Internal Revenue
bulletin

Bulletin No. 2002–31
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HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

Rev. Rul. 2002–48, page 239.
Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 1274, 1288, and other sections of the Code, tables set forth the rates for August 2002.

Rev. Proc. 2002–53, page 253.
Specifications are set forth for the private printing of paper substitutes for tax year 2002 Form W–2, *Wage and Tax Statement*, and Form W–3, *Transmittal of Wage and Tax Statements*. Rev. Proc. 2001–26 superseded.

EMPLOYEE PLANS

REG–165868–01, page 270.
Proposed regulations under section 419A of the Code provide guidance regarding whether a welfare benefit plan is part of a 10-or-more employer plan described in section 419A(f)(6). A public hearing is scheduled for November 5, 2002.

EXEMPT ORGANIZATIONS

Announcement 2002–70, page 284.
A list is provided of organizations now classified as private foundations.

EMPLOYMENT TAX

Rev. Proc. 2002–53, page 253.
Specifications are set forth for the private printing of paper substitutes for tax year 2002 Form W–2, *Wage and Tax Statement*, and Form W–3, *Transmittal of Wage and Tax Statements*. Rev. Proc. 2001–26 superseded.

Finding Lists begin on page ii.
Index for July begins on page iv.

Department of the Treasury
Internal Revenue Service

ADMINISTRATIVE

REG–116644–01, page 268.
Proposed regulations under sections 3406 and 6724 of the Code clarify rules with respect to notices of incorrect taxpayer identification numbers for purposes of backup withholding and waiver of information reporting penalties. A public hearing is scheduled for October 22, 2002.

Rev. Proc. 2002–52, page 242.
This document updates the procedures for requesting assistance from the U.S. competent authority under the provisions of an income, estate, or gift tax treaty to which the United States is a party. Rev. Procs. 96–13, 96–14, 91–23, and 91–26 modified and superseded. Rev. Proc. 96–53 amplified. Rev. Rul. 92–75 clarified.

Announcement 2002–68, page 283.
This document contains corrections to temporary regulations (T.D. 8997, 2002–26 I.R.B. 6) that provide corporations filing consolidated returns with an election to waive the 5-year net operating loss carryback period with respect to certain acquired members.

Announcement 2002–69, page 283.
This document contains corrections to proposed regulations (REG–123305–02, 2002–26 I.R.B. 26) that clarify and amend information relating to the deductibility of losses recognized on dispositions of subsidiary stock by members of a consolidated group.

The IRS Mission

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

Introduction

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

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

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

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

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

Part II.—Treaties and Tax Legislation.

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

Part III.—Administrative, Procedural, and Miscellaneous.

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

Part IV.—Items of General Interest.

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

The first Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the first Bulletin of the succeeding semiannual period, respectively.

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

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

Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 2002. See Rev. Rul. 2002–48, on this page.

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of August 2002. See Rev. Rul. 2002–48, on this page.

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

The adjusted applicable federal long-term rate is set forth for the month of August 2002. See Rev. Rul. 2002–48, on this page.

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 2002. See Rev. Rul. 2002–48, on this page.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 2002. See Rev. Rul. 2002–48, on this page.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 2002. See Rev. Rul. 2002–48, on this page.

Section 482.—Allocation of Income and Deductions Among Taxpayers

Federal short-term, mid-term, and long-term rates are set forth for the month of August 2002. See Rev. Rul. 2002–48, on this page.

Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 2002. See Rev. Rul. 2002–48, on this page.

Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of August 2002. See Rev. Rul. 2002–48, on this page.

Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 2002. See Rev. Rul. 2002–48, on this page.

Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 2002. See Rev. Rul. 2002–48, on this page.

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

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

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 1274, 1288, and other sections of the Code, tables set forth the rates for August 2002.

Rev. Rul. 2002–48

This revenue ruling provides various prescribed rates for federal income tax purposes for August 2002 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(2) for buildings placed in service during the current month. Finally, Table 5 contains the federal rate for determining the present value of annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 2002–48 TABLE 1

Applicable Federal Rates (AFR) for August 2002

Period for Compounding

	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-Term				
AFR	2.54%	2.52%	2.51%	2.51%
110% AFR	2.79%	2.77%	2.76%	2.75%
120% AFR	3.04%	3.02%	3.01%	3.00%
130% AFR	3.31%	3.28%	3.27%	3.26%
Mid-Term				
AFR	4.24%	4.20%	4.18%	4.16%
110% AFR	4.67%	4.62%	4.59%	4.58%
120% AFR	5.10%	5.04%	5.01%	4.99%
130% AFR	5.53%	5.46%	5.42%	5.40%
150% AFR	6.40%	6.30%	6.25%	6.22%
175% AFR	7.49%	7.35%	7.28%	7.24%
Long-Term				
AFR	5.46%	5.39%	5.35%	5.33%
110% AFR	6.02%	5.93%	5.89%	5.86%
120% AFR	6.57%	6.47%	6.42%	6.38%
130% AFR	7.13%	7.01%	6.95%	6.91%

REV. RUL. 2002–48 TABLE 2

Adjusted AFR for August 2002

Period for Compounding

	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-term adjusted AFR	1.92%	1.91%	1.91%	1.90%
Mid-term adjusted AFR	3.34%	3.31%	3.30%	3.29%
Long-term adjusted AFR	4.78%	4.72%	4.69%	4.67%

REV. RUL. 2002–48 TABLE 3

Rates Under Section 382 for August 2002

Adjusted federal long-term rate for the current month	4.78%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	4.91%

REV. RUL. 2002–48 TABLE 4

Appropriate Percentages Under Section 42(b)(2) for August 2002

Appropriate percentage for the 70% present value low-income housing credit	8.13%
Appropriate percentage for the 30% present value low-income housing credit	3.48%

REV. RUL. 2002–48 TABLE 5

Rate Under Section 7520 for August 2002

Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest	5.2%

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 2002. See Rev. Rul. 2002–48, page 239.

