to become a party to a prohibited tax shelter transaction if the person has the authority to commit the entity to the transaction, either individually or as a member of a collective body, and the person exercises that authority.

(2) *Collective bodies*. If a person shares the authority described in paragraph (c)(1) of this section as a member of a collective body (for example, board of trustees or committee), the person will be considered to have exercised such authority if the person voted in favor of the entity becoming a party to the transaction. However, a member of the collective body will not be treated as having exercised the authority described in paragraph (c)(1) of this section if he or she voted against a resolution that constituted approval or an act that caused the tax-exempt entity to be a party to a prohibited tax shelter transaction, abstained from voting for such approval, or otherwise failed to vote in favor of such approval.

(3) *Exceptions*—(i) *Successor in interest*. If a tax-exempt entity that is a party to a prohibited tax shelter transaction is dissolved, liquidated, or merged into a successor entity, an entity manager of the successor entity will not, solely by reason of the reorganization, be treated as approving or otherwise causing the successor entity to become a party to a prohibited tax shelter transaction, provided that the reorganization of the tax-exempt entity does not result in a material change to the terms of the transaction. For purposes of this paragraph, a material change includes an extension or renewal of the agreement (other than an extension or renewal that results from another party to the transaction unilaterally exercising an option granted by the agreement) or a more than incidental change to any payment under the agreement. A change for the sole purpose of substituting the successor entity for the original tax-exempt party is not a material change.

(ii) *Exercise or nonexercise of options*. Nonexercise of an option pursuant to a transaction involving the tax-exempt entity generally will not constitute an act of approving or causing the entity to be a party to the transaction. If, pursuant to a transaction involving the tax-exempt entity, the entity manager exercises an option (such as a repurchase option), the entity manager will not be subject to the entity manager-level tax if the exercise of the option does not result in the tax-exempt entity becoming a party to a second transaction that is a prohibited tax shelter transaction.

(4) *Example*. The following example illustrates the principles of paragraph (c)(3)(ii) of this section:

Example. In a sale-in, lease-out (SILO) transaction described in Notice 2005–13, 2005–1 C.B. 630, X, which is a non-plan entity, has purported to sell property to Y, a taxable entity and lease it back for a term of years. At the end of the basic lease term, X has the option of "repurchasing" the property from Y for a predetermined purchase price, with funds that have been set aside at the inception of the transaction for that purpose. The entity manager, by deciding to exercise or not exercise the "repurchase" option is not approving or otherwise causing the non-plan entity to become a party to a second prohibited tax shelter transaction. See §601.601(d)(2)(ii)(*b*) of this chapter.

(5) *Coordination with the reason-to-know standard*. The determination that an entity manager approved or caused a tax-exempt entity to be a party to a prohibited tax shelter transaction, by itself, does not establish liability for the section 4965(a)(2) tax. For rules on determining whether an entity manager knew or had reason to know that the transaction was a prohibited tax shelter transaction, see §53.4965–6(b).

(d) *Effective dates*. See §53.4965–9 for the discussion of the relevant applicability dates.

§53.4965–6 Meaning of "knows or has reason to know".

(a) *Attribution to the entity*. An entity will be treated as knowing or having reason to know for section 4965 purposes if one or more of its entity managers knew or had reason to know that the transaction was a prohibited tax shelter transaction at the time the entity manager(s) approved the entity as (or otherwise caused the entity to be) a party to the transaction. The entity shall be attributed the knowledge or reason to know of any entity manager described in §53.4965–5(a)(1)(i) even if that entity manager does not approve the entity as (or otherwise cause the entity to be) a party to the transaction.

(b) *Determining whether an entity manager knew or had reason to know*—(1) *In general*. Whether an entity manager knew or had reason to know that a transaction is a prohibited tax shelter transaction is based on all facts and circumstances. In order for an entity manager to know or have reason to know that a transaction is a prohibited tax shelter transaction, the entity manager must have knowledge of sufficient facts that would lead a reasonable person to conclude that the transaction is a prohibited tax shelter transaction. An entity manager will be considered to have "reason to know" if a reasonable person in the entity manager's circumstances would conclude that the transaction was a prohibited tax shelter transaction based on all the facts reasonably available to the manager at the time of approving the entity as (or otherwise causing the entity to be) a party to the transaction. Factors that will be considered in determining whether a reasonable person in the entity manager's circumstances would conclude that the transaction was a prohibited tax shelter transaction include, but are not limited to—

(i) The presence of tax shelter *indicia* (see paragraph (b)(2) of this section);

(ii) Whether the entity manager received a disclosure statement prior to the consummation of the transaction indicating that the transaction may be a prohibited tax shelter transaction (see paragraph (b)(3) of this section); and

(iii) Whether the entity manager made appropriate inquiries into the transaction (see paragraph (b)(4) of this section).

(2) *Tax-shelter indicia*. The presence of *indicia* that a transaction is a tax shelter will be treated as an indication that the entity manager knew or had reason to know that the transaction was a prohibited tax shelter transaction. Tax shelter *indicia* include but are not limited to—

(i) The transaction is extraordinary for the entity considering prior investment activity;

(ii) The transaction promises an economic return for the organization that is exceptional considering the amount invested by, the participation of, or the absence of risk to the organization; or

(iii) The transaction is of significant size relative to the receipts of the entity.

(3) *Effect of disclosure statements*. Receipt by an entity manager of a statement, including a statement described in section 6011(g), in advance of a transaction that the transaction may be a prohibited tax shelter transaction (or a statement that a partnership, hedge fund or other investment conduit may engage in a prohibited tax shelter transaction in the future) is a factor relevant in the determination of whether the entity manager knew or had reason to know that the transaction is a prohibited transaction. However, an entity manager will not be treated as knowing or having reason to know that the transaction was a prohibited tax shelter transaction solely because the entity manager receives such a disclosure.

(4) *Appropriate inquiries*. What inquiries are appropriate will be determined from the facts and circumstances of each case. For example, if one or more tax shelter *indicia* are present or if an entity manager receives a disclosure statement described in paragraph (b)(3) of this section, an entity manager has a responsibility to inquire further whether the transaction is a prohibited tax shelter transaction.

(c) *Reliance on professional advice*—(1) *In general*. An entity manager is not required to obtain the advice of a professional tax advisor to establish that the entity manager made appropriate inquiries. Moreover, not seeking professional advice, by itself, shall not give rise to an inference that the entity manager had reason to know that a transaction is a prohibited tax shelter transaction.

