Internal Revenue Bulletin

CUMULATIVE BULLETIN 1967-1

JANUARY-JUNE 1967

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Internal Revenue Bulletin

Cumulative Bulletin 1967-1

January-June 1967

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801	Rev. Proc. 67-24	Page 625.
838	Rev. Rul. 67-79	Page 117.
867	Rev. Rul. 67-28	Page 359.
869	Rev. Proc. 67-5	Page 575.
870	Not in Bulletin.	
871	Rev. Rul. 67-1	Page 28.
872	Not in Bulletin.	
873	Rev. Proc. 67-25	Page 626.
874	Rev. Proc. 67-9	Page 583.
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881	Rev. Proc. 67-15	Page 592.
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883	Rev. Proc. 67-10	Page 585.
884	Not in Bulletin.	
885	See Rev. Rul. 67-1	Page 28.
886	Rev. Proc. 67-11	Page 589.
887	Rev. Proc. 67-12	Page 589.
888	Rev. Proc. 67-13	Page 590.
889	Rev. Rul. 67-90	Page 79.
890	Rev. Proc. 67-16	Page 593.
891	Rev. Proc. 67-17	Page 595.
892	Rev. Rul. 67-107	Page 115.
893	Rev. Rul. 67-115	Page 30.
894	Not in Bulletin.	
895	Announcement 67-14	I.R.B. 1967-15, 34.
896	Rev. Rul. 67-122	Page 78.
897	Not in Bulletin.	
898	Rev. Rul. 67-146	Page 254.
899	Announcement 67-18	I.R.B. 1967-19, 43.
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901	Rev. Proc. 67-27	Page 630.
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903	See Announcement 67-24	I.R.B. 1967-23, 19.
904	Not in Bulletin.	
905	Announcement 67-23	I.R.B. 1967-23, 19.
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908	Not in Bulletin.	
909	Rev. Rul. 67-193	Page 306.

ABBREVIATIONS

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

A, *B*, *C*, *etc.*—The names of individuals.
A.R.R.—Committee on Appeals and Review recommendation.
A.T.—Alcohol and tobacco tax ruling.
B.T.A.—Board of Tax Appeals.
C.B.—Cumulative Bulletin.
C.F.R.—Code of Federal Regulations.
C.P.A.—Certified Public Accountant.
Ct. D.—Court Decision.
Del. Order—Delegation Order.
D.C.—Treasury Department circular.
E.O.—Executive Order.
E.T.—Estate and gift tax ruling.
Em. T.—Employment tax ruling.
F.A.A.A.—Federal Alcohol Administration Act.
F.I.C.A.—Federal Insurance Contributions Act.
F.R.—Federal Register.
F.U.T.A.—Federal Unemployment Tax Act.
G.C.M.—Chief Counsel's memorandum (formerly General Counsel's memorandum).
I.R.B.—Internal Revenue Bulletin.
IR-Mim.—Published IR-Mimeograph.
I.T.—Income tax ruling.
M, *N*, *X*, *Y*, *Z*, *etc.*—The names of corporations, places or businesses, according to context.
M.T.—Miscellaneous tax ruling.
Mim.—Published mimeograph.
O.D.—Office Decision.
P.L.—Public Law.
P.S.—Pension, profit-sharing, stock bonus or annuity plan ruling.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
R.S.—Revised Statute.
S.M.—Solicitor's Memorandum.
Sol. Op.—Solicitor's Opinion.
S.P.R.—Statement of Procedural Rules.
S.R.—Solicitor's Recommendation.
S.S.T.—Social Security Tax.
S.T.—Sales tax ruling.
Stat.—Statutes at Large.
T.C.—The Tax Court of the United States.
T.D.—Treasury Decision.
T.I.R.—Technical Information Release.
U.S.C.—United States Code.
x and *y* are used to represent certain numbers and when used with the word "dollars" represent sums of money.

FOREWORD

The Cumulative Bulletin is prepared in five parts, as follows:

I. Part I includes rulings and decisions which are based on the application of provisions of the Internal Revenue Code of 1954 other than those pertaining to alcohol, tobacco, and firearms taxes.

II. Part II includes rulings and decisions which are based on the application of the Internal Revenue Code of 1939, and other public laws, except those pertaining to the alcohol, tobacco, and firearms taxes.

III. Part III contains ruling and decisions pertaining to the alcohol, tobacco, and firearms taxes. This part is subdivided into three subparts according to alcohol tax matters issued under chapter 51 of the Internal Revenue Code of 1954 (Subpart A), tobacco tax matters issued under chapter 52 of the Internal Revenue Code of 1954 (Subpart B), and firearms tax matters issued under chapter 53 of the Internal Revenue Code of 1954 and under the Federal Firearms Act (Subpart C).

IV. Part IV contains treaties and tax legislation. This part is subdivided into two subparts according to tax conventions, Treasury Decisions, and Revenue Rulings issued with respect thereto (Subpart A), and Legislation (Subpart B).

V. Part V is devoted to administrative, procedural, and miscellaneous matters. To the extent practicable, pertinent cross references to these are contained in the other Parts and Subparts. The weekly Internal Revenue Bulletins contained Parts III–E and VI consisting of items of general interest; those items are not reproduced herein, other than the disbarment and suspension list, which has been incorporated in Part V of this Bulletin.

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 considered to be of general interest.

It is the policy of the Service to publish in the Bulletin all substantive and procedural rulings of importance or of general interest, the publication of which is considered necessary to promote a uniform application of the tax laws. It is also the policy to publish all rulings and statements of procedures which supersede, revoke, modify, or amend any published ruling or procedure. Except where otherwise indicated, published rulings and procedures apply retroactively. Rulings and statements of procedures relating solely to matters of internal management are not published. However, statements of internal practices and procedures affecting rights or duties of taxpayers, or industry regulation, which appear in internal management documents, are published.

Revenue Rulings and Revenue Procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations (including Treasury Decisions), but are published to provide precedents to be used in the disposition of other cases, and may be cited and relied upon for that purpose. No unpublished ruling or decision will be cited or relied upon by any officer or employee of the Internal Revenue Service as a precedent in the disposition of other cases.

Since each published ruling represents the conclusion of the Service as to the application of the law to the entire state of facts involved, Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same. In applying rulings and procedures published in the Bulletin, personnel of the Service and others concerned must consider the effect of subsequent legislation, regulations, court decisions, rulings, and procedures.

Internal Revenue Cumulative Bulletin 1967–1 contains all rulings, decisions, and procedures pertaining to Internal Revenue matters published in the weekly Internal Revenue Bulletins 1967–1 to 1967–26, inclusive, for the period January 1 to June 30, 1967. It also contains a cumulative list of announcements relating to decisions of the Tax Court of the United States published in the Internal Revenue Bulletins.

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

THE TAX COURT OF THE UNITED STATES

CUMULATIVE LIST OF ANNOUNCEMENTS RELATING TO DECISIONS OF THE TAX COURT OF THE UNITED STATES PUBLISHED IN THE INTERNAL REVENUE BULLETIN FROM JANUARY 1, 1967, TO JUNE 30, 1967, INCLUSIVE

It is the policy of the Internal Revenue Service to announce in the Internal Revenue Bulletin at the earliest practicable date the determination of the Commissioner to acquiesce or not acquiesce in a decision of the Tax Court of the United States which disallows a deficiency in tax determined by the Commissioner to be due. Notice that the Commissioner has acquiesced or nonacquiesced in a decision of the Tax Court relates only to the issue or issues decided adversely to the Government. Actions of acquiescences in adverse decisions shoud be relied on by Revenue officers and others concerned as conclusions of the Service only to the application of the law to the facts in the particular case. Caution should be exercised in extending the application of the decision to a similar case unless the facts and circumstances are substantially the same, and consideration should be given to the effect of new legislation, regulations, and rulings as well as subsequent court decisions and actions thereon. Acquiescence in a decision means acceptance by the Service of the conclusion reached, and does not necessarily mean acceptance and approval of any or all of the reasons assigned by the Court for its conclusions. No announcements are made in the Bulletin with respect to memorandum opinions of the Tax Court.

The announcements published in the weekly Internal Revenue Bulletins are consolidated semiannually and annually. The semiannual consolidation appears in the first Bulletin for July and in the Cumulative Bulletin for the first half of the year and the annual consolidation appears in the first Bulletin for the following January and in the Cumulative Bulletin for the last half of the year.

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Stoll, John G., estate, and Virginia D. Stoll [8]	77166	38	223
Toledo Trust Co., the, executor, estate of Allen D. Gutchess [1]	4926–63	46	554
Union Trust Co. of Pittsburgh, the executor, estate of James M. Schoonmayer, Jr.[1] [10]	5695	6	404
United States Asphalt Refining Co. and the Interocean Oil Co., dissolved, Sigurd N. Hersloff, et al., trustees for the stockholders	3540–65 3939–65	46	545
Vidgoff, Abe Frederick, transferee of assets of Macabe Co., Inc	4782–62	42	1105
Vidgoff, Sally Louise, transferee of assets of Macabe Co., Inc	4783–62		
Walker, Genevieve B	2018–64	46	630
Welsh Homes, Inc	69035	32	239
Wild, Ruth K	1427–63	42	706

The Commissioner does NOT ACQUIESCE in the following decisions:

Anderson, Charles N., et ux	4710–62	42	410
Bolnick, Ted, et ux.[12]	3503–62	44	245
Clay, Edward P., et ux	1006–64	46	505
Jackson Investment Co	94203	41	675
Lexington Herald-Leader Co.[13]	77167	38	223
Oakes, Alden B., et ux	494–64	44	524
Security Trust Co., executor, estate of John G. Stoll [13]	77166	38	223
Stoll, John G., estate, and Virginia D. Stoll [13]			
West Shore Co	94204	41	675

[1] Estate Tax decision.
[2] Acquiescence in the issue relating to the offset of a tax deficiency for the year 1954 to the extent of an alleged overpayment of taxpayer's 1954 income tax for which a refund was claimed in the tax return filed for that year.
[3] Acquiescence in the issue presented by Commissioner's amended answer as to the deductibility of taxpayer's claimed aggregate losses in excess of $8,400.
[4] Acquiescence limited to the finding that the present value of an annuity promised to be paid by petitioners should be adjusted to reflect payment in semiannual installments.
[5] Acquiescence in result only in issue No. 1. The Revenue Service accepts the result reached by the Tax Court because of the Court's finding that the actual market prices of flower bulbs imported were in excess of minimum prices fixed by Holland law, and the 6-percent handling charge was reasonable.
[6] See Rev. Rul. 67–189, page 255 this bulletin.
[7] Acquiescence in result only in the issue relating to the determination that the petitioner was actively engaged in a trade or business during 1958. Acquiescence "in result only" means acceptance of the decision of the Court but disagreement with some or all of the reasons assigned for the decision.

[8] Acquiscence in the issue whether there was a valid assumption of the taxpayer's indebtedness by the corporation so that principal and interest payments made by the corporation did not constitute distributions in the nature of dividends.

[9] Estate tax decision. Acquiescence in result only in the issue whether the addition to tax for fraud, computed under the Internal Revenue Code of 1939 is 50 percent of the deficiency rather than 50 percent of the entire tax. Acquiescence "in result only" means acceptance of the decision of the Court but disagreement with some or all of the reasons assigned for the decision.

[10] Nonacquiescence published in C.B. 1946–2, 7, is withdrawn and acquiescence in result only is substituted therefor. Acquiescence "in result only" means acceptance of the decision of the Court but disagreement with some or all of the reasons assigned for the decision.

[11] Nonacquiescence published in C.B. 1955–2, 11, is withdrawn and acquiescence is substituted therefor.

[12] Nonacquiescence in the issue relating to the taxation of gain realized upon the redemption, at full face value but prior to maturity, of debentures which had been issued to petitioners in 1953 at an original issue discount.

[13] Nonacquiescence in the issue whether the transfer of the assets of the taxpayer to a newly formed corporation in exchange for stock and the assumption of liabilities was a nontaxable exchange under section 112(b)(5) of the 1939 Code.

PART 1

RULINGS AND DECISIONS UNDER THE INTERNAL REVENUE CODE OF 1954, EXCEPT THOSE PERTAINING TO ALCOHOL, TOBACCO, AND FIREARMS TAXES

SUBTITLE A.—INCOME TAXES

CHAPTER 1.—NORMAL TAXES AND SURTAXES

SUBCHAPTER A.—DETERMINATION OF TAX LIABILITY

PART IV.—CREDITS AGAINST TAX

Subpart A.—Credits Allowable

SECTION 39.—CERTAIN USES OF GASOLINE AND LUBRICATING OIL

Treatment of amounts payable with respect to gasoline used on a farm for farming purposes which farmers may claim as a credit against their income tax for taxable years beginning after June 30, 1965. See Rev. Rul. 67–2, page 13.

Credit for Federal excise tax paid on gasoline used after June 30, 1965, for certain nonhighway purposes, or on lubricating oil used after December 31, 1965, otherwise than in a highway motor vehicle. See Rev. Rul. 67–28, page 359.

Subpart B.—Rules for Computing Credit for Investment in Certain Depreciable Property

SECTION 48.—DEFINITIONS; SPECIAL RULES

26 CFR 1.48–1: Definition of section 38 property. Rev. Rul. 67–23

An outdoor lighting facility used to illuminate recreational, entertainment and amusement areas, and the related parking areas, is generally an inherently permanent structure and not, therefore, "tangible personal property" within the meaning of section 1.48–1 (c) of the Income Tax Regulations.

Advice has been requested whether any or all parts of an outdoor lighting facility are "tangible personal property" within the meaning of section 1.48–1(c) of the Income Tax Regulations.

The facility consists of cement blocks, metal towers, lighting fixtures, transformers, and underground conduits. It was installed in such a manner as to make it easy to dismantle and remove. Parts of the facility were also attached to a building and to another structure because they were conveniently located. In general, the outdoor lighting facility is used to illuminate recreational, entertainment and amusement areas, and the related parking areas.

Section 1.48–1(c) of the regulations provides, in part, that the term "tangible personal property" means any tangible property except land and improvements thereto, such as buildings or *other inherently permanent structures* including their structural components. It further provides that local law shall not be controlling for purposes of determining whether property is tangible or personal.

The controlling factor in this case, for investment credit purposes, is not that the facility is annexed to the ground, or attached to a building or other structure in such a manner as to make its removal convenient but that the facility is an inherently permanent structure within the meaning of this section.

Accordingly, the outdoor lighting facility, including its component parts, as described and used above, is an inherently permanent structure and not, therefore, "tangible personal property" within the meaning of section 1.48–1(c) of the regulations.

Rev. Rul. 67–67

A floating dock, located in a yacht harbor, which primarily provides uncovered berthing facilities for rent to individual pleasure yacht and boatowners does not qualify as "section 38 property" for investment credit purposes.

Advice has been requested whether taxpayer's floating dock qualifies as "section 38 property" for investment credit purposes.

The dock, which is located in a yacht harbor, provides a walkway to the land and a number of uncovered berths, also referred to as slips. The berths are rented primarily to individual yacht and boatowners who are not in the transportation business. Prefabricated partitions are affixed to the walkway to form the berths, which have electrical and plumbing outlets. The entire floating dock is permanently anchored by guiding sliprings around fixed pilings which are driven into the harbor bottom. One of the primary advantages of this floating dock over a nonfloating dock is that it can rise and fall with the change in water level, so that a boat secured to the dock will always remain at the same level as the walkway.

Section 48 of the Internal Revenue Code of 1954 provides, in part, that for property to qualify as "section 38 property" for investment credit purposes, it must be either (1) "tangible personal property," or (2) "other tangible property" (not including a building or its structural components) but only if such other property is used as an integral part of manufacturing, production, or extraction, or as an integral part of furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services, or constitutes a research or storage facility used in connection with any of these activities.

"Tangible personal property," as defined in section 1.48–1(c) of the Income Tax Regulations, includes all tangible property except land and improvements thereto, such as buildings or other inherently permanent structures (including items which are structural components of such buildings or structures). In addition, all property which is in the nature of machinery (other than structural components of a building or inherently permanent structure), shall be considered "tangible personal property" even though located outside a building.

"Other tangible property," to qualify as "section 38 property," under section 1.48–1(d) of the regulations, as an integral part of furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services, must be property used in a trade or business of furnishing such services.

Whether the dock can qualify as "section 38 property" depends upon whether it can qualify as "tangible personal property," or as "other tangible property" used as an integral part of one of the specified activities. The floating dock will not qualify as "tangible personal property" if it is an inherently permanent structure within the meaning of section 1.48–1(c) of the regulations when placed in service. In this case, the dock and its anchorage were built to be used as a unit in place of a similar nonfloating berthing facility annexed to the ground. Therefore, by reason of its nature and use, regardless of how classified by local law, the dock is an inherently permanent structure and does not qualify as "tangible personal property." However, it may qualify as "other tangible property" under section 1.48–1(d) of the regulations if it is used as an integral part of one of the specified business activities listed within this section. In this case, however, the dock is not used as an integral part of one of the specified activities.

Accordingly, the taxpayer's floating dock is not "section 38 property" for investment credit purposes.

(Also Section 179; 1.179–3.) Rev. Rul. 67–156

A motor vehicle trailer used as a launderette is, under the facts stated, a building within the meaning of sections 1.48–1(e)(1) and 1.179–3(b) of the Income Tax Regulations and does not qualify either as "section 38 property" for the investment credit or as "section 179 property" for the additional first-year depreciation allowance.

The question has been asked whether, under the facts stated, a motor vehicle trailer located in a trailer park and used as a launderette will qualify as "section 38 property" for the investment credit allowed under section 38 of the Internal Revenue Code of 1954 and as "section 179 property" for the additional first-year depreciation allowance under section 179 of the Code.

Many trailer parks contain housetrailers of a permanent nature and also accommodate overnight parking of housetrailers for persons who are transient. Some of these trailer parks provide laundry facilities for their tenants in a building whereas others, as in this case, convert mobile type trailers to provide these facilities.

Generally, most trailers use the same kind of shell or skin, running gear, wheels, tires, frames, windows, roof, doorways, doors, etc. Therefore, the outward appearance of one trailer resembles that of another.

On the other hand, the interior fittings of trailers differ substantially, depending upon the purpose for which it is to be used. For example, an office trailer is usually equipped with office furniture, such as flattop desks, slanttop draftsman's tables, and similar items.

The launderette in the instant case is equipped with washing machines and dryers, appropriate water and electrical connections, and other equipment ordinarily found in a laundry. In this case, the trailer is used as a laundry building and as a permanent structure at its location in the trailer park.

A taxpayer is allowed under section 38 of the Code to claim a credit against his tax for his qualified investment in "section 38 property." This includes depreciable "tangible personal property" or certain depreciable "other tangible property" (other than buildings and their structural components), having a useful life of four years or more.

An asset which has mobility characteristics is not automatically excluded from the category of buildings for investment credit purposes. Its actual functional use rather than its possible use will be controlling. See section 1.48–1(e)(1) of the Income Tax Regulations which defines a building as any structure or edifice enclosing a space within its walls, and usually covered by a roof, the purpose of which is to provide shelter or housing or to provide working, office, parking, display, or sales space.

An asset which, in fact, is primarily used to provide living, working, office, parking, display, sales space, or any other similar use, as distinguished from its use in transporting persons, freight, or equipment, is generally included within the term "building" as used in section 1.48–1(e)(1) of the regulations. The fact that an asset, incidental to its primary use, may be moved from one location to another location does not detract from its primary use as a building.

Under section 179 of the Code, a taxpayer may elect, in the first taxable year for which a deduction for depreciation is allowed on "tangible personal property," an additional depreciation allowance of 20 percent of the cost of the property subject to certain limitations. Only depreciable "tangible personal property" which has a useful life of 6 years or more qualifies.

Section 1.179–3(b) of the regulations provides that local law definitions will not be controlling for purposes of determining the meaning of the term "tangible personal property." Land and land improvements such as buildings or other inherently permanent structures (including items which are structural components of such buildings or structures), are excluded from the term "tangible personal property."

For purposes of determining whether property qualifies as "section 179 property" the distinction between a land improvement and tangible personal property for a structure which is designed with mobility characteristics will depend on the relative permanence of the structure.

Accordingly, under the facts stated, the motor vehicle trailer used as a launderette is a building within the meaning of sections 1.48–1(e)(1) and 1.179–3(b) of the regulations and does not qualify either as "section 38 property" for the investment credit or as "section 179 property" for the additional first-year depreciation allowance.

SUBCHAPTER B.—COMPUTATION OF TAXABLE INCOME

PART I.—DEFINITION OF GROSS INCOME, ADJUSTED GROSS INCOME, AND TAXABLE INCOME

SECTION 61.—GROSS INCOME DEFINED

26 CFR 1.61–1: Gross income. Rev. Rul. 67–30
(Also Section 170; 1.170–2.)

The taxpayer, a retired executive, performs gratuitous services for an organization of the type described in section 170(c) of the Internal Revenue Code of 1954 and receives a per diem allowance to cover his reasonable travel expenses, including meals and lodging, while away from home in the performance of such services. *Held*, under the circumstances the per diem allowance is includible in gross income to the extent it exceeds the taxpayer's actual travel expenses. *Held further*, a deduction is allowable as a charitable contribution for his travel expenditures necessarily incurred incident to the rendition of the donated services only to the extent they exceed the amount of the per diem allowance.

Rev. Rul. 67–38

An individual is employed by a State agency which is not a covered employer under the State's unemployment compensation laws. Therefore, the individual is not entitled to statutory unemployment compensation coverage. However, as a result of a collective bargaining agreement, the State agency agrees to pay the individual an amount comparable to that provided under the State's unemployment compensation laws. *Held*, under such circumstances the individual is in receipt of gross income at such time as he receives the payment. This conclusion is in accordance with Revenue Ruling 56–249, C.B. 1956–1, 488, which holds that benefits paid to individuals by trustees of a trust created pursuant to the provisions of a supplemental unemployment benefit plan established by the *M* company pursuant to a collective bargaining agreement entered into with the *O* Labor Union are includible in gross income of such individuals for the year in which received.

Rev. Rul. 67–47

Sums received by a principal from his exclusive sales agent as a security deposit to insure the agent's performance under the terms of a contract are not includible in the gross income of the principal where he is under an obligation to repay such amounts upon the performance of the terms of the contract. The sales agent may not deduct these payments made during the period of the contract. However, the security deposit or the appropriate part thereof will be includible in the gross income of the principal in any year in which the agent defaults on the contract and the sums are, consequently, appropriated by the principal to cover such default. When such default occurs the sales agent may deduct such sums.

The Internal Revenue Service has been requested to state its position with respect to the treatment for Federal income tax purposes

of amounts received by an individual and paid by another as a security deposit which must later be returned to the payer if he does not default on his obligations under the agreement between the individuals.

An individual who owns certain trademarks, copyrights, and secret formulas, and has developed certain methods of operation with respect to a food business, entered into an agreement with another individual, whom he designated as his exclusive sales agent, to sell franchises.

Under the agreement, the agent is required to secure and write two franchise agreements a year for a period of 10 years and thereafter one franchise agreement each year. To secure the performance of his obligations under the agreement, the agent agreed to establish a security deposit with his principal, payable $25x$ dollars upon signing of the agreement and $5x$ dollars at the end of each calendar year thereafter until a total of $75x$ dollars has been established as a security deposit. If, at the end of 10 years after a total of $75x$ dollars has been on deposit as security, the agent performs his obligation under the agreement, the principal is required to return the entire security deposit to the agent.

Prior to any default by the agent, the sum is deposited with the principal who is not required to keep such funds in a separate account. However, if the agent defaults upon his obligations under the agreement, he will forfeit all or part of the security deposit made by him.

Provision is also made in the agreement whereby certain franchise fee payments to be received by the principal would be assigned to the agent if, at the time the security deposit is to be returned to him, the principal is unable to repay all or a portion of the security deposit.

Section 61(a) of the Internal Revenue Code of 1954 provides that gross income means all income from whatever source derived, including compensation for services, except as otherwise provided.

In the case of *John Mantell* v. *Commissioner*, 17 T.C. 1143, 1148 (1952), acquiescence, C.B. 1952–1, 3, the court held that the sum received by the lessor upon execution of a lease, as security for the lessees' performance of the terms of the lease, was not taxable income upon receipt where the lessor was under obligation to repay it unless in the meantime it should be appropriated to make good a default by the lessees.

A similar result was reached in the case of *Bradford Hotel Operating Co.* v. *Commissioner*, 244 F. 2d 876 (1957), vacating and remanding 26 T.C. 454 (1956), in connection with a security deposit made under a 35-year lease. In that case the lessor was given the right to commingle and use the security deposit for its own purposes without interest throughout the term of the lease and was obligated to return the security deposit to the lessee immediately upon the expiration of the lease or any extension or renewal thereof provided that the lessee had fulfilled all the obligations of the lease.

Although the above-cited cases concern security deposits made with regard to leased premises as opposed to contracts for service, the principles set forth in those cases are applicable to the facts in this case.

Accordingly, the sums received by the principal from his exclusive sales agent as a security deposit to insure the agent's performance un-

der the terms of a contract, are not includible in the gross income of the principal where he is under an obligation to repay such amounts upon the performance of the terms of the contract. The sales agent may not deduct these payments paid during the period of the contract. However, the security deposit or the appropriate part thereof will be includible in the gross income of the principal in any year in which the agent defaults on the contract and the sums are, consequently, appropriated by him to cover such default. When such default occurs the sales agent may deduct such sums.

(Also Section 72; 1.72–16.) Rev. Rul. 67–154

Where an insurer has published one-year term life insurance rates which are lower than those set forth in Revenue Ruling 55–747, C.B. 1955–2, 228, such rates may not be used to compute the one-year term cost of the insurance protection to which an employee is entitled from year to year under a "split dollar" arrangement with his employer or under a trust qualified under section 401(a) of the Internal Revenue Code of 1954 if these rates do not relate to initial issue insurance.

Revenue Ruling 66–110, C.B. 1966–1, 12, amplified.

Advice has been requested as to whether it is proper to substitute an insurer's published one-year term insurance rates for those set forth in Revenue Ruling 55–747, C.B. 1955–2, 228, in determining the cost of insurance under a "split dollar" arrangement or a trust qualified under section 401(a) of the Internal Revenue Code of 1954, where such published rates are applicable only under a dividend option whereby term insurance may be purchased with dividends on existing policies, and are lower than the premium rates charged by the insurer for other individual one-year term life insurance policies.

Revenue Ruling 66–110, C.B. 1966–1, 12, provides that in any case where the current published premium rates per $1,000 of insurance protection charged by an insurer for individual one-year term life insurance available to all standard risks are lower than those set forth in Revenue Ruling 55–747, such published rates may be used in place of the rates set forth in that Revenue Ruling for determining the cost of insurance in connection with individual policies issued by the same insurer and used for "split dollar" arrangements or held by trusts qualified under section 401(a) of the Code.

In referring to rates that may be substituted for the above purposes, Revenue Ruling 66–110 contemplates gross premium rates charged by an insurer for initial issue insurance, available to all standard risks. Dividend option rates such as those described in the first paragraph of this ruling are not available to all standard risks since an individual seeking to purchase only a basic policy of term insurance could not obtain it at those rates. Accordingly, such rates are not rates of the kind contemplated by Revenue Ruling 66–110, and for the purposes mentioned in that ruling may not be substituted for the rates set forth in Revenue Ruling 55–747.

Revenue Ruling 66–110 is hereby amplified.

Whether income is realized on obtaining an oil and gas lease of federally owned lands by means of a drawing conducted by the Bureau

of Land Management of the Department of the Interior of the United States. See Rev. Rul. 67–135, 20.

Amounts paid by a corporation to qualified religious, charitable, and educational organizations designated by its employees pursuant to a charitable designation plan. See Rev. Rul. 67–137, page 63.

Whether refunds by the Dominion of Canada of its Special Refundable Tax on certain corporations and trusts, and interest received in connection with such refunds, are includible in gross income. See Rev. Rul. 67–187, page 185.

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26 CFR 1.61–2: Compensation for services, including fees, commissions, and similar items. (Also Section 3401; 31.3401(a)–1.) Rev. Rul. 67–144

Payments for services performed made to individuals under a State welfare agency work relief program are compensation includable in gross income under section 61(a)(1) of the Internal Revenue Code of 1954 and are "wages" subject to the withholding of income tax under section 3402 of the Code. Cash or payments in kind, such as food and other items, not directly attributable to services performed, are not includable in gross income or subject to the withholding of income tax.

Advice has been requested whether, under the circumstances described below, payments made by a State welfare agency under its work relief program are includable in the gross income of the recipients for Federal income tax purposes and are "wages" subject to the withholding of income tax.

A State welfare agency adopted a work relief program whereby individuals on a welfare roll who are able to work are required to work on the public roads to repay the State for some of the allowance made to them for food, shelter, and sometimes clothing for themselves and their families. The services are performed under the immediate supervision of public road employees. However, the welfare agency makes the work assignments, determines the number of hours the individuals are to work, has full responsibility for them in case of injury, and makes the only payments they receive in connection with the work.

If an individual refuses an assignment, he must submit a medical report indicating he is unable to do the work. If the report is not submitted he receives no welfare payment for the scheduled time. The welfare agency schedules the maximum number of hours an individual can work each month and prescribes a fixed hourly rate. If, under prescribed standards, the welfare needs of the individual exceed payments to him for the maximum work hours scheduled, the welfare agency allows additional payments in cash or in kind, such as food and similar items, to make up the difference. A welfare recipient assigned to a work relief project receives no increase in the relief allowance he and his family are already receiving except in

cases where he has transportation expenses to and from work. In those cases an increase in the number of hours is allowed in order to cover the cost of transportation. However, welfare payments continue if the recipient is unable to work, and they continue if no assignment is available.

Section 61(a)(1) of the Internal Revenue Code of 1954 provides that, except as otherwise provided, gross income means all income from whatever source derived, including compensation for services. However, disbursements from a general welfare fund in the interest of the general welfare which are not made for services rendered are not includable in gross income. See Rev. Rul. 63–136, C.B. 1963–2, 19, and rulings cited therein.

Accordingly, payments made to the welfare recipients in question by the State welfare agency under its work relief program equal to the number of hours actually worked times the applicable hourly rate are compensation for services rendered and are includable in gross income under section 61(a)(1) of the Code.

Furthermore, under section 3401(a) of the Code (ch. 24, subtitle C), the term "wages" means, with certain exceptions not here material, all remuneration for services performed by an employee for his employer. Since the payments equaling the number of hours worked times the applicable hourly rate represent remuneration for services performed by an employee for his employer, they are "wages" subject to the withholding of income tax under section 3402 of the Code.

However, payments in excess of the amount determined by reference to the hours worked times the hourly rate and payments to recipients who perform no work, including cash or the value of food or other items, are not includable in gross income and are not "wages" subject to the withholding of income tax since such payments are in the nature of welfare payments.

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26 CFR 1.61–3: Gross income derived from business.

Treatment of expenditures for stripping overburden to expose a mineral deposit for extraction on a continuing basis. See Rev. Rul. 67–169, page 159.

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26 CFR 1.61–4: Gross income of farmers. (Also Sections 39, 451, 1402, 6420; 1.451–1, 1.1402(a)–1, 48.6420(b)–1.) Rev. Rul. 67–2

Where a farmer's income is computed under the cash receipts and disbursements method of accounting, the amount of the credit allowable to the farmer for gasoline used on a farm for farming purposes after June 30, 1965, as provided by section 39 of the Internal Revenue Code of 1954, added by the Excise Tax Reduction Act of 1965, Public Law 89–44, C.B. 1965–2, 568, should be included in his gross income for the year in which the farmer files a timely return on which the credit is taken. Where a farmer is under the accrual method of accounting, the amount of the credit should be included in his gross income for the taxable year in which the gasoline is used. The foregoing conclusions apply both for purposes of determining a farmer's net farm profit or loss and for determining his net earnings from self-employment under either the regular or the optional method.

Advice has been requested concerning the treatment of the amounts payable with respect to gasoline used on a farm for farming purposes which farmers may claim as a credit against their income tax, as provided by the Excise Tax Reduction Act of 1965, Public Law 89–44, C.B. 1965–2, 568, for taxable years beginning after June 30, 1965.

Section 39 of the Internal Revenue Code of 1954, added by section 809 of the Excise Tax Reduction Act, provides, in part, as follows:

> There shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the sum of the amounts payable to the taxpayer * * * under section 6420 with respect to gasoline used during the taxable year on a farm for farming purposes * * *.

For this purpose, section 39(b) of the Code provides that a taxpayer's first taxable year beginning after June 30, 1965, shall include the period after that date and before the beginning of such first taxable year. The amount payable to the farmer under section 6420 of the Code is measured by multiplying (1) the number of gallons of gasoline used on his farm for farming purposes by (2) the rate of Federal gasoline tax imposed by section 4081 of the Code which applied on the date he purchased such gasoline. The credit can be allowed only if it is claimed on a timely filed income tax return including any extension of time for filing.

Specifically, advice is requested as to the reporting of the above credit, for income tax purposes, on Schedule F, Schedule of Farm Income and Expenses, and for computing farm net earnings from self-employment under either the regular or optional methods available to farmers for reporting such net earnings.

A farmer whose income is computed on the cash receipts and disbursements method should include the amount of the credit in his gross income for the taxable year in which he files a timely income tax return on which the credit is taken. For example, if the farmer on February 15, 1967, files his income tax return for the calendar year 1966, he may take on that return a gasoline tax credit based on the quantity of gasoline used on his farm for farming purposes during the period July 1, 1965, through December 31, 1966, and the amount of the credit so taken is to be included in his gross income for the calendar year 1967.

A farmer whose income is computed under the accrual method should include the amount of the credit in his gross income for the taxable year in which the gasoline is used. For example, if the farmer using the accrual method files a timely income tax return for the calendar year 1966, he may take on that return a gasoline tax credit based on gasoline used on his farm for farming purposes during the period July 1, 1965 through December 31, 1966. However, the amount of the credit attributable to gasoline used in the period July 1, 1965 through December 31, 1965, should be included in his gross income for 1965; and the amount attributable to the year 1966 should be included in his gross income for 1966.

The conclusions set forth in the two preceding paragraphs are applicable both for the purpose of determining a farmer's net farm profit or loss and for determining his net earnings from self-employment under either the regular or the optional method of determining net earnings from self-employment.

26 CFR 1.61–9: Dividends.

Conditions under which the Internal Revenue Service will issue rulings on waiver of dividends transactions. See Rev. Proc. 67–14, page 591.

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26 CFR 1.61–12: Income from discharge of indebtedness. Rev. Rul. 67–200
(Also Sections 108, 111, 1017; 1.108(a)–1, 1.111–1, 1.1017–1.)

During prior years a taxpayer using the accrual method of accounting deducted on his Federal income tax return interest accrued on his indebtedness. The interest so accrued was not paid. During 1965, the obligation to pay the accrued interest was forgiven resulting in the realization of income by the taxpayer for that year. The taxpayer was solvent both before and after the forgiveness of the interest indebtedness.

Held, in computing gross income of the taxpayer for the taxable year of the forgiveness, the amount of interest forgiven shall first be excluded from gross income to the extent of the recovery exclusion, if any, computed under section 111 of the Internal Revenue Code of 1954 and section 1.111–1 of the Income Tax Regulations. Any part of the interest forgiven which is not excluded from gross income under section 111 of the Code, may be excluded from gross income under section 108 of the Code for the taxable year of forgiveness provided there is filed, in accordance with section 1.108(a)–2 of the regulations, a consent to the adjustment of the basis of the taxpayer's property. The basis of the property shall be reduced in accordance with section 1017 of the Code and section 1.1017–1 of the regulations. However, the amount of the interest forgiven which is excludable under section 108 of the Code cannot exceed the basis of the taxpayer's property which is being adjusted. Thus, any portion of such amount which exceeds the basis is includable in gross income under section 61(a)(12) of the Code.

PART II.—ITEMS SPECIFICALLY INCLUDED IN GROSS INCOME

SECTION 71.—ALIMONY AND SEPARATE MAINTENANCE PAYMENTS

26 CFR 1.71–1: Alimony and separate maintenance payments; income to wife or former wife. Rev. Rul. 67–11
(Also Section 215; 1.215–1.)

Where an absolute decree of divorce adopts by reference the provisions of a prior decree for maintenance and support, payments made pursuant to the final decree are within the scope of section 71(a) of the Internal Revenue Code of 1954. Where a lump-sum payment is made to satisfy the obligations under the original decree and the payment is smaller than the aggregate amount due, such payment is arrearages of alimony taxable to the wife and deductible by the husband.

Advice has been requested whether a divorce decree adopts a maintenance decree of another court where the divorce decree reserves for future consideration matters respecting maintenance, support, and alimony in the event of the failure of the husband to comply with the earlier maintenance decree, and whether a lump-sum payment made under an agreement to satisfy past, present, and future obligations under the decree is payment of arrearages of alimony.

The wife in the instant case was separated from her husband and obtained a judgment and decree on January 19, 1961, under which she was awarded custody of the minor child and $5x$ dollars per month for maintenance and support, none of which was earmarked for the child. Later the wife obtained an absolute divorce from a court in another jurisdiction. In the final decree the court reserved for future consideration matters respecting the custody of the child, maintenance, support, and alimony in the event of the failure of the husband to comply with the provisions of the decree of the first court. As a result of various differences and disputes, the husband had paid some but had refused to pay the full amounts ordered by the first court, which resulted in arrearages under the order to pay maintenance.

Subsequent to the final decree, an agreement was accepted by the wife and approved by the court, wherein the husband agreed to pay the sum of $150x$ dollars in full settlement of all differences between the parties, including the matters of custody, maintenance, support, and alimony whether past, present, or future. This sum was less than the arrearages in the support payments.

Section 71(a)(1) of the Internal Revenue Code of 1954 provides in part that, if a wife is divorced or legally separated from her husband under a decree of divorce or of separate maintenance, the wife's gross income includes periodic payments received after such decree in discharge of a legal obligation which, because of the marital or family relationship, is imposed on or incurred by the husband under the decree or under a written instrument incident to such divorce or separation.

Under section 71(a)(2) of the Code, if a wife is separated from her husband and there is a written separation agreement executed after August 16, 1954, the wife's gross income includes periodic payments received after such agreement is executed which are made under such agreement and because of the marital or family relationship, except where the husband and wife make a single return jointly.

Under section 71(a)(3) of the Code, if a wife is separated from her husband, the wife's gross income includes periodic payments received by her after August 16, 1954, from her husband under a decree entered after March 1, 1954, requiring the husband to make the payments for her support or maintenance, except where the husband and wife make a single return jointly.

The judgment and decree of the first court provided for maintenance and support, but was not a decree of divorce or legal separation. However, the decree of the second court was an absolute decree of divorce, and this decree adopted by reference the provisions of the prior decree for maintenance. Therefore, payments made subsequent to the divorce decree are within the scope of section 71(a) of the Code.

Revenue Ruling 55–457, C.B. 1955–2, 527, holds that the part of the lump-sum payment made to a wife under an agreement with the

executor of the estate of her divorced husband, representing arrearages in periodic payments required by an amended decree of divorce, constitutes "periodic payments" includible in the gross income of the wife in the year of receipt. Where a lump sum is paid in settlement of arrearages in alimony the payment retains the character of the original payments for which it is substituted and if the latter qualified as "periodic payments", the former does also.

Alimony payments are deductible by the husband under section 215 of the Code if they are taxable to the wife under the provisions of section 71 of the Code. Inasmuch as the lump-sum payment in the instant case is less than the arrearages in the support payments, this entire lump-sum payment will be considered settlement of arrearages. This follows the rationale in the case of *Estate of Harold W. Ross* v. *Commissioner*, 18 T.C. 1013 (1952), acquiescence, C.B. 1954–1, 6, consolidated for trial with the case of *Jane C. Grant* v. *Commissioner*, 18 T.C. 1013 (1952), affirmed 209 F. 2d 430 (1954), where the court held that the full amount paid to the wife was deductible by the husband even though it was paid in settlement of future claims as well as in settlement of past and present obligations to pay.

Accordingly, the entire lump-sum payment of $150x$ dollars, made in this case under an agreement to satisfy past, present, and future obligations under the divorce decree, is a payment of arrearages in alimony, which is taxable to the wife and deductible by the husband, since such lump-sum payment is less than the aggregate amount of the arrearages.

SECTION 72.—ANNUITIES; CERTAIN PROCEEDS OF ENDOWMENT AND LIFE INSURANCE CONTRACTS

26 CFR 1.72–2: Applicability of section. Rev. Rul. 67–179
(Also Section 402; 1.402(a)–1.)

> The retirement allowance received under a State employees' retirement system, consisting of both (1) an "annuity" derived from employees' contributions, and (2) a "pension" derived from employer contributions, is attributable to but one "separate program of interrelated contributions and benefits" as that term is used in section 1.72–2 of the Income Tax Regulations, and is viewed as received under a single contract for purposes of determining whether a participant's contributions will be recovered within the 3-year period provided in section 72(d) of the Internal Revenue Code of 1954.

Advice has been requested with respect to the applicability of section 72(d) of the Internal Revenue Code of 1954 to certain distributions from a qualified State employees' retirement system.

The retirement system provides for payment of a retirement allowance consisting of (1) an "annuity" derived from contributions made by the employee and (2) a "pension" derived from contributions made by the employer. The retirement allowance is distributable to a participant upon his retirement at age 60. The "annuity" portion represents the actuarial equivalent (in continuing periodic payments) of his accumulated contributions at the time of his retirement. The "pension" portion is a stipulated percentage of his final average salary multiplied by his years of service. The retirement system provides for

the payment of these benefits under various settlement options. To receive any benefits under the retirement system, an employee who has elected to contribute to the "annuity" portion must make the required contributions thereto or forfeit both the "annuity" and "pension" portions.

In the instant case a distributee received a retirement allowance consisting of an "annuity" of $20x$ dollars per year for life and a "pension" of $20x$ dollars per year for life. The employee's consideration for the contract amounted to $100x$ dollars.

Section 402(a)(1) of the Code provides that certain distributions by exempt employees' trusts are taxable under section 72. For purposes of applying section 72 of the Code to such distributions, section 1.72–2(a)(3)(i) of the Income Tax Regulations provides, in part, that each separate program of the employer consisting of interrelated contributions and benefits shall be considered a single contract. Section 1.72–2(a)(3)(ii) of the regulations lists definitely determinable retirement benefits as one example of a separate program of interrelated contributions and benefits.

Section 72(d) of the Code provides that where part of the consideration for an annuity, endowment, or life insurance contract is contributed by the employer, and, during the 3-year period beginning on the date on which an amount is first received under the contract as an annuity, the aggregate amount receivable by the employee under the terms of the contract is equal to or greater than the consideration for the contract contributed by the employee, then all amounts received as an annuity under the contract shall be excluded from gross income until there has been so excluded an amount equal to the consideration for the contract contributed by the employee. Thereafter all amounts so received under the contract shall be included in gross income.

The retirement allowance of $40x$ dollars per year, which is the sum of the "annuity" and "pension" portions, is a definitely determinable retirement benefit. In addition, since, under the facts the contributions and benefits relating to the "annuity" and "pension" portions are interrelated, the retirement allowance as a whole is held to be attributable to a separate program of interrelated contributions and benefits and is treated as received under a single contract. It is further held that, since the aggregate amount of $120x$ dollars to be received by the distributee during the 3-year period beginning on the date the first payment is received as an annuity under the contract will exceed the total amount of $100x$ dollars (the employee's consideration for the contract), section 72(d) of the Code is applicable to the amounts to be received. Accordingly, each annuity payment must be excluded from the distributee's gross income until there has been so excluded the total amount equal to the employee's consideration for the contract, after which all amounts so received will be includible in gross income.

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26 CFR 1.72–6: Investment in the contract. (Also Sections 2031, 2512; 20.2031–7, 25.2512–5.) Rev. Rul. 67–39

The annuity tables contained in Revenue Ruling 62–216, C.B. 1962–2, 30, prescribe a standard to be used in valuing annuity contracts

issued from time to time by an organization such as a corporation, trust, fund or foundation (other than a commercial insurance company) in exchange for money or other property. Such tables are to be used for estate and gift tax purposes and for income tax purposes with respect to annuity contracts so issued as well as for purposes of section 72 of the Internal Revenue Code of 1954.

Revenue Ruling 62–216, C.B. 1962–2, 30, clarified.

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26 CFR 1.72–16: Life insurance contracts purchased under qualified employee plans.

Rates not usable for computing one-year term premiums in determining the amount required to be included in the income of an employee on account of current life insurance protection provided under qualified employee plans. See Rev. Rul. 67–154, page 11.

SECTION 74.—PRIZES AND AWARDS

26 CFR 1.74–1: Prizes and awards. Rev. Rul. 67–40

The television set an individual taxpayer was permitted to purchase for a nominal price, as a result of winning a contest, is a prize within the meaning of section 74(a) of the Internal Revenue Code of 1954. The amount to be included in the taxpayer's gross income is the difference between the fair market value of the television set and the price he paid.

Advice has been requested whether an individual taxpayer is in the receipt of gross income for Federal income tax purposes under the following circumstances.

The taxpayer removed a coupon from a department store's newspaper advertisement and, in compliance with the instructions in the advertisement, redeemed the coupon at the store for a numbered certificate. The rules of participation were printed on the face of the certificate and provided that if the holder of a certificate matched his certificate number with the number posted on an item of merchandise in the store, the holder was entitled to purchase the item for the price listed on the back of the certificate. The posted numbers were changed daily during the sale. In each case the item price listed on the back of the certificate was a small fraction of its fair market value.

The taxpayer searched the store for the numbered items and discovered that his certificate number matched that posted on a television set. He purchased the set for the price listed on the back of the certificate.

Section 74(a) of the Internal Revenue Code of 1954 provides, in pertinent part, that gross income includes amounts received as prizes and awards.

Section 1.74–1(a)(2) of the Income Tax Regulations provides that if the prize or award is not made in money but is made in goods or services, the fair market value of the goods or services is the amount to be included in gross income.

The difference between the fair market value of the television set and the price the taxpayer paid for it is a prize within the meaning of

section 74(a) of the Code and is the amount the taxpayer is required to include in his gross income for Federal income tax purposes.

(Also Section 3401; 31.3401(a)–1.) Rev. Rul. 67–89

Awards received by army nurses, selected by the senior officers of a certain army hospital for outstanding performance in connection with their employment, from a fund contributed to the Department of the Army by an individual for the purpose of making such awards, are amounts received from their employer, and are includible in the gross income of the recipients for Federal income tax purposes under section 74(a) of the Internal Revenue Code of 1954.

Advice has been requested with respect to the Federal tax treatment of awards made to certain army nurses selected by the senior officers of a certain army hospital in recognition of outstanding performance in connection with their employment, where the awards are paid from a fund contributed to the Department of the Army for the sole purpose of making such awards.

In the instant case, an individual made a substantial gift of money to the Department of the Army in memory of his late wife who had been an army nurse. The gift was accepted pursuant to section 2601 of Title 10 of the United States Code and was used to establish an award for the use and benefit of nurses assigned to a certain army hospital. As a condition of the gift, all or a portion of the earnings of the gift is to be awarded annually to one or more of the nurses assigned to the hospital, selected by the senior officers of the particular hospital, for outstanding performance in connection with their employment.

Under the provisions of section 74(a) of the Internal Revenue Code of 1954, gross income includes amounts received as prizes and awards. Section 1.74–1(b) of the Income Tax Regulations provides, in part, that prizes and awards from an employer to an employee in recognition of some achievement in connection with his employment are not excludable from gross income.

The awards were made by the Department of the Army, as employer, to the recipients, as employees. Consequently, the awards received by the army nurses selected by the senior officers of a certain army hospital for outstanding performance in connection with their employment, from a fund contributed to the Department of the Army by an individual for the purpose of making such awards, are includible in the gross income of the recipients for Federal income tax purposes under section 74(a) of the Code. Such awards are wages within the meaning of section 3401(a) of the Code and are subject to withholding of Federal income tax.

(Also Section 61; 1.61–1.) Rev. Rul. 67–135

An amount equal to the difference, if any, between the fair market value and the cost of a lease obtained by a taxpayer by means of a drawing conducted by the Bureau of Land Management of the Department of the Interior of the United States is not a prize under

the provisions of section 74(a) of the Internal Revenue Code of 1954. This amount is not includible in the taxpayer's gross income under section 61 of the Code when he obtains the lease.

Advice has been requested whether a taxpayer, under the circumstances described below, is in receipt of gross income, either within the meaning of section 74(a) of the Internal Revenue Code of 1954, or under section 61 of the Code.

Periodically the public is offered the opportunity to lease oil and gas rights to certain federally owned lands. The lands are administered by the Department of the Interior of the United States through its Bureau of Land Management and the leases are issued pursuant to the authority of the Mineral Leasing Act of 1920, Public Law 146, 66th Congress, 30 U.S.C. 181, as amended.

The Bureau of Land Management posts a list of the tracts of land when they become available for leasing. The lands posted are not within any known geological structure of a producing oil and gas field and are leased without competitive bidding. Any citizen of the United States who has reached the age of 21 years may file, on a drawing entry card, one offer to lease for each tract of land in which he is interested. Each offer to lease must be accompanied by the payment of the standard filing fee and the payment of the first year's rental. The Bureau of Land Management retains all filing fees but returns the rental payments to the applicants who are not selected. Each applicant, when he submits an offer, agrees that he will be bound to a lease if his offer is chosen for acceptance.

If a qualified applicant's offer to lease a tract of land is the only offer filed on that tract, his offer is accepted. However, when the lands available for leasing are posted it is not unusual that more than one applicant will file an offer to lease the same tract of land. When this occurs, the lessee is determined by a drawing.

Section 74(a) of the Code provides, in part, that gross income includes amounts received as prizes.

Section 61(a) of the Code provides, in part, that except as otherwise provided by law, gross income means all income from whatever source derived.

The facts and circumstances surrounding the issuance of these oil and gas leases indicate that the drawing is used merely as an impartial method of selecting a lessee from the qualified applicants.

Accordingly, the difference, if any, between the fair market value and the cost of a lease obtained by a taxpayer under these circumstances is not a prize under the provisions of section 74(a) of the Code, and such difference is not includible in the taxpayer's gross income under section 61(a) of the Code when he obtains the lease.

Whether a minor-winner of the prize fund of the Irish Hospitals' Sweepstakes is in receipt of income when the prize fund is held by the Irish court. See Rev. Rul. 67–203, page 105.

SECTION 79.—GROUP-TERM LIFE INSURANCE PURCHASED FOR EMPLOYEES

26 CFR 1.79–2: Exceptions to the rule of inclusion. T.D. 6919

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 1.—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Definition of "retirement age"

DEPARTMENT OF THE TREASURY,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D.C. 20224

To Officers and Employees of the Internal Revenue Service and Others Concerned:

In order to clarify the definition of "retirement age" applicable to the Income Tax Regulations (26 CFR Part 1) under sections 79(b)(1) and 105(d) of the Internal Revenue Code of 1954, such regulations are amended as follows:

Paragraph (b)(3)(i)(*a*)(*1*) of § 1.79–2 is amended to read as follows:

§ 1.79–2 EXCEPTIONS TO THE RULE OF INCLUSION.

* * * * * * *

(b) *Retired and disabled employees.* * * *
(3) *Retirement age.* * * *
(i)(*a*) * * *
(*1*) The earliest age indicated by such plan at which an active employee has the right (or an inactive individual would have the right had he continued in employment) to retire without disability and without the consent of his employer and receive immediate retirement benefits computed at either the full rate or a rate proportionate to completed service as set forth in the normal retirement formula of the plan, i.e., without actuarial or similar reduction because of retirement before some later specified age, or

* * * * * * *

Because this Treasury decision is of a clarifying nature, it is found that it is unnecessary to issue this Treasury decision with notice and public procedure thereon under section 553(b) of title 5 of the United States Code, or subject to the effective date limitation of subsection (d) of such section.

(This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

SHELDON S. COHEN,
Commissioner of Internal Revenue.

Approved May 15, 1967.

STANLEY S. SURREY,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on May 17, 1967, 8:49 a.m., and published in the issue of the Federal Register for May 18, 1967, 32 F.R. 7390)

PART III.—ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

SECTION 108.—INCOME FROM DISCHARGE OF INDEBTEDNESS

26 CFR 1.108(a)-1: Income from discharge of indebtedness.

Interest forgiven, the amount of which exceeds the basis of the taxpayer's property. See Rev. Rul. 67-200, page 15.

SECTION 111.—RECOVERY OF BAD DEBTS, PRIOR TAXES AND DELINQUENCY AMOUNTS

26 CFR 1.111-1: Recovery of certain items previously deducted or credited.

Interest forgiven for which deductions were claimed in prior years. See Rev. Rul. 67-200, page 15.

SECTION 112.—CERTAIN COMBAT PAY OF MEMBERS OF THE ARMED FORCES

26 CFR 1.112: Statutory provisions; certain combat pay of members of the Armed Forces. T.D. 6906 [1]

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 1.—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Combat pay exclusion

DEPARTMENT OF THE TREASURY,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE.
Washington, D.C., 20224

To Officers and Employees of the Internal Revenue Service and Others Concerned:

In order to conform the Income Tax Regulations (26 CFR Part 1) under section 112 of the Internal Revenue Code of 1954 to the Act of November 2, 1966 (Public Law 89-739, 80 Stat. 1165) [C.B. 1966-2, 647], such regulations are amended as follows:

PARAGRAPH 1. Section 1.112 is amended by revising so much of section 112(b) as precedes paragraph (1) to read as follows:

§ 1.112 STATUTORY PROVISIONS; CERTAIN COMBAT PAY OF MEMBERS OF THE ARMED FORCES.

SEC. 112. CERTAIN COMBAT PAY OF MEMBERS OF THE ARMED FORCES. * * *

(b) COMMISSIONED OFFICERS.—Gross income does not include so much of the compensation as does not exceed $500 received for active service as a commissioned officer in the Armed Forces of the United States for any month during any part of which such officer—

* * * * * * *

[1] 31 F.R. 16615.

[Sec. 112 as amended by sec. 1, Act of Nov. 2, 1966 (Pub. Law 89–739, 80 Stat. 1165 [C.B. 1966–2, 647]]

PAR. 2. Section 1.112–1 is amended by revising paragraphs (a) (2) and (h) to read as follows:

§ 1.112–1 COMPENSATION OF MEMBERS OF THE ARMED FORCES OF THE UNITED STATES FOR SERVICE IN A COMBAT ZONE DURING AN INDUCTION PERIOD, OR FOR SERVICE WHILE HOSPITALIZED AS A RESULT OF SUCH COMBAT-ZONE SERVICE.

(a) In addition to the exemptions and credits otherwise applicable, section 112 provides that there shall be excluded from gross income:

* * * * * * *

(2) In the case of compensation received for active service as a commissioned officer in the Armed Forces of the United States for any month during any part of which such officer (i) served in a combat zone during an induction period, or (ii) was hospitalized at any place as a result of wounds, disease, or injury incurred while so serving; *provided* that during all of such month there are combatant activities in some combat zone, so much of such compensation as does not exceed—

(i) $500, received in taxable years ending after December 31, 1965, for periods of active service after that date, and

(ii) $200, whenever received, for periods of active service before January 1, 1966, or, received in taxable years ending before that date, for periods of active service on or after that date.

* * * * * * *

(h) These exclusions are applicable without regard to the marital status of the recipient of the compensation, and if a husband and wife both meet the requirements of the statute, then each is entitled to the benefit of an exclusion. In the case of a husband and wife domiciled in a State recognized for Federal income tax purposes as a community property State, any exclusion from gross income under section 112 operates before apportionment of the gross income of the spouses in accordance with community property law. For example, a man and his wife are domiciled in a community property State and he is entitled, as a commissioned officer, to the benefit of the exclusion under section 112(b) of $500 for each month, with respect to compensation received in taxable years ending after December 31, 1965, for periods of active service after that date. He receives $2,100 as compensation for such active service for three months in a combat zone. Of such amount, $1,500 is excluded from gross income under section 112(b) and only $600 is taken into account in determining the gross income of both husband and wife.

* * * * * * *

Because the amendments made by this Treasury Decision make only those changes in the Income Tax Regulations which are necessary to reflect the statutory change in the amount of the exclusion from $200 per month to $500 per month, it is hereby found that it is unnecessary to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of that act.

(This Treasury Decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805)).

SHELDON S. COHEN,
Commissioner of Internal Revenue.

Approved December 22, 1966.

STANLEY S. SURREY,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on Dec. 28, 1966, 8:47 a.m., and published in the issue of the Federal Register for Dec. 29, 1966, 31 F.R. 16615)

SECTION 117.—SCHOLARSHIPS AND FELLOWSHIP GRANTS

26 CFR 1.117–3: Definitions. Rev. Rul. 67–85

An additional amount made available to an educational institution by the grantor of a fellowship award for expenses incurred in the training of the recipient of the award is considered to be in the nature of tuition, and, as such, is part of the recipient's fellowship grant. The total amount of the award granted, including the additional amount, is excludable from the recipient's gross income to the extent of the limitation provided in section 117(b)(2)(B) of the Internal Revenue Code of 1954.

Advice has been requested whether any portion of an additional amount made available by the grantor of a fellowship award to defray expenses involved in the training of the fellowship recipient is excludable from the recipient's gross income.

The taxpayer, who was not a candidate for a degree, was awarded a 1-year research fellowship grant by an organization described in section 501(c)(3) of the Internal Revenue Code of 1954, which is exempt from tax under section 501(a) of the Code. The grant was made for study in advanced orthopedics at an institute of orthopedics associated with a university hospital in a foreign country. In addition, the grantor made available to the institute a fixed sum to be used as compensation for the expenses involved in training the recipient. No specific designation was made as to the character of the expenses to be covered by this amount. It was, however, provided that at the discretion of the director of studies, who was the counselor of the grantee, a portion of the amount could be used to pay the cost of the grantee's travel to scientific meetings. Tuition and fees, if required to be paid to the institute, were deductible from the amount made available to the institute by the grantor as before stated, and were to be paid directly to the institute by the grantor.

The grantee was not required to perform services for the institute or the hospital. However, as a part of his training, he was to examine patients selected by the director of studies and might, under supervision, occasionally operate on such a patient. He was not to be responsible for preoperative or postoperative care. The areas of study and research were selected jointly by the grantee and his counselor. These areas were chosen solely for their value in advancing the grantee's knowledge and training. The grantor did not derive any direct benefits from such program of study and research nor did it award the grant to the grantee for past, present, or futue employment services.

Section 117(a)(1)(B) of the Code provides that in the case of an individual gross income does not include any amount received as a fellowship grant, including the value of contributed services and accommodations. In the case of a taxpayer not a candidate for a degree, section 117(b)(2)(B) of the Code limits the amount of the fellowship grant excluded under section 117(a)(1) of the Code in any taxable year to an amount equal to $300 times the number of months for which the taxpayer received amounts under the fellowship during the taxable year, up to a period of 36 months, whether or not consecutive.

Section 117(a)(2) of the Code provides that gross income does not include any amount received to cover expenses for travel, research,

clerical help, or equipment which are incident to a fellowship grant, to the extent that the amount is so expended by the recipient. A further requirement for the exclusion is that at the time of the grant the amount must be specifically designated to cover such expenses. Section 1.117–1(b)(2)(i) of the Income Tax Regulations.

Under section 1.117–3(c) of the regulations, the term "fellowship grant" is defined generally as an amount paid or allowed to, or for the benefit of an individual to aid him in the pursuit of study or research. That term includes the amount of the tuition, matriculation, and other fees which are furnished or remitted to an individual to aid him in the pursuit of study or research. In the instant case, the additional amount awarded was intended primarily to cover the expenses incurred by the institute in training the grantee. While discretion was given to the grantee's counselor to allow the use of a part of the amount for traveling to scientific meetings, there was no obligation so to use any part of the amount; nor was any particular sum specified for that purpose. It is clear, therefore, that no amount was "specfically designated" to cover travel expenses within the meaning of section 1.117–1(b)(2)(i) of the regulations. Consequently no part of the additional amount qualifies as a sum received to cover expenses for travel pursuant to section 117(a)(2) of the Code.

Because the discretionary authority to spend some of the additional amount on travel was vested in an official of the educational institution whose primary responsibility was to see that the institution recovered its educational costs and because the authority was limited to a portion of the additional amount, it is considered that the existence of such discretionary authority does not change the primary character or purpose of the additional amount. Since the additional amount was granted primarily to cover the expense incurred by an educational institution in training a student, such amount would appear to be in the nature of tuition (payment for instruction) and thus a part of the fellowship grant as defined by section 1.117–3(c) of the regulations.

Accordingly, the entire award (including the additional amount) is a fellowship grant within the meaning of section 117(a)(1)(B) of the Code, and is excludable from the grantee's gross income subject to the limitations prescribed in section 117(b)(2)(B) of the Code.

PART V.—DEDUCTIONS FOR PERSONAL EXEMPTIONS

SECTION 151.—ALLOWANCE OF DEDUCTIONS FOR PERSONAL EXEMPTIONS

26 CFR 1.151–2: Additional exemptions for dependents.

Dependency exemption for a parent who is in a mental institution. See Rev. Rul. 67–61, page 27.

SECTION 152.—DEPENDENT DEFINED

26 CFR 1.152–1: General definition of a dependent. Rev. Rul. 67–61
(Also Section 151; 1.151–2.)

A taxpayer whose mother is confined in a mental institution under an agreement in which the taxpayer promised to pay a specified amount per year for her support, and to pay the remainder of her support if and when it is possible for him to do so, will not be considered to have supplied the unpaid remainder of her support.

Revenue Ruling 58–404, C.B. 1958–2, 56, clarified.

Advice has been requested whether a taxpayer will be considered to have supplied his mother's support for 1965, where she is confined in a mental institution under an agreement in which the taxpayer promised to pay $6x$ dollars per year to the institution for her support, and to pay the remainder of her support ($10x$ dollars per year) if and when it is possible for him to do so. Taxpayer paid $6x$ dollars toward his mother's support in 1965. The remainder of her support for the year ($10x$ dollars) was supplied by the institution.

Where the taxpayer has neither furnished in kind nor paid for the support received during the calendar year by the individual he claims as a dependent, the following requirements must be met in order for him to be considered as having provided support: (1) The taxpayer must take affirmative steps to provide support for an individual he claims as his dependent; and (2) incur an unconditional obligation to pay for the items of support. *John L. Donner*, 25 T.C. 1043 (1956), illustrates the principle that section 152(a) of the Internal Revenue Code of 1954 requires something more than a taxpayer's unfulfilled duty or obligation to pay items of support in order to have them considered received from him.

A promise to pay for support, if and when it is possible to do so, is not an unconditional obligation for payment. Accordingly, a taxpayer, whose mother is confined in a mental institution under an agreement which requires the taxpayer to pay $6x$ dollars per year toward her support, and in which he promises to pay the remainder of her support ($10x$ dollars per year) if and when it is possible for him to do so, will not be considered to have supplied the remaining $10x$ dollars of her support.

For the reasons stated above, the taxpayer is not considered as providing over half the support received by his mother in 1965. Accordingly, the taxpayer cannot claim a dependency exemption for his mother in the taxable year under consideration.

Revenue Ruling 58–404, C.B. 1958–2, 56, involves a father who arranged with a college to provide tuition and board for his son in the fall of 1956 under an agreement to pay for these items of support in January 1957. There the father not only had an unconditional obligation to pay for the support items furnished; but he also, through his arrangement with the college to provide his son with tuition and board in 1956, took affirmative steps to provide his son with these items of support. These facts meet the requirements that there be "something more than an unfulfilled duty or obligation to pay" referred to in the *Donner* case.

Revenue Ruling 220, C.B. 1953–2, 22, holds that where a divorced husband, in violation of a court order, fails to make payments of "child support" for a calendar year, but pays the arrearage in a subsequent year, the amount thereof does not constitute support of the child furnished by the husband, either for the year in which such payments were in arrears or for the year in which the arrearage was paid. The father, in that case, failed to take any affirmative steps to provide for the support of his child during the calendar year. The arrearages paid in a subsequent year were merely reimbursements to his divorced wife for amounts she had paid for the child's support. Since the divorced husband took no affirmative steps to provide for the support of his child for the calendar year to which the arrearages related, he was not considered to have furnished the items of support which were received by his child in that year.

Revenue Ruling 58–404, C.B. 1958–2, 56, clarified.

PART VI.—ITEMIZED DEDUCTIONS FOR INDIVIDUALS AND CORPORATIONS

SECTION 162.—TRADE OR BUSINESS EXPENSES

26 CFR 1.162–1: Business expenses. Rev. Rul. 67–1 [1]

The Internal Revenue Service will follow the decision of the U.S. District Court for Connecticut in the case of *Locke Manufacturing Companies* v. *United States*, 237 F. Supp. 80 (1964), with respect to the deductibility of certain corporate proxy fight expenditures involving solicitation and shareholder relations expenses. The decision in this case held that such expenditures were primarily concerned with a question of corporate policy and were ordinary and necessary expenses deductible by the corporation as business expenses under section 162 of the Internal Revenue Code of 1954.

However, the Service will continue to scrutinize expenditures made by corporations in proxy contests to determine whether such expenditures are made primarily for the benefit of the interests of individuals rather than in connection with questions of corporate policy. Thus, for example, if it is determined that such expenditures are in the nature of preferential dividends to stockholders or excessive compensation to officer-stockholders, deductions claimed by corporations for such expenditures will be disallowed.

The decision in the *Locke* case is analogous to the position stated in Revenue Ruling 64–236, C.B. 1964–2, 64, which relates to the deductibility of proxy fight expenditures by an individual stockholder under section 212 of the Code, if such expenditures are proximately related to either the production or collection of income or to the management, conservation, or maintenance of property held for the production of income.

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[1] Based on Technical Information Release S71, dated Dec. 16, 1966; see also Technical Information Release 885, dated Feb. 15, 1967.

(Also Section 461; 1.461-1.) Rev. Rul. 67-12

Ordinary and necessary expenses, incurred in a trade or business in prior years and paid in the current taxable year, by an individual taxpayer using the cash receipts and disbursements method of accounting, are deductible under section 162 of the Internal Revenue Code of 1954 even though the trade or business has been discontinued.

Advice has been requested whether ordinary and necessary business expenses, incurred in prior years and paid in a year subsequent to the termination of the business by an individual taxpayer, using the cash receipts and disbursements method of accounting, may be deducted under section 162 of the Internal Revenue Code of 1954.

The taxpayer operated a business as a sole proprietor. He had incurred debts for ordinary and necessary business expenses which he was unable to pay because of financial problems, and had entered into an agreement with his creditors under which he would pay his debts when he was able to obtain funds. He then discontinued his business.

In a year subsequent to the termination of his business, the taxpayer paid the debts he had incurred while carrying on the business.

Section 162 of the Code provides, in part, for the deduction of all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business.

Section 461(a) of the Code sets forth the general rule that the amount of any deduction or credit allowable shall be taken for the taxable year which is the proper taxable year under the method of accounting used in computing taxable income.

Section 1.461-1(a)(1) of the Income Tax Regulations provides that under the cash receipts and disbursements method of accounting, amounts representing allowable deductions shall, as a general rule, be taken into account for the taxable year in which paid.

In the instant case, expenses represented by the debts would have been deductible under section 162 of the Code had they been paid by the taxpayer while he was still carrying on the business. The fact that the business has been discontinued does not prevent the deduction of expenses otherwise allowable to an individual taxpayer using the cash receipts and disbursements method of accounting. See *Waters F. Burrows* v. *Commissioner*, 38 B.T.A. 236 (1938), acquiescence, C.B. 1938-2, 5. Also, compare I.T. 4071, C.B. 1952-1, 148.

Accordingly, the ordinary and necessary expenses, incurred in a trade or business in prior years and paid in the current taxable year, by an individual taxpayer, using the cash receipts and disbursements method of accounting, are deductible under section 162 of the Code, even though the business has been discontinued.

Rev. Rul. 67-98

A taxpayer engaged in a trade or business paid a reward to a person who found and returned the taxpayer's stolen business checks.

Held, the amount of the reward is deductible by the taxpayer as an ordinary and necessary business expense under section 162 of the Internal Revenue Code of 1954.

(Also Section 262; 1.262–1.) Rev. Rul. 67–115 [1]

Amounts expended by members of the armed services of the United States on active duty for the purchase and maintenance of required military fatigue uniforms, where local military regulations prohibit their off-duty wear, are, to the extent the expenses exceed allowances received therefor, deductible for Federal income tax purposes as ordinary and necessary business expenses under section 162(a) of the Internal Revenue Code of 1954, provided such taxpayers itemize their deductions.

Advice has been requested as to the deductibility of amounts expended for the purchase and maintenance of military fatigue uniforms by members of the armed services of the United States on active duty.

The facts presented indicate that military personnel are often required to wear a fatigue uniform while on duty. Local military regulations frequently require that the fatigue uniform may be worn only while on duty or while traveling to and from duty provided the individual does not leave his car. The fatigue uniform referred to is distinguishable from the regularly authorized uniform of the day for the season which the member is permitted to wear off duty.

Section 1.262–1(b)(8) of the Income Tax Regulations governs the deductibility of amounts expended for the purchase and maintenance of uniforms, including fatigue uniforms, of members of the armed services. Section 1.262–1(b)(8) of the regulations provides as follows:

(8) The cost of equipment of a member of the armed services is deductible only to the extent that it exceeds nontaxable allowances received for such equipment and to the extent that such equipment is especially required by his profession and does not merely take the place of articles required in civilian life. For example, the cost of a sword is an allowable deduction in computing taxable income, but the cost of a uniform is not. However, amounts expended by a reservist for the purchase and maintenance of uniforms which may be worn only when on active duty for training for temporary periods, when attending service school courses, or when attending training assemblies are deductible except to the extent that nontaxable allowances are received for such amounts.

The first sentence of the above-quoted regulations prescribes the tests for deductibility. The second and third sentences of the regulations are intended to be explanatory of these tests rather than to establish an inflexible rule that the cost of any military uniform is a nondeductible personal expense.

Thus, where a required military uniform "does not merely take the place of articles required in civilian life," deduction of the amounts expended in the purchase and maintenance of such uniform would not be precluded by such regulation to the extent such amounts exceed nontaxable allowances received for such equipment. Where a member of the armed services is required to wear a fatigue uniform when on duty and local military regulations require that it be worn only while on duty, or while traveling directly to and from duty, in his car, the fatigue uniform does not take the place of articles required in civilian life.

Accordingly, amounts expended by members of the armed services on active duty for the purchase and maintenance of required military fatigue uniforms, where local military regulations prohibit their off-duty wear, are, to the extent the expenses exceed allowances received

[1] Also released as Technical Information Release 893, dated Mar. 23, 1967.

therefor, deductible as ordinary and necessary business expenses under section 162(a) of the Internal Revenue Code of 1954, provided the deductions are itemized.

This holding does not represent a change in position with respect to the nondeductibility of the costs related to uniforms worn without restriction. In such cases the uniform is considered to replace ordinary civilian clothing and does not meet the tests of the above-quoted provision of the regulations.

(Also Section 263; 1.263(a)-1.) Rev. Rul. 67-125

Legal fees incurred by a corporation in securing advice on the tax consequences prior to the consummation of a merger with another corporation, a subsequent stock split, and proposed distribution in redemption of a portion of the outstanding stock under section 302 of the Internal Revenue Code of 1954 (which distribution in redemption would not qualify as a partial liquidation under section 346 of the Code) are expenditures which are capital in nature and therefore not deductible as ordinary and necessary business expenses.

However, in the event the proposed redemption of a portion of the stock is subsequently abandoned, the capitalized fees attributable to such proposed redemption are deductible in the taxable year of the abandonment.

Advice has been requested whether legal fees incurred by a corporation in securing advice on the Federal tax consequences of the following transactions before they are consummated can be deducted as ordinary and necessary business expenses under section 162 of the Internal Revenue Code of 1954: (1) A merger, (2) a stock split, and (3) a proposed distribution in redemption of outstanding stock under section 302 of the Code (which distribution would not qualify as a partial liquidation under section 346 of the Code).

The legal fees in this case were incurred in connection with the merger of one corporation into another, followed by a split of the stock of the surviving corporation. It was also proposed that the surviving corporation would distribute property acquired in the merger in redemption of a portion of its stock to meet certain anticipated conditions in connection with the future operations of the surviving corporation. Since these conditions did not materialize, the planned redemption was tentatively abandoned for the year of the merger and the stock split. However, no final decision has been made as to whether the redemption will be made or finally abandoned.

Section 162(a) of the Code allows as a deduction all the ordinary and necessary business expenses paid or incurred during the taxable year in carrying on a trade or business. Section 263 of the Code precludes a deduction for capital expenditures.

It is well established that expenditures incident to the alteration of the capital structure of a corporation are to be capitalized. See *Mills Estate, Inc.* v. *Commissioner*, 206 Fed. 2d 244 (1953), and *Missouri-Kansas Pipe Line Co.* v. *Commissioner*, 148 Fed. 2d 460 (1945). Thus, legal fees incurred for services performed in drafting a corporate merger agreement are to be capitalized as incident to the reorganization since the effect of a merger is to change the capital structure of the surviving corporation.

The basic question then in this case is whether the legal fees incurred for tax advice on the corporate activities involved are considered to be incident to the alteration of the corporation's capital structure or are ordinary and necessary business expenses.

The probable tax consequences resulting from various kinds of reorganizations or other changes in a corporation's capital structure are instrumental in determining the type of reorganization or other change in the capital structure of the corporation. Thus, legal fees for advice as to the tax significance of a particular type of reorganization are considered to be just as necessary in effecting a reorganization as those for the actual drafting of the reorganization agreement. See *Standard Linen Service, Inc.* v. *Commissioner*, 33 T.C. 1 (1959), acquiescence, C.B. 1960–2, 7.

The split of the stock of the surviving corporation and the proposed redemption of a portion of its stock operate to change the capital structure of the corporation for a period of indefinite duration. Thus, the legal fees incurred for tax advice on these transactions represent expenditures incident to the change of the capital structure of the surviving corporation. However, if the taxpayer can subsequently establish that it has made a final decision not to carry out the redemption, the costs attributable to the proposed redemption may be deducted in the taxable year in which such a decision was made. See *Doernbecher Manufacturing Co.* v. *Commissioner*, 30 B.T.A. 973 (1934), acquiescence, C.B. XIII–2, 6 (1934), appealed on other grounds.

Accordingly, the legal fees incurred prior to the transaction in securing advice on the tax consequences of the merger, stock split, and proposed distribution in redemption represent capital expenditures incurred in connection with the change of the capital structure of the surviving corporation and are therefore not deductible as ordinary and necessary business expenses. However, in the event the proposed redemption of stock is subsequently abandoned, the capitalized fees attributable to such proposed redemption are deductible in the taxable year of abandonment.

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26 CFR 1.162–2: Traveling expenses. Ct. D. 1914
(Also Section 262; 1.262–1.)

INCOME TAX—INTERNAL REVENUE CODE OF 1954—DECISION OF SUPREME COURT OF THE UNITED STATES

1. DEDUCTIONS—TRAVELING EXPENSES WHILE AWAY FROM HOME—ARMED FORCES.

A military taxpayer's permanent duty station is also his home for purposes of determining the deductibility of travel expenses whether or not it is feasible or even permissible for his family to reside with him. Accordingly, expenditures for meals by a Marine officer stationed for more than a year at an overseas post to which his dependents were prohibited from accompanying him were not deductible as traveling expenses incurred while away from home.

2. JUDGMENT REVERSED.

Judgment of the United States Court of Appeals for the Ninth Circuit, 355 F. 2d 294, reversed.

SUPREME COURT OF THE UNITED STATES

No 173.—OCTOBER TERM, 1966

[386 U.S. 287]

Commissioner of Internal Revenue, Petitioner, v. *Howe A. Stidger et ux.*

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

[March 20, 1967]

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

In this case we are required to determine whether, under the 1954 Internal Revenue Code, expenditures for meals by a military officer stationed at a post to which his dependents were prohibited from accompanying him were deductible "traveling expenses . . . (incurred) while away from home" within the meaning of § 162(a)(2)[1] or whether instead they were nondeductible "personal, living, or family expenses" within the meaning of § 262.[2] At all pertinent times, respondent[3] was a captain in the United States Marine Corps, attached to an aviation squadron. Immediately prior to October 1957, his permanent duty station was a Marine Corps base located at El Toro, California, and he lived nearby with his wife and children. On October 1, 1957, however, respondent and his squadron were transferred to Iwakuni, Japan, where they were to be based while serving a standard 15-month tour of duty in the Far East. Because dependents were prohibited from accompanying Marine Corps personnel to that duty station, respondent's wife and children remained in California.

Of the 14½ months' actual duration of respondent's Far Eastern tour of duty, he was physically located at the Iwakuni base for 10 months. The remaining time was consumed by travel and short periods of duty at various other military bases; respondent was declared to be in a "travel status" for a period of 49 days, and he received additional compensation for those days on a per diem basis. During the entire period of his service as a Marine Corps captain, both while he served at bases in the United States and while he served abroad away from his family, respondent also received tax-free monthly allowances for quarters and subsistence.

On his 1958 income tax return, respondent claimed a deduction of $650, representing the cost of his meals at a rate of $65 per month for the 10 months spent at the Iwakuni base. The Commissioner of Internal Revenue disallowed the deduction, ruling that the expenditure for meals was a "personal, living" expense under § 262 and not a travel expense under § 162(a)(2). In the Commissioner's view respondent's "home" during the period in question was his permanent duty station at Iwakuni rather than California where his family resided; therefore, he was not "away from home" when he incurred the expenditure. The Tax Court upheld the Commissioner (40 T.C. 896), and respondent petitioned for review in the Court of Appeals for the Ninth Circuit. That court, in a *per curiam* decision with one judge dissenting, reversed the Tax Court and rejected the Commissioner's definition of "home" for purposes of the deduction. 355 F. 2d 294. The majority of the Court of Appeals ruled that the word "home" as used in § 162(a)(2) of the Code must be given its usual meaning as the place of residence, not the place of business, of the taxpayer and his family. And since it was not reasonable for this taxpayer to move his family residence closer to his place of business, the "ordinary and necessary" requirement applicable to all § 162 deductions was met and the cost of meals at Iwakuni was deductible. To resolve direct conflict between this decision and a 1948 decision of the Court of Appeals

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[1] "There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including—

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"(2) traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; . . ." § 162(a)(2) of the Internal Revenue Code of 1954, 26 U.S.C. § 162(a)(2).

[2] "Except as otherwise expressly provided in this chapter, no deduction shall be allowed for personal, living, or family expenses." § 262 of the Internal Revenue Code of 1954, 26 U.S.C. § 262.

[3] Since a joint income tax return was filed by Captain and Mrs. Stidger, both are respondents here. In this opinion, however, the terms "respondent" and "taxpayer" refer only to Captain Stidger.

for the Fourth Circuit in another case involving a military officer, *Bercaw* v. *Commissioner*, 165 F. 2d 521 (C.A. 4th Cir. 1948), we granted certiorari. 385 U.S. 809.

This case then requires us to focus upon one of the three conditions which must be met before an item is deductible as a travel expense under § 162(a)(2). There is no question but that the expenditure here was "ordinary and necessary" and that there was a "direct connection between the expenditure and the carrying on of the trade or business of the taxpayer or of his employer." Cf. *Peurifoy* v. *Commissioner*, 358 U.S. 59 (1958) [Ct.D. 1832, C.B. 1958–2, 916]; *Commissioner* v. *Flowers*, 326 U.S. 465 (1946) [Ct.D. 1659, C.B. 1946–1, 57]. The essence of the case is whether respondent was "away from home" when he incurred the expenditure. And the answer to that question turns upon a determination of whether, under the circumstances related above, respondent's "home" in 1958 was his permanent duty station at Iwakuni, Japan, or, instead, the residence of his family in California.

From the Revenue Act of 1921 [4] down to § 162(a)(2) of the 1954 Internal Revenue Code Congress has provided a deduction from taxable income for travel expenses, including amounts expended for meals and lodging, while "away from home." Although Congress has not defined the crucial phrase "away from home," administrative rulings and regulations have been directed toward that problem. In 1921, a general rule was established to the effect that "home" meant the taxpayer's principal place of business or employment whether or not it coincided with his place of residence.[5] This interpretation prevented deductions of day-to-day commuting expenses which were not the unusual type of "traveling expense" to which the statute was directed. Cf. *Commissioner* v. *Flowers*, 326 U.S. 465, 470 (1946). Its logic has been applied to a host of other situations. Although certain refinements have been added,[6] the essential position of the Commissioner has remained unchanged.

While the court below,[7] together with the Fifth [8] and Sixth [9] Circuit Courts of Appeals, has not always agreed with this interpretation, the Tax Court [10] and all of the other circuit courts of appeals which have considered it have sustained the Commissioner.[11] The Commissioner's interpretation of the word "home" in connection with travel-expense deductions was also made clear to Congress when in 1936 it was held that Members of Congress could not deduct expenses which they incurred in Washington, D.C., even though they also maintained a residence in the district from which they had been elected. *Lindsay* v. *Commissioner*, 34 B.T.A. 840. Congress did not respond to this ruling by amending the statutory language generally to provide that "home" was intended to be synonymous with "residence," but instead merely carved out an exception to cover the special travel expense problems inherent in service as a national legislator.[12]

The Commissioner argues that the fact that Congress has reviewed and reenacted the pertinent language with an awareness of the administrative interpretation constitutes a legislative endorsement of the Commissioner's position

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[4] Revenue Act of 1921, c. 136, § 214(a), 42 Stat. 239.

[5] O.D. 864, 4 Cum. Bull. 211 (1921); O.D. 1021, 5 Cum. Bull. 174 (1921).

[6] See, e.g., I.T. 1490, I–2 Cum. Bull. 89 (1922); Rev. Rul. 60–189, 1960–1 Cum. Bull. 60. See also note 22, infra.

[7] In addition to the instant case, see also *Wright* v. *Hartsell*, 305 F. 2d 221 (C.A. 9th Cir. 1962).

[8] *Steinhort* v. *Commissioner*, 335 F. 2d 496 (C.A. 5th Cir. 1964); *United States* v. *LeBlanc*, 278 F. 2d 571 (C.A. 5th Cir. 1960).

[9] *Burns* v. *Gray*, 287 F. 2d 698 (C.A. 6th Cir. 1961).

[10] See, e.g., *Friedman* v. *Commissioner*, 37 T.C. 539 (1961); *Carroll* v. *Commissioner*, 20 T.C. 382 (1953). The facts of the *Carroll* case are closely analogous to the circumstances surrounding the claimed deduction here. The taxpayer there was an employee of the War Department who in 1947 was transferred to a "permanent duty station" in Korea for a minimum of one year. His wife and child remained in the United States. A deduction for the cost of meals and lodging while in Korea was not allowed by the Tax Court which noted that the taxpayer's employer (1) designated Korea as a "permanent duty station" and (2) granted per diem travel allowances only while the taxpayer was en route to and from Korea, not while he was based there. See also *Todd* v. *Commissioner*, 10 T.C. 655 (1948).

[11] See, e.g., *O'Toole* v. *Commissioner*, 243 F. 2d 302 (C.A. 2d Cir. 1957); *Coerver* v. *Commissioner*, 297 F. 2d 837 (C.A. 3d Cir. 1962), affirming 36 T.C. 252 (1961); *Bercaw* v. *Commissioner*, 165 F. 2d 521 (C.A. 4th Cir. 1948); *England* v. *United States*, 345 F. 2d 414 (C.A. 7th Cir. 1965); *Cockrell* v. *Commissioner*, 321 F. 2d 504 (C.A. 8th Cir. 1963); and *York* v. *Commissioner*, 160 F. 2d 385 (C.A. D.C. Cir. 1947). The Courts of Appeals for the First and Tenth Circuits apparently have not taken a position on this question.

[12] In 1952, the following sentence was added to § 162(a) of the Code: "For purposes of the preceding sentence, the place of residence of a Member of Congress . . . within the State, congressional district, Territory, or possession which he represents in Congress shall be considered his home, but amounts expended by such Members within each taxable year for living expenses shall not be deductible for income tax purposes in excess of $3,000." 26 U.S.C. § 162(a).

and is sufficient reason for reversing the judgment below. *Helvering* v. *Winmill*, 305 U.S. 79 (1938) [Ct. D. 1365, C.B. 1938-2, 212]. But it is not necessary for us to decide here whether this congressional action (or inaction) constitutes approval and adoption of the Commissioner's interpretation of "home" in all of its myriad applications since, in the context of the military taxpayer, the Commissioner's position has a firmer foundation. The Commissioner has long held that a military taxpayer's permanent duty station is also his home for purposes of determining deductibility of travel expenses. This position builds on the terminology employed by the military services to categorize various assignments and tours of duty, and also on the language and policy of the statutory provisions prescribing travel and transportation allowances for military personnel. For example, a Marine Corps directive, which was effective during respondent's Far Eastern tour of duty, defined the length of standard tours of duty in terms of the commencement and termination dates of "*permanent* change[s] of station." [13] Similarly, eligibility for certain statutory travel allowances turns upon whether an assignment constitutes a "change of *permanent* station" or whether the serviceman is "away from his designated post of duty." 37 U.S.C. § 404(a)(1). Thus, the Commissioner's position recognizes, as do the relevant statutes and the military services themselves, that the "permanence" of location in civilian life cannot find a complete parallel in military life which necessarily contemplates relatively frequent changes of location.

The nondeductibility of expenses incurred by a military taxpayer while at a permanent duty station was previously challenged in *Bercaw* v. *Commissioner*, 165 F. 2d 521 (C.A. 4th Cir. 1948). There, the taxpayer, a reserve army officer who was called to active duty and assigned to Fort Meade in Maryland where there were no quarters for dependents, sought to deduct expenditures for his meals and janitorial service as costs of traveling "away from home" in pursuit of his trade or business. The Court of Appeals affirmed the Tax Court's disallowance of the deduction, stating:

> "The taxpayer was engaged in the business of an Army officer. His place of business was his particular Army post. If his Army duties required him to travel, he would have received a per diem allowance which would not have been taxable. . . . But whenever he made a permanent change of station that place of duty became his place of business and there was his 'home' within the meaning of Section 23(a)(1)(A). . . . Thus the expenditures for meals . . . while at this post were personal living expenses and nondeductible. . . ."

Since the *Bercaw* decision, the Commissioner has reiterated his position in Rev. Rul. 55-571, 1955 Cum. Bull. 44. And until the decision of the court below in the present case, neither the courts nor Congress had disturbed the Commissioner's interpretation of "home" as it pertained to military personnel.

Additional support for the Commissioner's position is found in the fact that Congress traditionally has provided a special system of tax-free allowances for military personnel.[14] These allowances now range from monthly payments for quarters [15] and subsistence [16] to per diem payments when the serviceman is declared in a "travel status." [17] Provision may also be made for financial relief to assist dependents in relocating when they are prohibited from accompanying a serviceman on a change of permanent duty station.[18] In the present case, respondent received the per diem payments while he was away from his permanent duty station. His quarters at Iwakuni were provided without cost to him, and at the same time he continued to receive a tax-free quarters allowance of $102.50 per month; [19] he also received a tax-free subsistence allowance of $42.50 per month at all relevant times. Moreover, because his assignment to Iwakuni was a change of permanent station, his wife and children could have moved their residence to another part of the United States at the Government's expense; however, they elected not to exercise that option.

Underlying the system of special allowances is congressional recognition of the

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[13] Marine Corps Order 1300.8B, c. 1, issued July 1, 1958. Record, p. 24.

[14] See generally Advisory Commission on Service Pay, Career Compensation for the Uniformed Forces, Appendix 13-18 (1948).

[15] 37 U.S.C. § 403.

[16] 37 U.S.C. § 402.

[17] 37 U.S.C. § 404. See also 37 U.S.C. §§ 405-412.

[18] 37 U.S.C. § 405(h).

[19] 37 U.S.C. § 403(d) provides: "A member of a uniformed service who is assigned to quarters of the United States or a housing facility under the jurisdiction of a uniformed service may not be denied the basic allowance for quarters if, because of orders of competent authority, his dependents are prevented from occupying those quarters."

fact that military life poses unusual financial problems.[20] The system is designed to provide complete and direct relief from such problems as opposed to the incomplete and indirect relief which an income tax deduction affords to a civilian business traveler.[21] If the system of allowances is in fact inadequate, or if there are inconsistencies in the Commissioner's application of the travel-expense provision to military personnel,[22] it is the province of Congress and the Commissioner, not the courts, to make the appropriate adjustments. Given the Commissioner's long-standing and judicially approved interpretation, the knowledge of that interpretation by Congress, and the fact that Congress has chosen to deal specially by tax-free allowances with the financial problems peculiar to military life, we must agree with the Commissioner that the military taxpayer is not "away from home" when he is at his permanent duty station whether or not it is feasible or even permissible for his family to reside with him there. The judgment is, therefore,

Reversed.

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BLACK and MR. JUSTICE FORTAS concur, dissenting in a separate opinion.

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26 CFR 1.162–5: Expenses for education. T.D. 6918[1]

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 1.—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Expenses for education

DEPARTMENT OF THE TREASURY,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D.C. 20224.

To Officers and Employees of the Internal Revenue Service and Others Concerned:

On October 1, 1966, notice of proposed rulemaking with respect to the amendment of § 1.162–5 (relating to expenses for education) and

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[20] In 1948, the Hook Commission, which had been appointed by the Secretary of Defense to study military compensation, issued its report and recommendations. Advisory Commission on Service Pay, Career Compensation for the Uniformed Forces (1948). That report formed a principal basis for the Career Compensation Act of 1949, c. 681, 63 Stat. 802. On the subjects of subsistence and quarters allowances, the Commission stated (Appendix, p. 17):

"The theory behind the subsistence allowance is that since the officer is required to arrange and provide his subsistence at all times and since he has no choice as to the place where he is to be stationed and therefore does not have the choice of the average citizen as to the place and manner of subsisting himself, it is necessary to provide him with an allowance at all times so that he may bear that expense wherever stationed.

* * * * * * *

"Because an officer is transferred frequently from place to place and is required to dig up his roots at the old station and transplant them to the new station, the Government has acknowledged for years its obligation to furnish quarters to the officer for occupancy by himself and his dependents."

[21] Congress has through the years evidenced a determination to maintain the various allowances at levels consistent with the necessary financial burdens borne by servicemen. See, e.g., id., at 35 and Appendix 13–18; H.R. Rep. No. 779, 81st Cong., 1st Sess., p. 19. In 1963, Congress enacted yet another measure designed to provide direct relief to dependents separated from servicemen on permanent duty outside this country or in Alaska. 37 U.S.C. § 427(b). Under specified conditions, this provision authorizes an allowance of $30 monthly. It was established because Congress recognized that separated families incur additional expenses. See H.R. Rep. No. 208, 88th Cong., 1st Sess., p. 29. That recognition is, of course, the same one that underlies the travel-expense deduction for civilian taxpayers.

[22] The Commissioner has taken the position that a naval officer may deduct as a traveling expense the cost of his meals aboard ship while the ship is away from its home port. Rev. Rul. 55–571, 1955–2 Cum. Bull. 44. Respondent contends that his own situation at Iwakuni was directly analogous to that of a naval officer on a ship at sea for an extended period of time. The Commissioner justifies the discrepant treatment by arguing that a naval officer should be treated like the engineer of a train, a bus driver, or an airplane pilot for purposes of the travel-expense deduction; the principal place of business of such taxpayers is their home terminal and they are allowed the deduction when away from that terminal on business trips. We are not convinced that respondent's situation was in all relevant respects analogous to that of a naval officer at sea. In any event, during oral argument we were advised that the Commissioner is re-examining his position with respect to naval officers.

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[1] 32 F.R. 6679.

§ 1.262–1 (relating to personal, living, and family expenses) of the Income Tax Regulations (26 CFR Part 1) was published in the Federal Register (31 F.R. 12843). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, such regulations are amended as follows:

PARAGRAPH 1. Section 1.162–5 is amended to read as follows:

§ 1.162–5 EXPENSES FOR EDUCATION.—(a) *General rule.*—Expenditures made by an individual for education (including research undertaken as part of his educational program) which are not expenditures of a type described in paragraph (b) (2) or (3) of this section are deductible as ordinary and necessary business expenses (even though the education may lead to a degree) if the education—

(1) Maintains or improves skills required by the individual in his employment or other trade or business, or

(2) Meets the express requirements of the individual's employer, or the requirements of applicable law or regulations, imposed as a condition to the retention by the individual of an established employment relationship, status, or rate of compensation.

(b) *Nondeductible educational expenditures.*—(1) *In general.*—Educational expenditures described in subparagraphs (2) and (3) of this paragraph are personal expenditures or constitute an inseparable aggregate of personal and capital expenditures and, therefore, are not deductible as ordinary and necessary business expenses even though the education may maintain or improve skills required by the individual in his employment or other trade or business or may meet the express requirements of the individual's employer or of applicable law or regulations.

(2) *Minimum educational requirements.*—(i) The first category of nondeductible educational expenses within the scope of subparagraph (1) of this paragraph are expenditures made by an individual for education which is required of him in order to meet the minimum educational requirements for qualification in his employment or other trade or business. The minimum education necessary to qualify for a position or other trade or business must be determined from a consideration of such factors as the requirements of the employer, the applicable law and regulations, and the standards of the profession, trade, or business involved. The fact that an individual is already performing service in an employment status does not establish that he has met the minimum educational requirements for qualification in that employment. Once an individual has met the minimum educational requirements for qualification in his employment or other trade or business (as in effect when he enters the employment or trade or business), he shall be treated as continuing to meet those requirements even though they are changed.

(ii) The minimum educational requirements for qualification of a particular individual in a position in an educational institution is the minimum level of education (in terms of aggregate college hours or degree) which the applicable laws or regulations, in effect at the time this individual is first employed in such position, is normally required of an individual initially being employed in such a position. If there are no normal requirements as to the minimum level of education required for a position in an educational institution, then an individual in such a position shall be considered to have met the minimum educational requirements for qualification in that position when he becomes a member of the faculty of the educational institution. The determination of whether an individual is a member of the faculty of an educational institution must be made on the basis of the particular practices of the institution. However, an individual will ordinarily be considered to be a member of the faculty of an institution if (*a*) he has tenure or his years of service are being counted toward obtaining tenure; (*b*) the institution is making contributions to a retirement plan (other than Social Security or a similar program) in respect of his employment; or (*c*) he has a vote in faculty affairs.

(iii) The application of this subparagraph may be illustrated by the following examples:

Example (1). General facts: State *X* requires a bachelor's degree for beginning secondary school teachers which must include 30 credit hours of professional educational courses. In addition, in order to retain his position a secondary school teacher must complete a fifth year of preparation within 10 years after beginning his employment. If an employing school official certifies to the State Department of Education that applicants having a bachelor's degree and the re-

quired courses in professional education cannot be found, he may hire individuals as secondary school teachers if they have completed a minimum of 90 semester hours of college work. However, to be retained in his position, such an individual must obtain his bachelor's degree and complete the required professional educational courses within 3 years after his employment commences. Under these facts, a bachelor's degree, without regard to whether it includes 30 credit hours of professional educational courses, is considered to be the minimum educational requirement for qualification as a secondary school teacher in State *X*. This is the case notwithstanding the number of teachers who are actually hired without such a degree. The following are examples of the application of these facts in particular situations:

Situation 1. *A*, at the time he is employed as a secondary school teacher in State *X*, has a bachelor's degree including 30 credit hours of professional educational courses. After his employment, *A* completes a fifth college year of education and, as a result, is issued a standard certificate. The fifth college year of education undertaken by *A* is not education required to meet the minimum educational requirements for qualification as a secondary school teacher. Accordingly, the expenditures for such education are deductible unless the expenditures are for education which is part of a program of study being pursued by *A* which will lead to qualifying him in a new trade or business.

Situation 2. Because of a shortage of applicants meeting the stated requirements, *B*, who has a bachelor's degree, is employed as a secondary school teacher in State *X* even though he has only 20 credit hours of professional educational courses. After his employment, *B* takes an additional 10 credit hours of professional educational courses. Since these courses do not constitute education required to meet the minimum educational requirements for qualification as a secondary school teacher which is a bachelor's degree and will not lead to qualifying *B* in a new trade or business, the expenditures for such courses are deductible.

Situation 3. Because of a shortage of applicants meeting the stated requirements, *C* is employed as a secondary school teacher in State *X* although he has only 90 semester hours of college work towards his bachelor's degree. After his employment, *C* undertakes courses leading to a bachelor's degree. These courses (including any courses in professional education) constitute education required to meet the minimum educational requirements for qualification as a secondary school teacher. Accordingly, the expenditures for such education are not deductible.

Situation 4. Subsequent to the employment of *A*, *B*, and *C*, but before they have completed a fifth college year of education, State *X* changes its requirements affecting secondary school teachers to provide that beginning teachers must have completed 5 college years of preparation. In the cases of *A*, *B*, and *C*, a fifth college year of education is not considered to be education undertaken to meet the minimum educational requirements for qualification as a secondary school teacher. Accordingly, expenditures for a fifth year of college will be deductible unless the expenditures are for education which is part of a program being pursued by *A*, *B*, or *C* which will lead to qualifying him in a new trade or business.

Example (2). *D*, who holds a bachelor's degree, obtains temporary employment as an instructor at University *Y* and undertakes graduate courses as a candidate for a graduate degree. *D* may become a faculty member only if he obtains a graduate degree and may continue to hold a position as instructor only so long as he shows satisfactory progress towards obtaining this graduate degree. The graduate courses taken by *D* constitute education required to meet the minimum educational requirements for qualification in *D*'s trade or business and, thus, the expenditures for such courses are not deductible.

Example (3). *E*, who has completed 2 years of a normal 3-year law school course leading to a bachelor of laws degree (LL.B.), is hired by a law firm to do legal research and perform other functions on a full-time basis. As a condition to continued employment, *E* is required to obtain an LL.B. and pass the State bar examination. *E* completes his law school education by attending night law school, and he takes a bar review course in order to prepare for the State bar examination. The law courses and bar review course constitute education required to meet the minimum educational requirements for qualification in *E*'s trade or business and, thus, the expenditures for such courses are not deductible.

(3) *Qualification for new trade or business.*—(i) The second category of nondeductible educational expenses within the scope of subparagraph (1) of this

paragraph are expenditures made by an individual for education which is part of a program of study being pursued by him which will lead to qualifying him in a new trade or business. In the case of an employee, a change of duties does not constitute a new trade or business if the new duties involve the same general type of work as is involved in the individual's present employment. For this purpose, all teaching and related duties shall be considered to involve the same general type of work. The following are examples of changes in duties which do not constitute new trades or businesses:

(*a*) Elementary to secondary school classroom teacher.

(*b*) Classroom teacher in one subject (such as mathematics) to classroom teacher in another subject (such as science).

(*c*) Classroom teacher to guidance counselor.

(*d*) Classroom teacher to principal.

(ii) The application of this subparagraph to individuals other than teachers may be illustrated by the following examples:

Example (1). *A*, a self-employed individual practicing a profession other than law, for example, engineering, accounting, etc., attends law school at night and after completing his law school studies receives a bachelor of laws degree. The expenditures made by *A* in attending law school are nondeductible because this course of study qualifies him for a new trade or business.

Example (2). Assume the same facts as in example (1) except that *A* has the status of an employee rather than a self-employed individual, and that his employer requires him to obtain a bachelor of laws degree. *A* intends to continue practicing his nonlegal profession as an employee of such employer. Nevertheless, the expenditures made by *A* in attending law school are not deductible since this course of study qualifies him for a new trade or business.

Example (3). *B*, a general practitioner of medicine, takes a 2-week course reviewing new developments in several specialized fields of medicine. *B*'s expenses for the course are deductible because the course maintains or improves skills required by him in his trade or business and does not qualify him for a new trade or business.

Example (4). *C*, while engaged in the private practice of psychiatry, undertakes a program of study and training at an accredited psychoanalytic institute which will lead to qualifying him to practice psychoanalysis. *C*'s expenditures for such study and training are deductible because the study and training maintains or improves skills required by him in his trade or business and does not qualify him for a new trade or business.

(e) *Deductible educational expenditures.*—(1) *Maintaining or improving skills.*—The deduction under the category of expenditures for education which maintains or improves skills required by the individual in his employment or other trade or business includes refresher courses or courses dealing with current developments as well as academic or vocational courses provided the expenditures for the courses are not within either category of nondeductible expenditures described in paragraph (b) (2) or (3) of this section.

(2) *Meeting requirements of employer.*—An individual is considered to have undertaken education in order to meet the express requirements of his employer, or the requirements of applicable law or regulations, imposed as a condition to the retention by the taxpayer of his established employment relationship, status, or rate of compensation only if such requirements are imposed for a bona fide business purpose of the individual's employer. Only the minimum education necessary to the retention by the individual of his established employment relationship, status, or rate of compensation may be considered as undertaken to meet the express requirements of the taxpayer's employer. However, education in excess of such minimum education may qualify as education undertaken in order to maintain or improve the skills required by the taxpayer in his employment or other trade or business (see subparagraph (1) of this paragraph). In no event, however, is a deduction allowable for expenditures for education which, even though for education required by the employer or applicable law or regulations, are within one of the categories of nondeductible expenditures described in paragraph (b) (2) and (3) of this section.

(d) *Travel as a form of education.*—Subject to the provisions of paragraph (b) and (e) of this section, expenditures for travel (including travel while on sabbatical leave) as a form of education are deductible only to the extent such expenditures are attributable to a period of travel that is directly related to the duties of the individual in his employment or other trade or business. For this purpose, a period of travel shall be considered directly related to the duties of

an individual in his employment or other trade or business only if the major portion of the activities during such period is of a nature which directly maintains or improves skills required by the individual in such employment or other trade or business. The approval of a travel program by an employer or the fact that travel is accepted by an employer in the fulfillment of its requirements for retention of rate of compensation, status or employment, is not determinative that the required relationship exists between the travel involved and the duties of the individual in his particular position.

(e) *Travel away from home.*—(1) If an individual travels away from home primarily to obtain education the expenses of which are deductible under this section, his expenditures for travel, meals, and lodging while away from home are deductible. However, if as an incident of such trip the individual engages in some personal activity such as sightseeing, social visiting, or entertaining, or other recreation, the portion of the expenses attributable to such personal activity constitutes nondeductible personal or living expenses and is not allowable as a deduction. If the individual's travel away from home is primarily personal, the individual's expenditures for travel, meals and lodging (other than meals and lodging during the time spent in participating in deductible education pursuits) are not deductible. Whether a particular trip is primarily personal or primarily to obtain education the expenses of which are deductible under this section depends upon all the facts and circumstances of each case. An important factor to be taken into consideration in making the determination is the relative amount of time devoted to personal activity as compared with the time devoted to educational pursuits. The rules set forth in this paragraph are subject to the provisions of section 162(a)(2), relating to deductibility of certain traveling expenses, and section 274 (c) and (d), relating to allocation of certain foreign travel expenses and substantiation required, respectively, and the regulations thereunder.

(2) *Examples.*—The application of this subsection may be illustrated by the following examples:

Example (1). *A*, a self-employed tax practitioner, decides to take a 1-week course in new developments in taxation, which is offered in City *X*, 500 miles away from his home. His primary purpose in going to *X* is to take the course, but he also takes a side trip to City *Y* (50 miles from *X*) for 1 day, takes a sightseeing trip while in *X*, and entertains some personal friends. *A*'s transportation expenses to City *X* and return to his home are deductible but his transportation expenses to City *Y* are not deductible. *A*'s expenses for meals and lodging while away from home will be allocated between his educational pursuits and his personal activities. Those expenses which are entirely personal, such as sightseeing and entertaining friends, are not deductible to any extent.

Example (2). The facts are the same as in example (1) except that *A*'s primary purpose in going to City *X* is to take a vacation. This purpose is indicated by several factors, one of which is the fact that he spends only 1 week attending the tax course and devotes 5 weeks entirely to personal activities. None of *A*'s transportation expenses are deductible and his expenses for meals and lodging while away from home are not deductible to the extent attributable to personal activities. His expenses for meals and lodging allocable to the week attending the tax course are, however, deductible.

Example (3). *B*, a high school mathematics teacher in New York City, in the summertime travels to a university in California in order to take a mathematics course the expense of which is deductible under this section. *B* pursues only one-fourth of a full course of study and the remainder of her time is devoted to personal activities the expense of which is not deductible. Absent a showing by *B* of a substantial nonpersonal reason for taking the course in the university in California, the trip is considered taken primarily for personal reasons and the cost of traveling from New York City to California and return would not be deductible. However, one-fourth of the cost of *B*'s meals and lodging while attending the university in California may be considered properly allocable to deductible educational pursuits and, therefore, is deductible.

PAR. 2. Paragraph (b) of § 1.262–1 is amended by adding a subparagraph (9) at the end thereof which reads as follows:

§ 1.262–1 PERSONAL, LIVING, AND FAMILY EXPENSES.

* * * * * * *

(b) *Examples of personal, living, and family expenses.* * * *

(9) Expenditures made by a taxpayer in obtaining an education or in furthering his education are not deductible unless they qualify under section 162 and § 1.162–5 (relating to trade or business expenses).

(This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

SHELDON S. COHEN,
Commissioner of Internal Revenue.

Approved April 26, 1967.

STANLEY S. SURREY,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on May 1, 1967, 8:45 a.m., and published in the issue of the Federal Register for May 2, 1967, 32 F.R. 6679)

Rev. Rul. 67–126

A Civil Service employee of the Federal Government used annual leave in order to attend school classes. *Held*, the dollar value of the annual leave used for this purpose is not deductible, for Federal income tax purposes, as an expense for education, since it is not an expense paid or incurred within the meaning of section 162(a) of the Internal Revenue Code of 1954.

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26 CFR 1.162–10: Certain employee benefits. Rev. Rul. 67–75
(Also Section 263; 1.263(a)–1.)

Any amount of vacation pay for taxpayer's employees that is attributable to employment on construction projects in its expansion program is not deductible under section 162 of the Internal Revenue Code of 1954. Such vacation pay represents a capital expenditure, properly includible as part of the cost of the construction project.

Advice has been requested regarding the deductibility of vacation pay attributable to work done by employees under the circumstances described below.

Taxpayer corporation, a public utility, is engaged in an expansion program involving use of its own employees in construction projects. The taxpayer claims that vacation pay is an ordinary and necessary expense currently deductible under section 162 of the Internal Revenue Code of 1954 even if such pay is attributable to an employee's work on construction of new buildings.

Section 162 of the Code allows as a deduction all ordinary and necessary expenses in carrying on any trade or business. Section 1.162–10 of the Income Tax Regulations provides, in part, that amounts paid or accrued within the taxable year for vacation pay are deductible under section 162(a) of the Code *if* they are ordinary and necessary expenses of the trade or business.

Section 263(a)(1) of the Code provides the general rule that no deduction shall be allowed for any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate. Section 1.263(a)–2(a) of the regulations provides, in part, that the cost of acquisition, construction, or

erection of buildings having a useful life extending substantially beyond the taxable year is an example of a capital expenditure.

Revenue Ruling 57–316, C.B. 1957–2, 626, considers "vacation allowances" paid to an employee includible in the definition of wages. The amount of overhead expenses incurred in connection with the construction of buildings must be included in the cost basis of the new building. See *Algernon Blair, Inc.* v. *Commissioner*, 29 T.C. 1205, at 1219 (1958), acquiescence, C.B. 1958–2, 4, with respect to the capitalization of all pertinent costs of a constructed asset.

Applying the foregoing authorities to the present case, the amount of vacation pay allocable to employment on the construction of new buildings is within the purview of the definition of wages includible in the labor costs for these new buildings and is properly considered a capital expenditure. Even though the taxpayer includes the amount of vacation pay in overhead on its books, such amount must be capitalized as part of the cost basis of the building.

Accordingly, any amount of vacation pay for taxpayer's employees that is attributable to employment on construction projects in its expansion program is not deductible under section 162 of the Code.

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26 CFR 1.162–17: Reporting and substantiation of certain business expenses of employees. (Also Section 274; 1.274–5.) Rev. Rul. 67–29

An employer utilizes the following practice to reimburse his employees for ordinary and necessary local transportation expenses incurred while using their privately owned automobiles for business purposes. Nonmanagement employees are reimbursed at the rate of 15 cents per mile for the first 100 miles driven each week and 6 cents per mile for all mileage in excess of 100 miles. In areas subject to extremely high liability and collision insurance rates (such as major metropolitan areas), resulting in an increase in the fixed costs attributable to each automobile, nonmanagement employees are reimbursed at the rate of 15 cents per mile for the first 125 miles driven each week and 6 cents per mile for all mileage in excess of 125 miles. Management employees are reimbursed at the rate of 9 cents per mile irrespective of the number of miles driven.

Although nonmanagement employees drive substantially more business miles than management employees, experience has shown that the yearly reimbursement rate for all employees averages approximately 9.6 cents per mile. The employer requires all employees to submit vouchers showing time, place, and business purpose of the local transportation, as well as business miles traveled. The employer reviews these vouchers and adjusts reimbursement rates when it is determined that transportation costs have increased or decreased.

Revenue Ruling 63–13, C.B. 1963–1, 69, to the extent here relevant, provides rules under which mileage allowance practices used by employers to pay expenses of employees for local transportation may be regarded as satisfying the requirements of an accounting to the employer, with respect to the amount of such expenses for purposes of section 1.162–17(b) of the Income Tax Regulations. Specifically, the

Revenue Ruling holds that where a fixed mileage allowance not exceeding 15 cents per mile is used by an employer in payment of an employee's ordinary and necessary transportation expenses not involving travel away from home, such an arrangement shall be considered to be an accounting to the employer within the meaning of section 1.162–17(b) of the regulations.

Even though the employer in this case uses more than one measure of reimbursement for local transportation expenses, the allowance practice is considered to be a fixed mileage allowance not exceeding 15 cents per mile within the meaning of Revenue Ruling 63–13. *Held*, the employees are deemed to have made an adequate accounting to their employer, with respect to such local transportation expenses, for purposes of section 1.162–17(b) of the regulations. Where such an allowance practice is used by an employer in payment of his employees' ordinary and necessary expenses of transportation while traveling away from home and the time, place, and business purpose elements of the travel are substantiated in accordance with paragraphs (b)(2) and (c) (other than subdivision (iii)(a) of subparagraph (2) thereof) of section 1.274–5 of the regulations, the arrangement will also be considered to satisfy the rules of Revenue Ruling 63–13 and the employees shall be deemed to have substantiated and adequately accounted to the employer, with respect to such travel amounts, for purposes of section 1.274–5 of the regulations.

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26 CFR 1.162–20: Expenditures attributable to lobbying, political campaigns, attempts to influence legislation, etc., and certain advertising. — Rev. Rul. 67–163

A substantial part of the activities of an "action" organization (as defined in section 1.501(c)(3)–1(c)(3) of the Income Tax Regulations) exempt from taxation under section 501(c)(4) of the Internal Revenue Code of 1954 consists of attempting to influence legislation by urging the public to contact members of a legislative body. Section 1.162–20(c)(3) of the regulations provides that if a substantial part of the activities of an organization, such as a labor union or trade association, consists of attempting to influence legislation by urging the public to contact members of a legislative body, a deduction will be allowed only for such portion of the dues or other payments to the organization that is not attributable to this activity.

Held, although section 1.162–20(c)(3) of the regulations refers specifically to dues and other payments made to labor unions and trade associations, organizations exempt from tax under sections 501(c)(5) and (6) of the Code, respectively, this regulation is also applicable to dues and other payments made to the instant "action" organization which is exempt from tax under section 501(c)(4) of the Code.

SECTION 163.—INTEREST

26 CFR 1.163–2: Installment purchases where interest charge is not separately stated. (Also Section 453; 1.453–2.) Rev. Rul. 67–62

Applicability of section 163 of the Internal Revenue Code of 1954, relating to the deductibility, as interest, of service charges paid by customers of a department store on purchases made under a so-called "budget charge account."

Advice has been requested as to the applicability of section 163 of the Internal Revenue Code of 1954, relating to the deductibility, as interest, of service charges paid by customers of a department store under the circumstances described below.

Y, a department store, has a credit arrangement under which its customers may pay for their purchases either in full or in installments. Under the terms of this arrangement, which is called a "budget charge account," the customer signs an agreement under which he is to pay each month, within 20 days of the date of his statement, either the balance due or a specified portion of the balance due. When less than the balance due is paid, a service charge is added to the next month's balance. The service charge is 1 percent of the balance remaining unpaid at the end of the 20-day payment period.

Purchases made under the above-described "budget charge account" may fall into three general categories: (1) Purchases treated as cash purchases (paid for within 20 days from the date on the statement) for which no service charges are imposed; (2) purchases treated as delayed payment purchases (purchases paid for in full at one time, but subsequent to 20 days after the original billing date), with respect to which service charges must be paid in addition to the cash price; and (3) purchases actually paid for in two or more installments, on which service charges are paid in addition to the cash price of the purchases. These three general categories are illustrated by the following examples:

Example 1.—A customer purchased $70 worth of merchandise in 1 month and, within 20 days from the date on his monthly statement, paid his account in full. No service charge was imposed.

Example 2.—A customer purchased $70 worth of merchandise in 1 month and paid nothing on account in the month following, when he received his bill. When the customer received his bill in the next succeeding month he paid his account in full with a payment of $70.70 (the remaining balance plus the service charge of 1 percent of the balance remaining unpaid).

Example 3.—A customer purchased $70 worth of merchandise in 1 month and paid $10 on account when he received his bill. In the next succeeding month the customer received a bill with a balance of $60.60 (the remaining balance plus the service charge of 1 percent of the balance remaining unpaid). The customer then paid the amount of this balance in full.

Section 163(a) of the Code (formerly sec. 23(b) of the Internal Revenue Code of 1939) provides the general rule that all interest paid or accrued within the taxable year on indebtedness is deductible. It has been held, however, that where property is sold on a deferred payment basis and the contract of purchase does not provide that any part

of the deferred payment is interest, no part of such payment may be deducted as interest. See I.T. 2674, C.B. XII–1, 96 and I.T. 3254, C.B. 1939–1, 98.

In order to provide a statutory basis for deductions by installment purchasers Congress adopted section 163(b) of the Code which provides as follows:

> (1) GENERAL RULE.—If personal property * * * [is] purchased under a contract—
>
> (A) which provides that payment of part or all of the purchase price is to be made in installments, and
>
> (B) in which carrying charges are separately stated but the interest charge cannot be ascertained, then the payments made during the taxable year under the contract shall be treated for purposes of this section as if they included interest equal to 6 percent of the average unpaid balance under the contract during the taxable year. For purposes of the preceding sentence, the average unpaid balance is the sum of the unpaid balance outstanding on the first day of each month beginning during the taxable year, divided by 12. * * *
>
> (2) LIMITATION.—In the case of any contract to which paragraph (1) applies, the amount treated as interest for any taxable year shall not exceed the aggregate carrying charges which are properly attributable to such taxable year.

Accordingly, if the actual interest charge cannot be ascertained and established, the formula provided by section 163(b) of the Code is applicable to service charges paid under the agreement entered into by the customers of *Y*, in applying for credit under the so-called budget charge account.

With respect to example 1 there are no carrying charges. With respect to example 2, the formula provided by section 163(b) of the Code applies to the 70 cents paid as carrying charges. Similarly, with respect to example 3, the formula provided by section 163(b) of the Code applies to the 60 cents paid as carrying charges.

The determination, under the above circumstances, that a taxpayer-customer is entitled to a deduction for interest payments under section 163 of the Code does not necessarily form a basis for finding that the retail merchant involved may report the income on such a transaction on the installment method under section 453(a) of the Code.

SECTION 164.—TAXES

26 CFR 1.164–1: Deduction for taxes. Rev. Rul. 67–21

> The owner of an interest in real property constituting a reserved term of years may deduct, as taxes, the real property taxes he pays on the property subject to the term of years.

Advice has been requested whether the owner of an interest in real property constituting a reserved term of years may deduct, as taxes, the real property taxes which he pays.

The taxpayer has conveyed his house and lot to his church reserving a term of 5 years for his own exclusive possession and use, subject to an agreed condition that the taxpayer is to pay any real property taxes assessed on the property during such reserved term.

Section 164 of the Internal Revenue Code of 1954 provides the general rule that State, local, and foreign real property taxes shall be allowed as a deduction for the taxable year in which paid or accrued.

In the case of *Estate of Mary Rumsey Movius*, et al., 22 T.C. 391 (1954), acquiescence, C.B. 1954–2, 5, the Tax Court of the United States states that the rule appears to be clear that a person owning a beneficial interest in property who pays taxes thereon to protect that interest may deduct the payment so made, even though the legal title to the property is in another against whom the tax is assessed.

Accordingly, the owner of an interest in real property constituting a reserved term of years may deduct, as taxes, the real property taxes he pays on the property subject to the term of years.

Rev. Rul. 67–86

The retail sales tax and the compensating use tax imposed on and after July 1, 1966, by the Sales and Use Tax Act (Chapter 32B, Subtitle 4A, Title 54, New Jersey Statutes Annotated) enacted as of April 27, 1966, and amended as of May 25, 1966, qualify as general sales taxes within the meaning of section 164(a)(4) of the Internal Revenue Code of 1954 and are deductible as taxes by the purchaser or consumer who pays the tax. However, where either of the above taxes is paid or accrued by an individual other than in connection with a trade or business carried on by him, it is deductible only if the standard deduction or the optional tax table is not used.

Whether the Special Refundable Tax on certain corporations and trusts imposed by the Dominion of Canada is deductible under section 164(a)(3) of the Code. See Rev. Rul. 67–187, page 185.

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26 CFR 1.164–3: Definitions and special rules. Rev. Rul. 67–13

Chapter 8.1 of the Code of Virginia imposes a general sales and use tax at the rate of 2 percent. This is to be increased to 3 percent on and after July 1, 1968. Also, under chapter 8.1 a city or county may levy a local sales tax at the rate of 1 percent, subject to the general sales tax provisions of this chapter. Chapter 12.1 of the Code of Virginia imposes a 2-percent sales and use tax in regard to the purchase or use of a motor vehicle in the State of Virginia. This is in lieu of the general sales and use tax referred to above.

Held, the taxes imposed by the general sales and use tax statute qualify as general sales and compensating use taxes under section 164(b) of the Internal Revenue Code of 1954 and are deductible under section 164(a) of the Code.

Held further, any sales tax imposed by a city or county pursuant to section 58–441.49 of chapter 8.1 of the Code of Virginia, and the Model Ordinance Guide prepared thereunder, will be deductible under section 164(a) of the Code for Federal income tax purposes.

Held further, the motor vehicle sales and use tax is deemed part of the general sales tax pursuant to section 1.164–3(g)(1) of the Income Tax Regulations and therefore deductible under section 164(a) of the Code.

However, where any of the above taxes is paid or accrued by an individual other than in connection with a trade or business carried on by him, it is deductible only if the standard deduction or the optional tax table is not used.

Rev. Rul. 67–63

The use tax imposed by the State of North Dakota pursuant to the provisions of Chapter 57–40, North Dakota Century Code (1960), as amended, is a tax imposed upon the consumer and user and is deductible under section 164(a) of the Internal Revenue Code of 1954 as a general sales tax within the meaning of section 164(a)(4). If such tax is paid with respect to property purchased for use in the purchaser's trade or business, other than a trade or business consisting of the performance of services as an employee, the consumer may deduct the tax under section 62(1) of the Code in arriving at adjusted gross income, provided he does not elect to capitalize such amount as provided by section 266 of the Code.

Advice has been requested as to the deductibility, for Federal income tax purposes, of the use tax imposed by the State of North Dakota pursuant to chapter 57–40 of the North Dakota Century Code (1960), as amended, in view of the fact that the State of North Dakota no longer has a retail sales tax designated as such in the North Dakota code.

From 1935 until July 1, 1965, the State of North Dakota had a retail sales tax designated as such. This tax was imposed only for 2-year periods, and a completely new and independent sales tax law was enacted at each session of the State legislature, or, beginning in 1957, reenacted through amendment to the existing statute. As reenacted in 1963, the sales tax law was scheduled to expire on June 30, 1965. In 1965, the State legislature enacted a new sales tax law, designed to take effect on July 1, 1965. North Dakota Century Code, chapter 57–39 (supp. 1965).

In response to a referendum petition drafted in accordance with North Dakota law, which suspended operation of the new law, a special election was held on September 21, 1965, at which the North Dakota electorate rejected the sales tax law enacted in 1965. The previous sales tax law, section 57–39–01 et seq. of the North Dakota Century Code (supp. 1963), terminated by its own provisions on June 30, 1965.

The expired sales tax was imposed at the rate of 2¼ percent upon the gross receipts of retailers from all sales at retail in North Dakota. Property subject to the tax generally included tangible personal property and the furnishing of certain services. North Dakota Century Code, section 57–39–02 (supp. 1963). Retailers were directed to add tax imposed to the retail sales price, and the tax so added was specifically made a debt from the consumer or user to the retailer. North Dakota Century Code, section 57–39–06 (supp. 1963). Revenue Ruling 56–611, C.B. 1956–2, 121, held that the sales tax imposed by the State of North Dakota was allowable as a deduction under section 164(a) of the Code, to the purchaser.

Section 57–40–02 of the North Dakota Century Code (supp. 1963), dealing with the State use tax, imposes a tax on the storage, use, or consumption of tangible personal property purchased at retail for storage, use, or consumption in North Dakota, at the rate of 2¼ percent of the purchase price of such property. This tax is also appli-

cable to tangible personal property which, though not originally purchased for storage, use or consumption in North Dakota, is subsequently brought within the State. Section 57–40–03 specifically exempts from the use tax tangible personal property subject to the sales tax.

Under section 57–40–05, every retailer maintaining a place of business in North Dakota is required to collect and remit the use tax to the Tax Commissioner. When the use tax is not paid in conformity with this provision, the person storing, using or consuming tangible personal property within North Dakota is required to remit the tax directly to the Tax Commissioner.

Prior to the expiration of the sales tax, the attorney general of North Dakota ruled that the North Dakota use tax would replace the retail sales tax in most areas in the event that the electorate rejected the 1965 sales tax act. The attorney general indicated that in this event all retail sales subject to the sales tax would be subject to the use tax, with the exception of steam or communications services, tickets or admissions to places of amusement or entertainment or athletic events, the leasing of hotel or motel accommodations, and services furnished in repairing, altering, restoring, or cleaning tangible personal property. Upon the expiration of the sales tax, with these exceptions, a purchaser became liable for the use tax on any tangible personal property purchased at retail in North Dakota, in the same manner that he was formerly liable for the expired sales tax. Retailers in North Dakota were directed to charge their customers use tax on such purchases, and to remit the tax to the Tax Commissioner. When brought into the State, tangible personal property purchased outside North Dakota is subject, as before July 1, 1965, to the use tax. The retail sales tax rules and regulations were incorporated into the use tax rules and regulations by Use Tax Rule No. 121 as an aid in the administration of the use tax law.

Under the attorney general's ruling, it has become the duty of each seller holding a North Dakota retail sales and use tax permit to add the use tax to the retail sales price. The use tax, when now added to the sales price by a seller having a collection responsibility, is a debt owing by the buyer to the seller. As the use tax law pertaining to the filing of returns and the remittance of tax to the tax department is identical to the sales tax law, these tax returns must be filed by all retailers for the same periods for which returns were formerly required under the sales tax law, and remittances of use tax to the tax department must accompany these returns.

Section 164(a) of the Internal Revenue Code of 1954 sets forth the general rule that State and local general sales taxes shall be allowed as a deduction for the taxable year within which paid or accrued.

The term "general sales tax" is defined in section 164(b)(2)(A) of the Code as meaning a tax imposed at one rate in respect of the sale at retail of a broad range of classes of items. Under section 164(b)(2)(D) of the Code, a compensating use tax in respect of an item shall be treated as a general sales tax. The term "compensating use tax" means, in respect of any item, a tax which is imposed on the use, storage or consumption of such item and which is complementary to a general sales tax which is deductible with respect to sales of similar items.

Section 1.164–1(a) of the Income Tax Regulations provides that, in general, taxes are deductible only by the person upon whom they are imposed.

The North Dakota use tax, as presently construed and administered, has replaced the expired sales tax and has, in effect, become a sales tax as it applies to purchases in North Dakota. As applied to such purchases, the use tax meets the requirements for a general sales tax, set out in section 1.164–3(f) of the regulations, as it is a tax imposed in respect of sales at retail at one rate upon a broad range of classes of items. The tax is imposed directly upon the purchaser, as well as upon the user, of tangible personal property.

The tax is applicable to purchases of tangible personal property at retail both within and without the State of North Dakota, and is, therefore, performing a dual function. Therefore, the North Dakota use tax also qualifies as a "compensating use tax" within the meaning of section 164(b)(2)(D) of the Code as it applies to purchases outside North Dakota, notwithstanding the fact that it also qualifies as a "general sales tax." Accordingly, the tax imposed by chapter 57–40 of the North Dakota Century Code (1960), as amended, is deductible under section 164(a) of the Code, in computing taxable income, by the consumer or user. In the case of an individual who elects to use the standard deduction or the optional tax table no deduction is allowable unless the subject tax is attributable to a trade or business carried on by him. If the use tax is paid with respect to property purchased by an individual for use in the purchaser's trade or business, other than a trade or business consisting of the performance of services as an employee, the consumer may deduct the tax under section 62(1) of the Code in determining adjusted gross income. The business consumer, whether an individual or other taxpayer, may elect to charge the tax to capital account, pursuant to section 266 of the Code and section 1.266–1 of the regulations, in lieu of taking the deduction.

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26 CFR 1.164–6: Apportionment of taxes on real property between seller and purchaser. Rev. Rul. 67–31

For purposes of section 164(d)(1) of the Internal Revenue Code of 1954, the "real property tax year" of the State of Michigan and local governmental units thereof is the calendar year.

Advice has been requested as to what period is considered the "real property tax year" of the State of Michigan for purposes of apportioning real property taxes between a seller and a purchaser of property situated within the State under section 164(d)(1) of the Internal Revenue Code of 1954.

Section 164(a) of the Code provides, in part, that State and local real property taxes shall be allowed as a deduction for the taxable year within which paid or accrued.

The rules set forth in section 164(d) of the Code, relating to the apportionment between seller and purchaser of the allowable deduction, however, are applicable when real property is sold during any "real property tax year." Section 164(d)(1) of the Code provides the general rule that if real property is sold during any "real property tax year" then so much of the tax as is properly allocable to that

part of such year which ends on the day before the date of the sale shall be treated as imposed on the seller, and so much of the tax as is properly allocable to the part of such year which begins on the date of the sale shall be treated as imposed on the purchaser.

Section 1.164–6(c) of the Income Tax Regulations provides that the term "real property tax year," as used in section 164(d) of the Code, refers to the period which, under the law imposing the tax, is regarded as the period to which the tax imposed relates. Where the State and one or more local governmental units impose a tax on real property, the real property tax year for each tax must be determined for purposes of applying the rule of apportionment of section 164(d)(1) of the Code to each tax. The time when the tax rate is determined, the time when the assessment is made, the time when the tax becomes a lien, or the time when the tax becomes due or delinquent does not necessarily determine the real property tax year. The real property tax year may or may not correspond to the fiscal year of the governmental unit imposing the tax. In each case, the State or local law determines what constitutes the real property tax year.

The provisions relating to the taxation of property in Michigan, both real and personal, are contained in the General Property Tax Law, Michigan Stat. Ann. ch. 59, sections 7.1, et seq. (1960). Although the Michigan law does not specifically state what period constitutes the real property tax year the Michigan attorney general opinions on this issue state that such taxes are levied for a calendar year and are collected for the calendar year in which the levy is made. See Opinion No. 2074 (1955) Report of the Attorney General of Michigan, Vol. 1, 257; Opinion No. 4463 of the Michigan Attorney General, dated February 21, 1966, and the case of *Pere Marquette Railroad Co.* v. *Kalamazoo Lake Shore Railway Co.*, 122 N.W. 356 (1909), cited therein. Therefore, it follows that the taxes assessed and levied on real property are for the calendar year.

Accordingly, for purposes of section 164(d)(1) of the Code, the "real property tax year" of the State of Michigan and local governmental units thereof is the calendar year.

SECTION 165.—LOSSES

26 CFR 1.165–1: Losses. Rev. Rul. 67–48
(Also Section 1341; 1.1341–1.)

An amount paid by a taxpayer as liquidated damages to a former employer for breach of an employment contract qualifies as a business loss under section 165(c)(1) of the Internal Revenue Code of 1954 where such amount is attributable to compensation received and reported for services rendered. Such amount is deductible, however, only if the taxpayer itemizes his deductions. The provisions of section 1341 of the Code are not applicable.

Advice has been requested whether the amount of liquidated damages paid to a former employer for breach of contract is deductible under the following circumstances and whether the provisions of section 1341 of the Internal Revenue Code of 1954 are applicable.

The taxpayer who utilizes the cash receipts and disbursements method of accounting entered into a contract with his employer to

render services and receive training for a period of 1, 2, or 3 years at the option of his employer. The taxpayer agreed that if the time spent in training status amounted to 6 months but not more than 15 months, he would tender 12 months of obligated service as a full-time employee after the expiration of the training period. If the training period was more than 15 months but not more than 27 months the obligated service time as a full-time employee would be 18 months. If the training period was more than 27 months but less than 36 months, the obligated service time would be 24 months. As the result of agreeing to the period of obligated future service, the taxpayer received a salary during the training period which was substantially in excess of what he would otherwise have received.

The contract provided that in the event of failure on the part of the taxpayer to render the entire period of obligated service, he would be liable in liquidated damages in the amount of $400x$ dollars for each month or portion of a month remaining in the period of obligated service. The amount of liquidated damages was the approximate equivalent of the excess salary to be paid during the training period and was set by the employer for the purpose of reimbursing the employer for such excess in the event of failure to complete the obligated service.

The taxpayer broke the contract after rendering 3 months of a required 12 months of obligated service. Thus, under the terms of the contract, he became liable in liquidated damages in the amount of $400x$ dollars for each of 9 months. He paid this amount during the taxable year. The amounts received by the taxpayer pursuant to the contract were reported as salary for the years in which received.

Section 165(c)(1) of the Code provides that in the case of an individual, there shall be allowed as a deduction any loss incurred in a trade or business during the taxable year, not compensated for by insurance or otherwise.

Since the amount of liquidated damages paid by the taxpayer to his employer in this case is attributable to compensation received for services rendered, such amount qualifies as a business loss under section 165(c)(1) of the Code. The deduction is allowable in the year paid, but only if the taxpayer itemizes his deductions. See Rev. Rul. 65–254, C.B. 1965–2, 50.

Section 1341(a) of the Code provides rules for the computation of tax where a taxpayer is entitled to a deduction in excess of $3,000 as the result of restoring an amount included in gross income for a prior taxable year (or years) because it appeared that the taxpayer had an unrestricted right to such amount. However, section 1341 of the Code is not applicable where the taxpayer did, in fact, have an unrestricted right to receive the amount and where the obligation to repay arose as the result of subsequent events. See Rev. Rul. 58–226, C.B. 1958–1, 318. Accordingly, in the instant case, the provisions of section 1341 of the Code do not apply.

Partnership loss to a general partner who is engaged as a real estate dealer for his individual account and also has an interest in the partnership created to acquire, operate and lease a hotel property. See Rev. Rul. 67–188, page 216.

Treatment of costs in connection with application of local service airline for certificates issued by CAB. See Rev. Rul. 67–113, page 55.

SECTION 166.—BAD DEBTS

26 CFR 1.166–4: Reserve for bad debts. Rev. Rul. 67–32

A production credit association organized under section 20 of the Farm Credit Act of 1933, Public Law 75, 73d Congress, 12 U.S.C. 1131d, makes short-term and intermediate-term loans to qualified farm owners and operators. These loans are represented by promissory notes which are normally secured. The association transfers most of these notes to the district Federal Intermediate Credit Bank as collateral on loans made by the bank to the association.

Held, in computing reasonable annual additions to its reserve for bad debts pursuant to section 166(c) of the Internal Revenue Code of 1954, the production credit association is not required to reduce the amount of its loans outstanding by the amounts represented by the promissory notes described above transferred as collateral on loans made to the association by the Federal Intermediate Credit Bank under a form of agreement which makes the production credit association primarily liable to the bank for the repayment of all funds lent to it by the bank.

SECTION 167.—DEPRECIATION

26 CFR 1.167(a)–1: Depreciation in general. Rev. Rul. 67–22
(Also Section 263; 1.263(a)–1.)

Tax treatment under the retirement and replacement method of accounting for depreciation with respect to welding rail costs is discussed.

Advice has been requested concerning the treatment for Federal income tax purposes of welded rail costs under the retirement and replacement method of accounting for depreciation generally used by railroads for track accounts.

In the strict sense, retirement accounting involves the capitalizing of the cost of each new asset put into use, and charging off as expense (only when retired) the original capitalized cost of the asset being retired. Likewise in the strict sense, replacement accounting involves charging the cost of assets to expense at the time they are put into use (when replacing assets) without disturbing the capital account balances. Betterments are part of replacement accounting. When a replacement involves a betterment, the betterment portion of the replacement is capitalized.

However, both the railroad industry and the Internal Revenue Service use "retirement method" to mean a method of accounting for depreciation composed of elements of retirement and replacement accounting. For assets accounted for under this "retirement method," no ratable deduction for depreciation is claimed and no depreciation reserve is maintained. The investment in the track accounts (original track structure and additions thereto), including the labor costs, is capitalized. When any asset of the track structure is replaced in kind

and quality, for example when 80-pound rail is replaced with 80-pound rail, the capital account is not disturbed. Instead, the cost of the replacement rail, less the salvage value of the recovered rail, together with labor costs for removing the old and installing the replacement is expensed.

When any asset of the track structure is replaced with a betterment, for example, 100-pound rail for 80-pound rail, the cost of the 20-pound betterment portion is capitalized and the cost of the 80-pound replacement portion, less the salvage value of the recovered rail, together with all labor costs incurred is charged to expense.

When any asset of the track structure is retired without replacement, a credit is made to the capital account for the capitalized book cost of the retired asset and that amount (less salvage value) together with labor costs of removal is charged to expense.

Since replacements and their labor costs have been expensed, the capital accounts reflect only the original investment (and additions thereto), including their labor costs, plus subsequent betterments, if any. Thus, in theory, under this "retirement method" of accounting for depreciation, the balance in the track structure capital accounts represent the adjusted basis of the assets reflected in such accounts.

The use of this method of accounting for depreciation permits a railroad to take, as a rough equivalent of depreciation on all remaining assets in the track accounts, a deduction in an amount aggregating: (1) the cost of replacements in kind and quality less the salvage value of the materials recovered; (2) the cost of the uncapitalized portion of replacements where betterments are involved, less the salvage value of the materials recovered; (3) the capitalized cost of retirements without replacements, less the salvage value of the materials recovered, and (4) the labor costs incurred in retirements and replacements.

For many years it was the practice of railroads to purchase rails in lengths of 39 feet, or shorter, and bolt them together with joint or angle bars. In more recent years, however, welded rails have come into use. Today the practice is to weld together rails of varying lengths which eliminates the necessity for using joint or angle bars. The welding process reduces track renewal costs, prolongs the life of the rail and rolling stock, and substantially reduces maintenance and overhead costs.

Some railroads expense all rail-welding costs apparently on the theory that since welding adds neither material nor weight to the rails, there is neither an improvement nor a betterment to be capitalized.

Section 263 of the Code provides, in pertinent part, as follows:

> (a) GENERAL RULE.—No deduction shall be allowed for—
> (1) Any amount paid out * * * for permanent improvements or betterments made to increase the value of any property or estate * * *.

The welding of rail creates something new or better by substitution or addition of different materials, reduces track renewal costs, prolongs rail and rolling stock life, reduces maintenance costs, and increases the value of the track structure. See Rev. Rul. 60–386, C.B. 1960–2, 107.

Accordingly, under the "retirement method" of accounting for depreciation composed of elements of retirement and replacement

accounting, initial welding costs are to be capitalized since a permanent improvement or betterment has been effected. However, under this method where welded rail is replaced with welded rail of the same kind and quality, no further betterment is involved and the rail replacement and labor costs, less the salvage value of the recovered rail, are properly charged to expense. Also, where joint or angle bars are retired because welding has occurred, the unrecovered capitalized costs (including the original labor cost of installation) of the joint or angle bars, less their salvage value, are properly charged to expense.

Rev. Rul. 67–145

Railroads using the "retirement method" of accounting for depreciation for their track account assets must value their recovered track materials at their fair market values at the time such track materials are retired or replaced and transferred to supplies or scrap accounts. The fair market values of the recovered track materials must be taken into account in computing the allowance for depreciation for the taxable year on all remaining track account assets. Such fair market values will be reflected in the supplies or scrap accounts as the basis of the recovered track materials transferred to such accounts.

Advice has been requested regarding the proper values and treatment for Federal income tax purposes of recovered track materials (accounted for in the ties, rails, other track material, and ballast accounts) when such track materials are retired or replaced and transferred to supplies or scrap accounts (without disposition) by railroads using the retirement and replacement method ("retirement method") of accounting for depreciation for their track account assets. (For a description of this "retirement method" of accounting for depreciation generally used by railroads, see Revenue Ruling 67–22, page 52, this Bulletin.)

As pointed out in Revenue Ruling 67–22, this "retirement method" of accounting for depreciation is not expressed in terms of years; no salvage is taken into account when the asset is placed in service; no ratable deduction is claimed; and no depreciation reserve is maintained. The deduction for depreciation is computed for all assets in the track accounts when track materials are retired or replaced and it is at that time that the salvage values of the recovered track materials are determined and taken into account in the computation of the allowable deduction for depreciation.

Section 167 of the Internal Revenue Code of 1954 provides that there shall be allowed as the depreciation deduction a reasonable allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence) of property used in the trade or business, or held for the production of income. Although the implementing regulations do not specifically cover all details for every method of accounting for depreciation, including the instant one, they nevertheless establish the basic rules applicable to all methods of accounting for depreciation.

Section 1.167(a)–1(a) of the Income Tax Regulations provides in pertinent part that:

* * * The allowance is that amount which should be set aside for the taxable year in accordance with a reasonably consistent plan (not necessarily at a uni-

form rate), so that the aggregate of the amounts set aside, plus the salvage value, will, at the end of the estimated useful life of the depreciable property, equal the cost or other basis of the property * * *. An asset shall not be depreciated below a reasonable salvage value under any method of computing depreciation. * * *

Section 1.167(a)-1(c)(1) of the regulations also provides, in part, that:

Salvage value is the amount (determined at the time of acquisition) which is estimated will be realizable upon sale or other disposition of an asset when it is no longer useful in the taxpayer's trade or business and is to be retired from service * * *. Salvage value must be taken into account in determining the depreciation deduction either by a reduction of the amount subject to depreciation or by reduction in the rate of depreciation, but in no event shall an asset (or an account) be depreciated below a reasonable salvage value. * * *

It is clear that salvage value plays an inherently vital role in the computation of the amount allowable as a depreciation deduction. It seems equally clear that the regulations provide but one concept of salvage value to be taken into account in computing the depreciation deduction irrespective of the method of accounting used, viz, that which is estimated will be realizable upon sale or other disposition of the depreciable assets. Even if the timing for taking salvage value into account is different under one method of accounting for depreciation (at the end of useful life) from that under another method (at the beginning of useful life), the concept of salvage value under the regulations is the same.

Accordingly, railroads using the "retirement method" of accounting for depreciation for their track account assets must value their recovered track materials at their fair market values at the time such track materials are replaced or retired and transferred to supplies or scrap accounts (without disposition). In computing the deduction for allowable depreciation for the taxable year on all remaining track account assets, the fair market values of such recovered track materials must be taken into account as offsets against the cost of the replacements and, in the case of retirements, against the basis of the retired assets as reflected in the capital accounts. Such fair market values of the recovered track materials will be reflected in the supplies or scrap accounts as the basis of the recovered track materials transferred to such accounts.

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26 CFR 1.167(a)-3: Intangibles. Rev. Rul. 67-113
(Also Sections 165, 263; 1.165-1, 1.263(a)-1.)

Expenditures made by an airline in acquiring "temporary" certificates of public convenience and necessity from the Civil Aeronautics Board are capital expenditures depreciable over the term for which the certificates are awarded.

Costs incurred in defending temporary authority are depreciable over the remaining life of such authority. Costs incurred beginning with the taxable year of the Civil Aeronautic Board's decision to determine permanent authorization, as well as any unrecovered costs of "temporary" certificates converted to "permanent" certificates, are not depreciable.

In the case of "mixed" awards (those in which part of the requested authority is denied, part granted for a temporary period, and part granted for an indefinite period of time), a reasonable allocation of total costs is required. Costs allocated to authority denied are deductible under section 165(a) of the Code. Costs allocated to certificates awarded on a temporary basis are depreciable

over the term of the award. Costs allocated to certificates awarded on a permanent basis are not depreciable.
Revenue Ruling 56–600, C.B. 1956–2, 171, amplified.

Advice has been requested regarding the proper treatment for Federal income tax purposes of expenditures made by an airline for the acquisition, defense, and pursuit of permanence of "temporary" certificates of public convenience and necessity issued by the Civil Aeronautics Board (hereinafter referred to as CAB) in the three following situations:

Situation (1)

An airline seeks to obtain certification from the CAB to service a new air route. Pursuant to the Federal Aviation Act and the Administrative Procedure Act, a hearing is held wherein the applicant is required to submit economic and legal data involving traffic projections, costs, potential profit, alternate modes of transportation, and diversion of traffic from other carriers.

During a 5-year period, the airline made various applications to the CAB in accordance with the above-described procedures. As a result thereof, the taxpayer was granted certain "temporary" certificates by the CAB, such certificates being limited in duration and to run for stated periods of time (usually 5 years).

The certificates are subject to revocation in the event that the CAB determines that the air route has not generated sufficient traffic to justify its operation. The taxpayer has presented information which indicates that during a 10-year period the CAB revoked or did not renew its certificates as to approximately one-third of the cities for which it was certified on a temporary basis.

Renewal of "temporary" certificates is not automatic, but is dependent upon approval of the CAB. The carrier must again present evidence to justify the continued operation of the air route before a full scale hearing held by the CAB.

With respect to situation (1), the question presented is the proper treatment for Federal income tax purposes of the costs incurred by the taxpayer in connection with the aforementioned hearings before the CAB.

Expenditures of the character described above must be capitalized. Section 1.167(a)–3 of the Income Tax Regulations provides, in part, that, "If an intangible asset is known from experience or other factors to be of use in the business or in the production of income for only a limited period, the length of which can be estimated with reasonable accuracy, such an intangible asset may be the subject of a depreciation allowance. * * * An intangible asset, the useful life of which is not limited, is not subject to the allowance for depreciation."

In determining whether a contract right or franchise has a reasonably determinable useful life, the renewability of the rights in question will be taken into account. Where, however, renewability does not occur as a matter of course or with reasonable certainty, the original stated term will be viewed as determinative of the useful life of rights for purposes of depreciation.

Accordingly, the "temporary" certificates awarded to the taxpayer have a determinable useful life limited to the stated life of the award. Therefore, expenditures made in pursuit of such certificates are de-

preciable ratably over the period beginning with the date of the award through the end of the stated period of authorization.

Revenue Ruling 56–600, C.B. 1956–2, 171, relating to expenditures in connection with the acquisition and development of air routes was directed at certification on a permanent basis, and is therefore distinguishable.

Situation (2)

The CAB granted the taxpayer and one other carrier a 5-year "temporary" certificate to provide service between two cities, *A* and *B*. The taxpayer incurred costs of about 21*x* dollars in connection with its pursuit of this authority.

Approximately 1 year later, the CAB ordered an investigation to determine whether taxpayer's *A–B* authorization should be terminated in whole or in part. In connection with various hearings held by the CAB in this matter, the taxpayer incurred costs amounting to about 30*x* dollars. As a result of its investigation, the CAB issued an order in which it decided to make no change in the taxpayer's original authorization.

Thereafter, the CAB announced it would hold further hearings to determine whether or not the original authorization should be renewed beyond the original 5-year period. Another investigation was held, and as a result thereof, the CAB issued an order to the taxpayer renewing the *A–B* authority on a permanent basis.

The question presented is the proper treatment for Federal income tax purposes of the costs originally incurred in pursuit of the authority, as well as the costs incurred with respect to each of the interim proceedings.

With respect to situation (2), the costs of 21*x* dollars incurred in pursuit of the original "temporary" certificate must be capitalized and are depreciable over the 5-year life of the certificate. The costs incurred in connection with the interim proceedings (to protect the "temporary" certificate against revocation) must also be capitalized and are depreciable over the remaining life of the certificate.

Costs incurred, beginning with the taxable year of the CAB's decision to hold hearings to determine permanent authorization must be capitalized. They are not, however, depreciable since they are closely related to the acquisition of an asset having an indeterminable useful life. Such costs may be deductible as losses only if and when the route is abandoned. Also, the unrecovered balance of the costs incurred in obtaining and defending the original 5-year "temporary" certificate ceased to be depreciable in the year of the CAB's decision to grant permanent certification. This balance then became a part of the cost of the permanent certification, and will be deductible as a loss only in the event the route is abandoned. See *Pig & Whistle Co.*, 9 B.T.A. 668 (1927).

Situation (3)

In certain cases, route authorizations awarded by the CAB do not conform to the routes of service requested by the carrier. For example, the CAB may grant a "mixed" award wherein a portion of the requested authority is denied, another portion is awarded on a temporary basis and the remaining portion is awarded on a permanent

basis. The question thus arises to what extent, if any, the costs incurred in pursuit of the requested authority are deductible.

With respect to situation (3), a reasonable allocation of total costs is required. Such allocation must be based on all the facts and circumstances and on reasonably accurate guidelines such as traffic potential or route mileage requested. Costs allocated to authority denied are deductible under section 165(a) of the Code. Costs allocated to certificates awarded on a temporary basis must be capitalized and are depreciable over the term of the award. Costs allocated to certificates awarded on a permanent basis must be capitalized and are not depreciable since they are related to the acquisition of an asset having an indeterminable useful life.

Accordingly, Revenue Ruling 56–600, C.B. 1956–2, 171, relating to the treatment of expenditures made by airlines in connection with the acquisition and development of permanent air routes, is amplified.

Rev. Rul. 67–136

A taxpayer-purchaser may deduct, as an allowance for depreciation under section 167 of the Internal Revenue Code of 1954, an amount equal to the payments made during the taxable year on the purchase price of United States patents and United States patent applications, where the invention covered by the patent application is one for which a patent will be issued in the normal course, if the purchase price is fixed by the contract of sale as a reasonable percentage of the annual return derived by the taxpayer-purchaser from the use or exploitation of the patents and patent applications over the period of their remaining lives.

Advice has been requested whether, under the circumstances described below, a taxpayer may deduct as an allowance for depreciation of property under section 167 of the Internal Revenue Code of 1954, an amount which equals the annual payments made on the purchase price of certain patents and patent applications where the invention covered by the patent application is one for which a patent will be issued in the normal course.

The taxpayer, who is engaged in the business of purchasing patents and patent applications and licensing their use to third persons, entered into a contract with an individual who owned certain United States patents and United States patent applications relating to inventions on which a patent will be issued in the normal course. The agreement provided that the seller would convey to the taxpayer all his right, title, and interest in these patents and patent applications.

As consideration for the transfer, the taxpayer agreed to pay to the seller each year a reasonable percentage of all royalties or other consideration which he received from any licenses of the patents and patent applications. The agreement provides for termination of the contract if the taxpayer becomes bankrupt, in which case all rights transferred by the contract will revert to the seller.

Section 167(a) of the Code provides, in part, that as a general rule there shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence), of property used in the trade or business, or of property held for the production of income.

In accordance with section 1.167(a)–3 of the Income Tax Regulations, if an intangible asset is known from experience or other factors

to be of use in the business or in the production of income for only a limited period, the length of which can be estimated with reasonable accuracy, such an intangible asset may be the subject of an allowance for depreciation. Examples are patents and copyrights. An intangible asset, the useful life of which is not limited, is not subject to an allowance for depreciation.

A depreciation deduction is designed, generally, to allow a taxpayer to recover his cost or other basis in assets over the period of their usefulness in his trade or business. Similarly, by the terms of the contract in the instant case, the price of the assets is tied to the benefits the taxpayer derives from them; as the assets produce income their cost or basis increases and their period of usefulness to the taxpayer is proven. The use of the amounts which the taxpayer in this case is contractually obligated to pay on the price as the measure of the allowance for depreciation assures minimum distortion of income. The contrary would be the case if the taxpayer were required to delay recapturing his capital investment in the assets until their total price is established.

Accordingly, since the invention covered by each of the applications is one for which a patent will be issued in the normal course and the purchase price of the patents and patent applications is contractually fixed as a reasonable percentage of the annual earnings from such patents and patent applications over the period of their remaining lives, the taxpayer-purchaser may deduct a sum equal to the payments made during the taxable year on the purchase price of such patents and patent applications as an allowance for depreciation under section 167 of the Code. See *Associated Patentees, Inc.* v. *Commissioner*, 4 T.C. 979 (1945), acquiescence, C.B. 1959–2, 3.

Rev. Rul. 67–155

A taxpayer acquired certain vending machine location leases in connection with the acquisition of a vending machine business. The leases granted the taxpayer the right to install and stock his machines on the lessors' premises to the exclusion of competing vendors. The leases were identical in providing minimum terms of three years with automatic renewals by which the leases might be renewed indefinitely.

Held, since the value of the vending machine location leases is in part attributable to benefits the taxpayer expects to derive from their extension for periods which are not limited but are indefinite, the cost of the leases is not depreciable for Federal income tax purposes. *Westinghouse Broadcasting Company, Inc.* v. *Commissioner*, 309 F. 2d 279 (1962), certiorari denied, 372 U.S. 935 (1963). *Thrifticheck Service Corporation* v. *Commissioner*, 287 F. 2d 1 (1961), *Sam Scalish* v. *Commissioner*, T. C. Memo. 1962–46.

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26 CFR 1.167(a)–10: When depreciation deduction is allowable. Rev. Rul. 67–49

Where a lessee erroneously claimed amortization instead of depreciation on its leasehold improvements, it may select an acceptable accelerated method of depreciation rather than the straight line method to correct the error when the error is discovered.

Advice has been requested whether a taxpayer may select an accelerated method of depreciation rather than the straight line method in the situation described below.

The taxpayer, a corporation, leased unimproved land from its principal stockholders for a period of 20 years and built a building which had a 40-year useful life. The taxpayer claimed a deduction for amortization of the building cost over the term of the ground lease (20 years). However, because the taxpayer-lessee and the lessor (stockholders) are related within the meaning of section 178(b)(2) of the Internal Revenue Code of 1954, amortization over the term of the lease is not allowable, but for depreciation purposes the use life of 40 years must be used. Section 1.178–1(d)(1)(i) of the Income Tax Regulations.

During an examination of taxpayer's Federal income tax return, the amortization claimed was disallowed and the question then arose as to whether the taxpayer may select an accelerated method of depreciation rather than the straight line method.

Section 1.167(a)–10(a) of the regulations provides as follows:

> A taxpayer should deduct the proper depreciation allowance each year and may not increase his depreciation allowances in later years by reason of his failure to deduct any depreciation allowance or of his action in deducting an allowance plainly inadequate under the known facts in prior years. The inadequacy of the depreciation allowance for property in prior years shall be determined on the basis of the allowable method of depreciation used by the taxpayer for such property or under the straight line method if no allowance has ever been claimed for such property. *The preceding sentence shall not be construed as precluding application of any method provided in section 167(b) if taxpayer's failure to claim any allowance for depreciation was due solely to erroneously treating as a deductible expense an item properly chargeable to capital account.* [Emphasis added.]

The exception in section 1.167(a)–10(a) of the regulations (emphasized above) equally applies in the present situation where the taxpayer erroneously amortized its land improvements (the building) instead of depreciating them since in neither case has any allowance for depreciation been claimed under section 167 of the Code.

Accordingly, the taxpayer-lessee may select an acceptable accelerated method of depreciation for computing its allowance for depreciation on its leasehold improvements (the building) rather than the straight line method to correct the amortization error when the error is discovered.

See, however, Revenue Ruling 67–50, page 60, this Bulletin, where a taxpayer erroneously used the sum of the years-digits method of depreciation for "used" property.

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26 CFR 1.167(e)–1: Change in method. Rev. Rul. 67–50

Where a taxpayer erroneously used the sum of the years-digits method of computing depreciation on a "used" depreciable asset, he may not substitute the "150 percent" declining balance method of computing depreciation or any other method except the straight line method. The straight line method must be used for all taxable years for which the periods of limitations have not expired, and for subsequent taxable years. The taxpayer may, however, file an application to change his method for subsequent taxable years.

Advice has been requested whether the declining balance method of computing depreciation, with a rate of one and one-half (150 percent) the applicable straight line rate, may be substituted for the sum of the years-digits method in the situation described below.

A taxpayer acquired an item of "used" depreciable property and computed depreciation on the property by using the sum of the years-digits method.

The taxpayer and the examining agent agree that the use of the sum of the years-digits method is not permitted under section 167(c) of the Internal Revenue Code of 1954, for computing depreciation on taxpayer's "used" property. The taxpayer contended, however, that he should be permitted to substitute the declining balance method of computing depreciation, with a rate not exceeding one and one-half times (150 percent) the appropriate straight line rate, since he could have properly elected that method if he had chosen to use it for the first taxable year the property was acquired.

Section 1.167(b)–1(a) of the Income Tax Regulations provides, in part, that the straight line method of computing depreciation shall be used in all cases where the taxpayer has not adopted a different acceptable method of computing depreciation. The sum of the years-digits method is not an acceptable method for computing depreciation on taxpayer's "used" property, since the property does not qualify for the use of this method under section 167(c) of the Code.

Accordingly, where a taxpayer erroneously used the sum of the years-digits method of computing depreciation on a "used" depreciable asset, he may not substitute the declining balance method of computing depreciation, or any other method other than the straight line method. The straight line method must be used for all taxable years for which the periods of limitations have not expired, and for subsequent taxable years. The taxpayer may, however, file an application on Form 3115, Application for Change in Accounting Method, to change his method of computing depreciation for succeeding years in accordance with sections 1.167(e)–1(a) and 1.446–1(e)(3) of the regulations.

See, however, Revenue Ruling 67–49, page 59, this Bulletin, where a taxpayer erroneously claimed amortization instead of depreciation on leasehold improvements.

SECTION 170.—CHARITABLE, ETC., CONTRIBUTIONS AND GIFTS

26 CFR 1.170–1: Charitable, etc., contributions and gifts; allowance of deduction. (Also Section 262; 1.262–1.) Rev. Rul. 67–14

> The amount expended by a tenant for additions or improvements to Government-owned housing is not deductible as a charitable contribution for Federal income tax purposes. Such amount represents a nondeductible personal, living or family expense.

Advice has been requested as to whether the amount expended by a tenant for additions and improvements to Government-owned housing is deductible as a charitable contribution, for Federal income tax purposes.

A civilian employee living in Government-owned housing on a Federal installation is permitted to make permanent additions and improvements at his own expense to the property in which he is living. The improvements are made by the employee for the sole purpose of obtaining additional living comfort and convenience for his family. The employee understands that when completed the additions and improvements will become Government property to which he holds no rights of ownership.

Section 170 of the Internal Revenue Code of 1954 provides, in part, that in computing taxable income there shall be allowed as a deduction, in the manner and to the extent specified, any charitable contribution payment of which is made within the taxable year to or for the use of the United States, but only if the gift or contribution is made for exclusively public purposes.

Since the expenditure was made for the personal comfort and convenience of the employee and his family, such amount is not a contribution or gift to the United States exclusively for public purposes. Such amount represents a nondeductible personal, living, or family expense under section 262 of the Code.

Accordingly, the amount expended by the tenant for additions or improvements to Government-owned housing is not deductible as a charitable contribution, for Federal income tax purposes.

(Also Sections 2055, 2522, 7805; 20.2055–2, 25.2522(a)–2, 301.7805–1.) Rev. Rul. 67–33

Where the local law authorizes a trustee to invest corpus in the stock of regulated investment companies and to pay out capital gains distributions received therefrom as income under the general provisions of the governing instrument, a charitable deduction is not allowable with respect to a charitable remainder interest as the charitable interest is not severable from the noncharitable interest. Revenue Ruling 60–385, C.B. 1960–2, 77, supplemented.

Advice has been requested concerning the applicability of the principle of Revenue Ruling 60–385, C.B. 1960–2, 77, regarding the ascertainability of the value of a charitable remainder interest in trust, where the governing instrument does not expressly authorize the trustee to invest corpus in the stock of regulated investment companies and to pay out capital gains distributions therefrom as income, but where the local law, either by statute or an outstanding court decision, permits such investment under a trustee's general power of investment and allows capital gains distributions to be paid out as income.

The general rule, with respect to allocation of capital gains distributions of regulated investment companies, is that such distributions are allocable to principal. This is the rule adopted in section 6(c) of the Revised Uniform Principal and Income Act (1962). Corresponding provisions are found in some other State statutes, and the law is to the same effect in certain States whose legislatures have not considered the question. See *Brock Estate*, 420 Pa. 454, 218 A. 2d 281 (1966); *Tait* v. *Peck*, 346 Mass. 521, 194 N.E. 2d 707 (1963). To the contrary, however, are decisions in Minnesota and Missouri, holding the capital gains distributions are allocable to income. See *In re*

Gardner's Trust, 266 Minn. 127, 123 N.W. 2d 69 (1963); *Coates* v. *Coates*, 304 S.W. 2d 874 (Mo. 1957).

It is apparent that if the trustee has the authority to invest in regulated investment companies and to treat capital gains distributions as income, whether by the express provisions of the governing instrument or by virtue of the local law, he has the power to divert corpus from the remainder beneficiaries for the benefit of the income beneficiaries. If there are noncharitable income beneficiaries, a charitable remainder interest in corpus which is subject to such power of investment, and diversion, cannot be severed from the noncharitable income interest in the absence of an acceptable formula for ascertaining the value of the remainder interest. No generally acceptable formula for this purpose is known. Thus, a charitable deduction is not allowable under section 170 (income tax), section 2055 (estate tax) or section 2522 (gift tax) of the Internal Revenue Code of 1954 with respect to charity's remainder interest in the corpus of a trust where the trustee may invest in stock of regulated investment companies and treat capital gains distributions as income either under the express terms of the governing instrument or under the applicable local law (that is, a statute or outstanding court decision). Deduction will be allowed where the governing trust instrument clearly provides for the allocation of capital gains distributions to principal.

The above conclusion regarding instruments which do not expressly grant trustees the powers in question, but where the local law makes it clear that a trustee has authority both to invest trust funds in shares of regulated investment companies and to treat capital gains distributions as income, was not considered in Revenue Ruling 60–385 as one of the conditions taken into consideration in the revocation of Revenue Ruling 55–620, C.B. 1955–2, 56. Accordingly, under the authority of section 7805(b) of the Code, this ruling will not be applied with respect to transfers completed prior to May 1, 1967, or to transfers made under instruments executed prior to that date which could not be altered or amended, unless the instrument expressly authorizes the trustee to pay out capital gains distributions as income.

Revenue Ruling 60–385 is hereby supplemented.

(Also Section 61; 1.61–1.) Rev. Rul. 67–137

Amounts paid by a corporation to qualified religious, charitable, and educational organizations designated by its employees pursuant to a charitable designation plan are deductible by the corporation under section 170 of the Internal Revenue Code of 1954. The employees will not be in receipt of gross income for Federal income tax purposes with respect to these contributions by the corporation.

Advice has been requested whether a charitable contribution deduction is allowable, for Federal income tax purposes, for amounts paid by a corporation to qualified religious, charitable, and educational organizations designated by its employees pursuant to a charitable designation plan.

The corporation adopted the plan in order to encourage its employees to engage in philanthropic activities on their own account

where their circumstances would permit. Under this plan, each employee with at least 1 year's service and a predetermined minimum annual compensation may participate in the allocation of the corporation's charitable contributions. Each such employee may designate a number of organizations qualified under section 170(c) of the Internal Revenue Code of 1954 to which contributions will be made by the corporation. The aggregate amount which an employee may designate varies according to his compensation.

The employee's designation is made on a form provided by the corporation. After satisfying itself that the organizations designated on the completed forms qualify under section 170 of the Code and that the employee will not benefit personally by the contribution, the corporation issues checks payable directly to the recipient organizations. The check or checks are then sent to the designating employee for transmission to the designated organizations.

The employees are merely performing administrative duties for the corporation by suggesting specific qualified recipient organizations.

Section 170 of the Code provides, in part, that in computing taxable income there shall be allowed as a deduction, in the manner and to the extent therein specified, any charitable contribution payment of which is made within the taxable year to or for the use of an organization which is operated exclusively for religious, charitable, and educational purposes.

Accordingly, amounts paid by the corporation to qualified religious, charitable, and educational organizations designated by its employees pursuant to the prescribed charitable designation plan are deductible by the corporation in the manner and to the extent provided by section 170 of the Code. The employees will not be in receipt of gross income for Federal income tax purposes with respect to these contributions by the corporation.

(Also Section 1012; 1.1012–1.) Rev. Rul. 67–178

When a donor transfers, without consideration, stock to a charitable organization under a "gentlemen's agreement" which allows him to reacquire the stock one month later at its then fair market value, the amount of the cash paid to the organization in reacquiring the stock, and not the fair market value of the stock when transferred, is a charitable contribution within the meaning of section 170 of the Internal Revenue Code of 1954, and is deductible to the extent provided by such section. The basis of the stock in the hands of the donor remains the same as it was before he transferred the stock.

Advice has been requested whether, under the circumstances described below, a taxpayer who transfers shares of stock to a charitable organization without consideration, and who later reacquires them from the organization at their fair market value at the time of reacquisition, is entitled to a charitable contribution deduction based on the fair market value of the stock at the time of his transfer, or on the cost of reacquisition, and whether such transaction will affect the basis of his stock.

The taxpayer in the instant case transferred, without consideration, 300 shares of stock in *M* Corporation, having a fair market value of $4x$ dollars per share, to an organization described in section 170(c)

of the Internal Revenue Code of 1954. The taxpayer's adjusted basis in the stock was $2x$ dollars per share. During the month following the transfer and in the same taxable year, the taxpayer repurchased the 300 shares at $4x$ dollars per share. The books of *M* reflected both changes in ownership.

The charitable organization had in its possession a large number of shares of stock of *M* which had been received from other donors. While such shares were allegedly held for sale to any prospective purchaser, the majority of them (as well as the shares acquired from the taxpayer) were, in fact, held under a "gentlemen's agreement" for resale to the donors. The transactions were handled in this manner for the purpose of enabling the donors to obtain a charitable deduction and to acquire a stepped-up basis for the stock while avoiding the recognition of gain.

Section 170(a) of the Code provides, in part, as follows:

> (1) *General rule.*—There shall be allowed as a deduction any charitable contribution * * * payment of which is made within the taxable year.

It is clear that the taxpayer has made a charitable contribution within the taxable year. The questions, however, are (1) in which of the transactions was the contribution effected, and (2) whether the transfer and repurchase of the stock under such a "gentlemen's agreement" should affect the basis of the stock.

It is well settled that the Internal Revenue Service will look to the substance of a transaction. *Commissioner* v. *Court Holding Co.*, 324 U.S. 331 (1945), Ct. D. 1636, C.B. 1945, 58. Upon a determination that the form employed to carry out a transaction is unreal or a sham, the Service may disregard its effect. *Higgins* v. *John Thomas Smith*, 308 U.S. 473 (1940), Ct. D. 1434, C.B. 1940–1, 127.

In the instant case title to the stock was actually transferred on the books of the corporation. Nevertheless, the facts indicate that the taxpayer had no intention of relinquishing his rights of ownership in the stock; that the stock was held by the donee under an agreement for return to the donor in the form of a sale; and that by means of this device the donor hoped to obtain a stepped-up basis for such stock.

On the basis of these facts, the transfer and repurchase of the stock are to be disregarded. However, the amount paid in order to reacquire the stock is a charitable contribution within the meaning of section 170 of the Code and is deductible in the year paid in the manner and to the extent provided by such section. The basis of the stock in the hands of the taxpayer after his reacquisition remains the same as it was before he transferred the stock.

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26 CFR 1.170–2: Charitable deductions by individuals; limitations. Rev. Rul. 67–160

Section 1.170–2(b)(5)(i)(a) of the Income Tax Regulations provides that gifts made to a corporation, trust, or community chest, fund, or foundation, referred to in section 170(c)(2) of the Internal Revenue Code of 1954 (other than an organization specified in subparagraphs 1.170–2(b)(1)(i) through (vi)) may be taken into account in computing the additional 10-percent limitation provided by section 170(b)(1)(A)(vi) of the Code, provided the organization is

"publicly supported." Section 1.170–2(b)(5)(iii)(b) of the regulations provides a "mechanical test" for determining whether or not an organization will be considered to be "publicly supported." Under this test, an organization will be considered to be a "publicly supported" organization for its current taxable year and the taxable year immediately succeeding its current year, if, for the four taxable years immediately preceding the current taxable year, the total amount of the support which the organization receives from governmental units, from donations made directly or indirectly by the general public, or from a combination of these sources equals 33⅓ percent or more of the total support of the organization for such four taxable years.

Held, for the purpose of determining whether or not the "mechanical test" is satisfied, an outright bequest which is received by an organization during one of the four taxable years immediately preceding the current taxable year and which is held as an endowment by such an organization rather than being disbursed for current expenses, is includible in the computation of support specified in section 1.170–2(b)(5)(iii)(b) of the regulations.

Treatment of per diem allowance received to cover travel expenses incurred while away from home rendering gratuitous services to an organization contributions to which are deductible. See Rev. Rul. 67–30, page 9.

Deductibility of the fair market value of "divested stock" (within the meaning of section 1111(e) of the Internal Revenue Code of 1954) where the owner-grantor has transferred in trust a number of his shares in the divesting company and the trust instrument requires the trustee to contribute the divested stock equally and irrevocably to designated organizations of the type described in section 170(b)(1)(A)(i), (ii), or (iii) of the Code. See Rev. Rul. 67–42, page 164.

SECTION 172.—NET OPERATING LOSS DEDUCTION

26 CFR 1.172–4: Net operating loss carrybacks and net operating loss carryovers.

Whether a corporation which discontinues its trade or business and invests in stock or securities and then undergoes a change of ownership of the corporation, to the extent provided in section 382(a) of the Code, may avail itself of net operating loss carryovers from taxable years prior to such change in ownership. See Rev. Rul. 67–186, page 81.

SECTION 173.—CIRCULATION EXPENDITURES

26 CFR 1.173–1: Circulation expenditures. (Also Section 455; 1.455–1.) Rev. Rul. 67–201

Expenditures for binders, tab guides, looseleaf paper, envelopes, boxes and printing ink used in the publication and distribution of a

periodical are not deductible circulation expenditures within the meaning of section 173 of the Internal Revenue Code of 1954. However, expenditures by the publisher of looseleaf periodicals for sales commissions for new and renewal subscriptions are circulation expenditures within the meaning of section 173 of the Code and deductible thereunder. Commission expenditures which are properly chargeable to capital account may be deducted or capitalized as the taxpayer elects in accordance with section 1.173–1(c)(2) of the Income Tax Regulations.

Advice has been requested regarding the proper treatment for Federal income tax purposes of certain expenditures incurred by a publisher of periodicals issued in looseleaf form.

Taxpayer employs salesmen to obtain renewal as well as new subscriptions to its periodicals and desires to deduct the commissions paid to these salesmen, as well as expenditures for certain items which it believes are circulation expenditures within the meaning of section 173 of the Internal Revenue Code of 1954. The latter items are binders, tab guides, looseleaf paper, envelopes, shipping boxes and printing ink used in the publication and distribution of the periodical.

Section 173 of the Code provides for the deduction from gross income of all expenditures to establish, maintain, or increase the circulation of a newspaper, magazine or other periodical. Section 1.173–1(c)(1) of the Income Tax Regulations provides that as a general rule expenditures normally made from year to year in an effort to maintain circulation are not properly chargeable to capital account; conversely, expenditures made in an effort to establish or to increase circulation are properly chargeable to capital account. Circulation expenditures are deductible under section 173 of the Code unless an election is made to capitalize that portion of such expenditures which are properly chargeable to capital account.

What are properly circulation expenditures depends on the specific facts. Expenditures for supplies used in the general conduct of a publishing business, such as binders, tab guides, looseleaf paper, envelopes, shipping boxes, and printing ink are not circulation expenditures within the meaning of section 173 of the Code because they are not considered to be incurred in the normal course of establishing, maintaining, or increasing the circulation of a newspaper, magazine, or other periodical. However, expenditures by a publisher of periodicals for sales commissions for new and renewal subscriptions represent an example of expenses incurred in the normal course of maintaining or increasing the circulation of its periodicals and are considered to be circulation expenditures within the meaning of section 173 of the Code and deductible thereunder. Commission expenditures for a special effort to increase circulation are circulation expenditures properly chargeable to capital account and are subject to the election to capitalize.

Accordingly, the binders, tab guides, looseleaf paper, envelopes, boxes, and printing ink used in the publication and distribution of the periodical are supplies and expenditures for such items are not deductible circulation expenditures within the meaning of section 173 of the Code. However, the expenditures by the publisher of looseleaf periodicals for sales commissions for new and renewal subscriptions are circulation expenditures within the meaning of section 173 of the Code and deductible thereunder. The commission expenditures which

are properly chargeable to capital account may be deducted or capitalized as the taxpayer elects in accordance with section 1.173–1(c)(2) of the regulations.

SECTION 179.—ADDITIONAL FIRST-YEAR DEPRECIATION ALLOWANCE FOR SMALL BUSINESS

26 CFR 1.179–3: Definitions and special rules. Rev. Rul. 67–51

Trees of fruit orchards or groves do not qualify as tangible personal property within the meaning of section 179 of the Internal Revenue Code of 1954.

Advice has been requested whether trees of a fruit orchard or grove purchased and held for the production of income qualify for the additional first-year depreciation allowance provided for by section 179 of the Internal Revenue Code of 1954.

Section 179 of the Code provides that a taxpayer, other than a trust, may elect for the first taxable year in which a depreciation deduction is allowable on tangible personal property to take an additional allowance of 20 percent of the cost or of a portion of the cost of such property. The additional allowance applies only to tangible personal property of a character subject to the allowance for depreciation under section 167 of the Code, acquired by purchase after December 31, 1957, for use in the taxpayer's trade or business or for the production of income, and which has an estimated useful life (determined at the time of acquisition) of 6 years or more.

Section 1.179–3(b) of the Income Tax Regulations provides that for purposes of section 179 of the Code the term "tangible personal property" includes any tangible property except land, and improvements thereto, such as buildings or other inherently permanent structures thereon and their structural components.

It seems well settled that trees are part and parcel of the land in which they are rooted and, thus, realty which passes to the purchaser with the purchase of the land. Accordingly, such trees of a fruit orchard or grove purchased and held for the production of income are in the nature of land and are not tangible personal property within the meaning of section 179 of the Code.

However, trees of fruit orchards or groves purchased and held for the production of income qualify as "other tangible property" under section 48(a)(1)(B) of the Code and section 1.48–1(d) of the regulations for purposes of the investment credit allowed by section 38 of the Code. See Rev. Rul. 65–104, C.B. 1965–1, 28.

Rev. Rul. 67–99

Equipment used, accessory to and necessary for the operation of oil and gas wells on a lease, is "tangible personal property" for purposes of the additional first-year depreciation allowance under section 179 of the Internal Revenue Code of 1954.

Revenue Rulings 61–142, C.B. 1961–2, 53, and 65–308, C.B. 1965–2, 74, are distinguished.

Advice has been requested whether equipment used, accessory to and necessary for the operation of oil and gas wells on a lease, qualifies as "tangible personal property" for purposes of the additional first-year depreciation allowance provided by section 179 of the Internal Revenue Code of 1954, in view of the Service position stated in Revenue Ruling 61–142, C.B. 1961–2, 53, and Revenue Ruling 65–308, C.B. 1965–2, 74.

The oil and gas well lease equipment involved consists of pumps, "lease tanks," heaters, rods, treaters, separators, valves, regulators, "Christmas trees," tubing, casing intended to be removed, and similar equipment. The equipment is generally affixed to the land and is used accessory to and necessary for the operation of oil and gas wells on a lease. In some instances, local law considers this equipment as "personal property," and, in other instances the equipment is included with the oil and gas lease and considered as real property.

A taxpayer, other than a trust, may elect under section 179 of the Code, in the first year depreciation is allowable on "tangible personal property," to include an additional depreciation allowance of 20 percent of the cost of the property subject to certain limitations. Depreciable tangible personal property which has a useful life of 6 years or more may qualify for this additional allowance. Section 1.179–3 of the Income Tax Regulations provides, in part, that the term "tangible personal property" includes any tangible property except land and land improvements, such as, buildings or other inherently permanent structures (including items which are structural components of such buildings or structures). Assets accessory to the operation of a business, such as machinery * * * generally constitute tangible personal property for purposes of section 179, even though such assets may be termed fixtures under local laws.

Revenue Ruling 61–142 held that a prefabricated grain bin delivered and assembled on the ground was inherently a permanent structure on land, because of its assembled structural character as a building, and was not "tangible personal property."

Revenue Ruling 65–308 held that gas mains laid under public streets did not qualify as "tangible personal property" because they were improvements added to land in the form of inherently permanent structures.

However, both of these rulings are distinguishable from the present factual situation wherein the equipment has neither the characteristics of a building, nor can it be classified merely as an improvement added to the land. It is equipment, accessory to and necessary for operation of the oil and gas wells, used in operating the lease. This oil and gas well lease equipment serves to make the oil and gas from the lease accessible. Therefore, it primarily benefits the oil and gas well production from the lease. In general, when production ceases, most of the equipment will be removed from the property and sold or reused on other properties.

Accordingly, equipment used, accessory to and necessary for the operation of oil and gas wells on a lease, is "tangible personal property" for purposes of the additional first-year depreciation allowance under section 179 of the Code.

Revenue Rulings 61–142, C.B. 1961–2, 53, and 65–308, C.B. 1965–2, 74, are distinguished.

Whether motor vehicle trailer used as a launderette is eligible for additional first-year depreciation allowance. See Rev. Rul. 67–156, page 7.

PART VII.—ADDITIONAL ITEMIZED DEDUCTIONS FOR INDIVIDUALS

SECTION 213.—MEDICAL, DENTAL, ETC., EXPENSES

26 CFR 1.213–1: Medical, dental, etc., expenses. Rev. Rul. 67–76

Revenue Ruling 58–8, C.B. 1958–1, 154, deals with the deductibility, as a medical expense under section 213 of the Internal Revenue Code of 1954, of the cost of a three-wheel motor vehicle commercially known as an "autoette," acquired by a totally disabled taxpayer for his personal transportation. As a modification of a prior position, that Revenue Ruling holds that where a person who is sick or disabled acquires an "autoette," or a wheelchair, either manually operated or self-propelled, and uses it primarily for the alleviation of his sickness or disability and not merely to provide transportation between his residence and place of employment, the cost of the "autoette," or the wheelchair, constitutes an allowable medical expenses under section 213 of the Code. However, that Revenue Ruling did not discuss the tax treatment of operating and maintenance costs.

Held, the cost of operating and maintaining an "autoette," or a wheelchair, used primarily for the alleviation of sickness or disability and not merely to provide transportation between the user's residence and place of employment, also is deductible as a medical expense under section 213 of the Code.

Revenue Ruling 58–8 is hereby amplified.

Rev. Rul. 67–185

Where the taxpayers, a husband and his wife, pay a monthly life-care fee to a retirement home, and prove that a specific portion of the fee covers the costs of providing medical care for them, that portion of the fee is deductible by the taxpayers as an expense for medical care in the year paid, subject to the limitations prescribed in section 213 of the Internal Revenue Code of 1954.

Advice has been requested whether the portion of a monthly life-care fee, paid to a retirement home, which is allocable to medical care is deductible under section 213 of the Internal Revenue Code of 1954.

The taxpayers, a husband and his wife, entered into agreements with a retirement home under which they became entitled to live in the home and to receive lifetime care. They agreed to pay $20x$ dollars each month as the life-care fee. The taxpayers proved that on the basis of the home's experience, the life-care fee of $20x$ dollars included $6x$ dollars for costs of providing medical care, medicine, and hospitalization.

Section 213 of the Code provides that there shall be allowed as a deduction, subject to specified limitations, expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer or his spouse.

Revenue Ruling 54–457, C.B. 1954–2, 100, states that where a university charges a student a lump-sum fee which includes his education, board, medical care, etc., the portion of the charge which is allocable to medical care is considered a proper medical expense deduction if there is a breakdown showing the amount of the fee which is allocable to medical care, or such information is readily available from the university. The principle in that revenue ruling relating to allocation of the fee, is equally applicable to the instant case.

Accordingly, where the taxpayers, a husband and his wife, pay a monthly life-care fee to a retirement home, and prove that a specific portion of the fee covers the costs of providing medical care for them, that portion of the fee is deductible by the taxpayers as an expense for medical care in the year paid, subject to the limitations prescribed in section 213 of the Code.

SECTION 215.—ALIMONY, ETC., PAYMENTS

26 CFR 1.215–1: Periodic alimony, etc., payments.

Lump-sum payment in settlement of arrearages of maintenance where court granting divorce reserved the question of alimony in the event the husband failed to comply with the earlier decree for maintenance. See Rev. Rul. 67–11, page 15.

PART VIII.—SPECIAL DEDUCTIONS FOR CORPORATIONS

SECTION 248.—ORGANIZATIONAL EXPENDITURES

26 CFR 1.248–1: Election to amortize organizational expenditures. Rev. Rul. 67–15

Organizational expenditures, which a taxpayer properly elects to amortize and deduct currently for Federal income tax purposes under section 248(a) of the Internal Revenue Code of 1954, may be so deducted even though such expenditures are reflected on the taxpayer's books as capital expenditures. Such treatment is similar to that set forth in Revenue Ruling 58–78, C.B. 1958–1, 148, concerning the treatment of research and experimental expenditures which a taxpayer elects to treat as not chargeable to capital account under section 174 of the Code. As therein pointed out, the requirements of section 1.446–1(a)(1) of the Income Tax Regulations are also applicable in the case of expenditures so treated.

PART IX.—ITEMS NOT DEDUCTIBLE

SECTION 262.—PERSONAL, LIVING, AND FAMILY EXPENSES

26 CFR 1.262–1: Personal, living, and family expenses.

Amounts expended by a tenant for additions or improvements to Government-owned housing. See Rev. Rul. 67–14, page 61.

Deductibility of amounts expended for the purchase and maintenance of military fatigue uniforms by members of the armed services of the United States on active duty. See Rev. Rul. 67–115, page 30.

Expenditures for meals by a member of the Armed Forces stationed at a post to which his family was prohibited from accompanying him. See Ct. D. 1914, page 32.

SECTION 263.—CAPITAL EXPENDITURES

26 CFR 1.263(a)–1: Capital expenditures; in general.

Welded rail costs under the "retirement method" of accounting for depreciation. See Rev. Rul. 67–22, page 52.

Vacation pay attributable to work performed by employees on employer's own construction projects. See Rev. Rul. 67–75, page 41.

Treatment of costs in connection with application of local service airline for certificates issued by CAB. See Rev. Rul. 67–113, page 55.

Whether legal fees paid by corporation to secure advance rulings on tax consequences of reorganization are capital expenditures. See Rev. Rul. 67–125, page 31.

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26 CFR 1.263(c)–1: Intangible drilling and development costs in the case of oil and gas wells. Rev. Rul. 67–34

(Also Section 612; 1.612–4.)

Pursuant to section 263(c) of the Internal Revenue Code of 1954 and section 1.612–4 of the Income Tax Regulations, a taxpayer who holds the working or operating interest in oil and gas properties has

the option to capitalize or expense the intangible drilling and development costs incurred with respect to those properties. This option is available with respect to oil and gas properties although located outside the United States if the taxpayer is required to report the income from those operations for Federal income tax purposes.

SECTION 267.—LOSSES, EXPENSES, AND INTEREST WITH RESPECT TO TRANSACTIONS BETWEEN RELATED TAXPAYERS

26 CFR 1.267(c)–1: Constructive ownership of stock.

Whether ownership of a capital or profits interest in a partnership may be attributed to a person who is not a partner for the purpose of determining if such person may be considered the constructive owner of such interest under section 707(b)(2)(B) of the Code. See Rev. Rul. 67–105, page 167.

SECTION 269.—ACQUISITIONS MADE TO EVADE OR AVOID INCOME TAX

26 CFR 1.269–2: Purpose and scope of section 269. Rev. Rul. 67–202

(Also section 368; 1.368–1.)

Individual *A* owns all of the stock of corporations *X* and *Y*. *A* contributes his *X* stock to *Y* and immediately thereafter *X* is liquidated into *Y*. *Held*, under these circumstances, section 269(a)(1) of the Internal Revenue Code of 1954 does not apply to the transaction since the substance of the transaction is the acquisition of the property of *X* by *Y* and not the acquisition of control of *X* by *Y*. *Held further*, section 269(a)(2) of the Code does not apply since *X* was controlled by *Y*'s shareholder immediately before the acquisition.

Advice has been requested whether under section 269 of the Internal Revenue Code of 1954 the carryover of net operating losses will be disallowed under the circumstances presented below.

A, an individual, in January 1961, purchased all of the stock of unrelated corporations *X* and *Y*, each of which was actively engaged in a business. In the 5-year period preceding the acquisition, both corporations operated at a profit. During 1961 and 1962 the corporations were operated separately and both corporations showed a small profit. During 1963, 1964, and 1965 both corporations incurred substantial losses. In 1964, the Federal Government initiated procedures to condemn a portion of *Y*'s land. In February 1966, in anticipation of the large gain to be realized from the condemnation, *A* contributed his *X* stock to *Y*. Five days later *X* was liquidated into *Y* so that the losses of both businesses could be used to partially offset *Y*'s gain.

Section 269 of the Code provides, in part, as follows:

(a) IN GENERAL.—If—

(1) Any person or persons acquire, * * * directly or indirectly, control of a corporation, or

> (2) Any corporation acquires, * * * directly or indirectly, property of another corporation, not controlled, directly or indirectly, immediately before such acquisition, by such acquiring corporation or its stockholders, * * *

and the principal purpose for which such acquistion was made is evasion or avoidance of Federal income tax by securing the benefit of a deduction, credit, or other allowance which such person or corporation would not otherwise enjoy, then the Secretary or his delegate may disallow such deduction, credit, or other allowance. For purposes of paragraphs (1) and (2), control means the ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of stock of the corporation.

While *Y*, as a matter of form, acquired control of *X*, the transitory control lacked substance since it was merely the initial step of a prearranged plan to liquidate *X* into *Y*. Thus, the "essential nature of the transaction" involved in the present case was the indirect acquisition by *Y* of the *X* property. See section 1.269–2(b) of the Income Tax Regulations. Accordingly, since section 269(a)(1) of the Code pertains only to the acquisition of control of a corporation and not to the acquisition of its assets, the section is not applicable to the described transaction. Moreover, section 269(a)(2) of the Code is not applicable since *A* owned all of the stock of each corporation prior to the acquisition of *X*'s property by *Y*.

The net operating losses in this type of case will carry over under section 381 of the Code provided the transaction qualifies as a reorganization under section 368(a)(1) of the Code. Thus, the taxpayer here would have to demonstrate that corporations *X* and *Y* were combined for a valid business purpose and not merely in order to secure the benefits of the next operating loss carryovers. See section 1.368–1 of the Income Tax Regulations.

SECTION 274.—DISALLOWANCE OF CERTAIN ENTERTAINMENT, ETC., EXPENSES

26 CFR 1.274–5: Substantiation requirements.

Treatment of a mileage allowance practice used by an employer in payment of ordinary and necessary travel expenses incurred by his employees. See Rev. Rul. 67–29, page 42.

SUBCHAPTER C.—CORPORATE DISTRIBUTIONS AND ADJUSTMENTS

PART I.—DISTRIBUTIONS BY CORPORATIONS

Subpart A.—Effects on Recipients

SECTION 301.—DISTRIBUTIONS OF PROPERTY

26 CFR 1.301–1: Rules applicable with respect to distributions of money and other property.

Whether the pro rata distribution of proceeds from the condemnation of property in redemption of a portion of the stock of a corporation is taxable as a dividend. See Rev. Rul. 67–16, page 77.

Treatment of amounts withdrawn or withdrawable by lawyers from an association organized and controlled by them for the purpose of providing title insurance on real property purchased by their clients. See Rev. Rul. 67–206, page 179.

Modification of guidelines relating to the determination of the taxable status of distributions by corporations and the information to be furnished in support thereof. See Rev. Proc. 67–12, page 589.

Conditions under which the Internal Revenue Service will issue rulings on waiver of dividends transactions. See Rev. Proc. 67–14, page 591.

Subpart C.—Definitions; Constructive Ownership of Stock

SECTION 316.—DIVIDEND DEFINED

26 CFR 1.316–1: Dividends.

Modification of guidelines relating to the determination of the taxable status of corporate distributions and the information to be furnished in support thereof. See Rev. Proc. 67–12, page 589.

SECTION 318.—CONSTRUCTIVE OWNERSHIP OF STOCK

26 CFR 1.318–3: Estates, trusts, and options. Rev. Rul. 67–24

All the outstanding stock of a corporation was owned by *A* and the estate of *D* until the corporation redeemed all the shares of its stock owned by the estate. The will of *D* provides that after the payment of certain specific legacies the residue of his estate is to be placed in trust for the benefit of *A*. The trust residue will not be transferred to the trustee until administration of the estate is concluded.

Held, the residuary testamentary trust is a trust under section 318 (a) (3) (B) of the Internal Revenue Code of 1954, even though the residue will not be transferred to the trustee until administration of the estate is concluded. The trust will be considered to be a beneficiary of the estate within the meaning of section 318(a) (3) (A) of the Code. Thus, the corporate stock owned by *A* is attributed to the trust under section 318(a) (3) (B) of the Code, and is in turn attributed to the estate under section 318(a) (3) (A) of the Code.

PART II.—CORPORATE LIQUIDATIONS

Subpart A.—Effects on Recipients

SECTION 333.—ELECTION AS TO RECOGNITION OF GAIN IN CERTAIN LIQUIDATIONS

26 CFR 1.333–1: Corporate liquidation in some one calendar month.

Modification of guidelines with respect to the determination of earnings and profits for purposes of determining taxable status of corporate distributions and information to be furnished in respect thereof. See Rev. Proc. 67–12, page 589.

Subpart C.—Collapsible Corporations; Foreign Personal Holding Companies

SECTION 341.—COLLAPSIBLE CORPORATIONS

26 CFR 1.341–4: Limitations on application of section. Rev. Rul. 67–100

Taxpayer, the owner of stock in a corporation which is collapsible under the terms of section 341(b)(1) of the Internal Revenue Code of 1954, entered into an executory contract of sale of the stock of the collapsible corporation on January 10, 1967. The contract provided in part that the transaction will be closed on July 2, 1967, at which time the stock certificates will be transferred to the purchaser, and that an appropriate adjustment in the purchase price will be made for any material changes in the agreed amount of the underlying assets and liabilities of the corporation occurring between the date the contract was entered into and the date of closing. The contract also indicated that all of the other benefits and burdens of ownership will remain with the seller until closing. On the date the executory contract was entered into, the three-year limitation of section 341(d)(3) of the Code had not run; however, the three year limitation will have run by July 2, the date of closing.

Held, that since the gain on the transaction will be realized when the transaction is closed and not when the executory contract of sale was entered into, the taxpayer is not precluded from the application of section 341(d)(3) of the Code.

Subpart D.—Definition

SECTION 346.—PARTIAL LIQUIDATION DEFINED

26 CFR 1.346–1: Partial liquidation. Rev. Rul. 67–16
(Also Section 301; 1.301–1.)

Where certain amounts representing proceeds from the condemnation of property are distributed in redemption of stock of a corporation, such distribution does not qualify as a partial liquidation within the meaning of section 346(a)(2) of the Internal Revenue Code of 1954, where the condemnation did not result in a current decrease in the corporate business and the corporation can continue for a considerable period of time its operations to the same extent maintained prior to the condemnation. Since the corporation had accumulated earnings and profits in excess of the amount distributed, the entire amount of the pro rata distribution is taxable as a dividend under section 301 of the Code.

Advice has been requested whether a distribution under the circumstances described below qualifies as a partial liquidation within the meaning of section 346(a)(2) of the Internal Revenue Code of 1954.

A corporation has been engaged in the business of quarrying limestone and manufacturing various lime products. In 1962 land containing about one-half of its proven limestone reserves was taken by a state agency in a condemnation proceeding. The reduction in the corporation's usable reserves did not cause an immediate curtailment of its business activity. During the years 1963 through 1965 its production continued at the same or greater rate as during the years 1960 through 1962. Based on the amount of limestone quarried during the period 1960 through 1965, the remaining usable limestone reserve is sufficient to allow the corporation to maintain its present rate of production for another 18 to 27 years beyond the year 1965.

The corporation in 1965 received 4,500x dollars as compensation for the taking of the land. Of this amount, 750x dollars was invested in facilities for the manufacture of a lime product not previously manufactured by it, and 1,000x dollars was set aside for further diversification or for acquisition of additional limestone reserves. Pursuant to a plan adopted in 1965 the corporation distributed in that year the remaining 2,000x dollars (after reserving 750x dollars for taxes) to its shareholders, pro rata, in redemption of a part of the only class of stock outstanding. At the time of redemption, the corporation had accumulated earnings and profits in excess of the amount of the distribution.

Section 346(a)(2) of the Code provides in part that a distribution shall be treated as in partial liquidation of a corporation if it is not essentially equivalent to a dividend, is in redemption of a part of the stock of the corporation pursuant to a plan, and occurs within the taxable year in which the plan is adopted or within the succeeding taxable year.

Section 1.346–1(a) of the Income Tax Regulations provides that a distribution which will qualify as a distribution in partial liquidation of a corporation under section 346(a)(2) of the Code is one which results from a genuine contraction of the corporate business, such as the distribution of unused insurance proceeds recovered as a result

of a fire which destroyed part of the business causing a cessation of a part of its activities.

Under the foregoing facts, the entire distribution consisted of a part of the proceeds from the condemnation award. However, the condemnation did not cause any current cessation of business activity; the corporation can continue its operations to the same extent maintained prior to the condemnation for a considerable period of time; and there is no present plan to contract the operation of the business activities presently carried on. Accordingly, the distribution did not result from a genuine contraction of the corporate business. Therefore, the distribution does not qualify as a partial liquidation under section 346(a)(2) of the Code. Since section 346(a) of the Code is inapplicable and the distribution does not qualify under section 302 (a) of the Code, as payment in exchange for the stock redeemed, the distribution by virtue of section 302(d) of the Code is treated as a distribution of property to which section 301 of the Code applies. Since the corporation had accumulated earnings and profits in excess of the amount distributed, the entire amount of the distribution to each shareholder is taxable as a dividend under the provisions of section 301 of the Code.

PART III.—CORPORATE ORGANIZATIONS AND REORGANIZATIONS

Subpart A.—Corporate Organizations

SECTION 351.—TRANSFER TO CORPORATION CONTROLLED BY TRANSFEROR

26 CFR 1.351-1: Transfer to corporation controlled by transferor. Rev. Rul. 67-122 [1]

Section 351(d) of the Internal Revenue Code of 1954, as amended by section 203 of Title II of Public Law 89-809, C.B. 1966-2, 656, provides that, in the case of stock and securities to be issued by an investment company with respect to which a registration statement is required to be filed with the Securities and Exchange Commission, a transfer of property to an investment company shall be treated as made on or before June 30, 1967, only if (1) the registration statement was filed with the Securities and Exchange Commission before January 1, 1967, (2) the property transferred to the investment company includes only property deposited by the transferring taxpayers before May 1, 1967, and (3) the exchange of the deposited property for the stock and securities of the investment company is made on or before June 30, 1967, and the aggregate issue price of the stock and securities actually issued by the investment company in the exchange does not exceed the aggregate amount therefor specified in the registration statement as of the close of December 31, 1966.

Except as provided below, stock will be considered by the Internal Revenue Service to have been deposited before May 1, 1967, only if the designated depository or its authorized agents acquire physical possession of the stock certificates before such date.

[1] Also released as Technical Information Release 896, dated Mar. 29, 1967.

Taxpayers have inquired about the effect of the deposit date cutoff on stock splits becoming effective, stock dividends payable, and stock received in certain exchanges, on or after May 1, 1967, with respect to stock deposited before that date. If a stock split becomes effective, a stock dividend is payable, or a depositor receives stock in an exchange qualifying under the provisions of section 354 or section 356 of the Code, with respect to stock deposited before May 1, 1967, the Revenue Service will consider such additional or substituted stock to have been deposited before May 1, 1967 if (1) the investment company's registration statement requires the taxpayer to deposit the additional or substituted stock, (2) the additional stock is taken into account in determining the value of the deposited stock for purposes of the exchange transaction, and (3) the stock split takes effect, the stock dividend is payable, or the exchange takes place, on or before June 30, 1967, whether or not the investment company acquires physical possession of the additional or substituted stock certificates on or before such date.