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 2002. See Rev. Rul. 2002–48, page 239.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 2002. See Rev. Rul. 2002–48, page 239.

Part III. Administrative, Procedural, and Miscellaneous

26 CFR 601.201: Rulings and determination letters.

Rev. Proc. 2002–52

SECTION 1. PURPOSE OF THE REVENUE PROCEDURE

This revenue procedure explains the procedures by which taxpayers may obtain assistance from the U.S. competent authority under the provisions of an income, estate or gift tax treaty to which the United States is a party. This revenue procedure supersedes Rev. Proc. 96–13, 1996–1 C.B. 616.

SECTION 2. SCOPE

.01 *In General*. The U.S. competent authority assists taxpayers with respect to matters covered in the mutual agreement procedure provisions of tax treaties in the manner specified in those provisions. A tax treaty generally permits taxpayers to request competent authority assistance when they consider that actions of the United States, the treaty country, or both, result or will result in taxation that is contrary to the provisions of a treaty. For example, tax treaties generally permit taxpayers to request assistance in order to relieve economic double taxation arising from an allocation under section 482 of the Internal Revenue Code (the "Code") or an equivalent provision under the laws of a treaty country. Competent authority assistance may also be available with respect to issues specifically dealt with in other provisions of a treaty. For example, many tax treaties contain provisions permitting competent authorities to resolve issues of fiscal residence or allowing a competent authority to make a discretionary determination that a taxpayer is

entitled to the benefits of a treaty under specific limitation on benefits provisions. *See* sections 3.07 and 3.08 of this revenue procedure. Taxpayers are urged to examine the mutual agreement procedure provisions or other specific provisions of the treaty under which they seek relief, in order to determine whether relief may be available in their particular case. This revenue procedure is not intended to limit or expand any specific treaty provisions relating to competent authority matters.

.02 *Requests for Assistance*. In general, requests by taxpayers for competent authority assistance must be submitted in accordance with this revenue procedure. However, where a treaty or other published administrative guidance provides specific procedures for requests for competent authority assistance, those procedures shall apply, and the provisions of this revenue procedure shall not apply to the extent inconsistent with such procedures.

.03 *Authority of the U.S. Competent Authority*. The Director, International acts as the U.S. competent authority in administering the operating provisions of tax treaties (including reaching a mutual agreement in a specific case) and in interpreting and applying these treaties. In interpreting and applying tax treaties, the Director, International acts only with the concurrence of the Associate Chief Counsel (International). *See* Delegation Order No. 114 (Rev. 13).

.04 *General Process*. If a taxpayer's request for competent authority assistance is accepted, the U.S. competent authority generally will consult with the appropriate foreign competent authority and attempt to reach a mutual agreement that is acceptable to all parties. The U.S. competent authority also may initiate competent authority negotiations in any situation deemed necessary to protect U.S. interests. Such a situation may arise, for example, when a taxpayer fails to request competent authority assistance after agreeing to a U.S. or foreign tax assessment that is contrary to the provisions of an applicable tax treaty or for which correlative relief may be available.

.05 *Failure to Request Assistance*. Failure to request competent authority assistance or to take appropriate steps as necessary to maintain availability of the remedy may cause a denial of part or all of any foreign tax credits claimed. *See* § 1.901–2(e)(5)(i) of the Income Tax Regulations. *See also* section 9 of this revenue procedure concerning protective measures and section 11 of this revenue procedure concerning the determination of creditable foreign taxes.

SECTION 3. GENERAL CONDITIONS UNDER WHICH THIS PROCEDURE APPLIES

.01 *General*. The exclusions, exemptions, deductions, credits, reductions in rate, and other benefits and safeguards provided by treaties are subject to conditions and restrictions that may vary in different treaties. Taxpayers should examine carefully the specific treaty provisions applicable in their cases to determine the nature and extent of treaty benefits or safeguards they are entitled to and the conditions under which such benefits or safeguards are available. *See* section 9 of this revenue procedure, which prescribes protective measures to be taken by the taxpayer and any concerned related person with respect to U.S. and foreign tax authorities. *See also* section 12.02 of this revenue procedure for circumstances in which competent authority assistance may be denied.

.02 *Requirements of a Treaty*. There is no authority for the U.S. competent authority to provide relief from U.S. tax or to provide other assistance due to taxation arising under the tax laws of the foreign country or the United States, unless such authority is granted by a treaty. *See also* Rev. Proc. 89–8, 1989–1 C.B. 778, for procedures for requesting the assistance of the Internal Revenue Service ("the Service") when a taxpayer is or may be subject to inconsistent tax treatment by the Service and a U.S. possession tax agency.