(2) *Reliance on written opinion of professional tax advisor*. An entity manager may establish that he or she did not have a reason to know that a transaction was a prohibited tax shelter transaction at the time the tax-exempt entity entered into the transaction if the entity manager reasonably, and in good faith, relied on the written opinion of a professional tax advisor. Reliance on the written opinion of a professional tax advisor establishes that the entity manager did not have reason to know if, taking into account all the facts and circumstances, the reliance was reasonable and the entity manager acted in good faith. For example, the entity manager's education, sophistication, and business experience will be relevant in determining whether the reliance was reasonable and made in good faith. In no event will an entity manager be considered to have reasonably relied in good faith on an opinion unless the requirements of this paragraph (c)(2) are satisfied. The fact that these requirements are satisfied, however, will not necessarily establish that the entity manager reasonably relied on the opinion in good faith. For example, reliance may not be reasonable or in good faith if the entity manager knew, or reasonably should have known, that the advisor lacked knowledge in the relevant aspects of Federal tax law.

(i) *All facts and circumstances considered*. The advice must be based upon all pertinent facts and circumstances and the law as it relates to those facts and circumstances. The requirements of this paragraph (c)(2) are not satisfied if the entity manager fails to disclose a fact that it knows, or reasonably should know, is relevant to determining whether the transaction is a prohibited tax shelter transaction.

(ii) *No unreasonable assumptions*. The advice must not be based on unreasonable factual or legal assumptions (including assumptions as to future events) and must not unreasonably rely on the representations, statements, findings, or agreements of the entity manager or any other person (including another party to the transaction or a material advisor within the meaning of sections 6111 and 6112.

(iii) *"More likely than not" opinion*. The written opinion of the professional tax advisor must apply the appropriate law to the facts and, based on this analysis, must conclude that the transaction was not a prohibited tax shelter transaction at a "more likely than not" level of certainty at the time the entity manager approved the entity (or otherwise caused the entity) to be a party to the transaction.

(3) *Special rule*. An entity manager's reliance on a written opinion of a professional tax advisor will not be considered reasonable if the advisor is, or is related to a person who is, a material advisor with respect to the transaction within the meaning of sections 6111 and 6112.

(d) *Subsequently listed transactions*. An entity manager will not be treated as knowing or having reason to know that a transaction (other than a prohibited reportable transaction as defined in section 4965(e)(1)(C) and §53.4965–3(a)(2)) is a prohibited tax shelter transaction if the entity enters into the transaction before the date on which the transaction is identified by the Secretary as a listed transaction.

(e) *Effective/applicability dates*. See §53.4965–9 for the discussion of the relevant applicability dates.

§53.4965–7 Taxes on prohibited tax shelter transactions.

(a) *Entity-level taxes*—(1) *In general*. Entity-level excise taxes apply to non-plan entities (as defined in §53.4965–2(b)) that are parties to prohibited tax shelter transactions.

(i) *Prohibited tax shelter transactions other than subsequently listed transactions*—(A) *Amount of tax if the entity did not know and did not have reason to know*. If the tax-exempt entity did not know and did not have reason to know that the transaction was a prohibited tax shelter transaction at the time the entity entered into the transaction, the tax is the highest rate of tax under section 11 multiplied by the greater of—

(*1*) The entity's net income with respect to the prohibited tax shelter transaction (after taking into account any tax imposed by Subtitle D, other than by this section, with respect to such transaction) for the taxable year; or

(*2*) 75 percent of the proceeds received by the entity for the taxable year that are attributable to such transaction.

(B) *Amount of tax if the entity knew or had reason to know*. If the tax-exempt entity knew or had reason to know that the transaction was a prohibited tax shelter transaction at the time the entity entered into the transaction, the tax is the greater of—

(*1*) 100 percent of the entity's net income with respect to the transaction (after taking into account any tax imposed by Subtitle D, other than by this section, with respect to such transaction) for the taxable year; or

(*2*) 75 percent of the proceeds received by the entity for the taxable year that are attributable to such transaction.

(ii) *Subsequently listed transactions*—(A) *In general*. In the case of a subsequently listed transaction (as defined in section 4965(e)(2) and §53.4965–3(b)), the tax-exempt entity's income and proceeds attributable to the transaction are allocated between the period before the transaction became listed and the period beginning on the date the transaction became listed. See §53.4965–8 for the standard for allocating net income or proceeds to various periods. The tax for each taxable year is the highest rate of tax under section 11 multiplied by the greater of—

(*1*) The entity's net income with respect to the subsequently listed transaction (after taking into account any tax imposed by Subtitle D, other than by this section, with respect to such transaction) for the taxable year that is allocable to the period beginning on the later of the date such transaction is identified by the Secretary as a listed transaction or the first day of the taxable year; or

(*2*) 75 percent of the proceeds received by the entity for the taxable year that are attributable to such transaction and allocable to the period beginning on the later of the date such transaction is identified by the Secretary as a listed transaction or the first day of the taxable year.

(B) *No increase in tax*. The 100 percent tax under section 4965(b)(1)(B) and §53.4965–7(a)(1)(i)(B) does not apply to any subsequently listed transaction (as defined in section 4965(e)(2) and §53.4965–3(b)) entered into by a tax-exempt entity before the date on which the transaction is identified by the Secretary as a listed transaction.

(2) *Taxable year*. The excise tax imposed under section 4965(a)(1) applies for the taxable year in which the entity becomes a party to the prohibited tax shelter transaction and any subsequent taxable year for which the entity has net income or proceeds attributable to the transaction. A taxable year for tax-exempt entities is the calendar year or fiscal year, as applicable, depending on the basis on which the tax-exempt entity keeps its books for Federal income tax purposes. If a tax-exempt entity has not established a taxable year for Federal income tax purposes, the entity's taxable year for the purpose of determining the amount and timing of net income and proceeds attributable to a prohibited tax shelter transaction will be deemed to be the annual period the entity uses in keeping its books and records.

(b) *Manager-level taxes*—(1) *Amount of tax*. If any entity manager approved or otherwise caused the tax-exempt entity to become a party to a prohibited tax shelter transaction and knew or had reason to know that the transaction was a prohibited tax shelter transaction, such entity manager is liable for the $20,000 tax. See §53.4965–5(d) for the meaning of approved or otherwise caused. See §53.4965–6 for the meaning of knew or had reason to know.