Taxpayers have also inquired about the extent to which a registration statement filed with the Securities and Exchange Commission before January 1, 1967, may be amended after that date without affecting the tax treatment of the exchange transaction. In general, any amendment of the registration statement may be made on or after January 1, 1967, provided that such amendment does not result in the offering of a new or a different security. Thus, for example, an amendment made to a registration statement on or after January 1, 1967, would not affect the tax treatment of the exchange transaction if (1) the amendment requires stock splits or stock dividends which become effective or are payable on or after May 1, 1967, with respect to stock deposited before that date, to be deposited by the transferring taxpayer and to be taken into account in determining the value of the deposited stock for purposes of the exchange transaction or (2) the amendment changes the amount of, or the method of computing, the sales charge in connection with the exchange transaction.

Subpart D.—Special Rule; Definitions

SECTION 368.—DEFINITIONS RELATING TO CORPORATE REORGANIZATIONS

26 CFR 1.368–1: Purpose and scope of exception of reorganization exchanges. Rev. Rul. 67–90 [1]

A contingent contractual right to receive only additional voting stock provided for in a plan of reorganization satisfies the "solely for voting stock" requirement of section 368(a)(1)(B) of the Internal Revenue Code of 1954 where the number of additional shares to be issued is determined by a formula based upon the future market price of the shares of the acquiring corporation.

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[1] Also released as Technical Information Release 889, dated Feb. 27, 1967.

Advice has been requested whether the transaction described below satisfies the "solely for voting stock" requirement of section 368(a)(1)(B) of the Internal Revenue Code of 1954.

Corporation X and corporation Y are both publicly held corporations. The stock of each corporation is listed and actively traded on a national stock exchange. Pursuant to a plan of reorganization X will acquire all of the Y stock from the Y shareholders. On the date the plan of reorganization was adopted by X and the Y shareholders the X stock closed at $45 per share and the Y stock closed at $52 per share. After substantial arms-length negotiations the agreed plan of reorganization provides that all of the Y shareholders will exchange all of their 50,000 shares of Y voting stock for 50,000 shares of X voting stock and a contingent contractual right to receive additional X voting stock.

The contingent right to receive additional X voting stock is evidenced only by the plan of reorganization agreed to by the parties, is not evidenced by a negotiable certificate of any kind, is not readily marketable, and can give rise to the receipt of only additional X stock. All additional X stock will be issued 4 years from the date of the initial distribution. All of the stock cannot be issued immediately because the parties are unable to agree on the value of the X stock for purposes of the exchange, notwithstanding that it is listed and traded on a national stock exchange. The maximum number of additional X shares that may be issued to the Y shareholders is 50,000. The plan of reorganization provides that the Y shareholders will receive the additional X shares only if on the fourth anniversary of the initial distribution the closing market price of the X stock is less than $50 per share. If the market price is below $50 per share, X will issue sufficient additional shares (but in no event more than 50,000) so that the total market value of the shares of both the initial and fourth anniversary distributions computed on the basis of the fourth anniversary closing price will equal $2,500,000. Subject to the 50,000 additional share limitation, this formula guarantees the exchanging Y shareholders a $50 per share value for the X stock they receive pursuant to the plan of reorganization.

Section 368(a)(1)(B) of the Code provides that the term "reorganization" includes the acquisition by one corporation, exchange solely for all or a part of its voting stock, of stock of another corporation, if, immediately after the acquisition, the acquiring corporation has control of such other corporation (whether or not such acquiring corporation has control immediately before the acquisition).

Revenue Ruling 66–112, C.B. 1966–1, 68, holds that the "solely for voting stock" requirement of section 368(a)(1)(B) of the Code is satisfied where the number of additional shares to be issued under the provisions of a nonassignable contractual right is determined by a formula contingent upon the future earnings of the acquired corporation. In this case the number of additional shares is contingent upon the future market price of the acquiring corporation's stock. Where the parties are unable to agree on the value of the stock of the acquiring corporation for purposes of the exchange, notwithstanding that the stock is traded on a national stock exchange, a valid business reason exists for issuing less than all of the stock immediately.

Accordingly, in the present case where the parties cannot agree on the value of the *X* stock, the proposed plan of reorganization satisfies the "solely for voting stock" requirement of section 368(a)(1)(B) of the Code.

The facts of every delayed stock issuance case arising under section 368 of the Code will be carefully examined to insure that bona fide business reasons justify issuing less than all of the stock immediately, and will also be examined to insure that the stock issued is issued solely in exchange for stock or assets, as the case may be, and is in fact not being issued in lieu of other consideration, such as compensation or royalties.

For the effect section 483 of the Code, dealing with interest on certain deferred payments, has on delayed issuance of stock exchanges see sections 1.483–1(b)(6), Example 7; 1.483–1(e)(3), Example 2; and 1.483–2(a)(2) of the Income Tax Regulations.

See further Revenue Procedure 66–34, C.B. 1966–2, 1232 as amplified by Revenue Procedure 67–13, page 590, this Bulletin.

Business purpose requirement for a reorganization under section 368(a)(1) of the Code. See Rev. Rul. 67–202, page 73.

PART V.—CARRYOVERS

SECTION 381.—CARRYOVERS IN CERTAIN CORPORATE ACQUISITIONS

26 CFR 1.381(a)–1: General rule relating to carryovers in certain corporate acquisitions.

Inventory adjustment required by the Commissioner in the last return for the acquired corporation. See Rev. Rul. 67–103, page 117.

SECTION 382.—SPECIAL LIMITATIONS ON NET OPERATING LOSS CARRYOVERS

26 CFR 1.382(a)–1: Purchase of a corporation and change in its trade or business. (Also Section 172; 1.172–4.) Rev. Rul. 67–186

A corporation which discontinues its trade or business and invests in stock or securities is not for the purposes of section 382(a) of the Internal Revenue Code of 1954 "carrying on a trade or business." Therefore, if a change in ownership of the corporation, to the extent provided in section 382(a) of the Code, has occurred during the taxable year or the prior taxable year, the corporation may not avail itself of a net operating loss carryover incurred in the discontinued trade or business from a taxable year prior to such change in ownership.

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Advice has been requested whether a corporation under the circumstances described below may avail itself of net operating loss carryovers under section 382 of the Internal Revenue Code of 1954.

A corporation conducted a lumber business until the sale of its operating assets during its taxable year ended July 31, 1959. The corporation incurred a net operating loss from the lumber business in the year of the sale of its assets. Since the sale of its operating assets, the corporation's sole source of income has been from investments in stocks and securities purchased after the sale of its operating assets. At the close of the taxable year ended July 31, 1962, shareholders of the corporation owned a percentage of the total fair market value of the corporation which was at least 50 percentage points more than such persons owned at either the beginning of such taxable year or the prior taxable year within the meaning of section 382(a) of the Code.

Section 1.382(a)-1(h)(4) of the Income Tax Regulations states that for purposes of section 382(a) of the Code the holding, purchase, or sale for investment purposes of stock, securities or similar property shall not be considered a trade or business unless such activities historically have been the primary activities of the corporation.

Section 1.382(a)-1(h)(6) of the regulations states that a corporation has not continued to carry on a trade or business substantially the same as that conducted before any increase in the ownership of its stock if the corporation is not carrying on an active trade or business at the time of such increase in ownership.

Since the investment activities were not historically the primary activities of this corporation prior to the change in ownership, such activity is not considered for purposes of section 382 of the Code to constitute carrying on a trade or business.

Therefore, when this corporation ceased its lumber business and engaged in investment activity, for purposes of section 382(a) of the Code the corporation is not regarded as having continued to carry on a trade or business substantially the same as that conducted by it before the change of ownership.

Accordingly, in the instant case the corporation is not entitled to avail itself of net operating loss carryovers from taxable years prior to such change in ownership.

SUBCHAPTER D.—DEFERRED COMPENSATION, ETC.

PART I.—PENSION, PROFIT-SHARING, STOCK BONUS PLANS, ETC.

SECTION 401.—QUALIFIED PENSION, PROFIT-SHARING, AND STOCK BONUS PLANS

26 CFR 1.401-1: Qualified pension, profit-sharing, and stock bonus plans. Rev. Rul. 67-101

A qualified retirement plan which includes a self-employed physician, who is a part-owner of a clinic, must also include all common-law employees of the clinic who have at least 3 years of service.

Advice has been requested whether a self-employed individual may establish a retirement plan for himself, which is intended to qualify

under section 401(a) of the Internal Revenue Code of 1954, without covering the common-law employees of a clinic of which he is a one-third owner.

Three physicians operate a clinic. They hire a receptionist and a nurse, each of whom renders services to the physicians in the aggregate of 40 hours per week. Day-to-day operation of the clinic is governed by an agreement between the physicians. For example, they must be in agreement as to the hiring and firing of employees, fixing wages, assignment of duties, altering or renovating the clinic, etc. Liability insurance for injuries which might occur on the premises is carried jointly.

Each physician has his own medical practice and each carries his own malpractice and wage continuation insurance. The earnings derived from their individual practice of medicine is considered the individual income of each physician. Although the cost of operating the clinic is shared equally, the clinic is not operated as a partnership for Federal income tax purposes.

A plan intended to qualify under section 401(a) of the Code which includes employees some or all of whom are owner-employees within the meaning of section 401(c)(3) must also meet the pertinent requirements of section 401(d) of the Code. Section 401(d)(3) of the Code requires that the plan benefit each employee having a period of employment of three years or more. For this purpose, an employee whose customary employment is for not more than 20 hours per week or is for not more than five months in any calendar year may be excluded from the plan.

Section 401(c)(3) of the Code defines an "owner-employee" as an employee who either owns the entire interest in an unincorporated business or owns more than ten percent of either the capital interest or the profits interest in a partnership.

Each physician is an owner-employee, within the meaning of section 401(c)(3) of the Code. Therefore, any plan of an owner-employee must cover all his full-time employees having the prescribed minimum years of service.

The pivotal question is whether, in the absence of a recognized partnership for Federal income tax purposes with regard to the physician's operation of the clinic, the employees of the clinic are employed full time with each physician as a separate employer.

Whether the common-law employees are employed full time with each physician is not determined by the amount of services rendered to each. The amount of services rendered to each physician will vary from day to day. Such variation does not, however, permit classifying the employees as seasonal or part-time workers. The characteristics of an employee do not change when the efforts of such employee are shared by more than one employer. Therefore, the receptionist and nurse who work in the clinic are the full-time employees of each of the three physicians.

Accordingly, if one of the physicians, as an owner-employee, establishes a retirement plan covering himself, all the full-time common-law employees of the clinic having at least 3 years of service must be covered in order for the plan to meet the requirements for qualification under section 401(a) of the Code.

Procedures for requests on the qualification of pension, annuity, profit-sharing, and stock bonus plans and related trusts. See Rev. Proc. 67–4, page 565.

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26 CFR 1.401–3: Requirements as to coverage. Rev. Rul. 67–10 [1]

Interim guides for issuing advance determination letters on pension, annuity, profit-sharing or stock bonus plans designed to integrate with old-age and survivors insurance benefits provided by the Social Security Act as amended through 1965.

The Internal Revenue Service has been requested to state its position on the issuance of advance determination letters regarding qualification under section 401(a) of the Internal Revenue Code of 1954 of pension, annuity, profit-sharing, and stock bonus plans designed to integrate with the old-age and survivors insurance benefits provided by the Social Security Act, pending the development and publication of the rules to be applied under the Social Security Amendments of 1965, Public Law 89–97, C.B. 1965–2, 601.

A plan which satisfies the present integration requirements of section 1.401–3(e) of the Income Tax Regulations will qualify under section 401(a) of the Code until amended regulations are issued or until such later date as may be specified in the amended regulations, provided it continues to meet the requirements of section 401(a) of the Code in all other respects.

Guides for determining whether a plan meets the present integration requirements of section 1.401–3(e) of the regulations are set forth in Mimeograph 5539, C.B. 1943, 499; Mimeograph 6641, C.B. 1951–1, 41; Revenue Ruling 13, C.B. 1953–1, 294; Revenue Ruling 56–692, C.B. 1956–2, 287; and Revenue Ruling 61–75, C.B. 1961–1, 140. Furthermore, a plan which provides benefits or employer contributions only with respect to compensation in excess of a compensation level higher than $4,800 a year will satisfy the present integration requirements of section 1.401–3(e) of the regulations if the rate of benefits or employer contributions with respect to compensation in excess of the compensation level does not exceed the applicable rate determined under the above-mentioned rulings multiplied by the ratio of $4,800 to the compensation level.

For example, a noncontributory plan which: (1) Is limited to employees earning in excess of $6,600 a year, (2) provides no death benefits before retirement, (3) provides normal retirement benefits only in the form of a straight life annuity, and (4) provides such benefits only after completion of 15 years of service and attainment of age 65, will satisfy the present integration requirements of section 1.401–3(e) of the regulations if the normal annual retirement benefits cannot exceed 27.27 percent (*i.e.*, 37½ percent multiplied by 4,800/6,600) of average annual compensation in excess of $6,600, where average annual compensation is defined as the average over the highest 5 consecutive years. As a further example, a noncontributory plan of the type described in (1), (2), (3), and (4) above will satisfy the present integration requirements of section 1.401–3(e) of the regulations if the normal annual retirement benefits cannot exceed 0.909

[1] Also released as Technical Information Release 876, dated Dec. 23, 1966.

percent (27.27 percent divided by 30) of actual compensation in excess of $6,600 a year for each year of service.

Determination letters are being issued on plans which satisfy the present integration requirements of section 1.401–3(e) of the regulations as indicated above, and may be relied upon until amended regulations are issued or until such later date as may be specified. Moreover, in no event will changes in benefits accrued to such date be required under plans which satisfy the present integration requirements of section 1.401–3(e) of the regulations.

These interim rules are being announced for the guidance of taxpayers who are establishing new plans, or amending the integration features of existing plans, and need advance assurance as to the current status of their plans. These interim rules should not be interpreted as indicative of the rules which will ultimately be incorporated in the amended regulations.

Determinations as to the qualification of plans intended to integrate with the Social Security Amendments of 1965, but which do not meet the foregoing requirements, cannot be made until amended regulations are issued.

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26 CFR 1.401–4: Discrimination as to contributions or benefits. Rev. Rul. 67–114

Application of principles involving limitations imposed upon benefits or funds when a change in an employees' pension or annuity plan increases benefits.

PS No. 50, dated July 12, 1945, superseded.

Advice has been requested whether the limitations of PS No. 50, dated July 12, 1945, are still in effect in view of the provisions of section 1.401–4(c)(5) of the Income Tax Regulations concerning the restrictions upon funds or benefits necessary in order that an employees' pension or annuity plan may be acceptable after a change in the plan increases benefits to be provided for highly compensated employees.

PS No. 50 referred to parargraph 7 of Mimeograph 5717, C.B. 1944, 321, and was issued in response to advice requested as to the necessary restrictions upon benefits or funds in order that a pension or annuity plan may generally be considered acceptable within the meaning of paragraph 2 of the mimeograph after a change in the plan increases the benefits to be provided by employer contributions for highly compensated employees.

PS No. 50 states that for this purpose the use of employer contributions or the benefits provided by employer contributions should be subject to any restrictions relating to the previous plan and should also be subject to restrictions relating to the change of plan as follows:

Restrictions Relating to Previous Plan.—Any restrictions to limit benefits as indicated in Mimeograph 5717 applicable to the plan before the change should apply to all benefits as if the plan had not been changed so that, in event of termination or failure to meet the costs of the plan as changed, all benefits are limited as they would have been upon termination or failure at that time to meet the costs of the plan as it existed before the change.

Restrictions Relating to Change.—The restrictions relating to the change of plan should apply to benefits or funds for each of the 25 highest paid employees on the effective date of the change except that such restrictions need not apply with respect to any employee in this group for whom the normal annual pension or annuity provided by employer contributions prior to that date and during the

ensuing ten years, based on his rate of compensation on that date, could not exceed $1,500.00. In other respects the limits indicated in Mimeograph 5717 should apply to all the benefits as if they were all provided under a plan established on the effective date of the change except that, in place of the limit described under (a) of paragraph 3 of that Mimeograph, there may be substituted a limit which cannot exceed the greater of the following three amounts:

1. The employer contributions (or funds attributable thereto) which would have been applied to provide the benefits for the employee if the previous plan had been continued without change.
2. $20,000.00.
3. The sum of (a) the employer contributions (or funds attributable thereto) which would have been applied to provide benefits for the employee under the previous plan if it had been terminated the day before the effective date of change, and (b) an amount computed by multiplying the number of years for which the current costs of the plan after that date are met by (A) 20 percent of his annual compensation, or (B) $10,000.00, whichever is smaller.

Section 1.401–4(c) of the regulations also provides restrictions which must be included in a qualified plan in order to minimize the possibility of the prohibited discrimination resulting from the early termination of the plan or the discontinuance of employer contributions thereunder. These regulations incorporate a pattern of administrative rules of long standing.

Subparagraph (5) of section 1.401–4(c) of the regulations deals with the limitations which apply when a plan is amended so as to increase substantially the extent of possible discrimination. While the language of PS No. 50 has not been included verbatim, the regulations incorporate the principles contained therein. Therefore, the limitations contained in PS No. 50 are held to be still in effect.

Since the provisions of PS No. 50 are restated herein, it is hereby superseded.

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26 CFR 1.401–7: Forfeitures under a qualified pension plan. Rev. Rul. 67–68

The requirements of section 401(a)(8) of the Internal Revenue Code of 1954 are satisfied by provisions in pension plans requiring that forfeitures must be used to reduce the employer's contributions necessary to fund the employee benefits since such provisions have the effect of preventing the use of forfeitures to increase benefits otherwise provided under the plans.

Advice has been requested whether two employees' pension plans satisfy the requirements of section 401(a)(8) of the Internal Revenue Code of 1954 and of section 1.401–7(a) of the Income Tax Regulations that forfeitures must not be applied to increase the benefits any employee would receive.

The first case involves a trusteed self-insured plan which provides that forfeitures will be used to reduce the employer's required contributions. The second case involves a nontrusteed group annuity contract under which employer contributions are not allocated to any specific participant but are determined by reference to accrued benefits. In both of these cases, the separation from service of a partici-

pant results in the reduction of the employer contributions required to fund accrued benefits for the remaining participants.

Section 401(a)(8) of the Code provides that a trust forming part of a pension plan shall not constitute a qualified trust unless the plan provides that forfeitures must not be applied to increase the benefits any employee would receive under the plan.

Section 1.401–7(a) of the regulations provides that, in the case of a trust forming part of a qualified pension plan, the plan must expressly provide that forfeitures arising from severance of employment, death, or for any other reason, must not be applied to increase the benefits any employee would otherwise receive under the plan at any time prior to the termination of the plan or the complete discontinuance of employer contributions thereunder. The amounts so forfeited must be used as soon as possible to reduce the employer's contributions under the plan. However, a qualified pension plan may anticipate the effect of forfeitures in determining the costs under the plan. Furthermore, a qualified plan will not be disqualified merely because a determination of the amount of forfeitures under the plan is made only once during each taxable year of the employer.

It is not necessary for a pension plan, intended to qualify under section 401(a) of the Code, to contain a specific statement regarding the application of forfeitures, provided that the plan makes it otherwise clear that forfeitures must not be applied to increase the benefits any employee would otherwise receive thereunder.

Both of the pension plans described above contain language the effect of which is that no part of the forfeitures may be used to increase benefits otherwise provided. The provisions requiring the use of forfeitures to reduce the employer's future contributions have the effect of preventing the use of forfeitures to increase benefits otherwise provided under the plans. Accordingly, the requirements of section 401(a)(8) of the Code are satisfied in each case.

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26 CFR 1.401–10: Definitions relating to plans covering self-employed individuals.

Contributions to a qualified profit-sharing plan established by a sole proprietor made after the business of the proprietorship was changed to that of a partnership. See Rev. Rul. 67–3, page 94.

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26 CFR 1.401–12: Requirements for qualification of trusts and plans benefiting owner-employees.

Procedure for determination of qualification of pension, profit-sharing, annuity, and bond purchase plans of self-employed persons in conformity with section 204 of the Foreign Investors Tax Act of 1966. See Rev. Proc. 67–26, page 629.

SECTION 402.—TAXABILITY OF BENEFICIARY OF EMPLOYEES' TRUST

26 CFR 1.402(a)-1: Taxability of beneficiary under a trust which meets the requirements of section 401(a). Rev. Rul. 67-164

The "total distributions payable" (within the meaning of section 402(a)(3)(C) of the Internal Revenue Code of 1954) to a participant of an exempt employees' trust forming part of a profit-sharing plan, on account of his separation from the service, do not include any amounts withheld under a court order. The distributions made within one taxable year, excluding such amount withheld by court order, are treated as long-term capital gain pursuant to section 402(a)(2) of the Code. However, if any additional distribution, representing the distributee's portion of the subsequently released court impounded funds, is made in a subsequent taxable year of the distributee, this distribution will not be accorded capital gains treatment.

Advice has been requested concerning the treatment for Federal income tax purposes of distributions from a qualified employees' profit-sharing plan where a portion of the trust funds have been impounded under a court order.

A corporation established a trust forming part of a profit-sharing plan for its salaried employees. The plan meets the requirements of section 401(a) of the Internal Revenue Code of 1954 and the trust is exempt from tax under section 501(a) of the Code. The corporation found it necessary to terminate the employment of some of its employees. A number of these employees had not been participants in the plan for a sufficient number of years to qualify for distributions under the plan upon termination of employment. Before any distributions were made, a group of the latter employees brought suit against the corporation and the trustee seeking adjudication of their accounts. The court issued a restraining order requiring that the trustee retain a sufficient sum to pay the claims of the plaintiffs in the event that the court should rule in their favor. The order also provided that the trustee could make distributions out of the balance of the fund, over and above the amount impounded, to persons other than the plaintiffs who might be entitled thereto under the provisions of the plan.

Except for the court order, the funds comprising the sum impounded would have been forfeited by the plaintiffs and reallocated to the accounts of the other participants in the plan. An eventual court determination adverse to the plaintiffs, freeing the impounded funds, would require an allocation and a second distribution of such funds to employees entitled thereto.

Section 402(a)(3)(C) of the Code defines the term "total distributions payable" as "the balance to the credit of an employee which becomes payable to a distributee on account of the employee's death or other separation from the service, or on account of his death after separation from the service."

Section 1.402(a)-1(a)(6)(ii) of the Income Tax Regulations provides that a distribution upon separation from service will not receive capital gains treatment unless it constitutes the total amount in the employee's account at the time of his separation from service. If the total amount in the employee's account at the time of his death

or other separation from the service or death after separation from the service is paid or includible in the gross income of the distributee within one taxable year of the distributee, such amount is entitled to the capital gains treatment notwithstanding that in a later taxable year an additional amount, attributable to the last year of service, is credited to the account of the employee and distributed.

Revenue Ruling 56–558, C.B. 1956–2, 290, holds that a total distribution from a qualified employees' profit-sharing trust of the total amount credited to the employee's account in the year of his separation from service is taxable as a long-term capital gain under section 402(a)(2) of the Code. However, an additional distribution made in the following year from the employer's contribution of profits for the year of separation, would be taxable as ordinary income under section 402(a)(1) of the Code, since such distribution would represent an amount not paid within the same taxable year of the distributee.

In the instant case, "the balance to the credit of an employee which becomes payable" to him is the total amount credited to the employee's account, not including any portion of the impounded funds, prevented by the court order from being payable to him at the time of his separation from the service of the employer. Consequently, upon the employee's separation from the service, the entire balance to his credit and then payable to him was paid to him within one taxable year, so that the distribution meets the requirements of section 402(a)(2) of the Code and thus is accorded capital gains treatment. On the other hand, if any additional distributions, representing the distributee's portion of the subsequently released court impounded funds, are made, in a subsequent taxable year of the distributee, these distributions will not be accorded capital gains treatment but rather will be taxable as provided under section 402(a)(1) of the Code, since the additional amount would not be paid within the same taxable year of the distributee.

Rev. Rul. 67–165

Where an employee, while still employed, receives a distribution, under a qualified profit-sharing plan, consisting of employer securities purchased in part with employee contributions and in part with reinvested dividends, the net unrealized appreciation which is excluded from gross income under section 402(a)(1) of the Internal Revenue Code of 1954 is limited to that amount of the total net unrealized appreciation in such securities which is attributable to the portion of the securities purchased with employee contributions. The balance of the net unrealized appreciation in the distributed securities is includable in gross income except to the extent it does not exceed the employee's unrecovered contributions as provided in section 72(e)(1)(B) of the Code.

The Internal Revenue Service has been requested to explain the taxability of distributions of stock of the employer corporation, pursuant to an exempt employees' profit-sharing plan, under the circumstances described below.

An employees' thrift plan is a qualified profit-sharing plan under section 401(a) of the Internal Revenue Code of 1954. The trust forming a part thereof is exempt from tax under section 501(a) of the

Code. The employer corporation contributed 50 cents out of profits for each dollar contributed to the trust by an employee-participant. All contributions under the plan are invested in common stock of the employer corporation. Dividends received on such stock are also invested in the corporation's common stock.

The interest of each employee in the trust is represented by units allocated to his account. Units credited to an employee's account as a result of his own contributions are known as member-units. Units credited to an employee's account as a result of the corporation's contributions are known as employer-units. Both member-units and employer-units include stock which is attributable to reinvested cash dividends received by the trust on stock represented by units already credited to an employee's account. Therefore, any employee who withdraws all or a part of his member-units withdraws some shares which are, and some which are not, attributable to the employee's own contributions.

During employment an employee may withdraw all or any part of his member-units subject only to the forfeiture of 10 percent of the value of the withdrawn units. All withdrawals are paid in full shares of the corporation's common stock, to the extent possible, with any balance being paid in money.

Section 402(a)(1) of the Code provides that "the amount actually distributed or made available to any distributee," by an exempt employees' trust, shall be taxable to him, in the year in which so distributed or made available, under section 72 (relating to annuities). Section 402(a)(1) of the Code excludes from the amount actually distributed or made available to any distributee, the "net unrealized appreciation in securities of the employer corporation attributable to the amount contributed by the employee."

Thus, the net unrealized appreciation attributable to employee contributions will be excluded from the distributee's gross income. The net unrealized appreciation which is not attributable to employee contributions will be included in gross income except to the extent excluded by section 72(e)(1)(B) of the Code. That section provides that if any amount is not received as an annuity then such amount shall be included in gross income but only to the extent that it (when added to amounts previously received which were excludable from gross income) exceeds the aggregate consideration paid.

In determining the amount of net unrealized appreciation which is attributable to the amount contributed by the employee for purposes of section 402(a)(1) of the Code, section 1.402(a)-1(b)(3)(ii) of the Income Tax Regulations provides that the amount contributed by the employee for the purchase of securities shall be solely the portion of his actual contributions properly allocable to such securities and shall not include any part of the increment in the trust expended for such securities.

Section 1.402(a)-1(b)(2)(i) of the regulations provides that the amount of net unrealized appreciation in securities of the employer corporation which are distributed by the trust is the excess of the market value of such securities at the time of distribution over the cost or other basis of such securities to the trust. Section 1.402(a)-1(b)(3)(iii) of the regulations states that the amount of the net unrealized appreciation which is attributable to the employee's con-

tributions is that proportion of the net unrealized appreciation which the employee's contributions allocable to such securities bear to the cost or other basis to the trust of the securities.

In applying section 1.402(a)-1(b)(3)(iii) of the regulations to a distribution of securities of the employer which were purchased partially with employee contributions and partially with increments in the trust, the amount of net unrealized appreciation attributable to the employee's contributions is the amount of appreciation which bears the same relationship to the total net unrealized appreciation in such securities as the part of the cost of such securities paid with the employee's contributions bears to the total cost of the securities.

The remainder of the fair market value of the securities distributed is includible in the distributee's gross income under section 72(e)(1)(B) of the Code to the extent it exceeds the employee's contributions as defined in section 72(f). The effect of this computation is to include in the gross income of the distributee the increments of the trust used to purchase the stock plus that portion of the net unrealized appreciation allocable thereto.

Accordingly, under the facts presented, when an employee withdraws member-units only from the trust, while still employed, he is entitled to exclude from gross income under section 402(a)(1) of the Code only that portion of the total net unrealized appreciation which is allocable to the part of the stock purchased with his own contributions. The remainder of the fair market value of the securities distributed is includible in the gross income of the distributee under section 72(e)(1)(B) of the Code to the extent it exceeds the employee's contributions as defined in section 72(f).

Rev. Rul. 67-181

The transfer of employer securities (consisting of stock in the parent corporation) from an exempt employees' trust maintained by the parent corporation and its subsidiary to a newly established exempt employees' trust of the subsidiary corporation did not change the basis of these securities for the purpose of computing net unrealized appreciation in such securities.

Advice has been requested whether the transfer of employer securities (consisting of stock in the parent corporation) from an exempt employees' trust maintained by a corporation and its subsidiary to a newly established exempt employees' trust of the subsidiary, under the circumstances described below, changed the basis of these securities for the purpose of computing the net unrealized appreciation in such securities.

A wholly owned subsidiary corporation was a participating employer under the parent's qualified profit-sharing trust. Pursuant to an amendment to its plan, the subsidiary discontinued participation under the parent's trust, established its own trust, limited coverage to its own employees, and restricted future benefits to a share of its own profits. The trustees of the parent's trust transferred to the subsidiary's trust all assets held for the benefit of the subsidiary's employees. The assets transferred to the trustees of the subsidiary's trust include securities of the parent corporation. The trustees compute the average

cost price of the employer securities in accordance with the provisions of section 1.402(a)-1(b)(2)(ii)(b) of the Income Tax Regulations.

Section 1.402(a)-1(b)(1)(i) of the regulations sets forth the extent to which the amount of net appreciation in the securities of the employer corporation may be excluded from the gross income of the distributee where such securities are included in a distribution made by a trust described in section 401(a) of the Internal Revenue Code of 1954 and exempt under section 501(a). If the distribution constitutes a total distribution made on account of the employee's death or other separation from service, or on account of his death after separation from service, the amount to be excluded is the entire net unrealized appreciation in such securities. If the distribution is other than a total distribution, however, the amount to be excluded is limited to the net unrealized appreciation in the securities purchased with amounts considered to have been contributed by the employee.

Section 1.402(a)-1(b)(1)(ii) of the regulations provides that "securities of the employer corporation" includes securities of a parent corporation.

Section 1.402(a)-1(b)(2) of the regulations provides that the amount of net unrealized appreciation in securities of the employer corporation which are distributed by the trust is the excess of the market value of the securities at the time of distribution over the cost or other basis of such securities to the trust.

Revenue Ruling 55-368, C.B. 1955-1, 40, holds that the transfer of funds from one trust to another through the agency of the employees is not a taxable event where both trusts are qualified trusts under section 401(a) of the Code. In that ruling, all the funds of a pension trust were distributed to the participants, each of whom had previously executed and thereafter carried out a legally enforceable agreement to pay over his distributive share to a newly created pension trust.

The only significant changes for the participants in this case were that their benefits were restricted to a share of the subsidiary's profits, and assets held on their behalf were separated from those held for employees of the parent. The amounts previously credited to their accounts were unchanged and no taxable event occurred.

Since no taxable event occurred upon the transfer of assets to the newly established trust, it is held that such transfer did not change the basis of the securities of the parent for the purpose of computing net unrealized appreciation in such securities. Therefore, the average cost of such securities to the trust previously maintained as a part of the plans of the subsidiary and the parent must be used in determining the net unrealized appreciation attributable to the stock acquired for the accounts of the subsidiary's employees while they were participants in the group plan.

Application of section 72 of the Code to a retirement allowance payable under a state employees' retirement system. See Rev. Rul. 67-179, page 17.

SECTION 403.—TAXATION OF EMPLOYEE ANNUITIES

26 CFR 1.403(b)-1: Taxability of beneficiary under annuity purchased by a section 501 (c)(3) organization or public school. Rev. Rul. 67-69

An employer purchasing an annuity contract, under the provisions of section 403(b) of the Internal Revenue Code of 1954, for an employee performing services for a State educational institution, may retain amounts arising under a salary reduction agreement until the end of a contract year in order to obtain the benefit of a more favorable annual premium rate. The annuity contract purchase arrangement may coincide with the employee's contract year but he is not permitted to make more than one salary reduction agreement during any taxable year.

Advice has been requested whether an employer, pursuant to a salary reduction and annuity purchase agreement may, under section 403(b) of the Internal Revenue Code of 1954, retain amounts arising therefrom until the end of a contract year, and then pay a premium, in order to obtain a more favorable annual premium rate for such contract and whether such salary reduction agreement may coincide with the employee's contract year rather than to his taxable year.

Employees of a certain school district who perform services for an educational institution, as defined in section 151(e)(4) of the Code, participate in an annuity purchase program. The employer proposes to retain amounts, withheld monthly under the agreement, until the end of the contract year. At this time the total amount standing to the credit of each participant will be paid to the insurance company, thereby obtaining an annual premium rate for each contract. This annuity purchase agreement is related to the school contract year running from September 1 through August 31 of the following year.

Section 403(b)(1) of the Code provides that, if the provisions set forth therein are met, the amounts contributed by an employer for an annuity shall be excluded from the gross income of the employee for the taxable year to the extent that such amounts do not exceed the applicable exclusion allowance.

Section 1.403(b)-1(b)(3) of the Income Tax Regulations provides that the exclusion is applicable if an employee agrees to take a reduction in salary in return for his employer's agreement to purchase an annuity contract for him. It is further provided that the employee must not be permitted to make more than one agreement with the same employer during any taxable year of the employee beginning after December 31, 1963.

Section 403(b) of the Code and the applicable regulations do not specify the manner in which an employer is to pay for the contract purchased for an employee under a salary reduction agreement. Thus, it makes no difference whether the annuity contract was paid for or purchased on a monthly, quarterly, or annual basis. Accordingly, it is held that as long as the requirements of section 403(b) of the Code are met at the time the annual premium is paid, the employer may retain the amounts arising by means of the employee's salary reduction

until the end of an employee's contract year to obtain the more favorable annual rate for such annuity. It is further held that this annuity contract purchase arrangement may coincide with the employee's contract year extending from September 1 through August 31 of the following year, but the employee is not permitted to make more than one agreement during any taxable year of such employee.

Rev. Rul. 67–78

Request has been made for a supplement to table I of section 1.403 (b)–1(d)(4) of the Income Tax Regulations. Table I shows, for normal retirement at ages 60, 62, and 65, the annuity values to be used in the formula set forth in such regulation for determining the amounts of certain employer contributions where the actual amounts are not known. Table I is hereby supplemented as follows:

Table I supplemented

[Value at normal retirement ages of annuity of $1 per annum payable in equal monthly installments during life of employee based upon employee's sex]

Normal retirement age	Value		Normal retirement age	Value	
	Male	Female		Male	Female
55	14.42	16.30	63	11.41	13.14
56	14.06	15.92	64	11.02	12.73
57	13.69	15.54	65	10.63	12.31
58	13.32	15.16	66	10.25	11.89
59	12.95	14.76	67	9.87	11.47
60	12.57	14.36	68	9.50	11.04
61	12.19	13.96	69	9.12	10.61
62	11.80	13.55	70	8.76	10.18

SECTION 404.—DEDUCTION FOR CONTRIBUTIONS OF AN EMPLOYER TO AN EMPLOYEES' TRUST OR ANNUITY PLAN AND COMPENSATION UNDER A DEFERRED-PAYMENT PLAN

26 CFR 1.404(a)–1: Contributions of an employer to an employees' trust or annuity plan and compensation under a deferred payment plan; general rule.
(Also Section 401; 1.401–10.)

Rev. Rul. 67–3

In one year a sole proprietor established and contributed to a qualified profit-sharing plan which covered only the self-employed individual. In January of the next year the individual took in a partner and thereafter the business was conducted as a partnership. He also made a contribution to the plan in this second year. The partnership, however, did not adopt the plan or establish a new plan. Under the provisions of section 1.401–10(e)(1) of the Income Tax Regulations, the partnership is considered to be the employer of each of the partners for purposes of section 401 of the Internal Revenue Code of

1954, as amended by the Self-Employed Individuals Tax Retirement Act of 1962, Public Law 87–792, C.B. 1962–3, 89, and an individual partner is not an employer who may establish and maintain a qualified plan with respect to his services performed with the partnership. *Held*, the individual may not take deductions for contributions to his former plan with respect to earned income derived from the partnership.

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26 CFR 1.404(a)–6: Pension and annuity plans; limitations under section 404(a)(1)(C). Rev. Rul. 67–116

The Internal Revenue Service describes an acceptable method of adjusting for gains and losses on a cumulative basis in determining the limit on deductions provided by section 404(a)(1)(C) of the Internal Revenue Code of 1954 for contributions to an employees' exempt pension trust.

Advice has been requested concerning a method of determining the limit on deductions provided by section 404(a)(1)(C) of the Internal Revenue Code of 1954 for contributions to an employees' exempt pension trust. Such method automatically adjusts the limit on deductions to reflect "gains" or "losses" on a cumulative basis.

An employer established an employees' pension plan and trust which meets the requirements of section 401(a) of the Code and is exempt under section 501(a) of the Code. The employer used the "entry age normal" method to compute the normal cost and past service cost (accrued liability). Under this method, annual (or normal) costs are determined as a level percentage of payroll as indicated in section 1.404(a)–6 of the Income Tax Regulations. The excess of the present value of projected benefits over the present value of current and future normal costs is treated as past service cost. Deductible limits under the plan are determined under section 404(a)(1)(C) of the Code.

As noted in Revenue Ruling 59–153, C.B. 1959–1, 89, section 1.404(a)–3(b) of the Income Tax Regulations states in part, that, in any case, in determining the costs and limitations, an adjustment shall be made on account of any experience more favorable than that assumed in the basis of limitations for prior years. Unless such adjustments are consistently made every year by reducing the limitations otherwise determined by any decrease in liability or cost arising from experience in the next preceding taxable year which was more favorable than the assumptions on which the costs and limitations were based, the adjustment shall be made by some other method approved by the Commissioner. Such decreases in liability or cost are generally referred to as "gains." The occurrence of "gains" indicates that previous costs were overestimated. If the factors and assumptions used as a basis for determining costs and deductible limits in prior years are acceptable, the adjustment for "gains" required by the regulations takes the place of a retroactive revision of costs and deductions for prior years, which would otherwise be required when "gains" arise. However, an adjustment for gains is satisfactory for this purpose only when the costs are based upon acceptable factors and assumptions. An adjustment for gains would not be sufficient to correct for overestimation of costs where the factors and assumptions are not acceptable,

and would not meet the requirement of section 1.404(a)–3(b) of the regulations that costs for the purpose of section 404(a)(1) of the Code shall in no event exceed costs based on reasonable assumptions and methods.

Revenue Ruling 59–153, above, sets forth an acceptable method of adjusting for gains under a pension plan where costs are determined under the entry age normal method, as in the present case. (Except where noted, the terminology used herein has the same meaning as in Revenue Ruling 59–153.)

In lieu of the method of adjusting for gains outlined in Revenue Ruling 59–153, the method outlined below may, in appropriate cases, be used to compute the deductible limit, as adjusted for gains on a cumulative basis. Under this method, so long as the assumptions used to determine the plan costs are reasonable, gains need not be separately determined, but are reflected in the special 10-percent base. The special 10-percent base automatically decreases (increases) each year by the amount of the discounted value of the current gain (loss). The method of computing the special 10-percent base is set forth in Revenue Ruling 59–153.

The deductible limit, after adjusting for gains, is computed as follows:

(1) Special 10-percent base.
(2) Number of years plan has been in effect as of valuation date.
(3) Sum of all prior deductible contributions toward past service cost including interest on unfunded past service cost (item (10), below, of prior year).
(4) Special limit (10 percent of item (1) times item (2), less item (3)).
(5) Unfunded past service cost at valuation date, plus interest on such cost while unfunded within the year.
(6) Normal cost, including interest on any unfunded portion of such cost within the year.
(7) Smaller of 10 percent of item (1), and item (4).
(8) Deductible limit (item (6) plus item (7), but not more than item (5) plus item (6)).
(9) Currently deductible contribution toward past service cost including interest on unfunded past service cost (smaller of current contribution and item (8), less item (6)).
(10) Sum of all deductible contributions toward past service cost including interest on unfunded past service cost (item (3) plus item (9)).

The use of this method of computing the deductible limit, including the adjustment for gains, is reasonable in plans where the employer's liability has not been substantially increased. Where the employer's liability has been substantially increased, as, for example, by plan amendment, a further adjustment will generally be required in applying the method outlined above. If, in a given year, assets include any prior contributions which have not yet been deducted, that fact would require an appropriate modification of the foregoing method.

Accordingly, where plan costs are determined by the entry age normal method, the foregoing constitutes an acceptable method of com-

puting deductible limits, including the adjustment for gains, under section 404(a)(1)(C) of the Code, if used consistently and if, as noted above, the employer's liability has not been substantially increased.

SECTION 405.—QUALIFIED BOND PURCHASE PLANS

26 CFR 1.405–1: Qualified bond purchase plans.

Procedures for requests on the qualification of bond purchase plans. See Rev. Proc. 67–4, page 565.

PART II.—CERTAIN STOCK OPTIONS

SECTION 422.—QUALIFIED STOCK OPTIONS

26 CFR 1.422–2: Qualified stock options defined. Rev. Rul. 67–166

The requirements of section 422(b)(5) of the Internal Revenue Code of 1954 will be satisfied although a stock option contains no statement with respect to limitations on its exercise while there are prior outstanding qualified stock options, where such option is granted to an employee who, in fact, holds no prior outstanding stock options.

Advice has been requested whether a stock option which otherwise qualifies as a qualified stock option as defined in section 422(b) of the Internal Revenue Code of 1954 meets the requirements of section 422(b)(5) of the Code under the circumstances described below.

On March 1, 1965, a corporation granted stock options to certain of its employees pursuant to its qualified stock option plan. Each option by its terms provides that such option may not be exercised while there is outstanding any restricted stock option which was granted by the company or by a parent or subsidiary of the company to the optionee before the granting of the present option. However, the options in question contain no statement with respect to limitations on exercise where there are prior outstanding qualified stock options. On the date these options were granted, the optionees held prior granted restricted stock options, but no optionee held a prior granted qualified stock option.

In addition to the other requirements which must be met for a stock option to qualify as a qualified stock option, section 422(b)(5) of the Code provides that such option by its terms must not be exercisable while there is outstanding (within the meaning of section 422(c)(2) of the Code) any qualified stock option or restricted stock option which was granted, before the granting of such option, to such individual to purchase stock in his employer corporation or in a corporation which (at the time of the granting of such option) is a parent or subsidiary corporation of the employer corporation or in a predecessor corporation of any such corporations. Under the provisions of section

1.422–2(f)(iii) of the Income Tax Regulations here pertinent, the restrictions imposed by section 422(b)(5) of the Code must be set forth in the terms of the option unless at the time an option is granted the optionee "in fact has no prior outstanding qualified or restricted stock options * * *."

While the options in question contain the limitation prescribed by section 422(b)(5) of the Code as to prohibition of exercise while there are previously granted restricted stock options outstanding, the terms of such options do not contain a limitation on exercise while there are qualified stock options outstanding. However, since none of the optionees in fact held qualified stock options on March 1, 1965, the date of grant of the options in question, no provision relating to limitations on the exercise of such options is required.

Accordingly, the requirements of section 422(b)(5) of the Code will be satisfied under the circumstances described above although the stock option contains no statement with respect to limitations on its exercise while there are prior outstanding qualified stock options, where such option is granted to an employee who in fact holds no prior outstanding qualified stock options.

SECTION 425.—DEFINITIONS AND SPECIAL RULES

26 CFR 1.425–1: Definitions and special rules applicable to statutory options. Rev. Rul. 67–41

Where the original terms of a qualified stock option provide that it is exercisable by the optionee only while in the employ of the grantor corporation, a change in the terms of the option to permit exercise while in the employ of a subsidiary corporation is a "modification" within the meaning of section 425(h) of the Internal Revenue Code of 1954.

Revenue Ruling 58-324, C.B. 1958–1, 214 clarified, and Revenue Ruling 59–68, C.B. 1959–1, 95, distinguished.

Advice has been requested whether a change in the terms of an employee stock option in the manner described below is a "modification" within the meaning of section 425(h) of the Internal Revenue Code of 1954.

X corporation granted qualified stock options to its employees at a time when it had no subsidiaries and contemplated no change in its corporate structure. The terms of each option included a provision that the option would expire upon termination of the optionee's employment with *X*.

After the date of grant, but prior to expiration of the options, *X* acquired several subsidiary corporations pursuant to a plan of expansion and diversification. The plan contemplated that some of *X*'s employees would terminate their employment with *X* to become employees of the subsidiary corporations. *X* amended the terms of all the options previously granted to permit exercise by the optionees while employed by *X* or any one of its subsidiary corporations.

With certain exceptions not controlling here, section 425(h)(3) of the Code defines the term "modification" as any change in the terms of an option which gives the employee additional benefits under the option. For example, a change which provides more favorable terms for the payment for the stock purchased under the option is a modification. (See section 1.425–1(e)(5)(i) of the Income Tax Regulations.)

In the instant case, the amendment of the options granted by *X* to permit exercise of the options by the optionees while in the employ of a subsidiary corporation gave the optionees additional benefits because it gave them the right to exercise the options in a particular circumstance where the right previously did not exist. Consequently, this amendment is a "modification" within the meaning of section 425 (h) (3) of the Code.

The facts in this case are distinguishable from those in Revenue Ruling 58–324, C.B. 1958–1, 214, which holds that an optionee who exercised his option while employed by a corporation which had become a subsidiary of the grantor corporation after the date of grant qualified for the treatment provided in section 421 of the Code. In that case, the terms of the option permitted exercise by an optionee while in the employ of a subsidiary corporation regardless of whether the subsidiary was created or acquired subsequent to the granting of the options.

Revenue Ruling 59–68, C.B. 1959–1, 95, holds that the employment relationship existing by reason of the particular agreement described in that case is not considered as having been terminated when the employee is directed by his employer to serve as an officer of an affiliated corporation. In effect, that holding gives recognition to the continuing employment of the optionee by the grantor corporation according to the terms of an agreement under which the grantor corporation continued to pay the optionee a salary and retained the right to direct and control his actions. The issue in the instant case is distinguishable in that it relates to the effect of the granting of an additional benefit to the optionee rather than to the question whether there is a continuing employment relationship under the terms of the option when granted.

Although the amendment of the terms of the options in the instant case is a "modification" within the meaning of section 425(h) (3) of the Code, it should be noted that section 425(h)(3)(A) of the Code provides that the term "modification" shall not include a change in the terms of the option attributable to the issuance or assumption of an option under section 425(a) of the Code.

Section 425(a) of the Code provides in part that the term "issuing or assuming a stock option in a transaction to which section 425(a) applies" means a substitution of a new option for the old option, or an assumption of the old option by an employer corporation, or a parent or subsidiary of such corporation, by reason of a corporate merger, consolidation, acquisition of property or stock, separation, reorganization, or liquidation, if (1) the excess of the aggregate fair market value of the shares subject to the option immediately after the substitution or assumption over the aggregate option price of such shares is not more than the excess of the aggregate fair market value of all shares subject to the option immediately before such substitution or assumption over the aggregate option price of such shares, and (2) the new option or the assumption of the old option does not give the employee additional benefits which he did not have under the old option.

Thus, if the subsidiary in the instant case assumed the options of *X* or substituted its own options and the conditions of section 425(a) of the Code and section 1.425–1 of the regulations were otherwise met, a change in the terms of the option solely to qualify under section 425(a)

of the Code would not be a "modification" as defined by section 425(h)(3) of the Code. However, the change in the terms of the options in the instant case was not attributable to an issuance or assumption of a stock option under section 425(a) of the Code.

Accordingly, for the reasons indicated above, where the original terms of a qualified stock option provide that it is exercisable by the optionee only while in the employ of the grantor corporation, a change in the terms of the option to permit exercise while in the employ of a subsidiary corporation is a "modification" within the meaning of section 425(h)(3) of the Code.

Revenue Ruling 58–324, C.B. 1958–1, 214, is hereby clarified, and Revenue Ruling 59–68, C.B. 1959–1, 95, is hereby distinguished.

Rev. Rul. 67–102

The release from a representation made by the holder of a stock option that the shares of stock acquired pursuant to an exercise of the option will be held for investment and not for resale, is a "modification" of the option for purposes of section 425(h)(3) of the Internal Revenue Code of 1954. However, if the terms of the option had originally provided that this restriction would be inoperative upon the occurrence of a given contingency, such as registration with the Securities and Exchange Commission of the stock subject to the option, the disregard of the investment representation upon the happening of the contingency would not be a "modification."

Advice has been requested whether a change in the terms of a qualified stock option in the manner described below is a "modification" within the meaning of section 425(h)(3) of the Internal Revenue Code of 1954.

A corporation, prior to January 1, 1965, granted to certain of its employees qualified stock options pursuant to a plan under which the employees were required to represent "that all shares purchased under this option will be acquired for investment purposes and not for resale." The corporation required this representation since it sought to bring these shares within the provisions of section 4(1) of the Securities Act of 1933, 15 U.S.C. 77(a) et seq., which section exempts from the registration requirements of section 5 of the act "transactions by an issuer not involving any public offering."

It was essential that the shares be held for investment, for should the exempt status of the transaction be lost, both the corporation and the optionees would be subject to civil and criminal sanctions under the Securities Act. See 15 U.S.C. 77(l), 77(t) and 77(x).

Subsequently, however, in connection with the registration of other stock of the corporation pursuant to a public offering thereof, the shares underlying the subject options were similarly registered. Thereupon, the corporation released the optionees from their investment representations.

Section 425(h)(3) of the Code, subject to exceptions not here relevant, defines the term "modification" to mean "any change in the terms of the option which gives the employee additional benefits under the option * * *." Under section 1.425–1(e)(5)(i) of the Income Tax Regulations, for example, a change which provides more favorable terms for the payment for the stock purchased under the option is a "modification."

An option which requires an investment representation by the optionee is substantially less beneficial than an option to purchase stock which has been registered and which is not subject to any limitation on resale. Where, as here, a corporation converts an option to purchase unregistered stock into an option to purchase registered stock which may be sold at will, it thereby confers an additional benefit upon the optionees. Since the release from the investment representation is an integral part of such conversion, it is a "modification" within the meaning of section 425(h)(3) of the Code.

However, if the terms of the option had originally provided that this restriction would be inoperative upon the occurrence of a given contingency, such as registration with the Securities and Exchange Commission of the stock subject to the option, the disregard of the investment representation upon the happening of the contingency would not be a "modification."

SUBCHAPTER E.—ACCOUNTING PERIODS AND METHODS OF ACCOUNTING

PART I.—ACCOUNTING PERIODS

SECTION 441.—PERIOD FOR COMPUTATION OF TAXABLE INCOME

26 CFR 1.441–1: Period for computation of taxable income.

Annual accounting period of organization previously exempt from tax. See Rev. Rul. 67–173, below.

SECTION 442.—CHANGE OF ANNUAL ACCOUNTING PERIOD

26 CFR 1.442–1: Change of annual accounting period. Rev. Rul. 67–173

(Also Sections 441, 443; 1.441–1, 1.443–1.)

> An organization previously exempt from Federal income tax which is thereafter held to be a taxable organization and is required to file a Form 1120, U.S. Corporation Income Tax Return, must file such return on the basis of its established annual accounting period. Where the organization had no established annual accounting period, such return shall be on the basis of the calendar year, subject to the exception provided in section 443 of the Internal Revenue Code of 1954, relating to returns for a period of less than twelve months. In either circumstance, an organization is required to secure the prior approval of the Commissioner before it may adopt a new "taxable year" within the meaning of section 441(b) of the Code.

Advice has been requested whether an organization previously exempt from taxation under subtitle A of the Internal Revenue Code of 1954 by reason of section 501(a) of the Code may, without the prior approval of the Commissioner of Internal Revenue, change its annual accounting period for the first taxable year it is subject to the

taxes imposed under subtitle A of the Code. It has been contended by the organization that it is a "new taxpayer" within the meaning of section 1.442–1 of the Income Tax Regulations.

In one case, for the years 1958 to 1964, inclusive, *X* was an organization exempt from tax under section 501(a) of the Code but was required to file an annual information return, Form 990, Return of Organization Exempt from Income Tax, pursuant to the provisions of section 6033 of the Code and the regulations thereunder. Throughout the period of its existence it maintained its books and records and filed its annual return of information, Form 990, on the basis of a calendar year accounting period. As of the beginning of the calendar year 1965, *X* was held to be a taxable organization and was required to file a Form 1120, U.S. Corporation Income Tax Return. Thereupon *X* desired to change its annual accounting period and adopt as a new taxable year a fiscal year ending June 30.

In another case, *Y* was an organization exempt from tax under section 501(a) of the Code but, because of a specific exception contained in section 6033 of the Code and section 1.6033–1 of the regulations, it was not required to file an annual return of information. *Y* was organized in 1957 and maintained its books and records on the basis of a fiscal year accounting period ending September 30. Effective January 8, 1965, *Y* was held to be a taxable organization and was required to file a Form 1120 corporation income tax return. Thereupon, *Y* desired to change its annual accounting period and adopt as a new taxable year a fiscal year ending March 31.

Section 6033 of the Code provides that every organization, except as therein specifically provided, exempt from taxation under section 501(a) of the Code shall file an annual return, stating specifically the items of gross income, receipts, and disbursements, and such other information as the Secretary or his delegate may by forms or regulations prescribe. This provision of the Code and the regulations thereunder set forth the requirements for filing an annual information return by an organization during the period it is exempt from taxation under section 501(a) of the Code. However, whether an exempt organization is required to file an annual information return is not relevant to the requirements for filing a return by a taxpayer subject to the taxes imposed by subtitle A of the Code. See sections 6011 and 6012 of the Code and the regulations thereunder, relating to the requirements of returns of income subject to taxation under subtitle A of the Code.

With respect to the taxes imposed by subtitle A of the Code, section 441 of the Code, relating to the period for computation of taxable income, provides, in pertinent part, as follows:

> (a) COMPUTATION OF TAXABLE INCOME.—Taxable income shall be computed on the basis of the taxpayer's taxable year.
>
> (b) TAXABLE YEAR.—For purposes of this subtitle, the term "taxable year" means—
>
> (1) the taxpayer's annual accounting period, if it is a calendar year or a fiscal year;
>
> (2) the calendar year, if subsection (g) applies; or
>
> (3) the period for which the return is made, if a return is made for a period of less than 12 months.
>
> (c) ANNUAL ACCOUNTING PERIOD.—For purposes of this subtitle, the term "annual accounting period" means the annual period on the basis

of which the taxpayer regularly computes his income in keeping his books.

(d) CALENDAR YEAR.—For purposes of this subtitle, the term "calendar year" means a period of 12 months ending on December 31.

(e) FISCAL YEAR.—For purposes of this subtitle, the term "fiscal year" means a period of 12 months ending on the last day of any month other than December. * * *

* * * * * * *

(g) NO BOOKS KEPT; NO ACCOUNTING PERIOD.—Except as provided in section 443 (relating to returns for periods of less than 12 months), the taxpayer's taxable year shall be the calendar year if—

(1) the taxpayer keeps no books;

(2) the taxpayer does not have an annual accounting period; or

(3) the taxpayer has an annual accounting period, but such period does not qualify as a fiscal year.

Section 1.441–1(b)(3) of the regulations provides, in part, as follows:

(3) A new taxpayer in his first return may adopt any taxable year which meets the requirements of section 441 and this section without obtaining prior approval. The first taxable year of a new taxpayer must be adopted on or before the time prescribed by law (not including extensions) for the filing of the return for such taxable year. * * *.

Section 442 of the Code provides, in part, as follows:

If a taxpayer changes his annual accounting period, the new accounting period shall become the taxpayer's taxable year only if the change is approved by the Secretary or his delegate. For purposes of this subtitle, if a taxpayer to whom section 441(g) applies adopts an annual accounting period (as defined in section 441(c)) other than a calendar year, the taxpayer shall be treated as having changed his annual accounting period.

Section 1.442–1(a)(1) of the regulations provides in part, as follows:

If a taxpayer wishes to change his annual accounting period (as defined in section 441(c)) and adopt a new taxable year (as defined in section 441(b)), he must obtain prior approval from the Commissioner by application, as provided in paragraph (b) of this section, or the change must be authorized under the Income Tax Regulations. A new taxpayer who adopts an annual accounting period as provided in section 441 and sections 1.441–1 or 1.441–2 need not secure the permission of the Commissioner under section 442 and this section. * * *

Although both *X* and *Y* as a result of being held to be taxable organizations are required for the first time to file Form 1120 returns of income subject to the taxes imposed under subtitle A of the Code, neither is a "new taxpayer" within the meaning of the regulations. In order for a corporation to qualify as a "new taxpayer" within the meaning of section 1.442–1 of the regulations, the requirements of section 441 of the Code must be met, and these requirements cannot be met if the taxpayer was in existence, even though exempt from taxation, for a period of time preceding that for which it must file its first return of income subject to taxation under subtitle A of the Code. If a taxpayer was in existence prior to such time and has an established annual accounting period on the basis of which its books and records are kept, then under section 441(c) of the Code such period is its "annual accounting period" and under section 441(b) of the Code this is its "taxable year." If such a taxpayer fails to maintain books and records, its "taxable year" is the calendar year under section 441(g) of the Code. If a return is required to be filed for a period of less than 12 months, see section 443 of the Code. See also *The Royal Highlanders*

v. *Commissioner*, 1 T.C. 184 (1942), acquiescence, C.B. 1943, 20, reversed on another issue, 138 F. 2d 240 (1943); *The Economy Savings & Loan Co.* v. *Commissioner*, 5 T.C. 543 (1945), affirmed on this issue, 158 F. 2d 472 (1946).

Accordingly, an organization previously exempt from Federal income tax which is thereafter held to be a taxable organization and is required to file a Form 1120 corporation income tax return must file such return on the basis of its established annual accounting period, or, where the organization has no established annual accounting period, such return shall be on the basis of the calendar year, subject to the exception provided in section 443 of the Code, relating to returns for a period of less than 12 months. Since such organization is not a "new taxpayer" within the meaning of section 1.442–1 of the regulations, prior approval of the Commissioner is required before it may adopt a new "taxable year" within the meaning of section 441(b) of the Code.

In view of the foregoing, in the absence of prior approval by the Commissioner of a change in annual accounting period pursuant to the provisions of section 442 of the Code and the regulations, *X*'s annual accounting period is a calendar year and *Y*'s annual accounting period is a fiscal year ending September 30. *X* is required to file a Form 1120 corporation income tax return for the 12-month calendar year 1965 and *Y* is required, pursuant to the provisions of section 443 of the Code, to file a short period return for the period commencing January 8, 1965, and ending September 30, 1965.

For the requirements in general to secure approval of a change in the annual accounting period, see section 1.442(b)(1) of the regulations.

SECTION 443.—RETURNS FOR A PERIOD OF LESS THAN 12 MONTHS

26 CFR 1.443–1: Returns for periods of less than 12 months.

Filing of a return for a short period in the first taxable year that a previously exempt organization becomes subject to Federal income tax. See Rev. Rul 67–173, page 101.

Whether affiliated corporations filing consolidated returns are required to annualize short-period income. See Rev. Rul. 67–189, page 255.

PART II.—METHODS OF ACCOUNTING

Subpart A.—Methods of Accounting in General

SECTION 446.—GENERAL RULE FOR METHODS OF ACCOUNTING

26 CFR 1.446–1: General rule for methods of accounting.

Procedure for changing overall method of accounting from cash receipts and disbursements method to accrual method. See Rev. Proc. 67–10, page 585.

Subpart B.—Taxable Year for Which Items of Gross Income Included

SECTION 451.—GENERAL RULE FOR TAXABLE YEAR OF INCLUSION

26 CFR 1.451–1: General rule for taxable year of inclusion. Rev. Rul. 67–203

(Also Section 74; 1.74–1.)

A winner of the Irish Sweepstakes reports his income on the cash receipts and disbursements basis, and, by reason of being a minor his winnings must be held by the Irish court until he reaches majority. *Held*, the economic benefit doctrine applies and requires the inclusion of the present value of the sweepstakes winnings in the minor's gross income at the time the funds are paid over to the Irish court. See *E. T. Sproull* v. *Commissioner*, 16 T.C. 244 (1950), affirmed, 194 F. 2d 541 (1952).

Treatment of amounts payable with respect to gasoline used on a farm for farming purposes which farmers may claim as a credit against their income tax for taxable years beginning after June 30, 1965. See Rev. Rul. 67–2, page 13.

SECTION 453.—INSTALLMENT METHOD

26 CFR 1.453–1: Installment method of reporting income. Rev. Rul. 67–147

The taxpayer, a dealer in personal property, has consistently used the installment method of accounting for book and Federal income tax purposes with respect to its installment sales. In connection with a public offering of its stock, the taxpayer desires to change to an accrual method of accounting for book purposes with respect to its installment sales but wishes to continue on the installment method of accounting for Federal income tax purposes. *Held*, if the taxpayer maintains

permanent auxiliary records with its regular books of account reconciling the difference in installment sales for book and Federal income tax purposes, it may continue to use the installment sales method for Federal income tax purposes although it changes its book method of accounting for such sales to an accrual method. See sections 1.453–1(f) and 1.453–2(c) of the Income Tax Regulations.

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26 CFR 1.453–2: Special rules applicable to dealers in personal property.

Service charges paid by department store customers on purchases made under a so-called budget charge account. See Rev. Rul. 67–62, page 44.

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26 CFR 1.453–9: Gain or loss on disposition of installment obligations.
(Also Sections 673, 677; 1.673(b)–1, 1.677(a)–1.)

Rev. Rul. 67–70

The transfer to a reversionary trust of an installment obligation is not a disposition within the meaning of section 453(d) of the Internal Revenue Code of 1954 where the grantor is treated as the owner of a portion of the trust consisting of the deferred profit included in the installment obligation.

The grantor is taxable on the deferred profit as the installment payments are received by the trust.

The grantor is not taxable on the interest income earned by the trust and paid to a charitable beneficiary for a period of 2 years and 1 month from the date of transfer of the installment obligation to the trust.

Advice has been requested whether the transfer of an installment obligation to a trust is a "disposition" within the meaning of section 453(d) of the Internal Revenue Code of 1954 under the following circumstances.

The grantor sold property and accepted an installment note providing for payment in monthly installments over a number of years plus interest at 6 percent on the unpaid balance. He elected to report the gain on the sale on the installment method of accounting under section 453 of the Code.

The grantor, while the installment obligation still had over 2 years to run, transferred the installment note to a trust. The trust instrument provides that the term of the trust should be 2 years and 1 month; that the income of the trust, consisting solely of the interest earned on the note during the period it is trust property be paid to a named charitable beneficiary (which was of the type described in section 170(b)(1)(A)(ii) of the Code); and that the deferred profit and return of capital (principal) in the payments received by the trust, be paid to the grantor. On termination of the trust the installment note reverts to the grantor.

Section 453(d) of the Code provides, in part, that if an installament obligation is disposed of gain or loss shall result to the transferor in the taxable year in which the disposition occurs.

Section 677(a) of the Code provides, in part, that the grantor of a trust shall be treated as the owner of any portion of a trust whose

income, without the approval or consent of an adverse party or, in the discretion of the grantor or a nonadverse party, may be distributed to the grantor.

Under the general rule provided in section 673(a) of the Code, a grantor is treated as the owner of any portion of a trust in which he has a reversionary interest in either the corpus or the income therefrom if, as of the inception of that portion of the trust, the interest will or may be expected to take effect in possession or enjoyment within 10 years commencing with the date of the transfer of that portion of the trust. Section 673(b) of the Code provides, however, that subsection (a) of that section shall not apply to the extent that the income of a portion of a trust in which the grantor has a reversionary interest is, under the terms of the trust, irrevocably payable for a period of at least 2 years to a designated beneficiary of the type described in section 170(b)(1)(A) (i), (ii), or (iii) of the Code.

The grantor, by retaining a right to the deferred profit in the installments remains the owner of that portion of the trust under the provisions of section 673 and section 677(a)(1) of the Code, and is taxable on the part of each installment which represents deferred profit.

Accordingly, the transfer in trust of the installment obligation is not a disposition of the installment obligation since the grantor is treated as the owner of the portion of the trust consisting of the deferred profit included in the obligation. The grantor is taxable on the deferred profit as the installment payments are received by the trust. (Cf. Rev. Rul. 64–302, C.B. 1964–2, 170.)

Because of the exception in section 673(b) of the Code, the grantor is not deemed the owner of that portion of the trust to which is attributable the interest earned during the period the trust is in existence and paid to the trustee with the installment payments since, under the terms of the trust instrument, the interest is irrevocably payable for a period of 2 years and 1 month to the charitable beneficiary. Therefore, the interest income received by the trustee during the period of the trust is not taxable to the grantor.

Rev. Rul. 67–167

The transfer in trust of an installment obligation effected a "disposition" of the obligation within the meaning of section 453(d) of the Internal Revenue Code of 1954 and resulted in recognition of the deferred gain by the grantor of the trust in the taxable year in which the disposition occurred. The gain is the difference between the basis of the obligation and its fair market value at the time of the transfer.

Advice has been requested whether, under the following circumstances the transfer of an installment obligation to a trust was a "disposition" within the meaning of section 453(d) of the Internal Revenue Code of 1954, which would accelerate payment of the tax on the deferred profit.

The grantor sold property and accepted an installment note providing for payment in monthly installments over a period of 20 years plus interest at six percent on the unpaid balance. He properly elected to report the gain on the sale on the installment method of accounting under section 453 of the Code.

The grantor, while the installment obligation still had 18 years to run, transferred the installment note in trust for the benefit of his sister. The trust instrument provides that the entire amount of each installment and interest payment on the note shall be currently distributed to the beneficiary.

The trust instrument also provides that the trust shall terminate after ten years and two months at which time the balance due on the installment obligation shall revert to the grantor.

Section 453(d) of the Code provides that if an installment obligation is disposed of, gain or loss shall result to the transferor in the taxable year in which the disposition occurs to the extent of the difference between the basis of the obligation and the fair market value of the obligation at the time of disposition, in the case of disposition otherwise than by sale or exchange.

The transfer of an installment obligation in trust results in a disposition of the installment obligation with immediate tax consequences to the grantor in all cases where the facts and circumstances are such that the grantor is not the owner of any part of the trust under the provisions of subpart E of subchapter J of the Code. Under the circumstances of this case, the grantor is not the owner of any part of the trust. (Cf. Rev. Rul. 67–70, page 106, this Bulletin.)

Accordingly, the transfer in trust of the installment obligation effected a "disposition" of the obligation. The grantor is taxable in the year of the transfer on the difference between the basis of the obligation and its fair market value at the time of transfer.

SECTION 455.—PREPAID SUBSCRIPTION INCOME

26 CFR 1.455–1: Treatment of prepaid subscription income.

Whether sales commissions and expenditures for certain items are deductible currently under section 173 of the Code. See Rev. Rul. 67–207, page 295.

Subpart C.—Taxable Year for Which Deductions Taken

SECTION 461.—GENERAL RULE FOR TAXABLE YEAR OF DEDUCTION

26 CFR 1.461–1: General rule for taxable year of deduction. T.D. 6917[1]

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 1.—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Treatment of interest or dividends paid by certain savings institutions on certain deposits or withdrawable accounts.

[1] 32 F.R. 6682.

DEPARTMENT OF THE TREASURY,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D.C. 20224.

To Officers and Employees of the Internal Revenue Service and Others Concerned:

On May 26, 1966, notice of proposed rulemaking with respect to the amendment of the Income Tax Regulations (26 CFR Part 1) under section 461 of the Internal Revenue Code of 1954 to conform such regulations to section 3(a) of the act of October 24, 1962 (Public Law 87-876, 76 Stat. 1199) [C.B. 1962-3, 217], was published in the Federal Register (31 F.R. 7571). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the regulations are amended by adding at the end of § 1.461-1 a new paragraph (e) which reads as follows:

§ 1.461-1 GENERAL RULE FOR TAXABLE YEAR OF DEDUCTION.

* * * * * * *

(e) *Dividends or interest paid by certain savings institutions on certain deposits or withdrawable accounts.*—(1) *Deduction not allowable.*—(i) *In general.*—Except as otherwise provided in this paragraph, pursuant to section 461(e) amounts paid to, or credited to the accounts of, depositors or holders of accounts as dividends or interest on their deposits or withdrawable accounts (if such amounts paid or credited are withdrawable on demand subject only to customary notice to withdraw) by a mutual savings bank not having capital stock represented by shares, a domestic building and loan association, or a cooperative bank shall not be allowed as a deduction for the taxable year to the extent such amounts are paid or credited for periods representing more than 12 months. The provisions of section 461(e) are applicable with respect to taxable years ending after December 31, 1962. Whether amounts are paid or credited for periods representing more than 12 months depends upon all the facts and circumstances in each case. For example, payments or credits which under all the facts and circumstances are in the nature of bona fide bonus interest or dividends paid or credited because a shareholder or depositor maintained a certain balance for more than 12 months, will not be considered made for more than 12 months, providing the regular payments or credits represent a period of 12 months or less. The nonallowance of a deduction to the taxpayer under section 461(e) and this subparagraph has no effect either on the proper time for reporting dividends or interest by a depositor or holder of a withdrawable account, or on the obligation of the taxpayer to make a return setting forth, among other things, the aggregate amounts paid to a depositor or shareholder under section 6049 (relating to returns regarding payments of interest) and the regulations thereunder. With respect to a short period (a taxable year consisting of a period of less than 12 months), amounts of dividends or interest paid or credited shall not be allowed as a deduction to the extent that such amounts are paid or credited for a period representing more than the number of months in such short period. In such a

case, the rules contained in section 461(e) and this paragraph apply to the short period in a manner consistent with the application of such rules to a 12-month taxable year. Subparagraph (2) of this paragraph provides rules for computing amounts not allowed in the taxable year and subparagraph (3) provides rules for determining when such amounts are allowed. See section 7701(a) (19) and (32) and the regulations thereunder for the definitions of domestic building and loan association and cooperative bank.

(ii) *Exceptions.*—The rule of nonallowance set forth in subdivision (i) of this subparagraph is not applicable to a taxpayer in the year in which it liquidates (other than following, or as part of, an acquisition of its assets in which the acquiring corporation, pursuant to section 381(a), takes into account certain items of the taxpayer, which for purposes of this paragraph shall be referred to as an acquisition described in section 381(a)). In addition, such rule of nonallowance is not applicable to a taxpayer which pays or credits grace interest or dividends to terminating depositors of shareholders, provided the total amount of the grace interest or dividends paid or credited during the payment or crediting period (for example, a quarterly or semiannual period) does not exceed 10 percent of the total amount of the interest or dividends paid or credited during such period, computed without regard to the grace interest or dividends. For example, providing the 10-percent limitation is met, the rule of nonallowance does not apply in a case in which a calendar year taxpayer, with regular interest payment dates of January 1, April 1, July 1, and October 1, pays grace interest for the period beginning October 1 to a depositor who terminates his account on December 10.

(2) *Computation of amounts not allowed as a deduction.*—(i) *Method of computation.*—The amount of the dividends or interest to which subparagraph (1) of this paragraph applies, which is not allowed as a deduction shall be computed under the rules of this subparagraph. The amount which is not allowed as a deduction is the difference between the total amount of dividends or interest paid or credited to that class of accounts with respect to which a deduction is not allowed under subparagraph (1) of this paragraph during the taxable year (or short period, if applicable) and an amount which bears the same ratio to such total as the number 12 (or number of months in the short period) bears to the number of months with respect to which such amounts of dividends or interest are paid or credited.

(ii) *Examples.*—The provisions of subdivision (i) of this subparagraph may be illustrated by the following examples:

Example (1). *X* Association, a domestic building and loan association filing its return on the basis of a calendar year, regularly credits dividends on its withdrawable accounts quarterly on the first day of the quarter following the quarter with respect to which they are earned. *X* changes the time of crediting dividends commencing with the credit for the fourth quarter of 1964. Such credit and all subsequent credits are made on the last day of the quarter with respect to which they are earned. As a result of this change *X*'s credits for the year 1964 are as follows:

Period with respect to which earned	Date credited in 1964	Amount
4th quarter, 1963	Jan. 1	$250, 000
1st quarter, 1964	Apr. 1	300, 000
2d quarter, 1964	July 1	300, 000
3d quarter, 1964	Oct. 1	300, 000
4th quarter, 1964	Dec. 31	350, 000
Total dividends credited		$1, 500, 000

Since the change in the time of crediting dividends results in the crediting in 1964 of amounts of dividends representing periods totaling 15 months (October 1963 through December 1964), amounts shall not be allowed as a deduction in 1964 which are in excess of $1,200,000, which is the amount which bears the same ratio to the amounts of dividends credited during the year ($1,500,000) as the number 12 bears to the number of months (15) with respect to which such dividends are credited. Thus, $300,000 ($1,500,000 minus $1,200,000) is not allowed as a deduction in 1964.

Example (2). *Y* Association, a domestic building and loan association filing its return on the basis of a calendar year, regularly credits dividends on its withdrawable accounts on the basis of a semiannual period on March 31 and September 30 of each year. *Y* changes the period with respect to which credits are made from the semiannual period to the quarterly basis, commencing with the last quarter in 1964. The credit for this last quarter and all subsequent credits are made on the last day of the quarter with respect to which they are earned. As a result of this change, *Y*'s credits for the year 1964 are as follows:

Period with respect to which earned, 1964	Date credited in 1964	Amount
6-month period ending Mar. 31	Mar. 31	$300, 000
6-month period ending Sept. 30	Sept. 30	400, 000
4th quarter	Dec. 31	200, 000
Total dividends credited		$900, 000

Since the change in the basis of crediting dividends results in a crediting in 1964 of dividends representing periods totaling 15 months (October 1963 through December 1964), amounts shall not be allowed as a deduction in 1964 which are in excess of $720,000, which is the amount which bears the same ratio to the amounts of dividends credited during the year ($900,000) as the number 12 bears to the number of months (15) with respect to which such dividends are credited. Thus, $180,000 ($900,000 minus $720,000) is not allowed as a deduction in 1964.

Example (3). *Z* Association, a domestic building and loan association, regularly files its return on the basis of a fiscal year ending on the last day of February and regularly credits dividends on its withdrawable accounts quarterly on the last day of the quarter with

respect to which they are earned. *Z* receives approval from the Commissioner of Internal Revenue to change its accounting period to a calendar year and effects the change by filing a return for a short period ending on December 31, 1964. Dividend credits for the short period beginning on March 1 and ending on December 31, 1964, are as follows:

Period with respect to which earned, 1964	Date credited, 1964	Amount
January-March	Mar. 31	$250, 000
April-June	June 30	300, 000
July-September	Sept. 30	300, 000
October-December	Dec. 31	350, 000
Total dividends credited		$1, 200, 000

Since the change of accounting period results in amounts of dividends credited ($1,200,000) representing periods totaling 12 months (January through December 1964), and such periods represent more than the number of months (10) in the short period, an amount shall not be allowed as a deduction in such short period which is in excess of $1 million, which is the amount which bears the same ratio to the amount of dividends credited in the short period ($1,200,000) as the number of months (10) in the short period bears to the number of months (12) with respect to which such dividends are credited. Thus, $200,000 ($1,200,000 minus $1 million) is not allowed as a deduction in the short period.

(3) *When amounts allowable.*—The amount of dividends or interest not allowed as a deduction under subparagraph (1) of this paragraph shall be allowed as follows (subject to the limitation that the total of the amounts so allowed shall not exceed the amount not allowed under subparagraph (1)):

(i) Such amount shall be allowed as a deduction in a later taxable year or years subject to the limitation that, when taken together with the deductions otherwise allowable in the later taxable year or years, it does not bring the deductions for any later taxable year to a total representing a period of more than 12 months (or number of months in the short period, if applicable). However, in any event, an amount otherwise allowable under subdivision (ii) of this subparagraph shall be allowed notwithstanding the fact that it may bring the deductions allowable to a total representing a period of more than 12 months (or number of months in the short period, if applicable).

(ii) In any case in which it is established to the satisfaction of the Commissioner that the taxpayer does not intend to avoid taxes, one-tenth of such amount shall be allowed as a deduction in each of the 10 succeeding taxable years—

(*a*) Commencing with the taxable year for which such amount is not allowed as a deduction under subparagraph (1), or

(*b*) In the case of such amount not allowed for a taxable year ending before July 1, 1964, commencing with either the first or second taxable year after the taxable year for which such amount is not allowed as a deduction under subparagraph (1) if the tax-

payer has not taken a deduction on his return, or filed a claim for credit or refund, in respect of such amount under (*a*).

Normally, if the deduction not allowed under subparagraph (1) is a result of a change, not requested by the taxpayer, in the taxpayer's annual accounting period or dividend or interest payment or crediting dates solely as a consequence of a requirement of a Federal or State regulatory authority, or if the deduction is not allowed solely as a result of the taxpayer being a party to an acquisition to which section 381(a) applies, the Commissioner will permit the allowance of the amount not allowed in the manner provided in this subdivision. Nothing set forth in this subdivision shall be construed as permitting the allowance of a credit or refund for any year which is barred by the limitations on credit or refund provided by section 6511.

(iii) If the total of the amounts, if any, allowed under subdivisions (i) and (ii) of this subparagraph before the taxable year in which the taxpayer liquidates or otherwise ceases to engage in trade or business is less than the amount not allowed under subparagraph (1), there shall be allowed a deduction in such taxable year for the difference between the amount not allowed under subparagraph (1) and the amounts allowed, if any, as deductions under subdivisions (i) and (ii) unless the circumstances under which the taxpayer ceased to do business constitute an acquisition described in section 381(a) (relating to carryovers in certain corporate acquisitions). If the circumstances under which the taxpayer ceased to do business constitute an acquisition described in section 381(a), the acquiring corporation shall succeed to and take into account the balance of the amounts not allowed on the same basis as the taxpayer, had it not ceased to engage in business.

(This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

SHELDON S. COHEN,
Commissioner of Internal Revenue.

Approved April 25, 1967.

STANLEY S. SURREY,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on May 1, 1967, 8:45 a.m., and published in the issue of the Federal Register for May 2, 1967, 32 F.R. 6682)

Deductibility of trade or business expenses incurred in prior years and paid by a cash-basis taxpayer in a taxable year after the trade or business has been discontinued. See Rev. Rul. 67–12, page 29.

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26 CFR 1.461–2: Timing of deductions in certain cases where asserted liabilities are contested. Rev. Rul. 67–127

Provisions of section 461(f) of the Internal Revenue Code of 1954 do not require a taxpayer to postpone, until the year of payment under protest, a deduction for Illinois property taxes properly accruable in the preceding taxable year.

270–829°—67——9

Advise has been requested concerning the effect of section 461(f) of the Internal Revenue Code of 1954 on the proper taxable year for deduction of Illinois property taxes by a taxpayer using the accrual method of accounting.

Illinois property taxes are assessed and become a lien on the property during the calendar year prior to the year in which the tax rates are determined, the tax bills are mailed and payment of the taxes becomes due. For Federal income tax purposes, accrual method taxpayers deduct Illinois property taxes in the year of assessment and lien. G.C.M. 6273. C.B. VIII–1, 168 (1929).

A corporation, an accrual method taxpayer on a calendar year basis, deducts each year the amount of its liability for Illinois taxes assessed during the year by applying to the assessed value of its property, tax rates estimated on the basis of the prior year's levies. In the year following the year of assessment, the difference between taxes actually paid and the amount that was accrued in the prior year is taken as an adjustment to taxable income for the year of payment.

In 1959 the corporation accrued $40x$ dollars of Illinois property taxes by applying to its 1959 assessment an estimated rate based on the 1958 tax rate. During 1960 the Illinois taxing authority billed the corporation $43x$ dollars on the 1959 assessment. The corporation paid the $43x$ dollars and at the same time filed a protest with respect to $5x$ dollars of this amount and deducted $3x$ dollars from its 1960 income to reflect the excess of the actual 1959 tax over its accrued estimated tax liability for 1959. The ensuing court action brought by the corporation terminated with a refund of $5x$ dollars to it in 1966. The corporation included the $5x$ dollars in its 1966 taxable income.

The issue presented is whether section 461(f) of the Code is applicable in the instant case so as to require that the Illinois property taxes which were accrued in 1959 be instead deducted in 1960 to the extent that such taxes were paid under protest in 1960. The amount in issue is $2x$ dollars, since of the $5x$ dollars paid under protest only $2x$ dollars were accrued in 1959.

Section 461(f) of the Code provides that if a taxpayer contests an asserted liability, but makes payment in satisfaction of this liability and the contest with respect to the liability exists after the payment, then the item involved is to be allowed as a deduction in the taxable year of payment. A necessary requirement for the application of this section is that, *but for* the fact that the asserted liability is contested, a deduction would have been allowed for either the taxable year of the payment or for an earlier taxable year (section 461(f)(4) of the Code). For example, section 461(f)(4) of the Code is applicable where taxes are contested in the assessment and lien date year (year 1), with payment being made in the next year (year 2). But for the fact that the taxes were contested in year 1, an accrual method taxpayer would have been entitled to a deduction in year 1. In the absence of section 461(f) of the Code, such a hypothetical taxpayer could not deduct the taxes in either year 1 (*Dixie Pine Products Co.* v. *Commissioner*, 320 U.S. 516 (1944), Ct. D. 1598, C.B. 1944, 509), or year 2 (*United States* v. *Consolidated Edison Company of New York, Inc.*, 366 U.S. 380 (1961), Ct. D. 1864, C.B. 1961–2, 236). Section 461(f) would then apply to allow the deduction in year 2.

However, the corporation in the instant case is not precluded under the *Dixie Pine Products Co.* decision from deducting the taxes in the year of accrual (1959) since there is no contest in that year. Similarly, the "but for" requirement of section 461(f)(4) of the Code is not met and section 461(f) of the Code does not apply.

Accordingly, it is concluded that the corporation properly accrued $40x$ dollars in Illinois property taxes in 1959 and that section 461(f) of the Code does not require it to postpone until 1960 the deduction of $2x$ dollars of this amount. Also, the corporation properly included the $5x$ dollars in its 1966 income.

Subpart D.—Inventories

SECTION 471.—GENERAL RULE FOR INVENTORIES

26 CFR 1.471-2: Valuation of inventories. Rev. Rul. 67-107 [1]

Used cars taken in trade as part payment on the sale of cars by a car dealer may be valued, for inventory purposes, at valuations comparable to those listed in an official used car guide as the average wholesale prices for comparable cars.
O.D. 782, C.B. No. 4, 31 (1921), revoked.

Advice has been requested concerning the proper method of valuing for inventory purposes used cars taken in trade by a car dealer.

A car dealer files his returns on a calendar year basis employing an accrual method of accounting and values his inventories at the lower of cost or market.

It is a common practice for the car dealer to sell a car and as part of the payment to take in trade the purchaser's old car. The dealer values the car taken in trade at cost which is an amount representing the average wholesale price listed by an official used car guide at the time of trade-in. If not sold, the used car is carried in inventory at the cost figure until the end of year. The inventory value is then adjusted to conform to the average wholesale price listed at that time. This is the practice recommended by the auto industry and used by nearly all car dealers.

Section 471 of the Internal Revenue Code of 1954 provides that inventories must conform as nearly as may be to the best accounting practice in the trade or business and must clearly reflect income. Section 1.471-2(c) of the Income Tax Regulations provides that the bases of valuation most commonly used by business concerns and which meet the requirements of section 471 are (1) cost and (2) cost or market, whichever is lower. Section 1.471-4(a) of the regulations defines "market" as the "the current bid price prevailing at the date of inventory for the particular merchandise in the volume in which usually purchased by the taxpayer."

Accordingly, a car dealer may value his used cars for inventory purposes at valuations comparable to those listed in an official used car guide as the average wholesale prices for comparable cars.

O.D. 782, C.B. No. 4, 31 (1921) is revoked.

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[1] Also released as Technical Information Release 892, dated Mar. 15, 1967.

SECTION 472.—LAST-IN, FIRST-OUT INVENTORIES

26 CFR 1.472–1: Last-in, first-out inventories. Rev. Rul. 67–168

Price indexes for January 1967, published by the Bureau of Labor Statistics on March 1, 1967, for use by department stores employing the retail inventory and last-in, first-out inventory methods.

The following price indexes for January 1967, published by the Bureau of Labor Statistics on March 1, 1967, for use by department stores employing the retail inventory and last-in, first-out inventory methods, are accepted by the Internal Revenue Service pursuant to section 1.472–1(k) of the Income Tax Regulations and Mimeograph 6244, C.B. 1948–1, 21, for appropriate application to inventories for taxable years of 12 months ended December 31, 1966, and January 31, 1967.

Indexes are given on a national basis for the store total, for 20 major groups of departments, and for two special combinations—soft and durable goods. The store total index covers all departments, including some not listed separately, with the following exceptions: candy, foods, liquor, tobacco, paints, and wallpaper, as well as contract departments.

Bureau of Labor Statistics, Department Store Inventory Price Indexes, by Department Groups

[January 1941=100]

	Department group	January 1967	January 1966	Percent change from January 1966 to January 1967 [1]
I	Piece goods	208.1	206.6	0.7
II	Domestics and draperies	214.0	209.6	2.1
III	Women's and children's shoes	300.1	281.9	6.5
IV	Men's and boys' shoes	294.6	275.7	6.9
V	Infants'wear	180.1	177.2	1.6
VI	Women's underwear	190.6	182.5	4.4
VII	Women's and girls' hosiery	155.1	155.2	—.1
VIII	Women's and girls' accessories	214.9	207.9	3.4
IX	Women's outerwear and girls' wear	198.5	192.4	3.2
X	Men's clothing	258.2	252.5	2.3
XI	Men's furnishings	212.2	205.5	3.3
XII	Boys' clothing and furnishings	228.0	221.2	3.1
XIII	Jewelry	202.8	198.1	2.4
XIV	Notions	194.0	186.0	4.3
XV	Toilet articles and drugs	217.7	211.2	3.1
XVI	Furniture and bedding	249.1	237.1	5.1
XVII	Floor covering	200.4	199.5	.5
XVIII	Housewares	256.7	246.7	4.1
XIX	Major appliances	128.5	128.0	.4
XX	Radio and television sets	109.8	111.6	—1.6
	Groups I–XV: Soft goods	218.4	211.5	3.3
	Groups XVI–XX: Durable goods	208.2	202.2	3.0
	Store total	216.0	209.4	3.2

[1] Absence of a minus sign before percent change in this column signifies price increase.

PART III.—ADJUSTMENTS

SECTION 481.—ADJUSTMENTS REQUIRED BY CHANGES IN METHOD OF ACCOUNTING

26 CFR 1.481–1: Adjustments in general. (Also Section 381; 1.381(a)–1.) Rev. Rul. 67–103

A corporation has been consistently computing its inventories in a manner which does not clearly reflect its income. The corporation's assets were acquired by another corporation in a transaction described in section 381 of the Internal Revenue Code of 1954. The Commissioner of Internal Revenue changed the closing inventory on the last return of the corporation whose assets were transferred.

Held, the adjustment to the closing inventory is a change in method of accounting not "initiated by the taxpayer" and is therefore subject to the provisions of section 481 of the Code. The revised basis of the acquired corporation's closing inventory and the net amount of the adjustments under section 481 of the Code not taken into account by the acquired corporation are carried over and taken into account by the acquiring corporation. Compare section 381(c)(21) of the Code, which is not directly applicable in the circumstances of this case because no pre-1954 Code balance is involved.

Procedure for changing overall method of accounting from cash receipts and disbursements method to accrual method. See Rev. Proc. 67–10, page 585.

SECTION 482.—ALLOCATION OF INCOME AND DEDUCTIONS AMONG TAXPAYERS

26 CFR 1.482–1: Determination of the taxable income of a controlled taxpayer. (Also Part II, Section 45; Regulations 118, Section 39.45–1.) Rev. Rul. 67–79 [1]

> In cases where, pursuant to the provisions of section 482 of the Internal Revenue Code of 1954, the Service has made adjustments to allocate income or deductions among the members of a group of business entities owned or controlled by the same interests, corresponding adjustments must be made to the income or deductions of the related corporations from which the allocations were made.

The Internal Revenue Service has been asked to explain its acquiescence in the decision of the Tax Court of the United States in the case of *Smith-Bridgman & Co.* v. *Commissioner*, 16 T.C. 287 (1951), Acquiescence C.B. 1951–1, 3; and its position on the decision of the U.S. Court of Appeals for the Sixth Circuit in the case of *Tennessee-Arkansas Gravel Co.* v. *Commissioner*, 112 Fed. 2d 508 (1940). This explanation has been prompted by certain interpretations which have been made of these cases.

[1] Also released as Technical Information Release 838, dated Aug. 2, 1966.

The cases involve the application of section 482 of the Internal Revenue Code of 1954, which gives the Revenue Service authority to allocate income and deductions among the members of a group of business entities owned or controlled by the same interests so that the true income of each member of the group is clearly reflected.

In *Smith-Bridgman & Co.*, the taxpayer made interest-free loans to its parent company. The funds were used to retire outstanding debenture bonds redeemable at a premium plus accrued interest. Under the authority of section 45 of the Internal Revenue Code of 1939 (predecessor of sec. 482 of the 1954 Code) the Revenue Service determined that income representing interest of 4 percent on these loans should be allocated from the parent to the subsidiary in order to clearly reflect income.

In the *Tennessee-Arkansas Gravel Co.* case, the taxpayer leased equipment to a commonly controlled corporation during 1933 for $1,000 a month. Although the lease agreement covered only the year 1933, the lessee continued to use the equipment during 1934 without paying rent. Under the authority of section 45 of the 1939 Code the Revenue Service determined that $12,000 should be allocated to Tennessee-Arkansas Gravel Co. from the commonly controlled company as the fair rental value of the equipment for 1934.

In both cases the courts pointed out that no corresponding adjustments were made to the income or deductions of the related corporations from which the allocations were made. The courts concluded that by increasing the taxpayer's income in each case the Revenue Service had not distributed, apportioned, or allocated gross income, but had improperly created or distributed income where none in fact existed.

The *Smith-Bridgman & Co.* and *Tennessee-Arkansas Gravel Co.* cases have been cited by some as authority for the proposition that income may not be attributed under section 482 of the 1954 Code to a member of a controlled group involved in a transaction with another member, if the latter had no gross income or if no income was realized outside the group as a result of the particular non-arm's-length transaction.

The acquiescence in *Smith-Bridgman & Co.* was intended only to concur in the proposition that appropriate adjustments are to be made to the incomes of both members of the group affected to reflect the allocation. The acquiescence does not override the Service's position as to the scope and purpose of section 482 of the 1954 Code as set forth in existing regulations. Similarly, the Service concurs in the result reached in *Tennessee-Arkansas Gravel Co.* only to the extent the holding is based on its failure to have made an appropriate adjustment to the income or deductions of the member of the group from which the allocation was made.

SUBCHAPTER F.—EXEMPT ORGANIZATIONS

PART I.—GENERAL RULE

SECTION 501.—EXEMPTION FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC.

26 CFR 1.501(a)-1: Exemption from taxation. Rev. Rul. 67-174

(Also Section 6033; 1.6033-1.)

A separately incorporated subsidiary of an organization exempt from Federal income tax under section 501(a) of the Internal Revenue Code of 1954 may not consider itself exempt from Federal income tax merely because of its relationship to the exempt parent. Further, the inclusion of the financial information of the subsidiary on the information return of the parent does not satisfy the reporting requirements of the subsidiary.

Advice has been requested whether a separately incorporated subsidiary of an organization exempt from Federal income tax under section 501(a) of the Internal Revenue Code of 1954 may consider itself exempt solely by reason of its relationship to the exempt parent and whether the financial operations of the subsidiary may be reported on the parent's annual information return, Form 990, Return of Organization Exempt from Income Tax.

A tax exempt organization incorporated a subsidiary to engage in activities to further the exempt purposes of the parent. The subsidiary had not applied for exemption, nor had it filed any Federal income tax returns or information returns. However, the information return, Form 990, filed by the exempt parent included information concerning the financial operations of the subsidiary.

Section 1.501(a)-1(a)(2) of the Income Tax Regulations provides that an organization is not exempt from Federal income tax merely because it is not organized and operated for profit. To establish its exemption, an organization must file an appropriate application form with the district director for the internal revenue district in which is located the principal place of business or principal office of the organization.

Section 1.6033-1(a) of the regulations provides for the filing of an information return by certain organizations exempt under section 501(a) of the Code. However, section 1.6033-1(c) of the regulations provides that if the date for filing an income tax return and paying the tax occurs before the tax exempt status of the organization has been established, the organization is required to file the return and pay the tax. Upon establishment of its exempt status, an organization may file a claim for refund of income taxes paid for the period for which its exempt status is established.

The inclusion of the financial information of a subsidiary on the information return of its parent does not satisfy the reporting requirements of the subsidiary. See section 1.6033-1(a) and section 1.6033-1(d) of the regulations.

Accordingly, the separately incorporated subsidiary is not exempt from Federal income tax merely because of its relationship to its

exempt parent. Further, the inclusion of the financial information of the subsidiary on the information returns of the parent does not satisfy the reporting requirements of the subsidiary.

Listed rulings relating primarily to the exempt organizations area which are not determinative with respect to future transactions. See Rev. Rul. 67–46, page 377.

Acquisitions of stock of a foreign issuer or debt obligations of a foreign obligor by exempt organizations are subject to interest equalization tax. See Rev. Rul. 67–81, page 309.

Procedures with respect to (1) applications for exemption under sections 501 and 521 of the Code, (2) revocation or modification of exemption rulings and determination letters, and (3) issuance of rulings involving prohibited transactions described in section 503 of the Code. See Rev. Proc. 67–3, page 560.

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26 CFR 1.501(c)(2)–1: Corporations organized to hold title to property for exempt organizations.
(Also Section 504; 1.504–1.)

Rev. Rul. 67–104

Where a title holding corporation exempt from Federal income tax under section 501(c)(2) of the Internal Revenue Code of 1954 retains part of its income each year to apply to indebtedness on property to which it holds title, such retention may be treated as if the parent received the income and used it to make a contribution to the capital of the corporation which applied such contribution to the indebtedness.

Where the parent organization is subject to the provisions of section 504 of the Code, income so retained by the title holding corporation will be treated as part of the parent's accumulated income.

Advice has been requested whether a corporation which is exempt from Federal income tax under section 501(c)(2) of the Internal Revenue Code of 1954 may retain part of its income each year to apply to indebtedness on property to which it holds title.

All of the corporation's stock is owned by an organization exempt from Federal income tax under section 501(c)(3) of the Code and to which section 504 of the Code is applicable. By agreement with the parent the corporation retains a part of income each year and applies it to the indebtedness it has incurred on the property to which it holds title.

Section 1.501(c)(2)–1(b) of the Income Tax Regulations provides that a corporation described in section 501(c)(2) of the Code cannot accumulate income and retain its exemption, but must turn over the entire amount of such income, less expenses, to an organization which is itself exempt from tax under section 501(a) of the Code. In view of this requirement, a question arises whether an organization exempt

under section 501(c)(2) of the Code may make payments out of income to reduce the indebtedness on its property.

The title holding corporation is by its nature responsive to the needs and purposes of its exempt parent which established it mainly to facilitate the administration of properties. If it must remit all of its net income to the parent every year, it will have no funds with which to meet its own indebtedness. Rather, it will have to turn repeatedly to the parent for additional contributions to its capital or the parent will have to make direct payments on the indebtedness of the subsidiary. Thus, the subsidiary will be restricted in serving the needs of the parent in connection with the administration of properties.

It is the contention of the title holding corporation and its parent that the use of the income by the corporation to pay amounts necessary to retire indebtedness on the property should be treated as if the subsidiary had turned over the income to the parent and the latter had used such income to make a contribution to the capital of the title holding corporation which in turn applied such contribution to the indebtedness.

It is held that, under the circumstances described, the title holding corporation may retain part of its income each year to apply to indebtedness on property to which it holds title. The transaction will be treated as if the income had been turned over to the parent and the latter had used such income to make a contribution to the capital of the title holding corporation which, in turn, applied such contribution to the indebtedness.

However, amounts of net income retained by the title holding corporation, under such circumstances, for application on the indebtedness will be treated as part of the accumulated income of the tax-exempt parent for purposes of section 504 of the Code. See Rev. Rul. 54–420, C.B. 1954–2, 128.

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26 CFR 1.501(c)(3)–1: Organizations organized and operated for religious, charitable, scientific, testing for public safety, literary, or educational purposes or for the prevention of cruelty to children or animals. Rev. Rul. 67–4

An organization was formed for the purpose of encouraging basic research in specific types of physical and mental disorders, to improve educational procedures for teaching those afflicted with such disorders, and to disseminate educational information about such disorders, by the publication of a journal containing current technical literature relating to these disorders. The organization may qualify for exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954 if it meets prescribed conditions.

Revenue Ruling 60–351, C.B. 1960–2, 169, distinguished.

Advice has been requested whether a nonprofit organization formed and operated as described below qualifies for exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954.

The organization was formed to encourage scientific research in, and to disseminate educational information about, specific types of physical and mental disorders. This is accomplished by publishing a journal which contains abstracts of current information from the

world's medical and scientific publications. The journal is sold, below cost, to the public.

The organization's staff consists of leading pathologists, other medical specialists, and teachers, most of whom donate their services. The organization receives income from the sale of subscriptions, contributions, and government grants. Its operating deficits are defrayed by contributions.

Section 501(c)(3) of the Code provides for the exemption from Federal income tax of organizations organized and operated exclusively for charitable, educational, and scientific purposes.

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations defines the term "charitable" as used in section 501(c)(3) of the Code as including the advancement of education or science.

Revenue Ruling 66-147, C.B. 1966-1, 137, holds that the publication of abstracts of scientific and medical articles by an organization contributes to the advancement of education and science by providing an effective means for the increased dissemination and application of such knowledge.

An organization engaged in publishing scientific and medical literature may qualify for exemption from Federal income tax under section 501(c)(3) of the Code if (1) the content of the publication is educational, (2) the preparation of material follows methods generally accepted as "educational" in character, (3) the distribution of the materials is necessary or valuable in achieving the organization's educational and scientific purposes, and (4) the manner in which the distribution is accomplished is distinguishable from ordinary commercial publishing practices.

The methods used in preparing and presenting the abstracts conform to methods traditionally accepted as "educational" in character. The organization provides a reference to literature on the research undertaken in the area, and enables the afflicted to receive improved instruction and treatment. The distribution of the abstracts is carried out essentially in a "charitable" manner, in the sense that there is a public benefit derived from the distribution. The charges for the publication recover only a portion of the costs.

Accordingly, the organization qualifies for exemption from Federal income tax under section 501(c)(3) of the Code.

An organization which considers itself within the scope of this Revenue Ruling must, in order to establish exemption under section 501(c)(3) of the Code, file an application on Form 1023, Exemption Application, with the District Director of Internal Revenue for the internal revenue district in which is located the principal place of business or the principal office of the organization. See section 1.501(a)-1 of the regulations.

This case is distinguishable from that in Revenue Ruling 60-351, C.B. 1960-2, 169, involving an organization which is publishing a magazine and selling it to the general public in accordance with ordinary commercial publishing practices.

Rev. Rul. 67-5

A foundation controlled by the creator's family is operated to enable the creator and his family to engage in financial activities which are beneficial to them, but detrimental to the foundation. This has resulted in the foundation's ownership of non-income-producing assets which prevent its carrying on a charitable program commensurate in scope with its financial resources. *Held*, the foundation is operated for a substantial non-exempt purpose and serves the private interests of the creator and his family, and therefore is not entitled to exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954.

The question has been raised whether a foundation organized and operated in the manner described below qualifies for exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954.

A foundation was created under a trust agreement between the donor and members of his family as trustees. The trust agreement sets forth exclusively charitable purposes and directs the trustees to pay over the entire net income to charity.

The creator and his family contributed a few shares of common stock in their family-owned corporation to the foundation shortly after its inception. At this point the corporation, whose capital structure consisted solely of common stock, was recapitalized. A first and a second class of preferred stock, each having voting rights equal to the common, was authorized. The first class was sold to members of the family; the second class was issued as a dividend on the common stock.

In the years following the recapitalization, the foundation acquired a substantial majority of the common stock. The larger portion of this stock was purchased from the creator and members of his family. In this manner the sellers realized appreciation in value of the corporation's assets, as reflected in its common stock, the gain being taxable at capital gains rates. The foundation also obtained additional common stock in the corporation through donations from the creator and his family. The donors claimed deductions as charitable contributions for the appreciated value of these gifts.

As a result of these transactions, the corporation's common stock became the foundation's principal asset. Concurrent with the sales and donations of the common stock to the foundation, the creator and his family increased their ownership of the corporation's preferred stock. This was accomplished by authorization and purchase of new issues of preferred, stock dividends on existing preferred, and various reorganizations between the corporation and other corporations controlled by the creator and his family.

Throughout this entire period the corporation consistently paid full dividends on its first preferred and partial dividends on its second preferred. No dividend was ever paid on the common stock. Since the corporation's common stock was the foundation's principal asset, the foundation's income was negligible in relation to the net asset value of its total holdings. As a result, the foundation was able to carry out only minimal charitable activities.

Despite the absence of dividends, the trustees of the foundation continued to purchase the corporation's common stock and failed to invest any sizable portion of the foundation's funds in other assets productive of income. Although the foundation was an important

stockholder in the corporation, its trustees never exercised their fiduciary duty to the foundation by attempting to require the payment of dividends on the common stock or to prevent the issuance of additional preferred stock which diluted the underlying value of the common stock and inhibited the payment of dividends on it.

Section 501(c)(3) of the Code provides for the exemption from Federal income tax of organizations organized and operated exclusively for charitable purposes.

Section 1.501(c)(3)–1(c)(1) of the Income Tax Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code.

Section 1.501(c)(3)–1(d)(1)(ii) of the regulations provides that an organization is not organized and operated exclusively for the purposes specified in section 501(c)(3) unless it serves a public rather than a private interest. To meet this requirement, an organization must establish that it is not organized or operated for the benefit of private interests such as the creator or his family, or persons controlled, directly or indirectly, by such private interests.

Members of the family of the creator of the foundation control the operation and investment policies of the foundation in their capacity as trustees. Through this control, the foundation has been operated to enable the creator and his family to engage in financial activities beneficial to them.

By a series of financial transactions involving the corporation, the creator and his family have succeeded in shifting the economic advantages and voting control in this company from the common stock held by the foundation to the preferred stock held by the creator and his family. The members of the family acting as trustees of the foundation have acquiesced in these transactions. As a result, the foundation owns non-income producing assets and is prevented from carrying on a charitable program commensurate in scope with its financial resources. Thus, these activities have not only resulted in favorable tax consequences to the creator and his family, but their effect has also been detrimental to the charitable purposes of the foundation.

The use of the foundation as a vehicle for activities advantageous to its creator and his family and as a source of funds to finance such activities, the resulting investments by the foundation in assets which fail to produce income for a charitable program commensurate in scope with its financial resources, the continued failure of its trustees to protect the value of these investments, and their failure to make them income-producing, all establish that the foundation is operated for a non-exempt purpose, substantial in nature. That purpose is to serve the private financial interests of its creator and his family. The presence of such purpose is fatal to exempt status. See *Better Business Bureau of Washington, D.C., Inc.* v. *United States*, 326 U.S. 279 (1945) Ct. D. 1650, C.B. 1945, 375. Furthermore, the foundation fails to serve a public, rather than a private, interest and therefore is not operated exclusively for charitable purposes.

Accordingly, the foundation fails to qualify for exemption from Federal income tax under section 501(c)(3) of the Code.

Rev. Rul. 67–71

A nonprofit organization created to improve a public educational system is not exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954 where it campaigns on behalf of candidates for election to the school board.

Advice has been requested whether a nonprofit organization created to improve a public educational system by engaging in campaigns on behalf of candidates for the school board may qualify for exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954.

Every four years when the school board is to be elected, the organization considers the qualifications of all candidates and selects those it determines to be best qualified. It then engages in a campaign on their behalf by publicly announcing its slate of candidates and by publishing and distributing a complete biography of each.

Section 501(c)(3) of the Code provides for the exemption from Federal income tax of organizations which are organized and operated exclusively for educational purposes and which do not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

Section 1.501(c)(3)–1(c)(3) of the Income Tax Regulations states that an organization is not operated exclusively for one or more exempt purposes described in section 501(c)(3) of the Code if it is an "action" organization. An "action" organization is defined to include an organization which participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office. A candidate for a public office is defined as an individual who offers himself, or is proposed by others, as a contestant for an elective public office.

A candidate for an elected position on a school board is a candidate for public office. Furthermore, the organization's activity in evaluating the qualifications of all potential candidates and then selecting and supporting a particular slate constitutes participation in a political campaign on behalf of particular candidates, even though its process of selection may have been completely objective and unbiased and was intended primarily to educate and inform the public about the candidates. Therefore, the organization is not exempt from Federal income tax under section 501(c)(3) of the Code.

Rev. Rul. 67–72

An organization created by representatives of both labor and management to select individuals for apprentice training, arrange their classroom and on-the-job training, and provide books and supplies used in the training, is exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954.

An organization created by representatives of both labor and management to conduct an industrywide apprentice training program in a certain city has applied for exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954.

The organization was created as a result of a bargaining agreement and is operated under the joint trusteeship of representatives of both

labor and management. Interested individuals make application to the organization to enroll in the training program. The trustees select individuals for the training program from the applicants, arrange for their classroom and on-the-job training, and provide the books and supplies used in the training. Upon completion of the training the individual is qualified to seek employment as a journeyman anywhere in the industry. The organization has no other activities.

The bargaining agreement provides for the organization to be supported by contributions from both labor and management. It receives funds from no other source.

Section 501(c)(3) of the Code provides for the exemption from Federal income tax of organizations that are "organized and operated exclusively" for charitable or educational purposes.

Section 1.501(c)(3)–1(d) of the Income Tax Regulations includes within the definition of the term "charitable," the advancement of education and within the definition of the term "education," the training of the individual for the purpose of improving or developing his capabilities.

By selecting individuals for an apprentice training program which it conducts and by providing the necessary books and supplies, the organization is assisting in the training of individuals for the purpose of improving or developing their capabilities. Accordingly, the organization is exempt from Federal income tax under section 501(c)(3) of the Code.

Compare Revenue Ruling 59–6, C.B. 1959–1, 121, which holds that an apprenticeship committee, organized primarily to establish standards of employment concerning apprentices in various skilled crafts, determine the qualifications necessary to become a journeyman, aid in adjusting and settling disputes between the employer and the apprentice, and cooperate with the local board of education in establishing supplementary classroom instruction pertaining to the apprentice's vocation, is exempt from taxation as a labor organization under section 501(c)(5) of the Code.

An organization which considers itself within the scope of this Revenue Ruling must, in order to establish exemption under section 501(c)(3) of the Code, file an application on Form 1023, Exemption Application, with the District Director of Internal Revenue for the internal revenue district in which is located the principal place of business or principal office of the organization. See section 1.501(a)–1 of the regulations.

(Also Section 504; 1.504–1.) Rev. Rul. 67–106

An organization otherwise qualified for exempt status under section 501(c)(3) of the Internal Revenue Code of 1954 and to which section 504 applies will be held not exempt from Federal income tax under section 501 of the Code when it is created for the sole purpose of accumulating donations and all income for a mandatory period of twenty years merely to make a gift of its entire funds to a tax-exempt university.

The question has been asked whether an organization formed by a graduating class of a tax-exempt university to receive and invest donations and to accumulate all income for a mandatory period of 20

years will be held exempt under section 501(c)(3) of the Internal Revenue Code of 1954. The organization has no plan for the use of its accumulations except the making of a contribution of its entire funds to the university at the end of the 20-year period.

Section 501(c)(3) of the Code provides for the exemption of an organization organized and operated exclusively for charitable and educational purposes.

Section 504 of the Code provides, with certain exceptions not here pertinent, that an organization described in section 501(c)(3) to which section 503 of the Code (relating to denial of exemption to organizations engaged in prohibited transactions) is applicable will be denied exemption under section 501 of the Code for the taxable year if amounts accumulated out of income during the taxable year or any prior taxable year and not actually paid out by the end of the taxable year are unreasonable in amount or duration in order to carry out the charitable, educational, or other purpose or function constituting the basis for the organization's exemption under section 501 of the Code. Section 1.504–1(a) of the Income Tax Regulations provides that the restrictions enumerated in section 504 of the Code are in addition to and not in limitation of the restrictions contained in section 501(c)(3) of the Code.

An accumulation of income is reasonable where an organization can establish that the accumulation is part of a concrete program for a specific charitable purpose and that the program is reasonable in the light of existing circumstances. See *Samuel Friedland Foundation* v. *United States*, 144 F. Supp. 74 (1956). The mandatory accumulation by an organization of an indeterminable amount of income for 20 years merely to enable the organization to make a gift of its entire funds to an exempt educational institution at the end of that period is not a program which, in the light of existing circumstances, is reasonable.

An organization created to accumulate all its income in a manner which violates the provisions of section 504 of the Code cannot operate in accordance with the requirements of exemption under section 501 of the Code beginning with the year in which it has income and for so long as the accumulation exists. Accordingly, this organization will be held not exempt from Federal income tax under section 501(c)(3) of the Code. See Rev. Rul. 67–108, below.

A determination under section 504 of the Code of an unreasonable accumulation of income by an organization operates to cause loss of exemption under section 501 of the Code but is not, in itself, determinative of deductibility of contributions to the organization under section 170 of the Code. This latter determination must depend on the facts and circumstances of each case.

(Also Section 504; 1.504–1.) Rev. Rul. 67–108

An organization otherwise exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954, which is subject to the provisions of sections 503 and 504 of the Code, will be held not exempt if its charter or any other organizational document contains a provision for the mandatory accumulation of income for an indefinite period solely to increase principal.

Advice has been requested whether an organization which accumulates its income pursuant to an organizational provision for mandatory retention of a specified percentage of its income for an indefinite period solely to increase principal will be held exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954.

Section 504 of the Code provides, with certain exceptions not here pertinent, that an organization described in section 501(c)(3) of the Code to which section 503 of the Code (relating to denial of exemption to organizations engaged in prohibited transactions) is applicable will be denied exemption under section 501 of the Code for the taxable year if amounts accumulated out of income during the taxable year or any prior taxable year and not actually paid out by the end of the taxable year are unreasonable in amount or duration in order to carry out the charitable, educational, or other purpose or function constituting the basis for the organization's exemption under section 501 of the Code. Section 1.504–1(a) of the Income Tax Regulations provides that the restrictions enumerated in section 504 of the Code are in addition to and not in limitation of the restrictions contained in section 501(c)(3) of the Code.

In determining the reasonableness of an accumulation of income, it is necessary to establish that the accumulation is part of a concrete program for a specific charitable purpose and that, in the light of existing circumstances, the program is a reasonable one. See *Samuel Friedland Foundation* v. *United States*, 144 F. Supp. 74 (1956). An organizational requirement for accumulation of income for an indefinite period of time solely to increase principal is not a reasonable program for accumulation. Therefore, any accumulation of income pursuant to such a provision would be unreasonable within the meaning of section 504 of the Code.

To be exempt from Federal income tax an organization described in section 501(c)(3) of the Code must be organized and operated in accordance with the provisions of that section. Subject to exceptions not here pertinent, an unreasonable accumulation of income contravenes section 504 of the Code, and violation of that section requires denial of exemption under section 501 of the Code. Since this organization is subject to a provision for mandatory accumulation of income for an indefinite period, it cannot be operated in accordance with the requirements of exemption under section 501 of the Code beginning with the year in which it has income and for so long as the accumulation exists. Accordingly, such organization will be held not exempt from Federal income tax under section 501(c)(3) of the Code. See Rev. Rul. 67–106, page 126 of this Bulletin.

It should be noted that, since section 504 of the Code operates only with respect to an organization's qualification for exemption from income tax under section 501 of the Code, a determination of an unreasonable accumulation of income under section 504 of the Code, is not, in itself, determinative of deductibility of contributions to an organization under section 170 of the Code.

Rev. Rul. 67–138

A nonprofit organization created to provide instruction and guidance to low-income families in need of adequate housing and interested in building their own homes may be exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954.

An organization created under the not-for-profit corporation laws of a State to provide instruction and guidance to low-income families in need of adequate housing and interested in building their own homes has applied for exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954.

The organization's activities, which are directed toward assisting low-income families obtain improved housing, include (1) conducting a training course relative to various aspects of housebuilding and homeownership, (2) coordinating and supervising joint construction endeavors, (3) purchasing building sites for resale at cost, and (4) lending aid in obtaining home construction loans. No charge is made for any of these services.

The organization is financed by public contributions and Federal grants.

Section 501(c)(3) of the Code provides for the exemption from Federal income tax of organizations organized and operated exclusively for charitable and educational purposes.

Section 1.501(c)(3)–1(d)(2) of the Income Tax Regulations defines the term "charitable" as including relief of the poor and distressed or underprivileged, lessening the burdens of government, and promotion of social welfare by organizations designed to combat community deterioration.

Section 1.501(c)(3)–1(d)(3)(i)(b) of the regulations defines the term "educational" as including the instruction of the public on subjects useful to the individual and beneficial to the community.

The organization's training of low-income families on various aspects of housebuilding and homeownership is "educational" since the training is useful to and develops the capabilities of the individuals who receive it and benefits the community. The organization's other activities in assisting families in need to obtain adequate housing are "charitable" since they provide relief to the underprivileged, lessen the burdens of government, and are a means of combatting community deterioration.

Accordingly, the organization is exempt from Federal income tax under section 501(c)(3) of the Code.

An organization which considers itself within the scope of this Revenue Ruling must, in order to establish exemption under section 501(c)(3) of the Code, file an application on Form 1023, Exemption Application, with the District Director of Internal Revenue for the internal revenue district in which is located the principal place of business or principal office of the organization. See section 1.501(a)–1 of the regulations.

(Also 1.501(c)(7)–1.) Rev. Rul. 67–139

Gem and mineral clubs and a federation of such clubs may qualify for exemption from Federal income tax under section 501(c)(3) or 501(c)(7) of the Internal Revenue Code of 1954 depending upon their forms of organization and methods of operation.

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Depending upon its form of organization and method of operation, a gem and mineral club may qualify for exemption from Federal income tax as an educational organization under section 501(c)(3) of the Internal Revenue Code of 1954 or as a social club under section 501(c)(7) of the Code. A federation of such clubs may qualify for exemption from Federal income tax under section 501(c)(3) of the Code.

Situation 1.—Club qualifying under section 501(c)(3) of the Code. The club was formed to advance the earth sciences by stimulating interest and encouraging study therein. It is a nonprofit organization whose membership consists primarily of amateurs and hobbyists interested in geological, mineralogical, and lapidary activities. In carrying out its purposes, the club (1) holds monthly lectures at which qualified experts discuss topics pertaining to gems and minerals and give instruction on lapidary techniques; (2) sponsors field trips to collect and study various kinds of rocks and minerals; (3) issues a bulletin containing educational material pertaining to rocks and minerals; (4) maintains a library of reference materials on geological, mineralogical, and lapidary subjects; (5) assists the local museum in its display of gems and minerals through specimens provided from members' collections; and (6) annually conducts a show for the general public at which members and nonmembers demonstrate lapidary techniques and display collections of gems and minerals. Exhibitors at the show compete for awards based upon the quality, workmanship, and variety of their displays. A "swapping" room is maintained to provide an opportunity for the purchase, sale, and exchange of specimens and materials so that the members and others may complete mineral collections, obtain new specimens, and dispose of lapidary works. A nominal fee is charged for show admission and nonmember displays.

The general public is invited to attend all club functions and participate in its programs on substantially the same basis as members.

Receipts of the society are from membership dues and from the gem and mineral show. Disbursements are for office and club expenses. No salaries are paid; all services are performed by volunteers.

Section 501(c)(3) of the Code exempts from Federal income tax organizations organized and operated exclusively for educational purposes whose net earnings do not inure to the benefit of any private individual.

Section 1.501(c)(3)-1(d)(3) of the Income Tax Regulations defines the term "educational" as relating to (*a*) the instruction or training of the individual for the purpose of improving or developing his capabilities or (*b*) the instruction of the public on subjects useful to the individual and beneficial to the community. An example in this section states that an organization whose activities consist of presenting public discussion groups, forums, panels, lectures, or other similar programs, may be an educational organization.

The lectures, discussions, field trips, and shows conducted by the club, to which the general public is invited, are recognized educational methods. These activities are educational within the meaning of the regulations even though they serve recreational interests.

This organization is organized and, in carrying out its purposes in the manner described above, is operated exclusively for charitable and

educational purposes. Accordingly, the organization qualifies for exemption under section 501(c)(3) of the Code.

Situation 2.—Club qualifying under section 501(c)(7) of the Code.

The club was formed by mineralogy and lapidary enthusiasts to disseminate knowledge of mineralogical and lapidary subjects, to promote their application so that greater pleasure may be derived from these activities, and to promote good fellowship among its members. In furtherance of these purposes, the club (1) holds monthly social meetings during which the members discuss gem and mineral topics and sell, purchase, or exchange rock and mineral specimens; (2) issues a bulletin containing news of members' social activities and their rock and mineral collections; and (3) annually conducts a show for the general public at which its members display their lapidary techniques and mineral specimens. A nominal admission fee, designed to cover expenses of the show, is charged for admittance to the show. The club's funds are otherwise derived solely from membership dues, fees, and assessments. No part of the net earnings of the organization inures to the benefit of any individual.

Section 501(c)(7) of the Code exempts from Federal income tax a club that is organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes whose net earnings do not inure to the benefit of any private individual.

The club provides a meeting place for its members where they may associate with each other and become more proficient in their hobbies. It is operated primarily to accommodate its members in their recreational pursuits. The gem and mineral show serves to stimulate the members' hobby interests and is, thus, consistent with the society's recreational purposes.

The facts in this situation are distinguishable from those in *Situation 1* in that the instant organization is organized and operated primarily for the benefit, pleasure, or recreation of its members. Its activities are only incidentally educational.

Accordingly, it qualifies for exemption from Federal income tax under section 501(c)(7) of the Code.

Situation 3.—Federation of local clubs qualifying under section 501(c)(3) of the Code.

A federation of local gem and mineral clubs was formed as a nonprofit organization to disseminate knowledge and encourage the study of earth sciences. Its membership consists of local gem and mineral clubs within a geographical area. The federation (1) encourages and aids in the formation of local clubs; (2) provides informational programs for the use of its members clubs; (3) provides educational materials such as slides, displays, and discussion topics for use by the clubs; (4) distributes educational materials to the general public; (5) sponsors a monthly journal which contains articles relating to gems and minerals and suggestions for the care, collection, and handling of these materials; (6) sponsors and conducts field trips for the observation of geological phenomena and the collection of rocks and minerals; and (7) conducts an annual gem and mineral show which is open to the general public. The show is presented with the aid of a different local club each year and is conducted in the same manner as described in *Situation 1.*

Receipts of the federation are from membership dues, the gem and mineral show, commissions from the sale of the monthly journal, and the sale to member clubs of pins, emblems, and decals. Disbursements are for the costs of educational materials and general operating expenses.

Section 501(c)(3) of the Code exempts from Federal income tax organizations organized and operated exclusively for educational purposes whose net earnings do not inure to the benefit of any private individual.

Section 1.501(c)(3)-1(d)(3)(i)(b) of the regulations defines the term "educational" as relating to the instruction of the public on subjects useful to the individual and beneficial to the community.

The federation is engaged in educational activities providing its member clubs and the public with programs and material designed to encourage the study of mineralogical, geological, and lapidary subjects. It does not matter whether the local clubs themselves are exempt from Federal income taxes.

The federation is organized and is operated exclusively for educational purposes. Accordingly, the organization qualifies for exemption under section 501(c)(3) of the Code.

An organization which considers itself within the scope of this Revenue Ruling must, in order to establish exemption, file an application on an appropriate form with the District Director of Internal Revenue for the internal revenue district in which is located the principal office of the organization. An organization claiming exemption under section 501(c)(3) of the Code must file an application on Form 1023, Exemption Application. An organization claiming exemption under section 501(c)(7) of the Code must file an application on Form 1025. See section 1.501(a)-1 of the regulations.

Rev. Rul. 67-148

A nonprofit organization formed to study, research, and reenact Civil War battles may be exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954.

Advice has been requested whether a nonprofit organization created and operated for the purposes and in the manner described herein qualifies for exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954.

The organization was formed to increase the knowledge of its members and the public about historic events of the Civil War. Its principal activity is the research, study, and participation of its members in historically accurate reenactments of Civil War battles to which the public is invited as spectators. Participants as well as spectators pay nominal fees to participate in and witness the reenactments. Proceeds are used to help defray the cost of the reenactments.

Section 501(c)(3) of the Code provides for the exemption from Federal income tax of organizations organized and operated exclusively for charitable or educational purposes.

An organization may qualify for exemption as an educational organization even though it does not offer formal instruction or training, but merely provides an opportunity for an individual to educate

himself through observation of, or participation in, the organization's activities. See section 1.501(c)(3)–1(d)(3) of the Income Tax Regulations.

By sponsoring and participating in historically accurate reenactments of significant battles of the Civil War this organization is engaged in educational activities within the meaning of the statute and applicable regulations. Accordingly, this organization is exempt from Federal income tax under section 501(c)(3) of the Code.

An organization which considers itself within the scope of this Revenue Ruling must, in order to establish exemption under section 501(c)(3) of the Code, file Form 1023, Exemption Application, with the District Director of Internal Revenue for the internal revenue district in which is located the principal place of business or principal office of the organization. See section 1.501(a)–1 of the regulations.

Rev. Rul. 67–149 [1]

An organization was formed for the purpose of providing financial assistance to several different types of organizations which are exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954. It carries on no operations other than to receive contributions and incidental investment income and to make distributions of income to such exempt organizations at periodic intervals. The organization does not accumulate its investment income.

Held, the organization is exempt from Federal income tax under section 501(c)(3) of the Code.

This Revenue Ruling restates under current law the position set forth in I.T. 1945, C.B. III–1, 273 (1924). Therefore, I.T. 1945 is hereby superseded.

Rev. Rul. 67–150 [1]

A nonprofit organization which furthers the rehabilitation of ex-convicts and parolees in order to make them self-supporting and useful citizens may be exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954.

I.T. 2088, C.B. III–2, 220 (1924), superseded.

The purpose of this Revenue Ruling is to update and restate the position set forth in I.T. 2088, C.B. III–2, 220 (1924), under current statute and regulations.

An organization was formed and is operated to rehabilitate ex-convicts and parolees in order to make them self-supporting and useful citizens. Representatives of the organization participate in discussion groups, forums, and panels before interested organizations and on radio and television in order to acquaint the public with the problems encountered by ex-convicts and parolees. It also furnishes them counsel and financial assistance when needed; helps them secure employment; conducts programs to make them better citizens; helps organize and coordinate the activities of prisoners' aid societies; and disseminates information among such societies. The income of the organization is derived from contributions. All funds are expended for the programs of the organization.

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[1] Prepared pursuant to Rev. Proc. 67–6, page 576, this Bulletin.

Section 501(c)(3) of the Internal Revenue Code of 1954 provides for the exemption from Federal tax of organizations which are organized and operated exclusively for educational or charitable purposes.

Section 1.501(c)(3)–1(d)(2) of the Income Tax Regulations defines the term "charitable" to include relief of the poor and distressed or of the underprivileged.

Section 1.501(c)(3)–1(d)(3) of the regulations defines the term "educational" as relating to (1) the instruction or training of the individual for the purpose of improving or developing his capabilities or (2) the instruction of the public on subjects useful to the individual and beneficial to the community. An example in this section states that an organization whose activities consist of presenting public discussion groups, forums, panels, lectures, or other similar programs may be educational.

By assisting ex-convicts and parolees and by acquainting the public with the problems encountered by such persons, the organization is serving charitable and educational purposes within the meaning of the Code and applicable regulations. Accordingly, the organization is exempt from Federal income tax under section 501(c)(3) of the Code.

An organization which considers itself within the scope of this Revenue Ruling must, in order to establish exemption under section 501(c)(3) of the Code, file an application on Form 1023, Exemption Application, with the District Director of Internal Revenue for the internal revenue district in which is located the principal place of business or principal office of the organization. See section 1.501(a)–1 of the regulations.

This Revenue Ruling restates under current law the position set forth in I.T. 2088. Therefore, I.T. 2088 is hereby superseded.

Rev. Rul. 67–151 [1]

An organization was formed and is operated for the purpose of preventing children from working in hazardous trades and occupations in violation of state laws. Its activities are designed to protect children, and eliminate conditions detrimental to their welfare. No part of the organization's activities is carrying on propaganda, or otherwise attempting, to influence legislation. Its income is derived from contributions solicited from the public through various agencies. *Held*, the organization is exempt from Federal income tax as an organization organized and operated exclusively for the prevention of cruelty to children under section 501(c)(3) of the Internal Revenue Code of 1954.

This Revenue Ruling restates under current law the position set forth in I.T. 2143. Therefore, I.T. 2143, C.B. IV–1, 214 (1925), is hereby superseded.

Whether a preexisting inter vivos trust referred to in the grantor's will, but not "created by such will," and which is required to accumulate one-half of its income for 25 years qualifies for exemption under section 501(c)(3) of the Code. See Rev. Rul. 67–177, page 145.

[1] Prepared pursuant to Rev. Proc. 67–6, page 576, this Bulletin.

26 CFR 1.501(c)(4)–1: Civic organizations and local associations of employees. Rev. Rul. 67–6

An association whose activities are primarily devoted to preserving the traditions, architecture, and appearance of a community by means of individual and group action before the local legislature and administrative agencies with respect to zoning, traffic, and parking regulations may be exempt from Federal income tax under section 501(c)(4) of the Internal Revenue Code of 1954. It is not exempt under section 501(c)(3) of the Code.

Advice has been requested whether an association organized and operated as described below qualifies for exemption from Federal income tax under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code of 1954.

The association was formed to preserve the traditions, architectural style, and scenic appearance of an historic community. The association's voting membership is restricted to owners of real estate in the community. Associate membership is open to all persons interested in its objectives.

The primary activity of the association consists of reviewing zoning matters affecting the community, and opposing applications for changes or variances considered detrimental to the traditions of the community. The association opposes such changes through appearances before the local council, administrative boards, and commissions. It also sponsors the enactment of traffic and parking regulations, seeks better lighting and sanitation facilities, and assists in crime-prevention and anti-litter campaigns within the community. It implements these activities by encouraging members of the community to contact local legislative representatives in support of the association's programs. This constitutes a substantial part of the association's activities.

Section 501(c)(4) of the Code provides for the exemption from Federal income tax of civic organizations not organized for profit but operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)–1(a)(2) of the Income Tax Regulations states that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization coming within the scope of this section is one which is operated to bring about civic betterment and social improvements.

The preservation of the traditions, architecture, and appearance of a community through the enforcement of zoning regulations, the enactment of favorable traffic and parking regulations, and the improvement of lighting, sanitation, and crime-prevention facilities benefit all members of the community. The association is thus promoting the common good and general welfare of the people of the community within the meaning of section 501(c)(4).

Section 501(c)(3) of the Code provides for the exemption from Federal income tax of organizations which are organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or

distributing of statements), any political campaign on behalf of any candidate for public office.

A "social welfare" organization may qualify for exemption as a charitable organization under section 501(c)(3) of the Code if it falls within the definition of "charitable" set forth in section 1.501(c)(3)-1(d)(2) of the regulations and is not an "action" organization as defined in section 1.501(c)(3)-1(c)(3) of the regulations. Failure to satisfy either of these requirements will disqualify an organization from exemption under section 501(c)(3) of the Code. See section 1.501(c)(4)-1(a)(2) of the regulations.

Section 1.501(c)(3)-1(d)(2) of the regulations defines the term "charitable" to include the advancement of education and the promotion of social welfare by organizations designed to combat community deterioration. Section 1.501(c)(3)-1(c)(3) of the regulations defines an organization as an "action" organization if a substantial part of its activities is attempting to influence legislation. The term legislation is defined as including actions by any local council or similar governing body, or by the public in a referendum.

Combating community deterioration through remedial action leading to the elimination of the physical, economic, and social causes of such deterioration is "charitable." Preserving and maintaining a historic or scenic area for the benefit and education of the general public also is "charitable." However, preserving the traditions, architecture, and appearance of a community for the benefit solely of residents of the community (as distinguished from the general public both within and without the community involved) is not "charitable." While such activities promote the common good and general welfare of the people of the community under section 501(c)(4) of the Code, they are not the promotion of social welfare within the scope of "charitable" under section 501(c)(3) as defined in the applicable regulations.

Furthermore, since the association as a substantial part of its activities is engaged in attempts to influence local legislative representatives with respect to the association's programs, it is an "action" organization within the contemplation of section 1.501(c)(3)-1(c)(3)(ii) of the regulations.

In view of the above, the association is exempt under section 501(c)(4) of the Code as an organization operated exclusively for the promotion of social welfare, but is not exempt under section 501(c)(3) of the Code.

An organization which considers itself within the scope of this Revenue Ruling must, in order to establish an exemption under section 501(c)(4) of the Code, file an application on Form 1024, Exemption Application, with the District Director of Internal Revenue for the internal revenue district in which is located the principal place of business or principal office of the organization. See section 1.501(a)-1 of the regulations.

Rev. Rul. 67-109

A nonprofit corporation organized and operated exclusively for the purpose of establishing and maintaining a roller skating rink as a recreational facility for the benefit and use of the residents of a particular county, in a county-owned building which it occupies rent free in cooperation with the county government, may qualify for exemption from Federal income tax under section 501(c)(4) of

the Internal Revenue Code of 1954 where the rink is open to the general public upon payment of such nominal dues and admissions charges as are needed to defray operating expenses.

Advice has been requested whether a nonprofit corporation which operates a roller skating rink in the manner specified below is exempt from Federal income tax under section 501(c)(4) of the Internal Revenue Code of 1954.

The roller skating rink is located in a county-owned building which is made available by the county government to the organization on a rent free basis. The income of the organization, which is derived from admissions, membership fees, and concessions operated in conjunction with the skating facilities, is used to defray operating expenses. Although the charges made are aimed at a break-even operation, any profit which the rink might realize is donated to the county for necessary improvements to the rink building. Membership in the organization, which qualifies one to vote for officers and directors at the annual meeting, and admission to the rink are open to all residents of the county upon payment of a nominal amount.

Section 501(c)(4) of the Code provides for the exemption from Federal income tax of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.

An organization is operated exclusively for the promotion of social welfare if it is engaged in promoting in some way the common good and general welfare of the people of the community. See section 1.501(c)(4)–1 of the Income Tax Regulations.

A nonprofit organization which is organized and operated solely for the purpose of establishing and maintaining a roller skating rink as a recreational facility in cooperation with a county government, in a building provided rent free by a county, is an organization described in section 501(c)(4) of the Code where the rink is open to all the people of a county upon the payment of such nominal dues and admissions charges as are needed to defray operating expenses. Accordingly, the organization is exempt from Federal income tax under section 501(c)(4) of the Code.

Compare Revenue Ruling 59–310, C.B. 1959–2, 146, which holds that a nonprofit community swimming pool or public beach for the benefit of a low-income class and supported in part by public contributions may qualify for exemption as a charitable organization described in section 501(c)(3) of the Code.

An organization which considers itself within the scope of this Revenue Ruling must, in order to establish exemption under section 501(c)(4) of the Code, file an application on Form 1024, Exemption Application, with the District Director of Internal Revenue for the internal revenue district in which is located the principal place of business or principal office of the organization. See section 1.501(a)–1 of the regulations.

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26 CFR 1.501(c)(5)–1: Labor, agricultural, and horticultural organizations. Rev. Rul. 67–7

An organization established by a labor union to provide strike and lockout benefits to its members may be exempt from Federal income tax as a labor organization under section 501(c)(5) of the Internal Revenue Code of 1954.

Advice has been requested whether an organization established to provide benefits to members of a labor union as described below qualifies for exemption from Federal income tax as a labor organization under section 501(c)(5) of the Internal Revenue Code of 1954.

The organization was formed to provide financial assistance to the members of a labor union who are involved in strikes or lockouts. It is controlled by the executive board of the union. Funds are derived from dues paid by members and disbursements are made to pay benefits to members who are not working as a result of a strike or lockout.

Section 501(c)(5) of the Code provides for the exemption from Federal income tax of labor organizations.

Section 1.501(c)(5)-1 of the Income Tax Regulations provides that labor organizations entitled to exemption from Federal income taxation are those which (1) have no net earnings inuring to the benefit of any member, and (2) have as their objects the betterment of the conditions of those engaged in such pursuits, the improvement of the grade of their products, and the development of a higher degree of efficiency in their respective occupations.

Strike benefits are directed to furthering a labor union's primary purpose of representing its members in matters of wages, hours of labor, working conditions, and economic benefits. The payment of such benefits to its members is a proper activity of a labor organization. An organization which is engaged in activities appropriate to an exempt labor union may itself qualify for exemption under section 501(c)(5) of the Code. *Portland Cooperative Labor Temple Association* v. *Commissioner*, 39 B.T.A. 450 (1939), acquiescence, C.B. 1939-1, 28.

Since this organization is engaged solely in activities which are appropriate for an exempt labor union, it qualifies for exemption under section 501(c)(5) of the Code.

An organization which considers itself within the scope of this Revenue Ruling must, in order to establish exemption under section 501(c)(5) of the Code, file an application on Form 1024, Exemption Application, with the District Director of Internal Revenue for the internal revenue district in which is located the principal place of business or principal office of the organization. See section 1.501(a)-1 of the regulations.

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26 CFR 1.501(c)(6)-1: Business leagues, chambers of commerce, real estate boards, and boards of trade. Rev. Rul. 67-77 [1]

An organization composed of dealers in a certain make of automobile in a designated area is organized and operated for the primary purpose of financing general advertising campaigns to promote, with funds contributed by dealer members, the sale of that make of automobile. *Held*, the organization is performing particular services for its members and is not entitled to exemption from Federal income tax as a business league under section 501(c)(6) of the Internal Revenue Code of 1954.

I.T. 4053, C.B. 1951-2, 53, superseded.

The purpose of this Revenue Ruling is to update and restate the position set forth in I.T. 4053, C.B. 1951-2, 53, under the current stat-

[1] Prepared pursuant to Rev. Proc. 67-6, page 576, this Bulletin.

ute and regulations. This ruling relates to whether an organization which is organized and operated for the primary purpose of financing advertising campaigns to promote the sale of a particular make of automobile is entitled to exemption from Federal income tax as a business league under section 501(c)(6) of the Internal Revenue Code of 1954.

Membership in the organization is restricted to dealers who hold franchises for the sale of a certain make of automobile in a designated area. It was formed to unite the dealers in that area and to finance general advertising campaigns which promote the sale of automobiles, parts, and services. Its only income consists of contributions from the dealer-members. The size of these contributions is determined by the number of automobiles purchased from the manufacturer by each member.

Section 501(c)(6) of the Code exempts from Federal income tax business leagues, chambers of commerce, real estate boards, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(6)–1 of the Income Tax Regulations describes a business league as an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons.

The organization described herein, instead of engaging in activities for the improvement of business conditions in the automotive industry as a whole, is performing services for its members by advertising the make of automobile sold by its members. Therefore, it is not entitled to exemption from Federal income tax as a business league under section 501(c)(6) of the Code.

This Revenue Ruling restates under current law the position set forth in I.T. 4053. Therefore, I.T. 4053 is hereby superseded.

Rev. Rul. 67–175

Subsidizing the prosecution of a lawsuit for an injunction to prevent air pollution of a region did not cause an organization of growers and processors of agricultural products to lose its exemption from Federal income tax under section 501(c)(6) of the Internal Revenue Code of 1954.

Advice has been requested whether an organization which undertakes the activity described below would lose its exemption from Federal income tax under section 501(c)(6) of the Internal Revenue Code of 1954.

The organization was formed to benefit growers and processors of agricultural products in a given region by formulating, promulgating, and enforcing among its members policies and practices for the producing, handling, selling, and shipping of the products. Its membership is open to all growers and processors of agricultural products in that area.

Noxious fumes from a factory in the region were damaging crops and trees with widespread effect on the agricultural economy of the area. The organization hired attorneys to represent individual property owners, some of whom were members of the organization, in a suit for an injunction requiring the factory to take necessary steps to prevent the air pollution.

Section 501(c)(6) of the Code provides for the exemption from Federal income tax of nonprofit business leagues no part of the net earnings of which inures to the benefit of private individuals.

Section 1.501(c)(6)-1 of the Income Tax Regulations provides that a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It also provides that the activities of the organization should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons.

The prosecution of the injunction suit under the circumstances described was an activity promoting the common business interest of the members of the organization and was directed toward the improvement of business conditions in a particular line of business. Accordingly, the organization's exemption as one described in section 501(c)(6) of the Code is not affected by subsidizing the lawsuit.

Rev. Rul. 67-176

An organization formed to provide specific services to members of a given profession and to those preparing to enter the profession on matters relating to their practices does not qualify for exemption from Federal income tax under section 501(c)(6) of the Internal Revenue Code of 1954.

Advice has been requested whether an organization formed and operated under the circumstances described below qualifies for exemption from Federal income tax under section 501(c)(6) of the Internal Revenue Code of 1954.

The organization was formed to advance a given profession, to contribute to the welfare and education of students preparing for that profession, to furnish financial aid to members by grants and loans, to provide a means for the expression of members' views, and to do other things for the benefit, welfare, and security of its members.

Nominal dues entitle members to receive the organization's publication and to participate in a variety of programs designed to aid them in completing their studies and setting up their practices. An emergency loan fund is provided which allows a member to borrow small amounts of money interest free for short periods. Additionally, a loan plan is sponsored in cooperation with commercial suppliers under which a member may borrow substantial sums for working capital and living expenses when beginning his practice. Under this plan the member can obtain office equipment at a discount. The organization also sponsors a variety of insurance programs, a hotel-motel discount plan, and a car leasing plan for members.

Section 501(c)(6) of the Code provides for the exemption from Federal income tax of business leagues and similar organizations, not

organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(6)–1 of the Income Tax Regulations defines a business league as an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons.

The emergency loan plan, insurance plans, practice loan plan, hotel discounts, and car leasing plan serve primarily as a convenience and economy to members in providing financial aid in completing their professional studies and establishing themselves in practice, and are, therefore, the performance of particular services to members as opposed to improvement of a line of business. Accordingly, the organization does not qualify for exemption from Federal income tax under section 501(c)(6) of the Code.

Rev. Rul. 67–182

An organization whose only activity is providing a reference library of "electric logs", maps, and information services used solely by its members in their oil exploration businesses is not exempt from Federal income tax as an organization described in section 501 (c)(6) of the Internal Revenue Code of 1954.

Advice has been requested whether an organization of scientists and engineers maintaining in the manner described below a cooperative library of data used in exploration for oil qualifies for exemption from Federal income tax under section 501(c)(6) of the Internal Revenue Code of 1954.

A nonprofit organization was formed to establish and maintain a private library of "electric logs", maps, oil publications, and oil information services, as well as other matters which are a source of geological data, for its members' use as an aid in their oil exploration businesses. The material for the library is furnished by the members. Membership in the organization is limited to a small group.

Section 501(c)(6) of the Code provides for the exemption from Federal income tax of business leagues not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(6)–1 of the Income Tax Regulations provides that a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It also provides that the activities of the organization should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons.

The organization is making specialized information available to its members on a cooperative basis. This serves as a convenience and economy in the conduct of their businesses. Operation of the library

as described is an activity which constitutes the performance of particular services for individual persons. Furthermore, since membership is limited and the facilities of the organization are made available only to participating members, the organization's activities are not aimed at the improvement of business conditions in the industry as a whole.

Accordingly, the organization does not qualify for exemption from Federal income tax under section 501(c)(6) of the Code.

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26 CFR 1.501(c)(7)–1: Social clubs. Rev. Rul. 67–8

A nonprofit membership corporation which was formed to bring the members of a particular family into closer association through social and historical activities is exempt from Federal income tax under section 501(c)(7) of the Internal Revenue Code of 1954.

Advice has been requested whether the nonprofit membership corporation described below qualifies for exemption from Federal income tax under section 501(c)(7) of the Internal Revenue Code of 1954.

The nonprofit organization, which was incorporated under the membership corporation laws of its state, was formed to bring the members of a particular family into closer association through social activities revolving around matters of common historical and genealogical interest to the members as a group. Lineal descendants of a particular individual are eligible for membership. The organization's activities include collection and preservation of family records and similar memorabilia, social activities for its members, and distribution to members of a newsletter containing matters of family interest. The organization's funds are derived from membership fees, dues, and sales to members of monographs and insignia relating to the history of the family. No part of the net earnings of the organization inures to the benefit of any member.

Section 501(c)(7) of the Code provides for the exemption of clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder.

The purposes and activities of the organization are directed to promoting closer ties among the members of the family and providing opportunities for sociable commingling among them. These purposes and activities are similar to providing pleasure and recreation for the members of a social club. Therefore, the organization is exempt from Federal income tax under section 501(c)(7) of the Code.

An organization which considers itself within the scope of this Revenue Ruling must, in order to establish its exemption under section 501(c)(7) of the Code, file an application on Form 1025, Exemption Application, with the District Director of Internal Revenue for the internal revenue district in which is located the principal place of business or principal office of the organization. See section 1.501(a)–1 of the Income Tax Regulations.

Whether an organization engaged in activities relating to gem and mineral clubs qualifies as a social club. See Rev. Rul. 67–139, page 129.

26 CFR 1.501(c)(15)-1: Mutual insurance companies or associations. Rev. Rul. 67-80

In determining the gross amount received during the taxable year for the purposes of the limitation provided in section 501(c)(15) of the Internal Revenue Code of 1954, premiums written or received on insurance contracts during the taxable year are to be taken into account without deduction for amounts paid or incurred for reinsurance or for return premiums.

Advice has been requested whether a mutual insurance company exempt from Federal income tax under section 501(c)(15) of the Internal Revenue Code of 1954 may, in determining gross income received during the taxable year for the purposes of the limitation contained in that section of the Code, reduce the amount of premiums written or received on insurance contracts by amounts paid or incurred for reinsurance or for return premiums.

Section 501(c)(15) of the Code provides for the exemption from Federal income tax of mutual insurance companies or associations other than life or marine (including inter-insurers and reciprocal underwriters) if the gross amount received during the taxable year from the items described in section 822(b) of the Code (other than paragraph (1)(D) thereof) and premiums (including deposits and assessments) does not exceed $150,000.

Section 1.821-4(a)(1)(ii) of the Income Tax Regulations provides that the term "premiums" as used in section 821 of the Code has the same meaning as in section 501(c)(15) of the Code and means the total amount of the premiums and other consideration provided in the insurance contract without any deduction for return premiums, reinsurance, etc. Accordingly, premiums written or received during the taxable year are to be taken into account without deduction for amounts paid or incurred for reinsurance or for return premiums in determining the gross amount received during the taxable year for purposes of the limitation contained in section 501(c)(15) of the Code.

SECTION 503.—REQUIREMENTS FOR EXEMPTION

26 CFR 1.503(d)-1: Future status of organizations denied exemption. Rev. Rul. 67-9

An organization which has been denied exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954 by reason of having engaged in a prohibited transaction described in section 503(c)(1) of the Code may not reestablish exemption until the loan which was the prohibited transaction has been repaid or adequately secured.

Advice has been requested whether an organization which has been denied exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954 by reason of having engaged in a prohibited transaction described in section 503(c)(1) of the Code may reestablish exemption before the loan which was the prohibited transaction has been repaid or adequately secured.

An organization, exempt from Federal income tax under section 501(c)(3) of the Code and subject to the provisions of section 503 of the Code, loaned a part of its corpus to a substantial contributor without the receipt of adequate security. The loan was evidenced by a

promissory note maturing five years from the date of issuance. The organization was denied exemption because the loan was a prohibited transaction described in section 503(c)(1) of the Code. Thereafter, the organization filed a new application for exemption under section 501(c)(3) of the Code with respect to subsequent taxable years. The application contained an affidavit by its president that the organization would not knowingly again engage in a prohibited transaction. The existing loan, however, had not been repaid nor had adequate security been furnished.

Section 501(a) of the Code provides in effect that exemption from Federal income taxes does not extend to an organization engaged in a prohibited transaction. Section 503(d) of the Code provides for the reinstatement of exemption to organizations previously denied exemption because of a prohibited transaction.

Section 1.503(d)–1 of the Income Tax Regulations requires such organization to submit a written declaration by a principal officer that it will not knowingly again engage in a prohibited transaction and to satisfy all other requirements under section 501(c)(3) of the Code. However, these regulations presuppose that, in the case of an organization denied exemption by reason of its having engaged in a prohibited transaction, the grounds for the original denial of exemption shall have been removed before an exemption may be reinstated for future years. Otherwise the organization would continue to be in violation of section 501(a) of the Code.

In this case, the transaction causing the denial of exemption carried into subsequent taxable years. Part of the organization's corpus was still loaned to a substantial contributor without the receipt of adequate security. Thus, the loan continued as a prohibited transaction. Accordingly, until the loan was repaid or adequate security for the loan received, the organization was not entitled to reestablish exemption under section 501(c)(3) of the Code.

SECTION 504.—DENIAL OF EXEMPTION

26 CFR 1.504–1: Denial of exemption. Rev. Rul. 67–95

In the case of an organization exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954, subject to the provisions of section 503 of the Code, and not a trust created under the will of a decedent dying before January 1, 1951, income accumulated prior to 1950 will be considered for purposes of determining whether the organization has unreasonably accumulated income in violation of the provisions of section 504 of the Code.

An organization exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954 and subject to the provisions of section 503 of the Code has asked whether income accumulated prior to 1950 will be considered for purposes of determining whether it has unreasonably accumulated income in violation of the provisions of section 504 of the Code.

The organization has accumulated a portion of its income since 1945. In 1966 a question was raised whether the income accumulated had become unreasonable in amount in order to carry out the organization's exempt purposes. The contention was made by the organization that income accumulated prior to 1950, the year of enactment

of section 3814 of the Internal Revenue Code of 1939, the predecessor to section 504 of the 1954 Code, should not be considered in determining whether an unreasonable accumulation existed. The organization is not a trust created under the will of a decedent dying before January 1, 1951.

Section 504 of the Code provides that any organization described in section 501(c)(3) of the Code to which section 503 of the Code is applicable shall be denied exemption under section 501 of the Code for the taxable year if amounts accumulated out of income during the taxable year or any prior taxable year and not actually paid out by the end of the taxable year are unreasonable in amount or duration in order to carry out the charitable, educational, or other purpose or function constituting the basis for such organization's exemption under section 501(c)(3) of the Code.

Section 1.504–1(b)(1) of the Income Tax Regulations provides that any organization described in section 501(c)(3) of the Code other than an organization described in section 503(b)(1) through (5), inclusive, shall not be exempt under section 501(a) of the Code if the amounts accumulated out of income during the taxable year, or any prior taxable year, and not actually paid out for exempt purposes by the end of the taxable year, are unreasonable.

Both the statute and regulations promulgated thereunder specifically refer to amounts accumulated out of income during the taxable year *or any prior taxable year* and no relevant exception was provided for this type organization in either section 3814 of the 1939 Code or section 504 of the 1954 Code to exclude income accumulated prior to the enactment of that section. See *Erie Endowment* v. *United States*, 316 F. 2d 151 (1963); *Danforth Foundation* v. *United States*, 222 F. Supp 761 (1963); and *Stevens Brothers Foundations, Inc.* v. *Commissioner*, 39 T.C. 93 (1962), affirmed in part, 324 F. 2d 633 (1963).

In view of the foregoing, amounts accumulated prior to 1950 by the organization will be considered in determining whether the organization has unreasonably accumulated income in violation of the provisions of section 504 of the Code.

(Also Section 501; 1.501(c)(3)–1.) Rev. Rul. 67–177

An inter vivos trust which required its trustees to add one-half of its net income to corpus for twenty-five years was referred to in the grantor's will and was bequeathed additional property. The trust was not "created by such will" within the meaning of the exception provided by section 504(a) of the Internal Revenue Code of 1954 relating to income attributable to property transferred to a trust created by a will of a decedent. Therefore, the trust is subject to the provisions of section 504 of the Code relating to unreasonable accumulation of income. Since the mandatory accumulation is unreasonable, the trust will not be held exempt.

Advice has been requested whether a trust created under the circumstances described will be held exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954.

An inter vivos trust was created on June 1, 1956, to provide a permanent charitable scholarship fund. Under the terms of the trust, one-half of its net income is required to be accumulated and added to the principal for 25 years.

On June 1, 1960, the grantor executed a will which referred to the prior indenture of trust and bequeathed the residue of his estate to the trust. The total principal in the trust, including both the amount transferred inter vivos and the amount passing under the will, was in the amount of more than $1 million.

Section 504(a) of the Code provides that any organization described in section 501(c)(3), to which section 503 is applicable, shall be denied exemption under section 501 if the amounts accumulated out of income during the taxable year or any prior taxable year and not actually paid out by the end of the taxable year are unreasonable in amount or duration in order to carry out the charitable, educational, or other purpose or function constituting the basis for such organization's exemption. In the case of a trust created by the will of a decedent dying on or after January 1, 1951, if income is required to be accumulated pursuant to the mandatory terms of the will creating the trust the provision for the denial of exemption for the unreasonable accumulation of income will apply only to the income accumulated during a taxable year of the trust beginning more than 21 years after the date of death of the last life in being designated in the trust instrument.

Although the trust is referred to in the will and is a beneficiary under the will, it was not created by the will and therefore does not come within the exception provided by section 504 of the Code.

Furthermore, the accumulation of one-half of the trust's income for 25 years for the sole purpose of increasing corpus is an unreasonable accumulation within the meaning of section 504(a)(1) of the Code.

In view of the provision in the trust instrument for mandatory accumulation of one-half of the trust's net income for 25 years, the trust cannot be operated in accordance with the requirements for exemption under section 501 of the Code beginning with the year in which it has income and for so long as the accumulation exists.

Therefore, the trust will not be held exempt under section 501(c)(3) of the Code. See Rev. Rul. 67–106 and Rev. Rul. 67–108, pages 126 and 127.

Retention by a title holding corporation of part of its income each year to apply to indebtedness on property to which it holds title. See Rev. Rul 67–104, page 120.

An organization formed solely to accumulate donations and all income for a mandatory period of 20 years merely to make a substantial gift to a tax-exempt university. See Rev. Rul. 67–106, page 126.

An organization formed to mandatorily accumulate income for an indefinite period of time. See Rev. Rul. 67–108, page 127.

PART III.—FARMERS' COOPERATIVES

SECTION 521.—EXEMPTION OF FARMERS' COOPERATIVES FROM TAX

26 CFR 1.521–1: Farmers' cooperative marketing and purchasing associations; requirements for exemption under section 521. Rev. Rul. 67–128

A farmers' cooperative association exempt from Federal income tax under section 521 of the Internal Revenue Code of 1954 may allocate nonpatronage income and nonpatronage losses to the department or departments to which such income or losses relate, provided that the allocation is not discriminatory among patrons similarly situated.

Advice has been requested whether a farmers' cooperative association exempt from Federal income tax under section 521 of the Internal Revenue Code of 1954 may allocate nonpatronage income and nonpatronage losses to the patrons of the association under the method described below without losing its exemption.

The association maintains several departments, including a vegetable marketing department and a grain marketing department. It consistently accounts for the marketing income and expenses of each department separately, and consistently allocates the net earnings of each department to the patrons of that department on a proportionate basis. The association also realizes nonpatronage gains and nonpatronage losses which are consistently allocated to the department or departments to which the gains or losses are related. In each case the association is able to show that the particular nonpatronage income or loss is related to the department or departments to which allocated.

In *Juniata Farmers' Cooperative Association* v. *Commissioner*, 43 T.C. 836 (1965), acquiescence, C.B. 1966–1, 2, it was concluded that the allocation of nonpatronage income received from the Commodity Credit Corporation only to the patrons of the grain department and not to the patrons of the feed department or fertilizer department did not constitute an inequality of treatment, and the association's exempt status was maintained. The income in question arose from transactions with the grain department.

Accordingly, nonpatronage income and nonpatronage losses of the association referred to in the present ruling may be allocated to the patrons of a department or departments to which such income or losses relate, rather than to all the patrons of the association, provided that the allocation is not discriminatory among patrons similarly situated.

Rev. Rul. 67–152 [1]

Where a cooperative marketing association markets products *purchased* by members which exceed in value the products *grown or otherwise produced* by members for whose accounts such products are marketed, it violates the limitation placed on business done with "nonmembers" provided by section 521 of the Internal Revenue Code of 1954. Furthermore, by marketing products of nonmembers as those of its members, the association does not meet the statutory

[1] Prepared pursuant to Rev. Proc. 67–6, page 576, this Bulletin.

requirement that proceeds of the sale of products, less necessary operating expenses, be returned to producers on the basis of the quantity or value of products furnished by them.
I.T. 3853, C.B. 1947–1, 42, superseded.

The purpose of this Revenue Ruling is to update and restate the position set forth in I.T. 3853, C.B. 1947–1, 42, under current statute and regulations.

An association is engaged in packing, shipping, and marketing fruit supplied by members, a substantial amount of which is not *produced* by them, but is *purchased* on the open market. During each of the years involved the value of fruit purchased by members and marketed by the association exceeded the value of the fruit marketed by the association which was grown or otherwise produced by the members. Net profits from operations are allocated to members on the basis of the value of products furnished by them.

Section 521(b)(1) of the Internal Revenue Code of 1954 provides that farmers' cooperatives exempt from Federal income tax are farmers', fruitgrowers', or like associations organized and operated on a cooperative basis for the purpose of marketing the products of members or other producers, and turning back to them the proceeds of sales, less the necessary marketing expenses, on the basis of either the quantity or the value of products furnished by them.

Section 521(b)(4) of the Code, relating to transactions with nonmembers, provides that exemption shall not be denied any such association which markets the products of nonmembers in an amount the value of which does not exceed the value of the products marketed for members.

In *Dr. P. Phillips Cooperative* v. *Commissioner*, 17 T.C. 1002 (1951), the Tax Court of the United States, in construing section 101(12) of the Internal Revenue Code of 1939 (which corresponds to section 521 of the 1954 Code) with respect to the marketing of products *purchased* by members, as distinguished from products *produced* by members, held that one who merely purchased a ripe crop at harvest and marketed it through a cooperative would not be a farmer, a fruitgrower, or producer within the meaning of that section of the Code. See also, *Sunset Scavenger Company, Inc.* v. *Commissioner*, 31 B.T.A. 758 (1934), affirmed on appeal on this issue, 84 F. 2d 453 (1936), Ct. D. 1190, C.B. 1937–1, 202.

Hence, the term "products" as used in the Code refers to *products grown or otherwise produced by the patron for whose account such products are marketed.* Products grown by one who is not a member of the cooperative marketing association must be treated as "products of nonmembers," nothwithstanding such products are marketed by the association in the name of, or for the account of, a member.

Accordingly, since the cooperative marketing association in this case markets products *purchased* by members which exceed in value products *grown or otherwise produced* by members for whose accounts such products are marketed, it violates the limitation placed on business done with "nonmembers" prescribed by section 521 of the Code. Furthermore, by marketing products of nonmembers as those of its members, the association does not meet the statutory requirement that proceeds of the sale of products, less necessary operating expenses, be returned to producers on the basis of the quantity or value of products

furnished by them. Accordingly, the association is not exempt from Federal income tax under section 521 of the Code.

This Revenue Ruling restates under current law the position set forth in I.T. 3853. Therefore, I.T. 3853 is hereby superseded.

Rev. Rul. 67–204

A farmers' cooperative purchasing association issues shares of voting common stock to patrons without regard to the status of such patrons as producers or nonproducers, requesting that patrons who are not producers of agricultural products return their shares for redemption. As a result of this practice and the failure of many nonproducers to comply with the association's request, numerous nonproducers have become shareholders. *Held*, the association is not complying with the requirements of section 521(b)(2) of the Internal Revenue Code of 1954 and the regulations thereunder which require that ownership of capital stock be restricted to actual producers as far as possible. Accordingly, the association is not exempt from Federal income tax under section 521 of the Code.

Advice has been requested whether an incorporated farmers' cooperative purchasing association which issues capital stock under the circumstances described below complies with the requirements of section 521(b)(2) of the Internal Revenue Code of 1954.

The principal function of the association is the sale of farm supplies and equipment to its patrons through numerous sales outlets. The association is authorized to issue common stock with a par value of $1 per share. Only the owners of common stock possess the right to vote in the affairs of the association, and the charter provides that ownership of this class of stock is restricted to producers of agricultural products.

The association maintains records of business transacted with individual patrons in order that patronage dividends may be declared and paid to the patrons on the basis of their purchases from the association. If the patron is a holder of common stock, the dividend is issued in a form other than common stock. If he is not a holder of common stock, a share of such stock is mailed to him together with a letter requesting him to return the stock for redemption if he is not actively engaged in farming.

The association does not attempt to determine whether the patrons are producers or nonproducers before issuing stock to them. Thus, since a considerable number of nonproducer patrons did not honor the association's request to return the shares, numerous nonproducer patrons have become shareholders.

Section 521(b)(2) of the Code provides, in effect, that exemption shall not be denied a farmers' cooperative association because it has voting capital stock if substantially all such stock is owned by producers who market their products or purchase their supplies and equipment through the association.

Section 1.521–1(a)(2) of the Income Tax Regulations provides that ownership of stock by others than actual producers must be satisfactorily explained in the association's application for exemption, and that the association will be required to show that the ownership of its capital stock has been restricted as far as possible to actual producers. Other provisions of the same section of the regulations make it clear

that the restriction of the ownership of an association's capital stock to actual producers is a continuing requirement.

An association that does not determine as far as possible that a prospective stockholder is a producer before it issues stock to him and which takes no other action to assure that the ownership of its stock is in fact restricted as far as possible to actual producers has not complied with the requirements of the statute and regulations. An inference drawn from the failure to respond to the request to return the stock if the patron is not a producer does not meet these requirements.

In this case, since numerous shares of capital stock have been issued to and retained by nonproducers as a result of the association's indiscriminate issuance of stock in the manner described above, the association is unable to show that the ownership of its stock has been restricted as far as possible to actual producers.

Accordingly, the association does not qualify for exemption from Federal income tax under section 521 of the Code.

Procedures with respect to (1) applications for exemption under sections 501 and 521 of the Code, (2) revocation or modification of exemption rulings and determination letters, and (3) issuance of rulings involving prohibited transactions described in section 503 of the Code. See Rev. Proc. 67-3, page 560.

SUBCHAPTER G.—CORPORATIONS USED TO AVOID INCOME TAX ON SHAREHOLDERS

PART I.—CORPORATIONS IMPROPERLY ACCUMULATING SURPLUS

SECTION 537.—REASONABLE NEEDS OF THE BUSINESS

26 CFR 1.537-1: Reasonable needs of the business. Rev. Rul. 67-64

> A corporation may not include a fund equal to its depreciation reserves escalated for the economic factor of increased replacement costs in justifying the reasonable needs of its business pursuant to section 537 of the Internal Revenue Code of 1954. However, the reserve for depreciation itself may be considered and given appropriate weight as a part of the facts and circumstances in each case.

Advice has been requested whether, in justifying the reasonable needs of its business pursuant to section 537 of the Internal Revenue Code of 1954, a corporation may include a fund equal to its depreciation reserves escalated for the economic factor of increased replacement costs.

A corporation is engaged in the manufacturing business and has operated successfully since its inception. Over the years, the corporation has expanded its plant facilities and has made replacements of machinery and equipment. The expenditures with respect to such

expansion and replacements were normal for a successful business. The corporation contends that, in justifying the reasonable needs of its business, it should be permitted to include a fund equal to its depreciation reserves escalated for the economic factor of increased costs of replacement regardless of whether it has any specific or definite plans to use the funds in its business.

Section 537 of the Code provides that the term "reasonable needs of the business" includes the reasonably anticipated needs of the business. Section 1.537–1(b) of the Income Tax Regulations provides that in order for a corporation to justify an accumulation of earnings and profits for reasonably anticipated future needs, there must be an indication that the future needs of the business require such accumulation, *and the corporation must have specific, definite, and feasible plans for the use of such accumulation.* Where the future needs of the business are uncertain or vague, where the plans for the future use of an accumulation are not specific, definite, and feasible, or where execution of such a plan is postponed indefinitely, an accumulation cannot be justified on the grounds of reasonably anticipated needs of the business. These regulations express the legislative intent as stated in Senate Report 1622, 83d Congress, 2d Session, 69, and House Report 1337, 83d Congress, 2d Session, A172–A173.

Although the reserve for depreciation itself may be considered and given appropriate weight as a part of the facts and circumstances in considering the reasonable needs of the business, the concept that a noncash deduction for depreciation based on historic costs requires the setting aside for an indefinite period a cash fund adjusted for economic fluctuations in order to provide for total replacement of plant assets is not within the meaning of the term "reasonable needs of the business."

Accordingly, a corporation may not include a fund equal to its depreciation reserves escalated for the economic factor of increased replacement costs in justifying the reasonable needs of its business pursuant to section 537 of the Code. However, the reserve for depreciation itself may be considered and given appropriate weight as a part of the facts and circumstances in each case.

PART II.—PERSONAL HOLDING COMPANIES

SECTION 543.—PERSONAL HOLDING COMPANY INCOME

Procedures for electing to apply the amendments made by section 206 of Public Law 89–809 to taxable years beginning on or before November 13, 1966, and ending after December 31, 1965. See Rev. Proc. 67–16, page 593.

SUBCHAPTER H.—BANKING INSTITUTIONS

PART I.—RULES OF GENERAL APPLICATION TO BANKING INSTITUTIONS

SECTION 584.—COMMON TRUST FUNDS

26 CFR 1.584–1: Common trust funds. Rev. Rul. 67–73

A trust fund is maintained by a bank exclusively for the investment and reinvestment of moneys contributed thereto by the bank, in its capacity as trustee of community trusts and other charitable trusts which are exempt from Federal income tax under the provisions of section 501(a) of the Internal Revenue Code of 1954 as organizations described in section 501(c)(3) of the Code. *Held*, the fund qualifies as a "common trust fund" within the meaning of section 584 of the Code, provided the fund is otherwise operated in conformity with the rules and regulations, prevailing from time to time, of the Comptroller of the Currency pertaining to the collective investment of trust funds by national banks.

Advice has been requested whether a trust fund, established by a bank and consisting solely of property held by the bank as trustee of community trusts and other charitable trusts, all of which are exempt from Federal income tax under the provisions of section 501(a) of the Internal Revenue Code of 1954 as organizations described in section 501(c)(3) of the Code, is exempt from Federal income tax as a "common trust fund" within the meaning of section 584 of the Code.

Section 584(a) of the Code provides, in part, that the term "common trust fund" means a fund maintained by a bank (1) exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as a trustee, executor, administrator, or guardian; and (2) in conformity with the rules and regulations, prevailing from time to time, of the Comptroller of the Currency pertaining to the collective investment of trust funds by national banks.

Section 1.584–1(b) of the Income Tax Regulations provides that (2) above applies whether or not the bank maintaining the fund is a national bank or a member of the Federal Reserve System.

Section 584(b) of the Code provides that a common trust fund shall not be subject to Federal income tax and shall not be considered a corporation.

Section 9.18(a) of title 12 of the Code of Federal Regulations, relating to fiduciary powers of national banks and collective investment funds, provides that, where not in contravention of local law, funds held by a national bank as a fiduciary may be invested collectively (1) in a common trust fund maintained by the bank exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as executor, administrator, guardian, or trustee under a will or deed; (2) in a fund consisting solely of assets of retirement, pension, profitsharing, stock bonus, or other trusts which are exempt from Federal income taxation under the Internal Revenue Code; (3) in a common trust fund, maintained by the bank exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as managing agent under a managing agency agreement expressly providing that such moneys are received by the bank in trust.

Section 9.18(b)(2) of title 12 provides that property held by the bank in its capacity as trustee of retirement, pension, profitsharing, stock bonus, or other trusts which are exempt from Federal income taxation under the Internal Revenue Code may be invested in collective investment funds established under the provisions of subparagraph (1) or (2) of section 9.18(a) of title 12.

Since the trust fund is maintained by the bank exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as trustee and this is done in conformity with the rules and regulations, prevailing from time to time, of the Comptroller of the Currency pertaining to the collective investment of trust funds by national banks, it qualifies as a "common trust fund." The fact that the trust fund may consist solely of property held by the bank in its capacity as trustee of community trusts and other charitable trusts which are exempt from Federal income tax does not alter the rule, since such trust funds may be invested in a collective investment fund under the provisions of either subparagraph (1) or (2) of section 9.18(a) of title 12.

Accordingly, the trust fund maintained by the bank qualifies as a "common trust fund" within the meaning of section 584 of the Code, provided the fund is otherwise operated in conformity with the rules and regulations, prevailing from time to time, of the Comptroller of the Currency pertaining to the collective investment of trust funds by national banks.

SUBCHAPTER I.—NATURAL RESOURCES

PART I.—DEDUCTIONS

SECTION 611.—ALLOWANCE OF DEDUCTION FOR DEPLETION

26 CFR 1.611–1: Allowance of deduction for depletion. Rev. Rul. 67–141

> Where fees are paid for services rendered in connection with the acquisition of noncompetitive government oil and gas leases, the fees are not deductible expenses but must be capitalized by the applicant as part of the cost of acquisition of the leases acquired and may be recoverable through depletion.

Advice has been requested whether fees paid for services rendered in connection with the acquisition of noncompetitive government oil and gas leases are deductible or to be capitalized by the applicant.

A person solicits applicants to participate in the bidding on noncompetitive government oil and gas leases on Federal lands. The person also selects the tracts to be bid on and is responsible for filing a proper and timely bid with the Bureau of Land Management for which each applicant pays a fixed fee. In addition, the standard filing fee is paid to the Bureau of Land Management by each applicant.

The Tax Court of the United States in *L. S. Munger et al.* v. *Commissioner*, 14 T.C. 1236 (1950), upheld the Commissioner's determination that commissions paid for services in the acquisition of oil and

gas leases were part of the cost of acquisition of the leases and should be capitalized.

The court in *Dorothy Cockburn* v. *Commissioner*, 16 T.C. 775 (1951), sustained the Commissioner's determination that the commission paid in the assignment of an oil and gas lease was a capital expenditure recoverable through depletion and not deductible as ordinary and necessary business expense.

Although the commissions paid in the *Munger* and *Cockburn* cases were paid by the grantor rather than the grantee, there is no difference in principle between fees paid by the applicant in the instant case and the commissions paid in those cases. Compare *Bonwit Teller and Co.* v. *Commissioner*, 17 B.T.A. 1019 (1929), acquiescence, C.B. IX–1, 6 (1930), reversed on other grounds, 53 F. 2d 381 (1931), certiorari denied, 284 U.S. 690 (1931).

Accordingly, the fees paid by the applicants for services rendered in connection with the acquisition of oil and gas leases are not deductible expenses but must be capitalized as part of the cost of the oil and gas leases acquired by the applicants and may be recoverable through depletion.

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26 CFR 1.611–2: Rules applicable to mines, oil and gas wells, and other natural deposits. Rev. Rul. 67–157

> The prior estimate of taxpayer's recoverable units of coal in place cannot be reduced, for purposes of determining the allowance for cost depletion, because of speculative factors such as the remoteness of the time when the coal will be produced and sold or because the speculative future increases in cost of extraction will exceed the estimated future selling price of such coal.

Advice has been requested whether the prior estimate of taxpayer's recoverable units of coal in place can be adjusted, for purposes of computing the allowance for cost depletion, based on certain time and economic factors.

The taxpayer owns lands containing a large tonnage of recoverable coal in place. Its basis for depletion of this coal was determined in part by March 1, 1913, value and in part by its cost. This basis has been adjusted for depletion allowances over the years.

The taxpayer contends that the prior estimate of its recoverable units of coal in place should be reduced by those units which it estimates cannot be produced and sold within a reasonable period of time and by those units which, for any reason, cannot be extracted at a cost which does not exceed the estimated future selling price of such coal.

The taxpayer made computations as of December 31, 1965, based on its estimated future rate of production, costs and selling prices, to show that some of the units of coal, included in its prior estimate of recoverable coal, could not be economically produced and sold in the foreseeable future. If the number of recoverable units of coal were so reduced, the unit rate for cost depletion purposes would increase because the same basis would be spread over the smaller number of units of coal. This increased rate, if applied to the tonnage mined and sold during the taxable year 1965, would result in a greater amount of cost depletion for that year.

Section 611(a) of the Internal Revenue Code of 1954 states in part:

In any case in which it is *ascertained* as a result of *operations or of development work* that the recoverable units are greater or less than the prior estimate thereof, then such prior estimate (but not the basis for depletion) shall be revised and the allowance under this section for subsequent taxable years shall be based on such revised estimate. (Emphasis supplied)

Section 1.611–2(a)(1) of the Income Tax Regulations states in part:

* * * cost depletion for that year shall be computed by dividing such amount (basis) by the *number of units of mineral remaining* as of the taxable year * * * and by multiplying the depletion unit, so determined, by the number of units of mineral sold within the taxable year * * *. (Emphasis supplied)

Section 1.611–2(a)(3) of the regulations states in part:

"The number of units of mineral remaining as of the taxable year" is the number of units remaining at the end of the year *to be recovered* from the property (including units recovered but not sold) plus the "number of units sold within the taxable year" * * *. (Emphasis supplied)

Section 1.611–2(c)(1) of the regulations states in part:

If it is necessary to estimate or determine * * * as of any specific date the total recoverable units * * * reasonably known, or on good evidence believed, to have *existed in place as of that date*, the estimate or determination must be made according to the method *current* in the industry * * * The * * * recoverable units * * * shall include * * *: (i) The ores and minerals * * * "assured" * * * and (ii) "Probable" or "prospective" ores or minerals * * * (Emphasis supplied)

Section 1.611–2(c)(2) of the regulations states in part:

* * * if there has been no *known change in the facts* upon which the prior estimate was based, the number of recoverable units of mineral in the deposit as of the taxable year *will be the number remaining from the prior estimate.* However, for any taxable year for which it is *ascertained* either by the taxpayer or the district director from any source, such as *operations or development work prior to the close of the taxable year*, that the *remaining recoverable mineral units* as of the taxable year are materially greater or less than the number remaining from the prior estimate, then the estimate of the remaining recoverable units shall be revised, * * *. (Emphasis supplied)

Section 611(a) of the Code and section 1.611–2(c)(2) of the regulations require a change in the cost depletion rate when it is *ascertained*, as a result of *operations or development work prior to the close* of the taxable year, that the remaining recoverable units of mineral in place, as of that year, are materially greater or less than the prior estimate of recoverable units. Finding a geologic "fault" or a "pinch-out" of the coal seam, in an area being drilled preparatory to extraction, is an example of the information which can be ascertained from operations or development work during the year which shows the absence of coal units and confirms that the remaining recoverable units are materially less than the prior estimated recoverable units.

The information relied upon by the taxpayer in this case as justification for a change in the estimate of recoverable units was not obtained during the year as a result of its operations or development work. It was based, in part, upon information gleaned from the changes in the coal market over a number of years, and, in part, upon its prediction of future markets. Therefore, the information used by the taxpayer does not satisfy the requirements of section 611(a) of the Code and section 1.611–2(c)(2) of the regulations to require a change in the estimate. To the contrary, under the circumstances of this case,

section 1.611–2(c)(2) of the regulations requires the taxpayer to continue to use the prior estimate of its recoverable units in the property.

Furthermore, section 1.611–2(c)(1) of the regulations requires that, when it is necessary to make an estimate or determination, such estimate or determination must be made according to the method current in the industry.

Geological Survey Bulletin 1136 entitled "Coal Reserves of the United States" prepared by the United States Geological Survey, states in part the following:

> Recoverable reserves [units of coal] are reserves in the ground, as of the date of estimate, the past experience suggests can actually be produced in the future. *Much coal thus classified* can be mined at or near present costs, measured in man-hours and equipment. The *remainder* in thinner and less accessible beds can be mined either at gradually increased cost according to present mining technology, or possibly with little or no increase in cost according to future, improved mining technology. Recoverable reserves are obtained by subtracting estimated future losses [loss of coal] in mining from remaining reserves. (Emphasis supplied)

Geological Survey Bulletin 1136, on pages 21–22, defines three classes of "coal reserves" (measured, indicated and inferred). These three classes of reserves are based on the relative abundance and reliability of the data used in preparing the estimate. Therefore, the original estimate or any subsequent revised estimate of recoverable units of coal in place made in accordance with the method current in the industry, as outlined in Bulletin 1136, would require the inclusion of all coal which falls into the three classes defined in that bulletin. Also, section 1.611–2(c)(1) of the regulations requires the inclusion of "probable" and "prospective" ores with the "proved" or "assured" ores. Therefore, there is no justification for reclassifying and eliminating the estimated recoverable coal units which fall into any of the categories described in both the regulations and industry practice as "recoverable."

Accordingly, the prior estimate of the taxpayer's recoverable coal units cannot be reduced, for purposes of determining the allowance for cost depletion, because of speculative factors such as the remoteness of the time when the coal will be produced and sold, or because the speculative future increases in cost of extraction will exceed the estimated future selling price of such coal.

SECTION 612.—BASIS FOR COST DEPLETION

26 CFR 1.612–3: Depletion; treatment of bonus and advanced royalty. Rev. Rul. 67–25

> Where a "first year rental," paid under a competitive government or private nongovernmental oil and gas lease, has the characteristics of a true "delay rental" it may be treated as an expense or capitalized at the option of the lessee. However, in any instance in which a payment is, in substance, a bonus, even though designated as a "first year rental," it must be capitalized and recovered through depletion deductions.
>
> Revenue Ruling 56–252, C.B. 1956–1, 210, modified.

Advice has been requested whether first-year payments, designated as "rentals," under competitive oil and gas leases granted by Federal

and State governments are to be capitalized or deducted as an expense by the lessee.

In this case, bonuses were paid in addition to "yearly rental payments" of a stated amount per acre, payable in advance, upon execution of competitive Federal and State government oil and gas leases. These "yearly rental payments" either terminated upon production or were credited against the royalty for that year which was computed at a specified percentage of gross income.

The Mineral Lands Leasing Act of February 25, 1920, as amended, 30 U.S.C. 181, *et seq.*, with respect to government lands, provides for *competitive* oil and gas leases on lands in a known geological structure and for *noncompetitive* leases on lands outside such structure. In referring to competitive leases, the Act speaks of "bonus" and "royalty" as well as "rent." However, in referring to noncompetitive leases the Act speaks only of "rental" or "royalty."

Revenue Ruling 56–252, C.B. 1956–1, 210, holds, "that first year 'rental' payments paid in the acquisition of noncompetitive government oil and gas leases are to be treated as nondepletable deductible expenditures." That ruling also holds that "first year rental" payments made by lessees of private, nongovernmental oil and gas leases are capital investments recoverable only through depletion. The question of the treatment of such payments in the case of competitive governmental leases was not considered in that Revenue Ruling.

In the case of a private nongovernmental (commercial) lease, the rental payment is made at or near the end of the first year and each succeeding year prior to development to keep the contract in effect for another year. In the cases of competitive governmental leases, rental payments are paid at the beginning of the first year as well as for each succeeding year prior to development.

Yearly rental payments made with respect to an undeveloped oil and gas lease which extend the period in which the lessee may delay the drilling of wells for the production of oil and gas are termed "delay rentals." Section 1.612–3(c)(1) of the Income Tax Regulations defines a "delay rental" as "an amount paid for the privilege of deferring development of the property and which could have been avoided by abandonment of the lease, or by commencement of development operations, or by obtaining production."

Revenue Ruling 55–118, C.B. 1955–1, 320, holds, under the Internal Revenue Code of 1939, that "delay rentals" paid or accrued in connection with nonproducing oil and gas leases may, at the election of the lessee, be expensed or capitalized, irrespective of their treatment in earlier years with respect to a property and irrespective of the treatment of similar payments in connection with other properties. The same rule applies under the Internal Revenue Code of 1954. See section 1.612–3(c)(2) of the regulations.

Accordingly, to the extent a first-year rental, paid under a competitive Federal or State government or private nongovernmental oil and gas lease, has the characteristics of a true delay rental it may be treated as an expense or capitalized at the option of the lessee. However, in any instance in which a payment is, in substance, a bonus, even though designated as a first-year rental payment, the amount thereof must be capitalized and recovered through depletion deductions. As to both of these points see *Houston Farms Development Co.* v. *United States*,

131 F. 2d 577 (1942), rehearing denied, 132 F. 2d 861; *Jefferson Lake Sulphur Co.* v. *Lambert*, 133 F. Supp. 197 (1955), affirmed, 236 F. 2d 542 (1956); and *Shamrock Oil & Gas Corporation*, 35 T.C. 979 (1961) acquiescence, C.B. 1966–1, 3, affirmed, 346 F. 2d 377 (1965).

Revenue Ruling 56–252 is modified to remove therefrom the holding that all first-year rental payments made by lessees of private nongovernmental oil and gas leases must be capitalized.

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26 CFR 1.612–4: Charges to capital and to expense in case of oil and gas wells.

Whether the option on intangible drilling and development costs is available to a United States citizen for oil and gas operations outside of the United States. See Rev. Rul. 67–34, page 72.

SECTION 614.—DEFINITION OF PROPERTY

26 CFR 1.614–5: Special rules as to aggregating nonoperating mineral interests. Rev. Rul. 67–205

Taxpayer has a prior-approved aggregation, under the provisions of section 1.614–5(d) of the Income Tax Regulations, of nonoperating mineral interests in mineral properties. He wishes to file an application to include a newly acquired or newly created nonoperating mineral interest in the prior-approved aggregation effective as of the date the new interest was acquired or created. The newly acquired or newly created nonoperating mineral interest is the same type of mineral and is in the same tract or parcel of land or an adjacent tract or parcel of land as the prior-approved aggregation.

Held, the taxpayer must file his application to include the new nonoperating mineral interest in the aggregation, in the manner prescribed by section 1.614–5(e) of the regulations, within 90 days after the new interest is acquired or created for the approval of the inclusion of the new interest in the aggregation to be effective as of the day the new interest is acquired or created. However, an application filed more than 90 days after such new interest is acquired or created, but prior to the expiration of the first 90 days of the next taxable year, may be considered as an application to change an existing aggregation (by forming a new aggregation consisting of the new interest and those interests in the prior approved aggregation) effective for the first day of that next taxable year.

SECTION 615.—EXPLORATION EXPENDITURES

Temporary regulations relating to elections to deduct mining exploration expenditures as expenses and as to method of recapture of adjusted exploration expenditures. See T.D. 6907, page 531.

SECTION 616.—DEVELOPMENT EXPENDITURES

26 CFR 1.616–1 : Development expenditures. Rev. Rul. 67–35

The Internal Revenue Service will not follow the decision of the U.S. Court of Claims in *Kennecott Copper Corporation* v. *United States*, 347 F. 2d 275 (1965), in the disposition of analogous cases.

In *Kennecott* the court held that costs incurred by the taxpayer for the acquisition of stripping rights to surface lands adjoining producing properties of the taxpayer, the right to mine copper from beneath those lands, the right to dump waste on certain other lands, and various other rights, were deductible expenditures attributable to further development of the properties of the taxpayer already being operated by it.

The Service position is that expenditures of the character of those in issue in *Kennecott* are actually capital expenditures incurred for the acquisition of additional rights, to be recovered through depletion. It is the view of the Service that development expenditures under section 616(a) of the Internal Revenue Code of 1954 are limited to those resulting directly from such physical mining process or activities as the driving of shafts, tunnels, galleries, and similar operations undertaken to make the ore or mineral in place accessible for production operations.

Accordingly, the Service will continue to treat expenditures of the character of those in issue in *Kennecott* as capital in nature and not deductible as development expenditures under section 616(a) of the Code.

(Also Section 61; 1.61–3.) Rev. Rul. 67–169

In the case of strip mining, expenditures paid or incurred by a taxpayer for the removal of overburden to expose his mineral deposit for extraction on a continuing basis are not "development expenditures" subject to the provisions of section 616 of the Internal Revenue Code of 1954, when such removal is directly related to and tied-in with the rate of the extraction of the mineral in the day-to-day mining cycle. Instead these expenditures are expenses of mining to be taken into account as cost of goods sold.

Advice has been requested whether the costs of stripping overburden from a mineral deposit are "development expenditures" under section 616 of the Internal Revenue Code of 1954 or are expenses of mining to be taken into account as cost of goods sold under section 1.61–3 of the Income Tax Regulations.

The taxpayer owns a more or less horizontally lying limestone deposit overlain by 50 to 115 feet of stratified or bedded overburden consisting of soil, shale, and rock. He mines the limestone by stripping the overburden to expose the top part of the limestone bed about two months in advance of current limestone production needs. The rate at which the taxpayer strips overburden is directly related to and tied-in with the rate at which he is extracting the limestone. The top of the limestone bed exposed at any time is about 90 feet wide and in varying lengths, usually exposing about 250,000 tons of limestone for extraction.

Section 616 of the Code permits the taxpayer to deduct currently in computing taxable income all expenditures paid or incurred during

the taxable year for the development of a mine or other natural deposit (other than an oil or gas well) if paid or incurred after the existence of ores or minerals in commercially marketable quantities is disclosed. However, in the alternate the taxpayer may elect to treat these expenditures as deferred expenses. If the taxpayer so elects, he may deduct the expenditures on a ratable basis as he produces and sells the units of ore or minerals benefited by the expenditures.

Development operations for the exploitation of a mineral deposit (applicable to both underground and surface mining) are excavations performed for the purpose of preparing the entire ore body or a part of the ore body for extracting the valuable mineral on a continuing repetitive basis. Development expenditures described in section 616 of the Code are those expenditures paid or incurred in carrying out the excavation of material and related activities in the driving of shafts, tunnels, galleries, and other mining excavation for the purpose of making the ore or mineral in place accessible for sustained extraction methods by either underground or strip-mining methods. These expenditures benefit an area of a mineral deposit, recoverable over a relatively long period in the ordinary course of mining and selling of the valuable mineral extracted from the deposit. Such expenditures would be chargeable to capital expenditures except for the provisions of section 616 of the Code.

In the instant case described above, the removal of a particular segment of overburden does not benefit the entire ore body or smaller bodies of the same ore to which could be applied a mining cycle on a repetitive and continuing basis for a sustained period. The overburden removed on what amounts to a day-to-day basis, is directly related to the day-to-day extraction of the valuable mineral. Although overburden may be stripped several days or even months prior to the actual extraction of the valuable mineral in order to provide lead time, it is not development work because each increment of overburden removed benefits only a particular increment of mineral and no other. Lead time is provided to allow for the proper function of mining cycle and break downs and other possible contingencies that might interfere with the orderly removal of the limestone.

Accordingly, in the case of strip mining, expenditures paid or incurred by the taxpayer to remove overburden on a continuing basis to expose the valuable mineral deposit for extraction are not "development expenditures" subject to the provisions of section 616 of the Code, when such removal is directly related to and tied in with the rate of the extraction of the mineral in the day-to-day mining cycle. Instead, these expenditures are expenses of mining to be taken into account under the provisions of section 1.61-3 of the regulations as cost of goods sold.

SECTION 617.—ADDITIONAL EXPLORATION EXPENDITURES IN THE CASE OF DOMESTIC MINING

Temporary regulations relating to elections to deduct mining exploration expenditures as expenses and as to method of recapture of adjusted exploration expenditures. See T.D. 6907, page 531.

SUBCHAPTER J.—ESTATES, TRUSTS, BENEFICIARIES, AND DECEDENTS

PART I.—ESTATES, TRUSTS, AND BENEFICIARIES

Subpart A.—General Rules for Taxation of Estates and Trusts

SECTION 643.—DEFINITIONS APPLICABLE TO SUBPARTS A, B, C, AND D

26 CFR 1.643(a)–0: Distributable net income; deduction for distributions; in general.

Whether nontaxable stock dividends enter into the computation of distributable net income and whether their character carries over to the beneficiary. See Rev. Rul. 67–117 below.

Subpart C.—Estates and Trusts Which May Accumulate Income or Which Distribute Corpus

SECTION 662.—INCLUSION OF AMOUNTS IN GROSS INCOME OF BENEFICIARIES OF ESTATES AND TRUSTS ACCUMULATING INCOME OR DISTRIBUTING CORPUS

26 CFR 1.662(a)–1: Inclusion of amounts in gross income of beneficiaries of estates and complex trusts; general. Rev. Rul. 67–117

(Also Section 643; 1.643(a)–0.)

The Internal Revenue Service discusses the tax treatment of a trust and beneficiaries where the trust distributes cash in lieu of nontaxable stock dividends received by the trust.

Advice has been requested whether an amount distributed by a trustee to the income beneficiary of the trust, equal to the value of a nontaxable stock dividend received by the trust, is includible in the beneficiary's gross income.

A corporation distributed to a trust a nontaxable stock dividend. Under the particular State law the dividend is income for trust accounting purposes, and the trustee in his discretion can either distribute in kind the stock received, sell the stock and distribute the proceeds, or distribute cash equal to the fair market value of the stock, to the income beneficiary of the trust.

Under the terms of the trust instrument, the income of the trust may, in the discretion of the trustee, be distributed to the income beneficiary or accumulated. The trustee, upon receipt of the stock dividend, elected to distribute to the beneficiary an amount in cash equivalent to the then current fair market value of the stock.

While under local law a nontaxable stock dividend may be income for trust accounting purposes, under the provisions of section 643(a) of the Internal Revenue Code of 1954, nontaxable stock dividends do not enter into the computation of distributable net income.

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Under the rules of subchapter J, chapter 1, of the Code, and the regulations thereunder, the deduction by the trust for amounts distributed to the beneficiary may not exceed its distributable net income for the taxable year. Likewise, distributions from the trust shall be included in gross income of the beneficiary only to the extent that they do not exceed the distributable net income of the trust. Amounts includible in the gross income of the beneficiary will have the same character, proportionately, as the classes of items which enter into the computation of distributable net income.

Application of the foregoing may be illustrated by the following examples:

Example (1).—A trust is created to pay the income currently to *H* for life. In the taxable year, a nontaxable stock dividend worth $1,000, which is income distributable to the income beneficiary under State law, is received by the trust, but it had no other income. The trustee elects to distribute to the beneficiary cash equal to the fair market value of the stock dividend, in lieu of distributing that stock. The trust has no deductible expenses.

Since the trust has no distributable net income, the beneficiary is not required to include in his gross income any amount of the cash distributed to him.

Example (2).—Assume the same facts as above except that the trust also receives taxable interest of $3,000.

The "income required to be distributed currently" to the beneficiary is $4,000. The distributable net income of the trust, as computed under section 643(a) of the Code, however, is only $3,000, since the stock dividend is nontaxable and does not enter into the computation of distributable net income. Therefore, the amount deductible by the trust and includible in the gross income of the beneficiary is limited to $3,000. Consequently, the $1,000 in cash distributed in lieu of the stock dividend is not includible in the gross income of the beneficiary.

Similarly where the trustee has the discretion to distribute corpus and to accumulate or distribute income of the trust, and he properly distributes to the beneficiary only an amount of cash equal to the value of the stock dividend received at a time when the trust has distributable net income, the beneficiary is required to include the amount of cash received in his gross income, under section 662(a) of the Code, to the extent that such amount does not exceed the distributable net income of the trust. The character of the items contained in distributable net income determines the character of the amount taxable to the beneficiary, as provided by section 662(b) of the Code.

Application of the foregoing may be illustrated by the following examples:

Example (3).—Under the terms of the trust instrument, the trustee may distribute income, or accumulate it for future distribution in his discretion. In the taxable year a nontaxable stock dividend having a fair market value of $1,000 is received by the trust. The trust has no other income or deductible expenses for this year. The trustee distributes $1,000 in cash to the beneficiary and retains the stock.

Since the trust has no distributable net income, the beneficiary is not required to include in his gross income any of the cash distributed to him.

Example (4).—Under the terms of the trust instrument, $1,000 is required to be paid annually out of income of the trust to beneficiary *A*. The balance of the trust income may, in the trustee's discretion, be accumulated or distributed to beneficiary *B*. The trust has the following items of income and no expenses for the taxable year:

Taxable interest	$2,000
Nontaxable stock dividend worth	1,000
Total income under state law	$3,000

During the taxable year, the trustee distributes $1,000 in cash to *A*, and $500 in cash to *B*.

The distributable net income of the trust, as computed under section 643(a) of the Code, is $2,000.

Under section 661(a) (1) and (2) of the Code, $1,500 is deductible by the trust. Under section 662(a)(1) of the Code, $1,000 is includible in the gross income of *A*. Under section 662(a)(2) of the Code, $500 is includible in the gross income of *B*. The trust's taxable income after deducting $100 for personal exemption, is $400.

Subpart E.—Grantors and Others Treated as Substantial Owners

SECTION 671.—TRUST INCOME, DEDUCTIONS AND CREDITS ATTRIBUTABLE TO GRANTORS AND OTHERS AS SUBSTANTIAL OWNERS

26 CFR 1.671–1: Grantors and others treated as substantial owners; scope. Rev. Rul. 67–118

> The donative assignment to a trust, established for the benefit of a college, of an overriding royalty interest created from an oil and gas leasehold presently owned and retained by the grantor, is not an anticipatory assignment of income. Hence the trust income will not be taxable to the grantor, even though the term of the trust is less than the economic life of the overriding royalty, provided the grantor is not considered the owner of the trust under sections 671 through 677 of the Internal Revenue Code of 1954.

Advice has been requested whether the income of a trust, under the circumstances described below, is taxable to the grantor.

The taxpayer is the owner of certain producing oil and gas leases, out of which he created and transferred in trust certain overriding royalty interests. The trust was established by the grantor for the benefit of a college and is for a term of five years. The entire net income of the trust is irrevocably payable to the college during the term of the trust. Under the provisions of the trust, the trustees may deal with the overriding royalties as if they were the absolute owners thereof. Upon termination of the trust, the overriding royalties, which have an economic life exceeding the term of the trust, or the proceeds of any sale of such royalties, will revert to the grantor.

When income-producing property is placed in trust, the tax liability generally shifts from the grantor in accordance with part I, subparts A through D of subchapter J of the Internal Revenue Code

of 1954, sections 641 through 668, inclusive. However, the grantor will remain taxable on the trust income if he retains such dominion and control over the trust corpus as to be considered the substantial owner of the corpus under subpart E of subchapter J, sections 671 through 677.

Section 673(a) of the Code provides in effect that the grantor shall be treated as the owner of any portion of a trust in which he has a reversionary interest in either the corpus or the income therefrom which will or may reasonably be expected to take effect within ten years from the date of transfer to the trust. Subsection (b) of section 673 of the Code provides that subsection (a) shall not apply to the extent that the income of a portion of a trust in which the grantor has a reversionary interest is, under the terms of the trust, irrevocably payable for a period of at least two years to a designated beneficiary of a type described in section 170(b)(1)(A) (i), (ii), or (iii) of the Code. However, if the grantor merely assigns the right to future income to the trust, he will be taxed on the income even though he retains none of the controls specified in sections 671 through 677 of the Code. See section 1.671–1(c) of the Income Tax regulations; H. Rep. No. 1337, 83d Cong., 2d Sess., A212; and S. Rep. No. 1662, 83d Cong., 2d Sess., 365 (1954).

An overriding royalty interest may be defined as an economic interest in oil and gas in place, created from the working interest, which entitles its owner to a specified fraction of gross production, free of operating and development costs. The term of an overriding royalty interest is coextensive with the term of the working interest from which it was created. The transfer of an overriding royalty is an assignment of a property interest and is not an anticipatory assignment of income. This is in contrast to the transfer of an in-oil payment right carved out of a larger interest, which is such an assignment of income. See G.C.M. 24849, C.B. 1946–1, 66.

Accordingly, a transfer in trust of an overriding royalty created from a leasehold which is retained by the grantor is not a mere assignment of future income so as to cause the grantor to remain taxable in accordance with the provisions of section 1.671–1(c) of the regulations. Since the college in this case is a beneficiary which "is of a type described in section 170(b)(1)(A) (i), (ii), or (iii)" of the Code and the entire net income of the trust is irrevocably payable to such beneficiary for a period in excess of two years, the income attributable to the overriding royalties will not be taxed to the grantor provided he is not considered the owner of the trust under one of the other provisions of subpart E of subchapter J of the Code.

SECTION 673.—REVERSIONARY INTERESTS

26 CFR 1.673(b)–1: Income payable to charitable beneficiaries. (Also Section 170; 1.170–2.) — Rev. Rul. 67–42

The Internal Revenue Service discusses the Federal income tax consequences, under sections 673 and 170 of the Internal Revenue Code of 1954, of a transfer in trust of certain stock, part of the income from which is "divested stock" within the meaning of section

1111(e) of the Code, where the divested stock is payable irrevocably for a period of over 2 years to designated organizations of the type described in section 170(b)(1)(A) (i), (ii), or (iii) of the Code.

Advice has been requested concerning the Federal income tax consequences under sections 673 and 170 of the Internal Revenue Code of 1954 of a transfer in trust under the circumstances set forth below.