.03 *Applicable Standards in Allocation Cases*. With respect to requests for competent authority assistance involving the allocation of income and deductions between a U.S. taxpayer and a related person, the U.S. competent authority and its counterpart in the other treaty country will be bound by the arm's length standard provided by the applicable provisions of the relevant treaty. The U.S. competent authority also will be guided by the arm's length standard consistent with the regulations under section 482 of the Code and the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations. When negotiating mutual agreements on the allocation of income and deductions, the U.S. competent authority will take into account all of the facts and circumstances of the particular case and the purpose of the treaty to avoid double taxation.

.04 *Who Can File Requests for Assistance*. Unless otherwise permitted under an applicable tax treaty, the U.S. competent authority will only consider requests for assistance from U.S. persons, as defined in section 7701(a)(30) of the Code. For purposes of this revenue procedure, a U.S. person is referred to as "the taxpayer." Thus, non-U.S. persons generally must present their initial request for assistance to the relevant foreign competent authority. As noted in Sec. 12.02 of this revenue procedure, there are circumstances in which the U.S. competent authority will not pursue assistance.

.05 *Closed Cases*. A case previously closed after examination shall not be reopened in order to make an adjustment unfavorable to the taxpayer unless the exceptional circumstances described in Rev. Proc. 94–68, 1994–2 C.B. 803, are present. The U.S. competent authority may, but is not required to, accept a taxpayer's request for competent authority consideration that will require the reopening of a case closed after examination.

.06 *Foreign Initiated Competent Authority Request*. When a foreign competent authority refers a request from a foreign taxpayer to the U.S. competent authority for consultation under the mutual agreement procedure, the U.S. competent authority generally will require the U.S. related taxpayer (in the case of an allocation of income or deductions between related persons) or may require the foreign taxpayer (in other cases) to file a request for competent authority assistance under this revenue procedure.

.07 *Requests Relating to Residence Issues*. U.S. competent authority assistance may be available to taxpayers seeking to clarify their residency status in the United States. Examples include cases in which taxpayers believe that they are erroneously treated as non-U.S. residents by treaty countries or cases where taxpayers are treated as dual residents despite

the objective tie-breaker provisions contained in the applicable treaties. Generally, competent authority assistance is limited to situations where resolution of a residency issue is necessary in order to avoid double taxation or to determine the applicability of a benefit under the treaty. Further, a request for assistance regarding a residency issue will be accepted only if it is established that the issue requires consultation with the foreign competent authority in order to ensure consistent treatment by the United States and the applicable treaty country. The U.S. competent authority does not issue unilateral determinations with respect to whether an individual is a resident of the United States or of a treaty country.

.08 *Determinations Regarding Limitation on Benefits*. Many treaties contain a limitation on benefits article that enumerates prescribed requirements that must be met to qualify as a resident that may be eligible for benefits under the treaty. The U.S. competent authority will not issue determinations regarding a taxpayer's status under one of the prescribed requirements in a limitation on benefits provision. However, certain treaties provide that the competent authority may, as a matter of discretion, determine the availability of treaty benefits where the prescribed requirements are not met. *See, e.g.*, Article 22(4) of the U.S.-South Africa income tax treaty. Requests for assistance in such cases should comply with this revenue procedure and any other specific procedures that may be issued from time to time. Taxpayers who are requesting a discretionary determination under a limitation on benefits provision should include the information described in exhibit 4.60.3–3 of the Internal Revenue Manual ("IRM"), Part 4 Examining Process, Chapter 60 International Procedure, Section 3 Tax Treaty Related Matters (IRM 4.60.3).

SECTION 4. PROCEDURES FOR REQUESTING COMPETENT AUTHORITY ASSISTANCE

.01 *Time for Filing*. A request for competent authority assistance generally may be filed at any time after an action results in taxation not in accordance with the provisions of the applicable treaty. In a case involving a U.S. initiated adjustment of tax or income resulting from a tax examination, a request for competent authority assistance may be submitted as soon as practicable after the amount of the proposed adjustment is communicated in writing to the taxpayer. Where a U.S. initiated adjustment has not yet been communicated in writing (*e.g.*, a notice of proposed adjustment) to the taxpayer, the U.S. competent authority generally will deny the request as premature. In the case of a foreign examination, a request may be submitted as soon as the taxpayer believes such filing is warranted based on the actions of the country proposing the adjustment. In a case involving the re-allocation of income or deductions between related entities, the request should not be filed until such time that the taxpayer can establish that there is the probability of double taxation. See section 9 of this revenue procedure, which explains protective measures to be taken by the taxpayer and any concerned related person with respect to U.S. and foreign tax authorities. In cases not involving an examination, a request can be made when the taxpayer believes that an action or potential action warrants the assistance of the U.S. competent authority. Examples of such action include a ruling or promulgation by a foreign tax authority concerning a taxation matter, or the withholding of tax by a withholding agent. Except where otherwise provided in an applicable treaty, taxpayers have discretion over the time for filing a request; however, delays in filing may preclude effective relief. *See* section 9 of this revenue procedure concerning protective measures for taxpayers that need or wish to delay the filing of a request for assistance. *See also* section 7.06 of this revenue procedure for rules relating to accelerated issue resolution and competent authority assistance.

.02 *Place of Filing*. The taxpayer must send all written requests for, or any inquiries regarding, competent authority assistance to the Director, International Attn: Office of Tax Treaty, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, D.C. 20224.