(2) *Timing of the entity manager tax*. If a tax-exempt entity enters into a prohibited tax shelter transaction during a taxable year of an entity manager, then the entity manager that approved or otherwise caused the tax-exempt entity to become a party to the transaction is liable for the entity manager tax for that taxable year if the entity manager knew or had reason to know that the transaction was a prohibited tax shelter transaction.

(3) *Example*. The application of paragraph (b)(2) of this section is illustrated by the following example:

Example. The entity manager's taxable year is the calendar year. On December 1, 2006, the entity manager approved or otherwise caused the tax-exempt entity to become a party to a transaction that the entity manager knew or had reason to know was a prohibited tax shelter transaction. The tax-exempt entity entered into the transaction on January 31, 2007. The entity manager is liable for the entity manager level tax for the entity manager's 2007 taxable year, during which the tax-exempt entity entered into the prohibited tax shelter transaction.

(4) *Separate liability*. If more than one entity manager approved or caused a tax-exempt entity to become a party to a prohibited tax shelter transaction while knowing (or having reason to know) that the transaction was a prohibited tax shelter transaction, then each such entity manager is separately (that is, not jointly and severally) liable for the entity manager-level tax with respect to the transaction.

(c) *Effective dates*. See §53.4965–9 for the discussion of the relevant effective dates.

§53.4965–8 Definition of net income and proceeds and standard for allocating net income or proceeds to various periods.

(a) *In general*. For purposes of section 4965(a), the amount and the timing of the net income and proceeds attributable to the prohibited tax shelter transaction will be computed in a manner consistent with the substance of the transaction. In determining the substance of listed transactions, the IRS will look to, among other items, the listing guidance and any subsequent guidance published in the Internal Revenue Bulletin relating to the transaction.

(b) *Definition of net income and proceeds*—(1) *Net income*. A tax-exempt entity's net income attributable to a prohibited tax shelter transaction is its gross income derived from the transaction reduced by those deductions that are attributable to the transaction and that would be allowed by chapter 1 of the Internal Revenue Code if the tax-exempt entity were treated as a taxable entity for this purpose, and further reduced by taxes imposed by Subtitle D, other than by this section, with respect to the transaction.

(2) *Proceeds*—(i) *Tax-exempt entities that facilitate the transaction by reason of their tax-exempt, tax indifferent or tax-favored status*. Solely for purposes of section 4965, in the case of a tax-exempt entity that is a party to the transaction by reason of §53.4965–4(a)(1) of this chapter, the term *proceeds* means the gross amount of the tax-exempt entity's consideration for facilitating the transaction, not reduced for any costs or expenses attributable to the transaction. Published guidance with respect to a particular prohibited tax shelter transaction may designate additional amounts as proceeds from the transaction for section 4965 purposes.

(ii) *Tax-exempt entities that enter into transactions to reduce or eliminate their liability for applicable Federal taxes*. For purposes of section 4965, in the case of a tax-exempt entity that is a party to the transaction by reason of §53.4965–4(a)(2) of this chapter, the term *proceeds* means tax savings purportedly generated by the transaction and claimed by the tax-exempt entity on its tax return with respect to the tax year. Published guidance with respect to a particular prohibited tax shelter transaction may designate additional amounts as proceeds from the transaction for section 4965 purposes.

(iii) *Treatment of gifts and contributions*. To the extent not otherwise included in the definition of proceeds in paragraphs (b)(2)(i) and (ii) of this section, any amount that is a gift or a contribution

to a tax-exempt entity and is attributable to a prohibited tax shelter transaction will be treated as proceeds for section 4965 purposes, unreduced by any associated expenses.

(c) *Allocation of net income and proceeds*—(1) *In general*. For purposes of section 4965(a), the net income and proceeds attributable to a prohibited tax shelter transaction must be allocated in a manner consistent with the tax-exempt entity's established method of accounting for Federal income tax purposes. If the tax-exempt entity has not established a method of accounting for Federal income tax purposes, solely for purposes of section 4965(a) the tax-exempt entity must use the cash receipts and disbursements method of accounting (cash method) provided for in section 446 of the Internal Revenue Code to determine the amount and timing of net income and proceeds attributable to a prohibited tax shelter transaction.

(2) *Special rule*. If a tax-exempt entity has established a method of accounting other than the cash method, the tax-exempt entity may nevertheless use the cash method of accounting to determine the amount of the net income and proceeds—

(i) Attributable to a prohibited tax shelter transaction entered into prior to the effective date of section 4965(a) tax and allocable to pre- and post-effective date periods; or

(ii) Attributable to a subsequently listed transaction and allocable to pre- and post-listing periods.

(d) *Transition year rules*. In the case of the taxable year that includes August 16, 2006 (the transition year), the IRS will treat the period beginning on the first day of the transition year and ending on August 15, 2006, and the period beginning on August 16, 2006, and ending on the last day of the transition year as short taxable years. This treatment is solely for purposes of allocating net income or proceeds under section 4965. The tax-exempt entity continues to file tax returns for the full taxable year, does not file tax returns with respect to these deemed short taxable years and does not otherwise take the short taxable years into account for Federal tax purposes. Accordingly, the net income or proceeds that are properly allocated to the transition year in accordance with this section will be treated as allocable to the period—

(1) Ending on or before August 15, 2006 (and accordingly not subject to tax under section 4965(a)) to the extent such net income or proceeds would have been properly taken into account in accordance with this section by the tax-exempt entity in the deemed short year ending on August 15, 2006; and

(2) Beginning after August 15, 2006 (and accordingly subject to tax under section 4965(a)) to the extent such income or proceeds would have been properly taken into account in accordance with this section by the tax-exempt entity in the short year beginning August 16, 2006.