The taxpayer is an individual shareholder in X company which, in turn, is a shareholder of the common stock of Y company. Pursuant to an antitrust action brought by the United States, a court order required X to divest itself of all Y stock by distributing it to its shareholders. The circumstances of the antitrust action and the court order were such that Y stock is "divested stock" within the meaning of section 1111(e) of the Code.

Section 1111(a) of the Code provides under certain circumstances that a distribution of divested stock (as defined in subsec. (e)) is not out of the earnings and profits of the distributing corporation. The distribution of Y stock to the taxpayer is treated as a return of capital he has invested in X stock. He is required to reduce the basis of his X stock by an amount equal to the fair market value of the Y stock received and any excess is to be treated as capital gain. The taxpayer's basis for his X stock is zero and he has held it for more than 6 months. Therefore, he would normally be treated as having received a long-term capital gain in an amount equal to the entire fair market value of the Y stock he receives pursuant to the divestiture order.

Prior to completion of the divestiture, and after March 9, 1954, the taxpayer transferred in trust $100x$ shares of X stock. The trust instrument provides that the trustee shall pay the net income from the trust, to the extent it consists of divested shares of Y stock which are distributed with respect to shares of X stock held in trust, equally and irrevocably to four designated organizations of the type described in section 170(b)(1)(A) (i), (ii), or (iii) of the Code. The taxpayer reserves the right to receive any dividends paid in cash on the X stock, and the trust is to terminate 2 years and 10 days after its creation. Upon termination, the $100x$ shares of X stock will revert to the taxpayer-grantor or his estate. However, if, upon termination, the distribution of Y stock to the charitable organizations, in the aggregate, shall have been less than nine-tenths of a share of Y stock for each share of the X stock held in trust, or $90x$ shares, the trustee must acquire, by liquidating to the extent necessary other assets held in the trust, and deliver to the charitable organizations, such number of shares of Y stock as may be necessary to assure their receiving a number of such shares equal to nine-tenths of the number of shares of X stock which have been placed in the trust.

Section 673(a) of the Code provides a general rule that the grantor shall be treated as the owner of any portion of a trust in which he has a reversionary interest in either the corpus or the income therefrom if, as of the inception of that portion of the trust, the interest will or may reasonably be expected to take effect in possession or enjoyment within 10 years commencing with the date of the transfer of that portion of the trust.

Section 673(b) of the Code provides that section 673(a) of the Code shall not apply to the extent that the income of a portion of a trust in which the grantor has a reversionary interest is, under the terms of

the trust, irrevocably payable for a period of at least 2 years (commencing with the date of the transfer) to a designated beneficiary, which beneficiary is of a type described in section 170(b)(1)(A) (i), (ii), or (iii) of the Code.

Under the circumstances of this case, to the extent of their fair market value, the shares of *Y* stock are income attributable to the portion of the trust which will revert to the taxpayer. Since such income is made irrevocably payable for a period of at least 2 years to the type of beneficiary contemplated by section 673(b) of the Code, section 673(a) of the Code does not apply. Accordingly, the taxpayer here is not taxable on the gain arising from the receipt by the trustee, within the period of the trust, of a divestiture distribution of *Y* stock attributable to the shares of *X* stock which the taxpayer has transferred to the trust under the terms of the agreement described above.

A charitable contribution is defined in section 170(c) of the Code as a contribution or gift to or for the use of an organization described in that section.

Section 1.170–1(c) of the Income Tax Regulations provides, in part, that if a contribution is made in property other than money, the amount of the deduction is determined by the fair market value of the property at the time of the contribution.

Section 1.170–1(d) of the regulations provides that a deduction may be allowed for a contribution of an interest in the income from property, or an interest in the remainder, to be valued according to the tables referred to in section 1.170–2(d).

Section 170(b)(1)(D) of the Code denies a charitable deduction for the value of any interest in property transferred to a trust after March 9, 1954, if the grantor has a reversionary interest in the corpus or income and the value of such reversionary interest exceeds 5 percent of the total value on which the charitable deduction would, but for section 170(b)(1)(D) of the Code, be determined.

The gift to the designated section 170(b)(1)(A) organizations of the right to receive the distribution of *Y* stock comes within the purview of section 170(b)(1)(D) of the Code, since, at the time of the transfer of the *X* stock in trust, the taxpayer-grantor had a reversionary interest within the meaning of this section, the value of which exceeded 5 percent of the total value of the *X* stock placed in trust.

Accordingly, no portion of the value of the $90x$ shares of *Y* stock, attributable to the *X* stock transferred in trust for the benefit of the designated organizations described in section 170(b)(1)(A) of the Code, will be deductible under the provisions of section 170 of the Code.

Tax effect of transfer in trust of installment obligation with interest income payable to charitable beneficiary. See Rev. Rul. 67–70, page 106.

SECTION 677.—INCOME FOR BENEFIT OF GRANTOR

26 CFR 1.677(a)–1: Income for benefit of grantor; general rule.

Tax effect where trust instrument directs that gain be distributed to grantor. See Rev. Rul. 67–70, page 106.

SUBCHAPTER K.—PARTNERS AND PARTNERSHIPS

PART I.—DETERMINATION OF TAX LIABILITY

SECTION 702.—INCOME AND CREDITS OF PARTNER

26 CFR 1.702–1: Income and credits of partner.

Items taken into account separately where distributive share of a partner, a bona fide resident of a foreign country, includes earned income as defined in section 911(b) of the Code. See Rev. Rul. 67–158, page 188.

Partnership loss to a general partner who is engaged as a real estate dealer for his individual account and also has an interest in a partnership created to acquire, lease, and operate a hotel property. See Rev. Rul. 67–188, page 216.

SECTION 707.—TRANSACTIONS BETWEEN PARTNER AND PARTNERSHIP

26 CFR 1.707–1: Transactions between partner and partnership. Rev. Rul. 67–105
(Also Section 267; 1.267(c)–1.)

> In determining, for the purpose of section 707(b)(2)(B) of the Internal Revenue Code of 1954, whether the same persons own, directly or indirectly, more than 80 percent of the capital or profits interest in two or more partnerships, a partner in the transferor partnership who is related, as provided in section 267(c)(4) of the Code, to a partner in the transferee partnership is deemed to be the constructive owner of the interests of the related partner in the transferee partnership.

Advice has been requested whether a partnership, owned entirely by *A* and *B*, may sell a portion of its real property, held for more than 6 months, to another partnership owned entirely by the adult children of *A* and *B*, and treat the gain on such sale as long-term capital gain.

A and *B* are the only partners in *X*, a valid partnership for Federal income tax purposes, which owns and operates various citrus groves. *X* proposes to sell one of its groves to *Y*, a valid partnership for Federal income tax purposes, for use in *Y*'s fruit-growing business. The sale to *Y* will be at fair market value and in an arms-length transaction. All of the partners in *Y* are children of *A* and *B* and operate this partnership independently of their parents. Neither *A* nor *B* is a member of the *Y* partnership.

Section 707(b)(2)(B) of the Internal Revenue Code of 1954 provides that in the case of a sale or exchange, directly or indirectly, of property which in the hands of the transferee is property other than a capital asset (as defined in section 1221 of the Code), any recognized gain shall be considered as gain from the sale or exchange of property other than a capital asset, if the sale or exchange is between

partnerships in which the same persons own, directly or indirectly, more than 80 percent of the capital or profits interests in each partnership. See also section 1.707–1(b)(2) of the Income Tax Regulations.

In determining ownership for the purposes of section 707(b)(2)(B) of the Code, the rules for the constructive ownership of stock provided in section 267(c)(1), (2), (4), and (5) of the Code are applied pursuant to section 707(b)(3) of the Code. Under the rule provided by section 267(c)(2) of the Code, an individual shall, for the purpose of section 707(b)(2)(B) of the Code, be considered as owning the interests in a partnership owned, directly or indirectly, by or for his family. The family of an individual is defined in section 267(c)(4) of the Code, as including brothers, and sisters, spouse, ancestors, and lineal descendants.

Accordingly, *A* and *B* must be regarded as the owners of the interests in the *Y* partnership owned by their children. See *Max A. Burde* v. *Commissioner*, 43 T.C. 252 (1964), affirmed 352 F. 2d 995 (1965), certiorari denied, 383 U.S. 966 (1966). Thus, the gain realized by the *X* partnership upon the sale of its citrus grove to *Y* partnership for use in *Y*'s business will be treated as gain from the sale of property other than a capital asset.

SECTION 708.—CONTINUATION OF PARTNERSHIP

26 CFR 1.708–1: Continuation of partnership. Rev. Rul. 67–65
(Also Section 735; 1.735–1.)

> Where, as required by an agreement between the partners, the surviving partner of a two-man partnership purchases the deceased partner's interest from his estate, the partnership terminates under the provisions of section 708(b)(1)(A) of the Internal Revenue Code of 1954 at the time the sale is consummated, and the surviving partner is deemed to have acquired by purchase the assets attributable to the deceased partner's interest in the partnership.
>
> In determining his holding period for the assets deemed acquired by purchase, the surviving partner cannot include the period such assets were held in the partnership.

Advice has been requested whether the surviving partner in a two-man partnership who purchased the deceased partner's interest from his estate, acquired the assets represented thereby through a distribution within the meaning of section 735(b) of the Internal Revenue Code of 1954, so that in computing his holding period for assets attributable to the partnership interest purchased by him from the deceased partner's estate, he may include the period those assets were held in the partnership.

D and *E* were equal partners in a two-man partnership engaged in the wholesale produce business. Upon *D*'s death, *E* purchased, pursuant to a buy and sell agreement, and through the use of his own funds, the decedent's interest in the partnership from his estate. Thereafter, the business was continued by *E* as a sole proprietorship.

Section 708(b)(1)(A) of the Code provides that a partnership shall terminate when the operations of the partnership are discontinued and no part of any business, financial operation or venture of the partnership continues to be carried on by any of its partners in a partnership.

Section 1.708–1(b)(1)(i) of the Income Tax Regulations implements section 708(b)(1)(A) of the Code with an example which states that on November 20, 1956, *A* and *B*, each of whom is a 20-percent partner in partnership *ABC*, sell their interests to *C*, who is a 60-percent partner. Since the business is no longer carried on by any of its partners in a partnership, the *ABC* partnership is terminated as of November 20, 1956.

Accordingly, in the instant case, the sale of *D*'s partnership interest to *E* resulted in termination of the partnership under section 708(b)(1)(A) of the Code since the business is no longer carried on by any of its partners in a partnership.

Section 735(b) of the Code provides that in determining the period for which a partner has held property received in a distribution from a partnership there shall be included the holding period of the partnership, as determined under section 1223, with respect to such property.

Although it is recognized that one partner in a two-man partnership may sell his partnership interest to his partner (sec. 1.741–1(b) of the regulations), such a transaction is viewed as though one partner acquired by purchase, the assets attributable to the partnership interest sold by the other partner. No distribution of property by the partnership occurred with respect to such assets. However, the purchasing partner is considered to have received as a distribution in kind, through liquidation of his partnership interest, those assets attributable to his own former interest in the partnership.

Accordingly, section 735(b) of the Code is applicable with respect to the assets attributable to *E*'s partnership interest. Hence, his holding period for those assets include the holding period of the partnership. However, section 735(b) of the Code is not applicable with respect to the assets attributable to the partnership interest purchased from *D*'s estate. Therefore, *E*'s holding period for those assets does not include the holding period of the partnership, and runs from the date of his purchase of *D*'s partnership interest. See *Edwin E. McCaulsen* v. *Commissioner*, 45 T.C. 588 (1966).

PART II.—CONTRIBUTIONS, DISTRIBUTIONS, AND TRANSFERS

Subpart B.—Distributions by a Partnership

SECTION 735.—CHARACTER OF GAIN OR LOSS ON DISPOSITION OF DISTRIBUTED PROPERTY

26 CFR 1.735–1: Character of gain or loss on disposition of distributed property.

Holding period for assets attributable to the partnership interest purchased from a deceased partner's estate. See Rev. Rul. 67–65, page 168.

SUBCHAPTER L.—INSURANCE COMPANIES

PART I.—LIFE INSURANCE COMPANIES

Subpart A.—Definition; Tax Imposed

SECTION 801.—DEFINITION OF LIFE INSURANCE COMPANY

26 CFR 1.801–3: Definitions.

Liability for retrospective rate credits. See Rev. Rul. 67–180, page 172.

26 CFR 1.801–4: Life insurance reserves.

Whether total insurance in force and life insurance reserves must be reduced by amount of insurance in force and life insurance reserves attributable to the net value of risks reinsured before revaluing life insurance reserves on the approximate revaluation basis pursuant to an election under section 818(c) of the Code. See Rev. Rul. 67–43, page 177.

Reduction of life insurance reserves by amounts attributable to losses incurred but not reported. See Rev. Rul. 67–129, below.

Subpart C.—Gain and Loss From Operations

SECTION 809.—IN GENERAL

26 CFR 1.809–4: Gross amount.

Liability for retrospective rate credits. See Rev. Rul. 67–180, page 172.

26 CFR 1.809–5: Deductions. Rev. Rul. 67–129
(Also Sections 801, 818; 1.801–4, 1.818–2.)

A life insurance company must take into account the full amount of its reasonable estimate of losses incurred but not reported in computing its deduction for death benefits, etc., under section 809(d)(1) of the Internal Revenue Code of 1954 and must reduce its life insurance reserves by the amount attributable to such losses.
Revenue Ruling 65–33, C.B. 1965–1, 263, amplified.

Advice has been requested whether, under the circumstances described below, a life insurance company must include the full amount

of its losses incurred but not reported as part of its deduction for death benefits, etc., under section 809(d)(1) of the Internal Revenue Code of 1954, and whether its life insurance reserves must be reduced by the amount attributable to such unreported losses.

The taxpayer is a life insurance company as defined in section 801 of the Code and is subject to the tax imposed under section 802 of the Code. In computing its gain or loss from operations under section 809 of the Code the taxpayer claimed, as part of its deduction for death benefits, etc., under section 809(d)(1) of the Code, its estimate of "losses incurred but not reported" reduced by the portion of its life insurance reserves attributable to such unreported losses.

Section 801(b) of the Code provides, in pertinent part, that the term "life insurance reserves" means amounts which are set aside to mature or liquidate, either by payment or reinsurance, future *unaccrued* claims.

Section 809(d)(1) of the Code allows as a deduction, in computing gain or loss from operations, all claims and benefits accrued, and "all losses incurred (whether or not ascertained)," during the year.

Section 1.809–5(a) of the Income Tax Regulations provides that for this purpose the term "losses incurred (whether or not ascertained)" includes a reasonable estimate of the amount of the losses (based upon the facts in each case and the company's experience with similar cases) incurred but not reported by the end of the taxable year as well as losses reported but where the amount thereof cannot be ascertained by the end of the taxable year.

Section 818(a) of the Code provides the general rule that all computations entering into the determination of taxes imposed by part I, subchapter L, chapter 1, of the Code, shall be made under an accrual method of accounting.

All losses occurring before the end of the taxable year whether reported or unreported are, on the basis of the facts in each case and the company's experience with similar cases, fixed liabilities reasonably ascertainable in amount. Such reported and unreported losses are thus part of losses incurred and may be taken into account in computing the deduction under section 809(d)(1) for death benefits, etc.

In view of the fact that losses incurred represent matured liabilities, the life insurance reserves attributable to such losses no longer pertain to future unaccrued insurance claims. The reserves must therefore be reduced by the amount attributable to the losses incurred, which, losses include a reasonable estimate of reported and unreported claims, and such reduction must be taken into income as a decrease in reserves under section 809(c)(2) of the Code.

Revenue Ruling 65–33, C.B. 1965–1, 263, which holds, in effect, that unpaid losses are taken into account under section 809(d)(1) of the Code in the computation of the deduction allowed for death benefits, etc., rather than taken into account as an increase in reserves under section 810 of the Code, is hereby amplified.

SECTION 811.—DIVIDENDS TO POLICYHOLDERS

26 CFR 1.811–2: Dividends to policyholders. (Also Sections 801, 809, 832; 1.801–3, 1.809–4, 1.832–1, 1.832–4.) Rev. Rul. 67–180[1]

Liability for retrospective rate credits based on experience with respect to casualty insurance contracts issued by an accident department of a life insurance company is treated for Federal income tax purposes as a reserve for dividends to policyholders as defined in section 1.811–2 of the Income Tax Regulations as distinguished from unearned premiums and return premiums. However, reserves for dividends to policyholders do not include any amounts attributable to potential rate credits or refunds with respect to casualty contracts expiring after the close of the taxable year.

This Revenue Ruling applies equally to retrospective rate credits based on experience with respect to group life and group accident and health contracts written by life insurance companies.

Advice has been requested as to the nature of retrospective rate credit refunds on casualty policies issued by an accident department of a life insurance company, and whether any amounts set aside at the end of the taxable year with respect to potential rate credit refunds on contracts expiring after the close of the taxable year are deductible for Federal income tax purposes.

The taxpayer is a multiple-line insurance company which qualifies as a life insurance company subject to tax imposed by section 802 of the Internal Revenue Code of 1954. In addition to life insurance, it writes accident and health, and casualty insurance, including workmen's compensation, auto liability, and liability other than auto. The operational statistics of its life and casualty lines are not consolidated but are treated as if there existed separate life and casualty insurance companies.

On all casualty insurance policies issued by the taxpayer, whether or not subject to a retrospective premium rating formula, an estimated standard premium is charged at the inception of the risk period. Thereafter, the taxpayer audits the insured at least annually during the period of coverage and the earned standard premium is determined on the basis of the insured's payrolls or other exposure. The difference between the earned standard premium and the estimated standard premium is then charged or refunded to the policyholder.

On a retrospective rated policy, certain additional computations are made commencing with the earned standard premiums as determined above and already paid. A percentage factor, as determined by the taxpayer, called a "basic charge" is applied to the earned standard premium. Added thereto are losses up to certain limits and expenses attributable thereto. To this total, another percentage, denominated as premium tax multiplier, is added. The total of the basic charge, losses and expenses, and the addition for the premium tax is compared with the earned standard premium previously paid. Any difference between the two is refunded to the policyholder if the experience is favorable or paid to the taxpayer by the insured if the experience is unfavorable.

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[1] Also released as Technical Information Release 902, dated May 10, 1967.

On a three-year retrospective plan, the computations are made at the end of each policy year taking into account all the experience for the periods preceding the period of computation.

The first question involved concerns the nature of the liability to return, after all or part of the risk has attached, a portion of the amount paid by the policyholder with respect to a policy subject to a retrospective rate endorsement.

Dividends to policyholders, unearned premiums, and return premiums all have the common denominator of being an adjustment of premium. However, they are conceptually distinguishable from each other, and therefore the treatment of each is different under the Internal Revenue Code.

Dividends are an allocation of divisible surplus payable to the policyholders in their capacity as such and are taken into account, in determining underwriting income, as a deduction under section 809(d)(3) of the Code. Unearned premiums have a technical meaning. They are amounts which cover the cost of carrying the insurance risk for the period for which the premiums have been paid in advance and are held to take care of anticipated losses on policies. Section 1.801–3(e) of the regulations. In determining underwriting income, unearned premiums are taken into account as increases (deductions) and decreases (income) in reserves under sections 809(d)(2) and 809(c)(2) of the Code, respectively. The decreases in reserves would be offset by deductions for claims and benefits accrued under section 809(d)(1) of the Code.

Return premiums, on the other hand, are not taken into account as a reserve or deduction item but rather as an adjustment to gross premiums under section 809(c)(1) of the Code, an income provision, in a fashion similar to the subtraction, in commercial practice, of returns and allowances from gross receipts to arrive at gross income from sales. It has a limited meaning and as defined in section 1.809–4(a)(1)(ii) of the regulations is limited to situations where the premium has been erroneously calculated, where the policy has been canceled before the end of the contract period, or has been procured through fraud, or issued through a mistake of law or fact, or is void. Briefly, in other words, "return premiums" apply only to an adjustment for premiums to which no risk has attached. Since reserves for such adjustment are not held to take care of anticipated losses on the policies as the premium is earned but rather to take care of the contingency that some part of the premium may have to be returned, they would not constitute technical insurance reserves. Therefore, the adjustment for "return premiums" could properly be reflected only as an adjustment of gross amount under section 809(c)(1) of the Code. Thus, since a reserve for "return premiums" would not be a technical insurance reserve, "return premiums" are not unearned premiums even though both have the same no risk attaching quality.

Unearned premiums are defined in section 1.801–3(e) of the regulations as "those amounts which shall cover the cost of carrying the risk for the period for which the premium has been paid in advance." This language reflects cases arising under earlier statutes when life insurance companies prior to 1921 were entitled to a deduction for the interest required to be added to their "reserves required by law." The only recognized "reserves required by law" were those pertaining

directly to insurance which were set aside and funded to take care of anticipated losses on policies. This excluded amounts held on account of matured obligations and also amounts which did not represent insurance in existence during the taxable year for the reason that in one case the reserve had served its purpose and the amounts held had become pure liabilities and, in the other case, there being no insurance in existence there could be no reserve attributable thereto. See *McCoach* v. *Insurance Company of North America*, 244 U.S. 585 (1917); *Maryland Casualty Company* v. *United States*, 251 U.S. 342 (1920) as modified and explained in *United States* v. *Boston Insurance Company*, 269 U.S 197 (1925), T.D. 3792, C.B. V–1, 300 (1926); *Colonial Surety Company* v. *United States*, 178 F. Supp. 600 (1959).

The basic concepts in these earlier cases are applicable today even though the scheme of taxation for life insurance companies is now quite different. Application of the principles in these and numerous similar cases suggests that a reserve for an estimated potential retrospective rate credit with respect to a policy which has expired, in whole or in part, and to which the risk has already attached, in whole or in part, as the case may be, is not a reserve to take care of future, unaccrued, claims and losses to be paid for out of such reserve as it is earned, and neither is it a reserve pertaining to insurance.

Thus, an amount set aside for the contingency that some part of the premium paid under a policy subject to a retrospective rate endorsement may have to be returned cannot be either unearned premiums or return premiums, since, if the risk has attached, it does not apply to insurance in force and if the risk has not attached, it is not held to take care of future, unaccrued insurance claims and losses.

The conclusion reached above is not affected by section 1.832–1(a) of the regulations which states in part that "the amount of unearned premiums shall include * * * (2) liability for return premiums under a rate credit or retrospective rating plan based on experience, such as the 'War Department Insurance Rating Plan,' and which return premiums are therefore not earned premiums."

Simply because under such regulation section the liability for retrospective rate credits is arithmetically taken into account together with unearned premiums, for purposes of computing earned premiums under section 832 of the Code, does not make such liability a technical unearned premium or any other insurance liability provided for by the Code. The regulation merely sets forth the manner in which earned premiums of certain insurance companies are computed.

Since the "basic charge" described above; i.e., a percentage of the standard premium and the starting point for the computation of the retrospective premium appears to be the minimum premium which takes into account the risk charge and the loading elements of such premium and since those elements are taken into account any difference between the standard premium paid by the policyholder at the inception of the risk period and the retrospective premium is a difference which depends on the experience of the company. Thus, any retrospective rate credit allowed would be a dividend within the meaning of section 811 of the Code and section 1.811–2 of the regulations. Therefore, the sole question remaining is whether a reserve for dividends to policyholders, as defined in section 1.811–2(c) of the regulations, attributable to potential rating credits on contracts expiring

after the close of the taxable year is deductible for Federal income tax purposes.

Section 1.811–2(c) of the regulations provides, in part, as follows:

(c) RESERVES FOR DIVIDENDS TO POLICYHOLDERS DEFINED—(1) IN GENERAL. The term "reserves for dividends to policyholders" as used in section 811(b)(1) (A) and (B) and paragraph (b)(1) of this section, means only those amounts—

(i) Actually held, or set aside as provided in subparagraph (2) of this paragraph and thus treated as actually held, by the company at the end of the taxable year, and

(ii) With respect to which, at the end of the taxable year or, if set aside, within the period prescribed in subparagraph (2) of this paragraph, the company is under an obligation, which is either fixed or determined according to a formula which is fixed and not subject to change by the company, to pay such amounts as dividends to policyholders (as defined in section 811(a) and paragraph (a) of this section) during the year following the taxable year.

(2) AMOUNTS SET ASIDE. (i) In the case of a life insurance company (as defined in section 801(a) and paragraph (b) of § 1.801–3), all amounts set aside before the 16th day of the 3rd month of the year following the taxable year for payment as dividends to policyholders (as defined in section 811(a) and paragraph (a) of this section) during the year following such taxable year shall be treated as amounts actually held at the end of the taxable year.

Generally, dividends on insurance policies are determined according to a formula which is fixed at the end of the calendar year but payment is only made on the policy anniversary date which may or may not fall within the same calendar year if the policy is in force on that date. Because of this almost universal industry-wide practice, the language in the proposed regulations at section 1.811–2(c) that limited the year-end dividend reserves only to amounts where there was an obligation "* * * fixed and not contingent * * *" was changed to "* * * under an obligation, which is either fixed or determined according to a formula which is fixed and not subject to change * * *" as quoted above in the final regulations.

This change in language in the regulations, however, does not have any effect upon the earning factors for a particular period which is taken into account in determining the dividend payable on the next anniversary date. In other words, the dividend according to a fixed formula must be based upon the divisible surplus at the end of the calendar year and the divisible surplus at that time can only be determined from the basis of experience factors which have already occurred. Thus, under the language of the final regulations only a determined amount may be included in the year-end dividend reserve, and an amount cannot be determined if its calculation depends upon experience factors after the close of the taxable year.

The replacement of the "fixed and not contingent" rule in the proposed regulations by the "determined according to a formula which is fixed" language in the final regulations was intended not to preclude additions to the year-end dividend reserve of "determined" amounts when there is a contingency beyond the control of the taxpayer affecting whether the determined amount will be paid. An example of such contingency is a participating policy which is contingent on renewal, or the policyholder being alive, on the anniversary date.

Accordingly, the reserve for dividends to policyholders does not include any amounts attributable to potential retrospective rate credits or refunds with respect to casualty insurance contracts expiring after the close of the taxable year. Thus, the taxpayer would be entitled to a deduction for a reserve for dividends to policyholders at the time it

meets the requirements of section 1.811–2(c) of the regulations on both the one-year and the three-year contracts. If on the three-year contract it meets those requirements annually it would be entitled to the deduction annually. On the other hand, in a case where the entire contract would have to expire before it could meet the requirements (where the loss and expense computations are cumulative), it would not meet the requirements of the regulations until the entire contract expired.

This Revenue Ruling is equally applicable to retrospective rate credits based on experience with respect to group life and group accident and health contracts written by life insurance companies.

SECTION 812.—OPERATIONS LOSS DEDUCTION

26 CFR 1.812–4: Operations loss carrybacks and operations loss carryovers. Rev. Rul. 67–36

A company which was authorized to do business as a fire and casualty insurance company more than 5 years prior to the taxable year in which it qualified as a life insurance company and in which it had a loss from operations was not a "new company" for such loss year within the meaning of section 812(e) of the Internal Revenue Code of 1954 and therefore is entitled to a 5-year carryover of its operations loss from such taxable year rather than the 8-year carryover provided by section 812(b)(1)(A)(iii) of the Code.

Advice has been requested whether a life insurance company was a "new company" for the taxable year 1965 for purposes of section 812(b) of the Internal Revenue Code of 1954, relating to operations loss carrybacks and carryovers, under the following circumstances.

The taxpayer was organized on January 1, 1959, and was authorized on that date to do business as a stock fire and casualty insurance company. For the years 1959 through 1964, the taxpayer was subject to tax under section 831 of the Code as an insurance company other than life or mutual.

On December 31, 1965, the taxpayer qualified as a "life insurance company" within the meaning of section 801 of the Code. The taxpayer had a loss from operations for the taxable year 1965.

Section 812(b)(1)(A) of the Code provides as follows:

> (b) OPERATIONS LOSS CARRYBACKS AND CARRYOVERS.—
> (1) YEARS TO WHICH LOSS MAY BE CARRIED.—
> (A) IN GENERAL.—The loss from operations for any taxable year (hereinafter in this section referred to as the "loss year") beginning after December 31, 1954, shall be—
> (i) an operations loss carryback to each of the 3 taxable years preceding the loss year,
> (ii) an operations loss carryover to each of the 5 taxable years following the loss year, and
> (iii) subject to subsection (e), if the life insurance company is a new company for the loss year, an operations loss carryover to each of the 3 taxable years following the 5 taxable years described in clause (ii).

Section 812(e) of the Code provides as follows:

> (e) NEW COMPANY DEFINED.—For purposes of this part, a life insurance company is a new company for any taxable year only if such taxable year begins not more than 5 years after the first day on which it (or any predecessor, if section 381(c)(22) applies or would have

applied if in effect) was authorized to do business *as an insurance company.* (Emphasis added.)

In the instant case, the taxpayer first qualified as a life insurance company in 1965, the year in which it had a loss from operations. However, the taxpayer was first authorized to do business "as an insurance company" on January 1, 1959.

Accordingly, the taxpayer in the instant case was not a "new company" for the taxable year 1965 within the meaning of section 812(e) of the Code and therefore is entitled to a 5-year carryover of its 1965 operations loss rather than the 8-year carryover provided by section 812(b)(1)(A)(iii) of the Code.

Subpart E.—Miscellaneous Provisions

SECTION 818.—ACCOUNTING PROVISIONS

26 CFR 1.818–2: Accounting provisions.

Treatment of losses incurred but not reported in computing gain or loss from operations of life insurance companies. See Rev. Rul. 67–129, page 170.

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26 CFR 1.818–4: Election with respect to life insurance reserves computed on preliminary term basis. Rev. Rul. 67–43

(Also Section 801; 1.801–4.)

A life insurance company which values its life insurance reserves on a preliminary term basis should not reduce its insurance in force and life insurance reserves by the amount of insurance in force and the reserves attributable to reinsurance ceded on a yearly renewable term basis before revaluing such reserves on the approximate revaluation basis pursuant to an election under section 818(c) of the Internal Revenue Code of 1954. The total life insurance reserves as revalued, however, must be reduced by the portion thereof attributable to the net value of risks reinsured on a yearly renewable term basis.

Advice has been requested whether a life insurance company, subject to the tax imposed by section 802 of the Internal Revenue Code of 1954, which values its life insurance reserves on a preliminary term basis is required to reduce its total insurance in force and life insurance reserves by the portion of each attributable to reinsurance ceded on a yearly renewable term basis before revaluing such reserves on the approximate revaluation basis pursuant to an election under section 818(c) of the Code.

Section 818(c) of the Code provides, in part, as follows:

(c) LIFE INSURANCE RESERVES COMPUTED ON PRELIMINARY TERM BASIS.—For purposes of this part (other than section 801), at the election of the taxpayer the amount taken into account as life insurance reserves with respect to contracts for which such reserves are computed on a preliminary term basis may be determined on either of the following bases:

(1) EXACT REVALUATION.—As if the reserves for all such contracts had been computed on a net level premium basis (using the same mortality

assumptions and interest rates for both the preliminary term basis and the net level premium basis).

(2) APPROXIMATE REVALUATION.—The amount computed without regard to this subsection—

(A) increased by $21 per $1,000 of insurance in force (other than term insurance) under such contracts, less 2.1 percent of reserves under such contracts, and

(B) increased by $5 per $1,000 of term insurance in force under such contracts which at the time of issuance cover a period of more than 15 years, less 0.5 percent of reserves under such contracts. * * *.

Section 1.818–4(d)(1) of the Income Tax Regulations provides, in part, that for the first taxable year for which the election under section 818(c) of the Code applies, a company making such election must revalue all of its life insurance reserves held with respect to contracts for which such reserves are computed on a preliminary term basis at the end of such taxable year on the basis elected under section 818(c) of the Code.

Section 1.801–4(a) of the regulations provides, in part, that reserves held by the company with respect to the net value of risks reinsured in other solvent companies (whether or not authorized) shall be deducted from the company's life insurance reserves. For example, if an ordinary life policy with a reserve of $100 is reinsured in another solvent company on a yearly renewable term basis, and the reserve on such yearly renewable term policy is $10, the reinsured company shall include $90 ($100 minus $10) in determining its life insurance reserves.

The amount of reserves attributable to the net value of risks reinsured is the amount of reserves established by the reinsurer, computed on a yearly renewable term basis, with respect to the risks reinsured. The life insurance reserves maintained by the ceding company on contracts for which such reserves are computed on a recognized preliminary term basis are not affected by the reserves set up by the reinsurer company for purposes of applying the revaluation formula under section 818(c)(2) of the Code. Although all or a part of the risks may be reinsured on a yearly renewable term basis, the ceding company continues to maintain life insurance reserves with respect to the entire amount of risks under the insurance policies. When the ceding company elects to revalue its reserves held on a preliminary term basis, the election applies to all such reserves. Regulations 1.818–4. The regulations make no provision for an exception for policies reinsured on a yearly renewable term basis even though the life insurance reserves held by the reinsured must, for Federal income tax purposes, be reduced for the portion attributable to the net value of the reinsured risks.

Accordingly, a life insurance company which values its life insurance reserves on a preliminary term basis should not reduce its insurance in force and life insurance reserves by the amount of insurance in force and the reserves attributable to reinsurance ceded on a yearly renewable term basis before revaluing such reserves on the approximate revaluation basis pursuant to an election under section 818(c) of the Code. The total life insurance reserves as revalued, however, must be reduced by the portion thereof attributable to the net value of risks reinsured on a yearly renewable term basis.

SECTION 819.—FOREIGN LIFE INSURANCE COMPANIES

26 CFR 1.819–2: Foreign life insurance companies.

Percentage to be used by foreign life insurance companies in computing income tax for the taxable year 1966, and estimated tax for the taxable year 1967. See T.D. 6913, page 543.

PART II.—MUTUAL INSURANCE COMPANIES (OTHER THAN LIFE AND CERTAIN MARINE INSURANCE COMPANIES AND OTHER THAN FIRE OR FLOOD INSURANCE COMPANIES WHICH OPERATE ON BASIS OF PERPETUAL POLICIES OR PREMIUM DEPOSITS)

SECTION 822.—DETERMINATION OF TAXABLE INVESTMENT INCOME

26 CFR 1.822–10: Amortization of premium and accrual of discount. Rev. Rul. 67–17

M, a mutual casualty insurance company taxable under section 821 of the Internal Revenue Code of 1954, purchased both taxable and tax-exempt bonds for cash through a registered broker. The bonds were purchased between interest dates at a price including unpaid interest accrued to the date of purchase. The bonds were not in default.

Held, under the facts presented, *M* should not include the amount which it paid for accrued interest as part of the cost of the bonds for purposes of computing the amount of bond premium to be amortized in accordance with the provisions of section 822(d)(2) of the Code. In addition, the purchased accrued interest attributable to the bonds represents a return of capital when received. Accordingly, none of the purchased accrued interest is includible in *M*'s taxable investment income.

PART III.—OTHER INSURANCE COMPANIES

SECTION 831.—TAX ON INSURANCE COMPANIES (OTHER THAN LIFE OR MUTUAL), MUTUAL MARINE INSURANCE COMPANIES, AND CERTAIN MUTUAL FIRE OR FLOOD INSURANCE COMPANIES

26 CFR 1.831–1: Tax on insurance companies (other than life or mutual), mutual marine insurance companies, and mutual fire insurance companies issuing perpetual policies. Rev. Rul. 67–206

(Also Sections 301, 832; 1.301–1, 1.832–1, 1.832–4.)

An association organized and controlled by a group of lawyers to provide title insurance on real property purchased by clients of member-lawyers is an insurance company, other than life or mutual,

taxable under section 831 of the Internal Revenue Code of 1954 and its taxable income is computed as provided in section 832 of the Code. Amounts withdrawn or withdrawable by its members are allocable in part to distributions within the meaning of section 301 of the Code and in part to commissions paid to members in the capacity of independent sales representatives obtaining business for the association.

Advice has been requested whether an association organized and controlled by a group of lawyers to provide title insurance on real property purchased by clients of member lawyers is an insurance company taxable under the provisions of section 831 of the Internal Revenue Code of 1954.

The association, hereinafter called the Fund, was organized under a declaration of trust by a group of lawyers who engage in the examination and approval of titles to real estate. The Fund is qualified and treated as an insurer under state law. The declaration of trust provides that the life of the Fund is to be perpetual. The declaration also provides in substance that the Fund will engage in the business of guaranteeing the opinions rendered by its members as to the status of real estate titles and will establish and maintain a fund for that purpose. Each member is authorized to issue on prescribed forms and within prescribed limits guarantees in the name of the Fund of every opinion rendered by him on real estate titles and the Fund guarantees to cover losses arising from defects in titles. In issuing such guarantees, the members perform the functions of independent sales representatives (independent contractors).

Membership in the Fund is open to any member of the State bar association in good standing, who is a resident of the State, and who is actively practicing law. Law partnerships may be members if all the partners are also members of the Fund. Membership in the Fund is not transferable. Such membership may be terminated upon withdrawal from practice in the State; loss of or withdrawal of membership from the State bar association; upon becoming a nonresident of the State; for failure to make payments due the Fund; or as a result of complaints based on fraud, negligence or incompetence.

Management and control of the Fund is vested in a board of trustees, elected by the members, which holds sole title to all of its assets. Each member must make an initial contribution in a stated amount when admitted to membership and, thereafter, he must contribute additional amounts for each guarantee issued to his clients based on the amount of risk to which he has committed the Fund, in accordance with the schedule established by it. The client of a member to whom a guarantee is issued is not liable for any contributions to the Fund.

A separate account for each member is maintained in the Fund to which is credited his initial or membership contribution, all of his additional contributions, amounts recovered on losses by subrogation or otherwise under guarantees issued by the member, plus a proportionate share of the investment income of the Fund. Chargeable against the account is a proportionate share of the administrative expenses (to the extent they exceed investment income) and losses for which a member has been found civilly liable because of negligence in making the title search. These items are first charged against the credits in the member's account, excluding his initial contribution, until such credits are used up, and then against his initial contribution.

If charges against a member's account exceed the total credits, the fund may be fully indemnified from a member's future contribution. Losses arising under a guarantee for which the member is not found civilly liable are borne entirely by the Fund.

No member may withdraw his initial contribution so long as he remains a member. However, the member may withdraw all or part of the net credit balance (the balance remaining after all credits and charges have been offset against each other, exclusive of the member's initial contribution) which has existed for a specified number of years before application for withdrawal was made and which is not then subject to any outstanding claims.

The additional contributions to the Fund are similar in amount to the rate of premiums charged by conventional title insurance companies. Moreover, the board of trustees has adopted rules under which the Fund may reinsure all or part of any title risk it assumes and may reinsure title risks of other insurers.

Section 1.801–3(a)(1) of the Income Tax Regulations provides, in part, that though its name, charter powers, and subjection to state insurance laws are significant in determining the nature of the business which a corporation is authorized and intends to carry on, the character of the business actually done in the taxable year determines whether it is taxable as an insurance company under the Internal Revenue Code of 1954.

In the instant case, the organization and operation of the Fund are unusual in that the lawyer rendering an opinion on the status of his client's real estate title is also the representative of the Fund issuing the guarantee in the name of the Fund. In addition, the members, not the clients, have the obligation of making the contributions to the Fund. Nevertheless, since the client is protected against loss to the same extent as if he obtained insurance from an independent insurance company, and since the fees he pays the member for legal services include amounts representing all or a part of the additional contributions which the member pays to the Fund with respect to this indemnification, it is clear that the Fund is actually an insurer and the client the insured party.

While the members of the Fund may have organized it in part to establish a financial reserve with respect to their professional liability relating to title opinions, the fact that their interest in the Fund is reduced *pro tanto* for losses, for which they are civilly liable, indicates that the members do not receive protection in an insurance sense. Furthermore, the initial contributions paid by a lawyer to enable him to become a member and to participate in the business activity of the Fund are not returnable until termination of his membership. Such amounts, therefore, are more appropriately classified as contributions to capital rather than as a premium paid by the members to insure themselves. Compare the assessments involved in *874 Park Avenue Corp.* v. *Commissioner*, 23 B.T.A. 400 (1931), acquiescence, C.B. X–2, 21 (1931), with the membership fees involved in *Affiliated Government Employees' Distributing Company* v. *Commissioner*, 322 F. 2d 872 (1963), certiorari denied, 376 U.S. 950 (1963). Therefore, it is apparent that the Fund was formed to engage in the title insurance business.

Accordingly, the Fund is an insurance company other than life or mutual which is subject to tax under section 831 of the Code. Therefore, its taxable income should be computed as provided under section 832 of the Code. In computing taxable income under section 832 of the Code, the additional contributions made by a member for guarantees issued by the member to his clients in the name of the Fund are premiums paid for title insurance on behalf of his clients and must be taken into account as such by the Fund as provided in section 832(b)(4) of the Code. "Losses incurred" and "expenses incurred" are to be subtracted from the amount found to constitute "premiums earned" under section 832(b)(4) of the Code in determining "underwriting income" in accordance with section 832(b)(3) of the Code.

Further, a portion of the amounts withdrawn, or which become withdrawable, by the members from their net credit balance existing for the prescribed number of years before application for withdrawal is made, not to exceed a sum which would be a reasonable return on the existing aggregate of the members' capital amounts, is to be treated as distributions under section 301 of the Code, and is not deductible by the Fund. The remaining amounts which are withdrawn or become withdrawable by members, which are not allocable to distributions to shareholders within the meaning of section 301 of the Code, are deductible by the Fund as commissions paid to the members in their capacity as independent sales representatives (independent contractors).

SECTION 832.—INSURANCE COMPANY TAXABLE INCOME

26 CFR 1.832–1: Gross income.

Liability for retrospective rate credits. See Rev. Rul. 67–180, page 172.

Computation of gross income of an association organized and controlled by a group of lawyers for the purpose of providing title insurance on real property purchased by their clients. See Rev. Rul. 67–206, page 179.

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26 CFR 1.832–4: Gross income.

Liability for retrospective rate credits. See Rev. Rul. 67–180, page 172.

Computation of gross income of an association organized and controlled by a group of lawyers for the purpose of providing title insurance on real property purchased by their clients. See Rev. Rul. 67–206, page 179.

SUBCHAPTER N.—TAX BASED ON INCOME FROM SOURCES WITHIN OR WITHOUT THE UNITED STATES

PART I.—DETERMINATION OF SOURCES OF INCOME

SECTION 863.—ITEMS NOT SPECIFIED IN SECTION 861 OR 862

26 CFR 1.863–6: Income from sources within a foreign country or possession of the United States. Rev. Rul. 67–194

The income of a foreign corporation resulting from the mining and processing of sylvinite at the mine site within a foreign country and the sale of the product in bulk in the United States, through an independent commission agent, without further treatment or processing outside the foreign country, is gross income from sources without the United States.

Advice has been requested whether income of a foreign corporation is gross income from sources without the United States under the circumstances described below.

A foreign corporation holds a mining concession in its country of incorporation. It extracts sylvinite from the mine and processes it at the mine site by the flotation method. The resulting product is dried muriate of potash suitable for commercial use. The product is transported in bulk to the United States where it is stored in warehouses. There is no processing, packaging, or other treatment of the product outside the foreign country, and the product is sold in bulk in the same form that it enters the United States.

The foreign corporation does not directly engage in any selling activities in the United States, but markets the product through an independent commission agent in the United States. The commission agent is authorized to determine prices and to negotiate and conclude sales. Title passes in the United States upon sale to the consumer.

Section 1.863–1(b) of the Income Tax Regulations provides, in relevant part, that the income derived from the ownership or operation of any mine located within the United States, and from the sale by the producer of the products thereof within or without the United States, shall ordinarily be included in gross income from sources within the United States.

Section 1.863–6 of the regulations provides that the principles applied in sections 1.861–1 to 1.863–5 of the regulations, inclusive, for determining the gross and the taxable income from sources within and without the United States shall be applied, for purposes of the income tax, in determining the gross and the taxable income from sources within and without a foreign country, or within and without a possession of the United States.

The effect of section 1.863–6 of the regulations is to make the converse of the rule set forth in section 1.863–1(b) of the regulations applicable.

Accordingly, under the circumstances described, the foreign corporation's income resulting from the mining and processing of sylvinite

within a foreign country and the sale of the product in the United States, through an independent commission agent, without further treatment or processing outside the foreign country, is gross income from sources without the United States.

PART II.—NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

Subpart A.—Nonresident Alien Individuals

SECTION 872.—GROSS INCOME

26 CFR 1.872–2: Exclusions from gross income of nonresident alien individuals.

Whether Lebanon satisfies the equivalent exemption requirements of section 883 of the Code. See Rev. Rul. 67–183, below.

Subpart B.—Foreign Corporations

SECTION 883.—EXCLUSIONS FROM GROSS INCOME

26 CFR 1.883–1: Exclusions from gross income of foreign corporations. Rev. Rul. 67–183
(Also Section 872; 1.872–2.)

Under Article 5(f), Chapter II, of the Lebanese Income Tax Law (Presidential Decree, No. 144 of June 12, 1959) the Republic of Lebanon has exempted foreign shipping and airline carriers from Lebanese income tax on a reciprocal basis. Accordingly, Lebanon satisfies the equivalent exemption requirements of section 883 of the Internal Revenue Code of 1954.

Subpart C.—Miscellaneous Provisions

SECTION 894.—INCOME AFFECTED BY TREATY

26 CFR 1.894–1: Income exempt under treaty.

Stock ownership of a subsidiary corporation for purposes of the United States-Swiss Confederation Income Tax Convention. See Rev. Rul. 67–143, page 425.

PART III.—INCOME FROM SOURCES WITHOUT THE UNITED STATES

Subpart A.—Foreign Tax Credit

SECTION 901.—TAXES OF FOREIGN COUNTRIES AND OF POSSESSIONS OF UNITED STATES

26 CFR 1.901–1: Allowance of credit for taxes. Rev. Rul. 67–187
(Also Sections 61, 164; 1.61–1, 1.164–1.)

The Special Refundable Tax on certain corporations and trusts imposed by the Dominion of Canada does not fall within the United States concept of an income, war profits, or excess profits tax for the purpose of either section 164(a)(3) or section 901(b)(1) of the Internal Revenue Code of 1954, and is therefore not deductible in computing taxable income or creditable against United States income tax.

Refunds of the Special tax are not includible in the taxpayer's gross income. However, interest received in connection with such refunds must be included in gross income pursuant to section 61 of the Code.

Advice has been requested whether the Special Refundable Tax on certain corporations and trusts imposed by the Dominion of Canada falls within the United States concept of an income, war profits, or excess profits tax for the purpose of either section 164(a)(3) or section 901(b)(1) of the Internal Revenue Code of 1954. Inquiry has also been made whether refunds of such tax and interest received in connection with such refunds are includible in gross income under section 61 of the Code.

The Special Refundable Tax was enacted by Canada on July 15, 1966. This five-percent tax is imposed, for the tax period commencing May 1, 1966, and ending October 31, 1967, on the "cash profits" (after tax profits, plus certain adjustments). Refunds of the tax, with interest at the rate of five percent per annum, are to be made by the Canadian Government within 18 to 36 months after the later of the due date or the date of payment of such tax.

Section 901(b)(1) of the Code allows as a credit against United States income tax under certain circumstances, the amount of any income, war profits, and excess profits taxes paid or accrued during the taxable year to a foreign country, subject to the applicable limitations of section 904 of the Code.

Except as otherwise provided in section 164 of the Code, section 164(a)(3) allows a deduction for the amount of foreign income war profits, and excess profits taxes paid or accrued during the taxable year.

The tax in question is in the nature of a compulsory loan, repayable with interest within a specified time. Refund of the tax is essentially the repayment of a loan by the Government of Canada to the taxpayer. It has been consistently held that such a tax is not a foreign tax which may be credited against Federal income tax under section 901 of the Code. See I.T. 3624, C.B. 1943, 438; Rev. Rul. 59–70, C.B. 1959–1, 186; and Rev. Rul. 60–56, C.B. 1960–1, 274.

Accordingly, the Special Refundable Tax imposed by Canada is not an income, war profits, or excess profits tax within the meaning of either section 901(b)(1) or section 164(a)(3) of the Code and is neither allowable as a credit against United States income tax under section 901(a) of the Code nor deductible under section 164(a)(3) of the Code.

Also, refunds of the tax by Canada are not includible in gross income. However, interest received in connection with such refunds must be included in gross income pursuant to section 61 of the Code.

Subpart B.—Earned Income of Citizens of United States

SECTION 911.—EARNED INCOME FROM SOURCES WITHOUT THE UNITED STATES

26 CFR 1.911–1: Earned income from sources without the United States attributable to services performed before 1963.

Determination of source of a partner's distributive share of earned income of the partnership. See Rev. Rul. 67–158, page 188.

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26 CFR 1.911–2: Earned income from sources without the United States attributable to services performed after 1962.

Rev. Rul. 67–52

The United States does not consider the Antarctic region (comprised of the land area, the permanent ice sheets, and the adjacent waters) to be under the sovereignty of any government. It is, therefore, not a foreign country for the purposes of section 911(a) of the Internal Revenue Code of 1954. See sections 1.911–1(a)(9) and 1.911–1(b)(7) of the Income Tax Regulations.

Rev. Rul. 67–87

Compensation received by a United States citizen for services performed in a foreign country, under a contract with the foreign government which required him to render advisory services for a period of two years, is not an amount paid by the United States or any agency thereof within the meaning of section 911(a)(2) of the Internal Revenue Code of 1954, even though the project on which he worked was financed in part by an agency of the United States. Therefore, such compensation is excludable from the gross income of the taxpayer, to the extent provided by section 911(c)(1) of the Code, if he otherwise meets the requirements for exemption under section 911(a)(2) of the Code.

Advice has been requested whether compensation received by a United States citizen for services performed after 1962 in a foreign country under a contract with the government of that country, which required him to render advisory services for a period of two years, is excludable from gross income under section 911(a)(2) of the Internal Revenue Code of 1954.

The contract in this case was executed pursuant to a project agreement between an agency of the United States and the foreign government which provided that a civil service expert would be recruited and employed under an individual contract with the foreign government to serve as a staff adviser to an official of the foreign government. The project was financed through a contribution of $40x$ dollars from the U.S. agency and a contribution of $16x$ dollars from the foreign government.

Under the terms of the employment contract between the United States citizen and the foreign government, the United States citizen was paid a salary of $14x$ dollars a year and related emoluments, including transportation expenses for himself and his dependents, leave benefits, housing accommodations, medical and dental care, and a bonus on termination of his services. The foreign government paid him from its own funds a salary of $4x$ dollars a year, the basic rate for a special official of the foreign government. The difference between that paid for a special official and the salary stipulated in the contract was paid by the foreign government out of the funds contributed by the U.S. agency under the project agreement. However, the U.S. agency incurred no obligation to pay any part of the salary stipulated in the contract and would not have paid any part of it if the foreign government had failed to live up to its agreement. The taxpayer was required to pay all taxes and fees imposed by the laws of the foreign country.

The contract provided that the first six months should be a probationary period. Either party could terminate the contract by giving one month's notice. The foreign government could, for cause, terminate the contract with or without 30 days' notice, in which event the employee could be subject to loss of entitlement to transportation expenses back to the United States and loss of the right to all or part of the bonus payable on termination of his services. The interpretation of the provisions of the contract was to be based on the laws of the foreign country.

Section 911 of the Code provides, in part, as follows:

> (a) GENERAL RULE.—The following items shall not be included in gross income and shall be exempt from taxation under this subtitle:
>
> * * * * * * *
>
> (2) PRESENCE IN FOREIGN COUNTRY FOR 17 MONTHS.—In the case of an individual citizen of the United States who during any period of 18 consecutive months is present in a foreign country or countries during at least 510 full days in such period, amounts received from sources without the United States (except amounts paid by the United States or any agency thereof) which constitute earned income attributable to services performed during such 18-month period. The amount excluded under this paragraph for any taxable year shall be computed by applying the special rules contained in subsection (c). * * *.

The facts in this case are distinguishable from those in *Commissioner* v. *Eldon E. Wolfe, et ux.*, U.S. Court of Appeals, District of Columbia Circuit, 361 F. 2d 62 (1966), reversing 43 T.C. 572 (1965), certiorari denied, 385 U.S. 838 (1966). The *Wolfe* case involved an employee of the U.S. Bureau of Public Roads who was assigned to work on a highway project of the Government of Iran, which had entered into a credit agreement with the Export-Import Bank in Washington under which the proceeds of a loan to Iran were to be used exclusively to finance the road project. The court of appeals held that the amounts

he received as salary were "amounts paid by the United States or an agency thereof." This decision was based on the following salient features: The taxpayer was an employee of the United States, maintaining unique status as such and receiving unique benefits as such; the United States had the primary and sole obligation to pay his salary, and his rights were only against the United States; and a U.S. agency actually executed and delivered the salary checks to him. The court further noted that the taxpayer was exempt from all income taxes, duties, fees and customs charges of Iran; that he received a 10-percent increment over his base salary as a foreign post differential; and that there were financial burdens on the U.S. Government which were not compensable by Iran.

The facts in this case show that the taxpayer was an employee of the foreign government with respect to services performed under the contract. That government exercised complete control over him in the performance of such services, and the U.S. agency exercised no control over the employee. The foreign government had the primary and sole obligation to pay his salary. The project agreement is merely a grant on the part of the U.S. agency to enable the foreign government to hire experts at the rate of compensation which they would receive for similar services performed in this country. The taxpayer was subject to all taxes and fees imposed by the laws of the foreign country.

Under these circumstances, the compensation received by the United States citizen for advisory services performed in the foreign country is not an amount paid by the United States or any agency thereof within the meaning of section 911(a)(2) of the Code. Therefore, such compensation is excludable from the gross income of the taxpayer, to the extent provided by section 911(c)(1) of the Code, if he otherwise meets the requirements for exemption under section 911(a)(2) of the Code.

(Also 1.911–1.)
(Also Section 702; 1.702–1.)

Rev. Rul. 67–158

A taxpayer, a United States citizen, is a resident partner in charge of a foreign branch of a United States partnership and the partnership agreement does not provide that he is to receive his share of partnership income from a specific source. *Held*, only that portion of his distributive share of partnership income which the partnership's earned income from foreign sources bears to its total earned income is earned income "from sources without the United States" for the purpose of exemption from Federal income tax under section 911(a) of the Internal Revenue Code of 1954.

Another partnership is engaged, in the United States and abroad, in a business in which both personal services and capital are material income-producing factors. The partnership agreement provides that a partner assigned to a foreign branch is to receive his entire distributive share of partnership income only from the profits of the foreign branch with which he is associated. The principal purpose of such provision is not the avoidance or evasion of any tax imposed by subtitle A of the Code. *Held*, that partner's entire distributive share of partnership income is considered income from sources without the United States, and a reasonable allowance as compensation for personal services rendered by the taxpayer, not in excess of 30 percent of his distributive share of the net profits, is "earned income" from sources without the United States for purposes of section 911(b) of the Code.

Advice has been requested with respect to the nature of the taxpayers' distributive shares of partnership income received under the circumstances described below.

Situation (1). Taxpayer *A*, a citizen of the United States and general partner in an accounting firm, rendered his personal services during a period of several consecutive years within *X*, a foreign country, as resident partner in charge of the *X* office of the partnership. He qualified as a "bona fide resident of a foreign country" within the meaning of section 911(a) of the Internal Revenue Code of 1954 for the entire period.

The partnership is a firm of certified public accountants with offices in the major cities of the United States and in a number of foreign countries. The income of the partnership is derived from sources within and without the United States. The partnership agreement provides that the interest of each member of the firm in the firm capital and in its net profits and his obligations to meet its net losses, if any, shall be proportionate to his contribution to the firm capital. The partnership agreement does not provide that any part of taxpayer's distributive share of net partnership income is to be charged to the profits of the foreign office, nor does it provide for guaranteed payments to any partner. In each of the years, taxpayer received his distributive share of the net partnership income in accordance with the terms of the partnership agreement.

Situation (2). Taxpayer *B* is a citizen of the United States and a general partner in a firm engaged in the general brokerage and investment banking business conducted at its principal office in New York and other cities throughout the United States and the world. He is in charge of the partnership branch office in *Y*, a foreign country, and qualifies as a bona fide resident of *Y* within the meaning of section 911 (a) of the Code for all the years herein involved.

The partnership agreement provides that each general partner shall be paid an annual salary at a rate fixed by the Executive Committee, and that he shall share in the net profits or losses of the partnership (computed after deducting salaries paid to the partners) in accordance with his percentage interest as fixed by the partnership agreement. The agreement provides that the salary of a general partner assigned to a foreign branch of the partnership shall be paid only out of the profits of the branch to which he is assigned. Under the terms of the agreement, such a partner may share only in the profits of the branch with which he is associated, even though his maximum share may be measured by a percentage of the net profits of the partnership derived from all sources. Furthermore, the sum of the salary and the share of partnership net profits paid or allocated to a partner residing in a foreign country for any year may not exceed the profits attributable to his foreign branch for that year. If this limitation should, for any year, reduce the salary paid or net profits allocable to a partner, the resulting deficit shall be paid or allocated to him in a succeeding year, to the extent that the profits of his foreign branch for the succeeding year are sufficient to permit this action. Since the amount of the so-called "salary" payments is determined with reference to partnership income, these payments are distributive share income to the recipient rather than guaranteed payments within the scope of section 707(c) of the Code.

Section 911(a)(1) of the Code provides that a United States citizen who is a bona fide resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year is exempt from United States income tax upon amounts received from sources without the United States (except amounts paid by the United States or any agency thereof) which constitute earned income attributable to services performed during such uninterrupted period.

Section 702(a) of the Code provides that each partner in a partnership "shall take into account separately his distributive share" of a number of specified items including "(8) other items of income, gain, loss, deduction, or credit, to the extent provided by regulations prescribed by the Secretary or his delegate." Section 702(b) of the Code states that the character of any item of income, gain, loss, deduction, or credit included in a partner's distributive share under paragraphs (1) through (8) of subsection (a) shall be determined as if such item were realized directly from the source from which realized by the partnership. See also section 1.702–1(b) of the Income Tax Regulations.

Section 1.702–1(a)(8)(ii) of the regulations provides, in part, that under section 911(a) of the Code, if any partner is a bona fide resident of a foreign country who may exclude from his gross income the part of his distributive share which qualifies as earned income as defined in section 911(b) of the Code, the earned income of the partnership for all partners must be separately stated.

Section 911(b) of the Code defines the term "earned income" to mean wages, salaries, or professional fees, and other amounts received as compensation for personal services actually rendered. However, if a taxpayer is engaged in a trade or business in which both personal services and capital are material income-producing factors, "earned income" is a reasonable allowance as compensation for services rendered by the taxpayer, limited under section 911(b) of the Code, to not more than 30 percent of his share of the net profits of the trade or business.

The earned income of a partnership is an item of income included in section 702(a)(8) of the Code. Under section 702(b) of the Code and section 1.702–1(b) of the regulations, the character of a partner's distributive share of an item of partnership income is to be determined "as if such item were realized directly from the source from which realized by the partnership."

Capital is not a material income-producing factor in an accounting partnership, as referred to in *Situation (1)*. Therefore, each partner's distributive share of that portion of partnership income representing compensation for services rendered by the partnership is "earned income." See section 1.911–1(a)(4) of the regulations. However, under section 702(b) of the Code and section 1.702–1(b) of the regulations, regardless of where the individual partner works, his earned partnership income is considered to be from foreign sources only to the extent of his proportionate share of the total earned income of the partnership which is derived from such sources. See *Craik* v. *United States*, 31 F. Supp. 132 (1940).

Accordingly, taxpayer *A*'s distributive share of the partnership earned income in *Situation (1)* is earned income "from sources without the United States" for the purpose of section 911(a) of the Code,

only in the ratio that the earned income of the partnership from foreign sources bears to its total earned income.

In *Situation (2)*, taxpayer *B* is a member of an investment and banking partnership in which both personal services and capital are material income-producing factors. Since the partnership agreement provides that taxpayer's distributive share is to be paid and distributed, only to the extent that the profits of the foreign branch are sufficient therefor, his entire distributive share of partnership income is considered income from foreign sources, if the principal purpose of such provision is not the avoidance or evasion of any tax imposed by Subtitle A of the Code. See section 704(b)(2) of the Code. In the event that the principal purpose of the provision is not such avoidance or evasion, then a reasonable allowance as compensation for personal services rendered by the taxpayer, not in excess of 30 percent of his distributive share of the net profits of the trade or business, is considered earned income from sources without the United States for purposes of section 911(b) of the Code.

Subpart F.—Controlled Foreign Corporations

SECTION 956.—INVESTMENT OF EARNINGS IN UNITED STATES PROPERTY

26 CFR 1.956-2: Definition of United States property. Rev. Rul. 67-130

Section 956(b)(1)(A) of the Internal Revenue Code of 1954 and section 1.956-2(a)(1)(i) of the Income Tax Regulations define one class of United States property as "tangible property located in the United States." *Held*, such classification does not include property which is in transit from a foreign point of origin to a foreign destination and which is being transshipped through, or temporarily stored under customs bond in the United States.

SUBCHAPTER O.—GAIN OR LOSS ON DISPOSITION OF PROPERTY

PART I.—DETERMINATION OF AMOUNT OF AND RECOGNITION OF GAIN OR LOSS

SECTION 1001.—DETERMINATION OF AMOUNT OF AND RECOGNITION OF GAIN OR LOSS

26 CFR 1.1001-1: Computation of gain or loss. (Also Sections 1002, 1031; 1,1002-1, 1.1031(a)-1.) Rev. Rul. 67-66

Gain or loss from the exchange of vessels pursuant to section 510(i) of the Merchant Marine Act of 1936, 46 U.S.C. 1160, as amended by Public Law 86-575, 74 Stat. 312, and Public Law 89-254, 79 Stat. 980, is recognized under section 1002 of the Internal Revenue Code of 1954.

In determining fair market value for Federal income tax purposes, the fair and reasonable value assigned to the vessels by the Maritime Administration or the Secretary of Commerce pursuant to section 510(i) of the Merchant Marine Act is not controlling but will be taken into consideration.

Advice has been requested concerning the tax treatment to be given gains or losses on the exchange of certain vessels under section 510(i) of the Merchant Marine Act of 1936, 46 U.S.C. 1160, as amended, 46 U.S.C. 1160 (Supp. I, 1965).

The taxpayer, a commercial shipper, exchanged two of its C–3 freighters for two C–4 vessels owned by the United States. The Maritime Administration, hereinafter referred to as "MARAD," valued both the two C–3 freighters and the two C–4 freighters. In accordance with condition "(4)" of section 510(i) of the act, below, no money was paid to the taxpayer upon the exchange of the vessels.

On the exchange transaction, the taxpayer in accordance with condition "(6)" of the act, below, reported the difference between the value assigned the C–4 vessels by "MARAD" and the adjusted bases of the C–3 freighters.

Section 510(i) of the Merchant Marine Act of 1936, which was added by Public Law 86–575, July 5, 1960, and was amended by Public Law 89–254, October 10, 1965, authorizes the Secretary of Commerce to acquire war-built vessels in exchange for more modern or efficient war-built vessels owned by the United States under certain conditions, including the following:

(1) The traded-in vessel shall have been owned by a citizen or citizens of the United States, documented under the laws of the United States, and shall not have been operated with operating-differential subsidy under subchapter VI of this chapter by the applicant or any affiliate of the applicant for at least three years immediately prior to the date of the exchange.

(2) The fair and reasonable value of the traded-in and traded-out vessels shall be determined, as of the date of the exchange, pursuant to subsection (d) of this section.

(3) In determining said fair and reasonable value the Secretary shall consider the cost of placing the vessels in class with respect to hull and machinery, and, with respect to any traded-out vessels of the military type, the cost of reconverting and restoring such vessels for normal operation in commercial service * * *.

(4) The value of the traded-out vessel which is in excess of the value of the traded-in vessel or vessels shall be paid in cash at the time of the exchange. No payment shall be made by the United States to the owner of a traded-in vessel in connection with any exchange under this subsection.

* * * * * * *

(6) Neither subsection (e) of this section, nor the nontaxable exchange provisions of the Internal Revenue Code, shall apply to the exchange of vessels under this subsection.

* * * * * * *

Subsection (d) of the act, referred to above, states that in determining the fair and reasonable value of the obsolete vessel (traded-in vessel) the Maritime Administration or the Secretary of Commerce shall consider: (1) The scrap value of the obsolete vessel both in American and in foreign markets; (2) the depreciated value based on a 20- or 25-year life, whichever is applicable; and (3) the market value thereof for operation in the world trade or in the foreign or domestic trade of the United States. Subsection (e) of the act, also referred to above, provides for the nonrecognition of gain for Federal income tax purposes in the case of certain other transfers of obsolete vessels to the

Maritime Administration or the Secretary of Commerce under section 510 of the act.

Three questions have been presented. The first is whether gain or loss on the exchange of certain vessels for more efficient ones under the provisions of section 510(i) of the Merchant Marine Act of 1936, as amended, will be recognized as provided for in section 1002 of the Internal Revenue Code of 1954. Assuming the first is answered in the affirmative, the second question is whether the method of computing that gain or loss is the difference between the fair market value of the vessels received and adjusted bases of those given up. The last question is whether the value assigned by "MARAD" will be considered by the Service in determining the amount of gain or loss under section 1001(a) of the Code.

Section 1001 of the Code provides the following:

(a) COMPUTATION OF GAIN OR LOSS.—The gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis provided in section 1011 for determining gain, and the loss shall be the excess of the adjusted basis provided in such section for determining loss over the amount realized.

(b) AMOUNT REALIZED.—The amount realized from the sale or other disposition of property shall be the sum of any money received, plus the market value of the property (other than money) received.

Section 1002 of the Code states the following:

Except as otherwise provided in this subtitle, on the sale or exchange of property the entire amount of the gain or loss, determined under section 1001, shall be recognized.

Section 1031 of the Code provides, in part, as follows:

(a) NONRECOGNITION OF GAIN OR LOSS FROM EXCHANGES SOLELY IN KIND.—No gain or loss shall be recognized if property held for productive use in trade or business or for investment (not including stock in trade or other property held primarily for sale, nor stocks, bonds, notes, choses in action, certificates of trust or beneficial interest or other securities or evidences of indebtedness or interest) is exchanged solely for property of a like kind to be held either for productive use in trade or business or for investment.

Gain or loss is recognized in the instant case, although the transaction would otherwise qualify as a nontaxable exchange under section 1031 of the Code, because section 510(i)(6) of the Merchant Marine Act of 1936, as amended, specifically states that the nontaxable exchange provisions of the Internal Revenue Code do not apply to the exchange of vessels under this subsection of the act. Further support for this result is found in Senate Report 1275, 86th Congress which states: "The changes in language in subsection (6) of the bill are intended to assure that any capital gain on the traded-in vessel will be recognized for tax purposes and that a tax will be paid by the operator at the time of exchange." The changes in language referred to are incorporated in the act set out above.

Except for section 510(i)(6) of the act which precludes the application of the nontaxable exchange provisions of the Internal Revenue Code to an exchange of vessels under section 510(i), the act does not otherwise alter the application of section 1002 of the Code to the gain or loss recognized on the exchange. Under the provisions of section 1001(a) of the Code, which governs the computation of gain or loss for purposes of section 1002, the gain or loss from the exchange is the difference between the amount realized by the taxpayer on account of the

C–4 freighters received and the adjusted bases of the C–3 freighters transferred.

Section 510(i) of the act requires the Maritime Administration or the Secretary of Commerce to determine the "fair and reasonable value" of the vessels involved in the exchange. This valuation is not controlling but will be taken into consideration in determining fair market value for purposes of section 1001(b) of the Code.

Accordingly, gain or loss on the exchange of vessels under section 510(i) of the Merchant Marine Act of 1936 is recognized in accordance with section 1002 of the Code. Such gain or loss is determined under the provisions of section 1001(a) of the Code. The value assigned to the vessels by "MARAD" is not controlling but will be taken into consideration in determining fair market value for Federal income tax purposes.

(Also Section 1012; 1.1012–1.) Rev. Rul. 67–74

Under the terms of the instrument which created a trust, the trustee is required to distribute currently to the beneficiary all of the income of the trust for each year. For the taxable year under consideration, the trustee had sufficient cash on hand to enable him to distribute in cash all of the trust income for that year which he was required to distribute to the beneficiary. However, in accordance with an agreement with the beneficiary, the trustee distributed, in lieu of cash, stock which was a part of the trust corpus and which had a fair market value equal to the amount of trust income for that year required to be distributed to the beneficiary. The value of the stock so distributed exceeded the basis of the stock in the hands of the trust.

Held, for Federal income tax purposes, the transaction is treated as though the trustee had actually distributed to the beneficiary cash in an amount equal to the trust income required to be distributed currently, and the beneficiary had purchased the stock from the trustee with cash. The trust is allowed a deduction under section 651(a) of the Internal Revenue Code of 1954, limited by the distributable net income of the trust, for the amount of income required to be distributed currently, and the beneficiary must report a like amount in gross income under section 652(a) of the Code. The instant transfer, involving stock having a fair market value equal to the trust income for the year in question which the trustee was required to distribute to the beneficiary, resulted in a capital gain to the trust equal to the difference between the basis of the stock in the hands of the trustee and the amount of the obligation satisfied by the transfer. (I.T. 3316, C.B. 1939–2, 186.) Further, the basis of the stock in the hands of the beneficiary is his cost, that is, the price he is deemed to have paid for it. See section 1012 of the Code.

SECTION 1002.—RECOGNITION OF GAIN OR LOSS

26 CFR 1.1002–1: Sales or exchanges.

Recognition of gain on the exchange of shipping vessels under section 510(i) of the Merchant Marine Act of 1936, as amended. See Rev. Rul. 67–66, page 191.

SECTION 1012.—BASIS OF PROPERTY—COST

26 CFR 1.1012–1: Basis of property.

Basis of property distributed in lieu of cash as part of income required to be distributed currently by a trustee to a beneficiary. See Rev. Rul. 67–74, page 194.

Shares of stock donated to a charitable organization and reacquired from the organization at fair market value. See Rev. Rul. 67–178, page 64.

SECTION 1014.—BASIS OF PROPERTY ACQUIRED FROM A DECEDENT

26 CFR 1.1014–1: Basis of property acquired from a decedent. Rev. Rul. 67–96

(Also Section 1234; 1.1234–1.)

The unadjusted basis of property acquired by an individual from a decedent's estate through exercise of an option, provided for in the will of the decedent, to purchase the property at an amount below its fair market value, is the sum of (1) the basis of the option under section 1014(a) of the Internal Revenue Code of 1954, plus (2) the option price. The provisions of section 1234 of the Code which allow a loss on the failure to exercise an option are not applicable on nonexercise of a testamentary option.

Advice has been requested regarding the proper basis of certain shares of corporate stock acquired by an individual through exercise of an option to purchase the shares from his father's estate for an amount far below the fair market value of the shares. The option was created under the will of his father and bequeathed to him.

Section 1014(a) of the Internal Revenue Code of 1954 provides a general rule that the basis of property in the hands of a person acquiring the property from a decedent or to whom the property passed from a decedent shall, if not sold, exchanged or otherwise disposed of before the decedent's death by such person, be the fair market value of the property at the date of the decedent's death, or, in the case of an election under either section 2032 of the 1954 Code or section 811(j) of the 1939 Code where the decedent died after October 21, 1942, its value at the applicable valuation date prescribed by those sections.

Because the option was not an item of property held by the decedent at the time of his death the question arose whether it could acquire a basis under the provisions of section 1014(a) of the Code. Also, in view of certain language in *Helvering* v. *San Joaquin Fruit & Investment Co.*, 297 U.S. 496 (1936), Ct. D. 1098, C.B. XV–1, 196 (1936), it was asked whether the basis of the option could be added to the option price to establish the basis of the property purchased on exercise of the option.

With regard to the first question, it appears that a valuable option created by will does have a basis in the hands of the optionee. In the

case of *W. Winnie Cadby* v. *Commissioner*, 24 T.C. 899, (1955), acquiescence C.B. 1956–1, 3, the Tax Court of the United States made its position clear in regard to the basis of testamentary options. The case involved the sale of an option created by the will of the taxpayer's father and left to him. The court stated that the option was property which had value and it "acquired a basis by virtue of its transmission by inheritance" equal to "its fair market value at the date of death."

Compare *Helen S. Delone* v. *Commissioner*, 6 T.C. 1188 (1946), where the decedent bequeathed 2,544 shares of stock to his wife, subject to an option granted in the will to three key employees to purchase the stock from the wife at a price of $100 per share. The stock had been included in the decedent's estate for Federal estate tax purposes at a value of $125 per share and the wife claimed this amount as her basis for the stock. The Tax Court recognized "that the option constituted a valuable, though contingent and personal, bequest to the 3 individuals" and concluded that the wife was only entitled to a basis of $100 per share since the valuation for Federal estate tax was of unencumbered stock.

See also *United States* v. *C. M. Land*, 303 F. 2d 170 (1962), certiorari denied, 371 U.S. 862, in which the U.S. Court of Appeals for the Fifth Circuit in discussing the effect of a testamentary option upon the value of property includible in the gross estate, stated that "such a case does not present a problem of changing value; the interest simply is split and passes to different persons, but its total value is unaltered, and that is the value included in the estate."

In view of the foregoing, the testamentary option in the subject case is treated as having a basis computed under the provisions of section 1014(a) of the Code. However, if the option had been allowed to lapse, it would have been considered to have been disclaimed or renounced and, therefore, the loss provisions of section 1234 of the Code would not be applicable.

With regard to whether the basis of an option created in a will can be added to the option price to establish the basis of the property purchased on exercise of the option, it is the position of the Internal Revenue Service that those cases, such as *J. Gordon Mack* v. *Commissioner*, 148 F. 2d 62 (3d Cir. 1945), which rely on the *San Joaquin* case for the proposition that the basis of a testamentary option cannot be added to the option price to establish the basis of the stock acquired through exercise of the option, involved a misplaced reliance on *San Joaquin* for this proposition. See *John J. Kalbac* v. *Commissioner*, 298 F. 2d 251 at 254 (8th Cir. 1962).

The *San Joaquin* case involved an option granted in a 10-year 1906 lease to buy the leased property at the termination of the lease. The option was exercised November 30, 1916. No will was involved, and it does not appear that any separate consideration was paid for the option. Portions of the property were later sold giving rise to the basis question. The case involved an interpretation of section 204 of the Revenue Act of 1924, and corresponding sections of the Revenue Acts of 1921, 1926, and 1928. That section provides, generally, that the basis of property "acquired" after February 28, 1913, shall be its cost. It also provides that if property was acquired before March 1, 1913, its basis shall be its cost or the fair market value of the property on March 1, 1913, whichever is greater. The taxpayer contended

that the property was acquired in 1906 and that, therefore, under this statute, basis of the property would be its fair market value on March 1, 1913. The bulk of the Supreme Court's opinion is devoted to denying this contention of the taxpayer.

The alternate contention of the taxpayer company in *San Joaquin* was that "the exercise of the option to purchase in 1916 operated to convert capital assets consisting of a vested property right, a valuable option and purchase money, into a fee simple title, a taxable transaction giving rise to a new basis, namely, the value of the land and trees on the date the option was exercised." *San Joaquin Fruit & Investment Co.*, 28 B.T.A. 395, at 400. It was the company's position, based on *Marr* v. *United States*, 268 U.S. 536 (1925), T.D. 3755, C.B. IV–2, 116 (1925), that if the land was not acquired in 1906, then it was acquired in 1916 when the option was exercised. The company contended that at the time there was a taxable conversion of assets resulting in gain and, although the gain was not taxed and the year was barred by the statute of limitations, since the transaction had been taxable in 1916, the basis of the new asset acquired in 1916 was its fair market value at the time. It does not appear that the taxpayer made any other contention before the Supreme Court.

The Supreme Court devoted a short paragraph at the end of its opinion to the contention that the exercise of the option was a taxable exchange and refused to accept it. The Supreme Court stated:

> An alternative contention is that the exercise of the option and the conveyance on November 30, 1916, constituted merely an exchange of capital assets—a closed transaction—and the basis for calculation of gain was the value of the land and improvements at that date. The capital asset, sale of which resulted in taxable gain, was the land. This was not an asset of the taxpayer prior to the exercise of the opinion. We think it clear that there was no combination of two capital assets—the option and $200,000 of cash, to form a new capital asset, the land, which was subsequently sold at a profit.

This language caused the Court of Appeals in the *Mack* case, *supra*, to conclude that the basis of a testamentary option could not be added to the option price to determine the basis of property acquired on exercise of the option. However, it should be noted that it has long been recognized that the cost of a purchased option is added to the option price to establish the basis of the property acquired through exercise of the option. *Realty Sales Co.*, 10 B.T.A. 1217 (1928) acquiescense, C.B. VII–2, 33 (1928); *C. H. Mead Coal Co.*, 72 F. 2d 22 (4th Cir. 1934); *Commissioner* v. *Cummings*, 77 F. 2d 670, at 673 (5th Cir. 1935); G.C.M. 7246, C.B. VIII–2, 80 (1929); Rev. Rul. 58–234, C.B. 1958–1, 279.

Since the first contention of the taxpayer in *San Joaquin* was that the property was acquired when the lease containing the option was made, and the alternate contention was that exercise of the option and the conveyance on November 30, 1916, resulted in a closed transaction and that the basis for calculation of gain was the value of the land and improvements at that date, the Supreme Court, did not decide the issue of whether the basis of property acquired by exercise of a testamentary option would be determined by adding the basis of the option to the option price, nor did it even have such question before it.

In view of the foregoing, the decision in the *San Joaquin* case, does not stand for the principle attributed to it by the *Mack* case. Accordingly, the Service will not follow the decision in *J. Gordon Mack* v.

Commissioner. Therefore, the basis of a testamentary option may be added to the option price in determining the basis of the property acquired upon exercise of the option.

SECTION 1017.—DISCHARGE OF INDEBTEDNESS

26 CFR 1.1017–1: Adjusted basis; discharge of indebtedness; general rule.

Limitation on the amount of interest forgiven which is applied to reduce basis of property. See Rev. Rul. 67–200, page 15.

PART III.—COMMON NONTAXABLE EXCHANGES

SECTION 1031.—EXCHANGE OF PROPERTY HELD FOR PRODUCTIVE USE OR INVESTMENT

26 CFR 1.1031(a)–1: Property held for productive use in trade or business or for investment.

Federal income tax treatment resulting from the exchange of shipping vessels under section 510(i) of the Merchant Marine Act of 1936, as amended. See Rev. Rul. 67–66, page 191.

SECTION 1038.—CERTAIN REACQUISITIONS OF REAL PROPERTY

26 CFR 1.1038: Statutory provisions; certain reacquisitions of real property. T.D. 6916[1]

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 1.—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Certain reacquisitions of real property

DEPARTMENT OF THE TREASURY,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D.C. 20224

To Officers and Employees of the Internal Revenue Service and Others Concerned:

On August 5, 1965, notice of proposed rulemaking with respect to the amendment of the Income Tax Regulations (26 CFR Part 1) to conform such regulations to section 2 of the Act of September 2, 1964 (Public Law 88–570, 78 Stat. 854 [C.B. 1964–2, 647]), relating

[1] The publication of this Treasury Decision in 32 F.R. 5923, dated April 13, 1967, contains (1) instructions for modifying the notice of proposed rulemaking published in 30 F.R. 9768, dated August 5, 1965, and (2) the full context of the regulations with such modifications. As here published, the Treasury Decision reflects the full context of such regulations, with modifications. The individual instructions have been omitted.

to certain reacquisitions of real property, was published in the Federal Register (30 F.R. 9768). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the following amendments of the regulations are hereby adopted. Except as otherwise specifically provided, such amendments are effective for taxable years beginning after December 31, 1953, and ending after August 16, 1954.

PARAGRAPH 1. Section 1.121–5 is amended by adding a new paragraph (h) thereto as follows:

§ 1.121–5 SPECIAL RULES.

* * * * * * *

(h) *Special rules applicable to certain reacquisitions of real property.*—For special rules relating to a case where real property with respect to which an election under this section is in effect is reacquired by the seller in partial or full satisfaction of the indebtedness arising from the sale of such property and resold by him within one year after the date of such reacquisition, see § 1.1038–2.

PAR 2. Section 1.166–6 is amended by adding a new paragraph (e) thereto as follows:

§ 1.166–6 SALE OF MORTGAGED OR PLEDGED PROPERTY.

* * * * * * *

(e) *Special rules applicable to certain reacquisitions of real property.*—Notwithstanding this section, special rules apply for taxable years beginning after September 2, 1964 (and for certain taxable years beginning after December 31, 1957) to the gain or loss on certain reacquisitions of real property, to indebtedness remaining unsatisfied as a result of such reacquisitions, and to the basis of the reacquired real property. See §§ 1.1038 through 1.1038–3.

PAR. 3. Section 1.453–5 is amended by revising paragraph (b) to read as follows:

§ 1.453–5 SALE OF REAL PROPERTY TREATED ON INSTALLMENT METHOD.

* * * * * * *

(b) *Defaults and repossessions.*—(1) *Effective date.*—This paragraph shall apply only with respect to taxable years beginning before September 3, 1964, in respect of which an election has not been properly made to have the provisions of section 1038 apply. For rules applicable to taxable years beginning after September 2, 1964, and for taxable years beginning after December 31, 1957, to which such an election applies, see §§ 1.1038 through 1.1038–3.

(2) *Gain or loss on reacquisition of property.*—If the purchaser of real property on the installment plan defaults in any of his payments, and the vendor returning income on the installment method reacquires the property sold, whether title thereto had been retained by the vendor or transferred to the purchaser, gain or loss for the year in which the reacquisition occurs is to be computed upon any installment obligations of the purchaser which are satisfied or discharged upon the reacquisition or are applied by the vendor to the purchase or bid price of the property. Such gain or loss is to be measured by the difference between the fair market value at the date of reacquisition of the property reacquired (including the fair market value of any fixed improvements placed on the property by the purchaser) and the basis in the hands of the vendor of the obligations of the purchaser which are so satisfied, discharged, or applied, with proper adjustment for any other amounts realized or costs incurred in connection with the reacquisition.

(3) *Fair market value of reacquired property.*—If the property reacquired is bid in by the vendor at a foreclosure sale, the fair market value of the property shall be presumed to be the purchase or bid price thereof in the absence of clear and convincing proof to the contrary.

(4) *Basis of obligations.*—The basis in the hands of the vendor of the obligations of the purchaser satisfied, discharged, or applied upon the reacquisition of the property will be the excess of the face value of such obligations over an amount equal to the income which would be returnable were the obligations paid in full. For definition of the basis of an installment obligation, see section 453(d)(2) and paragraph (b)(2) of § 1.453–9.

(5) *Bad debt deduction.*—No deduction for a bad debt shall in any case be taken on account of any portion of the obligations of the purchaser which are treated by the vendor as not having been satisfied, discharged, or applied upon the reacquisition of the property, unless it is clearly shown that after the property was reacquired the purchaser remained liable for such portion; and in no event shall the amount of the deduction exceed the basis in the hands of the vendor of the portion of the obligations with respect to which the purchaser remained liable after the reacquisition. See section 166 and the regulations thereunder.

(6) *Basis of reacquired property.*—If the property reacquired is subsequently sold, the basis for determining gain or loss is the fair market value of the property at the date of reacquisition, including the fair market value of any fixed improvements placed on the property by the purchaser.

PAR. 4. Section 1.453–6 is amended by revising paragraphs (b) and (c) and by adding a new paragraph (d). These amended and added provisions read as follows:

§ 1.453–6 DEFERRED PAYMENT OF REAL PROPERTY NOT ON INSTALLMENT METHOD.

* * * * * * *

(b) *Repossession of property where title is retained by vendor*—(1) *Gain or loss on repossession.*—If the vendor in sales referred to in paragraph (a) of this section has retained title to the property and the purchaser defaults in any of his payments, and the vendor repossesses the property, the difference between—

(i) The entire amount of the payments actually received on the contract and retained by the vendor plus the fair market value at the time of repossession of fixed improvements placed on the property by the purchaser, and

(ii) The sum of the profits previously returned as income in connection therewith and an amount representing what would have been a proper adjustment for exhaustion, wear and tear, obsolescence, amortization, and depletion of the property during the period the property was in the hands of the purchaser had the sale not been made,

will constitute gain or loss, as the case may be, to the vendor for the year in which the property is repossessed.

(2) *Basis of repossessed property.*—The basis of the property described in subparagraph (1) of this paragraph in the hands of the vendor will be the original basis at the time of the sale plus the fair market value at the time of repossession of fixed improvements placed on the property by the purchaser, except that, with respect to repossessions occurring after September 18, 1958, the basis of the property shall be reduced by what would have been a proper adjustment for exhaustion, wear and tear, obsolescence, amortization, and depletion of the property during the period the property was in the hands of the purchaser if the sale had not been made.

(c) *Reacquisition of property where title is transferred to purchaser*—(1) *Gain or loss on reacquisition.*—If the vendor in sales described in paragraph (a) of this section has previously transferred title to the purchaser, and the purchaser defaults in any of his payments, and the vendor accepts a voluntary reconveyance of the property, in partial or full satisfaction of the unpaid portion of the purchase price, the receipt of the property so reacquired, to the extent of its fair market value at that time, including the fair market value of fixed improvements placed on the property by the purchaser, shall be considered as the receipt of payment on the obligations satisfied. If the fair market value of the property is greater than the basis of the obligations of the purchaser so satisfied (generally, such basis being the fair market value of such obligations previously recognized in computing income), the excess constitutes ordinary income. If the value of such property is less than the basis of such obligations, the difference may be deducted as a bad debt if uncollectible, except that, if the obligations satisfied are securities (as defined in section 165 (g)(2)(C)), any gain or loss resulting from the transaction is a capital gain or loss subject to the provisions of sections 1201 through 1241.

(2) *Basis of reacquired property.*—If the reacquired property described in subparagraph (1) of this paragraph is subsequently sold, the basis for determining gain or loss is the fair market value of the property at the date of reacquisition, including the fair market value of the fixed improvements placed on the property by the purchaser. See section 166 and the regulations thereunder with respect to property reacquired by the vendor in a foreclosure proceeding.

(d) *Effective date.*—Paragraphs (b) and (c) of this section shall apply only with respect to taxable years beginning before September 3, 1964, in respect of which an election has not been properly made to have the provisions of section 1038 apply. For rules applicable to taxable years beginning after September 2, 1964, and for taxable years beginning after December 31, 1957, to which such an election applies, see §§ 1.1038 through 1.1038–3.

PAR. 5. Section 1.1034–1 is amended by adding two sentences at the end of paragraph (a) thereof. This amended provision reads as follows:

§ 1.1034–1 SALE OR EXCHANGE OF RESIDENCE.—(a) *Nonrecognition of gain; general statement.*—Section 1034 provides rules for the nonrecognition of gain in certain cases where a taxpayer sells one residence after December 31, 1953, and buys or builds, and uses as his principal residence, another residence within specific time limits before or after such sale. In general, if the taxpayer invests in a new residence an amount at least as large as the adjusted sales price of his old residence, no gain is recognized on the sale of the old residence (see paragraph (b) of this section for definitions of "adjusted sales price", "new residence", and "old residence"). On the other hand, if the new residence costs the taxpayer less than the adjusted sales price of the old residence, gain is recognized to the extent of the difference. Thus, if an amount equal to or greater than the adjusted sales price of an old residence is invested in a new residence, according to the rules stated in section 1034, none of the gain (if any) realized from the sale shall be recognized. If an amount less than such adjusted sales price is so invested, gain shall be recognized, but only to the extent provided in section 1034. If there is no investment in a new residence, section 1034 is inapplicable and all of the gain shall be recognized. Whenever, as a result of the application of section 1034, any or all of the gain realized on the sale of an old residence is not recognized, a corresponding reduction must be made in the basis of the new residence. The provisions of section 1034 are mandatory, so that the taxpayer cannot elect to have gain recognized under circumstances where this section is applicable. Section 1034 applies only to gains; losses are recognized or not recognized without regard to the provisions of this section. Section 1034 affects only the amount of gain recognized, and not the amount of gain realized (see also section 1001 and regulations issued thereunder). Any gain realized upon disposition of other property in exchange for the new residence is not affected by section 1034. For special rules relating to the sale or exchange of a principal residence by a taxpayer who has attained age 65, see section 121 and paragraph (g) of § 1.121–5. For special rules relating to a case where real property with respect to the sale of which gain is not recognized under this section is reacquired by the seller in partial or full satisfaction of the indebtedness arising from such sale and resold by him within one year after the date of such reacquisition, see § 1.1038–2.

* * * * * * *

PAR. 6. There are inserted immediately after § 1.1036–1 the following new sections:

§ 1.1038 STATUTORY PROVISIONS; CERTAIN REACQUISITIONS OF REAL PROPERTY.

SEC. 1038. CERTAIN REACQUISITIONS OF REAL PROPERTY.

(a) GENERAL RULE.—If—

(1) A sale of real property gives rise to indebtedness to the seller which is secured by the real property sold, and

(2) The seller of such property reacquires such property in partial or full satisfaction of such indebtedness,

then, except as provided in subsections (b) and (d), no gain or loss shall result to the seller from such reacquisition, and no debt shall become worthless or partially worthless as a result of such reacquisition.

(b) AMOUNT OF GAIN RESULTING.—(1) IN GENERAL. In the case of a reacquisition of real property to which subsection (a) applies, gain shall result from such reacquisition to the extent that—

(A) The amount of money and the fair market value of other property (other than obligations of the purchaser) received, prior to such reacquisition, with respect to the sale of such property, exceeds

(B) The amount of the gain on the sale of such property returned as income for periods prior to such reacquisition.

(2) LIMITATIONS.—The amount of gain determined under paragraph (1) resulting from a reacquisition during any taxable year beginning after the date of the enactment of this section shall not exceed the amount by which the price at which the real property was sold exceeded its adjusted basis, reduced by the sum of—

(A) The amount of the gain on the sale of such property returned as income for periods prior to the reacquisition of such property, and

(B) The amount of money and the fair market value of other property (other than obligations of the purchaser received with respect to the sale of such property) paid or transferred by the seller in connection with the reacquisition of such property.

For purposes of this paragraph, the price at which real property is sold is the gross sales price reduced by the selling commissions, legal fees, and other expenses incident to the sale of such property which are properly taken into account in determining gain or loss on such sale.

(3) GAIN RECOGNIZED.—Except as provided in this section, the gain determined under this subsection resulting from a reacquisition to which subsection (a) applies shall be recognized, notwithstanding any other provision of this subtitle.

(c) BASIS OF REACQUIRED REAL PROPERTY.—If subsection (a) applies to the reacquisition of any real property, the basis of such property upon such reacquisition shall be the adjusted basis of the indebtedness to the seller secured by such property (determined as of the date of reacquisition), increased by the sum of—

(1) The amount of the gain determined under subsection (b) resulting from such reacquisition, and

(2) The amount described in subsection (b)(2)(B).

If any indebtedness to the seller secured by such property is not discharged upon the reacquisition of such property, the basis of such indebtedness shall be zero.

(d) INDEBTEDNESS TREATED AS WORTHLESS PRIOR TO REACQUISITION.—If, prior to a reacquisition of real property to which subsection (a) applies, the seller has treated indebtedness secured by such property as having become worthless or partially worthless—

(1) Such seller shall be considered as receiving, upon the reacquisition of such property, an amount equal to the amount of such indebtedness treated by him as having become worthless, and

(2) The adjusted basis of such indebtedness shall be increased (as of the date of reacquisition) by an amount equal to the amount so considered as received by such seller.

(e) PRINCIPAL RESIDENCES.—If—

(1) Subsection (a) applies to a reacquisition of real property with respect to the sale of which—

(A) An election under section 121 (relating to gain from sale or exchange of residence of an individual who has attained age 65) is in effect, or

(B) Gain was not recognized under section 1034 (relating to sale or exchange of residence); and

(2) Within one year after the date of the reacquisition of such property by the seller, such property is resold by him,

then, under regulations prescribed by the Secretary or his delegate, subsections (b), (c), and (d) of this section shall not apply to the reacquisition of such property and, for purposes of applying sections 121 and 1034, the resale of such property shall be treated as a part of the transaction constituting the original sale of such property.

(f) REACQUISITIONS BY DOMESTIC BUILDING AND LOAN ASSOCIATIONS.—This section shall not apply to a reacquisition of real property by an organization described in section 593(a) (relating to domestic building and loan associations, etc.).

[Sec. 1038 as added by sec. 2, Act of Sept. 2, 1964 (P.L. 88-570, 78 Stat. 854 [C.B. 1964-2, 647])]

§ 1.1038–1 REACQUISITIONS OF REAL PROPERTY IN SATISFACTION OF INDEBTEDNESS.—(a) *Scope of section 1038.*—(1) *General rule on gain or loss.*—If a sale of real property gives rise to indebtedness to the seller which is secured by the real property which is sold, and the seller of such property reacquires such property in a taxable year beginning after September 2, 1964, in partial or full satisfaction of such indebtedness, then, except as provided in paragraphs (b) and (f) of this section, no gain or loss shall result to the seller from such reacquisition. The treatment so provided is mandatory; however, see § 1.1038–3 for an election to apply the provisions of this section to certain taxable years beginning after December 31, 1957. It is immaterial, for purposes of applying this subparagraph, whether the seller realized a gain or sustained a loss on the sale of the real property, or whether it can be ascertained at the time of the sale whether gain or loss occurs as a result of the sale. It is also immaterial what method of accounting the seller used in reporting gain or loss from the sale of the real property or whether at the time of reacquisition such property has depreciated or appreciated in value since the time of the original sale. Moreover, the character of the gain realized on the original sale of the property is immaterial for purposes of applying this subparagraph. The provisions of this section shall apply, except as provided in § 1.1038–2, to the reacquisition of real property which was used by the seller as his principal residence and with respect to the sale of which an election under section 121 is in effect or with respect to the sale of which gain was not recognized under section 1034.

(2) *Sales giving rise to indebtedness.*—(i) *Sale defined.*—For purposes of this section, it is not necessary for title to the property to have passed to the purchaser in order to have a sale. Ordinarily, a sale of property has occurred in a transaction in which title to the property has not passed to the purchaser, if the purchaser has a contractual right to retain possession of the property so long as he performs his obligations under the contract and to obtain title to the property upon the completion of the contract. However, a sale may have occurred even if the purchaser does not have the right to possession until he partially or fully satisfies the terms of the contract. For example, if *S* contracts to sell real property to *P*, and if *S* promises to convey title to *P* upon the completion of all of the payments due under the contract and to allow *P* to obtain possession of the property after ten percent of the purchase price has been paid, there has been a sale on the date of the contract for purposes of this section. This section shall not apply to a disposition of real property which constituted an exchange of property or was treated as a sale under section 121(d)(4) or section 1034(i); nor shall it apply to a sale of stock in a cooperative housing corporation described in section 121(d)(3) or section 1034(f).

(ii) *Secured indebtedness defined.*—An indebtedness to the seller is secured by the real property for purposes of this section whenever the seller has the right to take title or possession of the property or both if there is a default with respect to such indebtedness. A sale of real property may give rise to an indebtedness to the seller although the seller is limited in his recourse to the property for payment of the indebtedness in the case of a default.

(3) *Reacquisitions in partial or full satisfaction of indebtedness.*—(i) *Purpose of reacquisition.*—This section applies only where the seller reacquires the real property in partial or full satisfaction of the indebtedness to him that arose from the sale of the real property and was secured by the property. That is, the reacquisition must be in furtherance of the seller's security rights in the property with respect to indebtedness to him that arose at the time of the sale. Accordingly, if the seller in reacquiring the real property does not pay consideration in addition to discharging the purchaser's indebtedness to him that arose from the sale and was secured by such property, this section shall apply to the reacquisition even though the purchaser has not defaulted in his obligations under the contract or such a default is not imminent. If in addition to discharging the purchaser's indebtedness to him that arose from the sale the seller pays consideration in reacquiring the real property, this section shall generally apply to the reacquisition if the reacquisition and the payment of additional consideration is provided for in the original contract for the sale of the property. This section generally shall apply to a reacquisition of real property if the seller reacquires the property either when the purchaser has defaulted in his obligations under the contract or when such a default is imminent. This section generally shall not apply to a reacquisition of real property where the seller pays consideration in addition to discharging the

purchaser's indebtedness to him that arose from the sale if the reacquisition and payment of additional consideration was not provided for in the original contract for the sale of the property and if the purchaser has not defaulted in his obligations under the contract or such a default is not imminent. Thus, for example, if the purchaser is in arrears on the payment of interest or principal or has in any other way defaulted on his contract for the purchase of the property, or if the facts of the case indicate that the purchaser is unable satisfactorily to perform his obligations under the contract, and the seller reacquires the property from the purchaser in a transaction in which the seller pays consideration in addition to discharging the purchaser's indebtedness to him that arose from the sale and was secured by the property, this section shall apply to the reacquisition. Additional consideration paid by the seller includes money and other property paid or transferred by the seller. Also, the reacquisition by the seller of real property subject to an indebtedness (or the assumption, upon the reacquisition, of indebtedness) which arose subsequent to the original sale shall be considered as a payment by the seller of additional consideration. However, the reacquisition by the seller of real property subject to an indebtedness (or the assumption, upon the reacquisition, of an indebtedness) which arose prior to or arose out of the original sale shall not be considered as a payment by the seller of additional consideration.

(ii) *Manner of reacquisition.*—For purposes of applying section 1038 and this section there must be a reacquisition by the seller of the real property itself, but the manner in which the seller so reduces the property to ownership or possession, as the case may be, shall generally be immaterial. Thus, the seller may reduce the real property to ownership or possession or both, as the case may require, by agreement or by process of law. The reduction of the real property to ownership or possession by agreement includes, where valid under local law, such methods as voluntary conveyance from the purchaser and abandonment to the seller. The reduction of the real property to ownership or possession by process of law includes foreclosure proceedings in which a competitive bid is entered, such as foreclosure by judicial sale or by power of sale contained in the loan agreement without recourse to the courts, as well as those types of foreclosure proceedings in which a competitive bid is not entered, such as strict foreclosure and foreclosure by entry and possession, by writ of entry or by publication or notice.

(4) *Persons from whom real property may be reacquired.*—The real property reacquired in satisfaction of the indebtedness need not be reacquired from the purchaser but may be reacquired from the purchaser's transferee or assignee, or from a trustee holding title to such property pending the purchaser's satisfaction of the terms of the contract, so long as the indebtedness that is partially or completely satisfied in the reacquisition of such property arose in the original sale of the property and was secured by the property so reacquired. In such a case, a reference in this section to the purchaser shall, where appropriate, include the purchaser's transferee or assignee. Thus, for example, this section will apply if the seller reacquires the property from a purchaser from the original purchaser and either the property is subject to, or the subsequent purchaser assumes, the liability to the seller on the indebtedness.

(5) *Reacquisitions not included.*—This section shall not apply to reacquisitions of real property by mutual savings banks, domestic building and loan associations, and cooperative banks, described in section 593(a). However, for rules respecting the reacquisition of real property by such organizations, see § 1.595–1.

(b) *Amount of gain resulting from a reacquisition.*—(1) *Determination of amount.*—(i) *In general.*—As a result of a reacquisition to which paragraph (a) of this section applies gain shall be derived by the seller to the extent that the amount of money and the fair market value of other property (other than obligations of the purchaser arising with respect to the sale) which are received by the seller, prior to such reacquisition, with respect to the sale of the property exceed the amount of the gain derived by the seller on the sale of such property which is returned as income for periods prior to the reacquisition. However, the amount of gain so determined shall in no case exceed the amount determined under paragraph (c) of this section with respect to such reacquisition.

(ii) *Amount of gain returned as income for prior periods.*—For purposes of this subparagraph and paragraph (c)(1) of this section, the amount of gain on the sale of the property which is returned as income for periods prior to the

reacquisition of the real property does not include any amount of income determined under paragraph (f)(2) of this section which is considered to be received at the time of the reacquisition of the property. However, the amount of gain on the sale of the property which is returned as income for such periods does include gain on the sale resulting from payments received in the taxable year in which the date of reacquisition occurs if such payments are received prior to such reacquisition. The application of this subdivision may be illustrated by the following example:

Example.—In 1965 *S*, who uses the calendar year as the taxable year, sells to *P* for $10,000 real property which has an adjusted basis of $3,000. *S* properly elects under section 453 to report the income from the sale on the installment method. In 1965 and 1966, *S* receives a total of $4,000 on the contract. On May 15, 1967, *S* receives $1,000 on the contract. Because of *P*'s default, *S* reacquires the property on August 31, 1967. The gain on the sale which is returned as income for periods prior to the reacquisition is $3,500 ($5,000 x $7,000/$10,000).

(2) *Amount of money and other property received with respect to the sale.*—(i) *In general.*—Amounts of money and other property received by the seller with respect to the sale of the property include payments made by the purchaser for the seller's benefit, as well as payments made and other property transferred directly to the seller. If the purchaser of the real property makes payments on a mortgage or other indebtedness to which the property is subject at the time of the sale of such property to him, or on which the seller was personally liable at the time of such sale, such payments are considered amounts received by the seller with respect to the sale. However, if after the sale the purchaser borrows money and uses the property as security for the loan, payments by the purchaser in satisfaction of the indebtedness are not considered as amounts received by the seller with respect to the sale, although the seller does in fact receive some indirect benefit when the purchaser makes such payments.

(ii) *Payments by purchaser at time of reacquisition.*—All payments made by the purchaser at the time of the reacquisition of the real property that are with respect to the original sale of the property shall be treated, for purposes of subparagraph (1) of this paragraph, by the seller as having been received prior to the reacquisition with respect to such sale. For example, if the purchaser, at the time of the reacquisition by the seller, pays money or other property to the seller in partial or complete satisfaction of the purchaser's indebtedness on the original sale, the seller shall treat such amounts as having been received prior to the reacquisition with respect to the sale.

(iii) *Interest received.*—For purposes of this subparagraph and paragraph (c)(1) of this section any amounts received by the seller as interest, stated or unstated, are excluded from the computation of gain on the sale of the property and are not considered amounts of money or other property received with respect to the sale.

(iv) *Amounts received on sale of purchaser's indebtedness.*—Money or other property received by the seller on the sale of the purchaser's indebtedness that arose at the time of the sale of the real property are amounts received by the seller with respect to the sale of such real property, except that the amounts so received from the sale of such indebtedness shall be reduced by the amount of money and the fair market value of other property paid or transferred by the seller, before the reacquisition of the real property, to reacquire such indebtedness. For example, if *S* sells real property to *P* for $25,000, and under the contract receives $10,000 down and a note from *P* for $15,000, *S* would receive $22,000 with respect to the sale if he were to discount the note for $12,000. If before the reacquisition of the real property *S* were to reacquire the discounted note for $8,000, he would receive $14,000 with respect to the sale.

(3) *Obligations of the purchaser arising with respect to the sale.*—The term "obligations of the purchaser arising with respect to the sale" of the real property includes, for purposes of subparagraph (1) of this paragraph, only that indebtedness on which the purchaser is liable to the seller and which arises out of the sale of such property. Thus, the term does not include any indebtedness in respect of the property that the seller owes to a third person which the purchaser assumes, or to which the property is subject, at the time of the sale of the property to the purchaser. Nor does the term include any indebtedness on which the purchaser is liable to the seller if such indebtedness arises subsequent to the sale of such property.

(c) *Limitation upon amount of gain.*—(1) *In general.*—Except as provided by subparagraph (2) of this paragraph, the amount of gain on a reacquisition of

real property, as determined under paragraph (b) of this section, shall in no case exceed—

(i) The amount by which the price at which the real property was sold exceeded its adjusted basis at the time of the sale, as determined under § 1.1011–1, reduced by

(ii) The amount of gain on the sale of such real property which is returned as income for periods prior to the reacquisition, and by

(iii) The amount of money and the fair market value of other property (other than obligations of the purchaser to the seller which are secured by the real property) paid or transferred by the seller in connection with the reacquisition of such real property.

(2) *Cases where limitation does not apply.*—The limitation provided by subparagraph (1) of this paragraph shall not apply in a case where the selling price of property is indefinite in amount and cannot be ascertained at the time of the reacquisition of such property, as, for example, where the selling price is stated as a percentage of the profits to be realized from the development of the property which is sold. Moreover, the limitation so provided shall not apply to a reacquisition of real property occurring in a taxable year beginning before September 3, 1964, to which the provisions of this section are applied pursuant to an election under § 1.1038–3.

(3) *Determination of sales price.*—The price at which the real property was sold shall be, for purposes of subparagraph (1) of this paragraph, the gross sales price reduced by the selling commissions, legal fees, and other expenses incident to the sale of such property which are properly taken into account in determining gain or loss on the sale. For example, the amount of selling commissions paid by a nondealer will be deducted from the gross sales price in determining the price at which the real property was sold; on the other hand, selling commissions paid by a real estate dealer will be deducted as a business expense. Examples of other expenses incident to the sale of the property are expenses for appraisal fees, advertising expense, cost of preparing maps, recording fees, and documentary stamp taxes. Payments on indebtedness to the seller which are for interest, stated or unstated, are not included in determining the price at which the property was sold. See paragraph (b)(2)(iii) of this section.

(4) *Determination of amounts paid or transferred in connection with a reacquisition.*—(i) *In general.*—Amounts of money or property paid or transferred by the seller of the real property in connection with the reacquisition of such property include payments of money, or transfers of property, to persons from whom the real property is reacquired as well as to other persons. Payments or transfers in connection with the reacquisition of the property do not include money or property paid or transferred by the seller to reacquire obligations of the purchaser to the seller which were received by the seller with respect to the sale of the property or which arose subsequent to the sale. Amounts of money or property paid or transfered by the seller in connection with the reacquisition of the property include payments or transfers for such items as court costs and fees for services of an attorney, master, trustee, or auctioneer, or for publication, acquiring title, clearing liens, or filing and recording.

(ii) *Assumption of indebtedness.*—The assumption by the seller, upon reacquisition of the real property, of any indebtedness to another person which at such time is secured by such property will be considered a payment of money by the seller in connection with the reacquisition. Also, if at the time of reacquisition such property is subject to an indebtedness which is not an indebtedness of the purchaser to the seller, the seller shall be considered to have paid money, in an amount equal to such indebtedness, in connection with the reacquisition of the property. Thus, for example, if at the time of the sale the purchaser executes in connection with the sale a first mortgage to a bank and a second mortgage to the seller and at the time of reacquisition the seller reacquires the property subject to the first mortgage which he does not assume, the seller will be considered to have paid money, in an amount equal to the unpaid amount of the first mortgage, in connection with the reacquistion.

(d) *Character of gain resulting from a reacquisition.*—Paragraphs (b) and (c) of this section set forth the extent to which gain shall be derived from a reacquisition to which paragraph (a) of this section applies, but the rules provided by section 1038 and this section do not affect the character of the gain so derived. The character of the gain resulting from such a reacquisition is determined on the basis of whether the gain on the original sale was returned on the installment method or, if not, on the basis of whether title to the real property was transferred to the purchaser; and, if title was transferred to the pur-

chaser in a deferred-payment sale, whether the reconveyance of the property to the seller was voluntary. For example, if the gain on the original sale of the reacquired property was returned on the installment method, the character of the gain on reacquisition by the seller shall be determined in accordance with the rules provided in paragraph (a) of § 1.453–9. If the original sale was not on the installment method but was a deferred-payment sale, as described in § 1.453–6 (a), where title to the real property was transferred to the puchaser and the seller accepts a voluntary reconveyance of the property, the gain on the reacquisition shall be ordinary income; however, if the obligations satisfied are securities (as defined in section 165(g)(2)(C)), any gain resulting from the reacquisition is capital gain subject to the provisions of subchapter P of chapter 1 of the Code.

(e) *Recognition of gain.*—The entire amount of the gain determined under paragraphs (b) and (c) of this section with respect to a reacquisition to which paragraph (a) of this section applies shall be recognized notwithstanding any other provision of subtitle A (relating to income taxes) of the Code.

(f) *Special rules applicable to worthless indebtedness.*—(1) *Worthlessness resulting from reacquisition.*—No debt of the purchaser to the seller which was secured by the reacquired real property shall be considered as becoming worthless or partially worthless as a result of a reacquisition of such real property to which paragraph (a) of this section applies. Accordingly, no deduction for a bad debt and no charge against a reserve for bad debts shall be allowed, as a result of the reacquisition, in order to reflect the noncollectibility of any indebtedness of the purchaser to the seller which at the time of reacquisition was secured by such real property.

(2) *Indebtedness treated as worthless prior to reacquisition.*—(i) *Prior taxable years.*—If for any taxable year ending before the taxable year in which occurs a reacquisition of real property to which paragraph (a) of this section applies the seller of such property has treated any indebtedness of the purchaser which is secured by such property as having become worthless or partially worthless by taking a bad debt deduction under section 166(a), he shall be considered as receiving, at the time of such reacquisition, income in an amount equal to the amount of such indebtedness previously treated by him as having become worthless. The amount so treated as income received shall be treated as a recovery of a bad debt previously deducted as worthless or partially worthless. Accordingly, the amount of such income shall be excluded from gross income, as provided in § 1.111–1, to the extent of the "recovery exclusion" with respect to such item. For purposes of § 1.111–1, if the indebtedness was treated as partially worthless in a prior taxable year, the amount treated under this subparagraph as a recovery shall be considered to be with respect to the part of the indebtedness that was previously deducted as worthless. The seller shall not be considered to have treated an indebtedness as worthless in any taxable year for which he took the standard deduction under section 141 or paid the tax imposed by section 3 if a deduction in respect of such indebtedness was not allowed in determining adjusted gross income for such year under section 62.

(ii) *Current taxable year.*—No deduction shall be allowed under section 166(a), for the taxable year in which occurs a reacquisition of real property to which paragraph (a) of this section applies, in respect of any indebtedness of the purchaser secured by such property which has been treated by the seller as having become worthless or partially worthless in such taxable year but prior to the date of such reacquisition.

(3) *Basis adjustment.*—The basis of any indebtedness described in subparagraph (2)(i) of this paragraph shall be increased (as of the date of the reacquisition) by an amount equal to the amount which, under such subparagraph of this paragraph, is treated as income received by the seller with respect to such indebtedness, but only to the extent the amount so treated as received is not excluded from gross income by reason of the application of § 1.111–1.

(g) *Rules for determining gain or loss on disposition of reacquired property.*—(1) *Basis of reacquired real property.*—The basis of any real property acquired in a reacquisition to which paragraph (a) of this section applies shall be the sum of the following amounts, determined as of the date of such reacquisition:

(i) The amount of the adjusted basis, determined under sections 453 and 1011, and the regulations thereunder, of all indebtedness of the purchaser to the seller which at the time of reacquisition was secured by such property, including any increase by reason of paragraph (f)(3) of this section,

(ii) The amount of gain determined under paragraphs (b) and (c) of this section with respect to such reacquisition, and

(iii) The amount of money and the fair market value of other property (other than obligations of the purchaser to the seller which are secured by the real property) paid or transferred by the seller in connection with the reacquisition of such real property, determined as provided in paragraph (c) of this section even though such paragraph does not apply to the reacquisition.

(2) *Basis of undischarged indebtedness.*—The basis of any indebtedness of the purchaser to the seller which was secured by the reacquired real property described in subparagraph (1) of this paragraph, to the extent that such indebtedness is not discharged upon the reacquisition of such property, shall be zero. Therefore, to the extent not discharged upon the reacquisition of the real property, indebtedness on the original obligation of the purchaser, a substituted obligation of the purchaser, a deficiency judgment entered in a court of law into which the purchaser's obligation has merged, or any other obligation of the purchaser to the seller, shall be zero if such indebtedness constitutes an indebtedness to the seller which was secured by such property.

(3) *Holding period of reacquired property.*—Since the reacquisition described in subparagraph (1) of this paragraph is in a sense considered a nullification of the original sale of the real property, for purposes of determining gain or loss on a disposition of such property after its reacquisition the period for which the seller has held the real property at the time of such disposition shall include the period for which such property is held by him prior to the original sale. However, the holding period shall not include the period of time commencing with the date following the date on which the property is originally sold to the purchaser and ending with the date on which the property is reacquired by the seller. The period for which the property was held by the seller prior to the original sale shall be determined as provided in § 1.1223–1. For example, if under paragraph (a) of § 1.1223–1 real property, which was acquired as the result of an involuntary conversion, has been held for five months on January 1, 1965, the date of its sale, and such property is reacquired on July 2, 1965, and resold on July 3, 1965, the seller will be considered to have held such property for five months and one day for purposes of this subparagraph.

(h) *Illustrations.*—The application of this section may be illustrated by the following examples in which it is assumed that the reacquisition is in satisfaction of secured indebtedness arising out of the sale of the real property:

Example (1).—(a) *S* purchases real property for $20 and sells it to *P* for $100, the property not being mortgaged at the time of sale. Under the contract *P* pays $10 down and executes a note for $90, with stated interest at 6 percent, to be paid in nine annual installments. *S* properly elects to report the gain on the installment method. After the second $10 annual payment *P* defaults and *S* accepts a voluntary reconveyance of the property in complete satisfaction of the indebtedness. *S* pays $5 in connection with the reacquisition of the property. The fair market value of the property at the time of the reacquisition is $110.

(b) The gain derived by *S* on the reacquisition of the property is $6, determined as follows:

Gain before application of limitation:		
Money with respect to the sale received by *S* prior to the reacquisition		$30
Less:		
Gain returned by *S* as income for periods prior to the reacquisition ($30 × [($100−$20)/$100])		24
Gain before application of limitation		6
Limitation on amount of gain:		
Sales price of real property		100
Less:		
Adjusted basis of the property at the time of sale	$20	
Gain returned by *S* as income for periods prior to the reacquisition	24	
Amount of money paid by *S* in connection with the reacquisition	5	49
Limitation on amount of gain		51
Gain resulting from the reacquisition of the property		6

(c) The basis of the reacquired real property at the date of the reacquisition is $25, determined as follows:

Adjusted basis of *P*'s indebtedness to *S* ($70—[$70×$80/$100])	$14
Gain resulting from the reacquisition of the property	6
Amount of money paid by *S* in connection with the reacquisition	5
Basis of reacquired property	25

Example (2).—(a) The facts are the same as in example (1) except that *S* purchased the property for $80.

(b) The gain derived by *S* on the reacquisition of the property is $9, determined as follows:

Gain before application of limitation:		
Money with respect to the sale received by *S* prior to the reacquisition		$30
Less: Gain returned by *S* as income for periods prior to the reacquisition ($30×[($100—$80)/$100])		6
Gain before application of limitation		24
Limitation on amount of gain:		
Sales price of real property		100
Less:		
Adjusted basis of the property at the time of sale	$80	
Gain returned by *S* as income for periods prior to the reacquisition	6	
Amount of money paid by *S* in connection with the reacquisition	5	91
Limitation on amount of gain		9
Gain resulting from the reacquisition of the property		9

(c) The basis of the reacquired real property at the date of the reacquisition is $70, determined as follows:

Adjusted basis of *P*'s indebtedness to *S* ($70—[$70×$20/$100])	$56
Gain resulting from the reacquisition of the property	9
Amount of money paid by *S* in connection with the reacquisition	5
Basis of reacquired property	70

Example (3).—(a) *S* purchases real property for $70 and sells it to *P* for $100, the property not being mortgaged at the time of sale. Under the contract *P* pays $10 down and executes a note for $90, with stated interest at 6 percent, to be paid in nine annual installments. *S* properly elects to report the gain on the installment method. After the first $10 annual payment *P* defaults and *S* accepts a voluntary reconveyance of the property in complete satisfaction of the indebtedness. *S* pays $5 in connection with the reacquisition of the property. The fair market value of the property at the time of the reacquisition is $50.

(b) The gain derived by *S* on the reacquisition of the property is $14, determined as follows:

Gain before application of limitation:		
Money with respect to the sale received by *S* prior to the reacquisition		$20
Less: Gain returned by *S* as income for periods prior to the reacquisition ($20×[($100—70)/$100])		6
Gain before application of limitation		14
Limitation on amount of gain:		
Sales price of real property		100
Less:		
Adjusted basis of the property at time of sale	$70	
Gain returned by *S* as income for periods prior to the reacquisition	6	
Amount paid by *S* in connection with the reacquisition	5	81
Limitation on amount of gain		19
Gain resulting from the reacquisition of the property		14

(c) The basis of the reacquired real property at the date of the reacquisition is $75, determined as follows:

Adjusted basis of *P*'s indebtedness to *S* ($80—[$80×$30/100])	$56
Gain resulting from the reacquisition of the property	14
Amount of money paid by *S* in connection with the reacquisition	5
Basis of reacquired property	75

Example (4).—(a) *S* purchases real property for $20 and sells it to *P* for $100, the property not being mortgaged at the time of sale. Under the contract *P* pays $10 down and executes a note for $90, with stated interest at 6 percent, to be paid in nine annual installments. *S* properly elects to report gain on the installment method. After the second $10 annual payment *P* defaults and *S* accepts from *P* in complete satisfaction of the indebtedness a voluntary reconveyance of the property plus cash in the amount of $20. *S* does not pay any amount in connection with the reacquisition of the property. The fair market value of the property at the time of the reacquisition is $30.

(b) The gain derived by *S* on the reacquisition of the property is $10, determined as follows:

Gain before application of the limitation:		
Money with respect to the sale received by *S* prior to the reacquisition ($30+$20)		$50
Less: Gain returned by *S* as income for periods prior to the reacquisition ($50×[($100—$20)/$100])		40
Gain before application of limitation		10
Limitation on amount of gain:		
Sales price of real property		100
Less:		
Adjusted basis of the property at time of sale	$20	
Gain returned by *S* as income for periods prior to the reacquisition	40	60
Limitation on amount of gain		40
Gain resulting from the reacquisition of the property		10

(c) The basis of the reacquired real property at the date of the reacquisition is $20, determined as follows:

Adjusted basis of *P*'s indebtedness to *S* ($50—[$50×$80/$100])	$10
Gain resulting from the reacquisition of the property	10
Basis of reacquired property	20

Example (5).—(a) *S* purchases real property for $80 and sells it to *P* for $100, the property not being mortgaged at the time of sale. Under the contract *P* pays $10 down and executes a note for $90, with stated interest at 6 percent, to be paid in nine annual installments. At the time of sale *P*'s note has a fair market value of $90. *S* does not elect to report the gain on the installment method but treats the transaction as a deferred-payment sale. After the third $10 annual payment *P* defaults and *S* forecloses. Under the foreclosure sale *S* bids in the property at $70, cancels *P*'s obligation of $60, and pays $10 to *P*. There are no other amounts paid by *S* in connection with the reacquisition of the property. The fair market value of the property at the time of the reacquisition is $70.

(b) The gain derived by *S* on the reacquisition of the property is $0, determined as follows:

Gain before application of the limitation:	
Money with respect to the sale received by *S* prior to the reacquisition	$40
Less: Gain returned by *S* as income for periods prior to the reacquisition ([$10+$90]—$80)	20
Gain before application of limitation	20

Limitation on amount of gain:		
Sales price of real property		$100
Less:		
Adjusted basis of the property at time of sale	$80	
Gain returned by *S* as income for periods prior to the reacquisition	20	
Amount of money paid by *S* in connection with the reacquisition	10	110
Limitation on amount of gain (not to be less than zero)		0
Gain resulting from the reacquisition of the property		0

(c) The basis of the reacquired real property at the date of the reacquisition is $70, determined as follows:

Adjusted basis of *P*'s indebtedness to *S* (face value at time of reacquisition)	$60
Gain resulting from the reacquisition of the property	0
Amount of money paid by *S* in connection with the reacquisition	10
Basis of reacquired property	70

§ 1.1038–2 REACQUISITION AND RESALE OF PROPERTY USED AS A PRINCIPAL RESIDENCE.

(a) *Application of special rules.*—(1) *In general.*—If paragraph (a) of § 1.1038–1 applies to the reacquisition of real property which was used by the seller as his principal residence and with respect to the sale of which an election under section 121 is in effect or with respect to the sale of which gain was not recognized under section 1034, the provisions of § 1.1038–1 (other than paragraph (a) thereof) shall not, and this section shall, apply to the reacquisition of such property if the property is resold by the seller within one year after the date of the reacquisition. For purposes of this section an election under section 121 shall be considered to be in effect with respect to the sale of the property if, at the close of the last day for making such an election under section 121(c) with respect to such sale, an election under section 121 has been made and not revoked. Thus, a taxpayer who properly elects, subsequent to the reacquisition, to have section 121 apply to a sale of his residence may be eligible for the treatment provided in this section. The treatment provided by this section is mandatory; however, see § 1.1038–3 for an election to apply the provisions of this section to certain taxable years beginning after December 31, 1957.

(2) *Sale and resale treated as one transaction.*—In the case of a reacquisition to which this section applies, the resale of the reacquired property shall be treated, for purposes of applying sections 121 and 1034, as part of the transaction constituting the original sale of such property. In effect, the reacquisition is generally disregarded pursuant to this section and, for purposes of applying sections 121 and 1034, the resale of the property is considered to constitute a sale of such property occurring on the date of the original sale of such property.

(b) *Transactions not included.*—(1) If with respect to the original sale of the property there was no nonrecognition of gain under section 1034 and an election under section 121 is not in effect, the provisions of § 1.1038–1, and not this section, shall apply to the reacquisition. Thus, for example, if in the case of a taxpayer not entitled to the benefit of section 121 there is no gain on the original sale of the property, the provisions of § 1.1038–1, and not this section, shall apply even though a redetermination of gain under this section would result in the nonrecognition of gain on the sale under section 1034. Also, if in the case of such a taxpayer there was gain on the original sale of the property but after the application of section 1034 all of such gain was recognized, the provisions of § 1.1038–1, and not this section, shall apply to the reacquisition.

(2) If the original sale of the property was not eligible for the treatment provided by section 121 and section 1034, the provisions of § 1.1038–1, and not this section, shall apply to the reacquisition of the property even though the resale of such property is eligible for the treatment provided by either or both of sections 121 and 1034.

(c) *Redetermination of gain required.*—(1) *Sale of old residence.*—The amount of gain excluded under section 121 on the sale of the property and the amount of gain recognized under section 1034 on the sale of the property shall be redetermined under this section by recomputing the adjusted sales price and

the adjusted basis of the property, and any adjustments resulting from the redetermination of the gain on the sale of such property shall be reflected in the income of the seller for his taxable year in which the resale of the property occurs.

(2) *Sale of new residence.*—If gain was not recognized under section 1034 on the original sale of the property, the adjusted basis of the new residence shall be redetermined under this section. If the new residence has been sold, the amount of gain returned on such sale of the new residence which is affected by the redetermination of the recognized gain on the sale of the old residence shall be redetermined under this section, and any adjustments resulting from the redetermination of the gain on the sale of the new residence shall be reflected in income of the seller for his taxable year in which the resale of the old residence occurs.

(d) *Redetermination of adjusted sales price.*—For purposes of applying sections 121 and 1034 pursuant to this section, the adjusted sales price of the reacquired real property shall be redetermined by taking into account both the sale and the resale of the property and shall be—

(1) The amount realized, which for purposes of section 1001 shall be—

(i) The amount realized on the resale of the property, as determined under paragraph (b) (4) of § 1.1034–1, plus

(ii) The amount realized on the original sale of the property, determined as provided in paragraph (b) (4) of § 1.1034–1, less that portion of any obligations of the purchaser arising with respect to such sale which at the time of reacquisition is secured by such property and is unpaid, less

(iii) The amount of money and the fair market value of other property (other than obligations of the purchaser to the seller secured by the real property) paid or transferred by the seller in connection with the reacquisition of such real property,

reduced by

(2) The total of the fixing-up expenses (as defined in paragraph (b) (6) of § 1.1034–1) incurred for work performed on such real property to assist in both its original sale and its resale.

For purposes of applying paragraph (b) (6) of § 1.1034–1, there shall be two 90-day periods, the first ending on the day on which the contract to sell is entered into in connection with the original sale of the property, and the second ending on the day on which the contract to sell is entered into in connection with the resale of the property. There shall also be two 30-day periods for such purposes, the first ending on the 30th day after the date of the original sale, and the second ending on the 30th day after the date of the resale. For determination of the obligations of the purchaser arising with respect to the original sale of the property, see paragraph (b) (3) of § 1.1038–1. For determination of amounts paid or transferred by the seller in connection with the reacquisition of the property, see paragraph (c) (4) of § 1.1038–1.

(e) *Determination of adjusted basis at time of resale.*—For purposes of applying sections 121 and 1034 pursuant to this section, the adjusted basis of the reacquired real property at the time of its resale shall be—

(1) The sum of—(i) The adjusted basis of such property at the time of the original sale, with proper adjustment under section 1016(a) in respect of such property for the period occurring after the reacquisition of such property, and

(ii) Any indebtedness of the purchaser to the seller which arose subsequent to the original sale of such property and which at the time of reacquisition was secured by such property,

reduced by

(2) Any indebtedness of the purchaser to the seller which at the time of reacquisition was secured by the reacquired real property and which, for any taxable year ending before the taxable year in which occurs the reacquisition of such property, was treated by the seller as having become worthless or partially worthless by taking a bad debt deduction under section 166(a).

The reduction under the preceding sentence by reason of having treated indebtedness as worthless or partially worthless shall not exceed the amount by which there would be an increase in the basis of such indebtedness under paragraph (f) (3) of § 1.1038–1 if section 1038(d) had been applicable to the reacquisition of such property.

(f) *Treatment of indebtedness secured by the property*—(1) *Year of reacquisition.*—No debt of the purchaser to the seller which was secured by the reac-

quired real property shall be considered as becoming worthless or partially worthless as a result of a reacquisition of such real property to which this section applies. Accordingly, no deduction for a bad debt shall be allowed, as a result of the reacquisition, in order to reflect the noncollectibility of any indebtedness of the purchaser to the seller which at the time of reacquisition was secured by such real property. In addition, no deduction shall be allowed, for the taxable year in which occurs a reacquisition of real property to which this section applies, in respect of any indebtedness of the purchaser secured by such property which has been treated by the seller as having become worthless or partially worthless in such taxable year but prior to the date of such reacquisition.

(2) *Prior taxable years.*—For reduction of the basis of the real property for indebtedness treated as worthless or partially worthless for taxable years ending before the taxable year in which occurs the reacquisition, see paragraph (e) of this section.

(3) *Basis of indebtedness.*—The basis of any indebtedness of the purchaser to the seller which was secured by the reacquired real property, to the extent that such indebtedness is not discharged upon the reacquisition of such property, shall be zero.

(g) *Date of sale.*—Since the resale of the property, by being treated as part of the transaction constituting the original sale of the property, is treated as having occurred on the date of the original sale, in determining whether any of the time requirements of section 121 or section 1034 are satisfied for purposes of this section the date of the original sale is used, except to the extent provided in paragraph (d)(2) of this section.

(h) *Illustrations.*—The application of this section may be illustrated by the following examples:

Example (1).—(a) On June 30, 1964, *S*, a single individual over 65 years of age, sells his principal residence to *P* for $25,000, the property not being mortgaged at the time of sale. *S* properly elects to apply the provisions of section 121 to the sale. Under the contract, *P* pays $5,000 down and executes a note for $20,000, with stated interest at 6 percent, the principal being payable in installments of $5,000 each on January 1 of each year and the note being secured by the real property which is sold. At the time of sale *P*'s note has a fair market value of $20,000. *S* does not elect to report the gain on the installment method but treats the transaction as a deferred-payment sale, title to the property being transferred to *P* at the time of sale. *S* uses the calendar year as the taxable year and the cash receipts and disbursements method of accounting. After making two annual payments of $5,000 each on the note, *P* defaults on the contract, and on March 1, 1967, *S* reacquires the real property in full satisfaction of *P*'s indebtedness, title to the property being voluntarily reconveyed to *S*. On November 1, 1967, *S* sells the property to *T* for $35,000. The assumption is made that no fixing-up expenses are incurred for work performed on the principal residence in order to assist in the sale of the property in 1964 or in the resale of the property in 1967. At the time of sale in 1964 the property has an adjusted basis of $15,000. *S* does not treat any indebtedness with respect to the sale in 1964 as being worthless or partially worthless or make any capital expenditures with respect to the property after such sale. In his return for 1964, *S* includes in income $2,000 capital gain from the sale of his residence.

(b) The results obtained before and after the reacquisition of the property are as follows:

	Before reacquisition	*After reacquisition*
Adjusted sales price:		
$5,000 plus $20,000	$25,000	
$15,000 plus $35,000		$50,000
Less: Adjusted basis of property at time of sale	15,000	15,000
Gain on sale	10,000	35,000
Gain excluded from income under sec. 121:		
$10,000×$20,000/$25,000	8,000	
$35,000×$20,000/$50,000		14,000
Gain included in income after applying sec. 121:		
$10,000−$8,000	2,000	
$35,000−$14,000		21,000

(c) *S* is required to show the additional inclusion of $19,000 capital gain ($21,000−$2,000) in income on his return for 1967.

Example (2).—(a) The facts are the same as in example (1) except that on April 1, 1965, *S* purchases a new residence at a cost of $30,000 and qualifies for the nonrecognition of gain under section 1034 in respect of the sale of his principal residence on June 30, 1964. In his return for 1964, *S* does not include any capital gain in income as a result of the sale of the old residence.

(b) The results obtained before and after the reacquisition of the property are as follows:

	Before reacquisition	*After reacquisition*
Application of sec. 121 (see example (1)):		
Adjusted sales price	$25,000	$50,000
Less: Adjusted basis of property at time of sale	15,000	15,000
Gain on sale	10,000	35,000
Gain excluded from income under sec. 121	8,000	14,000
Gain not excluded from income under sec. 121	2,000	21,000
Application of sec. 1034:		
Adjusted sales price:		
$25,000—$8,000	17,000	
$50,000—$14,000		36,000
Less: Cost of new residence	30,000	30,000
Gain recognized under sec. 1034 on sale of old residence	0	6,000
Gain not recognized under sec. 1034 on sale of old residence:		
($10,000—[$8,000+$0])	2,000	
($35,000—[$14,000+$6,000])		15,000
Adjusted basis of new residence on April 1, 1965:		
$30,000—$2,000	28,000	
$30,000—$15,000		15,000

(c) The $6,000 of capital gain on the sale of the old residence is required to be included in income on the return for 1967. The adjusted basis on April 1, 1965, for determining gain on a sale or exchange of the new residence at any time on or after that date is $15,000, after taking into account the reacquisition and resale of the old residence.

Example (3).—The facts are the same as in example (2) except that *S* sells the new residence on June 20, 1965, for $40,000 and includes $12,000 of capital gain ($40,000—$28,000) on its sale in his income on the return for 1965. *S* is required to include the additional capital gain of $13,000 ([$40,000—$15,000]—$12,000) on the sale of the new residence in his income on the return for 1967. For this purpose, the assumption is also made that there are no additional adjustments to the basis of the new residence after April 1, 1965.

§ 1.1038–3 Election to Have Section 1038 Apply for Taxable Years Beginning After December 31, 1957.

(a) *In general.* If an election is made in the manner provided by paragraph (b) of this section, the applicable provisions of § 1.1038–1 and § 1.1038–2 shall apply to all reacquisitions of real property occurring in each and every taxable year beginning after December 31, 1957, and before September 3, 1964, for which the assessment of a deficiency, or the credit or refund of an overpayment, is not prevented on September 2, 1964, by the operation of any law or rule of law. The election so made shall apply to all taxable years beginning after December 31, 1957, and before September 3, 1964, for which the assessment of a deficiency, or the credit or refund of an overpayment, is not prevented on September 2, 1964, by the operation of any law or rule of law and shall apply to every reacquisition occurring in such taxable years. The fact that the assessment of a deficiency, or the credit or refund of an overpayment, is prevented for any other taxable year or years affected by the election will not prohibit the making of an election under this section. For example, if an individual who uses the calendar year as the taxable year were to sell in 1960 real property used as his principal residence in respect of the sale of which gain is not recognized under section 1034, and if such property were reacquired by the seller in 1962 and resold within one year, he would be permitted to make an election under this section with respect to such reacquisition even though on September 2, 1964, the period of limitations on

assessment or refund has run for 1960. An election under this section shall be deemed a consent to the application of the provisions of this section.

(b) *Time and manner of making election.*—(1) *In general.*—(i) An election to have the provisions of § 1.1038–2 apply to reacquisitions of real property occurring in taxable years beginning after December 31, 1957, and before September 3, 1964, shall be made by filing on or before September 3, 1965, a return, an amended return, or a claim for refund, whichever is proper, for each taxable year in which the resale of such real property occurs. If the return for any such year is not due on or before such date and has not been filed, the election with respect to such taxable year shall be made by filing on or before such date the statement described in subparagraph (2) of this paragraph.

(ii) An election to have the provisions of § 1.1038–1 apply to reacquisitions of real property occurring in taxable years beginning after December 31, 1957, and before September 3, 1964, shall be made by filing on or before September 3, 1965, a return, an amended return, or a claim for refund, whichever is proper, for each taxable year in which such reacquisitions occur. If the return for any such year is not due on or before such date and has not been filed, the election with respect to such taxable year shall be made by filing on or before such date the statement described in subparagraph (2) of this paragraph.

(iii) If the facts are such that § 1.1038–2 applies to a reacquisition of property except that the reacquisition occurs in a taxable year beginning after December 31, 1957, and before September 3, 1964, an election may not be made under this paragraph to have the provisions of § 1.1038–1 apply to such reacquisition.

(iv) Once made, an election under this paragraph may not be revoked after September 3, 1965. To any return, amended return, or claim for refund filed under this subparagraph there shall be attached the statement described in subparagraph (2) of this paragraph.

(2) *Statement to be attached.*—The statement described in subparagraph (1) of this paragraph shall indicate—

(i) The name, address and account number of the taxpayer, and the fact that the taxpayer is electing to have the provisions of section 1038 apply to the reacquisitions of real property,

(ii) The taxable years in which the reacquisitions of property occur and any other taxable year or years the tax for which is affected by the application of section 1038 to such reacquisitions,

(iii) The office of the district director where the return or returns for such taxable year or years were or will be filed,

(iv) The dates on which such return or returns were filed and on which the tax for such taxable year or years was paid,

(v) The type of real property reacquired, the terms under which such property was sold and reacquired, and an indication of whether the taxpayer is applying the provisions of § 1.1038–2 to the reacquisition of such property.

(vi) If § 1.1038–2 is being applied to the reacquisition, the terms under which the old residence was resold and, if applicable, the terms under which the new residence was sold, and

(vii) The office where, and the date when, the election to apply section 121 in respect of any sale of such property was or will be made.

(3) *Place for filing.*—Any claim for refund, amended return, or statement, filed under this paragraph in respect of any taxable year, whether the taxable year in which occurs the reacquisition of property or the taxable year in which occurs the resale of the old residence, shall be filed in the office of the district director in which the return for such taxable year was or will be filed.

(c) *Extension of period of limitations on assessment or refund.*—(1) *Assessment of tax.*—If an election is properly made under paragraph (b) of this section and the assessment of a deficiency for the taxable years to which such election applies is not prevented on September 2, 1964, by the operation of any law or rule of law, the period within which a deficiency for such taxable years may be assessed shall, to the extent such deficiency is attributable to the application of section 1038, not expire prior to one year after the date on which such election is made.

(2) *Refund of tax.*—If an election is properly made under paragraph (b) of this section and the credit or refund of any overpayment for the taxable years to which such election applies is not prevented on September 2, 1964, by the operation of any law or rule of law, the period within which a claim for credit or refund of an overpayment for such taxable years may be filed shall, to the extent such overpayment is attributable to the application of section 1038, not expire prior to one year after the date on which such election is made.

(d) *Payment of interest for period prior to September 2, 1964.*—No interest shall be payable with respect to any deficiency attributable to the application of the provisions of section 1038, and no interest shall be allowed with respect to any credit or refund of any overpayment attributable to the application of such section, for any period prior to September 2, 1964. See section 2(c)(3) of the Act of September 2, 1964 (Public Law 88-570, 78 Stat. 856).

(This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

SHELDON S. COHEN,
Commissioner of Internal Revenue.

Approved April 7, 1967.
STANLEY S. SURREY,
Assistant Secretary of the Treasury.

(Filed with the Office of the Federal Register on Apr. 12, 1967; 8:49 a.m., and published in the issue of the Federal Register for Apr. 13, 1967, 32 F.R. 5923)

SUBCHAPTER P.—CAPITAL GAINS AND LOSSES

PART IV.—SPECIAL RULES FOR DETERMINING CAPITAL GAINS AND LOSSES

SECTION 1231.—PROPERTY USED IN THE TRADE OR BUSINESS AND INVOLUNTARY CONVERSIONS

26 CFR 1.1231-1: Gains and losses from the sale or exchange of certain property used in the trade or business. Rev. Rul. 67-188

(Also Sections 165, 702; 1.165-1, 1.702-1.)

Where a general partner is engaged as a real estate dealer for his individual account and also has an interest in a partnership formed to acquire, operate and lease a hotel, his share of the partnership's loss, resulting from the foreclosure of a mortgage on the hotel used in the partnership's trade or business, is considered to be a loss from the sale of real and depreciable property used in his trade or business. The partner shall treat such loss as an ordinary loss since he has no gains for the taxable year from the disposition of property of the type described in section 1231 of the Internal Revenue Code of 1954.

Advice has been requested relative to the treatment of a distributive share of a partnership's loss, resulting from the foreclosure of a mortgage on a hotel acquired and held by the partnership, by a general partner who is engaged as a real estate dealer for his individual account.

The taxpayer, engaged as a real estate dealer for his individual account, is a general partner in a partnership which was formed to acquire, own, operate, lease, and manage a hotel. The hotel property was purchased subject to existing mortgages which were not assumed by the purchaser. The hotel property was purchased subject also to a lease and was operated by various lessees until foreclosed by a second mortgagee some five years after the partnership had acquired it. Under the laws of the State in which the hotel was located, the foreclosure sale was not subject to a period of redemption.

The partnership agreement provided, in part, that the net profits of the partnership would be divided among the partners and the net losses would be borne by them, pro rata, in proportion to their respective original contributions to the capital of the partnership.

The taxpayer in his individual capacity during the year the mortgage on the hotel property was foreclosed had no transactions involving property described in section 1231 of the Internal Revenue Code of 1954.

Section 1231 of the Code provides that a taxpayer's recognized gains and losses from the disposition (including involuntary conversion) of "property used in the trade or business," as defined in section 1231(b) of the Code, and from the involuntary conversion of capital assets held for more than six months shall be treated as long-term capital gains and losses if the total gains exceed the total losses. If the total gains do not exceed the total losses, all such gains and losses are treated as ordinary gains and losses. Section 1231 of the Code, to the extent here pertinent, applies to recognized gains and losses from the sale, exchange, or involuntary conversion of property held for more than six months and used in the taxpayer's trade or business, which is either real property or is of a character subject to the allowance for depreciation under section 167 of the Code (even though fully depreciated), and which is not property of a kind which would properly be includible in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of business. See section 1.1231–1(c) of the Income Tax Regulations.

Since the real and depreciable property comprising the hotel was held by the partnership for more than six months, was used in the partnership business, and was not inventory or property held by the partnership primarily for sale to customers, it qualifies as property described in section 1231 of the Code. The partnership had no other property described in section 1231 of the Code.

Section 165(a) of the Code provides, in part, that there shall be allowed as a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise.

Section 702 of the Code provides, in substance, that, in determining his income tax, each partner shall take into account separately his distributive share of the partnership's gains and losses from sales and exchanges of capital assets and from property described in section 1231 of the Code, as well as other items of income, gain, loss, deduction, or credit, to the extent provided by the Code and by regulations prescribed by the Secretary of the Treasury or his delegate. The character of any such item included in a partner's distributive share shall be determined as if the item were realized by the partner directly from the source from which realized by the partnership or incurred in the same manner as incurred by the partnership. For example, a partner's distributive share of gain from the sale of depreciable property used in the trade or business of the partnership shall be considered as gain from the sale of such depreciable property in the hands of the partner. See section 1.702–1(b) of the regulations.

Section 1.702–1(a)(3) of the regulations provides, in effect, that each partner, in determining his income tax, shall take into account separately, as part of his gains and losses from sales or exchanges

of property described in section 1231 of the Code, his distributive share of the combined net amount of such gains and losses of the partnership. Each partner must also take into account separately his distributive share of any partnership item which, if separately taken into account by any partner, would result in an income tax liability for that partner different from that which would result if that partner did not take the item into account separately. See section 1.702–1(a)(8)(ii) of the regulations.

For Federal income tax purposes, a loss sustained by an individual taxpayer upon the foreclosure sale of his interest in real estate does not result from an involuntary conversion but from a sale. See *Helvering* v. *Godfrey Hammel, et ux.*, 311 U.S. 504 (1941), Ct. D. 1480, C.B. 1941–1, 375. It makes no difference whether the taxpayer is personally liable on the mortgage so long as the properties are taken from him by foreclosure. See *Edward F. C. McLaughlin* v. *Commissioner*, 43 B.T.A. 528 (1941). Where under State law the mortgage foreclosure sale of real property is not subject to, or defeasible by, redemption within a certain period, the definitive event fixing the loss will be the foreclosure sale.

Since the hotel property involved here qualifies as property described in section 1231 of the Code, the partnership's loss resulting from foreclosure thereof is a partnership loss under section 1231 of the Code, each partner's distributive share of which must be taken into account separately by him. Accordingly, each partner's distributive share of such loss must be considered a loss from the sale of property described in section 1231 of the Code in the hands of the partner.

Accordingly, the taxpayer's share of the partnership's loss resulting from the foreclosure of the mortgage on the hotel, is to be treated as an ordinary loss to the taxpayer under section 1231 of the Code, inasmuch as he had no gains for the taxable year from the disposition of property of the type described in that section.

The taxpayer's distributive share of partnership loss will be allowed only to the extent of the adjusted basis of his interest in the partnership at the end of the partnership year in which such loss occurred. See section 704(d) of the Code.

SECTION 1234.—OPTIONS TO BUY OR SELL

26 CFR 1.1234–1: Options to buy or sell.

Loss on failure to exercise an option, received under the will of a decedent, to purchase property from the decedent's estate. See Rev. Rul. 67–96, page 195.

SUBCHAPTER Q.—READJUSTMENT OF TAX BETWEEN YEARS AND SPECIAL LIMITATIONS

PART V.—CLAIM OF RIGHT

SECTION 1341.—COMPUTATION OF TAX WHERE TAXPAYER RESTORES SUBSTANTIAL AMOUNT HELD UNDER CLAIM OF RIGHT

26 CFR 1.1341–1: Restoration of amounts received or accrued under claim of right.

Liquidated damages paid former employer for breach of employment contract. See Rev. Rul. 67–48, page 50.

SUBCHAPTER S.—ELECTION OF CERTAIN SMALL BUSINESS CORPORATIONS AS TO TAXABLE STATUS

SECTION 1371.—DEFINITIONS

26 CFR 1.1371–1: Definition of small business corporation. T.D. 6904[1]

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A. PART 1.—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Electing small business corporations; classes of stock

DEPARTMENT OF THE TREASURY,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D.C. 20224

To Officers and Employees of the Internal Revenue Service and Others Concerned:

In order to modify the rules relating to the requirement that an electing small business corporation does not have more than one class of stock, paragraph (g) of § 1.1371–1 of the Income Tax Regulations (26 CFR Part 1) is amended to read as follows:

§ 1.1371–1 DEFINITION OF SMALL BUSINESS CORPORATION.

* * * * * * *

(g) CLASSES OF STOCK.—A corporation having more than one class of stock does not qualify as a small business corporation. In determining whether a corporation has more than one class of stock, only stock which is issued and outstanding is considered. Therefore, treasury stock and unissued stock of a different class than that held by the shareholders will not disqualify a corporation under section 1371(a)(4). If the outstanding shares of stock of the corporation are not identical with respect to the rights and interest which they convey in the control, profits, and assets of the corporation, then the corporation

[1] 31 F.R. 16527.

is considered to have more than one class of stock. Thus, a difference as to voting rights, dividend rights, or liquidation preferences of outstanding stock will disqualify a corporation. However, if two or more groups of shares are identical in every respect except that each group has the right to elect members of the board of directors in a number proportionate to the number of shares in each group, they are considered one class of stock. Obligations which purport to represent debt but which actually represent equity capital will generally constitute a second class of stock. However, if such purported debt obligations are owned solely by the owners of the nominal stock of the corporation in substantially the same proportion as they own such nominal stock, such purported debt obligations will be treated as contributions to capital rather than a second class of stock. But, if an issuance, redemption, sale, or other transfer of nominal stock, or of purported debt obligations which actually represent equity capital, results in a change in a shareholder's proportionate share of nominal stock or his proportionate share of such purported debt, a new determination shall be made as to whether the corporation has more than one class of stock as of the time of such change.

Because this Treasury decision liberalizes the regulations relating to the requirement that an electing small business corporation does not have more than one class of stock, it is found that it is unnecessary to issue this Treasury decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of such Act.

(This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

SHELDON S. COHEN,
Commissioner of Internal Revenue.

Approved December 22, 1966.

STANLEY S. SURREY,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on Dec. 27, 1966, 8:47 a.m., and published in the issue of the Federal Register for Dec. 28, 1966, 31 F.R. 16527)

SECTION 1372.—ELECTION BY SMALL BUSINESS CORPORATION

26 CFR 14.1–1: Election relating to passive investment income of electing small business corporations.

Time for, and manner of, making election and related consents of electing small business corporations. See T.D. 6912, page 539.

CHAPTER 2.—TAX ON SELF-EMPLOYMENT INCOME

SECTION 1402.—DEFINITIONS

26 CFR 1.1402(a)–1: Definition of net earnings from self-employment.

Treatment of amounts payable with respect to gasoline used on a farm for farming purposes which farmers may claim as a credit against their income tax for taxable years beginning after June 30, 1965. See Rev. Rul. 67–2, page 13.

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26 CFR 1.1402(c)–3: Employees. Rev. Rul. 67–153

A United States citizen employed by an international organization, on an annual salary basis, performed services both within and without the United States. He was subject to call by the organization at all times and was in a payment status on a 7-day week basis, regardless of the number of days per week he actually performed services. *Held*, in computing the amount of such salary constituting net earnings from self-employment attributable to services performed in the United States, his salary is to be apportioned on the basis of the number of days spent in payment status within and without the United States, respectively, the days of arrival in and departure from the United States to be counted as days in payment status in the United States.

The Internal Revenue Service has received an inquiry as to how a United States citizen employee of an international organization should compute his net earnings from self-employment under section 1402(a) of the Self-Employment Contributions Act of 1954 as amended (ch. 2, subtitle A, Internal Revenue Code of 1954) when, during a taxable year, he works both within and without the United States for such organization.

A, a United States citizen, was employed on an annual salary basis by *X*, an organization which qualified as an "international organization" within the meaning of that term as defined in section 7701(a)(18) of the Internal Revenue Code of 1954. *A* was subject to call by the organization at all times and was in a payment status on a 7-day week basis; that is, he received his stipulated salary payments regardless of the number of days per week he actually performed services. *A*'s assignment of duties required him to perform services both within and without the United States but there was no specific agreement as to the amount of his salary attributable to services performed within, and those performed without, the United States.

The starting point in computing the amount of "net earnings from self-employment" as defined in section 1402(a) of the Act is the gross income from any "trade or business" carried on by an individual. The performance of services by an individual as an employee, as defined in chapter 21 of the Code, generally does not constitute a "trade or business" for this purpose, as provided in section 1402(c)(2) of the Act. However, section 1402(c)(2)(C) of the Act includes within the definition of the term "trade or business" service described in section 3121(b)(15) of the Code performed by a United States citizen in the

United States, as defined in section 3121(e)(2) of the Code. As provided in section 3121(b)(15) of the Code the described service is service performed in the employ of an international organization, defined as above stated in section 7701(a)(18) of the Code.

In the absence of a specific agreement as to the amount of salary attributable to services performed within and those performed without the United States, the portion of *A*'s salary attributable to services performed in the United States and taken into account in computing the amount of his net earnings from self-employment is to be computed on a per diem basis; that is, the salary he receives from *X* for a taxable period is to be multiplied by a fraction, the numerator of which is the total number of days in payment status while employed by *X* within the United States and the denominator of which is the total number of days in payment status while he is employed by *X* whether within or without the United States, the resulting amount to be considered by *A* in computing his net earnings from self-employment. Under this method, time spent in traveling to and from the United States will not be considered as employment in the United States but the days of his arrival in and departure from the United States will be counted as being in payment status in the United States.

The foregoing may be illustrated by the following example: *A* was employed by *X* from March 1, 1961, to June 12, 1961, a total of 104 days. He left the United States on March 14, 1961, and returned on April 29, 1961. He was thus within the United States 14 days in March, 2 in April, 31 in May, and 12 in June, a total of 59 days. Multiplying *A*'s total pay from *X*, $6,120, by the fraction of 59 over 104 results in $3,471.92. The expenses in connection with *A*'s services for *X* were incurred and paid by *X*. Thus, no deduction is allowable for such expenses in computing *A*'s net earnings from self-employment. Accordingly, $3,471.92 is includable in computing *A*'s net earnings from self-employment for 1961.

CHAPTER 3.—WITHHOLDING OF TAX ON NONRESIDENT ALIENS AND FOREIGN CORPORATIONS AND TAX-FREE COVENANT BONDS

SUBCHAPTER A.—NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

SECTION 1441.—WITHHOLDING OF TAX ON NONRESIDENT ALIENS

26 CFR 1.1441: Statutory provisions; withholding of tax on nonresident aliens. (Also Sections 1442, 3401; 1.1442, 31.3401(a)(6).)

T.D. 6908 [1]

[1] The publication of this Treasury Decision in 31 F.R. 16769, dated Dec. 31, 1966, contains (1) instructions for modifying the notice of proposed rulemaking published in 31 F.R. 15587, dated Dec. 10, 1966, and (2) the full context of the regulations with such modifications. As here published, the Treasury Decision reflects the full context of such regulations, with modifications. The individual instructions have been omitted.

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 1.—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953; SUBCHAPTER C, PART 31.—EMPLOYMENT TAXES; APPLICABLE ON AND AFTER JANUARY 1, 1955

Withholding of tax on nonresident aliens and foreign corporations

DEPARTMENT OF THE TREASURY,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D.C. 20224.

To Officers and Employees of the Internal Revenue Service and Others Concerned:

On December 10, 1966, notice of proposed rulemaking was published in the Federal Register (31 F.R. 15587) with respect to the amendment of the Income Tax Regulations (26 CFR Part 1) under sections 1441 and 1442 of the Internal Revenue Code and the Employment Tax Regulations (26 CFR Part 31) under section 3401 of the Internal Revenue Code, to reflect the changes made by sections 103 (h) and (k), and section 104(c), of the Foreign Investors Tax Act of 1966 (80 Stat. 1553, 1554, 1557) [P.L. 89–809, C.B. 1966–2, 656] and by section 302(c) of the Revenue Act of 1964 (78 Stat. 146) [P.L. 88–272, C.B. 1964–1 (Part 2), 6]. After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the following amendments of the regulations are adopted.

In order to conform the Income Tax Regulations (26 CFR Part 1) to amendments of the Internal Revenue Code made by section 302(c) of the Revenue Act of 1964 (78 Stat. 146) and by section 103(h) and section 104(c) of the Foreign Investors Tax Act of 1966 (80 Stat. 1553, 1554, 1557); to conform the Employment Tax Regulations (26 CFR Part 31) to amendments of the Internal Revenue Code made by section 103(k) of the Foreign Investors Tax Act of 1966 (80 Stat. 1554); and to make certain technical changes in such regulations, they are amended as set forth below. Unless otherwise expressly provided, the amendments required by sections 103(h) and 104(c) of the Foreign Investors Tax Act of 1966 are effective with respect to payments made in taxable years of recipients beginning after December 31, 1966, and the amendments required by section 103(k) of such Act are effective with respect to payments occurring after December 31, 1966.

PARAGRAPH 1. Section 1.943–1 is amended to read as follows:

§ 1.943–1 WITHHOLDING BY A CHINA TRADE ACT CORPORATION.—Dividends paid by a China Trade Act corporation to a nonresident alien individual, foreign partnership, or foreign corporation are subject to withholding of tax at source under § 1.1441–1. However, see paragraph (c) of § 1.1441–4 for exemption applicable to dividends paid to residents of Formosa or Hong Kong.

PAR. 2. Section 1.1441 is amended by revising sections 1441 (a) and (b), by striking out paragraph (1) of section 1441(c) and inserting a new paragraph (1) in lieu thereof, by revising sections 1441(c) (4) and (5) by adding a paragraph (7) to section 1441(c), by redesignating section 1441(d) as section 1441(e), by adding a new section

1441(d), and by adding a historical note. These amended and added provisions read as follows:

§ 1.1441 STATUTORY PROVISIONS; WITHHOLDING OF TAX ON NONRESIDENT ALIENS.

SEC. 1441. WITHHOLDING OF TAX ON NONRESIDENT ALIENS.

(a) GENERAL RULE.—Except as otherwise provided in subsection (c), all persons, in whatever capacity acting (including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the United States) having the control, receipt, custody, disposal, or payment of any of the items of income specified in subsection (b) (to the extent that any of such items constitutes gross income from sources within the United States), of any nonresident alien individual or of any foreign partnership shall (except in the cases provided for in section 1451 and except as otherwise provided in regulations prescribed by the Secretary or his delegate under section 874) deduct and withhold from such items a tax equal to 30 percent thereof, except that in the case of any item of income specified in the second sentence of subsection (b), the tax shall be equal to 14 percent of such item.

(b) INCOME ITEMS.—The items of income referred to in subsection (a) are interest, dividends, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, gains described in section 402(a)(2), 403(a)(2), or 631 (b) or (c), amounts subject to tax under section 871(a)(1)(C), gains subject to tax under section 871(a)(1)(D), and gains on transfers described in section 1235 made on or before October 4, 1966. The items of income referred to in subsection (a) from which tax shall be deducted and withheld at the rate of 14 percent are—

(1) That portion of any scholarship or fellowship grant which is received by a nonresident alien individual who is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is not excluded from gross income under section 117(a)(1) solely by reason of section 117(b)(2)(B); and

(2) Amounts described in subparagraphs (A), (B), (C), and (D) of section 117(a)(2) which are received by any such nonresident alien individual and which are incident to a scholarship or fellowship grant to which section 117(a)(1) applies, but only to the extent such amounts are includible in gross income.

In the case of a nonresident alien individual who is a member of a domestic partnership, the items of income referred to in subsection (a) shall be treated as referring to items specified in this subsection included in his distributive share of the income of such partnership.

(c) EXCEPTIONS.—(1) INCOME CONNECTED WITH UNITED STATES BUSINESS.—No deduction or withholding under subsection (a) shall be required in the case of any item of income (other than compensation for personal services) which is effectively connected with the conduct of a trade or business within the United States and which is included in the gross income of the recipient under section 871(b)(2) for the taxable year.

(2) OWNER UNKNOWN.—The Secretary or his delegate may authorize the tax under subsection (a) to be deducted and withheld from the interest upon any securities the owners of which are not known to the withholding agent.

(3) BONDS WITH EXTENDED MATURITY DATES.—The deduction and withholding in the case of interest on bonds, mortgages, or deeds of trust or other similar obligations of a corporation, within subsections (a), (b), and (c) of section 1451 were it not for the fact that the maturity date of such obligations has been extended on or after January 1, 1934, and the liability assumed by the debtor exceeds 27½ percent of the interest, shall not exceed the rate of 27½ percent per annum.

(4) COMPENSATION OF CERTAIN ALIENS.—Under regulations prescribed by the Secretary or his delegate, compensation for personal

services may be exempted from deduction and withholding under subsection (a).

(5) SPECIAL ITEMS.—In the case of gains described in section 402 (a)(2), 403(a)(2), or 631 (b) or (c), gains subject to tax under section 871(a)(1)(D), and gains on transfers described in section 1235 made on or before October 4, 1966, the amount required to be deducted and withheld shall, if the amount of such gain is not known to the withholding agent, be such amount, not exceeding 30 percent of the amount payable, as may be necessary to assure that the tax deducted and withheld shall not be less than 30 percent of such gain.

(6) PER DIEM OF CERTAIN ALIENS.—No deduction or withholding under subsection (a) shall be required in the case of amounts of per diem for subsistence paid by the United States Government (directly or by contract) to any nonresident alien individual who is engaged in any program of training in the United States under the Mutual Security Act of 1954, as amended.

(7) CERTAIN ANNUITIES RECEIVED UNDER QUALIFIED PLANS.—No deduction or withholding under subsection (a) shall be required in the case of any amount received as an annuity if such amount is, under section 871(f), exempt from the tax imposed by section 871(a).

(d) EXEMPTION OF CERTAIN FOREIGN PARTNERSHIPS.—Subject to such terms and conditions as may be provided by regulations prescribed by the Secretary or his delegate, subsection (a) shall not apply in the case of a foreign partnership engaged in trade or business within the United States if the Secretary or his delegate determines that the requirements of subsection (a) impose an undue administrative burden and that the collection of the tax imposed by section 871(a) on the members of such partnership who are nonresident alien individuals will not be jeopardized by the exemption.

(e) ALIEN RESIDENT OF PUERTO RICO.—For purposes of this section, the term "nonresident alien individual" includes an alien resident of Puerto Rico.

[Sec. 1441 as amended by sec. 544(f), Mutual Security Act 1954 (added by sec. 11(a), Mutual Security Act 1956 (70 Stat. 563)); sec. 40(b), Technical Amendments Act 1958 (72 Stat. 1638); sec. 110(d), Mutual Educational and Cultural Exchange Act 1961 (75 Stat. 536); sec. 302 (c), Revenue Act 1964 (78 Stat. 146); sec. 103(h), Foreign Investors Tax Act 1966 (80 Stat. 1553). (Sec. 544(f), Mutual Security Act 1954, was repealed by sec. 11(b)(1), Mutual Security Act 1957 (71 Stat. 365), with the proviso that sec. 1441 was not affected by the repeal.)]

PAR. 3. Section 1.1441–1 is amended to read as follows:

§ 1.1441–1 REQUIREMENT FOR WITHHOLDING OF TAX ON NONRESIDENT ALIENS, FOREIGN PARTNERSHIPS, AND FOREIGN CORPORATIONS.

Except as otherwise provided in §§ 1.1441–3 and 1.1441–4, to the extent that the items specified in § 1.1441–2 constitute gross income from sources within the United States, withholding of a tax of 30 percent is required in the case of items of income specified in paragraphs (a) and (b) of § 1.1441–2 when such income is paid to a nonresident alien individual, a foreign partnership, or a foreign corporation, except that with respect to payments made after March 4, 1964, withholding of a tax of 14 percent is required in the case of items of income specified in paragraph (c) of § 1.1441–2. The rate of 30 percent or 14 percent shall be reduced as may be provided by a treaty with any country. See section 894, relating to income affected by treaty. For purposes of this section, the term "nonresident alien individual" includes an alien resident of Puerto Rico.

PAR. 4. Section 1.1441–2 is amended by revising paragraph (a)(1), by striking out the last sentence of paragraph (a)(3), by revising paragraph (b), and by revising paragraphs (c)(1) and (2). These amended provisions read as follows:

§ 1.1441–2 INCOME SUBJECT TO WITHHOLDING.

(a) *Fixed or determinable annual or periodical income.*—(1) The gross amount of fixed or determinable annual or periodical income is subject to withholding.

Section 1441(b) specifically includes in such income interest, dividends, rent, salaries, wages, premiums, annuities, compensations, remunerations, and emoluments; but other kinds of income are included, as, for instance, royalties. For purposes of the preceding sentence, the term "interest" includes interest on certain deferred payments, as provided in section 483 and the regulations thereunder. The term "fixed or determinable annual or periodical" income is merely descriptive of the character of a class of income. If an item of income falls within the class of income contemplated by the statute, it is immaterial whether payment of that item is made in a series of repeated payments or in a single lump sum. Thus, $5,000 in royalty income would come within the meaning of the term, whether paid in 10 payments of $500 each or in one payment of $5,000.

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(3) Income derived from the sale in the United States of property, whether real or personal, is not fixed or determinable annual or periodical income.

(b) *Other income subject to withholding.*—(1) *Payments in taxable years of recipients beginning before January 1, 1967.*—For payments made in taxable years of recipients beginning before January 1, 1967, withholding at 30 percent is also required on the gross amount of the items described in section 402(a)(2), relating to treatment of total distributions from certain employees' trusts; in sections 631 (b) and (c), relating to treatment of gain on disposal of timber, coal, or domestic iron ore with a retained economic interest; in section 1235, relating to treatment of gain on sale or exchange of patents; and, after September 2, 1958, in section 403(a)(2), relating to treatment of payments under certain employee annuities, each of which items is considered to be gain from the sale or exchange of a capital asset.

(2) *Payments in taxable years of recipients beginning after December 31, 1966.*—For payments made in taxable years of recipients beginning after December 31, 1966, withholding at 30 percent is also required on the gross amount of the following items:

(i) Gains described in section 402(a)(2), relating to the treatment of total distributions from certain employees' trusts; section 403(a)(2), relating to treatment of payments under certain employee annuities; and section 631 (b) or (c), relating to treatment of gain on disposal of timber, coal, or domestic iron ore with a retained economic interest;

(ii) [Reserved]

(iii) Gains subject to the 30-percent tax under section 871(a)(1)(D) or section 881(a)(4), relating to contingent payments received from the sale or exchange after October 4, 1966, of patents, copyrights, and similar intangible property; and

(iv) Gains on transfers described in section 1235, relating to treatment of gain on sale or exchange of patents, if the transfers are made on or before October 4, 1966.

(c) *Amounts received by participants in certain exchange or training programs.*—(1) *Scholarship or fellowship grants.*—Withholding of tax shall be at the rate of 14 percent (rather than 30 percent) on that portion of a scholarship or fellowship grant paid after March 4, 1964, to a nonresident alien individual who is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, which is not excludable from such nonresident alien's gross income under section 117(a)(1) and paragraph (a) of § 1.117–1 because it exceeds the limitations set forth in section 117(b)(2)(B) and paragraph (b)(2) of § 1.117–2. Thus, if a nonresident alien scientist who was admitted to the United States under subparagraph (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, to engage in postdoctoral scientific studies received a fellowship grant from a grantor specified in section 117(b)(2)(A) which exceeded the $300-per-month-for-36-months limitation determined under paragraph (b) (2) and (3) of § 1.117–2, a tax at the rate of 14 percent rather than 30 percent must be withheld from the amount of the grant includible in the scientist's gross income.

(2) *Expenses for travel, research, etc.*—Withholding shall also be at the rate of 14 percent on amounts paid after March 4, 1964, to nonresident alien individuals described in subparagraph (1) of this paragraph to cover expenses for travel, research, clerical help, or equipment which are incident to a scholarship or fellowship grant to which section 117(a)(1) applies, but only to the extent that such amounts are not excludable from gross income under paragraph (b)(1) of § 1.117–1 because they pertain to a portion of a scholarship or fellow-

ship grant which is not excludable, or because the amount received is not specifically designated to cover such expenses under paragraph (b)(2)(i) of § 1.117–1.

(3) *Exchange visitors.*—A nonresident alien individual who is temporarily present in the United States as a nonimmigrant under subparagraph (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, includes a nonresident alien individual admitted to the United States as an "exchange visitor" under section 201 of the United States Information and Educational Exchange Act of 1948, as amended (22 U.S.C. 1446), which section was repealed by section 111 of the Mutual Educational and Cultural Exchange Act of 1961 (Pub. Law 87–256, 75 Stat. 538) [C.B. 1961–2, 322].

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PAR. 5. Section 1.1441–3 is amended by revising subparagraphs (1) and (2) of paragraph (b), by striking out subparagraphs (3) and (4) of paragraph (b), and inserting a new subparagraph (3) in lieu thereof, by revising paragraph (c)(1), by revising paragraph (d), by revising paragraph (e)(2), and by revising paragraph (f). These amended and added provisions read as follows:

§ 1.1441–3 EXCEPTIONS AND RULES OF SPECIAL APPLICATION.

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(b) *Corporate distributions.*—(1) *Nontaxable portion.*—The tax shall be withheld at the source under § 1.1441–1 on the gross amount of any distribution made by a corporation other than—

(i) A nontaxable distribution payable in stock or stock rights, and

(ii) A distribution which is treated as a distribution in part or full payment in exchange for stock.

This rule shall apply without regard to any claim that all or a portion of the distribution is not taxable under section 871 or 881. The tax shall be withheld on the gross amount of the distribution even though the payee may be entitled to the benefits of section 116, relating to partial exclusion of dividends received by individuals. Appropriate adjustment, if any, will be made upon the payee's filing of a claim for refund, together with appropriate supporting evidence, in accordance with paragraph (h) of this section.

(2) *Dividends paid by a foreign corporation.*—(i) *Payments in taxable years of recipients beginning before January 1, 1967.*—In the case of dividends paid in taxable years of recipients beginning before January 1, 1967, no withholding under § 1.1441–1 is required in the case of dividends paid by a foreign corporation unless (*a*) the corporation is engaged in trade or business within the United States and (*b*) more than 85 percent of the gross income of the corporation for the 3-year period ending with the close of its taxable year preceding the declaration of the dividends (or for such part of such period as the corporation has been in existence) was derived from sources within the United States as determined under the provisions of part I (section 861 and following), subchapter N, chapter 1 of the Code, and the regulations thereunder.

(ii) *Payments in taxable years of recipients beginning after December 31, 1966.*—In the case of dividends paid in taxable years of recipients beginning after December 31, 1966, all dividends paid by a foreign corporation which are treated as income from sources within the United States are subject to withholding under § 1.1441–1.

(3) *Dividends paid to shareholder whose status is not definite.*—When a payer corporation or any other person, including a nominee, having the control, receipt, custody, disposal, or payment of dividends has no definite knowledge of the status of a shareholder, the tax shall be withheld under § 1.1441–1 if the shareholder's address is outside the United States. If the shareholder's address is within the United States, it may be assumed for the purpose of withholding on dividends that, in the case of an individual, the shareholder is a citizen or resident of the United States; and, in the case of a partnership or corporation, the shareholder is a domestic partnership or a domestic corporation, as the case may be. Unless the facts and circumstances indicate clearly that the shareholder is a nonresident alien individual, foreign partnership, or foreign corporation, an address in care of another person in the United States does not of itself warrant treating the shareholder as a person who is subject to withholding upon dividends under § 1.1441–1. If a shareholder changes his address from a place outside the United States to a place within the United States, the tax shall be withheld on dividends unless (i) proof is furnished showing that, in the case of an

individual, he is a citizen or resident of the United States or, in the case of a partnership or corporation, it is a domestic partnership or corporation, or (ii) the withholding agent is otherwise satisfied that the shareholder is not a person who is subject to withholding under § 1.1441–1. For general provisions for claiming to be a person not subject to withholding under § 1.1441–1, see § 1.1441–5.

(c) *Interest.*—(1) *Government obligations.*—Withholding is required under § 1.1441–1 in case of interest paid on obligations issued on or after March 1, 1941, by the United States or any agency or instrumentality thereof. See section 103 and the regulations thereunder, relating to the taxation of such interest, and § 1.1461–1, relating to ownership certificates. See also section 895 and the regulations thereunder, relating to the exemption from tax with respect to interest received by a foreign central bank of issue or the Bank for International Settlements on obligations of the United States.

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(d) *Special rules applicable to certain income.*—(1) *Determination of amount to be withheld.*—If in the case of amounts described in paragraph (b) of § 1.1441–2, other than amounts described in subparagraph (2)(ii) of such paragraph, the withholding agent does not know the amount of recognized gain, he is required to deduct and withhold such amount under § 1.1441–1 as may be necessary to assure that the tax withheld will not be less than 30 percent of the recognized gain. For this purpose, the recognized gain shall be determined without regard to the deduction allowed by section 1202 with respect to capital gains. The amount so withheld shall not exceed 30 percent of the amount payable by reason of the transaction giving rise to the recognized gain, except that the amount payable may be determined by excluding the net unrealized appreciation described in section 402(a)(2). Appropriate adjustment, if any, will be made by the payee's filing of a claim for refund, together with appropriate supporting evidence, in accordance with paragraph (h) of this section.

(2) *Statement showing recognized gain.*—The withholding agent may, unless he has reason to believe to the contrary, rely on the statement of the person entitled to the gain described in subparagraph (1) of this paragraph as to the amount of gain which is recognized on the transaction involved and subject to withholding under § 1.1441–1. This statement shall be filed with the withholding agent in duplicate. It shall show the computation of the amount of gain subject to withholding, shall be dated, shall be signed by the person entitled to the income, shall contain the taxpayer's identifying number, if any, and shall contain, or be verified by, a written declaration that it is made under the penalties of perjury. No particular form is prescribed for this statement. The duplicate copy of each statement filed during any calendar year pursuant to this subparagraph shall be forwarded by the withholding agent with, and attached to, the Form 1042S required by paragraph (c) of § 1.1461–2 with respect to such gain for such calendar year.

(e) *Personal exemption.* * * *

(2) In the determination of the tax to be withheld at the source under § 1.1441–1 from remuneration paid for labor or personal services performed within the United States by a nonresident alien individual, the benefit of the deduction for personal exemptions provided in section 151, to the extent allowable under section 873(b)(3) and the regulations thereunder, shall be allowed, prorated upon a daily basis for the period during which labor or personal services are performed within the United States by the alien individual. The benefit of the deduction for such personal exemptions shall also be allowed in the determination of the tax of 14 percent to be withheld at the source under § 1.1441–1 and paragraph (c) of § 1.1441–2 from amounts paid after March 4, 1964, to nonresident alien individuals who are temporarily present in the United States as nonimmigrants under subparagraph (F) or (J) of the Immigration and Nationality Act, as amended, and such personal exemptions shall be prorated upon a daily basis for the period during which the described nonresident alien student or scholar receives the payments. The proration is on a basis of $1.70 per day for each exemption to which the nonresident alien individual is entitled. Thus, if *A*, a married nonresident alien individual without dependents is paid remuneration subject to withholding under § 1.1441–1 for performing personal services during a stay of 100 days in the United States, the amount of $170 will be allocated as the portion of the deduction to be allowed against the remuneration for personal services performed within the United States during that period; and withholding at 30 percent shall be applied against the balance, if any, of the remuneration. If, for example, the total remuneration paid to *A* for that period is $2,000, a total tax in the amount of $549 [($2,000−$170)×.30] is required to

be withheld under § 1.1441–1. However, if *A* is a resident of Canada or Mexico, and his spouse has no gross income from sources within the United States, which is subject to income tax under chapter 1 of the Code, and is not the dependent of another taxpayer subject to such tax, an amount of $340 will be allocated as the portion of the deduction to be allowed against the remuneration for personal services performed within the United States. Thus, in such case, a total tax in the amount of $498 [($2,000—$340)×.30] is required to be withheld under § 1.1441–1. As to what constitutes remuneration for labor or personal services performed within the United States see section 861(a)(3) and the regulations thereunder.

(f) *Partnerships and fiduciaries.*—Domestic partnerships are required to withhold the tax at source under § 1.1441–1 on items of income described in paragraphs (a) and (b) of § 1.1441–2 which are included in the distributive share of a member of such partnership who is a nonresident alien individual or foreign corporation. Resident or domestic fiduciaries are required to withhold the tax at source under § 1.1441–1 on all items of income described in paragraphs (a) and (b) of § 1.1441–2 of beneficiaries who are nonresident alien individuals, foreign partnerships, or foreign corporations, to the extent that such items constitute gross income from sources within the United States. Income described in paragraphs (a) and (b) of § 1.1441–2 which is paid to a foreign partnership or nonresident alien fiduciary is subject to withholding under § 1.1441–1 even though the members of the partnership, or the beneficiaries of the estate or trust, are individuals who are citizens or residents of the United States or are domestic corporations.

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PAR. 6. Section 1.1441–4 is amended by striking out paragraph (a) and inserting a new paragraph (a) in lieu thereof, by revising paragraph (b), and by adding new paragraphs (f), (g), and (h). These amended and added provisions read as follows:

§ 1.1441–4 EXEMPTIONS FROM WITHHOLDING.

(a) *Income connected with a United States business.*—(1) *In general.*—No withholding is required under § 1.1441–1 in the case of any item of income if such income is effectively connected with the conduct of a trade or business within the United States by the person entitled to such income and is includible in his gross income under section 871(b)(2), section 842, or section 882(a)(2) for the taxable year and if he has filed the statement prescribed by subparagraph (2) of this paragraph. This subparagraph shall apply to income for services performed by a foreign partnership or a foreign corporation (other than a foreign corporation which has income to which section 543(a)(7) applies for the taxable year) but shall not apply to compensation for personal services performed by an individual. In determining whether an item of income from sources within the United States is, or is deemed to be, effectively connected with the conduct of a trade or business within the United States by the person entitled to the income, see section 864(c)(2), section 871(d), and sections 882(d) and (e), and the regulations thereunder.

(2) *Statement claiming exemption.*—In order for the exemption provided by subparagraph (1) of this paragraph to apply for any taxable year, the person entitled to the income must file with the withholding agent a statement in duplicate that the income described in the statement is, or is expected to be, effectively connected with the conduct of a trade or business within the United States and that such income is includible in his gross income for the taxable year. This statement shall show (i) the name and address of the withholding agent and of the person entitled to the income, (ii) the taxpayer's identifying number, (iii) the nature of the item or items of income with respect to which the statement is filed, (iv) the trade or business with which such income is, or is expected to be, effectively connected, and (v) the taxable year in respect of which the statement is made. This statement shall be filed with the withholding agent for each taxable year of the person entitled to the income, and before payment of the income in respect of which it applies. Any statement so filed shall be effective only with respect to the item or items of income specified therein and shall constitute authorization to the withholding agent to pay such income during the taxable year without deduction of the tax at source under § 1.1441–1. The statement shall be amended by the person entitled to the income if subsequent circumstances arising during the taxable year indicate that the income is not, or is not expected to be, effectively connected with the conduct of a trade or business within the United States. Any statement required by this

subparagraph may be made on a properly executed Form 4224, which shall be filed in duplicate with the withholding agent. The duplicate copy of each statement or form filed during any calendar year pursuant to this subparagraph shall be forwarded by the withholding agent with, and attached to, any Form 1042S required by paragraph (c) of § 1.1461–2 with respect to such income for such calendar year.

(b) *Compensation for personal services of an individual.*—(1) *Exemption from withholding.*—Withholding is not required under § 1.1441–1 from salaries, wages, remuneration, or any other compensation for personal services of a nonresident alien individual if—

(i) Such compensation is subject to withholding under section 3402, relating to withholding of tax at source on wages, and the regulations thereunder,

(ii) Such compensation would be subject to withholding under section 3402 but for the provisions of section 3401(a) (other than paragraph (6) thereof) and the regulations thereunder,

(iii) Such compensation is for services performed by a nonresident alien individual who is a resident of Canada or Mexico and who enters and leaves the United States at frequent intervals, or

(iv) Such compensation is, or will be, exempt from the income tax imposed by chapter 1 of the Code by reason of a provision of the Internal Revenue Code or a tax convention to which the United States is a party.

(2) *Statement claiming exemption.*—In order for the exemption provided by subparagraph (1)(iv) of this paragraph to apply for any taxable year, the person entitled to such compensation must file for the taxable year with the withholding agent a statement in duplicate setting forth his name, address, and taxpayer identifying number, and certifying (i) that he is not a citizen or resident of the United States, (ii) that the compensation to be paid to him during the taxable year is, or will be, exempt from the tax imposed by chapter 1 of the Code, and (iii) the reason why such compensation is so exempt from tax. If the compensation is claimed to be exempt from tax by reason of a provision of an income tax convention to which the United States is a party, the statement shall also indicate the provision and tax convention under which the exemption is claimed, the country of which he is a resident, and sufficient facts to justify the claim to exemption. The statement shall be dated, shall identify the taxable year for which it is to apply and the compensation to which it relates, shall be signed by the person entitled to such compensation, and shall contain, or be verified by, a written declaration that it is made under the penalties of perjury. No particular form is prescribed for this statement. The duplicate copy of each statement filed during a calendar year pursuant to this subparagraph shall be forwarded by the withholding agent with, and attached to, the Form 1042S required by paragraph (c) of § 1.1461–2 with respect to such compensation for such calendar year.

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(f) *Exemption of certain foreign partnerships and foreign corporations.*—(1) *In general.*—No withholding is required under § 1.1441–1 upon any item of income paid to a foreign partnership, or foreign corporation, engaged in trade or business in the United States at any time during the taxable year, if it is established to the satisfaction of the Director of International Operations that the requirements of section 1441(a), or 1442(a), and § 1.1441–1 impose an undue administrative burden for such taxable year and that the collection of the tax imposed by section 871(a) or section 881 on the members of such partnership, or by section 881 on such corporation, as the case may be, will not be jeopardized by the exemption from withholding. As a general rule, the requirements of section 1441(a), or 1442(a), and § 1.1441–1 will be considered to impose an undue administrative burden only in a case where (i) the person entitled to the income, such as foreign insurance company, receives from the withholding agent income on securities issued by a single corporation, some of which is, and some of which is not, effectively connected with the conduct of a trade or business within the United States and (ii) the criteria for determining the effective connection are unduly difficult to apply because of the circumstances under which such securities are held. Thus, for example, if a foreign corporation carrying on a life insurance business in the United States finds that, because of the requirements of State law which cause its U.S. reserves to fluctuate frequently, it is unduly difficult with respect to any class of income to identify the income which is, and the income which is not, effec-

tively connected with its conduct of business in the United States during the taxable year, the corporation will be considered to have satisfied the requirements of subdivision (ii) of this subparagraph. No exemption from withholding shall be granted under this paragraph unless the person entitled to the income complies with such other requirements as may be imposed by the Director of International Operations and unless the Director of International Operations is satisfied that the collection of the tax on the income involved will not be jeopardized by the exemption from withholding.

(2) *Claiming exemption.*—(i) *Statement required.*—In order for the exemption provided by subparagraph (1) of this paragraph to apply for any taxable year the foreign partnership or the foreign corporation must file with the Director of International Operations, Internal Revenue Service, Washington, D.C. 20225, a statement indicating the reasons why specific classes of income should be exempted from the withholding requirements of § 1.1441–1 for such year. This statement shall show the name and address of the withholding agent and of the person entitled to the income, the taxpayer's identifying number, the class or classes of income to be exempted from withholding, the trade or business with which such income is in part effectively connected, the taxable year during which such exemption is to apply, and, in such form and to such extent as shall satisfy the Director of International Operations, the identity of the securities or other underlying property involved.

(ii) *Notification of determination.*—The Director of International Operations shall notify the partnership or corporation by letter in duplicate of his determination in respect of the application for exemption. If the exemption from withholding is granted, the duplicate copy of the notice from the Director of International Operations shall be filed with the withholding agent and shall constitute authorization to pay the specified class or classes of income during the specified taxable year without deduction of the tax at source under § 1.1441–1.

(iii) *Bond requirement.*—The Director of International Operations may, as a condition precedent to the allowance of the exemption from withholding for the taxable year, require a bond in such sum as the Commissioner may prescribe, conditioned upon the payment of the tax on the income involved and such further conditions as the Director of International Operations may require. This bond shall be executed by the foreign partnership or foreign corporation and shall conform to the requirements of § 301.7101–1 as to form of bond and surety required. No bond shall be required pursuant to this subparagraph from a foreign corporation which is required to file a declaration of estimated income tax under section 6016 for the taxable year in respect of which the exemption from withholding applies.

(g) *Annuities received under qualified plans.*—Withholding is not required under § 1.1441–1 in the case of any amount received as an annuity if such amount is exempt under section 871(f) and the regulations thereunder from the tax imposed by section 871(a). In order for the exemption provided by this paragraph to apply for any taxable year in those cases where the withholding agent is not the employer by whom the annuity plan or qualified trust under or from which such annuity is paid was established, the person entitled to the annuity must file with the withholding agent a statement in duplicate setting forth his name, address, and taxpayer identifying number, if any, and certifying that he is not a citizen or resident of the United States and that the annuity in respect of which the statement is filed is excluded from gross income by reason of section 871(f). This statement shall be dated, shall identify the taxable year to which it relates, shall be signed by the person entitled to the annuity and shall contain, or be verified by, a written declaration that it is made under the penalties of perjury. No particular form is prescribed for the statement. The duplicate copy of each statement filed during any calendar year pursuant to this paragraph shall be forwarded by the withholding agent with, and attached to, the Form 1042S required by paragraph (c) of § 1.1461–2 with respect to such annuity for such calendar year.

(h) *Interest on bonds sold between interest dates.*—Except as provided by paragraph (b)(2)(ii) of § 1.1441–2, the tax is not required to be withheld under § 1.1441–1 on accrued interest paid by the buyer in connection with the sale of bonds between interest dates, even though the interest is subject to tax under section 871 or section 881. The exemption from withholding granted by this paragraph is not a determination that the accrued interest is not fixed or determinable annual or periodical income.

PAR. 7. Section 1.1441–5 is amended by revising the heading thereof, by revising paragraphs (b) and (d), and by striking out paragraph (e). These amended provisions read as follows:

§ 1.1441–5 CLAIMING TO BE A PERSON NOT SUBJECT TO WITHHOLDING.

* * * * * * *

(b) *Partnerships and corporations.*—For purposes of chapter 3 of the Code a written statement from a partnership or corporation claiming that it is not a foreign partnership or foreign corporation may be relied upon by the withholding agent as proof that such partnership or corporation is domestic. This statement shall be furnished to the withholding agent in duplicate. It shall contain the address of the taxpayer's office or place of business in the United States and shall be signed by a member of the partnership or by an officer of the corporation. The official title of the corporate officer shall also be given.

* * * * * * *

(d) *Definitions.*—For determining whether an alien individual is a resident of the United States see § 1.871–2. For definition of the terms "foreign partnership" and "foreign corporation" see sections 7701(a) (4) and (5) and § 301.7701–5.

PAR. 8. Section 1.1442 is amended by revising section 1442 and by adding a historical note. These amended and added provisions read as follows:

§ 1.1442 STATUTORY PROVISIONS; WITHHOLDING OF TAX ON FOREIGN CORPORATIONS.

SEC. 1442. WITHHOLDING OF TAX ON FOREIGN CORPORATIONS.

(a) GENERAL RULE.—In the case of foreign corporations subject to taxation under this subtitle, there shall be deducted and withheld at the source in the same manner and on the same items of income as is provided in section 1441 or section 1451 a tax equal to 30 percent thereof; except that, in the case of interest described in section 1451 (relating to tax-free covenant bonds), the deduction and withholding shall be at the rate specified therein. For purposes of the preceding sentence, the references in section 1441(b) to sections 871(a)(1) (C) and (D) shall be treated as referring to sections 881(a) (3) and (4), the reference in section 1441(c)(1) to section 871(b)(2) shall be treated as referring to section 842 or section 882(a)(2), as the case may be, and the reference in section 1441(c)(5) to section 871(a)(1)(D) shall be treated as referring to section 881(a)(4).

(b) EXEMPTION.—Subject to such terms and conditions as may be provided by regulations prescribed by the Secretary or his delegate, subsection (a) shall not apply in the case of a foreign corporation engaged in trade or business within the United States if the Secretary or his delegate determines that the requirements of subsection (a) impose an undue administrative burden and that the collection of the tax imposed by section 881 on such corporation will not be jeopardized by the exemption.

[Sec. 1442 as amended by sec. 104(c), Foreign Investors Tax Act 1966 (80 Stat. 1557)]

PAR. 9. Section 1.1442–1 is amended to read as follows:

§ 1.1442–1 WITHHOLDING OF TAX ON FOREIGN CORPORATIONS.

For regulations respecting the withholding of tax at source under section 1442 in the case of foreign corporations, see §§ 1.1441–1 and 1.1451–1.

PAR. 10. The following new section is inserted immediately after § 1.1442–1:

§ 1.1442–2 EXEMPTION FROM WITHHOLDING OF TAX ON FOREIGN CORPORATIONS.

For regulations exempting certain foreign corporations from the withholding requirements of section 1442 in a case where an undue administrative burden is imposed, see paragraph (f) of § 1.1441–4.

PAR. 11. Section 1.1443–1 is amended to read as follows:

§ 1.1443–1 RENTS PAID TO FOREIGN TAX-EXEMPT ORGANIZATIONS.

In the case of a foreign tax-exempt organization which is subject to the tax imposed by section 511, any rents paid to such organization in a taxable year beginning after December 31, 1966, which are includible under section 512 in determining its unrelated business taxable income, shall not be subject to withholding under § 1.1441–1. See paragraph (a)(2) of § 1.1441–4 for rules for claiming the exemption from withholding in the case of such rents.

PAR. 12. Section 1.1451–2 is amended by revising paragraph (c) to read as follows:

§ 1.1451–2 EXEMPTIONS FROM WITHHOLDING UNDER SECTION 1451.

* * * * * * *

(c) *Other exemptions.*—The exemptions allowed by paragraphs (d) and (h) of § 1.1441–4 shall also apply for purposes of section 1451.

PAR. 13. Section 1.1461–1 is amended by revising paragraphs (a), (b), (d), (e), (f)(3), and (i). These amended provisions read as follows:

§ 1.1461–1 OWNERSHIP CERTIFICATES FOR BOND INTEREST.

(a) *Tax-free covenant bond interest of citizens and residents of the United States.*—Citizens, resident individuals, fiduciaries, and partnerships, and nonresident partnerships all of the members of which are citizens or residents, owning bonds, mortgages, or deeds of trust, or other similar obligations issued by a domestic corporation, a resident foreign corporation, or a nonresident foreign corporation having a fiscal or paying agent in the United States, shall, when presenting interest coupons for payment, file ownership certificates for each issue of such obligations issued before January 1, 1934, and containing a tax-free covenant. This rule shall apply without regard to the amount of the interest coupons.

(b) *Nonresident aliens and foreign corporations.*—(1) Nonresident alien individuals, foreign partnerships, foreign corporations, and unknown owners, owning bonds, mortgages, or deeds of trust, or other similar obligations of a corporation, shall, when presenting interest coupons for payment, file ownership certificates for each issue of all such obligations whether or not the obligation contains a tax-free covenant. This rule shall apply without regard to the amount of the interest coupons and without regard to the date on which the obligations were issued.

(2) Ownership certificates shall also be filed in the case of interest paid on obligations of the United States or of any agency or instrumentality thereof, irrespective of the date on which the obligations are issued or of the amount of the interest, if the obligations are owned by a nonresident alien individual, foreign partnership, foreign corporation, or an unknown owner.

(3) Notwithstanding subparagraphs (1) and (2) of this paragraph, ownership certificates are not required to be filed by—

(i) A nonresident alien individual, foreign partnership, or foreign corporation, engaged in a trade or business in the United States during the taxable year, if the interest is effectively connected with the conduct of a trade or business within the United States by such person and is exempted from withholding under section 1441 or section 1442 by reason of paragraph (a) of § 1.1441–4,

(ii) A nonresident alien individual, a foreign corporation, or a foreign partnership composed wholly of nonresident alien individuals and foreign corporations, if the interest is treated under section 861(a)(1) and the regulations thereunder as income not from sources within the United States, or

(iii) A foreign partnership or foreign corporation engaged in trade or business in the United States during the taxable year, with respect to interest which is exempted from withholding under section 1441 or 1442 by reason of paragraph (f) of § 1.1441–4.

* * * * * * *

(d) *Information shown on ownership certificate.*—The ownership certificate shall show the name and address of the obligor, the name and address of the owner of the obligations, a description of the obligations, the amount of interest

and its due date, the rate at which tax is to be withheld, and the date upon which the interest coupons were presented for payment. The certificate shall also show the amount of tax if any withheld; or if the certificate has been used under a tax treaty regulation to claim a release of tax withheld, then it shall show both the amount of tax withheld and also the amount of tax released. This paragraph shall apply to all special variations of Form 1001 referred to in paragraph (i) of this section.

(e) *Ownership certificates not required.*—Ownership certificates are not required to be filed in the case of interest payments on—

(1) Obligations of a State, Territory, or possession of the United States, or any political subdivision of any of the foregoing, or of the District of Columbia;

(2) Bonds, mortgages, or deeds of trust, or other similar obligations issued by an individual or a partnership; and

(3) Obligations owned by a domestic corporation or foreign government.

* * * * * * *

(f) *Interest coupons unaccompanied by ownership certificates.* * * *

(3) The statement furnished pursuant to this paragraph shall be forwarded to the Director of International Operations, Internal Revenue Service, Washington, D.C. 20225, with the annual return on Form 1042.

* * * * * * *

(i) *Form of ownership certificate for nonresident aliens and foreign corporations.*—Form 1001 shall be used in preparing ownership certificates of nonresident alien individuals, foreign partnerships, foreign corporations, and unknown owners. A special variation of Form 1001 (designated by a letter or letters following the number 1001) shall be used, however, in preparing ownership certificates of persons claiming the benefit of an exemption from tax, or reduced rate of tax, granted by an applicable income tax convention in respect of interest payments on coupon bonds. See the applicable tax treaty regulation and paragraph (d) of this section. Form 1001, and the special variations of such form, shall be filed in duplicate.

* * * * * * *

PAR. 14. Section 1.1465–1 is amended by revising paragraph (b) (1) to read as follows:

§ 1.1465–1 GENERAL PROVISIONS RELATING TO WITHHOLDING AGENTS.

* * * * * * *

(b) *Person designated to act for withholding agent.*—(1) A debtor corporation having an issue of bonds or other similar obligations which appoints a duly authorized agent to act on its behalf under the withholding provisions of chapter 3 of the Code is required to file a notice of such appointment with the Director of International Operations, Internal Revenue Service, Washington, D.C. 20225.

* * * * * * *

PAR. 15. Section 1.6042–3 is amended by revising subparagraphs (2) and (3) of paragraph (b) to read as follows:

§ 1.6042–3 DIVIDENDS SUBJECT TO REPORTING.

* * * * * * *

(b) *Exceptions.* * * *

(2) Any distribution or payment which is subject to withholding under section 1441 or 1442 (relating to withholding of tax on nonresident aliens and foreign corporations, respectively) by the person making the distribution or payment, or which would be so subject to withholding but for the provisions of a treaty, or for the fact that it is attributable to income from sources outside the United States, or for the fact that withholding is not required by reason of paragraph (a) or (f) of § 1.1441–4.

(3) In the case of a nominee, any distribution or payment which he receives and with respect to which he is required to withhold under section 1441 or 1442, or would be so required to withhold but for the provisions of a treaty, or for the fact that the distribution or payment is attributable to income from sources

outside the United States, or for the fact that withholding is not required by reason of paragraph (a) or (f) of § 1.1441–4.

* * * * * * *

PAR. 16. Section 1.6049–2 is amended by revising subparagraphs (3) and (4) of paragraph (b) to read as follows:

§ 1.6049–2 INTEREST SUBJECT TO REPORTING.

* * * * * * *

(b) *Exceptions.* * * *

(3) Any interest which is subject to withholding under section 1441 or 1442 (relating to withholding of tax on nonresident aliens and foreign corporations, respectively) by the person making the payment, or which would be so subject to withholding but for the provisions of a treaty, or for the fact that under section 861(a)(1) it is not from sources within the United States, or for the fact that withholding is not required by reason of paragraph (a) or (f) of § 1.1441–4.

(4) In the case of a nominee, any interest which he receives and with respect to which he is required to withhold under section 1441 or 1442, or would be so required to withhold but for the provisions of a treaty, or for the fact that under section 861(a)(1) it is not from sources within the United States, or for the fact that withholding is not required by reason of paragraph (a) or (f) of § 1.1441–4.

* * * * * * *

PAR. 17. Section 1.6071–1 is amended by adding new subparagraphs (15) and (16) to paragraph (c). These added provisions read as follows:

§ 1.6071–1 TIME FOR FILING RETURNS AND OTHER DOCUMENTS.

* * * * * * *

(c) *Time for filing certain information returns.* * * *

(15) For provisions relating to the time for filing ownership certificates with respect to interest payments on certain bonds, mortgages, deeds of trust, and other similar obligations, see § 1.1461–1.

(16) For provisions relating to the time for filing the annual information return on Form 1042S of the tax withheld under chapter 3 of the Code (relating to withholding of tax on nonresident aliens and foreign corporations and tax-free covenant bonds), see paragraph (c) of § 1.1461–2.

PAR. 18. Section 1.6072–4 is amended to read as follows:

§ 1.6072–4 TIME FOR FILING OTHER RETURNS OF INCOME.

(a) *Reports for recovery of excessive profits on Government contracts.*—For the time for filing annual reports by persons completing Government contracts, see 26 CFR (1939) 17.16 (Treasury Decision 4906, approved June 23, 1939), and 26 CFR (1939) 16.15 (Treasury Decision 4909, approved June 28, 1939), as made applicable to section 1471 of the Internal Revenue Code of 1954 by Treasury Decision 6091, approved August 16, 1954 (19 F.R. 5167, C.B. 1954–2, 47).

(b) *Returns of tax on transfers to avoid income tax.*—For the time for filing returns of tax under chapter 5 of the Code, see § 1.1494–1.

PAR. 19. Section 31.3401(a)–1 is amended by adding a new paragraph (b)(13) to read as follows:

§ 31.3401(a)–1 WAGES.