.03 *Additional Filing*. In the case of U.S. initiated adjustments, the taxpayer also must file a copy of the request with the office of the Service where the taxpayer's case is pending. If the request is filed after the matter has been designated for litigation or while a suit contesting the relevant tax liability of the taxpayer is pending in a U.S. court, a copy of the request also must be filed with the Associate Chief Counsel (International), Internal Revenue Service, 1111 Constitution Avenue N.W., Washington, D.C. 20224, with a separate statement attached identifying the court where the suit is pending and the docket number of the action.

.04 *Form of Request*. A request for competent authority assistance must be in the form of a letter addressed to the Director, International. It must be dated and signed by a person having the authority to sign the taxpayer's federal tax returns. The request must contain a statement that competent authority assistance is being requested and must include the information described in section 4.05 of this revenue procedure. *See* section 5 of this revenue procedure for requests involving small cases.

.05 *Information Required*. The following information shall be included in the request for competent authority assistance:

(a) a reference to the specific treaty and the provisions therein pursuant to which the request is made;

(b) the names, addresses, U.S. taxpayer identification number and foreign taxpayer identification number (if any) of the taxpayer and, if applicable, all related persons involved in the matter;

(c) if applicable, a description of the control and business relationships between the taxpayer and any relevant related person for the years in issue, including any changes in such relationship to the date of filing the request;

(d) a brief description of the issues for which competent authority assistance is requested, including a brief description of the relevant transactions, activities or other circumstances involved in the issues raised and the basis for the adjustment, if any;

(e) the years and amounts involved with respect to the issues in both U.S. dollars and foreign currency;

(f) the IRS office which has made or is proposing to make the adjustment or has examination jurisdiction over the taxpayer;

(g) an explanation of the nature of the relief sought or the action requested in the United States or in the treaty country with

respect to the issues raised, including a statement as to whether the taxpayer wishes to avail itself of the relief provided under Rev. Proc. 99–32, 1999–2 C.B. 296, (hereinafter referred to as "Rev. Proc. 99–32"), as indicated in section 10 of this revenue procedure;

(h) a statement whether the period of limitations for the years for which relief is sought has expired in the United States or in the treaty country;

(i) a statement of relevant domestic and foreign judicial or administrative proceedings which involve the taxpayer and related persons;

(j) to the extent known by the taxpayer, a statement of relevant foreign judicial or public administrative proceedings which do not involve the taxpayer or related persons, but involve the same issue for which competent authority assistance is requested;

(k) a statement whether the request for competent authority assistance involves issues that are currently, or were previously, considered part of an Advance Pricing Agreement ("APA") proceeding or other proceeding relevant to the issue under consideration in the United States or part of a similar proceeding in the foreign country;

(l) if applicable, powers of attorney with respect to the taxpayer;

(m) a statement whether the taxpayer is requesting the Simultaneous Appeals procedure as provided in section 8 of this revenue procedure;

(n) on a separate document, a statement that the taxpayer consents to the disclosure to the competent authority of the treaty country (with the name of the treaty country specifically stated) and that competent authority's staff, of any or all of the items of information set forth or enclosed in the request for U.S. competent authority assistance within the limits contained in the tax treaty under which the taxpayer is seeking relief. The taxpayer may request, as part of this statement, that its trade secrets not be disclosed to a foreign competent authority. This statement must be dated and signed by a person having authority to sign the taxpayer's federal tax returns and is required to facilitate the administrative handling of the request by the U.S. competent authority for purposes of the record-keeping requirements of section 6103(p) of the Code. Failure to provide such a statement will not prevent the U.S. competent authority from disclosing information under the terms of a treaty. *See* section 6103(k)(4) of the Code;

(o) a penalties of perjury statement in the following form:

> Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and, to the best of my knowledge and belief, the facts presented in support of the request for competent authority assistance are true, correct and complete.

The declaration must be signed by the person or persons on whose behalf the request is being made and not by the taxpayer's representative. The person signing for a corporate taxpayer must be an authorized officer of the taxpayer who has personal knowledge of the facts. The person signing for a trust, an estate or a partnership must be respectively, a trustee, an executor or a partner who has personal knowledge of the facts; and

(p) any other information required under this revenue procedure, as applicable. *See, e.g.*, section 7.06 of this revenue procedure, which requires the provision of certain information in the case of a request for the accelerated competent authority procedure, and section 10 of this revenue procedure, which requires the provision of certain information in the case of a request for Rev. Proc. 99–32 treatment.

.06 *Other Dispute Resolution Programs*. Requests for competent authority assistance that involve an APA or Pre-Filing Agreement request must include the information required under the relevant revenue procedure.

.07 *Other Documentation.* In addition, the taxpayer shall, on request, submit any other information or documentation deemed necessary by the U.S. or foreign competent authority for purposes of reaching an agreement. This includes English translations of any documentation required in connection with the competent authority request.

.08 *Updates*. The taxpayer must keep the U.S. competent authority informed of all material changes in the information or documentation previously submitted as part of, or in connection with, the request for competent authority assistance. The taxpayer also must provide any updated information or new documentation that becomes known or is created after the request is filed and which is relevant to the resolution of the issues under consideration.