(e) *Allocation to pre- and post-listing periods*. If a transaction other than a prohibited reportable transaction (as defined in section 4965(e)(1)(C) and §53.4965–3(a)(2)) to which the tax-exempt entity is a party is subsequently identified in published guidance as a listed transaction during a taxable year of the entity (the listing year) in which it has net income or proceeds attributable to the transaction, the net income or proceeds are allocated between the pre- and post-listing periods. The IRS will treat the period beginning on the first day of the listing year and ending on the day immediately preceding the date of the listing, and the period beginning on the date of the listing and ending on the last day of the listing year as short taxable years. This treatment is solely for purposes of allocating net income or proceeds under section 4965. The tax-exempt entity continues to file tax returns for the full taxable year, does not file tax returns with respect to these deemed short taxable years and does not otherwise take the short taxable years into account for Federal tax purposes. Accordingly, the net income or proceeds that are properly allocated to the listing year in accordance with this section will be treated as allocable to the period—

(1) Ending before the date of the listing (and accordingly not subject to tax under section 4965(a)) to the extent such net income or proceeds would have been properly taken into account in accordance with this section by the tax-exempt entity in the deemed short year ending on the day immediately preceding the date of the listing; and

(2) Beginning on the date of the listing (and accordingly subject to tax under section 4965(a)) to the extent such income or proceeds would have been properly taken into account in accordance with this section by the tax-exempt entity in the short year beginning on the date of the listing.

(f) *Examples*. The following examples illustrate the allocation rules of this section:

Example 1. (i) In 1999, X, a calendar year non-plan entity using the cash method of accounting, entered into a lease-in/lease-out transaction (LILO) substantially similar to the transaction described in Notice 2000–15, 2000–1 C.B. 826 (describing Rev. Rul. 99–14, 1999–1 C.B. 835, superseded by Rev. Rul. 2002–69, 2002–2 C.B. 760). In 1999, X purported to lease property to Y pursuant to a "head lease," and Y purported to lease the property back to X pursuant to a "sublease" of a shorter term. In form, X received $268M as an advance payment of head lease rent. Of this amount, $200M had been, in form, financed by a nonrecourse loan obtained by Y. X deposited the $200M with a "debt payment undertaker." This served to defease both a portion of X's rent obligation under its sublease and Y's repayment obligation under the nonrecourse loan. Of the remainder of the $268M advance head lease rent payment, X deposited $54M with an "equity payment undertaker." This served to defease the remainder of X's rent obligation under the sublease as well as the exercise price of X's end-of-sublease term purchase option. This amount inures to the benefit of Y and enables Y to recover its investment in the transaction and a return on that investment. In substance, the $54M is a loan from Y to X. X retained the remaining $14M of the advance head lease rent payment. In substance, this represents a fee for X's participation in the transaction. See §601.601(d)(2)(ii)(b) of this chapter.

(ii) According to the substance of the transaction, the head lease, sublease and nonrecourse debt will be ignored for Federal income tax purposes. Therefore, any net income or proceeds resulting from these elements of the transaction will not be considered net income or proceeds attributable to the LILO transaction for purposes of section 4965(a). The $54M deemed loan from Y to X and the $14M fee are not ignored for Federal income tax purposes.

(iii) Under X's established cash basis method of accounting, any net income received in 1999 and attributable to the LILO transaction is allocated to X's December 31, 1999, tax year for purposes of section 4965. The $14M fee received in 1999, and which constitutes proceeds of the transaction, is likewise allocated to that tax year. Because the 1999 tax year is before the effective date of the section 4965 tax, X will not be subject to any excise tax under section 4965 for the amounts received in 1999.

(iv) Any earnings on the amount deposited with the equity payment undertaker that constitute gross income to X will be reduced by X's original issue discount deductions with respect to the deemed loan from Y, in determining X's net income from the transaction.

Example 2. B, a non-plan entity using the cash method of accounting, has an annual accounting period that ends on December 31, 2006. B entered into a

prohibited tax shelter transaction on March 15, 2006. On that date, B received a payment of $600,000 as a fee for its involvement in the transaction. B received no other proceeds or income attributable to this transaction in 2006. Under B's method of accounting, the payment received by B on March 15, 2006, is taken into account in the deemed short year ending on August 15, 2006. Accordingly, solely for purposes of section 4965, the payment is treated as allocable solely to the period ending on or before August 15, 2006, and is not subject to the excise tax imposed by section 4965(a).

Example 3. The facts are the same as in *Example 2*, except that B received an additional payment of $400,000 on September 30, 2006. Under B's method of accounting, the payment received by B on September 30, 2006, is taken into account in the deemed short year beginning on August 16, 2006. Accordingly, solely for purposes of section 4965, the $400,000 payment is treated as allocable to the period beginning after August 15, 2006, and is subject to the excise tax imposed by section 4965(a).

Example 4. C, a non-plan entity using the cash method of accounting, has an annual accounting period that ends on December 31. C entered into a prohibited tax shelter transaction on May 1, 2005. On March 15, 2007, C received a payment of $580,000 attributable to the transaction. On June 1, 2007, the transaction is identified by the IRS in published guidance as a listed transaction. On June 15, 2007, C received an additional payment of $400,000 attributable to the transaction. Under C's method of accounting, the payments received on March 15, 2007, and June 15, 2007, are taken into account in 2007. The IRS will treat the period beginning on January 1, 2007, and ending on May 31, 2007, and the period beginning on June 1, 2007, and ending on December 31, 2007, as short taxable years. The payment received by C on March 15, 2007, is taken into account in the deemed short year ending on May 31, 2007. Accordingly, solely for purposes of section 4965, the payment is treated as allocable solely to the pre-listing period, and is not subject to the excise tax imposed by section 4965(a). The payment received by C on June 15, 2007, is taken into account in the deemed short year beginning on June 1, 2007. Accordingly, solely for purposes of section 4965, the payment is treated as allocable to the post-listing period, and is subject to the excise tax imposed by section 4965(a).

(g) *Effective/applicability dates*. See §53.4965–9 for the discussion of the relevant applicability dates.

§53.4965–9 Effective/applicability dates.

(a) *In general*. The taxes under section 4965(a) and §53.4965–7 are effective for taxable years ending after May 17, 2006, with respect to transactions entered into before, on or after that date, except that no tax under section 4965(a) applies with respect to income or proceeds that are properly allocable to any period ending on or before August 15, 2006.

(b) *Applicability of the regulations*. Except as provided in paragraph (c) of this section, upon publication of final regulations, §§53.4965–1 through 53.4965–8 of this chapter will apply to taxable years ending after July 6, 2007. A tax-exempt entity may rely on the provisions of §§53.4965–1 through 53.4965–8 for taxable years ending on or before July 6, 2007.