* * * * * * *

(b) *Certain specific items.* * * *

(13) *Federal employees resident in Puerto Rico.*—Except as provided in paragraph (d) of § 31.3401(a)(6)–1, the term "wages" includes remuneration for services performed by a nonresident alien individual who is a resident of Puerto Rico if such services are performed as an employee of the United States or any agency thereof. The place where the services are performed is immaterial for purposes of this subparagraph.

PAR. 20. Section 31.3401(a)(6) is amended by revising its heading and by revising the historical note. These amended provisions read as follows:

§ 31.3401(a)(6)A STATUTORY PROVISIONS; DEFINITIONS; WAGES; REMUNERATION FOR SERVICES OF CERTAIN NONRESIDENT ALIEN INDIVIDUALS.

* * * * * * *

[Sec. 3401(a)(6) as amended by sec. 110(g)(1), Mutual Educational and Cultural Exchange Act 1961 (75 Stat. 537); as in effect before amendment by sec. 103(k), Foreign Investors Tax Act 1966 (80 Stat. 1554)]

PAR. 21. Section 31.3401(a)(6)-1 is amended by revising the heading and by adding a new paragraph (e). These amended and added provisions read as follows:

§ 31.3401(a)(6)-1A REMUNERATION FOR SERVICES OF CERTAIN NONRESIDENT ALIEN INDIVIDUALS PAID BEFORE JANUARY 1, 1967.

* * * * * * *

(e) This section shall not apply with respect to remuneration paid after December 31, 1966. For rules with respect to such remuneration see § 31.3401(a)(6)-1.

PAR. 22. The following new sections are inserted immediately after § 31.3401(a)(5)-1:

§ 31.3401(a)(6) STATUTORY PROVISIONS; DEFINITIONS; WAGES; REMUNERATION FOR SERVICES OF CERTAIN NONRESIDENT ALIEN INDIVIDUALS.

SEC. 3401. DEFINITIONS.

(a) WAGES.—For purposes of this chapter, the term "wages" means all remuneration * * * for services performed by an employee for his employer * * *; except that such term shall not include remuneration paid—

* * * * * * *

(6) For such services, performed by a nonresident alien individual, as may be designated by regulations prescribed by the Secretary or his delegate; or

[Sec. 3401(a)(6) as amended by sec. 110(g)(1), Mutual Educational and Cultural Exchange Act 1961 (75 Stat. 537); sec. 103(k), Foreign Investors Tax Act 1966 (80 Stat. 1554)]

§ 31.3401(a)(6)-1 REMUNERATION FOR SERVICES OF NONRESIDENT ALIEN INDIVIDUALS PAID AFTER DECEMBER 31, 1966.

(a) *In general.*—All remuneration paid after December 31, 1966, for services performed by a nonresident alien individual, if such remuneration otherwise constitutes wages within the meaning of § 31.3401(a)-1, is subject to withholding under section 3402 unless excepted from wages under this section.

(b) *Remuneration for services performed outside the United States.*—Remuneration paid to a nonresident alien individual (other than a resident of Puerto Rico) for services performed outside the United States is excepted from wages and hence is not subject to withholding.

(c) *Remuneration for services of residents of Canada or Mexico who enter and leave the United States at frequent intervals.*—(1) *Transportation service.*—Remuneration paid to a nonresident alien individual who is a resident of Canada or Mexico and who, in the performance of his duties in transportation service between points in the United States and points in such foreign country, enters and leaves the United States at frequent intervals, is excepted from wages and hence is not subject to withholding. This exception applies to personnel engaged in railroad, bus, truck, ferry, steamboat, aircraft or other transportation services and applies whether the employer is a domestic or foreign entity. Thus, the remuneration of a nonresident alien individual who is a resident of Canada and an employee of a domestic railroad, for services as a member of the crew of a train operating between points in Canada and points in the United States, is not subject to withholding under section 3402.

(2) *Service on international projects.*—Remuneration paid to a nonresident alien individual who is a resident of Canada or Mexico and who, in the performance of his duties in connection with the construction, maintenance, or operation of a waterway, viaduct, dam, or bridge traversed by, or traversing, the boundary between the United States and Canada or the boundary between the United States and Mexico, as the case may be, enters and leaves the United States at frequent intervals, is excepted from wages and hence is not subject to withholding. Thus, the remuneration of a nonresident alien individual who is a resident of Canada, for services as an employee in connection with the construction, maintenance, or operation of the Saint Lawrence Seaway and who, in the performance of such services, enters and leaves the United States at frequent intervals, is not subject to withholding under section 3402.

(3) *Limitation.*—The exceptions provided by this paragraph do not apply to the remuneration of a resident of Canada or of Mexico who is employed wholly within the United States as, for example, where such a resident is employed to perform service at a fixed point or points in the United States, such as a factory, store, office, or designated area or areas within the United States, and who commutes from his home in Canada or Mexico, in the pursuit of his employment within the United States.

(4) *Certificate required.*—In order for an exception provided by this paragraph to apply for any taxable year, the nonresident alien employee must furnish his employer a statement in duplicate for the taxable year setting forth the employee's name, address, and taxpayer identifying number, and certifying (i) that he is not a citizen or resident of the United States, (ii) that he is a resident of Canada or Mexico, as the case may be, and (iii) that he expects to meet the requirements of subparagraph (1) or (2) of this paragraph with respect to remuneration to be paid during the taxable year in respect of which the statement is filed. The statement shall be dated, shall identify the taxable year to which it relates, shall be signed by the employee, and shall contain, or be verified by, a written declaration that it is made under the penalties of perjury. No particular form is prescribed for this statement. The duplicate copy of each statement filed during any calendar year pursuant to this paragraph shall be forwarded by the employer with, and attached to, the Form 1042S required by paragraph (c) of § 1.1461–2 with respect to such remuneration for such calendar year.

(d) *Remuneration for services performed by residents of Puerto Rico.*—(1) Remuneration paid for services performed in Puerto Rico by a nonresident alien individual who is a resident of Puerto Rico for an employer (other than the United States or any agency thereof) is excepted from wages and hence is not subject to withholding.

(2) Remuneration paid for services performed outside the United States but not in Puerto Rico by a nonresident alien individual who is a resident of Puerto Rico for an employer (other than the United States or any agency thereof) is excepted from wages and hence is not subject to withholding if such individual does not expect to be a resident of Puerto Rico during the entire taxable year. In order for the exception provided by this subparagraph to apply for any taxable year, the nonresident alien employee must furnish his employer a statement for the taxable year setting forth the employee's name and address and certifying (i) that he is not a citizen or resident of the United States and (ii) that he is a resident of Puerto Rico but does not expect to be a resident of Puerto Rico during the entire taxable year. The statement shall be dated, shall identify the taxable year to which it relates, shall be signed by the employee, and shall contain, or be verified by, a written declaration that it is made under the penalties of perjury. No particular form is prescribed for this statement.

(3) Remuneration paid for services performed outside the United States by a nonresident alien individual who is a resident of Puerto Rico as an employee of the United States or any agency thereof is excepted from wages and hence is not subject to withholding if such individual does not expect to be a resident of Puerto Rico during the entire taxable year. In order for the exception provided by this subparagraph to apply for any taxable year, the nonresident alien employee must furnish his employer a statement for the taxable year setting forth the employee's name and address and certifying (i) that he is not a citizen or resident of the United States and (ii) that he is a resident of Puerto Rico but does not expect to be a resident of Puerto Rico during the entire taxable year. This statement shall be dated, shall identify the taxable year to which it relates, shall be signed by the employee, and shall contain, or be verified by, a written

declaration that it is made under the penalties of perjury. No particular form is prescribed for this statement.

(e) *Income exempt from income tax.*—Remuneration paid for services performed within the United States by a nonresident alien individual is excepted from wages and hence is not subject to withholding if such remuneration is, or will be, exempt from the income tax imposed by chapter 1 of the Code by reason of a provision of the Internal Revenue Code or an income tax convention to which the United States is a party. In order for the exception provided by this paragraph to apply for any taxable year, the nonresident alien employee must furnish his employer a statement in duplicate for the taxable year setting forth the employee's name, address, and taxpayer identifying number, and certifying (1) that he is not a citizen or resident of the United States, (2) that the remuneration to be paid to him during the taxable year is, or will be, exempt from the tax imposed by chapter 1 of the Code, and (3) the reason why such remuneration is so exempt from tax. If the remuneration is claimed to be exempt from tax by reason of a provision of an income tax convention to which the United States is a party, the statement shall also indicate the provision and tax convention under which the exemption is claimed, the country of which the employee is a resident, and sufficient facts to justify the claim to exemption. The statement shall be dated, shall identify the taxable year for which it is to apply and the remuneration to which it relates, shall be signed by the employee, and shall contain, or be verified by, a written declaration that it is made under the penalties of perjury. No particular form is prescribed for this statement. The duplicate copy of each statement filed during any calendar year pursuant to this paragraph shall be forwarded by the employer with, and attached to, the Form 1042S required by paragraph (c) of § 1.1461–2 with respect to such remuneration for such calendar year.

PAR. 23. Section 3401(a)(7) is amended by adding a historical note as follows:

[Sec. 3401(a)(7) as in effect before its deletion by sec. 103(k), Foreign Investors Tax Act 1966 (80 Stat. 1554)]

PAR. 24. Section 31.3401(a)(7)–1 is amended by revising the heading and by adding a new paragraph (e). These amended and added provisions read as follows:

§ 31.3401(a)(7)–1 REMUNERATION PAID BEFORE JANUARY 1, 1967, FOR SERVICES PERFORMED BY NONRESIDENT ALIEN INDIVIDUALS WHO ARE RESIDENTS OF A CONTIGUOUS COUNTRY AND WHO ENTER AND LEAVE THE UNITED STATES AT FREQUENT INTERVALS.

* * * * * * *

(e) *Effective date.*—This section shall not apply with respect to remuneration paid after December 31, 1966. For rules with respect to such remuneration see § 31.3401(a)(6)–1.

PAR. 25. Section 31.3402(f)(6)–1 is amended to read as follows:

§ 31.3402(f)(6)–1 WITHHOLDING EXEMPTIONS FOR NONRESIDENT ALIEN INDIVIDUALS.

A nonresident alien individual subject to withholding under section 3402 is on any 1 day entitled under section 3402(f)(1) and § 31.3402(f)(1)–1 to the number of withholding exemptions corresponding to the number of personal exemptions to which he is entitled on such day by reason of the application of section 873(b)(3) or section 876, whichever applies. Thus, a nonresident alien individual who is not a resident of Canada or Mexico and who is not a resident of Puerto Rico during the entire taxable year, is allowed under section 3402(f)(1) only one withholding exemption.

PAR. 26. Section 31.6001–5 is amended by revising paragraph (a)(7) to read as follows:

§ 31.6001–5 ADDITIONAL RECORDS IN CONNECTION WITH COLLECTION OF INCOME TAX AT SOURCE ON WAGES.

(a) * * *

(7) Copies of any statements furnished by the employee pursuant to §§ 31.3401 (a) (6)–1 and 31.3401 (a) (7)–1, relating to nonresident alien individuals.

* * * * * * *

(This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

SHELDON S. COHEN,
Commissioner of Internal Revenue.

Approved December 28, 1966.

FRED B. SMITH,
General Counsel of the Treasury.

(Filed by the Office of the Federal Register on Dec. 30, 1966, 8:48 a.m., and published in the issue of the Federal Register for Dec. 31, 1966, 31 F.R. 16769)

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26 CFR 1.1441–1: Requirement for withholding of tax on nonresident aliens, foreign partnerships, and foreign corporations.

Interim procedure for giving effect to the reduced rate of withholding under the protocol brought into force December 27, 1965, modifying the income tax convention between the United States and the Federal Republic of Germany. See Rev. Proc. 67–24, page 625.

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26 CFR 1.1441–2: Income subject to withholding.

Procedures to be followed by withholding agents with respect to the withholding of tax under the United States-United Kingdom Income Tax Convention, as amended. See Rev. Proc. 67–17, page 595.

SECTION 1442.—WITHHOLDING OF TAX ON FOREIGN CORPORATIONS

26 CFR 1.1442: Statutory provisions; withholding of tax on foreign corporations.

Regulations respecting the withholding of tax on foreign corporations and the exemption of certain foreign corporations from withholding requirements where an undue administrative burden is imposed. See T.D. 6908, page 222.

CHAPTER 6.—CONSOLIDATED RETURNS

SUBCHAPTER A.—RETURNS AND PAYMENT OF TAX

SECTION 1502.—REGULATIONS

26 CFR 1.1502–14: Stock, bonds, and other obligations of members. T.D. 6909 [1]

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 1.—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Consolidated return regulations

DEPARTMENT OF THE TREASURY,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D.C. 20224.

To Officers and Employees of the Internal Revenue Service and Others Concerned:

On September 8, 1966, notice of proposed rulemaking with respect to the amendment of the Income Tax Regulations (26 CFR Part 1) under subchapter A of chapter 6 of the Internal Revenue Code of 1954 (relating to consolidated returns), was published in the Federal Register (31 F.R. 11845). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendment is hereby adopted to read as set forth below:

PARAGRAPH 1. Section 1.1502–14 is added to read as follows:

§ 1.1502–14 STOCK, BONDS, AND OTHER OBLIGATIONS OF MEMBERS.

(a) *Intercompany distributions with respect to stock.*—(1) *Dividends.*—A dividend distributed by one member to another member during a consolidated return year shall be eliminated. For purposes of this paragraph, the term "dividend" means a distribution which is described in section 301(c)(1) other than a distribution described in section 243(c)(1).

(2) *Nondividend distributions.*—No gain shall be recognized to the distributee on a distribution with respect to stock, from one member to another member during a consolidated return year, which is described in section 301(c)(2) or (3). Such distribution shall be applied against and reduce the adjusted basis (determined after taking into account any adjustment under § 1.1502–32) of such stock in the distributing corporation held by the distributee, and to the extent such distribution exceeds the adjusted basis, the excess shall be (or shall be added to) the excess loss account for such stock in the distributing corporation held by the distributee. (See §§ 1.1502–19 and 1.1502–32.)

(3) *Amount distributed.*—For purposes of this paragraph, the amount of any distribution of property other than money shall be determined under section 301(b)(1)(B)(ii).

(4) *Example.*—This paragraph may be illustrated by the following example:

Example.—Assume that corporation *P* and its wholly owned subsidiary, corporation *S*, are members of a group filing consolidated returns on a calendar year basis. On December 31, 1966, *S* distributed to *P* with respect to its stock $5,000 cash and land with an adjusted basis to *S* of $6,000 and a fair market value of $5,000. No part of the distribution constituted a dividend. On December 31, 1966, *P* had an adjusted basis of $3,000 in the stock of *S*. The amount distributed is $11,000. $3,000 of that amount is applied against and reduces the

[1] The publication of this Treasury Decision in 31 F.R. 16694, dated Dec. 30, 1966, contains the proposed rulemaking published in 31 F.R. 11845, dated Sept. 8, 1966, with modifications and additions thereto.

adjusted basis of the stock to zero, and the remaining $8,000 is treated as *P*'s excess loss account for its stock in *S*. No gain is recognized by *P*. Pursuant to § 1.1502–31(b)(1) *P*'s basis in the land is $6,000.

(b) *Intercompany distributions in cancellation or redemption of all or part of the stock of the distributing corporation.*—(1) *General rule.*—Except as provided in subparagraph (2) of this paragraph and in § 1.1502–19, no gain or loss shall be recognized on the receipt, during a consolidated return year, by one member of property (including cash) distributed in cancellation or redemption of all or a part of the stock of another member. For purposes of this paragraph, a distribution is in cancellation or redemption of all or a part of stock only if—

(i) It is in complete liquidation of the distributing corporation,

(ii) It is in partial liquidation of the distributing corporation within the meaning of section 346, and such corporation remains a member of the group immediately after the distribution, or

(iii) It is a distribution in redemption of the stock of the distributing corporation to which section 302(a) applies, and such corporation remains a member of the group immediately after the distribution.

(2) *Gain or loss recognized.*—In the case of a distribution (other than a distribution to which section 332 applies) described in subparagraph (1) of this paragraph, the following rules shall apply—

(i) Gain shall be recognized to the extent that any cash distributed exceeds the sum of—

(*a*) The adjusted basis (determined after taking into account any adjustment under § 1.1502–32) of the stock of the distributing corporation held by the distributee which was canceled or redeemed, plus

(*b*) Any liabilities assumed by the distributee (or to which the property received is subject).

(ii) If the property distributed consists only of cash, loss shall be recognized to the extent that the sum of—

(*a*) The adjusted basis (determined after taking into account any adjustment under § 1.1502–32) of the stock of the distributing corporation held by the distributee which was canceled or redeemed, plus

(*b*) Any liabilities assumed by the distributee,

exceeds the amount of cash distributed.

(iii) If the distribution is not in complete liquidation of the distributing corporation, any gain or loss recognized shall be deferred.

(3) *Restoration of gain or loss.*—Gain or loss deferred under subparagraph (2) of this paragraph shall be taken into account immediately before the occurrence of the earliest of the following events:

(i) When the distributee corporation ceases to be a member, or

(ii) When the stock of the distributing corporation (or any successor member in an acquisition to which section 381(a) applies) is considered to be disposed of by any member under § 1.1502–19(b)(2) (other than subdivision (ii) thereof).

(c) *Treatment of distributing corporation.*—(1) *Deferral in other than complete liquidations.*—Except as provided in subparagraph (2) of this paragraph, to the extent gain or loss is recognized to the distributing corporation on a distribution described in paragraph (a) or (b) of this section (including any amount which is treated as gain under section 311, 336, 341(f)(2), 453(d), 1245(a)(1), or 1250(a)(1)), such gain or loss shall be deferred by the distributing corporation. Such deferred gain or loss shall be taken into account by the distributing corporation at the time and in the manner specified in paragraphs (d), (e), and (f) of § 1.1502–13, as if such distributing corporation were a "selling member" and the distributee were a "purchasing member".

(2) *Complete liquidations.*—Gain or loss shall be taken into account by the distributing corporation on a complete liquidation, in the same manner and to the same extent as if separate returns were filed.

(d) *Gains and losses on obligations of members.*—(1) *Deferral of gain or loss.*—To the extent gain or loss is recognized under the Code to a member during a consolidated return year because of a sale or other disposition (other than a redemption or cancellation) of an obligation of another member (referred to in this paragraph as the "debtor member"), whether or not such obligation is evidenced by a security, such gain or loss shall be deferred. For purposes of this paragraph, a deduction because of the worthlessness of, or a deduction for a reasonable addition to a reserve for bad debts with respect to,

an obligation described in this subparagraph shall be considered a loss from the disposition of such obligation.

(2) *Restoration of gain or loss where obligation leaves group.*—If an obligation described in subparagraph (1) of this paragraph is sold or disposed of to a nonmember (or if the member holding the obligation becomes a nonmember), each member with deferred gain or loss with respect to such obligation under subparagraph (1) of this paragraph shall, except as provided in subparagraph (3) of this paragraph, take such gain or loss into account ratably over the remaining term of the obligation.

(3) *Restoration of gain or loss on other events.*—Each member's gain or loss deferred with respect to an obligation under subparagraph (1) which has not been taken into account under subparagraph (2) of this paragraph shall be taken into account immediately before the occurrence of the earliest of the following events:

(i) When such member ceases to be a member,

(ii) When the stock of the debtor member (or any successor in an acquisition to which section 381(a) applies) is considered to be disposed of by any member under § 1.1502-19(b)(2) (other than subdivision (ii) thereof), or

(iii) When the obligation is redeemed or canceled.

(4) *Exception for obligations acquired in tax-free exchanges.*—(i) If—

(*a*) A member received an obligation of another member in exchange for property,

(*b*) The basis of the obligation was determined in whole or in part by reference to the basis of the property exchanged, and

(*c*) The obligation has never been held by a nonmember,

then any gain or loss of any member on redemption or cancellation of such obligation shall be deferred, and subparagraph (3) of this paragraph shall not apply.

(ii) Gain or loss deferred by a member under subdivision (i) of this subparagraph, and under subparagraph (1) of this paragraph with respect to an obligation to which this subparagraph applies, shall be taken into account immediately before the occurrence of the earliest of the following events:

(*a*) When such member ceases to be a member, or

(*b*) When the stock of the debtor member is considered to be disposed of by any member under § 1.1502-19(b)(2) (other than subdivision (ii) thereof), determined without regard to § 1.1502-19 (d) and (e).

(iii) This subparagraph may be illustrated by the following example:

Example.—Corporation *P* forms a subsidiary, *S*, in a transaction to which section 351 applies and receives as a result of such transaction, in addition to stock, a security with a face value of $100 and a basis of $50. If the security is redeemed for $100, the $50 gain on redemption is deferred and is not taken into account until *P* ceases to be a member or the stock of *S* is treated as disposed of under this subparagraph.

(5) *Premium and discount.*—For treatment of premium and discount with respect to obligations described in this subparagraph, see § 1.1502-13(b) and example 16 of § 1.1502-13(h).

(e) *Character and inheritance of deferred items.*—(1) *Character.*—The character of gain or loss deferred under paragraph (b)(2), (d)(1), or (d)(4) of this section shall be determined at the time of the transaction as if such transaction had not occurred during a consolidated return year.

(2) *Inheritance.*—Paragraphs (b)(3)(i), (d)(3)(i), and (d)(4)(ii)(*a*) of this section shall not apply if a member with deferred gain or loss ceases to be a member because its assets are acquired by one or more members in an acquisition to which section 381(a) applies. The member acquiring the greatest portion of the assets (measured by fair market value) of such member shall be subject to the appropriate restoration provisions of paragraphs (b) and (d) of this section.

PAR. 2. Section 1.1502-15 is amended by revising paragraph (a)(3) and adding paragraph (a)(4), and by adding paragraph (b). The revised and added provisions read as follows:

§ 1.1502-15 LIMITATIONS ON CERTAIN DEDUCTIONS.

(a) *Limitation on built-in deductions.* * * *

(3) *Prior law.*—If the corporation with the built-in deduction became a member before October 1, 1965, the provisions of § 1.1502-31A(b)(9) shall apply in lieu of the provisions of subparagraphs (1) and (2) of this paragraph.

(4) *Exceptions.*—Subparagraphs (1), (2), and (3) of this paragraph shall not limit built-in deductions in a taxable year if—

(*i*) The date on which the corporation with the built-in deductions became a member occurred more than 10 years before the first day of such taxable year, or

(*ii*) Immediately before the date the corporation became a member, the aggregate of the adjusted basis of all the assets (other than cash, any marketable security the fair market value of which was not less than 95 percent of its adjusted basis, and goodwill) of such corporation did not exceed the fair market value of such assets by more than 15 percent.

(b) *Other limitation.*—No loss shall be allowed upon the sale or other disposition of stock, bonds, or other obligations of a member or former member to the extent that such loss is attributable to a distribution made in an affiliated year beginning before January 1, 1966, out of earnings and profits accumulated before the distributing corporation became a member.

PAR. 3. Section 1.1502–19 is added to read as follows:

§ 1.1502–19 EXCESS LOSSES.

(a) *Recognition of income.*—(1) *In general.*—Immediately before the disposition (as defined in paragraph (b) of this section) of stock of a subsidiary, there shall be included in the income of each member disposing of such stock that member's excess loss account (determined under §§ 1.1502–14 and 1.1502–32) with respect to the stock disposed of.

(2) *Character of income.*—(i) *In general.*—Except to the extent otherwise provided in this subparagraph, the amount included in income under subparagraph (1) of this paragraph shall be treated as gain from the sale of stock (that is, as capital gain or ordinary income, as the case may be).

(ii) *Insolvency.*—If, at the time of the disposition of stock of a subsidiary, the subsidiary is insolvent, then the amount included in income under subparagraph (1) of this paragraph, minus all amounts which increased the excess loss account under § 1.1502–14(a)(2) for any consolidated return year, shall be treated as ordinary income to the extent of such insolvency. For purposes of the preceding sentence, a subsidiary is insolvent to the extent that the sum of—

(*a*) All its liabilities,

(*b*) All its liabilities which were discharged during consolidated return years to the extent such discharge would have resulted in "cancellation of indebtedness income" but for the insolvency of such subsidiary, and

(*c*) The amount to which all stock of such subsidiary which is limited and preferred as to dividends is entitled in liquidation,

exceeds the fair market value of such subsidiary's assets. This subdivision shall not apply to the extent that the taxpayer establishes to the satisfaction of the Commissioner that the ordinary income portion of the excess loss account is attributable to losses of the subsidiary which reduced long-term capital gains of the group (without regard to section 1201).

(3) *Cancellation or redemption.*—If stock of a subsidiary is considered to be disposed of under paragraph (b)(1)(ii) of this section, any amount which would otherwise be included in the income of the disposing member under subparagraph (1) of this paragraph shall be deferred and taken into account at the time provided in § 1.1502–14(b)(3).

(4) *Prior law.*—To the extent the excess loss account is attributable to an adjustment under § 1.1502–32(f)(1) which was not subsequently reduced under § 1.1502–32(e)(2) or (3), it shall be taken into account in the same manner as it would have been taken into account under regulations effective for taxable years beginning before January 1, 1966. For example, assume that *P* is the common parent of a group which filed a consolidated return for 1965. During such taxable year a member of the group, corporation *S*, sustained a loss of $100, all of which was availed of in the consolidated return for 1965. *P* organized *S* on January 1, 1965, with a contribution to capital of $80 and a $10 loan. The group files a consolidated return for 1966. Under § 1.1502–32(f)(1), *P*'s basis for the stock in *S* as of January 1, 1966 is reduced to zero, and *P* has an excess loss account with respect to such stock of $20. No part of the reduction for losses availed of is applied to reduce the basis of the $10 obligation. During 1966, *S* has earnings and profits of $5, and under § 1.1502–32(e)(2) *P*'s excess loss account for its stock of *S* is reduced to $15. On December 31, 1966 *P* sells the stock of *S* for $5. *P* realizes a $5 gain on such sale. In addition, the excess loss account of $15 is applied to

reduce the basis of *S*'s obligation to zero, and the balance is otherwise taken into account in the same manner and to the same extent as it would have been taken into account under the regulations applicable to 1965. If, on December 31, 1966, *P* had sold *S*'s obligation instead of its stock, the excess loss account would be applied to reduce the basis of the obligation to zero, and *P* would then have an excess loss account of $5 with respect to the stock of *S*.

(b) *Disposition.*—(1) *Disposition of particular share.*—Except as otherwise provided in paragraphs (d) and (e) of this section, a member shall be considered for purposes of this section as having disposed of a share of stock in a subsidiary—

(i) On the day such share is transferred to any person, or

(ii) On the day such member receives a distribution in cancellation or redemption of such stock (as defined in § 1.1502-14(b)(1)).

(2) *Disposition of all shares.*—Except as otherwise provided in paragraphs (d) and (e) of this section, a member shall be considered for purposes of this section as having disposed of all of its shares of stock in a subsidiary—

(i) On the day such subsidiary ceases to be a member,

(ii) On the day such member ceases to be a member,

(iii) On the last day of each taxable year of such subsidiary in which any of its stock is wholly worthless (within the meaning of section 165(g)), or in which an indebtedness of the subsidiary is discharged if such discharge would have resulted in "cancellation of indebtedness income" but for the insolvency of the subsidiary,

(iv) On the last day of each taxable year of the subsidiary for which the Commissioner is satisfied that 10 percent or less of the face amount of any obligation for which the subsidiary is personally liable (primarily or secondarily) is recoverable at maturity by its creditors,

(v) On the day on which a member transfers an obligation for which the subsidiary is personally liable (primarily or secondarily) to any nonmember for an amount which is 25 percent or less of the face amount of such obligation, or

(vi) On the last day of the taxable year preceding the first taxable year for which the group does not file a consolidated return.

(c) *Effect of chain of ownership.*—(1) *Multiple dispositions.*—If the stock of more than one subsidiary is disposed of in the same transaction, paragraph (a) of this section shall be applied in the order of the tiers, from the lowest to the highest.

(2) *Examples.*—The provisions of this paragraph may be illustrated by the following examples:

Example (1).—Assume that corporation *P* owns all the stock of corporation *S* with an adjusted basis of zero and an excess loss account of $5, that *S* owns all the stock of corporation *T* with an adjusted basis of zero and an excess loss account of $15, and that *T* owns all of the stock of corporation *U* with an adjusted basis of zero and an excess loss account of $10. If *T* sells the stock of *U* to a nonmember, *T* will realize income of $10, *T*'s earnings and profits will be increased by $10 (see § 1.1502-33(c)(3)) and *S*'s excess loss accounts with respect to *T*'s stock will be reduced to $5 (see § 1.1502-32(b)(1)(i) and (e)(2)). *P*'s excess loss account with respect to *S*'s stock will be reduced to zero, and its basis for *S*'s stock will be increased to $5.

Example (2).—Assume the same facts as in example (1) except that the stock of *T*, rather than the stock of *U*, is sold to a nonmember. Since *U* ceases to be a member by reason of the sale, *T* as well as *S* is considered to have disposed of stock of a subsidiary in the same transaction. Since *U* is the lowest tier subsidiary, this section is applied first with respect to the excess loss account relating to the stock of *U* with the same result as in example (1). This section is then also applied with respect to the stock of *T*. Thus, in addition to the result in example (1), *S* will realize income of $5, and *P*'s basis for *S*'s stock will be increased by $5 to $10.

Example (3).—Corporation *P* is the common parent of an affiliated group which filed a consolidated return for 1966. Corporations *S1* and *S2* are wholly owned subsidiaries of *P* organized on January 1, 1966. Corporation *T* was also organized on January 1, 1966, its stock being owned 75 percent by *S2* and 25 percent by *S1*. *P* originally invested $300 in the stock of *S1* and $200 in the stock of *S2*; *S1* and *S2* originally invested $50 and $150, respectively, in

the stock of *T*. For the year 1966, there were the following undistributed earnings and profits or deficits, computed without regard to § 1.1502–33(c)(4):

S1	$50
S2	0
T	(400)

There were no consolidated net losses. Under § 1.1502–32(e) the basis and excess loss accounts would be as follows:

	S1 in *T*	*S2* in *T*	*P* in *S1*	*P* in *S2*
Original basis	$50	$150	$300	$200
Deficit of *T*	(100)	(300)	(100)	(300)
Undistributed earnings and profits of *S1*	------	------	50	-------
Basis or (excess loss account)	(50)	(150)	250	(100)

Assume that the group does not file a consolidated return for 1967. As of December 31, 1966, the following adjustments would be made:

	S1 in *T*	*S2* in *T*	*P* in *S1*	*P* in *S2*
Basis or (excess loss account)	($50)	($150)	$250	($100)
Income to *S1*	50	------	------	-------
Adjustment under § 1.1502–32(b)(1)	------	------	50	-------
Income to *S2*	------	150	------	-------
Adjustment under § 1.1502–32(b)(1)	------	------	------	150
Basis of stock	0	0	300	50

(d) *Transfers of stock of subsidiary within the group.*—(1) *In general.*—A transfer of stock of a subsidiary from one member to another member in a consolidated return year shall not be treated as a disposition for purposes of paragraph (b) of this section if the basis of such stock in the hands of the transferee is determined by reference to the basis of such stock in the hands of the transferor. In such case, the transferee member shall succeed to the transferor member's excess loss account with respect to the transferred stock. See example (5) of paragraph (f) of this section.

(2) *Contributions to capital.*—If the transferor in a transfer described in subparagraph (1) of this paragraph owns or receives stock in the transferee, the transferor's excess loss account for the transferred stock shall also be immediately applied to reduce the basis, if any, of the stock which the transferor owns or receives in the transferee. The excess, if any, over such basis shall be the transferor's excess loss account with respect to the stock owned or received. See example (5) of paragraph (f) of this section.

(e) *Nontaxable liquidations and reorganizations to which the subsidiary is a party.*—If, in a consolidated return year, a subsidiary is the transferor or distributor corporation and another member is the acquiring corporation in a transaction to which section 381(a) applies, any member owning stock in such subsidiary shall not, by reason of such transaction, be considered for purposes of paragraph (b) of this section as having disposed of the stock of such subsidiary. If, pursuant to such transaction, the member owning stock in such subsidiary receives stock in another member in exchange for the owning member's stock in such subsidiary, then any excess loss account with respect to the stock of the subsidiary shall be applied to reduce the basis, to the extent thereof, of the stock in such other member owned or received by the owning member, and any excess over such basis shall be treated as an excess loss account with respect to such stock. For example, assume that corporation *P* owns all the stock of corporation *S* with an adjusted basis of zero and an excess loss account of $20. If *S* is liquidated into *P* in a liquidation to which section 334(b)(1) applies, the $20 excess loss account is eliminated (and is not included in income). However, if *S* is merged into corporation *T* (another member) in a transaction described in section 368(a)(1)(A), *P* will apply $20 against and reduce the basis of any stock of *T* which *P* owns, or receives pursuant to the merger, and any excess over such basis will be *P*'s excess loss account with respect to *T*'s stock.

(f) *Examples.*—This section may be illustrated by the following examples:

Example (1).—Corporation *P* is the common parent of an affiliated group which files consolidated returns for 1966 through 1970. Included in the group for all such years are corporations *S1* and *S2* which are wholly owned by *P*, corporation *T* which is owned 40 percent by *P*, and 60 percent by *S2*, and corporation *U* which is wholly owned by *T*. *S1*, *S2*, *T*, and *U* were each organized on January 1, 1966, with the following investments being made in their stock.

P in *S1*	$50
P in *S2*	150
P in *T*	40
S2 in *T*	60
T in *U*	50

During the period 1966–70, *S1*, *S2*, *T*, and *U* made no distributions and had the following earnings and profits or deficits computed without regard to § 1.1502–33 (c)(4):

S1	($70)
S2	60
T	(120)
U	(80)

There were no consolidated net losses in 1966–70. Under § 1.1502–32(e) the basis and excess loss accounts for the stock of *S1*, *S2*, *T*, and *U* would be as follows:

	T in U	*P in T*	*S2 in T*	*P in S2*	*P in S1*
Original basis	$50	$40	$60	$150	$50
Undistributed earnings and profits or (deficits)					
of *U*	(80)	(32)	(48)	(48)	-------
of *T*	------	(48)	(72)	(72)	-------
of *S2*	------	------	------	60	-------
of *S1*	------	------	------	------	(70)
Basis or (excess loss account)	(30)	(40)	(60)	90	(20)

On January 1, 1971, *P* sells its stock in *S1* to an unrelated person for $10. The group files a consolidated return for 1971. *P* must include in its income for 1971 the $20 in its excess loss account for *S1* and the $10 gain from the sale of the stock of *S1*.

Example (2).—Assume the same facts as in example (1) except that *P* does not sell its stock in *S1*, but on January 1, 1971, *P* sells its stock in *S2* to an unrelated person for $170. Since *S2*, *T*, and *U* have ceased to be members of the group, the following adjustments must be made:

	T in U	*P in T*	*S2 in T*	*P in S2*
Basis or (excess loss account)	($30)	($40)	($60)	$90
T's excess loss account in *U* (see paragraph (c) of this section)	30	12	18	18
	------	(28)	(42)	108
S2's excess loss account in *T* (see paragraph (c) of this section)	------	------	42	42
				150
P's excess loss account in *T*	------	28	------	-------
Basis or (excess loss account)	0	0	0	150

For the year 1971, *P*, *S2*, and *T* would include in their incomes $28, $42, and $30, respectively. In addition, *P* would have a gain of $20 from the sale of the stock of *S2*, zero bases for its stock in *T* and *S1*, and a $20 excess account for its stock in *S1*.

Example (3).—Assume the same facts as in example (2), except that a consolidated return is not filed for 1971. As of December 31, 1970, *P*, *S2*, and *T* would include in their incomes $28, $42, and $30, respectively (see example (2)), and *P* would have a $150 basis for its stock in *S2* and zero bases for its stock in *T* and *S1*. In addition, *P* would include in its income $20 with

respect to its excess loss account in *S1*. In 1971, *P* would have a gain of $20 from the sale of its stock in *S2*.

Example (*4*).—Assume the same facts as in example (1), except that *P* does not sell its stock in *S1*, but on January 1, 1971, *T* redeems for $30 cash, in a transaction qualifying under section 346, one-half of its stock held by *P*. *P* has income in 1971 of $20, but such income is deferred; *P*'s excess loss account for its remaining stock in *T* is reduced to $20. In addition, *P* recognizes a gain of $30 on the redemption of the stock of *T*, which gain is deferred.

Example (*5*).—Assume the same facts as in example (1), except that instead of selling its stock in *S1* to an unrelated person, *P* transfers its stock in *S1* to *T* in exchange for stock in *T* in a transaction to which section 351 applies. *P*'s excess loss account of $20 for the stock in *S1* which was transferred to *T* increases *P*'s excess loss account for its stock in *T* from $40 to $60. In addition, *T* has a zero basis and an excess loss account of $20 for the stock it acquired in *S1*.

Example (*6*).—Assume the same facts as in example (1), except that *P* does not sell its stock in *S1*, but on January 1, 1971, *S2* is liquidated into *P* in a liquidation to which section 334(b)(1) applies. No income is realized by *S2* by reason of its distribution to *P* of its stock in *T*. *S2*'s excess loss account of $60 for its stock in *T* is added to, and is merged with, *P*'s excess loss account for its stock in *T*. Thus, *P* has an excess loss account of $100 for all its stock in *T*.

Example (7).—Assume the same facts as in example (6), except that *S1*, rather than *S2*, is liquidated into *P* in a liquidation to which section 334(b)(1) applies. *P*'s excess loss account for its stock in *S1* is eliminated.

(g) *Foreign expropriation losses.*—The application of this section to foreign expropriation losses is reserved pending the issuance of further regulations.

PAR. 4. Section 1.1502–25 is added to read as follows:

§ 1.1502–25 CONSOLIDATED SECTION 922 DEDUCTION.

(a) *In general.*—The consolidated section 922 deduction for the taxable year shall be determined by multiplying the fraction specified in section 922(2) by that portion of the consolidated taxable income attributable to those members of the group which are Western Hemisphere trade corporations for such year.

(b) *Definition of Western Hemisphere trade corporation.*—For purposes of paragraph (a) of this section, in determining whether a member is a Western Hemisphere trade corporation, the definition contained in section 921 shall be applied to such member separately. For purposes of applying the gross income tests of section 921 to such member, the gross income of such member for a consolidated return year shall be determined as if such member had filed a separate return, except that—

(1) Gains and losses on intercompany transactions shall be reflected in gross income in the manner provided by § 1.1502–13;

(2) Gains (not including dividends) and losses on transactions with respect to stock, bonds, or other obligations of members of the group shall be reflected in gross income in the manner provided by §§ 1.1502–14 and 1.1502–19; and

(3) The adjustments prescribed by §§ 1.1502–18 and 1.1502–32 shall be made.

(c) *Portion of consolidated taxable income attributable to Western Hemisphere trade corporations.*—(1) *In general.*—For purposes of paragraph (a) of this section, the portion of the consolidated taxable income attributable to those members of the group which are Western Hemisphere trade corporations is an amount equal to the consolidated taxable income (computed without regard to the section 922 deduction) multiplied by a fraction, the numerator of which is the sum of the taxable incomes of those members which are Western Hemisphere trade corporations, and the denominator of which is the sum of the taxable incomes of all the members.

(2) *Taxable income.*—For purposes of this paragraph, the taxable income of a member shall be the separate taxable income determined under § 1.1502–12, adjusted for the following items taken into account in the computation of consolidated taxable income:

(i) The portion of the consolidated net operating loss deduction, the consolidated charitable contributions deduction, and the consolidated dividends received deduction, attributable to such member;

(ii) Such member's net capital gain (determined without regard to any net capital loss carryover attributable to such member);

(iii) Such member's net capital loss and section 1231 net loss, reduced by the portion of the consolidated net capital loss attributable to such member; and

(iv) The portion of any consolidated net capital loss carryover attributable to such member which is absorbed in the taxable year.

If the computation of the taxable income of a member under this subparagraph results in an excess of deductions over a gross income, then for purposes of subparagraph (1) of this paragraph such member's taxable income shall be zero.

PAR. 5. Section 1.1502–31(b)(1) is revised to read as follows:

§ 1.1502–31 BASIS OF PROPERTY.

(a) *Deferred intercompany transactions.*—The basis of property acquired by a purchasing member in a deferred intercompany transaction shall be determined as if separate returns were filed. Thus, if, in a deferred intercompany transaction, *S* sells property with an adjusted basis of $80 to *P* for $100, the basis of such property in the hands of *P* shall be $100 even though, under § 1.1502–13, *S* defers its $20 gain on the sale.

(b) *Basis after liquidation or intercompany distributions with respect to stock.*—(1) *Distributions in kind.*—The basis of property received in a distribution to which section 301 applies shall be determined under section 301(d)(2)(B).

(2) *Liquidations and redemptions.*—(i) The basis of property acquired in a liquidation to which section 332 applies shall be determined as if separate returns were filed.

(ii) The aggregate basis of all property acquired in a distribution in cancellation or redemption of stock (as defined in § 1.1502–14(b)(3)) by a member to another member, other than a liquidation to which section 332 applies, shall be the same as the adjusted basis of the stock exchanged therefor (adjusted in accordance with the rules prescribed in § 1.1502–32(a)), increased by the amount of any liabilities of the distributing corporation assumed by the distributee or to which the property acquired is subject, and reduced by the amount of cash received in the distribution. Such aggregate basis shall be allocated among the assets received (except cash) in proportion to the fair market values of such assets on the date received.

PAR. 6. Section 1.1502–32 is added to read as follows:

§ 1.1502–32 INVESTMENT ADJUSTMENT.

(a) *In general.*—As of the end of each consolidated return year, each member owning stock in a subsidiary shall adjust the basis of such stock in the manner prescribed in this section. If a subsidiary owns stock in any other subsidiary, the adjustment with respect to the stock of the higher tier subsidiary shall not be made until after the adjustment is made with respect to the stock of the lower tier subsidiary. In the case of a disposition (as defined in § 1.1502–19(b)) of stock of a subsidiary before the end of the taxable year, the adjustment with respect to such stock shall be made as of the date of disposition. The amount of such adjustment shall be the difference between the positive adjustment described in paragraph (b)(1) or (c)(1) of this section, whichever is applicable, and the negative adjustment described in paragraph (b)(2) or (c)(2) of this section, whichever is applicable. Such difference is referred to in this section as the "net positive adjustment" or the "net negative adjustment", as the case may be.

(b) *Stock which is not limited and preferred as to dividends.*—(1) *Positive adjustment.*—The positive adjustment with respect to a share of stock which is not limited and preferred as to dividends shall be the sum of—

(i) An allocable part of the undistributed earnings and profits of the subsidiary for the taxable year;

(ii) An allocable part of the portion of any consolidated net operating loss or consolidated net capital loss for the taxable year which is attributable to such subsidiary under § 1.1502–79(a)(3) or (b)(2), and which is not carried back and absorbed in a prior taxable year; and

(iii) If such subsidiary owns stock in another subsidiary, an allocable part of the net positive adjustment made by the higher tier subsidiary for the taxable year with respect to its stock in such other subsidiary.

(2) *Negative adjustment.*—The negative adjustment with respect to a share of stock which is not limited and preferred as to dividends shall be the sum of—

(i) An allocable part of the deficit in earnings and profits of the subsidiary for the taxable year (determined under § 1.1502–33);

(ii) An allocable part of any net operating loss or net capital loss incurred by the subsidiary in a prior separate return year, and of any portion of a consolidated net operating loss or consolidated net capital loss incurred by the group in a prior consolidated return year which is attributable to such subsidiary under § 1.1502–79 (a)(3) or (b)(2), and which is carried over and absorbed in the taxable year;

(iii) Distributions made by the subsidiary during the taxable year with respect to such share out of earnings and profits of the subsidiary—

(*a*) Accumulated in prior consolidated return years beginning after December 31, 1965; or

(*b*) Accumulated in preaffiliation years of the subsidiary; and

(iv) If such subsidiary owns stock in another subsidiary, an allocable part of the net negative adjustment made by the higher tier subsidiary for the taxable year with respect to its stock in such other subsidiary.

(c) *Limited and preferred stock.*—(1) *Positive adjustment.*—The positive adjustment with respect to a share of stock which is limited and preferred as to dividends shall be an allocable part of the undistributed earnings and profits of the subsidiary for the taxable year.

(2) *Negative adjustment.*—The negative adjustment with respect to a share of stock which is limited and preferred as to dividends shall be the amount of distributions made by the subsidiary during the taxable year with respect to such share out of earnings and profits of the subsidiary—

(i) Accumulated in prior consolidated return years beginning after December 31, 1965; or

(ii) Accumulated in preaffiliation years of the subsidiary.

(d) *Operating rules.*—For purposes of paragraphs (b) and (c) of this section—

(1) *Allocation of undistributed earnings and profits.*—The undistributed earnings and profits for the taxable year shall first be allocated to all the outstanding stock (including the stock hold by nonmembers) which is limited and preferred as to dividends in an amount equal to the excess, if any, of—

(i) The cumulative dividends in arrears (determined as of the last day of the subsidiary's taxable year) for all consolidated return years beginning after December 31, 1965, over

(ii) The accumulated earnings and profits of the subsidiary as of the first day of the taxable year,

but such amount shall not exceed the accumulated earnings and profits of the subsidiary as of the last day of the taxable year. The balance, if any, of the undistributed earnings and profits, and any net positive adjustment made by such subsidiary with respect to lower tier subsidiaries, for the taxable year shall be allocated among all the outstanding stock of such subsidiary (including stock held by nonmembers) which is not limited and preferred as to dividends.

(2) *Allocation of deficit.*—A deficit in earnings and profits, and any net negative adjustments made by such subsidiary with respect to lower tier subsidiaries, for the taxable year, shall be allocated among all the outstanding stock of such subsidiary (including stock held by nonmembers) which is not limited and preferred as to dividends.

(3) *Loss carryovers.*—The amounts described in paragraphs (b)(1)(ii) and (b)(2)(ii) shall be allocated as if such amounts were deficits in earnings and profits for the current taxable year.

(4) *Portion of taxable year.*—If an adjustment is required to be made under this section prior to the end of a taxable year of the subsidiary, the amounts referred to in paragraphs (b)(1), (b)(2)(i), (ii), and (iv), and (c)(1) of this section for the taxable year shall be prorated on a daily basis.

(5) *Built-in deductions.*—For purposes of paragraphs (b)(1)(ii) and (b)(2)(ii) of this section, the amount of any built-in deductions (as defined in § 1.1502–15(a)) of a subsidiary which are not allowable in a consolidated return year shall be treated as a net operating loss or net capital loss attributable to such subsidiary.

(6) *Acquisitions of nonmembers.*—If a subsidiary acquires the assets of a nonmember in a transaction to which section 381(a) applies, the earnings and profits or deficit in earnings and profits carried over to the subsidiary pursuant to section 381(c)(2) shall not be treated, for purposes of paragraphs (b)(2)(iii) and (c)(2) of this section, as earnings and profits accumulated

in prior consolidated return years beginning after December 31, 1965 or in preaffiliation years of the subsidiary.

(7) *Distributions from contiguous country corporations.*—For purposes of paragraphs (b)(2)(iii)(*b*) and (c)(2)(ii), a distribution by a subsidiary for which an election has been made under section 1504(d), out of earnings and profits accumulated during a taxable year on each day of which such subsidiary would have been a member but for section 1504(b)(3), shall not be treated as a distribution out of earnings and profits accumulated in a preaffiliation year.

(8) *Undistributed earnings and profits.*—For purposes of this section, the term undistributed earnings and profits for the taxable year means earnings and profits for the taxable year (determined under § 1.1502–33) after diminution by reason of distribution of dividends (as defined in § 1.1502–14(a)(1)).

(9) *Preaffiliation year.*—The term "preaffiliation year" of a subsidiary means a taxable year during which such subsidiary was not a member for each day.

(e) *Application of adjustment.*—(1) *Net negative adjustment.*—A member owning stock in a subsidiary shall apply its net negative adjustment to reduce its basis for such stock. Any excess of such adjustment over basis is herein referred to as such member's "excess loss account".

(2) *Net positive adjustment.*—A member owning stock in a subsidiary shall apply its net positive adjustment with respect to such stock to reduce its excess loss account, if any, with respect to such stock. Any excess of such adjustment over the excess loss account shall be applied to increase the member's basis for such stock.

(3) *Subsequent investment.*—If a member has an excess loss account with respect to stock in a subsidiary, any increase in the basis of such stock as a result of a contribution to the capital of the subsidiary (or any basis in stock of the same class or of a similar class acquired with respect to such contribution) shall be applied against and reduce the excess loss account. For example, if corporation *P* has an excess loss account of $100 in the stock of its wholly-owned subsidiary, *S*, and *P* transfers $150 to *S* in a transaction described in section 351, the excess loss account is reduced to zero and *P* has a $50 basis in the stock of *S*.

(4) *Excess loss account.*—With respect to the time and manner for taking into account the excess loss account, see § 1.1502–19.

(f) *Transitional rules.*—(1) *In general.*—If any subsidiary joined in filing (or was required to join in filing) a consolidated return for a taxable year beginning before January 1, 1966 (whether or not with the same group), then for purposes of determining the basis of stock of such subsidiary as of the first day of the first taxable year to which this section applies § 1.1502–34A (b)(2) ann (c) shall be applied with respect to the stock (other than stock which is limited and preferred as to dividends) of such subsidiary owned by each member as if such stock were disposed of on such date. If the amount of deductions for losses availed of under § 1.1502–34A (b)(2) or (c)(2) exceeds the sum of the aggregate bases of such stock owned by all members, such excess shall be treated as an excess loss account with respect to such stock. See § 1.1502–19(a)(4) with respect to the treatment of such excess loss account.

(2) *Deemed dividend.*—If all the stock of a subsidiary is owned on each day of the subsidiary's taxable year by members, then at the election of the group such subsidiary shall be treated for all tax purposes as having made a distribution on the first day of such taxable year in an amount equal to its accumulated earnings and profits on such day. Each member owning stock in such subsidiary shall be treated for all tax purposes as having received an allocable share of such distribution, and as having immediately contributed such allocable share to the capital of the subsidiary. The election shall be made by submitting a statement, on or before the due date (including any extensions of time) of the consolidated return for such year, to the district director with whom the group files such return.

(g) *Adjustment on disposition.*—(1) *In general.*—A member owning stock in a subsidiary shall, on the first day of the first separate return year of the member or of the subsidiary, whichever shall first occur, decrease its basis for such stock by the amount referred to in subparagraph (2) of this paragraph.

(2) *Computation.*—The amount referred to in subparagraph (1) of this paragraph is the lesser of—

(i) The accumulated earnings and profits of the subsidiary, or

(ii) The excess, with respect to such stock, of—

(*a*) The net positive adjustments under paragraph (e)(2) of this section for all consolidated return years, over

(*b*) The net negative adjustments under paragraph (e)(1) of this section for all consolidated return years.

(3) *Example.*—Assume that in 1967, corporation *P* organizes corporation *S*, investing $500 for all of *S*'s stock. For the taxable year 1967, *S* has earnings and profits of $100, thus increasing *P*'s basis in *S*'s stock to $600 on the last day of 1967. On December 31, 1967, *P* sells one-half of its stock in *S* to a nonmember for $370. *P* recognizes a gain of $70 on such sale, and on January 1, 1968, *P*'s basis for its remaining stock in *S* is reduced by $50 to $250.

(h) *Section 334(b)(2) adjustments.*—If a subsidiary is liquidated pursuant to section 332 and the basis of the assets distributed is determined under section 334(b)(2), adjustments shall be made to the extent necessary to avoid duplications of adjustments otherwise required by section 334(b)(2) and the regulations thereunder.

(i) [Reserved.]

(j) *Examples.*—This section may be illustrated by the following examples:

Example (1).—On January 1, 1967, corporation *P* acquired all of the stock of corporation *S* for $1,000. On that date *S* had accumulated earnings and profits of $200. In 1967 *S* had no earnings and profits and distributed $100; in 1968 *S* had earnings and profits of $150; in 1969 *S* had a deficit of $30 and made a distribution (on the last day of the year) of $200; in 1970 *S* had a deficit of $2,000; in 1971 *S* had earnings and profits of $5,000, and made a distribution of $1,000; in January–June 1972 *S* had no earnings and profits and made a distribution of $2,000. Consolidated returns were filed for 1967–72 in which there were no consolidated net losses. On June 30, 1972, the stock of *S* was sold to an unrelated person. *P*'s basis in *S*'s stock on June 30, 1972, is computed as follows:

Cost		$1,000
1967—Distribution of preaffiliation earnings		(100)
Basis		900
1968—Undistributed earnings and profits		150
Basis		1,050
1969—Deficit	($30)	
Distribution of 1967–69 earnings	(120)	
Distribution of preaffiliation earnings	(80)	
		(230)
Basis		820
1970—Deficit		(2,000)
Excess loss account		(1,180)
1971—Undistributed earnings and profits		4,000
Basis		2,820
1972—Distribution of 1967–71 earnings		(2,000)
Basis on June 30, 1972		820

Example (2).—On January 1, 1966, corporation *P* organized a wholly owned subsidiary, corporation *S;* on the same date *S* organized a wholly owned subsidiary, corporation *T*. *P* invested $1,000 in the stock of *S; S* invested $600 in the stock of *T*. Consolidated returns are filed for the years 1966–69 for which there were no consolidated net losses. Earnings and profits and deficits of *T* were as follows:

	T
1966	($150)
1967	(900)
1968	600
1969	(100)

Earnings and profits and deficits of *S*, determined without regard to § 1.1502–33(c)(4), were as follows:

	S
1966	$100
1967	200
1968	(1,000)
1969	500

No distributions were made by *S* or *T*. On December 31, 1969, the adjusted bases for the stock of *S* and *T* would be computed as follows:

	S in T	*P in S*
Original basis	$600	$1,000
1966—Deficit of *T*	(150)	(150)
Undistributed earnings and profits of *S*		100
Basis	$450	$950
1967—Deficit of *T*	(900)	(900)
Undistributed earnings and profits of *S*		200
Basis or (excess loss account)	($450)	$250
1968—Undistributed earnings and profits of *T*	600	600
Deficit of *S*		(1,000)
Basis or (excess loss account)	$150	($150)
1969—Deficit of *T*	(100)	(100)
Undistributed earnings and profits of *S*		500
Basis	50	250

Example (3).—Corporation *P* purchased all the stock of corporation *S* for $60,000 at the beginning of the calendar year. On August 15, *P* sold the stock of *S* for $70,000. A consolidated return is filed by *P* and *S* for the calendar year. *S* had a $40,000 net operating loss and deficit for the period it was included in the consolidated return, while *P* had $10,000 income for the taxable year (computed without regard to any gain or loss on the sale of *S*'s stock). In computing *P*'s gain on the sale of the stock, *P*'s basis for such stock was decreased by $40,000, the amount of *S*'s deficit, and increased by the portion of the consolidated net operating or capital loss for the taxable year attributable to *S* under § 1.1502–79(a)(3). Since there were no such consolidated losses for the taxable year, *P*'s basis for *S*'s stock was $20,000 and *P*'s gain was $50,000.

Example (4).—Assume the same facts as in example (3) except that *P* sold the stock of *S* for $30,000. In such case, there was a consolidated net capital loss for the taxable year none of which was attributable to *S*, and a consolidated net operating loss for the taxable year of $30,000, all of which was attributable to *S*. *P*'s basis for its stock in *S* was $50,000 (original basis of $60,000, minus *S*'s deficit of $40,000, plus the consolidated net operating loss attributable to *S* of $30,000), and *P*'s loss on the sale of *S*'s stock was $20,000.

PAR. 7. Section 1.1502–33 is added to read as follows:

§ 1.1502–33 EARNINGS AND PROFITS.

(a) *Intercompany transactions.*—Gain or loss on an intercompany transaction shall be reflected in the earnings and profits of a member for its taxable year in which such gain or loss is taken into account under § 1.1502–13. Thus, for example, gain on a deferred intercompany transaction shall be reflected in the earnings and profits of a member for its taxable year in which such deferred gain is taken into account under paragraph (d), (e), or (f) of § 1.1502–13, rather than for the taxable year in which such gain or loss is deferred.

(b) *Effect of inventory adjustments.*—There shall be reflected in the earnings and profits of a member for a taxable year gains and losses taken into account pursuant to § 1.1502–18 for such year.

(c) *Stock and obligations.*—(1) *Dividend distributions.*—Dividend distributions from one member to another member shall be reflected in the earnings and profits of such members.

(2) *Nondividend distributions.*—Distributions to which section 301(c)(3) applies from one member to another member shall be reflected in earnings and profits only if subparagraph (4)(i) of the paragraph applies.

(3) *Gains or losses on dispositions.*—Gains or losses on the disposition of stock or obligations of a subsidiary (including amount determined under §§ 1.1502–14 and 1.1502–19) shall be reflected in the earnings and profits of a member for the taxable year in which such gain or loss is taken into account. Thus, for example, deferred gain resulting from a partial liquidation shall be reflected in the earnings and profits of a member for its taxable year in which such deferred gain is taken into account under § 1.1502–14(b)(3).

(4) *Investment adjustment.*—(i) *Taxable years ending before January 1, 1968.*—Except as provided in subdivisions (ii) and (iii) of this subparagraph—

(*a*) The adjustments made by a member under § 1.1502–32 (e), (f)(1), and (g) shall not be reflected in the earnings and profits of such member;

(*b*) For purposes of computing the earnings and profits of a member resulting from a disposition of stock (or an obligation to which § 1.1502–19(a)(4) applies) of a subsidiary, the adjusted basis of such stock (or obligation) shall be the adjusted basis determined without regard to any adjustments made under § 1.1502–32 (e), (f)(1), and (g), plus the amount of any excess loss account includible in income by such member under § 1.1502–19(a) on such disposition.

(ii) *Taxable years ending after December 31, 1967.*—For a group which does not make the election provided in subdivision (iii) of this subparagraph, the application of subdivision (i) of this subparagraph with respect to taxable years ending after December 31, 1967, is reserved.

(iii) *Election to adjust currently.*—At the election of the group—

(*a*) There shall be reflected in the earnings and profits of a member for a taxable year an amount equal to any increase or decrease for such taxable year pursuant to § 1.1502–32 (e) and (g) in such member's basis or excess loss account for its stock in a subsidiary;

(*b*) If an adjustment was made pursuant to § 1.1502–32(f)(1) with respect to the stock of a subsidiary—

(*i*) There shall be reflected in the earnings and profits of a member owning stock in such subsidiary, for the taxable year in which such stock is considered under § 1.1502–19(b) to have been disposed of by any member, an amount equal to the adjustment made under § 1.1502–32(f)(1) with respect to the stock disposed of, minus the amount of any excess loss account with respect to such stock which is not taken into account as income under § 1.1502–19(a)(4), and

(*ii*) There shall be reflected in the earnings and profits of a member for the taxable year in which such member reduces, pursuant to § 1.1502–19(a)(4), the basis of an obligation of a subsidiary, the amount of such reduction;

(*c*) For purposes of computing the earnings and profits of a member resulting from the disposition of stock (or an obligation to which § 1.1502–19(a)(4) applies) of a subsidiary, the adjusted basis of such stock (or obligation) shall be determined by taking into account any adjustments made under § 1.1502–32 (e), (f)(1), and (g); and

(*d*) The adjustments provided by § 1.1502–32(b)(1)(iii) and (2)(iv) shall be inapplicable.

Such election shall be made by submitting a statement, on or before the due date (including any extensions of time) of the consolidated return for the first taxable year for which the election is to apply, to the district director with whom the group files such return. If such election is made, it may not thereafter be revoked.

(5) *Section 381 transactions.*—The amount of earnings and profits or deficit of a transferor or distributor member which is carried over to the acquiring member in a transaction to which section 381(a) applies shall be adjusted so as not to duplicate any amount reflected in earnings and profits under subparagraph (4) of this paragraph.

(This Treasury decision is issued under the authority contained in sections 1502 and 7805 of the Internal Revenue Code of 1954 (68A Stat. 367, 917; 26 U.S.C. 1502 and 7805).)

SHELDON S. COHEN,
Commissioner of Internal Revenue.

Approved December 29, 1966.
FRED B. SMITH,
General Counsel of the Treasury.

(Filed by the Office of the Federal Register on Dec. 29, 1966, 1:07 p.m., and published in the issue of the Federal Register for Dec. 30, 1966, 31 F.R. 16694)

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26 CFR 1.1502–75: Filing of consolidated returns. Rev. Rul. 67–146 [1]

Method by which each member of an affiliated group consents to the consolidated return regulations for the purpose of filing a consolidated income tax return.

Under Income Tax Regulations applicable to taxable years beginning after December 31, 1965, the members of an affiliated group of corporations which files a consolidated income tax return for its first taxable year beginning after December 31, 1965, must consent to the regulations under section 1502 of the Internal Revenue Code of 1954, notwithstanding that the group filed (or was required to file) a consolidated return for its immediately preceding taxable year.

Under section 1.1502–75(b) of the regulations, the consent of a corporation is made by such corporation joining in the making of a consolidated return. A corporation is deemed to have joined in the making of a consolidated return if it files a Form 1122 in the manner specified in section 1.1502–75(h)(2). If a member fails to file a Form 1122, section 1.1502–75(b)(2) authorizes the Commissioner to determine, under the facts and circumstances, that such member has joined in the making of a consolidated return.

Some affiliated groups which filed consolidated returns for taxable years beginning in 1965 (whether calendar year or fiscal) were unaware that their members are obliged to consent to the regulations under section 1502 for the first taxable year of the group beginning after December 31, 1965. If such members do not file (or have not filed) the Forms 1122 required by the regulations, it is held under the authority of section 1.1502–75(b)(2) that a member of an affiliated group which files (or has filed) a consolidated return for its first taxable year beginning after December 31, 1965, and which filed (or was required to file) such a return for its immediately preceding taxable year, will be considered to have joined in the making of the consolidated return for the later year if (1) the income and deductions of such member are included in the consolidated return, (2) such member does not file a separate return for such taxable year, and (3) the member is included in the affiliations schedule, Form 851.

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[1] Also released as Technical Information Release 898, dated Apr. 10, 1967.

26 CFR 1.1502-76: Taxable year of members of group. (Also Section 443; 1.443-1.) Rev. Rul. 67-189

Where a corporation becomes a member of an affiliated group of corporations and the corporation joins the group in the filing of a consolidated return under section 1501 of the Internal Revenue Code of 1954, the corporation is not required under section 443(b) of the Code to annualize its income for the period prior to affiliation which is required to be reported on a separate short-period return. Revenue Ruling 57-602, C.B. 1957-2, 611, revoked.

In view of the decision of the Tax Court of the United States in *Erwin Properties, Inc.* v. *Commissioner of Internal Revenue*, 43 T.C. 888 (1965), acquiescence page 2 this Bulletin, the Internal Revenue Service has reconsidered the position taken in Revenue Ruling 57-602, C.B. 1957-2, 611, which revoked Revenue Ruling 55-566, C.B. 1955-2, 580.

Revenue Ruling 57-602 required a subsidiary corporation to annualize its income pursuant to section 443(b) of the Internal Revenue Code of 1954 in filing the short-period separate return when it elected as a member of an affiliated group to make a consolidated return with its parent corporation under section 1501 of the Code. Revenue Ruling 55-566 did not require such annualization.

The *Erwin Properties, Inc.* case involved a situation wherein a corporation reporting its income on a calendar year basis became a member of an affiliated group of corporations on May 1, 1959. The corporation joined the group in the filing of a consolidated return under section 1501 of the Code for the taxable year ended April 30, 1960. It had filed a separate short-period return for the period January 1 to April 30, 1959.

The sole question presented was whether the taxpayer corporation was required under section 443(b) of the Code to annualize its income for the short period, January 1, 1959, to April 30, 1959.

Section 443(b) of the Code was intended to provide for the annualization of income in the case of a return for a short period "by reason of" a change in the annual accounting period. Senate Report No. 1622, 83d Congress, at page 299.

The court concluded in the *Erwin Properties, Inc.* case that section 443(b) of the Code was inapplicable since the separate return therein was not made "by reason of" a change in the corporation's accounting period but was instead the result of a taxpayer complying with the requirement of section 1.1502-13A(g) of the Income Tax Regulations in effect for the taxable year in question. That regulation provides that the income of a new member of an affiliated group must be included in the consolidated return from the time the new member becomes affiliated, and its income for the portion of the taxable year not included in the consolidated return must be included in a separate return.

The Service agrees with the position taken by the court in the above case. Moreover, the provisions of section 1.1502-13A(g) of the regulations have been continued in section 1.1502-76(b)(2) of the regulations which are effective for taxable years beginning after December 31, 1965.

Accordingly, where a corporation becomes a member of an affiliated group of corporations and the corporation joins the group in the filing of a consolidated return under section 1501 of the Code, the corporation is not required under section 443(b) of the Code to annualize its income for the period prior to affiliation which is required to be reported on a separate short-period return.

Revenue Ruling 57–602, C.B. 1957–2, 611, is revoked.

SUBCHAPTER B.—RELATED RULES

PART 1.—IN GENERAL

SECTION 1551.—DISALLOWANCE OF SURTAX EXEMPTION AND ACCUMULATED EARNINGS CREDIT

26 CFR 1.1551–1: Disallowance of surtax exemption and accumulated earnings credit. T.D. 6911[1]

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 1.—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Disallowance of surtax exemption and accumulated earnings credit

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF INTERNAL REVENUE,
Washington, D.C. 20224

To Officers and Employees of the Internal Revenue Service and Others Concerned:

On July 19, 1966, notice of proposed rulemaking with respect to the amendment of the Income Tax Regulations (26 CFR Part 1) under section 1551 of the Internal Revenue Code of 1954 to conform the regulations to certain provisions of section 235(b) of the Revenue Act of 1964 (78 Stat. 125) [P.L. 88–272, C.B. 1964–1(Part 2), 6] was published in the Federal Register (31 F.R. 9743). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the following amendments to the regulations are adopted:

PARAGRAPH 1. Section 1.1551 is amended to read as follows:

§ 1.1551 STATUTORY PROVISIONS; DISALLOWANCE OF SURTAX EXEMPTION AND ACCUMULATED EARNINGS CREDIT.

SEC. 1551. DISALLOWANCE OF SURTAX EXEMPTION AND ACCUMULATED EARNINGS CREDIT.

(a) IN GENERAL.—If—

(1) Any corporation transfers, on or after January 1, 1951, and on or before June 12, 1963, all or part of its property (other than money) to a transferee corporation,

(2) Any corporation transfers, directly or indirectly, after June 12, 1963, all or part of its property (other than money) to a transferee corporation, or

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[1] The publication of this Treasury Decision in 32 F.R. 3214, dated Feb. 24, 1967, contains the proposed rulemaking published in 31 F.R. 9743, dated July 19, 1966, with modifications and additions thereto.

(3) Five or fewer individuals who are in control of a corporation transfer, directly or indirectly, after June 12, 1963, property (other than money) to a transferee corporation,

and the transferee corporation was created for the purpose of acquiring such property or was not actively engaged in business at the time of such acquisition, and if after such transfer the transferor or transferors are in control of such transferee corporation during any part of the taxable year of such transferee corporation, then for such taxable year of such transferee corporation the Secretary or his delegate may [(except as may be otherwise determined under subsection (d))] [sic] disallow the surtax exemption (as defined in section 11(d)), or the $100,000 accumulated earnings credit provided in paragraph (2) or (3) of section 535(c), unless such transferee corporation shall establish by the clear preponderance of the evidence that the securing of such exemption or credit was not a major purpose of such transfer.

(b) CONTROL.—For purposes of subsection (a), the term "control" means—

(1) With respect to a transferee corporation described in subsection (a) (1) or (2), the ownership by the transferor corporation, its shareholders, or both, of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of the stock; or

(2) With respect to each corporation described in subsection (a)(3), the ownership by the five or fewer individuals described in such subsection of stock possessing—

(A) At least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of the stock of each corporation, and

(B) More than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such individual only to the extent such stock ownership is identical with respect to each such corporation.

For purposes of this subsection, section 1563(e) shall apply in determining the ownership of stock.

(c) AUTHORITY OF THE SECRETARY UNDER THIS SECTION.—The provisions of section 269(b), and the authority of the Secretary under such section, shall, to the extent not inconsistent with the provisions of this section, be applicable to this section.

[Sec. 1551 as amended by sec. 205(a), Small Business Tax Revision Act 1958 (72 Stat. 1680) [P.L. 85-866, C.B. 1958-3, 254]; sec. 235(b), Rev. Act 1964 (78 Stat. 125) [P.L. 88-272, C.B. 1964-1 (Part 2), 6]]

PAR. 2. Section 1.1551-1 is amended to read as follows:

§ 1.1551-1 DISALLOWANCE OF SURTAX EXEMPTION AND ACCUMULATED EARNINGS CREDIT.—(a) IN GENERAL.—If—

(1) Any corporation transfers, on or after January 1, 1951, and before June 13, 1963, all or part of its property (other than money) to a transferee corporation,

(2) Any corporation transfers, directly or indirectly, after June 12, 1963, all or part of its property (other than money) to a transferee corporation, or

(3) Five or fewer individuals are in control of a corporation and one or more of them transfer, directly or indirectly, after June 12, 1963, property (other than money) to a transferee corporation,

and the transferee was created for the purpose of acquiring such property or was not actively engaged in business at the time of such acquisition, and if after such transfer the transferor or transferors are

in control of the transferee during any part of the taxable year of the transferee, then for such taxable year of the transferee the Secretary or his delegate may disallow the surtax exemption defined in section 11(d) or the $100,000 accumulated earnings credit provided in paragraph (2) or (3) of section 535(c), unless the transferee establishes by the clear preponderance of the evidence that the securing of such exemption or credit was not a major purpose of the transfer.

(b) PURPOSE OF SECTION 1551.—The purpose of section 1551 is to prevent avoidance or evasion of the surtax imposed by section 11(c) or of the accumulated earnings tax imposed by section 531. It is not intended, however, that section 1551 be interpreted as delimiting or abrogating any principle of law established by judicial decision, or any existing provisions of the Code, such as sections 269 and 482, which have the effect of preventing the avoidance or evasion of income taxes. Such principles of law and such provisions of the Code, including section 1551, are not mutually exclusive, and in appropriate cases they may operate together or they may operate separately.

(c) APPLICATION OF SECTION 269(b) TO CASES COVERED BY SECTION 1551.—The provisions of section 269(b) and the authority of the district director thereunder, to the extent not inconsistent with the provisions of section 1551, are applicable to cases covered by section 1551. Pursuant to the authority provided in section 269(b) the district director may allow to the transferee any part of a surtax exemption or accumulated earnings credit for a taxable year for which such exemption or credit would otherwise be disallowed under section 1551(a); or he may apportion such exemption or credit among the corporations involved. For example, corporation *A* transfers on January 1, 1955, all of its property to corporations *B* and *C* in exchange for all of the stock of such corporations. Immediately thereafter, corporation *A* is dissolved and its stockholders become the sole stockholders of corporations *B* and *C*. Assuming that corporations *B* and *C* are unable to establish by the clear preponderance of the evidence that the securing of the surtax exemption defined in section 11(d) or the accumulated earnings credit provided in section 535, or both, was not a major purpose of the transfer, the district director is authorized under sections 1551(c) and 269(b) to allow one such exemption and credit and to apportion such exemption and credit between corporations *B* and *C*.

(d) ACTIVELY ENGAGED IN BUSINESS.—For purposes of this section, a corporation maintaining an office for the purpose of preserving its corporate existence is not considered to be "actively engaged in business" even though such corporation may be deemed to be "doing business" for other purposes. Similarly, for purposes of this section, a corporation engaged in winding up its affairs, prior to an acquisition to which section 1551 is applicable, is not considered to be "actively engaged in business."

(e) MEANING AND APPLICATION OF THE TERM "CONTROL".—(1) *In general.*—For purposes of this section, the term "control" means—

(i) With respect to a transferee corporation described in paragraph (a) (1) or (2) of this section, the ownership by the transferor corporation, its shareholders, or both, of stock possessing either (*a*) at least 80 percent of the total combined voting power of all classes of stock entitled to vote, or (*b*) at least 80 percent of the total value of shares of all classes of stock.

(ii) With respect to each corporation described in paragraph (a)(3) of this section, the ownership by five or fewer individuals of stock possessing (*a*) at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of the stock of each corporation, and (*b*) more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such individual only to the extent such stock ownership is identical with respect to each such corporation.

(2) *Special rules.*—In determining for purposes of this section whether stock possessing at least 80 percent (or more than 50 percent in the case of subparagraph (1)(ii)(*b*) of this paragraph) of the total combined voting power of all classes of stock entitled to vote is owned, all classes of such stock shall be con-

sidered together; it is not necessary that at least 80 percent (or more than 50 percent) of each class of voting stock be owned. Likewise, in determining for purposes of this section whether stock possessing at least 80 percent (or more than 50 percent) of the total value of shares of all classes of stock is owned, all classes of stock of the corporation shall be considered together; it is not necessary that at least 80 percent (or more than 50 percent) of the value of shares of each class be owned. The fair market value of a share shall be considered as the value to be used for purposes of this computation. With respect to transfers described in paragraph (a) (2) or (3) of this section, the ownership of stock shall be determined in accordance with the provisions of section 1563(e) and the regulations thereunder. With respect to transfers described in paragraph (a)(1) of this section, the ownership of stock shall be determined in accordance with the provisions of section 544 and the regulations thereunder, except that constructive ownership under section 544(a)(2) shall be determined only with respect to the individual's spouse and minor children. In determining control, no stock shall be excluded because such stock was acquired before January 1, 1951 (the effective date of section 1551(a)(1)), or June 13, 1963 (the effective date of section 1551 (a) (2) and (3)).

(3) *Example.*—This paragraph may be illustrated by the following example:

Example.—On January 1, 1964, individual *A*, who owns 50 percent of the voting stock of corporation *X*, and individual *B*, who owns 30 percent of such voting stock, transfer property (other than money) to corporation *Y* (newly created for the purpose of acquiring such property) in exchange for all of *Y*'s voting stock. After the transfer, *A* and *B* own the voting stock of corporations *X* and *Y* in the following proportions:

Individual	Corporation *X*	Corporation *Y*	Identical ownership
A	50	30	30
B	30	50	30
Total	80	80	60

The transfer of property by *A* and *B* to corporation *Y* is a transfer described in paragraph (a)(3) of this section since (i) *A* and *B* own at least 80 percent of the voting stock of corporations *X* and *Y*, and (ii) taking into account each such individual's stock ownership only to the extent such ownership is identical with respect to each such corporation, *A* and *B* own more than 50 percent of the voting stock of corporations *X* and *Y*.

(f) TAXABLE YEAR OF ALLOWANCE OR DISALLOWANCE.—(1) *In general.*—The district director's authority with respect to cases covered by section 1551 is not limited to the taxable year of the transferee corporation in which the transfer of property occurs. Such authority extends to the taxable year in which the transfer occurs or any subsequent taxable year of the transferee corporation if, during any part of such year, the transferor or transferors are in control of the transferee.

(2) *Examples.*—This paragraph may be illustrated by the following examples:

Example (1).—On January 1, 1955, corporation *D* transfers property (other than money) to corporation *E*, a corporation not actively engaged in business at the time of the acquisition of such property, in exchange for 60 percent of the voting stock of *E*. During a later taxable year of *E*, corporation *D* acquires an additional 20 percent of such voting stock. As a result of such additional acquisition, *D* owns 80 percent of the voting stock of *E*. Accordingly, section 1551 (a)(1) is applicable for the taxable year in which the later acquisition of stock occurred and for each taxable year thereafter in which the requisite control continues.

Example (2).—On June 20, 1963, individual *A*, who owns all of the stock of corporation *X*, transfers property (other than money) to corporation *Y*, a corporation not actively engaged in business at the time of the acquisition of such property, in exchange for 60 percent of the voting stock of *Y*. During a later taxable year of *Y*, *A* acquires an additional 20 percent of such voting stock. After such acquisition *A* owns at least 80 percent of the voting stock of corporations *X* and *Y*. Accordingly, section 1551(a)(3) is applicable for the taxable

year in which the later acquisition of stock occurred and for each taxable year thereafter in which the requisite control continues.

Example (3).—Individuals *A* and *B* each owns 50 percent of the stock of corporation *X*. On January 15, 1964, *A* transfers property (other than money) to corporation *Y* (newly created by *A* for the purpose of acquiring such property) in exchange for all the stock of *Y*. In a subsequent taxable year of *Y*, individual *B* buys 50 percent of the stock which *A* owns in *Y* (or he transfers money to *Y* in exchange for its stock, as a result of which he owns 50 percent of *Y*'s stock). Immediately thereafter the stock ownership of *A* and *B* in corporation *Y* is identical to their stock ownership in corporation *X*. Accordingly, section 1551(a)(3) is applicable for the taxable year in which *B* acquires stock in corporation *Y* (see paragraph (g)(3) of this section) and for each taxable year thereafter in which the requisite control continues. Moreover, if *B*'s acquisition of stock in *Y* is pursuant to a preexisting agreement with *A*, *A*'s transfer to *Y* and *B*'s acquisition of *Y*'s stock are considered a single transaction and section 1551(a)(3) also would be applicable for the taxable year in which *A*'s transfer to *Y* took place and for each taxable year thereafter in which the requisite contral continues.

(g) NATURE OF TRANSFER.—(1) *Corporate transfers before June 13, 1963.*—A transfer made before June 13, 1963, by any corporation of all or part of its assets, whether or not such transfer qualifies as a reorganization under section 368, is within the scope of section 1551(a)(1), except that section 1551(a)(1) does not apply to a transfer of money only. For example, the transfer of cash for the purpose of expanding the business of the transferor corporation through the formation of a new corporation is not a transfer within the scope of section 1551(a)(1), irrespective of whether the new corporation uses the cash to purchase from the transferor corporation stock in trade or similar property.

(2) *Corporate transfers after June 12, 1963.*—A direct or indirect transfer made after June 12, 1963, by any corporation of all or part of its assets to a transferee corporation, whether or not such transfer qualifies as a reorganization under section 368, is within the scope of section 1551(a)(2) except that section 1551(a)(2) does not apply to a transfer of money only. For example, if a transferor corporation transfers property to its shareholders or to a subsidiary, the transfer of that property by the shareholders or the subsidiary to a transferee corporation as part of the same transaction is a transfer of property by the transferor corporation to which section 1551(a)(2) applies. A transfer of property pursuant to a purchase by a transferee corporation from a transferor corporation controlling the transferee is within the scope of section 1551(a)(2), whether or not the purchase follows a transfer of cash from the controlling corporation.

(3) *Other transfers after June 12, 1963.*—A direct or indirect transfer made after June 12, 1963, by five or fewer individuals to a transferee corporation, whether or not such transfer qualifies under one or more other provisions of the Code (for example, section 351), is within the scope of section 1551(a)(3) except that section 1551(a)(3) does not apply to a transfer of money only. Thus, if one of five or fewer individuals who are in control of a corporation transfers property (other than money) to a controlled transferee corporation, the transfer is within the scope of section 1551(a)(3) notwithstanding that the other individuals transfer nothing or transfer only money.

(4) *Examples.*—This paragraph may be illustrated by the following examples:

Example (1).—Individuals *A* and *B* each owns 50 percent of the voting stock of corporation *X*. On January 15, 1964, *A* and *B* each acquires property (other than money) from *X* and, as part of the same transaction, each transfers such property to his wholly owned corporation (newly created for the purpose of acquiring such property). *A* and *B* retain substantial continuing interests in corporation *X*. The transfers to the two newly created corporations are within the scope of section 1551(a)(2).

Example (2).—Corporation *W* organizes corporation *X*, a wholly owned subsidiary, for the purpose of acquiring the properties of corporation *Y*. Pursuant to a reorganization qualifying under section 368(a)(1)(C), substantially all of the properties of corporation *Y* are transferred on June 15, 1963, to corporation *X* solely in exchange for voting stock of corporation *W*. There is a transfer of property from *W* to *X* within the meaning of section 1551(a)(2).

Example (3).—Individuals *A* and *B*, each owning 50 percent of the voting stock of corporation *X*, organize corporation *Y* to which each transfers money only in exchange for 50 percent of the stock of *Y*. Subsequently, *Y* uses such money to acquire other property from *A* and *B* after June 12, 1963. Such acquisition is within the scope of section 1551(a)(3).

Example (4).—Individual *A* owns 55 percent of the stock of corporation *X*. Another 25 percent of corporation *X*'s stock is owned in the aggregate by individuals *B*, *C*, *D*, and *E*. On June 15, 1963, individual *A* transfers property to corporation *Y* (newly created for the purpose of acquiring such property) in exchange for 60 percent of the stock of *Y*, and *B*, *C*, and *D* acquire all of the remaining stock of *Y*. The transfer is within the scope of section 1551(a)(3).

(b) PURPOSE OF TRANSFER.—In determining, for purposes of this section, whether the securing of the surtax exemption or accumulated earnings credit constituted "a major purpose" of the transfer, all circumstances relevant to the transfer shall be considered. "A major purpose" will not be inferred from the mere purchase of inventory by a subsidiary from a centralized warehouse maintained by its parent corporation or by another subsidiary of the parent corporation. For disallowance of the surtax exemption and accumulated earnings credit under section 1551, it is not necessary that the obtaining of either such credit or exemption, or both, have been the sole or principal purpose of the transfer of the property. It is sufficient if it appears, in the light of all the facts and circumstances, that the obtaining of such exemption or credit, or both, was one of the major considerations that prompted the transfer. Thus, the securing of the surtax exemption or the accumulated earnings credit may constitute "a major purpose" of the transfer, notwithstanding that such transfer was effected for a valid business purpose and qualified as a reorganization within the meaning of section 368. The taxpayer's burden of establishing by the clear preponderance of the evidence that the securing of either such exemption or credit or both was not "a major purpose" of the transfer may be met, for example, by showing that the obtaining of such exemption, or credit, or both, was not a major factor in relationship to the other consideration or considerations which prompted the transfer.

(This Treasury Decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

SHELDON S. COHEN,
Commissioner of Internal Revenue.

Approved February 17, 1967.

STANLEY S. SURREY,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on Feb. 23, 1967, 8:50 a.m., and published in the issue of the Federal Register for Feb. 24, 1967, 32 F.R. 3214)

SUBTITLE B.—ESTATE AND GIFT TAXES

CHAPTER 11.—ESTATE TAX

SUBCHAPTER A.—ESTATES OF CITIZENS OR RESIDENTS

PART II.—CREDITS AGAINST TAX

SECTION 2012.—CREDIT FOR GIFT TAX

26 CFR 20.2012–1: Credit for gift tax.

The computation of the gift tax credit applicable to an estate against which a credit for tax on prior transfers is also allowable requires the computation of a hypothetical gift tax credit which is made on the basis of the transferee-decedent's reduced gross estate. See Rev. Rul. 67–110, page 262.

SECTION 2013.—CREDIT FOR TAX ON PRIOR TRANSFERS

26 CFR 20.2013–1: Credit for tax on prior transfers. Rev. Rul. 67–110
(Also Section 2012; 20. 2012–1.)

Where a credit is allowable under section 2013(a) of the Internal Revenue Code of 1954, for tax on prior transfers, and a gift tax credit is also allowable under section 2012(a), the computation of the limitation on credit provided for in section 2013(c) requires, for purposes of section 2013(c)(1)(B), the computation of a hypothetical gift tax credit, which is made on the basis of the transferee's reduced gross estate, in order to determine the net Federal estate tax under section 2013(c)(1)(B).

Advice has been requested concerning the method of computing the credit allowable under section 2013 of the Internal Revenue Code of 1954, where the decedent's estate is also entitled to a credit under section 2012 of the Code.

In the instant case, the decedent received the entire net estate of his predeceased brother who died in 1961. The value of such inherited property was included in the brother's gross estate and a Federal estate tax was paid thereon. The decedent died in the year 1966, which was within 10 years after the death of the brother.

The decedent gratuitously transferred a parcel of real estate to his son. A Federal gift tax return was filed, a gift tax was paid, and the decedent died 6 months later. The transfer of the real property was admittedly made in contemplation of death and, consequently, its value was included in the decedent's gross estate under the provisions of section 2035 of the Code.

Under section 2012(a) of the Code, a credit is allowed against the Federal estate tax for gift tax paid with respect to the transfer by gift of property that is subsequently included in the donor-decedent's gross estate. The credit is limited to the lesser of two limitations. The "first limitation" is the amount of the gift tax paid on the included gift. And the "second limitation" is the amount of the estate tax attributable to the inclusion of the gift property in the gross estate.

Section 2013 of the Code provides that the estate of a deceased who had received property from another decedent shall be credited with all or a part of the amount of the Federal estate tax paid with respect to such property in the transferor-decedent's estate, provided that the decedents died within the statutory period. Section 2013(c)(1) imposes a limitation on the amount of the credit as computed in section 2013(b); that is, the credit cannot be greater than the amount by which the estate tax imposed by either section 2001 or 2101 (after deducting the credits for State death taxes, gift tax, and foreign death taxes provided in sections 2011, 2012, and 2014) and computed without regard to section 2013 exceeds "such tax computed by excluding from the decedent's gross estate the value of such property transferred * * *." In other words, in determining the amount of the credit allowable under section 2013(c)(1), it is necessary to make two computations of the Federal estate tax, both of which are to be made without regard to the credit under section 2013, but which must take into account the allowance of the credits provided for in sections 2011, 2012, and 2014, that is, the credits for State death taxes paid, gift taxes paid, and foreign death taxes paid.

The first computation, under section 2013(c)(1)(A), is made on the basis of the entire value of the present decedent's (transferee) gross estate.

The second computation, under section 2013(c)(1)(B), is made on the basis of the value of the decedent's gross estate less the value of the property received from the prior decedent (transferor). If a gift tax credit is involved, the second computation requires the computation of a hypothetical gift tax credit, which is likewise made on the basis of the reduced gross estate, in order to determine the amount of the Federal estate tax on the reduced gross estate.

The computation was made as follows:

Decedent's taxable estate

Gross estate		$500,000.00
Less:		
Debts and charges	$10,000.00	
Marital deduction	30,000.00	
Specific exemption	60,000.00	100,000.00
Taxable estate		$400,000.00
Gross estate tax		$113,700.00
Less credit for State death taxes		8,720.00
Gross estate tax less credit for State death taxes		$104,980.00
Less:		
Credit for Federal gift taxes (1st limitation)	$20,025.00	
Credit for tax on prior transfers (2d limitation)	49,984.64	70,009.64
Net estate tax payable		$34,970.36

Computation of credit for Federal gift taxes

1st limitation:	
Value of gift to son	$153,000.00
Less annual exclusion	3,000.00
Amount of included gift for year	$150,000.00
Less specific exemption	30,000.00
Amount of taxable gifts for year	$120,000.00
Gift tax paid on taxable gifts	$20,025.00

1st limitation expressed as a fraction:

$$\frac{\$153{,}000.00-\$3{,}000.00\ \text{(Value of gift, less annual exclusion)}}{\$120{,}000.00+\$30{,}000.00\ \text{(Total taxable gift, plus specific exemption allowed)}}\times\$20{,}025.00\ \text{(Total gift tax paid)}=\$20{,}025.00$$

2d limitation:	
Value of gift as included in gross estate	$153,000.00
Gross estate	500,000.00
Less marital deduction	30,000.00
Value of gross estate less marital deduction	470,000.00

2d limitation expressed as a fraction:

$$\frac{\$153{,}000.00-\$3{,}000.00\ \text{(Value of gift for estate tax purpose, less annual exclusion)}}{\$500{,}000.00-\$30{,}000.00\ \text{(Value of gross estate, less marital deduction)}}\times\$104{,}980.00\ \text{(Gross estate tax, less credit for State death taxes}=\$33{,}504.26$$

Computation of credit for tax on prior transfers

Assuming that State death taxes are $6,800.00, the maximum credit allowable, the computation of Federal estate tax in the brother's estate would be as follows:

Brother's total gross estate		$440,000.00
Less:		
Debts and charges	$40,000.00	
Specific exemption	60,000.00	100,000.00
Taxable estate		$340,000.00
Net estate tax payable		$87,700.00

The computation of the credit, under 2013(b) of the Code, in the decedent's estate was as follows:

First limitation

Net value of transfers:		
Brother's gross estate		$440,000.00
Less:		
Debts and charges	$40,000.00	
Federal estate tax	87,700.00	
State death taxes	6,800.00	134,500.00
Net value of transfers		$305,500.00
Value of transferor's estate, adjusted:		
Taxable estate		$340,000.00
Plus specific exemption		60,000.00
		$400,000.00
Federal estate tax	$87,700.00	
State death taxes	6,800.00	94,500.00
Value of transferor's adjusted estate		$305,500.00
Tax on transferor's estate, adjusted:		
Federal estate tax paid		$87,700.00
Plus:		
Credit for Federal gift taxes	0.00	
Credit for tax on prior transfers	0.00	0.00
Transferor's adjusted estate tax		$87,700.00

Transferor's tax on prior transfers (1st limitation)

$$\frac{\$305{,}500.00 \text{ (Net value of transfers)}}{\$305{,}500.00 \text{ (Value of transferor's adjusted estate)}} \times \$87{,}700.00 \text{ (Tax on transferor's estate)} = \$87{,}700.00$$

Second limitation

Transferee's tax computed without regard to credit for tax on prior transfers:	
Gross estate tax	$113,700.00
Less credit for State death taxes	8,720.00
Gross estate less credit for State death taxes	104,980.00
Less credit for Federal gift taxes	20,025.00
Estate tax before credit for tax on prior transfers	84,955.00
Transferee's reduced gross estate:	
Gross estate	500,000.00
Less net value of transfers	305,500.00
Reduced gross estate	194,500.00

Transferee's deductions:	
Debts and charges	$10, 000. 00
Marital deduction	30, 000. 00
Specific exemption	60, 000. 00
Total deductions	100, 000. 00
Transferee's reduced taxable estate:	
Reduced gross estate	194, 500. 00
Less transferee's deductions	100, 000. 00
Reduced taxable estate	94, 500. 00
Transferee's tax on reduced taxable estate:	
Gross estate tax	19, 160. 00
Less credit for State death taxes	472. 00
Gross estate tax less credit for State death taxes	18, 688. 00
Less credit for Federal gift tax (2d limitation, as computed below)	17, 040. 73
Net estate tax on reduced taxable estate	1, 647. 27

Computation of hypothetical gift tax credit applicable to transferee's reduced gross estate

1st limitation ($20,025.00, unchanged).
2d limitation:

Value of gift as included in gross estate	$153, 000. 00
Transferee's reduced gross estate	194, 500. 00
Less marital deduction	30, 000. 00
Value of reduced gross estate, less marital deduction	164, 500. 00

2nd limitation expressed as a fraction:

$$\frac{\$153{,}000.00-\$3{,}000.00\text{ (Value of gift for estate tax purpose, less annual exclusion)}}{\$194{,}500.00-\$30{,}000.00\text{ (Value of reduced gross estate, less marital deduction)}} \times \$18{,}688.00\text{ (Gross estate tax on reduced taxable estate, less credit for State death taxes)} = \$17{,}040.73$$

Transferee's tax on prior transfers (2nd limitation:)	
Transferee's estate tax before credit for tax on prior transfers	$84, 955. 00
Less transferee's tax on reduced taxable estate	1, 647. 27
Transferee's tax on prior transfer	$83, 307. 73

Since the tax in the transferee's estate attributable to the transferred property is smaller than that in the transferor's estate, the "second limitation" applies. Inasmuch as the two deaths occurred within 5 years, the credit is limited to 60 percent of the tax attributable to the property, or $83,307.73 × .60 = $49,984.64.

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26 CFR 20.2013–4: Valuation of property transferred. Rev. Rul. 67–53

Where a decedent-transferee received a property interest which was not susceptible of valuation by recognized valuation principles on the date of death of the transferor, a credit under section 2013 of the Internal Revenue Code of 1954 for Federal estate tax paid on

the transfer of such an interest from the estate of the transferor is not allowed against the Federal estate tax imposed upon the estate of the decedent-transferee.

Advice has been requested regarding the allowance of the credit for Federal estate tax paid on prior transfers under section 2013 of the Internal Revenue Code of 1954, where, at the time of the transferor's death, the property interest of the transferee was not susceptible of valuation by recognized valuation principles.

A grantor created a trust during his lifetime under the terms of which he reserved the right to net income for his life. The trust instrument provided that at his death net income was payable to the grantor's wife for life, subject to the power of the trustee, in his absolute and uncontrolled discretion, to withhold any or all of such income and to add all or any part of it to the principal of the trust. The instrument also provided that at the grantor's death or at the death of his wife, whichever occurred last, the principal and any accumulated income of the trust were to be paid to the grantor's then living children. At the grantor's death the principal of the trust was includible in his gross estate for Federal estate tax purposes. Thereafter, the trustee annually paid out the entire amount of net income of the trust to the wife of the grantor until her death.

Section 2013(a) of the Code provides, in part, that the tax imposed by section 2001 of the Code shall be credited with all or a part of the amount of the Federal estate tax paid with respect to the transfer of an interest in property to a decedent (designated as a transferee) from a person (designated as a transferor) who died within 10 years before, or within 2 years after, the decedent's death. The amount of the credit is based upon the value of the property used for the purpose of determining the Federal estate tax of the transferor, notwithstanding the fact that the property transferred cannot be identified in, or traced through, the transferee's estate. See Rev. Rul. 59–9, C.B. 1959–1, 232.

Section 20.2013–4(a) of the Estate Tax Regulations provides that if a transferee received a life estate or a remainder or other limited interest in property included in the transferor's gross estate the value of such an interest is determined as of the date of the transferor's death on the basis of recognized valuation principles. Any action, transaction, or event occurring subsequent to the death of the transferor is not to be taken into account in the valuation of such transferred property.

Where a trustee possesses the power, in his absolute and uncontrolled discretion, to pay out net income to the income beneficiary of a trust or to accumulate such income, the beneficiary's interest cannot be valued according to recognized valuation principles as of the date of the transferor's death. Therefore, notwithstanding the fact that such income was actually paid to the decedent-transferee, the credit for tax on prior transfers under section 2013 of the Code is not allowable with respect to such an interest.

PART III.—GROSS ESTATE

SECTION 2031.—DEFINITION OF GROSS ESTATE

26 CFR 20.2031–2: Valuation of stocks and bonds.

Valuation of block of voting stock in relation to valuation of nonvoting stock in closely held corporation. See Rev. Rul. 67–54, page 269.

26 CFR 20.2031–7: Valuation of annuities, life estates, terms for years, remainders and reversions. Rev. Rul. 67–195

(Also Sections 2055, 2512, 2522; 20.2055–2, 25.2512–5, 25.2522(a)–2.)

The value of an income interest may be computed by the use of the tables prescribed in section 20.2031–7 of the Estate Tax Regulations provided the *entire* amount (or a specific fraction) of the income from the transferred property is receivable by the income beneficiary. Where a bequest provides that the annual income only up to 3½ percent of the value of the subject property is payable to charity, the charitable deduction is not allowable under section 2055 of the Internal Revenue Code of 1954 as charity's interest is not presently ascertainable, and hence not severable from the noncharitable interest.

Advice has been requested whether the value of a bequest of an income interest to charity is deductible from the value of the decedent's gross estate, under the provisions of section 2055(a) of the Internal Revenue Code of 1954, under the circumstances described below.

The decedent established a testamentary trust which provided that the net income up to 3½ percent of the value of the trust property (as valued for estate tax purposes) shall be paid annually to charity for 5 years following his death, with the remainder to be distributed among noncharitable beneficiaries. The charitable income interest is not cumulative with respect to any years in which the income is less than the 3½ percent limitation. To the extent that the income exceeds the 3½ percent limitation in any year of the 5-year term, the excess is to be accumulated as corpus.

The executor of the decedent's estate claimed an estate tax charitable deduction computed with the use of table II of section 20.2031–7 of the Estate Tax Regulations. Column 3 of table II provides factors for the present worth, at 3½ percent, of an income interest for a term certain. The amount of the charitable deduction claimed was the fair market value of the trust property multiplied by 0.158027, the factor for a 5-year term certain.

Section 20.2031–7(c) of the regulations provides "If the interest to be valued is the right of a person for his life, or for the life of another person, to receive the income of certain property or to use nonincome-producing property, the value of the interest is the value of the property multiplied by the figure in column 3 of table I opposite the number of years nearest to the actual age of the measuring life. If the interest to be valued is the right to receive income of property or to use

nonincome-producing property for a term of years, column 3 of table II is used." This provision of the regulations was derived from section 81.10(i)(8) of Regulations 105 (the estate tax regulations under the 1939 Code) and Treasury Decision 5906, C.B. 1952–1, 155.

Section 81.10(i)(8) of Regulations 105 provided that if the decedent was entitled to receive "the *entire income* of certain property during the life of another person, or was entitled to the use of nonincome-producing property during the life of another person, a hypothetical annuity at a rate of 4 percent of the value of the property should be made the basis of the calculation." [Emphasis added.] Although Treasury Decision 5906, in amending section 81.10(i), did not employ the word "entire" in the subject context, the meaning of the term "income" as used in the revised provision was not intended to be changed by the omission. Thus, the factors are applicable only if the income beneficiary is entitled to all (or a specific fraction) of the income from the subject property for the term certain.

A bequest to charity of the right to receive annual income from the transferred property only up to 3½ percent of its value is not considered to be the right to receive the entire income (or a specific fraction) from the property and, therefore, the factors of column 3 of table II are not applicable in the valuation of such interest. Moreover, no generally acceptable formula is known by which the value of charity's interest may be determined. Accordingly, it is held that the estate tax charitable deduction is not allowable with respect to the bequest since charity's interest is not ascertainable, and hence not severable from the noncharitable interest. Section 20.2055–2 of the regulations. Similarly, the gift tax charitable deduction is not allowable with respect to comparable inter vivos gifts. Section 25.2522(a)–2 of the Gift Tax Regulations.

Valuation of the annuity contracts issued from time to time by an organization (other than a commercial insurance company). See Rev. Rul. 67–39, page 18.

SECTION 2033.—PROPERTY IN WHICH THE DECEDENT HAD AN INTEREST

26 CFR 20.2033–1: Property in which the decedent had an interest.

Amount subject to withdrawal from qualified employees' profit-sharing plan. See Rev. Rul. 67–37, page 27.

SECTION 2036.—TRANSFERS WITH RETAINED LIFE ESTATE

26 CFR 20.2036–1: Transfers with retained life estate. Rev. Rul. 67–54

(Also Section 2031; 20.2031–2.)

The value of nonvoting corporate common stock transferred in trust is includible in the grantor's gross estate for Federal estate tax purposes, where the grantor retained for the remainder of his life a controlling interest in the corporate voting stock and where (1) the grantor was himself a trustee of the trust at his death, or (2) the trustee was restricted in any way in his power to dispose of the nonvoting stock, and the trustee held the nonvoting stock at the grantor's death. Since the grantor retained the power to regulate the income from the transferred property, he retained for his life or for a period which did not in fact end before his death the right to designate the persons who shall possess or enjoy the property or the income therefrom. The value of the nonvoting shares included in the gross estate should reflect the additional value inherent in the closely held voting shares by reason of control of the company policies.

Advice has been requested whether the value of nonvoting corporate common stock transferred in trust is includible in the deceased grantor's gross estate for Federal estate tax purposes where he had the power to regulate, for his life or for a period which did not in fact end before his death, the potential income from the transferred property through his retention of the corporation's voting stock, in cases where (1) as trustee he could control the disposition of the transferred property during his lifetime, or (2) the trustee was restricted in any way in his power to dispose of the transferred property, and the trustee held the transferred property at the grantor's death.

The decedent transferred assets to a corporation which issued nonvoting preferred stock and debentures, which he retained, for the full current value of the assets transferred. The corporation also issued 10 shares of voting and 990 shares of nonvoting common stock. The decedent transferred the 990 shares of nonvoting stock in trust for the benefit of his children. The trust owned the 990 shares at the date of the decedent's death. The trustee was required to get the permission of the grantor before disposing of the transferred stock. By retaining the 10 shares of voting stock, which he still owned at the time of his death, the decedent had complete control of the company and was in a position to determine its dividend policy in respect of the nonvoting shares. By the restriction upon the trustee, the decedent had control over the disposition of the nonvoting stock.

Section 2036(a) of the Internal Revenue Code of 1954 provides:

GENERAL RULE.—The value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death—

(1) the possession or enjoyment of, or the right to the income from, the property, or

(2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom.

Section 20.2036–1(b)(3) of the Estate Tax Regulations provides:

The phrase "right * * * to designate the person or persons who shall possess or enjoy the transferred property or the income therefrom" includes a reserved power to designate the person or persons to receive the income from the transferred property, or to possess or enjoy nonincome-producing property, during the decedent's life or during any other period described in paragraph (a) of this section. With respect to such a power, it is immaterial (i) whether the power was exercisable alone or only in conjunction with another person or persons, whether or not having an adverse interest; (ii) in what capacity the power was exercisable by the decedent or by another person or persons in conjunction with the decedent; and (iii) whether the exercise of the power was subject to a contingency beyond the decedent's control which did not occur before his death (e.g., the death of another person during the decedent's lifetime).

Where a decedent transfers nonvoting stock in trust and holds for the remainder of his life voting stock giving him control over the dividend policy of the corporation, he has retained, for a period which did not in fact end before his death, the right to determine the income from the nonvoting stock. If he also retains control over the disposition of the nonvoting stock, whether as trustee, by restriction upon the trustee, or alone or in conjunction with another, he has in fact made a transfer whereby he has retained for his life the right to designate the persons who shall possess or enjoy the transferred property or the income therefrom. Since under section 20.2036–1(b)(3) of the Estate Tax Regulations it is immaterial in what capacity a power was exercisable by the decedent, it is sufficient that the power was exercisable in the capacity of controlling stockholder. Under the facts of this case, therefore, the decedent has made a transfer with a reserved power within the meaning of section 2036(a) of the Code.

Section 20.2031–2(f)(2) of the regulations provides, in part, that in determining the fair market value of shares of stock where actual prices and bona fide bid and asked prices are lacking, one of the relevant factors to be considered is the degree of control of the business represented by the block of stock to be valued. Where the block consists of the voting common stock of a corporation, a substantial portion of the entire value of the common stock is to be attributed to that block, and hence the per share value of the voting stock should be relatively larger than the per share value of the nonvoting stock.

Accordingly, it is held that the value of nonvoting corporate stock transferred to a trust is includible in the gross estate of a deceased grantor for Federal estate tax purposes under section 2036 of the Code where the grantor owned the voting stock for the remainder of his life and was therefore able to control the income from the transferred property, and where the trustee was restricted in his power to dispose of the transferred property and held it at the grantor's death. The grantor thereby retained for his life or for a period which did not in fact end before his death the right to designate the persons who shall possess or enjoy the transferred property or the income therefrom. Under section 2031 of the Code, the value of the nonvoting shares included in the gross estate should reflect the additional value inherent in the closely held voting shares by reason of control of the company policies.

SECTION 2039.—ANNUITIES

26 CFR 20.2039–2: Annuities under "qualified plans" and section 403(b) annuity contracts. (Also Section 2033; 20.2033–1.) Rev. Rul. 67–37

Where a qualified employees' profit-sharing plan provides that one-third of the amount credited to an employee's account as of the preceding December 31 may be withdrawn by the employee during his eighteenth year of participation in the plan, such amount is the property of the employee as of January 1, of the eighteenth year even though certain administrative computations have to be made to determine the exact amount to which he is entitled. Therefore, in the case of an employee who died during his eighteenth year without having exercised his right of withdrawal, one-third of the amount credited to his account is considered as property in which the decedent had an interest to that extent so as to be includible in his gross estate under section 2033 of the Internal Revenue Code of 1954, and not as receivable by the designated beneficiary under the profit-sharing plan. Accordingly, the exclusion from decedent-employee's gross estate provided by section 2039(c) of the Code is not applicable to that portion of the amount credited to his account.

Advice has been requested whether any portion of the amount credited to the account of the decedent under an employees' profit-sharing plan and trust agreement is includible in his gross estate for Federal estate tax purposes under the circumstances described below.

The decedent was, at the time of his death, an employee of the *R* Company and a participant of its profit-sharing plan which met the requirements of section 401(a) of the Internal Revenue Code of 1954. All contributions under the plan were made by the employer.

Under the terms of the plan, after an employee's 10th year of participation, he must withdraw annually a percentage of the balance in his account as of the end of the preceding year. The decedent was in his 18th year, and, with regard to such employees, the plan provides:

During the eighteenth year of each Employee-Party's participation herein, he shall withdraw, and the trustee shall, upon his demand, pay to him one-third (⅓) of the amount credited to his account as of the last preceding December 31.

The amount credited to the decedent's account as of December 31 was not subject to immediate payment. The trustees of the plan had to await the employer's income computations, not due before the following March 1, and, in turn, for the employer's contribution to be made to the plan in order to ascertain the exact amount of the employee entitlements and make distribution.

The decedent died on February 25 before withdrawing any amount from the plan, and the entire amount credited to his account was distributed to his designated beneficiary.

Section 2039(a) of the Code and the regulations thereunder provide that a decedent's gross estate includes the value of an annuity or other payment receivable by any beneficiary by reason of surviving the decedent where the decedent had certain lifetime rights under the contract or agreement, to the extent that the value of the annuity or other payment is attributable to contributions made by the decedent or his employer.

However, section 2039(c) of the Code and the regulations thereunder provide that, notwithstanding any provision of law, there shall be excluded from the decedent's gross estate the value of any annuity

or other payment receivable by any beneficiary under an employees' trust forming part of a profit-sharing plan which, at the time of decedent's death, met the requirements of section 401(a) of the Code.

This exclusion does not apply to the extent that the annuity or other payment is attributable to contributions made by the decedent-employee. The exclusion is fully applicable, however, in the case of a plan which is noncontributory as far as the employee is concerned.

Two-thirds of the amount credited to the decedent's account was receivable after his death by his designated beneficiary under the qualified profit-sharing plan. That amount is held to be excludable from decedent's gross estate by reason of the provisions of section 2039(c) of the Code.

As to the remaining one-third of the amount credited to the decedent's account which he could have withdrawn during his 18th year of participation, the question to be resolved is whether the trustee was holding that amount for the decedent or as part of the plan.

Under the express terms of the plan, decedent's right to one-third of the amount credited to his account as of the preceding December 31, was completely matured when he began his 18th year of participation in the plan. The fact that certain administrative computations had to be made to determine the exact amount to which he was entitled was not a substantial restriction upon his right.

Accordingly, it is held that one-third of the amount credited to the decedent's account as of the preceding December 31 was the property of the decedent as of January 1, of the 18th year. Such property is considered as property in which the decedent had an interest to that extent so as to be includible in his gross estate under section 2033 of the Code, and not as receivable by the designated beneficiary under the profit-sharing plan. Consequently, the exclusion provided by section 2039(c) of the Code is inapplicable to such property.

PART IV.—TAXABLE ESTATE

SECTION 2055.—TRANSFERS FOR PUBLIC, CHARITABLE, AND RELIGIOUS USES

26 CFR 20.2055–1: Deduction for transfers for public, charitable, and religious uses; in general. Rev. Rul. 67–170

(Also Section 2522; 25.2522(a)–1.)

A bequest or devise to a trustee or trustees for the perpetual care of a nonprofit cemetery, owned by a corporation other than a religious organization, will not qualify for the estate tax charitable deduction since it is not exclusively for religious or charitable purposes within the meaning of section 2055(a)(3) of the Internal Revenue Code of 1954. Similarly, an inter vivos gift for the perpetual care of a cemetery will not qualify for the gift tax charitable deduction under section 2522(a) of the Code.

Advice has been requested whether a bequest or devise to trustees of a cemetery qualifies for the Federal estate tax deduction under section 2055(a) of the Internal Revenue Code of 1954. The cemetery is separately owned by a nonprofit corporation organized for the purpose of operating the cemetery and it has been determined that such

corporation is exempt, for Federal income tax purposes, under section 501(c)(13) of the Code.

The decedent devised and bequeathed an interest in his estate in trust to the board of trustees of a cemetery for the perpetual care of the cemetery. The cemetery was not owned by any religious organization but has at all times permitted members of any race to purchase graves and to be buried therein, and persons without funds were likewise permitted to be buried there. It was suggested that the mere fact that grave lots are sold to persons who are able to pay, should not, in and of itself, jeopardize the charitable status of the cemetery since the funds received from such sales are used for operational expenses and do not inure to the benefit of any stockholder.

The issue, however, is whether funds bequeathed to trustees of a cemetery for its perpetual care are considered to be for exclusively charitable purposes within the meaning of section 2055(a)(3) of the Code where the facts show or the articles and charter provide that the cemetery corporation was formed primarily for the purpose of maintaining a cemetery for purchasers of burial lots therein.

Section 2055(a)(3) of the Code authorizes the allowance of a deduction from the value of the gross estate for all bequests, legacies, devises, or transfers to a trustee or trustees, but only if such contributions or gifts are to be used by such trustee or trustees exclusively for religious, charitable, scientific, literary or educational purposes, and no substantial part of the activities of such trustee or trustees is carrying on propaganda or otherwise attempting to influence legislation.

In the interpretation and application of the Internal Revenue Code relating to charitable deductions for Federal tax purposes, the courts have held that a cemetery engaged in the business of selling lots for burial purposes is not considered to be one that is operated exclusively for charitable purposes. The fact that a person who can pay the price is not excluded from becoming a purchaser of a lot, or that one unable to pay is not forbidden free burial in the cemetery, does not necessarily constitute it as an organization or association operating exclusively for charitable purposes. Cf. *Wilber National Bank, Executor* v. *Commissioner*, 17 B.T.A. 654 (1929); *Estate of Arthur D. Haley* v. *Commissioner*, Tax Court Memorandum Opinion, entered September 30, 1948, where the court commented that it is the use to which a bequest is to be applied that determines deductibility and not the motive prompting the bequest nor the nature of the business in which the trustee is engaged.

Accordingly, it is held that a bequest to a board of trustees, to be expended for the perpetual care of a nonprofit cemetery, owned by a corporation other than a religious organization, is not for exclusively religious or charitable purposes within the meaning of section 2055(a)(3) or section 2522(a) of the Code.

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26 CFR 20.2055-2: Transfers not exclusively for charitable purposes.

Charitable remainder interests subject to diminution by the payment of capital gains distributions, received from mutual funds, to income beneficiaries. See Rev. Rul. 67-33, page 62.

Charitable income interest not ascertainable by use of actuarial tables. See Rev. Rul. 67–195, page 267.

SECTION 2056.—BEQUESTS, ETC. TO SURVIVING SPOUSE

26 CFR 20.2056(c)–2: Marital deduction in cases involving community property. Rev. Rul. 67–171

> Income from community property which had been converted to separate property after December 31, 1941, as well as other property acquired or derived from such income, constitutes separate property for the purpose of computing the adjusted gross estate under section 2056(c)(2)(C) of the Internal Revenue Code of 1954 when so designated by the applicable local property law.

Advice has been requested whether cash dividends from separately owned common stock take the same character as the stock itself, where such stock, having been converted from community property to separate property after December 31, 1941, is considered to be "held as * * * community property" under section 2056(c)(2)(C) of the Internal Revenue Code of 1954. Also in issue is the further question of properly characterizing other property acquired with, or derived from, the cash dividends.

A decedent and his wife owned 8,000 shares of common stock of *M* Corporation, which stock constituted community property under the law of the State of California. On December 30, 1942, the decedent and his wife executed a written agreement converting this stock into the separate property of each spouse. Under the terms of the agreement, the decedent became the owner of 4,000 shares of *M* Corporation as his separate property while his wife became the owner of the balance of 4,000 shares as her separate property. As a result of various stock dividends and stock splits, the decedent's share ownership increased from 4,000 to 26,000 shares of stock during the period of time beginning with the date of the agreement, December 30, 1942, and ending on the date of the decedent's death, May 5, 1962. During the same period the decedent received x dollars in cash dividends on these shares of stock. The decedent's gross estate included y dollars, representing the value of cash and property acquired or derived from the cash dividends received.

Section 158 of the California Civil Code empowers a husband and wife to enter into a contract with each other. Section 159 of the above-cited Code provides that a husband and wife may alter their legal relations with respect to their property. Pursuant to such authority, a husband and wife may, by contract made during the marriage, change the character of property from community property to the separate property of both or either spouse. *Tompkins* v. *Bishop*, 94 C.A. 2d 540, 211 P. 2d 14 (1949). Following such a conversion, the income derived from the separate property of each spouse constitutes separate property under the law of the State of California. Cf. *Neilson's Estate*, 57 C. 2d 733, 371 P. 2d 745 (1962); *Wynn* v. *Wynn*, 170 C.A. 2d 484, 338 P. 2d 930 (1959); *Marsh's Estate*, 151 C.A. 2d 356, 311 P. 2d 596 (1957).

Section 2056(c)(2)(B) of the Code provides, in part, that if the decedent and his surviving spouse at any time held property as community property under the law of any state, the adjusted gross estate

shall be determined by subtracting from the entire value of the gross estate the sum of (i) the value of property which is at the time of the death of the decedent held as such community property; and (ii) the value of property transferred by the decedent during his life, if at the time of such transfer the property was held as such community property. Section 2056(c)(2)(C) of the Code provides, in part, that if after December 31, 1941, property held as such community property (unless considered by subparagraph (B) as not so held) was by the decedent and the surviving spouse converted, by one transaction or a series of transactions, into separate property of the decedent and his spouse (including any form of coownership by them), the separate property so acquired by the decedent and any property acquired at any time by the decedent *in exchange therefor* (by one exchange or a series of exchanges) shall, for the purposes of clauses (i), (ii), and (iii) of subparagraph (B) be considered as "held as such community property."

There is nothing in the statute or regulations which would indicate that section 2056(c)(2)(C) of the Code was intended to embrace income from converted community property and to treat such income as "artificial" community property. The above-cited Code section expressly provides that the conversion rule is applicable to "separate property so acquired by the decedent and any property acquired at any time by the decedent *in exchange therefor*." Section 20.2056(c)-2(c)(3) of the Estate Tax Regulations contains a similar provision. The obvious intent of both the statute and the regulations is to encompass the property converted, and, through the process of tracing, property acquired in exchange therefor. Beyond the tracing provision, however, there is no evidence of an intent to transform the income from separate property into community property for purposes of the Federal estate tax.

The legislative history of section 2056(c)(2)(C) of the Code confirms the above conclusion. This section was first enacted as section 812(e)(2)(C) of the 1939 Code by the Revenue Act of 1948, Public Law 471, 80th Congress, C.B. 1948-1, 211. The report of the Senate Committee on Finance states that the "separate property acquired by the decedent in such a conversion and *any property at any time acquired after such conversion by the decedent in exchange for such separate property* (by one exchange or a series of exchanges) is considered as 'held as such community property.'" (Emphasis added.) Senate Report 1013, 80th Congress, 20 (1948), C.B. 1948-1, 285. In further clarification of this rule, the committee report states that it applies to partitions of property and to conversions into any form of coownership. Significantly, however, there is no indication in the report of an intention to include the income from converted property within the conversion clause.

Moreover, purely as a matter of interpreting the language of the statute, it is clear that the receipt of cash dividends paid on shares of stock represents an acquisition of income without a corresponding relinquishment of property. Conversely, an "exchange" is variously defined as "the act of giving or taking one thing in return for another," "the act of substituting one thing for another" or a process of reciprocal transfer of ownership. See *Webster's Third International Dictionary*. It is apparent that there cannot be an exchange unless each party to the transaction relinquishes something. Obviously, therefore, there is

no exchange when a party receives a cash dividend since he does not surrender anything in "exchange therefor."

Although subsections (3) and (4) of section 20.2056(c)-2(f) of the Estate Tax Regulations make some reference to earnings, gains, and rentals, this section was designed to further elucidate the "exchange" provision of section 2056(c)(2)(C) of the Code. Thus, subsection (4), like subsection (2), relates merely to a change in the form of ownership which "causes" future rentals to be acquired as separate property. Moreover, subsection (3) relates only to an agreement to presently change property rights in future earnings and gains. Subsections (3) and (4) do not mean that the income from separate property shall be classified as community property for purposes of computing the adjusted gross estate.

Accordingly, while all of the stock shares, including the 22,000 shares received through stock splits and stock dividends, which are substantially the same property, are considered to be converted community property, it is held that income from converted community property, as well as other property acquired with or derived from such income, constitutes separate property for purposes of computing the adjusted gross estate under section 2056(c)(2)(C) of the Code when so designated by the applicable local property law.

CHAPTER 12.—GIFT TAX

SUBCHAPTER A.—DETERMINATION OF TAX LIABILITY

SECTION 2503.—TAXABLE GIFTS

26 CFR 25.2503-2: Exclusions from gifts. Rev. Rul. 67-172

Where a donor transfers real property and reserves the right to the current crops and rents, and also retains a one-half interest in any oil, gas and mineral rights, the transfer of the surface rights represents a gift of a future interest in property under section 2503(b) of the Internal Revenue Code of 1954, against which the annual exclusion is not allowable. The gift of the one-half interest in the oil, gas and mineral rights constitutes a gift of a present interest, provided access to such subterranean rights is not, in any way, subject to the grantor's rights in the crops and rents. An annual exclusion is allowable with respect to the gift of the subterranean rights.

Advice has been requested whether the gift tax exclusion authorized by section 2503(b) of the Internal Revenue Code of 1954 is allowable under the circumstances set forth below.

During 1964, the grantor executed a number of warranty deeds with respect to various tracts of land, in favor of his relatives. Subsequently, the deeds were recorded and delivered to the donees. In seven of the deeds the grantor expressly reserved the exclusive right to use of the surface including all crops and rents for the years 1964 and 1965. With respect to five of the seven deeds, the grantor also reserved a one-half interest in all oil, gas, and mineral rights for 25 years.

Section 2503(b) of the Code provides that the first $3,000 of gifts made to any one donee during the calendar year, except gifts of future interests in property, is excluded in determining the total amount of gifts for the calendar year. The entire value of any gift of a future interest must be included in the total amount of gifts for the calendar year in which the gift is made.

Section 25.2503–3(a) of the Gift Tax Regulations provides, in part, that "future interests" is a legal term, and includes reversions, remainders, and other interests or estates, whether vested or contingent, and whether or not supported by a particular interest or estate, which are limited to commence in use, possession, or enjoyment at some future date or time.

Section 25.2503–3(b) of the regulations provides that an unrestricted right to the immediate use, possession, or enjoyment of property or the income from property, such as a life estate or term certain is a present interest in property, and an exclusion is allowable with respect to a gift of such an interest, but not in excess of the value of the interest.

The term "future interests" refers primarily not to the type of property transferred, but to a particular type of transfer, by which rights capable of immediate use, possession, or enjoyment by the donee are withheld from such donee. As used in the Internal Revenue Code the term has a special meaning. It is not concerned with the varying local definitions of property interests or with the local refinements of conveyancing. Cf. *United States* v. *Pelzer*, 321 U.S. 399 (1941), Ct. D. 1495, C.B. 1941–1, 441; *Fondren* v. *Commissioner*, 324 U.S. 18 (1945), Ct. D. 1627, C.B. 1945, 421; *Commissioner* v. *Disston*, 325 U.S. 442 (1945), Ct. D. 1642, C.B. 1945, 426.

The reservation by the grantor of the use of the surface including all crops and rents for the years 1964 and 1965, regardless of the local definition of such property interests, postponed the donees' use, possession, or enjoyment of the surface rights of the property conveyed under the deed. Such postponement, regardless of the period of time involved, created a future interest in property within the meaning of section 2503(b) of the Code. Accordingly, it is held that the annual exclusion is not applicable with respect to the gift of the interests in property postponed by the reservation of the surface rights.

If present use and enjoyment through access to the subsurface resources is not subject in any way to the donor's reserved interest in the surface, the transfer of a half interest in the subsurface rights is a gift of a present interest which will qualify for the annual exclusion under section 2503(b) of the Code to the extent that the value of such rights is determinable.

SUBCHAPTER B.—TRANSFERS

SECTION 2512.—VALUATION OF GIFTS

26 CFR 25.2512–5: Annuities, life estates, terms for years, remainders and reversions.

Valuation of the annuity contracts issued from time to time by an organization (other than a commercial insurance company). See Rev. Rul. 67–39, page 18.

Use of actuarial tables for determining present worth of a term for years dependent on a term certain where a sum less than the entire income or a specific fraction thereof from the charitable interest subject to valuation is receivable for a term for years. See Rev. Rul. 67–195, page 267.

SECTION 2513.—GIFT BY HUSBAND OR WIFE TO THIRD PARTY

26 CFR 25.2513–2: Manner and time of signifying consent. (Also Section 6019; 25.6019–2.) Rev. Rul. 67–55

The spouse of a donor died prior to the due date of the donor's required gift tax return without having executed the consent required for the purposes of section 2513 of the Internal Revenue Code of 1954, and without executing and filing a gift tax return. The decedent did not leave an estate which required administration. The surviving spouse had not remarried prior to the end of the calendar year, was the sole surviving joint tenant, and had sole possession of all the property in which the decedent had an interest. Accordingly, no executor or administrator was legally appointed or authorized to act for the decedent's estate. *Held*, the surviving donor-spouse may be considered to be authorized to act as administrator for the purposes of sections 2513 and 6019 of the Code.

SUBCHAPTER C.—DEDUCTIONS

SECTION 2522.—CHARITABLE AND SIMILAR GIFTS

26 CFR 25.2522(a)–1: Charitable and similar gifts; citizens or residents.

Gift tax charitable deduction with respect to gifts for the perpetual care of a nonprofit cemetery. See Rev. Rul. 67–170, page 272.

26 CFR 25.2522(a)-2: Transfers not exclusively for charitable, etc., purposes.

Charitable remainder interests subject to diminution by the payment of capital gains distributions, received from mutual funds, to income beneficiaries. See Rev. Rul. 67-33, page 62.

Charitable income interest not ascertainable by use of actuarial tables. See Rev. Rul. 67-195, page 267.

SUBTITLE C.—EMPLOYMENT TAXES

CHAPTER 21.—FEDERAL INSURANCE CONTRIBUTIONS ACT

SUBCHAPTER C.—GENERAL PROVISIONS

SECTION 3121.—DEFINITIONS

26 CFR 31.3121(a)(2)-1: Payments under employers' plans on account of retirement, sickness or accident disability, medical or hospitalization expenses, or death. (Also Section 3306; 31.3306(b)(2)-1.) — Rev. Rul. 67-111

Monthly Medicare premium reimbursement payments made by an employer to retired employees and their spouses are benefits of the type contemplated by section 3121(a)(2) of the Federal Insurance Contributions Act. Therefore, they are excluded from "wages" and are not subject to the taxes imposed under the Act.

Advice has been requested whether certain monthly medicare premium reimbursement payments made by an employer to retired employees and their spouses, under the circumstances described below, are "wages" for purposes of the Federal Insurance Contributions Act (ch. 21, subtitle C, Internal Revenue Code of 1954).

Under the terms of a collective bargaining agreement entered into by an employer with an employees' union, a medicare premium reimbursement plan was established to reimburse certain retired employees and their spouses for premiums paid under part B of title XVIII of the Social Security Act, Public Law 89-97, 42 U.S.C. 1395j-1395w.

A recipient of monthly medicare premium reimbursement is either a retired employee who is eligible to receive retirement income benefits under employer's pension plan or the spouse of a retired employee who is eligible to receive benefits under that plan.

To receive the payments, a recipient must be 65 years old or older, must be enrolled under part B of title XVIII of the Social Security Act and must actually be making the premium payments under that act.

Section 3121 of the Federal Insurance Contributions Act provides, in pertinent part, that the term "wages" means all remuneration for

employment, with certain specified exclusions. Section 3121(a)(2) of this act excludes from "wages" any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents) on account of sickness or accident disability or medical or hospitalization expenses in connection with sickness or accident disability.

Accordingly, the monthly medicare premium reimbursement payments made by the employer to the retired employees and their spouses are benefits of the type contemplated by section 3121(a)(2) of the Federal Insurance Contributions Act. Therefore, they are excluded from "wages" and are not subject to the taxes imposed under this Act.

This conclusion is equally applicable for purposes of the tax imposed under the Federal Unemployment Tax Act (ch. 23, subtitle C, Internal Revenue Code of 1954).

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26 CFR 31.3121(b)(19)–1: Service of certain nonresident aliens. Rev. Rul. 67–159

(Also Sections 3306, 3401, 3402; 31.3306(c)-(18)–1, 31.3401(a)(6)–1, 31.3402(a)–1, 31.3402(f)(6)–1.)

The taxes under the Federal Insurance Contributions Act and the Federal Unemployment Tax Act do not apply to remuneration for services which *A*, an alien student who will be in the United States at least two years, performs for the purpose for which *A* was admitted as a nonimmigrant under section 101(a)(15)(F) of the Immigration and Nationality Act. For the purposes of these taxes the Employment Tax Regulations treat *A* as a nonresident alien individual.

Under the facts stated, *A*'s remuneration is subject to income tax withholding under section 3402 of the Internal Revenue Code of 1954. For this purpose, *A* is treated as a resident alien individual, under Revenue Ruling 54–87, C.B. 1954–1, 155, which is made applicable to income tax withholding.

Revenue Ruling 54–87, C.B. 1954–1, 155, amplified.

Advice has been requested as to the status, for Federal employment tax purposes, of *A*, an alien individual who is temporarily present in the United States as a nonimmigrant under section 101(a)(15)(F) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1101. *A* is a citizen of a foreign country which does not have an income tax convention or treaty with the United States. He was admitted to the United States for the purpose of advanced training in nursing at a hospital for a period of at least two years. For this purpose, and as part of the training, *A* performs part-time services as an employee of the hospital, and receives remuneration from the hospital for the services.

Federal Insurance Contributions Act and Federal Unemployment Tax Act

The taxes imposed by the Federal Insurance Contributions Act and the Federal Unemployment Tax Act (chapters 21 and 23, respectively, subtitle C, Internal Revenue Code of 1954) apply to "wages" for "employment," as those terms are defined in the Acts. Identical exceptions from "employment," which apply to services performed after 1961, are provided in sections 3121(b)(19) of the Federal Insurance Contributions Act and 3306(c)(18) of the Federal Unemployment Tax Act, as follows:

> Service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be.

The related Employment Tax Regulations (sections 31.3121(b)(19)–1(a)(1) and 31.3306(c)(18)–1(a)(1)) provide in part as follows:

> For purposes of this section an alien individual who is temporarily present in the United States as a nonimmigrant under such subparagraph (F) or (J) is deemed to be a nonresident alien individual.

This quoted provision classifies such individual as a nonresident alien, for purposes of sections 3121(b)(19) and 3306(c)(18) of the Acts, as long as the individual holds an "F" or "J" visa, regardless of the period of time during which the individual is present in the United States.

Under the facts and regulations quoted above, *A* is a nonresident alien individual for purposes of sections 3121(b)(19) and 3306(c)(18) of these Acts, and services performed by *A* after 1961 are excepted from "employment" by those sections. The taxes under the Federal Insurance Contributions Act and the Federal Unemployment Tax Act do not apply to the remuneration for the services.

Collection of Income Tax at Source on Wages (chapter 24, subtitle e, of the Code)

Section 3402 of the Code requires the withholding of income tax from "wages," as that term is defined in section 3401(a) of the Code. Section 3401(a)(6) of the Code, as amended by the Foreign Investors Tax Act of 1966, Public Law 89–809, C.B. 1966–2, 656, excludes from the term "wages," remuneration paid for "such services, performed by a nonresident alien individual, as may be designated by regulations prescribed by the Secretary or his delegate."

Revenue Ruling 54–87, C.B. 1954–1, 155, provides that, for purposes of the Federal income tax, a foreign student whose studies require temporary residence in the United States for a minimum of two years will be classified as a resident alien during the period of residence. The same rule will be applied for purposes of withholding under section 3402 of the Code.

Thus, an alien individual such as *A*, who holds an "F" or "J" visa and who is expected to remain in the United States thereunder at least two years, will be treated as a resident for purposes of Federal income tax and income tax withholding, but as a nonresident for purposes of the Federal Insurance Contributions Act and the Federal Unemployment Tax Act.

Because *A* is treated as a resident alien for the purposes of section 3402 of the Code, the provisions of section 3401(a)(6) of the Code are not applicable in his case. Since, under the facts, *A*'s remuneration falls within the basic definition of "wages" in section 3401(a) of the Code and does not come within any of the exceptions provided by that section, it is subject to withholding under section 3402 of the Code.

If *A* were considered a nonresident alien for income tax purposes, his remuneration would, nevertheless, be "wages" under section 3401 of the Code and be subject to withholding under section 3402 of the Code. This is so because section 31.3401(a)(6)–1(a) of the Employment Tax Regulations provides that all remuneration paid after December 31, 1966, for services performed by a nonresident alien individual, if such remuneration otherwise is wages within the meaning of section 31.3401(a)–1 of the regulations, is subject to withholding unless excepted from wages by other provisions of that section. Those exceptions would not be pertinent in this case.

Thus, *A* is subject to withholding under section 3402 of the Code regardless of whether he is a resident or a nonresident. Nevertheless, his status as resident or nonresident may substantially affect the amount to be withheld. As a resident alien, *A* is allowed withholding exemptions to the same extent as if he were a citizen. A nonresident alien individual who is not a resident of Canada or Mexico and who is not a resident of Puerto Rico during the entire taxable year, is allowed under section 3402(f)(1) of the Code only one withholding exemption. See section 31.3402(f)(6)–1 of the regulations, as amended by T.D. 6908, page 238, at 222, this Bulletin.

Revenue Ruling 54–87, C.B. 1954–1, 155, is amplified.

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26 CFR 31.3121(d)–1: Who are employees. (Also Sections 3306, 3401; 31.3306(i)–1, 31.3401(c)–1.) Rev. Rul. 67–18

"Design engineers" are engaged by a company to design dies. They perform personal services on a continuing basis; they are given instructions regarding processing and process changes; they are furnished materials and supplies; their services are performed primarily on the company's business premises; they perform services required under the purchase orders issued to the company by its customers; and the company retains the right to discharge them at any time. *Held*, the design engineers are employees of the company for Federal employment tax purposes.

The Internal Revenue Service has been requested to determine whether individuals employed by a company to design dies are employees of the company for purposes of the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, and the Collection of Income Tax at Source on Wages (chs. 21, 23, and 24, respectively, subtitle C, Internal Revenue Code of 1954).

The company is engaged in the business of designing dies and does considerable work for the automobile industry. In some cases the company contracts with an automobile manufacturer to complete a particular design job on a time and material basis. In most cases, however, it obtains jobs on a fixed-fee basis as a result of competitive bidding.

When the company receives a purchase order for a job on a fixed-fee basis, it is usually inexpedient for it to be fulfilled by its employees who are paid by the hour because of the nature of the work and the time limitation relating thereto. Consequently, the company enters into written contracts with die designers, known in the industry as "design engineers," who are experienced in the work and therefore perform the jobs with greater competence and dispatch. The contracts refer to the "design engineers" as independent contractors.

Generally, the work is not made available to the "design engineers" on a competitive bidding basis. Since most of the designers specialize in particular design work, the company usually offers to pay a designer a specified price (usually a percentage of the price the company is to receive) to do a particular job with which he is familiar. If the designer agrees to complete the job for the price specified, or if through negotiations the company and designer agree on a price that is mutually satisfactory, the designer receives a written purchase order for that particular job, which supplements the written contract which he has previously entered into with the company.

The designers are given keys to the company's business premises and may come and go as they please. They are not required to observe regular working hours or to work a specified number of hours a day or week but they must meet a job completion date set by the company's customer.

The company provides the designer with desk space, drafting boards, light, heat, and telephone at its business premises and furnishes the materials and supplies necessary to do the work. The designers primarily perform the services on the company's premises, since it is a requirement under the company's purchase orders with its customers that the customers' blueprints must not be taken off the company's premises. On occasion a designer may perform some of the work in his home, for his own convenience, when blueprints are not required, but this is not customary or typical.

The contracts between the "design engineers" and the company do not provide for assignment of the purchase order by the designers to anyone else and it is generally expected that they will personally execute the work. Since they are experienced in the work, they are only given a brief description of the nature of the work required. The company's followup man does not supervise them but does instruct them in regard to processing and any process changes which may occur. Upon completion of a particular job, a company representative checks to see if the work is accurate and in accordance with its customer's requirements and standards. If the work is found to be defective, the designer is required to correct or replace the work without any additional compensation.

The designers are usually paid the agreed upon price at the completion of each job; however, they may apply for and receive partial payments as the work progresses. If a designer's services are unsatisfactory, the company retains the right to discharge him at any time.

The designers work on a continuing basis for the company, provided work is available. Some designers do perform similar work for others in their spare time.

The design engineers are employees for Federal employment tax purposes if they have the status of employees under the usual common

law rules applicable in determining the employer-employee relationship. Guides for determining that status are found in three substantially similar sections of the Employment Tax Regulations; namely, sections 31.3121(d)-1(c), 31.3306(i)-1, and 31.3401(c)-1.

Section 31.3121(d)-1(c) of the regulations provides, in part, that generally the relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is an employer. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools and the furnishing of a place to work, to the individual who performs the services.

Whether an employer-employee relationship exists depends upon the particular facts in each case. The design engineers in this case perform personal services on a continuing basis; they are given instructions regarding processing and process changes; they are furnished materials and supplies; their services are performed primarily on the company's business premises; their services are both necessary and incident to the business conducted by the company, since they perform services required under the purchase orders issued to the company by its customers; and the company retains the right to discharge them at any time.

Although the design engineers may be extremely well qualified to perform the work without detailed supervision and do perform services with considerable freedom of action, these facts are not controlling in reaching a decision as to their employment status since the ultimate test for determining whether there is an employment relationship is whether the person for whom the services are performed *retains the right to exercise direction and control over them in the performance of their services.* Upon the basis of the facts stated, the company exercises, or has the right to exercise, such direction and control over the "design engineers" in the performance of their services as is necessary to establish the relationship of employer and employee under the usual common law rules. If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. See section 31.3121(d)-1(a)(3) of the regulations.

Accordingly, the "design engineers" performing services for the company under the circumstances described above are employees of the company for Federal employment tax purposes.

(Also Sections 3306, 3401; 31.3306(i)-1, 31.3401(c)-1.) Rev. Rul. 67-119

The membership of an association consists entirely of individuals who have been trained by the association to serve as officials of

athletic contests. Through the association, the individuals are engaged by various schools, including the members of a high school league, to officiate at contests in which the schools participate. The individuals are paid on a per game basis by the respective schools for which they perform their services. *Held*, the individuals are not employees of the association, for Federal employment tax purposes, with respect to the services they perform as officials. Revenue Ruling 57–119, C.B. 1957–1, 331, distinguished.

Advice has been requested whether, for Federal employment tax purposes, officials of athletic contests, for example, referees and umpires, are employees of an association through which their services are offered to various schools, including the members of a statewide high school athletic league.

The association is a nonprofit, self-governing organization. Its purpose is to train and develop contest officials and to maintain a booking office for high schools, preparatory schools, and others desiring the services of the officials. Its membership consists entirely of officials who pay annual membership dues to, and participate in the operation of, the association. The association receives an annual booking fee from each school using its services.

The association conducts clinics for the purpose of familiarizing its members with the rules and regulations governing the particular sports events at which they will officiate. Under the bylaws of the association, general rules of conduct are prescribed for the member officials and an official may be suspended for violation of these rules. The association's bylaws and the rules and regulations pertaining to its operations serve principally as guidelines for the officials in order that the association may maintain standards established by the National Federation of State High School Athletic Associations.

No member of the association may accept an assignment to officiate at a high school game unless he is assigned through the association. Officials are not given season schedules but are offered assignments on a per game basis. An official may accept or reject an offer from a school. The school pays the official a set fee for his services after each game. Fees paid by members of the high school league are set by the association, with the approval of the league, and cannot be changed without the league's approval. The league is a separate and distinct organization from the association.

Section 3121(d) of the Federal Insurance Contributions Act (ch. 21, subtitle C, Internal Revenue Code of 1954) provides, among other things, that the term "employee" means any individual who, under the usual common law rules applicable in determining the employer-employee relationship has the status of an employee. The guides for determining whether, under such rules, an employer-employee relationship exists are found in section 31.3121(d)–1(c) of the Employment Tax Regulations.

Revenue Ruling 57–119, C.B. 1957–1, 331, holds that an athletic association composed of colleges and universities is the employer, for Federal employment tax purposes, of individuals who officiate at intercollegiate athletic contests participated in by members of the association. That Revenue Ruling is distinguishable from this case. There the athletic association was organized to control and manage intercollegiate athletics in the institutions comprising its membership. One of its functions is to engage, train, and supervise the officials. Here the association's membership consists entirely of the officials

and its purpose is to provide a public service organization through which competent officials may be engaged by the various high schools. In Revenue Ruling 57–119, the officials are engaged by the athletic association and are compensated by the association on a fixed-fee basis. In the instant case, the officials are engaged by and perform their services for, the high schools rather than the association of which they are members.

Based on the stated facts, the association does not exercise or have the right to exercise over the officials in the performance of their services at athletic contests the direction and control necessary to establish the relationship of employer and employee under the usual common law rules. Accordingly, the officials are not employees of the association for purposes of the Federal Insurance Contributions Act with respect to such services performed for the schools which engage them.

The above conclusion is also applicable for purposes of the Federal Unemployment Tax Act and the Collection of Income Tax at Source on Wages (chs. 23 and 24, respectively, subtitle C, Internal Revenue Code of 1954).

Revenue Ruling 57–119, C.B. 1957–1, 331, is distinguished.

CHAPTER 22.—RAILROAD RETIREMENT TAX ACT

SUBCHAPTER A.—TAX ON EMPLOYEES

SECTION 3201.—RATE OF TAX

26 CFR 31.3201–1: Measure of employee tax.

Employment tax imposed under the Railroad Retirement Tax Act with respect to compensation paid during 1967 for services rendered after 1936 and before October 1, 1966. See Rev. Proc. 67–7, page 578.

SUBCHAPTER B.—TAX ON EMPLOYEE REPRESENTATIVES

SECTION 3211.—RATE OF TAX

26 CFR 31.3211–1: Measure of employee representative tax.

Employment tax imposed under the Railroad Retirement Tax Act with respect to compensation paid during 1967 for services rendered after 1936 and before October 1, 1966. See Rev. Proc. 67–7, page 578.

SUBCHAPTER C.—TAX ON EMPLOYERS

SECTION 3221.—RATE OF TAX

26 CFR 31.3221–1: Measure of employer tax.

Employment tax imposed under the Railroad Retirement Tax Act with respect to compensation paid during 1967 for services rendered after 1936 and before October 1, 1966. See Rev. Proc. 67–7, page 278.

CHAPTER 23.—FEDERAL UNEMPLOYMENT TAX ACT

SECTION 3302.—CREDITS AGAINST TAX

26 CFR 31.3302(c)–1: Limit on total credits.

Reductions in the amount of credit otherwise allowable with respect to wages paid during 1966 for services performed in a State which has not restored to the United States Treasury amounts made available under title XII of the Social Security Act or under the Temporary Unemployment Act of 1958. See Rev. Proc. 67–9, page 583.

SECTION 3306.—DEFINITIONS

26 CFR 31.3306(b)(2)–1: Payments under employers' plans on account of retirement, sickness or accident disability, medical or hospitalization expenses, or death.

Monthly medicare premium reimbursement payments made by an employer to its retired employees and their spouses. See Rev. Rul. 67–111, page 279.

26 CFR 31.3306(c)(14)–1: Services of insurance agent or solicitor. Rev. Rul. 67–44

Section 3301 of the Federal Unemployment Tax Act (chapter 23, subtitle C, Internal Revenue Code of 1954) imposes on every "employer" an excise tax, with respect to having individuals in his employ, equal to a certain percentage of the total "wages" paid by him during the calendar year with respect to "employment," as these terms are defined in the Act.

Section 3306(c)(14) of the Act excepts from "employment," for purposes of the tax imposed by this Act, services performed by an insurance agent or insurance solicitor, if all of his services for his employer are performed for remuneration solely by way of commission. Section 31.3306(c)(14)–1(b) of the Employment Tax Regulations provides that if all or any part of the remuneration of an

employee for services performed as an insurance agent or insurance solicitor for a person is a salary, none of his services performed in that capacity are excepted from employment and his total remuneration (for example, salary, or salary and commissions) for such services is included for purposes of computing the tax.

Inasmuch as the tax imposed by the Federal Unemployment Tax Act is specifically levied on a calendar year basis and in view of the express provisions of the law and regulations, a determination as to whether an individual is remunerated solely by way of commission and whether a company is liable for the tax imposed by section 3301 of the Act must be made on a calendar year basis rather than on a quarterly basis.

Held, if a company pays an insurance agent or an insurance solicitor a guaranteed salary or other compensation which is the equivalent of a guaranteed salary during part of the calendar year and commissions during the reminder of the year, the company is liable for the tax imposed by the Federal Unemployment Tax Act for that calendar year on all of the remuneration paid to the insurance agent or the insurance solicitor subject, of course, to the limitation on wages provided in section 3306(b) of the Act.

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26 CFR 31.3306(c)(18)–1: Services of certain nonresident aliens.

Treatment of an alien student as a nonresident alien individual. See Rev. Rul. 67–159, page 280.

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26 CFR 31.3306(i)–1: Who are employees.

Status of design engineers (die designers) performing services for a company engaged in the business of designing dies for the automobile industry. See Rev. Rul. 67–18, page 282.

Status of members of an association who are trained by the association to serve as officials at high school athletic contests. See Rev. Rul. 67–119, page 284.

CHAPTER 24.—COLLECTION OF INCOME TAX AT SOURCE ON WAGES

SECTION 3401.—DEFINITIONS

26 CFR 31.3401(a)–1: Wages.

Awards received by army nurses. See Rev. Rul. 67–89, page 20.

Payments made to welfare recipients by a State welfare agency under its work relief program. See Rev. Rul. 67–114, page 12.

26 CFR 31.3401(a)(6): Statutory provisions; definitions; wages; remuneration for services of certain nonresident alien individuals.

Exemptions from withholding applicable to certain remuneration otherwise constituting wages for services performed by a nonresident alien individual. See T.D. 6908, page 222.

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26 CFR 31.3401(a)(6)–1: Remuneration for services of nonresident alien individuals paid after December 31, 1966.

Treatment of remuneration paid to an alien student who is in the United States on an "F" visa. See Rev. Rul. 67–159, page 280.

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26 CFR 31.3401(c)–1: Employee.

Status of design engineers (die designers) performing services for a company engaged in the business of designing dies for the automobile industry. See Rev. Rul. 67–18, page 282.

Status of members of an association who are trained by the association to serve as officials at high school athletic contests. See Rev. Rul 67–119, page 284.

SECTION 3402.—INCOME TAX COLLECTED AT SOURCE

26 CFR 31.3402(a)–1: Requirement of withholding.

Payments to a resident alien individual. See Rev. Rul. 67–159, page 280.

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26 CFR 31.3402(f)(6)–1: Withholding exemptions for nonresident alien individuals.

Treatment of remuneration paid to an alien student who is in the United States on an "F" visa. See Rev. Rul. 67–159, page 280.

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26 CFR 31.3402(g)–1: Supplemental wage payments. Rev. Rul. 67–88

When an employer pays an employee wages in addition to his regular wages and includes both amounts in a single payment, the amount of income tax to be withheld is determined on the basis of the aggregate amount, under the standard wage bracket or percentage method.

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Advice has been requested whether an employer whose payment of wages to an employee includes both the regular amount of wages and an additional amount may (a) treat the additional amount as a supplemental wage payment within the meaning of section 31.3402 (g)–1 of the Employment Tax Regulations relating to the Collection of Income Tax at Source on Wages (chapter 24, subtitle C, Internal Revenue Code of 1954), and (b) apply to the additional amount a flat withholding rate of 20 percent (without allowance for exemptions and without reference to any regular payment of wages) for the purpose of determining the amount of income tax to be withheld.

The employer in the instant case pays any employee who leaves his service in full as of his final day of actual employment. Certain employees, in addition to regular wages, may at that time be entitled to overtime pay and accumulated or bonus vacation pay. In these instances the employer does not make separate payments to the employee for regular wages and for additional amounts due him but instead includes all amounts due the employee in a single final payment.

The issue here is whether, under the circumstances stated, the employer may treat that part of the final payment which represents amounts other than regular wages as a supplemental wage payment within the meaning of section 31.3402(g)–1 of the regulations and whether, accordingly, the flat percentage rate of 20 percent can be used to determine the amount to be withheld with respect to that part of the final payment.

Section 31.3402(g)–1 of the regulations provides that an employee's remuneration may consist of wages paid for a payroll period and supplemental wages, such as bonuses, commissions, and overtime pay, paid for the same or a different period, or without regard to a particular period. It is provided in section 31.3402(g)–1(a)(2) of the regulations that, under certain circumstances, the employer may determine the tax to be withheld from supplemental wages by using a flat percentage rate of 20 percent if supplemental wages are paid and tax has been withheld from the employee's regular wages. Where this provision is appropriate, the withholding exemptions which an employee has claimed on his Form W–4, Employee's Withholding Exemption Certificate, are not taken into consideration.

In the instant case, since the regular amount of wages of the employee has not actually been paid and tax withheld thereon (because both the regular amount of wages and the additional amount are included in the payment of a single amount), the employer is not entitled to use the alternative method of computation applying a flat percentage rate of 20 percent.

Accordingly, pursuant to section 31.3402(g)–1(a)(2) of the regulations, the additional amount of wages paid concurrently in a single amount with the regular wages for a payroll period will be aggregated with the regular wages, and the amount of tax to be withheld will be determined under the standard wage bracket or percentage method using the aggregate amount as the basis for the determination.

Rev. Rul. 67–131

A lump-sum payment for unused accumulated annual leave, paid separately from regular wages to an individual who is leaving the Federal Service, should be treated by the employer as a supplemental wage payment for income tax withholding purposes.

Advice has been requested by an agency of the Federal Government concerning the computation of tax for purposes of the Collection of Income Tax at Source on Wages (chapter 24, subtitle C, Internal Revenue Code of 1954) on lump-sum payments which the agency makes to employees who retire or who are otherwise separated from the Federal service.

In general, Civil Service employees of the Federal Government earn specified hours of annual leave each 80-hour biweekly pay period, dependent on the length of the employee's service. Employees, under usual circumstances, are permitted to accumulate earned but unused annual leave from year to year, up to a specified maximum number of hours. When an employee leaves the service of the Federal Government, he receives his final payment of regular wages and, either in the same check or in a separate check, receives payment for his unused accumulated annual leave, computed at his former regular pay rate. The procedure for payment is determined by the employing agency.

The individual in the instant case retired from the service of his agency and received a check for wages due him for his final payroll period. Shortly thereafter, he received a separate check of $100x$ dollars as a lump-sum payment for 160 hours of unused accumulated annual leave.

Section 31.3402(g)–1 of the Employment Tax Regulations relating to the collection of income tax at source on wages provides that an employee's remuneration may consist of wages paid for a payroll period and supplemental wages, such as bonuses, commissions, and overtime pay, paid for the same or a different period, or without regard to a particular period. The treatment of the supplemental wages for income tax withholding purposes depends, in part, on whether income tax has been withheld from the regular wages paid to the employee. Revenue Ruling 66–190, C.B. 1966–2, 457, sets forth guidelines which an employer should follow in determining the amount of income tax to be withheld where an employee receives both regular wages and supplemental wages. See also Rev. Rul. 66–294, C.B. 1966–2, 459.

In the instant case, the Federal agency should treat the lump-sum payment for unused accumulated annual leave as a supplemental wage payment within the meaning of section 31.3402(g)–1 of the regulations and should withhold income tax thereon pursuant to the guidelines in Revenue Ruling 66–190.

In accordance with these guidelines, if the Federal agency has withheld income tax from the regular wages paid the employee for his last preceding payroll period (in this instance, his final payroll period), it may choose to withhold income tax on the lump-sum payment by either of two methods, method *a* or method *b* described in Revenue Ruling 66–190.

Under method *a*, the agency may withhold on the lump-sum payment at a flat percentage rate of 20 percent, without allowance for any withholding exemptions the individual had claimed on his Form

W–4, Employee's Withholding Exemption Certificate. See Treasury Decision 6882, C.B. 1966–1, 244.

Under method *b*, the agency may aggregate the lump-sum payment with the regular wages paid to the employee in the same calendar year for the last preceding payroll period, determine the income tax to be withheld as if the aggregate amount were a single payment, subtract the tax already withheld from the regular wages, and withhold the remaining tax from the lump-sum payment.

If the agency has not withheld income tax on the employee's regular wages (as, for example, where the employee's withholding exemptions exceeded his wages), then the agency, in withholding income tax on the lump-sum payment, must use method *b*, described above. In such case, the agency must aggregate the lump-sum payment with the regular wages paid the employee during the same calendar year for the last preceding payroll period and withhold income tax thereon at the regular graduated rates as if the aggregate of the lump-sum payment and the regular wages were a single payment for the regular payroll period.

If, instead of giving a separate check in payment for the accumulated annual leave, the employing agency gives one check for a single payment combining both regular wages and the amount due for accumulated annual leave, the income tax to be withheld is determined under the standard wage bracket or percentage method, using the aggregate amount and the biweekly pay period as the basis for the determination. See Rev. Rul. 67–88, page 289, this Bulletin.

SUBTITLE D.—MISCELLANEOUS EXCISE TAXES

CHAPTER 31.—RETAILERS EXCISE TAXES

SUBCHAPTER E.—SPECIAL FUELS

SECTION 4041.—IMPOSITION OF TAX

26 CFR 48.4041–9: Exemption for use as supplies for vessels or aircraft.

Excise taxes on aircraft fuels and lubricants; reciprocal privileges by Iceland and the Union of Soviet Socialist Republics. See Rev. Rul. 67–193, page 306.

CHAPTER 32.—MANUFACTURERS EXCISE TAXES

SUBCHAPTER A.—AUTOMOTIVE AND RELATED ITEMS

PART I.—MOTOR VEHICLES

SECTION 4061.—IMPOSITION OF TAX

26 CFR 48. 4061(a)–1: Imposition of tax. Rev. Rul. 67–19

The manufacturers excise tax on motor vehicle articles, imposed by section 4061(a) (1) of the Internal Revenue Code of 1954, applies to that portion of the sale price of an "asphalt softener trailer" attributable to the trailer chassis.

Advice has been requested concerning the applicability of the manufacturers excise tax on motor vehicle articles to sales by the manufacturer of the "asphalt softener trailer" described below.

A company manufactures and sells an "asphalt softener trailer" for use in the repair and maintenance of asphalt surfaces. The article consists of a steel chassis frame mounted on a rear axle wheel assembly and a single front wheel, and an insulated "hot box," which contains liquefied petroleum gas burners, attached to the chassis frame.

The article will ordinarily be towed by a truck or similar vehicle to the section of asphalt surface in need of repair. It will then be unhooked and left at the job site until the work is completed. The unit is small enough to be operated by one man who pushes it into position over the section of surface to be repaired. The "hot box" is then lowered into position, the fires lighted, and the appliance allowed to remain for several minutes. This softens the asphalt and it is then in condition to be raked and tamped down.

Section 4061(a) (1) of the Internal Revenue Code of 1954 imposes a tax upon the sale by the manufacturer, producer, or importer of certain enumerated motor vehicle articles, including truck and bus trailer and semitrailer chassis and bodies.

Section 48.4061(a)–1(e) (1) of the Manufacturers and Retailers Excise Tax Regulations provides, in part, that a trailer of semitrailer chassis or body primarily designed for highway use in combination with a taxable truck, bus, or tractor is subject to the tax imposed by section 4061(a) (1) of the Code. The tax attaches even though the trailer or semitrailer may have equipment to perform functions other than in connection with the transportation of property or persons. However, no tax under section 4061(a) of the Code attaches to that part of the selling price of the complete unit which is reasonably attributable to such equipment provided such part of the selling price is billed separately on the invoice to the customer or can be otherwise established by adequate records.

Revenue Ruling 62–118, C.B. 1962–2, 233, holds, in part, that certain two- and four-wheel mountings or undercarriages which are designed, constructed, and sold for use in transporting various items of equipment, such as air compressors, arc welders, and pumps are considered to be truck trailer or semitrailer chassis within the meaning of section 4061(a) (1) of the Code. Each undercarriage is intended to provide

mobility for the item of equipment which is to be bolted or otherwise attached to an identifiable chassis frame which is an integral part of the undercarriage.

Similarly, the undercarriage and frame of the "asphalt softener trailer" constitutes a trailer chassis under the rationale of Revenue Ruling 62-118. Furthermore, the trailer chassis is primarily designed and constructed to transport property over the highways in combination with a taxable truck. The asphalt heating apparatus is considered to be equipment "which performs a function other than in connection with the transportation of property or persons" within the meaning of section 48.4061(a)-1(e)(1) of the regulations.

Therefore, the manufacturers excise tax imposed by section 4061(a)(1) of the Code applies to that portion of the sale price of the "asphalt softener trailer" attributable to the trailer chassis. No tax under section 4061(a) of the Code attaches to that part of the selling price of the complete unit attributable to the asphalt heating apparatus provided that such part of the selling price is billed separately on the invoice to the customer or can be otherwise established by adequate records.

(Also 48.4061(b)-1.) Rev. Rul. 67-20

The manufacturers excise tax on motor vehicle articles, imposed by section 4061(a)(1) of the Internal Revenue Code of 1954, does not apply to the trailer chassis for an article referred to as a "mobile test stand" designed to be used at Air Force bases. The equipment mounted on the trailer chassis is not subject to the tax imposed on automotive parts or accessories by section 4061(b) of the Code.

Advice has been requested whether the manufacturers excise tax on motor vehicle articles applies to the sale by the manufacturer of the assembly unit described below.

A company manufactures and sells articles which it refers to as "mobile test stands" primarily designed and constructed for the maintenance, testing, and servicing of gas turbine power and heating units installed in aircraft at various Air Force bases. The "mobile test stand" consists of a trailer chassis made up of a platform mounted on two pneumatic tired wheel assemblies and a tow bar. The platform is designed to accommodate the power and heating units to be tested, the field tester, fuel tanks, exhaust silencer, and other related equipment. The test stand, with equipment, including the power and heating unit to be tested, weighs approximately 1,700 pounds. It is 71¾ inches wide, 24 inches high (to the mounting platform only) and 118 inches long.

The trailer chassis is not designed primarily as a carrier for the field tester and power and heating unit over the highways but rather for mobility of the tester and units to be tested when removed from the aircraft for testing. The "mobile test stand" may be towed at the following maximum speeds: Paved surfaces—20 miles per hour, graded gravel roads—10 miles per hour, broken ground—5 miles per hour.

Section 4061(a)(1) of the Internal Revenue Code of 1954 imposes a tax upon the sale by the manufacturer, producer, or importer of certain enumerated motor vehicle articles, including truck trailer and semitrailer chassis and bodies.

Section 4061(b) of the Code imposes a tax on the sale by the manufacturer, producer, or importer of parts and accessories (other than tires or inner tubes) for any of the articles enumerated in section 4061 (a) (1) of the Code, except that no tax shall be imposed upon any part or accessory which is suitable for use (and ordinarily is used) on or in connection with, or as a component part of, any article enumerated in section 4061(a) (2) or a house trailer.

Section 48.4061(a)–1(d) of the Manufacturers and Retailers Excise Tax Regulations provides that a chassis or body specified in section 4061(a) of the Code which is not designed for highway use is not subject to the tax imposed by such section.

Based upon all the factors outlined above, it is held that this trailer chassis is "not designed for highway use" within the meaning of section 48.4061(a)–1(d) of the regulations. Thus, the chassis is not a motor vehicle article under the provisions of section 4061(a) (1) of the Code and is not subject to the manufacturers excise tax imposed by that section.

Further, the testing equipment mounted on the trailer chassis is not considered to be "parts or accessories" under section 4061(b) of the Code. Accordingly, such articles are not subject to the manufacturers excise tax imposed by that section.

(Also Section 4218; 48.4218–5.) Rev. Rul. 67–56

Revenue Ruling 65–317, C.B. 1965–2, 422, holds that a resident of the United States who purchases a foreign-made automobile under conditions described therein is the importer of the vehicle for purposes of imposition of the manufacturers excise tax under sections 4061 (a) (2) and 4218(a) of the Internal Revenue Code of 1954. Revenue Ruling 66–66, C.B. 1966–1, 252, amplifies Revenue Ruling 65–317 to hold that tax in such cases is to be computed on the total cost of acquisition of the vehicle at the time of taxable use. The specific question presented herein is whether State and local use taxes and fees paid for registration or license tags under State law are acquisition costs of the type required to be included in the tax base. *Held*, the term "total cost of acquisition", as defined in Revenue Ruling 66–66, does not include such State and local taxes or fees required to be paid for the privilege of operating an automobile on State highways. Acquisition costs described in Revenue Ruling 66–66 are those elements of costs incurred by the importer in connection with importing and taking possession or control of a foreign-made automobile.

Revenue Ruling 66–66 is hereby clarified.

Rev. Rul. 67–207

A tank used in connection with a taxable trailer chassis and highway tractor to transport liquid sugar from one location to another is a trailer body and is subject to manufacturers excise tax on motor vehicles when sold by the manufacturer.

Revenue Ruling 60–185, C.B. 1960–1, 412, distinguished.

Advice has been requested as to whether the article described below is subject to the tax on motor vehicles imposed by section 4061(a) (1) of the Internal Revenue Code of 1954.

A company manufactures and sells a 2,400-gallon cylindrical aluminum tank that is approximately 20 feet long and 5 feet in diameter. The tank is used to transport liquid sugar over the highway to a destination where it is used for storage and as a source of supply. When the tank is empty, it is returned to the sugar manufacturer for reuse.

The tank is mounted on skids to prevent rolling during transit and to afford a stable base while the tank is being used for storage. For purposes of moving the tank from one place to another, the tank is set upon a truck trailer and securely fastened to the trailer by use of hold-down ties located at each end of the tank. At the centerline of the tank there is a lifting eye which is used by an overhead crane or similar machine to place the tank on the trailer and in its storage location.

Section 4061(a)(1) of the Code imposes a tax on certain articles sold by the manufacturer thereof. Among the articles enumerated in that section are truck and bus trailer and semitrailer bodies. Section 48.4061(a)-1(e)(1) of the Manufacturers and Retailers Excise Tax Regulations states that a trailer or semitrailer chassis or body primarily designed for highway use in combination with a taxable truck, bus, or tractor is subject to the tax imposed by section 4061(a)(1) of the Code.

The tank in the instant case is designed for use in combination with a taxable trailer chassis and highway tractor to transport liquid sugar from one location to another. Although the tank may serve as a storage device, its utility lies in the highway transportation function it performs. Therefore, it is held that the tank is a body for a taxable trailer chassis and is subject to the tax imposed by section 4061(a)(1) of the Code when sold by the manufacturer.

The article described above is distinguishable from the article described in Revenue Ruling 60-185, C.B. 1960-1, 412. In that ruling the article, a cargo container resembling a truck trailer or semitrailer body, is designed for use and is used in connection with different modes of transportation and not primarily highway transportation.

(Also Section 4218; 48.4218-1.) Rev. Rul. 67-208

An otherwise nontaxable trailer or semitrailer chassis with plates and brackets for mounting a liquid fertilizer tank thereon, becomes a taxable article within the meaning of section 4061(a)(1) of the Internal Revenue Code of 1954.

Revenue Ruling 64-107, C.B. 1964-1 (Part 1), 364, amplified.

Advice has been requested whether the manufacturers excise tax on truck trailer and semitrailer chassis, imposed by section 4061(a)(1) of the Internal Revenue Code of 1954, applies to certain trailer and semitrailer chassis.

A manufacturer of a certain type of four-wheel trailer chassis and two-wheel semitrailer chassis ordinarily sells these articles to farm machinery dealers and cooperatives for farm use. As usually manufactured and sold, these chassis have been classified as farm wagon chassis and held to be not subject to tax. Section 48.4061(a)-1(e) of the Manufacturers and Retailers Excise Tax Regulations. The manufacturer receives an order from an anhydrous ammonia liquid fertilizer distributor for a similar chassis, which differs from the foregoing chassis only to the extent that welded to it is a bracket to hold a 5-

gallon water tank and two rectangular steel plates to enable the purchaser to fasten a fertilizer tank to the chassis. These vehicles are used to transport liquid fertilizer from the point of distribution to farms.

Section 4061(a)(1) of the Code imposes a tax upon certain enumerated motor vehicle articles, including truck trailer and semitrailer chassis, sold by the manufacturer, producer, or importer.

Section 48.4061(a)–1(e)(1) of the regulations provides, in part, that a trailer or semitrailer chassis primarily designed for highway use in combination with a taxable truck, bus, or tractor is subject to the tax imposed by section 4061(a)(1) of the Code.

Section 48.4061(a)–1(e)(3) of the regulations provides that a farm wagon primarily designed for use on farms, although it may be used on the highway, illustrates a type of vehicle which is not a trailer within the meaning of section 4061(a) of the Code.

Revenue Ruling 64–107, C.B. 1964–1 (Part 1), 364, provides that the manufacturers excise tax imposed by Code section 4061(a)(1) applies to certain four-wheel trailer chassis and two-wheel semitrailer chassis which are designed for the highway transportation of anhydrous ammonia liquid fertilizer as well as for off-highway use on a farm. The chassis involved in that revenue ruling were considered to be designed and constructed for general use both on and off the highway, with the highway use being more than merely incidental. The fact that a particular chassis of this type may be used primarily on a farm does not affect the taxability thereof.

In the instant case, where the steel plates for mounting a liquid fertilizer tank and brackets for holding a water tank are welded to an otherwise nontaxable chassis by the chassis manufacturer, or where the steel plates and brackets are not welded, but are sold on or in connection with the sale thereof, the chassis becomes a taxable trailer or semitrailer chassis within the meaning of section 4061(a)(1) of the Code. In each case, the manufacturers excise tax imposed by that section applies to the manufacturer's sales of these chassis.

Where nontaxable chassis are sold by the manufacturer without plates and brackets and his vendee either manufactures or purchases such articles from another manufacturer and welds them to the chassis, the vendee is considered to have manufactured a taxable chassis and is liable for excise tax on his sale or use of such chassis.

Revenue Ruling 64–107, C.B. 1964–1 (Part 1), 364, amplified.

(Also Sections 4071, 4081, 4161, 4181; 48.4071–1, 48.4081–1, 48.4161–1, 48.4181–1.) Rev. Rul. 67–209

A foreign company, *X*, organized a subsidiary, *Y*, in the United States to market certain articles manufactured by *X*. The articles in question, when sold by the importer, are subject to the manufacturers excise tax imposed under Chapter 32 of the Internal Revenue Code of 1954. Under an independent arrangement *X* shipped the articles to *Z*, an unrelated United States company, for the purpose of clearing the articles through customs and shipping them to *Y*. Under these circumstances *Y* is considered to be the "importer" of the taxable articles for purposes of the manufacturers excise tax. Accordingly, *Y* is liable for reporting and paying the tax on its sale or use of the taxable articles.

Revenue Ruling 56–409, C.B. 1956–2, 796, amplified.

Advice has been requested as to which party, in the circumstances described below, is the "importer" and therefore liable for the manufacturers excise tax imposed under chapter 32 of the Internal Revenue Code of 1954.

X, a foreign corporation, organized a wholly owned subsidiary in the United States, *Y*, to market in this country certain articles manufactured by *X*. The articles in question are subject to the manufacturers excise tax imposed under chapter 32 of the Code when sold by the importer. Because of the procedural considerations involved in clearing the articles through customs, *X* arranged with *Z* to have this done. *Z* is an unrelated United States company which has had many years of business experience with *X* in importing and selling other nontaxable articles manufactured by *X*. Under this arrangement *Z* is required to deliver all of the articles to *Y*, who has the sole right to merchandise the articles in the United States.

A typical transaction under the above arrangement begins when *Y* submits an order to *Z* who sends the order to *X* for confirmation and acceptance. When *X* fills the order, the bill of lading shows *Z's* customhouse broker to be the consignee of the articles. When the articles arrive they are cleared through customs by *Z's* broker and shipped by the broker directly to *Y*. *Z* is billed for the broker's service fees and expenses and *Z*, in turn, bills *Y* for the total landed cost of the articles, plus two percent. Payment to *X* is made by *Z* only after *Z* receives its invoice price from *Y*.

Revenue Ruling 56–409, C.B. 1956–2, 796, holds that the person who withdraws taxable articles from a customs bonded warehouse for sale or use in the United States is the "importer" for purposes of the manufacturers excise taxes. However, in determining who is an importer for purposes of the manufacturers excise taxes, consideration must be given to the substance of the transaction. See Revenue Ruling 61–179, C.B. 1961–2, 183, which holds under stated facts that one company is the importer of taxable articles for the purpose of the manufacturers excise tax although under the agreement involved there the articles were shipped to another company by the foreign supplier.

In the case of *Handley Motor Company, Inc.* v. *United States*, 338 F.2d 361 (1964), the U.S. Court of Claims held that the plaintiff was the importer of foreign automobiles and stated in part as follows:

> A determination of who is the "importer" does not in the first instance turn on the law of sales. We think the "importer" is the first purchaser resident in the United States who arranges (as principal and not as an agent) for the goods to be brought into the United States, *Rev. Rul.* 60–106, 60–1 C.B. 490; *cf. Rev. Rul.* 56–409, 56–2 C.B. 796. The "importer" may in fact take title in the United States from the foreign seller, *cf. Hooven & Allison Co.* v. *Evatt*, 324 U.S. 652, 662–663 (1945); *Blumenthal Print Works* v. *United States*, 51 F. Supp. 208, 212 (E.D. La. 1943).

In a subsequent decision, *Import Wholesalers Corporation* v. *United States*, 368 F.2d 577 (1966), the Court of Claims stated that "However, the essence of the *Handley* ruling seems to be that the determination of who is the 'importer' under the pertinent statute does not turn on technical rules such as the law of sales, but rather on the realities as to who arranges as principal and not as agent for the articles to be imported into the United States."

The fact that the transaction in the instant case takes the form of a purported "sale" by *X* to *Z* and a purported "resale" by *Z* to *Y* is not necessarily determinative of the question of who is the "importer" for purposes of the manufacturers excise tax. As previously mentioned, it is necessary to look through the form to the substance of the transaction to determine whether the nominal importer actually functions as a typical import merchant, or merely serves in a representative capacity, charged only with the responsibility for bringing the goods into the commerce of the United States, after a sale contract has been negotiated independently by the principals involved.

In the instant case, *Z* does not assume any of the risks of a typical merchant importer. *Z* serves merely as a conduit through which orders are transmitted to *X* and through which merchandise, when received, is transferred to Y. The 2 percent added on to the landed cost of the merchandise is compensation commensurate with the nature of the service rendered by *Z*, that is, handling the importation of the goods into the United States and delivering the goods to *Y*, rather than a reasonable return on *Z's* capital investment.

Under the circumstances previously described, it is held that *Y*, and not *Z*, is the importer of the taxable articles for purposes of the manufacturers excise tax. Accordingly, Y is liable for reporting and paying the tax imposed under chapter 32 of the Code on its sale or use of the taxable articles.

Revenue Ruling 56–409, C.B. 1956–2, 796, is hereby amplified.

Whether tax liability is incurred by a manufacturer, producer, or importer of articles subject to the manufacturers excise tax imposed by chapter 32 of the Code where such articles are stolen from the manufacturer, producer, or importer while he still holds legal title thereto. See Rev. Rul. 67–58, page 302.

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26 CFR 48.4061(b)–1: Imposition of tax. Rev. Rul. 67–26

A metering device is used on trucks, truck trailers, buses, etc., to register mileage. It is ordinarily mounted at the hubcap location of a wheel where it converts forward and backward wheel revolution into miles and records the distance traveled by the vehicle on numbered counter wheels similar to those used in an automobile odometer. The device operates without wires, cables, electrical connections, etc., and can be calibrated for use on wheels of any size or as a revolution counter on industrial machinery. *Held*, because the device is primarily used in connection with trucks, truck trailers, buses, etc., sales by the manufacturer are subject to the tax imposed on motor vehicle parts and accessories by section 4061(b)(1) of the Internal Revenue Code of 1954.

Rev. Rul. 67–57

A device, called a "revolution counter," records the agitator and mix speeds for a concrete mixer mounted on a highway-type truck

chassis. The revolution counter can be mounted on the truck chassis, in the cab or elsewhere to give the truck operator information as to the condition of the load. *Held*, the revolution counter is an automotive "part or accessory" as contemplated by section 4061(b)(1) of the Internal Revenue Code of 1954. Therefore, the manufacturer is liable for manufacturers excise tax under that section of the Code on his sale of the revolution counter.

Rev. Rul. 67–91

A manufacturer contracts on a job order basis to produce rubber bushings for a manufacturer of motor vehicles taxable under section 4061(a)(1) of the Internal Revenue Code of 1954. The contract provides that the vendee will furnish the specifications and dies for the bushings and that the vendor's sale of the completed bushings is limited to the motor vehicle manufacturer.

Rubber bushings of this type are produced and sold generally by other manufacturers for use wherever an insulating effect upon sound, vibration, abrasion, or electrical current is desired, for example, in farm machinery, children's toys, and household appliances.

Held, these bushings are not subject to the tax imposed by section 4061(b) of the Code on parts and accessories for the articles enumerated in section 4061(a)(1) of the Code. Each bushing is of a type which is considered to be an article of general use as described in section 48.4061(b)–2(b) of the Manufacturers and Retailers Excise Tax Regulations. It is not an article designed primarily for use in connection with a taxable motor vehicle merely because it is known at the time of sale that the bushing will be so used.

Whether testing equipment mounted on a "mobile test stand" designed for use at Air Force bases is subject to the manufacturers tax on parts or accessories sold on or in connection with the sale of a trailer. See Rev. Rul. 67–20, page 294.

Whether tax liability is incurred by a manufacturer, producer, or importer of articles subject to the manufacturers excise tax imposed by chapter 32 of the Code where such articles are stolen from the manufacturer, producer, or importer while he still holds legal title thereto. See Rev. Rul. 67–58, page 302.

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26 CFR 48.4061(b)–2: Definition of parts or accessories. Rev. Rul. 67–210

Certain devices designed to warn of low oil level in diesel engines and to detect aeration in the cooling system of such engines, which are primarily sold and used in connection with highway motor vehicles taxable under section 4061(a)(1) of the Internal Revenue Code of 1954, are "parts or accessories" as defined in section 48.4061(b)–2(a) of the Manufacturers and Retailers Excise Tax Regulations. Therefore, these devices are subject to the manufacturers excise tax on parts or accessories imposed by section 4061(b) of the Code when sold by the manufacturer.

Advice has been requested concerning the applicability of the manufacturers excise tax on "parts and accessories" to sales by the manufacturer of the devices described below.

A company manufactures two devices, one of which is used to detect aeration in the cooling system of diesel engines, while the other is used to detect low oil level in diesel engines. Standard warning for these devices is provided by a positive aircraft-type press-to-test red instrument panel light. The devices can also be connected to provide audible warning or automatic shutdown of the engine. Both the aeration warning device and the low oil level device may be used either on trucks, boats, construction equipment, or on stationary power generators. The manufacturer sells these devices, packaged in kits, primarily to fleet truck operators, manufacturers of trucks and wholesale dealers.

The aeration warning device is packaged and sold in kits labeled "Complete Kit," "Fleet Kit," and "Marine Kit." Each kit contains the same "Basic Unit." The only difference in these three kits is that the "Fleet Kit" and the "Marine Kit" do not contain a hose or certain standard fittings. The low oil level device is sold in kits labeled "Complete Kit" and "Marine Kit." These two kits contain identical component parts.

Section 4061(b) of the Internal Revenue Code of 1954 imposes upon parts or accessories (other than tires and inner tubes) for any of the motor vehicles enumerated in section 4061(a)(1) sold by the manufacturer, producer, or importer a tax equivalent to 8 percent of the price for which so sold.

Section 48.4061(b)–2(a) of the Manufacturers and Retailers Excise Tax Regulations provides that, in general, the term "parts and accessories" includes (1) any article the primary use of which is to improve, repair, replace, or serve as a component part of an automobile truck or bus chassis or body, or taxable tractor; (2) any article designed to be attached to or used in connection with such chassis, body or tractor to add to its utility or ornamentation; and (3) any article the primary use of which is in connection with such chassis, body, or tractor, whether or not essential to its operation or use.

The devices described above are designed for use with diesel engines and are primarily sold and used in connection with motor vehicles enumerated in section 4061(a)(1) of the Code. Therefore, these devices are "parts or accessories," within the meaning of section 48.4061(b)–2(a) of the regulations, and are subject to the tax imposed by section 4061(b) of the Code when sold by the manufacturer. The fact that both devices may be packaged and sold in kits, some of which are labeled "Marine Kits," and may also be used in connection with boats or for other nonhighway purposes does not alter this classification, unless the manufacturer can establish to the satisfaction of the Service that such devices are not suitable for use in connection with motor vehicles enumerated in section 4061(a)(1) of the Code.

PART II.—TIRES AND TUBES

SECTION 4071.—IMPOSITION OF TAX

26 CFR 48.4071–1: Imposition and rates of tax.

Whether tax liability is incurred by a manufacturer, producer, or importer of articles subject to the manufacturers excise tax imposed by chapter 32 of the Code where such articles are stolen from the manufacturer, producer, or importer while he still holds legal title thereto. See Rev. Rul. 67–58 below.

A determination as to which party is the importer of articles subject to the manufacturers excise tax. See Rev. Rul. 67–209, page 297.

PART III.—PETROLEUM PRODUCTS

Subpart A.—Gasoline

SECTION 4081.—IMPOSITION OF TAX

26 CFR 48.4081–1: Imposition and rates of tax. (Also Sections 4061, 4071, 4091, 4161, 4181, 4218; 48.4061(a)–1, 48.4061(b)–1, 48.4071–1, 48.4091–1, 48.4161–1, 48.4181–1, 48.4218–1.) Rev. Rul. 67–58

Gasoline was stolen from a producer (importer) who still held legal title thereto. *Held*, the producer (importer) incurred no liability under section 4081 of the Internal Revenue Code of 1954 for tax because the theft constituted neither a sale nor use of the gasoline by him within the meaning of the applicable sections of the Code. This principle applies equally as well to manufacturers, producers, or importers in the case of the other manufacturers excise taxes imposed by chapter 32 of the Code.

A determination as to which party is the importer of articles subject to the manufacturers excise tax. See Rev. Rul. 67–209, page 297.

Subpart B.—Lubricating Oil

SECTION 4091.—IMPOSITION OF TAX

26 CFR 48.4091–1: Tax on lubricating oils.

Whether tax liability is incurred by a manufacturer, producer, or importer of articles subject to the manufacturers excise tax imposed by

chapter 32 of the Code where such articles are stolen from the manufacturer, producer, or importer while he still holds legal title thereto. See Rev. Rul. 67–58, page 302.

SUBCHAPTER D.—RECREATIONAL EQUIPMENT

Part I.—SPORTING GOODS

SECTION 4161.—IMPOSITION OF TAX

26 CFR 48.4161–1: Imposition and rate of tax.

Whether tax liability is incurred by a manufacturer, producer, or importer of articles subject to the manufacturers excise tax imposed by chapter 32 of the Code where such articles are stolen from the manufacturer, producer, or importer while he still holds legal title thereto. See Rev. Rul. 67–58, page 302.

A determination as to which party is the importer of articles subject to the manufacturers excise tax. See Rev. Rul. 67–209, page 297.

PART III.—FIREARMS

SECTION 4181.—IMPOSITION OF TAX

26 CFR 48.4181–1: Imposition and rates of tax.

Whether tax liability is incurred by a manufacturer, producer, or importer of articles subject to the manufacturers excise tax imposed by chapter 32 of the Code where such articles are stolen from the manufacturer, producer, or importer while he still holds legal title thereto. See Rev. Rul. 67–58, page 302.

A determination as to which party is the importer of articles subject to the manufacturers excise tax. See Rev. Rul. 67–209, page 297.

SUBCHAPTER F.—SPECIAL PROVISIONS APPLICABLE TO MANUFACTURERS TAX

SECTION 4216.—DEFINITION OF PRICE

Rev. Rul. 67–59

In determining the price for which articles were sold for purposes of computing the manufacturers excise tax, the manufacturer's

price to the purchaser may not be reduced by an amount equal to a warehouse "handling-out" charge incurred by the manufacturer for having the articles moved from the inner storage area of a public warehouse to the loading platform of the warehouse.

Advice has been requested whether, in determining the "price for which an article is sold" for purposes of computing the manufacturers excise tax, a manufacturer's price to a purchaser may be reduced by an amount equal to the warehouse "handling-out" charge described below.

A manufacturer of articles subject to an ad valorem manufacturers excise tax stored quantities of manufactured articles in a public warehouse. The purpose of this warehousing of finished articles was to assure an adequate supply to avoid delays in filling orders. The normal warehouse storage costs incurred by the manufacturer are not involved here.

Following the receipt of an order or orders for a number of articles, the manufacturer asked the warehouse to move the specified number of articles from the inner storage area to the loading platform of the warehouse from which the articles could be placed aboard a conveyance for delivery to the purchaser. In accordance with the storage contract, the warehouse made a "handling-out" charge to the manufacturer for this movement of the stored articles to the loading platform.

The specific question presented here is whether, within the meaning of section 4216(a) of the Internal Revenue Code of 1954, this "handling-out" charge to the manufacturer should be considered as a transportation or delivery charge which is reflected in the manufacturer's price to the purchaser.

In defining price for purposes of the manufacturers excise tax, section 4216(a) of the Code provides as follows:

CONTAINERS, PACKING AND TRANSPORTATION CHARGES.—In determining, for the purposes of this chapter, the price for which an article is sold, there shall be included any charge for coverings and containers of whatever nature, and any charge incident to placing the article in condition packed ready for shipment, but there shall be excluded the amount of tax imposed by this chapter, whether or not stated as a separate charge. A transportation, delivery, insurance, installation, or other charge (not required by the foregoing sentence to be included) shall be excluded from the price only if the amount thereof is established to the satisfaction of the Secretary or his delegate in accordance with the regulations.

As noted in *United States* v. *Stowe-Woodward Inc.*, 306 F. 2d 678 (1962), certiorari denied, 371 U.S. 949 (1963), the "price for which an article is sold" essentially excludes nothing incurred by the manufacturer up to the moment of shipment. In the case of *F. W. Fitch Co.* v. *United States*, 323 U.S. 582 (1945), Ct.D. 1625, C.B. 1945, 433, the Supreme Court of the United States stated that "In essence, all manufacturing and other charges incurred prior to the actual shipment of an article and reflected separately or otherwise in the f.o.b. wholesale price are to be included in the sale price underlying the tax, while all charges incurred subsequent thereto are to be excluded."

In the instant case, the "handling-out" charge was an expense incurred by the manufacturer prior to the shipment of the articles to the purchaser. That expense was incidental to warehousing the articles for the benefit or convenience of the manufacturer prior to their sale and shipment.

Accordingly, it is held that, in determining the price for which the articles were sold for purposes of computing the manufacturers excise

tax, the manufacturer's price to the purchaser may not be reduced by an amount equal to the described warehouse "handling-out" charge.

SECTION 4218.—USE BY MANUFACTURER OR IMPORTER CONSIDERED SALE

26 CFR 48.4218–1: Tax on use by manufacturer, producer, or importer.

Whether tax liability is incurred by a manufacturer, producer, or importer of articles subject to the manufacturers excise tax imposed by chapter 32 of the Code where such articles are stolen from the manufacturer, producer, or importer while he still holds legal title thereto. See Rev. Rul. 67–58, page 302.

Application of the manufacturers excise tax on the use of an otherwise nontaxable trailer or semitrailer chassis to which plates and brackets have been attached for mounting a liquid fertilizer tank. See Rev. Rul. 67–208, page 296.

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26 CFR 48.4218–5: Computation of tax.

Whether State and local use taxes and fees paid for registration or license tags under State law are acquisition costs of the type required to be included in the tax base by an individual who imports an automobile for personal use. See Rev. Rul. 67–56, page 295.

SUBCHAPTER G.—EXEMPTIONS, REGISTRATION, ETC.

SECTION 4221.—CERTAIN TAX-FREE SALES

Rev. Rul. 67–120

Military flying clubs may not purchase gasoline on a tax-free basis, under the provisions of section 4221(a) (3) of the Internal Revenue Code of 1954 for use in aircraft owned by the United States but on loan to the military flying clubs.

Advice has been requested whether aircraft used by military flying clubs come within the scope of the term "vessels of war of the United States" for purposes of the exemption from the manufacturers excise tax on gasoline provided by section 4221(a) (3) of the Internal Revenue Code of 1954.

Certain military flying clubs are organized under the provisions of the regulations of the various branches of the Armed Forces of the United States as one of a number of programs to promote and provide for the morale, welfare, and recreation of military personnel. Membership is on a voluntary basis and is also extended to certain civilians. The aircraft used by the flying clubs are on loan from the respective branches of the Armed Forces and title remains in the United States.

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The clubs are operated on a self-supporting basis and maintain the aircraft in their possession.

Section 4081(a) of the Code imposes a tax on gasoline sold by the producer or importer thereof, or by any producer of gasoline.

Section 4221(a)(3) of the Code provides that no tax shall be imposed on the sale by the manufacturer of an article for use by the purchaser as supplies for vessels or aircraft. Section 4221(d)(3) of the Code provides, in part, that the term "supplies for vessels or aircraft" means fuel supplies, ships' stores, sea stores, or legitimate equipment on vessels of war of the United States or of any foreign nation. Furthermore, the term "vessels of war of the United States or of any foreign nation" includes aircraft owned by the United States or by any foreign nation and constituting a part of the Armed Forces thereof.

Since military aircraft on loan to flying clubs do not come within the definition of "vessels of war of the United States," they are not "part of the Armed Forces" within the meaning of section 4221(d)(3) of the Code. Accordingly, it is held that sales of gasoline to the flying clubs are subject to the manufacturers excise tax imposed by section 4081 of the Code.

(Also Section 4041; 26 CFR 48.4041-9.) Rev. Rul. 67-193 [1]

Revenue Ruling 63-62, C.B. 1963-1, 250, as modified by Revenue Ruling 63-230, C.B. 1963-2, 539, and supplemented by Revenue Ruling 64-228, C.B. 1964-2, 437, sets forth lists of foreign countries which have been found by the Secretary of Commerce to allow or not allow substantially reciprocal privileges in respect of aircraft registered in the United States, for purposes of the special rule provided by section 4221(e)(1) of the Internal Revenue Code of 1954. That special rule relates to excise tax exemptions with respect to articles sold for use as supplies for civil aircraft which are registered in a foreign country and employed in foreign trade or trade between the United States and any of its possessions. The list of countries which had been found not to allow substantially reciprocal privileges includes Iceland and the Union of Soviet Socialist Republics.

The Secretary of Treasury has been advised by the Secretary of Commerce that he has found that Iceland and the Union of Soviet Socialist Republics allow substantially reciprocal privileges in respect of aircraft registered in the United States. With respect to Iceland, however, such reciprocal privileges are limited to aircraft fuels and lubricants sold on or after June 1, 1967. Therefore, the list of countries which have been found to allow substantially reciprocal privileges should include "Iceland (aircraft fuels and lubricants only, beginning June 1, 1967)" and "Union of Soviet Socialist Republics."

Revenue Ruling 63-62 is hereby modified accordingly.

Whether the sale of a bus by the manufacturer thereof to a person (lessor) who leases the bus to another person (lessee) for use exclusively in transporting students and employees of schools operated by State or local governments or by nonprofit educational organizations

[1] Also released as Technical Information Release 909, dated May 29, 1967.

may be made tax free under the provisions of section 4221(e)(5) of the Code. See Rev. Rul. 67-27, page 358.

CHAPTER 33.—FACILITIES AND SERVICES

SUBCHAPTER C.—TRANSPORTATION OF PERSONS BY AIR

SECTION 4261.—IMPOSITION OF TAX

26 CFR 49.4261-1: Imposition of tax.

Exemption from tax on transportation of persons by air of amounts paid by the Department of the Interior for persons involved in fire prevention and control activities. See Secretary's Authorization, page 435.

CHAPTER 34.—DOCUMENTARY STAMP TAXES

SUBCHAPTER C.—CONVEYANCES

SECTION 4361.—IMPOSITION OF TAX

26 CFR 47.4361-1: Imposition of tax.

Whether an employee of a land title guarantee company can become subject to the penalty imposed by section 7271 of the Code. See Rev. Rul. 67-94, page 367.

CHAPTER 36.—CERTAIN OTHER EXCISE TAXES

SUBCHAPTER B.—OCCUPATIONAL TAX ON COIN-OPERATED DEVICES

SECTION 4462.—DEFINITION OF COIN-OPERATED GAMING DEVICE

26 CFR 45.4462-1: Definition of coin-operated amusement or gaming device. (Also Section 7805; 301.7805-1.) Rev. Rul. 67-124

A machine is operated by insertion of a coin and entitles a player not only to obtain the top coupon, which is visible to the player, but also to see the next coupon. The coupons entitle the holder to cash, merchandise, or discounts on merchandise depending upon the legend appearing on each coupon. Held, the machine is a coin-operated gaming device within the meaning of section 4462(a)(1) of the Internal Revenue Code of 1954.

Advice has been requested whether the coin-operated machine described below is considered to be a gaming device for purposes of the imposition of the occupational tax on coin-operated gaming devices under section 4461 of the Internal Revenue Code of 1954.

A person maintains a so-called "advertizer bonanza" machine at his place of business for use by his customers.

The machine is initially stocked with a series of coupons (1,000 in number) which are placed in the machine by the location operator, or the owner of the machine. Each coupon has an element of value, such value depending upon the legend appearing thereon. Some coupons entitle the holder to a 20 percent discount on merchandise listed in a catalog in the possession of the location operator. Other coupons are good for discounts at specified local business establishments. Some coupons state that the holder is entitled to a specified amount of cash, or merchandise, at the place of business where the machine is located.

The machine is operated by the player inserting a 25-cent coin into the machine. The top coupon (which is available to the player upon the insertion of the coin) is always visible to the player through a window on the front of the machine. Thus, the player knows the value of the coupon available to him when he inserts his coin. Upon removing this coupon from the machine, the next coupon becomes visible to the player.

Section 4461(a) of the Code imposes a special tax of $250 a year to be paid by every person who maintains for use or permits the use of, on any place or premises occupied by him, a coin-operated gaming device as defined in section 4462(a)(1) of the Code.

As defined in paragraph (1) of section 4462(a) of the Code, a "coin-operated gaming device" includes a so-called "slot" machine which operates by means of the insertion of a coin, token, or similar object and which, by application of the element of chance, may deliver, or entitle the person playing or operating the machine to receive, cash, premiums, merchandise, or tokens.

Section 4462(b) of the Code provides that the term "coin-operated gaming device" does not include a bona fide vending or amusement machine in which gaming features are not incorporated.

In the instant case, a gaming feature is present in the operation of the so-called "advertizer bonanza." By inserting a 25-cent coin in the machine, the player puts into motion the process by which he will see the next coupon which is not visible to him at the time of his play. He may repeat this procedure for subsequent coupons. In so operating this machine the player may be entitled, by application of the element of chance, to receive a cash award, trade in cash, or a discount on merchandise. Thus, it is held the "advertizer bonanza" is a coin-operated gaming device within the meaning of section 4462(a)(1) of the Code. The tax is to be paid by every person who maintains for use or permits the use of such a gaming device on any place or premises occupied by him.

However, with respect to tax years ending on or before June 30, 1967, this Revenue Ruling will not be applied, under the authority granted by section 7805(b) of the Code, to a machine which was being maintained for use before May 1, 1967. Any such machine which

is first maintained for use on or after that date will be subject to tax from the first day of the month during which it was first maintained for use through June 30, 1967, at the rate of $250 a year.

SUBCHAPTER D.—TAX ON USE OF CERTAIN VEHICLES

SECTION 4482.—DEFINITIONS

26 CFR 41.4482(b)-1: Definition of taxable gross weight.

Computing actual unloaded weight of side loading compaction-type refuse collection trucks. See Rev. Proc. 67-28, page 631.

CHAPTER 41.—INTEREST EQUALIZATION TAX

SUBCHAPTER A.—ACQUISITIONS OF FOREIGN STOCK AND DEBT OBLIGATIONS

SECTION 4911.—IMPOSITION OF TAX

(Also Section 501: 26 CFR 1.501(a)-1.) Rev. Rul. 67-81

Even though the acquiring organization is exempt from income tax under section 501 of the Internal Revenue Code of 1954, its acquisitions by purchase or gift of stock of a foreign issuer or debt obligations of a foreign obligor are subject to interest equalization tax.

Advice has been requested as to the liability for interest equalization tax of an organization which is exempt from income tax under section 501(a) of the Internal Revenue Code of 1954, where such organization acquires by purchase or by gift stock of a foreign issuer or debt obligations of a foreign obligor.

Section 4911 of the Code imposes a tax on each acquisition by a United States person of stock of a foreign issuer or of a debt obligation of a foreign obligor (if such obligation has a period remaining to maturity of 1 year or more), unless an exemption or exclusion from the tax is provided.

In this case the stock of a foreign issuer or debt obligations of a foreign obligor are acquired under circumstances where there is available neither the statutory exemption for prior American ownership provided in section 4918 of the Code, nor any of the statutory exclusions provided under sections 4914, 4915, 4916, and 4917 of the Code.

Section 501(a) of the Code provides an exemption from income tax to certain organizations. However, an exemption from income tax under section 501 will not serve to avoid liability for interest equalization tax since an exemption under section 501 relates only to the taxes

imposed under subtitle A (Income Taxes), whereas the interest equalization tax is imposed under subtitle D (Miscellaneous Excise Taxes).

Section 4914(a)(3) of the Code provides an exclusion from interest equalization tax for acquisitions "by gift to a United States person who is an individual." The exclusion for acquisitions by gift is therefore not available where the donee is other than an individual.

Accordingly, under the circumstances stated, the purchase, or acquisition by gift, of stock of a foreign issuer or debt obligations of a foreign obligor by the organization which is exempt from income tax under section 501 of the Code is subject to interest equalization tax.

(Also Section 4920.) Rev. Rul. 67–190

Acquisitions of certain participation certificates sold by the Export-Import Bank of Washington are not subject to the interest equalization tax.

Advice has been requested whether acquisitions of certain participation certificates sold by the Export-Import Bank of Washington are subject to the interest equalization tax imposed by section 4911 of the Internal Revenue Code of 1954.

The Export-Import Bank of Washington is a corporate agency of the United States, organized and existing under the Export-Import Bank Act of 1945, as amended, 12 U.S.C. 635. In the course of its operations the Export-Import Bank of Washington has acquired and holds for its own account various evidences of indebtedness or beneficial interests therein which are primarily obligations of foreign borrowers.

With the prior approval of the Secretary of the Treasury, the Export-Import Bank of Washington establishes a portfolio consisting of certain of the above-mentioned obligations. Export-Import Bank of Washington then sells beneficial interests in such portfolio. Such interests are evidenced by participation certificates. The principal of, and interest on, the participation certificates are unconditionally guaranteed by the Export-Import Bank of Washington. The participation certificates do not give the holders thereof any right to enforce the obligations held in the portfolio. The Export-Import Bank of Washington has custody, control, and administration of the obligations in the portfolio, may add obligations to, or remove obligations from, the portfolio and may freely substitute obligations in the portfolio. Thus, the participation certificates do not represent a claim against any identifiable obligations in the portfolio. Further, the obligation of the Export-Import Bank of Washington to make payment of principal and interest on the participation certificates is not contingent upon the payment to the Export-Import Bank of Washington of principal and interest on any obligations in the portfolio.

Section 4911 of the Code provides, in relevant part, that the interest equalization tax shall be imposed on each acquisition by a United States person (as defined in section 4920(a)(4) of the Code) of the stock of a foreign issuer, or the debt obligation of a foreign obligor, if such debt obligation has a period remaining to maturity of one year or more.

The described participation certificates sold by the Export-Import Bank of Washington are not the debt obligations of a foreign issuer or obligor, and therefore, their acquisition by United States persons is not subject to the interest equalization tax.

SECTION 4916.—EXCLUSION FOR INVESTMENTS IN LESS-DEVELOPED COUNTRIES

26 CFR 147.3–1: Exclusion for investments in less-developed-country corporations. Rev. Rul. 67–142

In Revenue Ruling 66–1, C.B. 1966–1, 259, the Internal Revenue Service published a list of foreign corporations which have received rulings that they qualify as less-developed-country corporations for respectively stated periods and, accordingly, that acquisitions by United States persons of stock or debt obligations of such corporations during such periods are exempt from the interest equalization tax under the provisions of section 4916(c)(4) of the Internal Revenue Code of 1954.

The following is a list of corporations that have met the requirements of section 147.3–1(e) of the Temporary Regulations, C.B. 1964–2, 906, and, therefore, qualify as less-developed-country corporations for their respectively stated periods.