.09 *Conferences*. To the extent possible, the U.S. competent authority will consult with the taxpayer regarding the status and progress of the mutual agreement proceedings. The taxpayer may request a pre-filing conference with the U.S. competent authority to discuss the mutual agreement process with respect to matters covered under a treaty, including discussion of the proper time for filing, the practical aspects of obtaining relief and actions necessary to facilitate the proceedings. Similarly, after a matter is resolved by the competent authorities, a taxpayer may also request a conference with the U.S. competent authority to discuss the resolution.

SECTION 5. SMALL CASE PROCEDURE FOR REQUESTING COMPETENT AUTHORITY ASSISTANCE

.01 *General*. To facilitate requests for assistance involving small cases, this section provides a special procedure simplifying the form of a request for assistance and, in particular, the amount of information that initially must be submitted. All other requirements of this revenue procedure continue to apply to requests for assistance made pursuant to this section.

.02 *Small Case Standards*. Eligible taxpayers may file an abbreviated request for competent authority assistance in accordance with this section if the total proposed adjustment involved in the matter is not greater than the following:

Taxpayer	Proposed Adjustment
Individual	$ 200,000
Corporation/ Partnership	$1,000,000
Other	$ 200,000

.03 *Small Case Filing Procedure*. The abbreviated request for competent authority assistance under the small case procedure must be dated and signed by a person having the authority to sign the

taxpayer's federal tax returns. Although other information and documentation may be requested at a later date, the initial request for assistance should include the following information and materials:

(a) a statement indicating that this is a matter subject to the small case procedure;

(b) the name, address, U.S. taxpayer identification number and foreign taxpayer identification number (if any) of the taxpayer and if applicable, all related persons involved in the matter;

(c) a description of the issue and the nature of the relief sought;

(d) the taxable years and amounts involved with respect to the issues in both U.S. and foreign currency;

(e) the name of the treaty country;

(f) on a separate document, a statement that the taxpayer consents to the disclosure to the competent authority of the treaty country (with the name of the treaty country specifically stated) and that competent authority's staff, of any or all of the items of information set forth or enclosed in the request for U.S. competent authority assistance within the limits contained in the tax treaty under which the taxpayer is seeking relief. The taxpayer may request, as part of this statement, that its trade secrets not be disclosed to a foreign competent authority. This statement must be dated and signed by a person having authority to sign the taxpayer's federal tax returns and is required to facilitate the administrative handling of the request by the U.S. competent authority for purposes of the record-keeping requirements of section 6103(p) of the Code. Failure to provide such a statement will not prevent the U.S. competent authority from disclosing information under the terms of a treaty. *See* section 6103(k)(4) of the Code; and

(g) a penalties of perjury statement in the following form:

> Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and, to the best of my knowledge and belief, the facts presented in support of the request for competent authority assistance are true, correct and complete.

The declaration must be signed by the person or persons on whose behalf the request is being made and not by the taxpayer's representative. The person signing for a corporate taxpayer must be an authorized officer of the taxpayer who has personal knowledge of the facts. The person signing for a trust, an estate or a partnership must be respectively, a trustee, an executor or a partner who has personal knowledge of the facts.

SECTION 6. RELIEF REQUESTED FOR FOREIGN INITIATED ADJUSTMENT WITHOUT COMPETENT AUTHORITY INVOLVEMENT

Taxpayers seeking correlative relief with respect to a foreign initiated adjustment involving a treaty matter should present their request to the U.S. competent authority. However, when the adjustment involves years under the jurisdiction of the Area Director or Appeals, taxpayers sometimes try to obtain relief from these offices. This may occur, for example, if the adjustment involves a re-allocation of income or deductions involving a related person in a country with which the United States has an income tax treaty. In these cases, taxpayers will be advised to contact the U.S. competent authority office. In appropriate cases, the U.S. competent authority will advise the Area Director or Appeals office on appropriate action. The U.S. competent authority may request the taxpayer to provide the information described under sections 4.05 and 4.07 of this revenue procedure. Failure to request competent authority assistance may result in denial of correlative relief with respect to the issue, including applicable foreign tax credits.

SECTION 7. COORDINATION WITH OTHER ADMINISTRATIVE OR JUDICIAL PROCEEDINGS

.01 *Suspension of Administrative Action with Respect to U.S. Adjustments.* When a request for competent authority assistance is accepted with respect to a U.S. initiated adjustment, the Service will postpone further administrative action with respect to the issues under competent authority consideration (such as assessment or collection procedures), except (a) in situations in which the Service may be requested otherwise by the U.S. competent authority, or (b) in situations involving cases pending in court and in other instances in which action must be taken to avoid prejudicing the U.S. Government's interest. The normal administrative procedures continue to apply, however, to all other issues not under U.S. competent authority consideration. For example, if there are other issues raised during the examination and the taxpayer is not in agreement with these issues, the usual procedures for completing the examination with respect to these issues apply. If the taxpayer is issued a thirty day letter with respect to these issues and prepares a protest of the unagreed issues, the taxpayer need not include any unagreed issue under consideration by the competent authority. Following the receipt of a taxpayer's protest, normal Appeals procedures shall be initiated with respect to those issues not subject to competent authority consideration.