(c) *Effective date with respect to certain knowing transactions*—(1) *Entity-level tax*. The 100 percent tax under section 4965(b)(1)(B) and §53.4965–7(a)(1)(i)(B) does not apply to prohibited tax shelter transactions entered into by a tax-exempt entity on or before May 17, 2006.

(2) *Manager-level tax*. The IRS will not assert that an entity manager who approved or caused a tax-exempt entity to become a party to a prohibited tax shelter transaction is liable for the entity manager tax under section 4965(b)(2) and §53.4965–7(b)(1) with respect to the transaction if the tax-exempt entity entered into such transaction prior to May 17, 2006.

Par. 5. In §53.6071–1, paragraphs (g) and (h) are added to read as follows:

§53.6071–1 Time for filing returns.

* * * * *

(g) [The text of the proposed amendment to §53.6071–1(g) is the same as the text of §53.6071–1T(g) published elsewhere in this issue of the Bulletin].

(h) [The text of the proposed amendment to §53.6071–1(h) is the same as the text of §53.6071–1T(h) published elsewhere in this issue of the Bulletin].

PART 54—EXCISE TAXES, PENSIONS, REPORTING AND RECORDKEEPING REQUIREMENTS

Par. 6. The authority citation for part 54 continues to read, in part, as follows:

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

Par. 7. In §54.6011–1, paragraphs (c) and (d) are added to read as follows:

§54.6011–1 General requirement of return, statement or list.

* * * * *

(c) [The text of the proposed amendment to §54.6011–1(c) is the same as the text of §54.6011–1T(c) published elsewhere in this issue of the Bulletin].

(d) [The text of the proposed amendment to §54.6011–1(d) is the same as the text of §54.6011–1T(d) published elsewhere in this issue of the Bulletin].

PART 301—PROCEDURE AND ADMINISTRATION

Par. 8. The authority citation for part 301 continues to read, in part, as follows:

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

Par. 9. Section 301.6011(g)–1 is added to read as follows:

§301.6011(g)–1 Disclosure by taxable party to the tax-exempt entity.

(a) *Requirement of disclosure*—(1) *In general*. Except as provided in paragraph (d)(2) of this section, any taxable party (as defined in paragraph (c) of this section) to a prohibited tax shelter transaction (as defined in section 4965(e) and §53.4965–3 of this chapter) must disclose by statement to each tax-exempt entity (as defined in section 4965(c) and §53.4965–2 of this chapter) that the taxable party knows or has reason to know is a party to such transaction (as defined in paragraph (b) of this section) that the transaction is a prohibited tax shelter transaction.

(2) *Determining whether a taxable party knows or has reason to know*. Whether a taxable party knows or has reason to know that a tax-exempt entity is a party to a prohibited tax shelter transaction is based on all the facts and circumstances. If the taxable party knows or has reason to know that a prohibited tax shelter transaction involves a tax-exempt, tax indifferent or tax-favored entity, relevant factors for determining whether the taxable party knows or has reason to know that a specific tax-exempt entity is a party to the transaction include—

(i) The extent of the efforts made to determine whether a tax-exempt entity is facilitating the transaction by reason of its tax-exempt, tax indifferent or tax-favored status (or is identified in published guidance, by type, class or role, as a party to the transaction); and

(ii) If a tax-exempt entity is facilitating the transaction by reason of its tax-exempt, tax indifferent or tax-favored status (or is identified in published guidance, by type, class or role, as a party to the transaction), the extent of the efforts made to determine the identity of the tax-exempt entity.

(b) *Definition of tax-exempt party to a prohibited tax shelter transaction*—(1) *In*

general. For purposes of section 6011(g), a tax-exempt entity is a party to a prohibited tax shelter transaction if the entity—

(i) Facilitates a prohibited tax shelter transaction by reason of its tax-exempt, tax indifferent or tax-favored status; or

(ii) Is identified in published guidance, by type, class or role, as a party to a prohibited tax shelter transaction.

(2) Published guidance may identify which tax-exempt entities, by type, class or role, will not be treated as a party to a prohibited tax shelter transaction for purposes of section 6011(g).

(c) *Definition of taxable party*—(1) *In general*. For purposes of this section, the term *taxable party* means—

(i) A person who has entered into and participates or expects to participate in the transaction under §§1.6011–4(c)(3)(i)(A), (B), or (C), 20.6011–4, 25.6011–4, 31.6011–4, 53.6011–4, 54.6011–4, or 56.6011–4 of this chapter; or

(ii) A person who is designated as a taxable party by the Secretary in published guidance.

(2) *Special rules*—(i) *Certain listed transactions*. If a transaction that was otherwise not a prohibited tax shelter transaction becomes a listed transaction after the filing of a person's tax return (including an amended return) reflecting either tax consequences or a tax strategy described in the published guidance listing the transaction (or a tax benefit derived from tax consequences or a tax strategy described in the published guidance listing the transaction), the person is a taxable party beginning on the date the transaction is described as a listed transaction in published guidance.

(ii) *Persons designated as non-parties*. Published guidance may identify which persons, by type, class or role, will not be treated as a party to a prohibited tax shelter transaction for purposes of section 6011(g).

(d) *Time for providing disclosure statement*—(1) *In general*. A taxable party to a prohibited tax shelter transaction must make the disclosure required by this section to each tax-exempt entity that the taxable party knows or has reason to know is a party to the transaction within 60 days after the last to occur of—

(i) The date the person becomes a taxable party to the transaction within the meaning of paragraph (c) of this section; or

(ii) The date the taxable party knows or has reason to know that the tax-exempt entity is a party to the transaction within the meaning of paragraph (b) of this section.

(2) *Termination of a disclosure obligation*. A person shall not be required to provide the disclosure otherwise required by this section if the person does not know or have reason to know that the tax-exempt entity is a party to the transaction within the meaning of paragraph (b) of this section on or before the first date on which the transaction is required to be disclosed by the person under §§1.6011–4, 20.6011–4, 25.6011–4, 31.6011–4, 53.6011–4, 54.6011–4, or 56.6011–4 of this chapter.

(3) Disclosure is not required with respect to any prohibited tax shelter transaction entered into by a tax-exempt entity on or before May 17, 2006.

(e) *Frequency of disclosure*. One disclosure statement is required per tax-exempt entity per transaction. See paragraph (h) of this section for rules relating to designation agreements.