Aaron Maritime Co., Ltd.—October 27, 1966, to January 29, 1967
Adela Investment Co.—September 24, 1964, to November 2, 1964, and December 7, 1964, to September 28, 1967
American Israelis Paper Mills, Ltd.—July 19, 1963, to June 29, 1967
Andacollo Mining Company, Ltd.—September 16, 1966, to July 29, 1967
Anglo-Lautaro Nitrate Corp.—July 19, 1963, to September 28, 1967
Antilles International Salt Co., N.V.—October 26, 1965, to September 28, 1967
Arger Navigation Ltd.—October 27, 1966, to July 29, 1967
Bank Leumi Le-Israel B.M.—May 3, 1965, to March 31, 1967
Bantry Transportation Co.—September 6, 1966, to March 31, 1967
Barracuda Tanker Corp.—February 8, 1965, to September 28, 1967
Benguet Consolidated, Inc.—July 19, 1963, to March 31, 1968
Bogo-Medellin Milling Co., Inc.—July 20, 1965, to December 31, 1966
Brazilian Traction, Light & Power Co., Inc.—February 18, 1965, to March 31, 1967
Brown Brothers de Mexico, S.A.—April 11, 1966, to March 31, 1967
Canadian International Power Co., Ltd.—July 19, 1963, to November 2, 1964, and November 24, 1964, to March 31, 1968
Caxinas, S. de R.L.—May 20, 1966, to March 31, 1967
Central American Allied Investors, S.A.—January 12, 1966, to March 31, 1967
CE-rrey, S.A.—June 24, 1966, to March 31, 1967
Coastal Caribbean Oils & Minerals, Inc.—April 4, 1965, to March 31, 1967
Compania de Luz Y Fuerza deal Centro, S.A.—November 25, 1964, to March 31, 1967
Compania Shell de Venezuela, Ltd.—May 25, 1965, to March 31, 1967
Compania de Celulose do Ultramar Portugues, S.A.R.L.—February 4, 1966, to March 31, 1967
Communicaciones, S.A.—July 29, 1966, to January 29, 1968
Consolidated Halliwell, Ltd.—July 19, 1963, to November 2, 1964, and December 8, 1964, to March 31, 1968
Constructora de Viviendas de Bogata, Ltda.—November 28, 1966, to June 30, 1967
Credit & Development Corp.—May 17, 1965, to March 31, 1968
Deltec Panamerica Corp.—March 13, 1966, to Decmber 29, 1967
ECL Industries, Ltd.—July 19, 1963, to November 2, 1964, and November 25, 1964, to March 31, 1968

Golarfruit, Inc.—April 11, 1966, to March 31, 1967
Grand Bassa Tankers, Inc.—January 25, 1965, to March 31, 1967
Hawaiian-Philippine Co.—August 3, 1965, to December 29, 1967
Heinz Alimentos S.A. de C.V.—December 13, 1966, to July 29, 1967
Industria Electrica de Mexico, S.A.—July 19, 1963, to November 2, 1964, and December 9, 1964, to March 31, 1967
Interhemisphere Transport Co.—June 29, 1966, to March 31, 1968
IPC Finance, Ltd.—March 7, 1966, to March 31, 1967
Iran Shell, N.V.—July 27, 1966, to March 31, 1967
Israel Discount Bank, Ltd.—January 1, 1964, to November 2, 1964, and November 24, 1964, to March 31, 1967
Jamaica Public Service, Ltd.—January 11, 1965, to March 31, 1967
Kilembe Copper Cobalt, Ltd.—November 4, 1965, to March 31, 1967
Kupat-Am Bank, Ltd.—August 3, 1965, to March 31, 1967
La Gloria Palacios, S.A. de C.V.—September 30, 1965, to March 31, 1967
La Luz Mines, Ltd.—November 23, 1965, to December 29, 1967
Lepanto Consolidated Mining Co.—June 9, 1966, to March 31, 1967
Liberian Iron Ore, Ltd.—July 19, 1963, to November 2, 1964, and December 3, 1964, to March 31, 1967
Luzon Stevedoring Corp.—September 30, 1965, to March 31, 1967
Mexican Light & Power Co., Ltd.—July 19, 1963, to November 2, 1964, and November 25, 1964, to March 31, 1967
Midespa Industries, Ltd.—November 24, 1965, to July 29, 1967
Moran International Towing Corp.—March 31, 1966, to March 31, 1967
Naviera Panamericana, S.A.—April 11, 1966, to March 31, 1967
Norsul Oil & Mining, Ltd.—March 9, 1965, to July 29, 1967
Ocean Oil Traders, Inc—April 11, 1966, to March 31, 1967
Ocean Oil Transport, Inc.—April 11, 1966, to March 31, 1967
Ocean Ore Shipping Corp.—April 11, 1966, to March 31, 1967
Oriole Shipping Corp.—April 11, 1966, to March 31, 1967
Oswego Chemical Carriers Corp.—July 24, 1965, to March 31, 1967
Oswego Marine Corp.—August 27, 1965, to March 31, 1967
Oswego Navigation Corp.—October 21, 1965, to March 31, 1967
Oswego Tanker Corp.—February 25, 1965, to March 31, 1967
Oswego Unity Corp.—November 10, 1965, to March 31, 1967
Pato Consolidated Gold Dredging, Ltd.—July 19, 1963, to November 2, 1964, and December 8, 1964, to March 31, 1967
Peruvian Investment & Finance, Ltd.—June 16, 1966, to September 28, 1967
Premier Consolidated Oilfields, Ltd.—July 19, 1963, to November 2, 1964, and December 9, 1964, to June 29, 1967
Proyecto Viru Sociedad Anomina—May 17, 1965, to March 31, 1967
Roan Selection Trust, Ltd.—January 25, 1965, to September 28, 1967
Rosita Mines, Ltd.—November 23, 1965, to December 29, 1967
San Carlos Milling Co., Inc.—July 19, 1963, to November 2, 1964, and December 4, 1964, to March 31, 1965, and May 13, 1965, to March 31, 1967
San Jose Oil Co., Inc.—January 6, 1965, to March 31, 1967
San Miguel Corp.—July 19, 1963, to November 2, 1964, and November 24, 1964, to March 31, 1967
Shell Finance (Development) Co., Ltd.—May 25, 1965, to March 31, 1967
Shell Quimica de Venezuela, C.A.—May 25, 1965, to March 31, 1967
Signess Shipping Co., Inc.—November 30, 1964, to March 31, 1967
Societe Hoteliere de la Baie de Marigot, S.A.—December 13, 1966, to March 31, 1967
Space Marine Transport Co.—September 23, 1965, to March 31, 1968
Standard (Philippines) Fruit Corp.—September 1, 1966, to March 31, 1967
Sterling Tankers Corp.—October 27, 1965, to March 31, 1967
TACA International Airlines, S.A.—October 22, 1965, to March 31, 1967
Telefonos de Mexico—April 29, 1966, to March 31, 1967
Trinity Marine Corp.—January 1, 1964, to November 2, 1964, and November 25, 1964, to March 31, 1967
Trinity Navigation Corp.—November 25, 1964, to March 31, 1967
Triple Ocean Operation, Inc.—April 11, 1966, to March 31, 1967
Tropical Gas Co., Inc.—September 16, 1966, to March 31, 1967
Tropigas Tankers, Inc.—September 28, 1966, to March 31, 1967
Tubos de Acero de Mexico, S.A.—July 19, 1963, to November 2, 1964, and December 9, 1964, to March 31, 1967
Twin Ocean Operation, Inc.—April 11, 1966, to March 31, 1967

Urbanizaciones Guacara, C.A.—May 6, 1965, to March 31, 1968
Westwaters Shipping Inc.—January 28, 1965, to March 31, 1966, and May 7, 1965, to March 31, 1967.

Corporations that were listed in Revenue Ruling 66–1 but are not listed above have not established that they qualify as less-developed-country corporations within the meaning of section 4916 of the Code for periods subsequent to the dates set forth in Revenue Ruling 66–1.

SECTION 4920.—DEFINITIONS AND SPECIAL RULES

Rev. Rul. 67–132

A United States person acquired a debt obligation of the World Bank (International Bank for Reconstruction and Development). *Held*, since the United States is a member of the World Bank, that organization is not a foreign issuer or obligor as defined in section 4920(a)(3) of the Internal Revenue Code of 1954. Accordingly, the acquisition of its debt obligation is not subject to the interest equalization tax imposed by section 4911 of the Code.

Whether Participation Certificates sold by the Export-Import Bank of Washington are debt obligations of a foreign issuer or obligor. See Rev. Rul. 67–190, page 310.

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26 CFR 147.7–2: Foreign stock issues treated as domestic stock issues. Rev. Rul. 67–196 [1]

The Internal Revenue Service has issued rulings to the listed foreign corporations holding that certain classes of their stock are exempt under section 4920(b)(2) of the Internal Revenue Code of 1954 from the interest equalization tax.
Revenue Ruling 65–55, C.B. 1965–1, 511, superseded.

The Internal Revenue Service has issued rulings to a number of foreign corporations exempting certain classes of their stock from the interest equalization tax, pursuant to section 4920(b) (formerly 4920(a)(8)) of the Internal Revenue Code of 1954. This Revenue Ruling contains a list of foreign corporations which have received favorable rulings, updating the list previously published in Revenue Ruling 65–55, C.B. 1965–1, 511.

The classes of stock of such foreign corporations which satisfy the requirements of section 4920(b) of the Code are treated not as foreign stock issues but as domestic issues. Accordingly, United States persons who acquire shares of such a class of stock are not subject to the interest equalization tax.

These rulings exempt only those shares included in the term "class of stock" as defined in section 4920(b)(2) of the Code. The term "class of stock" means all shares of stock of a corporation issued and outstanding as of the corporation's latest record date before July 19, 1963, which are identical with respect to the rights and interests such

[1] Based on Technical Information Releases 761 and 774, dated Sept. 13, 1965, and Oct. 8, 1965, respectively.

shares represent in the control, profits, and assets of the corporation. The term also includes additional shares possessing rights and interests identical with the rights and interests of shares described in the preceding sentence if such additional shares shall have been: (1) issued on or before November 10, 1964; (2) issued after November 10, 1964, pursuant to a written commitment made by such corporation on or before such date; (3) issued after November 10, 1964, to a shareholder with respect to or in exchange solely for shares described in this paragraph; or (4) issued in accordance with section 4920(b)(2)(D) of the Code.

The Service has permitted corporations receiving rulings under section 4920(b) of the Code to issue shares of stock similar to the exempt class, which do not qualify for the exemption. In such cases the Service has specified that the nonqualifying shares are to be identified by a legend on the stock certificate by which they can easily be distinguished from the exempt class of stock.

Corporations issuing both exempt stock and similar stock which does not qualify as part of the exempt class of stock (so-called legend stock) are listed separately below. Since this list of corporations issuing nonqualifying legend shares may be modified from time to time, United States persons should ascertain before acquisition of shares of stock of any of the listed corporations whether the shares are exempt or nonexempt.

From time to time other lists will be published of those corporations which have received rulings during the period subsequent to this Revenue Ruling.

The following corporations have been issued favorable rulings under section 4920(b) of the Code with respect to the class of stock described for each corporation:

Alcan Aluminum Limited—common stock without nominal or par value.
Alliance Tire and Rubber Company Limited—class A stock.
Alscope Consolidated Limited—common stock.
Asamera Oil Corporation Ltd.—common capital stock.
Atlas Consolidated Mining & Development Corp.—common stock.
Blue Crown Petroleums Ltd.—common stock.
Brilund Mines Limited—capital stock.
Cabol Enterprises Limited—common stock, without par value.
The Calgary & Edmonton Corporation Ltd.—capital stock without nominal or par value.
Canada Southern Petroleum Ltd.—capital stock and voting trust certificates relating thereto.
The Canada Southern Railway Company—common stock.
Canadian Curtiss-Wright Limited—capital stock.
Canadian Export Gas & Oil Limited—common stock.
Canadian Homestead Oils Limited—common stock.
Canadian Javelin Limited—common stock without par value.
Canadian Superior Oil Limited—common stock with $1 par value.
Canadian Westinghouse Company, Ltd.—common stock without nominal or par value.
Cayzor Athabaska Mines Limited—common stock.
Chemalloy Minerals Limited—common stock, par value $1.
Columbia Cellulose Company, Ltd.—common stock without nominal or par value.
Consolidated Marbenor Mines Limited—common stock.
Consolidated Panther Mines Limited—common stock.
Delta Acceptance Corporation Limited—first preference share $100 par value, series B 5½ percent cumulative redeemable sinking fund shares; second preference shares $100 par value, series A 5½ percent cumulative convertible shares and common stock, no par value.
Dome Mines Limited—stock without nominal or par value.

Dome Petroleum Limited—common stock, par value $2.50.
Elite Cobalt Mines Limited—common stock.
Fargo Oils Ltd.—common stock, par value $1.
Ford Motor Company of Canada Ltd.—common stock, without par value.
Fruehauf Trailer Company of Canada Ltd.—common stock without nominal or par value.
Wm. Gluckin Company Limited—5 percent convertible preferred stock & common stock, each par value one pound.
The Goodyear Tire & Rubber Company of Canada Limited—common stock.
The Granby Mining Company Limited—common stock.
Greyhound Lines of Canada Limited—common stock.
Hudson's Bay Oil and Gas Co., Ltd.—capital stock, par value of $2.50.
Imperial Oil Limited—capital stock, without nominal or par value.
Indian Mountain Metal Mines, Limited—common stock.
Initiative Explorations Limited—common stock.
The International Nickel Company of Canada Ltd.—common stock without nominal or par value.
Jefferson Lake Petrochemicals of Canada Ltd.—common stock.
Jenkins Bros. Limited—common stock.
James A. Lewis Engineering Co., Ltd.—common stock.
Kardar Canadian Oils Limited—common stock.
MacDonald Mines Limited—common stock.
Magellan Petroleum Corporation—common capital stock, par value $0.01 and voting trust certificates relating thereto.
Molybdenite Corporation of Canada Ltd.—common stock with par value $1.
Monarch Fine Foods Limited—common stock without par value.
Murky Fault Metal Mines Limited—common stock.
Murphy Oil Company Limited—common stock.
National Malartic Gold Mines Limited—common stock.
National Petroleum Corporation Ltd.—capital stock, par value $0.25.
North Canadian Oils Limited—common stock, par value $0.25.
Northwest Nitro-Chemicals, Limited—common stock.
O'Okiep Copper Company Limited—ordinary shares, par value 1 Rand.
Orofino-Mines Limited—common stock.
Pacific Petroleums Ltd.—common stock. par value $1.
Peel-Elder Limited—capital stock of no par value.
Peruvian Oils & Minerals, Limited—capital stock.
Phoenix Canada Oil Company Limited—common stock.
Pompey Oil & Minerals Company Limited—common stock.
Prairie Oil Royalties Company Ltd.—capital stock.
Reeves MacDonald Mines Limited—common stock.
Sailfish Sports Craft Limited—common stock.
Schlumberger Limited—common stock.
Scurry-Rainbow Oil Limited—common stock.
Seven Arts Productions Limited—common stock without par value.
Silver Ridge Mining Co., Limited—common stock.
Snowdrift Base Metal Mines Limited—common stock.
Stanrock Uranium Mines Limited—common stock.
Syntex Corporation—common stock.
Tashota Nipigon Mines Limited—common stock.
Tropical Gas Company, Inc.—common stock.
Union Carbide Canada Limited—common stock without nominal or par value.
Union Oil Company of Canada Limited—common stock.
United Asbestos Corporation Limited—capital stock, $1 par value.
United Canso Oil & Gas Limited—capital stock, par value $1 and voting trust certificates relating thereto.
Vanadium-Alloys Steel Canada Limited—common stock, no par value.
Western Heritage Properties Limited—common stock.

The corporations listed below have been issued rulings which exempt the described class or classes of their stock under section 4920(b) of the Code, but have subsequently issued additional shares which are not exempt, even though they are similar in rights and interest to the exempt shares:

Banff Oil Limited—common stock & preferred stock.

Coastal Caribbean Oils & Minerals Ltd.—capital stock, par value one shilling and voting trust certificates relating thereto.
Husky Oil Canada Limited—common stock.
Surluga Gold Mines Limited—common stock.

The stock certificates representing the nonexempt shares should in each case be marked with the distinguishing legend.

Revenue Ruling 65–55, C.B. 1965–1, 511, is superseded.

SUBCHAPTER B.—ACQUISITIONS BY COMMERCIAL BANKS

SECTION 4931.—COMMERCIAL BANK LOANS

26 CFR 147.9–1: Imposition of interest equalization tax on commercial bank loans. E.O. 11328

Modifying Executive Order No. 11198, relating to the interest equalization tax on certain commercial bank loans.

WHEREAS it has been determined heretofore that the acquisition of debt obligations of foreign obligors by commercial banks in making loans in the ordinary course of the commercial banking business has materially impaired the effectiveness of the tax imposed by section 4911 of the Internal Revenue Code of 1954, as added by the Interest Equalization Tax Act, because such acquisitions have replaced acquisitions by United States persons, other than commercial banks, of debt obligations of foreign obligors which are subject to the tax imposed by section 4911; and

WHEREAS such determination formed the basis for the issuance of Executive Order No. 11198, dated February 10, 1965 [C.B. 1965–1, 513], relating to the imposition of the interest equalization tax on the acquisition of such debt obligations by commercial banks; and

WHEREAS it is now appropriate that Executive Order No. 11198 be modified:

NOW, THEREFORE, by virtue of the authority vested in me by section 4931(a) of the Internal Revenue Code of 1954, as amended (26 U.S.C. 4931(a)), by section 3(e)(2) of the Interest Equalization Tax Extension Act of 1965 (Public Law 89–243; 79 Stat. 955) [C.B. 1965–2, 627], by section 301 of title 3 of the United States Code, and as President of the United States, it is ordered that Executive Order No. 11198 be, and it is hereby, modified to read as follows:

SECTION 1. The provisions of section 4931 of the Internal Revenue Code of 1954, as amended, shall apply to acquisitions by commercial banks of debt obligations of foreign obligors to the extent set forth in sections 2 and 3.

SEC. 2. (a) The exclusions provided in section 4914(j)(1)(A)(ii) and section 4915(c)(2)(A) from the tax imposed by section 4911 shall continue to apply to any acquisition by a commercial bank of a debt obligation of a foreign obligor; and

(b) The exclusion provided in section 4914(b)(2)(A) from the tax imposed by section 4911 shall apply only to an acquisition of such debt obligation which is made by a commercial bank at any of its branches located outside the United States.

SEC. 3. The amendments of section 4931 contained in section 3(e)(1) of the Interest Equalization Tax Extension Act of 1965 (Public Law 89-243; 79 Stat. 954) shall be applicable with respect to acquisitions of debt obligations of foreign obligors made after the date on which this order is issued.

SEC. 4. The Secretary of the Treasury or his delegate is authorized to prescribe from time to time such regulations, rulings, directions, and instructions, and to require such reports of information, as he shall deem necessary to carry out the purposes of this order.

SEC. 5. This order shall be effective with respect to acquisitions of debt obligations of foreign obligors made during the period beginning on the day after the date on which this order is issued and ending on the date set forth in section 4911(d).

LYNDON B. JOHNSON.

THE WHITE HOUSE,
February 20, 1967.

(Filed by the Office of the Federal Register on Feb. 20, 1967, 4:45 p.m., and published in the issue of the Federal Register for Feb. 22, 1967, 32 F.R. 3137)

SUBTITLE F.—PROCEDURE AND ADMINISTRATION

CHAPTER 61.—INFORMATION AND RETURNS

SUBCHAPTER A.—RETURNS AND RECORDS

PART II.—TAX RETURNS OR STATEMENTS

Subpart A.—General Requirement

SECTION 6011.—GENERAL REQUIREMENT OF RETURN, STATEMENT, OR LIST

26 CFR 46.6011(a)-1: Returns.

Amendments to the regulations in 26 CFR Parts 46, 48, and 49, miscellaneous excise taxes payable by return, manufacturers and retailers excise taxes, facilities and services excise taxes, respectively, relating to the filing of monthly, semimonthly, and quarterly returns. See T.D. 6915, page 322.

Subpart B.—Income Tax Returns

SECTION 6012.—PERSONS REQUIRED TO MAKE RETURNS OF INCOME

26 CFR 1.6012-1: Individuals required to make returns of income.

Filing of a joint return by a husband and the court-appointed guardian of the wife See Rev. Rul. 67-191, page 318.

SECTION 6013.—JOINT RETURNS OF INCOME TAX BY HUSBAND AND WIFE

26 CFR 1.6013–1: Joint returns. Rev. Rul. 67–191
(Also Section 6012; 1.6012–1.)

A court-appointed guardian charged with the care of a married person's property may file for such person a joint return of income tax with the other spouse.

Advice has been requested as to the requirements for filing a joint return under the circumstances set forth below.

The property of a married woman was placed in the care of a guardian by a State Court of Chancery because she was elderly and had difficulty in managing her affairs.

The husband now wishes to file a joint Federal income tax return, and asks whether he may join with his wife in filing such return, or whether he must join with the guardian in filing such return.

Section 6013 of the Internal Revenue Code of 1954 provides, with certain exceptions not here material, that a husband and a wife may make a single return jointly of income taxes.

Section 6012(b)(2) of the Code, relating to persons under a disability, provides as follows:

> * * * If an individual is unable to make a return, required under subsection (a) or section 6015(a), the return of such individual shall be made by a duly authorized agent, his committee, guardian, fiduciary or other person charged with the care of the person or property of such individual. * * *

Section 6903 of the Code provides that, upon notice to the Secretary of the Treasury or his delegate, if any person is acting for another person in a fiduciary capacity, such fiduciary shall assume the powers, rights, duties, and privileges of such other person in respect of Federal taxes until notice is given that the fiduciary capacity has terminated.

The wife in the instant case is deemed to be an individual who is unable to make a return within the ambit of section 6012(b)(2) of the Code. Thus, the guardian must file for the wife any Federal income tax return required and exercise her election to file a joint return.

Accordingly, it is held that the husband must join with the guardian, acting for the wife, in order to file a joint income tax return.

Subpart C.—Estate and Gift Tax Returns

SECTION 6019.—GIFT TAX RETURNS

26 CFR 25.6019–2: Returns required in case of consent under section 2513.

Person or persons authorized to execute consent, execute and file gift tax return for deceased consenting spouse. See Rev. Rul. 67–55, page 278.

PART III.—INFORMATION RETURNS

Subpart A.—Information Concerning Persons Subject to Special Provisions

SECTION 6033.—RETURNS BY EXEMPT ORGANIZATIONS

26 CFR 1.6033–1: Returns by exempt organizations.

The inclusion of the financial information of a separately incorporated subsidiary of an organization exempt from Federal income tax under section 501(a) of the Code on the information return of the parent. See Rev. Rul. 67–174, page 119.

Subpart B.—Information Concerning Transactions With Other Persons

SECTION 6041.—INFORMATION AT SOURCE

26 CFR 1.6041–1: Return of information as to payments of $600 or more. Rev. Rul. 67–197

Literary agents must report on information returns the gross amount of royalties received from publishers prior to deduction of commissions, fees, and expenses.

Revenue Ruling 65–129, C.B. 1965–1, 519, modified.

The Internal Revenue Service has reconsidered the information reporting requirements relating to royalty payments made by literary agents to authors or writers as set forth in Revenue Ruling 65–129, C.B. 1965–1, 519.

Section 6041 of the Internal Revenue Code of 1954 and section 1.6041–1 of the Income Tax Regulations require that every person engaged in a trade or business file information returns, Form 1096, U.S. Annual Information Return, and Form 1099, U.S. Information Return for Calendar Year, for each calendar year after 1962 with respect to payments made by him during the calendar year in the course of his trade or business to another person of fixed or determinable interest, rents, royalties, annuities, pensions, and other gains, profits, and income aggregating $600 or more.

Under Revenue Ruling 54–571, C.B. 1954–2, 235, a real estate agent must report on information returns the gross amount of rents collected on behalf of the property owner prior to the deduction of commissions, fees, or other expenses if such amount paid to any one property owner totals $600 or more during the calendar year.

Commissions, fees, and expenses deducted from the gross amount of royalty payments collected by literary agents on behalf of authors or writers are considered as having been paid by the agent to the writer and paid back to the agent for the purpose of discharging the writer's obligations; therefore, the gross amount of royalties so received and paid over to authors is subject to information reporting.

Accordingly, it is held that literary agents must report on information returns, Forms 1096 and 1099, the gross amount of royalties received from publishers prior to the deduction of commissions, fees, and expenses if the gross amount of such royalties paid to an author or writer total $600 or more during the taxable year.

Revenue Ruling 65–129 is hereby modified to remove the requirement that the commissions and net amount actually paid over to the author must also be shown on the Form 1099 filed by the agent.

Information returns for payments of $600 or more by banking institutions acting as agents for the collection of interest on evidences of indebtedness. See Rev. Proc. 67–8, page 582.

Reporting of gross or net amounts of oil and gas royalties on information returns, Form 1099. See Rev. Proc. 67–11, page 589.

Requirements governing the private printing of substitutes for Form 1099, U.S. Information Return. See Rev. Proc. 67–21, page 601.

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26 CFR 1.6041–5: Information as to actual owner.

Printing and use of substitutes for Form 1087, Nominee's Information Return. See Rev. Proc. 67–22, page 611.

SECTION 6042.—RETURNS REGARDING PAYMENTS OF DIVIDENDS AND CORPORATE EARNINGS AND PROFITS

26 CFR 1.6042–2: Returns of information as to dividends paid in calendar years after 1962.

Modification of guidelines relating to the determination of the taxable status of corporate distributions and the information to be furnished in support thereof. See Rev. Proc. 67–12, page 589.

Printing and use of substitutes for Form 1087, Nominee's Information Return. See Rev. Proc. 67–22, page 611.

SECTION 6047.—INFORMATION RELATING TO CERTAIN TRUSTS AND ANNUITY AND BOND PURCHASE PLANS

26 CFR 1.6047–1: Information to be furnished with regard to employee retirement plan covering an owner-employee.

Information reporting in respect of distributions on behalf of an "owner-employee" under a self-employed retirement plan. See Rev. Proc. 67–19, page 599.

Subpart C.—Information Regarding Wages Paid Employees

SECTION 6051.—RECEIPTS FOR EMPLOYEES

26 CFR 31.6051–1: Statements for employees.

Printing of substitutes for Form W–2, Wage and Tax Statement. See Rev. Proc. 67–23, page 618.

SECTION 6052.—RETURNS REGARDING PAYMENT OF WAGES IN THE FORM OF GROUP-TERM LIFE INSURANCE

26 CFR 1.6052–1: Information returns regarding payment of wages in the form of group-term life insurance.

Information reporting in respect of the cost of group-term life insurance on the life of an employee carried directly or indirectly by his employer. See Rev. Proc. 67–19, page 599.

PART V.—TIME FOR FILING RETURNS AND OTHER DOCUMENTS

SECTION 6071.—TIME FOR FILING RETURNS AND OTHER DOCUMENTS

26 CFR 46.6071(a)–1: Time for filing returns.

Amendments to the regulations in 26 CFR Parts 46, 48, and 49, miscellaneous excise taxes payable by return, manufacturers and retailers excise taxes and facilities and services excise taxes, respectively, relating to the due date for monthly, semimonthly, and quarterly returns. See T.D. 6915, page 322.

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26 CFR 49.6071(a): Statutory provisions; time for filing returns and other documents.

Amended regulations relating to time for filing quarterly returns with respect to certain excise taxes. See T.D. 6910, page 349.

PART VII.—PLACE FOR FILING RETURNS OR OTHER DOCUMENTS

SECTION 6091.—PLACE FOR FILING RETURNS OR OTHER DOCUMENTS

26 CFR 31.6091: Statutory provisions; place for filing returns. T.D. 6915 [1]
(Also 46.6091, 48.6091, 49.6091.)
(Also Sections 6011, 6071, 6151; 46.6011(a)-1, 48.6011(a), 49.6011(a), 46.6071(a)-1, 48.6071(a), 49.6071(a)-1, 46.6151, 48.6151, 49.6151.)

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 31.—EMPLOYMENT TAXES; APPLICABLE ON AND AFTER JANUARY 1, 1955; SUBCHAPTER D, PART 46.—REGULATIONS RELATING TO MISCELLANEOUS EXCISE TAXES PAYABLE BY RETURN; PART 48.—MANUFACTURERS AND RETAILERS EXCISE TAXES; PART 49.—FACILITIES AND SERVICES EXCISE TAXES

Filing of certain employment and excise tax returns with service centers and semimonthly returns for certain excise taxes.

DEPARTMENT OF THE TREASURY,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D.C. 20224

To Officers and Employees of the Internal Revenue Service and Others Concerned:

On February 7, 1967, notice of proposed rulemaking with respect to regulations relating to filing of certain employment and excise tax returns with service centers and semimonthly returns for certain excise taxes was published in the Federal Register (32 F.R. 2565). After consideration of all such relevant matter as was presented by interested persons, the following regulations are hereby adopted.

In order to provide for the filing of certain employment and excise tax returns with service centers, to conform the regulations to the amendments made by section 1 of the act of November 2, 1966 (Public Law 89-713, 80 Stat. 1107) [C.B. 1966-2, 617] and to provide for semimonthly returns for certain excise taxes, the following regulations are amended as follows:

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[1] The publication of this Treasury Decision in 32 F.R. 5260, dated Mar. 29, 1967, containing (1) instructions for modifying the notice of proposed rulemaking published in 32 F.R. 2565, dated Feb. 7, 1967, and (2) the full context of the regulations with such modifications. As here published, the Treasury Decision reflects the full context of such regulations, with modifications. The individual instructions have been omitted.

EMPLOYMENT TAX REGULATIONS

(26 CFR Part 31)

PARAGRAPH 1. Section 31.6091 is amended to read as follows:

§ 31.6091 STATUTORY PROVISIONS; PLACE FOR FILING RETURNS.

SEC. 6091. PLACE FOR FILING RETURNS OR OTHER DOCUMENTS.

(a) GENERAL RULE.—When not otherwise provided for by this title, Secretary or his delegate shall by regulations prescribe the place for the filing of any return, declaration, statement, or other document, or copies thereof, required by this title or by regulations.

(b) TAX RETURNS.—In the case of returns of tax required under authority of part II of this subchapter—

(1) PERSONS OTHER THAN CORPORATIONS—

(A) *General rule.*—Except as provided in subparagraph (B), a return (other than a corporation return) shall be made to the Secretary or his delegate—

(i) In the internal revenue district in which is located the legal residence or principal place of business of the person making the return, or

(ii) At a service center serving the internal revenue district referred to in clause (i),

as the Secretary or his delegate may by regulations designate.

(B) *Exception.*—Returns of—

(i) Persons who have no legal residence or principal place of business in any internal revenue district,

(ii) Citizens of the United States whose principal place of abode for the period with respect to which the return is filed is outside the United States,

(iii) Persons who claim the benefits of section 911 (relating to earned income from sources without the United States), section 931 (relating to income from sources within possessions of the United States), or section 933 (relating to income from sources within Puerto Rico), and

(iv) Nonresident alien persons.

shall be made at such place as the Secretary or his delegate may by regulations designate.

(2) CORPORATIONS—

(A) *General rule.*—Except as provided in subparagraph (B), a return of a corporation shall be made to the Secretary or his delegate—

(i) In the internal revenue district in which is located the principal place of business or principal office or agency of the corporation, or

(ii) At a service center serving the internal revenue district referred to in clause (i),

as the Secretary or his delegate may by regulations designate.

(B) *Exception.*—Returns of—

(i) Corporations which have no principal place of business or principal office or agency in any internal revenue district.

(ii) Corporations which claim the benefits of section 922 (relating to special deduction for Western Hemisphere trade corporations), section 931 (relating to income from sources within possessions of the United States), or section 941 (relating to the special deduction for China Trade Act corporations), and

(iii) Foreign corporations,

shall be made at such place as the Secretary or his delegate may by regulations designate.

* * * * * * *

(4) HAND-CARRIED RETURNS.—Notwithstanding paragraph (1) or (2), a return to which paragraph (1)(A) or (2)(A) would apply, but for this paragraph, which is made to the Secretary or his delegate by hand carrying shall, under regulations prescribed by the Secretary or his delegate, be made in the internal revenue district referred to in paragraph (1)(A)(i) or (2)(A)(i), as the case may be.

(5) EXCEPTIONAL CASES. Notwithstanding paragraph (1), (2), * * * or (4) of this subsection, the Secretary or his delegate may permit a return to be filed in any internal revenue district, and may require the return of any officer or employee of the Treasury Department to be filed in any internal revenue district selected by the Secretary or his delegate.

[Sec. 6091 as amended by sec. 1 (a), Act of November 2, 1966 (Pub. Law 89–713, 80 Stat. 1107) [C.B. 1966–2, 617]]

PAR. 2. Section 31.6091–1 is amended by revising paragraphs (c) and (d) and adding paragraphs (e), (f), and (g) to read as follows:

§ 31.6091–1 PLACE FOR FILING RETURNS.

* * * * * * *

(c) *Returns of taxpayers outside the United States.* The return of a person (other than a corporation) outside the United States having no legal residence or principal place of business in any internal revenue district, or the return of a corporation having no principal place of business or principal office or agency in any internal revenue district, shall be filed wth the Director of International Operations, Internal Revenue Service, Washington, D.C. 20225, unless the principal place of business or legal residence of such person, or the principal place of business or principal office or agency of such corporation, is located in the Virgin Islands or Puerto Rico, in which case the return shall be filed with the Director of International Operations, United States Internal Revenue Service, Hato Rey, Puerto Rico 00917.

(d) *Returns filed with service centers.*—Notwithstanding paragraphs (a), (b), and (c) of this section, whenever instructions applicable to such returns provide that the returns shall be filed with a service center, such returns shall be so filed in accordance with such instructions.

(e) *Hand-carried returns.*—Except as provided in subparagraph (3) of this paragraph, and notwithstanding paragraphs (1) and (2) of section 6091(b) and paragraph (d) of this section—

(1) *Persons other than corporations.*—Returns of persons other than corporations which are filed by hand carrying shall be filed with the district director as provided in paragraph (a) of this section.

(2) *Corporations.*—Returns of corporations which are filed by hand carrying shall be filed with the district director as provided in paragraph (b) of this section.

(3) *Exceptions.*—This paragraph shall not apply to returns of—

(i) Persons who have no legal residence, no principal place of business, nor principal office or agency in any internal revenue district,

(ii) Citizens of the United States whose principal place of abode for the period with respect to which the return is filed is outside the United States,

(iii) Persons who claim the benefits of section 911 (relating to earned income from sources without the United States), section 922 (relating to special deduction for Western Hemisphere trade corporations), section 931 (relating to income from sources within possessions of the United States), section 933 (relating to income from sources within Puerto Rico), or section 941 (relating to the special deduction for China Trade Act corporations), and

(iv) Nonresident alien persons and foreign corporations.

(f) *Permission to file in district other than required district.*—The Commissioner may permit the filing of any return required to be made under the regulations in this subpart in any internal revenue district, notwithstanding the provisions of paragraphs (1), (2), and (4) of section 6091(b) and paragraphs (a), (b), (c), (d), and (e) of this section.

(g) *Returns of officers and employees of the Internal Revenue Service.*—The Commissioner may require any officer or employee of the Internal Revenue Service to file any return required of him under the regulations in this subpart in

any internal revenue district selected by the Commissioner, notwithstanding the provisions of paragraphs (1), (2), and (4) of section 6091(b) and paragraphs (a), (b), (c), (d), and (e) of this section.

PAR. 3. Section 31.6151 is amended by revising section 6151(a) and adding a historical note to read as follows:

§ 31.6151 STATUTORY PROVISIONS; TIME AND PLACE FOR PAYING TAX SHOWN ON RETURNS.

SEC. 6151. TIME AND PLACE FOR PAYING TAX SHOWN ON RETURNS.

(a) GENERAL RULE.—Except as otherwise provided in this section, when a return of tax is required under this title or regulations, the person required to make such return shall, without assessment or notice and demand from the Secretary or his delegate, pay such tax to the internal revenue officer with whom the return is filed, and shall pay such tax at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).

* * * * * * *

[Sec. 6151 as amended by sec. 1(b), Act of November 2, 1966, (Public Law 89-713, 80 Stat. 1108) [C.B. 1966-2, 617]]

PAR. 4. Paragraph (a) of § 31.6151-1 is amended to read as follows:

§ 31.6151-1 TIME FOR PAYING TAX.

(a) *In general.*—The tax required to be reported on each tax return required under this subpart is due and payable to the internal revenue officer with whom the return is filed at the time prescribed in § 31.6071(a)-1 for filing such return. See the applicable sections in Part 301 of this chapter (Regulations on Procedure and Administration), for provisions relating to interest on underpayments, additions to tax, and penalties.

* * * * * * *

PAR. 5. Paragraph (a)(3) of § 31.6302(c)-1 is amended to read as follows:

§ 31.6302(c)-1 USE OF GOVERNMENT DEPOSITARIES IN CONNECTION WITH TAXES UNDER FEDERAL INSURANCE CONTRIBUTIONS ACT AND INCOME TAX WITHHELD.

(a) *Requirement.* * * *

(3) *Depositary receipts.*—Any deposit required to be made by an employer under subparagraph (1) of this paragraph shall be made separately from any deposit required to be made by him under subparagraph (2) of this paragraph. An employer required to make deposits under subparagraph (1) or subparagraph (2) may make one, or more than one, remittance of the amount required by such subparagraph to be deposited for a calendar month or a semimonthly period, as the case may be. However, a deposit for a period in one calendar quarter shall be made separately from any deposit for a period in another calendar quarter. Each remittance shall be accompanied by a Federal Depositary Receipt (Form 450) which shall be prepared in accordance with the instructions applicable thereto. The employer shall forward such remittance, together with such depositary receipt, to a Federal Reserve bank or, at his election, to a commercial bank authorized in accordance with Treasury Department Circular No. 848 to accept remittances of the taxes for transmission to a Federal Reserve bank. After the Federal Reserve bank has validated the depositary receipt, such depositary receipt will be returned to the employer. Every employer making deposits pursuant to this section shall attach to his return for the period with respect to which such deposits are made, in part or in full payment of the taxes shown thereon, depositary receipts so validated, and shall pay the balance, if any, of the taxes due for such period. An amount of tax which is not required to be deposited may nevertheless be deposited if the employer so desires. If such a voluntary deposit is made, the employer shall make it in ample time to enable the Federal Reserve bank to return the validated receipt to the employer so that it can be attached to and filed with the employer's return.

REGULATIONS RELATING TO MISCELLANEOUS EXCISE TAXES PAYABLE BY RETURN

(26 CFR Part 46)

PAR. 6. Section 46.6011(a)–1 is amended by revising paragraphs (a) and (b) to read as follows:

§ 46.6011(a)–1 RETURNS.

(a) *In general.*—Liability for tax imposed under section 4501(a) or 4511 shall be reported on Form 720. Except as provided in paragraph (b) of this section, a return on Form 720 shall be filed for a period of one calendar quarter. Every person required to make a return on Form 720 for a return period ended December 31, 1954, shall make a return for each subsequent calendar quarter, month, or semimonthly period (whether or not liability was incurred for any tax reportable on such return for such return period) until he has filed a final return in accordance with § 46.6011(a)–2. Every person not required to make a return on Form 720 for a return period ended December 31, 1954, shall make a return for the first calendar quarter thereafter in which he incurs liability for tax imposed under section 4501(a) or 4511, and shall make a return for each subsequent calendar quarter, month, or semimonthly period until he has filed a final return in accordance with § 46.6011(a)–2.

(b) *Monthly and semimonthly returns.*—(1) *Requirement.*—If the district director determines that any taxpayer who is required to make deposit of taxes under the provisions of § 46.6302(c)–1 has failed to make deposits of such taxes, such taxpayer shall be required, if so notified in writing by the district director, to file a monthly or semimonthly return on Form 720, except that, if some other form is furnished by the district director for use in lieu of Form 720, the return shall be made on such other form. Every person so notified by the district director shall make a return for the calendar month or semimonthly period (as defined in § 46.6302(c)–1(b)(1)) in which the notice is received and for each calendar month or semimonthly period thereafter until he has filed a final return or is required to make returns on the basis of a different return period pursuant to notification as provided in subparagraph (2) of this paragraph.

(2) *Change of requirement.*—The district director, in his discretion, may notify the taxpayer in writing that he is required to make a quarterly or monthly return, if he has been filing returns for a semimonthly period, or is required to make a quarterly or semimonthly return, if he has been filing monthly returns.

(3) *Return for period change takes effect.*—If a taxpayer who has been filing quarterly returns receives notice to file a monthly or semimonthly return or a taxpayer who has been filing monthly returns receives notice to file a semimonthly return, the first return required pursuant to the notice shall be made for the month or semimonthly period in which the notice is received and all prior months or semimonthly periods which are not includible in a prior period for which the taxpayer is required to file a return. If a taxpayer who has been filing monthly or semimonthly returns receives notice to file a quarterly return, the last month or semimonthly period for which a return shall be made is the last month or semimonthly period of the calendar quarter in which such notice is received. If a taxpayer who has been filing semimonthly returns receives notice to file a monthly return, the last semimonthly period for which a return shall be made is the last semimonthly period of the month in which such notice is received.

* * * * * * *

PAR. 7. Section 46.6071(a)–1 is amended by revising paragraphs (a) and (b) to read as follows:

§ 46.6071(a)–1 TIME FOR FILING RETURNS.

(a) *Quarterly returns.*—Each return required to be made under paragraph (a) of § 46.6011(a)–1 for a return period of not less than one calendar quarter shall be filed on or before the last day of the first calendar month following the period for which it is made. However, if, and only if, the return is accompanied by depositary receipts (Form 537, Depositary Receipt for Federal Excise Taxes), showing timely deposits, in full payment of the taxes due for the entire calendar quarter, the return may be filed on or before the 10th day of the second calendar month following the period for which it is made. For the purpose of the preceding sentence, a deposit which is not required to be made in respect of such return period may be made on or before the last day of the first calendar

month following the close of such period, and the timeliness of the deposit will be determined by the earliest date stamped on the validated Form 537 by an authorized commercial bank or by a Federal Reserve bank.

(b) *Monthly and semimonthly returns.*—(1) *Monthly returns.*—Each return required to be made for a monthly period under paragraph (b) of § 46.6011(a)–1 shall be filed not later than the 15th day of the month following the period for which it is made.

(2) *Semimonthly returns.*—Each return required to be made for a semimonthly period under paragraph (b) of § 46.6011(a)–1 shall be filed not later than the 10th day of the semimonthly period following the period for which it is made.

* * * * * * *

PAR. 8. Section 46.6091 is amended to read as follows:

§ 46.6091 STATUTORY PROVISIONS; PLACE FOR FILING RETURNS.

SEC. 6091. PLACE FOR FILING RETURNS OR OTHER DOCUMENTS.

(a) GENERAL RULE.—When not otherwise provided for by this title, the Secretary or his delegate shall by regulations prescribe the place for the filing of any return, declaration, statement, or other document, or copies thereof, required by this title or by regulations.

(b) TAX RETURNS.—In the case of returns of tax required under authority of part II of this subchapter—

(1) PERSONS OTHER THAN CORPORATIONS—

(A) *General rule.*—Except as provided in subparagraph (B), a return (other than a corporation return) shall be made to the Secretary or his delegate—

(i) In the internal revenue district in which is located the legal residence or principal place of business of the person making the return, or

(ii) At a service center serving the internal revenue district referred to in clause (i),

as the Secretary or his delegate may by regulations designate.

(B) *Exemption.*—Returns of—

(i) Persons who have no legal residence or principal place of business in any internal revenue district,

(ii) Citizens of the United States whose principal place of abode for the period with respect to which the return is filed is outside the United States,

(iii) Persons who claim the benefits of section 911 (relating to earned income from sources without the United States), section 931 (relating to income from sources within possessions of the United States), or section 933 (relating to income from sources within Puerto Rico), and

(iv) Nonresident alien persons,

shall be made at such place as the Secretary or his delegate may by regulations designate.

(2) CORPORATIONS—

(A) *General rule.*—Except as provided in subparagraph (B), a return of a corporation shall be made to the Secretary or his delegate—

(i) In the internal revenue district in which is located the principal place of business or principal office or agency of the corporation, or

(ii) At a service center serving the internal revenue district referred to in clause (i),

as the Secretary or his delegate may by regulations designate.

(B) *Exception.*—Returns of—

(i) Corporations which have no principal place of business or principal office or agency in any internal revenue district,

(ii) Corporations which claim the benefits of section 922 (relating to special deduction for Western Hemisphere trade corporations), section 931 (relating to income from

sources within possessions of the United States), or section 941 (relating to the special deduction for China Trade Act corporations), and

(iii) Foreign corporations,

shall be made at such place as the Secretary or his delegate may by regulations designate.

* * * * * * *

(4) HAND-CARRIED RETURNS.—Notwithstanding paragraph (1) or (2), a return to which paragraph (1)(A) or (2)(A) would apply, but for this paragraph, which is made to the Secretary or his delegate by hand carrying shall, under regulations prescribed by the Secretary or his delegate, be made in the internal revenue district referred to in paragraph (1)(A)(i) or (2)(A)(i), as the case may be.

(5) EXCEPTIONAL CASES.—Notwithstanding paragraph (1), (2), * * * or (4) of this subsection, the Secretary or his delegate may permit a return to be filed in any internal revenue district * * *.

[Sec. 6091 as amended by sec. 1(a), Act of November 2, 1966 (Pub. Law 89–713, 80 Stat. 1107) [C.B. 1966–2, 617]]

PAR. 9. Section 46.6091–1 is amended by revising paragraphs (c) and (d), redesignating paragraph (e) as paragraph (g) and adding paragraphs (e) and (f). The revised, added and redesignated provisions read as follows:

§ 46.6091–1 PLACE FOR FILING RETURNS.

* * * * * * *

(c) *Returns of taxpayers outside the United States.*—The return of a person (other than a corporation) outside the United States having no legal residence or principal place of business in any internal revenue district, or the return of a corporation having no principal place of business or principal office or agency in any internal revenue district, shall be filed with the Director of International Operations, Internal Revenue Service, Washington, D.C. 20225, unless the principal place of business or legal residence of such person, or the principal place of business or principal office or agency of such corporation, is located in the Virgin Islands or Puerto Rico, in which case the return shall be filed with the Director of International Operations, United States Internal Revenue Service, Hato Rey, Puerto Rico 00917.

(d) *Returns filed with service centers.*—Notwithstanding paragraphs (a), (b), and (c) of this section, whenever instructions applicable to such returns provide that the returns shall be filed with a service center, such returns shall be so filed in accordance with such instructions.

(e) *Hand-carried returns.*—Except as provided in subparagraph (3) of this paragraph, and notwithstanding paragraphs (1) and (2) of section 6091(b) and paragraph (d) of this section—

(1) *Persons other than corporations.*—Returns of persons other than corporations which are filed by hand carrying shall be filed with the district director as provided in paragraph (a) of this section.

(2) *Corporations.*—Returns of corporations which are filed by hand carrying shall be filed with the district director as provided in paragraph (b) of this section.

(3) *Exceptions.*—This paragraph shall not apply to returns of—

(i) Persons who have no legal residence, no principal place of business, nor principal office or agency in any internal revenue district.

(ii) Citizens of the United States whose principal place of abode for the period with respect to which the return is filed is outside the United States,

(iii) Persons who claim the benefits of section 911 (relating to earned income from sources without the United States), section 922 (relating to special deduction for Western Hemisphere trade corporations), section 931 (relating to income from sources within possessions of the United States), section 933 (relating to income from sources within Puerto Rico), or section 941 (relating to the special deduction for China Trade Act corporations), and

(iv) Nonresident alien persons and foreign corporations.

(f) *Permission to file in district other than required district.*—The Commissioner may permit the filing of any return required to be made under the regulations in this part in any internal revenue district, notwithstanding the provisions of paragraphs (1), (2), and (4) of section 6091(b) and paragraphs (a), (b), (c), (d), and (e) of this section.

(g) *Cross references.*—For provisions relating to the place for filing returns with respect to the taxes on circulation other than of national banks, see § 46.4884–1.

PAR. 10. Section 46.6101–1 is amended to read as follows:

§ 46.6101–1 PERIOD COVERED BY RETURNS OR OTHER DOCUMENTS.

The normal period for which returns are ordinarily required is a calendar quarter. Under certain circumstances, the district director may require returns to be filed monthly or semimonthly. For provisions relating to quarterly returns, see paragraph (a) of § 46.6011(a)–1. For provisions relating to monthly and semimonthly returns, see paragraph (b) of § 46.6011(a)–1.

PAR. 11. Section 46.6151 is amended by revising section 6151(a) and adding a historical note to read as follows:

§ 46.6151 STATUTORY PROVISIONS; TIME AND PLACE FOR PAYING TAX SHOWN ON RETURNS.

SEC. 6151. TIME AND PLACE FOR PAYING TAX SHOWN ON RETURNS.

(a) GENERAL RULE.—Except as otherwise provided in this section, when a return of tax is required under this title or regulations, the person required to make such return shall, without assessment or notice and demand from the Secretary or his delegate, pay such tax to the internal revenue officer with whom the return is filed, and shall pay such tax at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).

* * * * * * *

[Sec. 6151 as amended by sec. 1(b), Act of November 2, 1966 (Pub. Law 89–713, Stat. 1108) [C.B. 1966–2, 617]]

PAR. 12. Section 46.6151–1 is amended to read as follows:

§ 46.6151–1 TIME AND PLACE FOR PAYING TAX SHOWN ON RETURN.

The tax required to be reported on each tax return required under this subpart is due and payable to the internal revenue officer with whom the return is filed, at the time prescribed in § 46.6071(a)–1 for filing such return. For provisions with respect to the time and place for payment of taxes imposed on circulation other than of national banks, see § 46.4884–1. See the applicable sections in Part 301 of this chapter (Regulations on Procedure and Administration), for provisions relating to interest on underpayments, additions to tax, and penalties. For provisions relating to the use of Federal Reserve banks and authorized commercial banks in depositing the taxes, see §§ 46.6302(c)–1 and 46.6302(c)–2.

PAR. 13. Section 46.6302(c) is amended to read as follows:

§ 46.6302(c) STATUTORY PROVISIONS; MODE OR TIME OF COLLECTION.

SEC. 6302. MODE OR TIME OF COLLECTION. * * *

(c) USE OF GOVERNMENT DEPOSITARIES.—The Secretary or his delegate may authorize Federal Reserve banks, and incorporated banks or trust companies which are depositaries or financial agents of the United States, to receive any tax imposed under the internal revenue laws, in such manner, at such times, and under such conditions as he may prescribe; and he shall prescribe the manner, times, and conditions under which the receipt of such tax by such banks and trust companies is to be treated as payment of such tax to the Secretary or his delegate.

PAR. 14. Section 46.6302(c)–1 is amended by revising subdivision (i) of paragraph (a)(1) and by adding a new subdivision (iii) to paragraph (a)(1) to read as follows:

§ 46.6302(c)–1 USE OF GOVERNMENT DEPOSITARIES.

(a) *Requirement*—(1) *In general.*—(i) Except as provided in subdivision (ii) of this subparagraph, if for any calendar month, other than the last month

of a calendar quarter, any person required to file a quarterly excise tax return on Form 720 has a total liability of more than $100 for all excise taxes reportable on such form, the amount of such liability for taxes (to which this part relates) shall be deposited by him with a Federal Reserve bank on or before the last day of the month following such month.

* * * * * * *

(iii) The provisions of this section shall not apply with respect to taxes for the month or the semimonthly period in which the taxpayer receives notice from the district director that returns are required under paragraph (b) of § 46.6011(a)–1, or for any subsequent month or semimonthly period for which such a return is required.

* * * * * * *

(26 CFR Part 48)

REGULATIONS RELATING TO MANUFACTURERS AND RETAILERS EXCISE TAXES

PAR. 15. Section 48.0–4 is amended to read as follows:

§ 48.0–4 EXTENT TO WHICH THE REGULATIONS IN THE PART SUPERSEDE PRIOR REGULATIONS

The regulations in this part, with respect to the subject matter within the scope thereof, supersede the Manufacturers and Retailers Excise Tax Regulations contained in Part 40 of this chapter and, to the extent not superseded by the regulations contained in such Part 40, the following regulations and such regulations as prescribed and made applicable to the Internal Revenue Code of 1954 by Treasury Decision 6091, signed August 16, 1954 (19 F.R. 5167, Aug. 17, 1954) [C.B. 1954–2, 47]:

Taxes on gasoline, lubricating oil and matches—Regulations 44 (1944 Edition, as amended), 26 CFR (1939) Part 314.

Excise taxes on sales by the manufacturer—Regulations 46 (1940 Edition, as amended), 26 CFR (1939) Part 316.

Excise tax on sale of pistols and revolvers—Regulations 47 (Revised October 1928, as amended), 26 CFR (1939) Part 302.

Retailers excise taxes—Regulations 51 (1941 Edition, as amended), 26 CFR (1939) Part 320.

Excise tax on diesel fuel—Regulations 119, 26 CFR (1939) Part 324.

The regulations in this part, with respect to the subject matter within the scope thereof, also supersede the Regulations on Monthly Returns and Payment of Excise Taxes (26 CFR Part 149) and the Regulations on Return and Payment of Certain Excise Taxes (26 CFR (1939) Part 477).

PAR. 16. There are added immediately before § 48.6011 (c) the following new sections:

§ 48.6011(a) STATUTORY PROVISIONS; GENERAL REQUIREMENT OF RETURN, STATEMENT, OR LIST.

SEC. 6011. GENERAL REQUIREMENT OF RETURN, STATEMENT, OR LIST.

(a) GENERAL RULE.—When required by regulations prescribed by the Secretary or his delegate any person made liable for any tax imposed by this title, or for the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary or his delegate. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

[Sec. 6011(a) as originally enacted and in effect Jan. 1, 1959]

§ 48.6011(a)–1 RETURNS.

(a) *In general.*—Liability for tax imposed under chapter 31 or 32 of the Code shall be reported on Form 720. Except as provided in paragraph (b) of this section, a return on Form 720 shall be filed for a period of one calendar quarter. Every person required to make a return on Form 720 for the return period ended December 31, 1958, shall make a return for each subsequent calendar quarter, month, or semimonthly period (whether or not liability was incurred for any tax reportable on the return for such return period) until he has filed a final return in accordance with § 48.6011(a)–2. Every person not required to make a return on Form 720 for the return period ended December 31, 1958, shall make a return for the first calendar quarter thereafter in which he incurs liability for tax im-

posed under chapter 31 or 32, and shall make a return for each subsequent calendar quarter, month, or semimonthly period until he has filed a final return in accordance with § 48.6011(a)–2. Each return required under the regulations in this part, together with any prescribed copies, records, or supporting data, shall be filed in and disposed of in accordance with the forms, instructions, and regulations applicable thereto.

(b) *Monthly and semimonthly returns*—(1) *Requirement.*—If the district director determines that any taxpayer who is required to make deposit of taxes under the provisions of § 48.6302(c)–1 has failed to make deposits of such taxes, such taxpayer shall be required, if so notified in writing by the district director, to file a monthly or semimonthly return on Form 720, except that, if some other form is furnished by the district director for use in lieu of Form 720, the return shall be made on such other form. Every person so notified by the district director shall make a return for the calendar month or semimonthly period (as defined in § 48.6302(c)–1(b)) in which the notice is received and for each calendar month or semimonthly period thereafter until he has filed a final return or is required to make returns on the basis of a different return period pursuant to notification as provided in subparagraph (2) of this paragraph.

(2) *Change of requirement.*—The district director, in his discretion, may notify the taxpayer in writing that he is required to make a quarterly or monthly return, if he has been filing returns for a semimonthly period, or is required to make a quarterly or semimonthly return, if he has been filing monthly returns.

(3) *Return for period change takes effect.*—If a taxpayer who has been filing quarterly returns receives notice to file a monthly or semimonthly return or a taxpayer who has been filing monthly returns receives notice to file a semimonthly return, the first return required pursuant to the notice shall be made for the month or semimonthly period in which the notice is received and all prior months or semimonthly periods which are not includible in a prior period for which the taxpayer is required to file a return. If a taxpayer who has been filing monthly or semimonthly returns receives notice to file a quarterly return, the last month or semimonthly period for which a return shall be made is the last month or semimonthly period of the calendar quarter in which such notice is received. If a taxpayer who has been filing semimonthly returns receives notice to file a monthly return, the last semimonthly period for which a return shall be made is the last semimonthly period of the month in which such notice is received.

§ 48.6011(a)–2 FINAL RETURNS.

(a) *In general.*—Any person who is required to make a return on Form 720 pursuant to § 48.6011(a)–1, and who in any return period ceases operations in respect of which he is required to make a return on such form, shall make his return for that period as a final return. Each return made as a final return shall be marked "Final Return" by the person filing the return. A person who has only temporarily ceased to incur liability for tax required to be reported on Form 720, because of temporary or seasonal suspension of his business or for other reasons, shall not make a final return but shall continue to file returns.

(b) *Statement to accompany final return.*—There shall be executed as a part of each final return a statement showing the address at which the records required by the regulations in this part will be kept, the name of the person keeping such records, and, if the business of a taxpayer has been sold or otherwise transferred to another person, the name and address of such person and the date on which the sale or transfer took place. If no sale or transfer occurred or the taxpayer does not know the name of the person to whom the business was sold or transferred, that fact should be included in the statement.

PAR. 17. There are added immediately after § 48.6011(c)–1 the following new sections:

§ 48.6071(a) STATUTORY PROVISIONS; TIME FOR FILING RETURNS AND OTHER DOCUMENTS.

SEC. 6071. TIME FOR FILING RETURNS AND OTHER DOCUMENTS.

(a) GENERAL RULE.—When not otherwise provided for by this title, the Secretary or his delegate shall by regulations prescribe the time for filing any return, statement, or other document required by this title or by regulations.

[Sec. 6071(a) as originally enacted and in effect Jan. 1, 1959]

§ 48.6071(a)-1 TIME FOR FILING RETURNS.

(a) *Quarterly returns.*—Each return required to be made under paragraph (a) of § 48.6011(a)-1 for a return period of not less than one calendar quarter shall be filed on or before the last day of the first calendar month following the period for which it is made. However, if, and only if, the return is accompanied by depositary receipts (Form 537, Depositary Receipt for Federal Excise Taxes), showing timely deposits, in full payment of the taxes due for the entire calendar quarter, the return may be filed on or before the 10th day of the second calendar month following the period for which it is made. For the purpose of the preceding sentence, a deposit which is not required to be made in respect of such return period may be made on or before the last day of the first calendar month following the close of such period, and the timeliness of a deposit will be determined by the earliest date stamped on the validated Form 537 by an authorized commercial bank or by a Federal Reserve bank.

(b) *Monthly and semimonthly returns*—(1) *Monthly returns.*—Each return required to be made for a monthly period under paragraph (b) of § 48.6011(a)-1 shall be filed not later than the 15th day of the month following the period for which it is made.

(2) *Semimonthly returns.*—Each return required to be made for a semimonthly period under paragraph (b) of § 48.6011(a)-1 shall be filed not later than the 10th day of the semimonthly period following the period for which it is made.

(c) *Last day for filing.*—For provisions relating to the time for filing a return when the prescribed due date falls on Saturday, Sunday, or a legal holiday, see § 301.7503-1 of this chapter (Regulations on Procedure and Administration).

(d) *Late filing.*—For additions to the tax in case of failure to file a return within the prescribed time, see § 301.6651-1 of this chapter (Regulations on Procedure and Administration).

§ 48.6091 STATUTORY PROVISIONS; PLACE FOR FILING RETURNS.

SEC. 6091. PLACE FOR FILING RETURNS OR OTHER DOCUMENTS.

(a) GENERAL RULE.—When not otherwise provided for by this title, the Secretary or his delegate shall by regulations prescribe the place for the filing of any return, declaration, statement, or other document, or copies thereof, required by this title or by regulations.

(b) TAX RETURNS.—In the case of returns of tax required under authority of part II of this subchapter—

(1) PERSONS OTHER THAN CORPORATIONS—

(A) *General rule.*—Except as provided in subparagraph (B), a return (other than a corporation return) shall be made to the Secretary or his delegate—

(i) In the internal revenue district in which is located the legal residence or principal place of business of the person making the return, or

(ii) At a service center serving the internal revenue district referred to in clause (i),

as the Secretary or his delegate may by regulations designate.

(B) *Exception.*—Returns of—

(i) Persons who have no legal residence or principal place of business in any internal revenue district,

(ii) Citizens of the United States whose principal place of abode for the period with respect to which the return is filed is outside the United States,

(iii) Persons who claim the benefits of section 911 (relating to earned income from sources without the United States), section 931 (relating to income from sources within possessions of the United States), or section 933 (relating to income from sources within Puerto Rico), and

(iv) Nonresident alien persons,

shall be made at such place as the Secretary or his delegate may by regulations designate.

(2) CORPORATIONS—

(A) *General rule.*—Except as provided in subparagraph (B), a return of a corporation shall be made to the Secretary or his delegate—

(i) In the internal revenue district in which is located the principal place of business or principal office or agency of the corporation, or

(ii) At a service center serving the internal revenue district referred to in clause (i),

as the Secretary or his delegate may by regulations designate.

(B) *Exception.*—Returns of—

(i) Corporations which have no principal place of business or principal office or agency in any internal revenue district,

(ii) Corporations which claim the benefits of section 922 (relating to special deduction for Western Hemisphere trade corporations), section 931 (relating to income from sources within possessions of the United States), or section 941 (relating to the special deduction for China Trade Act corporations), and

(iii) Foreign corporations,

shall be made at such place as the Secretary or his delegate may by regulations designate.

* * * * * * *

(4) HAND-CARRIED RETURNS.—Notwithstanding paragraph (1) or (2), a return to which paragraph (1)(A) or (2)(A) would apply, but for this paragraph, which is made to the Secretary or his delegate by hand carrying shall, under regulations prescribed by the Secretary or his delegate, be made in the internal revenue district referred to in paragraph (1)(A)(i) or (2)(A)(i), as the case may be.

(5) EXCEPTIONAL CASES.—Notwithstanding paragraph (1), (2), * * * or (4) of this subsection, the Secretary or his delegate may permit a return to be filed in any internal revenue district * * *.

[Sec. 6091 as amended by sec. 1(a), Act of Nov. 2, 1966 (Pub. Law 89-713, 80 Stat. 1107) [C.B. 1966-2, 617]]

§ 48.6091-1 PLACE FOR FILING RETURNS.

(a) *Persons other than corporations.*—The return of a person other than a corporation shall be filed with the district director for the internal revenue district in which is located the principal place of business or legal residence of such person. If such person has no principal place of business or legal residence in any internal revenue district, the return shall be filed with the District Director at Baltimore, Maryland 21202, except as provided in paragraph (c) of this section.

(b) *Corporations.*—The return of a corporation shall be filed with the district director for the district in which is located the principal place of business or principal office or agency of the corporation, except as provided in paragraph (c) of this section.

(c) *Returns of taxpayers outside the United States.*—The return of a person (other than a corporation) outside the United States having no legal residence or principal place of business in any internal revenue district, or the return of a corporation having no principal place of business or principal office or agency in any internal revenue district, shall be filed with the Director of International Operations, Internal Revenue Service, Washington, D.C. 20225, unless the principal place of business or legal residence of such person, or the principal place of business or principal office or agency of such corporation, is located in the Virgin Islands or Puerto Rico, in which case the return shall be filed with the Director of International Operations, United States Internal Revenue Service, Hato Rey, Puerto Rico 00917.

(d) *Returns filed with service centers.*—Notwithstanding paragraphs (a), (b), and (c) of this section, whenever instructions applicable to such returns provide that the returns shall be filed with a service center, such returns shall be so filed in accordance with such instructions.

(e) *Hand-carried returns.*—Except as provided in subparagraph (3) of this paragraph, and notwithstanding paragraphs (1) and (2) of section 6091(b) and paragraph (d) of this section—

(1) *Persons other than corporations.*—Returns of persons other than corporations which are filed by hand carrying shall be filed with the district director as provided in paragraph (a) of this section.

(2) *Corporations.*—Returns of corporations which are filed by hand carrying shall be filed with the district director as provided in paragraph (b) of this section.

(3) *Exceptions.*—This paragraph shall not apply to returns of—

(i) Persons who have no legal residence, no principal place of business, nor principal office or agency in any internal revenue district.

(ii) Citizens of the United States whose principal place of abode for the period with respect to which the return is filed is outside the United States,

(iii) Persons who claim the benefits of section 911 (relating to earned income from sources without the United States), section 922 (relating to special deduction for Western Hemisphere trade corporations), section 931 (relating to income from sources within possessions of the United States), section 933 (relating to income from sources within Puerto Rico), or section 941 (relating to the special deduction for China Trade Act corporations), and

(iv) Nonresident alien persons and foreign corporations.

(f) *Permission to file in district other than required district.*—The Commissioner may permit the filing of any return required to be made under the regulations in this part in any internal revenue district, notwithstanding the provisions of paragraphs (1), (2), and (4) of section 6091(b) and paragraphs (a), (b), (c), (d), and (e) of this section.

PAR. 18. There are added immediately after § 48.6109–1 the following new sections:

§ 48.6151 STATUTORY PROVISIONS; TIME AND PLACE FOR PAYING TAX SHOWN ON RETURNS.

SEC. 6151. TIME AND PLACE FOR PAYING TAX SHOWN ON RETURNS.

(a) GENERAL RULE.—Except as otherwise provided in this section, when a return of tax is required under this title or regulations, the person required to make such return shall, without assessment or notice and demand from the Secretary or his delegate, pay such tax to the internal revenue officer with whom the return is filed, and shall pay such tax at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).

(b) EXCEPTIONS. * * *

(2) USE OF GOVERNMENT DEPOSITARIES.—For authority of the Secretary or his delegate to require payments to Government depositaries, see section 6302(c).

(c) DATE FIXED FOR PAYMENT OF TAX.—In any case in which a tax is required to be paid on or before a certain date, or within a certain period, any reference in this title to the date fixed for payment of such tax shall be deemed a reference to the last day fixed for such payment (determined without regard to any extension of time for paying the tax).

[Sec. 6151 as amended by sec. 1(b), Act of Nov. 2, 1966 (Pub. Law 89–713, 80 Stat. 1108) [C.B. 1966–2, 617]]

§ 48.6151–1 TIME AND PLACE FOR PAYING TAX SHOWN ON RETURN.

The tax required to be reported on each tax return required under this subpart is due and payable to the internal revenue officer with whom the return is filed at the time prescribed in § 48.6071(a)–1 for filing such return. See the applicable sections in Part 301 of this chapter (Regulations on Procedure and Administration), for provisions relating to interest on underpayments, additions to tax, and penalities. For provisions relating to the use of Federal Reserve banks and authorized commercial banks in depositing the taxes, see § 48.6302(c)–1.

PAR. 19. Section 48.6302(c)–1 is amended by adding a new subdivision (iii) to paragraph (a)(1) to read as follows:

§ 48.6302(c)–1 USE OF GOVERNMENT DEPOSITARIES.

(a) *Requirement*—(1) *In general.* * * *

(iii) The provisions of this section shall not apply with respect to taxes for the month or the semimonthly period in which the taxpayer receives notice from the district director that returns are required under paragraph (b) of § 48.6011

(a)–1, or for any subsequent month or semimonthly period for which such a return is required.

* * * * * * *

REGULATIONS RELATING TO FACILITIES AND SERVICES EXCISE TAXES

(26 CFR Part 49)

PAR. 20. Section 49.0–4 is amended to read as follows:

§ 49.0–4 EXTENT TO WHICH THE REGULATIONS IN THIS PART SUPERSEDES PRIOR REGULATIONS.

The regulations in this part, with respect to the subject matter within the scope thereof, supersede the Facilities and Services Excise Tax Regulations contained in Part 42 of this chapter and, to the extent not superseded by the regulations contained in such Part 42, the following regulations and such regulations as prescribed and made applicable to the Internal Revenue Code of 1954 by Treasury Decision 6091, signed August 16, 1954 (19 F.R. 5167, August 17, 1954) [C.B. 1954–2, 47]:

Safe deposit boxes, transportation of oil by pipeline, telephone, telegraph, radio and cable messages and services, and transportation of persons.	Regulations 42 (1942 edition, as amended), 26 CFR (1939) Part 130.
Admissions, dues, and initiation fees.	Regulations 43 (1941) edition, as amended), 26 CFR (1939) Part 101.

The regulations in this part, with respect to the subject matter within the scope thereof, also supersede the Regulations on Monthly Returns and Payment of Excise Taxes (26 CFR Part 149), the Regulations on Return and Payment of Certain Excise Taxes (26 CFR (1939) Part 477), and Treasury Decision 6131, signed April 29, 1955 (20 F.R. 3024, May 5, 1955) [C.B. 1955–1, 721].

PAR. 21. There are added immediately before § 49.6071(a) the following new sections:

§ 49.6011(a) STATUTORY PROVISIONS; GENERAL REQUIREMENT OF RETURN, STATEMENT, OR LIST.

SEC. 6011. GENERAL REQUIREMENT OF RETURN, STATEMENT, OR LIST.

(a) GENERAL RULE.—When required by regulations prescribed by the Secretary or his delegate any person made liable for any tax imposed by this title, or for the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary or his delegate. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

[Sec. 6011(a) as originally enacted and in effect Jan. 1, 1959]

§ 49.6011(a)–1 RETURNS.

(a) *In general.*—Liability for tax imposed under chapter 33 of the Code shall be reported on Form 720. Except as provided in paragraph (b) of this section, a return on Form 720 shall be filed for a period of one calendar quarter. Every person required to make a return on Form 720 for the return period ended December 31, 1958, shall make a return for each subsequent calendar quarter, month, or semimonthly period (whether or not liability was incurred for any tax reportable on the return for such return period) until he has filed a final return in accordance with § 49.6011(a)–2. Every person not required to make a return on Form 720 for the return period ended December 31, 1958, shall make a return for the first calendar quarter thereafter in which he incurs liability for tax imposed under chapter 33, and shall make a return for each subsequent calendar quarter, month, or semimonthly period until he has filed a final return in accordance with § 49.6011(a)–2. Each return required under the regulations in this part, together with any prescribed copies, records, or supporting data, shall be filled in and disposed of in accordance with the forms, instructions, and regulations applicable thereto.

(b) *Monthly and semimonthly returns*—(1) *Requirement.*—If the district director determines that any person who is required to make deposit of taxes under

the provisions of § 49.6302(c)–1 has failed to make deposits of such taxes, such person shall be required, if so notified in writing by the district director, to file a monthly or semimonthly return on Form 720, except that, if some other form is furnished by the district director for use in lieu of Form 720, the return shall be made on such other form. Every person so notified by the district director shall make a return for the calendar month or semimonthly period (as defined in § 49.6302(c)–1(b)) in which the notice is received and for each calendar month or semimonthly period thereafter until he has filed a final return or is required to make returns on the basis of a different return period pursuant to notification as provided in subparagraph (2) of this paragraph.

(2) *Change of requirement.*—The district director, in his discretion, may notify the person in writing that he is required to make a quarterly or monthly return, if he has been filing returns for a semimonthly period, or is required to make a quarterly or semimonthly return, if he has been filing monthly returns.

(3) *Return for period change takes effect.*—If a person who has been filing quarterly returns receives notice to file a monthly or semimonthly return or a person who has been filing monthly returns receives notice to file a semimonthly return, the first return required pursuant to the notice shall be made for the month or semimonthly period in which the notice is received and all prior months or semimonthly periods which are not includible in a prior period for which the person is required to file a return. If a person who has been filing monthly or semimonthly returns receives notice to file a quarterly return, the last month or semimonthly period for which a return shall be made is the last month or semimonthly period of the calendar quarter in which such notice is received. If a person who has been filing semimonthly returns receives notice to file a monthly return, the last semimonthly period for which a return shall be made is the last semimonthly period of the month in which such notice is received.

§ 49.6011(a)–2 FINAL RETURNS.

(a) *In general.*—Any person who is required to make a return on Form 720 pursuant to § 49.6011(a)–1, and who in any return period ceases operations in respect of which he is required to make a return on such form, shall make his return for that period as a final return. Each return made as a final return shall be marked "Final Return" by the person filing the return. A person who has only temporarily ceased to incur liability for tax required to be reported on Form 720, because of temporary or seasonal suspension of his business or for other reasons, shall not make a final return but shall continue to file returns.

(b) *Statement to accompany final return.*—There shall be executed as a part of each final return a statement showing the address at which the records required by the regulations in this part will be kept, the name of the person keeping such records, and, if the business of a person required to make a return on Form 720 has been sold or otherwise transferred to another person, the name and address of such other person and the date on which the sale or transfer took place. If no sale or transfer occurred or the person required to make a return on Form 720 does not know the name of the person to whom the business was sold or transferred, that fact should be included in the statement.

PAR. 22. Section 49.6071(a)–1 is amended by revising the heading and paragraph (b), and by adding immediately after paragraph (b), paragraphs (c), (d), and (e). The revised heading, revised paragraph and added paragraphs read as follows:

§ 49.6071(a)–1 TIME FOR FILING RETURNS.

* * * * * * *

(b) *Monthly and semimonthly returns*—(1) *Monthly returns.*—Each return required to be made with respect to the excise taxes (to which this part relates) for a monthly period ended after March 31, 1967, under paragraph (b) of § 49.6011(a)–1 shall be filed on or before the 15th day of the calendar month following the month for which it is made, except that in the case of a return filed by a person who computes amounts of tax required to be paid over on the basis of amounts billed (in the case of the tax imposed by section 4251) or tickets sold (in the case of the tax imposed by section 4261), the return shall be filed on or before the 15th day of the second calendar month following the month for which it is made. For rules relating to the time for filing monthly returns for return periods ended before April 1, 1966, see paragraph (a)(3) of § 149.1–2 (Regulations relating to Monthly Returns and Payment of Excise Taxes).

(2) *Semimonthly returns.*—Each return required to be made with respect to the excise taxes (to which this part relates) for a semimonthly period under paragraph (b) of § 49.6011(a–1) shall be filed on or before the 2d day of the semimonthly period following the semimonthly period for which it is made, except that in the case of a return filed by a person who computes amounts of tax required to be paid over on the basis of amounts billed (in the case of the tax imposed by section 4251) or tickets sold (in the case of the tax imposed by section 4261), the return shall be filed on or before the 2d day of the third semimonthly period following the period for which it is made.

(c) *Termination of special due date.*—No special due date for filing a return obtained under the Internal Revenue Code of 1939 (made applicable to the 1954 Code by Treasury Decision 6131, signed April 29, 1955 (20 F.R. 3024, May 5, 1955) [C.B. 1955–1, 721]) shall apply in the case of the return for any calendar quarter ended after December 31, 1966, or the return for any monthly or semimonthly period ended after March 31, 1967.

(d) *Last day for filing.*—For provisions relating to the time for filing a return when the prescribed due date falls on Saturday, Sunday, or a legal holiday, see § 301.7503–1 of this chapter (Regulations on Procedure and Administration).

(e) *Late filing.*—For additions to the tax in case of failure to file a return within the prescribed time, see § 301.6651–1 of this chapter (Regulations on Procedure and Administration).

PAR. 23. There are added immediately after § 49.6071(a)–1, the following new sections:

§ 49.6091 STATUTORY PROVISIONS; PLACE FOR FILING RETURNS.

SEC. 6091. PLACE FOR FILING RETURNS OR OTHER DOCUMENTS.

(a) GENERAL RULE.—When not otherwise provided for by this title, the Secretary or his delegate shall by regulations prescribe the place for the filing of any return, declaration, statement, or other document, or copies thereof, required by this title or by regulations.

(b) TAX RETURNS.—In the case of returns of tax required under authority of part II of this subchapter—

(1) PERSONS OTHER THAN CORPORATIONS—

(A) *General rule.*—Except as provided in subparagraph (B), a return (other than a corporation return) shall be made to the Secretary or his delegate—

(i) In the internal revenue district in which is located the legal residence or principal place of business of the person making the return, or

(ii) At a service center serving the internal revenue district referred to in clause (i),

as the Secretary or his delegate may by regulations designate.

(B) *Exception.*—Returns of—

(i) Persons who have no legal residence or principal place of business in any internal revenue district.

(ii) Citizens of the United States whose principal place of abode for the period with respect to which the return is filed is outside the United States,

(iii) Persons who claim the benefits of section 911 (relating to earned income from sources without the United States), section 931 (relating to income from sources within possessions of the United States), or section 933 (relating to income from sources within Puerto Rico), and

(iv) Nonresident alien persons,

shall be made at such place as the Secretary or his delegate may by regulations designate.

(2) CORPORATIONS—

(A) *General rule.*—Except as provided in subparagraph (B), a return of a corporation shall be made to the Secretary or his delegate—

(i) In the internal revenue district in which is located the principal place of business or principal office or agency of the corporation, or

(ii) At a service center serving the internal revenue district referred to in clause (i),

as the Secretary or his delegate may by regulations designate.

(B) *Exception.*—Returns of—

(i) Corporations which have no principal place of business or principal office or agency in any internal revenue district,

(ii) Corporations which claim the benefits of section 922 (relating to special deduction for Western Hemisphere trade corporations), section 931 (relating to income from sources within possessions of the United States), or section 941 (relating to the special deduction for China Trade Act corporations), and

(iii) Foreign corporations,

shall be made at such place as the Secretary or his delegate may by regulations designate.

* * * * * * *

(4) HAND-CARRIED RETURNS.—Notwithstanding paragraph (1) or (2), a return to which paragraph (1)(A) or (2)(A) would apply, but for this paragraph, which is made to the Secretary or his delegate by hand carrying shall, under regulations prescribed by the Secretary or his delegate, be made in the internal revenue district referred to in paragraph (1)(A)(i) or (2)(A)(i), as the case may be.

(5) EXCEPTIONAL CASES.—Notwithstanding paragraph (1), (2), * * * or (4) of this subsection, the Secretary or his delegate may permit a return to be filed in any internal revenue district * * *.

[Sec. 6091 as amended by sec. 1(a), Act of Nov. 2, 1966 (Pub. Law 89-713, 80 Stat. 1107) [C.B. 1966-2,617]]

§ 49.6091-1 PLACE FOR FILING RETURNS.

(a) *Persons other than corporations.*—The return of a person other than a corporation shall be filed with the district director for the internal revenue district in which is located the principal place of business or legal residence of such person. If such person has no principal place of business or legal residence in any internal revenue district, the return shall be filed with the District Director at Baltimore, Maryland 21202, except as provided in paragraph (c) of this section.

(b) *Corporations.*—The return of a corporation shall be filed with the district director for the district in which is located the principal place of business or principal office or agency of the corporation, except as provided in paragraph (c) of this section.

(c) *Returns of persons outside the United States.*—The return of a person (other than a corporation) outside the United States having no legal residence or principal place of business in any internal revenue district, or the return of a corporation having no principal place of business or principal office or agency in any internal revenue district, shall be filed with the Director of International Operations, Internal Revenue Service, Washington, D.C. 20225, unless the principal place of business or legal residence of such person, or the principal place of business or principal office or agency of such corporation, is located in the Virgin Islands or Puerto Rico, in which case the return shall be filed with the Director of International Operations, United States Internal Revenue Service, Hato Rey, Puerto Rico 00917.

(d) *Returns filed with service centers.*—Notwithstanding paragraphs (a), (b), and (c) of this section, whenever instructions applicable to such returns provide that the returns shall be filed with a service center, such returns shall be so filed in accordance with such instructions.

(e) *Hand-carried returns.*—Except as provided in subparagraph (3) of this paragraph, and notwithstanding paragraphs (1) and (2) of section 6091(b) and paragraph (b) of this section—

(1) *Persons other than corporations.*—Returns of persons other than corporations which are filed by hand carrying shall be filed with the district director as provided in paragraph (a) of this section.

(2) *Corporations.*—Returns of corporations which are filed by hand carrying shall be filed with the district director as provided in paragraph (b) of this section.

(3) *Exceptions.*—This paragraph shall not apply to returns of—

(i) Persons who have no legal residence, no principal place of business, nor principal office or agency in any internal revenue district,

(ii) Citizens of the United States whose principal place of abode for the period with respect to which the return is filed is outside the United States,

(iii) Persons who claim the benefits of section 911 (relating to earned income from sources without the United States), section 922 (relating to special deduction for Western Hemisphere trade corporations), section 931 (relating to income from sources within possessions of the United States), section 933 (relating to income from sources within Puerto Rico), or section 941 (relating to the special deduction for China Trade Act corporations), and

(iv) Nonresident alien persons and foreign corporations.

(f) *Permission to file in district other than required district.*—The Commissioner may permit the filing of any return required to be made under the regulations in this part in any internal revenue district, notwithstanding the provisions of paragraphs (1), (2), and (4) of section 6091(b) and paragraphs (a), (b), (c), (d), and (e) of this section.

PAR. 24. There are added immediately after § 49.6109–1 the following new sections:

§ 49.6151 STATUTORY PROVISIONS; TIME AND PLACE FOR PAYING TAX SHOWN ON RETURNS.

SEC. 6151. TIME AND PLACE FOR PAYING TAX SHOWN ON RETURNS.

(a) GENERAL RULE.—Except as otherwise provided in this section, when a return of tax is required under this title or regulations, the person required to make such return shall, without assessment or notice and demand from the Secretary or his delegate, pay such tax to the internal revenue officer with whom the return is filed, and shall pay such tax at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).

(b) EXCEPTIONS. * * *

(2) USE OF GOVERNMENT DEPOSITARIES.—For authority of the Secretary or his delegate to require payments to Government depositaries, see section 6302(c).

(c) DATE FIXED FOR PAYMENT OF TAX.—In any case in which a tax is required to be paid on or before a certain date, or within a certain period, any reference in this title to the date fixed for payment of such tax shall be deemed a reference to the last day fixed for such payment (determined without regard to any extension of time for paying the tax).

[Sec. 6151 as amended by sec. 1(b), Act of Nov. 2, 1966 (Pub. Law 89–713, 80 Stat. 1108) [C.B. 1966–2, 617]]

§ 49.6151–1. TIME AND PLACE FOR PAYING TAX SHOWN ON RETURN.

(a) *In general.*—The tax required to be reported on each tax return required under this subpart is due and payable to the internal revenue officer with whom the return is filed at the time prescribed in § 49.6071(a)–1 for filing such return. See the applicable sections in Part 301 of this chapter (Regulations on Procedure and Administration), for provisions relating to interest on underpayments, additions to tax, and penalties. For provisions relating to the use of Federal Reserve banks and authorized commercial banks in depositing the taxes, see § 49.6302(c)–1.

(b) *Termination of special due date.*—No special due date for paying the tax obtained under the Internal Revenue Code of 1939 (made applicable to the 1954 Code by Treasury Decision 6131, signed April 29, 1955 (20 F.R. 3024, May 5, 1955) [C.B. 1955–1, 721]) shall apply in the case of the tax for any calendar quarter ended after December 31, 1966, or the tax for any monthly or semimonthly period ended after March 31, 1967.

PAR. 25. Section 49.6302(c)–1 is amended by revising paragraphs (a)(1) (i) and (iii) and (d) and by adding a new subdivision (iv)

to paragraph (a)(1). These revised and added provisions read as follows:

§ 49.6302(c)-1 USE OF GOVERNMENT DEPOSITARIES.

(a) *Requirement*—(1) *In general.*—(i) Except as provided in subdivision (ii) of this subparagraph, if for any calendar month, other than the last month of a calendar quarter, any person required to file a quarterly excise tax return on Form 720 has a total liability of more than $100 for all excise taxes collected (see subdivision (iii) of this subparagraph for amounts which are considered as collected) during such month and reportable on such form, the amount of such total liability shall be deposited by him with a Federal Reserve bank on or before the last day of the month following such month or, if such month is March 1967 or a prior month, in the case of a person who has obtained a special deposit date under the Internal Revenue Code of 1939 (made applicable to the 1954 Code by Treasury Decision 6131, signed April 29, 1955 (20 F.R. 3024, May 5, 1955) [C.B. 1955-1, 721]), on or before such special deposit date. See paragraph (d) of this section for the termination of special deposit dates.

* * * * * * *

(iii) For purposes of applying this subparagraph to a person who computes amounts of tax required to be paid over on the basis of amounts billed (in the case of the tax imposed by section 4251) or tickets sold (in the case of the tax imposed by section 4261), the tax so computed for a monthly period ended after March 31, 1967, shall be considered as collected during the succeeding monthly period and the tax so computed for a semimonthly period shall be considered as collected during the second succeeding semimonthly period. A person must notify the Commissioner before changing from one method of computing the tax to another, so that proper adjustments may be made in order to properly reflect the person's excise tax liability.

(iv) The provisions of this section shall not apply with respect to taxes for the month or the semimonthly period in which the person receives notice from the district director that returns are required under paragraph (b) of § 49.6011(a)-1, or for any subsequent month or semimonthly period for which such a return is required.

* * * * * * *

(d) *Termination of special deposit date.*—No special deposit date, obtained under the Internal Revenue Code of 1939 (made applicable to the 1954 Code by Treasury Decision 6131, signed April 29, 1955 (20 F.R. 3024, May 5, 1955) [C.B. 1955-1, 721]) shall apply in the case of a deposit required by paragraph (a)(1)(i) of this section for any month after March 31, 1967, or in the case of a deposit required by paragraph (a)(1)(ii) for any semimonthly period after January 31, 1967.

(This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

SHELDON S. COHEN,
Commissioner of Internal Revenue.

Approved March 22, 1967.

STANLEY S. SURREY,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on March 28, 1967; 8:45 a.m., and published in the issue of the Federal Register for March 29, 1967, 32 F.R. 5260)

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26 CFR 46.6091: Statutory provisions; place for filing returns.

Amendments to the regulations in 26 CFR Parts 46, 48, and 49, miscellaneous excise taxes payable by return, manufacturers and retailers excise taxes, and facilities and services excise taxes, respectively, relating to place for filing returns. See T.D. 6915, page 322.

SUBCHAPTER B.—MISCELLANEOUS PROVISIONS

SECTION 6103.—PUBLICITY OF RETURNS AND DISCLOSURE OF INFORMATION AS TO PERSONS FILING INCOME TAX RETURNS

26 CFR 301.6103(a)–101: Inspection of returns by committees of Congress other than those enumerated in section 6103(d). (Also Part II, Section 55; 458.324.) E.O. 11332

Inspection of income, excess-profits, estate, and gift tax returns by the Committee on Government Operations, House of Representatives.

By virtue of the authority vested in me by section 55(a) of the Internal Revenue Code of 1939, as amended (53 Stat. 29, 54 Stat. 1008; 26 U.S.C. (1952 Ed.) 55(a)), and by section 6103(a) of the Internal Revenue Code of 1954, as amended (68A Stat. 753; 26 U.S.C. 6103(a)), it is hereby ordered that any income, excess-profits, estate, or gift tax return for the years 1947 to 1968, inclusive, shall, during the Ninetieth Congress, be open to inspection by the Committee on Government Operations, House of Representatives, or any duly authorized subcommittee thereof, in connection with its studies of the operation of Government activities at all levels with a view to determining the economy and efficiency of the Government. Such inspection shall be in accordance and upon compliance with the rules and regulations prescribed by the Secretary of the Treasury in Treasury Decisions 6132 [C.B. 1955–1, 142] and 6133 [C.B. 1955–1, 335], relating to the inspection of returns by committees of the Congress, approved by the President on May 3, 1955.

This order shall be effective upon its filing for publication in the Federal Register.

LYNDON B. JOHNSON

THE WHITE HOUSE,
March 7, 1967.

(Filed by the Office of the Federal Register on March 8, 1967, 10:25 a.m., and published in the issue of the Federal Register for March 9, 1967, 32 F.R. 3877)

(Also Part II, Section 55; 458.324.) E.O. 11337

Inspection of income, excess-profits, estate, and gift tax returns by the Senate Committee on Government Operations.

By virtue of the authority vested in me by section 55(a) of the Internal Revenue Code of 1939, as amended (53 Stat. 29, 54 Stat. 1008; 26 U.S.C. (1952 Ed.) 55(a), and by section 6103(a) of the Internal Revenue Code of 1954 (68A Stat. 753; 26 U.S.C. 6103(a)), it is hereby ordered that any income, excess-profits, estate, or gift tax return for the years 1948 to 1966, inclusive, shall, during the Ninetieth Congress, be open to inspection by the Senate Committee on Government Operations or any duly authorized subcommittee thereof, in connection with its studies of the operation of Government activities at all levels

with a view to determining the economy and efficiency of the Government. Such inspection shall be in accordance and upon compliance with the rules and regulations prescribed by the Secretary of the Treasury in Treasury Decisions 6132 [C.B. 1955–1, 142] and 6133, [C.B. 1955–1, 335] relating to the inspection of returns by committees of the Congress, approved by the President on May 3, 1955.

This order shall be effective upon its filing for publication in the Federal Register.

LYNDON B. JOHNSON

THE WHITE HOUSE,
March 25, 1967.

(Filed by the Office of the Federal Register on Mar. 27, 1967, 4:49 p.m., and published in the issue of the Federal Register for Mar. 29, 1967, 32 F.R. 5245)

CHAPTER 62.—TIME AND PLACE FOR PAYING TAX

SUBCHAPTER A.—PLACE AND DUE DATE FOR PAYMENT OF TAX

SECTION 6151.—TIME AND PLACE FOR PAYING TAX SHOWN ON RETURNS

26 CFR 46.6151: Statutory provisions; time and place for paying tax shown on returns.

Amendments to the regulations in 26 CFR Parts 46, 48, and 49, miscellaneous excise taxes payable by return, manufacturers and retailers excise taxes, and facilities and services excise taxes, respectively, relating to payment of tax to internal revenue officers. See T.D. 6915, page 322.

SUBCHAPTER B.—EXTENSIONS OF TIME FOR PAYMENT

SECTION 6166.—EXTENSION OF TIME FOR PAYMENT OF ESTATE TAX WHERE ESTATE CONSISTS LARGELY OF INTEREST IN CLOSELY HELD BUSINESS

26 CFR 20.6166–1: Extension of time for payment of estate tax where estate consists largely of interest in closely held business. (Also Section 6601; 301.6601–1.) Rev. Rul. 67–161

Where a timely election was made under section 6166(a) of the Internal Revenue Code of 1954 to pay the tax shown on an estate tax return in installments, and the total amount of such tax is paid prior to assessment of a deficiency, the deficiency may be prorated to installments and paid in accordance with the provisions of section 6166(f) of the Code.

Furthermore, pursuant to section 6166(g) of the Code, the four percent rate of interest provided in section 6601(b) is applicable to the entire amount of the deficiency so prorated to installments.

Advice has been requested whether an estate tax deficiency may be paid in installments, as provided in section 6166(f) of the Internal Revenue Code of 1954, in a case where a timely election was made under section 6166(a) to pay the tax shown on the estate tax return in installments and the total amount of such tax was paid before the deficiency was assessed, and whether the four percent rate of interest provided in section 6601(b) of the Code is applicable to the deficiency.

A timely election was made under section 6166(a) of the Code to pay the estate tax in ten installments. Section 6166(e) of the Code provides that the first installment shall be paid on or before the date prescribed by section 6151(a) for payment of the tax, and each succeeding installment shall be paid on or before the date which is one year after the date prescribed for payment by section 6166(e) of the Code for payment of the preceding installment. After paying the first installment when the estate tax return was filed, the executor, instead of paying the balance of tax due on the return in annual installments in accordance with the election, paid it in full before the second installment was due and well before the time a deficiency was assessed.

Subsection (f) of section 6166 of the Code provides that if an election is made under subsection (a) of such section to pay any part of the estate tax in installments and a deficiency has been assessed, the deficiency shall, subject to the limitation provided by subsection (b), be prorated to such installments. The deficiency is prorated to installments due prior to the date the deficiency is assessed, as well as to installments not yet due.

Section 20.6166–1(e)(3) of the Estate Tax Regulations provides that where the estate tax return shows no tax due, an election may be made, contingent upon the values as finally determined meeting the percentage requirements set forth in section 6166(a) of the Code, to pay in installments any portion of the estate tax, including a deficiency, which may be unpaid at the time of such final determination and which does not exceed the limitation provided in section 6166(b) of the Code. Since the regulations provide that a timely installment election made where there is no tax due on an estate tax return is valid as to a subsequently determined deficiency, it follows that if a timely election is made where there is tax due on the return, the election is valid with respect to a later determined deficiency even though the tax liability shown on the return has been paid in full.

Subsection (b) of section 6601 of the Code provides that the four percent rate of interest applies in lieu of the six percent rate provided in subsection (a) if the time for payment of an amount of estate tax is extended pursuant to section 6166 of the Code.

Subsection (g) of section 6166 of the Code provides that in applying section 6601(b) in the case of a deficiency, the *entire* amount which is prorated to installments under section 6166 shall be treated as an amount of tax the payment of which is extended under this section. There is no restriction which makes the four percent interest rate applicable only to a portion of such deficiency. Therefore, it applies to the portion of the deficiency prorated to installments the dates for payment of which have already arrived as well as to the portion prorated to installments which are not yet due.

Accordingly, although the total tax shown on an estate tax return was paid prior to the assessment of a deficiency, the deficiency may be

prorated to installments and paid in accordance with subsection (f) of section 6166 of the Code if a timely election was made under subsection (a) of such section. Furthermore, pursuant to subsection (g) of section 6166, the four percent rate of interest provided in section 6601(b) of the Code is applicable to the entire amount of the deficiency so prorated to installments.

CHAPTER 64.—COLLECTION

SUBCHAPTER A.—GENERAL PROVISIONS

SECTION 6302.—MODE OR TIME OF COLLECTION

26 CFR 1.6302–1: Use of Government depositaries in connection with corporation income and estimated income taxes. (Also Section 6312; 301.6312–1.)

T.D. 6914[1]

TITLE 26.—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 1.—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953; SUBCHAPTER F, PART 301.—PROCEDURE AND ADMINISTRATION

Deposit of corporation income and estimated income tax with Government depositaries

DEPARTMENT OF THE TREASURY,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D.C. 20224

To Officers and Employees of the Internal Revenue Service and Others Concerned:

On January 11, 1967, notice of proposed rulemaking was published in the Federal Register (32 F.R. 279) with respect to the amendment of the Income Tax Regulations (26 CFR Part 1) to provide rules for the deposit of corporation income and estimated income tax with Government depositaries. After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the following amendments of the regulations are adopted:

In order to provide rules for the deposit of corporation income and estimated income tax with Government depositaries, the Income Tax Regulations (26 CFR Part 1) are amended as follows:

PARAGRAPH 1. Paragraph (a)(2) of § 1.6081–3 is amended to read as follows:

§ 1.6081–3 AUTOMATIC EXTENSION OF TIME FOR FILING CORPORATION INCOME TAX RETURNS.—(a) IN GENERAL. * * *

[1] The publication of this Treasury Decision in 32 F.R. 3819, dated Mar. 8, 1967, contains (1) instructions for modifying the notice of proposed rulemaking published in 32 F.R. 279, dated Jan. 11, 1967, and (2) the full context of the regulations with such modifications. As here published, the Treasury Decision reflects the full context of the regulations, with modifications. The individual instructions have been omitted.

(2) The original of the application must be filed on or before the date prescribed for the filing of the return of the corporation with the internal revenue officer with whom the corporation is required to file its income tax return. The corporation shall make a remittance of an estimated amount of tax which shall not be less than would be required as the first installment under section 6152 (a) (1) should the corporation elect to pay the tax in installments.

* * * * * * *

PAR. 2. Section 1.6151–1 is amended by adding a new paragraph (d) at the end thereof to read as follows:

§ 1.6151–1 TIME AND PLACE FOR PAYING TAX SHOWN ON RETURNS.

* * * * * * *

(d) USE OF GOVERNMENT DEPOSITARIES.—For provisions relating to the use of Federal Reserve banks and authorized commercial banks in depositing the taxes see § 1.6302–1.

PAR. 3. Paragraph (a) of § 1.6152–1 is amended by adding a new subparagraph (3) at the end thereof to read as follows:

§ 1.6152–1 INSTALLMENT PAYMENTS.—(a) PRIVILEGE OF CORPORATION TO ELECT TO MAKE INSTALLMENT PAYMENTS. * * *

(3) USE OF GOVERNMENT DEPOSITARIES.—For provisions relating to the use of Federal Reserve banks and authorized commercial banks in depositing the taxes see § 1.6302–1.

* * * * * * *

PAR. 4 There is inserted immediately after § 1.6154–3 the following new section:

§ 1.6154–4 USE OF GOVERNMENT DEPOSITARIES.

For provisions relating to the use of Federal Reserve banks and authorized commercial banks in depositing the taxes see § 1.6302–1.

PAR. 5. There are inserted immediately after § 1.6165–1 the following new sections:

§ 1.6302 STATUTORY PROVISIONS; MODE OR TIME OF COLLECTION, USE OF GOVERNMENT DEPOSITARIES.

SEC. 6302. MODE OR TIME OF COLLECTION.

(a) ESTABLISHMENT BY REGULATIONS.—If the mode or time for collecting any tax is not provided for by this title, the Secretary or his delegate may establish the same by regulations.

* * * * * * *

(c) USE OF GOVERNMENT DEPOSITARIES.—The Secretary or his delegate may authorize Federal Reserve banks, and incorporated banks or trust companies which are depositaries or financial agents of the United States, to receive any tax imposed under the internal revenue laws, in such manner, at such times, and under such conditions as he may prescribe; and he shall prescribe the manner, times, and conditions under which the receipt of such tax by such banks and trust companies is to be treated as payment of such tax to the Secretary or his delegate.

§ 1.6302–1 USE OF GOVERNMENT DEPOSITARIES IN CONNECTION WITH CORPORATION INCOME AND ESTIMATED INCOME TAXES.—(a) REQUIREMENT.—For taxable years ending on or after December 31, 1967, a corporation (other than a foreign corporation referred to in paragraph (g) of § 1.6012–2) shall deposit with a Federal Reserve bank all payments of tax imposed by Chapter 1 of the Code (including any payments of estimated tax) on or before the date otherwise prescribed for paying such tax.

(b) DEPOSITARY FORMS.—A deposit required to be made by this section shall be made separately from a deposit required by any other section. A corporation may make one, or more than one, remittance of the amount required by this section to be deposited. Each remittance shall be accompanied by a Federal

Tax Deposit, Corporation Income Taxes, form (Form 503) which shall be prepared in accordance with the instructions applicable thereto. The remittance, together with Form 503, shall be forwarded to a Federal Reserve bank, or at the election of the corporation, to a commercial bank authorized in accordance with Treasury Department Circular No. 1079, 31 CFR Part 214, to accept remittances of the tax for transmission to a Federal Reserve bank. The timeliness of the deposit will be determined by the date of receipt by a Federal Reserve bank or by the authorized commercial bank, whichever is earlier. Each corporation making deposits pursuant to this section shall report on the return or declaration for the period with respect to which such deposits are made information regarding such deposits in accordance with the instructions applicable to such return or declaration. Amounts deposited under this section shall be considered as payment of the tax.

(c) PROCUREMENT OF THE PRESCRIBED FORMS.—Copies of Form 503, the Federal Tax Deposit, Corporation Income Taxes, form will so far as possible be furnished corporations. A corporation will not be excused from making a deposit, however, by the fact no form has been furnished to it. Corporations not supplied with the proper form should make application therefor to the district director (or director of a service center) in ample time to make the required deposits within the time prescribed. The corporation may secure the form or additional forms by applying therefor and supplying the district director or director of a service center with its name, identification number, address and the taxable year to which the deposits will relate.

(d) FAILURE TO DEPOSIT.—For provisions relating to the penalty for failure to make a deposit within the prescribed time, see the provisions of § 301.6656–1 of this chapter (Regulations on Procedure and Administration).

PAR. 6. Section 301.6312–1 is amended by adding a new paragraph (d) at the end thereof to read as follows:

§ 301.6312–1 TREASURY CERTIFICATES OF INDEBTEDNESS, TREASURY NOTES, AND TREASURY BILLS ACCEPTABLE IN PAYMENT OF INTERNAL REVENUE TAXES OR STAMPS.

* * * * * * *

(d) In the case of payments of tax required to be deposited with Government depositaries by regulations under section 6302 of the Code, certificates, notes, or bills referred to in paragraph (a) of this section may be deposited with a Federal Reserve bank or branch, or with the Office of the Treasurer of the United States, in part or full satisfaction of such tax liability. As in the case of all remittances of amounts so required to be deposited, each such deposit of certificates, notes, or bills shall be accompanied by the appropriate deposit form in accordance with the regulations under section 6302. In such cases, notwithstanding paragraphs (b) and (c) of this section, receipts for such certificates, notes or bills shall no longer be issued in the name of the district director.

(This Treasury Decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

SHELDON S. COHEN,
Commissioner of Internal Revenue.

Approved March 3, 1967.

STANLEY S. SURREY,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on Mar. 7, 1967, 8:49 a.m., and published in the issue of the Federal Register for Mar. 8, 1967, 32 F.R. 3819)

26 CFR 31.6302(c)–1: Use of Government depositaries in connection with taxes under Federal Insurance Contributions Act and income tax withheld. (Also 46.6302(c)–1, 48.6302(c)–1, 49.6302 (c)–1.) Rev. Rul. 67–198

Taxpayers liable for employment taxes reportable on Form 941, Employer's Quarterly Federal Tax Return, and excise taxes reportable on Form 720, Quarterly Federal Excise Tax Return, often must estimate their tax liability for a semimonthly period because they do not know the actual liability at the time for making semimonthly deposit required under section 6302 of the Internal Revenue Code of 1954 and regulations thereunder. This may result in an "overdeposit" for a semimonthly period.

Held, an "overdeposit" of a particular tax for a semimonthly period may be applied to reduce the amount of such tax required to be deposited for a subsequent semimonthly period within the *same calendar quarter*.

T.D. 6903 [1]

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 31.—EMPLOYMENT TAXES; APPLICABLE ON AND AFTER JANUARY 1, 1955

Amendment of the Employment Tax Regulations to provide revised rules for the deposit of certain employment taxes.

DEPARTMENT OF THE TREASURY,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D.C. 20224

To Officers and Employees of the Internal Revenue Service and Others Concerned:

On December 1, 1966, notice of proposed rulemaking with respect to the amendment of paragraph (a)(1)(i) and (ii) of § 31.6302(c)–1 of the Employment Tax Regulations (26 CFR Part 31) to provide revised rules for the deposit of certain employment taxes was published in the Federal Register (31 F.R. 15095). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the following amendment of the regulations is hereby adopted:

§ 31.6302(c)–1 USE OF GOVERNMENT DEPOSITARIES IN CONNECTION WITH TAXES UNDER FEDERAL INSURANCE CONTRIBUTIONS ACT AND INCOME TAX WITHHELD.—(a) *Requirement.*—(1) *In general.*—(i) Except as provided in paragraph (b) of this section and subdivision (ii) of this subparagraph, if during any calendar month other than the last month of a calendar quarter, the aggregate amount of taxes (as defined in subdivision (iii) of this subparagraph) exceeds $100 in the case of an employer, such employer shall deposit such aggregate amount within 15 days after the close of such calendar month with a Federal Reserve bank. Notwithstanding the provisions of this subdivision—

(*a*) Amounts required to be deposited for May 1966 may be deposited after June 15, 1966, but not later than June 20, 1966, if such

[1] 31 F.R. 16269.

amounts are combined with an amount required to be deposited under subdivision (ii) of this subparagraph for the first semimonthly period in June 1966, and

(*b*) Amounts required to be deposited under this subdivision (i) for January 1967 may be deposited after February 15, 1967, but not later than February 20, 1967, if such amounts are combined with an amount required to be deposited under subdivision (ii) of this subparagraph for the first semimonthly period in February 1967.

(ii) This subdivision shall apply to taxes with respect to wages paid by an employer during February or March 1967 or during a calendar quarter thereafter if the aggregate of the taxes with respect to wages paid during any calendar month in the preceding calendar quarter exceeded $2,500 in the case of such employer. This subdivision also applies to taxes with respect to wages paid by an employer during June 1966, during either of the last two calendar quarters in the calendar year 1966, or during January 1967, if the aggregate of the taxes with respect to wages paid during any calendar month in the preceding calendar quarter exceeded $4,000 in the case of such employer. An employer shall deposit taxes to which this subdivision applies in a Federal Reserve bank within 3 banking days after the close of the semimonthly period during which the wages to which such taxes relate are paid. For purposes of this subdivision, "semimonthly period" means the first 15 days of a calendar month or the portion of a calendar month following the 15th of such month. An employer will be considered to have complied with the requirements of this subdivision for a semimonthly period if—

(*a*) (*1*) His deposit for such semimonthly period is not less than 90 percent of the aggregate amount of the taxes for such period and (*2*) if such period occurs in a month other than the last month in a calendar quarter, he deposits any underpayment for such month within 3 banking days after the 15th day of the following month;

(*b*) (*1*) His deposit for each semimonthly period in the month is not less than 45 percent of the aggregate amount of the taxes for the month, and (*2*) if such month is other than the last month in a calendar quarter, he deposits any underpayment for such month within 3 banking days after the 15th day of the following month; or

(*c*) (*1*) His deposit for each semimonthly period in the month is not less than 50 percent of the aggregate amount of the taxes for the preceding month, and (*2*) if the current month is other than the last month in a calendar quarter, he deposits any underpayment for such month within 3 banking days after the 15th day of the following month.

Subdivisions (*b*) and (*c*) of this subdivision (ii) shall not apply to any employer who normally pays in the first semimonthly period in each month more than 75 percent of the total wages paid during the month.

* * * * * * *

(This Treasury Decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

SHELDON S. COHEN,
Commissioner of Internal Revenue.

Approved December 16, 1966.
JOHN K. CARLOCK,
Fiscal Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on December 19, 1966, 8:48 a.m., and published in the issue of the Federal Register for December 20, 1966, 31 F.R. 16269)

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26 CFR 46.6302(c)-1: Use of Government depositaries. T.D. 6910 [1]
(Also 48.6302(c), 49.6302(c).)
(Also Section 6071; 49.6071(a).)

TITLE 26.—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER D, PART 46.—REGULATIONS RELATING TO MISCELLANEOUS EXCISE TAXES PAYABLE BY RETURN; PART 48.—MANUFACTURERS AND RETAILERS EXCISE TAXES; PART 49.—FACILITIES AND SERVICES EXCISE TAXES

Semimonthly deposits of certain excise taxes

DEPARTMENT OF THE TREASURY,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D.C. 20224

To Officers and Employees of the Internal Revenue Service and Others Concerned:

On December 16, 1966, notice of proposed rulemaking with respect to amendment of the regulations, which relate to semimonthly deposits in Government depositaries, of the excise taxes imposed by chapters 31, 32, 33, 34, and 37 of the Internal Revenue Code of 1954, as amended, which are reportable by return, was published in the Federal Register (31 F.R. 16157). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the following amendments of the regulations are adopted:

REGULATIONS RELATING TO MISCELLANEOUS EXCISE TAXES PAYABLE BY RETURN (26 CFR Part 46)

PARAGRAPH 1. Section 46.6302(c)-1 is amended by revising paragraphs (a)(1) and (b) and by adding a new paragraph (c). These revised and added provisions read as follows:

§ 46.6302(c)-1 USE OF GOVERNMENT DEPOSITARIES.—(a) *Requirement.*—(1) *In general.*—(i) Except as provided in subdivision (ii) of this subparagraph, if for any calendar month, other than the last month of a calendar quarter, any person required to file a quarterly excise tax return on Form 720 has a total liability of more than $100 for all excise taxes reportable on such form, the

[1] The publication of this Treasury Decision in 32 F.R. 1037, dated Jan. 28, 1967, contains (1) instructions for modifying the notice of proposed rulemaking published in 31 F.R. 16157, dated Dec. 16, 1966, and (2) the full context of the regulations with such modifications. As here published, the Treasury Decision reflects the full context of such regulations, with modifications. The individual instructions have been omitted.

amount of such liability for taxes (to which this part relates) shall be deposited by him with a Federal Reserve bank on or before the last day of the month following such month. The provisions of this subdivision are not applicable with respect to taxes for the month in which the taxpayer receives notice from the district director that returns are required under paragraph (b) of § 46.6011 (a)–1, or for any subsequent month for which such a return is required.

(ii) This subdivision shall apply to excise taxes (to which this part relates) which are reportable on Form 720 by any person for February and March 1967, or for a calendar quarter thereafter, if such person's total liability for all excise taxes reportable on such form for any calendar month in the preceding calendar quarter exceeded $2,000. In any case to which this subdivision applies, the excise tax for a semimonthly period (as defined in paragraph (b)(1) of this section) shall be deposited by such person in a Federal Reserve Bank on or before the depositary receipt date (as defined in paragraph (b)(2) of this section). A person will be considered to have complied with the requirements of this subdivision for a semimonthly period if—

(*a*)(*1*) His deposit for such semimonthly period is not less than 90 percent of the total amount of the excise taxes (to which this part and Part 48 relate) reportable by him on Form 720 for such period, and (*2*) if such period occurs in a month other than the last month in a calendar quarter, he deposits any underpayment for such month by the first day of the second month following such month; or

(*b*)(*1*) His deposit for each semimonthly period in the month is not less than 45 percent of the total amount of the excise taxes (to which this part and Part 48 relate) reportable by him on Form 720 for the month, and (*2*) if such month is other than the last month in a calendar quarter, he deposits any underpayment for such month by the first day of the second month following such month; or

(*c*)(*1*) His deposit for each semimonthly period in the month is not less than 50 percent of the total amount of the excise taxes (to which this part and Part 48 relate) reportable by him on Form 720 for the preceding calendar month, and (*2*) if such month is other than the last month in a calendar quarter, he deposits any underpayment for such month by the first day of the second month following such month.

Accordingly, a person who makes his deposits in accordance with the provisions of (*b*) or (*c*) of this subdivision will not find it necessary to keep his books and records on a semimonthly basis. However, (*b*) and (*c*) of this subdivision shall not apply to any such person who normally incurs in the first semimonthly period in each month more than 75 percent of his total excise tax liability (to which this part and Part 48 relate) for the month.

* * * * * * *

(b) *Definitions.*—For purposes of this part—

(1) *Semimonthly period.*—A "semimonthly period" means the first 15 days of a calendar month or the portion of a calendar month following the 15th day of such month.

(2) *Depositary receipt date.*—With respect to the first semimonthly period of a month, the "depositary receipt date" is the first day of the month following such month. With respect to the second semimonthly period of a month, the "depositary receipt date" is the 15th day of the month following such month.

(c) *Manner of making remittances.*—Each remittance required by paragraph (a)(1) of this section shall be accompanied by a Depositary Receipt for Federal Excise Taxes (Form 537) prepared in accordance with the instructions and regulations applicable thereto. The person shall forward his remittance, together with the depositary receipt, to a Federal Reserve bank or, at his election, to a commercial bank authorized in accordance with Treasury Department Circular No. 848 to accept remittances of the taxes for transmission to a Federal Reserve bank. The depositary receipt will be returned to the person after the Federal Reserve bank has validated it. Every person making deposits pursuant to this section shall attach to his return for the calendar quarter with respect to which deposits are made, in part or in full payment of the taxes shown thereon, depositary receipts so validated, and shall pay the balance, if any, of the taxes due for the quarter. A person with a total liability of not more than $100 for a calendar month may nevertheless deposit the tax if he so desires.

Regulations Relating to Manufacturers and Retailers Excise Taxes (26 CFR Part 48)

Par. 2. Section 48.0–4 is amended to read as follows:

§ 48.0–4 Extent to Which the Regulations in This Part Supersede Prior Regulations.

The regulations in this part, with respect to the subject matter within the scope thereof, supersede the Manufacturers and Retailers Excise Tax Regulations contained in Part 40 of this chapter and, to the extent not superseded by the regulations contained in such Part 40, the following regulations and such regulations as prescribed and made applicable to the Internal Revenue Code of 1954 by Treasury Decision 6091, signed August 16, 1954 (19 F.R. 5167, August 17, 1954) [C.B. 1954–2, 47]:

Taxes on gasoline, lubricating oil and matches—Regulations 44 (1944 edition, as amended), 26 CFR (1939) Part 314.

Excise taxes on sales by the manufacturer—Regulations 46 (1940 edition, as amended), 26 CFR (1939) Part 316.

Excise tax on sale of pistols and revolvers—Regulations 47 (Revised October 1928, as amended), 26 CFR (1939) Part 302.

Retailers excise taxes—Regulations 51 (1941 edition, as amended), 26 CFR (1939) Part 320.

Excise tax on diesel fuel—Regulations 119, 26 CFR (1939) Part 324.

The regulations in this part, with respect to the subject matter within the scope thereof, also supersede paragraph (c) of § 477.4 (Regulations on Return and Payment of Certain Excise Taxes (26 CFR (1939) Part 477)).

Par. 3. Immediately after § 48.6206–1, there are added the following new sections:

§ 48.6302(c) Statutory Provisions; Mode or Time of Collection.

SEC. 6302. MODE OR TIME OF COLLECTION. * * *

(c) Use of Government Depositaries.—The Secretary or his delegate may authorize Federal Reserve banks, and incorporated banks or trust companies which are depositaries or financial agents of the United States, to receive any tax imposed under the internal revenue laws, in such manner, at such times, and under such conditions as he may prescribe; and he shall prescribe the manner, times, and conditions under which the receipt of such tax by such banks and trust companies is to be treated as payment of such tax to the Secretary or his delegate.

[Sec. 6302(c) as originally enacted and in effect Jan. 1, 1959]

§ 48.6302(c)–1 Use of Government Depositaries.—(a) *Requirement.*—(1) *In general.*—(i) Except as provided in subdivision (ii) of this subparagraph, if for any calendar month, other than the last month of a calendar quarter, any person required to file a quarterly excise tax return on Form 720 has a total liability of more than $100 for all excise taxes reportable on such form, the amount of such liability for taxes (to which this part relates) shall be deposited by him with a Federal Reserve bank on or before the last day of the month following such month.

(ii) This subdivision shall apply to excise taxes (to which this part relates) which are reportable on Form 720 by any person for February and March 1967, or for a calendar quarter thereafter, if such person's total liability for all excise taxes reportable on such form for any calendar month in the preceding calendar quarter exceeded $2,000. A person shall deposit the excise taxes to which this subdivision applies in a Federal Reserve bank on or before the last day of the semimonthly period (as defined in paragraph (b) of this section) following the semimonthly period for which the taxes are reportable. A person will be considered to have complied with the requirements of this subdivision for a semimonthly period if—

(*a*)(*1*) His deposit for such semimonthly period is not less than 90 percent of the total amount of the excise taxes (to which this part and Part 46 relate) reportable by him in Form 720 for such period, and (*2*) if such period occurs in a month other than the last month in a calendar

quarter, he deposits any underpayment for such month by the last day of the following month; or

(*b*) (*1*) His deposit for each semimonthly period in the month is not less than 45 percent of the total amount of the excise taxes (to which this part and Part 46 relate) reportable by him on Form 720 for the month, and (2) if such month is other than the last month in a calendar quarter, he deposits any underpayment for such month by the last day of the following month; or

(*c*) (*1*) His deposit for each semimonthly period in the month is not less than 50 percent of the total amount of the excise taxes (to which this part and Part 46 relate) reportable by him on Form 720 for the preceding calendar month, and (*2*) if such month is other than the last month in a calendar quarter, he deposits any underpayment for such month by the last day of the following month.

Accordingly, a person who makes his deposits in accordance with the provisions of (*b*) or (*c*) of this subdivision will not find it necessary to keep his books and records on a semimonthly basis. However, (*b*) and (*c*) of this subdivision shall not apply to any such person who normally incurs in the first semimonthly period in each month more than 75 percent of his total excise tax liability (to which this part and Part 46 relate) for the month. Notwithstanding the other provisions of this subdivision, in the case of a wholesale distributor described in section 4082(d), all amounts required to be deposited under this subdivision with respect to the excise taxes for a semimonthly period in the month of February, March or April 1967 may be deposited on or before the last day of the second semimonthly period following such semimonthly period.

(2) *Procurement of depositary receipt form.*—A person not supplied with Form 537, Depositary Receipt for Federal Excise Taxes, should make application therefor to the district director in ample time to have the form available for use in making his initial deposit within the time prescribed in subparagraph (1) of this paragraph. Thereafter, a blank form will be sent to the person by the Federal Reserve bank when returning the validated depositary receipt. A person may secure additional forms from a Federal Reserve bank by applying therefor and advising the bank of his identification number. The person's identification number and name, as entered on each depositary receipt, shall be the same as the number and name required to be shown on the return to be filed. For rules relating to employer identification numbers, see § 48.6109–1. The address of the person, as shown on each depositary receipt, shall be the address to which the receipt should be returned following validation by the Federal Reserve bank.

(b) *Definition of semimonthly period.*—A "semimonthly period" means the first 15 days of a calendar month or the portion of a calendar month following the 15th day of such month.

(c) *Manner of making remittances.*—Each remittance required by paragraph (a) (1) of this section shall be accompanied by a Depositary Receipt for Federal Excise Taxes (Form 537) prepared in accordance with the instructions and regulations applicable thereto. The person shall forward his remittance, together with the depositary receipt, to a Federal Reserve bank or, at his election, to a commercial bank authorized in accordance with Treasury Department Circular No. 848 to accept remittances of the taxes for transmission to a Federal Reserve bank. The depositary receipt will be returned to the person after the Federal Reserve bank has validated it. Every person making deposits pursuant to this section shall attach to his return for the calendar quarter with respect to which deposits are made, in part or in full payment of the taxes shown thereon, depositary receipts so validated, and shall pay the balance, if any, of the taxes due for the quarter. A person with a total liability of not more than $100 for a calendar month may nevertheless deposit the tax if he so desires.

Regulations Relating to Facilities and Services Excise Taxes (26 CFR Part 49)

Par. 4. Section 49.0–4 is amended to read as follows:

§ 49.0–4 Extent to Which the Regulations in This Part Supersede Prior Regulations.—The regulations in this part, with respect to the subject matter within the scope thereof, supersede the Facilities and Services Excise Tax Regulations contained in Part 42 of this chapter and, to the extent not superseded by the regulations contained in such Part 42, the following regulations and such

regulations as prescribed and made applicable to the Internal Revenue Code of 1954 by Treasury Decision 6091, signed August 16, 1954 (19 F.R. 5167, August 17, 1954) [C.B. 1954–2, 47]:

Safe deposit boxes, transportation of oil by pipeline, telephone, telegraph, radio and cable messages and services, and transportation of persons.	Regulations 42 (1942 edition, as amended), 26 CFR (1939) Part 130.
Admissions, dues and initiation fees.	Regulations 43 (1941 edition, as amended), 26 CFR (1939) Part 101.

The regulations in this part, with respect to the subject matter within the scope thereof, also supersede paragraph (a) of § 477.3 and paragraph (c) of § 477.4 (Regulations on Return and Payment of Certain Excise Taxes (26 CFR (1939) Part 477)) and Treasury Decision 6131, signed April 29, 1955 (20 F.R. 3024, May 5, 1955) [C.B. 1955–1, 721].

PAR. 5. Immediately before § 49.6109, there are added the following new sections:

§ 49.6071(a) STATUTORY PROVISIONS; TIME FOR FILING RETURNS AND OTHER DOCUMENTS.

SEC. 6701. TIME FOR FILING RETURNS AND OTHER DOCUMENTS.

(a) GENERAL RULE.—When not otherwise provided for by this title, the Secretary or his delegate shall by regulations prescribe the time for filing any return, statement, or other document required by this title or by regulations.

[Sec. 6071(a) as originally enacted and in effect Jan. 1, 1959]

§ 49.6071(a)–1 TIME FOR FILING QUARTERLY RETURNS.—(a) *Quarterly returns for return periods ended after December 31, 1966.*—Each quarterly return required to be made with respect to the excise taxes (to which this part relates) for a return period ended after December 31, 1966, of not less than one calendar quarter shall be filed on or before the last day of the second calendar month after such period.

(b) *Termination of special due date.*—No special due date for filing a return obtained under the Internal Revenue Code of 1939 (made applicable to the 1954 Code by Treasury Decision 6131, signed April 29, 1955 (20 F.R. 3024, May 5, 1955) [C.B. 1955–1, 721]) shall apply in the case of the return for any return period ended after December 31, 1966.

PAR. 6. Immediately after § 49.6109–1, there are added the following new sections:

§ 49.6302(c) STATUTORY PROVISIONS; MODE OR TIME OF COLLECTION.

SEC. 6302. MODE OR TIME OF COLLECTION. * * *

(c) USE OF GOVERNMENT DEPOSITARIES.—The Secretary or his delegate may authorize Federal Reserve banks, and incorporated banks or trust companies which are depositaries or financial agents of the United States, to receive any tax imposed under the internal revenue laws, in such manner, at such times, and under such conditions as he may prescribe; and he shall prescribe the manner, times, and conditions under which the receipt of such tax by such banks and trust companies is to be treated as payment of such tax to the Secretary or his delegate.

[Sec. 6302(c) as originally enacted and in effect Jan. 1, 1959]

§ 49.6302(c)–1 USE OF GOVERNMENT DEPOSITARIES.—(a) *Requirement.*—(1) *In general.*—(i) Except as provided in subdivision (ii) of this subparagraph, if for any calendar month, other than the last month of a calendar quarter, any person required to file a quarterly excise tax return on Form 720 has a total liability of more than $100 for all excise taxes reportable on such form, the amount of such total liability shall be deposited by him with a Federal Reserve bank on or before the last day of the month following such month or, in the case of a person who has obtained a special deposit date under the Internal Revenue Code of

1939 (made applicable to the 1954 Code by Treasury Decision 6131, signed April 29, 1955 (20 F.R. 3024, May 5, 1955) [C.B. 1955–1, 721]), on or before such special deposit date.

(ii) This subdivision shall apply to excise taxes (to which this part relates) which are collected (see subdivision (iii) of this subparagraph for amounts which are considered as collected) during February and March 1967, or during a calendar quarter thereafter, by any person required to pay over such taxes, if such person's total liability for all excise taxes reportable on Form 720 for any calendar month in the preceding calendar quarter exceeded $2,000. A person shall deposit the excise taxes to which this subdivision applies in a Federal Reserve bank within 3 banking days after the close of the semimonthly period (as defined in paragraph (b) of this section) during which such taxes were collected. A person will be considered to have complied with the requirements of this subdivision for a semimonthly period if—

(*a*) (*1*) His deposit for such semimonthly period is not less than 90 percent of the total amount of the excise taxes (to which this part relates) collected by him during such period, and (*2*) if such period occurs in a month other than the last month in a calendar quarter, he deposits any underpayment for such month by the last day of the following month; or

(*b*) (*1*) His deposit for each semimonthly period in the month is not less than 45 percent of the total amount of the excise taxes (to which this part relates) collected by him during the month, and (*2*) if such month is other than the last month in a calendar quarter, he deposits any underpayment for such month by the last day of the following month; or

(*c*) (*1*) His deposit for each semimonthly period in the month is not less than 50 percent of the total amount of the excise taxes (to which this part relates) collected by him during the preceding calendar month, and (*2*) if such month is other than the last month in a calendar quarter, he deposits any underpayment for such month by the last day of the following month.

Accordingly, a person who makes his deposits in accordance with the provisions of (*b*) or (*c*) of this subdivision will not find it necessary to keep his books and records on a semimonthly basis. However, (*b*) and (*c*) of this subdivision shall not apply to any such person who normally collects in the first semimonthly period in each month more than 75 percent of his total excise taxes (to which this part relates) collected during the month. Notwithstanding the other provisions of this subdivision, all amounts required to be deposited under this subdivision with respect to taxes collected during February 1967 may be deposited within 3 banking days after the close of such month.

(iii) For purposes of applying this subparagraph to a person who computes amounts of tax required to be paid over on the basis of amounts billed (in the case of the tax imposed by section 4251) or tickets sold (in the case of the tax imposed by section 4261), the tax so computed for a semimonthly period shall be considered as collected during the second succeeding semimonthly period. A person must notify the Commissioner before changing from one method of computing the tax to another, so that proper adjustments may be made in order to properly reflect the person's excise tax liability.

(2) *Procurement of depositary receipt form.*—A person not supplied with Form 537, Depositary Receipt for Federal Excise Taxes, should make application therefor to the district director in ample time to have such form available for use in making his initial deposit within the time prescribed in subparagraph (1) of this paragraph. Thereafter, a blank form will be sent to the person by the Federal Reserve bank when returning the validated depositary receipt. A person may secure additional forms from a Federal Reserve bank by applying therefor and advising the bank of his identification number. The person's identification number and name, as entered on each depositary receipt, shall be the same as the number and name required to be shown on the return to be filed. For rules relating to employer identification numbers, see § 49.6109–1. The address of the person, as shown on each depositary receipt, shall be the address to which the receipt should be returned following validation by the Federal Reserve bank.

(b) *Definition of semimonthly period.*—A "semimonthly period" means the first 15 days of a calendar month or the portion of a calendar month following the 15th day of such month.

(c) *Manner of making remittances.*—Each remittance required by paragraph (a) (1) of this section shall be accompanied by a Depositary Receipt for Federal

Excise Taxes (Form 537) prepared in accordance with the instructions and regulations applicable thereto. The person shall forward his remittance, together with the depositary receipt, to a Federal Reserve bank or, at his election, to a commercial bank authorized in accordance with Treasury Department Circular No. 848 to accept remittances of the taxes for transmission to a Federal Reserve bank. The depositary receipt will be returned to the person after the Federal Reserve bank has validated it. Every person making deposits pursuant to this section shall attach to his return for the calendar quarter with respect to which deposits are made, in part or in full payment of the taxes shown thereon, depositary receipts so validated, and shall pay the balance, if any, of the taxes due for the quarter. A person with a total liability of not more than $100 for a calendar month may nevertheless deposit the tax if he so desires.

(d) *Termination of special deposit date.*—No special deposit date, obtained under the Internal Revenue Code of 1939 (made applicable to the 1954 Code by Treasury Decision 6131, signed April 29, 1955 (20 F.R. 3024, May 5, 1955) [C.B. 1955–1. 721]) shall apply in the case of a deposit required by paragraph (a) (1) (ii) of this section.

(This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

SHELDON S. COHEN,
Commissioner of Internal Revenue.

Approved January 26, 1967.

STANLEY S. SURREY,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on Jan. 27, 1967, 8:49 a.m., and published in the issue of the Federal Register for Jan 28, 1967, 32 F.R. 1037)

How to apply an "overdeposit" of excise taxes for a semimonthly period. See Rev. Rul. 67–198, page 347.

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26 CFR 48.6302(c): Statutory provisions; mode or time of collection.

Amended regulations with respect to semimonthly deposits in Government depositaries of certain excise taxes which are reportable by return. See T.D. 6910, page 349.

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26 CFR 48.6302(c)–1: Use of Government depositaries.

How to apply an "overdeposit" of excise taxes for a semimonthly period. See Rev. Rul. 67–198, page 347.

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26 CFR 49.6302(c): Statutory provisions; mode or time of collection.

Amended regulations with respect to semimonthly deposits in Government depositaries of certain excise taxes which are reportable by return. See T.D. 6910, page 349.

26 CFR 49.6302(c)–1: Use of Government depositaries.

How to apply an "overdeposit" of excise taxes for a semimonthly period. See Rev. Rul. 67–198, page 347.

SUBCHAPTER B.—RECEIPT OF PAYMENT

SECTION 6312.—PAYMENT BY UNITED STATES NOTES AND CERTIFICATES OF INDEBTEDNESS

26 CFR 301.6312–1: Treasury certificates of indebtedness, Treasury notes, and Treasury bills acceptable in payment of internal revenue taxes or stamps.

Amended regulations with respect to depositing corporation income and estimated income tax. See T.D. 6914, page 344.

SUBCHAPTER C.—LIEN FOR TAXES

SECTION 6321.—LIEN FOR TAXES

26 CFR 301.6321–1: Lien for taxes. Rev. Rul. 67–162

The Government will not assert tort liability against an insurance company, or a bank or domestic building and loan association which, in the ordinary course of business, makes payments to a person against whom a Federal tax lien is outstanding.

Revenue Ruling 56–48, C.B. 1956–1, 561; Revenue Ruling 57–367, C.B. 1957–2, 846; Revenue Ruling 58–470, C.B. 1958–2, 888, and Revenue Ruling 63–54, C.B. 1963–1, 306, superseded.

It has come to the attention of the Internal Revenue Service that Revenue Ruling 56–48, C.B. 1956–1, 561 (as modified by Revenue Ruling 63–54, C.B. 1963–1, 306); Revenue Ruling 57–367, C.B. 1957–2, 846; and Revenue Ruling 58–470, C.B. 1958–2, 888, have been misconstrued in a number of cases. These rulings hold that insurance companies, banks, and domestic building and loan associations, acting in the ordinary course of business with an insured or beneficiary, depositor, or holder of certain savings accounts, without actual notice or knowledge of a Federal tax lien, and in the absence of negligence or fraud, would not be liable [in tort] to the Government for making payments to such a person or on his order. The rulings also contain cautionary language concerning the action which such an institution might take when in doubt about the extent of its liability.

The Service wishes to make clear that Revenue Ruling 56–48, Revenue Ruling 57–367, and Revenue Ruling 58–470 were intended to apply solely to the question of tort liability. Those Revenue Rulings were not intended to apply to lien priority situations, nor to situations involving liability under section 6332 of the Internal Revenue Code of 1954 for failure to honor notices of levy.

The Government will not assert any tort liability against insurance companies, banks, or domestic building and loan associations acting in the ordinary course of business, even though they possess actual notice or knowledge of the existence of a Federal tax lien (such as from a previous unsatisfied levy), with respect to payments made to an insured or depositor (or his order).

In view of the foregoing, Revenue Rulings 56–48, 57–367, 58–470, and 63–54 are hereby superseded.

SECTION 6323.—VALIDITY AND PRIORITY AGAINST CERTAIN PERSONS

Effect on section 6323(f)(1)(A)(i) of the Internal Revenue Code of 1954, as added by the Federal Tax Lien Act of 1966, on the place for filing of Federal Tax Liens on real property in Cook County, Ill. See Rev. Proc. 67–15, page 592.

CHAPTER 65.—ABATEMENTS, CREDITS, AND REFUNDS

SUBCHAPTER A.—PROCEDURE IN GENERAL

SECTION 6402.—AUTHORITY TO MAKE CREDITS OR REFUNDS

26 CFR 31.6402(a)–1: Credits or refunds.

Interim procedure for giving effect to the reduced rate of withholding under the protocol brought into force December 27, 1965, modifying the income tax convention between the United States and the Federal Republic of Germany. See Rev. Proc. 67–24, page 625.

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26 CFR 301.6402–1: Authority to make credits or refunds.

Overpayment of income tax resulting from an increase in a net operating loss carryback from 1958 to 1956 attributable to the renegotiation of 1955 income. See Rev. Rul. 67–121, page 363.

SUBCHAPTER B.—RULES OF SPECIAL APPLICATION

SECTION 6416.—CERTAIN TAXES ON SALES AND SERVICES

26 CFR 48.6416(b)–2: Tax payments deemed to be overpayments by reason of certain uses, sales, or resales. (Also Section 4221.) Rev. Rul. 67–27

Buses sold by the manufacturer to a person (lessor) who leases the buses to another person (lessee) for use exclusively in transporting students are not considered "sold" to the lessee within the meaning of section 6416(b)(2)(R) of the Internal Revenue Code of 1954. Therefore, the manufacturer of the buses is not entitled to a credit or refund of the tax paid on his sales of the buses to the lessor.

Advice has been requested whether, under the provisions of section 6416(b)(2)(R) of the Internal Revenue Code of 1954, a bus manufacturer is entitled to a credit or refund of the manufacturers excise tax paid on certain buses under the circumstances described below.

A bus manufacturer paid to the United States the manufacturers excise tax, imposed by section 4061(a)(1) of the Code, on certain buses which were sold by the manufacturer to a person who leased the buses to another person who used them exclusively in transporting students of a State-operated school.

Section 4221(e)(5) of the Code provides that under regulations prescribed by the Secretary or his delegate, the tax imposed by section 4061(a) of the Code shall not apply to a bus sold to any person for use exclusively in transporting students and employees of schools operated by State or local governments or by nonprofit educational organizations.

Section 145.3–1(a) of the Temporary Manufacturers and Retailers Excise Tax Regulations states that under section 4221(e)(5) of the Code the tax imposed by section 4061(a) shall not apply to the sale of a bus by the manufacturer to any person for use exclusively in transporting students and employees of schools operated by a State or local government or by a nonprofit educational organization.

Paragraph (e) of this section of the regulations states that under section 6416(b)(2)(R) of the Code, tax under section 4061(a) paid to the United States on the sale of any bus is considered to be an overpayment if such bus is, on or after June 22, 1965, and prior to any other use, sold to a purchaser by any person for use exclusively in transporting students or employees of a school operated by a State or local government or by a nonprofit educational organization and the bus is so used.

With respect to the effect of a lease in the case of any manufacturers excise tax imposed by chapter 32 of the Code, section 4217(a) states that the lease of an article by the manufacturer, producer, or importer shall be considered a sale of such article.

In the instant case, the sale of the buses by the manufacturer to the lessor cannot be made tax free under the provisions of section 4221(e)(5) of the Code because they are not for use by the lessor ex-

clusively in transporting students and employees of schools operated by a State or local government or by nonprofit educational organizations. Furthermore, the tax paid on the buses leased by the lessor to the lessee who uses them exclusively in transporting students cannot be considered to be an overpayment under section 6416(b)(2)(R) of the Code because a sale within the meaning of that section has not occurred.

The provisions of section 4217(a) of the Code relate only to the lease of an article by the manufacturer, producer, or importer of that article. It does not apply to a lease entered into by a vendee of the manufacturer, producer, or importer. Accordingly, in the instant case, it is held that the schoolbuses leased by the lessor cannot be considered sold by him to the lessee for purposes of the credit or refund provisions of section 6416(b)(2)(R) of the Code.

Whether income from certain services provided by a local transit system must be included in "passenger fare revenue" for purposes of the allowance with respect to retailers excise tax paid on diesel fuel or special motor fuel used in the operation of a local transit system. See Rev. Rul. 67-92, page 361.

SECTION 6420.—GASOLINE USED ON FARMS

Claims by the United States, State, and local governments, and certain tax-exempt organizations for payment of the Federal excise tax paid on gasoline used after June 30, 1965, for certain nonhighway purposes. See Rev. Rul. 67-28, page 359.

Small business corporation's claim for credit of tax on gasoline used for nonhighway purposes for a taxable year beginning after June 30, 1965, and ending before December 31, 1966. See Rev. Proc. 67-5, page 575.

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26 CFR 48.6420(b)-1: Claims.

Treatment of amounts payable with respect to gasoline used on a farm for farming purposes which farmers may claim as a credit against their income tax for taxable years beginning after June 30, 1965. See Rev. Rul. 67-2, page 13.

SECTION 6421.—GASOLINE USED FOR CERTAIN NONHIGHWAY PURPOSES OR BY LOCAL TRANSIT SYSTEMS

(Also Sections 39, 6420, 6424.) Rev. Rul. 67-28 [1]

Guidelines are issued for the filing of claims by the United States, State, and local governments, and certain tax-exempt organizations

[1] Based on Technical Information Release 867, dated November 29, 1966.

for payment of the Federal excise tax paid on gasoline used after June 30, 1965, for certain nonhighway purposes.

Revenue Ruling 66–48, C.B. 1966–1, 9, and Revenue Ruling 66–276, C.B. 1966–2,505, supplemented.

The purpose of this Revenue Ruling is to issue guidelines for the filing of claims by the United States, State, and local governments, and certain tax-exempt organizations for payment of 2 cents a gallon of the Federal excise tax paid on gasoline used after June 30, 1965, for certain nonhighway purposes under section 6421 of the Internal Revenue Code of 1954. These guidelines also apply to claims filed by such governments and organizations of 4 cents a gallon for gasoline used on farms for farming purposes after June 30, 1965, under section 6420 of the Code, or of 6 cents a gallon for lubricating oil used otherwise than in a highway motor vehicle after December 31, 1965, under section 6424 of the Code.

Section 6421 of the Code provides for a payment to the ultimate purchaser of a portion of the Federal excise tax paid on gasoline which is used for certain nonhighway purposes. Unless a person is entitled to a payment of $1,000 or more for any of the first three quarters of his taxable year, he may not file more than one claim for payment or credit with respect to gasoline used during his taxable year.

In order to obtain this payment, persons required to file an income tax return must claim as a credit against their income tax for the taxable year in which the gasoline is used those amounts for which quarterly claims have not been filed. Governments and tax-exempt organizations which are not required to file an income tax return for the taxable year may file a cumulative claim for these amounts.

Any claims filed under section 6421 of the Code by governments and tax-exempt organizations (not required to file an income tax return) must be filed on or before the 15th day of the 5th calendar month following the close of the taxable year of the governmental unit or tax-exempt organization. In the case of fiscal years ending on or after June 30, 1966, and before September 1, 1966, a claim for gasoline used after June 30, 1965, and before the end of the fiscal year will be treated as timely filed if the claim is filed before February 1, 1967. (Regulations to be issued under section 6421 will so provide.)

For the purpose of these claims, the "taxable year" of a government or an exempt organization will generally be the annual period (calendar or fiscal year) on the basis of which it regularly keeps its books, except that the first "taxable year" beginning after June 30, 1965, includes both the first such annual accounting period which begins after June 30, 1965, and also the period (if any) after June 30, 1965, and preceding this annual accounting period. Thus, a government or tax-exempt organization (other than an organization required to file an income tax return) which keeps its books on a calendar-year basis would have until May 15, 1967, to file a claim for gasoline used in calendar year 1966 and the last 6 calendar months of 1965.

These guidelines do not affect the time and manner in which the amount due may be claimed by a tax-exempt organization which is required to file an income tax return for the taxable year. Such organizations can claim the amount due for gasoline used during the taxable year (exclusive of amounts covered by payment claims filed for any of the first three quarters) only as a credit against income tax on a timely filed Form 990–C, Exempt Cooperative Association Income

Tax Return, or 990–T, Exempt Organization Business Income Tax Return. See Rev. Rul. 66–48, C.B. 1966–1, 9.

Claims by a State or local government or a tax-exempt organization (not required to file an income tax return) should be filed with the Internal Revenue Service Center for the internal revenue region in which the principal place of business or principal office of the government or organization is located. No duplicate claim need be filed if a claim has already been filed with a district director of internal revenue.

Payments are allowable only for gasoline which was purchased tax paid. Thus, for example, a State or local government should not file a claim for any gasoline which it purchased tax free from the producer, even though the State or local government used the gasoline for nonhighway purposes. See Rev. Rul. 66–276, C.B. 1966–2, 505.

Similarly, a government or tax-exempt organization as the ultimate purchaser of gasoline should not file a claim for payment if it is known that another person is entitled to claim a payment or refund for the same gasoline. For example, a State or local government should not file a claim if it has executed, or intends to execute, a certificate of ultimate purchaser, or other documentation, to enable the producer to claim a refund for the gasoline. See Rev. Rul. 66–276, C.B. 1966–2, 505.

Revenue Ruling 66–48, C.B. 1966–1, 9, and Revenue Ruling 66–276, C.B. 1966–2, 505, are hereby supplemented.

Small business corporation's claim for credit of tax on gasoline used for nonhighway purposes for a taxable year beginning after June 30, 1965, and ending before December 31, 1966. See Rev. Proc. 67–5, page 575.

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26 CFR 48.6421(b)–1: Payments to ultimate purchaser of gasoline used by local transit systems. (Also Section 6416; 48.6416(b)–2.) Rev. Rul. 67–92

The Internal Revenue Service rules as to the qualification of two types of transportation revenue as revenue derived from a "scheduled common carrier public passenger land transportation service along regular routes", within the meaning of section 6421(b) of the Internal Revenue Code of 1954.

Advice has been requested whether revenue derived from two described forms of transportation service is revenue derived from "scheduled common carrier public passenger land transportation service along regular routes," for purposes of the allowance provided by section 6421(b) of the Internal Revenue Code of 1954 for manufacturers excise tax paid on gasoline used in the operation of local transit systems.

Among the sources of revenue of the transportation company in question are revenues derived from the two types of service described below.

Service A.—A passenger bus service rendered under contract with a railway company. Under the contract the transportation company

furnishes to the railway's employees local scheduled bus transportation to and from the railway terminal. The railway pays an annual fee for the service.

Service B.—A limousine service between downtown hotels and an airfield. It is a deluxe-type service using recliner seat buses operating on schedule, and the fare charged exceeds 60 cents. By virtue of that fact, none of the revenue derived from the service qualifies as "commuter fare revenue," as that term is defined in section 6421(d)(2) of the Code. This service is operated as a separate department of the transportation company. Separate equipment and employees are used, and separate accounting is maintained.

Section 4081 of the Code imposes a manufacturers excise tax on gasoline sold by the producer or importer thereof, or by any producer of gasoline.

Section 6421(b) of the Code provides for an allowance for gasoline used during a calendar quarter by the ultimate purchaser thereof in vehicles furnishing scheduled common carrier public passenger land transportation service along regular routes, provided at least 60 percent of the total passenger fare revenue derived from such service is commuter fare revenue, as defined in section 6421(d)(2) of the Code.

Section 48.6421(b)-1(b) of the Manufacturers and Retailers Excise Tax Regulations provides, in part, that for purposes of the allowance provided by section 6421(b), in determining whether the "60-percent passenger fare revenue test" is met in a particular calendar quarter, there shall not be included as revenue derived from the operation of "scheduled common carrier public passenger land transportation service along regular routes," revenue from such sources as charter fees, rentals of property, advertising receipts, etc.

Apart from any question of qualification as "commuter fare revenue" under section 6421(b)(2), the revenue derived from *Service A* does not qualify as revenue derived from "scheduled common carrier public passenger land transportation service along regular routes" under section 6421(b) of the Code. An essential element of this type of service is that it be "public" in nature. A "public" transportation service is a service available to the general public, and is usually operated under a public franchise. The arrangement between the railway company and the transportation company is a private contract under which a private bus transportation service is rendered. Accordingly, since revenue derived from this service does not qualify as revenue derived from "scheduled common carrier public passenger land transportation service along regular routes," no part thereof is subject to the allowance provided for by section 6421(b)(1) of the Code.

Service B, on the other hand, does qualify as "scheduled common carrier public passenger land transportation service along regular routes." Therefore, the revenue derived from this service must be included in the 60-percent passenger fare revenue test under section 6421(b)(2), even though none of such revenue qualifies as "commuter fare revenue" within the meaning of section 6421(d) of the Code. Furthermore, the fact that *Service B* is conducted as a separate operation of the transportation company does not entitle the company to exclude revenue derived from the service from its computation of the passenger fare revenue.

These conclusions are equally applicable under section 6416(b)(2)(H) of the Code, in computing the passenger fare revenue for allowance with respect to retailers excise tax paid under section 4041 of the Code, on diesel fuel or special motor fuel used in the operation of local transit systems.

SECTION 6424.—LUBRICATING OIL NOT USED IN HIGHWAY MOTOR VEHICLES

Claims by the United States, State, and local governments, and certain tax-exempt organizations for payment of the Federal excise tax paid on lubricating oil used after December 31, 1965, otherwise than in a highway motor vehicle. See Rev. Rul. 67-28, page 359.

CHAPTER 66.—LIMITATIONS

SUBCHAPTER B.—LIMITATIONS ON CREDIT OR REFUND

SECTION 6511.—LIMITATIONS ON CREDIT OR REFUND

26 CFR 301.6511(d)-2: Overpayment of income tax on account of net operating loss carryback. Rev. Rul. 67-121

(Also Sections 6402, 6611; 301.6402-1, 301.6611-1.)

The period of limitation for filing a claim for refund of an overpayment of income tax for 1956, attributable to a net operating loss carryback from 1958 made available to the year 1956 as a result of the elimination of excessive 1955 profits by a renegotiation, does not expire until the end of the 12th month following the month in which the renegotiation agreement or order becomes final.

Any overpayment of income tax resulting from an increase in the net operating loss carryback from 1958 to 1956 attributable to the renegotiation of 1955 income is an overpayment of 1956 tax and, as such, is subject to credit or refund under section 6402 of the Internal Revenue Code of 1954.

For the purpose of allowing interest on such overpayment, the date of overpayment is the date on which the taxpayer returns the excessive profits in 1955 to the Government pursuant to the terms of a renegotiation agreement.

Advice has been requested, based on the facts set forth below, as to (1) the period of limitation for filing a claim for refund of an overpayment of income tax for 1956 attributable to a net operating loss carryback from 1958 made available to the year 1956 as a result of the elimination of excessive 1955 profits by a renegotiation; (2) whether any repayment of such income tax shall be considered a refund for the year 1956, or a credit for the year 1955 or 1956 under section 1481(b)(1) of the Internal Revenue Code of 1954; and (3) the period for which interest will be allowed on any overpayment of income tax.

The taxpayer had entered into certain contracts which were subject to renegotiation under the Renegotiation Act of 1951, P.L. 9, C.B. 1951–1, 180. During the taxable year ended December 31, 1955, the profits of the taxpayer were derived almost entirely from such contracts.

A net operating loss was sustained by the taxpayer for the taxable year ended December 31, 1958. The loss was carried back to and allowed as a net operating loss deduction for the taxable year ended December 31, 1955. The portion of the 1958 loss which exceeded the taxable income for 1955 was allowed as a net operating loss deduction for the taxable year ended December 31, 1956.

In 1959 the Regional Renegotiation Board ordered a refund of excessive profits earned in 1955. The taxpayer did not agree to the findings of the Renegotiation Board and subsequently filed a petition with the Tax Court of the United States for a redetermination of the Board's order.

The taxpayer and the Government entered into an agreement in 1966 and the Tax Court granted the taxpayer's motion to dismiss the renegotiation proceeding. As a consequence of the elimination of excessive profits for 1955 under the renegotiation agreement and the resultant decrease in taxable income for 1955, the portion of the 1958 loss previously used as an offset against such eliminated income became available for carryback to 1956.

The position of the Internal Revnue Service with respect to each of the issues is stated below.

Issue 1. Section 6511(d)(2)(A) of the Code provides:

> (A) PERIOD OF LIMITATION.—If the claim for credit or refund relates to an overpayment attributable to a net operating loss carryback, in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be that period which ends with the expiration of the 15th day of the 40th month (or the 39th month, in the case of a corporation) following the end of the taxable year of the net operating loss which results in such carryback, or the period prescribed in subsection (c) in respect of such taxable year, whichever expires later; except that—
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> * * * * * * *
>
> (ii) with respect to an overpayment attributable to the creation of, or an increase in, a net operating loss carryback as a result of the elimination of excessive profits by a renegotiation (as defined in section 1481(a)(1)(A)), the period shall not expire before September 1, 1959, or the expiration of the twelfth month following the month in which the agreement or order for the elimination of such excessive profits becomes final, whichever is the later.

No distinction is made in the statute between an increase in a net operating loss carryback attributable to a renegotiation with respect to the loss year and an increase in a net operating loss carryback attributable to a renegotiation with respect to a year to which a net operating loss had previously been carried, as occurred in the instant case. If it was intended that the extended period of limitations on filing a claim for credit or refund was to be restricted to cases where income for the loss year is renegotiated, the word "carryback" should not appear in clause (ii) of section 6511(d)(2)(A) of the Code, so that reference would be made only to a net operating loss. Since the word "carryback" does appear in such clause, it must be concluded that the

increase in the net operating loss carryback to 1956 directly attributable to the renegotiation of the 1955 income is an increase in a net operating loss carryback within the meaning of section 6511(d)(2)(A)(ii) of the Code, and that the period of limitation for filing a claim for refund of income tax for 1956 attributable to such increase will not expire before the end of the 12th month following the month in which the renegotiation agreement or order becomes final.

Issue 2. Any overpayment of income tax resulting from an increase in the portion of the 1958 net operating loss carryback to 1956 attributable to the renegotiation of 1955 income is an overpayment of 1956 tax. As such, it is not a credit for the year 1955 or 1956 under section 1481(b)(1) of the Code but is subject to credit or refund under section 6402 of the Code.

Issue 3. Section 6611 of the Code provides that interest on an overpayment shall be allowed and paid as follows:

> (a) RATE.—Interest shall be allowed and paid upon any overpayment in respect of any internal revenue tax at the rate of 6 percent per annum.
> (b) PERIOD.—Such interest shall be allowed and paid as follows:
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> * * * * * * *
>
> (2) REFUNDS.—In the case of a refund, from the date of the overpayment to a date (to be determined by the Secretary or his delegate) preceding the date of the refund check by not more than 30 days * * *.
>
> * * * * * * *
>
> (f) REFUND OF INCOME TAX CAUSED BY CARRYBACK OR ADJUSTMENT FOR CERTAIN UNUSED DEDUCTIONS.—
> (1) NET OPERATING LOSS CARRYBACK.—For purposes of subsection (a), if any overpayment of tax imposed by subtitle A results from a carryback of a net operating loss, such overpayment shall be deemed not to have been made prior to the close of the taxable year in which such net operating loss arises.

The above provisions of the Code clearly show (1) that interest is allowable only on an overpayment of tax, and (2) that an overpayment of tax resulting from a net operating loss carryback is deemed not to exist, for the purpose of accruing interest thereon, prior to the close of the taxable year in which the net operating loss arises. With respect to (2), although an overpayment attributable to a net operating loss carryback is deemed not to exist prior to the close of the loss year, the provisions of section 6611(f)(1) of the Code permit a determination to be made that an overpayment attributable to a net operating loss carryback can be deemed to have been made subsequent to the close of the loss year. The facts and circumstances in the instant case warrant such a determination. Although the taxpayer's income tax liability for the year 1956 was paid during 1956 and 1957, there can be no additional overpayment of 1956 tax until the excessive profits received in 1955 have been repaid, since it will be then that the portion of the 1958 net operating loss carryback previously applied to the 1955 tax will first become available as a deduction for the year 1956.

Accordingly, for the purpose of allowing interest on any overpayment for the taxable year 1956 which is attributable to a reallocation to 1956 of a portion of the 1958 net operating loss resulting from the elimination of excessive profits from taxable income for 1955 under the renegotiation determination, the date of such overpayment is the

date on which the taxpayer returns the excessive profits in 1955 to the Government pursuant to the terms of a renegotiation agreement. This position is based on the premise that no overpayment of tax exists, in fact, prior to such date, and therefore there is no authority for the allowance of interest prior to such date under section 6611 of the Code.

CHAPTER 67.—INTEREST

SUBCHAPTER A.—INTEREST ON UNDERPAYMENTS

SECTION 6601.—INTEREST ON UNDERPAYMENT, NONPAYMENT, OR EXTENSIONS OF TIME FOR PAYMENT, OF TAX

26 CFR 301.6601-1: Interest on underpayments.

Whether the four percent rate of interest provided in section 6601(b) is applicable to the entire amount of the deficiency prorated to installments and paid in accordance with section 6166 of the Code. See Rev. Rul. 67-161, page 342.

SUBCHAPTER B.—INTEREST ON OVERPAYMENTS

SECTION 6611.—INTEREST ON OVERPAYMENTS

26 CFR 301.6611-1: Interest on overpayments.

Date of overpayment for the purpose of allowing interest on an overpayment of income tax resulting from an increase in a net operating loss carryback from 1958 to 1956 attributable to the renegotiation of 1955 income. See Rev. Rul. 67-121, page 363.

CHAPTER 68.—ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

SUBCHAPTER A.—ADDITIONS TO THE TAX AND ADDITIONAL AMOUNTS

SECTION 6655.—FAILURE BY CORPORATION TO PAY ESTIMATED INCOME TAX

26 CFR 1.6655-2: Exceptions to imposition of the addition to the tax in the case of corporations. Rev. Rul. 67-93

In determining applicability of the exception provided by section 6655(d)(3) of the Internal Revenue Code of 1954 to imposition

of the addition to the tax for underpayment of estimated income tax by a corporation, the entire amount of a net operating loss carryover should be deducted from the income for the appropriate period prior to annualization of the income for such period.

Advice has been requested whether a net operating loss carryover is to be applied against income before or after the annualization of income for the periods specified in section 6655(d)(3) of the Internal Revenue Code of 1954.

Section 6655(a) of the Code provides that in the case of any underpayment of estimated tax by a corporation, except as provided in section 6655(d), there shall be added to the tax under chapter 1 for the taxable year an amount determined at the rate of 6 percent per annum upon the amount of the underpayment for the period of the underpayment. Section 6655(d) provides that notwithstanding the provisions of section 6655(a) the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds an amount to be determined under paragraph (1), (2), or (3) of section 6655(d) of the Code.

Section 1.6655–2(d) of the Income Tax Regulations provides that, in determining the applicability of the exception described in section 6655(d)(3) of the Code, there must be an accurate determination of the amount of income and deductions for the appropriate period, that is, for the first 3, 5, 6, 8, 9, or 11 months of the taxable year. A net operating loss carryover is an allowable deduction under the provisions of section 172 of the Code. As in the case of other allowable deductions, a net operating loss is deductible in computing taxable income under section 6655(d)(3) of the Code.

Accordingly, the entire amount of a net operating loss carryover should be deducted from the income for the appropriate period under section 6655(d)(3) of the Code prior to annualization of the income for such period, for the purpose of determining the applicability of the provisions of section 6655(d)(3) of the Code.

CHAPTER 75.—CRIMES, OTHER OFFENSES, AND FORFEITURES

SUBCHAPTER B.—OTHER OFFENSES

SECTION 7271.—PENALTIES FOR OFFENSES RELATING TO STAMPS

26 CFR 47.7271–1: Cross references. Rev. Rul. 67–94
(Also Sections 4361, 7343; 47.4361–1.)

A title examiner for a land title guarantee company obtained documentary stamps from the company bookkeeper-cashier over a period of time ostensibly for the purpose of affixing them to instruments which it was his duty to file with the county recorder. However, the title examiner filed the deeds with no stamps affixed and made

unauthorized sales of the stamps to third parties. *Held*, the penalty imposed by section 7271 of the Internal Revenue Code of 1954 applies under these circumstances. However, since this penalty is not directly assessable, it may be enforced only by a special court proceeding.

Advice has been requested as to whether the penalty provisions of section 7271 of the Internal Revenue Code of 1954 are applicable to an individual who misappropriates documentary revenue stamps under the circumstances described below.

A title examiner for a land title guarantee company obtained documentary stamps from the company bookkeeper-cashier ostensibly for the purpose of affixing them to instruments which it was his duty to file with the county recorder. Over a period of several years a number of deeds were filed by the title examiner with no stamps affixed. Investigation disclosed the stamps were appropriated by the title examiner who made unauthorized sales thereof to third parties.

Section 4361 of the Code imposes a tax on each deed, instrument, or writing by which any land, tenements, or other realty sold is granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his or their direction, when the consideration or value of the interest or property conveyed exceeds $100.

Section 4384 of the Code provides in part that the aforesaid tax on conveyances shall be paid by any person who makes, signs, issues, or sells any of the documents and instruments subject to such taxes, or for whose use or benefit the same are made, signed, issued, or sold.

Section 47.6804–1 of the Documentary Stamp Tax Regulations provides, among other things, that all the taxes imposed by section 4361 of the Code shall be paid through the use of the special documentary stamps therein referred to.

Section 7271 of the Code deals with certain offenses relating to stamps and includes the following provisions:

> Any person who with respect to any tax payable by stamps—
>
> (1) *Failure to attach or cancel stamps, etc.*—Fails to comply with rules or regulations prescribed pursuant to section 6804 (relating to attachment, cancellation, etc., of stamps), unless such failure is shown to be due to reasonable cause and not willful neglect; or
>
> * * * * * * *
>
> (3) *Instruments.*—Makes, signs, issues, or accepts, or causes to be made, signed, issued, or accepted, any instrument, document, or paper of any kind or description whatsoever without the full amount of tax thereon being duly paid;
>
> * * * * * * *
>
> shall be liable for each such offense to a penalty of $50.

Section 7343 of the Code defines the term "person" as including an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

In view of the definition of "person" set out in section 7343 of the Code, section 7271 reaches beyond the parties to a transaction and encompasses anyone under a duty by virtue of his employment to perform the acts required by law.

Accordingly, it is held that the title examiner, because of his failure to perform the acts required as a duty of his employment, is subject to the provisions of section 7271 of the Code.

The proper procedure to be followed in asserting the various penalties imposed by section 7271 must necessarily be determined by reference to whether such penalties come within the scope of the basic assessment authority set out in section 6201 of the Code. This latter section authorizes the Secretary or his delegate to assess "all taxes (including interest, additional amounts, additions to the tax, and assessable penalties)" imposed by title 26 of the Code "which have not been duly paid by stamp at the time and in the manner provided by law."

Under the above-quoted language of section 6201 of the Code, only those penalties which the Code otherwise expressly authorizes the Secretary or his delegate to assess by means of the same administrative procedures contemplated for taxes as such can properly be considered "assessable" by administrative action. This conclusion is reinforced by the fact there are two different instances in which the Code makes explicit provision for particular penalties to be assessed "in the same manner as taxes." Both of these special provisions, which are set out in sections 6659(a) and 6671(a) of the Code, have certain clearly defined limitations in that one refers to no penalties other than those provided for in chapter 68 (sections 6651 through 6679) of the Code, while the other applies only to the penalties and liabilities provided for by subchapter B of chapter 68 (sections 6671 through 6679).

Section 7271 of the Code falls within chapter 75 of the Code and such chapter contains no provision for the direct assessment of any of the penalties therein mentioned. It is therefore concluded that the penalties provided for in section 7271 do not come within the scope of section 6201 and must be treated as nonassessable penalties which can only be enforced by instituting a special court proceeding for that purpose.

SUBCHAPTER D.—MISCELLANEOUS PENALTY AND FORFEITURE PROVISIONS

SECTION 7343.—DEFINITION OF TERM "PERSON"

Whether an employee of a land title guarantee company can become subject to the penalty imposed by section 7271 of the Code. See Rev. Rul. 67–94, page 367.

CHAPTER 76.—JUDICIAL PROCEEDINGS

SUBCHAPTER A.—CIVIL ACTIONS BY THE UNITED STATES

SECTION 7401.—AUTHORIZATION

26 CFR 301.7401–1: Authorization. T.D. 6902[1]
(Also Section 7403; 301.7403–1.)

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER F, PART 301.—PROCEDURE AND ADMINISTRATION

Delegation of authority to sanction civil actions.

DEPARTMENT OF THE TREASURY,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D.C. 20224

To Officers and Employees of the Internal Revenue Service and Others Concerned:

In order to conform §§ 301.7401–1 and 301.7403–1 of the Regulations on Procedure and Administration to General Counsel Order No. 34, relating to the authority of the Chief Counsel for the Internal Revenue Service to authorize or sanction civil actions for the collection of taxes, etc., such sections are amended as follows:

PARAGRAPH 1. Paragraph (a) of § 301.7401–1 is amended to read as follows:

§ 301.7401–1 AUTHORIZATION.—(a) *In general.*—No civil action for the collection or recovery of taxes, or of any fine, penalty, or forfeiture, shall be commenced unless the Commissioner (or the Director, Alcohol and Tobacco Tax Division, with respect to the provisions of subtitle E of the Code), or the Chief Counsel for the Internal Revenue Service or his delegate authorizes or sanctions the proceedings and the Attorney General or his delegate directs that the action be commenced. With respect to forfeitures, the assistant regional commissioner or supervisor in charge (alcohol and tobacco tax) may also authorize or sanction the proceedings.

* * * * * * *

PAR. 2. Section 301.7403–1 is amended to read as follows:

§ 301.7403–1 ACTION TO ENFORCE LIEN OR TO SUBJECT PROPERTY TO PAYMENT OF TAX.—In any case where there has been a refusal or neglect to pay any tax, or to discharge any liability in respect thereof, whether or not levy has been made, the Attorney General or his delegate, at the request of the Commissioner (or the Director, Alcohol and Tobacco Tax Division, with respect to the provisions of subtitle E of the Code) or the Chief Counsel for the Internal Revenue Service or his delegate, may direct a civil action to be filed in a district court of the United States to enforce the lien of the United States under the Code with respect to such tax or liability or to subject any property, of whatever nature, of the delinquent, or in which he has any right, title or interest, to the payment of such tax or liability. In any such proceeding, at the instance of the United States, the court may appoint a receiver to enforce the lien, or, upon certification by the Commissioner during the pendency of such proceedings that it is in the public interest, may appoint a receiver with all the powers of a receiver in equity.

[1] 31 F.R. 15736.

Because this Treasury Decision merely conforms §§ 301.7401–1 and 301.7403–1 of the Regulations on Procedure and Administration to General Counsel Order No. 34, dated December 23, 1964, it is found that it is unnecessary to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of said Act.

(This Treasury Decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

SHELDON S. COHEN,
Commissioner of Internal Revenue.

Approved December 9, 1966.

STANLEY S. SURREY,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on Dec. 13, 1966, 8:49 a.m., and published in the issue of the Federal Register for Dec. 14, 1966, 31 F.R. 15736)

SECTION 7403.—ACTION TO ENFORCE LIEN OR TO SUBJECT PROPERTY TO PAYMENT OF TAX

26 CFR 301.7403–1: Action to enforce lien or to subject property to payment of tax.

Authority of the Chief Counsel of the Internal Revenue Service to direct the filing of a civil action in connection with any unpaid tax or tax liability. See T.D. 6902, page 370.

SUBCHAPTER B.—PROCEEDINGS BY TAXPAYERS AND THIRD PARTIES

SECTION 7425.—DISCHARGE OF LIENS

Requirements of the notice of sale, prescribed by section 7425(c), in the case of nonjudicial foreclosure sales described in section 7425(b) of the Code. See Rev. Proc. 67–25, page 626.

CHAPTER 80.—GENERAL RULES

SUBCHAPTER A.—APPLICATION OF INTERNAL REVENUE LAWS

SECTION 7805.—RULES AND REGULATIONS

26 CFR 301.7805–1: Rules and regulations. Rev. Rul. 67–45

In accordance with the program announced in Revenue Procedure 67–6, page 576, this Bulletin, listed rulings published prior to 1953, relating to capital stock tax, processing tax, silver tax, and certain other miscellaneous excise taxes, are declared to be obsolete.

Revenue Procedure 67–6, page 576, this Bulletin, announced a program for reviewing rulings published in the Internal Revenue Bulletin prior to 1953 for the primary purpose of identifying and declaring obsolete those rulings which, although not specifically revoked or superseded, are not considered determinative with respect to future transactions.

In accordance with that program and based on the review of certain rulings which have primary application in the excise tax area, the rulings listed below are hereby declared to be obsolete.

Capital stock tax (C.S.T.) ruling series

C.S.T. No.	C.B. citation	C.S.T. No.	C.B. citation
1	XV–2, 315.	8	1939–1, 347.
2	1937–1, 308.	9	1939–1, 346.
3	1937–1, 309.	10	1939–2, 349.
4	1937–2, 496.	11	1941–2, 253.
5	1937–2, 498.	12	1941–2, 255.
6	1937–2, 497.	13	1945, 430.

Miscellaneous division (MS.) ruling series

MS. No.	C.B. citation	MS. No.	C.B. citation
1	I–2, 353.	49	IV–2, 319.
2	I–2, 359.	50	V–1, 428.
3	II–1, 307.	51	V–1, 428.
4	II–1, 311.	52	V–1, 429.
5	II–1, 338.	53	V–1, 430.
6	II–1, 308.	54	V–1, 431.
7	II–1, 338.	55	V–1, 431.
8	II–1, 340.	56	V–2, 285.
9	II–1, 306.	57	V–2, 286.
10	II–1, 339.	58	V–2, 387.
11	II–1, 340.	59	V–2, 288.
12	II–2, 355.	60	V–2, 289.
13	II–2, 333.	61	V–2, 290.
14	II–2, 356.	62	VI–1, 334.
15	II–2, 357.	63	VI–1, 335.
16	II–2, 357.	64	VI–1, 336.
17	II–2, 358.	65	VI–1, 337.
18	II–2, 334.	66	VI–1, 338.
19	II–2, 332.	67	VI–1, 339.
20	II–2, 331.	68	VI–2, 386.
21	II–2, 333.	69	VI–2, 387.
22	II–2, 331.	70	VI–2, 388.
23	II–2, 359.	71	VI–2, 389.
24	III–1, 512.	72	VI–2, 390.
25	III–1, 513.	73	VI–2, 391.
26	III–1, 513.	74	VII–1, 337.
27	III–1, 514.	75	VII–1, 338.
28	III–1, 515.	76	VII–1, 339.
29	III–1, 516.	77	VII–1, 340.
30	III–2, 405.	78	VII–1, 341.
31	III–2, 406.	79	VII–1, 342.
32	III–2, 406.	80	VII–2, 407.
33	III–2, 407.	81	VII–2, 408.
34	III–2, 408.	82	VII–2, 409.
35	III–2, 408.	83	VII–2, 410.
36	III–2, 409.	84	VII–2, 411.
37	IV–1, 362.	85	VII–2, 412.
38	IV–1, 363.	86	VIII–1, 325.
39	IV–1, 363.	87	VIII–1, 326.
40	IV–1, 364.	88	VIII–1, 327.
41	IV–1, 365.	89	VIII–1, 328.
42	IV–1, 338.	90	VIII–1, 329.
43	IV–1, 366.	91	VIII–1, 330.
44	IV–2, 316.	92	VIII–2, 435.
45	IV–2, 316.	93	VIII–2, 436.
46	IV–2, 317.	94	VIII–2, 437.
47	IV–2, 318.	95	VIII–2, 438.
48	IV–2, 318.	96	VIII–2, 439.

Miscellaneous division (MS.) ruling series—Continued

MS. No.	C.B. citation	MS. No.	C.B. citation
97	VIII–2, 440.	158	XIV–1, 553.
98	IX–1, 403.	159	XIV–1, 554.
99	IX–1, 404.	160	XIV–1, 555.
100	IX–1, 405.	161	XIV–1, 556.
101	IX–1, 406.	162	XIV–1, 557.
102	IX–1, 407.	163	XIV–1, 558.
103	IX–1, 408.	164	XIV–2, 593.
104	IX–2, 452.	165	XIV–2, 594.
105	IX–2, 453.	166	XIV–2, 595.
106	IX–2, 454.	167	XIV–2, 596.
107	IX–2, 455.	168	XIV–2, 597.
108	IX–2, 456.	169	XIV–2, 598.
109	IX–2, 457.	170	XIV–2, 599.
110	X–1, 502.	171	XV–1, 502.
111	X–1, 503.	172	XV–1, 503.
112	X–1, 504.	173	XV–1, 504.
113	X–1, 505.	174	XV–1, 505.
114	X–1, 506.	175	XV–1, 506.
115	X–1, 507.	176	XV–1, 507.
116	X–2, 458.	177	XV–2, 533.
117	X–2, 459.	178	XV–2, 534.
118	X–2, 460.	179	XV–2, 535.
119	X–2, 461.	180	XV–2, 536.
120	X–2, 462.	181	XV–2, 537.
121	X–2, 463.	182	1937–1, 541.
122	XI–1, 375.	183	1937–1, 542.
123	XI–1, 376.	184	1937–1, 543.
124	XI–1, 377.	185	1937–1, 544.
125	XI–1, 378.	186	1937–1, 545.
126	XI–1, 379.	187	1937–1, 546.
127	XI–1, 380.	188	1937–1, 547.
128	XI–2, 568.	189	1937–2, 638.
129	XI–2, 569.	190	1937–2, 639.
130	XI–2, 570.	191	1937–2, 640.
131	XI–2, 571.	192	1937–2, 641.
132	XI–2, 572.	193	1937–2, 642.
133	XI–2, 573.	194	1938–1, 580.
134	XII–1, 475.	195	1938–1, 581.
135	XII–1, 476.	196	1938–1, 583.
136	XII–1, 477.	197	1938–1, 585.
137	XII–1, 478.	198	1938–1, 584.
138	XII–1, 479.	199	1938–1, 582.
139	XII–1, 480.	200	1938–1, 586.
140	XII–2, 487.	201	1938–1, 587.
141	XII–2, 488.	202	1938–1, 588.
142	XII–2, 489.	203	1938–2, 512.
143	XII–2, 490.	204	1938–2, 513.
144	XII–2, 491.	205	1938–2, 514.
145	XII–2, 492.	206	1938–2, 515.
146	XIII–1, 543.	207	1938–2, 516.
147	XIII–1, 544.	208	1939–1, 416.
148	XIII–1, 545.	209	1939–1, 417.
149	XIII–1, 546.	210	1939–1, 418.
150	XIII–1, 547.	211	1939–1, 419.
151	XIII–1, 548.	212	1939–1, 420.
152	XIII–2, 586.	213	1939–1, 421.
153	XIII–2, 587.	214	1939–1, 422.
154	XIII–2, 588.	215	1939–2, 451.
155	XIII–2, 589.	216	1939–2, 452.
156	XIII–2, 590.	217	1939–2, 453.
157	XIII–2, 591.	218	1939–2, 454.

Miscellaneous division (MS.) ruling series—Continued

MS. No.	C.B. citation	MS. No.	C.B. citation
219	1939–2, 455.	280	1944, 708.
220	1939–2, 456.	281	1944, 709.
221	1940–1, 300.	282	1945, 497.
222	1940–1, 301.	283	1945, 498.
223	1940–1, 302.	284	1945, 499.
224	1940–1, 303.	285	1945, 500.
225	1940–1, 304.	286	1945, 501.
226	1940–1, 305.	287	1945, 502.
227	1940–2, 438.	288	1945, 503.
228	1940–2, 439.	289	1945, 504.
229	1940–2, 440.	290	1945, 505.
230	1940–2, 441.	291	1945, 506.
231	1940–2, 442.	292	1945, 507.
232	1940–2, 443.	293	1945, 508.
233	1941–1, 505.	294	1946–1, 312.
234	1941–1, 506.	295	1946–1, 313.
235	1941–1, 507.	296	1946–1, 314.
236	1941–1, 508.	297	1946–1, 315.
237	1941–1, 509.	298	1946–1, 316.
238	1941–1, 510.	299	1946–1, 317.
239	1941–1, 511.	300	1946–2, 256.
240	1941–1, 512.	301	1946–2, 257.
241	1941–2, 369.	302	1946–2, 258.
242	1941–2, 370.	303	1946–2, 259.
243	1941–2, 371.	304	1946–2, 260.
244	1941–2, 372.	305	1946–2, 261.
245	1941–2, 373.	306	1947–1, 199.
246	1941–2, 374.	307	1947–1, 200.
247	1942–1, 351.	308	1947–1, 201.
248	1942–1, 352.	309	1947–1, 202.
249	1942–1, 353.	310	1947–1, 203.
250	1942–1, 354.	311	1947–1, 204.
251	1942–1, 355.	312	1947–2, 271.
252	1942–2, 323.	313	1947–2, 272.
253	1942–2, 324.	314	1947–2, 273.
254	1942–2, 325.	315	1947–2, 274.
255	1942–2, 326.	316	1947–2, 275.
256	1942–2, 327.	317	1947–2, 276.
257	1942–2, 328.	318	1948–1, 201.
258	1943, 1218.	319	1948–1, 202.
259	1943, 1219.	320	1948–1, 203.
260	1943, 1220.	321	1948–1, 204.
261	1943, 1221.	322	1948–1, 205.
262	1943, 1222.	323	1948–1, 206.
263	1943, 1223.	324	1948–2, 306.
264	1943, 1224.	325	1948–2, 307.
265	1943, 1225.	326	1948–2, 308.
266	1943, 1226.	327	1948–2, 309.
267	1943, 1227.	328	1948–2, 310.
268	1943, 1228.	329	1948–2, 311.
269	1943, 1229.	330	1949–1, 289.
270	1944, 698.	331	1949–1, 290.
271	1944, 699.	332	1949–1, 291.
272	1944, 700.	333	1949–1, 292.
273	1944, 701.	334	1949–1, 293.
274	1944, 702.	335	1949–1, 294.
275	1944, 703.	336	1949–2, 258.
276	1944, 704.	337	1949–2, 259.
277	1944, 705.	338	1949–2, 260.
278	1944, 706.	339	1949–2, 261.
279	1944, 707.	340	1949–2, 262.

Miscellaneous division (MS.) ruling series—Continued

MS. No.	C.B. citation	MS. No.	C.B. citation
341	1949–2, 263.	346	1950–1, 280.
342	1950–1, 276.	347	1950–1, 281.
343	1950–1, 277.	348	1950–2, 205.
344	1950–1, 278.	349	1950–2, 206.
345	1950–1, 279.		

Miscellaneous taxes (M.T.) ruling series

M.T. No.	C.B. citation	M.T. No.	C.B. citation
2	1942–1, 278.	24	1946–2, 182.
3	1942–2, 257.	25	1948–1, 139.
4	1942–2, 275.	26	1948–1, 141.
5	1942–2, 245.	27	1948–1, 136.
6	1942–2, 245.	29	1948–2, 166.
8	1943, 1165.	30	1948–2, 167.
9	1943, 1159.	32	1948–2, 160.
10	1943, 1160.	33	1949–1, 243.
11	1943, 1162.	34	1949–1, 241.
13	1943, 1161.	35	1949–1, 250.
14	1943, 1161.	36	1949–1, 242.
15	1943, 1158.	37	1949–1, 241.
17	1943, 1166.	38	1949–2, 128.
18	1943, 1162.	39	1950–1, 141.
20	1944, 649.	40	1950–1, 141.
22	1945, 452.	45	1952–2, 269.

Processing tax (P.T.) ruling series

P.T. No.	C.B. citation	P.T. No.	C.B. citation
1	XII–2, 432.	18	XIV–1, 449.
2	XIII–1, 458.	19	XIV–1, 449.
3	XIII–1, 449.	20	XIV–1, 448.
4	XIII–1, 452.	21	XIV–1, 496.
5	XIII–1, 455.	22	XIV–1, 497.
6	XIII–1, 450.	23	XIV–1, 493.
7	XIII–1, 454.	24	XIV–1, 494.
8	XIII–1, 451.	25	XIV–1, 498.
9	XIII–1, 456.	26	XIV–1, 499.
10	XIII–1, 452.	27	XIV–1, 447.
11	XIII–1, 457.	28	XIV–2, 423.
12	XIII–2, 476.	29	XIV–2, 422.
13	XIII–2, 475.	30	XIV–2, 424.
14	XIII–2, 532.	31	XIV–2, 418.
15	XIII–2, 534.	32	XIV–2, 418.
16	XIII–2, 532.	33	XIV–2, 420.
17	XIII–2, 484.	34	XIV–2, 425.

Silver tax (Sil.) ruling series

Sil. No.	C.B. citation	Sil. No.	C.B. citation
1	XIII–2, 542.	4	XIV–1, 495.
2	XIII–2, 543.	5	XIV–2, 490.
3	XIII–2, 543.		

The purpose of this declaration of obsolescence is to make it clear to all concerned that the above-listed rulings are not determinative with respect to future transactions. It is not the purpose of this Revenue Ruling to determine the applicability of any of the listed rulings to past transactions.

As stated in Revenue Procedure 67–6, many of the older published rulings have become obsolete for various reasons. However, in the case of this particular Revenue Ruling, most of the listed rulings are inapplicable to future transactions because the statutory provisions under which they were issued subsequently have been repealed.

Failure to include in the foregoing lists any excise tax ruling published prior to 1953 should not be taken to imply that such ruling has been determined to have continuing application to future transactions.

(Also Section 501; 1.501(a)–1.) Rev. Rul. 67–46

In accordance with the program announced in Revenue Procedure 67–6, page 576, this Bulletin, for the review of rulings published prior to 1953, it has been found that listed rulings relating primarily to the exempt organizations area are not determinative with respect to future transactions.

Revenue Procedure 67–6, page 576, this Bulletin, announced a program for the review of rulings published in the Internal Revenue Bulletin before 1953 for the primary purpose of identifying and declaring obsolete those rulings which, although not specifically revoked or superseded, are not considered determinative with respect to future transactions.

In accordance with that program, a review has been made of the exempt organizations area, and it has been found that certain rulings are not determinative with respect to future transactions because (1) the applicable statutory provisions or regulations have been changed; (2) the ruling position is specifically covered by statute, regulations, or a subsequent published position; (3) the facts set forth are not sufficient to permit application of the current statute and regulations; or (4) the ruling relates solely to the tax status of a named organization. Therefore, the rulings listed below are hereby declared to be obsolete.

Appeals and review memorandum

A.R.M. No.	C.B. citation	A.R.M. No.	C.B. citation
36	2, 208.	79	3, 235.

Appeals and review recommendation

A.R.R. No.	C.B. citation	A.R.R. No.	C.B. citation
218	3, 238.	1159	I–2, 187.
2166	II–1, 155.		

General Counsel's or Chief Counsel's memorandum

G.C.M. No.	C.B. citation	G.C.M. No.	C.B. citation
388A	V–2, 184.	11893	XII–2, 124.
1231	VI–1, 82.	12333	XII–2, 68.
3830	VII–1, 114.	13602	XIII–2, 62.
4729	VII–2, 58.	19836	1938–2, 163.
5396	VII–2, 155.	20853	1938–2, 166.
5909	VIII–1, 177.	21323	1940–1, 97.
10232	XI–2, 104.	21610	1939–2, 103.
11653	XII–1, 121.	23063	1942–1, 103.
11705	XII–1, 57.	23892	1943, 272.
11817	XII–1, 56.	24100	1944, 192.

Income tax ruling

I.T. No.	C.B. citation	I.T. No.	C.B. citation
1475	I–2, 184.	2317	V–2, 70.
1541	I–2, 182.	2325	V–2, 63.
1556	II–1, 157.	2334	VI–1, 82.
1745	II–2, 199.	2425	VII–2, 153.
1906	III–1, 270.	2437	VII–2, 292.
1961	III–1, 259.	2458	VIII–1, 97.
1967	III–1, 259.	2460	VIII–1, 98.
1979	III–1, 260.	2463	VIII–1, 98.
1990	III–1, 249.	2546	IX–2, 122.
1991	III–1, 261.	2622	XI–1, 65.
1992	III–1, 261.	2693	XII–1, 59.
1999	III–1, 263.	2697	XII–1, 272.
2027	III–1, 250.	2747	XII–2, 70.
2106	III–2, 228.	2880	XIV–1, 95.
2109	III–2, 224.	2933	XIV–2, 117.
2207	IV–2, 75.	2941	XIV–2, 297.
2236	IV–2, 206.	3124	1937–2, 123.
2248	IV–2, 78.	3228	1938–2, 161.
2251	V–1, 84.	3258	1939–1, 123.
2267	V–1, 84.	3360	1940–1, 50.
2270	V–1, 85.	3487	1941–2, 123.
2282	V–1, 80.	3550	1942–1, 104.
2283	V–1, 293.	3552	1942–1, 105.
2291	V–1, 82.	3612	1943, 1051.

Solicitor's Law Opinion

L.O. (or O.) No.	C.B. citation
790	1, 203.

Mimeograph

Mim. No.	C.B. citation	Mim. No.	C.B. citation
3537	VI–1, 81.	3537 (Rev.)	1937–1, 100.

Office decision

O.D. No.	C.B. citation	O.D. No.	C.B. citation
62	1, 206.	573	3, 236.
63	1, 206.	703	3, 235.
64	1, 208.	704	3, 240.
65	1, 208.	705	3, 240.
190	1, 194.	744	3, 238.
252	1, 206.	768	4, 262.
280	1, 203.	780	4, 262.
293	1, 201.	866	4, 269.
312	1, 207.	953	4, 261.
318	1, 207.	993	5, 203.
389	2, 148.	1077	5, 203.
439	2, 210.	1088	5, 201.
522	2, 210.	1129	5, 201.
528	2, 207.		

Solicitor's memorandum

S.M. or S. No.	C.B. citation	S.M. or S. No.	C.B. citation
1140	1, 194.	2225	III–2, 211.
1362	2, 152.	2268	III–2, 208.
1469	III–1, 252.	2325	III–2, 226.
1697	III–1, 248.	2553	III–2, 219.
1705	III–1, 266.	2620	III–2, 221.
1801	III–1, 264.	2988	IV–1, 217.
2114	III–2, 213.	4523	V–1, 291.
2116	III–2, 209.	4647	IV–2, 74.
2133	III–2, 218.	5231	V–1, 291.

Solicitor's opinion

Sol. Op. No.	C.B. citation	Sol. Op. No.	C.B. citation
57	3, 241.	78	3, 237.
68	3, 233.	156	III–1, 284.

Advisory Tax Board recommendation

T.B.R. No.	C.B. citation
33	1, 199.

A few of the rulings listed above were published for the sole purpose of announcing that, under the facts and law then existing, named organizations were entitled to exemption from income tax and, in appropriate cases, that contributions to those organizations were deductible. The inclusion of those rulings in the above lists has no effect upon the current exemption status of any named organization which may still be in existence or upon the deductibility of contributions thereto. They are included because it no longer is the practice of the Internal Revenue Service to publish a ruling merely to announce the status of a named organization; instead, if contributions to an

organization are deductible, the name of the organization is included in the Cumulative List, Publication No. 78.

Other exempt organizations rulings published prior to 1953 are currently being reviewed. Therefore, failure to include any particular ruling in the foregoing lists should not be construed as an indication that the ruling necessarily is determinative with respect to future transactions.

Rev. Rul. 67–97

In accordance with the program announced in Revenue Procedure 67–6, page 576, this Bulletin, listed rulings published prior to 1953, relating to estate and gift taxes, are declared to be obsolete.

Revenue Procedure 67–6, page 576, this Bulletin, announced a program for reviewing rulings published in the Internal Revenue Bulletin prior to 1953 for the primary purpose of identifying and declaring obsolete those rulings which, although not specifically revoked or superseded, are not considered determinative with respect to future transactions.

In accordance with that program and based on the review of certain rulings which have primary application in the estate and gift tax area, the rulings listed below are hereby declared to be obsolete.

Estate and Gift Tax (E.T.) Ruling Series

E.T. No.	*C.B. Citation*	*E.T. No.*	*C.B. Citation*
1	II–2, 320 (1923)	14	1940–1, 221
3	XII–2, 279 (1933)	16	1940–1, 232
5	XIII–2, 369 (1934)	17	1940–1, 231
6	XIV–1, 381 (1935)	20	1947–2, 207
9	1937–1, 300	21	1948–2, 156
10	1937–2, 469	22	1949–2, 113
11	1937–2, 470	23	1950–1, 133

General Counsel's or Chief Counsel's Memorandum (G.C.M.) Ruling Series

G.C.M. No.	*C.B. Citation*	*G.C.M. No.*	*C.B. Citation*
674	V–2, 237 (1926)	13147	XIII–1, 358 (1934)
681	V–2, 228 (1926)	15773	XIV–2, 353 (1935)
1164	VI–1, 315 (1927)	16932	XV–2, 299 (1936)
2027	VI–2, 332 (1927)	17817	1937–1, 281
4784	VIII–2, 385 (1929)	19715	1938–1, 499
8481	X–1, 451 (1931)	27242	1952–1, 160

Income Tax (I.T.) Ruling Series

I.T. No.	*C.B. Citation*	*I.T. No.*	*C.B. Citation*
2145	IV–1, 43 (1925)	2553	IX–2, 101 (1930)

Mimeograph (Mim.) Ruling Series

Mim. No.	*C.B. Citation*	*Mim. No.*	*C.B. Citation*
4261	XIII–2, 371 (1934)	6105	1947–1, 153

Solicitor's Memorandum (S.M.) Ruling Series

S.M. No.	*C.B. Citation*
2738A	V–2, 241 (1926)

Other estate and gift tax rulings are currently being reviewed. Therefore, failure to include in the foregoing lists any estate or gift tax ruling published prior to 1953 should not be taken to imply that such ruling has been determined to have continuing application to future transactions.

Rev. Rul. 67–112

In accordance with the program announced in Revenue Procedure 67–6, page 576, this Bulletin, for the review of rulings published prior to 1953, it has been found that the listed rulings relating primarily to income and profits taxes are not determinative with respect to future transactions.

Revenue Procedure 67–6, page 576, this Bulletin, announced a program for the review of rulings published in the Internal Revenue Bulletin before 1953 with the immediate objective of identifying and publishing lists of those rulings which, although not specifically revoked or superseded, are not considered to be determinative with respect to future transactions.

In accordance with that program and based on a preliminary review of the following-indicated series of rulings relating primarily to income and profits taxes, the rulings listed below are hereby declared obsolete.

Office Decision (O.D.) ruling series

O.D. number	C.B. citation	O.D. number	C.B. citation	O.D. number	C.B. citation
1	1, 14	144	1, 186	287	1, 112
2	1, 15	148	1, 234	295	1, 12
10	1, 64	164	1, 157	305	1, 278
12	1, 66	179	1, 297	306	1, 283
16	1, 67	180	1, 309	307	1, 283
21	1, 67	184	1, 273	309	1, 96
27	1, 97	186	1, 154	311	1, 168
28	1, 89	189	1, 190	321	1, 306
29	1, 97	193	1, 310	329	1, 98
31	1, 90	194	1, 58	337	1, 98
33	1, 96	202	1, 283	339	1, 186
34	1, 84	205	1, 65	348	1, 298
40	1, 111	206	1, 84	356	1, 306
41	1, 111	211	1, 84	359	2, 12
57	1, 189	212	1, 84	362	2, 95
71	1, 234	213	1, 85	369	2, 98
79	1, 272	214	1, 98	370	2, 101
80	1, 272	218	1, 159	371	2, 112
81	1, 278	222	1, 296	378	2, 267
82	1, 290	223	1, 308	380	2, 128
85	1, 300	224	1, 11	382	2, 156
86	1, 298	227	1, 90	383	2, 159
89	1, 288	230	1, 212	387	2, 116
90	1, 288	234	1, 252	390	2, 156
91	1, 290	240	1, 111	394	2, 12
92	1, 290	247	1, 247	395	2, 316
93	1, 278	248	1, 283	400	2, 163
94	1, 306	249	1, 288	402	2, 306
95	1, 308	255	1, 212	405	2, 94
100	1, 62	256	1, 96	410	2, 293
102	1, 125	257	1, 96	411	2, 11
103	1, 124	259	1, 221	412	2, 13
104	1, 150	261	1, 12	413	2, 186
106	1, 181	262	1, 28	415	2, 226
107	1, 184	263	1, 155	417	2, 287
122	1, 97	274	1, 96	420	2, 94
123	1, 97	281	1, 271	430	2, 58
141	1, 174	284	1, 185	431	2, 59

Office Decision (O.D.) ruling series—Continued

O.D. number	C.B. citation	O.D. number	C.B. citation	O.D. number	C.B. citation
434	2, 98	721	3, 169	942	4, 112
435	2, 101	723	3, 230	956	4, 83
436	2, 101	729	3, 123	963	5, 105
445	2, 58	733	3, 308	966	5, 155
449	2, 98	734	3, 341	969	5, 300
453	2, 170	742	3, 124	973	5, 106
462	2, 102	745	3, 355	982	5, 300
463	2, 102	748	3, 167	991	5, 284
464	2, 103	752	3, 125	996	5, 64
477	2, 13	756	3, 282	1000	5, 104
484	2, 99	759	3, 312	1005	5, 196
485	2, 102	760	3, 319	1006	5, 276
492	2, 94	772	4, 60	1007	5, 285
493	2, 94	783	4, 45	1015	5, 173
494	2, 99	789	4, 405	1034	5, 277
502	2, 95	793	4, 87	1036	5, 65
503	2, 99	798	4, 318	1038	5, 106
511	2, 58	802	4, 53	1042	5, 204
525	2, 100	803	4, 60	1044	5, 278
532	2, 267	813	4, 384	1046	5, 97
535	2, 137	816	4, 93	1052	5, 65
540	2, 14	818	4, 178	1053	5, 106
545	2, 100	819	4, 211	1057	5, 277
551	2, 61	822	4, 396	1061	5, 206
553	2, 101	828	4, 208	1063	5, 18
558	2, 59	846	4, 324	1065	5, 65
564	2, 197	855	4, 54	1069	5, 278
574	3, 282	860	4, 55	1070	5, 301
577	3, 124	869	4, 98	1075	5, 107
581	3, 198	876	4, 63	1079	5, 299
608	3, 299	881	4, 254	1090	5, 113
611	3, 72	891	4, 173	1094	5, 229
614	3, 198	898	4, 63	1095	5, 248
618	3, 334	899	4, 83	1096	5, 278
634	3, 308	900	4, 112	1097	5, 312
635	3, 324	901	4, 391	1099	5, 113
648	3, 125	902	4, 83	1101	5, 182
657	3, 219	903	4, 112	1104	5, 293
662	3, 20	904	4, 112	1105	5, 64
663	3, 125	913	4, 63	1113	5, 79
677	3, 21	916	4, 112	1116	5, 117
678	3, 104	922	4, 111	1127	5, 183
679	3, 198	923	4, 173	1131	5, 289
692	3, 286	928	4, 357	1137	5, 66
701	3, 228	929	4, 363	1138	5, 66
718	3, 124	930	4, 404		

Tax Board Memorandum (T.B.M.) ruling series

T.B.M. number	C.B. citation	T.B.M. number	C.B. citation	T.B.M. number	C.B. citation
4	1, 268	41	1, 292	56	1, 291
5	1, 286	42	1, 273	57	1, 287
7	1, 303	49	1, 282	58	1, 304
9	1, 13	50	1, 272	60	1, 305
17	1, 292	51	1, 296	70	1, 105
30	1, 305	52	1, 155	81	1, 297
32	1, 236	53	1, 303	82	1, 275

Tax Board Recommendation (T.B.R.) ruling series

T.B.R. number	C.B. citation	T.B.R. number	C.B. citation	T.B.R. number	C.B. citation
2	1, 307	19	1, 292	49	1, 284
3	1, 29	27	1, 307	52	1, 236
6	1, 290	28	1, 88	54	1, 298
7	1, 87	31	1, 247	58	1, 14
9	1, 156	32	1, 286	60	1, 20
10	1, 152	38	1, 280	63	1, 24
16	1, 272	40	1, 281	67	1, 288
17	1, 294	45	1, 19		

The purpose of this declaration of obsoleteness is to make it clear to all concerned that the above-listed rulings are not determinative with respect to future transactions. It is not the purpose of this Revenue Ruling to determine the applicability of any of the listed rulings to past transactions.

As stated in Revenue Procedure 67–6, many of the older published rulings have become obsolete for various reasons. In the case of this particular Revenue Ruling, most of the listed rulings are inapplicable to future transactions because the statutory provisions and regulations under which they were issued subsequently have become inoperative.

A further review will be made of the other rulings contained in these series. Therefore, failure to include any particular ruling in the foregoing lists should not be construed as an indication that the ruling necessarily is determinative with respect to future transactions.

Rev. Rul. 67–123

In accordance with the program announced in Revenue Procedure 67–6, page 576, this Bulletin, for the review of rulings published prior to 1953, it has been found that listed rulings relating primarily to engineering issues are not determinative with respect to future transactions, and they are declared to be obsolete.

Revenue Procedure 67–6, page 576, this Bulletin, announced a program for reviewing rulings published in the Internal Revenue Bulletin prior to 1953 for the primary purpose of identifying and declaring obsolete those rulings which, although not specifically revoked or superseded, are not considered determinative with respect to future transactions.

In accordance with that program, a review has been made of those rulings dealing primarily with engineering matters, and it has been found that certain rulings are not determinative with respect to future transactions because (1) the applicable statutory provisions or regulations have been changed, (2) the ruling position is specifically covered by statute or regulations, or (3) the facts set forth are not sufficient to permit application of the current statute and regulations. Therefore, the rulings listed below are hereby declared to be obsolete.

Appeals and Review Memorandum (A.R.M.) ruling series

A.R.M. No.	C.B. citation	A.R.M. No.	C.B. citation
7	1, 38.	112	4, 180.
10	1, 140.	124	4, 190.
35	2, 142.	148	I–1, 186.
95	3, 172.	153	I–1, 179.
106	4, 390.	189	I–2, 68.
110	4, 200.	209	III–1, 176.
111	4, 201.		

Appeals and Review Recommendation (A.R.R.) ruling series

A.R.R. No.	C.B. citation	A.R.R. No.	C.B. citation
27	2, 139.	963	I–1, 161.
45	2, 141.	1009	I–2, 125.
93	2, 142.	1086	I–2, 122.
173	3, 58.	1147	I–2, 138.
272	3, 173.	1234	I–2, 140.
279	3, 168.	1329	II–1, 99.
339	3, 169.	2991	II–2, 271.
377	4, 64.	3515	II–2, 23.
403	4, 32.	3699	II–2, 123.
431	4, 193.	3920	II–2, 146.
469	4, 164.	3959	II–2, 162.
498	4, 165.	4799	III–1, 384.
517	4, 385.	4801	III–1, 177.
520	5, 156.	4803	III–1, 173.
551	4, 215.	4822	III–1, 159.
570	5, 152.	6040	III–1, 397.
594	5, 154.	6092	III–1, 169.
652	5, 9.	6099	III–1, 175.
712	I–1, 183.	6127	III–1, 395.
722	I–1, 169.	6426	III–1, 162.
799	I–1, 374.	8367	III–2, 57.