.02 *Coordination with Appeals.* Taxpayers that disagree with a proposed U.S. adjustment either may pursue their right of administrative review with Appeals before requesting competent authority assistance or may request competent authority assistance immediately. Appeals' consideration, if any, of potential competent authority matters will be made without regard to other issues or considerations that do not involve potential competent authority matters. Taxpayers who are pursuing their rights with Appeals may contact the competent authority if they believe they have a potential competent authority issue. If a taxpayer decides to make a competent authority request, it may choose to make a request pursuant to the Simultaneous Appeals procedures in section 8 of this revenue procedure or otherwise. If a taxpayer makes a competent authority request, the taxpayer is deemed to consent to the U.S. competent authority contacting Appeals. *See* Rev. Proc. 2000–43, 2000–2 C.B. 404.

.03 *Coordination with Litigation.* The U.S. competent authority will not, without the consent of the Associate Chief Counsel (International), accept (or continue to consider) a taxpayer's request for assistance if the request involves a taxable period pending in a U.S. court or involves a matter pending in a U.S. court or designated for litigation for any taxable

period. If the case is pending in the United States Tax Court, the taxpayer may, in appropriate cases, be asked to join the Service in a motion to sever issues or delay trial pending completion of the competent authority proceedings. If the case is pending in any other court, the Associate Chief Counsel (International) will consult with the Department of Justice about appropriate action, and the taxpayer may, in appropriate cases, be asked to join the U.S. Government in a motion to sever issues or delay trial pending completion of the competent authority proceedings. Final decision on severing issues or delaying trial rests with the court. The filing of a competent authority request does not, however, relieve the taxpayer from taking any action that may be necessary or required with respect to litigation.

.04 *Coordination with Other Alternative Dispute Resolution and Pre-Filing Procedures*. Competent authority assistance is available to taxpayers in conjunction with other alternative dispute resolution and pre-filing procedures in order to ensure taxation in accordance with tax treaty provisions. Other revenue procedures and IRS publications should be consulted as necessary with regard to specific matters. *See, e.g.*, Rev. Proc. 96–53, 1996–2 C.B. 375 (concerning APAs); or Rev. Proc. 98–21, 1998–1 C.B. 585 (concerning Article XIII(8) of the U.S.-Canada treaty). Taxpayers that have applications under any other dispute resolution procedures should seek competent authority assistance as early as possible if they believe they have potential competent authority issues.

.05 *Effect of Agreements or Judicial Determinations on Competent Authority Proceedings*. If a taxpayer either executes a closing agreement with the Service (whether or not contingent upon competent authority relief) with respect to a potential competent authority issue or reaches a settlement on the issue with Appeals or with Chief Counsel pursuant to a closing agreement or other written agreement, the U.S. competent authority will endeavor only to obtain a correlative adjustment from the treaty country and will not undertake any actions that would otherwise change such agreements. However, the U.S. competent authority will, in appropriate cases, consider actions necessary for the purpose of providing treatment similar to that provided in Rev. Proc. 99–32. Once a taxpayer's tax liability for the taxable periods in issue has been determined by a U.S. court (including settlement of the proceedings before or during trial), the U.S. competent authority similarly will endeavor only to obtain correlative relief from the treaty country and will not undertake any action that would otherwise reduce the taxpayer's federal tax liability for the taxable periods in issue as determined by a U.S. court. Taxpayers therefore should be aware that in these situations, as well as in situations where a treaty country takes a similar position with respect to issues resolved under its domestic laws, relief from double taxation may be jeopardized.

.06 *Accelerated Competent Authority Procedure*. A taxpayer requesting competent authority assistance with respect to an issue raised by the Service also may request that the competent authorities attempt to resolve the issue for subsequent taxable periods ending prior to the date of the request for assistance if the same issue continues in those periods. *See also* Rev. Proc. 94–67, 1994–2 C.B. 800, concerning the Accelerated Issue Resolution ("AIR") process. The U.S. competent authority will consider the request and will contact the appropriate IRS field office to consult on whether the issue should be resolved for subsequent taxable periods. If the IRS field office consents to this procedure, the U.S. competent authority will address with the foreign competent authority the request for such taxable periods. For purposes of resolving the issue, the taxpayer must furnish all relevant information and statements that may be requested by the U.S. competent authority pursuant to this revenue procedure. In addition, if the case involves a Coordinated Industry Case ("CIC") taxpayer, the taxpayer must furnish all relevant information and statements requested by the Service, as described in Rev. Proc. 94–67, 1994–2 C.B. 800. If the case involves a non-CIC taxpayer, the taxpayer must furnish all relevant information and statements that may be requested by the IRS field office. A request for the accelerated competent authority procedure may be made at the time of filing a request for competent authority assistance or at any time thereafter, but generally before conclusion of the mutual agreement in the case; however, taxpayers are encouraged to request the procedure as early as practicable. The application of the accelerated procedure may require the prior consent of the Associate Chief Counsel (International). *See* section 7.03 of this revenue procedure. A request for the accelerated competent authority procedure must contain a statement that the taxpayer agrees that: (1) the inspection of books of account or records under the accelerated competent authority procedure will not preclude or impede (under section 7605(b) or any administrative provision adopted by the Service) a later examination of a return or inspection of books of account or records for any taxable period covered in the accelerated competent authority assistance request, and (2) the Service need not comply with any applicable procedural restrictions (for example, providing notice under section 7605(b)) before beginning such examination or inspection. The accelerated competent authority procedure is not subject to the AIR process limitations.