(f) *Form and content of disclosure statement*. The statement disclosing to the tax-exempt entity that the transaction is a prohibited tax shelter transaction must be a written statement that—

(1) Identifies the type of prohibited tax shelter transaction (including the published guidance citation for a listed transaction); and

(2) States that the tax-exempt entity's involvement in the transaction may subject either it or its entity manager(s) or both to excise taxes under section 4965 and to disclosure obligations under section 6033(a) of the Internal Revenue Code.

(g) *To whom disclosure is made*. The disclosure statement must be provided—

(1) In the case of a non-plan entity as defined in §53.4965–2(b) of this chapter, to—

(i) Any entity manager of the tax-exempt entity with authority or responsibility similar to that exercised by an officer, director or trustee of an organization; or

(ii) If a person described in paragraph (g)(1)(i) of this section is not known, to the primary contact on the transaction.

(2) In the case of a plan entity as defined in §53.4965–2(c) of this chapter, including a fully self-directed qualified plan, IRA, or other savings arrangement, to any entity manager of the plan entity who approved or otherwise caused the entity to become a party to the prohibited tax shelter transaction.

(h) *Designation agreements*. If more than one taxable party is required to disclose a prohibited tax shelter transaction under this section, the taxable parties may designate by written agreement a single taxable party to disclose the transaction. The transaction must then be disclosed in accordance with this section. The designation of one taxable party to disclose the transaction does not relieve the other taxable parties of their obligation to disclose the transaction to a tax-exempt entity that is a party to the transaction in accordance with this section, if the designated taxable party fails to disclose the transaction to the tax-exempt entity in a timely manner.

(i) *Penalty for failure to provide disclosure statement*. See section 6707A for penalties applicable to failure to disclose a prohibited tax shelter transaction in accordance with this section.

(j) *Effective/applicability date*. This section will apply with respect to transactions entered into by a tax-exempt entity after May 17, 2006.

Par. 10. Section 301.6033–5 is added to read as follows:

§301.6033–5 Disclosure by tax-exempt entities that are parties to certain reportable transactions.

[The text of the proposed amendment to §301.6033–5 is the same as the text of §301.6033–5T published elsewhere in this issue of the Bulletin].

Kevin M. Brown,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on July 5, 2007, 8:45 a.m., and published in the issue of the Federal Register for July 6, 2007, 72 F.R. 36927)

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

Announcement 2007-72

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

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

Reinstatement To Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, The Director, Office of Professional Responsibility, may entertain a petition for reinstatement for any attorney, certified public accountant, enrolled agent, or enrolled actuary censured, suspended, or disbarred, from practice before the Internal Revenue Service.

The following individuals' eligibility to practice before the Internal Revenue Service has been restored:

Name	Address	Designation	Date of Reinstatement
Mollo, Charles W.	Anaheim, CA	EA	December 1, 2004
Price, Richard A.	Novato, CA	CPA	April 29, 2005
Reyes, Ruperto D.	Placentia, CA	CPA	December 8, 2005
Schwartz, Kenneth J.	West Hills, CA	Attorney	February 28, 2006
McCarthy III, William P.	Sacramento, CA	EA	March 10, 2006
Deen, Mae T.	Salinas, CA	EA	April 16, 2006
Banks, Jean R.	Van Nuys, CA	EA	December 6, 2006
Eckstein, Matthew	Woodbury, NY	CPA	March 14, 2007
Cunningham, William	Philadelphia, PA	CPA	March 31, 2007
Ganz, Sheldon M.	Great Neck, NY	CPA	April 19, 2007
Smith, Sean M.	Kensington, MD	Enrolled Agent	April 27, 2007
Frascella, Russell B.	Pound Ridge, NY	CPA	April 27, 2007
Lamont, Alice	Atlanta, GA	CPA	May 4, 2007
Carroccio, Ronald P.	Staten Island, NY	CPA	May 15, 2007
Cohen, Ronald J.	Cornwall, NY	Attorney	June 21, 2007
Troese, Jr., Henry A.	Clarion, PA	Enrolled Agent	June 25, 2007

Name	Address	Designation	Date of Reinstatement
Jacob, Robert T.	Tucson, AZ	Enrolled Agent	June 27, 2007
Simontacchi, Joseph F.	Rockaway, NJ	CPA	July 3, 2007
Kimes, Larry W.	Irving, TX	CPA	July 6, 2007

Consent Suspensions From Practice Before the Internal Revenue Service

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

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

Name	Address	Designation	Date of Suspension
Caplan, Howard A.	Ocean, NJ	CPA	Indefinite from April 1, 2007
Tow, Marc R.	Newport Beach, CA	Attorney	Indefinite from April 1, 2007
Pyburn, Richard E.	Downers Grove, IL	CPA	Indefinite from April 9, 2007
Cook, Jack D.	South Haven, MI	CPA	Indefinite from April 17, 2007
Serban, Daniel E.	Roanoke, IN	Attorney	Indefinite from April 19, 2007
Wentz, Debora B.	Newton, NC	CPA	Indefinite from April 19, 2007
Ferguson, Duane F.	Upland, CA	CPA	Indefinite from May 1, 2007
Mulrey, Robert M.	Milton, MA	CPA	Indefinite from May 1, 2007
Colasuonno, Philip V.	New Rochelle, NY	CPA	Indefinite from May 23, 2007
Bankston, David A.	Land O Lakes, FL	CPA	Indefinite from June 1, 2007

Name	Address	Designation	Date of Suspension
Nagy, Robert J.	Charleston, SC	CPA	Indefinite from June 1, 2007
Wallen, David G.	Beckley, WV	CPA	Indefinite from June 15, 2007
Rudick, Josephine M.	Bear Creek, PA	Enrolled Agent	Indefinite from June 25, 2007
Iglesias, Jorge E.	Roswell, GA	CPA	Indefinite from July 1, 2007
Raimer, Russell B.	Brecksville, OH	CPA	Indefinite from July 1, 2007
Stancukas, Stanley J.	Forth Worth, TX	CPA	Indefinite from July 1, 2007