General Counsel's or Chief Counsel's Memorandum (G.C.M.) ruing series

G.C.M. No.	C.B. citation	G.C.M. No.	C.B. citation
266A	VI–1, 233.	4245	VII–2, 279.
340	V–2, 174.	4336	VII–2, 199.
499	V–2, 171.	5479	VIII–1, 173.
550	V–2, 155.	6122	VIII–2, 115.
880	VI–1, 45.	6601	VIII–2, 322.
932	VI–1, 241.	6746	VIII–2, 119.
1023	VI–1, 19.	6982	VIII–2, 190.
1090	VI–1, 240.	8573	IX–2, 168.
1345A	VI–2, 154.	8787	IX–2, 189.
1424	VI–1, 69.	9333	X–1, 253.
1505	VI–1, 208.	9461	X–1, 120.
1597	VI–1, 71.	10686	XI–2, 257.
1673	VI–1, 252.	10860	XII–1, 37.
1792	VI–1, 236.	10969	XI–2, 64.
1905	VI–2, 210.	11197	XII–1, 238.
2579	VII–1, 198.	11330	XI–2, 247.
2774	VII–1, 196.	12012	XII–2, 60.
2817	VI–2, 23.	12118	XII–2, 119.
2824	VI–2, 221.	16793	XV–2, 162.
2826	VII–1, 234.	19884	1938–1, 290.
3008	VII–1, 235.	21926	1940–1, 157.
3067	VII–1, 64.	22239	1940–2, 105.
3350	VII–1, 62.	27491	1952–2, 221.

Income Tax (I.T.) ruling series

I.T. No.	C.B. citation	I.T. No.	C.B. citation
1158	I–1, 173.	2313	V–2, 49.
1222	I–1, 168.	2316	V–2, 113.
1285	I–1, 365.	2327	VI–1, 18.
1308	I–1, 178.	2337	VI–1, 144.
1309	I–1, 196.	2338	VI–1, 74.
1329	I–1, 178.	2350	VI–1, 20.
1342	I–1, 169.	2361	VI–1, 73.
1367	I–1, 274.	2369	VI–2, 63.
1370	I–1, 172.	2384	VI–2, 22.
1389	I–2, 125.	2393	VI–2, 68
1413	I–2, 121.	2409	VII–1, 89.
1440	I–2, 248.	2418	VII–1, 87.
1450	I–2, 200.	2452	VIII–1, 84.
1460	I–2, 128.	2467	VIII–1, 85.
1494	I–2, 19.	2469	VIII–1, 158.
1553	II–1, 101.	2501	VIII–2, 116.
1567	II–1, 90.	2533	IX–1, 129.
1616	II–1, 114.	2537	IX–1, 117.
1661	II–1, 116.	2615	XI–1, 112.
1698	II–1, 117.	2623	XI–1, 71.
1700	II–1, 102.	2662	XI–2, 41.
1701	II–1, 111.	2722	XII–2, 198.
1711	II–2, 104	2838	XIII–2, 133.
1798	II–2, 105.	2944	XIV–2, 126.
1799	II–2, 146.	2966	XV–1, 299.
1820	II–2, 126.	3217	1938–2, 94.
1835	II–2, 148.	3231	1938–2, 147.
1843	II–2, 72.	3246	1939–1, 137.
1893	III–1, 184.	3251	1939–1, 113.
1894	III–1, 186.	3448	1941–1, 206.
1902	III–1, 196.	3463	1941–1, 287.
1919	III–1, 186.	3541	1942–1, 41.
1920	III–1, 188.	3554	1942–1, 108.
1933	III–1, 122.	3610	1943, 411.
1985	III–1, 191.	3639	1944, 123.
1986	III–1, 67.	3652	1944, 118.
2007	III–1, 178.	3667	1944, 281.
2025	III–1, 166.	3696	1944, 241.
2038	III–1, 174.	3713	1945, 178.
2053	III–2, 107.	3815	1946–2, 30.
2101	III–2, 141.	3818	1946–2, 42.
2150	IV–1, 147.	3843	1947–1, 12.
2158	IV–1, 170.	3886	1948–1, 42.
2181	IV–2, 29.	3895	1948–1, 39.
2196	IV–2, 112.	3921	1948–2, 32.
2217	IV–2, 53.	3935	1949–1, 39.
2218	IV–2, 61.	3975	1949–2, 48.
2269	V–1, 256.	3979	1949–2, 50.
2278	V–1, 65.	4009	1950–1, 13.
2295	V–2, 47.	4032	1950–2, 21.
2297	V–2, 109.	4062	1951–2, 61.
2308	V–2, 176.	4064	1951–2, 15.
2311	V–2, 49.		

(Solicitor's) Law Opinion (L.O. or O.) ruling series

L.O. (or O.) No.	C.B. citation	L.O. (or O.) No.	C.B. citation
797	1, 130.	1074	5, 159.
862	1, 127.	1098	I–1, 64.
880	1, 31.	1103	I–2, 128.
1033	2, 145.	1110	II–1, 104.
1055	3, 178.	1118	II–2, 148.

Mimeograph (Mim.) ruling series

Mim. No.	C.B. citation	Mim. No.	C.B. citation
3071	II–1, 103.	6030	1946–2, 45.
4170	XIII–1, 59.	6030 Supp. 1	1948–1, 42.
4170 (rev.)	XV–2, 148.	6776	1952–1, 71.
5957	1945, 181.		

Office Decision (O.D.) ruling series

O.D. No.	C.B. citation	O.D. No.	C.B. citation
7	1, 37.	714	3, 49.
43	1, 144.	720	3, 145.
125	1, 133.	753	3, 171.
283	1, 138.	796	4, 199.
298	1, 138.	833	4, 390.
344	1, 138.	845	4, 178.
367	2, 58.	847	4, 45.
381	2, 138.	851	4, 179.
386	2, 33.	871	4, 179.
429	2, 38.	897	4, 43.
458	2, 313.	948	4, 180.
472	2, 141.	955	4, 44.
527	2, 147.	1001	5, 150.
567	3, 108.	1026	5, 51.
601	3, 50.	1035	5, 51.
675	3, 144.	1141	5, 134.

Solicitor's Memorandum (S.M. or S.) ruling series

S.M. (or S.) No.	C.B. citation	S.M. (or S.) No.	C.B. citation
1003	1, 35.	2541	III–2, 138.
1365	2, 143.	2931	IV–1, 33.
1584	III–1, 182.	3399	IV–1, 167.
1690	III–1, 148.	3550	IV–2, 239.
1782	III–2, 131.	4110	IV–2, 162.
2022	III–2, 344.	4225	IV–2, 168.
2062A	V–1, 246.	4249	IV–2, 15.
2319	III–2, 150.	4665A	V–1, 256.
2319A	IV–1, 37.	4911	V–1, 250.
2320	III–2, 137.	5038	V–1, 242.
2321	III–2, 146.	5444	V–1, 64.
2429	III–2, 148.		

Solicitor's Opinion (Sol. Op.) ruling series

Sol. Op. No.	C.B. citation	Sol. Op. No.	C.B. citation
26	3, 44.	124	5, 161.
36	3, 18.	138	I–1, 174.
114	5, 148.		

Solicitor's Recommendation (S.R.) ruling series

S.R. No.	C.B. citation	S.R. No.	C.B. citation
17	III–2, 112.	4623	IV–1, 166.
1236	III–2, 161.	5798	IV–1, 267.
2195	III–2, 143.	6141	IV–2, 238.
2222	IV–1, 156.	7322	V–1, 267.
2499	IV–1, 142.	7359	IV–2, 112.
2549	III–2, 129.	7705	V–1, 260.

Tax Board Memorandum (T.B.M.) ruling series

T.B.M. No.	C.B. citation
39	1, 131.

Tax Board Recommendation (T.B.R.) ruling series

T.B.R. No.	C.B. citation	T.B.R. No.	C.B. citation
4	1, 141.	44	1, 133.
8	1, 57.	57	1, 40.
25	1, 39.	59	1, 138.

Other rulings published prior to 1953 relating to engineering issues will continue to be reviewed to ascertain those which are inapplicable to future transactions. Therefore, failure to include any particular ruling in the above lists should not be construed as an indication that the ruling necessarily is determinative with respect to future transactions.

Rev. Rul. 67–140

Employment tax rulings which are not determinative with respect to future transactions are listed in accordance with Revenue Procedure 67–6, page 576, this Bulletin, relating to the review of rulings published before 1953.

Revenue Procedure 67–6, page 576, this Bulletin, announced a program for the review of rulings published in the Internal Revenue Bulletin before 1953 for the primary purpose of identifying and declaring obsolete those rulings which, although not specifically revoked or superseded, are considered not determinative with respect to future transactions.

In accordance with that program, a review has been made in the employment tax area, and it has been found that certain rulings are not determinative with respect to future transactions because (1) the applicable statutory provisions or regulations have been changed, (2) the ruling position is specifically covered by statute, regulations, or a subsequent published position, or (3) the facts set forth are not

sufficient to permit application of the current statute and regulations. Therefore, the rulings listed below are hereby declared to be obsolete.

Carriers Taxing Act (C.T.) Ruling Series

C.T. No.	C.B. citation	C.T. No.	C.B. citation
2	1938–1, 488.	6	1938–1, 486.
3	1938–1, 481.	19	1939–2, 294.

Circular (Circ.) Series

Circ. No.	C.B. citation	Circ. No.	C.B. citation
1798	1945, 327.	2061	1948–2, 116.
1816	1945, 328.	2131	1949–2, 93.
1837	1945, 329.	2289	1951–2, 186.
1852	1946–1, 209.	2299	1951–2, 194.
1994	1947–2, 140.	2315	1951–2, 196.
2040	1948–2, 109.		

Employment Tax (Em. T.) Ruling Series

Em. T. No.	C.B. citation	Em. T. No.	C.B. citation
449	1951–1, 136.		

Income Tax (I.T.) Ruling Series

I.T. No.	C.B. citation	I.T. No.	C.B. citation
3596	1943, 983.	3976	1949–2, 90.
3628	1943, 942.	3995	1950–1, 120.
3709	1945, 248.		

Internal Revenue Mimeograph (IR-Mim.) Series

IR-Mim. No.	C.B. citation	IR-Mim. No.	C.B. citation
34	1952–2, 239.	34 (amdt. 1)	1952–2, 240.

Mimeograph (Mim.) Series

Mim. No.	C.B. citation	Mim. No.	C.B. citation
4591	1937–1, 459.	5952	1945, 323.
4621	1937–2, 434.	6198	1947–2, 145.
4730	1938–1, 404.	6288	1948–2, 124.
4766	1938–1, 386.	6472	1950–1, 15.
4847	1938–2, 310.	6535	1950–2, 116.
4882	1939–1 (Part 1), 283.	6543	1950–2, 11.
4992	1940–1, 189.	6547	1950–2, 113.
5107	1940–2, 244.	6571	1951–1, 95.
5121	1940–2, 258.	6625	1951–1, 87.
5142	1940–2, 238.	6633	1951–1, 106.
5323	1942–1, 236.	6686	1951–2, 173.
5764	1944, 450.	6702	1951–2, 183.
		6703	1951–2, 178.

Social Security Tax (S.S.T.) Ruling Series

S.S.T. No.	C.B. citation	S.S.T. No.	C.B. citation
3	XV–1, 466.	113	1937–1, 473.
5	XV–1, 464.	114	1937–1, 423.
7	XV–1, 475.	115	1937–1, 424.
10	XV–2, 411.	117	1937–1, 395.
11	XV–2, 392.	118	1937–1, 397.
12	XV–2, 417.	119	1937–1, 434.
13	XV–2, 397.	123	1937–1, 483.
16	XV–2, 386.	126	1937–1, 425.
17	XV–2, 402.	131	1937–1, 400.
18	XV–2, 416.	133	1937–1, 428.
19	XV–2, 399.	135	1937–1, 365.
21	XV–2, 404.	139	1937–1, 402.
22	XV–2, 410.	141	1937–1, 466.
26	XV–2, 414.	144	1937–1, 436.
27	XV–2, 393.	146	1937–1, 443.
28	XV–2, 397.	156	1937–1, 383.
31	XV–2, 400.	160	1937–1, 455.
32	XV–2, 373.	164	1937–1, 432.
34	XV–2, 395.	168	1937–2, 431.
36	XV–2, 413.	173	1937–2, 370.
38	XV–2, 400.	175	1937–2, 435.
41	XV–2, 417.	176	1937–2, 445.
42	XV–2, 418.	179	1937–2, 424.
43	XV–2, 387.	184	1937–2, 436.
50	XV–2, 394.	185	1937–2, 446.
52	XV–2, 389.	186	1937–2, 371.
53	XV–2, 390.	187	1937–2, 448.
54	XV–2, 421.	189	1937–2, 388.
55	XV–2, 412.	195	1937–2, 408.
57	XV–2, 396.	201	1937–2, 457.
58	XV–2, 414.	203	1937–2, 409.
59	XV–2, 391.	204	1937–2, 427.
61	1937–1, 409.	213	1937–2, 441.
63	1937–1, 357.	218	1937–2, 412.
65	1937–1, 410.	220	1937–2, 414.
66	1937–1, 433.	221	1937–2, 430.
71	1937–1, 407.	222	1937–2, 453.
75	1937–1, 482.	224	1937–2, 415.
79	1937–1, 411.	243	1938–1, 429.
80	1937–1, 412.	258	1938–1, 468.
81	1937–1, 461.	270	1938–1, 461.
83	1937–1, 437.	272	1938–1, 434.
84	1937–1, 438.	273	1938–1, 458.
87	1937–1, 480.	274	1938–1, 435.
88	1937–1, 413.	275	1938–1, 442.
91	1937–1, 367.	277	1938–1, 430.
93	1937–1, 414.	282	1938–1, 430.
99	1937–1, 417.	286	1938–1, 427.
101	1937–1, 418.	288	1938–1, 388.
103	1937–1, 471.	300	1938–1, 387.
107	1937–1, 419.	303	1938–2, 307.
108	1937–1, 420.	315	1938–2, 329.
110	1937–1, 440.	322	1938–2, 322.
111	1937–1, 422.		

S.S.T. No.	C.B. citation	S.S.T. No.	C.B. citation
342	1938–2, 308.	368	1939–1 (Part 1), 298.
351	1939–1 (Part 1), 286.	369	1939–2, 323.
352	1939–1 (Part 1), 284.	371	1939–2, 266.
365	1939–1 (Part 1), 307.	374	1939–2, 290.
		378	1939–2, 292.
		405	1940–2, 255.

The purpose of this declaration of obsolescence is to make it clear to all concerned that the above-listed rulings are not determinative with respect to future transactions. It is not the purpose of this Revenue Ruling to determine the applicability of any of the listed rulings to past transactions.

Other employment tax rulings published before 1953 are currently being reviewed. Therefore, failure to include any particular ruling in the foregoing lists should not be construed as an indication that the ruling necessarily has continuing application to future transactions.

Rev. Rul. 67–199

In accordance with the program announced in Revenue Procedure 67–6, page 576, this Bulletin, listed rulings published prior to 1953, relating to the various excise taxes, have been found not to be determinative with respect to future transactions, and they are declared to be obsolete.

Revenue Procedure 67–6, page 576, this Bulletin, announced a program for reviewing rulings published in the Internal Revenue Bulletin prior to 1953 for the primary purpose of identifying and declaring obsolete those rulings which, although not specifically revoked or superseded, are not considered determinative with respect to future transactions.

In accordance with that program and based on the review of certain rulings which have primary application in the excise tax area, the rulings listed below are hereby declared to be obsolete.

Office Decision (O.D.) ruling series

O.D. No.	C.B. citation[1]	O.D. No.	C.B. citation
1	December, 1920, 26.	17	December, 1920, 86.
2	December, 1920, 45.	18	December, 1920, 87.
4	December, 1920, 63.	19	December, 1920, 87.
5	December, 1920, 63.	20	December, 1920, 106.
6	December, 1920, 63.	21	January–June, 1921, 13.
7	December, 1920, 63.	22	January–June, 1921, 14.
8	December, 1920, 63.	23	January–June, 1921, 15.
9	December, 1920, 64.	24	January–June, 1921, 15.
10	December, 1920, 64.	25	January–June, 1921, 17.
11	December, 1920, 64.	26	January–June, 1921, 18.
12	December, 1920, 67.	28	January–June, 1921, 27.
13	December, 1920, 67.	29	January–June, 1921, 31.
14	December, 1920, 74.	30	January–June, 1921, 32.
15	December, 1920, 79.	31	January–June, 1921, 44.
16	December, 1920, 80.	32	January–June, 1921, 45.

See footnote at end of table.

Office Decision (O.D.) ruling series—Continued

O.D. No.	C.B. citation [1]	O.D. No.	C.B. citation
33	January–June, 1921, 46.	97	January–June, 1921, 21.
34	January–June, 1921, 47.	98	January–June, 1921, 31.
35	January–June, 1921, 48.	99	January–June, 1921, 32.
36	January–June, 1921, 49.	100	January–June, 1921, 41.
37	January–June, 1921, 49.	101	January–June, 1921, 44.
38	January–June, 1921, 50.	102	January–June, 1921, 45.
39	January–June, 1921, 56.	103	January–June, 1921, 47.
40	January–June, 1921, 57.	104	January–June, 1921, 62.
41	January–June, 1921, 59.	105	January–June, 1921, 74.
42	January–June, 1921, 62.	106	January–June, 1921, 82.
43	January–June, 1921, 62.	107	January–June, 1921, 84.
44	January–June, 1921, 63.	108	January–June, 1921, 84.
45	January–June, 1921, 71.	109	January–June, 1921, 91.
46	January–June, 1921, 71.	110	January–June, 1921, 90.
47	January–June, 1921, 79.	111	January–June, 1921, 18.
48	January–June, 1921, 81.	112	January–June, 1921, 22.
49	January–June, 1921, 84.	113	January–June, 1921, 30.
50	January–June, 1921, 85.	114	January–June, 1921, 33.
51	January–June, 1921, 86.	115	January–June, 1921, 34.
52	January–June, 1921, 86.	116	January–June, 1921, 43.
53	January–June, 1921, 86.	117	January–June, 1921, 43.
55	January–June, 1921, 87.	118	January–June, 1921, 43.
56	January–June, 1921, 88.	119	January–June, 1921, 46.
57	January–June, 1921, 89.	120	January–June, 1921, 46.
58	January–June, 1921, 92.	121	January–June, 1921, 47.
59	January–June, 1921, 10	122	January–June, 1921, 47.
60	January–June, 1921, 17.	123	January–June, 1921, 48.
61	January–June, 1921, 22.	124	January–June, 1921, 54.
63	January–June, 1921, 40.	125	January–June, 1921, 58.
64	January–June, 1921, 60.	126	January–June, 1921, 58.
65	January–June, 1921, 73.	127	January–June, 1921, 74.
66	January–June, 1921, 75.	128	January–June, 1921, 84.
67	January–June, 1921, 82.	129	January–June, 1921, 85.
69	January–June, 1921, 83.	130	January–June, 1921, 85.
70	January–June, 1921, 83.	131	January–June, 1921, 94.
71	January–June, 1921, 83.	132	January–June, 1921, 41.
72	January–June, 1921, 86.	133	January–June, 1921, 41.
73	January–June, 1921, 89.	134	January–June, 1921, 60.
74	January–June, 1921, 9.	135	January–June, 1921, 62.
75	January–June, 1921, 16.	136	January–June, 1921, 80.
76	January–June, 1921, 21.	137	January–June, 1921, 88.
77	January–June, 1921, 50.	138	January–June, 1921, 92.
78	January–June, 1921, 59.	139	January–June, 1921, 93.
79	January–June, 1921, 61.	140	July–December, 1921, 10.
80	January–June, 1921, 62.	141	July–December, 1921, 11.
81	January–June, 1921, 68.	142	July–December, 1921, 24.
82	January–June, 1921, 71.	143	July–December, 1921, 47.
83	January–June, 1921, 72.	144	July–December, 1921, 68.
84	January–June, 1921, 73.	145	July–December, 1921, 7.
85	January–June, 1921, 75.	146	July–December, 1921, 30.
86	January–June, 1921, 79.	147	July–December, 1921, 34.
87	January–June, 1921, 79.	148	July–December, 1921, 36.
88	January–June, 1921, 84.	149	July–December, 1921, 41.
89	January–June, 1921, 90.	150	July–December, 1921, 43.
90	January–June, 1921, 10.	151	July–December, 1921, 43.
91	January–June, 1921, 11.	152	July–December, 1921, 47.
92	January–June, 1921, 14.	153	July–December, 1921, 48.
93	January–June 1921, 15.	154	July–December, 1921, 49.
94	January–June, 1921, 18.	155	July–December, 1921, 58.
95	January–June, 1921, 18.	156	July–December, 1921, 59.
96	January–June, 1921, 20.	157	July–December, 1921, 60.

See footnote at end of table.

Office Decision (O.D.) ruling series—Continued

O.D. No.	C.B. citation [1]	O.D. No.	C.B. citation
158	July–December, 1921, 64.	179	July–December, 1921, 63.
159	July–December, 1921, 4.	180	July–December, 1921, 64.
160	July–December, 1921, 5.	181	July–December, 1921, 64.
161	July–December, 1921, 6.	182	July–December, 1921, 64.
162	July–December, 1921, 7.	183	July–December, 1921, 66.
163	July–December, 1921, 7.	185	July–December, 1921, 1.
164	July–December, 1921, 7.	186	July–December, 1921, 3.
165	July–December, 1921, 11.	187	July–December, 1921, 23.
166	July–December, 1921, 23.	188	July–December, 1921, 42.
167	July–December, 1921, 25.	189	July–December, 1921, 44.
168	July–December, 1921, 28.	190	July–December, 1921, 45.
169	July–December, 1921, 38.	191	July–December, 1921, 48.
170	July–December, 1921, 41.	192	July–December, 1921, 53.
171	July–December, 1921, 43.	193	July–December, 1921, 71.
172	July–December, 1921, 68.	194	July–December, 1921, 71.
173	July–December, 1921, 26.	195	July–December, 1921, 4.
174	July–December, 1921, 53.	196	July–December, 1921, 24.
175	July–December, 1921, 54.	197	July–December, 1921, 48.
176	July–December, 1921, 57.	198	July–December, 1921, 50.
177	July–December, 1921, 61.	199	July–December, 1921, 64.
178	July–December, 1921, 62.	200	July–December, 1921, 73.

[1] The C.B. citations for the O.D. series and certain rulings from other series relate to three Sales Tax Rulings Bulletins issued in 1920 and 1921. The Bulletins are identified as follows: Sales Tax Rulings Bulletin No. ST–1–20 (December, 1920); Sales Tax Rulings Cumulative Bulletin (January–June, 1921); and Sales Tax Rulings Cumulative Bulletin (July–December, 1921).

Sales Tax (S.T.) ruling series

S.T. No.	C.B. citation	S.T. No.	C.B. citation
357	I–1, 434.	390	I–2, 280.
358	I–1, 450.	391	I–2, 293.
359	I–1, 431.	392	I–2, 294.
360	I–1, 432.	395	I–2, 295.
361	I–1, 432.	396	I–2, 296.
362	I–1, 432.	397	I–2, 289.
363	I–1, 433.	398	I–2, 306.
364	I–1, 433.	399	I–2, 309.
365	I–1, 433.	400	I–2, 291.
366	I–1, 439.	401	I–2, 305.
367	I–1, 443.	402	I–2, 306.
368	I–1, 435.	403	I–2, 307.
369	I–1, 431.	404	II–1, 249.
370	I–1, 431.	405	II–1, 250.
371	I–1, 432.	406	II–1, 268.
372	I–1, 442.	407	II–1, 280.
374	I–1, 448.	408	II–1, 285.
376	I–1, 451.	409	II–1, 285.
378	I–1, 440.	412	II–1, 283.
379	I–1, 443.	413	II–1, 285.
380	I–1, 444.	414	II–1, 286.
381	I–1, 448.	415	II–1, 285.
382	I–1, 449.	416	II–1, 288.
382A	I–2, 290.	417	II–1, 268.
383	I–2, 297.	418	II–1, 279.
384	I–2, 281.	419	II–2, 301.
385	I–2, 284.	420	II–2, 310.
386	I–2, 284.	421	II–2, 289.
387	I–2, 291.	423	II–2, 311.
388	I–2, 296.	424	II–2, 313.
389	I–2, 308.	425	II–2, 295.

Sales Tax (S.T.) ruling series—Continued

S.T. No.	C.B. citation	S.T. No.	C.B. citation
426	II–2, 308.	500	XI–2, 470.
427	II–2, 298.	501	XI–2, 473.
428	II–2, 310.	502	XI–2, 480.
430	II–2, 300.	503	XI–2, 529.
431	II–2, 311.	504	XI–2, 533.
433	II–2, 290.	505	XI–2, 448.
434	II–2, 312.	506	XI–2, 457.
435	II–2, 299.	507	XI–2, 460.
436	II–2, 300.	508	XI–2, 480.
438	III–1, 460.	510	XI–2, 488.
439	III–1, 465.	511	XI–2, 488.
440	III–1, 449.	512	XI–2, 498.
442	III–1, 465.	514	XI–2, 471.
444	III–1, 460.	515	XI–2, 478.
445	III–1, 462.	516	XI–2, 483.
446	III–1, 463.	517	XI–2, 489.
447	III–1, 462.	518	XI–2, 498.
448	III–1, 462.	519	XI–2, 521.
449	III–2, 369.	520	XI–2, 528.
450	III–2, 363.	521	XI–2, 531.
451	III–2, 369.	522	XI–2, 536.
452	IV–1, 320.	523	XI–2, 477.
453	IV–1, 309.	524	XI–2, 487.
454	IV–1, 310.	525	XI–2, 499.
455	IV–1, 295.	526	XI–2, 499.
456	IV–1, 296.	527	XI–2, 499.
457	IV–1, 296.	528	XI–2, 522.
460	XI–2, 514.	529	XI–2, 528.
461	XI–2, 479.	530	XI–2, 537.
462	XI–2, 517.	531	XI–2, 463.
463	XI–2, 496.	532	XI–2, 480.
464	XI–2, 496.	533	XI–2, 481.
465	XI–2, 454.	534	XI–2, 491.
466	XI–2, 497.	535	XI–2, 500.
467	XI–2, 507.	537	XI–2, 529.
469	XI–2, 518.	538	XI–2, 530.
470	XI–2, 460.	539	XI–2, 538.
471	XI–2, 490.	541	XI–2, 449.
472	XI–2, 465.	542	XI–2, 480.
473	XI–2, 476.	543	XI–2, 489.
474	XI–2, 484.	544	XI–2, 500.
475	XI–2, 492.	545	XI–2, 500.
476	XI–2, 535.	546	XI–2, 538.
478	XI–2, 456.	547	XI–2, 541.
480	XI–2, 478.	549	XI–2, 464.
481	XI–2, 479.	552	XI–2, 505.
482	XI–2, 488.	553	XI–2, 501.
483	XI–2, 497.	554	XI–2, 507.
485	XI–2, 518.	555	XI–2, 516.
486	XI–2, 447.	557	XI–2, 538.
487	XI–2, 455.	558	XI–2, 450.
488	XI–2, 457.	559	XI–2, 459.
489	XI–2, 462.	560	XI–2, 463.
491	XI–2, 490.	562	XI–2, 501.
492	XI–2, 497.	564	XI–2, 531.
493	XI–2, 540.	565	XI–2, 468.
494	XI–2, 541.	566	XI–2, 469.
495	XI–2, 453.	567	XI–2, 481.
496	XI–2, 455.	568	XI–2, 493.
497	XI–2, 457.	569	XI–2, 501.
498	XI–2, 460.	570	XI–2, 502.
499	XI–2, 465.	572	XI–2, 469.

Sales Tax (S.T.) ruling series—Continued

S.T. No.	C.B. citation	S.T. No.	C.B. citation
573	XI–2, 473.	647	XII–1, 379.
574	XI–2, 481.	648	XII–1, 384.
575	XI–2, 484.	649	XII–1, 398.
576	XI–2, 502.	650	XII–1, 411.
577	XI–2, 505.	651	XII–1, 399.
578	XI–2, 532.	652	XII–1, 411.
579	XI–2, 539.	653	XII–1, 429.
580	XI–2, 451.	654	XII–1, 428.
581	XI–2, 451.	655	XII–1, 390.
583	XI–2, 489.	656	XII–1, 407.
584	XI–2, 503.	657	XII–1, 395.
585	XI–2, 508.	658	XII–1, 405.
586	XI–2, 527.	659	XII–1, 396.
587	XI–2, 539.	660	XII–1, 385.
588	XI–2, 452.	661	XII–1, 386.
589	XI–2, 471.	662	XII–1, 403.
590	XI–2, 503.	663	XII–1, 381.
593	XI–2, 511.	664	XII–1, 424.
594	XI–2, 519.	665	XII–1, 430.
595	XI–2, 527.	669	XII–1, 412.
597	XI–2, 470.	670	XII–1, 423.
598	XI–2, 482.	671	XII–1, 437.
599	XI–2, 485.	672	XII–1, 395.
600	XI–2, 506.	673	XII–1, 400.
601	XI–2, 523.	674	XII–1, 412.
602	XI–2, 529.	675	XII–1, 403.
603	XI–2, 533.	676	XII–1, 414.
604	XI–2, 539.	677	XII–1, 445.
606	XI–2, 476.	679	XII–1, 442.
607	XI–2, 491.	680	XII–1, 433.
608	XI–2, 494.	683	XII–1, 441.
609	XI–2, 503.	684	XII–1, 454.
610	XI–2, 523.	685	XII–1, 404.
611	XI–2, 524.	690	XII–2, 341.
612	XI–2, 531.	691	XII–2, 317.
614	XI–2, 487.	692	XII–2, 498.
615	XI–2, 504.	693	XII–2, 312.
618	XI–2, 530.	694	XII–2, 355.
619	XI–2, 549.	695	XII–2, 324.
620	XII–1, 419.	697	XII–2, 353.
621	XII–1, 429.	698	XII–2, 403.
622	XII–1, 437.	699	XII–2, 360.
623	XII–1, 413.	700	XII–2, 376.
625	XII–1, 418.	701	XII–2, 325.
626	XII–1, 387.	702	XII–2, 405.
627	XII–1, 408.	703	XII–2, 314.
629	XII–1, 398.	704	XII–2, 356.
630	XII–1, 444.	705	XII–2, 365.
631	XII–1, 424.	706	XII–2, 406.
632	XII–1, 438.	708	XII–2, 325.
633	XII–1, 409.	709	XII–2, 312.
635	XII–1, 455.	711	XII–2, 326.
636	XII–1, 402.	712	XII–2, 308.
637	XII–1, 409.	713	XII–2, 356.
638	XII–1, 435.	714	XII–2, 321.
639	XII–1, 393.	715	XIII–1, 424.
640	XII–1, 393.	717	XIII–1, 387.
641	XII–1, 410.	718	XIII–1, 446.
642	XII–1, 380.	719	XIII–1, 378.
643	XII–1, 397.	721	XIII–1, 374.
644	XII–1, 381.	722	XIII–1, 376.
645	XII–1, 404.	723	XIII–1, 424.

Sales Tax (S.T.) ruling series—Continued

S.T. No.	C.B. citation	S.T. No.	C.B. citation
724	XIII–1, 390.	811	XIV–1, 409.
725	XIII–1, 380.	812	XIV–1, 406.
726	XIII–1, 431.	813	XIV–1, 425.
727	XIII–1, 447.	814	XIV–2, 372.
728	XIII–1, 447.	815	XIV–2, 365.
729	XIII–1, 375.	816	XIV–2, 407.
730	XIII–1, 390.	817	XIV–2, 364.
731	XIII–1, 391.	818	XIV–2, 366.
733	XIII–1, 379.	819	XIV–2, 402.
735	XIII–1, 425.	820	XIV–2, 362.
738	XIII–1, 383.	821	XIV–2, 367.
739	XIII–1, 378.	823	XIV–2, 369.
740	XIII–1, 430.	824	XIV–2, 368.
741	XIII–1, 380.	825	XV–1, 382.
742	XIII–1, 382.	826	XV–1, 393.
743	XIII–1, 442.	827	XV–1, 395.
744	XIII–1, 423.	830	XV–1, 413.
745	XIII–2, 404.	831	XV–1, 403.
746	XIII–2, 390.	832	XV–1, 418.
747	XIII–2, 402.	834	XV–1, 396.
748	XIII–2, 537.	835	XV–1, 396.
749	XIII–2, 541.	836	XV–1, 378.
750	XIII–2, 546.	837	XV–1, 391.
751	XIII–2, 548.	838	XV–1, 414.
752	XIII–2, 474.	840	XV–2, 332.
754	XIII–2, 390.	841	XV–2, 359.
755	XIII–2, 398.	842	XV–2, 346.
757	XIII–2, 390.	843	XV–2, 360.
759	XIII–2, 547.	845	XV–2, 340.
760	XIII–2, 405.	846	XV–2, 342.
761	XIII–2, 542.	847	XV–2, 347.
762	XIII–2, 546.	848	XV–2, 342.
763	XIII–2, 537.	849	XV–2, 331.
764	XIII–2, 538.	850	XV–2, 361.
765	XIII–2, 541.	851	XV–2, 339.
766	XIII–2, 549.	852	XV–2, 341.
767	XIII–2, 390.	853	1937–1, 323.
768	XIII–2, 536.	854	1937–1, 324.
769	XIII–2, 547.	855	1937–1, 336.
770	XIII–2, 548.	856	1937–1, 340.
774	XIII–2, 421.	858	1937–1, 325.
777	XIII–2, 409.	859	1937–1, 334.
778	XIII–2, 416.	860	1937–1, 341.
781	XIII–2, 415.	862	1937–1, 342.
783	XIII–2, 422.	864	1937–2, 525.
786	XIII–2, 409.	866	1937–2, 524.
789	XIII–2, 394.	867	1937–2, 505.
790	XIII–2, 417.	868	1937–2, 527.
791	XIII–2, 392.	869	1937–2, 510.
792	XIII–2, 393.	870	1937–2, 520.
793	XIII–2, 422.	871	1938–1, 536.
794	XIII–2, 418.	872	1938–1, 546.
796	XIV–1, 411.	873	1938–2, 410.
797	XIV–1, 408.	874	1938–2, 412.
798	XIV–1, 414.	875	1938–2, 396.
799	XIV–1, 420.	876	1938–2, 413.
801	XIV–1, 415.	880	1939–1 (Part 1), 356.
802	XIV–1, 419.	881	1939–1 (Part 1), 359.
804	XIV–1, 418.	884	1939–2, 386.
805	XIV–1, 425.	885	1939–2, 371.
806	XIV–1, 416.	886	1939–2, 387.
808	XIV–1, 396.	887	1939–2, 378.
809	XIV–1, 416.	888	1939–2, 380.

Sales Tax (S.T.) ruling series—Continued

S.T. No.	C.B. citation	S.T. No.	C.B. citation
889	1939–2, 376.	915	1941–1, 455.
890	1939–2, 381.	916	1941–1, 465.
891	1939–2, 375.	917	1941–1, 466.
892	1939–2, 360.	918	1941–1, 464.
893	1939–2, 364.	919	1941–2, 301.
894	1939–2, 376.	920	1941–2, 299.
896	1940–1, 252.	921	1941–2, 295.
898	1940–1, 255.	922	1941–2, 296.
899	1940–1, 254.	924	1941–2, 295.
900	1940–1, 247.	925	1942–1, 260.
901	1940–2, 330.	926	1942–1, 267.
902	1940–2, 324.	929	1943, 1153.
903	1940–2, 330.	930	1944, 607.
904	1940–2, 320.	931	1944, 623.
905	1940–2, 305.	933	1945, 432.
906	1940–2, 327.	935	1948–2, 192.
907	1940–2, 316.	936	1949–1, 260.
909	1940–2, 309.	939	1951–2, 216.
910	1940–2, 315.	941	1952–1, 215.
911	1940–2, 331.	942	1952–1, 225.
912	1941–1, 463.	943	1952–1, 221.
913	1941–1, 462.	944	1952–2, 255.
914	1941–1, 458.	945	1952–2, 256.

Treasury Decision (T.D.) ruling series

T.D. No.	C.B. citation	T.D. No.	C.B. citation
2860	December, 1920, 33.	3202	July–December, 1921, 69.
2893	December, 1920, 137.	3249	July–December, 1921, 57.
2965	December, 1920, 55.	3251	July–December, 1921, 76.
2991	December, 1920, 133.	3255	July–December, 1921, 27.
3016	December, 1920, 134.	3256	July–December, 1921, 77.

(Solicitor's) Law Opinion (L.O.) ruling series

L.O. No.	C.B. citation	L.O. No.	C.B. citation
843	December, 1920, 61.	1002	December, 1920, 33.
855	December, 1920, 38.	1004	December, 1920, 118.
856	December, 1920, 44.	1036	December, 1920, 120.
875	December, 1920, 30.	1039	December, 1920, 70.
882	December, 1920, 60.	1047	December, 1920, 125.
899	December, 1920, 80.	1063	January–June, 1921, 22.
909	December, 1920, 84.	1064	January–June, 1921, 50.
949	December, 1920, 30.	1068	July–December, 1921, 13.
966	December, 1920, 87.	1091	I–1, 422.
984	December, 1920, 99.	1096	I–1, 437.
989	December, 1920, 71.	1104	I–2, 331.
990	December, 1920, 20.	1111	II–1, 249.
992	December, 1920, 116.	1112	II–1, 274.
996	December, 1920, 18.		

Solicitor's Memorandum (S.M.) ruling series

S.M. No.	C.B. citation	S.M. No.	C.B. citation
989	December, 1920, 52.	1018	December, 1920, 51.
1009	December, 1920, 53.	1028	December, 1920, 37.
1017	December, 1920, 59.	1033	December, 1920, 108.
1050	December, 1920, 43.	1336	December, 1920, 23.
1051	December, 1920, 35.	1339	December, 1920, 113.
1059	December, 1920, 42.	1363	December, 1920, 82.
1080	December, 1920, 50.	1375	December, 1920, 47.
1109	December, 1920, 106.	1388	December, 1920, 29.
1111	December, 1920, 78.	1781	III–1, 459.
1112	December, 1920, 17.	1819	III–1, 450.
1121	December, 1920, 64.	2029	III–1, 468.
1128	December, 1920, 27.	2068	III–1, 465.
1159	December, 1920, 31.	2148	III–2, 368.
1233	December, 1920, 40.	2178	III–2, 367.
1235	December, 1920, 103.	2216	III–2, 370.
1236	December, 1920, 112.	2220	III–2, 390.
1239	December, 1920, 72.	2246	III–2, 371.
1256	December, 1920, 100.	2252	III–2, 368.
1257	December, 1920, 104.	2536	IV–1, 306.
1260	December, 1920, 35.	2573	IV–1, 311.
1272	December, 1920, 32.	2590	IV–1, 312.
1282	December, 1920, 75.	2637	III–2, 367.
1287	December, 1920, 65.	2706	IV–1, 315.
1290	December, 1920, 68.	2717	IV–1, 315.
1296	December, 1920, 97.	2841	IV–1, 308.
1304	December, 1920, 16.	2853	IV–1, 294.
1316	December, 1920, 91.	2856A	IV–2, 251.
1319	December, 1920, 57.	4180	IV–2, 274.
1328	December, 1920, 77.		

Solicitor's Opinion (Sol. Op.) ruling series

Sol. Op. No.	C.B. citation	Sol. Op. No.	C.B. citation
11	December, 1920, 110.	61	December, 1920, 13.
16	January–June, 1921, 35.	71	January–June, 1921, 63.
28	December, 1920, 9.	73	January–June, 1921, 41.
30	December, 1920, 129.	89	January–June, 1921, 69.
44	December, 1920, 122.	102	January–June, 1921, 74.
54	December, 1920, 135.	133	I–1, 426.

Mimeograph (Mim.) ruling series

Mim. No.	C.B. citation	Mim. No.	C.B. citation
2446	December, 1920, 11.	4977	1939–2, 399.
2500	December, 1920, 12.	5060	1940–2, 316.
2583	January–June, 1921, 16.	5067	1940–2, 310.
3215	III–2, 404.	5145	1941–1, 456.
3290	IV–1, 321.	5247	1941–2, 319.
3387	V–1, 379.	5255	1941–2, 260.
3403	V–1, 417.	5420	1942–2, 225.
3404	V–1, 363.	5422	1942–2, 279.
3657	VII–2, 331.	5423	1942–2, 221.
4090	XII–2, 339.	5447	1942–2, 280.
4182	XIII–1, 373.	5656	1944, 635.
4183	XIII–1, 383.	5661	1944, 605.
4188	XIII–2, 526.	5681	1944, 589.
4193	XIII–2, 396.	5683	1944, 636.
4205	XIII–2, 449.	5696	1944, 610.
4206	XIII–2, 395.	5699	1944, 647.
4211	XIII–2, 539.	5712	1944, 593.
4230	XIII–2, 538.	5843	1945, 446.
4349	XIV–2, 509.	5893	1945, 440.
4357	XIV–2, 412.	6033	1946–2, 175.
4467	XV–2, 339.	6128	1947–1, 154.
4477	XV–2, 332.	6194	1947–2, 210.
4490	XV–2, 333.	6432	1949–2, 131.
4497	XV–2, 354.	6582	1951–1, 142.
4774	1938–1, 523.	6608	1951–1, 141.

General Counsel's Memorandum (G.C.M.) ruling series

G.C.M. No.	C.B. citation	G.C.M. No.	C.B. citation
440	V–2, 215.	13035	XIII–1, 427.
7152	VIII–2, 429.	13315	XIII–2, 405.
7188	IX–1, 399.	13445	XIII–2, 411.
7505	IX–2, 414.	13509	XIII–2, 419.
7542	IX–1, 392.	13545	XIII–2, 481.
8050	IX–1, 396.	13574	XIII–2, 475.
8374	IX–2, 444.	13754	XIII–2, 408.
10894	XI–2, 548.	13767	XIII–2, 483.
10960	XI–2, 458.	13773	XIII–2, 478.
11096	XI–2, 524.	13906	XIII–2, 391.
11249	XI–2, 474.	13918	XIII–2, 391.
11351	XII–1, 446.	14129	XIV–1, 428.
11387	XII–1, 427.	14348	XIV–1, 427.
11519	XII–1, 449.	14526	XIV–1, 417.
11522	XII–1, 387.	14582	XIV–1, 397.
11539	XII–1, 456.	14585	XIV–1, 400.
11611	XII–1, 445.	15055	XIV–2, 410.
11660	XII–1, 394.	15642	XIV–2, 419.
11693	XII–1, 430.	15661	XIV–2, 370.
11699	XII–1, 436.	15745	XV–1, 409.
11732	XII–1, 439.	16223	XV–1, 380.
11794	XII–1, 425.	16290	XV–1, 411.
11989	XII–2, 318.	16347	XV–1, 397.
12016	XII–2, 359.	16510	XV–1, 416.
12068	XII–2, 314.	16543	XV–1, 404.
12076	XII–2, 316.	16934	XV–2, 364.
12159	XII–2, 431.	17014	XV–2, 317.
12642	XIII–1, 435.	17026	XV–2, 366.

General Counsel's Memorandum (G.C.M.) ruling series—Continued

G.C.M. No.	C.B. citation	G.C.M. No.	C.B.)itation
18778	1937–2, 541.	22132	1940–2, 333.
18883	1937–2, 542.	22169	1940–2, 328.
19860	1938–1, 525.	22207	1940–2, 325.
20381	1938–2, 472.	22393	1940–2, 336.
20898	1938–2, 414.	22580	1941–1, 459.
21208	1939–1 (Part 1), 343.	23295	1942–2, 271.
21540	1939–2, 392.	23414	1942–2, 254.
21586	1939–2, 390.	23479	1942–2, 251.
21702	1939–2, 383.	24450	1944, 650.
22069	1940–1, 242.	26070	1949–2, 127.

The purpose of this declaration of obsolescence is to make it clear to all concerned that the above-listed rulings are not determinative with respect to future transactions. It is not the purpose of this Revenue Ruling to determine the applicability of any of the listed rulings to past transactions.

As stated in Revenue Procedure 67–6, many of the older published rulings have become obsolete for various reasons. However, in the case of this particular Revenue Ruling, many of the listed rulings are inapplicable to future transactions because the statutory provisions under which they were issued subsequently have been repealed.

Failure to include in the foregoing lists any excise tax ruling published prior to 1953 should not be taken to imply that such ruling has been determined to have continuing application to future transactions.

Rev. Rul. 67–211

In accordance with the program announced in Revenue Procedure 67–6, page 576, this Bulletin, for the review of rulings published prior to 1953, it has been found that the listed rulings relating primarily to income and profits taxes are not determinative with respect to future transactions.

Revenue Procedure 67–6, page 576, this Bulletin, announced a program for the review of rulings published in the Internal Revenue Bulletin before 1953 with the immediate objective of identifying and publishing lists of those rulings which, although not specifically revoked or superseded, are not considered to be determinative with respect to future transactions.

In accordance with that program and based on a preliminary review of rulings relating primarily to income and profits taxes contained in the respectively indicated series, the rulings listed below are hereby declared obsolete.

(Solicitor's) Law Opinion (O. or L. O.) ruling series

O. No.	C.B. citation
781	1, 276.
826	1, 93.
872	1, 278.
893	1, 259.
914	1, 77.
916A	1, 10.
931	2, 235.
957	1, 256.
974	2, 244.
999	2, 319.
1000A	2, 299.
1023	2, 310.
1026	2, 237.

L.O. No.	C.B. citation
1041	3, 371.
1057	4, 145.
1059	4, 147.
1060	4, 318.
1061	4, 160.
1063	4, 272.
1066	4, 259.
1080	5, 246.
1081	I–1, 394.
1083	I–1, 295.
1093	I–1, 319.
1100	I–2, 230.
1105	I–2, 113.
1108	III–1, 412.
1109	I–2, 253.

Solicitor's Memorandum (S. or S.M.) ruling series

S. No.	C.B. citation
920	1, 239.
927	1, 32.
930	1, 15.
971	1, 79.
992	1, 145.
1081	1, 28.
1200	1, 274.
1305	2, 117.
1312	2, 64.
1317	2, 268.
1387	2, 285.
1391	2, 282.

S.M. No.	C.B. citation
1621	III–2, 72.
1712	III–1, 345.
1841	III–2, 346.
1886	III–2, 274.
1893	III–1, 366.
1960	III–2, 261.
2001	III–2, 265.
2011	III–2, 127.
2012	III–2, 334.
2102	III–2, 290.
2102A	III–2, 307.
2206	III–2, 278.
2232	III–2, 83.
2240	III–2, 271.
2266	III–2, 298.
2269	III–2, 347.
2275	III–2, 354.
2282	III–2, 282.

S.M. No.	C.B. citation
2292	III–2, 273.
2293	III–2, 310.
2322	III–2, 82.
2357	III–2, 262.
2384	III–2, 330.
2390	III–2, 308.
2394	III–2, 345.
2726	III–2, 84.
2882	IV–1, 135.
2954	IV–1, 77.
2970	IV–1, 127.
3021	IV–1, 72.
3140	IV–1, 159.
3384	IV–1, 277.
3616	IV–2, 244.
3811	IV–2, 43.
3969	IV–2, 144.
4116	IV–2, 233.
4171	IV–2, 147.
4186	IV–2, 230.
4226	IV–2, 164.
4236	IV–2, 149.
4289A	V–1, 344.
4677	IV–2, 245.
4877	V–1, 340.
5245	V–1, 279.
5287	V–1, 222.
5322	V–1, 335.
5480	V–1, 345.
5490	V–1, 37.
5675	V–1, 43.
5694	V–2, 159.
5723	V–2, 142.
5766	V–1, 30.
5783	V–1, 121.

Solicitor's Opinion (Sol. Op.) ruling series

Sol. Op. No.	C.B. citation	Sol. Op. No.	C.B. citation
4	2, 307.	128	I–1, 5.
5	2, 67.	129	I–1, 360.
23	3, 267.	135	I–1, 190.
32	3, 288.	140	I–1, 12.
60	3, 295.	145	I–2, 75.
79	3, 302.	152	II–2, 93.
100	4, 295.	155	III–1, 407.
117	5, 254.	157	III–2, 172.
122	5, 107.	158	III–1, 418.
127	5, 226.		

Solicitor's Recommendation (S.R.) ruling series

S.R. No.	C.B. citation	S.R. No.	C.B. citation
6	III–2, 50.	2084	IV–1, 264.
39	IV–1, 276.	2294	IV–1, 268.
55	III–2, 9.	2307	IV–1, 271.
107	III–2, 263.	2352	IV–1, 139.
323	IV–1, 177.	2521	IV–1, 273.
1123	III–2, 4.	2550	IV–1, 263.
1132	III–2, 11.	2863	IV–1, 174.
1348	IV–1, 89.	4367	IV–1, 280.
1436	IV–1, 274.	5545	IV–2, 242.
1469	IV–1, 175.	5617	IV–2, 240.
1512	III–2, 334.	5679	IV–2, 230.
1527	III–2, 336.	6421	IV–2, 246.
1862	III–2, 182.	6741	V–1, 330.
1981	IV–1, 272.	6750	V–1, 331.
1987	IV–1, 161.	6998	V–1, 268.
1989	III–2, 269.	7199	V–1, 269.
2017	IV–1, 275.	7246	V–1, 333.

Appeals and Review Recommendation (A.R.R.) ruling series

A.R.R. No.	C.B. citation	A.R.R. No.	C.B. citation
7	1, 13.	111	2, 283.
9	2, 293.	116	2, 270.
10	2, 279.	123	2, 225.
15	2, 60.	127	2, 25.
16	2, 312.	161	3, 345.
17	2, 280.	167	3, 333.
19	2, 298.	209	3, 360.
23	2, 23.	210	3, 21.
24	2, 16.	211	3, 314.
26	2, 315.	213	3, 22.
29	2, 294.	217	3, 76.
36	2, 269.	221	3, 320.
43	2, 263.	229	3, 354.
46	2, 17.	233	3, 347.
48	2, 281.	237	3, 327.
65	2, 263.	247	3, 315.
70	2, 287.	250	3, 324.
71	2, 290.	268	3, 334.
78	2, 273.	285	3, 367.
86	2, 288.	295	3, 337.
100	2, 290.	315	3, 341.
102	2, 277.	321	3, 126.
104	2, 301.	326	3, 361.
110	2, 303.	327	3, 362.

Appeals and Review Recommendation (A.R.R.) ruling series—Continued

A.R.R. No.	C.B. citation	A.R.R. No.	C.B. citation
328	3, 342.	789	I–1, 3.
331	3, 190.	817	I–1, 350.
332	3, 362.	844	I–1, 397.
337	3, 349.	845	I–1, 391.
338	3, 363.	853	I–1, 370.
342	3, 81.	855	I–1, 413.
349	3, 351.	859	I–1, 316.
350	4, 350.	877	I–1, 239.
356	3, 330.	933	I–1, 108.
358	4, 382.	942	I–1, 298.
360	4, 322.	944	I–2, 27.
363	4, 14.	968	I–1, 348.
364	4, 16.	979	I–2, 250.
373	4, 291.	988	I–2, 258.
376	4, 364.	1020	I–2, 104.
378	4, 309.	1026	I–2, 209.
384	4, 366.	1082	I–2, 98.
390	4, 371.	1128	I–2, 34.
393	4, 367.	1232	I–2, 204.
394	4, 391.	1276	I–2, 244.
396	4, 369.	1300	II–1, 191.
397	4, 311.	2190	II–2, 270.
408	4, 396.	2406	II–1, 206.
413	4, 379.	2564	II–1, 199.
425	5, 262.	2766	II–2, 259.
436	4, 392.	2839	II–2, 273.
448	4, 314.	2859	II–2, 159.
458	4, 353.	2958	II–2, 214.
459	4, 399.	2971	II–2, 266.
463	5, 22.	3041	II–2, 110.
464	4, 17.	3092	II–2, 190.
467	4, 403.	3202	II–2, 275.
473	4, 362.	3275	III–1, 388.
485	4, 355.	3421	II–2, 172.
499	4, 360.	3552	II–2, 181.
500	4, 20.	3572	II–2, 265.
518	4, 401.	4123	III–1, 394.
538	5, 301.	4519	II–2, 236.
547	5, 269.	4837	III–1, 39.
554	5, 169.	4884	III–1, 385.
556	5, 142.	4910	III–1, 40.
559	5, 223.	4948	III–1, 7.
564	5, 18.	4959	III–1, 379.
565	5, 187.	4972	III–1, 400.
599	5, 304.	6011	III–1, 377.
611	5, 294.	6087	III–1, 128.
618	5, 308.	6137	III–1, 12.
619	5, 286.	6223	III–1, 388.
624	5, 234.	6242	III–1, 20.
636	5, 257.	6347	III–1, 18.
641	5, 235.	6572	III–1, 406.
664	5, 107.	6603	III–1, 441.
678	5, 290.	6725	III–1, 381.
683	5, 20.	6745	III–1, 404.
716	I–1, 336.	6930	III–1, 45.
743	I–1, 45.	6970	III–1, 390.
747	I–1, 353.	7769	III–1, 199.
761	I–1, 365.	7991	III–2, 331.
770	I–1, 289.	8282	III–2, 258.

Appeals and Review Memorandum (A.R.M.) ruling series

A.R.M. No.	C.B. citation	A.R.M. No.	C.B. citation
1	1, 269.	51	2, 297.
4	1, 155.	56	2, 86.
5	1, 268.	57	2, 121.
12	2, 292.	59	2, 20.
13	2, 168.	71	3, 348.
24	2, 231.	80	3, 343.
26	2, 115.	81	3, 356.
29	2, 119.	87	3, 352.
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41	2, 264.	131	4, 395.
42	2, 24.	134	5, 279.
43	2, 281.	141	5, 296.
44	2, 275.	174	I–2, 234.
46	2, 247.	185	I–2, 37.
50	2, 19.	219	III–1, 319.

The purpose of this declaration of obsoleteness is to make it clear to all concerned that the above-listed rulings are not determinative with respect to future transactions. It is not the purpose of this revenue ruling to determine the applicability of any of the listed rulings to past transactions.

As stated in Revenue Procedure 67–6, many of the older published rulings have become obsolete for various reasons. In the case of this particular revenue ruling, most of the listed rulings are inapplicable to future transactions because the statutory provisions and regulations with respect to which they were issued subsequently have become inoperative.

A further review will be made of the other rulings contained in these series. Therefore, failure to include any particular ruling in the foregoing lists should not be construed as an indication that the ruling necessarily is determinative with respect to future transactions.

Prospective application of ruling relating to disallowance of estate, gift, and income tax charitable deductions with respect to a remainder interest where local law permits the trustee to invest in regulated investment companies and to pay out capital gains distributions as income. See Rev. Rul. 67–33, page 62.

Prospective application of ruling relating to classification of a certain machine known as "advertizer bonanza" as a coin-operated gaming device under section 4462(a)(1) of the Internal Revenue Code of 1954. See Rev. Rul. 67–124, page 307.

A program for the review of rulings published in the Internal Revenue Bulletin prior to 1953. See Rev. Proc. 67–6, page 576.

26 CFR 301.9000–1: Procedure to be followed by officers and employees of the Internal Revenue Service upon receipt of a request or demand for disclosure of internal revenue records or information.

T.D. 6920 [1]

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER F, PART 301.—PROCEDURE AND ADMINISTRATION

Procedure to be followed by officers and employees of Internal Revenue Service upon receipt of request, subpoena, notice, or other order for disclosure of internal revenue records or information.

DEPARTMENT OF THE TREASURY,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D.C. 20224.

To Officers and Employees of the Internal Revenue Service and Others Concerned:

In order to clarify and revise the procedures to be followed by officers and employees of the Internal Revenue Service upon receipt of a request, subpoena, notice, or other order for the disclosure of internal revenue records or information, the Regulations on Procedure and Administration (26 CFR Part 301) are hereby amended by adding at the end thereof the new section set forth below. Section 301.9000–1 of the regulations supersedes article 80 of regulations 12, as amended.

§ 301.9000–1 PROCEDURE TO BE FOLLOWED BY OFFICERS AND EMPLOYEES OF THE INTERNAL REVENUE SERVICE UPON RECEIPT OF A REQUEST OR DEMAND FOR DISCLOSURE OF INTERNAL REVENUE RECORDS OR INFORMATION.

(a) *Authority.*—The provisions of this section are prescribed under the authority of 5 U.S.C. 301; section 2 of Reorganization Plan No. 26 of 1950, 64 Stat. 1280; 18 U.S.C. 1905; section 2(g) of the Federal Alcohol Administration Act (27 U.S.C. 202(c)); and sections 5274, 6103, 6104, 6106, 6107, 7213, 7237(e), 7803, and 7805 of the Internal Revenue Code of 1954.

(b) *Definitions.*—When used in this section—

(1) *Internal revenue records or information.*—The term "internal revenue records or information" means any records (including copies thereof) or information, made or obtained by, furnished to, or coming to the knowledge of, any officer or employee of the Internal Revenue Service while acting in his official capacity, or because of his official status, with respect to the administration of the internal revenue laws or any other laws administered by or concerning the Internal Revenue Service.

(2) *Internal revenue officer and employee.*—The term "internal revenue officer and employee" means all officers and employees of the United States, engaged in the administration and enforcement of the internal revenue laws or any other laws administered by the Internal Revenue Service, appointed or employed by, or subject to the directions, instructions or orders of, the Secretary of the Treasury or his delegate.

(3) *Demand.*—The term "demand" means any subpoena, notice of deposition either upon oral examination or written interrogatory, or other order, of any court, administrative agency, or other authority.

(c) *Disclosure of internal revenue records or information prohibited without prior approval of the Commissioner.*—The disclosure, including the production, of internal revenue records or information to any person outside the Treasury Department or to any court, administrative agency, or other authority, in response to any request or demand for the disclosure of such records or informa-

[1] 32. F.R. 8240.

tion shall be made only with the prior approval of the Commissioner. However, nothing in this section shall restrict the disclosure of internal revenue records or information which the Commissioner has determined is authorized under any provision of statute, Executive order, or regulations, or for which a procedure has been established by the Commissioner. For example, this section does not restrict the inspection of returns and approved applications for tax exemption inspection of which is governed by sections 6103 and 6104 of the Code and the Executive orders and regulations issued thereunder, nor does it restrict the disclosure of internal revenue records or information which is requested by U.S. attorneys or attorneys of the Department of Justice for use in cases which arise under the internal revenue laws or related statutes and which are referred by the Department of the Treasury to the Department of Justice for prosecution or defense.

(d) *Delegation to Commissioner of authority to determine disclosure and establish procedures; procedure in the event of a request or demand for disclosure.*—(1) *Delegation to Commissioner.*—The Commissioner is hereby authorized to determine whether or not officers and employees of the Internal Revenue Service will be permitted to disclose internal revenue records or information in response to:

(i) A request by any court, administrative agency, or other authority, or by any person, for the disclosure of such records or information, or

(ii) A demand for the disclosure of such records or information.

The Commissioner is also authorized to establish such procedures as he may deem necessary with respect to the disclosure of internal revenue records or information by internal revenue officers and employees. Any determination by the Commissioner as to whether internal revenue records or information will be disclosed, or any procedure established by him in connection therewith, will be made in accordance with applicable statutes, Executive orders, and regulations, and such instructions as may be issued by the Secretary or his delegate. Notwithstanding the preceding provisions of this subparagraph, the Commissioner shall, where either he or the Secretary deems it appropriate, refer the opposing of a request or demand for disclosure of internal revenue records or information to the Secretary.

(2) *Procedure in the event of a request or demand for internal revenue records or information.*—(i) *Request procedure.*—Any officer or employee of the Internal Revenue Service who receives a request for internal revenue records or information, the disposition of which is not covered by a procedure established by the Commissioner, shall promptly communicate the contents of the request to the Commissioner through the appropriate supervisor for the district or region in which he serves. Such officer or employee shall await instructions from the Commissioner concerning the response to the request. For the procedure to be followed in the event a person making a request seeks to obtain a court order or other demand requiring the production of internal revenue records or information, see subdivision (ii) of this subparagraph.

(ii) *Demand procedure.*—Any officer or employee of the Internal Revenue Service who is served with a demand for internal revenue records or information, the disposition of which is not covered by a procedure established by the Commissioner, shall promptly, and without awaiting appearance before the court, administrative agency, or other authority, communicate the contents of the demand to the Commissioner through the appropriate supervisor for the district or region in which he serves. Such officer or employee shall await instructions from the Commissioner concerning the response to the demand. If it is determined by the Commissioner that the demand should be opposed, the U.S. attorney, his assistant, or other appropriate legal representative shall be requested to respectfully inform the court, administrative agency, or other authority that the Commissioner has instructed the officer or employee to refuse to disclose the internal revenue records or information sought. If instructions have not been received from the Commissioner at the time when the officer or employee is required to appear before the court, administrative agency, or other authority in response to the demand, the U.S. attorney, his assistant, or other appropriate legal representative shall be requested to appear with the officer or employee upon whom the demand has been served and request additional time in which to receive such instructions. In the event the court, administrative agency, or other authority rules adversely with respect to the refusal to disclose the records or information pursuant to the instructions of the Commissioner, or declines to

defer a ruling until instructions from the Commissioner have been received, the officer or employee upon whom the demand has been served shall, pursuant to this section, respectfully decline to disclose the internal revenue records or information sought.

(e) *Record of seizure and sale of real estate.*—Record 21, "Record of seizure and sale of real estate," is open for public inspection in offices of district directors of internal revenue and copies are furnished upon application.

(f) *State liquor cases or State firearms cases.*—Assistant regional commissioners (alcohol and tobacco tax) may, in the interest of Federal and State law enforcement, upon receipt of demands or requests of State authorities, and at the expense of the State, authorize investigators and other employees under their supervision to attend trials and administrative hearings in liquor cases or firearms cases in which the State is a party, produce records and testify as to facts coming to their knowledge in their official capacities, provided that information will not be divulged contrary to section 7213 of the Code by such production or testimony.

(g) *Penalties.*—Any officer or employee of the Internal Revenue Service who disobeys the provisions of this section will be subject to dismissal and may incur criminal liability.

(h) *Effective date.*—The provisions of this section are applicable to any request or demand for internal revenue records or information received by any officer or employee of the Internal Revenue Service after June 15, 1967.

Because this Treasury decision constitutes a general statement of policy and establishes rules of Treasury Department practice and procedure, it is found that it is unnecessary to issue this Treasury decision with notice and public procedure thereon under section 553(b) of title 5 of the United States Code.

HENRY H. FOWLER,
Secretary of the Treasury.

Approved June 2, 1967.

(Filed by the Office of the Federal Register on June 7, 1967, 8:47 a.m., and published in the issue of the Federal Register for June 8, 1967, 32 F.R. 8240)

PART II

RULINGS AND DECISIONS UNDER THE INTERNAL REVENUE CODE OF 1939 AND OTHER PUBLIC LAWS, EXCEPT THOSE PERTAINING TO ALCOHOL, TOBACCO, AND FIREARMS TAXES

SUBTITLE A.—TAXES SUBJECT TO THE JURISDICTION OF THE BOARD OF TAX APPEALS

CHAPTER 1.—INCOME TAX

SUBCHAPTER B.—GENERAL PROVISIONS

PART IV.—ACCOUNTING PERIODS AND METHODS OF ACCOUNTING

SECTION 45.—ALLOCATION OF INCOME AND DEDUCTIONS

Regulations 118, Section 39.45–1: Determination of the taxable net income of a controlled taxpayer.

Allocation of income and deductions among the members of a group of business entities owned or controlled by the same interests. See Rev. Rul. 67–79, page 117.

PART V.—RETURNS AND PAYMENT OF TAX

SECTION 55.—PUBLICITY OF RETURNS

26 CFR 458.324: Inspection of returns by committees of Congress other than those enumerated in section 55(d) of the Internal Revenue Code of 1939.

Inspection of certain returns for the years 1947 to 1968, inclusive, by the Committee on Government Operations, House of Representatives. See E.O. 11332, page 341.

Inspection of certain returns for the years 1948 to 1966 inclusive, by the Senate Committee on Government Operations. See E.O. 11337, page 341.

PART III

ALCOHOL AND TOBACCO TAX MATTERS

SUBPART A.—ALCOHOL TAX RULINGS AND DECISIONS UNDER CHAPTER 51 OF THE INTERNAL REVENUE CODE OF 1954 AND THE FEDERAL ALCOHOL ADMINISTRATION ACT

SUBTITLE E.—ALCOHOL, TOBACCO, AND CERTAIN OTHER EXCISE TAXES

CHAPTER 51.—DISTILLED SPIRITS, WINES, AND BEER

SUBCHAPTER C.—OPERATION OF DISTILLED SPIRITS PLANTS

PART II.—OPERATIONS ON BONDED PREMISES

Subpart D.—Denaturation

SECTION 5242.—DENATURING MATERIALS

26 CFR 212.16: Formula No. 1.

Use of wood alcohol having a minimum specific gravity of 0.8072. See Rev. Rul. 67–82, below.

26 CFR 212.65: General.

Use of wood alcohol having a minimum specific gravity of 0.8072. See Rev. Rul. 67–82, below.

26 CFR 212.96: Wood alcohol. Rev. Rul. 67–82
(Also 212.16, 212.65.)

The Director, Alcohol and Tobacco Tax Division, has been requested to determine whether wood alcohol having a specific gravity lower than the minimum provided for in 26 CFR 212.96 may be used in production of specially denatured alcohol formula No. 1. The re-

quest was made in an effort to gain an increase in the yield of wood alcohol from production materials.

Accordingly, samples of wood alcohol having a minimum specific gravity of 0.8072 were examined, and it has been determined that use of such alcohol would provide a degree of protection consistent with existing requirements. In view thereof, under the authority of 26 CFR 212.65 wood alcohol having the minimum specific gravity of 0.8072 at 15.56°/15.56° C. meeting all the other requirements of 26 CFR 212.96 may be used as provided by 26 CFR 212.16 in the production of SDA formula No. 1 and where the use of wood alcohol is otherwise required by internal revenue regulations.

SUBCHAPTER F.—BONDED AND TAXPAID WINE PREMISES

PART I.—ESTABLISHMENT

SECTION 5357.—PREMISES

26 CFR 240.163: Markings on fermenting and storage tanks. — Rev. Rul. 67–83

The requirements of 26 CFR 240.163 would be satisfied by the use of signs made of cardboard to identify fermenting and storage tanks in a bonded wine cellar.

The Internal Revenue Service has been asked whether the use of cardboard signs to identify fermenting and storage tanks on bonded wine cellar premises would satisfy the requirements of 26 CFR 240.163.

The use of cardboard signs to identify fermenting and storage tanks on bonded wine cellar premises would satisfy the requirements of 26 CFR 240.163, provided the cardboard is of sufficient durability to withstand continued use and such signs are coated with a waterproofing material so that they will be protected from the elements and the accidental spillage of wine.

PART III.—CELLAR TREATMENT AND CLASSIFICATION OF WINE

SECTION 5382.—CELLAR TREATMENT OF NATURAL WINE

26 CFR 240.382: Addition of wine spirits to juice or concentrated juice. (Also 240.482, 240.411.) — Rev. Rul. 67–84

A formula is not required for the addition of wine spirits to concentrated or unconcentrated juice.

The Internal Revenue Service has been asked whether a formula is required under 26 CFR 240.482 for the addition of wine spirits to concentrated or unconcentrated juice.

Under 26 CFR 240.482, a formula is required for the production of wine other than standard wine. However, 26 CFR 240.382 provides that concentrated or unconcentrated juice to which wine spirits have been added is not wine. Therefore, a formula is not required for the addition of wine spirits to concentrated or unconcentrated juice.

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26 CFR 240.411: Addition of wine spirits.

Requirements for the addition of wine spirits to concentrated or unconcentrated juice. See Rev. Rul. 67–84, page 410.

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26 CFR 240.482: Formula required.

Requirements for the addition of wine spirits to concentrated or unconcentrated juice. See Rev. Rul. 67–84, page 410.

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26 CFR 240.524: Finishing of wine. Rev. Rul. 67–133
(Also 240.1051, 240.1052.)

> Copper sulfate may be used to clarify and stabilize grape wine and a clarifying agent composed of Bentonite, activated carbon, and copper sulfate may be used to clarify and stabilize grape wine, upon giving notice to and obtaining approval of the Assistant Regional Commissioner.
>
> Revenue Ruling 65–278, C.B. 1965–2, 513, and Revenue Ruling 66–229, C.B. 1966–2, 539, superseded.

The Internal Revenue Service has been asked whether the limitations stated in Revenue Rulings 65–278 and 66–229 are intended to restrict the amount of copper sulfate or copper. Since the limitations are intended to apply to the amount of copper which may be added to the wine, the authorizations are restated.

The use of copper sulfate as a clarifying agent to clarify and stabilize grape wine and a clarifying agent composed of Bentonite, activated carbon, and copper sulfate to clarify and stabilize grape wine are considered as being consistent with good commercial practice. However, the Bentonite and activated carbon must be used within the limitations of 26 CFR 240.1051 and the addition of copper, in the form of copper sulfate, may not exceed 0.5 ppm. of copper with a residual level not in excess of 0.2 ppm. of copper.

Winemakers desiring to use these clarifying agents in the treatment of wine may obtain approval of the Assistant Regional Commissioner, Alcohol and Tobacco Tax, by filing a notice pursuant to the provisions of 26 CFR 240.1052.

Revenue Ruling 65–278, C.B. 1965–2, 513, and Revenue Ruling 66–229, C.B. 1966–2, 539, are hereby superseded.

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26 CFR 240.1051: Materials authorized for treatment of wine.

Use of clarifying agents to clarify and stabilize grape wine. See Rev. Rul. 67–133, above.

26 CFR 240.1052: Notice.

Use of clarifying agents to clarify and stabilize grape wine. See Rev. Rul. 67–133, page 411.

SUBCHAPTER I.—MISCELLANEOUS GENERAL PROVISIONS

SECTION 5552.—INSTALLATION OF METERS, TANKS, AND OTHER APPARATUS

26 CFR 245.30: Meters required.

Potter beer monitoring system, Model SY–81–600. See Rev. Proc. 67–20, page 600.

SUBPART B.—TOBACCO TAX RULINGS AND DECISIONS UNDER CHAPTER 52 OF THE INTERNAL REVENUE CODE OF 1954

CHAPTER 52.—CIGARS, CIGARETTES, AND CIGARETTE PAPERS AND TUBES

SUBCHAPTER A.—DEFINITIONS; RATE AND PAYMENT OF TAX; EXEMPTION FROM TAX; AND REFUND AND DRAWBACK OF TAX

SECTION 5701.—RATE OF TAX

26 CFR 270.21: Cigar tax rates. Rev. Rul. 67–60

All direct costs to the consumer, such as mailing and handling charges, are an integral part of the retail price of a single cigar under Section 5701 of the Internal Revenue Code of 1954, with the exception only of State and local taxes as specifically provided for in the statute.

See Revenue Ruling 55–20, C.B. 1955–1, 516, for method of determining the retail price of a single cigar in its principal market where sold singly at retail for more than one price.

Advice has been requested as to whether mailing and handling costs charged to the purchaser (consumer) at retail for large cigars, should be included in the "retail price" of these cigars to determine the proper class for tax purposes under section 5701 of the Internal Revenue Code of 1954.

Section 5701(a)(2) of the Code imposes a tax on large cigars on the basis of the price at which "removed to retail" and provides that in determining this retail price "regard shall be had to the ordinary retail price of a single cigar in its principal market."

Usually the costs of transporting large cigars to the consumer are not stated separately but are merely included in the basic retail price quoted to and charged to the consumer. The fact that these transportation charges are quoted separately would not exclude them from the retail price for Federal tax purposes.

Therefore, it is held that all direct costs to the consumer, with the sole exception of the exact amount of State and local taxes which are specifically excluded by the statute, are part of the retail price of a single cigar for Federal tax purposes. When the retail price of the single cigar after excluding State and local taxes includes a fraction of a cent, the fraction is an integral part of the price for determining the applicable Federal tax.

See Revenue Ruling 55–20, C.B. 1955–1, 516, for method of determining the retail price of a single cigar in its principal market where sold singly at retail for more than one price.

SECTION 5705.—CREDIT, REFUND, OR ALLOWANCE OF TAX

26 CFR 270.283: Credit or refund of tax.

Procedure to be followed in executing Form 3069 to support claims for credit or refund of tax on cigars and cigarettes withdrawn from the market. See Rev. Proc. 67–18, page 597.

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26 CFR 270.311: Action by claimant.

Procedure to be followed in executing Form 3069 to support claims for credit or refund of tax on cigars and cigarettes withdrawn from the market. See Rev. Proc. 67–18, page 597.

SUBCHAPTER C.—OPERATIONS BY MANUFACTURERS AND IMPORTERS OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES AND EXPORT WAREHOUSE PROPRIETORS

SECTION 5723.—PACKAGES, MARKS, LABELS, NOTICES, AND STAMPS

26 CFR 270.211: Package. Rev. Rul. 67–184
(Also 275.71, 290.181, 290.248, 295.41.)

26 CFR Parts 270, 275, 290, and 295 do not prohibit the use of outer containers for, or overwrap of, packages of cigars or cigarettes. *Held*, packages of cigars or cigarettes bearing the required mark and notice may be enclosed in outer containers which may be sealed, or such packages may be overwrapped, including overwraps for special occasions such as Christmas or Father's Day. Internal Revenue officers are authorized to open such outer containers or remove the overwraps in the course of their inspection of cigars and cigarettes so packaged or overwrapped.

Revenue Ruling 66–131, C.B. 1966–1, 346, is hereby superseded.

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26 CFR 275.71: Package.

Whether packages of cigars or cigarettes bearing the required mark and notice may be enclosed in outer containers or overwrapped for special occasions. Rev. Rul. 67–184, above.

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26 CFR 290.181: Packages.

Whether packages of cigars or cigarettes bearing the required mark and notice may be enclosed in outer containers or overwrapped for special occasions. Rev. Rul. 67–184, above.

26 CFR 290.248: Packages.

Whether packages of cigars or cigarettes bearing the required mark and notice may be enclosed in outer containers or overwrapped for special occasions. Rev. Rul. 67–184, page 414.

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26 CFR 295.41: Packages.

Whether packages of cigars or cigarettes bearing the required mark and notice may be enclosed in outer containers or overwrapped for special occasions. Rev. Rul. 67–184, page 414.

SUBTITLE F.—PROCEDURE AND ADMINISTRATION

CHAPTER 80.—GENERAL RULES

SUBCHAPTER A.—APPLICATION OF INTERNAL REVENUE LAWS

SECTION 7805.—RULES AND REGULATIONS

26 CFR 301.7805–1: Rules and regulations. Rev. Rul. 67–134

Obsolete Revenue Procedure concerning cigars, cigarettes, and cigarette papers and tubes, published in C.B. 1960–2.

A review of the Revenue Rulings and Revenue Procedures concerning cigars, cigarettes, and cigarette papers and tubes has been made. On the basis of the review it has been determined that one Revenue Procedure concerning the preparation and handling of Forms 2149 and 2150 is no longer necessary since the forms have been revised to provide for certification of the forms without modification by customs officers at border ports for overland exportation. Therefore, Revenue Procedure 60–32, 1960–2, 1011, is hereby declared to be obsolete. Other Rulings that have been declared obsolete are listed in Revenue Rulings 62–172, C.B. 1962–2, 352, and 66–22, C.B. 1966–1, 354.

SUBPART C.—FIREARMS TAX RULINGS AND DECISIONS UNDER CHAPTER 53 OF THE INTERNAL REVENUE CODE OF 1954 AND THE FEDERAL FIREARMS ACT

CHAPTER 53.—MACHINE GUNS AND CERTAIN OTHER FIREARMS

SUBCHAPTER A.—TAXES

PART II.—TRANSFER TAX

SECTION 5812.—EXEMPTIONS

26 CFR 179.105: Notice of exemption and transfer. T.D. 6905 [1]

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER E, PART 179.—MACHINE GUNS AND CERTAIN OTHER FIREARMS

Notice of exemption and transfer of firearms

DEPARTMENT OF THE TREASURY,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D.C. 20224

To Officers and Employees of the Internal Revenue Service and Others Concerned:

On November 8, 1966, a notice of proposed rule making to amend 26 CFR Part 179 was published in the Federal Register (31 F.R. 14359). In accordance with the notice, interested persons were afforded an opportunity to submit written comments or suggestions pertaining thereto. No comments or suggestions were received within the 30-day period prescribed in the notice, and the amendments as proposed are hereby adopted.

In order to establish that a reported tax-exempt transfer of a firearm coming within the purview of the National Firearms Act (ch. 53 of the Internal Revenue Code of 1954) has been accomplished, section 179.105 of 26 CFR Part 179 is amended to read as follows:

§ 179.105 NOTICE OF EXEMPTION AND TRANSFER.—Where a transfer is claimed to be exempt from tax under section 5812 I.R.C., as implemented by §§ 179.104, 179.104a, and 179.104b, a notice of exemption and transfer must be immediately executed by the transferor in triplicate on Form 5 (Firearms), and the original forwarded to the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Washington, D.C. 20224, the duplicate retained by the transferor, and the triplicate furnished to the transferee. The notice must show the name and address of the transferor and transferee, a description of the firearm, the date of the transfer, the basis of the exemption claimed, and any other evidence which the Director, Alcohol and

[1] 31 F.R. 16616.

Tobacco Tax Division, may require. In addition, the transferor must establish that the transferee has received the firearm. Acceptable proof of receipt of a firearm may be in the form of a document such as a bill of lading showing shipment of the firearm to the transferee, or a signed statement by the transferee, or by a responsible officer or official on behalf of the transferee, acknowledging receipt of the firearm. Any document evidencing receipt of the firearm by the transferee must be securely affixed to the original Form 5 (Firearms) furnished to the Director, Alcohol and Tobacco Tax Division.

This Treasury decision shall become effective on the first day of the first month which begins not less than 30 days after the date of its publication in the Federal Register.

(This Treasury decision is issued under authority contained in section 7805 of the Internal Revenue Code (68A Stat. 917; 26 U.S.C. 7805).)

SHELDON S. COHEN,
Commissioner of Internal Revenue.

Approved December 22, 1966.

STANLEY S. SURREY,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on Dec. 28, 1966, 8:49 a.m., and published in the issue of the Federal Register for Dec. 29, 1966, 31 F.R. 16616)

PART IV

LEGISLATION AND TREATIES

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PART IV

LEGISLATION AND TREATIES

SUBPART A.—TAX CONVENTIONS

UNITED STATES-BELGIUM SUPPLEMENTARY INCOME TAX PROTOCOL[1]

A protocol between the United States and Belgium for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, modifies and supplements the United States-Belgium tax convention of October 28, 1948, C.B. 1954–2, 626, as amended by the supplementary convention of September 9, 1952 (incorporated in the convention published in C.B. 1954–2, 626) and the supplementary convention of August 22, 1957, C.B. 1960–1, 739. The protocol was signed at Brussels on May 21, 1965. Ratification was advised by the Senate of the United States on October 22, 1965. It was ratified by the President on November 22, 1965, and by Belgium on July 29, 1966. The instruments of ratification were exchanged at Washington, D.C., on August 29, 1966. The protocol was proclaimed by the President on September 2, 1966, and entered into force on August 29, 1966.

The official text of the protocol is contained in the pamphlet of the Treaties and Other International Act Series (TIAS) designated as TIAS 6073. The English text of the protocol follows:

ARTICLE I

The provisions of the Convention between the United States of America and Belgium, signed at Washington on October 28, 1948, as previously amended, are hereby modified and supplemented as follows:

(1) In Article I, paragraph (1) (b) is replaced by the following:

(b) In the case of Belgium:

(i) The individual income tax (l'impôt des personnes physiques);

(ii) The corporate income tax (l'impôt des sociétés);

(iii) The income tax on legal entities (l'impôt des personnes morales);

(iv) The income tax on nonresidents (l'impôts des nonrésidents);

(v) The prepayments (précomptes) and additional prepayments (compléments de précomptes) relating to the taxes referred to in (i) through (iv); and

(vi) The proportional taxes (centimes additionnels) supplementing each of the taxes referred to in (i) through (v) above including the communal supplement to the individual income tax (taxe communale additionnelle à l'impôt des personnes physiques).

(2) In Article II (1) (a), the following words are deleted: ", the Territories of Alaska and of Hawaii,".

[1] Senate Executive Report No. 7, C.B. 1966–1, 543.

(3) In Article VIII, paragraph (2) is replaced by the following:

"(2) The rate of Belgian tax on dividends derived from sources within Belgium by a resident, corporation or other entity of the United States not having a permanent establishment within Belgium with respect to shares held in registered form for the period of 12 months immediately preceding the date on which such dividends become payable (or for such portion of that period as the paying corporation has been in existence) shall not exceed 15 percent of the amount actually distributed. In all other cases, the rate of Belgian tax on dividends derived from sources within Belgium by a resident, corporation or other entity of the United States not having a permanent establishment within Belgium shall not exceed 15 percent of the taxable amount of such dividends determined in accordance with the Belgian law in force on the date of signature of the protocol inserting this provision in the Convention. In applying this paragraph, the term 'dividends' shall include income from invested capital taxable as such to members of Belgian companies other than joint stock companies."

(4) After Article VIII A, the following new article is inserted:

"ARTICLE VIII B

"(1) Dividends and interest paid to a resident, corporation or other entity of the United States not having a permanent establishment within Belgium shall be exempt from the Belgian additional personal property prepayment (complément de précompte mobilier) provided for in the Belgian law in force on the date of the signature of the protocol inserting this provision in the Convention.

"(2) Dividends and interest paid by a Belgian corporation to a person other than a citizen, resident, corporation or other entity of the United States shall be exempt from United States tax.

"(3) Dividends and interest paid by a United States corporation to a person other than a resident, corporation or other entity of Belgium shall be exempt from Belgian tax unless such income is collected in Belgium."

(5) In Article IX(1) the words "on such income" are inserted in the second sentence after the word "tax" and before the word "as".

(6) In Article XII, paragraphs (2) and (3) are replaced by the following:

"(2) The United States agrees to allow as a credit against the Federal income taxes payable by a citizen, resident or corporation of the United States the appropriate amount of the taxes mentioned in Article I, paragraph (1)(b) and paid to Belgium. Such appropriate amount shall be based on the total amount of such taxes paid to Belgium, but it shall not exceed that proportion of the United States taxes which net income from sources within Belgium bears to the total net income of such citizen, resident or corporation.

"(3) Belgium shall grant relief from double taxation as follows:

"(a) Dividends which are paid by a United States corporation to a Belgian corporation or other entity owning stock in the corporation paying the dividends and which are taxed by the United States in accordance with Article VIII(1) shall be exempt from Belgian corporate income tax to the extent that such exemption would be granted in accordance with the Belgian law in force at the date of signature of the protocol inserting this provision in the Convention, if both corporations were Belgian corporations subject to Belgian corporate income tax.

"(b) Dividends covered under subparagraph (a) which are received by a Belgian corporation or other entity subject to the Belgian corporate income tax (other than a corporation which has made a valid election to have its profits subject to the individual income tax), with respect to stock directly owned by that corporation or other entity for the period of six months immediately preceding the date on which the dividends become payable (or for such portion of that period as both the corporation or other entity receiving and the corporation paying the dividends have been in existence) shall be exempt from the Belgian personal property prepayment (précompte mobilier) ordinarily applicable thereto by reason of their collection by that Belgian corporation or other entity, provided that such corporation or other entity makes a written request for such exemption when filing its annual tax return or before the expiration of the period allowed for the filing of such return. Dividends accorded this exemption shall not be deducted for purposes of determining the personal property prepayment (précompte mobilier) applicable to dividends distributed by the recipient corporation or other entity to its shareholders or members.

"(c) Where a resident of Belgium receives dividends taxed by the United States in accordance with Article VIII (1), Belgium shall deduct from its tax attributable to that income, in addition to any prepayments which may be collected in Belgium, an amount which is intended to take account of the foreign tax and which shall not be less than 15 percent of the dividends after reduction by the United States tax.

"(d) Where a Belgian resident, corporation or other entity receives interest taxed by the United States in accordance with Article VIII A, Belgium shall deduct from its tax attributable to that income, in addition to any prepayments which may be collected in Belgium, an amount which is intended to take account of the foreign tax and which shall not be less than 15 percent of the interest after reduction by the United States tax.

"(e) Where a resident of Belgium is a citizen of the United States, the amount of the Belgian individual income tax proportionately attributable to dividends, interests, pensions, annuities or royalties received by such individual from sources within the United States may not exceed, after allowance of the lump sum credit for foreign tax, 15 percent of such income.

"(f) Where a Belgian resident, corporation or other entity derives any income described in Articles III(1), IV, VI, IX(1), X(1), or XI (or other business or personal service income) which has been taxed by the United States in accordance with this Convention, Belgium shall exempt such income from tax; but it may, in order to compute the amount of its tax on the remainder of the income of such resident, corporation or other entity, apply the rate of its tax which would have applied if such income had not been exempt.

"(g) The provisions of subparagraph (f) shall also apply to interest, dividends, and royalties which are taxed by the United States by reason of the fact that the Belgian resident, corporation, or other entity receiving such income has a permanent establishment in the United States.

"(h) The amount of the income of any Belgian resident, corporation or other entity which is exempted, for any year, from Belgian tax in accordance with subparagraphs (f) and (g) shall be reduced by the amount of any net operating loss deducted in that year for United States tax purposes, but only to the extent that such loss has been deducted from the income subject to the Belgian taxes imposed on that taxpayer for any year."

(7) In the French text of Article XV (1), the words "qui sont susceptibles d'être obtenus en vertu de leurs lois fiscales respectives et" are inserted after the words "tous renseignements".

(8) Article XXII is deleted.

ARTICLE II

(1) The present protocol shall be ratified and the instruments of ratification exchanged at Washington as soon as possible.

(2) The present protocol shall come into force on the date of exchange of instruments of ratification and shall be applicable:

(a) to income of the calendar year 1963 and subsequent calendar years, or of taxable years ending within 1963 and subsequent calendar years, which is subjected:

—in Belgium, to the individual income tax or to the income tax on non-residents applicable to individuals;
—in the United States, to the Federal income tax applicable to individuals;
—in both Contracting States, to taxes accessory or related to the said taxes which are referred to in the amended Article I of the Convention;

(b) to income of taxable years ending on December 31, 1962, or subsequent to that date, which is subjected:

—in Belgium, to the corporate income tax applicable to corporations (sociétés anonymes), companies limited by shares (sociétés en commandite par actions), and other entities subjected to that tax and not mentioned under subparagraph (c), to the income tax on legal entities, or to the income tax on nonresidents applicable to corporations, associations, establishments, and organizations subjected to that tax;
—in the United States, to the Federal income tax applicable to corporations and other entities;
—in both Contracting States, to taxes accessory or related to the said taxes which are referred to in the amended Article I of the Convention;

(c) to income of taxable years ending on December 31, 1963, or subsequent to that date, which is subjected in Belgium to the corporate income tax applicable to companies other than joint stock companies;

(d) in Belgium, to the prepayments and additional prepayments:

(i) on real property income of the year 1963, and subsequent years

(ii) on other income distributed or paid on or after January 1, 1963 by payors established in Belgium or paid on or after that date by payors established in the United States and collected by residents, corporations or other entities of Belgium;

(e) on and after June 30, 1960, with respect to Article I(8) of this protocol.

(3) Notwithstanding the provisions of paragraph (2) of this Article, the provisions of paragraphs (2) and (3) of Article VIII B, inserted in the Convention by Article I(4) of this protocol, shall be applicable with respect to income paid during taxable years beginning on or after the first day of January following the calendar year in which the exchange of instruments of ratification takes place.

(4) Notwithstanding the provisions of paragraph (2) of this Article, where the recipient of the dividends described in Article VIII(2), inserted in the Convention by Article I(3) of this protocol, cannot, by reason of his taxable status in the United States, benefit, through reduction of his liability for United States income taxes, from the credit provided in Article XII(2), inserted in the Convention by Article I(6) of this protocol, with respect to Belgian taxes on such dividends (when such credit is applied without regard to income derived from, or taxes paid to, other foreign countries), the modification of said Article VIII (2) effected by this protocol shall apply only to dividends paid on or after January 1, 1965.

(5) This protocol shall remain in effect with respect to income of calendar years or taxable years beginning (or in the case of taxes payable at the source, payments made) prior to January 1, 1968, or such subsequent date, not later than January 1, 1971, which may be agreed to by the Contracting States through an exchange of diplomatic notes.

* * * * * * *

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto, have signed this Protocol and have affixed thereto their seals.

DONE in duplicate, in the English, French, and Dutch languages, the three texts being equally authentic, at Brussels this 21st day of May 1965.

* * * * * * *

EMBASSY OF THE UNITED STATES OF AMERICA,
27, *boulevard du Régent*,
Brussels 1.

The American Embassy to the Belgian Ministry of Foreign Affairs

No. 43

The Embassy of the United States of America presents its compliments to the Ministry of Foreign Affairs and has the honor to refer to the Ministry's Note No. 504/65/S.98.643 of September 27, 1965 in which it is proposed that the following corrections be made in the protocol signed at Brussels on May 21, 1965, modifying and supplementing the convention between the United States of America and Belgium, for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, signed at Washington on October 28, 1948, as amended by the supplementary conventions, signed at Washington on September 9, 1952, and August 22, 1957:

1. English text:

Article I(6) (3) (e), second line, to read "interest," in place of "interests,".

* * * * * * *

The proposed corrections do not affect the substance of the protocol. The Government of the United States of America considers that the Ministry's note of September 27, 1965 and this note in reply confirm the understanding between the two Governments that the abovementioned errors shall be considered as being corrected in the manner indicated

* * * * * * *

UNITED STATES—FEDERAL REPUBLIC OF GERMANY INCOME TAX CONVENTION

T.D. 6122, C.B. 1955–1, 641; 26 CFR 503.2: Dividends.

Interim procedure for giving effect to the reduced rate of withholding under the protocol brought into force December 27, 1965, modifying the income tax convention between the United States and the Federal Republic of Germany. See Rev. Proc. 67–24, page 625.

UNITED STATES-SWISS CONFEDERATION INCOME TAX CONVENTION

T.D. 6149, C.B. 1955–2, 814; 26 CFR 509.108: Dividends. Rev. Rul. 67–143

(Also Part I, Section 894; 1.894–1.)

Article VI(2) of the Income Tax Convention between the United States and the Swiss Confederation provides, in general, that the rate of tax imposed upon dividends shall not exceed 5 percent if the shareholder is a corporation controlling, directly or indirectly, at least 95 percent of the entire voting power in the corporation paying the dividend, and if not more than 25 percent of the gross income of such paying corporation is derived from interest and dividends, other than interest and dividends received from its own subsidiary corporations.

Held, based upon an exchange of correspondence between the competent authorities of both countries, a corporation whose sole class of outstanding stock is at least 50 percent owned by another corporation will be considered a subsidiary corporation for purposes of Article VI(2) of the Convention.

UNITED STATES-UNITED KINGDOM INCOME TAX CONVENTION

T.D. 6898, C.B. 1966–2, 567; 26 CFR 507.21: Text of convention and definitions.

Procedures implementing the withholding regulations for use by agents with respect to the withholding of tax under the Protocol of March 17, 1966. See Rev. Proc. 67–17, page 595.

SUBPART B.—LEGISLATION

PUBLIC LAW 90–11
NINETIETH CONGRESS, APRIL 22, 1967

S. 1177[1]

An Act to provide for the disposition of a judgment against the United States recovered by the Confederated Salish and Kootenai Tribes of Indians of the Flathead Reservation in Montana.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the unexpended balance of funds on deposit in the Treasury of the United States to the credit of the Confederated Salish and Kootenai Tribes of Indians of the Flathead Reservation that were appropriated by the Act of October 27, 1966 (80 Stat. 1065), to pay a judgment by the Indian Claims Commission in docket numbered 61, and the interest thereon, less payment of attorneys fees and expenses, may be invested, expended, or advanced for any purpose that is authorized by the tribal governing body and approved by the Secretary of the Interior. Any part of such funds that may be distributed to the members of the tribes shall not be subject to Federal or State income taxes.

Approved April 22, 1967.

[1] House Report No. 185 and Senate Report No. 66 are not published herein.

PART V

ADMINISTRATIVE, PROCEDURAL, AND MISCELLANEOUS MATTERS

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PART V

ADMINISTRATIVE, PROCEDURAL, AND MISCELLANEOUS MATTERS

EXECUTIVE ORDER 11318

Designating the European Space Research Organization as a public international organization entitled to enjoy certain privileges, exemptions, and immunities.

By virtue of the authority vested in me by Sections 1 and 11 of the International Organizations Immunities Act (59 Stat. 669; 22 U.S.C. 288), as amended by Public Law 89-353 (80 Stat. 5), I hereby designate the European Space Research Organization (ESRO) as a public international organization entitled to enjoy those privileges, exemptions, and immunities provided for by the International Organizations Immunities Act which are described in paragraphs 6 and 7 of the Agreement between the United States and the European Space Research Organization effected by an Exchange of Notes at Paris, dated November 28, 1966, a copy of which paragraphs are annexed hereto and made a part of this Order.

LYNDON B. JOHNSON

THE WHITE HOUSE,
December 5, 1966.

STATUS OF ESRO

6. ESRO shall, to the extent consistent with the instrument creating it, possess the capacity in the United States to contract, to acquire and dispose of real and personal property, and to institute legal proceedings.

PRIVILEGES AND IMMUNITIES

7. ESRO and its personnel shall be accorded the status, privileges, exemptions and immunities indicated in the following subparagraphs:

CUSTOMS DUTIES

A. The United States will, upon request, take the necessary measures to facilitate the admission into the United States of material, equipment, supplies, goods or other items imported by or for the account of ESRO in connection with the station and ESRO programs. Such shipments shall be accorded such exemption from customs duties and internal-revenue taxes imposed upon or by reason of importation, and such procedures in connection therewith, as are accorded under similar circumstances to foreign governments.

TITLE TO PROPERTY

B. Title to all materials, equipment or other items of property used in connection with the station and ESRO programs will remain in ESRO.

Material, equipment, supplies, goods or other property of ESRO may be removed from the United States at any time by ESRO free of taxes or duties.

INVIOLABILITY AND IMMUNITY FROM SEARCH

C. The archives of ESRO shall be inviolable. The property and assets of ESRO shall, subject to police and health regulations, and applicable United States regulations with regard to radio station inspections, be immune from search, unless ESRO expressly waives such immunity, and from confiscation.

JUDICIAL IMMUNITY

D. ESRO, its property and assets, shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by foreign governments, except to the extent that ESRO may expressly waive its immunity for the purpose of any proceedings or by the terms of any contract.

OTHER PRIVILEGES OF ESRO

E. ESRO shall be exempt from the following taxes levied by the United States: federal income tax; federal communications taxes on telephone, telegraph and teletype services in connection with the operation of the station; and federal tax on tickets for air transport of ESRO officers and employees which are purchased by ESRO or ESRO officers and employees in connection with official travel to and from the station.

PRIVILEGES OF PERSONNEL

F. The United States will facilitate the admission into the United States of such ESRO officers and employees and their families, as may be assigned to or visit the station. ESRO and its officers and employees shall have the same privileges and immunities as those accorded by the United States to officers and employees of foreign governments with respect to laws regulating entry into and departure from the United States, alien registration and fingerprinting, and registration of foreign agents. Officers and employees so assigned shall not exceed in number those necessary for the construction and effective operation of the station. ESRO will communicate their names to the United States in advance of entry.

Baggage and effects of ESRO officers and employees assigned to the station may be admitted, when imported in connection with the arrival of the owner, into the United States, and may be removed from the United States free of customs duties and internal-revenue taxes imposed upon or by reason of importation. Such effects having a significant value shall be sold or otherwise disposed of in the United States only under conditions approved by the United States. Such ESRO personnel shall be exempt from the payment of United States income tax and federal insurance contributions on wages and expenses paid by ESRO. The privileges and immunities set forth in this subparagraph shall not apply to citizens of the United States or foreign nationals admitted into the United States for permanent residence. However, officers and employees of ESRO, whatever their nationality, shall be immune from suit and legal process relating to acts performed by them in their official capacity and falling within their functions except insofar as such immunity may be waived by ESRO.

(Filed by the Office of the Federal Register on Dec. 6, 1966, 10:56 a.m., and published in the issue of the Federal Register for Dec. 7, 1966, 31 F.R. 15307)

EXECUTIVE ORDER 11351

Amending Executive Order No. 11318, Designating the European Space Research Organization as a public international organization.

By virtue of the authority vested in me by sections 1 and 11 of the International Organizations Immunities Act (59 Stat. 669; 22 U.S.C 288), as amended by Public Law 89–353 (80 Stat. 5), Executive Order

No. 11318 of December 5, 1966, page 431, this Bulletin, is amended by adding thereto the following paragraph:

"This order shall be effective as of May 31, 1966."

LYNDON B. JOHNSON.

THE WHITE HOUSE,
May 22, 1967.

(Filed by the Office of the Federal Register on May 22, 1967, 2:58 p.m., and published in the issue of the Federal Register for May 24, 1967, 32 F.R. 7561)

TREASURY DEPARTMENT CIRCULAR NO. 230 (Revised)

Rules governing the practice of attorneys and agents before the Internal Revenue Service

MISCELLANEOUS AMENDMENTS

Section 10.57 of Part 10 of Title 31, Code of Federal Regulations [C.B. 1966–2, 1171 at 1183] is amended by adding the following paragraphs, which involve procedural matters, after paragraph (a):

§ 10.57 SERVICE OF COMPLAINT AND OTHER PAPERS.

* * * * * * *

(b) *Service of papers other than complaint.* Any paper other than the complaint may be served upon an attorney, certified public accountant, or enrolled agent as provided in paragraph (a) of this section or by mailing the paper by first-class mail to the respondent at the last address known to the Director of Practice, or by mailing the paper by first-class mail to the respondent's attorney or agent of record. Such mailing shall constitute complete service. Notices may be served upon the respondent or his attorney or agent of record by telegraph.

(c) *Filing of papers.* Whenever the filing of a paper is required or permitted in connection with a disbarment or suspension proceeding, and the place of filing is not specified by this subpart or by rule or order of the Examiner, the paper shall be filed with the Director of Practice, Treasury Department, Washington, D.C. 20220. All papers shall be filed in duplicate.

§ 10.51 [AMENDED]

Section 10.51 of Part 10 of Title 31, Code of Federal Regulations [C.B. 1966–2, 1171, at 1181] is amended for purposes of clarification by adding the following bracketed sentence to the end of paragraph (c) as a continuation of that paragraph: "[The customary biographical insertions in approved law lists and in reputable professional directories and journals, as well as the use of professional cards and announcements, are permissable providing that they do not violate the standards of ethical conduct adopted by the American Bar Association, the American Institute of Certified Public Accountants and the National Society of Public Accountants.]"

270–829°—67——29

These amendments shall become effective immediately upon publication in the Federal Register.

Dated: October 28, 1966.

[SEAL]

FRED B. SMITH,
General Counsel.

(Filed by the Office of the Federal Register on November 1, 1966; 8:47 a.m., and published in the issue of the Federal Register for November 2, 1966, 31 F.R. 13992)

TREASURY DEPARTMENT ORDER NO. 107
(Revision No. 11)

Authority to affix seal of the Treasury Department

By virtue of the authority vested in the Secretary of the Treasury, including the authority conferred by 5 U.S.C. 301, and by virtue of the authority delegated to me by Treasury Department Order No. 190, Revision 4, it is hereby ordered that:

1. Except as provided in paragraph 2, the following officers are authorized to affix the Seal of the Treasury Department in the authentication of originals and copies of books, records, papers, writings, and documents of the Department, for all purposes, including the purposes authorized by 28 U.S.C. 1733(b):

(a) In the Office of Administrative Services:
- (1) Director of Administrative Services
- (2) Chief, General Services Division
- (3) Chief, Printing and Procurement Division
- (4) Chief, Directives Control and Distribution Branch

(b) In the Internal Revenue Service:
- (1) Commissioner of Internal Revenue
- (2) Director, and Assistant Director. Collection Division
- (3) Chief, and Assistant Chief, Disclosure and Liaison Branch, Collection Division

(c) In the Bureau of Customs:
- (1) Commissioner of Customs
- (2) Deputy Commissioner of Customs
- (3) Assistant Commissioner of Customs (Administration)
- (4) Assistant Commissioner of Customs (Investigations)
- (5) Assistant Commissioner of Customs (Operations)
- (6) Assistant Commissioner of Customs (Regulations and Rulings)

(d) In the Bureau of the Public Debt:
- (1) Commissioner of the Public Debt
- (2) Deputy Commissioner in Charge of the Chicago Office
- (3) Assistant Deputy Commissioner in Charge of the Chicago Office

2. Copies of documents which are to be published in the Federal Register may be certified only by the officers named in paragraph 1(a) of this Order.

3. The Director of Administrative Services, the Commissioner of Internal Revenue Service, and the Commissioner of the Public Debt are authorized to procure and maintain custody of the dies of the Treasury Seal.

The officers authorized in paragraph 1(c) may make use of such dies.

A. E. WEATHERBEE,
Assistant Secretary for Administration.

Dated April 13, 1967.

(Filed by the Office of the Federal Register on Apr. 19, 1967, 8:48 a.m., and published in the issued of the Federal Register for Apr. 20, 1967, 32 F.R. 6215)

SECRETARY'S AUTHORIZATION

(Also Part I, Section 4261; 26 CFR 49.4261–1.)

TITLE 26—INTERNAL REVENUE.—CHAPTER I.—SUBCHAPTER D—MISCELLANEOUS EXCISE TAXES.—PART 49—FACILITIES AND SERVICES EXCISE TAXES

Exemption From Tax of Certain Payments by Interior Department

Exemption from the tax on transportation of persons by air of amounts paid by the Department of the Interior for fire prevention and control activities.

By virtue of the authority vested in the Secretary of the Treasury by section 4293 of the Internal Revenue Code of 1954 (68 Stat. 511; 26 U.S.C. 4293), and by virtue of the authority vested in me by Treasury Department Order No. 190, Revision 4, 30 F.R. 15769, exemption is hereby authorized from the tax imposed by section 4261 of such Code with respect to amounts paid by the Department of the Interior, for travel by persons involved in presuppression or suppression of range and forest fires, in any aircraft on a nonestablished (nonscheduled) airline; such travel being performed in consonance with Comptroller General Opinion B–135644 of October 19, 1966. This exemption shall not apply to flights on scheduled airlines.

This authorization shall be effective with respect to amounts paid on or after the date of its publication in the Federal Register.

[SEAL] STANLEY S. SURREY,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on March 31, 1967, 8:49 a.m., and published in the issue of the Federal Register for April 1, 1967, 32 F.R. 5457)

STATEMENT OF ORGANIZATION AND FUNCTIONS[1]

ORGANIZATION AND FUNCTIONS

This material supersedes the statement on organization and functions published at 30 F.R. 9368–9402 [C.B. 1965–2, 863].

[1] 32 F.R. 727.

1112 SERVICE ORGANIZATION.—(1) The Internal Revenue Service is a component part of the Treasury Department. The Service is headed by the Commissioner of Internal Revenue who serves under the direction of the Secretary of the Treasury.

(2) The Internal Revenue Service consists of a National Office in Washington, D.C., and a field organization. The latter consists of 7 Internal Revenue regions, each headed by a Regional Commissioner who reports to the Deputy Commissioner, 58 Internal Revenue districts, each headed by a District Director, 7 service centers, each headed by a Director who reports to a Regional Commissioner, and a computer center and a data center under the direction of the Assistant Commissioner (Data Processing) in the National Office. In addition, there are in the field 7 Regional Inspectors and 7 Regional Counsels, who report to the Assistant Commissioner (Inspection) and the Chief Counsel, respectively, in Washington, D.C.

(3) In administering the alcohol and tobacco tax and appellate functions direct from the regional office, the Regional Commissioner maintains and supervises several branch offices. The Alcohol and Tobacco Tax branch offices are headed by Supervisors in Charge who report to the Assistant Regional Commissioner (Alcohol and Tobacco Tax). The Appellate branch offices are headed by Chiefs or Assistant Chiefs, Appellate Branch Office, who report to the Assistant Regional Commissioner (Appellate) who also carries the title of Chief, Appellate Division. The Regional Counsels also maintain and supervise branch offices.

(4) In each Internal Revenue district there are offices in communities where concentration of work load in audit, collection, or intelligence activities requires the assignment of personnel.

(5) Field office addresses are shown in the Appendixes.

1113 NATIONAL OFFICE.—1113.1 MISSION.—The mission of the National Office is to develop broad nationwide policies and programs for the administration of the internal revenue laws and related statutes, and to direct, guide, coordinate, and control the endeavors of the Internal Revenue Service.

1113.2 BASIC ORGANIZATION.—The principal offices which form the National Office are: The Office of the Commissioner; the Office of the Assistant Commissioner (Administration); the Office of the Assistant Commissioner (Compliance); the Office of the Assistant Commissioner (Data Processing); the Office of the Assistant Commissioner (Inspection); the Office of the Assistant Commissioner (Planning and Research); the Office of the Assistant Commissioner (Technical); and the Office of the Chief Counsel.

1113.3 OFFICE OF THE COMMISSIONER.—The Commissioner of Internal Revenue, in conformity with policies and delegations of authority made by the Secretary of the Treasury, establishes the policies and administers the activities of the Internal Revenue Service. The Office of the Commissioner includes the Deputy Commissioner, the Assistant to the Commissioner, and the Foreign Tax Assistance Staff.

1113.31 DEPUTY COMMISSIONER.—The Deputy Commissioner assists and acts for the Commissioner in planning, directing, coordinating and controlling the policies and programs and in giving executive leadership to the activities of the Internal Revenue Service. The

Deputy Commissioner also supervises the Regional Commissioners of Internal Revenue, and makes allocations of funds and personnel to them.

1113.32 Assistant to the Commissioner.—The Assistant to the Commissioner reviews and takes final action for the Commissioner on documents involving technical matters prepared for the Commissioner's signature, including regulations, closing agreements, reports on proposed legislation, rulings, correspondence, authorizations to the Attorney General for initiating suits, compromises and reports to the Joint Committee on Internal Revenue Taxation involving refunds or credits of any income, war profits, excess profits, estate, or gift taxes in excess of $100,000. The Assistant to the Commissioner makes independent studies for the Commissioner.

1113.33 Foreign Tax Assistance Staff.—The Foreign Tax Assistance Staff provides leadership within the Service for the development and implementation of comprehensive programs of assistance in tax administration to developing nations, and on occasion, to the more developed nations, in line with the foreign policy of the United States and its commitments to the Organization of American States, the United Nations, and other international institutions. It is the central point of contact within the Service with foreign governments, the State Department and international organizations on all matters involving the exchange of technical assistance in tax administration. The Staff designs broad programs aimed at modernizing and strengthening tax administration in developing countries; it determines program requirements in terms of number and qualifications of advisors and selects, trains, and assigns such advisors. It provides technical leadership and direction, continually monitors, and periodically evaluates country programs to ensure maximum effectiveness of assistance efforts. The Staff develops and arranges study and observation programs in tax administration for foreign tax officials, which are conducted largely in the United States and occasionally at overseas sites. The Staff maintains close liaison with the Department of State and the Agency for International Development (AID), foreign governments, international organizations, and the Office of the Secretary on matters concerning the foreign tax assistance program, most of which is conducted cooperatively with AID.

1113.4 Office of Assistant Commissioner (Administration).—The Assistant Commissioner (Administration) is the principal assistant to the Commissioner in planning and executing the Administration program of the Internal Revenue Service, which includes fiscal management, personnel, facilities management, training, public information, employment policy, and management improvement. Jointly, with other Assistant Commissioners, he participates in the general management of the Service by coordinating Administration with other functions to accomplish the objectives of a comprehensive and well-integrated Revenue program. On general administrative matters represents the Commissioner in relationships with the Congress: the Treasury Department Office of the Secretary and other components of the Treasury Department; and such agencies as the Bureau of the Budget, the Civil Service Commission and General Services Administration. Supervises the activities of the Fiscal Management, Personnel, Facilities Management, Training, and Public Information

Divisions in the National Office, and is responsible for functional supervision of Administration activities in the field.

1113.41 FACILITIES MANAGEMENT DIVISION.—OFFICE OF THE DIRECTOR.—Develops, directs, coordinates, and evaluates policies and programs for providing essential support activities for the operating divisions' primary programs and carries them out in the National Office. Its programs are designed to increase the effectiveness of the Internal Revenue Service, reduce its operating costs, and improve taxpayer relations by tailoring Internal Revenue Service physical facilities and by providing support services to best meet the Service's total needs. These programs include paper work, space, property, supply, transportation, and telecommunications management, procurement and contracting, printing and distribution, national emergency planning, safety, document and physical security, and the settlement of tort claims. Develops the standards and procedures necessary for effective performance of its functions. This Division consists of four branches: National Office Facilities, Standards and Programs, Protective Programs, and Publications.

1113.411 NATIONAL OFFICE FACILITIES BRANCH.—Develops, coordinates, directs, and evaluates all Facilities Management activities (except printing and distribution) within the National Office, including the National Training Center and the National Computer Center (but excluding the IRS Data Center) within the broad guidelines established by the Division Director. These activities include: Records and Paperwork Management—correspondence management, mail management, files management, records equipment and supplies management, records retention and disposal scheduling, paperwork management studies, and the application of microphotography; Space and Transportation Management—planning requirements for space, providing for the acquisition, maintenance, utilization and disposal of space to ensure an effective, efficient, and appropriate physical working environment for employees; providing transportation management planning for interoffice movement of Service records and documents, supplies and equipment, displays and other materials; Property and Supply Management—contracting, procurement, property accountability, utilization and disposal; Telecommunications, Management—communications services and facilities used for transmitting and receiving voice, image, data, and other message information by wire, radio, visual, or other electrical or electromagnetic transmission modes; systems, equipment, and circuitry for telephone, telegraph, facsimile, video, and other telecommunications operations; Protective Programs—documents and physical security safety, and fire and civil defense planning. The Branch provides standards, techniques, guidelines, and consultative services needed in these areas by National Office components. In addition, performs the following duties pertaining to Service-wide programs: Renders support services to the Foreign Tax Assistance Staff; provides contractual advice and contracting services, provides centralized procurement of automobiles, computers and data processing peripheral equipment, office machinery, and many supply items. Administers other support services for the National Office including building maintenance, transportation, travel, equipment, and vehicle repairs. Maintains liaison with National Office officials, other Government agencies, public utilities, contractors,

private carriers, and other private and public organizations to coordinate and improve service in these activities.

1113.412 Standards and Programs Branch.—Plans, develops, promotes, coordinates, and evaluates policies, standards and programs designed to increase the effectiveness of Service-wide Internal Revenue operations. These programs include: Records and Paperwork Management—documentation standards correspondence management, forms management, mail management, files management, records equipment and supplies management, records retention and disposal standards, paper work management studies, and the application of microphotography; Space and Transportation Management—planning requirements for IRS space, providing standards for the acquisition, maintenance, utilization and disposal of space to ensure an effective, efficient, and appropriate physical working environment for all Service employees; providing transportation management planning for interoffice movement of Service records and documents, supplies and equipment, displays and other materials; Property and Supply Management—contracting, procurement, property accountability, utilization and disposal and motor vehicle fleet management; Telecommunications Management—communications services and facilities used for transmitting and receiving voice, image, data, and other message information by wire, radio, visual, or other electrical or electromagnetic transmission modes; systems, equipment, and circuitry for telephone, telegraph, facsimile, video, and other telecommunications operations. The Branch determines the need for program emphasis and goals, develops the programs and promotes and coordinates their acceptance and implementation with other components of the Service; provides standardized techniques, guidelines, and consultative services needed in these areas by the Service. Collaborates with the Systems Development Division in matters involving data storage, retrieval and new systems using electrical and electronic equipment. Acts as liaison for Internal Revenue Service with other Federal agencies and industry in matters concerning Branch program activities.

1113.413 Protective Programs Branch.—Develops, coordinates, administers, and evaluates Service-wide programs of accident prevention, physical and document security, identification, emergency planning, and civil defense and ensures continuity of operations by preventing or minimizing loss through accident, employee injury, fire, theft, enemy attack, natural disaster, and civil disturbance, and breaches of security of facilities, equipment, and documents. Exercises the authority to settle claims arising out of the activities of the Internal Revenue Service under the Federal Tort Claims Act and the Military Personnel and Civilian Employees' Claims Act and administers the program to ensure equitable settlement and payment of claims.

1113.414 Publications Branch.—Develops and coordinates the policies, procedures, and standards for all printing and distribution programs and visual presentations services in the Internal Revenue Service in accordance with the programs determined by the appropriate IRS offices. Provides for and administers the planning, analysis, design, requirements estimating, procurement, production scheduling, and distribution of all publications, forms, and envelopes

needed by the Service in accordance with the programs determined by the appropriate IRS offices. Directs and coordinates studies of newly developed or improved processes in the graphic arts field including duplicating equipment and office reproduction machines. Represents IRS in liaison with printing regulatory agencies in interpreting, coordinating, and administering Government-wide printing and publications policies; and provides consultative services needed in these areas.

1113.42 Fiscal Management Division.—Develops, plans, coordinates and evaluates the financial management and budget policies and programs of the Internal Revenue Service. Develops and assists in the justification of the Service's budget; advises on its execution; establishes procedures covering the accounting system for appropriated funds; and directs the budget and fiscal activities carried out in the National Office. Counsels and advises the Commissioner, the Deputy Commissioner and all levels of management on matters concerning budget and the fiscal management of funds appropriated for the administration of the Service. The Division, under the direction of the Fiscal Management Officer, consists of two branches: Accounting Branch and Budget Branch.

1113.421 Accounting Branch.—The Accounting Branch develops, prescribes, and installs the Service's financial accounting system to produce timely and accurate data for budgetary and fiscal management purposes. It also collaborates with the Reports Division in developing and administering the financial reporting system.

1113.422 Budget Branch.—The Budget Branch develops the Service's budget in conformance with the established overall program policies through consultation and cooperation with the responsible operating officials. It prescribes budget procedures and directs the preparation of budget estimates for the Service; participates in the development of standards for the measurement of work necessary in the justification of estimates or the evaluation of financial plans; prepares requests for the apportionment and reapportionment of appropriations; allots funds in accordance with the approved financial plan and properly authorized revisions thereof; establishes the procedures and records necessary to properly reflect the execution of the budget; and collaborates with the Reports Division in developing and administering a reporting system reflecting the status of the budget and financial plan.

1113.43 Personnel Division.—Office of the Director.—Plans, directs, and leads in the development, coordination and evaluation of the personnel policies and programs of the Service. Provides functional supervision over personnel operations throughout the Service and personnel programs in the regions, districts and service centers, including long-range planning, organization and staffing studies, staff development, and program evaluation. Administers centralized personnel activities including those for employees of the National Office. Acts as the appellate office for the Commissioner on adverse action and grievance appeals and designates Hearing Officers when hearings are requested; through the Appeals Officer is responsible for adverse action appeals and for providing assistance in the appeals area; responsible for post review of disciplinary actions, disseminates information on CSC and Court decisions on adverse actions appeals. Coordinates and develops policies and procedures for employee conduct, disciplinary

actions including adverse actions, outside employment, employee indebtedness, and employee interest in alcohol and tobacco industries. Reviews and makes recommendations on conduct and character background investigations involving centralized positions, and on requests for interpretations or exceptions to outside employment regulations. Assists the field on conduct and character background cases and post audits, on a referral basis, of such cases. Through the Technical Advisor directs appropriate personnel activities to promote effective manpower utilization. Prepares certain Service-wide personnel reports for the Civil Service Commission and other agencies.

1113.431 EMPLOYEE-MANAGEMENT COOPERATION BRANCH—Develops and coordinates policies, programs, and procedures for the Service's Employee-Management Cooperation Program under Executive Order 10988, including liaison, consultation, and negotiation with employee organizations, and development of Service-wide positions on matters negotiable with employee organizations. Develops and coordinates grievance programs and handles grievance appeals filed with the Director. Develops and coordinates employee communications programs, including the planning and direction of employee attitude surveys and employee benefits and services including leave, hours of duty, retirement, Social Security, group insurance (life and health benefits), and health programs. Assists field in arranging employee services and coordinates recreational and fund-raising activities. Develops and coordinates comments or proposals on employee-management cooperation and benefits and services legislation, and regulations. Exercises functional supervision over counterpart operations throughout the Service, and participates as functional specialists in evaluation of field programs. Advises officials, and acts as liaison with the Civil Service Commission, Treasury Department, and other Governmental Agencies on policies, programs, and procedures in the employee-management cooperation and benefits and services functional areas.

1113.432 EMPLOYEE PROGRAMS BRANCH.—Develops and coordinates policies, procedures, and program instructions including technical training programs for the employee programs of the Service such as: Recruitment; selection; placement; appointment; career status; qualifications evaluation; promotion plans; details; veterans preference; orientation and placement follow-up; reduction-in-force; equal employment; separations; awards and incentive programs; high quality increases; and fitness for duty. Develops and coordinates redeployment programs and procedures; coordinates, as required, personnel programs affecting service center installations. Develops and coordinates policies and procedures pertaining to participation of the Service in Boards of U.S. Civil Service Examiner programs. Exercises functional personnel direction over the implementation and follow-through on career development programs. Reviews and advises on budgetary and staffing proposals relative to recruitment, selection and utilization of personnel. Exercises functional supervision over counterpart operations throughout the Service, and participates as functional specialists in evaluation of field programs. Reviews and makes recommendations on promotion appeals. Provides staff expertise in personnel management techniques for the development and application of automated processes to personnel management.

1113.433 NATIONAL OFFICE BRANCH.—Develops and executes policies, programs, and procedures relating to recruitment, selection, placement, employee relations, position classification, discipline, performance evaluation, promotion, manpower utilization, and other aspects of a complete personnel program for National Office and certain field positions with the exception of those requiring Treasury or Civil Service approval; reviews the budget for proposed position reallocations pertinent to the above positions. In addition, performs the following duties pertaining to Service-wide programs: renders support to the Foreign Tax Assistance Staff; provides staff assistance to the National Selection Board which selects and assigns executive personnel; administers National Placement Program; performs essential personnel services for career programs for supervisory and managerial positions; reviews and processes regional employment cases for which authority has not been delegated to regions; processes section 6(c) retirement cases and proposals for Gallatin Awards; and answers general inquiries and other correspondence concerning applications for employment, reassignments, promotions, etc. Reviews and makes recommendations of security cases Service-wide.

1113.434 POSITION PROGRAMS AND METHODS BRANCH.—Develops and coordinates policies, procedures, and program instructions for the position classification, employee performance evaluation, pay administration, noncompetitive staffing, and career programs of the Service. Develops and coordinates occupational standards and guides including classification, qualification and performance standards, qualification rating keys and criteria and techniques for making classification, qualifications, and training selection determinations. Reviews and counsels on position classification implications of budgetary and financial planning with respect to proposed grade structure changes as justified by data on available workload and conformance with existing classification guides and standards. Provides staff expertise in personnel management techniques including the conduct and direction of studies requiring the use of psychological and other social science methodology. Reviews and makes recommendations on CSC central office and Treasury classification and qualification standards. Exercises functional supervision over counterpart operations throughout the Service and participates as functional specialists in evaluating field programs. Performs such centralized services as classification of positions for which authority has not been delegated, preparation of supergrade recommendations, and justification, and development of standard position descriptions. Adjudicates classification appeals and administers Wage Board Program. Develops and coordinates the personnel management portion of the Service's emergency readiness plan. With assistance from Training Division, develops, negotiates, and administers Service-wide training agreements, and develops standards for selection of personnel for training.

1113.44 PUBLIC INFORMATION DIVISION.—Plans, develops and coordinates the Service-wide policies and programs for providing information to the public through the press, radio, television, and other informational, educational and professional media, to improve general knowledge and understanding of the Federal tax laws and their administration, for the primary purpose of encouraging and facilitating maximum compliance with the voluntary system of taxation. It counsels and advises the Commissioner and other levels of management

where public interest or response is involved in the determination of Service policy and execution of tax programs; evaluates for the Commissioner the attitude of the public toward Revenue Service policy and programs and recommends corrective measures where indicated; conducts continuous studies of the Service's information program to identify and act on problems and opportunities for improvement; maintains liaison with and gives functional guidance to regional and district offices in the public information area; and carries out the public information program at the National Office.

1113.45 TRAINING DIVISION.—OFFICE OF THE DIRECTOR.—The Director, Training Division, formulates and recommends the overall training policies of the Internal Revenue Service and provides professional training leadership and guidance to Service Officials and personnel. The Director conducts research and special studies to determine the best methods of employee development for the Service and provides expert advice and counsel on training techniques and methodology including the use of audio visual aids. In cooperation with the separate functions, the Director identifies the need for, and administers Service training programs; is responsible for development and preparation of training courses and program materials; supports the Foreign Tax Assistance Staff in defining training needs of foreign tax officials and in developing and implementing training programs to meet these needs; determines program emphasis and goals; establishes standards and procedures for the effective and efficient administration of Service training programs; and evaluates training for effectiveness and economy. He administers the Teaching Taxes program and coordinates the efforts of the National Office Divisions concerned He supports the field efforts in the Taxpayer Education program. He further advises on training cost estimates for all Service-wide training; administers the special fiscal allotment (250) used to finance centralized training activities; and carries out the training policies and programs of the Service in the National Office. The Division consists of the Director's Office, the Administrative Office, National Office Training Branch, Programs and Standards Branch, and the National Training Center.

1113.451 ADMINISTRATIVE OFFICE.—The Administrative Office provides staff assistance to the Director in carrying out the administrative management functions of the Division, and also provides all necessary administrative support for internal operations. The administrative services include various management analysis activities and studies; coordination and development of financial plans; administration of the centralized training allotment; cost estimating; preparation of long range staffing plans and requirements; space, records, and reports management; contract liaison; and personnel, mail and files, logistical, and clerical support services.

1113.452 NATIONAL OFFICE TRAINING BRANCH.—The National Office Training Branch carries out established training policies and administers training programs for National Office employees. The Branch provides professional training leadership and guidance to National Office officials and personnel. It assists National Office officials in determining training needs and defining training objectives. In collaboration with the National Office officials, the Branch determines the appropriate kind and source of training for National Office personnel; manages functional training classes for National

Office employees, and trains, counsels, and evaluates instructors and instruction for the National Office. It provides interfunctional training in supervision, communications, clerical skills and the like. The Branch reviews training agreements for National Office employees, outlines training to be given under the agreements, and assists in the clearance and administration of training agreements as required. It evaluates and reports on the overall adequacy, effectiveness and economy of training in the National Office.

1113.453 PROGRAMS AND STANDARDS BRANCH.—The Programs and Standards Branch formulates and recommends overall training policies for the Internal Revenue Service. It determines Service training emphasis and goals and coordinates their acceptance with other components of the Service. The Branch assists management in the determination of organizational and individual training needs; provides professional training leadership and guidance to Service officials in defining training objectives and planning training programs. In cooperation with the separate functions, National Training Center, and the Regional Offices, the Branch plans and develops specific training standards and programs; plans the Taxpayer Education Program; and supports the Foreign Tax Assistance Staff in defining training needs of foreign tax officials. In addition, the Branch studies and evaluates the various training programs; plans improvements in training effectiveness and economy; and coordinates the evaluation of Service-wide training programs. The Branch reviews Service-wide training agreements developed by the Personnel Division, outlines training to be given under the agreement, and assists in the clearance and administration of training agreements as required. The Branch plans research in the field of training and makes special studies to determine the best methods of employee development for the Service.

1113.454 NATIONAL TRAINING CENTER.—The National Training Center develops and maintains on a current basis all training courses and materials for Service-wide programs and directs the activities of permanently assigned faculty instructors, education and training specialists, functional specialists and detailed technicians, and other assigned personnel; plans, administers and conducts nationally centralized classes and administers Internal Revenue Service Correspondence Courses; and further develops courses and conducts centralized training for Service instructors, course developers, and other personnel engaged in training activity. The Center provides adequate classrooms, special training space, equipment, facilities, and professionally trained instructors for centralized courses conducted at the Center, and provides for storage, control, and distribution of training course materials. The Director, National Training Center, is responsible for evaluating the quality of the professional work product and effort of the Center: conducts research, analysis and evaluation of new or improved methods and techniques of training, including audiovisual aids, communications vehicles, and mechanical or electronic training devices and systems; and continually reviews the effectiveness of materials, methods, aids, and techniques utilized in existing programs through practical classroom experience and by analytical projects conducted at the Center.

1113.5 OFFICE OF ASSISTANT COMMISSIONER (COMPLIANCE).—The Assistant Commissioner (Compliance) is the principal assistant to the

Commissioner on all matters pertaining to the compliance and appellate programs of the Service, in encouraging and achieving the highest possible degree of voluntary compliance by taxpayers, and in providing effective functional supervision of those activities in the field. These include collection of delinquent accounts, obtaining of delinquent returns, audit and investigation of returns, criminal fraud investigations, the administrative system of tax appeals, and administration of laws relating to alcohol, alcoholic beverages, tobacco and firearms. The Assistant Commissioner (Compliance) directs, coordinates and evaluates the work of the Alcohol and Tobacco Tax Division, the Appellate Division, the Audit Division, the Collection Division, the Intelligence Division and the Office of International Operations.

1113.51 Alcohol and Tobacco Tax Division.—Office of the Director.—Accomplishes the Alcohol and Tobacco Tax mission with reference to alcohol, tobacco and firearms by developing and supervising (functional supervision—which includes evaluation) nationwide programs for: Regulation and supervision of the legal industries for revenue and social control purposes, and to protect the consumer and eliminate improper trade practices in the alcohol beverage industries; suppression of illicit traffic and frauds on the revenue in these commodities by developing information concerning violations, investigating suspected violations and recommending prosecution when warranted; and measurement of the effectiveness of the regulatory, supervisory, investigative and prosecution processes. The Division also performs certain centralized Alcohol and Tobacco Tax functions such as those pertaining to legislation, issuing regulations and rulings, making centralized determinations, performing final review on appeals, and supplying a variety of technical, laboratory and specialized services within the Service and to others.

1113.511 Executive Assistant.—Provides staff assistance to the Director in the general management of the Alcohol and Tobacco Tax operations and in the formulation of policy and program plans in the areas of organization, personnel, financial planning, funds management, and appraisal of field operations; both on a continuing basis and through specific management studies. Develops and coordinates the Division-wide program for planned systematic visitation to apprise top management, through on-site evaluation, of the effectiveness of field office performance in both the program and management areas. Works with Assistant Regional Commissioners in evaluating program results in the regions. Provides required office management and administrative services for the National Office Division.

1113.512 National Office Laboratory.—Responsible for formulating, developing, and carrying out programs for the application of scientific methods to the solution of problems of the Alcohol and Tobacco Tax and Tax Rulings Divisions of the Internal Revenue Service having impact on the collection of the revenue. Furnishes technical advice and assistance to officials of the Internal Revenue Service in the fields of chemistry and physics. Conducts research to improve and develop analytical techniques and to resolve technical problems by physical or chemical methods. Examines and analyzes samples, formulas and processes of permittees under the jurisdiction of the Alcohol and Tobacco Tax Division to determine taxable status and examines

samples for the Bureau of Narcotics. Coordinates the National Office and Regional Laboratory Programs.

1113.513 Basic Permit and Trade Practice Branch.—Responsible for formulating, developing, and carrying out programs for the administration and enforcement of the Federal Alcohol Administration Act. Plans and conducts studies of industry trends in marketing which might have an impact on the programs of the Branch. Recommends revision or amendment of regulations and prepares notices of hearings thereon; analyzes and evaluates testimony developed at hearings; and drafts final regulations and such related forms or internal management documents as required. Makes rulings and interpretations of law and regulations for benefit of industry, regional offices, other Federal agencies, State agencies, and embassies of foreign governments. Collaborates with foreign governments in their developments of control procedures abroad to supplement domestic controls established with respect to the importation of their products into the U.S. Acts on applications for interlocking directorates and for certificates of (or exemption from) label approval. Determines acceptability of alcoholic beverage advertising in all media and initiates punitive actions for violations of advertising provisions of law and regulations. Maintains liaison with regional offices to appraise the effectiveness of Branch programs.

1113.514 Enforcement Branch.—Responsible for: Formulating and developing policies, programs, procedures, and regulations relating to the investigation, prevention and detection of willful and/or fraudulent violations of the Internal Revenue Liquor and Tobacco Laws, the Liquor Enforcement Act of 1936, the Federal Alcohol Administration Act, and the National and Federal Firearms Acts; control and coordination of the law enforcement activities of the Division with related functions of other Federal Agencies and with those of State authorities; adaptation of investigative techniques and procedures to the varying needs of different regions, to a diversity of State control laws and their fluctuating requirements and to the constantly changing social and economic conditions affecting the enforcement operations of the Division; providing guidance and training to field elements, for effective application of policies and programs; and appraising management of field offices, as it relates to their enforcement function, through a planned on-site evaluation program.

1113.515 Permissive Branch.—Responsible for developing the objectives of the Division in the administration of Internal Revenue laws relating to the production, processing, distribution, and use of alcoholic beverages, industrial alcohol, and related products. Devises policies and programs and designs the organizational structure to achieve these objectives. Plans, develops, and prepares regulations, procedures, and rulings, and provides guidance and training to field elements, for effective application of policies and programs; and appraises management of field offices, as it relates to functional areas other than enforcement, through a planned on-site evaluation program.

1113.516 Tobacco Tax Branch.—Responsible for planning, developing, and expressing the program for the administration of the internal revenue laws relating to tobacco materials, tobacco products, and cigarette papers and tubes. Formulates policies, practices, procedures,

and regulations relating to the manufacture and taxpayment or tax-exempt disposition of tobacco products and cigarette papers and tubes, and to the handling of tobacco materials. Conducts analytical studies of the laws, regulations, policies, practices, and procedures, and appraises field operations to determine the efficiency and effectiveness of the tobacco tax program. Formulates recommendations for revision of internal revenue laws in the tobacco tax area. Interprets laws and regulations, makes tax determinations, and issues rulings and instructions; prepares internal management documents and forms; analyzes recurring problems and develops solutions; and prepares final decisions in cases where the action of regional offices is protested or appealed.

1113.52 APPELLATE DIVISION.—OFFICE OF THE DIRECTOR.—Accomplishes the Appellate mission of resolving tax controversies without litigation, on a basis which is fair and impartial to both the Government and the taxpayer by developing and supervising (functional supervision) nationwide programs for final appeal consideration, within the Service, of cases involving income, profits, estate, gift, employment and excise taxes (other than alcohol, tobacco, narcotics, firearms, and wagering), offers-in-compromise, refund claims and overassessments, in which the taxpayer protests the decision of the District Director, and of cases docketed in the Tax Court of the United States (with concurrence of Regional Counsel and prior to the opening date of the Tax Court session concerned). Develops nationwide Appellate budget estimates and long-range plans; evaluates financial plans and budget execution of regional Appellate Divisions. Furnishes administrative services for the operation of the Appellate Division of the National Office. Also directs or performs certain centralized Appellate functions.

1113.521 COORDINATION AND MANAGEMENT STAFF.—Assists in developing and recommending policies, plans, programs, and basic procedures and provides top-level managerial assistance through the following principal functions: Develops and recommends operations policies, plans, programs, and basic procedures relating to the Appellate function. Assists and advises regional Appellate offices on technical and administrative problems to enable them more effectively to accomplish their objectives. Establishes and conducts a field visitation program, and maintains continuous field liaison to assure that established policies, programs, plans, and instructions are carried out in a uniform, effective manner. Evaluates adequacy of staffing and managerial performance in regional Appellate offices. Performs coordination functions across regional lines and with other Service elements. Supervises task forces working on special projects such as training, position descriptions, offices systems, and management improvement. Represents the Director in meetings of National Office and regional officials, and staff members serve on various committees as designated.

1113.522 EXCESS PROFITS TAX COUNCIL.—Settles administratively or assists the office of the Chief Counsel in the trial of the few docketed section 722 cases that still are pending through the following principal functions: Considers and holds administrative hearings in disputed Excess Profits Tax cases and issues arising under section 722 of the 1939 Code. Prepares interpretative rulings on section 722 matters.

Furnishes assistance and advice to Chief Counsel and Regional Counsel in connection with the preparation and trial of section 722 cases before the Tax Court of the United States.

1113.523 Operations Analysis Branch.—Analyzes and interprets program status and progress in accomplishing the overall Appellate mission, and conducts the Appellate Reports and Information Retrieval Activity (ARIRA) program, through the following principal functions: Originates statistical analyses and graphic presentations with explanations and interpretations to disclose program status and progress with trends and deviations highlighted. These analyses serve as the basis for program direction and long-range program planning for the Appellate activity. Collaborates with the Reports Division in the development, review, and improvement of the nationwide Appellate reporting system which provides the Director, his assistants, and staff with statistical information to assist them in evaluating management effectiveness in the regions. Issues instructions for changes and improvements in the system and coordinates with other organizations on reporting and related matters. Assists regional offices in problems involved in preparing statistical reports. Collaborates with the Reports Division on the ARIRA program in determining and testing formats for machine-produced reports which present information in the most usable form for Appellate management at all levels and as an aid to research. Issues instructions for the preparation of source documents for computer input and for branch office records. Collaborates with Planning and Research, Data Processing, and other segments of the Service in a research effort to create a comprehensive information storage and retrieval system.

1113.524 Procedures Branch.—Provides current procedural instructions and public issuances for the Appellate Division through the following principal functions: Plans, directs, and administers the development, preparation, issuance, and interpretation of instructions necessary to implement policies, plans, programs, and procedures relating to the Appellate function. Coordinates all procedural changes with other segments of the Service. Recommends changes in the Code of Federal Regulations for Appellate activities and, when necessary, publication in the Federal Register. Considers employee suggestions submitted under the Incentive Awards Program which relate to Appellate activities and implements those that are adopted.

1113.525 Settlement Analysis Branch.—Performs qualitative analysis of the work product of the regional Appellate Divisions and provides them with technical assistance through the following principal functions: Reviews and analyzes action memoranda and supporting statements on cases closed by regional Appellate Divisions to provide assurance of and to promote uniformity and consistency in the treatment of issues, to assist in maintaining optimum quality of performance and decisions, and to ascertain compliance with procedures and the need for clarifying instructions. Postreviews final closing agreements approved by regional Appellate officials. Also reviews final closing agreements prior to submission to the Assistant Commissioner (Compliance) for approval. Identifies troublesome technical or qualitative areas and trends; and recommends solutions to help regional offices meet their objectives. Conducts special studies (such as Session, Reconsideration, Affirmative Issue, and Fraud cases) to

assist the Director and the Assistant Regional Commissioners (Appellate) in their programing and long-range planning. Analyzes and processes requests for technical information and digests technical information and other technical communications for dissemination to regional offices when information is of general Appellate interest. Analyzes the ARIRA and RIRA legal issue tables and reports significant findings to the Director, the Assistant Regional Commissioners (Appellate), and regional offices. Maintains liaison on matters relating to cases requiring submission to the Congressional Joint Committee on Internal Revenue Taxation. Provides centralized files, mails, distribution, and messenger service; and prepares sensitive case reports.

1113.526 SPECIAL SERVICES BRANCH.—Advises and assists in cases involving controversies as to valuation through the following principal functions: Participates in the development of Service position and procedures in complex valuation matters. Helps to maintain uniformity of treatment of valuation issues throughout the Regional Appellate Divisions by reviewing settlements, furnishing advice, and conducting training sessions. Furnishes expert advice and assistance to the National Office, Regional Appellate Division, and Regional Counsel on difficult valuation problems. Provides expert witnesses to testify at trials involving complex valuation issues. Develops programs and techniques aimed at eliminating, to the greatest extent possible, the need for time consuming trials of valuation issues in Tax Court or other courts.

1113.53 AUDIT DIVISION.—OFFICE OF THE DIRECTOR.—Accomplishes the audit mission of income, estate, gift, employment, and certain excises taxes by developing and supervising (functional supervision) nationwide programs for the examination of tax returns and the disposition of certain offers-in-compromise, and through measurement of the types and degrees of compliance and noncompliance in reported tax liabilities, the determination and analysis of the reasons for noncompliance, and the reduction of noncompliance. The Division also performs certain centralized audit functions.

1113.531 ADMINISTRATIVE SERVICES OFFICE.—Furnishes administrative services for the operation of the Audit Division through performance of the following functions: Provides for administrative needs of the Division. Provides centralized mail, files, distribution, messenger, and library services.

1113.532 ANALYTICAL SERVICES STAFF.—As a staff and service support element provides timely statistical analytical services to the Office of Director and other components of the Audit Division through performance of the following management processes and functions: Receives, compiles, collates and makes available statistical data for management needs. Analyzes and evaluates source data and other information, prepares preliminary interpretations and presents preliminary reports of progress toward accomplishment of audit mission and attainment of stated objectives. Performs across-the-board (horizontal) evaluation of audit programs and activities, including relating of external data such as economic and social data and provides technical assistance to branch chiefs in their detailed (vertical) analysis and evaluation of their specific programs. Researches, develops, and disseminates to audit personnel (National Office and field) the most effective

and latest statistical methods and techniques and the most effective means for presenting, communicating, and interpreting statistical data; serves as Audit Division consultant on these matters. Provides assistance in program evaluation, general analysis, and in preparation for visits to field offices. Provides assistance as requested by other components of the Audit Division in statistical research on Taxpayer Compliance Measurement Program, evaluation of audit field workload, and other special compliance research and measurement of compliance and noncompliance. Serves as specialist and consultant in analytical methods and other statistical matters and assists district, regional and National Office audit personnel in understanding and utilizing techniques and data resulting from integrated analysis of internal and external data and information.

1113.533 PROGRAM ASSISTANCE STAFF.—As a staff and service support element provides assistance to other components of the Audit Division through performance of the following management processes and functions: Studies organization, functions, responsibilities, and staffing when the entire audit activity in the field is involved or when two or more branches of the Audit Division, National Office have program responsibility in a single audit field organizational element; serves as consultant and specialist on these matters. Maintains liaison with Personnel Division on position classification and other personnel matters and coordinates such matters for the Audit Division. Coordinates or assists in general management and other special studies and when authorized performs other nonrecurring assignments which are not the responsibility of the Division's other organizational elements; assists in determining permanent functional assignments. Studies, identifies, and implements methods, systems, and procedures for management improvement, work simplification, and better utilization of resources in the field service branch activity. Collaborates and maintains liaison with the Office of the Assistant Commissioner (Data Processing) and, when necessary, with the Office of the Assistant Commissioner (Planning and Research), on information systems requirements for data and data processing, information storage and retrieval matters (including design of reporting systems and report forms as required); coordinates and maintains management surveillance over all these matters within the Audit Division. Collaborates and maintains liaison with the Facilities Management Division in internal forms and records management. Controls and coordinates with the appropriate branch or the Analytical Services Staff, the processing and evaluation of Internal Audit Reports and incentive awards suggestions; assures completed actions on these matters. Assures maintenance and development of Part IV of the Internal Revenue Manual by all organizational elements of the Audit Division on a uniform and current basis and serves as the control point for all published issuances of the Audit Division. Coordinates with the Preexamination Branch in the preparation of the budget for the operating requirements of the Audit Division, National Office.

1113.534 PREEXAMINATION BRANCH.—Provides program management for Audit Division's functional supervision over the determination and selection of the examination workload, including compliance research; measurement of compliance and noncompliance; returns selection; monitoring, coordinating, and integrating the workload

planning activities of the Division; preparation of the program planning document, and consolidation of work plans with budget and financial documents. Performs the following management processes and functions: Formulates and recommends policy. Conceives and plans programs (short, intermediate, and long-range); relates these to program planning documents, preliminary work plans, and budget and financial plans. Implements plans through systems, procedures, methods and other instructions, including development of techniques and training guides. Controls through analysis, evaluation, interpretation and timely reports on status, progress, and trends of programs, activities, and field operations, and through participation in Division visits to field offices and special field visits as required. Collaborates with Program Assistance Staff on management processes and miscellaneous activities involving multiple programs and activities such as data processing, information systems, records management, internal forms management, information storage and retrieval systems, incentive awards program matters and Internal Audit Reports. Coordinates with the Program Assistance Staff on field organization, staffing, position classification, and other field personnel matters. Conducts studies for problem identification, problem solving, planning, and assistance to the regions. Maintains continuing alternates, for managment improvement, work simplification, and better utilization of resources. Provide completed staff work and full coordination both within and outside the Audit Division.

1113.535 Field Examination Branch.—Provides program management for Audit Division's functional supervision over the conduct of examinations for tax liabilities through field examinations. Performs the following management processes and functions: Formulates and recommends policy. Conceives and plans programs (short, intermediate and long-range); relates these to program planning documents, preliminary work plans and budget and financial plans. Implements plans through systems, procedures, methods and other instructions, including development of techniques and training guides. Controls through analysis, evaluation, interpretation, and timely reports on status, progress, and trends of programs, activities, and field operations, and through participation in Division visits to field offices and special field visits as required. Engages in research on audit techniques and on technical and professional development for audit personnel. Collaborates with Progam Assistance Staff on management processes and miscellaneous activities involving multiple programs and activities such as data processing, informations systems, records management, internal forms management, information storage and retrieval systems, incentive awards program matters and Internal Audit Reports. Coordinates with the Program Assistance Staff on field organization, staffing, position classification, and other field personnel matters. Conducts studies for problem identification, problem solving, planning, and assistance to the regions. Maintains continuing alertness for management improvement, work simplification, and better utilization of resources. Provides completed staff work and full coordination both within and outside the Audit Division.

1113.536 Office Examination Branch.—Provides program management for Audit Division's functional supervision over the conduct of examinations for tax liabilities through office audits. Performs

the following management processes and functions: Formulates and recommends policy. Conceives and plans programs (short, intermediate and long-range); relates these to program planning documents, preliminary work plans, and budget and financial plans. Implements plans through systems, procedures, methods and other instructions, including development of techniques and training guides. Controls through analysis, evaluation, interpretation and timely reports on status, progress, and trends of programs, activities, and field operations, and through participation in Division visits to field offices and special field visits as required. Engages in research on audit techniques and on technical and professional development for office audit personnel. Collaborates with Program Assistance Staff on management processes and miscellaneous activities involving multiple programs and activities such as data processing, information systems, records management, internal forms management, information storage and retrieval systems, incentive awards program matters and Internal Audit Reports. Coordinates with the Program Assistance Staff on field organization, staffing, position classification, and other field personnel matters. Conducts studies for problem identification, problem solving, planning, and assistance to the regions. Maintains continuing alertness for management improvement, work simplification, and better utilization of resources. Provides completed staff work and full coordination both within and outside the Audit Division.

1113.537 Post-Examination Branch.—Provides program management for Audit Division's functional supervision over postexamination programs (district conferences, review and postreview) and associated programs and activities including determination letters, pension trust, departing aliens, offers in compromise based on doubt as to liability for taxes or for both taxes and statutory additions (except alcohol, tobacco, and firearms taxes), etc. Performs the following centralized audit activities, management processes, and functions: Formulates and recommends policy. Conceives and plans programs (short, intermediate, and long-range); relates these to program planning documents, preliminary work plans, and budget and financial plans. Implements plans through systems, procedures, methods, and other instructions, including development of techniques and training guides. Controls through analysis, evaluation, interpretation, and timely reports on status, progress, and trends of programs, activities, and field operations, and through participation in Division visits to field offices and special field visits as required. Collaborates with Program Assistance Staff on management processes and miscellaneous activities involving multiple programs and activities such as data processing information systems, records management, internal forms management, information storage and retrieval systems, incentive awards program matters and Internal Audit Reports. Coordinates with the Program Assistance Staff on field organization, staffing, position classification, and other field personnel matters. Conducts studies for problem identification, problem solving, planning, and assistance to the regions. Postreviews Office of International Operations cases in a role comparable to an Assistant Regional Commissioner (Audit). Reviews offers-in-compromise within functional jurisdiction requiring the Commissioner's approval. Maintains continuing

alertness for management improvement, work simplification, and better utilization of resources. Provides completed staff work and full coordination both within and outside the Audit Division.

1113.538 Technical Coordination Branch.—Represents the Audit Division in technical and legislative matters and performs the following centralized audit activities: Coordinates technical matters with Appellate Division and the Assistant Commissioner (Technical), including Technical Coordinator Program, requests for technical advice, Appellate Division actions, and review of tax briefs. Maintains file and makes appropriate briefing reports on sensitive cases. Reviews external forms and form letters submitted by the Regions; coordinates the development and revision of National Office external forms and form letters; reviews tax return forms and related public use forms proposed by the Forms Committee. Coordinates, controls, and processes cases involving special features such as restricted interest and recomputations based on court decisions and proposed settlements. Reviews jeopardy assessments. Assists Chief Counsel and Department of Justice in the trial and settlement of cases. Maintains action control on cases in suspense awaiting court decisions or National Office action. Responds to external communications generally involving questions of field actions in specific cases. Collaborates with the Program Assistance Staff on incentive awards program matters and Internal Audit Reports. Performs other technical assignments which do not fall within jurisdiction of other branches.

1113.54 Collection Division.—Office of the Director.—Accomplishes the Collection mission with reference to the filing and payment requirements of the Internal Revenue laws by developing and supervising (functional supervision) nationwide programs for taxpayer assistance, disposition of certain offers in compromise, collection of unpaid accounts, determination and analysis of why accounts become delinquent, and prevention of accounts from becoming delinquent, as well as through obtaining of delinquent returns, measurement of the types and degrees of nonfiling, determination and analysis of the reasons for nonfiling and reduction of nonfiling. The Division also performs certain centralized Collection functions and administers the disclosure provisions of the law and regulations concerning inspection of returns and related matters of official record.

1113.541 Administrative Services Offices.—Furnishes administrative services for the operation of the Collection Division of the National Office through performance of the following functions: Provides for administrative needs of the Division, such as centralized mails, files, distribution, messenger, photoreproduction, and library services. Maintains liaison with the Office of Assistant Commissioner (Administration) on all National Office Collection Division administrative matters (including budgetary, personnel, training, and facilities management matters). Provides administrative control of Incentive Awards suggestions assigned to other elements of the Division for study and recommendation and makes certain all suggestions have been effectively coordinated within the Division. Monitors, coordinates, and integrates Collection Division portion of the Management Improvement Report.

1113.542 Analytical Services Staff.—As a staff and service support element, provides statistical analytical services to the Director/

Assistant Director and all elements of the Collection Division, and identifies, evaluates, interprets, reports and assists in reporting progress toward accomplishment of the Collection mission through performance of the following functions: Collects and presents relevant statistical data in an organized and readily usable form in accordance with management needs. Analyzes and evaluates source data and other information, prepares preliminary interpretations and presents preliminary reports of progress toward accomplishment of Collection mission and stated objectives. Provides these to the Director and concurrently to the other organizational elements of the Division. Performs across-the-board (horizontal) evaluation of Collection programs and activities, including relating of external data such as economic and social data and provides technical assistance to Branch Chiefs in their detailed (vertical) analysis and evaluation of specific programs. Researches, develops and disseminates to Collection personnel (National Office and Field) the most effective and latest analytical methods and techniques and the most effective means for presenting and communicating statistical data and interpretations. Serves as Collection Division consultant on these matters. Provides assistance in program evaluation, general analysis and in preparation for visits to Field Offices by the Supervisor of Visits and other personnel; as requested, provides assistance in statistical research to all elements of the Collection Division with reference to TCMP, evaluation of Collection Field workload, and other special compliance research and measurement of voluntary compliance. Serves as specialist and consultant in analytical methods and assists District, Regional and National personnel in understanding and utilizing techniques and data resulting from integrated analysis of relevant internal and external data.

1113.543 Centralized Activities Office.—Performs all centralized Collection operations retained in the National Office, through the following principal functions: Reviews and processes all cases requiring approval of the Joint Committee on Internal Revenue Taxation (overassessments of $100,000 or more); adjustments of World War II Excess Profits Tax; adjustments of Post-War Credit; Judgments of the District Courts and the Court of Claims; administrative settlements by the Department of Justice. Advises district directors with reference to proper application in the final settlement of cases involving administrative provisions of the Code relating to assessments, collections, abatements, credits, refunds, and restricted interest. Performs other centralized functions relating to: Offsets of claims and debts; redemption of Government securities; redemption of mutilated currency; requests for relief under Public Law 334; and arranges for Government depositaries. Receives checks from Post Office Department from the proceeds of the documentary stamps sales; causes checks to be issued for distribution of certain tax collections to island possessions and Government Agencies and maintains an account current for same. Conducts correspondence and engages in conferences with taxpayers, other officials of the Service, the Department of Justice, and other Government Agencies regarding the above activities. Serves in an advisory capacity to other branches of the Division in developing policies and procedures in connection with these activities.

1113.544 Special Projects Staff.—Assists the Director/Assist-

ant Director and all elements of the Collection Division as a Staff element assigned special projects and activities not directly identified with any single program for which a program management branch has responsibility and especially involving coordination of management processes which apply to all programs and activities of the Division by performing the following functions: Monitors, coordinates and integrates the planning activities of the Division, including the preparation of program planning document, Work Plans and budget and financial documents. Maintains Work Planning and Control System (including maintenance of the Operations List) current and compatible with procedural issuances and coordinates the establishment of work priorities within the System. Monitors, studies, coordinates, and integrates Field Collection (DAR activities), organization, functions, position responsibilities, staffing and related personnel matters. Serves as Division consultant on these matters. Collaborates and maintains liaison with the Office of the Assistant Commissioner (Data Processing) on information system requirements for data and data processing, reports and information systems design, other reports management activities, and on information storage and retrieval matters (also collaborating and maintaining liaison with the Office of Assistant Commissioner (Planning and Research) on information storage and retrieval), and coordinates and maintains management surveillance over all these matters within the Collection Division. Conducts general management and other special studies and performs other assignments which are not within the specific jurisdiction of the program management branches when authorized by the Director or Assistant Director. Assists Director in determining permanent functional assignments within the Division where such assignments are not clearly covered within the established functional responsibilities. Coordinates internal audit matters related to the Collection Division, and is responsible for completed action on internal audit reports, keeping branches informed on these matters. Monitors maintenance and development of Part V of the Manual by all organizational elements of the Division, and serves as control point for all published issuances of the Division. Provides for and controls regularly planned and special visits by personnel of the various organizational elements of the Division to Field Offices. Responsible, on a continuing basis, for management improvement, work simplification, better utilization of resources, etc., with reference to assigned programs.

1113.545 Delinquent Accounts Branch.—Exercises program management responsibility for Collection Division's functional supervision of offers in compromise based on doubt as to collectibility of taxes (except alcohol, tobacco, and firearms taxes), offers in compromise of statutory additions based on doubt as to liability or doubt as to collectibility (except alcohol, tobacco, firearms, employment, and withholding taxes, and specific penalties), and all offers in compromise of 100 percent penalties, and of the payment requirements of the Internal Revenue laws through the Delinquent Accounts Program (collection of unpaid accounts, determination and analysis of why accounts become deliquent, and prevention of accounts from becoming delinquent) by performing the following functions with

reference to the Offer in Compromise and Delinquent Accounts Programs: Formulates and recommends policies. Develops short, intermediate, and long-range program content and activities. Relates these to program planning documents, preliminary work plans and budget and financial plans. Develops, reviews and revises as necessary: Systems, procedures, methods, and other instructions for Collection field personnel, including the development of techniques and training guides. Analyzes, evaluates and reports to Division Director on status, progress and trends with reference to assigned programs and takes appropriate action required. Evaluates and reports to Division Director on status and trends of Field Operations involving assigned programs. Collaborates with Office of Assistant Commissioner (Data Processing) on substantive program and systems matters pertaining to assigned programs. Collaborates with Special Projects Staff in identifying need for and seeking improvement of reports and information systems. Identifies need for and seeks improvement of records and internal forms in collaboration with Facilities Management Division. Recommends appropriate action on Incentive Award suggestions referred the Administrative Services Office and on internal audit reports referred by the Special Projects Staff. Conducts studies required for problem identification, problem solving, planning, assistance to the regions, and engages in "troubleshooting" for assigned programs. Reviews offers in compromise within functional jurisdiction requiring the Commissioner's approval. Participates in Division visits to Field Offices and conducts special purpose visits as required. Responsible, on a continuing basis, for management improvement, work simplification, better utilization of resources, etc., with reference to assigned programs.

1113.546 Delinquent Returns Branch. — Exercises program management responsibility for Collection Division's functional supervision of the filing requirements of the Internal Revenue laws through the Delinquent Returns Program (obtaining of delinquent returns, measurement of the types and degrees of nonfiling, determination and analysis of the reasons for nonfiling and reduction of nonfiling) by performance of the following functions with reference to the Delinquent Returns Program: Formulates and recommends policies. Develops short, intermediate, and long-range program content and activities. Relates these to program planning documents, preliminary work plans and budget and financial plans. Develops, reviews and revises as necessary: systems, procedures, methods and other instructions for Collection field personnel, including the development of techniques and training guides. Analyzes, evaluates, and reports to Division Director on status, progress and trends with reference to assigned programs and takes appropriate action required. Evaluates and reports to Division Director on status and trend of Field Operations involving assigned programs. Collaborates with Office of Assistant Commissioner (Data Processing) on substantive program and systems matters pertaining to assigned programs. Collaborates with Special Projects Staff in identifying need for and seeking improvement of reports and information systems. Identifies need for and seeks improvement of records and internal forms in collaboration with Facilities Management Division. Recommends appropriate action on Incentive Award suggestions referred by the Administrative Serv-

ices Office and on internal audit reports referred by the Special Projects Staff. Conducts studies required for problem identification, problem solving, planning, assistance to the regions, and engages in "troubleshooting" for assigned programs. Participates in Division visits to Field Offices and conducts special purpose visits as required. Responsible, on a continuing basis, for management improvement, work simplification, better utilization of resources, etc., with reference to assigned programs.

1113.547 DISCLOSURE AND LIAISON BRANCH.—Serves as taxpayer liaison office for the Division and administers the disclosure provisions of the law and regulations concerning inspection of returns, and other matters of official record, by Congressional Committees, Federal Agencies, States, and in the case of documents in the custody of the National Office, by any person, through the following principal functions: Responds to inquiries (personal visits, correspondence and telephone) from sources external to the Internal Revenue Service (e.g., Taxpayers, Members of Congress, Treasury Department, and other Departments and Agencies) on matters pertaining to Collection programs, activities and functions. Certifies documents under the Treasury Department Seal, furnishing copies where appropriate. Prepares Manual instructions, revenue procedures, delegation orders, policy statements, and other instructions governing disclosure from official records. Acts on requests for testimony. Conducts correspondence and engages in conferences with taxpayers, officials of the Service, States, other Federal Agencies, and Congressional Committees on disclosure matters. Serves in an advisory capacity to officials of the National Office in developing disclosure policies and procedures.

1113.548 TAXPAYER ASSISTANCE BRANCH.—Exercises program management responsibility for Collection Division's functional supervision of the year-round Taxpayer Assistance Program to assure prompt, accurate and responsive replies to taxpayer inquiries (walkin and telephone), through participation and support by various organizational elements of the Service with reference to manpower and facilities, and to assure uniformity and consistency of Service policy on furnishing assistance to taxpayers through review of educational and informational materials issued for general public use. Performs the following functions with reference to the Taxpayer Assistance Program: Formulates and recommends policies. Develops short, intermediate and long-range program content and activities. Relates these to program planning documents, preliminary work plans and budget and financial plans. Develops, reviews and revises as necessary: systems, procedures, methods and other instructions for Collection field personnel, including the development of techniques and training guides. Analyzes, evaluates and reports to Division Director on status, progress and trends with reference to assigned programs and takes appropriate action required. Evaluates and reports to Division Director on status and trend of Field Operations involving assigned programs. Collaborates with Office of Assistant Commissioner (Data Processing) on substantive program and systems matters pertaining to assigned programs. Collaborates with Special Projects Staff in identifying need for and seeking improvement of reports and information systems. Identifies need for and seeks im-

provement of records and internal forms in collaboration with Facilities Management Division. Recommends appropriate action in Incentive Award suggestions referred by the Administrative Services Office and on internal audit reports referred by the Special Projects Staff. Conducts studies required for problem identification, problem solving, planning, assistance to the regions, and engages in "trouble-shooting" for assigned programs. Participates in Division visits to Field Offices and conducts special purpose visits as required. Responsible, on a continuing basis, for management improvement, work simplification, better utilization of resources, etc., with reference to assigned programs.

1113.55 INTELLIGENCE DIVISION.—OFFICE OF THE DIRECTOR.—Accomplishes the Intelligence mission with reference to enforcement of the criminal status applicable to income, estate, gift, employment, and certain excise tax laws by developing and supervising (functional supervision—which includes evaluation) nationwide programs for the investigation of suspected criminal violations of such laws and the recommendation of prosecution when warranted, development of information concerning the extent of criminal violations of all Federal tax laws (except those relating to alcohol, tobacco, narcotics, and firearms), and measurement of the effectiveness of the investigation and prosecution processes. The Division also conducts, coordinates, and directs the investigation of cases which have been centralized, and performs certain other centralized Intelligence functions.

1113.551 ADMINISTRATIVE OFFICE.—Furnishes administrative services for the operation of the Intelligence Division of the National Office by: Developing and preparing budget requests and financial plans as well as supervising budget execution, providing for the administrative needs of the Division (such as providing and maintaining investigative and administrative central filing systems and processing mail, and maintaining liaison with the Office of Assistant Commissioner (Administration) on all National Office Intelligence Division matters including fiscal management, personnel, training, and facilities management matters); developing and preparing projections of personnel costs and staffing charts; collaborating with Administration in the procurement of investigative equipment for Field and National Office use, and maintaining inventory and current records as to location of Intelligence Division investigative equipment; and conducting special studies relating to personnel, space, budget, and equipment.

1113.552 ANALYSIS AND EVALUATION BRANCH.—Evaluates, interprets, and reports progress toward the accomplishment of the Intelligence mission and performs certain support, case review, and centralized operational functions by: Appraising the effectiveness of field Intelligence management and investigative operations through statistical studies and from narrative material such as visitation reports and internal audit findings; collaborating with the Reports Division for the report of management and investigative accomplishments; consolidating, evaluating and disseminating information reflecting accomplishments of programs and plans; identifying operational and management deficiencies through statistical studies and analytical case reviews and, as appropriate, initiating corrective action or referring the identified deficiencies to the appropriate branch; preparing final Intelligence recommendations in cases unresolved at

regional level; analyzing selected cases for uniform application of policies, programs, and procedures; disseminating information on current developments, such as legal decisions, unique defenses, and unusual investigative approaches; collaborating with the Fiscal Management Division in the evaluation of field financial proposals; submitting recommendation for the allocation of Intelligence personnel and funds; collaborating with the Office of Public Information in the preparation of news releases regarding closed cases; conducting special statistical and analytical studies, and research; and participating, as directed, in field visits in connection with the national program and management review.

1113.553 Investigative Techniques Branch.—Develops and maintains professional skills of special agents develops investigative techniques and performs certain support functions in the accomplishment of the Intelligence mission by: Conducting studies and developing intelligence training programs, materials, and budget estimates in collaboration with the Training Division; directing and conducting centralized Intelligence training programs: instructing at, and collaborating in the direction and supervision of the Treasury Law Enforcement School: coordinating and evaluating field training; developing, providing and maintaining investigative handbooks; evaluating, developing and disseminating investigative techniques; identifying deficiencies in training programs and materials and in investigative techniques and initiating corrective action or referring identified deficiencies to the appropriate branch; developing Intelligence investigative equipment standards; allocating investigative equipment to the field in collaboration with the Operations Coordination Branch; cooperating with the Personnel Division in the development of guidelines and standards for recruitment of and selection of Intelligence personnel; collaborating with the Foreign Tax Assistance Staff in orienting interested enforcement officials of other Federal Agencies, and of State and foreign governments concerning Intelligence techniques, procedures, and practices; conducting special studies and research and undertaking special assignments; collaborating and consulting with other Service activities and Government Agencies concerning training, investigative techniques and equipment; and participating, as directed, in field visits in connection with the national program and management review.

1113.554 Operations Coordination Branch.—Provides the field with operational assistance, and conducts, directs, and coordinates the investigation of centralized cases by: Interviewing informants, maintaining liaison with Committees of Congress, representatives of the Service, and other Government agencies in order to obtain, develop and disseminate to the field pertinent information relating to tax evasion; coordinating, conducting or directing investigations which are interregional in scope, of a sensitive nature, or of national interest; responding to communications on matters pertaining to operations, including correspondence for the signature of top Treasury and Service officials; keeping Service and Treasury officials informed of significant developments in sensitive cases and those of national interest; collaborating with the Investigative Techniques Branch in allocating investigative equipment to the field; maintaining and controlling the National Office Intelligence Division investigative equipment pool;

coordinating certain phases of investigations and furnishing the fiel with advice to resolve problems arising in the course of specific cases identifying operational and management deficiencies in investigation coordinated, conducted, or directed by the National Office and initiatin corrective action or referring identified deficiencies to the appropriat branch; and participating, as directed in field visits in connectio with the national program and management review.

1113.555 PLANNING AND PROCEDURES BRANCH.—Provides effectiv management and technical programs (including Intelligence Divi sion's portion of the Commissioner's Program Planning Document) plans and procedures for accomplishment of the Intelligence missio and identifies as well as corrects deficiencies in programing, planning and procedural guidelines through review of policies, managemen reports, reports of field visits, other issuances, and special on-sit studies, and through consultation and coordination with other Servic elements. Develops organizational and staffing standards; conduct special studies and research; consults and coordinates with othe Service elements on such matters as the findings in internal audi reports, the preparation of the Long-Range Plan, and the developmen of criteria to be used in the automatic processing of returns to aid i identification of returns having criminal potential. Collaborates witl the appropriate Service elements on submission of legislative pro posals (including voluntary disclosure matters) and also in the de velopment of personnel standards, procedures and guidelines for In telligence personnel. Evaluates and recommends disposition o Incentive Awards suggestions and proposals. Responds to communi cations on matters pertaining to Intelligence programs, plans, an procedures, and prepares, as necessary, correspondence for the signa ture of top Treasury and Service officials. Monitors, coordinates an integrates the Intelligence portions of the Management Improvemen Report and the Commissioner's Annual Report. Participates, as di rected, in field visits in connection with the national program an management review.

1113.56 OFFICE OF INTERNATIONAL OPERATIONS.—DIRECTOR OF IN TERNATIONAL OPERATIONS.—The Office of International Operation administers the Internal Revenue laws and related statutes (excep those relating to alcohol, tobacco, narcotics, and firearms) as they re late to citizen taxpayers residing or doing business abroad, foreig taxpayers deriving income from sources within the United States, an taxpayers who are required to withhold tax on income flowing abroa to nonresident aliens and foreign corporations; acts as staff advisor t the Assistant Commissioner (Compliance) in the international are on all compliance functions, and as the international specialist pro vides assistance and guidance to the Compliance Divisions and make recommendations on all aspects of international enforcement progra to the Assistant Commissioner (Compliance) and the Division Di rectors concerned; administers the operating provisions of tax conven tions and performs and coordinates for the Service all foreign investi gations and requests for information (other than those relating t rulings, regulations or assistance in field of foreign tax administra tion) from foreign countries and U.S. possessions. Also computes an collects taxes due from the Alien Property Custodian, administers th provisions of the Internal Revenue Code authorizing the acceptanc

of foreign currency in payment of U.S. tax liabilities, coordinates foreign travel of Service personnel, and maintains foreign posts.

1113.561 ADMINISTRATIVE OFFICE.—Responsible for the personnel, training, budget, and fiscal and general administrative services, including procurement and supply, printing, and communication services and other administrative services necessary to the effective operation and management of the Office of International Operations, including Foreign Posts and the Puerto Rico Office. Coordinates and develops the management improvement and incentive awards programs and special projects. Initiates and administers the security, safety and records management program. Develops the financial plan and budget estimates, fiscal programs, cost estimates, and is responsible for control of funds, report on budget execution and International Transaction estimates. Coordinates in conjunction with the Facilities Management Division the printing requirements and distribution of special publications, documents and tax forms required by the Office of International Operations, and the distribution of all tax forms to the U.S. Embassies and Consulates.

1113.562 COLLECTION DIVISION.—Receives, processes and, where appropriate, mathematically verifies all tax returns and information items emanating from the foreign area and U.S. possessions; safeguards and deposits all remittances received in the office; makes all required adjustments to tax liabilities; provides taxpayer service to citizens and aliens through correspondence, telephone and personal interview; performs required delinquency checks in the overseas area; performs all accounting operations, including the issuance of bills, processing of claims, scheduling of refunds and maintenance of general ledger; administers the provisions of tax treaties authorizing the automatic and other exchange of tax information between the United States and foreign countries; administers section 6316 of the 1954 Code authorizing, under certain conditions, the acceptance of foreign currencies in payment of U.S. tax liabilities; develops procedures required to process alien returns; determines whether National Office programs and procedures which are geared to district and Service Center processing should be applicable to the international area and issues implementing instructions where necessary; collects delinquent accounts of taxpayers residing abroad; examines certain offers in compromise; provides collection assistance to foreign governments as provided by tax treaties; develops procedures relating to the collection of delinquent taxes in the foreign area; maintains liaison with the State and Defense Departments and the Bureau of Accounts concerning collection matters; provides advice and guidance on collection where performed by the Foreign Posts and personnel detailed overseas; provides guidance and assistance to the governments of Guam and American Samoa concerning the processing of U.S. social security and self-employment tax returns; exercises direct supervision over the Puerto Rico Collection Branch.

1113.5621 OFFICE BRANCH.—Receives, processes and, where appropriate, mathematically verifies all types of tax returns filed by nonresident aliens, citizens residing abroad, foreign corporations, plus wage and excise, and estate and gift tax returns emanating from the foreign area, withholding agents returns (Form 1042), information

returns with respect to foreign corporations (Form 959), and all information returns filed under tax treaties; receives, safeguards and deposits all funds tendered to International Operations in Washington, D.C., in payment of Internal Revenue taxes; receives, opens, stamps, sorts, and distributes all ordinary mail; makes all required adjustments to tax liabilities; computes and asserts penalty and interest on delinquent returns; authorizes extensions of time for filing; provides taxpayer service through correspondence and personal interview; performs required delinquency checks in the overseas area; performs all accounting operations relating to returns and remittances received including the issuance of bills and taxpayer delinquent account notices, processing of claims, scheduling abatements, credits, and refunds, certifications of accounts, and maintenance of a general ledger; computes and withholds tax due from interest allowed on refunds paid to nonresident aliens; administers the provisions of tax treaties authorizing the automatic and other exchange of tax information between the United States and foreign countries; administers section 6316 of the 1954 Code authorizing, under certain conditions, the acceptance of foreign currency in payment of U.S. taxes; develops procedures required to process alien returns; develops implementing procedures from National Office issuances which are geared to regular district and Service Center operations; prepares all required accounting, processing, and work planning and control reports; provides guidance and assistance to the Governments of Guam and American Samoa concerning the processing of U.S. social security and self-employment tax returns.

1113.5622 Delinquent Accounts and Returns Branch.—Is responsible for all activities pertaining to the collection of delinquent accounts of nonresident aliens and citizens residing abroad through levy, lien, summons, seizure, sale or other authorized means; secures delinquent returns on the basis of assigned investigations or by returns compliance activity (primarily by correspondence); makes recommendations to Chief Counsel for suits to foreclose Federal tax liens, enforce levies, appoint receivers and to establish transferee assessments; recommends jeopardy assessments and expedites and coordinates collection actions required; recommends transferee assessments to the Audit Division; works closely with Chief Counsel and Justice Department in developing legal approaches to collecting accounts; prepares proofs of claim and traces the transfer of assets in decedent cases; maintains file of validated liens; reviews and acts on requests for release, discharge or nonattachment of Federal tax liens; determines appropriateness and legal sufficiency of collateral offered to stay collection of tax or withhold the filing of liens; examines offers in compromise based on doubts as to collectibility of taxes (except alcohol, tobacco, and firearms taxes), offers in compromise of statutory additions based on doubt as to liability or doubt as to collectibility (except alcohol, tobacco, firearms, employment, and withholding taxes and specific penalties), and all offers in compromise of 100 percent penalties; authorizes the write-off of accounts as uncollectible; performs necessary followup on written-off accounts; furnishes advice and guidance to the Revenue Service Representatives and their staffs concerning the collection of delinquent accounts; maintains liaison with the State and Defense Departments and other gov-

ernment agencies as a means of increasing compliance with IRS Regulations by overseas personnel of these departments; develops operating procedures for collecting delinquent accounts and securing delinquent returns in the foreign area; constantly explores means of increasing enforcement powers overseas; requests and lends assistance under the applicable reciprocal collection provisions of tax treaties with foreign governments; maintains statistical and accomplishment records and prepares necessary work planning and control reports and other necessary activity reports as required.

1113.5623 PUERTO RICO COLLECTION BRANCH.—Receives, possesses, and, where appropriate, mathematically verifies all tax returns emanating in Puerto Rico and the Virgin Islands, including alcohol and tobacco tax returns; receives, safeguards and deposits all remittances received in the office; receives, opens, stamps, sorts, and distributes all ordinary mail; makes all required adjustments in tax liabilities; computes and asserts penalty and interest on delinquent returns; authorizes extensions of time for filing; provides taxpayer service through correspondence, telephone, and personal interview; performs all accounting operations, including the issuance of bills, processing of claims, scheduling of refunds and maintenance of general ledger; responsible for all activities pertaining to the collection of delinquent accounts of citizens residing in Puerto Rico and the Virgin Islands through levy, lien, summons, seizure, sale, or other authorized means; makes all required delinquency checks through correspondence and personal contact; recommends jeopardy assessments and expedites and coordinates collection actions required; prepares proofs of claim; determines appropriateness and legal sufficiency of collateral offered to stay collection of tax or to withhold the filing of liens; examines offers in compromise based on doubt as to collectibility of taxes (except alcohol, tobacco, and firearms taxes), offers in compromise of statutory additions based on doubt as to liability or doubt as to collectibility (except alcohol, tobacco, firearms, employment, and withholding taxes and specific penalties), and all offers in compromise of 100 percent penalties; authorizes the write-off of accounts as uncollectible and performs necessary followup on these accounts; maintains liaison with Puerto Rican government concerning items of mutual interest; prepares all processing, accounting and delinquent accounts and returns reports, including all work planning and control reports; maintains records of alcohol and tobacco tax collections for subsequent transmission to the Puerto Rican government.

1113.563 AUDIT DIVISION.—The Audit Division administers an international audit program involving the selection and examination of all types of Federal tax returns filed with the Office of International Operations (except alcohol, tobacco, and firearms). Is responsible for the examination of certain offers in compromise, informants' claims for reward and related activities including the examination and approval of pension trusts and the issuance of determination letters. The audit program involves the classification of returns for field and office audits, the conduct of district conferences in unagreed cases, participation with special agents in the conduct of tax fraud investigations, and is responsible for providing manpower for the annual overseas taxpayer compliance program. Provides advice and guidance on audit work performed by the foreign posts and reviews for

technical and procedural accuracy all reports of audit examinations prepared by these offices. Directs programs for the exchange of estate and gift tax data with foreign governments under the tax conventions. Performs audit functions relating to the Alien Property Custodian activity. Makes certain that Internal Revenue Agents' manpower will be applied to the most significant civil enforcement cases in the international area. Is responsible for the maintenance of good relationship with regions and districts and is responsive to their requirements for assistance in the foreign area. The Audit Division consists of the Examination Branch, Service Branch, Review Staff, Conference Staff, and Classification.

1113.5631 CONFERENCE STAFF.—The Conference Staff attains, to the maximum extent possible, the primary objective of the Conference Function—to give taxpayers ample opportunity to reach early agreement on disputed issues arising from audit examinations. Has responsibility for all OIO conference cases. Assigns, controls, coordinates, and reviews Office of International Operations jurisdictional conference cases including those in Puerto Rico, and foreign posts of duty. Holds conferences; provides direction and furnishes technical advice to other conferees; performs final district review of field audit conference reports; reviews and evaluates statistics and other records to strengthen conference function operations; and screens taxpayer protests which request Appellate hearings. Authorizes settlements in "pattern settlement cases"; reviews primary statistical forms in conference cases; coordinates and discusses with Chief, Review Staff, conference cases in which Review Staff has taken legal interpretative positions at variance with conference positions; reviews and answers dissents to conference determinations; reviews Appellate Division closings for guidance to conferees; and is responsible for protecting the statute of limitations for cases under his control. Undertakes special assignments received from Division and Office Superiors to the extent time permits.

1113.5632 REVIEW STAFF.—Is responsible for reviewing for technical accuracy and policy and procedural adherence, reports of examination on income, estate, gift, and miscellaneous taxes, and offers in compromise. Prepares and issues preliminary letters and statutory notices. Grants extension of time for filing protests, and closes out statutory notices by sending the case file to the Appellate Division if a petition is filed or closing out for assessment if the time period expires on default. Receives taxpayer protests, refers protests to the Chief, Conference Staff, and closes protested cases to the Appellate Division upon recommendation of the Chief, Conference Staff. Furnishes technical advice to foreign and Puerto Rico posts and all examining personnel. Considers special problems relating to specific cases and prepares recommendations thereon. Prepares replies to technical inquiries from taxpayers from all over the world and issues determination letters as required. Considers applications for exemption from tax from foreign organizations, and issues determination letters or refers the case to the Assistant Commissioner (Technical) as appropriate. Prepares statistical reports and analyzes information on specific cases as required. Controls and reviews all forms used by the Audit Division. Controls and processes all informant's claims. Prepares re-

quests for technical advice to the National Office on specific cases under examination.

1113.5633 CHIEF CLASSIFYING OFFICER.—Is responsible for planning and executing the audit classification program including the selection of returns to be examined and the determination of the organizational units where the returns can best be examined. Is responsible for the planning and execution of procedures involving the classification of other documents used in connection with examinations such as transferred cases from other districts, information reports, etc.

1113.5634 SERVICE BRANCH.—Controls all income, estate and gift, and miscellaneous tax returns received for audit or investigation by the OIO Washington Office, Puerto Rico Office, and the Foreign Operations Division. Routes work to appropriate units; reproduces completed reports; provides typing service for the Audit Division; effects closing action on examined cases transmitting returns to the Collection Division; assembles audit production and statistical data and maintains controls on statutory expirations for the entire Audit Division as well as the Foreign Operations Division.

1113.5635 EXAMINATION BRANCH.—Conducts field and office examinations relative to all types of taxes (except alcohol, tobacco, and firearms) to determine correct liabilities of citizen taxpayers residing or doing business abroad, foreign taxpayers deriving income from sources within the United States and taxpayers who are required to withhold tax on certain payments to nonresident aliens and foreign corporations. Conducts examinations of estate tax returns of U.S. citizens who died while residing abroad or nonresident aliens with substantial property or income in the U.S. and gift tax returns filed by nonresident aliens or U.S. citizens residing abroad. It also conducts examinations of offers in compromise based on doubt as to liability for taxes or for both taxes and statutory additions (except alcohol, tobacco, and firearms taxes), claims for refund, credit or abatement, and special examinations as requested including joint examinations with special agents where tax evasion may exist. Obtains information on suspected delinquent taxpayers and other tax information while in overseas areas. It furnishes technical advice and assistance on pension trust plans, processes informants' claims for reward, and recommends jeopardy assessments. Prepares memoranda to accompany closing agreements and closing letters and releases in estate and gift tax cases, and administers the program for exchange of estate and gift tax data with foreign governments under tax conventions. Audits employment tax returns of Puerto Rico residents and income tax returns of U.S. Government employees and Puerto Rico residents deriving income from sources outside Puerto Rico. Audits books and records of Puerto Rican affiliates of domestic taxpayers to secure information requested by districts. Examines Virgin Island corporations to determine correct subsidy allowances. Coordinates examination program on resident foreign corporations and other cases where appropriate with National and Regional enforcement programs. On assignment holds conferences with taxpayers and their representatives. Prepares tax returns for, and audits books of, foreign corporations and alien individuals whose property is controlled by the Alien Property Custodian and conducts conferences on these matters.

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1113.564 FOREIGN OPERATIONS DIVISION.—Plans, develops, and coordinates the work programs and other activities of the foreign posts in accordance with Service objectives in the international area. Conducts the intelligence function with respect to taxpayers under jurisdiction of the Office of International Operations. Coordinates, directs, and/or conducts all compliance functions performed overseas by Appellate, Audit, Collection, Intelligence, and International Operations personnel. Makes necessary recommendations, holds conferences and coordinates all audit, collection, delinquency and intelligence functions between the foreign posts and the Divisions of the Office of International Operations, other Service components and other Government agencies; determines whether actions requested are appropriate and whether they should be handled by foreign representatives, International Operations personnel on detail, other Service personnel or other Government agencies. Supervises and evaluates the work and performance of foreign representatives. Keeps Director informed of trends in the foreign area which will be employed in program development and establishment of Service objectives. Exercises broad vision in determining proper utilization of information obtained from foreign representatives. Assists the Director in the performance of functions under tax treaties principally involving nonautomatic exchange of information. Serves as focal point for all contacts with foreign governments either directly or through the foreign posts pursuant to the operating provisions of the various tax treaties. Coordinates the foreign travel of personnel of the Internal Revenue Service. Maintains liaison with the Treasury, State, Defense, Commerce and Interior Departments concerning overseas operating matters. Plans, coordinates, and directs the Annual Taxpayer Compliance, Audit, and Delinquency Programs abroad and plans and coordinates, in conjunction with the military services, the Annual Military Assistance and School Program for overseas military personnel.

1113.5641 FOREIGN POSTS.—Pursuant to broad annual programs developed by the Foreign Operations Division, initiates such actions in the assigned areas as are necessary to establish and maintain satisfactory levels of voluntary compliance. Develops information indicating possible tax evasion, delinquency or noncompliance and completes action thereon or forwards the information to Washington for further development. Conducts audits of income, estate and gift tax returns of a type justifying field investigation or contact abroad and conducts investigations on tax evasion cases. Effects collection of delinquent taxes when personal contact or investigation abroad is required. Obtains information on audit, intelligence and collection matters for other service components on collateral requests. Holds taxpayer conferences and effects settlements in cases involving timely and delinquent income, estate, and gift tax returns, claims, offers in compromise, etc., including those referred abroad by International Operations headquarters for such purposes. Under specific direction, assists the Director in the exercise of the Competent Authority provisions of tax treaties by holding preliminary discussions with the foreign government representatives on the settlement of issues in specific cases involving double or discriminatory taxation and forwards information to Washington, D.C. Maintains close liaison with foreign governments in tax treaty, enforcement, exchange of information,

technical and other highly complex matters. Maintains close liaison with U.S. military authorities and taxpayer groups in the area and develops and implements enforcement, taxpayer assistance and school programs, taxpayer-education releases, and similar measures designed to assure a high level of compliance. Is responsible for the development and maintenance of desirable public relations, initiating appropriate taxpayer-education programs in the area. Furnishes technical assistance to taxpayers with regard to both current and delinquent income, estate, and gift tax matters.

1113.565 Research, Tax Treaty and Technical Services Division.—Provides the Office of International Operations with research and technical assistance to aid in achieving its mission; accumulates and analyzes varied pertinent tax data of foreign and U.S. derivation; prepares, coordinates and reviews guidance memoranda for other OIO Divisions. Assists the Director in performance of the functions of Competent Authority under tax treaties principally involving processing of double taxation claims; maintains a continuing appraisal of the operation of the income and estate tax treaties of the United States for the purpose of identifying areas for renegotiation; considers administrative and operational feasibility of proposed tax conventions and regulations thereunder; conducts analytical studies with a purpose of achieving effective tax compliance; prepares for the Office of International Operations and coordinates with various National Office Divisions recommendations for remedial legislation or regulatory amendments; reviews or prepares for the Office of International Operations suggested public use or internal forms and documents; accumulates and disseminates information regarding U.S. business activity abroad and foreign business activity in the United States. Acts on assignments received by Director from Assistant Commissioner (Compliance) or other National Office officials or components, of a program or planning nature. Determines the amount of administrative relief (offset) to be allowed under Revenue Procedure 64–54 [C.B. 1964–2, 1008]; conducts detailed studies and analyses of various examination reports and other documents in assisting the Director to provide assistance and guidance to the various compliance functions in the international area; submits recommendations with respect to proposed changes in legislation, regulations, revenue procedures, treaty provisions and other aspects of the international enforcement program. Maintains a group of economists and Internal Revenue Agents to provide economic data and guide technical personnel in resolving economic problems arising from proposed section 482 adjustments.

1113.5651 Economic Advisory Branch.—Accumulates and maintains reference files of economic data pertinent to section 482 allocation cases; post reviews appropriate coordinated examination reports to determine whether there is uniformity of approach and application of economic principles in section 482 allocations; prepares guidelines which set forth economic factors to consider in determining section 482 allocations; upon request, provides elements of the Service with economic data for guidance in determining section 482 allocations; provides direct assistance, when necessary, to appropriate Service personnel on a consultant basis in section 482 allocation matters; provides expert testimony of economists in section 482 cases in process of litigation; conducts economic studies covering pricing, and other trade

practices; periodically prepares a review digest containing items of general interest and results of review of closed section 482 allocation cases.

1113.5652 RESEARCH AND TAX TREATY BRANCH.—Accumulates and analyzes data concerning foreign tax laws, U.S. Tax Treaties, U.S. tax law changes, revenue rulings and statements of Service policy in the international area. Prepares, coordinates and reviews guidance memoranda within the Office of International Operations. Assists the Director in the Performance of the functions of the Competent Authority with respect to claims of double taxation under the respective tax treaties; under direction of the Competent Authority, represents the U.S. Government at conferences with foreign Competent Authorities on double taxation matters; reviews drafts of proposed tax conventions and regulations thereunder and prepares comments thereon regarding the administrative and operational feasibility of the conventions and regulations; seeks out operational and administrative problems in the tax treaty area, and where applicable, prepares analytical studies of technical problems and tax avoidance schemes in the international area for the purpose of disclosing tax law provisions that are weak, ineffective, inconsistent or unjust; prepares plans and programs to combat tax avoidance and evasion in the international area; reviews or prepares suggested tax forms and other material for the use of taxpayers under the jurisdiction of the Office of International Operations and coordinates technical matters having reference to proposed legislation and similar matters with the various Divisions of the National Office and other Government Agencies. Accumulates or programs for the accumulation of data designed to show such information as to extent, nature, location of U.S. taxpayer business and trust interest outside of United States, as well as similar data relative to foreign business entities ostensibly doing business in the United States; develops and prepares procedures designed to accumulate data on receipt and disposition of information relative to foreign business operations of concern to U.S.; all such information shall be in such form that periodic or special requests for reports on the subject can be readily provided. Acts on assignments received by Director from Assistant Commissioner (Compliance) or other National Office officials or components, of a program or planning nature. Receives requests for relief from economic double taxation filed by taxpayers under Revenue Procedure 64–54 [C.B. 1964–2, 1008] and processes such requests to determine the amount of administrative relief (offset) to be allowed and where appropriate prepares closing agreements for execution by taxpayers and Service. Conducts detailed studies and analyses of various examination reports and other documents in assisting the Director to provide assistance and guidance to the various compliance functions in the international area. Submits recommendations with respect to proposed changes in legislation, regulations, revenue procedures, treaty provisions and other aspects of the international enforcement program. Provides data concerning foreign tax laws through channels to technical field personnel responsible for determining correct Subparts F and G income and earnings and profits of controlled foreign corporations under the 1962 Revenue Act [P.L. 87–834, C.B. 1962–3, 111]. Prepares periodic reports of the progress and activity in the international area.

1113.6 Office of Assistant Commissioner (Data Processing).—The Assistant Commissioner (Data Processing) is the principal assistant to the Commissioner and Deputy Commissioner on all matters relating to the development of programs, systems, methods and procedures for implementation and operation of the Internal Revenue Service Automatic Data Processing Plan, the accounting for the internal revenue, the receipt and integrated processing of tax returns and payments; and the review and coordination of all reports. He exercises line supervision over the activities performed in the various Divisions in the National Office which are within his jurisdiction and the National Computer Center and the Internal Revenue Service Data Center, and is functionally responsible for ADP activities in Regional, Service Center, and District Offices. Confers and collaborates with officials of other Government Agencies and private industry to assure compatibility of data which will be integrated into the ADP system of each.

1113.61 Administrative Office.—Plans, organizes, coordinates, and directs the administrative management activities of the Office of Assistant Commissioner (Data Processing) at the National level, assisting and collaborating with Division Directors and the National Computer Center Director in providing budget, personnel, records and reports management, space management, duplication, supply, and other administrative services necessary for the internal administration, management, operation, and functioning of the Office.

1113.62 Operations Division.—Office of the Director.—Plans, directs and coordinates the implementation of the ADP System and the performance of data processing activities at the IRS Data Center. Provides functional supervision over data processing activities in the Regional Offices, Service Centers and District Offices. This includes program planning for and evaluating these activities and directing the installation of Service Centers. Provides line supervision over the National Computer Center and the IRS Data Center and provides a liaison between those centers and other organizational units of the Service served by them.

1113.621 Field Coordination Branch.—Responsible for monitoring and evaluating the progress of returns and documents through the ADP system in relation to established standards and cycles; for providing higher management with reports on progress of production; and for recommending corrective action where necessary to assure timely and efficient processing. Conducts on-site studies of operations incident to the evaluation of progress of production, and performs a continuing review and evaluation of the functioning of the entire ADP system to determine how effectively the objectives of the system are being met. Identifies through on-site studies, observation or otherwise, the existence of non-uniformity in organization, procedures, flow of work, physical layout, equipment, etc., wherever uniformity is deemed or established to be necessary to the effective management or operation of the ADP system and recommends corrective action. Provides liaison between field data processing activities and the Systems Division on the improvement of the ADP system and procedures. Participates with the Systems Division in systems acceptability test. Coordinates development and analysis of evaluative data under the

National Office Review Program, including review of Internal Audit Reports and related liaison activities.

1113.622 PROGRAM DEVELOPMENT BRANCH.—Responsible for developing and recommending the current and long-range Data Processing programs and plans to achieve the ADP Plan objectives, and for providing related coordination and guidance. Provides support, direction and guidance of all general administrative management functions of field installations of Data Processing including procurement of buildings, supplies and personnel; organization; redeployment; training; and internal and external information. Develops, recommends, or evaluates management control systems; coordinates with appropriate officials to assure compatibility with other systems and furnishes specifications to the Systems Division. Responsible for preparing and coordinating technical information materials relating to, and in support of, data processing programs. Reviews and answers inquiries from taxpayers, Congressmen, and others relating to operations, procedures, tax code provisions, or legal questions. Coordinates with field offices, tax practitioners and taxpayers in resolving questions and problems in individual cases. Assists with recommendations and reports on legislation affecting data processing activities.

1113.623 RESOURCE UTILIZATION BRANCH.—Responsible for the development, supervision and analysis of the Work Planning and Control System for manpower and equipment requirements. Conducts studies to assure that resources are effectively utilized and are abreast with the needs of the ADP Program. Develops and prepares Financial Plans for National Office activities of the Assistant Commissioner (Data Processing), recommends allocation of field activity budgetary estimates, and develops and updates the long-range plans as they relate to resources requirements and budgetary estimates.

1113.624 NATIONAL COMPUTER CENTER.—Responsible for the creation, maintenance and updating of business and individual tax accounts. Receives input data from Service Centers and processes against master file. Produces output data for use in issuing refund checks, bills, or notices; answering inquiries; making delinquency checks; detecting fraudulent refund claims; classifying returns for audit purposes; preparing reports; and other matters concerned with the processing and enforcement activities of the Service. Performs other machine data processing activities as required.

1113.625 IRS DATA CENTER.—Responsible for the performance of non-master file data processing operations for the Service. This includes the preparation of Treasury Department payrolls; fiscal reports; Statistics of Income; Taxpayer Compliance Measurement Program, including both work progress reports and special studies; special tax research; personnel analysis reports; work planning and control reports; data for the Long Range Plan and other purposes; special tabulations and comparisons for States and other Federal Agencies; and statistical information for management control by National and Regional Headquarters officials.

1113.63 REPORTS DIVISION.—The Reports Division develops and administers a Service-wide Reports Management Program for an overall management information and reporting complex which is integrated with the Automatic Data Processing System and which serves the needs of management at the various levels of the Service. It col-

lects, coordinates, tabulates and presents data needed for planning, controlling, analyzing, and evaluating programs. The Division performs these functions in consultation and cooperation with the various operating and planning officials using or providing data and who share with the Division the responsibility for effective and economical conduct of reporting programs. The Division independently develops and issues periodically statistical and narrative summaries of operating performance which are designed to point out significant developments in program execution and to assist operating officials to appraise progress toward approved program objectives and goals. It maintains a continuing program aimed at prescribing and revising forms, procedures and systems which will produce necessary data more effectively and economically. In addition, the Division develops and administers a program for analysis and statistical evaluation of the continuing programs of the Data Processing Activity.

1113.631 Data Processing Analysis Branch.—The Data Processing Analysis Branch develops and administers a program for analysis and statistical evaluation of the continuing programs of the Data Processing Activity. The Branch determines criteria, establishes data requirements, and conducts both continual and special evaluation with respect to: the effectiveness of the Automatic Data Processing Program, including the effect of shifts in program emphasis between Activities on Data Processing and other service programs; the assessment of the status of Data Processing programs at all organizational levels, as revealed through analysis of recurring reports providing accounting and broad statistical data on the operations of the Returns Processing and Revenue Accounting, and Service Center Activities; the Taxpayer Compliance Measurement Program. In exercising these responsibilities, it maintains close coordination with the Operations and Systems Divisions, and indicates to appropriate Data Processing officials possible alternative solutions to problems discovered through the evaluation process. The Branch evaluates source data analyzed to ensure its meeting professional standards of quality and timeliness; coordinates with other offices and makes field visitations as necessary to correct problems. It collaborates with the other branches of the Reports Division and with the Operations Division in the development, review, and administration of an integrated reporting system which will provide the data necessary for areas of mutual concern.

1113.632 Reports Management and Systems Branch.—The Reports Management and Systems Branch develops and administers: the policies, procedures and standards for a Service-wide Reports Management Program, and a program to bring reporting systems of the various program areas into a coordinated, overall management information and reporting complex integrated with the Automatic Data Processing system. In collaboration with responsible operating officials, the Branch studies and determines specific management information requirements for planning, controlling and evaluating programs of an entire Activity at the various levels of the Service; prepares feasibility studies to determine best data gathering and processing techniques (ADP) system, mechanical, manual or combinations of these; develops reporting and related recordkeeping systems and

integrates these with the overall management information and reporting complex; and implements the new or revised systems. It provides technical guidance and assistance for the development and integration of work planning and control systems. The Branch operates a National Office clearance procedure to examine proposed reporting requirements for duplication, overlapping, conformity to standards, and compatibility with the overall management information and reporting complex; and periodically reviews established requirements to insure continuing compatibility with the needs of the Service.

1113.633 Reports Processing Branch.—The Reports Processing Branch develops and administers a program to provide published managerial and operating reports and related narrative summaries responsive to the needs of management and which are an integral part of the overall management information and reporting complex. The Branch conducts studies of requirements for Service-wide published reports and designs their format and content; reviews published reports to determine modifications needed to provide for changing program emphasis and requirements of management: maintains liaison with field offices and service centers on all reporting documents and material received for review and processing; and provides centralized manual processing services for published reports and for special requirements of the various organizational elements of the National Office. It independently develops and issues periodically statistical and narrative summaries of operating performance which are designed to point out significant developments in program execution and to assist operating officials to appraise progress toward approved program objectives and goals. The Branch performs necessary research to compose replies to a variety of requests for management and operational-type information received from Congress, local, State and Federal Agencies, research and other organizations and individuals interested in tax administration matters.

1113.64 Systems Division.—Plans, directs, and coordinates the Divisional activities which involve the evaluation of or making feasibility studies of proposed data processing systems, the subsequent development of such systems, and the preparation, issuance, and interpretation of all procedures and programing related to data processing and related activities of the District Offices, Service Centers, and the National Computer Center of the Internal Revenue Service. This responsibility includes: Design of manual and electronically oriented tax and returns processing systems; revenue accounting, data processing, and related systems; detailed design of programing specifications and instructions for all Service Centers and the National Computer Center, testing and debugging of program routines; systems acceptability testing, and the maintenance of all program routines after they become operational.

1113.641 Master Files Programs Branch.—Responsible for interpretation and analysis of systems programing requirements and development of programs required to process Internal Revenue and related data in the Individual and Business Master Files at the National Computer Center. Analyzes specifications for the operation of approved computer applications as they pertain to master files processing. Contributes the master files part of the schematic diagrams and prepares the logic and block diagrams for such processing. Translates

diagrams into sets of computer instructions, coordinating with the Service Centers Programs Branch to insure complete compatibility and continuity. Proves programs by testing, and keeps computer programs and instructions up to date after they become operational. Assists the Planning and Applications Branch in conducting systems acceptability tests.

1113.642 PROCEDURES BRANCH.—Responsible for the development, preparation, issuance and interpretation of systems and procedures pertaining to data processing in the Internal Revenue Service. Such activities include the operations performed in the receipt and processing of tax payments and the receipt and processing of tax returns. Establishes and maintains the procedures manual for data processing activities of the District Offices, Service Centers, and the National Computer Center to cover all the procedures and operations in the respective offices. Responsible for designing systems required for processing Internal Revenue data through electric accounting machines. Assists the Planning and Applications Branch in conducting systems acceptability tests. Confers and collaborates with officials of the Internal Revenue Service, Department of the Treasury, General Accounting Office, and other governmental agencies in the performance of the above functions.