SECTION 8. SIMULTANEOUS APPEALS PROCEDURE

.01 *General*. A taxpayer filing a request for competent authority assistance under this revenue procedure may, at the same time or at a later date, request Appeals' consideration of the competent authority issue under the procedures and conditions provided in this section. The U.S. competent authority also may request Appeals' involvement if it is determined that such involvement would facilitate the negotiation of a mutual agreement in the case or otherwise would serve the interest of the Service. The taxpayer may, at any time, request a pre-filing conference with the offices of the Chief of Appeals and the U.S. competent authority to discuss the Simultaneous Appeals procedure. *See also* section 7.02 of this revenue procedure for coordination with the competent authority of cases already in Appeals. However, arbitration or mediation procedures that otherwise would be available through the Appeals process are not available for cases in the simultaneous appeals procedure. *See* Announcement 2000–4, 2000–1 C.B. 317, as extended by Announcement

2002–60, 2002–26 I.R.B. 28, or any subsequent announcement; and Rev. Proc. 2002–44, 2002–26 I.R.B. 10.

.02 *Time for Requesting the Simultaneous Appeals Procedure*.

(a) *When Filing For Competent Authority Assistance*. The Simultaneous Appeals procedure may be invoked at any of the following times:

(1) When the taxpayer applies for competent authority assistance with respect to an issue for which the examining IRS office has proposed an adjustment and before the protest is filed;

(2) When the taxpayer files a protest with Appeals and decides to sever the competent authority issue and seek competent authority assistance while other issues are referred to Appeals; and

(3) When the case is in Appeals and the taxpayer later decides to request competent authority assistance with respect to the competent authority issue. The taxpayer may sever the competent authority issue for referral to the U.S. competent authority and invoke the Simultaneous Appeals procedure at any time when the case is in Appeals but before settlement of the issue. Taxpayers, however, are encouraged to invoke the Simultaneous Appeals procedure as soon as possible, preferably as soon as practicable after the first Appeals conference.

(b) *After Filing For Competent Authority Assistance*. The taxpayer may request the Simultaneous Appeals procedure at any time after requesting competent authority assistance. However, a taxpayer's request for the Simultaneous Appeals procedure generally will be denied if made after the date the U.S. position paper is communicated to the foreign competent authority, unless the U.S. competent authority determines that the procedure would facilitate an early resolution of the competent authority issue or otherwise is in the best interest of the Service.

.03 *Cases Pending in Court*. If the matter is pending before a U.S. court or has been designated for litigation and jurisdiction has been released to the U.S. competent authority, a request for the Simultaneous Appeals procedure may be granted only with the consent of the U.S. competent authority and the Associate Chief Counsel (International).

.04 *Request for Simultaneous Appeals Procedure*. The taxpayer's request for the Simultaneous Appeals procedure should be addressed to the U.S. competent authority either as part of the initial competent authority assistance request or, if made later, as a separate letter to the U.S. competent authority. The request should state whether the issue was previously protested to Appeals for the periods in competent authority or for prior periods (in which case a copy of the relevant portions of the protest and an explanation of the outcome, if any, should be provided). The U.S. competent authority will send a copy of the request to the Chief of Appeals, who, in turn, will forward a copy to the appropriate Area Director. When the U.S. competent authority invokes the Simultaneous Appeals procedure, the taxpayer will be notified. The U.S. competent authority has jurisdiction of the issue when the Simultaneous Appeals procedure is invoked.

.05 *Role of Appeals in the Simultaneous Appeals Procedure*.

(a) *Appeals Process*. The Appeals representative assigned to the case will consult with the taxpayer and the U.S. competent authority for the purpose of reaching a resolution of the unagreed issue under competent authority jurisdiction before the issue is presented to the foreign competent authority. For this purpose, established Appeals procedures generally apply. The Appeals representative will consult with the U.S. competent authority during this process to ensure appropriate coordination of the Appeals process with the competent authority procedure, so that the terms of a tentative resolution and the principles and facts upon which it is based are compatible with the position that the U.S. competent authority intends to present to the foreign competent authority with respect to the issue. Any resolution reached with the Service under this procedure is subject to the competent authority process and, therefore, is tentative and not binding on the Service or the taxpayer. The Service will not request the taxpayer to conclude the Appeals process with a written agreement. The conclusions of the tentative resolution, however, generally will be reflected in the U.S. position paper used for negotiating a mutual agreement with the foreign competent authority. The procedures under this section do not give taxpayers the right to receive reconsideration of the issue by Appeals where the taxpayer applied for competent authority assistance after having received substantial Appeals consideration. Rather, the Service may rely upon, but necessarily will not be bound by, such previous consideration by Appeals when considering the case under the Simultaneous Appeals procedure.

(b) *Assistance to U.S. Competent Authority*. The U.S. competent authority is responsible for developing a U.S. position paper with respect to the issue and for conducting the mutual agreement procedure. Generally, requesting Appeals' consideration of an issue under competent authority jurisdiction will not affect the manner in which taxpayers normally are involved in the competent authority process.

.06 *Denial or Termination of Simultaneous Appeals Procedure*.

(a) *Taxpayer's Termination*. The taxpayer may, at any time, withdraw its request for the Simultaneous Appeals procedure.