Expedited Suspensions From Practice Before the Internal Revenue Service

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

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

Name	Address	Designation	Date of Suspension
Barach, Malcolm J.	Brookline, MA	Attorney	Indefinite from March 9, 2007
Cox, Marlisa R.	Oklahoma City, OK	CPA	Indefinite from April 2, 2007
Artis, Paris A.	Newberry, FL	Attorney	Indefinite from April 13, 2007
Blackadar, Christine M.	Center Harbor, NH	Attorney	Indefinite from April 13, 2007
Brelje, Brian J.	Laguna Beach, CA	CPA	Indefinite from April 13, 2007

Name	Address	Designation	Date of Suspension
Decker, Craig A.	Mesa, AZ	Attorney	Indefinite from April 13, 2007
House, Stephen M.	Nevada City, CA	CPA	Indefinite from April 13, 2007
Laird, James J.	San Ramon, CA	CPA	Indefinite from April 13, 2007
Milner, Dennis V.	Dublin, CA	Attorney	Indefinite from April 13, 2007
Nutt, Jeremy C.	Forth Worth, TX	Attorney	Indefinite from April 13, 2007
Picl, Frank M.	Peoria, IL	Attorney	Indefinite from April 13, 2007
Britt, Jerry U.	Mount Olive, NC	CPA	Indefinite from April 19, 2007
Lee, Janell M.	Oakland, CA	CPA	Indefinite from April 19, 2007
Baker, Sean W.	Elkridge, MD	Attorney	Indefinite from April 30, 2007
Brett, Stephen M.	York Beach, ME	Attorney	Indefinite from April 30, 2007
Donahue, Richard K.	Lowell, MA	CPA	Indefinite from April 30, 2007
Frank, Mack I.	Eunice, LA	Attorney	Indefinite from April 30, 2007
Leung, Elsie Y.	Pasadena, CA	CPA	Indefinite from April 30, 2007
Pearlman, Stephen E.	Dix Hills, NY	Attorney	Indefinite from April 30, 2007
Peer, Jameelah	Waimanalo, HI	Attorney	Indefinite from April 30, 2007

Name	Address	Designation	Date of Suspension
Riskowski, Patrick T.	Omaha, NE	Attorney	Indefinite from April 30, 2007
Schumacher, Mary M.	Dubuque, IA	Attorney	Indefinite from April 30, 2007
DeVaughn, Donald L.	Plainview, MN	Attorney	Indefinite from May 1, 2007
Waggle, Stephen L.	Los Banos, CA	CPA	Indefinite from May 24, 2007
Nefsky, Melvyn I.	Los Angeles, CA	CPA	Indefinite from June 11, 2007
Neuendorf, Louis E.	Sandwich, IL	Attorney	Indefinite from June 11, 2007
Thomas, Scott C.	Parker, CO	Attorney	Indefinite from June 11, 2007
Todd, Donald J.	South Holland, IL	CPA	Indefinite from June 11, 2007
Winrow, Wayne	Emeryville, CA	Attorney	Indefinite from June 11, 2007
Cannon, Todd R.	Florence, CO	Attorney	Indefinite from June 12, 2007
Hester, Karen H.	Overland Park, KS	Attorney	Indefinite from June 25, 2007
Denman, Dwight E.	Dallas, TX	Attorney	Indefinite from June 25, 2007
Korcan, Barry	Loretto, PA	CPA	Indefinite from June 25, 2007
Lloyd, Max C.	South Jordan, UT	CPA	Indefinite from June 25, 2007
White, Lanny R.	Lindon, UT	CPA	Indefinite from June 25, 2007
Bjorklund, Dennis A.	Coralville, IA	Attorney	Indefinite from June 28, 2007

Name	Address	Designation	Date of Suspension
Noel, Robert	Fairfield, CA	Attorney	Indefinite from June 28, 2007
Sanger, Susan L.	Greenwood Village, CO	Attorney	Indefinite from June 28, 2007
Shatzen, Robert S.	Beaverton, OR	Attorney	Indefinite from June 28, 2007
Stevenson, Albert D.	Olive Branch, MS	CPA	Indefinite from June 28, 2007
Van Beek, Andrea	Orange City, IA	Attorney	Indefinite from June 28, 2007
Sojcher, Stuart H.	Winchester, MA	Attorney	Indefinite from July 3, 2007
Estrada, Severo C.	San Jose, CA	CPA	Indefinite from July 3, 2007
Ferguson, Robert E.	Salt Point, NY	Attorney	Indefinite from July 3, 2007
Wickenkamp, Mary C.	Denison, TX	Attorney	Indefinite from July 3, 2007

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

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

Name	Address	Designation	Effective Date
Cettomai, Joseph W.	Rootstown, OH	CPA	Indefinite from April 19, 2007

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

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

Name	Address	Designation	Effective Date
Haynes, Scott Y.	Valdosta, GA	CPA	March 19, 2007

Censure Issued by Consent

Under Title 31, Code of Federal Regulations, Part 10, in lieu of a proceeding being instituted or continued, an attorney, certified public accountant, enrolled agent, or enrolled actuary, may offer his or her consent to the issuance of a censure. Censure is a public reprimand.

The following individuals have consented to the issuance of a Censure:

Name	Address	Designation	Date of Censure
Lyons, John K.	Dingmans Ferry, PA	Attorney	April 4, 2007
Bowman, T. Hardie	Corpus Christi, TX	CPA	May 23, 2007
Kofford, Brian T.	Provo, UT	CPA	June 12, 2007

Resignations of Enrolled Agents

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

The Director, Office of Professional Responsibility, has accepted offers of resignation as an enrolled agent from the following individuals:

Name	Address	Date of Resignation
Hancock, William H.	Plant City, FL	April 10, 2007

Deletions From Cumulative List of Organizations Contributions to Which are Deductible Under Section 170 of the Code

Announcement 2007–73

The names of organizations that no longer qualify as organizations described in section 170(c)(2) of the Internal Revenue Code of 1986 are listed below.

Generally, the Service will not disallow deductions for contributions made to a listed organization on or before the date of announcement in the Internal Revenue Bulletin that an organization no longer qualifies. However, the Service is not precluded from disallowing a deduction for any contributions made after an organization ceases to qualify under section 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on August 20, 2007, and would end on the date the court first determines that the organization is not described in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For individual contributors, the maximum deduction protected is $1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or

omissions of the organization that were the basis for revocation.