1113.643 PLANNING AND APPLICATIONS BRANCH.—Responsible for conducting, or participating in the conduct of, studies which will determine the immediate and long range system objectives of the Systems Division and develops overall systems plans and requirements to meet the objectives; develops and publishes guidelines, standards and applied programing techniques for uniform use by components of the Systems Division; develops guidelines and instructions for the uniform application of management techniques and systems, including the development of related computer programs; coordinates and approves the rental or purchase of all data processing, peripheral, auxiliary, or special purpose systems equipment required by the data processing activities at the National, Regional, or District Office levels and continuously evaluates and relates new equipment for Service use; reviews and evaluates or makes feasibility studies and recommends acceptance or rejection of such proposed data processing programs. Conducts systems acceptability tests to determine readiness of total system to process data. Responsible for continuous research and study to discover new methods, procedures, and machine programs involving mechanical and data processing equipment, which may be feasible or adaptable for data processing applications within the Internal Revenue Service; keeps informed of new development in the ADP field and considers each for possible inclusion in the data processing system.

1113.644 SERVICE CENTERS PROGRAMS BRANCH.—Responsible for interpretation and analysis of systems programing requirements and development of service center input/output programs. Analyzes specifications for the operation of approved computer applications as they pertain to service center processing. Contributes the service center part of the schematic diagrams and prepares the logic and block diagrams for all service center processing. Translates diagrams into sets of computer instructions, coordinating with Master Files Programs Branch to insure complete compatibility and continuity.

Proves programs by testing, and keeps computer programs and operating instructions up to date after they become operational. Assists the Planning and Applications Branch in conducting systems acceptability tests. Prepares machine instructions for off line data processing equipment.

1113.7 Office of Assistant Commissioner (Inspection).—The Assistant Commissioner (Inspection) acts as the principal assistant to the Commissioner in planning and carrying out the inspection program of the Internal Revenue Service. This includes the independent review and appraisal of all Internal Revenue Service activities as a basis for protective and constructive service to management, and the carrying out of a program for assisting management to maintain the highest standards of honesty and integrity among its employees. The Assistant Commissioner (Inspection) plans and directs the inspection program at both the national and regional levels. At the National Office level he supervises two divisions: the Internal Audit Division and the Internal Security Division; and at the regional level he supervises the Regional Inspectors.

1113.71 Internal Audit Division.—Office of the Director.—The Internal Audit Division has responsibility for conducting a program providing for an independent review and appraisal of the operations of the Internal Revenue Service. This review provides information on the condition of all the functional activities of the Service at the National, regional, and district levels and is sufficient in scope to provide a basis for constructive management action by the Service officials responsible for the activities involved. The Division is also responsible for a systematic verification and analysis of financial transactions and a review and appraisal of the protective measures and controls established at all operating levels. The organizational structure for program operations consists of the National Office Internal Audit Division, and the Regional Internal Audit Staffs which are headquartered in the same location as the Regional Inspectors. The Director of the Internal Audit Division under the general supervision of the Assistant Commissioner (Inspection) is responsible for the development and execution of the Division's program.

1113.711 Field Coordination Branch.—The Field Coordination Branch is responsible for assuring that a uniformly high standard of internal audit performance at the regional level is maintained. Furnishes staff guidance at the top management level to Internal Audit Division personnel assigned to the Regional Inspectors. Carries out a program of review and evaluation of the activities of the Regional Internal Audit Staffs (including on-job visitations). Responsible for evaluating matters reported by the Regional Internal Audit Staffs concerning the Service's operations to determine their significance and that action is initiated to call important matters to the attention of the Commissioner, Assistant Commissioners or other principal officials. Responsible for an evaluation of the adequacy of the action instituted by operating officials at all levels to correct deficiencies reported. Consults with top officials in the Offices of the Assistant Commissioners (Compliance) and (Administration), the Fiscal Management Officer, and the Office of Chief Counsel on operating problems disclosed by the Internal Audit Division, which suggest a need for a revision in cur-

rent operating instructions. Maintains liaison with National Office Internal Security Division on security cases pending in the regional offices.

1113.712 Operations Branch.—The Operations Branch is responsible for conducting periodic internal audits of National Office activities, including the annual audit of the Office of International Operations. Conducts special surveys and procedural studies as requested by the Treasury Department, the Commissioner or the Deputy Commissioner. Carries out special assignments on particular phases of operations requested by the Assistant Commissioner (Inspection) or the Director. Assists the Treasury Department in the annual audit of the Exchange Stabilization Fund and in the annual review of the Treasury agency inspection programs. Assists the General Accounting Office and the Treasury Department on various phases of audit work, such as inventorying Federal Reserve Notes stored in the vaults at the Bureau of Engraving and Printing. Responsible for conducting audits of regional and district offices as assigned by the Director. Carries out special assignments in cooperation with the Internal Security Division on cases requiring the specialized knowledge and training of personnel of the Internal Audit Division.

1113.713 Program Development Branch.—The Program Development Branch is responsible for developing all of the division's policy and procedural instructions and guidelines, including specialized programs for staff development. These are necessary to maintain high professional standards of Internal Audit staff performance and to provide the most effective, up-to-date methods for the uniform execution of Internal Audit's Service-wide program. Develops special internal management procedures for the Internal Audit Division to ensure adequate control of its activities and to promote maximum operational efficiency. Maintains a current knowledge of developments in electronic data processing and its applications to the Service's operations. Participates in the planning and development of the Service's ADP system to evaluate basic controls and to determine their effect on Internal Audit's responsibilities. Develops procedures to utilize automatic data processing in carrying out principal segments of the Internal Audit Division's program. Maintains liaison with all divisions at the National Office level, including the Office of Chief Counsel, in order to determine operating problems or development that should be given attention in carrying out the Internal Audit Division's program. In coordination with the Training Division, plans, develops and carries out the basic and advanced internal auditing training programs to assure the proper indoctrination of new staff members and the continuing professional growth of all Internal Audit Division personnel.

1113.72 Internal Security Division.—The Internal Security Division plans, develops, and controls the internal security program for the Internal Revenue Service so as to assist management in assuring the highest standards of honesty, integrity, and security among Service employees and maintain public confidence in the integrity of the Service. The program includes personnel background investigations and

investigations of complaints or allegations of misconduct or irregularities, including criminal, concerning Service employees; also investigations of non-Service persons when their actions may affect the integrity of the Service, including attempts to bribe or otherwise corrupt Service personnel. The program also includes background investigations of certain applicants for enrollment to practice before the Internal Revenue Service, investigations of charges against tax practitioners, formal investigations of accidents involving Service employees or property, investigations of complaints alleging discrimination because of race, creed, color, or national origin; and the maintenance of records and case files relating to investigations conducted. The Division also conducts such special investigations, studies, and inquiries as required for the Commissioner, Office of the Secretary, or other components of the Treasury Department. The Division is composed of four branches: Complaint Case Coordination Branch, Investigations Branch, Planning and Programing Branch, and Security Case Coordination Branch.

1113.721 COMPLAINT CASE COORDINATION BRANCH.—The Branch controls and coordinates on a nationwide basis the Internal Security Division function of investigating alleged violations of Federal criminal statutes and of the regulations and rules governing the conduct of Service personnel; actions of non-Service persons that may affect the integrity of the Service, including attempts to bribe or otherwise corrupt Service personnel; charges against persons enrolled to practice before the Internal Revenue Service, and special investigations as required for the Commissioner and other components of the Treasury Department. The Branch maintains a continuing review and control of individual cases to: (a) Assure that the scope of the investigations and the evidence are sufficient to provide a basis for conclusions by management, the Department of Justice or other authority; (b) assure that established policies, procedures and techniques are being followed uniformly; (c) to promote uniformity in investigate coverage, form and quality of reports, and administrative and criminal dispositions; (d) develop data for improvements, simplification, and standardization of investigative operations; (e) develop information that will aid management in planning and programing Internal Security activities. The Branch maintains liaison on criminal matters with the Office of the Chief Counsel, other law enforcement segments of the Service, Federal Bureau of Investigation, and other Federal law enforcement agencies.

1113.722 INVESTIGATIONS BRANCH.—The Branch, operating on a nationwide basis, is responsible for conducting extremely confidential investigations of complaints and allegations of misconduct or irregularities concerning high level officials of the Service and other special investigations which by reason of their complexity or sensitivity, or because of their potential effect on the maintenance of public confidence in the integrity of the Service, demand special handling. The Branch, as the investigative branch of the Internal Security Division for National Office personnel, is responsible for conducting background investigations of applicants for, or incumbents of, positions in the Service, certain applicants for enrollment to practice before the Internal Revenue Service, and for applicants for positions with certain other components of the Treasury Department. In addition the

Branch conducts investigations of alleged violations of Federal criminal statutes and rules and regulations governing the conduct of Service personnel; actions of non-Service persons that may affect the integrity of the Service, including attempts to bribe or otherwise corrupt Service personnel; charges against persons enrolled to practice before the Internal Revenue Service; formal investigations under the Federal Tort Claims Act; investigations of alleged discrimination because of race, creed, color, or national origin; and other special investigations as may be required for the Commissioner and other components of the Treasury Department. The Branch maintains liaison with the Regional Inspectors and Assistant Regional Inspectors (Internal Security) to coordinate joint activities and in special situations to render assistance in the handling of difficult investigations.

1113.723 PLANNING AND PROGRAMING BRANCH.—The Branch is responsible for providing staff assistance to the Division Director in planning and programing the Internal Security Division program. This includes formulating policies; developing technical and administrative procedural instructions, including manual issuances and investigative handbook; conducting inspections of the management and operation of the Regional Internal Security Divisions; conducting special surveys of National Office Internal Security activities; developing and coordinating training programs for the Division; providing technical and staff assistance to the Treasury Law Enforcement Officer Training School; directing the maintenance of record and case files relating to investigations by the Division; compiling and analyzing reports of operational costs, workload data, and statistics concerning criminal and administrative actions resulting from Internal Security investigations; evaluating manual issuances or proposals originating outside Inspection which are pertinent to Internal Security functions; conducting special staff studies; and maintaining liaison with other branches of the Internal Security Division, the Internal Audit Division, and other offices of the Service.

1113.724. SECURITY CASE COORDINATION BRANCH.—The Branch controls and coordinates on a nationwide basis the Internal Security Division function of investigating the character and background of applicants for, or incumbents of, positions in the Service. The Branch reviews reports submitted by the National and field offices of the Internal Security Division concerning investigations conducted for the Internal Revenue Service, for certain other components of the Treasury Department and for the Director of Practice. These reports cover all character and security cases, all National Agency Check and Inquiry (NACI), and enrollee applicant cases in which unfavorable or questionable information is disclosed, formal investigations under the Federal Tort Claims Act, and investigations of alleged discrimination because of race, creed, color, or national origin. The purpose of these reviews is to: (a) Assure that the high suitability and security requirements for Government employment and the investigative requirements of the Service have been met; (b) assure that policies and procedures are being followed uniformly; (c) develop factual data for improvement, simplification, and standardization of investigative operations; (d) promote nationwide uniformity in the approach, operating techniques, and administrative results of character and background investigations; (e) develop information to aid management

in planning and programing Internal Security activities. The Branch directs all investigative activities and coordinates administrative activities incidental to the issuance of Top Secret Defense Information Clearance letters to Service personnel and Confidential clearance letters to Service employees when required.

1113.8 Office of Assistant Commissioner (Planning and Research).—The Assistant Commissioner (Planning and Research) acts as the principal assistant to the Commissioner and the Deputy Commissioner in the development and administration of the Program and Financial Plan, related objectives and policies, and in the analysis of all Service programs for the purpose of promoting maximum effectiveness in the administration of the Internal Revenue Code with the most efficient and economical expenditure of resources; and is responsible for research, statistics, and systems development. The Assistant Commissioner (Planning and Research) represents the Commissioner on these matters in relations with the Treasury Department, the Congress, other Government agencies and outside organizations. He discharges these primary responsibilities in cooperation with the appropriate Assistant Commissioners (or other principal officials), each of whom exercises related responsibilities within his own functional area. The Assistant Commissioner (Planning and Research) is responsible for and supervises the activities of four divisions: Planning and Analysis Division, Research Division, Statistics Division, and Systems Development Division.

1113.81 Planning and Analysis Division.—The Planning and Analysis Division develops and administers the systems for producing a comprehensive multiyear Program and Financial Plan, for coordinating and integrating policies of the Service, and for analyzing all Service programs—with the aim of optimizing the collection of internal revenue taxes. To these ends, in cooperation with responsible offices, it develops the Service's Program and Financial Plan; through Special Studies, approved by the Deputy Commissioner, evaluates the desirability and costs of existing and proposed plans, policies, organizations, and program objectives; and develops criteria and presentations to measure accomplishments. It coordinates the preparation of the annual Program Memoranda analyzing the objectives, costs and benefits of the Program and Financial Plan. The Division, in cooperation with other responsible offices, determines the scope of operating data needed for performance reporting and for marginal productivity and other kinds of operations research analyses in connection with the Program and Financial Plan, Program Memoranda, and Special Studies. The Division also administers the Internal Management Document System and reviews issuances for conformance to basic policies of the Service.

1113.82 Research Division.—The Research Division conducts advanced research (independently or in conjunction with other offices) into the Federal tax system to develop new approaches to improve the Service's operations and to reduce the compliance burden on the taxpayer; directs such research, within the framework of tax policy determined by the Treasury Department; and furnishes leadership and coordination for the program of Federal-State cooperation in the field of tax administration. The Division actively participates with the appropriate staffs of the Treasury Department and the Assistant Com-

missioner (Technical) in the preparation of legislative proposals and regulation revisions resulting from the research conducted; designs and carries out surveys, studies, polls, and other forms of research to provide the Service with the basic data needed for the formulation of operating programs and plans; and prescribes the nature and content of statistical analyses made by other offices but required for the research functions of the Division.

1113.83 STATISTICS DIVISION.—The Statistics Division conducts research and prepares statistics with respect to the operation of the income tax laws as required annually by the Internal Revenue Code to provide basic information for tax studies and legislation by the Congress and its committees, for administrative use by the Secretary of the Treasury and the Commissioner of Internal Revenue, and for the Federal benchmark statistical programs on income, wealth, and finance; and performs other related research and statistical functions. The Division consists of the Income, Finance, and Wealth Branch, the Statistical Techniques Branch, and the Program Management Branch.

1113.831 ADMINISTRATIVE OFFICE.—Performs all administrative management activities, including personnel, budget, and fiscal programs, cost estimates, allocations and control of funds, records management, travel, space and equipment utilization. Coordinates and controls, in conjunction with the Facilities Management Division the printing requirements of the Division and statistical processing contracts, other office services required. Serves as a focal point for Division contacts with Personnel, Fiscal Management, and Facilities Management Divisions.

1113.832 INCOME, FINANCE AND WEALTH BRANCH.—The Income, Finance, and Wealth Branch performs statistical and economic research with respect to the operations of the income tax laws as required by the Internal Revenue Code. It identifies and analyzes actual and prospective needs of users of income, wealth, and financial data reported on tax returns. The Branch plans, evaluates, and modifies these needs to develop an integrated statistical program and prepares specifications for data preparation. It interprets, analyzes, and presents the resulting statistics through publications of the Internal Revenue Service, such as the "Statistics of Income" series, and in consultation with appropriate policy and management officials.

1113.833 STATISTICAL TECHNIQUES BRANCH.—The Statistical Techniques Branch conducts research in sampling and other statistical techniques to achieve efficiency in producing the program of the Division. It designs samples and prepares estimates of the tax-return population and workload. It reviews the application of the sampling specifications, conducts variance analyses, and makes other evaluations of the adequacy of the data. It conducts research in the development and adaptation of techniques and personnel to the solution of specific problems of the Division. It develops and maintains statistical standards for application to the Division's program.

1113.834 PROGRAM MANAGEMENT BRANCH.—Designs and develops operational plans for use in producing the statistics required by the Division's program, and prepares related procedures, forms, and instructions. Coordinates budget development for, and the planning, scheduling, and processing of the statistical work performed at decentralized locations. Conducts research into methods for controlling

quality. Develops and applies operating techniques for quality control, providing standards of measurement and instituting methods developed through operations research. Evaluates statistics produced in terms of original specifications, costs, and procedures. Serves as the focal point for collaboration between National Office and field statisticians in the execution of continuing programs such as Statistics of Income, Taxpayer Compliance Measurement, and Statistical Quality Control. Guides and coordinates the activities of statisticians in the field processing centers to insure uniformity of method and adherence to common goals. Plans uniform statistical applications to be implemended by statisticians in the field processing centers.

1113.84 Systems Development Division.—The Systems Development Division is concerned both with electronic systems and other systems. It conducts a continuing program relative to the availability and capability of electronic data processing systems and other electronic or automation equipment and systems, the feasibility and adaptability of electronic equipment to specific Service tasks, and the development of special modifications for Service purposes. The Division reviews and coordinates projects of other offices involving the adaptation of electronic equipment and participates in the selection and installation of electronic equipment and systems. With respect to other systems, the Division examines and makes recommendations for improvement or extension of internal systems (such as those relating to reporting, processing, accounting, enforcement, records management, and communications), reviews and coordinates system-improvement efforts of other offices, and initiates and develops projects of its own; furnishes other offices of the Service, on request, advisory and consultative services on systems problems; studies possibilties of integrating paperwork and data-handling systems and equipment; and surveys, develops and tests equipment used or usable by the Service.

1113.9 Office of Assistant Commissioner (Technical).—The Assistant Commissioner (Technical) acts as principal assistant to the Commissioner in providing basic principles and rules for uniform interpretation and application of the tax laws (other than alcohol, tobacco, and firearms taxes, but including the manufacturer's excise tax on firearms under sections 4181 and 4182 of the Internal Revenue Code). In carrying out this mission he: Issues and publishes rulings, advisory statements, and other tax guide materials for the benefit of the taxpaying public and Revenue officials; directs programs for clarification and simplification of tax rules; develops (including responsibility for the technical content) all tax return forms and instructions (other than those dealing with alcohol and tobacco taxes and the National and Federal Firearms Acts); acts as competent authority in matters involving interpretation or application of tax conventions; provides advice and assistance throughout the Service and, where appropriate, the Treasury Department, other Government Agencies, the Congressional Committees, on depreciation, depletion, and valuation matters; conducts a technical liaison program with Service field offices; conducts a program of annual visits by Technical personnel who are specialists in the various tax areas to Service field offices to discuss and explore matters of mutual concern and interest; coordinates with the Office of the Chief Counsel in providing advice and assistance to that office, and to the Treasury Department and the

Committees of Congress, on legislative and regulatory matters; reviews all new or amendatory regulations for administrative feasibility and adequacy; coordinates with the Office of the Chief Counsel and the Department of Justice in providing advice and assistance on matters in litigation; and coordinates with the other Assistant Commissioners and, where appropriate, with the Treasury Department, other Government Agencies, and outside professional groups and industry and trade associations, on matters of mutual concern. The Assistant Commissioner (Technical) is authorized to prescribe the extent, if any, to which any rulings issued by him or pursuant to authorization from him shall be applied without retroactive effect. He is also authorized to enter into a written agreement (Closing Agreement) with any person relating to the tax liability of that person (or of the person or estate for whom he acts) in respect of any rulings issued by him or pursuant to authorization from him. The Assistant Commissioner (Technical) is responsible for and supervises the activities of four divisions: Income Tax Division; Exempt Organizations and Pension Trust Division; Miscellaneous Tax Division, and Technical Publications and Services Division.

1113.91 INCOME TAX DIVISION.—OFFICE OF THE DIRECTOR.—Has primary responsibility for providing basic principles and rules for uniform interpretation and application of the tax laws in areas involving the application of Federal income taxes and the interest equalization tax to corporate and noncorporate taxpayers (including individuals, partnerships, estates, and trusts); those involving tax conventions; those involving depreciation, depletion, and valuation issues; and those involving the taxable status of exchanges and distributions in connection with corporate reorganizations, organizations, liquidations, etc. In carrying out these responsibilities, the division: Issues rulings to taxpayers, technical advice to District Directors and Regional Commissioners, and advises the Appellate and Audit Divisions of the Service's position on particular issues; drafts Revenue Rulings, Revenue Procedures, and Technical Information Releases to be published for the guidance of taxpayers and Service personnel; drafts, or reviews, IR Manual Issuances to be published for the guidance of Service personnel; reviews, or where appropriate, assists in preparing technical booklets, training materials, pamphlets, and other materials prepared for the guidance of taxpayers and Service personnel: conducts special studies of technical problem areas, including reappraisals of current rules and practices, with a view toward reducing controversy and promoting uniformity; reviews Actions on Decisions announcing the Commissioner's position on adverse decisions of the Tax Court of the United States, prior to publication in the Internal Revenue Bulletin; initiates recommendations and coordinates with the Office of the Chief Counsel in providing advice and assistance to that office, and to the Treasury Department and the Committees of Congress on legislative and regulatory matters; coordinates with the Office of the Chief Counsel and the Department of Justice in providing advice and assistance in connection with matters in litigation; reviews newly proposed and amendatory regulations for administrative feasibility and adequacy; analyzes and acts upon reports submitted by field offices under the Technical Coordinator Program which

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disclose tax administrative problems, abuses, and inequities, as well as the views of operating personnel as to the quality and effectiveness of regulations and tax return forms, the need for new or amendatory legislation or regulations, etc.; coordinates on matters of mutual concern with other Technical divisions, the Compliance organization and, where appropriate, with other offices of the Treasury Department and other Government Agencies; supplies the Audit Division with names or essential identifying characteristics of persons or organizations, and otherwise advises and assists the Audit Division in the selection of representative cases, involving issues on which Service position needs to be established, clarified, or otherwise developed; aids the Audit Division in developing the scope and techniques needed in the examinations or investigations of such issues; and supplies information for use by the Audit Division in programing, evaluating, and guiding audit operations throughout the Service; renders assistance to the Audit Division in the evaluation of field engineering staff requirements; participates in the development of tax return forms and instructions and reviews pertinent portions of public use forms and instructions; invites outside professional groups and industry and trade associations to participate in conferences and to submit comments, briefs and suggestions in connection with tax problems and matters involving Revenue Rulings or Revenue Procedures proposed for the solution of tax problems; conducts conferences annually in each of the Regional Offices together, where appropriate, with representatives of the Chief Counsel's Office and the Audit Division, meeting with field personnel to discuss major programs of the Technical Organization, to present papers on particular substantive areas, to discuss and explore possible solutions to technical areas of concern to field offices, and to discuss other matters of mutual concern; makes determinations with respect to earnings and profits of corporations and the taxable status of distributions to shareholders; acts on applications for changes in or adoption of accounting methods and periods; and acts as competent authority in matters involving interpretation or application of tax conventions. In areas involving the application of Federal taxes in connection with provisions relating to depreciation, depletion and valuation issues, this division also: Passes upon requests for approval of plans for the aggregation of nonoperating mineral interests as a single property under section 614(e) of the Code; provides informal technical advice to field offices; post-audits the depreciation, depletion and valuation issues of cases on which engineering reports have been prepared and a sample of other large cases involving such issues; provides direct assistance on matters involving depreciation, depletion and valuation issues upon request to regional and district offices, including assistance of classification of returns; provides or secures expert witnesses in support of Government position in cases of litigation, and assists Government Counsel in preparation and presentation of cases and in negotiations of settlements; prepares jointly with Compliance training materials including handbooks; prepares and presents material in professional and technical developments at engineering institutes; and prepares material for inclusion in the engineer coordination digest calling attention to important new development. The Division Director is responsible for and supervises

the activities of four branches: Corporation Tax Branch; Individual Income Tax Branch; Engineering and Valuation Branch; and Reorganization Branch.

1113.911 Corporation Tax Branch.—In matters involving the application of Federal income and profits taxes to corporate taxpayers, including the taxation of insurance companies under Subchapter L and those relating to consolidated returns of affiliated groups, this branch: Issues ruling and technical advice; drafts Revenue Rulings, Revenue Procedures, Technical Information Releases and Internal Revenue Manual issuances; reviews or assists in the preparation of booklets, pamphlets and other materials prepared for the guidance of Service personnel and the public; conducts special studies directed toward resolving technical problem areas; reviews Actions on Decisions; provides advice and assistance to other offices of the Service, including the Office of the Chief Counsel and, when appropriate, the Treasury Department, other Government Agencies, and Congressional committees; reviews proposed regulations for administrative feasibility and adequacy; analyzes and acts upon reports submitted by field offices under the Technical Coordinator Program; coordinates with other Technical branches on matters of mutual concern; advises and assists the Audit Division in regard to the Service's audit program; participates in the development of tax return forms and instructions, and reviews pertinent portions of public use forms and instructions; and participates in Technical's Annual Field Conference Program. It also performs the same functions with respect to both corporate and noncorporate taxpayers in the field of: Income of States and municipalities (section 115); amortization of emergency and grain storage facilities (sections 168 and 169); research and Experimental Expenditures (section 174); LIFO inventory (section 472); Farmers Cooperatives and tax treatment as to patrons (sections 521 and 1381 through 1388); taxation of Regulated Investment Companies and their shareholders (sections 851 to 855); foreign tax matters which involve determination of sources of income (sections 861 to 864); taxation of nonresident alien individuals and partnerships or of alien residents of Puerto Rico (sections 871 to 876); interpretation and application of tax treaties (section 894); foreign tax credits (sections 901 to 905); income from possessions (sections 931 to 934); involuntary conversions (sections 1033 and 1071); small business corporation stock losses (sections 1242–1244); election to be taxed as a corporation (section 1361); Subchapter S, Elections (sections 1371 and 1372); mitigation of effect of renegotiation of war contracts or disallowance of reimbursement (section 1481); interest equalization tax (sections 4911 through 4920 of the Internal Revenue Code); and requests for permission for change in or adoption of accounting periods and methods (except methods of accounting for depreciation and depletion). The Branch also acts as competent authority in matters involving interpretation or application of tax conventions, and makes determinations with respect to earnings and profits of corporations and the taxable status of distributions to shareholders.

1113.912 Engineering and Valuation Branch.—Provides advice and assistance throughout the Service and the Treasury Department and, under Main Treasury direction and in coordination with the

Office of the Chief Counsel, to Congressional committees, on depreciation, depletion, and valuation questions arising in the oil and gas, mining, timber, pulp, and paper, industrial, public utilities, real estate, and commercial fields; and assists the Office of the Chief Counsel and the Department of Justice in the development of cases involving such issues for trial or pretrial settlement. In areas involving the application of Federal taxes, this branch also: Issues rulings and technical advice; drafts Revenue Rulings, Revenue Procedures, Technical Information Releases and Internal Revenue Manual issuances; reviews or assists in the preparation of booklets, pamphlets, and other materials prepared for the guidance of Service personnel and the public; conducts special studies directed toward resolving technical problem areas; reviews Actions on Decisions; reviews proposed regulations for administrative feasibility and adequacy; analyzes and acts upon reports submitted by field offices under the Technical Coordinator Program; coordinates with other Technical branches on matters of mutual concern and assists the Audit Division in its responsibility for planning and coordinating engineering aspects of the audit program, including assistance in the evaluation of field engineering staff requirements, participates in the development of tax return forms and instructions, and reviews pertinent portions of public use forms and instructions; passes upon requests for permission to change methods of accounting for depreciation and depletion and for approval of plans for the aggregation of nonoperating mineral interests as a single property under section 614(e) of the Code; provides informal technical advice to field offices; postaudits the depreciation, depletion and valuation issues of cases on which engineering reports have been prepared, and a sample of other large cases involving such issues; provides direct assistance to regional and district offices, upon request, on matters involving depreciation, depletion, and valuation issues, including assistance on classification of returns; provides or secures expert witnesses in support of Government position in cases of litigation, and assists Government Counsel in preparation and presentation of cases and in negotiations of settlements; prepares training materials, including handbooks, jointly with Compliance; prepares and presents material on professional and technical developments at engineering institutes, and develops and conducts training programs for engineers; and prepares material for inclusion in the engineering coordination digest calling attention to important new developments.

1113.913. Individual Income Tax Branch.—In matters involving the application of Federal income taxes to noncorporate taxpayers (including partnerships, estates, and trusts), and with respect to the application of employment taxes (Chapter 21 to 25 inclusive, of the Internal Revenue Code) to both corporate and noncorporate taxpayers, and with respect to the taxes imposed on self-employment income (Chapter 2), this branch: Issues rulings and technical advice; drafts Revenue Rulings, Revenue Procedures, Technical Information Releases and Internal Revenue Manual issuances; reviews or assists in the preparation of booklets, pamphlets, and other materials prepared for the guidance of Service personnel and the public; conducts special studies directed toward resolving technical problem areas; reviews Actions on Decisions; provides advice and assistance to other offices of the Service, including the Office of the Chief Counsel, and

when appropriate, the Treasury Department, other Government Agencies, and Congressional committees; reviews proposed regulations for administrative feasibility and adequacy; analyzes and acts upon reports submitted by field offices under the Technical Coordinator Program; coordinates with other Technical branches on matters of mutual concern; advises and assists the Audit Division in regard to the Service's audit program; participates in the development of tax return forms and instructions, and reviews pertinent portions of public use forms and instructions; and participates in Technical's Annual Field Conference Program. This Branch also considers issues involving: corporate contributions (section 170 of the Internal Revenue Code); cooperative housing corporations (section 216); Employee stock option and stock purchase plans adopted by a corporation for its employees (sections 421–425); real estate investment trusts (sections 856–858); compensation of employees of foreign governments (section 893); earned income from sources outside the United States (section 911); Subchapter S, that portion which relates to taxation of shareholders (sections 1373–1376); withholding of tax on foreign corporations (section 1442).

1113.914 Reorganization Branch.—In matters involving the taxable status of exchanges and distributions in connection with corporate organizations, reorganizations and liquidations, stock dividends, redemptions, exchanges, obedience to SEC orders, and distributions pursuant to the Bank Holding Company Act, this branch: Issues rulings and technical advice; drafts Revenue Rulings, Revenue Procedures, Technical Information Releases, and Internal Revenue Manual issuances; reviews or assists in the preparation of booklets, pamphlets and other materials prepared for the guidance of Service personnel and the public; conducts special studies directed toward resolving technical problem areas; reviews Actions on Decisions; provides advice and assistance to other offices of the Service, including the Office of the Chief Counsel, and when appropriate, the Treasury Department, other Government Agencies, and Congressional committees; reviews proposed regulations for administrative feasibility and adequacy; analyzes and acts upon reports submitted by field offices under the Technical Coordinator Program; coordinates with other Technical branches on matters of mutual concern; advises and assists the Audit Division in regard to the Service's audit program; participates in the development of tax return forms and instructions, and reviews pertinent portions of public use forms and instructions; and participates in Technical's Annual Field Conference Program. This branch also determines whether distributions, redemptions, exchanges, or transfers referred to in sections 306(b)(4), 355(a)(1)(D)(ii), 367, and 1492 of the Internal Revenue Code are in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes, and answers questions relating to small business investment stock (section 1244).

1113.92 Exempt Organizations and Pension Trust Division.—Office of the Director.—Has primary responsibility for providing basic principles and rules for uniform interpretation and application of the tax laws with respect to organizations exempt from income tax under sections 501 and 521 of the Internal Revenue Code, and in matters involving the qualification of pension, annuity, profit-sharing,

stock bonus, and bond purchase plans, and the tax treatment of employees and their beneficiaries and deductions for employer contributions under such plans, pursuant to sections 401–407, inclusive of the Internal Revenue Code. In carrying out these responsibilities, the division: Issues rulings to taxpayers, technical advice to District Directors and Regional Commissioners, and advises the Appellate and Audit Divisions of the Service's position on particular issues; drafts Revenue Rulings, Revenue Procedures, and Technical Information Releases to be published for the guidance of taxpayers and Service personnel; drafts or reviews, IR Manual issuances to be published for the guidance of Service personnel; reviews, or where appropriate, assists in preparing technical booklets, training materials, pamphlets, and other materials prepared for the guidance of taxpayers and Service personnel; conducts special studies of technical problem areas, including reappraisals of current rules and practices with a view toward reducing controversy and promoting uniformity; reviews Actions on Decisions announcing the Commissioner's position on adverse decisions of the Tax Court of the United States; initiates recommendations and coordinates with the Office of the Chief Counsel in providing advice and assistance to that office, and to the Treasury Department and the Committees of Congress, on legislative and regulatory matters; coordinates with the Office of the Chief Counsel and the Department of Justice in providing advice and assistance in connection with matters in litigation; reviews newly proposed and amendatory regulations for administrative feasibility and adequacy; analyzes and acts upon reports submitted by field offices under the Technical Coordinator Program which disclose tax administrative problems, abuses, and inequities, as well as the views of operating personnel as to the quality and effectiveness of regulations and tax return forms, the need for new or amendatory legislation or regulations, etc.; coordinates on matters of mutual concern with other Technical Divisions, the Compliance organization and, where appropriate, with other offices of the Treasury Department and other Government agencies; supplies the Audit Division with names or essential identifying characteristics of persons or organizations, and otherwise advises and assists the Audit Division in the selection of representative cases, involving issues on which Service position needs to be established, clarified, or otherwise developed; aids the Audit Division in developing the scope and techniques needed in the examinations or investigations of such issues; and supplies information for use by the Audit Division in programing, evaluating, and guiding audit operations throughout the Service; participates in the development of tax return forms and instructions and reviews pertinent portions of public use forms and instructions; invites outside professional groups and industry and trade associations to participate in conferences and to submit comments, briefs and suggestions in connection with tax problems and matters involving Revenue Rulings or Revenue Procedures proposed for the solution of tax problems; conducts conferences annually in each of the Regional Offices together, where appropriate, with representatives of the Chief Counsel's Office and the Audit Division, meeting with field personnel to discuss major programs of the Technical Organization, to present papers on particular substantive technical areas, to discuss and explore possible solutions to technical areas of concern to field officers, and to

discuss other matters of mutual concern; manages the Service's Master File of Exempt Organizations; determines uses to be made of EOMF data and establishes procedures for obtaining data; works with other National Office divisions on ways and means for satisfying their needs for EOMF data, e.g., selecting returns for audit examination; etc. This Division also: Postreviews field determination letters; on a certiorari basis, reviews and decides cases appealed by taxpayers to the National Office for reconsideration of District Director's determinations under sections 401–407, inclusive, of the Internal Revenue Code; under the technical advice procedures, provides the final level of appeal on District Directors' proposals to revoke the exempt status of organizations under section 501 of the Code; and conducts training classes for Internal Revenue Agents and National Office employees in new provisions of the Internal Revenue Code relating to sections 401–407, inclusive. The Director is responsible for and supervises the activities of two branches: Exempt Organizations Branch and Pension Trust Branch.

1113.921 Exempt Organizations Branch.—In matters involving the exemption of organizations under sections 501 and 521 of the Internal Revenue Code, this branch: Issues rulings and technical advice; drafts Revenue Rulings, Revenue Procedures, Technical Information Releases, and IR Manual issuances; reviews or assists in the preparation of booklets, pamphlets, and other materials for the guidance of Service personnel and the public; maintains in current status a comprehensive Exempt Organizations Handbook used as a textbook for new employees in this area, and as a reference guide by personnel examining applications for exemption, reviewing the status of organizations previously held exempt, and examining returns filed by these organizations; conducts special studies directed toward resolving technical problem areas; reviews Actions on Decisions; provides advice and assistance to other offices of the Service, including the Office of the Chief Counsel, and when appropriate, the Treasury Department, other Government Agencies and Congressional committees; reviews proposed regulations for administrative feasibility and adequacy; participates in the development of tax return forms and instructions, and reviews pertinent portions of public use forms and instructions; analyzes and acts upon reports submitted by field offices under the Technical Coordinator Program; postreviews field determination letters; coordinates with other Technical branches on matters of mutual concern; advises and assists the Audit Division in regard to the Service's audit program; and participates in Technical's Annual Field Conference Program; provides the final level of appeal on District Directors' proposals to revoke the exempt status of organizations. This branch also passes on exempt organization matters involving: The requirements for filing annual information returns under section 6033 of the Code; liability for unrelated business income tax under sections 511 to 515, inclusive; prohibited transactions under section 503; and unreasonable accumulations, or misuse of, income under section 504.

1113.922 Pension Trust Branch.—In matters involving the qualification of pension, annuity, profit-sharing, stock bonus, and bond purchase plans and the tax treatment of employees and their beneficiaries and deductions for employer contributions under such

plans, pursuant to sections 401–407, inclusive of the Internal Revenue Code, this branch: Issues rulings and technical advice; drafts Revenue Rulings, Revenue Procedures, Technical Information Releases and IR Manual issuances; reviews or assists in the preparation of booklets, pamphlets, and other materials prepared for the guidance of Service personnel and the public; conducts training classes for Internal Revenue agents and National Office employees in new provisions of the Internal Revenue Code; conducts special studies directed toward resolving technical problem areas; reviews Actions on Decisions; provides advice and assistance to other offices of the Service, including the Office of the Chief Counsel, and when appropriate, the Treasury Department, other Government Agencies and Congressional committees; reviews proposed regulations for administrative feasibility and adequacy; participates in the development of tax return forms and instructions, and reviews pertinent portions of public use forms and instructions; analyzes and acts upon reports submitted by field offices under the Technical Coordinator Program; coordinates with other Technical branches on matters of mutual concern; advises and assists the Audit Division in regard to the Service's audit program; post-reviews field determination letters and, on a certiorari basis, reviews and decides cases appealed by taxpayers to the National Office for reconsideration of District Directors' determinations; determines the applicability of the annuity treatment under section 72 of the Code, the death benefit exclusion under section 101(b), and the sick pay inclusion under section 105(d), to distributions under qualified plans and exempt employees' trusts; passes upon the tax treatment accorded under nonqualified plans—deferred compensation; and participates in Technical's Annual Field Conference Program. This branch also passes on matters involving: Exemption of employees' trusts under section 501 of the Code; collateral matters involving the treatment of medical benefits for retired employees under qualified pension plans, the limitations and restrictions on self-employed persons participating in qualified plans, and the tax treatment of distributions to nonresident aliens; deductions by acquiring corporations for carryovers under sections 381(c) (11) and (20); whether an employees' trust is operated as a feeder organization under section 502; whether transactions prohibited under section 503 have been engaged in; and whether exempt trusts have unrelated business taxable income under sections 511 to 515, inclusive.

1113.93 Miscellaneous Tax Division.—Office of Director.—Has primary responsibility for providing basic principles and rules for uniform interpretation and application of the tax laws in areas involving the application of Federal estate, gift, and excise taxes; the procedure and administration provisions of the Internal Revenue Code (particularly Subtitle F); and on matters requiring actuarial determinations. In carrying out these responsibilities, the division: Issues rulings to taxpayers, technical advice to District Directors and Regional Commissioners, and advises the Appellate and Audit Divisions of the Service's position on particular issues; drafts Revenue Rulings, Revenue Procedures, and Technical Information Releases to be published for the guidance of taxpayers and Service personnel; drafts, or reviews, IR Manual issuances to be published for the guidance of Service personnel; reviews, or where appropriate, assists in

preparing technical booklets, training materials, pamphlets, and other materials prepared for the guidance of taxpayers and Service personnel; conducts special studies of technical problem areas, including reappraisals of current rules and practices, with a view toward reducing controversy and promoting uniformity; reviews Actions on Decisions announcing the Commissioner's position on adverse decisions of the Tax Court of the United States prior to publication in the Internal Revenue Bulletin; initiates recommendations and coordinates with the Office of the Chief Counsel in providing advice and assistance to that office, and to the Treasury Department and the Committees of Congress on legislative and regulatory matters; coordinates with the Office of the Chief Counsel and the Department of Justice in providing advice and assistance in connection with matters in litigation; reviews newly proposed and amendatory regulations for administrative feasibility and adequacy; analyzes and acts upon reports submitted by field offices under the Technical Coordinator Program which disclose tax administrative problems, abuses, and inequities, as well as the views of operating personnel as to the quality and effectiveness of regulations and tax return forms, the need for new or amendatory legislation or regulations, etc.; coordinates on matters of mutual concern with other Technical divisions, the Compliance organization and, where appropriate, with other offices of the Treasury Department and other Government Agencies; supplies the Audit Division with names or essential identifying characteristics of persons or organizations, and otherwise advises and assists the Audit Division in the selection of representative cases, involving issues on which Service position needs to be established, clarified, or otherwise developed; aids the Audit Division in developing the scope and techniques needed in the examinations or investigations of such issues; and supplies information for use by the Audit Division in programing, evaluating, and guiding audit operations throughout the Service; participates in the development of tax return forms and instructions and reviews pertinent portions of public use forms; invites outside professional groups and industry and trade associations to participate in conferences and to submit comments, briefs and suggestions in connection with tax problems and matters involving Revenue Rulings or Revenue Procedures proposed for the solution of tax problems; and conducts conferences annually in each of the Regional Offices together, where appropriate, with representatives of the Chief Counsel's Office and the Audit Division, meeting with field personnel to discuss major programs of the Technical Organization, to present papers on particular substantive areas, to discuss and explore possible solutions to technical areas of concern to field offices, and to discuss other matters of mutual concern. The Division Director is responsible for and supervises the activities of four branches: Actuarial Branch; Administrative Provisions Branch; Estate and Gift Tax Branch; and Excise Tax Branch.

1113.931 ACTUARIAL BRANCH.—In matters involving actuarial determinations, this branch: Issues ruling and technical advice; drafts Revenue Rulings, Revenue Procedures, Technical Information Releases and IR Manual issuances; reviews or assists in the preparation of booklets, pamphlets, and other materials prepared for the guidance of Service personnel and the public; conducts special studies directed

toward resolving technical problem areas; reviews Actions on Decisions; reviews proposed regulations for administrative feasibility and adequacy; analyzes and acts upon reports submitted by field officers under the Technical Coordinator Program; participates in the development of tax return forms and instructions, and reviews pertinent portions of public use forms and instructions; participates in Technical's Annual Field Conference Program; furnishes expert consulting assistance to other Service components, including the Office of the Chief Counsel, and to other Federal and State Government Agencies, on actuarial questions involved in income tax treatment of pension, profit-sharing, stock bonus, annuity, life insurance, accident and health, and other benefit and compensation plans and contracts, and deductions for amounts paid or accrued on indebtedness under insurance contracts; and furnishes expert consulting assistance to the Estate and Gift Tax Branch in this Division and the Reorganization Branch in the Income Tax Division, in regard to valuation of life estates, remainder interests, contingent assurances, series of payments, and actuarial interests in trusts. Coordinates with other branches on matters cutting across branch lines.

1113.932 ADMINISTRATIVE PROVISIONS BRANCH.—In matters involving the application of the procedure and administration provisions of the Internal Revenue Code, particularly those provided in Subtitle F, this branch: Issues rulings and technical advice; drafts Revenue Rulings, Revenue Procedures, Technical Information Releases and IR Manual issuances; reviews or assists in the preparation of booklets, pamphlets, and other materials prepared for the guidance of Service personnel and the public; conducts special studies directed toward resolving technical problem areas; reviews Actions on Decisions; provides advice and assistance to other offices of the Service, including the Office of the Chief Counsel and, when appropriate, the Treasury Department, other Government Agencies, and Congressional committees; reviews proposed regulations for administrative feasibility and adequacy; analyzes and acts upon reports submitted by field offices under the Technical Coordinator Program; coordinates with other Technical branches on matters of mutual concern; advises and assists the Audit Division in regard to the Service's Audit program; participates in the development of tax return forms and instructions, and reviews pertinent portions of public use forms and instructions; and participates in Technical's Field Conference Program. This branch also has jurisdiction as to the status of certain organizations as agencies or instrumentalities of the United States, a State, or political subdivision thereof or the District of Columbia.

1113.933 ESTATE AND GIFT TAX BRANCH.—In matters involving the application of Federal estate taxes and gift taxes, related statutes, and estate and gift tax treaties as to donors and estates, this branch: Issues rulings and technical advice; drafts Revenue Rulings, Revenue Procedures, Technical Information Releases, and IR Manual issuances; reviews or assists in the preparation of booklets, pamphlets and other materials prepared for the guidance of Service personnel and the public; conducts special studies directed toward resolving technical problem areas; reviews Actions on Decisions; provides advice and assistance to other offices of the Service, including the Office of the Chief Counsel and, when appropriate, the Treasury Department, other

Government agencies, and Congressional Committees; reviews proposed regulations for administrative feasibility and adequacy; analyzes and acts upon reports submitted by field offices under the Technical Coordinator Program; coordinates with other Technical branches on matters of mutual concern; advises and assists the Audit Division in regard to the Service's audit program; participates in the development of tax return forms and instructions, and reviews pertinent portions of public use forms and instructions; and participates in Technical's Field Conference Program.

1113.934 Excise Tax Branch.—In matters involving the application of all Federal excise taxes other than alcohol, tobacco, and firearms taxes (but including the manufacturer's excise tax on firearms under sections 4181 and 4182 of the Internal Revenue Code), this branch: Issues rulings and technical advice; drafts Revenue Rulings, Revenue Procedures, Technical Information Releases, and IR Manual issuances; reviews or assists in the preparation of booklets, pamphlets, and other materials prepared for the guidance of Service personnel and the public; conducts special studies directed toward resolving technical problem areas; reviews Actions on Decisions; provides advice and assistance to other offices of the Service, including the Office of the Chief Counsel and, when appropriate, the Treasury Department, other Government Agencies and Congressional committees; reviews proposed regulations for administrative feasibility and adequacy; analyzes and acts upon reports submitted by field offices under the Technical Coordinator Program; coordinates with other Technical branches on matters of mutual concern; advises and assists the Audit Division in regard to the Service's audit program; participates in the development of tax return forms and instructions, and reviews pertinent portions of public use forms and instructions; and participates in Technical's Field Conference Program.

1113.94 Technical Publications and Services Division.—Office of the Director.—Has primary responsibility for conducting the publications program of the Technical Organization; conducting the public use forms and instructions program for the Service and assisting in conducting the Service's form letters program; managing the overall correspondence program for the Technical Organization; and maintaining research facilities and providing reference services for the Technical Organization and other segments of the National Office. This division also has responsibility for promoting and maintaining a technical liaison program with regional and district offices of the Service, and for coordinating the Technical Organization's annual Field Conferences Program. In carrying out these responsibilities, the division: Conducts programs for preparation and publication of technical booklets, pamphlets, and other materials for the guidance of Service personnel and the taxpaying public; reviews tax guide material prepared by other Government Agencies and, where warranted, such material prepared by other government agencies, and other organizations outside the Service; conducts a program for publication of the Internal Revenue Bulletin and related materials, setting forth precedent Revenue Rulings, Revenue Procedure, court decisions, regulations, public laws, and other official pronouncements of the Service; conducts a program for the annual development of (including responsibility for the technical content) all tax return forms and

instructions covering Federal income, employment, excise, estate, and gift taxes; coordinates and assists in the work of the National Office Tax Forms Coordinating Committee in planning, reviewing, and approving tax return forms material; and assists the Committee in the performance of its review and approval function relating to public use forms and public use form letters; manages Technical's correspondence program by analyzing and directing the flow of all inquiries, requests for advice, reports submitted by field offices under the Technical Coordinator Program, etc., to the appropriate Technical Organizations units; issuing direct reply to communications involving requests for information of a general technical nature; and maintaining and servicing Technical's closed correspondence files and records; serves as liaison on Congressional correspondence and oral inquiries on matters within the jurisdiction of the Assistant Commissioner (Technical); maintains a technical reference library and provides reference services for the National Office; serves as point of contact with the Public Information Division with respect to exempt organization material to be made available for inspection under section 6104 of the Internal Revenue Code; and coordinates with other Technical Divisions on matters of mutual concern. This Division also: Conducts and coordinates a technical liaison program with regional and district offices to encourage the submission of field reports on cases which disclose tax administrative problems, abuses, and inequities; the views of field personnel as to the quality and effectiveness of regulations and tax return forms and their effect on taxpayer relations and compliance; the need for new or amendatory legislation or regulations, etc., conducts and coordinates special surveys upon request of the Treasury Department, to obtain factual information from Service field offices on tax areas in which legislation has been proposed or is being considered; and coordinates the Technical Organization's annual Technical Field Conferences Program whereunder teams of technical personnel who are specialists in the various tax areas, together with representatives of the Chief Counsel's Office and the Audit Division, visit and meet with field personnel in a District Office in each Region to discuss major problems of the Technical Organization, to present papers on particular substantive technical areas, to discuss and explore possible solutions to technical areas of particular concern to the field offices, and to discuss other matters of mutual concern and interest. The director is responsible for and supervises the activities of three branches: Technical Publications Branch; Forms and Form Letters Branch; and Technical Services Branch.

1113.941 Technical Publications Branch.—Conducts the publications program of the Technical Organization, which provides for dissemination of timely, comprehensive, and understandable explanations and information on the principles and rules established for the application of all Federal taxes (other than alcohol and tobacco, and certain firearms taxes) for the guidance of Service personnel and the public. In carrying out this responsibility, this Branch: On an annual basis, initiates, drafts and publishes comprehensive technical tax guide booklets, pamphlets, and other public use materials such as Your Federal Income Tax, Tax Guide for Small Business, Farmer's Tax Guide, the high school "Teaching Taxes" program, Guide to Federal

Estate and Gift Taxation, and others; conducts a program for keeping Service personnel up to date on significant technical developments in Federal taxation by publishing regular periodic summaries under the title Tax Briefs; initiates and drafts annual analyses and explanations in depth of important technical developments for use in the Annual Technical Review Institutes for field personnel; drafts, reviews for technical accuracy, and participates in the development of technical tax handbooks and guides for Service personnel and technical tax law text materials for use in Service training programs; drafts, reviews for technical accuracy, and participates in the development of releases, newspaper articles, radio and television program materials, etc., prepared by the Service's Public Information Division, and technical tax booklets and materials prepared by other Government agencies, and other organizations outside the Service; conducts a Reports on Current Tax Literature program to keep Service officials apprised on articles, comments, etc., published outside the Service regarding loopholes or inequities, and criticisms of Service positions or policies; and coordinates with other Technical branches in the preparation and review of technical materials, and on other matters of mutual concern. This Branch is also responsible for the publication of the weekly Internal Revenue Bulletin, the Commissioner's authoritative instrument for announcing official rulings and procedures of the Service, and for publishing Treasury Decisions, Executive orders, tax conventions, legislation, court decisions, and other items of general interest. It also: Prepares for publication the Service's looseleaf Regulations system, and other technical publications; prepares and publishes digests of substantive material published in the Bulletin for research and reference use throughout the Service; prepares and publishes finding lists and topical indexes on materials published in the Bulletin; accumulates and publishes appropriate material from the weekly Internal Revenue Bulletin in semiannual Cumulative Bulletins; compiles record retention requirements from regulations for publication in the Federal Register; and coordinates with the Publications Branch in the Facilities Management Division and, where appropriate, with the Government Printing Office in connection with the publication of the Internal Revenue Bulletin and other technical publications.

1113.942 Forms and Form Letters Branch.—Conducts the Service's public use forms and instructions program, and assists in the Service's form letters program. In carrying out these responsibilities, this Branch: On an annual basis, initiates, develops and revises the technical content of all public use tax return forms, instructions, schedules, etc., relating to employment, estate, excise, gift, and income taxes; coordinates the functions of the National Office Tax Forms Coordinating Committee in planning, reviewing and approving all public use tax return forms material; assists the National Office Tax Forms Coordinating Committee in its review and approval functions relating to public use form letters; provides advice and assistance to other offices in the Service, the Treasury Department and Congressional Committees in matters relating to tax return forms and instructions; and coordinates with other Technical branches on matters of mutual concern.

1113.943 TECHNICAL SERVICES BRANCH.—Manages the Technical Organization's over-all correspondence program and provides research and reference services for the Technical Organization and other segments of the National Office. In carrying out these responsibilities, this Branch: Acknowledges receipt of, analyzes, and directs the flow of all incoming correspondence, including requests for rulings and technical advice, general inquiries, reports submitted by Service field offices under the Technical Coordinator Program, etc., to the appropriate Technical division or branch; coordinates with other offices in Compliance, Data Processing and Administration on correspondence crossing jurisdictional lines; serves as liaison office and point contact on all Congressional office inquiries, oral or written, relating to matters under the jurisdiction of the Technical Organization; keeps the Assistant Commissioner (Technical) informed regarding incoming communications involving sensitive or controversial matters; issues direct replies to all communications involving requests for information of a general technical or procedural nature, including a substantial portion of the Congressional office inquiries directed to the Technical Organization; corresponds with field offices to supply or request needed information or files; processes, maintains, and services all closed correspondence files and related records for the Technical Organization; and maintains a technical reference library and provides research assistance and reference services for the Technical Organization and other offices in the Service's National Office. In connection with exempt organization applications and returns which are open to public inspection under section 6104 of the Internal Revenue Code, this Branch also: Maintains and services files on exempt organization applications and returns; processes requests for inspection of this material; and screens these files and deletes certain types of materials which are precluded from public inspection. In connection with Powers of Attorney submitted with requests for rulings, this Branch also: Determines their validity and acceptability and conducts correspondence seeking correction of those which are improperly drawn.

1113.(10) OFFICE OF THE CHIEF COUNSEL.—The Chief Counsel, an Assistant General Counsel of the Treasury Department, serves as a member of the Commissioner's executive staff and as counsel and legal officer to the Commissioner on all matters pertaining to the administration and enforcement of the internal revenue laws and related statutes. The key officials under his supervision are: Deputy Chief Counsel, Associate Chief Counsel (Litigation), an Executive Assistant, a staff of Technical Advisors, Special Assistants, and Directors of the Legislation and Regulations, Interpretative, Joint Committee, and Operations and Planning Divisions.

1113.(10)1 DEPUTY CHIEF COUNSEL.—The Deputy Chief Counsel assists and acts for the Chief Counsel in planning, directing, coordinating, and controlling the policies and programs of the Office and in giving overall executive leadership to its activities. The Deputy Chief Counsel acts for the Chief Counsel in supervising all phases of the work of the Office, including that of the Staff, the Division Directors, and the Regional Counsel.

1113.(10)2 ASSOCIATE CHIEF COUNSEL (LITIGATION).—Plans, directs, coordinates, and controls the policies and programs pertaining

to Tax Court, Enforcement, Alcohol and Tobacco Tax, Collection Litigation, and Refund Litigation work.

1113.(10)21 TAX COURT DIVISION.—The Tax Court Division develops policies, programs, and procedures relating to the disposition of tax cases pending in the Tax Court of the United States; supervises and coordinates the defense and settlement and the processing and handling of such cases, including preparation of pleadings, recomputations and other documents filed with the Tax Court together with hearings thereon to assure uniform treatment; coordinates and reviews Tax Court matters prepared in the regional offices; including the rendering of technical advice to the field offices, the approval of Chief Counsel's Decisions, the review of briefs to be filed with the Tax Court and recommendations of field offices for acquiescence or nonacquiescence in adverse Tax Court decisions; prepares recommendations to the Department of Justice for the Commissioner's appeals to the Courts of Appeals and prepares petitions and records on review in such cases; make recommendations to that Department regarding offers in compromise or settlement and prepares recommendations for or against filing petitions for writs of certiorari to the Supreme Court in such cases. It supervises the preparation and trial of cases assigned to, and handled by, attorneys in the Trial Branch.

1113.(10)22 ENFORCEMENT DIVISION.—The Enforcement Division handles and prepares for final decision those criminal tax cases referred to the Chief Counsel by Regional Counsel or by the National Office. It considers cases in which the Regional Commissioner and the Director of the Intelligence Division of the Office of the Assistant Commissioner (Compliance) do not concur in recommendations of Regional Counsel involving prosecution. The Division prepares acquiescence memorandums or protest letters on decisions by the Department of Justice or U.S. Attorneys against prosecution and recommendations to the Department of Justice respecting appeals of court decisions in criminal tax cases. It also prepares law opinions in cases involving penalties or other legal questions with respect to criminal cases or investigations or with respect to the disclosure of information. The Division coordinates with the Department of Justice or interested branches of the Service any questions involving investigations or actions respecting the civil aspects of pending criminal cases.

1113.(10)23 ALCOHOL AND TOBACCO TAX LEGAL DIVISION.—The Alcohol and Tobacco Tax Legal Division performs all of the legal services in the National Office incident to the administration and enforcement of the provisions of the Internal Revenue Code which relate to alcohol, tobacco products and firearms, the Federal Alcohol Administration Act, the Federal Firearms Act, Chapter 59 of the Criminal Code relating to the liquor traffic (18 U.S.C. Sections 1261 through 1265), certain provisions of the Customs and Transportation laws relating to the forfeiture and to the remission and mitigation thereof of contraband and articles used or intended to be used in violation of these laws and of the wagering tax provisions of the Internal Revenue Code, and the legal work arising under the Federal Tort Claims Act in respect of the negligent acts of Service employees. Execution of these functions includes the rendering of legal opinions, assisting in

conferences and hearings held by the administrative officers with taxpayers and other interested parties, advising as to legal problems involved in their handling of individual cases handling appeals to the Director, Alcohol and Tobacco Tax Division, in administrative quasi-judicial proceedings, drafting and reviewing proposed legislation, regulations, Treasury decisions, notices and accompanying documents, preparing and reviewing formal legal opinions, Revenue Rulings, and correspondence involving the interpretation or enforcement of the regulations, and the compromise of liabilities arising thereunder, preparing recommendations and furnishing advice and assistance to the Department of Justice in civil and criminal cases arising under the cited laws. It maintains general supervision over the legal work involving alcohol and tobacco matters performed in the offices of Regional Counsel. The Division advises the Regional Counsel, when requested, concerning legal matters considered by them.

1113.(10)24 COLLECTION LITIGATION DIVISION.—The Collection Litigation Division supervises and coordinates legal work of Regional Counsel on collection litigation matters. It reviews certain offers in compromise (except those concerning alcohol, tobacco, and firearms taxes). It prepares advisory opinions on collection litigation matters. The Division prepares and reviews recommendations to the Department of Justice concerning certiorari, appeal and petition for review in relation to all collection litigation cases. It handles certain legal work for the Director of the Office of International Operations. The Collection Litigation Division prepares and reviews recommendations to the Department of Justice concerning (a) the defense of injunction actions to restrain the assessment or collection of Federal taxes; (b) offers in settlement; (c) the waiver or release of a right to redeem under 28 U.S.C. 2410; and (d) suits for the civil enforcement of summonses. Similarly, the Division considers recommendations that the Commissioner authorize or sanction affirmative action in (a) insolvency cases (including decedents' estate proceedings), (b) suits for foreclosure of mortgages or other liens and suits to quiet title where the United States is named as a party defendant, (c) cases involving appointment of a receiver in aid of foreclosure of Federal tax liens, and (d) suits for the collection of taxes.

1113.(10)25 REFUND LITIGATION DIVISION.—The Refund Litigation Division performs all necessary legal service on behalf of the Internal Revenue Service in connection with taxpayers' suits for refund of taxes (except alcohol and tobacco taxes). It determines and coordinates the legal position of the Service in such suits and incorporates such determinations in recommendations to the Department of Justice with respect to the defense of such suits, the acceptance or rejection of settlement proposals and appeals and petitions for certiorari from adverse court decisions. The Division performs all necessary legal services on behalf of the Service in connection with all civil litigation affecting the Service and not within the responsibility of any other Division.

1113.(10)3 LEGISLATION AND REGULATIONS DIVISION.—The Legislation and Regulations Division participates and provides technical assistance in the development and drafting of internal revenue legislation and reviews as to legal form and substance recommendations for new and amendatory legislation. The Division cooperates with

the Internal Revenue Service Technical Planning Division in the development of the Service's program for the preparation of new and revised regulations, including Treasury decisions, and in accordance with the approved program undertakes preparation of most income tax regulations. It reviews as to legal form and substance all proposed regulations and Treasury decisions, except those pertaining to alcohol, tobacco, and firearms taxes. Representatives of the Division participate in public hearings on proposed regulations.

1113.(10)4 INTERPRETATIVE DIVISION.—The Interpretative Division reviews as to form and legality interpretations of internal revenue statutes and regulations and other law and legal materials bearing upon the administration of the Internal Revenue Service except those relating to: (a) Alcohol, tobacco, and firearms matters; (b) criminal tax investigations and prosecutions; (c) lien and collection matters, including those involving bankruptcies, receiverships, and other insolvencies; (d) administrative matters; (e) disclosure matters; and (f) summons enforcement matters. The Division prepares formal opinions of the Chief Counsel in assisting him in carrying out his functions as legal advisor to the Commissioner in the technical area. The Division is also responsible for the legal review of closing agreements.

1113.(10)5 JOINT COMMITTEE DIVISION.—The Joint Committee Division of the Chief Counsel's Office is responsible for the reviews of proposed refunds or credits of income, excess profits, estate, or gift tax in excess of $100,000 and of refunds or credits of income or excess profits tax in excess of $100,000 which tentatively have been made and, if approved, for the preparation of the report to the Joint (Congressional) Committee on Internal Revenue Taxation as required by section 6405 of the Internal Revenue Code, together with related deficiencies. Such refunds or credits arise from audits of taxpayers' returns or claims for refund or from proposed administrative settlements of cases pending in the Tax Court of the United States or in the U.S. Court of Claims or District Courts.

1113.(10)6 OPERATIONS AND PLANNING DIVISION.—Operations and Planning Division is responsible for all law work in the Internal Revenue Service other than substantive tax law work; at the direction of the Chief Counsel performs special assignments of a technical nature in substantive tax law. The Division serves as the principal legal advisor to the Assistant Commissioner (Administration), the Assistant Commissioner (Data Processing), and the Assistant Commissioner (Inspection). The Division is responsible for the supervision and coordination of all legal management work of the Chief Counsel Office (National Office and all field offices); establishes and maintains appropriate standards of professional competence by members of the legal staff of the office and evaluates their legal competence; analyzes the workload of the office, and determines the distribution of personnel available to handle the workload. The Division is responsible for the general supervision of all matters relating to administration and management in the Office of the Chief Counsel. Reviews and prepares for action enrollee and disbarment cases referred to the Chief Counsel by the Director of Practice, and represents the latter in the trial of cases before Hearing Examiners.

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1114. OFFICE OF REGIONAL COMMISSIONER.—1114.1 MISSION.—The mission of the Office of Regional Commissioner is to execute the broad nationwide policies and programs for the administration of the internal revenue laws, to carry out appellate and alcohol and tobacco tax programs at the regional level, and direct and coordinate the functions and activities of the district offices within the region.

1114.2 BASIC ORGANIZATION.—The principal organization components of the typical Office of the Regional Commissioner are the immediate office of the Regional Commissioner, the Administration Division, the Alcohol and Tobacco Tax Division, the Appellate Division, the Audit Division, the Collection Division, the Data Processing Division, and the Intelligence Division. An Assistant Regional Commissioner is at the head of each division.

1114.3 REGIONAL COMMISSIONER.—The Regional Commissioner administers within an assigned regional area the collection, audit, intelligence, appellate, alcohol and tobacco tax, and administration programs of the Internal Revenue Service. He carries out Service policies and programs in conformity with delegations of authority and, in this connection, establishes regional standards and programs to assure proper and effective implementation of Service-wide policies and programs within his region. The Regional Commissioner supervises and coordinates the work of the staff of the regional Office and the District Directors within his region to assure that work is processed in an orderly and timely manner, and that proper and equable emphasis is placed and directed toward the accomplishment of current program objectives. As the principal field official, he evaluates the effectiveness of Service policies and programs, and advises the National Office as to the need for revising such policies and programs to bring about improved operations or service.

1114.4 ASSISTANT REGIONAL COMMISSIONER (ADMINISTRATION).—The Assistant Regional Commissioner (Administration) acts as the principal assistant to the Regional Commissioner in planning, coordinating, and evaluating the administration activities of the Service under the jurisdiction of the Regional Commissioner to assure that administration policies and programs are properly executed. In conformity with administration policies, and programs established by the National Office, he develops regional standards and other measures necessary to implement most effectively the administration program of the Service which includes budget and fiscal management, personnel administration, training, public information, property and records management, use of facilities, printing and reproduction, and reports management. He also coordinates organization planning and advises and makes recommendations to the Regional Commissioner thereon; and furnishes guidance for and coordinates management programs. He provides the Regional Commissioner with results of evaluations and other information upon which to base his administration of the regional administration programs and recommends improvements and adjustments therein needed to bring about and sustain a high level of performance in administration activities within the region. Under the Regional Commissioner he serves as the primary source of information to the National Office as to the effectiveness of administration policies, programs, procedures and standards in terms of regional and

district requirements, provides reports and factual information upon which the National Office can base administration policy and program considerations, and recommends appropriate action with respect to problems encountered in observing and evaluating administration operations. Within the limits of his delegated authority, he provides the Regional Counsel and Regional Inspector with such administrative services as they may require in the performance of their duties. He is responsible for and supervises the activities of four branches: Facilities Management Branch, Fiscal Management Branch, Personnel Branch, and Training Branch.

1114.41 FACILITIES MANAGEMENT BRANCH.—The Facilities Management Branch coordinates, evaluates and carries out regionwide programs for providing essential support activities designed to increase the effectiveness of the region, reduce its operating costs and improve taxpayer relations. Develops within the broad guidelines established by the National Office standards and procedures for such matters, as the management of paperwork; space; property and supply; procurement and contracts; production, storage, and distribution of forms and publications initiated within the region and distribution and requirements of National Office forms and publications; emergency planning for civil defense; fire and safety, document and property security; and processes all claims arising within the region under the Federal Tort Claims Act.

1114.42 FISCAL MANAGEMENT BRANCH.—The Fiscal Management Branch performs, coordinates and evaluates budgeting, administrative accounting and financial reporting (other than for revenue collections) for the region, including the preparation of the financial plan within overall budget limitations, submission of budget data, allotment of funds, maintenance of accounts, and examination of vouchers. This Branch participates in long-range planning involving expenditures for personnel, equipment, administrative services, space, and similar items.

1114.43 PERSONNEL BRANCH.—The Personnel Branch develops and evaluates the regional personnel program and standards relating to recruitment and selection, employee relations, disciplinary actions, performance evaluation, promotions, in-service placements, incentive awards, records, reports, and other aspects of a complete personnel program, within the framework of Service policies, programs, and procedures established by the National Office, and conducts the personnel program for the regional office. It conducts the position classification program for the region. This Branch represents the region in contacts with employee groups and the Regional Directors of the Civil Service Commission.

1114.44 TRAINING BRANCH.—(1) The Training Branch provides leadership and coordination to the regional training programs and evaluates and reports on all such programs. It coordinates the regional execution of nationwide training programs; gives advice on all training programs conducted within the region; and assists in their development from the standpoint of training techniques. It participates in and coordinates the development of regional training programs to meet training needs that cut across organizational lines, such as supervisory training and training in clerical skills.

(2) The Training Branch also administers any formal Taxpayer Education Program for the region. Where a formal Taxpayer Education Program is administered by this branch, the branch title is Training and Taxpayer Education Branch.

1114.5 Assistant Regional Commissioner (Alcohol and Tobacco Tax).—The Assistant Regional Commissioner (Alcohol and Tobacco Tax) acts as the principal assistant to the Regional Commissioner in planning, directing, and coordinating the Alcohol and Tobacco Tax activities of the Service under the jurisdiction of the Regional Commissioner for the execution of Service policies and programs established by the National Office. He is responsible to the Regional Commissioner for the administration and enforcement of Internal Revenue laws relating to alcohol, alcoholic beverages and products, and tobacco and tobacco products; and related laws including the Federal Alcohol Administration Act, the National and Federal Firearms Acts and the Liquor Enforcement Act of 1936. This includes the supervision and control, under Federal laws, of units of the lawful liquor and tobacco industries located within the region. Under the Regional Commissioner he serves as the primary source of information to the National Office as to the effectiveness of Alcohol and Tobacco Tax policies; programs, procedures and standards in terms of regional requirements, provides reports and factual information upon which the National Office can base Alcohol and Tobacco Tax policy and program considerations and recommends actions with respect to problems encountered in Alcohol and Tobacco Tax operations. He supervises the activities of three branches: Enforcement Branch, Laboratory Branch, and Permissive Branch, and all branch offices located within the region.

1114.51 Permissive Branch.—(1) The Permissive Branch coordinates and evaluates the Alcohol and Tobacco Tax permissive activities to assure that throughout the region the policies and programs are properly executed with equal emphasis and uniform effort and that the work is processed in an orderly and timely manner.

(2) In conformity with Alcohol and Tobacco Tax permissive policies and programs established by the National Office, it develops regional programs, standards, and other measures necessary to implement most effectively the control and supervision of the legally qualified liquor and tobacco industries and permittees.

(3) The Branch exercises jurisdiction over the qualification of plants and premises and issuances of permits, and examines and/or audits reports relating to plant operations submitted by proprietors and Government employees. In regions where there are no branch offices (combination), it also directs the activities of all Permissive employees, provides advice and guidance to the industry, and supervises its operations through the direction and assignment of inspectors (on-premises) and inspectors (general). In regions where there are branch offices (combination), the branch provides advice and guidance to the industry in matters beyond the scope of the branch office, and provides functional advice and guidance to branch offices (combination), on permissive matters.

1114.52 Laboratory Branch.—(1) The Laboratory Branch coordinates and evaluates the Alcohol and Tobacco Tax Laboratory activities to assure that throughout the region the policies and pro-

grams are properly executed and that the work is prepared in an orderly and timely manner.

(2) In conformity with Service policies and Alcohol and Tobacco Tax programs established by the National Office develops regional practices, standards, and other measures necessary to implement most effectively the laws and regulations governing alcohol, alcoholic beverage, and tobacco industries.

(3) The Branch analyzes beverage and nonbeverage products containing alcohol, examines illegally produced alcoholic beverage, examines drugs submitted by the Bureau of Narcotics in connection with the enforcement of the Harrison Narcotic Act and the Marihuana Act, carries out analyses and work for other IRS divisions upon request, advises on technical matters pertaining to the production, storage, tax payment, and disposition of alcohol, alcoholic beverages, and tobacco products, and the denaturation of distilled spirits, use of tax-free alcohol, manufacture of nonbeverage products and articles in which denatured alcohol is used; members of the staff testify as expert witnesses on chemical matters in civil and criminal actions.

(4) The Branch provides functional advice and guidance to branch offices on laboratory matters.

1114.53 Enforcement Branch.—(1) The Enforcement Branch coordinates and evaluates the Alcohol and Tobacco Tax enforcement activities, including those relating to retail liquor dealers, to assure that throughout the region the policies and programs are properly executed with equal emphasis and uniform effort and that the investigative work is pursued in an orderly and timely manner.

(2) In conformity with Alcohol and Tobacco Tax enforcement policies and programs established by the National Office, it develops regional programs, standards, and other measures necessary to implement most effectively the investigative program relating to violation of the Internal Revenue laws and other statutes relating to alcohol, alcoholic beverages and products, tobacco and tobacco products and firearms.

(3) The Branch also directs and performs investigations of all major criminal cases throughout the region and provides functional advice and guidance to branch offices on enforcement matters.

1114.54 Branch Offices.—(1) Branch offices, headed by supervisors in charge, direct the permissive and/or enforcement activities within assigned areas of jurisdiction. Those that direct permissive and enforcement activities are known as Combination Offices, and those that direct only enforcement activities are known as Enforcement Offices. All branch offices in the Southeast and Southwest Regions are Enforcement Offices. All other branch offices are Combination Offices.

(2) In the regulatory or permissive field, Combination Offices provide advice and guidance to the industry and supervise its operations through the direction and assignment of inspectors (on-premises) and inspectors (general). The activities of the industry supervised include production, storage, tax payment, disposition and use of alcoholic liquors and tobacco by qualified permittees and registrants.

(3) In the enforcement field, all branch offices engage in the investigation, prevention, and detection of willful and/or fraudulent substantive violations of the Internal Revenue liquor and tobacco

laws, the Federal Alcohol Administrative Act, the Liquor Enforcement Act of 1936, the National and Federal Firearms Acts, the regulations promulgated thereunder, and related statutes. This involves the apprehension of violators against such laws; the submission of evidence adduced to U.S. Attorneys for criminal prosecution and forfeiture action and/or to the Regional Commissioner's office for administrative action; the seizure, custody, forfeiture, and disposition of real and personal property; the enforcement of the laws and regulations for the control of the flow of raw materials intended for use in the illicit manufacture of distilled spirits; and the inspection of retail liquor dealer establishments.

1114.6 Assistant Regional Commissioner (Appellate).—The Assistant Regional Commissioner (Appellate) acts as the principal assistant to the Regional Commissioner in planning, directing, coordinating and evaluating the appellate activities of the Service under the jurisdiction of the Regional Commissioner within the framework of Service policies and programs established by the National Office. He is responsible to the Regional Commissioner for a program of hearing and undertaking final settlement of taxpayers' appeals from determinations of tax liability made by District Directors within the region involving income, profits, estate, gift, and employment taxes, and excise taxes except those imposed on alcohol, wagering, narcotics, firearms, and tobacco. He is responsible for a program of hearing and, with the concurrence of Regional Counsel, undertaking final settlement of certain cases docketed in the Tax Court; and for a program of final review for the Commissioner in cases involving overassessments or overpayments in excess of $100,000 requiring review by the Chief Counsel or the Joint Committee on Internal Revenue Taxation. His program includes the hearing of administrative appeals in cases involving offers in compromise. In that capacity, he represents the Commissioner of Internal Revenue and exercises the authority of his office pursuant to, and within the limits of, a delegation of authority from the Regional Commissioner. Under the regional Commissioner he serves as the primary source of information to the National Office as to the effectiveness of appellate policies, programs, procedures, and standards in terms of regional requirements, provides reports and factual information upon which the National Office can base appellate policy and program considerations, and recommends action with respect to problems encountered in appellate operations. He supervises the activities of all appellate branch offices in the region.

1114.61 Appellate Branch Offices.—The basic settlement work of the Appellate Division is performed in branch offices of the Division which are headed by Chiefs or Assistant Chiefs who report to the Assistant Regional Commissioner (Appellate). The branch office conducts hearings and makes final determinations, within the limits of its delegated authority, on cases involving income, profits, estate, gift, and employment taxes and excise taxes, except those imposed on alcohol, wagering, narcotics, firearms, and tobacco, in which taxpayers have requested appellate consideration. The branch office conducts hearings and, with the concurrence of the Regional Counsel, effects settlement of cases which have been docketed in the Tax Court before the opening date of the session at which the case is calendered for trial, or

of any pretrial hearing of or report session thereon. It makes the final review for the Commissioner in all cases involving overpayments in excess of $100,000 which are subject to review by the Chief Counsel or the Joint Committee on Internal Revenue Taxation. The branch office considers protested offers in compromise and makes recommendations on final closing agreement.

1114.7 Assistant Regional Commissioner (Audit).—(1) The Assistant Regional Commissioner (Audit) acts as the principal assistant to the Regional Commissioner in planning, coordinating and evaluating the audit activities of the Service under the jurisdiction of the Regional Commissioner to assure that policies and programs are properly executed, that audit work is processed in an orderly and timely manner, that equal emphasis is placed and uniform effort directed toward the accomplishment of the current audit program objectives, and that required standards for audit uniformity are being maintained. In conformity with audit policies, and programs established by the National Office, he develops regional programs, standards, and other measures necessary to implement most effectively the audit program of the Service which includes the selection of returns for audit, their examination and investigation, the determination of tax liabilities and penalties where applicable, a regional review of selected cases closed by the district offices and the administrative disposition of offers in compromise by district Audit Divisions. He provides the Regional Commissioner with results of evaluation and other information upon which to base his administration of the regional audit program and recommends improvements and adjustments in audit operations needed to bring about and sustain a high level of performance within the region. Under the Regional Commissioner he serves as the primary source of information to the National Office as to the effectiveness of policies, programs, procedures, and standards in terms of regional and district requirements, provides reports and factual information upon which the National Office can base policy and program considerations, and recommends appropriate action with respect to problems encountered in observing and evaluating audit operations.

(2) In the Central Region, where centralized review of audit cases has been established, the functions of this office are as follows:

The Assistant Regional Commissioner (Audit) acts as the principal assistant to the Regional Commissioner in planning, coordinating and evaluating the audit activities of the Service under the jurisdiction of the Regional Commissioner to assure that policies and programs are properly executed, that audit work is processed in an orderly and timely manner, that equal emphasis is placed and uniform effort directed toward the accomplishment of the current audit program objectives, and that required standards for audit uniformity are being maintained. In conformity with audit policies, and programs established by the National Office, he develops regional programs, standards, and other measures necessary to implement most effectively the audit program of the Service which includes the selection of returns for audit, their examination and investigation, the determination of tax liabilities and penalties where applicable, tax assistance to taxpayers and the administrative disposition of offers in compromise by district

Audit Divisions. He provides the Regional Commissioner with results of evaluation and other information upon which to base his administration of the regional audit program and recommends improvements and adjustments in audit operations needed to bring about and sustain a high level of performance within the region. Under the Regional Commissioner he serves as the primary source of information to the National Office as to the effectiveness of policies, programs, procedures and standards in terms of regional and district requirements, provides reports and factual information upon which the National Office can base policy and program considerations, and recommends appropriate action with respect to problems encountered in observing and evaluating audit operations. He also reviews, as a service to those districts included in the centralized review, all field audit and unagreed office audit cases and a selected sample of agreed office audit cases examined by the district office (except that cases in which the expiration of the statute of limitations is imminent are reviewed after the necessary assessment, overassessment or statutory notice action is completed).

1114.8 Assistant Regional Commissioner (Collection)—(1) In offices which include an Assistant Regional Commissioner (Data Processing) the functions of the Assistant Regional Commissioner (Collection) are as follows:

The Assistant Regional Commissioner (Collection) acts as the principal assistant to the Regional Commissioner in planning, coordinating and evaluating the collection activities of the Service under the jurisdiction of the Regional Commissioner to assure that policies and programs are properly executed, the collection work is processed in an orderly and timely manner, and that equal emphasis is placed and uniform effort directed toward the accomplishment of the current collection program objectives. In conformity with collection policies, and programs established by the National Office, he develops regional programs, standards and other measures necessary to implement most effectively the program of the Service for the administrative disposition of offers in compromise by district Collection Divisions and the collection of delinquent accounts and the securing of delinquent returns. He provides the Regional Commissioner with results of evaluations and other information upon which to base his administration of the regional collection program and recommends improvements and adjustments in collection operations needed to bring about and sustain a high level of performance within the region. Under the Regional Commissioner he serves as the primary source of information to the National Office as to the effectiveness of collection policies, programs, procedures and standards in terms of factual information upon which the National Office can base collection policy and program considerations and recommends appropriate action with respect to problems encountered in observing and evaluating collection operations. He is also responsible for the year-round taxpayer assistance program.

(2) In offices which do not include an Assistant Regional Commissioner (Data Processing) the functions of the Assistant Regional Commissioner (Collection) are as follows:

The Assistant Regional Commissioner (Collection) acts as the principal assistant to the Regional Commissioner in planning, coordinating and evaluating the collection activities of the Service under the juris-

diction of the Regional Commissioner to assure that policies and programs are properly executed, that collection work is processed in an orderly and timely manner, and that equal emphasis is placed and uniform effort directed toward the accomplishment of the current collection program objectives. In conformity with collection policies, and programs established by the National Office, he develops regional programs, standards and other measures necessary to implement most effectively the program of the Service for the administrative disposition of offers in compromise by district Collection Divisions and for the collection and accounting of revenue, including the collection of delinquent accounts and the securing of delinquent returns. He provides the Regional Commissioner with results of evaluations and other information upon which to base his administration of the regional collection program and recommends improvements and adjustments in collection operations needed to bring about and sustain a high level of performance within the region. Under the Regional Commissioner he serves as the primary source of information to the National Office as to the effectiveness of collection policies, programs, procedures, and standards in terms of regional and district requirements, provides reports and factual information upon which the National Office can base collection policy and program considerations and recommends appropriate action with respect to problems encountered in observing and evaluating collection operations. He is also responsible for the year-round taxpayer assistance program.

1114.9 Assistant Regional Commissioner (Data Processing).—The Assistant Regional Commissioner (Data Processing) acts as the principal assistant to the Regional Commissioner in planning, coordinating and evaluating the returns processing, data processing, and revenue accounting activities under the jurisdiction of the Regional Commissioner to assure that policies and programs established by the National Office are timely and properly executed. He exercises line supervision over those activities at the Regional Office and functional supervision over those activities at the Internal Revenue Service Center and District Offices within the Region. He provides the Regional Commissioner and, through him, the National Office with evaluations, recommendations, and other information which are used as a means for determining the effectiveness of returns processing, data processing, and revenue accounting operations, policies, programs, procedures, and standards.

1114.(10) Assistant Regional Commissioner (Intelligence).—The Assistant Regional Commissioner (Intelligence) acts as the principal assistant to the Regional Commissioner in planning, coordinating and evaluating the intelligence activities of the Service under the jurisdiction of the Regional Commissioner to assure that policies and programs are properly executed, and that the intelligence work is processed in an orderly and timely manner. In conformity with intelligence policies, and programs, established by the National Office, he develops regional programs, standards and other measures necessary to implement most effectively the intelligence program of the Service which includes the investigation of alleged tax fraud, certain other civil and alleged criminal violations of tax laws (except alcohol, tobacco and certain firearms tax cases), and such other special investigations as the Commissioner may direct. He provides the Regional

Commissioner with results of evaluations and other information upon which to base his administration of the regional intelligence program and recommends improvements and adjustments in intelligence operations needed to bring about and sustain a high level of performance within the region. Under the Regional Commissioner he serves as the primary source of information to the National Office as to the effectiveness of intelligence policies, programs, procedures, and standards in terms of regional and district requirements, provides reports and factual information upon which the National Office can base intelligence policy and program considerations and recommends appropriate action with respect to problems encountered in observing and evaluating intelligence operations. He supervises the review of special agents' reports of investigation submitted by the district offices in the region, approves or disapproves recommendations for prosecution, and provides for conferences when required with taxpayers, their representatives, representatives of the Regional Counsel and the Appellate Division relative to cases investigated.

1114.(10)1 Review and Conference Staff.—(1) The Review and Conference Staff plans and directs the critical review of district office reports pertaining to alleged criminal violations of the internal revenue laws, which contain recommendations for criminal prosecution and/or ad valorem penalties, to determine that the conclusions and recommendations are sound and conform to existing policies; and recommends to the Assistant Regional Commissioner (Intelligence) the action to be taken on each such report.

(2) The Staff post reviews selected nonprosecution case reports prepared at the district level and unnumbered case disposals to determine that an appropriate, uniform basis for disposal existed. Where deficiencies are disclosed through such activities, the staff suggests corrective measures.

(3) Through continuing analysis of district office reports the Staff provides the Assistant Regional Commissioner (Intelligence) with information which will assist him in evaluating investigative techniques employed and the extent procedural and technical uniformity in the intelligence activity throughout the region.

(4) The Staff consults with and advises intelligence personnel at regional and district office locations on difficult and unusual issues, interpretations of regulations, rulings, tax laws and court decisions; also, as to the conduct of investigations, rules of evidence and Service policies. The Staff undertakes special assignments and investigations as directed by the Assistant Regional Commissioner (Intelligence).

1115 Office of Regional Inspector.—There are seven Regional Inspectors, one in each internal revenue region. The Regional Inspector, who operates under the direct supervision of the Assistant Commissioner (Inspection), is responsible for the conduct throughout the region of both the internal audit and internal security programs.

1115.1 Assistant Regional Inspector (Internal Audit).—Under the supervision of the Regional Inspector, the Assistant Regional Inspector (Internal Audit) is responsible for the conduct of the internal audit program throughout the region. The internal audit, which includes verification of financial transactions and analyses of operating practices and procedures, serves as the basis for informing appropriate officials of the manner in which operations are being carried out and

responsibilities are being discharged and as a basis for necessary changes in policies, practices and procedures.

1115.2 ASSISTANT REGIONAL INSPECTOR (INTERNAL SECURITY).—The Assistant Regional Inspector (Internal Security) is responsible for the conduct of the internal security program throughout the region. The program, which provides a factual basis for conclusions by management, the Department of Justice or other authority for making decisions, includes personnel background investigations, investigations of complaints and allegations of misconduct or irregularities concerning Service employees and actions of non-Service persons that may affect the integrity of the Service, including attempts to bribe or otherwise corrupt Service personnel. The program also includes background investigations of certain applicants for enrollment to practice before the Internal Revenue Service, investigations of charges against tax practitioners, formal investigations of accidents involving Service employees or property, and investigations of alleged discrimination because of race, creed, color or national origin. In addition, he is responsible throughout the region for the conduct of special investigations, as directed by higher authority, for the Office of the Secretary and other components of the Treasury Department.

1116 OFFICE OF REGIONAL COUNSEL.—(1) There are seven Regional Counsels, one in each Internal Revenue region. The Regional Counsel, who operates under the Chief Counsel for the Internal Revenue Service, serves as the principal legal advisor to the Regional Commissioner, the Regional Inspector, and the District Directors of Internal Revenue and their staffs. The Regional Counsel, subject to the Chief Counsel's continuing general supervision and review where appropriate or necessary, directs and supervises a staff of attorneys engaged in processing and handling cases docketed in the Tax Court of the United States and in furnishing legal advice and performing legal services connected with the Tax Court, enforcement, collection litigation and alcohol and tobacco tax functions.

(2) TAX COURT MATTERS.—The Regional Counsel's office furnishes legal advice to the Assistant Regional Commissioner (Appellate); in the name of the Chief Counsel, represents the Commissioner in the trial of cases before the Tax Court and is responsible for the preparation of pleadings, stipulations, and other documents to be filed with the Tax Court on behalf of the Commissioner prior to the entry of a decision by the Court; makes recommendations to the Chief Counsel respecting adverse Tax Court decisions; considers and approves or disapproves the settlement of cases docketed in the Tax Court, subject to the concurrence of Appellate while such cases are in presession status; considers and concurs in, or disapproves, recommendations by Appellate to eliminate the ad valorem fraud penalties in cases not docketed in the Tax Court; and considers and reviews, prior to issuance, statutory notices of deficiency or liability proposed by Appellate, and certain of such notices proposed by the District Directors.

(3) ENFORCEMENT MATTERS.—The Regional Counsel's office is responsible for the performance of legal services in the field in connection with criminal cases arising under the internal revenue laws. The office reviews recommendations of prosecution in criminal cases received in the field, and prepares and refers such cases (other than alcohol and tobacco tax cases) to the Department of Justice or, where

authorized by the Department of Justice, directly to U.S. Attorneys, or, where prosecution is not deemed warranted, prepares criminal action memoranda setting forth the reasons against the prosecution and closes such cases with the concurrence of the Assistant Regional Commissioner (Intelligence). On request, the office furnishes aid and assistance to U.S. Attorneys in criminal tax proceedings in the U.S. District Courts and Courts of Appeal.

(4) COLLECTION LITIGATION MATTERS.—The Regional Counsel's office is responsible for handling legal work with respect to cases under the Bankruptcy Act and other insolvency cases including decedents' estate proceedings; Federal tax liens in suits for foreclosure by mortgagees or other lienholders and in suits to quiet title; applications filed for the discharge of property from Federal tax liens or for the release of such liens; for review and handling of certain offers in compromise; recommendations as to the taking of affirmative action, whether by way of a separate suit or intervention in pending proceedings (with the exception of alcohol, tobacco, and firearms matters not relating to proceedings under the Bankruptcy Act, liens, receiverships, and other insolvencies); the defense of injunction suits to restrain the assessment or collection of Federal taxes (except with respect to alcohol, tobacco, and firearms matters); the assessment and collection of taxes; and of the civil enforcement of summonses.

(5) ALCOHOL AND TOBACCO TAX MATTERS.—The Regional Counsel's office gives legal advice on request to the Assistant Regional Commissioner (Alcohol and Tobacco Tax) and to his staff on administration and enforcement of the laws and regulations pertaining to liquor, tobacco, and firearms. The office reviews and makes recommendations, upon request, regarding claims for refund, abatement, and drawback of liquor, tobacco, and firearms taxes, and for damages, and with respect to petitions for mitigation or remission of forfeiture, offers in compromise, and proposed tax assessments. Upon request, the office assists U.S. Attorneys by preparing libels of information, indictments, briefs, stipulations, and other legal documents required in litigation, and by aiding in the prosecution and defense of suits. The office also handles the legal work in connection with administrative proceedings involving the issuance, suspension, revocation, or annulment of liquor and tobacco permits, including the preparation of the necessary orders, notices and pleadings and the presentation of the Government's case at both formal and informal hearings.

1117 SERVICE CENTERS—1117.1 GENERAL.—(1) There are seven Internal Revenue Service Centers located at: Austin, Tex.; Chamblee, Ga.; Cincinnati, Ohio; Kansas City, Mo.; Lawrence, Mass.; Ogden, Utah; and Philadelphia, Pa. Each Service Center is under the line supervision of the Regional Commissioner having jurisdiction over the area of their location. When fully operational, each Service Center will process tax documents within its Region's jurisdiction.

(2) Each Service Center is headed by a Director who operates under the general direction of a Regional Commissioner. The Service Center Director is responsible to the National Office, through the Regional Commissioner, for implementing the programs assigned to the Center. He is responsible for budget, fiscal, and personnel operations of the Center under directives of the Regional Commissioner. He

also participates with the National Office, through the Regional Commissioner, in planning, coordinating, and evaluating experimental projects to develop improved techniques and methods for processing tax returns. The Regional Commissioner, in turn, is responsible to the National Office for supervising the execution of the Service Center's program and for recommending adjustments to or modifications of the program. The Regional Commissioner also exercises general supervision over the activities of the Service Center Director in coordinating and maintaining liaison with Regional Commissioners, District Directors, and the National Office in carrying out the programs prescribed for the Centers by the National Office.

1117.2 PROGRAMS.—(1) The work programs performed in each Service Center are prescribed and assigned by the National Office.

(2) Programs assigned the Service Centers include the processing, analysis, and accounting control of income tax returns, estimated tax returns, wage and excise tax returns, farmers' gas tax refund claims, withholding tax documents, tax information documents, the mailing of income tax forms to taxpayers, the transcription of statistics information for the National Office Statistics Division, the preparation and certification of payrolls covering the salaries of employees throughout the Internal Revenue Service, and the preparation of special classification reports for the National Office Audit Division. These programs are not all-inclusive, and additional pilot studies and permanent assignments are made at the discretion of the National Office with a view of obtaining the benefits of data processing systems or mechanization in new work areas.

1117.3 DISTRICT OFFICE-SERVICE CENTER FUNCTIONS.—The district offices served by the centers receive the returns filed by the taxpayers, deposit all remittances, and settle all questions about the returns (including notices of change of address) before sending the returns to the centers for processing. They also endorse all notices of tax due issued by the center on which payment is made, and send them to the center for posting. The center, in turn, lists the returns on assessment lists, sends out even notices to taxpayers, prepares check-issue cards for the Regional Disbursing Office, sends out bills (first notices, on taxable-assessable and underpaid returns, prepares taxpayer delinquent account assemblies and unit ledger cards and turns over unpaid accounts to District Directors.

1117.4 SERVICE CENTER ORGANIZATION (NON-ADP)—1117.41 GENERAL.—(1) The Kansas City, Lawrence, and Ogden Service Centers were formerly "Area" Service Centers serving several regions. Effective January 1, 1964, they began conversion to a regional service operation utilizing automatic data processing systems. During the conversion period they will continue to process tax documents for certain districts in other regions.

(2) The principal organizational components of the typical Service Center (not oriented to ADP systems) are the immediate office of the Director and the following divisions: Transcription and Document Processing, Accounting and Control, Data Processing, Fiscal Management Operations, and Administration.

1117.42 TRANSCRIPTION AND DOCUMENT PROCESSING DIVISION.—The Transcription and Document Processing Division is responsible

for the transcription portion (key punching) of all work programs assigned the center. Examples of these programs include the transcription of income tax returns, farmers' gas tax refund claims, and the National Office payroll and fiscal reports program. In addition, this division is responsible for the manual processing of income information and tax documents programs; the sorting of mail address slips; the assembly and distribution of school teaching kits throughout the Nation; and such other programs as may be assigned which require manual processing. The work of the division is performed by the Review and Transcription Branch (key punching) and by the Document Processing Branch (manual processing).

1117.43 Accounting and Control Division.—The Accounting and Control Division is responsible for the review, inspection and placing under production control of returns and declarations preparatory to their processing in the Service Center; the sorting of returns into audit and statistical categories; the disposition of documents upon completion of Service Center processing: the conducting of "error inspection" activities involving the detailed examination of those returns and declarations which in the process of computation have been designated as possible error cases; the screening, perfection, and preparation of necessary correspondence with reference to the Farmers' Gas Tax Refund Program; implementation of the returns examination portion of the National Office Statistics Division Program; execution of the mail labeling portion of the Income Tax Forms Mailing Program; the establishment and maintenance of appropriate memorandum accounting controls reciprocal to general ledger accounts maintained by district offices served by the center; the establishment and maintenance of controls over all open accounts receivable up to and including taxpayer delinquent account status; the establishment of appropriate accounts covering refund disbursements; the balancing and reconciling of tabulated listings of registers and schedules prepared in the Data Processing Division; the certification of refund vouchers to the Regional Disbursing Office; the certification of assessment certificates for amounts of tax due and billed by the service center; the furnishing to district offices of appropriate journals and schedules of work processed for entry in general and subsidiary ledgers; the establishment, control, and balancing of estimated tax accounts and quarterly payments thereto throughout the tax year; and the preparation of required accounting reports. The work of the division is performed by the Documents Control and Analysis Branch and the Accounting Branch.

1117.44 Data Processing Division.—(1) The Data Processing Division is responsible for the mathematical verification and computation of tax and balance; preparation of assessment lists; identification of potential prerefund audit returns; establishment through electronic or tabulating processes of tax accounts receivable and the maintenance of such accounts, including trial balancing; issuance of bills and notices to individual income taxpayers, including those of delinquent accounts and delinquent returns; identification of overpaid returns, association of appropriate check-issue cards, and the preparation of related refund vouchers; preaddressing and prepunching blank income tax returns for mailing to individual taxpayers; establishment of index cards for

individual taxpayers and their proper arrangement for use in district offices; development of basic statistical data for use on a national basis with respect to tax returns received and processed: computation and register listing of payrolls covering salaries of Internal Revenue Service employees; preparation of quarterly estimated tax bills and the recording of payments made on them; division participation in the production of reports; and the performance of machine applications required by other programs as assigned.

(2) The Division undertakes and evaluates experimental projects developed by the Office of the Director in conjunction with the Regional Office of jurisdiction and/or the National Office in an effort to improve or extend mass processing techniques. The work of the division is performed by the Electronic Computing Branch and the Recording Branch.

1117.45 Fiscal Management Operations Division.—Under the administrative direction of the Service Center Director, with line management and supervision administered through the Service Center Director by the Regional Commissioner, the Division is responsible for organizing, planning, and directing operations relating to the processing and analysis of personal services-resources, including financial payment and the preparation of budgetary, statistical and accounting reports for management uses in the National Office and in the Regional and District Offices serviced. Also responsible for ADP systems design, revision, modification and supplementation to meet program requirements as prescribed by the Fiscal Management Officer. Responsible for coordination of Service Center Fiscal Management Operations with the National Office, Regional Headquarters Office, and other Service Centers as applicable, as well as internal coordination within the Service Center. Responsible for systems development, redesign, and revision, as well as programing and program changes. Also responsible for scheduling and planning operations, and for programing and testing work on the computer. Utilizing electronic computing and tabulating equipment, the system provides accurate and timely payments for salary and related expenses, comprehensive accounting, budgetary and statistical reports, analyses of personnel data, and subsidiary records to the general ledger control accounts maintained as an integral part of the administrative accounting system. Responsible for the audit of records on which payments are based, as certified by designated employees and supervisors and supported by official personnel action documents. Also responsible for initiating accounting, appropriation, and pay adjustments. Prepares and certifies vouchers for payment. Schedules and deposits repayments. Maintains detailed records of employees pay, allowances, deductions, and benefits. Responsible for internal controls over services performed by the Data Processing Division, for internal control over input and output, and for providing comprehensive audit trails including internal checks and balances. The Division consists of two branches: Program Operations Branch and Systems and Planning Branch.

1117.46 Administration Division.—The Administration Division provides the personnel, training, budget and fiscal, procurement and supply, records and communications services, and other administrative services (within the limitations of the Service Center Director's

delegated authority) necessary to the effective operation and management of the Service Center. It coordinates the Service Center management improvement and incentive awards programs and other special projects. The division is responsible for the recruitment and placement functions at the center and conducts the employee relations program. It participates in and coordinates the development of Service Center training programs to meet local training needs. It carries out the space program of the center and conducts periodic surveys to assure effective space utilization. It procures, requisitions, issues, and assures effective utilization of equipment, property and office supplies, and provides communications and duplicating services. It administers documents and property security, safety and records management programs in the center.

1117.5 Service Center Organization (ADP)—1117.51 General.—The principal organizational components of the typical Service Center (oriented to ADP systems) are the immediate office of the Service Center Director, the Planning Staff, the Administration Division, Document Analysis and Control Division, Transcription Division, and Accounting and Data Processing Division.

1117.52 Office of the Director.—Within the structure of the Internal Revenue Service, the Service Center has organizational status comparable to that of the District Offices. It operates under the line supervision of the Service Center Director, who is responsible to the Regional Commissioner in the same manner as a District Director. The Director plans, directs, and administers functions of the Service Center which provides services for the Region. Its functions are to process tax returns and related documents through the use of automatic data and other high-speed processing devices and systems and to maintain accountability records for internal revenue taxes collected within the region. Typical programs include the processing, analysis and accounting control of income tax returns, estimated tax returns, wage and excise tax returns, corporation tax returns, income information documents, mailing of income tax forms to individual taxpayers, transcription of statistical information for the National Office Audit and Statistics Divisions; etc. Responsible for budget, fiscal, and personnel operations of the Service Center. Plans and directs pilot studies and new assignments made by the National Office. Serves as advisor to the Regional and National Offices in planning, coordinating, and evaluating experimental projects to develop improved techniques and methods for processing work of the Internal Revenue Service.

1117.53 Planning Staff.—Plans, schedules, analyzes, and evaluates programs assigned or planned for the Service Center. Administers prescribed work planning and control system (including production control and performance evaluation) and quality control system. Plans, organizes, and coordinates the control of documents received from District Offices as they are processed through the Service Center. Conducts production analysis studies of programs in terms of quality, quantity and cost. Evaluates work measurement and cost ascertainment reports required by the Regional and National Offices. Develops information to support annual financial plan or special project financial plans.

1117.54 Administration Division.—The Administration Division provides the personnel, training, budget and fiscal, procurement and

supply, records and communications services, and other administrative services (within the limitations of the Service Center Director's delegated authority) necessary to the effective operation and management of the Service Center. It coordinates the Service Center management improvement and incentive awards programs and other special projects. The division is responsible for the recruitment and placement functions at the Service Center, and conducts the employee relations program. It participates in and coordinates the development of Service Center training programs to meet local training needs. It carries out the space program of the Service Center and conducts periodic surveys to assure effective space utilization. It procures, requisitions, issues, and assures effective utilization of equipment, property and office supplies, and provides communications and duplicating services. It administers documents and property security, safety and records management programs in the Service Center.

1117.541 PERSONNEL BRANCH.—Responsible for the evaluation, development, and execution of the Service Center personnel program and standards relating to recruitment and selection, employee relations, disciplinary actions, performance, evaluation, promotions, in-service placements, incentive awards, records, reports, and other aspects of a complete personnel program within the framework of policies, programs and procedures established by the National Office. Conducts the position classification program in the Service Center within delegated authority.

1117.542 FACILITIES MANAGEMENT BRANCH.—The Facilities Management Branch carries out administrative service activities including procurement and contracts; space, property, and supply utilization; warehousing; records administration; physical and document security; safety; communication and duplicating services; mail services; forms management; and building and equipment maintenance and repair.

1117.543 TRAINING BRANCH.—The Training Branch provides leadership and coordination to the Service Center training programs and evaluates and reports on all such programs. It coordinates the Service Center execution of nationwide, regional, and local training programs; gives advice on all training programs conducted within the Service Center; and develops or assists in their development from the standpoint of training techniques.

1117.55 DOCUMENT ANALYSIS AND CONTROL DIVISION.—The Document Analysis and Control Division receives, blocks, sorts, and controls documents received from District Offices; examines; perfects, and codes documents for transcription purposes; classifies documents into audit and statistical categories; researches, perfects, and resolves processing or taxpayer generated errors detected during the working cycle within the Service Center or National Computer Center; examines and codes documents for the National Office Statistics Division; processes and mails forms, notices, registers, reports, etc. to taxpayers and District, Regional, and National Offices; and disposes of documents upon completion of Service Center processing. Responsible for the storage of those tax returns which are scheduled for retention in the Service Center. Also responsible for forwarding returns to requesting offices within the IRS.

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1117.551 Document Analysis Branch.—Plans, organizes and directs the examining, perfecting, and coding of tax documents for transcription purposes; the initiation of required correspondence for mailing to district offices and taxpayers (to resolve discrepancies and to assure that correct postings are made to taxpayer master files); and the editing, coding, and extraction of information from returns for audit and statistical programs.

1117.552 Error Resolution Branch.—Performs research, perfects, and resolves processing or taxpayer generated errors detected during the working cycle within the Service Center or National Computer Center.

1117.553 Control and Services Branch.—Receives, screens, blocks and batches all work received; establishes control of returns and other documents; releases documents into the initial work processes in accordance with work schedules; under coordination of the Planning Staff makes necessary adjustments as dictated by actual pattern of receipt of work to maintain a steady balanced work flow which will meet the various Service Center deadlines. Performs any folding, labeling, inserting or other machine operations required in Service Center programs; prepares tax returns, forms, tapes, printouts, etc. for mailing to National Computer Center, District Offices, Taxpayers, Social Security Administration and Federal Reserve Banks; ships processed documents to District Offices; and compiles all production and work measurement reports for the Center from information furnished by other organizational entities. Responsible for the storage of those tax returns which are scheduled for retention in the Service Center. Also responsible for forwarding returns to requesting offices within the IRS. Initiates correspondence for perfecting master file returns during processing.

1117.56 Transcription Division.—The Transcription Division, by means of electric key punch and key verifier machines is responsible for: Transcription of pertinent information from tax returns; transcription of data to process feedback information, documents, correspondence, and forms to District Offices and taxpayers; transcription of production and cost record data for the tabulation and compilation of reports; transcription of data for accounting purposes; transcription of data for use in programs in the areas of administration, audit, statistics, fiscal, intelligence, etc.; and the transcription of such other projects or programs as assigned or authorized by the National Office.

1117.561. Transcription Branches.—(1) Branch A: Responsible for the transcription and key verification of pertinent information from all BMF tax returns, and some IMF tax returns as specified in the functional statements below. Responsible for processing documents related to BMF and IMF subsequent activity programs. Responsible for processing returns which have been previously transcribed but for which error conditions have been detected in subsequent processing.

(2) Branch B: Responsible for the transcription and key verification of pertinent information from IMF tax returns.

1117.57 Accounting and Data Processing Division.—Plans and directs the operation of a digital computer system used in processing, verifying, and computing the tax liabilities of taxpayers in all districts within the region; the processing of tax information and documents

for mailing to taxpayers and for internal use by the Service; the generation of reports, statistical information, and other information for use by the National, Regional, and District Offices, other program areas of the Service, and by the various States within the region; the processing and balancing of tax data forwarded to and received from the National Computer Center; and the processing of other programs assigned by the National Office. Programs projects as assigned by the National Office, and provides maintenance programing as necessary. Directs the maintenance of an accounting system to provide subsidiary records and general ledger accounts to reflect the Director's accountability for the tax revenue collected within the region; the recording of assessments, collections, receivables, refunds, overassessments, and other elements of revenue accounting affecting accountability; to control all accounting documents; to receive, verify, balance, and process accounting outputs from the National Computer Center; and to prepare special and periodic accounting reports. Responsible for the preparation of tax adjustments to master file returns.

1117.571 ACCOUNTING BRANCH.—Plans, coordinates, organizes, and directs the maintenance of subsidiary records and general ledger accounts covering revenue transactions to provide for the recording of assessments, collections, receivables, refunds, overassessments and other elements of revenue accounting affecting taxpayers' master accounts; controls accounting documents received from district offices for entry to master file; receives, initiates, controls, and processes MF accounting transactions involving district offices outside this region; receives and controls MF accounting outputs from Computer Center such as settlement registers and accomplishes required journalization and general ledger positions; initiates or processes account transfers, account adjustments, debit or credit transfers, statutory clearances, etc. related to MF accounts; verifies Computer Center accounting outputs against general ledger balances; receives settlements and other adjustments generated by Computer Center and processes into general ledger account; balances MF accounts with general ledger maintained in the Center; reconciles accounts with regional disbursing office; prepares periodic trial balances; prepares Statement of Accountability for the Service Center Director and Statement of Classified Collections; and prepares special and periodic financial reports covering deposits and collection data for transmittal to the National, Regional and District Offices. Plans and directs the tax adjustment work which has been centralized in the Service Center.

1117.572 DATA PROCESSING BRANCH.—The Data Processing Branch is responsible for the operation of a digital computer system used in processing, verifying, and computing the tax liabilities of taxpayers in all districts within the region; processing tax information and documents for mailing to taxpayers and for internal use by the Service; generating reports, statistical information, and other information for use by the National, Regional, and District Offices, other program areas of the Service, and by various States within the region; processing and balancing tax data forwarded and received from the National Computer Center; and processing other programs assigned by the National Office. Provides programming services as required in the maintenance of the system or as directed by the National Office.

1118 OFFICE OF DISTRICT DIRECTOR.—1118.1 MISSION.—The mission of the office of the District Director is to administer the internal revenue laws within an internal revenue district in conformance with Service policies and programs of the National and regional offices.

1118.2 BASIC ORGANIZATION.—The principal organizational components of the typical district office are the immediate office of the District Director, the Audit Division, Collection Division, Intelligence Division, and Administration Division.

1118.3 DISTRICT DIRECTOR.—The District Director administers, within an internal revenue district, the collection, audit, intelligence and administrative programs of the Internal Revenue Service. He is responsible for the determination of tax liability, the assessment of such liability, and scheduling and certification of refunds, and the investigation of certain criminal and civil violations of internal revenue tax laws (except those relating to alcohol, tobacco, and firearms). He is also responsible for the collection and deposit of all internal revenue taxes.

1118.4 AUDIT DIVISION.—(1) Administers a District-wide audit program involving the selection and examination of all types of Federal tax returns (except those involving alcohol, tobacco, and firearms taxes), claims, offers in compromise based on doubt as to liability for taxes or for both taxes and statutory additions (except alcohol, tobacco, and firearms taxes), informants' claims for reward, and related activities, including the examination and approval of pension trust plans and the issuance of determination letters. The audit program involves the selective classification of returns for field and office audit, the conduct of District conferences in unagreed cases, participation with special agents of the Intelligence Division in the conduct of tax fraud investigations, and provision of technical support to the year-round taxpayer assistance program.

(2) The Division structure conforms to one of three established patterns, depending upon size of the district office. These patterns all recognize six distinct groups of functions which are known as: Returns Classification, District Conference, Review, Field Audit, Office Audit, and Service. In small district offices the branch supervisory structure does not exist, while in large offices there may be more than one Field Audit Branch. In the Central Region the review functions are centralized in the regional office. Each district Audit Division in that region has a Technical Branch in lieu of the Conference Staff and the Review Staff.

1118.41 CONFERENCE STAFF.—Directs and performs the District conference function. This includes holding conferences with taxpayers and their representatives, and preparing conference reports. Also screens taxpayer protests and acts as technical advisor to Chief, Audit Division.

1118.42 REVIEW STAFF.—Reviews reports of examination of all types of tax returns to verify the determination of liability made by the examining officer. Directs the issuance of preliminary 30-day letters to taxpayers, reviews protests filed in response to such notices, and prepares statutory notices of deficiency. Prepares closing letters and releases in estate and gift tax cases, furnishes technical advice and assistance on pension trust plans, and prepares determination letters. Is responsible for the control, management and review of offers in

compromise, informants' claims for reward and the special procedures applicable in cases involving renegotiation. Prepares Management Information Reports for both agreed and unagreed cases. Has primary responsibility within the district for maintaining quality standards in examinations and reports, and the technical accuracy of all matters subject to review. Issues correction memorandums in all cases or matters involving substantial errors.

1118.43 RETURNS CLASSIFYING OFFICER.—Develops and administers district program for selecting all types of returns for examination. Conducts special studies to identify noncompliance problem areas and recommends audit programs to cope with them.

1118.44. FIELD AUDIT BRANCH.—Conducts field examinations relative to all types of taxes (except alcohol, tobacco, and firearms) to determine correct liabilities of taxpayers for tax and penalties, including the examination of claims for refund, credit, or abatement, or for redemption of stamps. Also conducts field examinations of offers in compromise based on doubt as to liability for taxes or for both taxes and statutory additions (except alcohol, tobacco, and firearms taxes), and special field examinations, as requested, including joint examinations with special agents of Intelligence Division where tax evasion may exist. Processes informants' claims for reward making any necessary investigations and prepares reports on such claims, together with recommendations as to the amount of rewards. Performs engineering and valuation work, prepares memorandums to accompany closing agreements, and recommends jeopardy assessments. Provides technical support to the year-round taxpayer assistance program.

1118.45 OFFICE AUDIT BRANCH.—Conducts examinations through correspondence or interviews with taxpayers in office of the Service relative to all types of taxes (except alcohol, tobacco, and firearms) to determine correct liability of taxpayers for tax and penalties, and the validity of claims for refund, credit, or abatement, or for redemption of stamps. Recommends jeopardy assessments. Provides technical support to the year-round taxpayer assistance program.

1118.46 SERVICE BRANCH.—Performs clerical services for the Division necessary to the processing of returns, reports of examination, case files and correspondence. Maintains control of all returns and case files assigned to the Audit Division and of number assignments for Management Information Reports on audit cases. Types examining officers' reports, form letters, correspondence and other material as assigned and furnishes clerical, stenographic, and typing assistance to all Division offices.

1118.47 TECHNICAL BRANCH.—(1) The Technical Branch directs the issuance of preliminary 30-day letters to taxpayers, prepares Form 7900 letters to taxpayers covering deficiencies in bankruptcy and receivership cases which serve as a basis for assessment and filing of proof of claim by the Collection Division; reviews protests filed in response to notices of deficiency and Form 7900 letters for proper form, compliance with existing requirements and for new issues or facts; and prepares statutory notices of deficiency.

(2) The Branch is responsible for the control, management and review of offers in compromise, informants' claims for reward, cases in which expiration of the statute of limitations is imminent and assessment, overassessment or statutory notice action is necessary prior

to forwarding to the Assistant Regional Commissioner (Audit) for review, and the special procedures applicable in cases involving renegotiation. It maintains and controls the preliminary notice file, the statutory notice file, the file on cases suspended pending court or other decision (Form 1254), power of attorney file, fee statement file, and worthless stock and taxability of dividend file, taking appropriate action as required. The Branch is responsible for the District conference functions, which include assignment of conferees to handle the case, the holding of the conference, the manner in which conferences are conducted, the quality of the conference reports and the statistical reporting of the conferences. The Chief of the Technical Branch acts as Technical Advisor to the Chief of the Audit Division on cases under investigation or assigned for District conferences.

1118.5. Collection Division.—(1) The Collection Division is responsible for the receipt and processing of tax returns and related documents filed with the district; the deposit of and accounting for tax remittances; making determinations with respect to tax refunds, credits, penalties, abatements, or overassessments; maintaining prescribed accounting and ledger controls including control of the refund appropriation account; the performance of all collection activity as relates to the sale and accounting for revenue stamps; the collection of delinquent accounts through distraint, seizure, levy, and other means; the securing of delinquent returns; the conduct of a year-round taxpayer assistance program; and the conduct of field examinations of offers in compromise based on doubt as to collectibility of taxes (except alcohol, tobacco, and firearms taxes), offers in compromise of statutory additions based on doubt as to liability or doubt as to collectibility (except alcohol, tobacco, firearms, employment, and withholding taxes and specific penalties), and all offers in compromise of 100 percent penalties.

(2) The organization of the Collection Division varies in its branches based on the size of the district. The basic or large district organization has four branches: Returns and Receipts, Revenue Accounting, Taxpayer Service, and Delinquent Accounts and Returns. The organization for medium districts has three branches: Returns and Receipts, Taxpayer Service and Accounts, and Delinquent Accounts and Returns. The organization for small districts has two branches: Office Branch, and the Delinquent Accounts and Returns Branch. The basic or large district organization is set forth below.

1118.51 Returns and Receipts Branch.—(1) The Returns and Receipts Branch is responsible for the receipt, categorical classification and internal routing of all tax returns, remittances, correspondence, and other documents received by the District Office. It sorts, examines, verifies, and reconciles tax returns, forms, schedules and other types of supporting tax and information documents for correctness; matches prepayment credits and associates supporting information documents with tax returns in preparation for audit; computes or verifies tax on all wage and excise tax returns, estate and gift and corporation income tax returns; makes certain penalty determinations; numbers all nonremittance returns; and prepares, transmits and controls shipment of returns and documents to and from the Service Center and the Social Security Administration.

(2) The Branch is responsible for the examination of all tax returns and documents received with remittance and for the determination of acceptability of remittances for deposit. It classifies returns and documents by prescribed classification and initially accounts for all remittances by class of tax; maintains required records and effects prescribed balancing of all recorded entries; takes required action to make daily deposits in designated depositary bank; and numbers all remittance returns. It coordinates cashier receipts and deposits activities with accounting and processing operations; initiates predeposit search on all remittances received without returns or identifying documents; and receives returned remittances from depositary bank and attempts to make collection from taxpayer; prepares necessary debit vouchers, posting vouchers and maintains pertinent records. The Branch is responsible for requisitioning, issuance and control of internal revenue stamps, Revenue Officers' receipt books, and other receipts for payment of internal revenue taxes. It handles and maintains collateral agreement records and related securities. The Branch has line responsibility for all teller activities in the same location as the Returns and Receipts Branch and functional responsibility for all other teller activities.

1118.52 Revenue Accounting Branch.—(1) The Revenue Accounting Branch performs all revenue accounting activities with respect to determining and recording of payments and adjustments to taxpayers' accounts and establishes and maintains all prescribed accounting control records, posting media and related accounting records. It is responsible for the mechanical listing (or scheduling) of all returns filed, and for the posting of debits and credits to taxpayer accounts and balancing of ledgers to sectional controls. It classifies and records all tax payments received without appropriate identification and searches records to identify same; issues all tax bills, notices and taxpayer delinquent accounts; prepares required vouchers to effect adjustments involving payments, debits, or credits to taxpayers' accounts and prepares abatement vouchers on duplicate assessments; maintains all account cards files on a current posting basis; maintains all required sectional and general ledger controls in connection with revenue accounting operations; makes reconciliations of ledger controls with prescribed sectional controls and takes appropriate action to ascertain source of discrepancies and make necessary corrections in records; and prepares and submits all accounting and ledger reports as required.

(2) The Branch makes final determination of tentative carry-back adjustments; prepares necessary schedules and vouchers in connection with the refunding appropriation; computes general and restricted interest; maintains files of refund and credit schedules; prepares certificates of overassessment; prepares appropriate overassessment schedules for refund, credit or abatement; and computes or verifies tax on certain tax returns.

1118.53 Taxpayer Service Branch.—(1) The Taxpayer Service Branch is responsible for taxpayer contact by telephone, mail or personal call; adjustments on tax returns; preparation of replies to correspondence; informal conferences relative to tax adjustments; and conduct of year-round taxpayer assistance within headquarters office.

(2) The Branch establishes and maintains all tax returns files and index card files and furnishes information from the files as requested. It maintains addressograph files and plates and performs all addressograph services; maintains and distributes adequate supplies of various types of income tax forms, returns, and all processing forms; addresses, stuffs and mails copies of blank tax forms, tax notice forms and other documents and forms, except those handled by Service Centers. Photostats all tax forms, returns and other documents, as required; assigns and controls all employers' identification numbers; receives, analyzes, classifies, controls, routes, performs research and makes reply to various routine types of correspondence on collection matters which can be serviced at a centralized point; prepares various documents for transmittal to the Federal Records Center, Service Center, Statistics Division and other (associate) Government Agencies, as necessary; coordinates Collection activities with Administration, Audit, Intelligence, Appellate, Statistics, Federal Records Center and Service Centers relative to returns' disposition, classification, statistics and processing. The Branch is responsible for furnishing advice and testimony concerning filing, processing, coding and related markings on all returns and documents.

1118.54 Delinquent Accounts and Returns Branch.—(1) The Delinquent Accounts and Returns Branch makes collections of delinquent accounts and conducts a continuing program for the securing of delinquent returns. The Branch safeguards the Government's interest through the filing of notices of tax liens, and enforces collection by the serving of levies, and seizure and sale of real and personal property. It recommends jeopardy assessment when deemed necessary to protect revenue, civil actions to secure payment, suits to enforce penalty for failure to honor levies, and penalty assessments as a means of collection or as a method of obtaining compliance with existing laws and regulations. The Branch recommends the issuance of certificates of discharge of property from the effects of tax liens and conducts the investigations necessary to support such recommendations.

(2) The Branch receives, acts on, and processes information pertinent to bankruptcies, receiverships, assignments, reorganizations, probate proceedings, bulk sales, gifts and prizes, and dissolutions and initiates investigations for securing delinquent returns where necessary. It canvasses the district for delinquent returns and serves summonses on taxpayers to produce books, documents, returns or other information where necessary to secure compliance with the requirements for filing returns. The Branch maintains control of payments received in insolvency, bankruptcy, and decedent cases and of surety bonds and other collateral posted as security for tax liability. It also maintains files and control records of property seized under distraint authority and takes appropriate action with respect to seized property to assure that proper legal action may be timely taken. The Branch has line responsibility for all teller activities in a location different from that of the Returns and Receipts Branch. The Branch is responsible for year-round taxpayer assistance in local offices.

(3) The Branch is responsible for the control, management, field investigation and review of offers in compromise based on doubt as to collectibility of taxes (except alcohol, tobacco, and firearms taxes),

offers in compromise of statutory additions based on doubt as to liability or doubt as to collectibility (except alcohol, tobacco, firearms, employment, and withholding taxes and specific penalties), and all offers in compromise of 100 percent penalties. It also issues conference invitation letters in unagreed offers in compromise and certain DAR Branch proposed assessment cases; conducts conferences with taxpayers and their representatives; and prepares conference reports.

1118.6 INTELLIGENCE DIVISION.—The Intelligence Division enforces the criminal statutes applicable to income, estate, gift, employment, and excise tax laws (except those relating to alcohol, tobacco, narcotics, and certain firearms), by developing information concerning alleged criminal violations thereof, evaluating allegations and indications of such violations to determine investigations to be undertaken, investigating suspected criminal violations of such laws, recommending prosecution when warranted, and measuring effectiveness of the investigation and prosecution processes. The Division assists other Intelligence offices in special inquiries, drives and compliance programs and in the normal enforcement programs, including those combating organized wagering, racketeering and other illegal activity, by providing investigative resources upon regional or National Office request. It also assists U.S. Attorneys and Regional Counsel in the processing of Intelligence cases, including the preparation for and trial of cases.

1118.61 BRANCHES A AND B.—In Districts where a branch structure has been authorized for Intelligence Division, the branch functions are as follows: The Branch conducts investigations of criminal tax violations, except those relating to alcohol, tobacco, narcotics, and certain firearms tax cases. The Branch coordinates actions with the office of the U.S. Attorney and with other Divisions in the district office. The Branch assists the U.S. Attorney and the Chief Counsel in the trial of cases. The Branch evaluates allegations of tax law violations and initiates surveys, examinations and investigations to identify cases which may have prosecution potential. The Branch makes appropriate recommendations as to the disposition of matters coming to the attention of the Intelligence Division and as to the disposition of cases investigated. The Branch assists in the planning, organizing, coordinating and directing the local adoption of Intelligence policies, programs and procedures of Regional and National Offices. The Branch keeps informed on investigations to ensure uniformity of actions, adherence to established policies and compliance with procedures; to ensure that evidence is adequate and sufficient and that the action taken is sound and proper; and to ensure that high standards of performance are maintained.

1118.7 ADMINISTRATION DIVISION.—(1) The Administration Division provides the personnel, training, budget and fiscal, procurement and supply, records and communications services and other administrative services, within the limitations of the District Director's delegated authority, necessary to the effective operation and management of the district office. It coordinates the district office cost reduction and management improvement, reports management and incentive awards programs and other special projects.

(2) The organization of the Administration Division varies according to the size of the district, its managerial staffing, and other local conditions, as follows:

(a) The Division is headed by a Chief in districts above 1,000 employees and in those with no Assistant District Director.

(b) In districts below 1,000 employees with an Assistant District Director, the District Director and the Regional Commissioner may decide whether to have a Chief, a Staff Assistant, or neither.

(c) The typical branch structure in districts above 1,000 employees is Facilities Management; Personnel; and Training. Districts below 1,000 employees are also structured into these branches if the District Director and Regional Commissioner decide they are necessary. However, in small districts (normally those below 400 employees) with a Chief, Administration, the branch structure is not authorized in the absence of compelling circumstances.

(3) For districts with a branch structure, the following functional descriptions refer to branches. For other districts, the functional descriptions indicate functions performed by staff personnel.

1118.71 Facilities Management Branch.—The Facilities Management Branch provides essential facilities and services necessary to the efficient operation of the district office. The Branch carries out the space programs of the District Director and conducts periodic surveys to assure effective space utilization. It procures, requisitions, issues, and assures effective utilization of equipment, property and office supplies; maintains records on all equipment and property located within the district, and provides communications, duplicating paperwork management, and internal management document distribution services. The Branch also furnishes data necessary for the preparation of that portion of the district office budget estimates and financial plans which is concerned with funds required for materials and facilities in the district. As required for district management control, it maintains blotter type records of fund commitments for materials and facilities (object classes 22, 23, 24, 25, 26, and 31 as defined in Bureau of the Budget Circular A-12). It administers document and property security, emergency planning for civil defense, and the safety programs in the district.

1118.72 Personnel Branch.—The Personnel Branch performs the recruitment and placement functions at the district level, and conducts the district's employee relations program and incentive awards program. It processes personnel action documents in accordance with prescribed procedure and maintains all district personnel records.

1118.73 Training Branch.—The Training Branch provides leadership and coordination to the district training program. It coordinates the district execution of training programs; gives advice on all training programs conducted in the district office, and assists in their development from the standpoint of training techniques. It participates in and coordinates the development of district training programs to meet local training needs that cut across organizational lines. In addition, it evaluates and reports on all district training programs.

1118.8 Offices Below the District Headquarters.—(1) Offices below the district headquarters (Area, Zone, and Local offices as defined below) perform one or more of certain Collection, Audit, and Intelligence functions such as: The collection of delinquent accounts

and the securing of delinquent returns, the receiving and deposit of monies tendered in payment of taxes; the examination of returns to determine correct liability of taxpayers for tax and penalties; the holding of conferences with taxpayers and their representatives regarding the determination of liability for tax and penalties; and the investigation of alleged criminal violation of the tax statutes. They also contain, to a limited extent, other functions such as taxpayer assistance and administrative support.

(2) Offices below the district headquarters are classified according to these types:

(a) *Area office.*—An area office is a major subdivision of the district office and usually contains all of its principal functional elements including one or more groups of Revenue Agents, one or more groups of Revenue Officers, an Office Collection Force group, and a Teller. Generally, it also contains one or more Special Agents.

(b) *Zone office.*—A Zone office is an intermediate size office which includes one or more groups of Revenue Agents or one or more groups of Revenue Officers. Generally, it also contains one or more Special Agents. Usually it does not have a Teller and if it has OCF personnel, they are supervised from some other office.

(c) *Local office.*—All other offices below the district headquarters are classified as Local offices. Primarily, these are small posts of duty where the workload does not warrant the stationing of Revenue Agents and Revenue Officers in group strength.

(3) Program planning and functional supervision for personnel of an Area, Zone, or Local office are the responsibilities of the appropriate divisions of the district office. However, administrative supervision of such an office may be assigned to an individual upon a determination by the District Director that such a position is needed in order to represent all IRS functions to the public, to coordinate functions, and to provide common administrative services. This position is to be assigned as an additional responsibility to one of the regular functional personnel of the office, usually the ranking or senior officer. Each person assigned this additional responsibility will be designated as the "(inserting name of city) representative" of the District Director.

(4) Generally, offices below the district headquarters do not contain Branch Chiefs or full-time Collection Managers in any of the functional activities. However, if the workload of an office (including nearby offices supervised by such office) is sufficient to justify five or more Audit groups, the District Director may determine that the needs for local supervision warrant the stationing of an Audit Branch Chief in the office. Similarly, if the workload justifies five or more Revenue Officer groups (counting less than 10 OCF as the equivalent of a group; or 10 or more OCF as two groups), the District Director may establish a full-time Collection Manager (who supervises only Group Supervisors, as distinguished from other Collection Managers who also directly supervise Revenue Officers). Recommendations for establishing such positions shall be forwarded to the Regional Commissioner for approval in accordance with regular procedures for effecting changes in organization.

(5) When the personnel of an office below the district headquarters are supervised by Group Supervisors, Branch Chiefs, or Collection

Managers in a different location, all of the functions in such offices will generally receive line supervision from the same city in order to foster functional coordination and efficient utilization of clerical and other manpower. However, when the District Director finds that the best interests of the Service require a different arrangement, he is authorized to make an exception. Exceptions may be particularly needed for those activities, such as Intelligence, which are more thinly represented than the Audit and Collection functions; and for specialists, such as those trained in estate, gift, and excise tax work.

APPENDIX A

INTERNAL REVENUE REGIONAL OFFICES

San Francisco, Calif., ZIP 94102, Flood Building, 870 Market Street.
Atlanta, Ga., ZIP 30303, Federal Office Building, 275 Peachtree Street NE.
Chicago, Ill., ZIP 60601, North American Life Insurance Building, 35 East Wacker Drive.
New York, N.Y., ZIP 10007, Federal Office Building, 90 Church Street.
Cincinnati, Ohio, ZIP 45202, Federal Office Building, 550 Main Street.
Philadelphia, Pa., ZIP 19102, 2 Penn Center Plaza Building, 2 Penn Center Plaza.
Dallas, Tex., ZIP 75202, Federal Office Building, 1114 Commerce Street.

APPENDIX B

ALCOHOL AND TOBACCO TAX BRANCH OFFICES

Birmingham, Ala., ZIP 35203, 2121 Building, 2121 Eighth Avenue North.
Little Rock, Ark., ZIP 72203, Federal Office Building, 700 West Capital Street.
Los Angeles, Calif., ZIP 90013, Subway Terminal Building, 417 South Hill Street.
San Francisco, Calif., ZIP 94102, New Federal Building, 450 Golden Gate Avenue.
Jacksonville, Fla., ZIP 32201, U.S. Courthouse and Post Office Building.
Atlanta, Ga., ZIP 30309, 67 Peachtree Drive NE.
Honolulu, Hawaii, ZIP 96813, Alexander Young Building, 1015 Bishop Street.
Chicago, Ill., ZIP 60601, Pure Oil Building, 35 East Wacker Drive.
Louisville, Ky., ZIP 40201, Federal Building.
Baltimore, Md., ZIP 21202, 707 North Calvert Street.
Boston, Mass., ZIP 02203, John F. Kennedy Federal Building, Government Center.
Detroit, Mich., ZIP 48231, 461 Federal Building.
St. Paul, Minn., ZIP 55101, Main Post Office Building, 180 East Kellogg Boulevard.
Jackson, Miss., ZIP 39205, 630 Milner Building, Lamar and Pearl Streets.
St. Louis, Mo., ZIP 63103, Federal Building, 208 North Broadway.
Newark, N.J., ZIP 07102, Industrial Office Building, 1060 Broad Street.
New York, N.Y., ZIP 10014, 641 Washington Street, Greenwich Village Post Office Station.
Charlotte, N.C., ZIP 28202, 316 East Morehead Street.
Cincinnati, Ohio, ZIP 45202, Federal Office Building, 550 Main Street.
Oklahoma City, Okla., ZIP 73101, 200 Fourth Street NW.
Philadelphia, Pa., ZIP 19106, U.S. Customshouse, Second and Chestnut Streets.
Pittsburgh, Pa., ZIP 15222, Federal Building, 1000 Liberty Avenue.
San Juan, P.R., ZIP 00902, Post Office and Customhouse Building.
Columbia, S.C., ZIP 29201, Federal Office Building, 901 Sumter Street.
Nashville, Tenn., ZIP 37202, U.S. Courthouse, 801 Broad Street.
Dallas, Tex., ZIP 75202, Wholesale Merchants Building, 912 Commerce Street.
Richmond, Va., ZIP 75202, Federal Building, 400 North Eighth Street.
Seattle, Wash., ZIP 98104, U.S. Courthouse, Sixth and Madison Streets.

APPENDIX C

APPELLATE BRANCH OFFICES

Birmingham, Ala., ZIP 35202, 2121 Building, 2121 Eighth Avenue, North.
Phoenix, Ariz., ZIP 85004, 222 North Central Avenue.
Los Angeles, Calif., ZIP 90013, Subway Terminal Building, 417 South Hill Street.
San Francisco, Calif., ZIP 94108, 447 Sutter Street.
Denver, Colo., ZIP 80202, 17504 Federal Building.
New Haven, Conn., ZIP 06511, 1221 Chapel Street.
Washington, D.C., ZIP 20009, Universal North Building, 1875 Connecticut Avenue NW.
Jacksonville, Fla., ZIP 32201, 343 Post Office and Courthouse Building.
Miami, Fla., ZIP 33130, 51 Southwest First Avenue.
Atlanta, Ga., ZIP 30303, 275 Peachtree Street NE.
Chicago, Ill., ZIP 60601, 35 East Wacker Drive.
Springfield, Ill., ZIP 62705, 325 West Adams Street.
Indianapolis, Ind., ZIP 46202, 510 Guaranty Building.
Wichita, Kans., ZIP 67201, 212 North Market Street.
Louisville, Ky., ZIP 40202, 410 Federal Building.
New Orleans, La., ZIP 70130, 444 Federal Office Building, 600 South Street.
Baltimore, Md., ZIP 21202, 707 North Calvert Street.
Boston, Mass., ZIP 02203, John F. Kennedy Federal Building.
Detroit, Mich., ZIP 48226, 600 Griswold Building, 1214 Griswold Street.
St. Paul, Minn., ZIP 55101, W-891 First National Bank Building, 332 Minnesota Street.
Kansas City, Mo., ZIP 64106, 1006 Federal Office Building, 911 Walnut Street.
St. Louis, Mo., ZIP 63101, 901 U.S. Courthouse and Customhouse, 1114 Market Street.
Omaha, Nebr., ZIP 68102, U.S. Post Office and Courthouse, 215 North 17th Street.
Newark, N.J., ZIP 07102, 251 Plane Street.
Buffalo, N.Y., ZIP 14202, 330 U.S. Courthouse, Niagara Square.
New York, N.Y., ZIP 10007, 90 Church Street.
Greensboro, N.C., ZIP 27401, 338 North Elm Street.
Cincinnati, Ohio, ZIP 45202, New Federal Office Building, 550 Main Street.
Cleveland, Ohio, ZIP 44114, 410 Federal Reserve Bank Building.
Oklahoma City, Okla., ZIP 73102, 220 Northwest Fourth Street.
Portland, Oreg., ZIP 97204, 880 Multnomah Building, 319 Southwest Pine.
Philadelphia, Pa., ZIP 19102, 2 Penn Center Plaza.
Pittsburgh, Pa., ZIP 15222, 2304 Clark Building, 7th and Liberty Avenue.
Nashville, Tenn., ZIP 37203, 654 New U.S. Courthouse Building, 801 Broadway.
Dallas, Tex., ZIP 75202, 1025 Elm Street.
Houston, Tex., ZIP 77002, 8031 Federal Building, 515 Rusk Avenue.
Salt Lake City, Utah, ZIP 84111, Federal Building, 125 South State Street.
Richmond, Va., ZIP 23240, Federal Building, 400 North Eighth Street.
Seattle, Wash., ZIP 98121, 1112 Sixth and Lenora Building.
Huntington, W. Va., ZIP 25701, 9th Street and 5th Avenue.
Milwaukee, Wis., ZIP 53202, Towne Building, 730 East Michigan Avenue.

APPENDIX D

INTERNAL REVENUE SERVICE CENTERS

Chamblee, Ga., ZIP 30005, 4800 Buford Highway.
Andover, Mass., ZIP 01810, 310 Lowell Street.
Kansas City, Mo., ZIP 64131, Federal Building, 2306 East Bannister Road.
Cincinnati, Ohio, ZIP 45202, Federal Office Building, 550 Main Street.
Philadelphia, Pa., ZIP 19154, 11601 Roosevelt Boulevard.
Austin, Tex., ZIP 78701, 3651 South Inter-Regional Highway.
Ogden, Utah, ZIP 84405, 1160 West 12th Street.

Appendix E

INTERNAL REVENUE DISTRICT OFFICES

Birmingham, Ala., ZIP 35203, 2121 Building, 2121 Eighth Avenue North.

Anchorage, Alaska, ZIP 99501, Alaska Mutual Savings Building, Fifth and F Streets.

Phoenix, Ariz., ZIP 85025, Federal Building, 230 North First Avenue.

Little Rock, Ark., ZIP 72203, Federal Office Building, 700 West Capitol Avenue.

Los Angeles, Calif., ZIP 90012, Federal Building, 300 North Los Angeles Street.

San Francisco, Calif., ZIP 94102, Federal Building and Courthouse, 450 Golden Gate Avenue.

Denver, Colo., ZIP 80202, Federal Office Building, 1961 Stout Street.

Hartford, Conn., ZIP 06115, Federal Office Building, 450 Main Street.

Wilmington, Del., ZIP 19802, 330 East 30th Street.

Jacksonville, Fla., ZIP 32202, Universal Marion Building, 21 West Church Street.

Atlanta, Ga., ZIP 30303, Federal Office Building, 275 Peachtree Street NE.

Honolulu, Hawaii, ZIP 96813, U.S. Post Office, Courthouse, and Customshouse.

Boise, Idaho, ZIP 83701, Broadway Holding Company Building, 914 Jefferson Street.

Chicago, Ill., ZIP 60602, State-Madison Building, 17 North Dearborn Street.

Springfield, Ill., ZIP 62704, Land of Lincoln Building, 325 West Adams Street.

Indianapolis, Ind., ZIP 46204, Post Office and Courthouse Building, Meridian and Ohio Streets.

Des Moines, Iowa, ZIP 50309, U.S. Courthouse, East First and Walnut Streets.

Wichita, Kans., ZIP 67202, Federal Building, 412–418 South Main Street.

Louisville, Ky., ZIP 40202, Federal Building, Sixth and Broadway.

New Orleans, La., ZIP 70130, Federal Office Building, 600 South Street.

Augusta, Maine, ZIP 04330, Federal Office Building, 68 Sewall Street.

Baltimore, Md., ZIP 21202, The 707 Building, 707 North Calvert Street.

Boston, Mass., ZIP 02203, The John Fitzgerald Kennedy Federal Building.

Detroit, Mich., ZIP 48226, Post Office and Courthouse, 231 West Lafayette Street.

St. Paul, Minn., ZIP 55101, Post Office and Customhouse Building, 180 East Kellogg Boulevard.

Jackson, Miss., ZIP 39202, 301 Building, 301 North Lamar Street.

St. Louis, Mo., ZIP 63101, U.S. Court and Customhouse Building, 1114 Market Street.

Helena, Mont., ZIP 59601, Federal Office Building, West Sixth Street and Park Avenue.

Omaha, Nebr., ZIP 68102, Federal Office Building, 15th and Dodge Streets.

Reno, Nev., ZIP 89502, Federal Building, U.S. Courthouse, 300 Booth Street.

Portsmouth, N.H., ZIP 03801, 600 State Street.

Newark, N.J., ZIP 07102, Industrial Office Building, 1060 Broad Street.

Albuquerque, N. Mex., ZIP 87101, Federal Office Building, 517 Gold Avenue SW.

Albany, N.Y., ZIP 12210, Internal Revenue Service Building, 161 Washington Avenue.

Brooklyn, N.Y., ZIP 11201, Federal Office Building, 35 Tillary Street.

Buffalo, N.Y., ZIP 14202, Edwards Building, 266–294 Pearl Street.

New York, N.Y., ZIP 10007, 120 Church Street.

Greensboro, N.C., ZIP 27401, Federal Office Building, 320 South Ashe Street.

Fargo, N. Dak., ZIP 58102, Manchester Building, 112 North University Drive.

Cincinati, Ohio, ZIP 45202, Federal Office Building, 550 Main Street.

Cleveland, Ohio, ZIP 44113, Mott Charles Building, 220 St. Clair Avenue NW.

Oklahoma City, Okla., ZIP 73101, Courthouse and Federal Office Building, 200 Northwest Fourth Street.

Portland, Oreg., ZIP 97204, Multnomah Building, 319 Southwest Pine Street.

Philadelphia, Pa., ZIP 19108, Terminal Commerce Building, 401 North Broad Street.

Pittsburgh, Pa., ZIP 15222, Federal Building, 1000 Liberty Avenue.

Providence, R.I., ZIP 02907, Co-Op Building, 544 Elmwood Avenue.

Columbia, S.C., ZIP 29201, Federal Office Building, 901 Sumter Street.

Aberdeen, S. Dak., ZIP 57401, Executive Office Building, 640 Ninth Avenue SW.

APPENDIX E—Continued

Nashville, Tenn., ZIP 37203, Federal Office Building, Eighth Avenue and Broad Street.

Austin, Tex., ZIP 78701, Federal Office Building, 300 East Eighth Street.

Dallas, Tex., ZIP 75201, 1600 Patterson Street.

Salt Lake City, Utah, ZIP 84110, U.S. Post Office and Courthouse Building, 350 South Main Street.

Burlington, Vt., ZIP 05401, Federal Building, 11 Elmwood Avenue.

Richmond, Va., ZIP 23240, Federal Building, 400 North Eighth Street.

Seattle, Wash., ZIP 98121, Sixth and Lenora Building, 2033 Sixth Avenue.

Parkersburg, W. Va., ZIP 26102, Federal Office Building, Juliana and Fifth Streets.

Milwaukee, Wis., ZIP 53202, Federal Building, 517 East Wisconsin Avenue .

Cheyenne, Wyo., ZIP 82001, Federal Office Building, 21st and Carey Avenue.

APPENDIX F

REGIONAL INSPECTORS' OFFICES

San Francisco, Calif., ZIP 94103, U.S. Post Office Building, 1076 Mission Street.

Atlanta, Ga., ZIP 30301, Federal Office Building, 275 Peachtree Street.

Chicago, Ill., ZIP 60601, 35 East Wacker Drive.

New York, N.Y., ZIP 10007, 50 Church Street.

Cincinnati, Ohio, ZIP 45202, Federal Office Building, 550 Main Street.

Philadelphia, Pa., ZIP 19107, Bankers Securities Building, Walnut and Juniper Streets.

Dallas, Tex., ZIP 75201, Fidelity Union Life Building, 1511 Bryan Street.

APPENDIX G

REGIONAL COUNSEL OFFICES

Birmingham, Ala., ZIP 35203, 2121 Eighth Avenue North.

Phoenix, Ariz., ZIP 85004, Security Center Building, 222 North Central Avenue.

Los Angeles, Calif., ZIP 90013, 1135 Subway Terminal Building, 417 South Hill Street.

San Francisco, Calif., ZIP 94108, 447 Sutter Street.

Denver, Colo., ZIP 80202, 1961 Stout Street.

Jacksonville, Fla., ZIP 32201, 318 Post Office Building.

Miami, Fla., ZIP 33130, Federal Office Building, 51 Southwest First Avenue.

Atlanta, Ga., ZIP 30301, Federal Office Building, 275 Peachtree Street, NE.

Chicago, Ill., ZIP 60601, 35 East Wacker Drive.

Indianapolis, Ind., ZIP 46204, 1001 Illinois Building, 17 West Market.

Louisville, Ky., ZIP 40202, 526 Federal Building.

New Orleans, La., ZIP 70130, Federal Office Building.

Boston, Mass., ZIP 02203, John Fitzgerald Kennedy Building, Government Center.

Detroit, Mich., ZIP 48226, 2300 Cadillac Tower.

St. Paul, Minn., ZIP 55101, W-1081 First National Bank Building.

Kansas City, Mo., ZIP 64106, 2700 Federal Office Building, 911 Walnut Street.

St. Louis, Mo., ZIP 63101, 935 U.S. Courthouse and Customhouse.

Omaha, Nebr., ZIP 68101, U.S. Post Office and Courthouse.

Newark, N.J., ZIP 07102, 251 Plane Street.

Buffalo, N.Y., ZIP 14202, 410 U.S. Courthouse.

New York, N.Y., ZIP 10007, 30 Church Street.

Greensboro, N.C., ZIP 27401, 338 North Elm Street.

Cincinnati, Ohio, ZIP 45202, 7504 New Federal Office Building, 550 Main Street.

Cleveland, Ohio, ZIP 44114, 1620 Williamson Building, 215 Euclid Avenue.

Oklahoma City, Okla., ZIP 73101, Courthouse and Federal Office Building, 220 Northwest Fourth Street.

Portland, Oreg., ZIP 97205, 820 Multnomah Building, 319 Southwest Pine Street.

Philadelphia, Pa., ZIP 19102, 2 Penn Center Plaza.

Pittsburgh, Pa., ZIP 15222, 2304 Clark Building.

Nashville, Tenn., ZIP 37202, 455 U.S. Courthouse, 801 Broadway.

APPENDIX G—Continued

Dallas, Tex., ZIP 75202, 1025 Elm Street.
Houston, Tex., ZIP 77000, 515 Rusk Avenue.
Richmond, Va., ZIP 23219, 605 Parcel Post Building.
Washington, D.C., ZIP 20009, Universal Building North, 1875 Connecticut Avenue NW.
Milwaukee, Wis., ZIP 53202, 730 East Michigan Street.
Seattle, Wash., ZIP 98121, 1101 Sixth and Lenora Building.

(Filed by the Office of the Federal Register on January 20, 1967, 8:45 a.m., and published in the issue of the Federal Register for January 21, 1967, 32 F.R. 727)

DELEGATION ORDER NO. 23 (Rev. 5)

(Effective April 11, 1967)

Settlement of tort claims and claims made by an employee of the Internal Revenue Service for damage to or loss of personal property incident to his service.

1. Pursuant to Treasury Department Order No. 145 (Rev. 3), dated February 13, 1967, and Treasury Department Order No. 177–22 (Rev. 1), dated October 18, 1965, there is hereby delegated to the Assistant Commissioner (Administration), the Director, Facilities Management Division, the Chief, Protective Programs Branch, and the Safety Management Officer in the Protective Programs Branch:

(a) The authority, under 28 U.S.C. 2672 to consider, ascertain, adjust, determine, compromise, settle, and pay or transmit for payment claims for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Internal Revenue Service;

(b) The authority to consider, ascertain, adjust and determine claims under the Act of December 28, 1922, 42 Stat. 1066;

(c) The authority under the Military Personnel and Civilian Employees' Claims Act of 1964, as amended, to settle and pay claims made by an employee of the Internal Revenue Service, for damage to or loss of personal property incident to his service.

2. This authority may not be redelegated.

3. This order supersedes Delegation Order No. 23 (Rev. 4) issued February 11, 1966 [C.B. 1966–1, 588].

SHELDON S. COHEN,
Commissioner.

(Filed by the Office of the Federal Register on Apr. 14, 1967, 8:49 a.m., and published in the issue of the Federal Register for Apr. 15, 1967, 32 F.R. 6062)

DELEGATION ORDER NO. 97 (Rev. 4)

(Effective March 13, 1967)

Delegation of authority; closing agreements concerning Internal Revenue tax liability

Pursuant to authority granted to the Commissioner of Internal Revenue by 26 CFR 301.7121–1(a); Treasury Department Order No. 150–32; dated November 18, 1953; and Treasury Department Order No. 150–36, dated August 17, 1954 [C.B. 1954–2, 733]:

1. The Assistant Commissioner (Compliance) is hereby authorized to enter into and approve a written agreement with any person relating to the internal revenue tax liability for alcohol, tobacco, and firearms taxes, other than the manufacturers excise tax on firearms arising from application of sections 4181 and 4182 of the Internal Revenue Code of 1954, of such person (or of the person or estate for whom he acts) in respect of any prospective transactions or completed transactions affecting returns to be filed.

2. The Assistant Commissioner (Technical) is hereby authorized to enter into and approve a written agreement with any person relating to the internal revenue tax liability, other than for those taxes covered by delegation to the Assistant Commissioner (Compliance) in paragraph 1, of such person (or of the person or estate for whom he acts) in respect of any prospective transactions or completed transactions affecting returns to be filed.

3. The Assistant Commissioner (Compliance) is hereby authorized to enter into and approve a written agreement with any person relating to the internal revenue tax liability of such person (or of the person or estate for whom he acts) for a taxable period or periods ended prior to the date of agreement and related specific items affecting other taxable periods.

4. Regional Commissioners, Assistant Regional Commissioners (Appellate), Chiefs, and Associated Chiefs, Appellate Branch Offices, are hereby authorized in cases under their jurisdiction and in cases in which a closing agreement has been recommended for approval by the office of a District Director (but excluding cases docketed before the Tax Court of the United States) to enter into and approve a written agreement with any person relating to the internal revenue tax liability of such person (or of the person or estate for whom he acts) for a taxable period or periods ended prior to the date of agreement and related specific items affecting other taxable periods.

5. Regional Commissioners, Assistant Regional Commissioners (Appellate), Chiefs, and Associated Chiefs, Appellate Branch Offices, are hereby authorized in cases under their jurisdiction docketed in the Tax Court of the United States to enter into and approve a written agreement with any person relating to the internal revenue tax liability of such person (or of the person or estate for whom he acts) but only in respect to related specific items affecting other taxable periods.

6. The Director of International Operations is hereby authorized to enter into and approve written agreements with any person relating to the internal revenue tax liability of such person (or of the person or estate for whom he acts) for a taxable period or periods ended prior to the date of agreement and related specific items affecting other taxable periods, as the competent authority in the administration of the operating provisions of the tax conventions of the United States. He is also authorized to enter into and approve a written agreement with any person relating to the internal revenue tax liability of such person (or of the person or estate for whom he acts) to provide for the mitigation of economic double taxation under section 3 of Revenue Procedure 64–54, C.B. 1964–2, 1008, and to enter into and approve a written agreement providing for such mitigation and relief under Revenue Procedure 65–17, C.B. 1965–1, 833.

270–829°—67——35

7. District Directors of Internal Revenue are hereby authorized in cases under their jurisdiction to enter into and approve a written agreement with any person to provide that the internal revenue tax liability of such person (or of the person or estate for whom he acts) with respect to the taxability of earnings from a deposit or account of the type described in Revenue Procedure 64–24, C.B. 1964–1 (Part 1), 693, opened prior to November 15, 1962, will be determined on the basis that earnings on such deposits or accounts are not includible in gross income until maturity or termination, whichever occurs earlier, and that the full amount of earnings on the deposit or account will constitute gross income in the year the plan matures, is assigned, or is terminated, whichever occurs first.

8. The authority delegated herein does not include the authority to set aside any closing agreement.

9. Authority delegated in this order may not be redelegated.

10. Delegation Order No. 97 (Rev. 3), issued November 10, 1966 [C.B. 1966–2, 1190], is hereby superseded.

Effective date: March 13, 1967.

[SEAL]

SHELDON S. COHEN,
Commissioner.

(Filed by the Office of the Federal Register on March 15, 1967, 8:47 a.m., and published in the issue of the Federal Register for March 16, 1967, 32 F.R. 4141)

DELEGATION ORDER 99 (Rev. 2)

(Effective December 16, 1966)

Filing of returns with Internal Revenue Service Centers

Pursuant to authority granted to the Commissioner of Internal Revenue by 26 CFR 1.6091–4, the authority (for all purposes except venue) to receive Forms 1040 and 1040A [U.S. Individual Income Tax Return] is delegated to:

Director, Internal Revenue Service Center, Central Region
Director, Internal Revenue Service Center, Mid-Atlantic Region
Director, Internal Revenue Service Center, Southeast Region
Director, Internal Revenue Service Center, Southwest Region
Director, Internal Revenue Service Center, Western Region

The authority (for all purposes except venue) to receive Forms 1040Q [U.S. Individual Income Tax Return (Questionnaire Version)] is delegated to the Director, Internal Revenue Service Center, Southwest Region.

This Order supersedes Delegation Order No. 99 (Rev. 1) issued August 23, 1965 [C.B. 1965–2, 863].

SHELDON S. COHEN,
Commissioner.

(Filed by the Office of the Federal Register on Dec. 19, 1966, 8:47 a.m., and published in the issue of the Federal Register for Dec. 20, 1966, 31 F.R. 16282)

(Also Part I, Sections 615, 617.) T.D. 6907 [1]

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 15.—TEMPORARY INCOME TAX REGULATIONS RELATING TO EXPLORATION EXPENDITURES IN THE CASE OF MINING

Elections to deduct exploration expenditures as expenses and as to method of recapture of adjusted exploration expenditures.

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF INTERNAL REVENUE,
Washington, D.C. 20224.

To Officers and Employees of the Internal Revenue Service and Others Concerned:

In order to prescribe temporary regulations, which shall remain in force and effect until superseded by permanent regulations, relating to the manner of making the elections provided by the Act of September 12, 1966 (Public Law 89–570, 80 Stat. 759) [C.B. 1966–2, 600], relating to the income tax treatment of exploration expenditures in the case of mining, the following regulations are hereby prescribed:

§ 15.1 STATUTORY PROVISIONS; ALLOWANCE OF DEDUCTION; RECAPTURE; ELECTIONS.

(a) Section 615 (e) and (f) of the Internal Revenue Code of 1954, added by section 2(a) of the Act of September 12, 1966:

SEC. 615. EXPLORATION EXPENDITURES. * * *

(e) *Election to have section apply.* —This section (other than subsections (f) and (g)) shall apply only if the taxpayer so elects in such manner as the Secretary or his delegate may by regulations prescribe. Such election shall be made before the expiration of 3 years after the time prescribed by law (determined without any extension thereof) for filing the return for the first taxable year ending after the date of the enactment of this subsection in which expenditures described in subsection (a) are paid or incurred after such date. Such election may not be revoked after the expiration of such 3 years.

(f) *Section 615 and section 617 elections to be mutually exclusive.*—A taxpayer who has made an election under subsection (e) (which he has not revoked) may not make an election under section 617(a). A taxpayer who has made an election under section 617(a) (which he has not revoked) may not make an election under subsection (e) of this section.

* * * * * * *

[Sec. 615 (e) and (f) of the Internal Revenue Code of 1954, added by sec. 2(a) of the Act of Sept. 12, 1966 (Public Law 89–570, 80 Stat. 763) [C.B. 1966–2, 600]]

(b) Section 617 (a) and (b) of the Internal Revenue Code of 1954, added by section 1(a) of the Act of September 12, 1966:

SEC. 617. ADDITIONAL EXPLORATION EXPENDITURES IN THE CASE OF DOMESTIC MINING.—(a) *Allowance of deduction.*—(1) *General rule.*—At the election of the taxpayer, expenditures paid or incurred during the taxable year for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral in the United States or on the Outer Continental Shelf (within the meaning of section 2 of the Outer Continental Shelf Lands Act, as amended and supplemented; 43 U.S.C. 1331), and paid or incurred before the beginning of the development stage of the mine, shall be allowed as a deduction in computing taxable income. This subsection shall apply only with respect to the amount of such expenditures which, but for this subsection, would not be allowable as a deduction for the taxable year. This subsection shall not apply to expenditures for the acquisition or improvement of property of a character which is subject to the allowance for depreciation provided in section 167, but allowances

[1] 31 F.R. 16776.

for depreciation shall be considered, for purposes of this subsection, as expenditures paid or incurred. In no case shall this subsection apply with respect to amounts paid or incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of oil or gas or of any mineral with respect to which a deduction for percentage depletion is not allowable under section 613.

(2) *Elections.*—(A) *Method.*—Any election under this subsection shall be made in such manner as the Secretary or his delegate may by regulations prescribe.

(B) *Time and scope.*—The election provided by paragraph (1) for the taxable year may be made at any time before the expiration of the period prescribed for making a claim for credit or refund of the tax imposed by this chapter for the taxable year. Such an election for the taxable year shall apply to all expenditures described in paragraph (1) paid or incurred by the taxpayer during the taxable year or during any subsequent taxable year. Such an election may not be revoked after the last day of the third month following the month in which the final regulations issued under the authority of this subsection are published in the Federal Register, unless the Secretary or his delegate consents to such revocation.

(C) *Deficiencies.*—The statutory period for the assessment of any deficiency for any taxable year, to the extent such deficiency is attributable to an election or revocation of an election under this subsection, shall not expire before the last day of the 2-year period beginning on the day after the date on which such election or revocation of election is made; and such deficiency may be assessed at any time before the expiration of such 2-year period, notwithstanding any law or rule of law which would otherwise prevent such assessment.

(b) *Recapture on reaching producing stage.*—(1) *Recapture.*—If, in any taxable year, any mine with respect to which expenditures were deducted pursuant to subsection (a) reaches the producing stage, then—

(A) If the taxpayer so elects with respect to all such mines reaching the producing stage during the taxable year, he shall include in gross income for the taxable year an amount equal to the adjusted exploration expenditures with respect to such mines, and the amount so included in income shall be treated for purposes of this subtitle as expenditures which (i) are paid or incurred on the respective dates on which the mines reach the producing stage, and (ii) are properly chargeable to capital account.

(B) If subparagraph (A) does not apply with respect to any such mine, then the deduction for depletion under section 611 with respect to the property shall be disallowed until the amount of depletion which would be allowable but for this subparagraph equals the amount of the adjusted exploration expenditures with respect to such mine.

(2) *Elections.*—(A) *Method.*—Any election under this subsection shall be made in such manner as the Secretary or his delegate may by regulations prescribe.

(B) *Time and scope.*—The election provided by paragraph (1) for any taxable year may be made or changed not later than the time prescribed by law for filing the return (including extensions thereof) for such taxable year.

* * * * * * *

[Sec. 617 (a) and (b) of the Internal Revenue Code of 1954, added by sec. 1(a) of the Act of Sept. 12, 1966 (Public Law 89-570, 80 Stat. 759)]

(c) Section 703(b) of the Internal Revenue Code of 1954, as amended by section 2(b) of the Act of September 12, 1966:

SEC. 703. PARTNERSHIP COMPUTATIONS. * * *

(b) *Elections of the partnership.*—Any election affecting the computation of taxable income derived from a partnership shall be made by the partnership, except that the election under section 901, relating to taxes of foreign countries and possessions of the United States, and any election under section 615 (relating to exploration expenditures) or under section 617 (relating to additional exploration expenditures in the case of domestic mining), shall be made by each partner separately.

[Sec. 703(b) of the Internal Revenue Code of 1954, as amended by sec. 2(b) of the Act of Sept. 12, 1966 (Public Law 89-570, 80 Stat. 764)]

(d) Section 3 of the Act of September 12, 1966:

SEC. 3. The amendments made by this Act shall apply to taxable years ending after the date of the enactment of this Act but only in respect of expenditures paid or incurred after such date.

[Sec. 3 of the Act of Sept. 12, 1966 (Public Law 89-570, 80 Stat. 764)]

§ 15.0-1 SCOPE OF REGULATIONS IN THIS PART.

The regulations in this part relate to expenditures of the type described in section 615(a) or in section 617(a)(1) paid or incurred after September 12, 1966. The regulations in this part do not apply to the income tax treatment of mining exploration expenditures paid or incurred before September 13, 1966, and no election made pursuant to the provisions of the regulations in this part shall have any effect on the income tax treatment of exploration expenditures paid or incurred before such date. See § 15.1-4 for rules relating to treatment of exploration expenditures paid or incurred during taxable years beginning before September 13, 1966, and ending after September 12, 1966.

§ 15.1-1 ELECTIONS TO DEDUCT.

(a) *Manner of making election.*—(1) *Election to deduct under section 617(a).*—The election to deduct exploration expenditures as expenses under section 617(a) may be made by deducting such expenditures in the taxpayer's income tax return for the first taxable year ending after September 12, 1966, for which the taxpayer desires to deduct exploration expenditures which are paid or incurred by him during such taxable year and after September 12, 1966. This election may be exercised by deducting such expenditures either in the taxpayer's return for such taxable year or in an amended return filed before the expiration of the period for filing a claim for credit or refund of income tax for such taxable year. Where the election is made in an amended return for a taxable year prior to the most recent year for which the taxpayer has filed a return, the taxpayer shall file amended income tax returns, reflecting any increase or decrease in tax attributable to the election, for all taxable years affected by the election. See section 617(a)(2)(C) for provisions relating to the tolling of the statute of limitations for the assessment of any deficiency for *any* taxable year, to the extent the deficiency is attributable to an election under section 617(a). In applying the election to the years affected there shall be taken into account the effect that any adjustments resulting from the election shall have on other items affected thereby, such as the deduction for charitable contributions, the foreign tax credit, net operating loss, and other deductions or credits the amount of which is limited by the taxpayer's taxable income, and the effect that adjustments of any such items have on other taxable years. Amended returns filed for taxable years subsequent to the taxable year for which the election under section 617(a) is made by amended return shall apply the recapture provisions of subsections (b)(1)(B), (c) and (d) of section 617.

(2) *Election to deduct under section 615.*—(i) *General rule.*—The election to deduct exploration expenditures under section 615 shall be made in a statement filed with the district director, or director of the regional service center, with whom the taxpayer's income tax return is required to be filed. If the election is made within the time period

prescribed for filing an income tax return (including extensions thereof) for the first taxable year ending after September 12, 1966, during which the taxpayer pays or incurs expenditures which are within the scope of section 615 and which are paid or incurred by him after September 12, 1966, this statement shall be attached to the taxpayer's income tax return for such taxable year. If the election is made after the time prescribed for filing such return but before the expiration of the period (described in paragraph (d)(1) of this section) for making the election under section 615(e), the statement must be signed by the taxpayer or his authorized representative. The statement shall be filed even though the taxpayer charges to capital account all such expenditures paid or incurred by him during such taxable year after such date. The statement shall clearly indicate that the taxpayer elects to have section 615 apply to all amounts deducted by him with respect to mining exploration expenditures paid or incurred after September 12, 1966. If the taxpayer desires, he may file this statement by attaching it to his return for a taxable year prior to the first taxable year ending after September 12, 1966, in which he pays or incurs mining exploration expenditures. Except as provided in subdivision (ii) of this subparagraph, if the taxpayer does not file such a statement within the period prescribed by section 615(e) and paragraph (d)(1) of this section, any amounts deducted by him with respect to exploration expenditures paid or incurred by him after September 12, 1966, will be deemed to have been deducted pursuant to an election under section 617(a).

(ii) *Exception.*—The last sentence of subdivision (i) of this subparagraph shall not apply if all mining exploration expenditures which are paid or incurred by the taxpayer after September 12, 1966, and which are deducted by him in his income tax return for the first taxable year ending after September 12, 1966, during which he pays or incurs such expenditures are outside the scope of section 617(a). For example, assume that, in his return for his first taxable year ending after September 12, 1966, a taxpayer deducts mining exploration expenditures paid or incurred after September 12, 1966, and does not attach to his return the statement described in subparagraph (i) of this subparagraph. However, all of the exploration expenditures paid or incurred by the taxpayer after September 12, 1966, and before the end of the taxable year were paid or incurred with respect to minerals located neither in the United States nor on the Outer Continental Shelf. The taxpayer will be deemed to have made an election under section 615(e) by deducting all or part of those expenditures as expenses in his income tax return.

(b) *Information to be furnished.*—A taxpayer who makes or has made an election under either section 615(e) or section 617(a) to deduct expenditures paid or incurred after September 12, 1966, shall indicate clearly on his income tax return for each taxable year for which he deducts any such expenditures the amount of the deduction claimed under section 615 (a) or (b) or section 617(a) with respect to each property or area of interest. Such property or area of interest shall be identified by a description sufficiently adequate to permit application of the recapture rules of section 617 (b), (c), and (d) and the rules of section 615(g) (relating to effect of transfer of mineral property).

(c) *Effect of election.*—A taxpayer who has made an election under section 615(e) may never make an election under section 617(a) unless, within the period set forth in section 615(e) and paragraph (b)(1) of § 15.1–2, he revokes his election under section 615(e). A taxpayer who has made an election under section 617(a) may never make an election under section 615(e) unless, within the period set forth in section 615 (e) and paragraph (b)(1) of § 15.1–2, he revokes his election under section 617(a). A taxpayer who has made, and has not revoked, an election under section 617(a) may not, in his return for the taxable year for which the election is made or for any subsequent taxable year, charge to capital account any expenditures which are within the scope of section 617(a), and he must deduct all such expenditures as expenses. Except as provided in paragraph (a)(2) of § 1.615–2 of this chapter (Income Tax Regulations), a taxpayer who makes an election under 615(e) may not change his treatment of exploration expenditures deducted, deferred, or capitalized pursuant to such election unless he revokes the election made under section 615(e).

(d) *Time for making election.*—(1) *Election under section 615(e).*—A taxpayer may not make an election under section 615(e) after the expiration of the 3-year period beginning with the date prescribed by section 6072 or other provision of law for filing the taxpayer's income tax return for the first taxable year ending after September 12, 1966, in which the taxpayer pays or incurs expenditures to which section 615(a) would apply if an election were made under section 615(e). This 3-year period shall be determined without regard to any extension of time for filing the taxpayer's income tax return. An election under section 615(e) may not be made after the expiration of the 3-year period even though the taxpayer charged to capital account, or erroneously deducted as development expenditures under section 616, all mine exploration expenditures paid or incurred by him after September 12, 1966, and before the end of his first taxable year ending after September 12, 1966, in which he paid or incurred such expenditures.

(2) *Election under section 617(a).*—The election under section 617 (a) may be made at any time before the expiration of the period prescribed for filing a claim for credit or refund of the tax imposed by chapter 1 for the first taxable year for which the taxpayer desires to deduct exploration expenditures under section 617.

(3) *Timely mailing treated as timely filing.*—Section 7502 (relating to timely mailing treated as timely filing) shall apply in determining the date when an election under either section 615(e) or section 617(a) is made.

§ 15.1–2 Revocation of Election To Deduct.

(a) *Manner of revoking election.*—A taxpayer may revoke an election made by him under section 615(e) or section 617(a) by filing with the internal revenue officer with whom the taxpayer's income tax return is required to be filed, within the periods set forth in paragraph (b) of this section, a statement, signed by the taxpayer or his authorized representative, which sets forth that the taxpayer is revoking the election previously made by him with respect to the deduction of mining exploration expenditures paid or incurred after September 12, 1966, and states with whom the document making the election was filed. A taxpayer revoking such an election shall file amended income tax returns, reflecting any increase or decrease in

tax attributable to the revocation of election, for all taxable years affected by the revocation of election. See section 617(a)(2)(C) for provisions relating to the tolling of the statute of limitations for the assessment of any deficiency for *any* taxable year, to the extent the deficiency is attributable to an election or revocation of election under section 617(a). In applying the revocation of an election to the years affected there shall be taken into account the effect that any adjustments resulting from the revocation of election shall have on other items affected thereby, such as the deduction for charitable contributions, the foreign tax credit, net operating loss, and other deductions or credits the amount of which is limited by the taxpayer's taxable income, and the effect that adjustments of any such items have on other taxable years.

(b) *Time for revoking election.*— (1) *Election under section 615(e).*—An election under section 615(e) may be revoked at any time before the expiration of the 3-year period described in paragraph (d)(1) of § 15.1–1. Such an election may not be revoked after the expiration of the 3-year period.

(2) *Election under section 617(a).*—An election under section 617(a) may be revoked before the expiration of the last day of the third month following the month in which the final regulations issued under the authority of section 617 are published in the Federal Register. After the expiration of this period, a taxpayer who has made an election under section 617(a) may not revoke that election unless he obtains the consent of the Secretary or his delegate in the manner to be set forth in the final regulations under section 617.

(c) *Additional information to be furnished by a transferor of mineral property.*—If, before revoking his election, the taxpayer has transferred any mineral property with respect to which he deducted exploration expenditures paid or incurred after September 12, 1966, to another person in a transaction as a result of which the basis of such property in the hands of the transferee is determined by reference to the basis in the hands of the transferor, the statement submitted pursuant to paragraph (a) of this section shall state that such property has been so transferred and shall identify the transferee, the property transferred, and the date of the transfer.

§ 15.1–3 Elections as to Method of Recapture.

(a) *In general.*—If the taxpayer so elects with respect to all mines with respect to which deductions have been allowed under section 617(a) and which reach the producing stage during a taxable year, he shall include in gross income for the taxable year an amount equal to the adjusted exploration expenditures with respect to such mines (determined under section 617(f)(1)). The amount so included in income shall be treated for purposes of subtitle A of the Internal Revenue Code as expenditures which are paid or incurred on the respective dates on which the mines reach the producing stage and which are properly chargeable to capital account. If the taxpayer does not make this election for a taxable year during which any mine with respect to which deductions have been allowed under section 617(a) reaches the producing stage, the deduction for depletion under section 611 with respect to the property (whether determined under § 1.611–2 of this chapter (Income Tax Regulations) or under section 613) shall be disallowed until the amount of depletion

which would be allowable but for section 617(b)(1)(B) equals the amount of the adjusted exploration expenditures with respect to the mine. The fact that a taxpayer does not make the election described in the first sentence of this paragraph for a taxable year during which mines with respect to which deductions have been allowed under section 617(a) reach the producing stage shall not preclude the taxpayer from making the election with respect to other mines which reach the producing stage during a subsequent taxable year. However, an election may not be made for any taxable year with respect to any mines which reached the producing stage during a preceding taxable year.

(b) *Manner of making election.*—A taxpayer will be considered to have made an election in accordance with the manner in which the adjusted exploration expenditures with respect to the mines reaching the producing stage during a taxable year are treated in his return for such taxable year.

(c) *Time for making election.*—The election described in paragraph (a) of this section may be made, or changed by filing an amended return, not later than the time prescribed by law for filing the return (including extensions thereof) for the taxable year.

§ 15.1–4 Special Rules.

(a) *Taxable years beginning before September 13, 1966, and ending after September 12, 1966.*—(1) *General rule.*—An election made under section 615(e) or section 617(a) applies only to expenditures paid or incurred after September 12, 1966. The income tax treatment of exploration expenditures paid or incurred before September 13, 1966, will be determined in accordance with the provisions of section 615 prior to its amendment by the Act of September 12, 1966 (Public Law 89–570, 80 Stat. 759). If a taxpayer makes an election under section 615(e) in his income tax return for a taxable year beginning before September 13, 1966, and ending after September 12, 1966, amounts deducted under section 615 with respect to expenditures paid or incurred during such taxable year but before September 13, 1966, will be taken into account in determining whether the $100,000 limitation set forth in section 615(a) is reached during 1966. Similarly, a taxpayer making an election under section 615(e) shall take into account expenditures deducted under section 615 for periods prior to September 13, 1966, in determining when the $400,000 overall limitation set forth in section 615(c) is reached. The fact that a taxpayer deducts under section 615 expenditures paid or incurred prior to September 13, 1966, shall not affect his right to make an election under section 617(a) to deduct under section 617 expenditures paid or incurred after September 12, 1966.

(2) *Allocation in case of inadequate records.*—If a taxpayer pays or incurs exploration expenditures during a taxable year beginning before September 13, 1966, and ending after September 12, 1966, but his records as to any mine or property are inadequate to permit a determination of the amount paid or incurred during the portion of the year ending after September 12, 1966, and the amount paid or incurred on or before such date, the exploration expenditures as to which the records are inadequate paid or incurred with respect to the mine or property during the taxable year shall be allocated to each part year (that is, the part occurring before September 13, 1966, and the part occurring after September 12, 1966) in the ratio which the number of

days in such part year bears to the number of days in the entire taxable year. For example, if the records of a calendar year taxpayer for 1966 are inadequate to permit a determination of the amount of exploration expenditures paid or incurred with respect to a certain mine or property after September 12, 1966, and the amount paid or incurred before September 13, 1966, 255/365 of the total exploration expenditures paid or incurred by the taxpayer with respect to the mine or property during 1966 shall be allocated to the period beginning January 1, 1966, and ending September 12, 1966, and 110/365 of the total exploration expenditures paid or incurred with respect to the mine or property during 1966 shall be allocated to the period beginning September 13, 1966, and ending December 31, 1966.

(3) *Partnership elections.*—With respect to exploration expenditures paid or incurred by a partnership before September 13, 1966, the option to deduct under section 615(a) and the election to defer under section 615(b) shall be made by the partnership, rather than by the individual partners. All elections under sections 615(e), 617(a), or 617(b) as to the tax treatment of a partner's distributive share of exploration expenditures paid or incurred by any partnership of which he is a member shall be made by the individual partner, rather than by the partnership.

(b) *Effect of transfer of mineral property.*—The binding effect of a taxpayer's election under section 615(e) shall not be affected by his receiving property with respect to which deductions have been allowed under section 617(a). The binding effect of a taxpayer's election under section 617(a) shall not be affected by his receiving property with respect to which deductions have been allowed under section 615 pursuant to an election made under section 615(e). However, see section 615(g)(2) for rules under which amounts deducted under section 615 by a transferor may be subject to recapture in the hands of a transferee who has made an election under section 617(a).

Because of the need for immediate guidance with respect to the elections described in this Treasury decision, it is found impracticable to issue it with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitations of section 4(c) of that Act.

(This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

SHELDON S. COHEN,
Commissioner of Internal Revenue.

Approved December 27, 1966.

FRED B. SMITH,
General Counsel of the Treasury.

(Filed by the Office of the Federal Register on Dec. 30, 1966, 8:48 a.m., and published in the issue of the Federal Register for Dec. 31, 1966, 31 F.R. 16776)

(Also Part 1, Section 1372; 26 CFR 14.1–1.) T.D. 6912 [1]

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A—PART 14.—TEMPORARY REGULATIONS UNDER THE ACT OF APRIL 14, 1966, RELATING TO ELECTING SMALL BUSINESS CORPORATIONS

Electing small business corporations; election relating to passive investment income

DEPARTMENT OF THE TREASURY,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D.C. 20224

To Officers and Employees of the Internal Revenue Service and Others Concerned:

In order to prescribe temporary regulations relating to the time for, and manner of, making the election and consents provided by section 3(b) of the Act of April 14, 1966 (Public Law 89–389, 80 Stat. 115) [C.B. 1966–1, 419], relating to passive investment income of electing small business corporations, the following regulations are adopted:

§ 14.1–1 ELECTION RELATING TO PASSIVE INVESTMENT INCOME OF ELECTING SMALL BUSINESS CORPORATIONS.—(a) *In general.*—Section 3(a) of the Act of April 14, 1966 (Public Law 89–389) amends section 1372(e)(5) of the Internal Revenue Code of 1954 (relating to passive investment income of electing small business corporations). This amendment, which applies to taxable years of electing small business corporations ending after April 14, 1966, provides, in general, that an election of a small business corporation under section 1372(a) of the Code shall not terminate for a taxable year of the corporation in which it has gross receipts more than 20 percent of which is passive investment income, if—

(1) Such taxable year is the first taxable year in which the corporation commenced the active conduct of any trade or business or the next succeeding taxable year; and

(2) The amount of passive investment income for such taxable year is less than $3,000.

Section 3(b) of the Act of April 14, 1966, provides that the amendment made by section 3(a) thereof shall also apply to taxable years of a corporation beginning after December 31, 1962, and ending before April 15, 1966, if the corporation elects to have the amendment apply to such years, and all persons (or their personal representatives) who were shareholders of such corporation at any time during any of such years consent to such election and the application of the amendment. This section prescribes the time for, and manner of, making such election and consents, and also extends the time within which certain new shareholders may consent to an election under section 1372(a) of the Code.

(b) *Application of amendment to taxable years beginning after December 31, 1962, and ending before April 15, 1966.*—(1) *In general.*—An election by a corporation under section 1372(a) of the Code shall not be treated as terminated under section 1372(e)(5) of the

[1] 32 F.R. 5343.

Code for any taxable year of the corporation beginning after December 31, 1962, and ending before April 15, 1966, if—

(i) Such taxable year is the first taxable year in which the corporation commenced the active conduct of any trade or business, or the next succeeding taxable year;

(ii) The amount of passive investment income for such taxable year is less than $3,000;

(iii) The corporation makes an election, within such time and in such manner as provided in subparagraph (2) of this paragraph; and

(iv) All persons (or their personal representatives) who were shareholders of the corporation at any time during any taxable year of the corporation beginning after December 31, 1962, and ending before April 15, 1966, consent to such election, within such time and in such manner as provided in subparagraph (3) of this paragraph.

If an election by a corporation under section 1372(a) of the Code is not treated as terminated for a taxable year of the corporation as a result of an election and consents under this paragraph, such election under section 1372(a) of the Code shall be treated as being in effect with respect to all subsequent taxable years of the corporation unless it is otherwise terminated or revoked for any such subsequent year pursuant to section 1372(e) of the Code.

(2) *Election by corporation.*—An election by a corporation pursuant to subparagraph (1)(iii) of this paragraph shall be filed with the district director with whom the corporation was required to file its return of income (see section 6037 of the Code and the regulations thereunder) for the earliest of its taxable years beginning after December 31, 1962, and ending before April 15, 1966, for which an election terminated under section 1372(e)(5) of the Code. Such election shall be filed within 3 years after the date prescribed by law (not including any extension thereof) on which such return was required to be filed, or within 90 days from February 28, 1967, whichever is later. (However, credit or refund of any overpayment attributable to the election may not be allowed or made if claim therefor has not been filed within the time prescribed by law; and, see subparagraph (3) of this paragraph providing that the statutory period for assessment of certain deficiencies against shareholders may not have expired on the date the election and consents under this paragraph are filed.) Such election shall be in the form of a statement, signed by a person authorized to sign the corporation's return of income, which shall expressly provide that the corporation elects the application of section 1372(e)(5) of the Internal Revenue Code, as amended by Public Law 89–389, with respect to its taxable years beginning after December 31, 1962, and ending before April 15, 1966. The statement shall set forth the name, address, and employer identification number of the corporation; the internal revenue officer with whom the corporation's returns of income have been filed for each of its taxable years beginning after December 31, 1962; the names and addresses of all persons who have been shareholders of the corporation at any time during each of its taxable years beginning after December 31, 1962; computations showing the amount of the corpora-

tion's overpayment or deficiency of tax for any taxable year which is attributable to the election under this paragraph; and computations showing each shareholder's portion of the undistributed taxable income (determined as provided in section 1373(b) of the Code) or net operating loss (determined as provided in section 1374(c) of the Code) for each taxable year of the corporation beginning after December 31, 1962, unless such computations were made on the corporation's returns of income for each of such years. In order for an election under this paragraph to be effective, it must be accompanied by the consents of certain shareholders as provided in subparagraph (3) of this paragraph.

(3) *Consents by shareholders.*—An election by a corporation pursuant to this paragraph must be accompanied by the consent of each person who was a shareholder of the corporation at any time during any taxable year of the corporation beginning after December 31, 1962, and ending before April 15, 1966. This includes persons who may not be shareholders on the date the election is filed. Where stock of the corporation was owned by a husband and wife as community property (or the income from which was community property), or was owned by tenants in common, joint tenants, or tenants by the entirety, each person who had a community interest in such stock and each tenant in common, joint tenant, and tenant by the entirety must consent to the election. The consent of a minor shall be made by the minor or by his legal guardian, or by his natural guardian if no legal guardian has been appointed. The consent of an estate shall be made by the executor or administrator thereof. If a person who is required to file a consent under this subparagraph is deceased, the executor or administrator of such person's estate, or other person charged with the property of such person, shall file the required consent. The consent of each shareholder shall be in the form of a statement signed by the shareholder in which he states that he consents to the election by the corporation under this paragraph. Each of such statements shall set forth the name and address of the corporation and of the shareholder; the number of shares of stock of the corporation owned by such shareholder at any time during any taxable year of the corporation beginning after December 31, 1962; the date (or dates) on which such stock was acquired, and, if disposed of, the date (or dates) of disposition; and the internal revenue officer with whom the shareholder's income tax returns have been filed for each of such taxable years in which he owned any such stock. In addition, a consent under this paragraph is not effective unless (i) the statutory period for assessment of any deficiency for each taxable year for which there would be a deficiency attributable to the election and consents under this paragraph has not expired on the date the election and consents under this paragraph are filed, and (ii) there is included in, or attached to, the statement of consent a written consent that the statutory period for assessment of any deficiency for any taxable year (to the extent that such deficiency is attributable to the election and consents under this paragraph) shall not expire before the expiration of 1 year after the date the election and consents under this paragraph are filed. Each of the statements of consent under this subparagraph shall be filed with the corporation's election under

this paragraph. The consents of all shareholders may be incorporated in one statement.

(4) *Election and consents are binding.*—The election and consents under this paragraph are binding and may not be withdrawn.

(c) *New shareholders.*—Section 1372(e)(1) of the Code provides that an election by a corporation under section 1372(a) of the Code shall terminate if certain new shareholders do not consent to such election within the time prescribed by regulations. New shareholders of a corporation which makes an election under paragraph (b) of this section may not have consented to the corporation's election under section 1372(a) of the Code within such prescribed time as a result of a termination of such election under section 1372(e)(5) of the Code prior to the enactment of Public Law 89–389. Therefore, notwithstanding the provisions of section 1372(e)(1) of the Code, and the regulations thereunder, an election by a corporation under section 1372(a) of the Code shall not be treated as terminated for the failure of any new shareholder to file a timely consent under section 1372(e)(1) of the Code, for any of the taxable years of the corporation between and including the earliest taxable year determined under subparagraph (1) of this paragraph, and the taxable year during which the corporation files an election under paragraph (b) of this section, if—

(1) The corporation's election under section 1372(a) of the Code would have terminated for a taxable year under section 1372(e)(5) of the Code in the event it had not made an election under paragraph (b) of this section, and

(2) A proper consent under section 1372(e)(1) of the Code is filed by such new shareholder with the corporation's election under paragraph (b) of this section.

Because this Treasury decision merely provides temporary regulations designed to inform taxpayers how to make certain elections, it is found unnecessary to issue this Treasury decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of that Act.

(This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

SHELDON S. COHEN,
Commissioner of Internal Revenue.

Approved February 20, 1967.

STANLEY S. SURREY,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on Feb. 27, 1967, 8:45 a.m., and published in the issue of the Federal Register for Feb. 28, 1967, 32 F.R. 3343)

(Also Part I, Section 819; 26 CFR 1.819–2.) T.D. 6913

TITLE 62—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART I.—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Percentage to be used by foreign life insurance companies in computing income tax for the taxable year 1966 and estimated tax for the taxable year 1967.

DEPARTMENT OF THE TREASURY,
Washington, D.C. 20220.

To Officers and Employees of the Treasury Department and Others Concerned:

Section 819 of the Internal Revenue Code of 1954 provides for the determination of a percentage to be used in determining a "minimum figure" for each foreign corporation carrying on a life insurance business. Where this minimum figure exceeds such a corporation's surplus held in the United States, the amount of the "policy and other contract liability requirements" (determined under section 805 without regard to section 819), and the amount of the "required interest" (determined under section 809(a) without regard to section 819), must each be reduced by an amount determined by multiplying such excess by the "current earnings rate" (as defined in section 805(b)(2)). Accordingly, it is hereby determined that for purposes of computing the 1966 income tax for foreign corporations carrying on a life insurance business a percentage of 15 shall be used in determining the "minimum figure" under section 819.

It is presently anticipated that the data with respect to domestic life insurance companies for 1966 required for the computation of the percentage to be used by foreign corporations carrying on a life insurance business in computing their estimated tax for the taxable year 1967 will not be available in time for the filing of the declaration of estimated tax for such taxable year. Accordingly, it is hereby determined that for purposes of computing the estimated tax for the taxable year 1967 and payments of installments thereof by such corporations a percentage of 15 (the percentage applicable for 1966) shall be used in determining the minimum figure under section 819. No additions to tax shall be made because of any underpayment of estimated tax for the taxable year 1967 which results solely from the use of this percentage.

Because the percentage announced in this Treasury decision is computed from information contained in the income tax returns of domestic life insurance companies for the year 1965, which are not open to public inspection, the public accordingly cannot effectively participate in the determination of such figure. Therefore, it is found that it is unnecessary to issue this Treasury decision with notice and public procedure thereon under section 553(b) of Title 5 of the United States Code (Pub. L. 89–554, 80 Stat. 383), or subject to the effective date limitation of subsection (d) of such section.

STANLEY S. SURREY,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on Mar. 1, 1967, 8:50 a.m., and published in the issue of the Federal Register for Mar. 2, 1967, 32 F.R. 3446)

26 CFR 601.201: Rulings and determination letters. Rev. Proc. 67–1

Outline of the general procedures of the Internal Revenue Service relating to issuing rulings and determination letters to taxpayers and entering into closing agreements as to specific issues, and an explanation of the rights and responsibilities of taxpayers under these procedures.

Revenue Procedure 62–28, C.B. 1962–2, 496, superseded.

SECTION 1. PURPOSE.

The purpose of this Revenue Procedure is to describe the general procedures of the Internal Revenue Service in issuing rulings and determination letters to taxpayers and in entering into closing agreements on specific issues as to the interpretation or application of the Federal tax laws (other than those under the jurisdiction of the Alcohol and Tobacco Tax Division). This Revenue Procedure is intended to inform taxpayers and their representatives where they may direct requests for rulings, determination letters, or closing agreements, and the procedures to be followed in order to promote the efficient handling of their inquiries.

SEC. 2. GENERAL PRACTICE AND DEFINITIONS.

.01 It is the practice of the Service to answer inquiries of individuals and organizations, whenever appropriate in the interest of sound tax administration, as to their status for tax purposes and as to the tax effects of their acts or transactions. One of the functions of the National Office of the Service is to issue rulings in such matters. District Directors of Internal Revenue apply the statutes, regulations, Revenue Rulings, and other precedents published in the Internal Revenue Bulletin in the determination of tax liability, the collection of taxes, and the issuance of determination letters in answer to taxpayers' inquiries or requests. For purposes of this Revenue Procedure any reference to district director or district office also includes the office of the Director, Office of International Operations, where appropriate.

.02 A "ruling" is a written statement issued to a taxpayer or his authorized representative by the National Office which interprets and applies the tax laws to a specific set of facts. Rulings are issued only by the National Office. The issuance of rulings is under the general supervision of the Assistant Commissioner (Technical) and has been largely redelegated to the directors of three divisions: Director, Income Tax Division; Director, Exempt Organizations and Pension Trust Division; and Director, Miscellaneous Tax Division.

.03 A "determination letter" is a written statement issued by a District Director in response to an inquiry by an individual or an organization, which applies the principles and precedents previously announced by the National Office to the particular facts involved. Determination letters are issued only where a determination can be made on the basis of clearly established rules as set forth in the statutes, Treasury Decisions or regulations, or by rulings, opinions, or court decisions published in the Internal Revenue Bulletin. Where such a determination cannot be made, such as where the question presented involves a novel issue or the matter is excluded from the jurisdiction of a District Director by the provisions of section 4 of this Revenue Procedure, a determination letter will not be issued.

.04 An "information letter" is a statement issued either by the National Office or by a District Director which does no more than call attention to a well-established interpretation or principle of tax law, without applying it to a specific set of facts. An information letter may be issued when the nature of the request from the individual or the organization suggests that it is seeking general information, or where the request does not meet all the requirements of section 6 of this Revenue Procedure, and it is believed that such general information will assist the individual or organization.

.05 A "Revenue Ruling" is an official interpretation by the Service which has been published in the Internal Revenue Bulletin. Revenue Rulings are issued only by the National Office and are published for the information and guidance of taxpayers, Internal Revenue Service officials, and others concerned.

.06 A "closing agreement," as the term is used herein, is an agreement between the Commissioner of Internal Revenue or his delegate and a taxpayer with respect to a specific issue or issues entered into pursuant to the authority contained in section 7121 of the Internal Revenue Code. Such a closing agreement is based on a ruling which has been signed by the Commissioner or his delegate and in which it is indicated that a closing agreement will be entered into on the basis of the holding of the ruling letter. Closing agreements are final and conclusive except upon a showing of fraud, malfeasance, or misrepresentation of material fact. They may be entered into where it is advantageous to have the matter permanently and conclusively closed, or where a taxpayer can show good and sufficient reasons for an agreement and the Government will sustain no disadvantage by its consummation.

SEC. 3. RULINGS ISSUED BY THE NATIONAL OFFICE.

.01 *In income and gift tax* matters, the National Office issues rulings on prospective transactions and on completed transactions before the return is filed. However, rulings will not ordinarily be issued if the identical issue is pending before the Appellate Division or if the identical issue is also involved in a return of the taxpayer already filed for a taxable period with respect to which the statutory period of limitations on assessment or refund of tax has not expired. The National Office issues rulings involving qualifications of plans under section 401 of the Code or the exempt status of organizations under section 501 or 521 of the Code, only to the extent provided in Revenue Procedure 67–4, page 565, this Bulletin, and Revenue Procedure 67–3, page 560, this Bulletin, respectively. The National Office will not issue rulings with respect to the replacement of involuntarily converted property, even though replacement has not been made, if the taxpayer has filed a return for the taxable year in which the property was converted. However, see section 4.06 of this Revenue Procedure as to the authority of District Directors to issue determination letters in this connection.

.02 *In estate tax* matters, the National Office issues rulings with respect to transactions affecting the estate tax of a decedent before the estate tax return is filed. It will not rule with respect to such matters after the estate tax return has been filed, nor will it rule on

matters relating to the application of the estate tax to property or the estate of a living person.

.03 *In employment and excise tax* matters, the National Office issues rulings with respect to prospective transactions and to completed transactions either before or after the return is filed. However, the National Office will not ordinarily rule with respect to an issue, whether related to a prospective or a completed transaction, if it knows or has reason to believe that the same or an identical issue is before any field office in an active examination or audit of the liability of the same taxpayer for the same or a prior period, or is being considered by a branch office of the Appellate Division.

.04 Ordinarily, the Service will not issue rulings to business, trade, or industrial associations, or to other similar groups relating to the application of the tax laws to members of the groups. However, rulings may be issued to such groups or associations relating to their own tax status or liability, provided this is not an issue before any field office in an active examination or audit of the liability of the same taxpayer for the same or a prior period or is not being considered before a branch office of the Appellate Division.

SEC. 4. DETERMINATION LETTERS ISSUED BY DISTRICT DIRECTORS.

.01 *In income and gift tax* matters, District Directors issue determination letters in response to taxpayers' requests submitted to their offices involving *completed* transactions which affect returns required to be filed in their districts, but only if the question presented is covered specifically by statute, Treasury Decision or regulation, or specifically by a ruling, opinion, or court decision published in the Internal Revenue Bulletin. A determination letter will not usually be issued with respect to a question which involves a return to be filed by the taxpayer if the identical question is involved in a return or returns already filed by the taxpayer. District Directors may not issue determination letters as to the tax consequence of prospective or proposed transactions, except as provided in paragraphs .05 and .06, below.

.02 *In estate tax* matters, District Directors issue determination letters in response to requests submitted to their offices affecting the estate tax returns of decedents which will be filed in their districts, but only if the questions presented are specifically covered by statute, Treasury Decision, or regulations, or specifically by a ruling, opinion, or court decision published in the Internal Revenue Bulletin. District Directors may not issue determination letters relating to matters involving the application of the estate tax to property or the estate of a living person.

.03 *In employment and excise tax* matters, District Directors issue determination letters in response to requests from taxpayers who have filed or who are required to file returns in their districts, but only if the questions presented are covered specifically by statute, Treasury Decision, or regulations, or specifically by a ruling, opinion, or court decision published in the Internal Revenue Bulletin. Because of the impact of these taxes upon the business operation of the taxpayer and because of special problems of administration both to the Service and to the taxpayer, District Directors may take appropriate action in regard to such requests, whether they relate to completed or prospective transactions or returns previously filed or to be filed.

.04 Notwithstanding the provisions of paragraphs .01, .02, and .03 of this section, a District Director may not issue a determination letter in response to an inquiry, although presenting a question covered specifically by statute, regulations, rulings, etc., published in the Internal Revenue Bulletin, where (1) it appears that the taxpayer has directed a similar inquiry to the National Office, (2) the determination letter is requested by an industry, trade association, or similar group, or (3) the request involves an industrywide problem. Under no circumstances will a District Director issue a determination letter unless it is clearly indicated that the inquiry is with regard to a taxpayer or taxpayers who have filed or are required to file returns in the district under his supervision. Notwithstanding the provisions of paragraph .03 of this section, a District Director may not issue a determination letter on an employment tax question when the specific question involved has been or is being considered by the National Office of the Social Security Administration. Nor may District Directors issue determination letters on excise tax questions if a request is for a determination of a constructive sales price under sections 4216(b) and 4218 of the Code. However the National Office will issue rulings in this area. See section 5.02.

.05 District Directors issue determination letters as to the qualification of plans under section 401 of the Code, and as to the exempt status of related trusts under section 501 of the Code, to the extent provided in Revenue Procedure 64–30, C.B. 1964–2, 944, and Revenue Procedure 67–4. They also issue determination letters as to the qualification of certain organizations for exemption from Federal income tax under sections 501 and 521 of the Code, to the extent provided in Revenue Procedure 67–3.

.06 District Directors issue determination letters with regard to the replacement of involuntarily converted property under section 1033 of the Code even though the replacement has not been made, if the taxpayer has filed his income tax return for the year in which the property was involuntarily converted.

.07 A request received by a District Director with respect to a question involved in an income, estate, or gift tax return already filed will, in general, be considered in connection with the examination of the return. If response is made to such inquiry prior to an examination or audit, it will be considered a tentative finding in any subsequent examination or audit of the return.

SEC. 5. DISCRETIONARY AUTHORITY TO ISSUE RULINGS AND DETERMINATION LETTERS.

.01 There are certain areas where, because of the inherently factual nature of the problem involved, or for other reasons, the Service will not issue rulings or determination letters. A list of these areas is set forth in Revenue Procedure 64–31, C.B. 1964–2, 947, as amended by Revenue Procedure 65–4, C.B. 1965–1, 720, and as amplified by Revenue Procedure 66–34, C.B. 1966–2, 1232. This list is not all inclusive since the Service may decline to issue rulings or determination letters on other questions whenever warranted by the facts or circumstances of a particular case. The National Office and District Directors may, when it is deemed appropriate and in the best interest of the Service, issue information letters calling attention to well established principles of tax law.

.02 The National Office will issue rulings in all cases on prospective or future transactions when the law or regulations require a determination of the effect of a proposed transaction for tax purposes, as in the case of a transfer coming within the provisions of sections 1491 and 1492 of the Code, or an exchange coming within the provisions of section 367 of the Code. The National Office, will issue rulings in all cases involving the determination of a constructive sales price under section 4216(b) or 4218 of the Code.

SEC. 6. INSTRUCTIONS TO TAXPAYERS.

.01 A request for a determination letter or a ruling is to be submitted in duplicate if (1) it is a request for exemption under section 501(c) or 501(d) of the Code; (2) more than one issue is presented in the request; or (3) a closing agreement is requested with respect to the issue presented. It is not necessary to present requests in duplicate under other circumstances, including requests for exemption from tax under section 521 of the Code or with respect to the qualification of plans under section 401 of the Code. Requests relating to prospective transactions may not contain alternative plans.

.02 Each request for a determination letter or a ruling must contain a complete statement of facts relating to the transaction. This includes, but is not necessarily limited to, the names, addresses, and taxpayer identifying numbers of all interested parties; the district office where each files or will file its return or report; a full and precise statement of the business reasons for the transaction; and true copies of all contracts, wills, deeds, agreements, or other documents involved in the transaction. (The term "all interested parties" is not to be construed as requiring a list of all shareholders of a widely held corporation requesting a ruling relating to a reorganization, or a list of employees where a large number may be involved in a plan.) The request must contain a statement whether, to the best of the knowledge of the taxpayer or his representative, the identical issue is being considered by any field office of the Service in connection with an active examination or audit of a tax return already filed. Where the request pertains to only one step of a larger integrated transaction, the facts, circumstances, etc., must be submitted with respect to the entire transaction. As documents and exhibits become a part of the Internal Revenue Service file and cannot be returned, the original documents should not be submitted. When documents and exhibits are submitted, they must be accompanied by an analysis of their bearing on the issue or issues, specifying the pertinent provisions. If the request is with respect to a corporate distribution, reorganization, or other similar or related transaction, the corporate balance sheet nearest the date of the tansaction should be submitted. (If the request relates to a prospective transaction, the most recent balance sheet should be submitted.)

.03 If the taxpayer is contending for a particular determination, he must furnish an explanation of the grounds for his contentions, together with a statement of relevant authorities in support of his views. Even though the taxpayer is urging no particular determination with regard to a proposed or prospective transaction, he must state his views as to the tax results of the proposed action and furnish a statement of relevant authorities to support such views.

.04 If the request is with respect to the qualification of a plan under section 401(a) of the Code, see Revenue Procedure 64–30 and Revenue

Procedure 67–4. If the request is with respect to the qualification of an organization for exemption from Federal income tax under section 501 or 521 of the Code, see Revenue Procedure 67–3.

.05 A request by or for a taxpayer must be signed by the taxpayer or his authorized representative. If the request is signed by a representative of the taxpayer, or if the representative is to appear before the Internal Revenue Service in connection with the request, he must either be:

(1) an attorney who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia, and who files with the Service a written declaration that he is currently qualified as an attorney and he is authorized to represent the principal,

(2) a certified public accountant who is duly qualified to practice in any State, possession, territory, Commonwealth, or the District of Columbia, and who files with the Service a written declaration that he is currently qualified as a certified public accountant and he is authorized to represent the principal, or

(3) a person, other than an attorney or certified public accountant, enrolled to practice before the Service. (See Treasury Department Circular No. 230, as amended, C.B. 1966–2, 1171.)

The above requirements do not apply to an individual representing his full-time employer, or to a bona fide officer, administrator, trustee, etc., representing a corporation, trust, estate, association, or organized group. An unenrolled preparer of a return (other than an attorney or certified public accountant referred to in clauses (1) and (2), above) who is not a full-time employee, or a bona fide officer, administrator, trustee, etc., may not represent a taxpayer with respect to a ruling or a determination letter. Any authorized representative, whether or not he is enrolled to practice, must also comply with the conference and practice requirements of the statement of procedural rules (26 CFR 601).

.06 A request for a ruling by the National Office should be addressed to the Commissioner of Internal Revenue, Washington, D.C. 20224. A request for a determination letter should be addressed to the District Director of Internal Revenue for the district with which the tax return of the taxpayer has been filed or is required to be filed. See also Revenue Procedure 64–30, Revenue Procedure 67–3, and Revenue Procedure 67–4.

.07 Any request for a ruling or a determination letter which does not comply with all the provisions of this Revenue Procedure will be acknowledged, and the requirements which have not been met will be pointed out.

.08 A taxpayer or his representative who desires an oral discussion of the issue or issues involved should indicate such desire in writing when filing the request or soon thereafter in order that the conference may be arranged at that stage of the consideration when it will be most helpful.

.09 It is the practice of the Service to process requests for rulings or determination letters in regular order and as expeditiously as possible. Compliance with a request for consideration of a particular matter ahead of its regular order, or by a specified time, tends to delay the disposition of other matters. Requests for processing ahead of the

regular order, made in writing and showing clear need for such treatment, will be given consideration as the particular circumstances warrant. However, no assurance can be given that any ruling or determination letter will be processed by the time requested. Requests by telegram will be treated in the same manner as requests by letter. Rulings and determination letters ordinarily will not be issued by telegram.

.10 The Director, Income Tax Division, has primary responsibility for issuing rulings in areas involving the application of Federal income and employment taxes and the interest equalization tax to corporate and noncorporate taxpayers (including individuals, partnerships, estates, and trusts); those involving tax conventions; those involving depreciation, depletion, and valuation issues; and those involving the taxable status of exchanges and distributions in connection with corporate reorganizations, organizations liquidations, etc.

.11 The Director, Exempt Organizations and Pension Trust Division, has primary responsibility for issuing rulings with respect to organizations exempt from income tax under sections 501 and 521 of the Internal Revenue Code, and in matters involving the qualification of pension, annuity, profit-sharing, stock bonus, and bond purchase plans, and the tax treatment of employees and their beneficiaries and deductions for employer contributions under such plans, pursuant to sections 401–407, inclusive, of the Internal Revenue Code.

.12 The Director, Miscellaneous Tax Division, has primary responsibility for issuing rulings in areas involving the application of Federal estate, gift, and excise taxes; the procedure and administrations provisions of the Internal Revenue Code (particularly subtitle F); and on matters requiring actuarial determinations.

.13 A taxpayer or his representative desiring to obtain information as to the status of his case may do so by contacting the following offices with respect to matters in the areas of their responsibility:

Official	*Telephone Numbers*
Director, Income Tax Division	964–4504 or 964–4505.
Director, Miscellaneous Tax Division	964–3767 or 964–3770.
Director, Exempt Organizations and Pension Trust Division	964–4662 or 964–3788.

.14 When a taxpayer receives a determination letter or a ruling prior to the filing of his return he should attach to his return the determination letter or ruling (or a copy thereof) with respect to any transaction which has been consummated and which is relevant to the return being filed.

SEC. 7. CONFERENCES IN THE NATIONAL OFFICE.

.01 If a conference has been requested, the taxpayer will be notified of the time and place of the conference. If conferences are being arranged with respect to more than one request for a ruling involving the same taxpayer, they will be so scheduled as to cause the least inconvenience to the taxpayer.

.02 A taxpayer is entitled, as a matter of right, to only one conference in the National Office unless one of the circumstances discussed in this section exists. This conference will usually be held at the branch level of the appropriate division in the office of the Assistant Commissioner (Technical) and will usually be attended by a person who has authority to act for the branch chief. If more than one sub-

ject is to be discussed at the conference, the discussion will constitute a conference with respect to each subject. In order to promote a free and open discussion of the vital issues, the conference will usually be held after the branch has had an opportunity to study the case thoroughly. At the request of the taxpayer or his representative, the conference may be held at an earlier stage in the consideration of the case than the Service would ordinarily designate. No taxpayer has a "right" to appeal the action of a branch to a division director or to any other official of the Service.

.03 In the process of consideration in the National Office of a position proposed by a branch, it may appear that the position of the Service will involve a reversal of the position proposed by the branch with a result that will be less favorable to the taxpayer. Or it may appear that an adverse position proposed by a branch will be sustained and become the position of the Service, but on a new or different issue or on substantially different grounds than those on which the branch turned the case. Under either of these circumstances, the taxpayer or his representative will be invited to another conference. The provisions of this Revenue Procedure limiting the number of conferences to which a taxpayer is entitled will not foreclose the invitation of a taxpayer to attend further conferences when, in the opinion of responsible National Office personnel, such need arises. All additional conferences of the type discussed in this paragraph are held only at the invitation of the Service.

.04 It is the responsibility of the taxpayer to add to the case file a written record of any additional data, lines of reasoning, precedents, etc., which are proposed by the taxpayer and discussed at the conference but which were not previously or adequately presented in writing.

SEC. 8. REFERENCE OF MATTERS TO THE NATIONAL OFFICE.

.01 Requests for determination letters received by District Directors which, in accordance with the provisions of section 4 of this Revenue Procedure, may not be acted upon by a district office shall be forwarded to the National Office for reply and the taxpayer advised accordingly. District Directors also may refer to the National Office any request for a determination letter which in their judgment warrants the attention of the National Office. See also the provisions of Revenue Procedure 64–30 and Revenue Procedure 67–4, with respect to requests relating to qualification of a plan under section 401 of the Code, and Revenue Procedure 67–3, with respect to applications for exemption from tax under sections 501 and 521 of the Code.

.02 If the request is with regard to an issue or an area with respect to which the Service will not issue a ruling or a determination letter, such request will not be forwarded to the National Office, but the district office will advise the taxpayer that the Service will not issue a ruling or a determination letter on the issue. See section 5.01 of this Revenue Procedure.

SEC. 9. REFERENCE OF MATTERS TO DISTRICT OFFICES.

Requests for rulings received in the National Office which, pursuant to the provisions of section 3 of this Revenue Procedure, may not be acted upon by the National Office, but which, under the authorities set out in section 4, may be acted upon by a district office will be forwarded for appropriate action to the district office in which the return

has been or will be filed. If the request is with respect to an issue or an area of the type discussed in section 5.01, the taxpayer will be so advised and the request may be forwarded to the appropriate district office for association with the proper return or report of the taxpayer.

SEC. 10. REVIEW OF DETERMINATION LETTERS.

.01 Determination letters issued with respect to the types of inquiries authorized by sections 4.01, 4.02, and 4.03 are not generally reviewed by the National Office as they merely inform a taxpayer of a position of the Service which has been previously established either in the regulations or in a ruling, opinion, or court decision published in the Internal Revenue Bulletin. If a taxpayer believes that a determination letter of this type is in error, he may ask the District Director to reconsider the matter. He may also ask the District Director to request advice from the National Office. If the District Director, in his discretion, decides to request such advice, the procedure in Revenue Procedure 67–2, page 555, this Bulletin, will be followed.

.02 The procedures for review of determination letters relating to the qualification of employers' plans under section 401(a) of the Code are provided in Revenue Procedure 67–4.

.03 The procedures for review of determination letters relating to the exemption from Federal income tax of certain organizations under sections 501 and 521 of the Code are provided in Revenue Procedure 67–3.

SEC. 11. WITHDRAWAL OF REQUESTS.

The taxpayer's request for a ruling or a determination letter may be withdrawn at any time prior to the signing of the letter of reply. However, in such a case, the National Office may furnish its views to the District Director in whose office the return has been or will be filed. The District Director will consider the information submitted in a subsequent audit or examination of the taxpayer's return. Even though a request is withdrawn, all correspondence and exhibits will be retained in the Service and may not be returned to the taxpayer.

SEC. 12. ORAL ADVICE TO TAXPAYERS.

.01 The Service does not issue rulings or determination letters upon oral requests. Furthermore, National Office officials and employees ordinarily will not discuss a substantive tax issue with a taxpayer or his representative prior to the receipt of a request for a ruling, since oral opinions or advice are not binding on the Service. This should not be construed as preventing a taxpayer or his representative from inquiring whether the Service will rule on a particular question, or from discussing questions relating to procedural matters with regard to submitting a request for a ruling.

.02 A taxpayer may, of course, seek oral technical assistance from a district office in the preparation of his return or report, pursuant to other established procedures. Such oral advice is advisory only and the Service is not bound to recognize it in the examination of the taxpayer's return.

SEC. 13. EFFECT OF RULINGS.

.01 A ruling, except to the extent incorporated in a closing agreement, may be revoked or modified at any time in the wise administration of the taxing statutes. See section 2.06 for the effect of a closing

agreement. If a ruling is revoked or modified, the revocation or modification applies to all open years under the statutes, unless the Commissioner or his delegate exercises the discretionary power under section 7805(b) of the Code to limit the retroactive effect of the ruling. The manner in which the Commissioner or his delegate generally will exercise this power is set forth in this section. With reference to rulings relating to the sale or lease of articles subject to the manufacturers excise tax and the retailers excise tax, see specifically section 13.08.

.02 As part of the determination of a taxpayer's liability, it is the responsibility of the District Director to ascertain whether any ruling previously issued to the taxpayer has been properly applied. It should be determined whether the representations upon which the ruling was based reflected an accurate statement of the material facts and whether the transaction actually was carried out substantially as proposed. If, in the course of the determination of the tax liability, it is the view of the District Director that a ruling previously issued to the taxpayer should be modified or revoked, the findings and recommendations of that office will be forwarded to the National Office for consideration prior to further action. Such reference to the National Office will be treated as a request for technical advice and the procedures of Revenue Procedure 67–2 will be followed. Otherwise, the ruling is to be applied by the district office in its determination of the taxpayer's liability.

.03 Appropriate coordination with the National Office shall be undertaken in the event that any other field official having jurisdiction of a return or other matter proposes to reach a conclusion contrary to a ruling previously issued to the taxpayer.

.04 A ruling found to be in error or no longer in accord with the position of the Service may be modified or revoked. Modification or revocation may be effected by a notice to the taxpayer to whom the ruling originally was issued, or by a Revenue Ruling or other statement published in the Internal Revenue Bulletin.

.05 Except in rare or unusual circumstances, the revocation or modification of a ruling will not be applied retroactively with respect to the taxpayer to whom the ruling was originally issued or to a taxpayer whose tax liability was directly involved in such ruling if (1) there has been no misstatement or omission of material facts, (2) the facts subsequently developed are not materially different from the facts on which the ruling was based, (3) there has been no change in the applicable law, (4) the ruling was originally issued with respect to a prospective or proposed transaction, and (5) the taxpayer directly involved in the ruling acted in good faith in reliance upon the ruling and the retroactive revocation would be to his detriment. To illustrate, the tax liability of each employee covered by a ruling relating to a pension plan of an employer is directly involved in such ruling. Also, the tax liability of each shareholder is directly involved in a ruling related to the reorganization of a corporation. However, the tax liability of members of an industry is not directly involved in a ruling issued to one of the members, and the position taken in a revocation or modification of a ruling to one member of an industry may be retroactively applied to other members of that industry. By the same reasoning, a tax practitioner may not obtain the nonretroactive

application to one client of a modification or revocation of a ruling previously issued to another client.

.06 A ruling issued to a taxpayer on a particular transaction applies to that transaction only. If the ruling is later found to be in error or no longer in accord with the position of the Service, it will afford the taxpayer no protection with respect to a like transaction in the same or subsequent year, except to the extent provided in sections 13.07 and 13.08.

.07 If a ruling is issued covering a continuing action or a series of actions and it is determined that the ruling was in error or no longer in accord with the position of the Service, the Assistant Commissioner (Technical) ordinarily will limit the retroactivity of the revocation or modification to a date not earlier than that on which the original ruling was modified or revoked. To illustrate, if a taxpayer rendered service or provided a facility which is subject to the excise tax on services or facilities, and in reliance on a ruling issued to the same taxpayer did not pass the tax on to the user of the service or the facility, the Assistant Commissioner (Technical) ordinarily will restrict the retroactive application of the revocation or modification of the ruling.

.08 A ruling holding that the sale or lease of a particular article is subject to the manufacturers excise tax or the retailers excise tax may not revoke or modify retroactively a prior ruling holding that the sale or lease of such article was not taxable, if the taxpayer to whom the ruling was issued, in reliance upon such prior ruling, parted with possession or ownership of the article without passing the tax on to his customer. Section 1108(b), Revenue Act of 1926.

.09 With respect to Revenue Rulings published in the Internal Revenue Bulletin, taxpayers generally may rely upon such rulings in determining the rule applicable to their own transactions and need not request a specific ruling applying the principles of a published Revenue Ruling to the facts of their particular cases where otherwise applicable. However, see section 13.10 below. Revenue Rulings published in the Internal Revenue Bulletin ordinarily are not revoked or modified retroactively.

.10 Since each Revenue Ruling represents the conclusion of the Service as to the application of the law to the entire state of facts involved, taxpayers, Service personnel, and others concerned are cautioned against reaching the same conclusion in other cases unless the facts and circumstances are substantially the same. Furthermore, they should consider the effect of subsequent legislation, regulations, court decisions, and Revenue Rulings.

SEC. 14. EFFECT OF DETERMINATION LETTERS.

.01 A determination letter issued by a District Director, in accordance with this Revenue Procedure, shall be given the same effect upon examination of the return of the taxpayer to whom the determination letter was issued as is described in section 13, in the case of a ruling issued to a taxpayer, except that reference to the National Office is not necessary where, upon examination of the return, it is the opinion of the District Director that a conclusion contrary to that expressed in the determination letter is indicated. A District Director may not limit the modification or revocation of a determination letter but may refer the matter to the National Office for exercise by the Commis-

sioner or his delegate of the authority to limit the modification or revocation.

.02 In this connection see also Revenue Procedure 67–3 and Revenue Procedure 67–4.

SEC. 15. EFFECT ON OTHER DOCUMENTS.

Revenue Procedure 62–28, C.B. 1962–2, 496, is superseded by this Revenue Procedure.

SEC. 16. EFFECTIVE DATE.

This Revenue Procedure is effective January 3, 1967, the date of its publication in the Internal Revenue Bulletin.

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26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability. — Rev. Proc. 67–2

Outline of general procedures of the Internal Revenue Service in furnishing technical advice to District Directors, and an explanation of the rights of taxpayers under these procedures.
Revenue Procedure 62–29, C.B. 1962–2, 507, superseded.

SECTION 1. PURPOSE.

The purpose of this Revenue Procedure is to prescribe the general procedures of the Internal Revenue Service in furnishing technical advice to District Directors of Internal Revenue. It is also intended to inform taxpayers of their rights when a District Director requests such advice from the National Office. For purposes of this Revenue Procedure any reference to district director or district office, also includes the office of the Director, Office of International Operations, where appropriate.

SEC. 2. DEFINITION AND NATURE OF TECHNICAL ADVICE.

.01 "Technical advice," as used herein, means advice or guidance as to the interpretation and proper application of internal revenue laws, related statutes, and regulations, to a specific set of facts, furnished by the National Office upon request of a district office in connection with the examination or consideration of a taxpayer's return or claim for refund or credit. It is furnished as a means of assisting Service personnel in closing cases and establishing and maintaining consistent positions in the several districts. It does not include memorandums on matters of general technical application furnished to district offices where the issues are not raised in connection with the examination of the return of a specific taxpayer.

.02 The consideration or examination of the facts relating to a request for a determination letter is considered to be in connection with the examination or consideration of a return of the taxpayer. Thus, a District Director may, in his discretion, request technical advice with respect to the consideration of a request for a determination letter.

.03 If a District Director is of the opinion that a ruling letter previously issued to a taxpayer should be modified or revoked, and he requests the National Office to reconsider the ruling, the reference

of the matter to the National Office is treated as a request for technical advice and the procedures set out herein will be followed. (For procedures relating to a request for a ruling see Revenue Procedure 67–1, page 544, this Bulletin.)

.04 The provisions of this Revenue Procedure apply only to a case under the jurisdiction of a District Director. They do not apply to a case under the jurisdiction of the Alcohol and Tobacco Tax Division or of the Appellate Division.

.05 The Assistant Commissioner (Technical), acting under a delegation of authority from the Commissioner of Internal Revenue, is exclusively responsible for providing technical advice in any issue involving the establishment of basic principles or policies for the uniform interpretation and application of tax laws other than those which are under the jurisdiction of the Alcohol and Tobacco Tax Division. This authority has been largely redelegated to subordinate officials.

SEC. 3. AREAS IN WHICH TECHNICAL ADVICE MAY BE REQUESTED.

.01 District Directors may request technical advice or assistance on any technical or procedural question which develops during the audit or examination of a return, or claim for refund or credit, of a taxpayer. These procedures are applicable as provided in section 2.

.02 District Directors are encouraged to request technical advice on any technical or procedural question arising in connection with any case of the type described in section 2, at any state of the proceedings in the district office, which cannot be resolved on the basis of law, regulations, or a clearly applicable Revenue Ruling or other precedent issued by the National Office.

SEC. 4. REQUESTING TECHNICAL ADVICE.

.01 It is the responsibility of the district office to determine whether technical advice is to be requested on any issue before that office. However, during the course of an examination or a conference in a district office, a taxpayer or his representative may request that an issue be referred to the National Office for technical advice on the grounds that a lack of uniformity exists as to the disposition of the issue, or that the issue is so unusual or complex as to warrant consideration by the National Office. While taxpayers are encouraged to make written requests setting forth the facts, law, and argument with respect to the issue, and reasons for requesting National Office advice, a taxpayer may make the request orally. If, after considering the taxpayer's request, the examining officer or conferee is of the opinion that the circumstances do not warrant referral of the case to the National Office, he will so advise the taxpayer.

.02 The taxpayer may appeal the decision of the examining officer or conferee not to request technical advice by submitting to that official, within 10 days (or such longer period as may be agreed upon), a statement of the facts, law, and arguments with respect to the issue, and the reasons why he believes the matter should be referred to the National Office for advice.

.03 The examining officer or conferee will submit the statement of the taxpayer through channels to the Chief, Audit Division, accompanied by a statement of his reasons why the issue should not be referred to the National Office. The Chief, Audit Division, will deter-

mine, on the basis of the statements submitted, whether technical advice will be requested. If he determines that technical advice is not warranted, he will inform the taxpayer in writing that he proposes to deny the request. In the letter to the taxpayer the Chief, Audit Division, will (except in unusual situations where such action would be prejudicial to the best interests of the Government) state specifically the reasons for the proposed denial. The taxpayer may not appeal the decision of the Chief, Audit Division, not to request technical advice from the National Office. However, he will have 15 days in which to notify the Chief, Audit Division, whether he agrees with the proposed denial. If he does not agree, all data relating to the issue for which technical advice has been sought, including taxpayer's written request and statements will be submitted to the National Office, Attention: Director, Audit Division, for review. After review in the National Office, the district office will be notified as to whether the proposed denial is approved or disapproved.

.04 While the matter is being reviewed in the National Office, the district office will suspend action on the issue (except where the delay would prejudice the Government's interests) until it is notified of the National Office decision. This notification will be made within 30 days after receipt of the data in the National Office. The review will be solely on the basis of the written record and no conference will be held in the National Office.

.05 When technical advice is to be requested, whether or not upon the request of the taxpayer, the taxpayer will be so advised, except as noted in section 4.10. If the examining officer or the conferee initiates the action, the taxpayer will be furnished a copy of the statement of the pertinent facts and the question or questions proposed for submission to the National Office. The request for advice submitted by the District Director should be so worded as to avoid possible misunderstanding, in the National Office, of the facts or of the specific point or points at issue.

.06 The taxpayer will be given 10 days (or such longer period as may be agreed upon) in which to indicate in writing the extent, if any, to which he may not be in complete agreement with the statement of facts and specific questions presented to him by the district office. Every effort should be made to reach agreement as to the facts and the specific point at issue. If agreement cannot be reached, the taxpayer may submit a statement of his understanding as to the specific point or points at issue which will be forwarded to the National Office with the request for advice.

.07 If the taxpayer initiates the action to request advice, and his statement of the facts and point or points at issue are not wholly acceptable to the district officials, the taxpayer will be advised in writing as to the areas of disagreement. If agreement cannot be reached, both the statements of the taxpayer and the district official will be forwarded to the National Office.

.08 If the taxpayer has not already done so, he may submit a statement explaining his position on the issues, citing precedents which he believes will bear on the case. This statement will be forwarded to the National Office with the request for advice. If it is received at a later date, it will be forwarded for association with the case file.

.09 At the time the taxpayer is informed that the matter is being

referred to the National Office, he will also be informed of his right to a conference in the National Office in the event an adverse decision is indicated, and will be asked to indicate whether he desires such a conference.

.10 The provisions of this section, relating to the referral of issues upon request of taxpayer, advising taxpayers of the referral of issues, and the granting of conferences in the National Office, are not applicable to matters primarily of internal concern or in instances where it would be prejudicial to the interests of the Internal Revenue Service (as for example in cases involving fraud or jeopardy assessments).

SEC. 5. PREPARATION OF TECHNICAL ADVICE MEMORANDUM BY THE NATIONAL OFFICE.

.01 Immediately upon receipt in the National Office, the technical assistant to whom the case is assigned will analyze the file to ascertain whether it meets all requirements of section 4. If the case is not complete, appropriate steps will be taken to complete the file.

.02 If the taxpayer has requested a conference in the National Office, the procedures in section 7 will be followed.

.03 Replies to requests for technical advice will be addressed to the District Director and will be drafted in two parts. Each part will identify the taxpayer by name, address, identification number, and year or years involved. The first part (hereafter called the "Technical Memorandum") will contain (1) a recitation of the pertinent facts having a bearing on the issue; (2) a discussion of the facts, precedents, and reasoning of the National Office; and (3) the conclusions of the National Office. The conclusions will give direct answers, whenever possible, to the specific questions of the district office. The discussion of the issues will be in such detail that the district officials are apprised of the reasoning underlying the conclusion.

.04 The second part of the reply will consist of a transmittal memorandum. In unusual cases it will serve as a vehicle for providing the district office administrative information or other information which, under the nondisclosure statutes, or for other reasons, may not be discussed with the taxpayer.

.05 It is the general practice of the Service to furnish a copy of the technical memorandum to the taxpayer, upon his request, after it has been adopted by the District Director. See section 5.03. However, where no definitive answer is given to the specific question presented, where the factual submission is such as to indicate that the issue should be decided by the district office, or where it would not be in the interest of a wise administration of the tax laws, a copy of the technical memorandum will not be furnished the taxpayer. The National Office will specifically advise the District Director in those cases where it is determined that a copy of the technical memorandum is not to be made available to the taxpayer.

SEC. 6. ACTION ON TECHNICAL ADVICE IN DISTRICT OFFICES.

.01 Upon adoption of the technical advice by a District Director, the district office will proceed to process the taxpayer's case on the basis of the conclusions expressed in the technical advice memorandum. Except as provided in section 6.02, a copy of the technical memorandum will be furnished to the taxpayer, upon his request, for his information as to the position of the Service on the issue.

.02 In those cases in which the National Office advises the District Director that he should not furnish a copy of the technical memorandum to the taxpayer, the District Director will so inform the taxpayer, if he requests such a copy.

SEC. 7. CONFERENCE IN THE NATIONAL OFFICE.

.01 If, after a comprehensive study of the case file, it appears that advice which is adverse to the taxpayer should be given and a conference has been requested, the taxpayer will be notified of the time and place of the conference. If conferences are being arranged with respect to more than one request for advice involving the same taxpayer, they will be so scheduled as to cause the least inconvenience to the taxpayer.

.02 A taxpayer is entitled, as a matter of right, to only one conference in the National Office unless one of the circumstances discussed in this section exists. This conference will usually be held at the branch level in the appropriate division (Exempt Organizations and Pension Trust Division, Income Tax Division, or Miscellaneous Tax Division) in the office of the Assistant Commissioner (Technical), and will usually be attended by a person who has authority to act for the branch chief. If more than one subject is discussed at the conference, the discussion constitutes a conference with respect to each subject. At the request of the taxpayer or his representative, the conference may be held at an earlier stage in the consideration of the case than the Service would ordinarily designate. A taxpayer has no "right" of appeal from an action of a branch to the director of a division or to any other National Office official.

.03 In the process of consideration, in the National Office, of a position proposed by a branch, it may appear that the position of the Service will involve a reversal of the position proposed by the branch with a result that will be less favorable to the taxpayer or it may appear that an adverse position proposed by a branch will be sustained and become the position of the Service, but on a new or different issue or on substantially different grounds than those on which the branch turned the case. Under either of these circumstances, the taxpayer or his representative will be invited to another conference. The provisions of this Revenue Procedure limiting the number of conferences to which a taxpayer is entitled will not foreclose inviting a taxpayer to attend further conferences when, in the opinion of responsible National Office personnel, such need arises. All additional conferences of the type discussed in this paragraph are held only at the invitation of the Service.

.04 It is the responsibility of the taxpayer to furnish to the National Office, for addition to the case file, a written record of any additional data, lines of reasoning, precedents, etc., which are proposed by the taxpayer and discussed at the conference but which were not previously or adequately presented in writing. This additional record should be addressed to the National Office, but it should be sent to the appropriate District Director who will forward it for association with the case file. The District Director may verify the additional facts and data presented and comment upon it, to the extent he deems it appropriate, when he forwards it to the National Office.

.05 A taxpayer or his representative desiring to obtain information as to the status of his case may do so by contacting the appropriate division in the office of the Assistant Commissioner (Technical). See .02 of this section for the divisions involved.

SEC. 8. EFFECT OF TECHNICAL ADVICE.

.01 A technical advice memorandum represents an expression of the views of the Service as to the application of law, regulations, and precedents to the facts of a specific case, and is issued primarily as a means of assisting district officials in the examination and closing of the case involved.

.02 A technical memorandum given a taxpayer will, in general, be afforded the same effect as a ruling to the taxpayer on a closed and completed transaction. In this connection see section 13 of Revenue Procedure 67–1. Since technical advice, in connection with cases of the type described in section 2.01 of this Revenue Procedure will always be issued with respect to a closed transaction, the taxpayer may not expect a modification or revocation of the position stated in the technical memorandum to be applied nonretroactively, except under circumstances of the type described in sections 13.07 and 13.08 of Revenue Procedure 67–1, relating to continuing transactions.

.03 A District Director may raise an issue in any taxable period, even though he may have asked for and been furnished, technical advice with regard to the same or a similar issue in any other taxable period.

SEC. 9. EFFECT ON OTHER DOCUMENTS.

Revenue Procedure 62–29, C.B. 1962–2, 507, is superseded by this Revenue Procedure.

SEC. 10. EFFECTIVE DATE.

This Revenue Procedure is effective January 3, 1967, the date of its publication in the Internal Revenue Bulletin. Requests for technical advice received prior to January 3, 1967, will be processed under the provisions of Revenue Procedure 62–29.

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26 CFR 601.201: Rulings and determination letters.
(Also Part I, Sections 501, 521; 1.501(a)–1, 1.521–1.)

Rev. Proc. 67–3

Outline of procedures with respect to (1) applications for exemption under sections 501 and 521 of the Internal Revenue Code of 1954, (2) revocation or modification of exemption rulings and determination letters, and (3) issuance of rulings involving prohibited transactions described in section 503 of the Code.

Revenue Procedures 62–30, C.B. 1962–2, 512, and 63–30, C.B. 1963–2, 769, superseded.

SECTION 1. PURPOSE.

The purpose of this Revenue Procedure is to outline the procedures of the Internal Revenue Service with respect to applications for exemption from Federal income tax under sections 501 and 521 of the Internal Revenue Code of 1954 and with respect to revocation or modification of exemption rulings and determination letters, other

than those subject to Revenue Procedure 67–4, page 565, this Bulletin (relating to pension, annuity, profit-sharing and stock bonus plans); and to outline circumstances under which rulings will be issued involving prohibited transactions described in section 503 of the Code.

SEC. 2. GENERAL.

For the purpose of this Revenue Procedure the term "determination letter" includes letters issued by a District Director on the basis of advice secured from the National Office pursuant to the procedures prescribed herein.

SEC. 3. FILING APPLICATIONS FOR EXEMPTION.

.01 An organization seeking a ruling or determination letter of exemption under section 501 or section 521 of the Code is required to file an application (in duplicate, if under section 501) with the District Director of Internal Revenue for the district where it would otherwise be required to file a tax return. Any application received by the National Office or by a District Director other than as provided above will be forwarded, without any action thereon, to the appropriate District Director.

.02 An exemption ruling or determination letter will be issued to an organization, provided its application and supporting documents establish that it meets the particular requirements of the section under which exemption is claimed. Exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization clearly will be exempt. A mere restatement of purpose or a statement that proposed activities will be in furtherance of such purposes will not satisfy the requirements for an advance ruling. Where the Service considers it warranted, a record of actual operations may be required before a ruling or determination letter will be issued.

.03 Requests for rulings or determination letters other than in the form of applications for exemption are governed by the procedures outlined in Revenue Procedure 67–1, page 544, this Bulletin.

SEC. 4. PROCESSING APPLICATIONS.

.01 Under the general procedures outlined in Revenue Procedure 67–1, District Directors are authorized to issue determination letters involving applications for exemption under sections 501 and 521 of the Code.

.02 A District Director will refer applications which present questions not covered by established precedents to the National Office for ruling. The National Office will consider each such application, issue a ruling directly to the organization, and send a copy of the ruling to the District Director. In the event of a conclusion unfavorable to the applicant, it will be informed of the basis for the conclusion and of its rights to file a protest and to a conference in the National Office. If a conference is requested, the conference procedures outlined in section 7 of Revenue Procedure 67–2 will be followed. After reconsideration of the application in the light of the protest and any information developed in conference, the National Office will affirm, modify, or reverse the original conclusion, issue a ruling to the organization, and send a copy of the ruling to the District Director.

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.03 An exemption application which does not contain the required information will be classified as an "incomplete application case." The applicant will be advised in writing why a determination will not be made.

SEC. 5. EFFECT OF EXEMPTION RULINGS OR DETERMINATION LETTERS.

.01 An exemption ruling or determination letter is usually effective as of the date of formation of an organization if its purposes and activities during the period prior to the date of the ruling or determination letter were consistent with the requirements for exemption. If the organization is required to alter its activities or to make substantive amendments to its enabling instrument in order to qualify for exemption, the exemption ruling or determination letter will be effective only for the period specified therein.

.02 An exemption ruling or determination letter may not be relied upon if there is a material change inconsistent with exemption in the character, the purpose, or the method of operation of the organization.

SEC. 6. NATIONAL OFFICE REVIEW OF DETERMINATION LETTERS.

The National Office will review determination letters to assure uniformity in the application of the established principles and precedents of the Service. Where the National Office takes exception to a determination letter, the District Director will be advised. If the organization protests the exception taken, the file and protest will be returned to the National Office. The referral will be treated as a request for technical advice and the procedures of Revenue Procedure 67–2 will be followed.

SEC. 7. PROTEST OF ADVERSE DETERMINATION LETTERS.

.01 Upon the issuance of a determination letter adverse to the applicant the District Director will advise the organization of its right to protest the determination by submitting a statement of the facts, law, and arguments in support of its application for exemption, and of its right to a district office conference.

.02 The organization may waive its right to a district office conference and request referral of the matter directly to the National Office. The District Director will advise the organization in writing that the matter will be referred to the National Office in accordance with its request only after a statement is filed setting forth the facts, law, and arguments in support of its application for exemption. In addition, the organization will be requested to specify whether it desires a conference in the National Office in the event an adverse decision is indicated.

.03 If, after considering the organization's protest and any information developed in conference, the District Director maintains his position and the organization does not agree, the case will be referred to the National Office. The referral will be considered a request for technical advice and the procedures of Revenue Procedure 67–2 will be followed.

.04 The adverse determination letter will serve to inform the organization of the pertinent facts and the question or questions proposed for submission to the National Office, and will be deemed to satisfy the requirements of section 4.05 of Revenue Procedure 67–2.

.05 The organization will not be afforded protest and conference rights if the determination letter is based on technical advice.

SEC. 8. REVOCATION OR MODIFICATION OF EXEMPTION RULINGS OR DETERMINATION LETTERS.

.01 An exemption ruling or determination letter may be revoked or modified by a ruling or determination letter addressed to the organization, or by a Revenue Ruling or other statement published in the Internal Revenue Bulletin. The revocation or modification may be retroactive if the organization omitted or misstated a material fact, operated in a manner materially different from that originally represented, or engaged in a prohibited transaction of the type described in paragraph .07 of this section.

.02 If a District Director concludes, as a result of examining an information return or considering information from any other source, that a ruling or determination letter should be revoked or modified, the organization will be advised in writing of the proposed action and the reasons therefor. The District Director will also advise the organization of its right to protest the proposed action by submitting a statement of the facts, law, and arguments in support of its continued exemption, and of its right to a district office conference.

.03 The organization may waive its right to a district office conference and request referral of the matter directly to the National Office. The District Director will advise the organization in writing that the matter will be referred to the National Office in accordance with its request only after it files a statement setting forth the facts, law, and arguments in support of continued exemption. In addition, the organization shall be requested to specify whether it desires a conference in the National Office in the event an adverse decision is indicated.

.04 If the organization agrees with the proposed action, either before or after a district office conference, or if no protest is filed, the District Director will issue a determination letter revoking or modifying the organization's exemption.

.05 If, after considering the organization's protest and any information developed in conference, the District Director maintains his position and the organization does not agree, the file and protest will be referred to the National Office. The referral will be considered a request for technical advice and the procedures of Revenue Procedure 67–2 will be followed.

.06 The letter advising the organization of the proposed revocation or modification action will serve to inform the organization of the pertinent facts and the question or questions proposed for submission to the National Office, and will be deemed to satisfy the requirements of section 4.05 of Revenue Procedure 67–2.

.07 If it is concluded that an organization entered into a prohibited transaction for the purpose of diverting corpus or income from its exempt purpose and if the transaction involved a substantial part of the corpus or income of the organization, its exemption is revoked effective as of the beginning of the taxable year during which the prohibited transaction was commenced. An organization is ordinarily notified of such revocation of exemption by regular mail.

.08 In all other prohibited transaction cases, the exemption is revoked effective as of the beginning of the first taxable year after the date of the revocation letter. In these cases the organization will be notified of the revocation of exemption by registered or certified mail, sent to its last known address.

.09 While the organization, in a prohibited transaction case, will usually be permitted to submit its brief and to be heard in conference before the revocation notice is issued, the Service may, at its discretion, issue the revocation notice by registered or certified mail prior to the receipt of the brief or prior to granting a conference. If it is later determined that the revocation was in error, it will be rescinded as of the date it was issued.

.10 The provisions of this section relating to protest and conference before a revocation notice is issued are not applicable to matters where delay would be prejudicial to the interests of the Internal Revenue Service (such as in cases involving fraud, jeopardy, the imminence of the expiration of the statute of limitations, or where immediate action is necessary to protect the interests of the Government).

SEC. 9. PROHIBITED TRANSACTIONS.

.01 Section 503 of the Code denies exemption to certain organizations which engage in transactions of the type described therein. The National Office may issue a ruling as to whether an organization has entered into, or proposes to enter into, a prohibited transaction; but, except as provided in paragraph .02 of this section, a ruling will not be issued where the determination is primarily one of fact, e.g., market value of property, reasonableness of compensation, etc. Also, no rulings will be issued with respect to such transactions as sales and leasebacks, gifts and leasebacks, and other rental transactions of real or personal property directly or indirectly with the creator or a related or controlled interest.

.02 Where the adequacy of the security of a loan is involved, a ruling may be issued, but only if there is a clear indication of value which can be established by reference to recognized sources without requiring physical valuation or appraisal. The following are examples of transactions where the adequacy of security can be established by reference to recognized sources:

1. A surety bond issued by a recognized surety company doing a surety bond business under applicable state law;
2. An assignment of an insurance contract having a cash surrender value sufficent to cover the loan, interest, and possible costs of collection;
3. A first mortgage on real property in an amount not in excess of 50 percent of its assessed value for local tax purposes; or,
4. Collateral represented by securities listed on a recognized exchange of an aggregate value equal to twice the amount of the loan.

.03 An organization whose exemption is revoked by reason of section 503 of the Code may file a new application in any taxable year following the taxable year in which the notice of revocation was issued. But the exempt status of an organization may not be renewed before the beginning of the first taxable year following the year in which its new application is filed. Thus, if a revocation notice was issued in 1966, the organization may not file a new application for exemption until 1967, and the new exemption may not be granted for a taxable year prior to 1968. If the organization does not file a new application

until 1968, the new exemption may not be recognized for a year prior to 1969.

SEC. 10. EFFECT ON OTHER DOCUMENTS.

Revenue Procedure 62–30, C.B. 1962–2, 512, and Revenue Procedure 63–30, C.B. 1963–2, 769, are superseded.

SEC. 11. EFFECTIVE DATE.

This Revenue Procedure is effective January 3, 1967, the date of its publication in the Internal Revenue Bulletin.

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26 CFR 601.201: Rulings and determination letters.
(Also Part I, Sections 401, 405; 1.401–1, 1.405–1.)

Rev. Proc. 67–4

Outline of procedures of the Internal Revenue Service applicable to requests for determinations on the qualification of pension, annuity, profit-sharing, and stock bonus plans under section 401(a) of the Internal Revenue Code of 1954, bond purchase plans under section 405(a), and the status for exemption of related trusts under section 501(a).

Revenue Procedure 62–31, C.B. 1962–2, 517, superseded.

SECTION 1. PURPOSE.

This Revenue Procedure sets forth the general procedures of the various offices of the Internal Revenue Service pertaining to the issuance of determination letters on the qualification of pension, annuity, profit-sharing, and stock bonus plans under section 401(a) of the Internal Revenue Code of 1954, bond purchase plans under section 405(a), and for the issuance of rulings and determination letters on the status for exemption of related trusts under section 501(a). For plans covering self-employed individuals, see Revenue Procedure 64–30, C.B. 1964–2, 944.

SEC. 2. BACKGROUND AND GENERAL INFORMATION.

.01 A trust created or organized in the United States and forming part of a pension, profit-sharing, or stock bonus plan of an employer for the exclusive benefit of his employees or their beneficiaries, which meets the requirements of section 401(a) of the Code, is a qualified trust and is exempt from Federal income tax under section 501(a) unless the exemption is denied under section 502, relating to feeder organizations, or section 503, relating to prohibited transactions.

.02 An exempt employees' trust is required to file an annual return as provided by section 6033 of the Code. Form 990–P, return of Employees' Trust Exempt from Tax, is used for this purpose. An exempt trust may, however, be subject to tax under section 511 of the Code on unrelated business income. Unrelated business income is reported on Form 990–T, Exempt Organization Business Income Tax Return.

.03 A nontrusteed annuity plan which meets the requirements of section 401(a) (3), (4), (5), (6), (7), and (8) of the Code may confer special tax treatment provided for under other sections of the Code, such as section 403(a)(2) (long term capital gain treatment) and section 404(a)(2) (deductions for employer contributions for the

purchase of retirement annuities), if the additional provisions of such other sections are also met.

.04 A favorable determination letter on a pension, annuity, profit-sharing, stock bonus, or bond purchase plan, and the exempt status of a related trust, if any, is not required as a condition for obtaining the benefits pertaining to the plan or trust. However, section 4.05 of Revenue Procedure 67–1, page 544, this Bulletin, permits District Directors to issue determination letters on the qualification of plans and the exempt status of related trusts.

SEC. 3. DETERMINATION LETTERS.

.01 Determination letters authorized by section 4.05 of Revenue Procedure 67–1 are limited to the qualification of plans or trusts under section 401(a) of the Code, bond purchase plans, under section 405(a), and to the exempt status of trusts under section 501(a). This includes consummated and proposed transactions relating to the following:

1. The initial qualification of a plan and, if trusteed, the status for exemption of a trust;
2. Compliance with the applicable requirements of foreign situs trusts as to taxability of beneficiaries (section 402(c)) and deductions for employer contributions (section 404(a)((4));
3. Amendments to plans and trusts;
4. Curtailment of plans;
5. Termination of plans and trusts; and
6. The effect on the qualification of the plan, and status for exemption of the trust, of an investment of trust funds in the stock or securities of the employer or controlled corporation (ownership of 50 percent or more of all voting stock or 50 percent or more of the total value of shares of all classes of stock).

.02 Determination letters authorized in the preceding paragraph do not include determinations on other inquiries concerning plans or trusts. Thus, except as provided in section 3.012, above, District Directors may not issue determination letters relating to issues under other sections of the Code, such as sections 72, 402 through 404, 502, 503, and 511 through 515, unless such determination letters are otherwise authorized under section 4 of Revenue Procedure 67–1.

.03 Employees' trusts must be maintained and operated for the exclusive benefit of employees or their beneficiaries, and investments by such trusts must be consistent with that purpose. See part 2(k)(1) of Revenue Ruling 65–178, C.B. 1965–2, 94, at 104. District Directors are authorized to issue determination letters as to the effect on qualification of trust investments in the stock or securities of corporations described in section 3.016 above. However, they may not issue determination letters concerning the fair market value of the investment, or the adequacy of security behind a loan. These issues are within the prohibited transactions area. See section 8 of this Revenue Procedure.

SEC. 4. INSTRUCTIONS TO TAXPAYERS.

.01 All of the provisions of section 6 of Revenue Procedure 67–1 are applicable to requests for determination letters of the type discussed in this Revenue Procedure. In addition, the information required by paragraphs .02 through .06 below, together with the identification number of a participating trust, must also be furnished in

requesting a determination letter on the qualification of an employees' plan or trust.

.02 If the request relates to the initial qualification of a plan or the compliance with the requirements for a foreign situs trust, the following information must be submitted:

1. The information required by section 1.404(a)–2 of the Income Tax Regulations;

2. Type of organization of employer;

3. Date incorporated, if a corporation, or date business commenced, if other type of organization;

4. Nature of business of employer;

5. Name of predecessor business, if any, type of organization of predecessor, and when transfer took place; and

6. Date on which the accounting year of the trust ends.

.03 If the request relates to an amendment of a plan, the following information must be submitted:

1. A copy of the amendment;

2. The information required by section 1.404(a)–2 of the regulations unless it was furnished with a request for a determination letter for the same year for which the amendment is to become effective. (However, if the amendment changes the requirements for coverage, contributions, or benefits, the information must be submitted even though previously submitted with a prior request.); and

3. The information required by sections 4.022–4.026, above, unless it was previously furnished with a request for a determination letter.

.04 If the request involves a curtailment or termination of the plan, the following information must be submitted:

1. The date the plan was, or is proposed to be, terminated or curtailed;

2. A statement of the reasons and circumstances for the termination or curtailment;

3. A statement whether any of the funds under the plan will revert to or become available to the employer; if so, details must be furnished;

4. A statement, with full particulars, as to any funds under the plan which at any time were contributed in the form of, or invested in, obligations or property of the employer or related companies;

5. The information specified below, in columnar form, for each of the 25 highest paid employees covered by the plan at the time of termination or curtailment (the most recent anniversary date of the plan if the action is proposed), listed in the order of their compensation, and for all other employees covered by the plan (as a group) and showing the number in the group:

(a) Name and whether an officer or supervisor;

(b) Percentage of each class of stock owned directly or indirectly by the employee or members of his family;

(c) Data, separately for the year of termination or curtailment and for each of the 5 preceding years of the plan's operation (if more are required they will be requested) indicating (1) total compensation other than deferred compensation,

(2) employer's contribution, (3) employee's contribution, and (4) employee's share of forfeitures;

(d) Totals for each of the columns under subparagraph c for each year;

(e) Summary columns aggregating for all years (totaled horizontally) for each employee listed and for all others, data similar to that required by subparagraph c; and

(f) Total value of benefits distributed or to be distributed to each employee listed, and to all others; and

6. A schedule showing separately for the year of termination or curtailment and for each of the 5 preceding years of the plan (if more are required they will be requested):

(a) Number of participants at beginning of year;

(b) Number of participants added in year;

(c) Number of participants dropped in year; and

(d) Number of participants remaining at end of year.

.05 If the request involves an investment of trust funds in the stock or securities of the employer, the following information, without duplicating information previously furnished, must be submitted:

1. Balance sheets of the employer (and controlled corporation, if involved) as of the close of the last 2 taxable years;

2. Comparative statements of income and profit and loss for the last 5 taxable years;

3. Analysis of surplus for the last 5 years, specifically showing the amount and rate of dividends paid on each class of stock;

4. A statement accounting for all material changes from the latest dates of the information in 1, 2, and 3 to the date of filing the information;

5. A schedule showing the nature and amounts of the various assets in the trust fund; and

6. A statement setting forth the amount to be invested in the stock or securities of the employer or a controlled corporation (or both), the nature of the investment, the present rate of return, collateral or type of security for the loan, if any, and the reasons for the investment.

The information called for under paragraphs 1, 2, and 6, and related data, may be submitted in composite form as shown in exhibit "A," page 574. A full disclosure must be made where trust funds are invested in stock or securities of, or loaned to, the employer, whether or not a determination letter is requested. The above information must in all cases be furnished to the appropriate District Director. See section 4.07, below.

.06 When in connection with the request for a determination on the qualification of the plan, it is necessary to determine whether an organization is an association taxable as a corporation as defined in section 7701(a)(3) of the Code, and that an employer-employee relationship exists between it and its associates, the District Director will make such determination. The request, in such case shall also be accompanied by copies of the articles of association or agreement establishing the organization, bylaws, and all other data relevant to the formation and operation of the association, and should show all pertinent dates. The organization should also support its request by

furnishing copies of the applicable local law relating to its status, copies of contracts of employment with its associates, and a brief of its position on its status for taxation and its relationship with its associates. See also Rev. Proc. 65–27, C.B. 1965–2, 1017.

.07 Requests for determination letters on matters authorized by section 3.01 and the necessary supporting data, are to be addressed to the District Director specified below:

1. A single employer will address his request to the District Director for the district in which its principal place of business is located.

2. If a parent company and its subsidiaries have a single plan, the request will be addressed to the District Director for the district in which the principal place of business of the parent company is located, whether separate or consolidated returns are filed.

3. If the plan is established or proposed for an industry by all subscribing employers whose principal places of business are located within the jurisdiction of more than one District Director, the request will be addressed to the District Director for the district in which is located the principal place of business of the trustee, or if more than one trustee, the usual meeting place of the trustees.

4. In the case of a pooled fund arrangement (individual trusts under separate plans pooling their funds for investment purposes through a master trust), the request on behalf of the master trust will be addressed to the District Director for the district where the principal place of business of such trust is located. Requests on behalf of the participating trusts and related plans will be addressed as otherwise provided herein.

5. In the case of a plan of multiple employers not otherwise herein provided for, the request will be addressed to the District Director for the district in which is located the principal place of business of the trustee, or if not trusteed, or if more than one trustee, the principal or usual meeting place of the trustees or plan supervisors.

6. If the plan is for an organization of the type described in section 4.06, above, the association will address its request to the District Director with whom it is required to file its tax returns.

SEC. 5. EFFECT OF PENSION TRUST DETERMINATION LETTERS.

Determination letters issued pursuant to the provisions of this Revenue Procedure have the effect, generally, of any other determination letter as provided in section 13 of Revenue Procedure 67–1. Determination letters issued under the provisions of this Revenue Procedure contain only opinions as to the qualification of plans under sections 401(a) and 405(a) of the Code and the status of related trusts under section 501(a). While a favorable determination letter may serve as a basis for determining deductions for employer contributions thereunder, it is not to be taken as an indication that contributions are necessarily deductible as made. Such determinations can be made only upon an examination of the employer's tax return, in accordance with the limitations and subject to the conditions of section 404 of the Code.

SEC. 6. NATIONAL OFFICE REVIEW OF DETERMINATION LETTERS.

All determination letters issued by District Directors under the procedures herein are subject to post review in the National Office under the jurisdiction of the Assistant Commissioner (Technical). If, during the course of review, a determination letter does not appear to conform to the interpretations and positions of the Service, the District Director will be advised of the exceptions noted. If the taxpayer protests the exceptions taken by the National Office, the matter will be returned to the National Office. The determination letter and the protest will be treated as a request for technical advice. The procedures in Revenue Procedure 67–2, page 555, this Bulletin, will be followed.

SEC. 7. REFERENCE OF MATTERS TO THE NATIONAL OFFICE.

.01 Revenue Procedure 67–2 defines technical advice as advice or guidance furnished upon request of a field official in connection with the examination or consideration of a return of a taxpayer. Although a taxpayer may request a determination letter on the qualification of its plan or trust under section 401(a) of the Code prior to the filing of any return affected by the plan or trust, the consideration or examination of the facts relating to the qualification, amendment, curtailment, or termination of the plan or relating to the exempt status of the trust will be considered to be in connection with the examination or consideration of a return of the taxpayer. Thus, a District Director may request technical advice on issues which arise as the result of requests for determination letters of the type discussed in this Revenue Procedure.

.02 Where issues arise in a District Director's office on matters within the contemplation of section 3.01, and the district office does not request technical advice from the National Office, the organization may notify the District Director that it intends to request National Office consideration. The notice will consist of a copy of the request which the organization intends to file with the National Office. See section 7.04 below. Should the District Director make an adverse determination, or should no action be taken within 30 days after the notice is filed with the District Director, the request may be filed with the National Office.

.03 Requests for National Office consideration will be entertained upon a clear showing—

1. That the position of the district office is contrary to the law or regulations on the points at issue;
2. That the position of the district office is contrary to the position of the Service as set forth in a Revenue Ruling currently in effect;
3. That the position of the district office is contrary to a court decision which is followed by the Service, i.e., acquiescence in an adverse Tax Court decision;
4. That the contemplated district office action is in conflict with a determination made in a similar case in the same or another district; or
5. That the issues arise because of unique or novel facts which had not previously been passed upon, in any published Revenue Ruling or announcement.

.04 The request to the National Office must show the following:

1. Date of request;

2. Name and address of taxpayer (employer) and name and address of representative, if any, who has been authorized to represent taxpayer (see section 6.05 of Revenue Procedure 67–1);

3. District office in which the case is pending;

4. Type of plan (pension, annuity, profit-sharing, stock bonus) and type of action involved (initial qualification, amendment, curtailment, termination, or investment);

5. Date of filing a copy of this request with the District Director and the date and symbols of determination letter, if any;

6. A concise statement of the issues without presentation of the facts or argumentation (e.g., whether a limitation may be imposed on employer contributions used to provide benefits for stockholder-employees);

7. Grounds for requesting National Office consideration, e.g., action of the district office contrary to law or regulations (cite sections involved), contrary to published precedent (cite), conflict between districts or in some district (give name and district of case in conflict), unique or novel facts (describe briefly);

8. Whether the applicable information required by section 4 has been filed with the District Director;

9. Whether a conference is desired in the National Office.

.05 Upon receipt of the request in the National Office, a determination will be made as to whether the case is to be considered at the National Office, and the taxpayer will be advised of this determination. If the National Office determines that it will consider the case, the file will be called in from the district office and the taxpayer will be afforded an opportunity to furnish a statement on the points at issue and to a conference in Washington, if such a conference was requested. Copies of all written submissions are to be furnished the District Director. The District Director will have an opportunity to make such comments to the National Office as he deems appropriate. After full consideration of the entire file, including any conference discussion, the National Office will notify the taxpayer of its determination, and the case file will be returned to the district office for appropriate disposition in accordance with the National Office determination. The procedures of Revenue Procedure 67–2 will control, to the extent they are not inconsistent with the provisions of this section.

.06 Should a District Director determine that an organization of the type described in section 4.06 above is not an association taxable as a corporation or that the proper employer-employee relationship does not exist between the organization and its associates, the District Director will so advise the organization. Inasmuch as the primary issue here is not the qualification of the plan under section 401(a) of the Code, the appeals procedures of sections 7.02 through 7.05 are not applicable.

SEC. 8. PROHIBITED TRANSACTIONS.

.01 Section 503 of the Code denies exemption to certain organizations which engage in transactions of the type described therein. The National Office may issue a ruling as to whether a trust has entered

into, or proposes to enter into, a prohibited transaction, but, except as provided in section 8.02 below, a ruling will not be issued where the determination is primarily one of fact, e.g., market value of property, reasonableness of compensation, etc. Also, no rulings or determination letters will be issued concerning such transactions as sales and leasebacks, gifts and leasebacks, and other rental transactions of real or personal property directly or indirectly with the creator, or a related or controlled interest.

.02 Where the adequacy of the security for a loan is involved, a ruling may be issued, but only if there is a clear indication of value which can be established by reference to recognized sources without requiring physical valuation or appraisal. The following are examples of transactions where the adequacy of security can be established by reference to recognized sources:

1. A surety bond issued by a recognized surety company doing a surety bond business under applicable state law;
2. An assignment of an insurance contract having a cash surrender value sufficient to cover the loan, interest, and possible costs of collection;
3. A first mortgage on real property in an amount not in excess of 50 percent of its assessed value for local tax purposes; or
4. Collateral represented by securities listed on a recognized exchange of an aggregate value equal to twice the amount of the loan.

Such rulings may be issued only on proposed transactions and on completed transactions where the return for the first year for which the transaction is effective has not been filed or the filing date has not passed. This section does not preclude the National Office from ruling as to whether a transaction is within the purview of section 503 (c), (h), or (i) of the Code.

.03 If, upon examination of the return or returns of a trust, or from other sources, a District Director is of the opinion that a trust has entered into a prohibited transaction, the trust will be advised in writing that it is proposed to revoke its exemption, and the reasons for such proposed action. The district office will also advise the trust of its rights to protest the proposed action by submitting a statement of the facts, law, and arguments in support of its continued exemption, and of its rights to a conference in the district office.

.04 If the trust agrees with the proposed action, either before or after the conference, or if no protest is filed, the District Director will advise the organization in writing of the revocation of the exempt status.

.05 If, after considering the information submitted by the trust, both in writing and in conference, the district office is still of the opinion that the exemption should be revoked, and the trust does not agree, the findings of the district office will be forwarded to the National Office for consideration prior to further action. Such reference to the National Office will be considered a request for technical advice and the procedures in Revenue Procedure 67–2 will be followed.

.06 If it is concluded that a prohibited transaction was entered into for the purpose of diverting corpus or income from its exempt purpose and if the transaction involved a substantial part of the corpus or income of the trust, its exemption is revoked, effective as of the beginning

of the taxable year during which the prohibited transaction was commenced. No notification to the trust of the loss of its exemption is required under these circumstances. In all other prohibited transaction cases, however, its exemption is revoked, effective as of the beginning of the first taxable year after the date of the revocation letter. Under these circumstances, a revocation letter is sent by registered or certified mail to the last known address of the organization.

.07 The trust will usually be permitted to submit its brief and to be heard in conference before final action is taken. However, the District Director may, in his discretion, issue the revocation letter prior to the receipt of the brief or prior to granting a conference. If it is later determined that the revocation was in error, it will be rescinded as of the date it was issued.

.08 A trust which is denied exemption under section 503 of the Code may file a new claim for exemption in any taxable year following the taxable year in which the notice of denial was issued. But it may not be granted a new exemption before the beginning of the first taxable year following the year in which its new claim is filed. Thus, if a revocation notice is issued in 1966, the trust may not file a new claim for exemption until 1967, and the new exemption may not be granted for a taxable year prior to 1968. If the trust does not file a new claim until 1968, the new exemption may not be granted for a year prior to 1969.

.09 District Directors have the authority to determine that a trust will not knowingly again engage in a prohibited transaction and that the trust also satisfies all other requirements under section 401(a) of the Code, and to notify such trust of the reestablishment of its exemption.

SEC. 9. ORAL ADVICE TO TAXPAYER.

.01 In conformity with the general principle announced in section 12 of Revenue Procedure 67–1, district officials will not ordinarily confer with taxpayers or their representatives on matters regarding the formation or qualification of pension or similar plans, or related matters, including amendments or curtailments to approved plans, prior to the submission of a plan, amendment, or curtailment for a determination.

.02 A District Director may grant such a conference upon written request from a taxpayer or his representative, provided the request shows that a substantive plan, amendment, etc., has been developed for submission to the Service, but that special problems or issues are involved, and the District Director concludes that such a conference would be warranted in the interest of facilitating review and determination when the plan, etc., is formally submitted.

.03 The furnishing of advice or assistance, whether requested by personal appearance, telephone, or correspondence, except as otherwise provided in section 9.02 above, will be limited to general procedures, or will direct the inquirer to source material, such as pertinent Code provisions, regulations, Revenue Procedures, and Revenue Rulings which may aid the inquirer in resolving his question or problem.

SEC. 10. EFFECT ON OTHER DOCUMENTS.

.01 Revenue Procedure 62–31, C.B. 1962–2, 517, is superseded.

.02 The general procedures of Revenue Procedure 67–1 are applicable to requests for rulings and determination letters, except that where such requests involve the qualification of plans under sections 401(a) and 405(a) of the Code, the tax-exempt status of related trusts under section 501(a), and related problems, the procedures of this Revenue Procedure apply.

SEC. 11. EFFECTIVE DATE.

This Revenue Procedure is effective January 3, 1967, the date of its publication in the Internal Revenue Bulletin.

EXHIBIT "A"

Composite Schedule Showing Data Called for Under Items 1, 2, and 6 of Section 4.05

1. Name and address of employer:
2. Name of plan:
3. District in which processed:
4. Date of favorable ruling or determination letter on qualification of plan:
5. Nature of investment:
6. Year of investment:
7. Amount of investment:
8. Annual yield:
9. Restrictions on marketability, if any:
10. Collateral, if any:
11. Total trust assets:
12. Total invested in stock or securities (including promissory notes) of employer (or controlled corporation):
13. Percentage of total assets invested (including current investment) in stock or securities of employer (and controlled corporation, if involved):
14. Nature of employer's business:
15. Reasons for the investment:

EMPLOYER'S FINANCIAL DATA

(*and separately of controlled corporation, if involved*)

16. Balance sheets

	Latest year ended_____	Prior year ended_____
(a) Total current assets		
(b) Total current liabilities		
(c) Working capital (excess of (a) over (b))		
(d) Current ratio ((a) divided by (b) to 1)		
(e) Total assets		
(f) Total liabilities		
(g) Capital		
(h) Analysis of capital:		
Preferred stock_____ Number of shares issued and outstanding.		
Amount.		
Common stock_____ Number of shares issued and outstanding.		
Amount.		
Surplus_____ Paid in.		
Earned.		

17. Profit and loss

	Year ended	Year ended	Year ended	Year ended	Year ended
(a) Net sales or total receipts					
(b) Cost of goods sold					
(c) Gross profit					
(d) Other income					
(e) Total profit					
(f) Operating expenses					
(g) Other deductions					
(h) Net profit					
(i) Federal income and excess profits taxes					
(j) Dividends paid					
(k) Other surplus charges					
(l) Surplus credits					
(m) Net transfer to surplus					

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26 CFR 601.602: Forms and instructions. Rev. Proc. 67–5 [1]
(Also Part I, Sections 6420, 6421.)

Procedures are provided for a small business corporation to file a claim for credit of Federal excise tax on gasoline used for nonhighway purposes during a taxable year beginning after June 30, 1965, and ending before December 31, 1966.

SECTION 1. PURPOSE.

The Excise Tax Reduction Act of 1965, Public Law 89–44, C.B. 1965–2, 568, amended sections 6420 and 6421 of the Internal Revenue Code of 1954, to provide that, in lieu of filing claims for payment of gasoline tax under such sections of the Code, persons who use gasoline for nonhighway purposes will claim a credit under section 39 of the Code against their income tax liability for such gasoline tax. The purpose of this Revenue Procedure is to provide an acceptable method for the small business corporation having a taxable year beginning after June 30, 1965, and ending before December 31, 1966, to claim the credit for Federal excise tax on gasoline used during such period for nonhighway purposes.

SEC. 2. MANNER OF CLAIMING CREDIT.

.01 A small business corporation claiming a credit for Federal excise tax on gasoline used during a taxable year beginning after June 30, 1965, and ending before December 31, 1966, should attach a statement to its timely filed (including any extensions) Form 1120–S,

[1] Also released as Technical Information Release 869, dated Dec. 12, 1966.

U.S. Small Business Corporation Return of Income, for such year as follows:

Type of use	Gasoline		
	Number of gallons used (A)	Rate of tax (B)	Column (A) multiplied by column (B) (C)
1. Nonhighway:			*Dollars*
a. Farm		0. 04	
b. Motorboat		. 02	
c. Aviation		. 02	
d. Other (specify)		. 02	
2. Local transit system		. 02	
3. Total			

.02 The filing of this statement with a timely filed Form 1120–S will constitute a valid claim for this period. Any credit claimed in this manner will be treated as an overpayment of tax which will be paid to the corporation.

.03 If the Form 1120–S has already been timely filed, and the credit was not distributed to the shareholders, then this statement if filed on or before February 15, 1967, will constitute a timely filed claim. This statement will be associated by the District Director with the previously filed Form 1120–S. For this purpose the same name, address, employer identification number, and taxable year should appear on this statement as appeared on the previously filed Form 1120–S.

.04 If the shareholders of the small business corporation have been instructed by the corporation to claim their pro rata share of this credit on their individual returns, then the small business corporation should not file a claim since the credit for the gasoline tax will be taken by the shareholders. The pro rata distribution to individual shareholders in this situation will constitute an acceptable method of claiming the credit.

.05 For subsequent years this credit for gasoline tax must be claimed on Form 1120–S.

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26 CFR 601.201: Rulings and determination letters. Rev. Proc. 67–6

(Also Part I, Section 7805; 301.7805–1.)

A program for reviewing rulings published in the Internal Revenue Bulletin prior to 1953 has been established. The primary objective of this program is to identify and publish lists of those rulings which, although not specifically revoked or superseded, are not considered determinative with respect to future transactions.

SECTION 1. PURPOSE.

.01 The purpose of this Revenue Procedure is to announce a program for reviewing rulings published in the Internal Revenue Bulletin prior to 1953. The immediate objective of this program is to identify

and publish lists of those rulings which, although not specifically revoked or superseded, are not considered to be determinative with respect to future transactions.

.02 As a separate phase of the program, consideration will be given to republishing under the current statute and regulations the conclusions of those rulings which may be identified as having significant application to future transactions.

SEC. 2. BACKGROUND.

.01 Since 1919, many thousands of official rulings, relating to the various categories of Federal taxes, have been published in the Bulletin. Each ruling represented the conclusion of the Service concerning the application of the particular provisions of law in effect at the time to the entire set of facts involved.

.02 Prior to the inauguration of the "Revenue Ruling" series as of January 1, 1953, rulings were published in various series, as follows:

Ruling Series	*Abbreviation*
Appeals and Review Memorandum	A.R.M.
Appeals and Review Recommendation	A.R.R.
Capital Stock Tax	C.S.T.
Carriers, Taxes on Employment by	C.T.
Employment Tax (Continuation of "Social Security Tax" series).	Em.T.
Estate and Gift Tax	E.T.
Excess Profits Tax	E.P.C.
General Counsel's Memorandum	G.C.M.
Income Tax (continuation of "Office Decision" series)	I.T.
Internal Revenue Circular	IR-Circ.
Internal Revenue Mimeograph	IR-Mim.
(Solicitor's) Law Opinion	L.O. (or O.)
Mimeograph	Mim.
Miscellaneous Division	MS.
Miscellaneous Taxes	M.T.
Office Decision	O.D.
Pension Trust Service	PS
Processing Tax	P.T.
Sales Tax	S.T.
Silver Tax	Sil.
Social Security Tax	S.S.T.
Solicitor's Memorandum	S.M. (or S.)
Solicitor's Opinion	Sol. Op.
Solicitor's Recommendation	S.R.
Tax Board Memorandum	T.B.M.
Tax Board Recommendation	T.B.R.

.03 Some of those rulings have been specifically revoked or superseded. However, many others should not be considered determinative for various reasons, such as (1) the ruling may be unnecessary because the issue has been covered by regulations; (2) the conclusion may not now be applicable because of amendment of the statute, revision of the regulations, application of court decisions, etc.; or (3) the ruling may not have precedent value because the factual situation no longer exists or is not sufficiently described to permit clear application of the current statute and regulations. To officially list as "obsolete" those rulings which are identified as not being determinative with respect to future transactions should eliminate unnecessary research and reduce the possibility of erroneous decisions by taxpayers and tax practitioners.

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SEC. 3. PROCEDURE.

Although it is intended that this program eventually encompass all rulings published prior to 1953, each branch and division of the Technical Organization will establish plans and procedures for reviewing those rulings within its responsibility, depending upon the type of tax and the subject matter involved. When a significant number of nondeterminative rulings have been identified, they will be listed and officially declared obsolete by the publication of a Revenue Ruling.

SEC. 4. EFFECT OF DECLARATION OF OBSOLESCENCE.

.01 The purpose of this program is to identify and publicly list those rulings which are not to be considered determinative with respect to future transactions (that is, those occurring after the date of publication of the list unless otherwise specified). It is not the purpose of this program to determine the applicability of any of the listed rulings to past transactions. If any question should arise regarding the possible application of any of these rulings to a prior transaction, that issue will be independently resolved on the basis of all the relevant facts and circumstances.

.02 The public announcement that a particular ruling is not determinative with respect to future transactions does not necessarily mean that the conclusion or the underlying rationale has no current applicability. For example, if the regulation now clearly covers the issue involved, the regulation is determinative and the published ruling is no longer the appropriate authority. If there should be uncertainty about the current treatment of issues covered by any of the listed rulings, consideration will be given to requests that published guidance be provided under the current statute and regulations.

.03 In view of the continuing nature of this review program, failure to include any particular ruling in an early list should not be construed as an indication that the ruling necessarily is determinative with respect to future transactions.

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26 CFR 601.602: Forms and instructions. (Also Part I, Sections 3201, 3211, 3221; 31.3201–1, 31.3211–1, 31.3221–1.) Rev. Proc. 67–7

Computation of employer tax, employee tax, and employee representative tax imposed under the Railroad Retirement Tax Act, with respect to compensation paid during 1967 for services rendered after 1936 and before October 1, 1966.

SECTION 1. PURPOSE.

The purpose of this Revenue Procedure is to provide instructions for the computation of employer tax and employee tax to be reported on Form CT–1, Employer's Quarterly Railroad Retirement Tax Return, and employee representative tax to be reported on Form CT–2, Employee Representative's Quarterly Railroad Retirement Tax Return, under the Railroad Retirement Tax Act (chapter 22, subtitle C, Internal Revenue Code of 1954), with respect to compensation paid during 1967 for services rendered after 1936 and before October 1, 1966.

SEC. 2. BACKGROUND.

The January 1967 revision of Form CT–1 and Form CT–2 will provide entry spaces and rates for computing tax with respect to compensation for services performed after September 30, 1966. Because of the infrequency of payments of compensation for services rendered before October 1, 1966, the forms do not provide a schedule for computation of tax with respect to such compensation. Instead, a single entry line is provided for the reporting of such tax, which may be computed by reference to this Revenue Procedure. See section 7 of this Revenue Procedure, however, relating to the reporting of employee representative tax with respect to compensation earned before 1947.

SEC. 3. MAXIMUM AMOUNT OF COMPENSATION EARNED IN A MONTH WHICH IS SUBJECT TO TAX.

The employee tax, employer tax, and employee representative tax apply to compensation which does not exceed the amount shown below, for services rendered in a calendar month:

Period in which services were rendered	Maximum per calendar month
After Dec. 31, 1965	$550
After Oct. 31, 1963, and before 1966	450
After May 31, 1959, and before Nov. 1, 1963	400
After June 30, 1954, and before June 1, 1959	350
After 1936 and before July 1, 1954	300

NOTE: See secs. 5 and 6, below, for special rules for calendar months before 1947.

If an employee is paid total compensation by two or more employers for services rendered in a calendar month, and the total exceeds the maximum amount subject to tax for that month, the amount of compensation paid by each employer which is subject to tax should be computed in accordance with paragraph F or G of the instructions relating to Form CT–1 (except that the monthly maximum applicable to that month should be used in lieu of the amount stated in par. F or G).

If in any calendar month an individual renders services as an employee representative and as an employee, and if the total compensation paid to him for the services exceeds the monthly maximum, the measure of the employee representative tax is the monthly maximum minus the amount of compensation paid to him for services rendered during the month as an employee.

SEC. 4. COMPUTATION OF EMPLOYER TAX AND EMPLOYEE TAX.

The schedule shown below is provided as a guide for computing the employer tax and employee tax applicable to compensation paid during 1967 for services rendered after 1936 and before October 1, 1966.

1. Computation of employee tax on compensation for services rendered before October 1, 1966:

Period in which compensation, paid during quarter, was earned (a)	Compensation paid during quarter for such services, subject to employee tax (b)	Rate of employee tax on such compensation (c)	Amount of employee tax (col. (b) × col. (c)) (d)
Jan. 1, 1966, through Sept. 30, 1966.	$	7. 95 percent	$
Oct. 1, 1965, through Dec. 31, 1965.		7⅛ percent	
Jan. 1, 1965, through Sept. 30, 1965.		8⅛ percent	
Calendar years 1962, 1963, and 1964.		7¼ percent	
June 1, 1959, through Dec. 31, 1961.		6¾ percent	
Jan. 1, 1947, through May 31, 1959.		6¼ percent	
Calendar year 1946		3½ percent	
Calendar years 1943, 1944, and 1945.		3¼ percent	
Calendar years 1940, 1941, and 1942.		3 percent	
Calendar years 1937, 1938, and 1939.		2¾ percent	
Total	$	XXXXXXXXXXXXX	$

2. Computation of employer tax on compensation for services rendered before October 1, 1966:

Period in which compensation, paid during quarter, was earned (e)	Compensation paid during quarter for such services, subject to employer tax (f)	Rate of employer tax on such compensation (g)	Amount of employer tax (col. (f) × col. (g)) (h)
Jan. 1, 1966, through Sept. 30, 1966.	$	7.95 percent	$
Oct. 1, 1965, through Dec. 31, 1965.		7⅛ percent	
Jan. 1, 1965, through Sept. 30, 1965.		8⅛ percent	
Calendar years 1962, 1963, and 1964.		7¼ percent	
June 1, 1959, through Dec. 31, 1961.		6¾ percent	
Jan. 1, 1937, through May 31, 1959.		6¼ percent	
Total	$	XXXXXXXXXXXXX	$

3. Total employee tax (from col. (d)), above, $_____.
4. Total employer tax (from col. (h)), above, $_____.
5. Total taxes (line 3 plus line 4) (enter on Form CT–1 and attach explanation, in duplicate), $_____.

NOTE: If the total of column (b) differs from the amount in column (f), include in the explanation a statement of the computations which cause the amounts to be different. See sections 5 and 6 below.

SEC. 5. EMPLOYEE TAX WITH RESPECT TO COMPENSATION EARNED BEFORE 1947.

The employee tax imposed by section 2(a) of the Carriers Taxing Act of 1937, 45 U.S.C. 261, and by section 1500 of the Internal Revenue Code of 1939 prior to its amendment by Public Law 572, 79th Congress, 2d session, July 31, 1946, C.B. 1946–2, 269, applies to compensation, not in excess of $300, earned by an employee from one or more employers in a calendar month before 1947. If an employee earned compensation of more than $300 in a calendar month before 1947, only $300 thereof is subject to the employee tax irrespective of the year or years in which such compensation is paid to the employee. If an employee earned compensation from two or more employers in a calendar month before 1947, and if the aggregate compensation paid (at any time) to such employee by all employers is more than $300 for such calendar month, each employer must report and pay employee tax with respect to that proportion of $300 which such employer's payment to the employee bears to the aggregate compensation paid (at any time) to such employee by all of his employers for that calendar month.

SEC. 6. EMPLOYER TAX WITH RESPECT TO COMPENSATION EARNED BEFORE 1947.

The employer tax applies to compensation, not in excess of $300, paid to an employee after 1946 by one or more employers for services rendered in any calendar month before 1947. The amount of such compensation which is subject to employer tax must be computed without regard to any payment made to the employee before 1947 by such employer or by any other employer. If an employee is paid total compensation of more than $300 after 1946 by two or more employers for services rendered in a calendar month before 1947, the amount of such compensation which is subject to employer tax should be computed by each employer in accordance with the rules stated in paragraph F of the instructions relating to Form CT–1 (except that the employer tax does not apply to compensation in excess of $300 for such services).

It should be noted that the amount of compensation, if any, subject to employee tax (col. (b) in sec. 4, above) generally will be less than the amount of compensation subject to employer tax (col. (f), sec. 4, above) for the reason that the latter amount must be computed without regard to compensation paid to the employee before 1947.

SEC. 7. COMPUTATION OF EMPLOYEE REPRESENTATIVE TAX.

The rates shown below are applicable to compensation paid during 1967 for services rendered after 1936 and before October 1, 1966, as an employee representative.

Period in which compensation, paid during quarter, was earned	Rate of employee representative tax
Jan. 1, 1966, through Sept. 30, 1966	15.9 percent.
Oct. 1, 1965, through Dec. 31, 1965	14¼ percent.
Jan. 1, 1965, through Sept. 30, 1965	16¼ percent.
Calendar years 1962, 1963, and 1964	14½ percent.
June 1, 1959, through Dec. 31, 1961	13½ percent.
Jan. 1, 1947, through May 31, 1959	12½ percent.
Calendar year 1946	7 percent.
Calendar years 1943, 1944, and 1945	6½ percent.
Calendar years 1940, 1941, and 1942	6 percent.
Calendar years 1937, 1938, and 1939	5½ percent.

Employee representative tax with respect to compensation paid for services rendered as an employee representative before 1947 should be reported on Form CT–2 for the calendar quarter in which the services were rendered, and not on the Form CT–2 for the quarter in which the compensation is paid. If a return on Form CT–2 was filed for the calendar quarter in which the services were rendered, any subsequent payment of compensation for services rendered in such quarter should be reported on a Form CT–2, which is marked "amended" and which is altered to show the applicable rate of tax.

(Also Part I, Section 6041; 26 CFR 1.6041–1.) Rev. Proc. 67–8

Revenue Ruling 63–271, C.B. 1963–2, 597, holds that a bank acting as agent for the collection of interest on evidences of indebtedness is required to file an information return on Forms 1099, U.S. Information Return for Calendar Year, and 1096, U.S. Annual Information Return, when, in the course of its trade or business, it receives payments of interest of $600 or more and pays them over to the actual owner.

Penalties apply for failure to file information returns required under the circumstances set forth in Revenue Ruling 63–271, and for failure to furnish identifying numbers on such returns, unless it is shown that such failures are due to reasonable cause.

Representatives of banking institutions have requested relief from the requirement of Revenue Ruling 63–271 to file returns and from the application of such penalties because of the many unresolved problems encountered by their banks in perfecting procedures to furnish the required information.

Therefore, relief will be granted for 1966 on a case-by-case basis when reasonable cause for failure to meet the requirements is established by banking institutions which submit statements in writing, on or before February 28, 1967, to the District Director of Internal Revenue showing that their failure to comply was due to problems or procedures which they could not solve.

See Revenue Procedure 66–26, C.B. 1966–1, 654, for similar procedures with respect to information returns for 1965.

26 CFR 601.602: Forms and instructions. (Also Part I, Section 3302; 31.3302(c)-1.)

Rev. Proc. 67-9 [1]

Computation of reductions in credit against tax reportable on Form 940, Employer's Annual Federal Unemployment Tax Return, for 1961 and subsequent years, with respect to wages paid for services performed in a State which has not restored to the United States Treasury amounts which were made available under title XII of the Social Security Act or under the Temporary Unemployment Compensation Act of 1958.

Revenue Procedure 65-33, C.B., 1965-2, 1038, superseded.

SECTION 1. PURPOSE.

The purpose of this Revenue Procedure is to restate Revenue Procedure 65-33, C.B., 1965-2, 1038, and bring up to date the procedure to be followed in computing reductions in the credit against tax reportable on Form 940, Employer's Annual Federal Unemployment Tax Return, for 1961 and subsequent years.

SEC. 2. BACKGROUND.

Section 3302 of the Internal Revenue Code of 1954 provides for credits against the Federal unemployment tax imposed by section 3301 of the Code on employers of four or more employees. Reductions in the amount of credit otherwise allowable are provided for in section 3302(c) of the Code and in section 104 of the Temporary Unemployment Compensation Act of 1958. The reductions may occur if an employer pays wages for services performed in a State which has not restored to the U.S. Treasury amounts which were made available under title XII of the Social Security Act or under the Temporary Unemployment Compensation Act of 1958. Credit reductions for 1963 or any subsequent year may be forestalled if a State restores to the U.S. Treasury before November 10 of that year an amount approximately equal to the additional Federal tax which otherwise would be due for that year as a result of the credit reductions.

SEC. 3. CREDIT REDUCTIONS FOR 1961 AND 1962.

Regulations relating to reductions in credit under section 3302(c) of the Code for the calendar years 1961 and 1962 are set forth in section 31.3302(c)-1 of the Employment Tax Regulations, as amended by Treasury Decision 6658, C.B., 1963-2, 426. The credit reductions are computed by applying the following percentages to wages paid for services performed in the following States:

States in which services were performed	Percentages applicable to wages paid in—	
	1961	1962
	Percent	*Percent*
Alaska	0.15	0.3
Michigan		.15

[1] Based on Technical Information Release 874, dated Dec. 27, 1966.

SEC. 4. CREDIT REDUCTIONS FOR 1963 AND SUBSEQUENT YEARS.

Public Law 88–173, approved November 7, 1963, C. B. 1963–2, 699, amended section 3302(c) (2) of the Code and section 104 of the Temporary Unemployment Compensation Act of 1958, effective for 1963 and subsequent years. Under the amended law, credit reductions apply in the following percentages to wages paid for services performed in the following States:

Percentages applicable to 1963 wages

States in which services were performed	Sec. 3302(c)(2), I.R.C. of 1954	Sec. 104 of TUCA 1958	Aggregate percentage
	Percent	*Percent*	*Percent*
Alaska	0. 15	0. 15	0. 3
California	----------	. 15	. 15
Delaware	----------	. 15	. 15
Indiana	----------	. 15	. 15
Massachusetts	----------	. 15	. 15
Michigan	. 15	. 15	. 3
Minnesota	----------	. 15	. 15
New Jersey	----------	. 15	. 15
West Virginia	----------	. 15	. 15

Percentages applicable to 1964 wages

States in which services were performed	Sec. 3302(c)(2), I.R.C. of 1954	Sec. 104 of TUCA 1958	Aggregate percentage
	Percent	*Percent*	*Percent*
Alaska	0. 15	0. 3	0. 45
California	----------	. 3	. 3
Delaware	----------	. 3	. 3
Indiana	----------	. 3	. 3
Massachusetts	----------	. 3	. 3
Michigan	----------	. 3	. 3
Minnesota	----------	. 3	. 3
New Jersey	----------	. 3	. 3
West Virginia	----------	. 3	. 3

Percentages applicable to 1965 wages

States in which services were performed	Sec. 3302(c)(2), I.R.C. of 1954	Sec. 104 of TUCA 1958	Aggregate percentage
	Percent	*Percent*	*Percent*
Alaska	0. 15	0. 3	0. 45
New Jersey	----------	. 3	. 3
West Virginia	----------	. 3	. 3

Percentages applicable to 1966 wages

States in which services were performed	Sec. 3302(c)(2), I.R.C. of 1954	Sec. 104 of TUCA 1958	Aggregate percentage
	Percent	*Percent*	*Percent*
Alaska	0. 15	----------	0. 15
New Jersey	----------	0. 3	. 3
West Virginia	----------	. 3	. 3

SEC. 5. PROCEDURE.

The computation of credit allowable is reported in schedule A of Form 940, Employer's Annual Federal Unemployment Tax Return. If a credit reduction applies, the amount of credit otherwise allowable is first computed in schedule A of Form 940, and the amount of the credit reduction is subtracted from the amount otherwise allowable. The remainder is then subtracted from the gross Federal tax shown on Form 940. If the employer is using a schedule A which was not designed for the particular year for which the computation is being made, the schedule A should be appropriately altered, or the computation should be shown on an attached sheet.

SEC. 6. EFFECT ON OTHER DOCUMENTS.

Revenue Procedure 65–33, C.B. 1965–2, 1038, is hereby superseded.

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26 CFR 601.204: Changes in accounting periods and in methods of accounting.
(Also Part I, Sections 446, 481; 1.446–1, 1.481–1.)

Rev. Proc. 67–10 [1]

Administrative procedure for changing overall method of accounting from cash receipts and disbursements method to accrual method.

SECTION 1. PURPOSE.

This Revenue Procedure provides an administrative procedure whereby taxpayers may expeditiously obtain consent to change their overall method of accounting from the cash receipts and disbursements method to an accrual method for Federal income tax purposes. Taxpayers complying with the provisions hereof will be deemed to have obtained the consent of the Commissioner of Internal Revenue to change their method of accounting.

SEC. 2. BACKGROUND.

A taxpayer, before changing his method of accounting from the cash receipts and disbursements method to an accrual method, for Federal income tax purposes, is required to obtain the consent of the Commissioner under the provisions of section 1.446–1(e)(3) of the Income Tax Regulations and is required to file an application on Form 3115, Application for Change in Accounting Method, with the Commissioner within the first 90 days of the taxable year in which the change is to become effective.

[1] Also released as Technical Information Release 883, dated Feb. 7, 1967.

SEC. 3. APPLICATION.

.01 Subject to the following conditions, a taxpayer desiring to change his overall method of accounting from the cash receipts and disbursements method to an accrual method may do so by filing an application on Form 3115 with the District Director of Internal Revenue for the district in which he files his return. Reference to this Revenue Procedure should be made a part of the application. The application shall be filed within the first 90 days of the taxable year in which the change is to become effective and include information showing all adjustments required under section 481(a) of the Internal Revenue Code of 1954 and the regulations thereunder. Unless a letter is received by the taxpayer from the District Director denying permission because the Form 3115 is not timely filed, it may be assumed that the change has been granted provided the taxpayer has complied with all of the provisions of section 4 below.

.02 Any adjustment resulting from the change is subject to verification by the District Director upon examination of the income tax return.

SEC. 4. MANNER OF EFFECTING THE CHANGE.

.01 Any taxpayer changing from the overall cash receipts and disbursements method to an accrual method under this Revenue Procedure shall effect the change as follows:

(1) Adjust the books at the end of the taxable year of change to an accrual method and keep the books for subsequent taxable years on such method.

(2) Take into account in computing taxable income for the taxable year of change and for each of the nine succeeding taxable years one-tenth of the net amount of the adjustments required under section 481(a) of the Code. The adjustments required thereunder are (*a*) the inclusion in income of (*i*) income accrued as of the end of the taxable year preceding the taxable year of change, which has not previously been reported, (*ii*) the amount of inventory (for farm inventories, see .02 of this section) as of the end of the taxable year preceding the taxable year of change previously deducted as an expense, and (*iii*) prepaid expenses at the end of the taxable year preceding the taxable year of change which have been deducted and (*b*) the inclusion of deductions for (*i*) expenses accrued as of the end of the taxable year preceding the taxable year of change not previously allowed as a deduction and (*ii*) amounts which were previously included in income and which, under an accrual method, would again be included as they accrue. Any other item or amount of income or deduction affected by the change shall be treated properly under subparagraph (*a*) or (*b*) of this paragraph in order to prevent such item or amount from being duplicated or omitted from the net amount of the adjustments.

(3) Under an accrual method of accounting the amount of inventory to be reported as the inventory at the beginning of the taxable year of change for purposes of computing cost of goods sold for each taxable year will be the amount of inventory referred to in subsection .01(2)(*a*)(*ii*) of this section plus items of inventory, if any, at the beginning of the taxable year of change

which have not been expensed. The inventory shall be valued in accordance with any of the methods provided in the regulations under section 471 or 472 of the Code. The method selected shall be used in valuing inventory at the beginning and end of the taxable year of change and for all subsequent years unless permission is granted to change to another method of valuation under section 1.446–1(e)(3) of the regulations.

(4) Prepaid expenses under subsection .01(2)(*a*)(*iii*) of this section shall be charged off as the benefit therefrom is derived.

(5) In addition to the foregoing adjustments, all items of income and expense for the year of change shall be accounted for under an accrual method. Adoption of an accrual method for the taxable year of change will necessitate the use of such method for all subsequent taxable years unless permission is obtained from the Commissioner to change to another recognized method under section 1.446–1(e)(3) of the regulations.

.02 A farmer changing from the overall cash receipts and disbursements method to an accrual method shall, in lieu of the adjustments for inventory required by subsection .01(2)(*a*)(*ii*) above, take into account in computing taxable income for the taxable year of change, the amount of inventory at the end of the taxable year preceding the taxable year of change valued according to one of the methods described in section 1.471–6 of the regulations, reduced by amounts paid for purchased items included in such inventory but not previously deducted. The basis elected for valuing the inventory referred to above shall be used in valuing inventory at the end of the taxable year of change and for subsequent years unless permission is granted to change to another recognized method of valuation. The amount of such inventory, without reduction for purchased items, will be the inventory at the beginning of the taxable year of change for computing cost of livestock and other farm products sold for the taxable year of change.

.03 Any taxpayer changing his method of accounting to an accrual method under this Revenue Procedure may, if this is the first year to which he is entitled to a bad debt deduction, select either the method of taking into account (1) a specific deduction for bad debts which become worthless in whole or in part or (2) a deduction for a reasonable addition to a reserve for bad debts. A statement of facts substantiating any deduction for bad debts claimed under section 166 of the Code shall accompany each return of income.

.04 This Revenue Procedure shall not be construed as permitting any taxpayer to change his method of reporting bad debts from the specific charge off method to the reserve method (see Rev. Proc. 64–51, C.B. 1964–2, 1003 and Rev. Rul. 65–92, C.B. 1965–1, 112).

.05 The following examples show how the net adjustment for changes from cash to accrual method of accounting should be determined.

Example (1): *Year of change—calendar year 1966*

Income accrued but not reported (accounts receivable), Dec. 31, 1965	$50,000
Inventory (cost previously deducted), Dec. 31, 1965	15,000
	65,000

	Year of change—calendar year 1966	
Less:		
Expenses accrued but not deducted (accounts payable), Dec. 31, 1965		$40,000
Net adjustment (increase in income spread over 10 years)		25,000

Example (2):

Expenses accrued but not deducted (accounts payable), Dec. 31, 1965		$65,000
Less:		
Income accrued but not reported (accounts receivable), Dec. 31, 1965	$40,000	
Inventory (cost previously deducted), Dec. 31, 1965	15,000	55,000
Net adjustment (decrease in income spread over 10 years)		10,000

SEC. 5. TAXPAYERS NOT COVERED BY THIS PROCEDURE.

.01 This Revenue Procedure applies only to those taxpayers whose overall method of accounting is the cash receipts and disbursements method and who wish to change from such method to an accrual method. This Revenue Procedure has no application where other methods of accounting are also involved such as the installment method, long term contract method, crop method, or any other special method of accounting for items of income or expense.

.02 A taxpayer may not apply this Revenue Procedure where a deduction, credit, or other allowance is involved which would not otherwise be allowable except for the change in method of accounting. Examples are, net operating loss carryover, foreign tax credit carryover, investment credit carryover, or situations under section 270 of the Code relating to the limitation of deductions allowable to individuals in certain cases.

.03 Taxpayers to which this Revenue Procedure does not apply and who desire to change their method of accounting shall continue to file applications on Form 3115 with the Commissioner in accordance with the requirements of section 1.446–1(e)(3) of the regulations.

SEC. 6. RECORDS.

Taxpayers must maintain adequate records so that the District Director may verify any data concerning the change.

SEC. 7. PROCEDURE FOR EFFECTING CHANGE.

.01 The taxpayer must attach a copy of the application, Form 3115, to his income tax return filed for the taxable year of change, together with a statement showing the computation used in arriving at the adjustment to be spread over the 10-year period. Photo copies may be used for this purpose.

.02 The taxpayer shall attach a copy of the application, Form 3115, to the income tax return for each of the succeeding 9 years, together with a copy of the statement showing the computation used in arriving at the adjustment and that portion of such adjustment to be taken into account in that year.

SEC. 8. COMPLIANCE WITH CONDITIONS

Taxpayers making a change from the cash receipts and disbursements method to an accrual method without complying with all the conditions of this Revenue Procedure will be deemed to have initiated the change without having obtained the consent of the Commissioner.

SEC. 9. EFFECTIVE DATE.

This Revenue Procedure shall be effective for taxable years beginning after December 31, 1966.

SEC. 10. INQUIRIES.

Inquiries in regard to this Revenue Procedure should refer to its number and be addressed to the Commissioner of Internal Revenue, Attention: T:I:C, Washington, D.C. 20224.

(Also Part I, Section 6041; 26 CFR 1.6041–1.) Rev. Proc. 67–11 [1]

Revenue Ruling 66–198, C.B. 1966–2, 488, requires payers of oil and gas royalties to show on information returns, Form 1099, U.S. Information Return for Calendar Year, the gross amounts due the royalty interest owners rather than the net amounts paid to such owners after withholding for various taxes levied by states.

Because certain payers have experienced unreasonable hardship in perfecting the necessary procedures for showing the gross royalty amounts, information returns reporting royalty payments for calendar year 1966 will be accepted on either a gross or a net basis.

Information reporting of royalty payments for calendar year 1967 will be required generally on a gross basis. However, for calendar year 1967, those payers who, prior to February 29, 1968, establish to the satisfaction of their district directors that such reporting would impose an unreasonable hardship in converting their accounting systems rapidly enough to provide gross payment information, will be permitted to report royalty payments on a net basis if these payments are clearly identified on the Form 1099 as representing net payments.

(Also Part I, Sections 301, 316, 333, 6042; 26 CFR 1.301–1, 1.316–1, 1.333–1, 1.6042–2.) Rev. Proc. 67–12 [2]

Modification of guidelines relating to the determination of the taxable status of distributions by corporations and the information to be furnished in support thereof.

Revenue Procedure 65–10, C.B. 1965–1, 738, modified.

Revenue Procedure 65–10, C.B. 1965–1, 738, provides instructions and guidelines relating to (1) the determination of the taxable status of corporate distributions to stockholders, and (2) the data to be furnished to the Internal Revenue Service with the lower portion of the corporation's Form 1096, U.S. Annual Information Return, in support of the corporate determination of the earnings and profits upon which the taxability of distributions depends.

The lower portion of form 1096 for 1966 is to be filed only by those corporations which deem their ordinary distributions to shareholders not to be wholly taxable as dividends or by those corporations which made liquidating distributions within 1 calendar month under the provisions of section 333 of the Internal Revenue Code of 1954.

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[1] Also released as Technical Information Release 886, dated Feb. 23, 1967.
[2] Also released as Technical Information Release 887, dated Feb. 24, 1967.

This lower portion of form 1096 is to be filed with the Director, Income Tax Division, T:I:C:1:E&P, Internal Revenue Service, Washington, D.C. 20224.

In outlining the data needed to enable the Service to test the accuracy of the corporation's determinations, section 6.02 of Revenue Procedure 65–10 provides for the submission of a computation of the estimated earnings and profits of the current year when the determination is made before the corporation's Federal income tax return (form 1120) has been prepared. As a modification of that provision, a corporation which has not filed its related income tax return by the due date for form 1096 should (1) complete and file the lower portion of form 1096, showing the taxable status of distributions as reported to shareholders, and (2) attach a request for an extension of time for filing the computation until the time the related income tax return is filed. Such computation of current-year earnings and profits should be based on the return as filed and the return's schedule L should be used in the detailed reconciliation of ending book-basis balance sheet and surplus with the ending tax-basis balance sheet and earnings and profits.

Revenue Procedure 65–10 is hereby modified to incorporate the procedures prescribed above.

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26 CFR 601.201: Rulings and determination letters. — Rev. Proc. 67–13 [1]

Revenue Procedure 66–34, C.B. 1966–2, 1232, sets forth operating rules that must be satisfied before a ruling will be issued in certain types of transactions. Section 3.3 thereof is amplified to read as follows:

In reorganizations under sections 368(a)(1)(A), 368(a)(1)(B) and 368(a)(1)(C) of the Internal Revenue Code of 1954 where the requisite stock or property has been acquired, it is not necessary that all of the stock of the acquiring corporation or a corporation in "control" thereof, which is to be issued in exchange therefor, be issued immediately provided (1) that all of the stock will be issued within five years from the date of the transfer of assets in the case of reorganizations under sections 368(a)(1)(A) and 368(a)(1)(C) of the Code, or within five years from the date of the initial distribution in the case of reorganizations under section 368(a)(1)(B) of the Code; (2) there is a valid business reason for not issuing all of the stock immediately, such as the difficulty in determining the value of one or both of the corporations involved in the reorganization; (3) the maximum number of shares which may be issued in the exchange is stated; (4) at least fifty percent of the maximum number of shares of each class of stock which may be issued is issued in the initial distribution; (5) the agreement evidencing the right to receive stock in the future prohibits assignment (except by operation of law) or, in the alternative, if the agreement does not prohibit assignments, the right must not be evidenced by negotiable certificates of any kind and must not be readily marketable; and (6) such right can give rise to the receipt of only

[1] Also released as Technical Information Release 888, dated Feb. 27, 1967.

additional stock of the acquiring corporation or a corporation in "control" thereof, as the case may be. Stock issued as compensation royalties or any other consideration other than in exchange for stock or assets will not be considered to have been received in exchange.

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26 CFR 601.201: Rulings and determination letters.
(Also Part I, Sections 61, 301; 1.61–9, 1.301–1.)

Rev. Proc. 67–14

Conditions under which the Internal Revenue Service will issue rulings on waiver of dividends transactions where a family relationship exists between the waiving and remaining stockholders.

SECTION 1. PURPOSE.

The purpose of this Revenue Procedure is to specify the conditions which must be present before the Internal Revenue Service will consider issuing a ruling on a proposed waiver of dividends transaction.

SEC. 2. BACKGROUND.

The Service has published two Revenue Rulings involving a waiver by a majority stockholder of his right to future undeclared dividends.

.01 Revenue Ruling 45, C.B. 1953–1, 178, described a fact situation under which no family or direct business relationship existed between the majority and minority stockholders, and the waiver was executed for a valid business purpose. The Revenue Ruling concluded that any dividend payments to the minority stockholders would not result in income to the waiving stockholder.

.02 On the other hand, Revenue Ruling 56–431, C.B. 1956–2, 171, involved a waiver by a majority stockholder whose relatives owned 25 percent of the stock of the corporation. Because of the existence of the significant family interest, the alleged business purpose was considered incidental and the waiver was considered as having been executed primarily for the benefit of the related stockholders. The Revenue Ruling concluded that the waiving stockholder would be taxed on the increased distribution to the related stockholders resulting from the waiver.

.03 Revenue Ruling 65–256, C.B. 1965–2, 85, although not involving an explicit waiver of dividends, did involve a merger under the terms of which the majority stockholder of one of the corporations agreed to accept a separate class of stock in the successor corporation subject to certain dividend limitations. In that ruling, members of the majority stockholder's family owned only 0.06 percent of the total capital stock of the surviving corporation and there were bona fide business reasons for the majority stockholder's acceptance of a class of stock with dividend restrictions. The ruling concluded that the majority stockholder would not be in constructive receipt of income when dividends are paid on a second class of stock.

SEC. 3. REQUESTS FOR RULINGS.

Based upon the Reveune Rulings described above, the Service will consider a request for a ruling on a proposed waiver of dividends transaction under the following conditions:

.01 A bonafide business reason must exist for the proposed waiver of dividends.

.02 The relatives of the stockholder proposing to waive his right to future dividends must not be in a position to receive more than 20 percent of the total dividends distributed to the nonwaiving shareholders. For this purpose the relatives of a waiving stockholder include his brother and sister (whether by the whole or half blood), spouse, ancestors, and lineal descendants, the spouses of his brothers and sisters (whether by the whole or half blood) and the spouses of his lineal descendants.

.03 A ruling issued on a proposed waiver of dividends transaction will clearly indicate that the ruling will no longer be applicable if any change in the stock ownership during the waiver period enables nonwaiving relatives to receive more than 20 percent of a dividend, unless the change occurs because of death.

.04 A ruling issued on a proposed waiver of dividends transaction will not be effective for a period longer than three years from the date of the ruling.

.05 A request for a ruling on a proposed waiver of dividends transaction must be submitted to the National Office in accordance with Revenue Procedure 67-1, page 544, this Bulletin.

(Also Part I, Section 6323.) Rev. Proc. 67-15 [1]

In Cook County, Ill., there are two offices designated for filing notices of Federal tax lien in the case of real property. Because this requirement does not meet the provisions of section 6323(f)(1)(A)(i) of the Internal Revenue Code of 1954, as added by the Federal Tax Lien Act of 1966, the Internal Revenue Service will file notices of Federal tax lien with respect to such real property with the clerk of the U.S. District Court, Northern Judicial District, Eastern Division, Illinois.

It has been brought to the attention of the Internal Revenue Service that the provisions of section 66 of chapter 82 of the Illinois Revised Statutes (1965) provide that notices of Federal tax lien with respect to real property are to be filed in the office of the recorder of deeds of the county in which the real property is located. However, if the real property is registered under the Torrens system of title registration, the notice of Federal tax lien is to be filed with the registrar of titles rather than the recorder of deeds. Accordingly, where the Torrens system is adopted by a county in Illinois, there are two offices designated for filing notices of Federal tax lien in the case of real property because one office is designated for Torrens real property and another office is designated for non-Torrens real property.

Cook County is the only county in Illinois to adopt the Torrens system of title registration.

[1] Based on Technical Information Release 881, dated Jan. 30, 1967.

Section 6323(f)(1)(A)(i) of the Internal Revenue Code of 1954, as added by the Federal Tax Lien Act of 1966, Public Law 89-719, C.B. 1966-2, 623, provides that in the case of real property, the Service shall file a notice of Federal tax lien in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated.

Because the requirements of section 6323(f)(1)(A)(i) of the Code have not been met with respect to real property located in Cook County, Ill., the Service will file notices of Federal tax lien with respect to such real property with the clerk of the U.S. District Court, Northern Judicial District, Eastern Division, Illinois, in accordance with section 6323(f)(1)(B) of the Code. The Service considers the filing with the U.S. District Court in this case as the correct place for filing for determining the rights of the United States with respect to purchasers and applicable secured creditors. However, solely as a matter of convenience, and not as a matter of legal effectiveness, for those who may have occasion to search for notices of Federal tax lien, the Service will also attempt to file notices of Federal tax lien with the Recorder of Deeds, Cook County, Ill. Inasmuch as the U.S. District Court is the proper place for filing these tax liens, the records of the Recorder of Deeds for Cook County should not be relied upon as constituting the records of Federal tax liens against real property in Cook County.

The Service will continue to file notices of Federal tax lien with respect to the personal property of taxpayers residing in Cook County, Ill., with the Recorder of Deeds, Cook County, Ill.

(Also Part I, Section 543.) Rev. Proc. 67-16 [1]

Procedure for electing to apply the amendments made by subsections (a) and (b) of section 206 of the Act of November 13, 1966 (Public Law 89-809, 80 Stat. 1578), relating to treatment of certain rents derived from manufactured property for personal holding company tax purposes, to taxable years beginning on or before November 13, 1966, and ending after December 31, 1965.

SECTION 1. PURPOSE.

The purpose of this Revenue Procedure is to provide a procedure whereby taxpayers may elect to apply the amendments made by a section 206 of the Act of November 13, 1966 (Public Law 89-809, 80 Stat. 1578) C.B. 1966-2, 656, to taxable years beginning on or before November 13, 1966, and ending after December 31, 1965, or revoke such an election previously made.

SEC. 2. BACKGROUND.

Under section 543(a) of the Internal Revenue Code of 1954, as amended, the term "personal holding company income" includes the adjusted income from rents (unless the adjusted income from rents from all sources constitutes 50 percent or more of the adjusted ordinary gross income and unless the sum of the dividends paid, the dividends considered as paid, and the consent dividends, during the year equals

[1] Also released as Technical Information Release 890, dated March 9, 1967.

or exceeds the amount by which the other personal holding company income exceeds 10 percent of the ordinary gross income). Section 543(b)(3) of the Code (as amended by section 206(a) of Public Law 89–809) provides that for purposes of computing "adjusted income from rents", the term "rents" does not include compensation, however designated, for the use of, or the right to use, any tangible personal property manufactured or produced by the taxpayer, if during the taxable year the taxpayer is engaged in substantial manufacturing or production of tangible personal property of the same type. Section 206(b) of the Public Law contain certain technical amendments to section 543 (a)(2) and (b)(2). Section 206(c) of the Public Law provides that a taxpayer may elect to have the amendments made by section 206 (a) and (b) apply to taxable years beginning on or before November 13, 1966, and ending after December 31, 1965. An election made pursuant to the provisions of section 206(c) applies to all taxable years beginning on or before November 13, 1966, and ending after December 31, 1965.

SEC. 3. ELECTION.

.01 *Form and Content.* The election authorized by section 206(c) shall be made in a statement signed by an officer of the corporation who is authorized to sign a return of the corporation with respect to income. The statement shall show the taxpayer's name, address, and employer identification number and shall state that the taxpayer elects to apply the amendments made by section 206 (a) and (b) of the Act of November 13, 1966 (Public Law 89–809, 80 Stat. 1578) to taxable years beginning on or before November 13, 1966, and ending after December 31, 1965.

.02 *Period in which election must be made.* An election applicable with respect to only one taxable year may be made at any time before the expiration of the period for making a claim for credit or refund of Federal income tax for such taxable year. An election applicable with respect to more than one taxable year may be made at any time before the expiration of the period for making a claim for credit or refund of Federal income tax for the earliest such taxable year.

.03 *Place where statement of election shall be filed.* In the case of an election applicable with respect to only one taxable year, the statement of election shall be filed with the office of the Internal Revenue Service where the taxpayer's Federal income tax return for such year was, or will be, filed. In the case of an election applicable with respect to more than one taxable year, the statement of election shall be filed with the office of the Internal Revenue Service where the taxpayer's Federal income tax return for the earliest such taxable year was, or will be, filed except that the statement of election may be attached to the taxpayer's Federal income tax return or a claim for credit or refund with respect to an overpayment of the tax imposed by section 541 shown on a previously filed return. However, in any event, the statement must be filed prior to the expiration of the period referred to in .02 of this section which is applicable with respect to the taxpayer. Where the statement of election has been filed prior to the date the taxpayer files its Federal income tax return for a taxable year for which the election is effective, a copy of such statement (clearly identified as a copy) shall be attached to such return.

SEC. 4. REVOCATION OF ELECTION.

A revocation of an election previously made under the procedure described in section 3 may be made by the taxpayer by filing with the office of the Internal Revenue Service where the statement of election was filed a statement signed in the same manner as a return of a corporation with respect to income. The statement shall show the taxpayer's name, address, and employer identification number and the taxable year or years to which such election was applicable and shall state that the taxpayer revokes the election previously made. In addition, if, at the time the statement of revocation is filed, the statutory period for assessment of a deficiency for a taxable year for which the election was made will expire within one year, then the revocation is not effective unless there is included in or attached to the statement of revocation a written consent that the statutory period for assessment of any deficiency (to the extent that such deficiency is attributable to the revocation of the election) shall not expire before the expiration of one year after the date that the statement of revocation is filed. The revocation must be made prior to the expiration of the period described in section 3.02 of this Procedure in which the taxpayer could make an election. In the case of an election applicable with respect to more than one taxable year, the revocation of such election applies to all taxable years beginning on or before November 13, 1966, and ending after December 31, 1965.

(Also Part IV, T.D. 6898, C.B. 1966–2, 567; 26 CFR 507.21.)
(Also Part I, Section 1441; 1.1441–2.)

Rev. Proc. 67–17 [1]

Procedures for withholding of tax from income subject to the United States-United Kingdom Income Tax Convention, as amended by the Protocol of March 17, 1966.

SECTION 1. PURPOSE.

The purpose of this Revenue Procedure is to prescribe procedures to be followed by United States withholding agents for the withholding of tax from income subject to the United States-United Kingdom Income Tax Convention, as amended by the Protocol of March 17, 1966 (hereinafter referred to as the convention) C.B. 1966–2, 582. The procedures prescribed herein supplement the withholding regulations under the convention (26 CFR 507.21–507.33) as published in T.D. 6898, C.B. 1966–2, 567.

SEC. 2. ADDITIONAL WITHHOLDING OF UNITED KINGDOM TAX.

Article II of the convention provides, in effect, that any reduction in the rate of, or exemption from, United Kingdom withholding tax provided by the convention is available only to a resident of the United States. Article XIXA provides, in effect, that the United States will endeavor to collect on behalf of the United Kingdom such amounts as may be necessary to insure that the relief granted by the convention will not enure to the benefit of persons not entitled to such relief.

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[1] Also released as Technical Information Release 891, dated Mar. 15, 1967.

In accordance with article XIXA of the convention, section 507.23 (b) of the new withholding regulations imposes certain responsibilities on any United States withholding agent (including a nominee, representative, fiduciary, or partnership) receiving income from sources within the United Kingdom on behalf of a person who is not a resident of the United States (whether or not such person is a citizen of the United States). If, on or after April 6, 1966, such income has been subject to a reduced rate of, or exempt from, withholding of United Kingdom tax, the U.S. withholding agent is required to withhold an additional amount of United Kingdom tax sufficient, when added to any tax withheld in the United Kingdom, to equal the tax which would have been withheld had the convention not been in effect (41.25 percent as of the date of publication of T.D. 6898).

These amounts of additional United Kingdom tax may be:

(1) Deposited in United States dollars with the Director, Office of International Operations, Internal Revenue Service, Washington, D.C. 20225, on or before March 15 of the year following the year in which the withholding occurs, accompanied by such forms as the Commissioner of Internal Revenue may prescribe, or

(2) Pursuant to an agreement between the United States withholding agent and the United Kingdom Department of Inland Revenue such amounts may be remitted directly to the United Kingdom on a quarterly basis.

In the event that direct remittance to the United Kingdom is selected, a statement setting forth the fact that an agreement exists and the amount of tax remitted to the Inland Revenue must be filed with the Office of International Operations, Internal Revenue Service, Washington, D.C. 20225, for each quarter in which a remittance is made.

Form 4198–UK has been designed for the use of U.S. withholding agents remitting the additional tax to the Director of International Operations.

In cases in which additional United Kingdom tax has been erroneously withheld, the excess amounts, if still in the possession of the withholding agent, may be released to the taxpayer upon presentation of evidence of U.S. residence. In the event the tax has been remitted to the Office of International Operations or the United Kingdom Department of Inland Revenue, the taxpayer should file his claim for refund with the Department of Inland Revenue.

SEC. 3. WITHHOLDING OF UNITED STATES TAX.

(a) *Exemptions from United States tax of interest or royalties.* This paragraph pertains to payment of interest or royalties (other than natural resources royalties) made to a resident of the United Kingdom in a taxable year of the recipient beginning after December 31, 1965.

(1) *Coupon bond interest.*

(i) *Payments made on or before April 1, 1967.*

Form 1001–UK–2 or Form 1001–UK may be used to secure exemption from withholding.

(ii) *Payments made after April 1, 1967.*

Exemption may be secured only by filing Form 1001–UK–2.

(2) *Interest (other than coupon bond interest) or royalties (other than natural resources royalties).*

(i) *Payment made on or before April 1, 1967.*

Exemption may be secured by filing Form 1001A–UK, or by filing a letter of notification (as explained in (ii) of this subparagraph).

(ii) *Payments made after April 1, 1967.*

Exemption from withholding on such interest or royalties may be secured only by filing a letter of notification with the withholding agent containing the information required by sections 507.24 and 507.25 of the new withholding regulations. A new letter of notification must be filed for each successive 3-calendar-year period during which the income is paid.

(b) *Exemption from U.S. tax of private pensions or life annuities.*

This paragraph pertains to payment of pensions (other than pensions to which article X of the convention applies) or life annuities received by a resident of the United Kingdom in a taxable year of the recipient beginning after December 31, 1965.

(1) *Payments on or before April 1, 1967.*

A letter of notification is required to secure exemption. Such letter may conform to the requirements of section 507.6 or section 507.26 of the withholding regulations.

(2) *Payments after April 1, 1967.*

To secure exemption, a letter of notification must be filed which contains the information required by section 507.26(b)(1) of the new regulations.

(c) *Applicability of section.*

(1) *United Kingdom residents.*

The forms, letters of notification, and rulings described in this section are applicable only to items of income paid to residents of the United Kingdom who are not citizens of the United States or U.S. corporations and who are not subject to tax in the United Kingdom on a remittance basis. See article II (1) (g) and (4) of the convention.

(2) *Residents of territories and former territories.*

Sections 507.501–507.511 of the withholding regulations under the convention as extended to the United Kingdom territories (T.D. 6437, C.B. 1960–1, 76) continue to be applicable to such territories and former territories. Modified Form 1001–UK and letters of notification shall continue to be used to secure exemption from withholding on payments of coupon bond interest and noncoupon bond interest, respectively, to residents of the former United Kingdom territories of the Federation of Rhodesia and Nyasaland, now known as Zambia, Rhodesia, and Malawi. Interest payments (coupon and noncoupon) from U.S. sources to residents of other present and former United Kingdom territories and colonies to which the convention has been extended remain subject to the U.S. statutory withholding rate of 30 percent.

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26 CFR 601.315: Claims. Rev. Proc. 67–18
(Also Part III–B, Section 5705; 270.283, 270.311.)

Procedure to be followed in executing Form 3069, Schedule of Cigars, Cigarettes, or Cigarette Papers or Tubes Withdrawn From the Market, to evidence cigars and cigarettes withdrawn from the market by the manufacturer.

Revenue Procedure 66–24, C.B. 1966–1, 652, superseded.

SECTION 1. PURPOSE.

Revenue Procedure 66–24, C.B. 1966–1, 652, established procedures to be followed by a manufacturer of tobacco products (or by his authorized representative) in executing Form 3069, Schedule of Cigars, Cigarettes, or Cigarette Papers or Tubes Withdrawn from the Market. In order to make such procedures applicable to Form 3069 without regard to revision date, they are restated herein to omit reference, in sections 3 and 4, to specific item numbers appearing on the form.

SEC. 2. BACKGROUND.

.01 Damaged cigars and cigarettes were destroyed at the premises of a wholesale tobacco dealer under the supervision of an alcohol and tobacco tax inspector. The dealer prepared Form 3069 with the intention of transmitting the schedule to the manufacturer who would file claim for credit or refund of tax under section 5705 of the Internal Revenue Code of 1954. However, the manufacturer was not aware of the destruction of such products. The matter did not come to his attention until after the destruction of the cigars and cigarettes. Therefore, the manufacturer could not properly claim that he had withdrawn them from the market. Accordingly, a claim for credit or refund of tax on such products is not allowable.

.02 One condition to the credit or refund of tax on domestic cigars and cigarettes under section 5705 of the Code is the withdrawal of the products from the market *by the manufacturer* who paid the tax. However, the law and regulations do not preclude the allowance of a claim where the cigars and cigarettes are destroyed or reduced to tobacco at a location other than the factory premises if the manufacturer takes possession or acquires ownership of the cigars and cigarettes prior to destruction or reduction to tobacco.

SEC. 3. SIGNATURE REQUIRED ON FORM 3069.

The action of the manufacturer in withdrawing cigars and cigarettes from the market must be evidenced by the signature of the manufacturer (or by the signature of the manufacturer's authorized representative) on the schedule, Form 3069.

SEC. 4. EXECUTION OF SCHEDULE FOR THE MANUFACTURER BY HIS REPRESENTATIVE.

Whenever a manufacturer withdraws cigars and cigarettes from the market and the schedule, Form 3069, is to be executed in his behalf by an employee such as a district manager, distribution manager, etc., not otherwise authorized to sign documents filed with the Assistant Regional Commissioner, Alcohol and Tobacco Tax, the manufacturer is responsible for timely filing Form 1534, Power of Attorney, as provided for in 26 CFR 270.68 authorizing such person to so act. It is the responsibility of the manufacturer to have on file with the Assistant Regional Commissioner, Alcohol and Tobacco Tax, for the region where the claim will be filed a Form 1534 prior to the execution of any schedule for the manufacturer by the person named in the power of attorney. Execution of Form 3069 by a person not authorized to do so may result in the disallowance of the claim. After cigars and cigarettes have been disposed of and a claim for credit or refund filed, the

determination will be made in alcohol and tobacco tax offices as to whether the person who executed Form 3069 was duly authorized to act in behalf of the manufacturer. Manufacturers should fully instruct their representatives in the proper preparation of Form 3069.

SEC. 5. INQUIRIES.

Inquiries in regard to this Revenue Procedure should refer to its number and be addressed to the office of the appropriate Assistant Regional Commissioner, Alcohol and Tobacco Tax.

SEC. 6. EFFECT ON OTHER DOCUMENTS.

Revenue Procedure 66–24, C.B. 1966–1, 652, is hereby superseded.

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26 CFR 1.6041–1: Return of information as to payments of $600 or more.
(Also Part I, Sections 6047, 6052; 1.6047–1, 1.6052–1.)

Rev. Proc. 67–19[1]

The Internal Revenue Service sets forth clarifying instructions as to the proper Form (1099 or W–2) to be used for various types of payments.

The Internal Revenue Service has been asked to clarify when "other compensation" should be reported on Form 1099, U.S. Information Return, and when it should be reported on Form W–2, Wage and Tax Statement.

Reporting of certain "other compensation" must be made on Form W–2 for the calendar year 1966 when the recipient of the compensation was an employee of the payer.

Payments to independent contractors of fees, commissions, and other compensation related to nonemployee services should be reported on Form 1099 in column 7.

Where certain employee pension, profit-sharing, or stock bonus plans are administered by a trust, which is not the employer making payment to an employee, the trustees should report applicable amounts distributed to participants in column 6 of Form 1099. For example, the amount of premium paid by a trust for current life insurance protection under a life insurance contract purchased pursuant to a qualified pension or profit-sharing plan must be reported in column 6 on Form 1099, together with any other amount distributed under the plan to an employee (to the extent it is includible in his gross income) if the aggregate amount is $600 or more during the calendar year. This reporting requirement is also applicable to distributions made by insurance companies pursuant to qualified annuity plans. However, the premiums applied by the employer for current life insurance protection under such non-trusteed qualified annuity plans must be reported by the employer as "other compensation" on Form W–2.

Distributions[2] on behalf of an "owner-employee" under a self-employed retirement plan aggregating $10 or more during the calendar year must be reported on Form 1099 in column 7.

The cost of group-term life insurance on the life of an employee carried directly or indirectly by his employer is reported as "other

[1] Based on Technical Information Release 882, dated Jan. 30, 1967.
[2] In TIR 882 the word "contributions" should have been "distributions."

compensation" on Form W–2 to the extent that it is includible in the employee's gross income under section 79(a) of the Internal Revenue Code of 1954. See section 6052 of the Code.

Forms 1099 which have been prepared will be accepted by the Service if the amounts reportable in columns 6 and 7 are entered in either column for the calendar year 1966.

Where Forms W–2 have been prepared for amounts reportable in column 6 or 7 of Form 1099, the Service has no objection to the use of Form W–2 for the calendar year 1966, provided the amounts are reported as "other compensation" and the aggregation rules are applied.

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26 CFR 601.301: Imposition of taxes, qualification requirements, and regulations. (Also Part III–A, Section 5552; 245.30.) — Rev. Proc. 67–20

The Potter beer monitoring system, Model SY–81–600 has been approved for use in breweries.

Revenue Procedure 66–14, C.B. 1966–1, 628, superseded.

SECTION 1. PURPOSE.

The purpose of this Revenue Procedure is to announce the approval of beer monitoring system, Model SY–81–600, manufactured by the Potter Aeronautical Corp., Union, N.J., for use in breweries in conjunction with approved Potter Flow Meters.

SEC. 2. BACKGROUND AND APPROVAL OF MONITORING SYSTEM.

The Potter Flow Meter equipped with beer monitoring system, Model SY–81–4000, was approved on August 29, 1958. This system incorporated a solenoid valve to prevent slow flow which the counter would not register. The new system, Model SY–81–600, eliminates the necessity for a solenoid valve or other slow-flow device by utilizing a 30-hour auxiliary power supply and an independent power failure and flow rate recorder. This device is maintained behind a security door and provides on a strip tape a permanent 3-month record of operations. From such strip tape, a determination can be made of the date and extent of a power failure and, also, within an accuracy of 5 percent of a rate of flow which falls below the established system minimum.

SEC. 3. METERS AND MONITORING SYSTEMS PREVIOUSLY APPROVED.

The following beer meters and monitoring systems have been previously approved for metering beer in breweries under 26 CFR Part 245.

.01 Figure 486 Xacto Meter, and Figure 786 Xacto Meter, manufactured by Bowser, Inc., Fort Wayne, Ind.

.02 Pittsburgh Equitable Meter, manufactured by Rockwell Manufacturing Co., Pittsburgh, Pa.

.03 Potter Flow Meter, equipped with Maximum Security System SY–81–4000, manufactured by the Potter Aeronautical Corp., Union, N.J. (Rev. Proc. 58–22, C.B. 1958–2, 1140, as modified by Rev. Procs. 61–12, C.B. 1961–1, 899, and 65–7, C.B. 1965–1, 734.)

.04 2BL and 3BL Rotocycle Beer Meters, manufactured by Rockwell Manufacturing Co., Pittsburgh, Pa., equipped with either registers (approved for piston-type meters or the Brodie Register, Series 22265. (Rev. Proc. 60–30, C.B. 1960–2, 1008, as modified by Rev. Proc. 65–14, C.B. 1965–1, 825.)

.05 Tamper-Proof Turbine Meter and Totalizer System, manufactured by the Fischer & Porter Co., Warminster, Pa. (Rev. Proc. 64–2, C.B. 1964–1, (Part 1), 641.)

.06 A. O. Smith Model SY–81 meter, equipped with Model 1537 Security System. (Rev. Proc. 65–30, C.B. 1965–2, 1024.)

.07 Fischer & Porter Co. Magnetic Meter Monitoring System SE #5264, manufactured by the Fischer & Porter Co., Warminster, Pa. (Rev. Proc. 66–9, C.B. 1966–1, 621.)

.08 Fischer & Porter Co. Magnetic Meter Monitoring System SE #5281, manufactured by the Fischer & Porter Co., Warminster, Pa. (Rev. Proc. 66–14, C.B. 1966–1, 628.)

SEC. 4. CONTROLS AND POWER FAILURE AND FLOW RATE RECORDER.

On all electronic metering systems, the panels containing the totalizers, the means of setting adjustment factors, and the power failure and flow rate recorders are to be kept under separate lock or seal under Government control. The brewer will control all other operating controls.

SEC. 5. INSTALLATION AND TEST OF METERS.

For testing brewers' meters, the Alcohol and Tobacco Tax Division ordinarily has available only master meters having 2-inch flanged connections. Therefore, brewery meters must be so installed as to be readily tested by such 2-inch meters. Also, where brewery meters normally operate in excess of the maximum rate of flow for Government master meters—usually 90 to 100 gallons per minute—provisions must be made to test such brewery meters at a lesser rate of flow.

SEC. 6. EFFECT ON OTHER DOCUMENTS.

Revenue Procedure 66–14, C.B. 1966–1, 628, is hereby superseded.

SEC. 7. INQUIRIES.

Inquiries regarding this Revenue Procedure should refer to its number and be addressed to the office of the appropriate Assistant Regional Commissioner, Alcohol and Tobacco Tax.

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26 CFR 601.602: Forms and instructions. Rev. Proc. 67–21
(Also Part I, Section 6041; 1.6041–1.)

Substitutes for Form 1099, U.S. Information Return may be used in lieu of the official form, subject, however, to prescribed conditions. Revenue Procedure 66–16, C.B. 1966–1,630, superseded.

SECTION 1. PURPOSE.

The purpose of this Revenue Procedure is to state the requirements of the Internal Revenue Service relating to substitutes for Form 1099, U.S. Information Return.

SEC. 2. SUBSTITUTE FORMS.

Substitutes for Form 1099 which adhere to the specifications contained in this procedure may be privately printed without the prior approval of the Internal Revenue Service. Proposed substitutes not meeting these specifications should be submitted to the Service for approval. Requests for approval should contain an explanation of the need for the specific deviations sought.

SEC. 3. PAYMENTS.

All of the payment blocks contained on the official form need not be shown on the substitute form. Only the payments actually needed by the user are necessary on the substitute. Payment blocks in addition to those on the official form may be added to substitute forms in accordance with section 4.02. The arrangement of payment blocks on substitute forms is covered in section 4.05.

SEC. 4. FORMAT SPECIFICATIONS.

.01 For purpose of format specifications, the Form 1099 is divided into two sections: a specified format section and a variable format section. The specified format section includes all payment blocks, payee name, address, and taxpayer identifying number, the format identifier (sec. 4.04(j)) and payment identifier (sec. 4.05 (b) and (d)), the format guidelines, and the area within three-eighths inch of the left edge of the document and one-eighth inch to the right of the format or payment identifier. The variable format section consists of the remainder of the document, including the reporting year and payer name, address, and identification number.

.02 Additional data blocks (including additional payment blocks) may be added to substitute Forms 1099, at the option of the payer, or in accordance with State requirements, but these additional data blocks must be contained in the variable format section except as noted in section 4.04(c) below.

.03 *Variable format section layout.*—The arrangement of data in the variable format section may be varied on substitute forms to fit the requirements of State law or to accommodate the needs of the data processing system used by the payer, except that the payment year must always be in the upper right corner of the form.

.04 *Specified format section layout (general).*

(a) The specified format section, including contents, general arrangement and typography, must conform to one of the formats illustrated in Exhibit B, subject to section 4.05. Formats 1, 2, 3, 4, and 5 are preferred; however, formats 6, 7, 8, and 9 are also acceptable.

(b) If format 8 or 9 is used, and the location of the taxpayer identifying number is consistent, a 3-point vertical rule (0.045 inch) should be preprinted immediately to the left of the number. If format 8 or 9 is used and the location of the taxpayer identifying number is not consistent for all returns, due to the nature of the mechanical equipment used by the payer, this number need not be contained in a special box, nor identified. Preferably, it should be printed to the right of and on the same line as the payee name (or first line of the payee name if there is more than one) but it can also be printed one or two lines above or below the first line of payee name.

(c) Special precaution must be taken if the printing of an account designation number in the specified format section is unavoidable. In this case such number must not be on the same line as or on any line above the taxpayer identifying number, nor on the same line as payments. When possible, the printing of such numbers in the specified format section should be avoided.

(d) If the taxpayer identifying number is a social security number, it must be printed in the following pattern: 000–00–0000. If it is an employer identification number, it must be printed as 00–0000000. Spaces may be used in lieu of hyphens.

(e) When there are multiple payees with different surnames, the identifying number shown must be linked to the surname to which it applies. It is preferred that such linkage be in the form of an asterisk preceding the designated surname.

(f) Payee name, street address, and city and State (including ZIP Code) must be on separate lines. City, State, and ZIP Code may be on the same line or on separate lines.

(g) The area within three-eighths inch of the left edge of the document (exclusive of stubs) must not contain any prepunched holes and be free of any printing except for the format identifier and format guidelines appropriate to each permissible alternate format as illustrated in Exhibit B. There must be no intervening data or marks between the left edge of the document and the specified format section. In addition, there must always be a clear space of at least one-eighth inch to the right of and below the format and payment identifiers.

(h) There must be a margin of at least one-fourth inch from the top edge of the document to any printing. Variable format section data may be placed between the top or bottom edge of the document and the specified format section. If not more than four payment blocks are used, the specified format section may occupy the entire left side of the substitute form at the option of the payer.

(i) The overall dimensions of the specified format section and the dimensions of the individual data blocks contained therein may be varied from the dimensions shown in Exhibits A and B. However, the general arrangement of data within the section and the typography may not be altered, except that substitute forms may be limited to the payments actually being reported.

(j) The appropriate format identifier (1, 2, 3, 4, 5, 6, 7, 8, or 9) must be shown in the upper left corner of Copy A, as illustrated in Exhibits A and B, one-fourth inch from the top and left edges. If payment identifiers are used, they should follow the format identifier. See Exhibit C. In addition, the appropriate format guidelines must also be shown on Copy A. The identifiers and guidelines need not be shown on the other copies of the form.

(k) In using any of the formats, care should be taken to prevent disclosure of payment information if a window envelope is used for mailing.

.05 *Specified format section layout (payment blocks and payment identifiers).*

(a) The number of payments reported and the sequence of payments may vary from the number and sequence on the official

form. However, payment blocks must always be on one line, and the wording and position within the block of the captions must conform to the wording and position on the official form. There must never be any nonpayment data between any payment block and the left margin of the document.

(b) In addition to the requirements in section 4.05(a), above, when the number or sequence of payments varies from the official form, or when a taxpayer identifying number is on the same line as the payments, a payment identifier must be printed on the form immediately to the right of the format identifier. The payment identifier consists of appropriate codes shown in section 4.05(d) below. The sequence of digits in the payment identifier must correspond exactly to the sequence of payments on the substitute form starting from the left.

(c) The taxpayer identifying number may be on the same line as the payment amounts. When this is done, format 6 or 7 must be used. In these cases, the number will be treated in the same manner as payment block, and assigned code "0" (numeric zero), as noted in section 4.05(d) below.

(d) The following codes apply when payment identifier numbers are used:

1. Dividends and other distributions on stock.
2. Earnings from savings and loan associations, mutual savings banks, credit unions, etc.
3. Interest.
4. Patronage dividends and certain other distributions by cooperatives.
5. Rents and royalties.
6. Annuities, pensions, and other fixed or determinable income.
7. Foreign items, prizes, awards, etc.
0. Taxpayer Identifying Number (used with format 6 or 7 only). See Exhibit C.

SEC. 5. SPECIFICATIONS.

.01 *Basic form.*—The latest revision of the prescribed Form 1099 should be used as the basis for the privately printed form. A copy of the latest revision of this form may be obtained from any District Director of Internal Revenue.

.02 *Color and quality of paper.*

(a) Paper used for Copy A must be white 100 percent bleached chemical wood, 2½ percent maximum groundwood permissible. No optical brighteners may be added; however, minimal trace amounts will be acceptable. The paper must be: Weight, 30- to 42-pound (basis 17 x 22—1,000) (weight must be inclusive of any coatings or chemical treatments); brightness, 80 percent or more when measured on a brightness meter in accordance with TAPPI specifications T-452; low finish; free of any dirt specks; and uniformly textured. The minimum qualifications are the typical physical characteristics in weight, caliper, stiffness, and tear resistance normally associated with chemical wood bond or writing papers of these weights.

(b) The paper used for other copies must be white, minimum 18-pound (17 x 22—1,000), and of good quality.

.03 *Color and quality of ink.*—All preprinted data and rules on Copy A must be in a black nonreflective ink. A nonreflective ink is one which has 10 percent reflectance or less between the wavelength range of 3,500 and 5,000 Angstroms and 20 percent or less between the wavelength range of 5,000 to 10,000 Angstroms. (These reflectances are referenced to magnesium oxide which is considered 100 percent.)

.04 *Quality of printing.*—Printers must maintain strict quality control during production of substitute Forms 1099. Special care must be taken to insure that the density of ink, as noted in section .03 above, is maintained and that the bar codes are free from picks and voids. Strict observance of printing and trimming tolerances is required.

.05 *Typography.*—Type must be substantially identical in size and shape with corresponding type on the official form. All horizontal rules on the document and all vertical rules outside the specified format section must be 1 point (0.015 inch). All vertical rules within the specified format section and format identifier lines must be 3-point (0.045 inch). When present, mailing guides must be less than one-half point (0.0075 inch). A 0.045-inch vertical rule must precede and follow every payment block, as illustrated in Exhibits A and B, irrespective of the number of payment blocks being reported. The format and payment identifiers must be printed in the 10-point Remington typewriter font as shown in GPO "Specimens of Type Faces." Vertical rules must be parallel to the left edge of the document; horizontal rules, parallel to the top edge.

.06 *Dimensions.*—The official form is 8 inches wide by 3½ inches deep, exclusive of a ½-inch snap-stub on the left side of the form. The substitute forms may vary in width from 7⅜ inches to 8 inches and in depth from 3¼ inches to 3¾ inches, although adherence to the size of the official form is preferred. The snap feature is not required on substitutes. If the substitute forms are in continuous or strip form, they must be burst and stripped to conform to the size specified before they are filed.

.07 *Clear area.*—The back of Copy A must be free of all printing.

.08 *Carbonized forms or "spot carbons."*—Carbonized forms and "spot carbons" are not permissible. Interleaved carbon, if used, should be black and of good quality to preclude smudging.

.09 *The Government Printing Office symbols.*—The Government Printing Office symbols must be omitted.

.10 *Copies B and C.*—Copies B and C are included in the official assembly for the convenience of the payer. Although there is no requirement that privately printed substitute forms include these copies, Copy B will satisfy the requirements of law and regulations concerning the statement of information which is to be furnished the payee and Copy C may be desired by the payer for his records.

SEC. 6. ADDITIONAL INSTRUCTIONS.

.01 *Arrangement of assembly.*—Except as provided in paragraph .02 below, the parts of the assembly shall be arranged, from top to bottom, as follows: Copy A, "For Internal Revenue Service," Copy B, "For Payee," Copy C, "For Payer's Records."

.02 *Additional copies.*—Additional copies may be prepared by payers for States requiring the report. When this is done, one such copy may be inserted between Copies A and B. Forms for delivery to State or local taxing authorities should be clearly labeled to indicate the purpose for which they are intended and should not bear any part of the designation, "Form 1099, U.S. Treasury Department, Internal Revenue Service."

.03 The instructions in the block "To Whom Paid" must be shown on the form.

.04 *Instructions for payers.*

(a) Only originals or ribbon copies may be filed with the Service. Carbon copies are not acceptable.

(b) The Service requests the cooperation of payers in typing or machine printing whenever possible and in providing good quality data entries on the forms; i.e., using black ribbon, inserting data in the middle of blocks, well separated from other printing and guidelines, and taking any other measures that will guarantee a clear, sharp image. However, payers are not expected to purchase typewritiers, machines, or special ribbons to prepare the forms.

(c) Corrected returns Form 1099 must be submitted in accordance with instructions on Exhibit D.

SEC. 7. SUBSTITUTES NOT MEETING ABOVE CONDITIONS.

Proposed substitute forms which do not meet the conditions stated above, and requests for submission of Forms 1099 in the form of tabulating cards or magnetic tape, should be forwarded by letter to the Commissioner of Internal Revenue, Attention: D:S:Pl., 1111 Constitution Avenue NW., Washington, D.C. 20224.

SEC. 8. REPRODUCTION PROOFS.

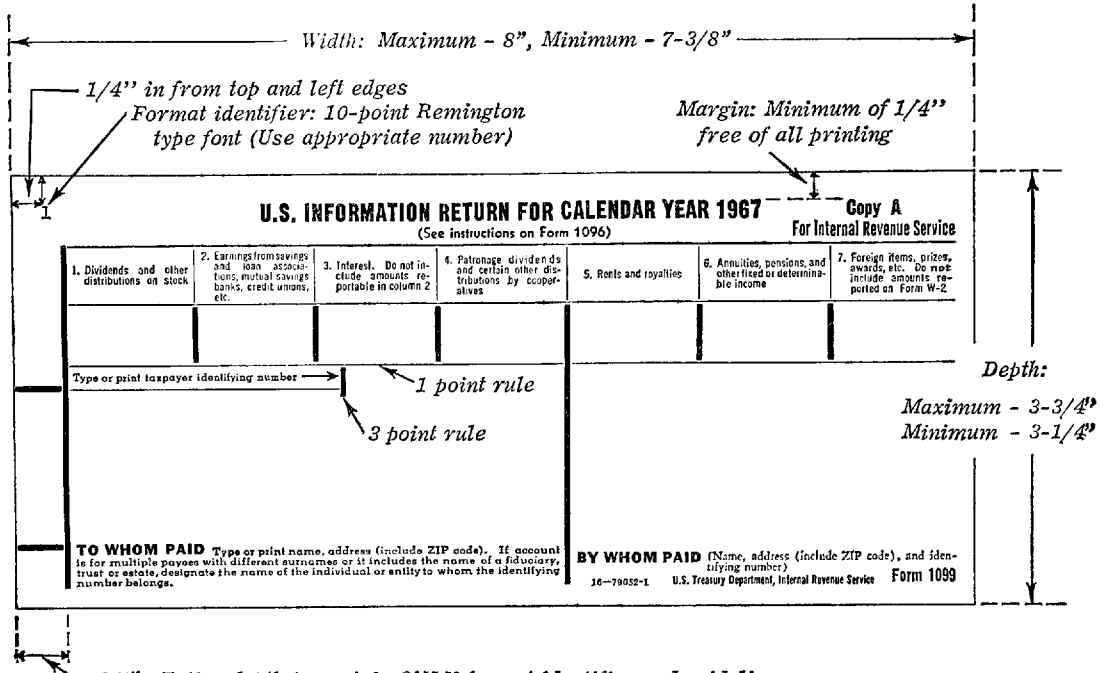
Order blanks for reproduction proofs are mailed annually to requesters of record, and, on request, to other users. Printers and others wishing to obtain reproduction proofs may send their requests to the Commissioner of Internal Revenue, Attention: A:FM:P, 1111 Constitution Avenue NW., Washington, D.C. 20224.

A charge of $0.75 per page will be made for each reproduction proof regardless of page size. Invoices will be mailed after orders have been filled.

SEC. 9. EFFECT ON OTHER DOCUMENTS.

This Revenue Procedure supersedes Revenue Procedure 66–16, C.B. 1966–1,630.

EXHIBIT A



Back of Copy A must be BLANK

EXHIBIT B

1

U.S. INFORMATION RETURN FOR CALENDAR YEAR 1967

(See instructions on Form 1096)

Copy A
For Internal Revenue Service

16—70304-1

1. Dividends and other distributions on stock	2. Earnings from savings and loan associations, mutual savings banks, credit unions, etc.	3. Interest. Do not include amounts reportable in column 2	4. Patronage dividends and certain other distributions by cooperatives	5. Rents and royalties	6. Annuities, pensions, and other fixed or determinable income	7. Foreign items, prizes, awards, etc. Do not include amounts reported on Form W-2

Type or print taxpayer identifying number →

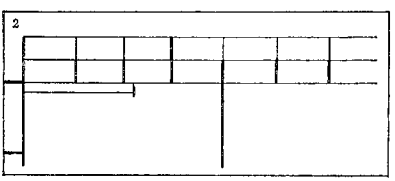
(This format (1) can only be used for substitutes based on the reproduction proof of the official form.)

TO WHOM PAID Type or print name and address (include ZIP code). If account is for multiple payees with different arrangements or it includes the name of a fiduciary, trust, or estate, designate the name of the individual or entity to whom the identifying number belongs.

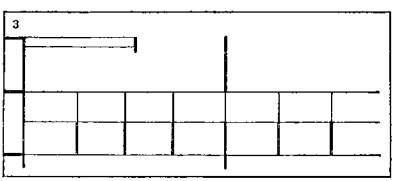
BY WHOM PAID (Name, address (include ZIP code), and identifying number)
U.S. Treasury Department, Internal Revenue Service

Form 1099

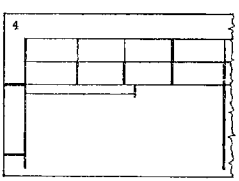
2



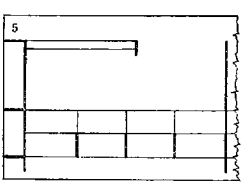
3



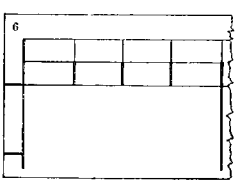
4



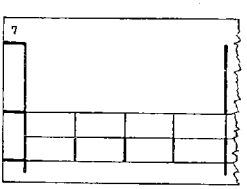
5



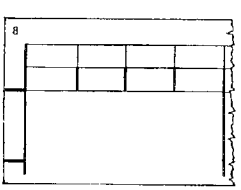
6



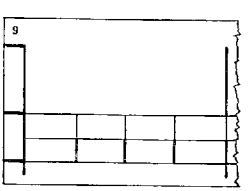
7



8



9

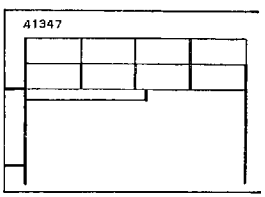


NOTES:

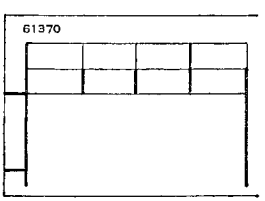
1. Formats 4, 5, 6, 7, 8, and 9 must have payment identifier number(s) following format identifier number. See Note 4 on Exhibit C.
2. When taxpayer identifying number is located in a payment block, format 6 or 7 must be used.
3. Use 10 point Remington Type Font for format and payment identifier numbers.

EXHIBIT C

Illustration of Payment Identifier Numbers When Formats 4, 5, 6, 7, 8 and 9 are Used



Format 4 with payment identifiers:
1. Dividends and other distributions
3. Interest
4. Patronage dividends and certain other distributions by cooperatives
7. Foreign items

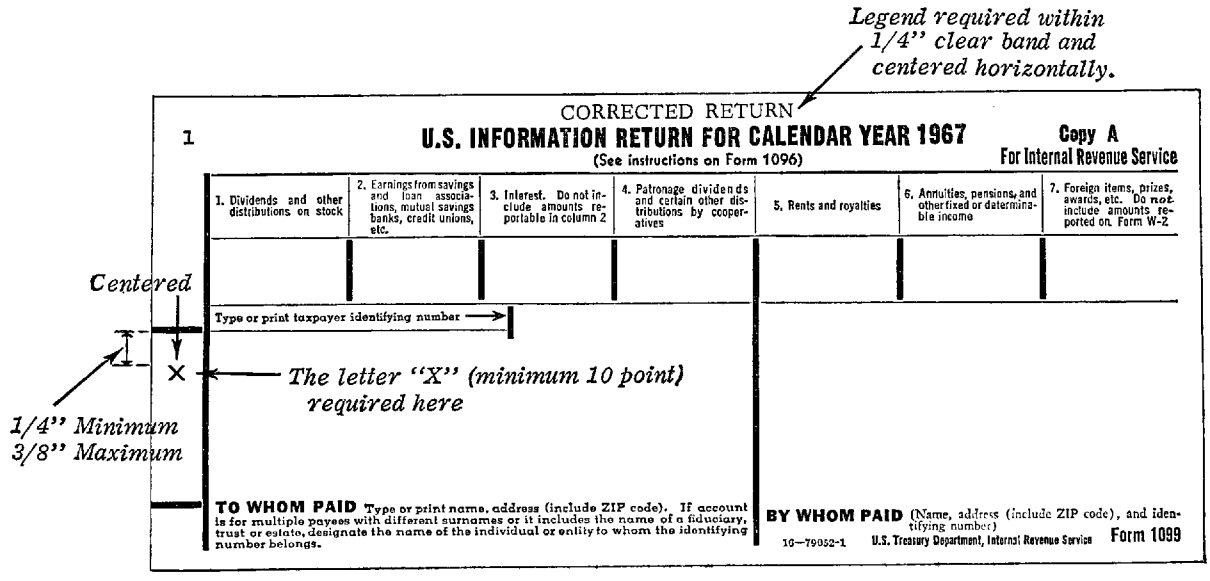


Format 6 with payment identifiers:
1. Dividends and other distributions
3. Interest
7. Foreign items
0. Taxpayer identifying number

NOTES:
1. When taxpayer identifying number is located in a payment block, format 6 or 7 must be used.
2. Use 10 point Remington Type Font for format and payment identifier numbers.
3. Payment blocks must correspond to payment identifier numbers printed. Do not use more payment blocks than payment identifier numbers.
4. If all 7 payment fields are shown and they are in the same sequence as on the official form, payment identifiers need not be shown.

EXHIBIT D

Illustration of additional information required on Form 1099 for amended or corrected returns.



NOTE:
When format 3, 5, 7, or 9 is used the location of the "X" must be centered in the 3/8" clear left margin and 1/4"-3/8" below the middle horizontal 3 point rule.

26 CFR 601.602: Forms and instructions. (Also Part I, Sections 6041, 6042; 1.6041–5, 1.6042–2.)

Rev. Proc. 67–22

Substitutes for Form 1087, Nominee's Information Return, may be used in lieu of the official form, subject, however, to prescribed conditions.

Revenue Procedure 66–17, C.B. 1966–1, 639 superseded.

SECTION 1. PURPOSE.

The purpose of this Revenue Procedure is to state the requirements of the Internal Revenue Service relating to substitutes for Form 1087, Nominee's Information Return.

SEC. 2. SUBSTITUTE FORMS.

Substitutes for Form 1087 which adhere to the specifications contained in this procedure may be privately printed without the prior approval of the Internal Revenue Service. Proposed substitutes not meeting these specifications should be submitted to the Service for approval. Requests for approval should contain an explanation of the need for the specific deviations sought.

SEC. 3. FORMAT SPECIFICATIONS.

.01 For purpose of format specifications, the Form 1087 is divided into two sections: a specified format section and a variable format section. The specified format section includes the payment blocks, name, address, and identifying number of the actual owner or payee, the format identifier (sec. 3.04(j)), the format guidelines, and the area within three-eighths inch of the left edge of the document and one-eighth inch to the right of the format identifier. The variable format section consists of the remainder of the document, including the reporting year and name, address, and identification number of the nominee or record owner.

.02 Additional data blocks (including additional payment blocks) may be added to substitute Forms 1087, at the option of the nominee, or in accordance with State requirements, but these additional data blocks must be contained in the variable format section except as noted in section 3.04(c).

.03 *Variable format section layout.*—The arrangement of data in the variable format section may be varied on substitute forms to fit the requirements of State law or to accommodate the data processing system used by the nominee, except that the payment year must always be on the top line of the form, subject to section 3.04(h) below.

.04 *Specified format section layout.*

(a) The specified format section, including contents, general arrangement, and typography, must conform to one of the formats illustrated in Exhibit B. Formats 1, 2, 3, 4, and 5 are preferred; however, formats 6 and 7 are also acceptable.

(b) If format 6 or 7 is used, and the location of the taxpayer identifying number is consistent, a 3-point vertical rule (0.045 inch) should be preprinted immediately to the left of this number. If format 6 or 7 is used and the location of the taxpayer identifying number is not consistent for all returns, due to the nature of the mechanical equipment used by the nominee, this number need not be contained in a special box, nor identified.

Preferably, it should be printed to the right of and on the same line as the name of the actual owner or payee (or first line of the payee name if there is more than one) but it can also be printed one or two lines above or below the first line of payee name.

(c) Special precaution must be taken if the printing of an account designation number in the specified format section is unavoidable. In this case such number must not be on the same line as, or on any line above, the taxpayer identifying number, nor on the same line as payments. When possible, the printing of such numbers in the specified format section should be avoided.

(d) If the taxpayer identifying number is a social security number, it must be printed in the following pattern: 000–00–0000. If it is an employer identification number, it must be printed as 00–0000000. Spaces may be used in lieu of hyphens.

(e) When there are multiple payees with different surnames, the identifying number shown must be linked to the surname to which it applies. It is preferred that such linkage be in the form of an asterisk preceding the designated surname.

(f) Payee name, street address, and city and State (including ZIP Code) must be on separate lines. City, State, and ZIP Code may be on the same line or on separate lines.

(g) The area within three-eighths inch of the left edge of the document (exclusive of stubs) must not contain any prepunched holes and be free of any printing except for the format identifier and format guidelines appropriate to each permissible alternate format as illustrated in Exhibit B. There must be no intervening data or marks between the left edge of the document and the specified format section. In addition, there must always be a clear space of at least one-eighth inch to the right of and below the format identifier.

(h) There must be a margin of at least one-fourth inch from the top edge of the document to any printing.

(i) The overall dimensions of the specified format section and the dimensions of the individual data blocks contained therein may be varied from the dimensions shown in Exhibits A and B, However, the general arrangement of data within the section and the typography may not be altered.

(j) The appropriate format identifier (1, 2, 3, 4, 5, 6, or 7) must be shown in the upper left corner of Copy A, as illustrated in Exhibits A and B, one-fourth inch from the top and left edges. In addition, the appropriate format guidelines must also be shown on Copy A. The identifier and guidelines need not be shown on the other copies of the form.

(k) In using any of the formats, care should be taken to prevent disclosure of payment information if a window envelope is used for mailing.

SEC. 4. SPECIFICATIONS.

.01 *Basic form.*—The latest revision of the prescribed Form 1087 should be used as the basis for the privately printed form. A copy of the latest revision of this form may be obtained from any District Director of Internal Revenue.

.02 *Color and quality of paper.*

(a) Paper used for Copy A must be white and 100 percent bleached chemical wood, 2½ percent maximum groundwood permissible. No optical brighteners may be added; however, minimal trace amounts will be acceptable. The paper must be: Weight, 30- to 42-pound (basis 17 x 22—1,000) (weight must be inclusive of any coatings or chemical treatments); brightness, 80 percent or more when measured on a brightness meter in accordance with TAPPI specifications T–452; low finish; free of any dirt specks; and uniformly textured. The minimum qualifications are the typical physical characteristics in weight, caliber, stiffness, and tear resistance normally associated with chemical wood bond or writing papers of these weights.

(b) The paper used for other copies must be white, minimum 18-pound (17 x 22—1,000) and of good quality.

.03 *Color and quality of ink.*—All preprinted data and rules on Copy A must be in a black nonreflective ink. A nonreflective ink is one which has 10 percent reflectance or less between the wavelength range of 3,500 and 5,000 Angstroms and 20 percent or less between the wavelength range of 5,000 to 10,000 Angstroms. (These reflectances are referenced to magnesium oxide which is considered 100 percent.)

.04 *Quality of printing.*—Printers must maintain strict quality control during production of substitute Forms 1087. Special care must be taken to insure that the density of ink, as noted in section .03 above, is maintained and that the bar codes are free from picks and voids. Strict observance of printing and trimming tolerances is required.

.05 *Typography.*—Type must be substantially identical in size and shape with corresponding type on the official form. All horizontal rules on the document and all vertical rules outside the specified format section must be 1 point (0.015 inch). All vertical rules within the specified format section and format identifier lines must be 3-point (0.045 inch). When present, mailing guides must be less than one-half point (0.0075 inch). A 0.045-inch vertical rule must precede and follow each payment block, as illustrated in Exhibits A and B. The format identifier must be printed in the 10-point Remington typewriter font as shown in GPO "Specimens of Type Faces." Vertical rules must be parallel to the left edge of the document; horizontal rules, parallel to the top edge.

.06 *Dimensions.*—The official form is 8 inches wide by 3½ inches deep, exclusive of a ½-inch snap-stub on the left side of the form. The substitute forms may vary in width from 7⅜ inches to 8 inches and in depth from 3¼inches to 3¾ inches, although adherence to the size of the official form is preferred. The snap feature is not required on substitutes. If the substitute forms are in continuous or strip form, they must be burst and stripped to conform to the size specified before they are filed.

.07 *Clear area.*—The back of Copy A must be free of all printing.

.08 *Carbonized forms or "spot carbons."*—Carbonized forms and "spot carbons" are not permissible. Interleaved carbon, if used, should be black and of good quality to preclude smudging.

.09 *The Government Printing Office symbols.*—The Government Printing Office symbols must be omitted.

.10 *Copies B and C.*—Copies B and C are included in the official assembly for the convenience of the nominee. Although there is no requirement that privately printed substitute forms include these copies, Copy B may be desired by the nominee for his records and Copy C will satisfy the requirements of law and regulations concerning the statement of information which is to be furnished to the actual owner or payee.

SEC. 5. ADDITIONAL INSTRUCTIONS.

.01 *Arrangements of assembly.*—Except as provided in paragraph .02 below, the parts of the assembly shall be arranged, from top to bottom, as follows: Copy A, "For Internal Revenue Service," Copy B, "For Nominee," Copy C, "For Actual Owner or Payee."

.02 *Additional copies.*—Additional copies may be prepared by nominees for States requiring the report. When this is done, one such copy may be inserted between Copies A and B. Forms for delivery to State or local taxing authorities should be clearly labeled to indicate the purpose for which they are intended and should not bear any part of the designation, "Form 1087, U.S. Treasury Department, Internal Revenue Service."

.03 *Instructions for nominees.*

(a) Only originals or ribbon copies may be filed with the Service. Carbon copies are not acceptable.

(b) The Service requests the cooperation of nominees in typing or machine printing whenever possible and in providing good quality data entries on the forms; i.e., using a black ribbon, inserting data in the middle of blocks, well separated from other printing and guidelines, and taking any other measures that will guarantee a clear, sharp image. However, nominees are not expected to purchase typewriters, machines, or special ribbons to prepare the forms.

(c) Corrected returns Form 1087 must be submitted in accordance with instructions on Exhibit C.

SEC. 6. SUBSTITUTES NOT MEETING ABOVE CONDITIONS.

Proposed substitute forms which do not meet the conditions stated above, and requests for submission of Forms 1087 in the form of tabulating cards or magnetic tape, should be forwarded by letter to the Commissioner of Internal Revenue, Attention: D:S:P1., 1111 Constitution Avenue NW., Washington, D.C. 20224.

SEC. 7. REPRODUCTION PROOFS.

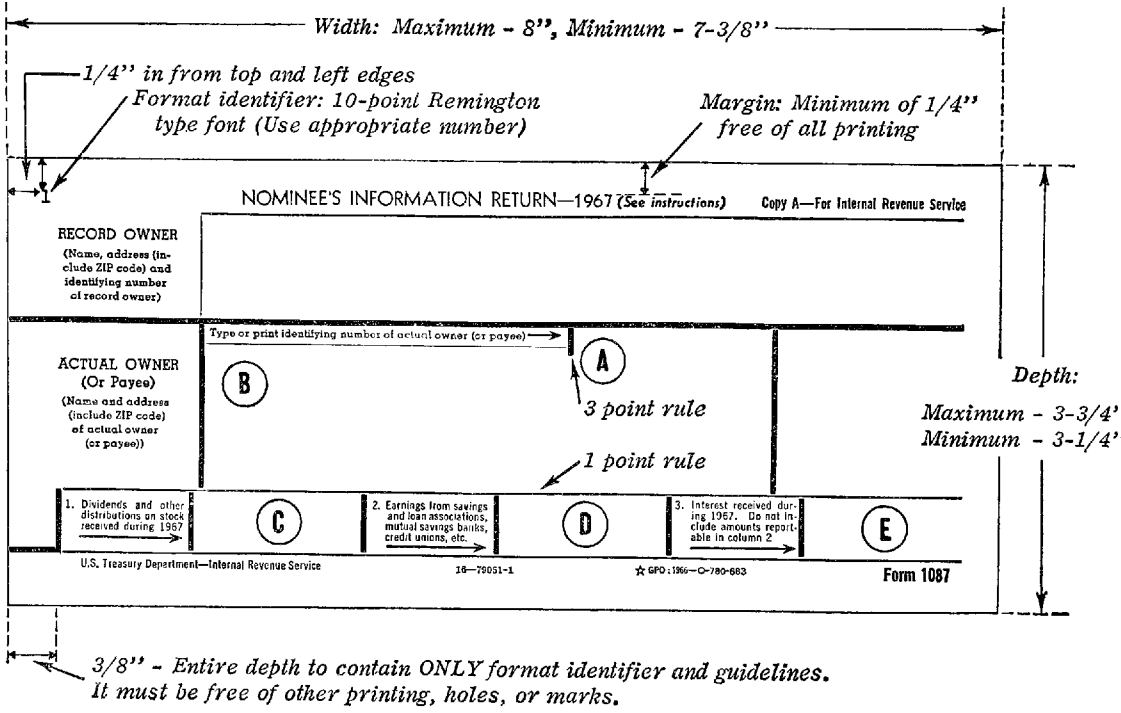
Order blanks for reproduction proofs are mailed annually to requesters of record and, on request, to other users. Printers and others wishing to obtain reproduction proofs may send their requests to the Commissioner of Internal Revenue, Attention: A:FM:P, 1111 Constitution Avenue NW., Washington, D.C. 20224.

A charge of $0.75 per page will be made for each reproduction proof regardless of page size. Invoices will be mailed after orders have been filled.

SEC. 8. EFFECT ON OTHER DOCUMENTS.

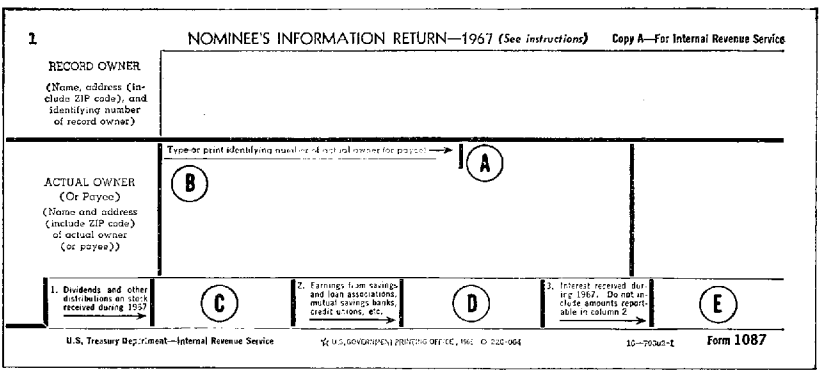
This Revenue Procedure supersedes Revenue Procedure 66–17, C.B. 1966–1,639.

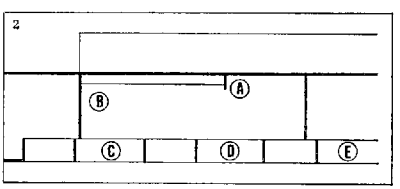
EXHIBIT A

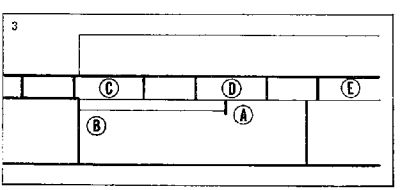


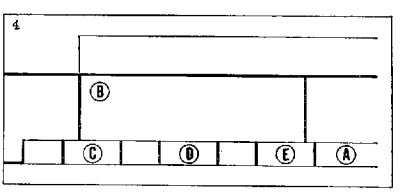
Back of Copy A must be BLANK

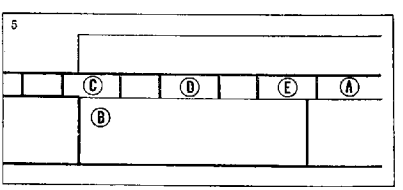
EXHIBIT B

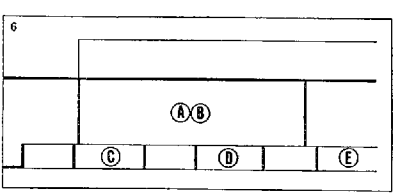

1
NOMINEE'S INFORMATION RETURN—1967 (See instructions)
Copy A—For Internal Revenue Service
RECORD OWNER
(Name, address (include ZIP code), and identifying number of record owner)
Type or print identifying number of actual owner for payee
A
ACTUAL OWNER
(Or Payee)
(Name and address (include ZIP code) of actual owner (or payee))
B
1. Dividends and other distributions on stock received during 1967
C
2. Earnings from savings and loan associations, mutual savings banks, credit unions, etc.
D
3. Interest received during 1967. Do not include amounts reportable in column 2
E
U.S. Treasury Department—Internal Revenue Service
U.S. GOVERNMENT PRINTING OFFICE, 1966 O 220-964
10—703a0-1
Form 1087


2
B
A
C
D
E


3
C
D
E
B
A


4
B
C
D
E
A


5
C
D
E
A
B


6
A B
C
D
E

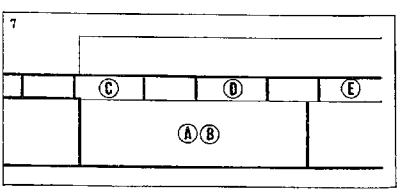
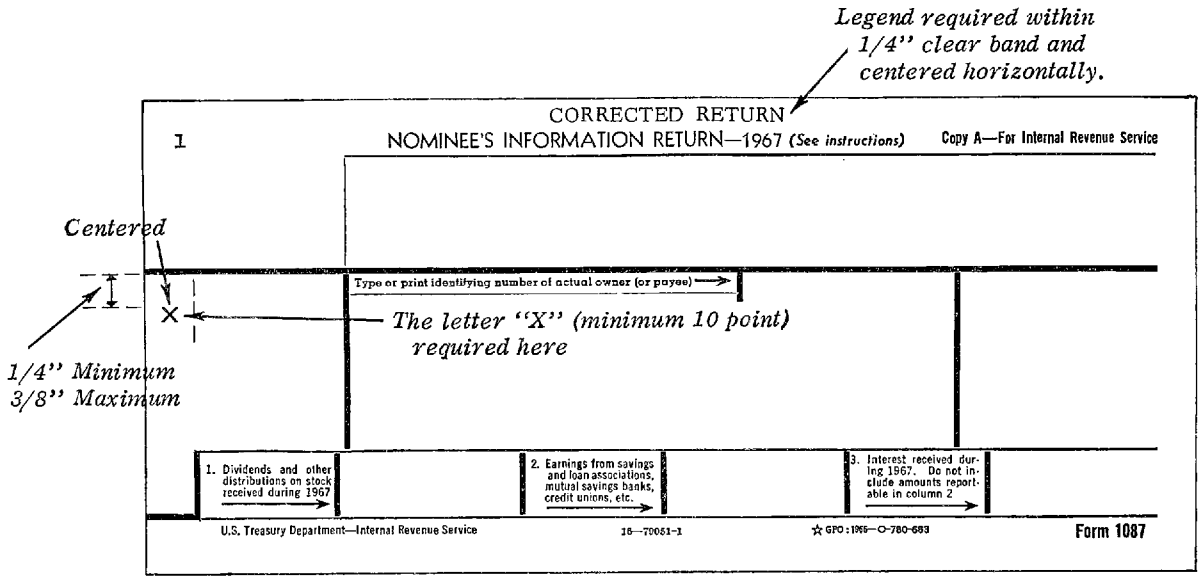

7
C
D
E
A B

EXHIBIT C

Illustration of additional information required on Form 1087 for amended or corrected returns.



NOTE:

When format 3, 5, or 7 is used the location of the "X" must be centered in the 3/8" clear left margin and 1/4"-3/8" below the middle horizontal 3 point rule.

26 CFR 601.602; Forms and instructions. (Also Part I, Section 6051; 31.6051–1.) Rev. Proc. 67–23

Substitutes for Form W–2, Wage and Tax Statement, may be privately printed with slight variations in format and used without specific approval of the Internal Revenue Service, only in the circumstances set forth below, provided they meet specified conditions with respect to physical characteristics, use of additional copies, and additional information, if any, to State and local taxing authorities.

Revenue Procedure 65–25, C.B. 1965–2, 1007, superseded.

SECTION 1. PURPOSE.

The purpose of this Revenue Procedure is to state the requirements of the Internal Revenue Service relating to substitutes for Form W–2, Wage and Tax Statement.

SEC. 2. SUBSTITUTE FORMS.

.01 The latest revision of the prescribed Form W–2 should be used as the basis for the privately printed form. A copy of the latest revision of Form W–2 may be obtained from any District Director of Internal Revenue.

.02 Substitutes for Form W–2 which adhere to the specifications contained herein may be privately printed without the prior approval of the Service. Proposed substitutes not meeting these specifications should be submitted to the Service for approval with an explanation of the need for the specific deviation sought. (See sec. 6.)

SEC. 3. FORMAT SPECIFICATIONS.

.01 *Form sections.*—For purposes of format specifications, the Form W–2 is divided into two sections: a specified format section and a variable format section. The specified format section consists of the area encompassed by the following data blocks: employee name and address, employee social security number, Federal income tax withheld, total wages paid, and other compensation, and includes also the left margin; i.e., the area within three-eighths inch of the left edge of the document. The variable format section consists of the remainder of the document, including the area encompassed by the following data blocks: the reporting year, FICA tax withheld, total FICA wages paid, and employer name, address, and identification number.

.02 *Additional data entries.*—Additional data blocks, beyond those contained on the official form, may be added to substitute Forms W–2, at the option of the employer or in accordance with State requirements. When present, *such additional entries must be contained in the variable format section, except as noted in section 3.04(b) below.*

.03 *Variable format section layout.*—The arrangement of data in the variable format section may be varied on substitute forms to fit the requirements of State law or to accommodate the needs of the data processing system used by the employer, except that the payment year must always be in the upper right corner of the form.

.04 *Specified format section layout.*—

(a) The layout of the specified format section, including contents, general arrangement, and typography must conform to one of the formats illustrated in exhibit B. Formats 1, 2, 3, 4, and 5

are preferred; however, formats 6 and 7 are acceptable. If 6 or 7 is used and the location of the social security number will be consistent for all returns prepared by a payer, a 3-point vertical rule (0.045 inch) should be preprinted immediately to the left of this area. The length of the rule and the wording and placement of the block should conform to the dimension and location on the official form.

(b) If 6 or 7 is used and the location of the social security number is not consistent for all returns, due to the nature of the mechanical equipment used by the payer, the social security number need not be contained in a special box or identified. Preferably it should be printed to the right of and on the same line as the name, but it can also be printed one or two lines above or below the name. There must be no other data between, or on the same line as, the social security number and the name. Also special precautions must be taken with respect to the printing of an employee number or badge number. The printing of such badge numbers in the specified format section should be avoided. However, if the printing of an employee or badge number in the specified format section is unavoidable, this number must not be on the same line as, or on any line above, the social security number or on the same line as wages.

(c) Employee name, street address, and city and State (including ZIP Code) must be on separate lines. City, State, and ZIP Code may be on the same line or printed on separate lines.

(d) The area within three-eighths inch of the left edge of the document (exclusive of stubs) must not contain any prepunched holes and must be free of any printing except for the format identifier and format guidelines appropriate to each permissible alternate format as illustrated in exhibit B. There must be no intervening data or marks between the left edge of the document and the specified format section.

(e) There must be a margin of at least one-fourth inch between the top and bottom edges of the document and any other printing. Variable format section data may be placed between the top or bottom edge of the document and the specified format section, or the specified format section may occupy the entire left side of the substitute form, at the option of the employer.

(f) The overall dimensions of the specified format section and the dimensions of the individual data blocks contained therein may be varied from the dimensions shown on exhibit A. However, the general arrangement of data within the section and the typography may not be altered, except for mailing guides. Mailing guides may be omitted if the substitute form is not intended to be mailed in window envelopes.

(g) The appropriate format identifier (1, 2, 3, 4, 5, 6, or 7) must be shown in the upper left corner of copy A, as illustrated in exhibits A and B, one-fourth inch from the top and left edges and there must be one-eighth inch clear space to the right of such number. In addition, the appropriate format guidelines must also be shown on copy A.

(h) In using any of the formats, care should be taken to prevent disclosure of wage and tax information if a window envelope is used for mailing.

SEC. 4. SPECIFICATIONS.

.01 *Color and quality of paper.*—

(a) Paper used for copy A must be white 100 percent bleached chemical wood, 2½ percent maximum groundwood permissible. No optical brighteners may be added; however, minimal trace amounts will be acceptable. The paper must be: Weight, 30- to 42-pound (basis 17 x 22—1,000) (weight must be inclusive of any coatings or chemical treatments); brightness, 80 percent or more when measured on a brightness meter in accordance with TAPPI specifications T–452; low finish; free of any dirt specks; and must be uniformly textured. The minimum qualifications are the typical physical characteristics in weight, caliper, stiffness, and tear resistance normally associated with chemical wood bond or writing papers of these weights.

(b) The paper used for other copies must be white, at least 18-pound (basis 17 x 22—1,000) and of good quality.

.02 *Color and quality of ink.*—All printing must be in a black nonreflective ink. A nonreflective ink is one which has a 10-percent reflectance or less between the wavelength range of 3,500 to 5,000 Angstroms and 20 percent less between the wavelength range of 5,000 to 10,000 Angstroms. (These reflectances are referenced to magnesium oxide which is 100 percent.)

.03 *Quality of printing.*—Printers must maintain strict quality control during production of substitute Forms W–2. Special care must be taken to insure that the density of ink, as noted in section .02 above, is maintained and that the bar codes are free from picks and voids. Strict observance of printing and trimming tolerances is required.

.04 *Typography.*—Type must be substantially identical in size and shape with corresponding type on the official form. All horizontal rules on the document and all vertical rules outside the specified format section except format identifier lines, must be 1 point (0.015 inch). All vertical rules within the specified format section and format identifiers must be 3-point (0.045 inch). When present, mailing guides must be less than one-half point (0.0075 inch). The format identifier must be printed on the 10-point Remington typewriter font as shown in GPO "Specimens of Type Faces." Vertical rules must be parallel to the left edge of the document; horizontal rules parallel to the top edge.

.05 *Dimensions.*—The official form is 8 inches wide by 3½ inches deep, exclusive of a ½-inch snap-stub on the left side of the form. The substitute forms may vary in width from 7⅜ inches to 8 inches and in depth from 3¼ inches to 3¾ inches, although adherence to the size of the official form is preferred. The snap feature is not required on substitutes. If the substitute forms are in continuous or strip form, they must be burst and stripped to conform to the size specified before they are filed.

.06 *Clear area.*—The back of Copy A must be free of all printing.

.07 *Carbonized forms or "spot carbons".*—Carbonized forms and "spot carbons" are not permissible. Interleaved carbon, if used, must be of good quality to preclude smudging and, preferably, black.

.08 *Special identification.*—Copy B must show the full-face dots, arranged vertically on the upper right side.

.09 *Printers' symbols.*—The Government Printing Office symbol must not be placed on substitute Forms W–2. In place thereof, it is suggested the forms printer print an identifying symbol in the same place on such substitute forms.

.10 *Copy D.*—Copy D is included in the official assembly for the convenience of the employer. Although there is no requirement that privately printed substitute forms include copy D, employers may find it desirable to make and retain such copy.

SEC. 5. ADDITIONAL INSTRUCTIONS.

.01 *Arrangement of assembly.*—Except as provided below, the parts of the assembly shall be arranged, from top to bottom, as follows: Copy A, "For District Director;" Copy B, "To be filed with employee's tax return;" Copy C, "For employee's record;" Copy D, "For employer." The first two copies of a Form W–2 assembly must be Copy A "For District Director" and Copy B "To be filed with employee's tax return," except when an additional copy is prepared for submission to a State or local taxing authority. Such additional copy may be inserted between Copy A and Copy B.

.02 *Additional copies.*—Except as noted in .01 above, additional copies which may be prepared by employers shall not be placed ahead of the Copy C in the assembly. All copies of the form must be clearly labeled to indicate the purpose for which intended and must carry the copy designation. Copies for State or local use must be clearly labeled to indicate the purpose for which intended and should not bear any part of the designation "Form W–2—U.S. Treasury Department, Internal Revenue Service."

.03 *Excludable sick pay.*—If desired, a block may be shown on Form W–2 for excludable sick pay. However, if such a block is provided and no amount is entered, the word "None" or "0" should be shown.

.04 *Statement to support excludable sick pay.*—A statement from the employer to support sick pay excludable from gross income may be made a part of the assembly, provided it is not placed ahead of Copies A and B in the assembly and is printed on paper of distinctive color. Such statement should substantially conform with the statement set forth in Revenue Procedure 57–1, C.B. 1957–1, 721. It should be clearly indicated on such statement that it is to be attached to page 2 of the taxpayer's Federal income tax return, Form 1040.

.05 *Instructions.*—The instructions contained on the face of copy A and both the face and back of Copies B and C must appear on all substitute forms.

.06 *State agencies.*—The amounts of wages paid and employee contributions withheld under a State-Federal Agreement, entered into pursuant to section 218 of the Social Security Act, may be shown in the spaces on Form W–2 for Federal Insurance Contributions Act wages and employee tax, provided appropriate distinguishing captions are used to identify such amounts. In such cases, the identification number assigned by the Social Security Administration to the State (prefix 69) should be shown in the employer block in addition to

the employer identification number assigned by the Internal Revenue Service for income tax withholding purposes.

.07 *Instructions for employers.*—The service requests the cooperation of employers in typing or machine printing whenever possible and in providing good quality data entries on the forms, i.e., using a black ribbon, inserting data in the middle of blocks, well separated from other printing and guidelines, and taking any other measures that will guarantee a clear, sharp image. However, employers are not expected to purchase typewriters, machines, or special ribbons to prepare the forms.

SEC. 6. SUBSTITUTES NOT MEETING ABOVE CONDITIONS.

Proposed substitute forms which do not meet the conditions stated above, and requests for submission of Forms W–2 in the form of punched cards or magnetic tape, should be forwarded by letter to the Commissioner of Internal Revenue, Attention: D:S:P1., 1111 Constitution Avenue NW., Washington, D.C. 20224.

SEC. 7. REPRODUCTION PROOFS.

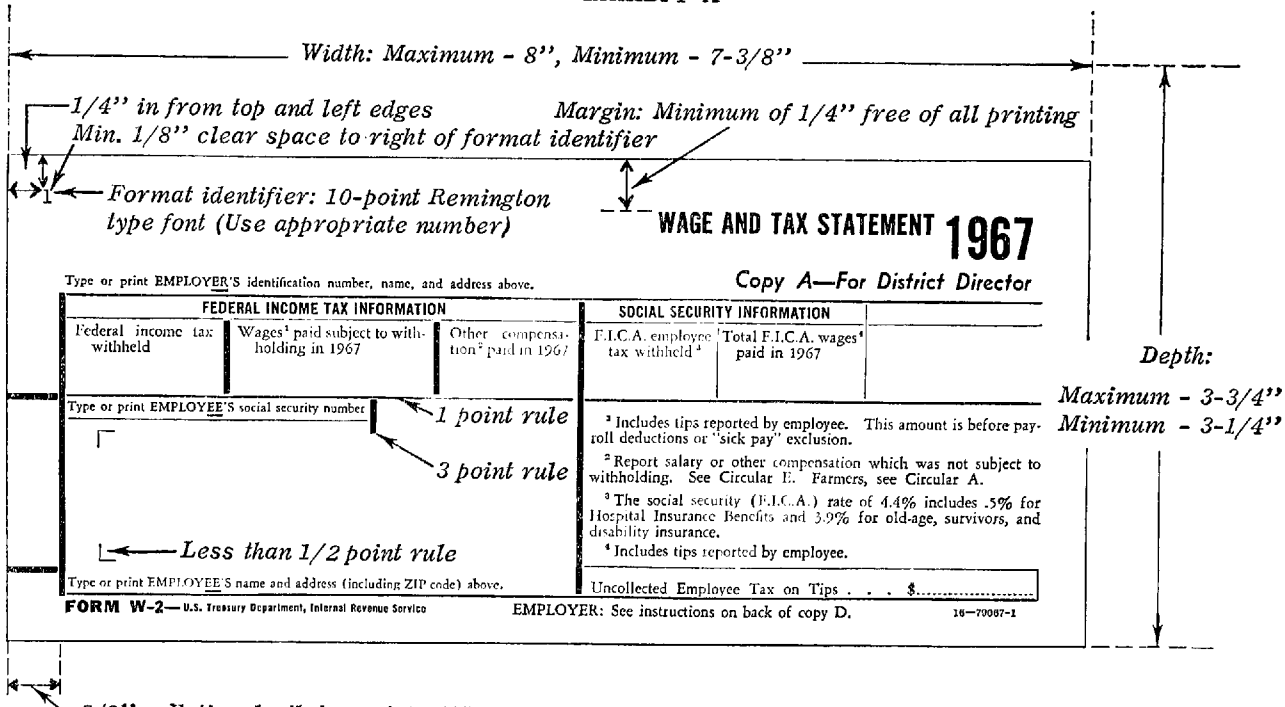
Order blanks for reproduction proofs are mailed annually to requesters of record and, on request, to other users. Printers and others wishing to obtain reproduction proofs may send their requests to the Commissioner of Internal Revenue, Attention: A:FM:P, 1111 Constitution Avenue NW., Washington, D.C. 20224.

A charge of $0.75 per page will be made for each reproduction proof regardless of page size. Invoices will be mailed after orders have been filled.

SEC. 8. EFFECT ON OTHER DOCUMENTS.

This Revenue Procedure supersedes Revenue Procedure 65–25, C.B., 1965–2, 1007.

EXHIBIT A



Back of Copy A must be BLANK

EXHIBIT B

1

WAGE AND TAX STATEMENT 1967

Type or print EMPLOYER'S identification number, name, and address above.

Copy A—For District Director

FEDERAL INCOME TAX INFORMATION			SOCIAL SECURITY INFORMATION	
Federal income tax withheld (A)	Wages[1] paid subject to withholding in 1967 (B)	Other compensation[2] paid in 1967 (C)	F.I.C.A. employee tax withheld[3]	Total F.I.C.A. wages[4] paid in 1967

Type or print EMPLOYEE'S social security number (D)

(E)

Type or print EMPLOYEE'S name and address (including ZIP code) above.

[1] Includes tips reported by employee. This amount is before payroll deductions or "sick pay" exclusion.

[2] Report salary or other compensation which was not subject to withholding. See Circular E. Farmers, see Circular A.

[3] The social security (F.I.C.A.) rate of 4.4% includes .5% for Hospital Insurance Benefits and 3.9% for old-age, survivors, and disability insurance.

[4] Includes tips reported by employee.

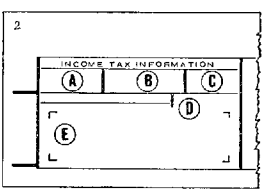
Uncollected Employee Tax on Tips . . . $.....

FORM W-2—U.S. Treasury Department, Internal Revenue Service

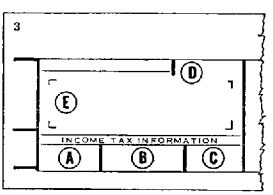
EMPLOYER: See instructions on back of copy D.

16—79087-1

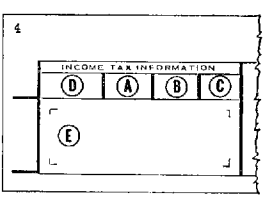
2



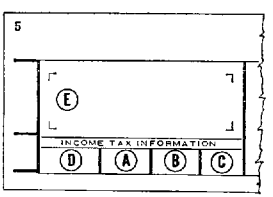
3



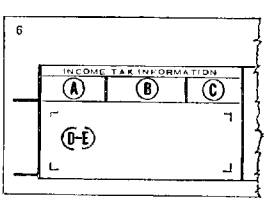
4



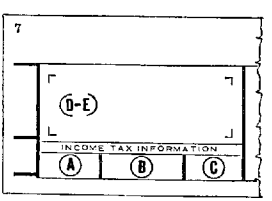
5



6



7



1. Format 1 is Official Government issued form. Formats 2-7 are to be used for privately printed forms.
2. All legends to be at top of data boxes.

(Also Part IV, T.D. 6122, C.B. 1955–1, 641; 26 CFR 503.2.)
(Also Part I, Sections 1441, 6402; 1.1441–1, 31.6402(a)–1.)

Rev. Proc. 67–24 [1]

Interim procedure for giving effect to the reduced rate of withholding of United States income tax from dividends paid by United States corporations to residents or companies of the Federal Republic of Germany under the protocol brought into force December 27, 1965, modifying the income tax convention between the United States and the Federal Republic of Germany.

SECTION 1. PURPOSE.

The purpose of this Revenue Procedure is to provide interim procedures which will supplement the withholding regulations set forth in Treasury Decision 6122, C.B. 1955–1, 641, governing the withholding of United States income tax at source from dividends paid by United States corporations to residents or companies of the Federal Republic of Germany. This interim procedure will apply until withholding regulations under the income tax convention, as modified by a protocol which was brought into force December 27, 1965, are published.

SEC. 2. BACKGROUND.

The United States-Federal Republic of Germany income tax convention of July 22, 1954, C.B. 1955–1, 635, provides for a 15-percent rate of United States tax (the statutory rate is 30 percent) for dividends paid by a United States corporation to a German company owning 10 percent or more of the stock of such corporation. The modifying protocol, C.B. 1966–1, 360, among other things, extends the 15-percent rate of United States tax to all dividends paid by a United States corporation to a resident or company of Germany, effective with respect to dividends paid on or after January 1, 1965. The reduction in rate does not apply if the German recipient has a permanent establishment in the United States and the holding of stock giving rise to the dividend is effectively connected with the permanent establishment.

SEC. 3. PROCEDURES.

.01 In order to give effect to the reduced rate of tax with respect to dividends paid on or after January 1, 1965, United States withholding agents who have withheld United States tax at the statutory 30-percent rate from dividends paid during those years by United States corporations to recipients having addresses in the Federal Republic of Germany at the time of payment may, except as provided in .03 of this section, release and pay over to the recipient from whom such tax was withheld an amount which is equal to the difference between the tax so withheld and the 15-percent tax required to be withheld pursuant to the United States-German income tax convention, as modified by the protocol. This procedure will not apply if, prior to the date of release of tax, the withholding agent is notified by the Commissioner or the recipient that the recipient is not entitled to the reduced rate.

.02 Withholding agents filing information returns on Form 1942, U.S. Annual Return of Income Tax to be Paid at Source, which include payments of dividends made to recipients having addresses in the

[1] Based on Technical Information Release 801, dated Feb. 23, 1966.

Federal Republic of Germany, where withheld taxes are released in accordance with this interim procedure, should adjust the amount reported on such returns as tax withheld so as to reflect only the net amount withheld. The accompanying Forms 1042S, U.S. Annual Information Statement of Income Paid to Nonresident Aliens, Etc., reporting dividends paid to, and United States tax withheld from, recipients having addresses in the Federal Republic of Germany should also indicate the amount of tax withheld, the amount of tax released, and the net amount withheld after such release of tax has been made.

.03 Where United States withholding agents have already paid over the amounts withheld as tax at the statutory 30-percent rate to the Director, Office of International Operations, a claim by the German recipient for refund of any resulting overpayment of tax may be made under section 6402 of the Internal Revenue Code of 1954 and the regulations thereunder.

.04 If the claimant has previously filed an income tax return with the Internal Revenue Service for the taxable year in which an overpayment has resulted because of the application of the convention, he should make a claim for refund of the overpayment by filing Form 843, or an amended return. If the claimant has not previously filed an income tax return with the Service for the taxable year in which an overpayment has resulted because of the application of the convention, he should make a claim for refund of the overpayment by filing, U.S. Nonresident Alien Income Tax Return, Form 1040NB, Form 1040NB–a, Form 1040B, or Form 1120–F, U.S. Income Tax Return of Foreign Corporations, whichever is applicable, showing the overpayment. Such a return will serve as a claim for refund, and it will not be necessary for the claimant to file Form 843. Amended returns or claims for refund should be filed with the Director, Office of International Operations, Washington, D.C. 20225.

.05 Pending issuance of withholding regulations under the Convention, as modified by the protocol, United States withholding agents paying dividends on or after January 1, 1965, to recipients having addresses in the Federal Republic of Germany may withhold at the reduced rate of 15 percent in every case except that in which, prior to the date of payment of the dividends, the withholding agent is notified by the Commissioner or the recipient that the reduced rate does not apply.

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26 CFR 601.104: Collection functions. (Also Part I, Section 7425.)

Rev. Proc. 67–25 [1]

Under the provisions of section 7425 (b) and (c) of the Internal Revenue Code of 1954, as added by the Federal Tax Lien Act of 1966, notices of sales on certain property to be sold as a result of foreclosure action are required to be furnished to district directors of internal revenue where the United States Government has or claims a Federal tax lien.

SECTION 1. PURPOSE.

The purpose of this Revenue Procedure is to set forth procedures under the requirements of section 7425 (b) and (c) of the Internal Revenue Code of 1954, as added by section 109 of the Federal Tax

[1] Based on Technical Information Release 873, dated Dec. 22, 1966.

Lien Act of 1966, Public Law 89-719, C.B. 1966-2, 623, under which a notice of sale must be given to the United States Government in certain foreclosure proceedings where the Government has a status of junior lienor.

SEC. 2. BACKGROUND.

.01 Section 7425(b) of the Code deals with the effect on the Government's interest in property in which the United States has or claims a Federal tax lien, or a title derived from the enforcement of a Federal tax lien, when a sale of property (other than in judicial proceedings) is made pursuant to:

(i) an instrument creating a lien on the property sold,

(ii) a confession of judgment on the obligation secured by an instrument creating a lien on the property sold, or

(iii) a statutory lien on the property sold.

.02 Section 7425(c)(1) of the Code provides that a notice of a sale described in section 7425(b) shall be given, in writing, by registered or certified mail or by personal service, not less than 25 days prior to such sale, to the Secretary of the Treasury or his delegate.

.03 In any situation where a notice of Federal tax lien has not been filed with respect to a taxpayer or has been filed less than 31 days before the scheduled sale, it is not necessary to notify the district director's office of a sale of the taxpayer's property under section 7425(c)(1) of the Code. In these situations, the rights of the United States are determined, in accordance with local law, in the same manner as the rights of any other claimant against the property.

SEC. 3. ADEQUACY OF NOTICE.

.01 In order to assist those persons who are planning these nonjudicial sales, a notice of sale will be considered adequate which contains the following:

1. Either a copy of each Notice of Federal Tax Lien (Form 668) or the following information shown on each filed Notice of Federal Tax Lien:

(a) The internal revenue district which originated the Notice of Federal Tax Lien.

(b) The serial number as shown on each notice.

(c) The name of the taxpayer as shown on each notice.

(d) The residence or place of business of the taxpayer as shown on each notice.

(e) The date and place of filing of each notice.

2. With respect to the property to be sold, the following information must appear on the notice of sale:

(a) In the case of real or personal property, an adequate description of the property.

(b) The time, place, and terms of the proposed sale of the property.

(c) In the case of a sale of perishable property described below, a description of the perishable nature of the property.

3. With respect to the interest of the person selling the property, show the present outstanding amount of his interest in the property.

.02 A notice of sale which does not contain the above information will not be considered adequate by the Internal Revenue Service. In addition, although not required, an abstract of title would be helpful, if available in the case of real property.

.03 This notice of sale is to be given in writing, by registered or certified mail or delivered by hand, not less than 25 days prior to the sale, to the Chief, Special Procedures Section, in the office of the district director for the internal revenue district where the sale is to be conducted. It is not necessary or advisable to send copies of the notice of sale to the Secretary of the Treasury, the Commissioner of Internal Revenue, or the United States attorney.

.04 Section 7425(c)(3) of the Code provides that, notwithstanding the notice requirements discussed above, a sale described in section 7425(b) of property liable to perish or become greatly reduced in value by keeping, or which cannot be kept without great expense, shall discharge or divest such property of the lien or title of the United States if written notice of the sale is given, in writing, by registered or certified mail, or by personal service to the district director's office before such sale. The proceeds (exclusive of costs) of the sale shall be held as a fund, for not less than 30 days after the date of the sale, subject to the liens and claims of the United States, in the same manner and with the same priority as the liens and claims of the United States had with respect to the property sold.

.05 In the case where a person is required to sell perishable goods before the issuance of regulations, the Service will accept a notice of the sale of perishable goods which contains the same information as that specified above with respect to a notice of sale under section 7425(b) of the Code. A notice of sale which does not contain all of the required information will not be considered adequate by the Service.

.06 This notice of sale of perishable goods is to be given in writing, by registered or certified mail or delivered in hand, before the sale to the Chief, Special Procedures Section, in the office of district director for the internal revenue district where the sale is to be conducted.

SEC. 4. EFFECTIVE DATE.

.01 The notice of sale provisions of section 7425(c)(1) of the Code and the perishable goods exception contained in section 7425(c)(3) of the Code do not apply to sales occurring after November 2, 1966 (the effective date of the Federal Tax Lien Act of 1966), if the seller of the property performed an act before the effective date which act at the time of performance was required and effective under local law with respect to the sale. A typical example of such an act is publication of notice of the sale in a local newspaper before November 3, 1966, if local law requires such publication before a sale and the publication was effective under local law. In such instances, it is not necessary to notify the district director of the sale under section 7425(c)(1) or (c)(3) of the Code.

.02 The Service will consider as adequate any notice of sale given before December 22, 1966, the date of issuance of Technical Information Release No. 873.

SEC. 5. RELATED MATTERS.

Pursuant to the consent to sale provisions contained in section 7425(c)(2) of the Code, the district director, for the district where the sale is conducted, is authorized, where he deems it appropriate, to consent to the sale of property free of the Federal tax lien even though timely or adequate notice is not given.

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26 CFR 601.201: Rulings and determination letters. Rev. Proc. 67-26

(Also Part I, Section 401; 1.401-12.)

Procedure applicable with respect to pension, profit-sharing, annuity, and bond purchase plans covering self-employed individuals which are amended solely to conform to the changes effected by section 204 of Public Law 89-809.

SECTION 1. PURPOSE.

The purpose of this Revenue Procedure is to prescribe the procedure applicable with respect to pension, profit-sharing, annuity, and bond purchase plans which are amended solely to conform to the provisions of section 204 of The Foreign Investors Tax Act of 1966, Public Law 89-809, C.B. 1966-2, 656, at 691.

SEC. 2. BACKGROUND.

.01 In accordance with section 601.201(o) of the Statement of Procedural Rules, the Internal Revenue Service issues determination letters as to the qualification of plans and trusts under section 401(a) of the Internal Revenue Code of 1954 in the case of consummated and proposed transactions relating, among other things, to (1) the initial qualification of a plan and, if trusteed, the status for exemption of the trust, and (2) amendments to plans and trusts.

.02 Section 204 of Public Law 89-809 repealed paragraph (10) of section 404(a) of the Code to eliminate the special limitation on the amount allowed as a deduction for self-employed individuals for contributions to certain pension, etc., plans and provided a new definition of "earned income" from self-employment. These changes are effective with respect to taxable years beginning after December 31, 1967.

.03 Thus, many individual plans and master or prototype plans involving self-employed individuals with respect to which a favorable determination letter has been issued will be amended to conform to the changes made by Public Law 89-809.

SEC. 3. PROCEDURE.

.01 If the amendment only conforms the plan to the new provisions of law, the previously-issued favorable determination letter will apply to the plan as amended. Plans so amended are not to be resubmitted for further determination and no new determination letter will be issued.

SEC. 4. EFFECTIVE DATE.

This Revenue Procedure is effective May 15, 1967, the date of its publication in the Internal Revenue Bulletin.

26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability. Rev. Proc. 67-27[1]

District Audit Division conference procedures are revised. Revenue Procedure 64-38, C.B. 1964-2, 965, superseded.

SECTION 1. PURPOSE.

This Revenue Procedure provides limited revisions of district Audit Division conference procedures as announced in Revenue Procedure 64-38, C.B. 1964-2, 965. It also provides for an increase, effective June 1, 1967, in the dollar limitations set forth in Sections 5.04, 5.05, 5.06 and Section 7 of Revenue Procedure 64-38.

SEC. 2. SCOPE.

The revised district Audit Division conference procedures apply to unagreed field audit cases involving income, estate, gift, excise (other than excise taxes on alcohol, tobacco, narcotics, and firearms), or employment taxes. Conference procedures applicable to unagreed office audit cases remain unchanged except as noted in Section 4.

SEC. 3. PROCEDURAL REVISIONS IN UNAGREED FIELD AUDIT CASES.

.01 If, at the conclusion of an examination, the taxpayer does not agree with the adjustments proposed by the examining officer, the examining officer will prepare a complete examination report fully explaining all proposed adjustments.

.02 Before the examination report or any district Audit Division conference invitation is sent to the taxpayer, the case files will be subjected to a thorough technical and procedural review.

.03 Following the review of the case files, the taxpayer will receive a copy of the examination report under cover of a transmittal letter (commonly referred to as a "30-day letter"), providing him with a detailed explanation of the available appeal procedures and requesting the taxpayer to advise the district, ordinarily within 30 days, of his choice of action.

.04 If the total amount of proposed additional tax, proposed overassessment, or claimed refund does not exceed $2,500 for any year, the taxpayer will be granted a district Audit Division conference on request, but will not be required to file a protest. Nevertheless, if he so desires, he may submit a written statement outlining the facts, law, or arguments on which he relies.

.05 If the amount of proposed additional tax, proposed overassessment, or claimed refund exceeds $2,500 for any year, the taxpayer, on request, will be granted a district Audit Division conference, provided a written protest is filed setting forth the facts, law, and arguments upon which the taxpayer relies.

.06 Taxpayers are encouraged to utilize the services of the district Audit Division conference procedures since they will usually result in more expeditious disposition of unagreed cases containing issues relatively free of legal or other complexities beyond the scope of the functional responsibilities of District conferees.

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[1] Also released as Technical Information Release 901, dated May 9, 1967.

.07 Where, however, the nature or complexity of the unagreed issues is such that original consideration by the Appellate Division would usually result in the more expeditious resolution of the case, taxpayers will be invited to request initial consideration by the regional Appellate Division. Written protests filed in such cases and the case file, after preliminary screening by the Chief, Conference Staff, will be forwarded by the Audit Division to the regional Appellate Division.

.08 Ordinarily, the examining officer will not attend the district Audit Division conference.

.09 Changes made by the Conference Staff in the proposals set forth in all examination reports will be reflected in a Conference Audit Statement which will be forwarded to the taxpayer to inform him of changes made and to serve as a supplement to the examination report.

.10 The determination of the Conference Staff will not be submitted to the district Review Staff for review. However, conference determinations may be subjected to review by the office of the Assistant Regional Commissioner (Audit).

SEC. 4. DISPOSITION OF PATTERN ISSUES IN UNAGREED FIELD AUDIT AND OFFICE AUDIT CASES.

If the total amount of proposed additional tax, proposed overassessment, or claimed refund does not exceed $2,500 for any year, the authority of the Chief, Conference Staff, may be extended to include resolution of selected issues on a basis similar to a substantially identical issue or pattern case previously so disposed of by a regional Appellate Division.

SEC. 5. EFFECTIVE DATE.

.01 This Revenue Procedure will become effective on June 1, 1967.

.02 All unagreed cases in conference status prior to June 1, 1967, will be processed under existing procedures.

SEC. 6. EFFECT ON OTHER DOCUMENTS.

Revenue Procedure 64–38, C.B. 1964–2, 965, is superseded.

SEC. 7. INQUIRIES.

Inquiries relating to this Revenue Procedure should be addressed to the Assistant Commissioner (Compliance), Attention: CP:A:PO, Internal Revenue Service, Washington, D.C. 20224.

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26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.
(Also Part I, Section 4482; 41.4482(b)–1.)

Rev. Proc. 67–28

As announced in Revenue Procedure 66–15, C.B. 1966–1, 629, the Internal Revenue Service will, in the examination of highway-use tax returns, accept without substantiation the exclusion of 3,000 pounds in computing the "actual unloaded weight" of rear loading packer-type refuse collection trucks.

A similar procedure will be followed by the Service in examining returns involving side loading compaction-type refuse trucks.

Revenue Procedure 66–15 is, therefore, supplemented.

ANNOUNCEMENT OF THE DISBARMENT AND SUSPENSION OF ATTORNEYS AND AGENTS FROM PRACTICE BEFORE THE INTERNAL REVENUE SERVICE

Under Section 261, Title 5 of the United States Code, the Secretary of the Treasury, after due notice and opportunity for hearing, is authorized to suspend or disbar from practice before the Internal Revenue Service any enrolled person who has violated the rules and regulations governing the recognition of attorneys or agents to practice before the Internal Revenue Service.

Enrolled persons are prohibited in any Internal Revenue Service matter from directly or indirectly employing, accepting assistance from, being employed by, or sharing fees with, any person disbarred or under suspension from practice before the Internal Revenue Service.

The Director of Practice announces in the Internal Revenue Bulletin the names and addresses of persons who have been disbarred or suspended from such practice, their designation as attorney or agent, and the date of disbarment or period of suspension.

After due notice and hearing before a Hearing Examiner, the following person was disbarred from practice before the Internal Revenue Service.

Name	Address	Designation	Date of Disbarment
Timothy J. Crowe	Chicago, Ill	Attorney	May 4, 1967.

After due notice and hearing before a Hearing Examiner, the following person was suspended from practice before the Internal Revenue Service.

Name	Address	Designation	Term of suspension
Nathan E. Waller	Miami Beach, Fla.	Certified public accountant.	For 18 months from November 18, 1966.

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