The Dale and Johanna Brunken Foundation
Salt Lake City, UT

Osterville Village Association
Osterville, MA

Epley Family Foundation
Salt Lake City, UT

Ohio Veterans Coalition, Inc.
Akron, OH

United States Historical Society
Richmond, VA

MOP Non-Profit, Inc.
Detroit, MI

Del Sol Foundation
Downey, CA

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.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—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[1]

Bulletins 2007–27 through 2007–34

Announcements:

Notices:

Proposed Regulations:

Revenue Procedures:

Revenue Procedures— Continued:

Revenue Rulings:

Treasury Decisions:

[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2007–1 through 2007–26 is in Internal Revenue Bulletin 2007–26, dated June 25, 2007.

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

Bulletins 2007–27 through 2007–34

Notices:

2006-43
Modified by
T.D. 9332, 2007-32 I.R.B. *300*

2007-26
Modified by
Notice 2007-56, 2007-27 I.R.B. *15*

Proposed Regulations:

REG-109367-06
Hearing scheduled by
Ann. 2007-66, 2007-31 I.R.B. *296*

REG-143601-06
Corrected by
Ann. 2007-71, 2007-33 I.R.B. *372*

Revenue Procedures:

90-27
Superseded by
Rev. Proc. 2007-52, 2007-30 I.R.B. *222*

95-28
Superseded by
Rev. Proc. 2007-54, 2007-31 I.R.B. *293*

97-14
Modified and superseded by
Rev. Proc. 2007-47, 2007-29 I.R.B. *108*

2002-9
Modified and amplified by
Rev. Proc. 2007-48, 2007-29 I.R.B. *110*
Rev. Proc. 2007-53, 2007-30 I.R.B. *233*

2004-42
Superseded by
Notice 2007-59, 2007-30 I.R.B. *135*

2005-16
Modified by
Rev. Proc. 2007-44, 2007-28 I.R.B. *54*

2005-27
Superseded by
Rev. Proc. 2007-56, 2007-34 I.R.B. *388*

2005-66
Clarified, modified, and superseded by
Rev. Proc. 2007-44, 2007-28 I.R.B. *54*

2006-25
Superseded by
Rev. Proc. 2007-42, 2007-27 I.R.B. *15*

2006-27
Modified by
Rev. Proc. 2007-49, 2007-30 I.R.B. *141*

Revenue Procedures— Continued:

2006-33
Superseded by
Rev. Proc. 2007-51, 2007-30 I.R.B. *143*

2006-55
Superseded by
Rev. Proc. 2007-43, 2007-27 I.R.B. *26*

2007-15
Superseded by
Rev. Proc. 2007-50, 2007-31 I.R.B. *244*

Revenue Rulings:

74-299
Amplified by
Rev. Rul. 2007-48, 2007-30 I.R.B. *129*

89-96
Amplified by
Rev. Rul. 2007-47, 2007-30 I.R.B. *127*

92-17
Modified by
Rev. Rul. 2007-42, 2007-28 I.R.B. *44*

2001-48
Modified by
T.D. 9332, 2007-32 I.R.B. *300*

Treasury Decisions:

9321
Corrected by
Ann. 2007-68, 2007-32 I.R.B. *348*

[1] A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2007–1 through 2007–26 is in Internal Revenue Bulletin 2007–26, dated June 25, 2007.

U.S. GOVERNMENT PRINTING OFFICE
KEEPING AMERICA INFORMED

Internal Revenue Cumulative Bulletins Publications and Subscription Order Form

Order Processing Code: 3465

Easy Secure Internet: bookstore.gpo.gov

Toll Free: 866 512-1800
DC Area: 202 512-2800
Fax: 202 512-2250

Mail: Superintendent of Documents
P.O. Box 371954
Pittsburgh, PA 15250-7954

Publications

Qty.	Stock Number	Title	Price Each	Total Price
	048–004–02467–5	Cum. Bulletin 1999–3	20.40	
	048–004–02462–4	Cum. Bulletin 2001–2 (Jul-Dec)	24.00	
	048–004–02480–2	Cum. Bulletin 2001–3	71.00	
	048–004–02470–5	Cum. Bulletin 2002–2 (Jul-Dec)	28.80	
	048–004–02486–1	Cum. Bulletin 2002–3	54.00	
	048–004–02483–7	Cum. Bulletin 2004–2 (July–Dec)	54.00	
	048–004–02488–8	Cum. Bulletin 2005–2	56.00	
			Total for Publications	

Subscriptions

Qty.	List ID	Title	Price Each	Total Price
	IRS	Internal Revenue Bulletin	$247	
		Optional – Add $50 to open Deposit Account		
			Total for Subscriptions	
			Total for Publications and Subscriptions	

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

Standing Order Service*

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

Qty.	Standing Order	Title
	ZIRSC	Internal Revenue Cumulative Bulletins

Authorization

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

❑ VISA ❑ MasterCard ❑ Discover/NOVUS ❑ American Express

❑ Superintendent of Documents (SOD) Deposit Account

Authorizing signature (Standing orders not valid unless signed.)

_____

Please print or type your name.

Daytime phone number (_____) _____

SuDocs Deposit Account

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

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

Check method of payment:

❑ Check payable to Superintendent of Documents

❑ SOD Deposit Account ☐☐☐☐☐☐☐ – ☐

❑ VISA ❑ MasterCard ❑ Discover/Novus ❑ American Express

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (expiration date)

Thank you for your Order!

Authorizing signature 06/06

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, Zip Code

E-mail address

Daytime phone including area code

Purchase order number (optional)

*Standing Order Service

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

You will receive written acknowledgement for each item you choose to receive by Standing Order Service.

If you wish to cancel your Standing Order Service, please notify the Superintendent of Documents in writing (telephone cancellations are accepted, but must be followed up with a written cancellation within 10 days).

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

INTERNAL REVENUE BULLETIN

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

CUMULATIVE BULLETINS

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

ACCESS THE INTERNAL REVENUE BULLETIN ON THE INTERNET

You may view the Internal Revenue Bulletin on the Internet at www.irs.gov. Under information for: select Businesses. Under related topics, select More Topics. Then select Internal Revenue Bulletins.

INTERNAL REVENUE BULLETINS ON CD-ROM

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

HOW TO ORDER

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

WE WELCOME COMMENTS ABOUT THE INTERNAL REVENUE BULLETIN

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

Internal Revenue Service
Washington, DC 20224

Official Business
Penalty for Private Use, $300