(b) *Service's Denial or Termination*. The U.S. competent authority, the Chief of Appeals or the appropriate Area Director may decide to deny or terminate the Simultaneous Appeals procedure if the procedure is determined to be prejudicial to the mutual agreement procedure or to the administrative appeals process. For example, a taxpayer that received Appeals consideration before requesting competent authority assistance, but was unable to reach a settlement in Appeals, may be denied the Simultaneous Appeals procedure. A taxpayer may request a conference with the offices of the U.S. competent authority and the Chief of Appeals to discuss the denial or termination of the procedure.

.07 *Returning to Appeals*. If the competent authorities fail to agree or if the taxpayer does not accept the mutual agreement reached by the competent authorities, the taxpayer will be permitted to refer the issue to Appeals for further consideration.

.08 *Appeals Consideration of Non-Competent Authority Issues*. The Simultaneous Appeals procedure does not affect

the taxpayer's rights to Appeals' consideration of other unresolved issues. The taxpayer may pursue settlement discussions with respect to the other issues without waiting for resolution of the issues under competent authority jurisdiction.

SECTION 9. PROTECTIVE MEASURES

.01 *General*. In negotiating treaties, the United States seeks to secure an agreement with its treaty partner that any competent authority agreement reached with the treaty partner will be implemented notwithstanding any time limits or other procedural limitations in the domestic law of either country. However, treaty provisions providing a competent authority with the ability to waive such limitations do not affect the application of statutes of limitation in the event that a request for competent authority assistance is declined or the competent authorities are unable to reach an agreement. In addition, the particular treaty or the posture of the particular case may indicate that the taxpayer or a related person must take protective measures with the U.S. and foreign tax authorities so that the implementation of any agreement reached by the competent authorities or alternative remedies outside of the competent authority process are not barred by administrative, legal or procedural barriers. Such barriers may arise either before or after a competent authority request is filed. Protective measures include, but are not limited to: (a) filing protective claims for refund or credit; (b) staying the expiration of any period of limitations on the making of a refund or other tax adjustment; (c) avoiding the lapse or termination of the taxpayer's right to appeal any tax determination; (d) complying with all applicable procedures for invoking competent authority consideration, including applicable treaty provisions dealing with time limits within which to invoke such remedy; and (e) contesting an adjustment or seeking an appropriate correlative adjustment with respect to the U.S. or treaty country tax. A taxpayer should take protective measures in a timely manner, that is, in a manner that allows sufficient time for appropriate procedures to be completed and effective before barriers arise. Generally, a taxpayer should consider, at the time an adjustment is first proposed, which protective measures may be necessary and when such measures should be taken. However, earlier consideration of appropriate actions may be desirable, for example, in the case of a recurring adjustment or where the taxpayer otherwise is on notice that an adjustment is likely to be proposed. Taxpayers may consult with the U.S. competent authority to determine the need for and timing of protective measures in their particular case.

.02 Filing Protective Claim for Credit or Refund with a Competent Authority Request.

(a) *In General*. A valid protective claim for credit or refund must meet the requirements of section 6402 of the Code and the regulations thereunder. Accordingly, a protective claim must (a) fully advise the Service of the grounds on which credit or refund is claimed; (b) contain sufficient facts to apprise the Service of the exact basis of the claim; (c) state the year for which the claim is being made; (d) be on the proper form; and (e) be verified by a written declaration made under penalties of perjury.

(b) *Treatment of Competent Authority Request as Protective Claim*. The Service will treat a request for competent authority assistance itself as one or more protective claims for credit or refund with respect to issues raised in the request and within the jurisdiction of the competent authority and will not require a taxpayer to file the form described in Treasury regulation section 301.6402–3 with respect to those issues, provided that the request meets the other requirements of section 6402 of the Code and the regulations thereunder, as described in section 9.02 (a) of this revenue procedure. The information constituting the protective claim should be set forth in a separate section of the request for assistance and captioned "Protective claim pursuant to section 9.02 of Rev. Proc. 2002–52. The penalties of perjury statement described in section 4.05(o) satisfies the requirement for the written declaration and a separate declaration is not required.

.03 Protective Filing Before Competent Authority Request.

(a) *In general*. There may be situations in which a taxpayer would be unable to file a formal competent authority assistance request before the period of limitations would expire with respect to the affected U.S. return. In these situations, before the period of limitations expires, the taxpayer should file a protective claim for credit or refund of the taxes attributable to the potential competent authority issue to ensure that alternative remedies outside of the competent authority process will not be barred. Situations for which a protective filing may be appropriate include: (i) the treaty country is considering but has not yet proposed an adjustment; (ii) the treaty country has proposed an adjustment but the related taxpayer in the treaty country decides to pursue administrative or judicial remedies in the foreign country; or (iii) the terms of the applicable treaty require notification to be made to the competent authority within a certain time period. In considering whether to accept a taxpayer's request for competent authority assistance, the U.S. competent authority will consider whether the proper treaty notification has been made in accordance with this subsection.

(b) *Letter to Competent Authority Treated as Protective Claim*. In situations in which a protective claim is filed prior to submitting a request for competent authority assistance, the taxpayer may make a protective claim in the form of a letter to the competent authority. The letter must indicate that the taxpayer is filing a protective claim and set forth, to the extent available, the information required under section 4.05(a) through (j) or under section 5.03(a) through (e) of this revenue procedure, as applicable. The letter must include a penalties of perjury statement as described in sections 4.05(o) and 5.03(g). The letter must be filed in the same place and manner as a request for competent authority assistance. The Service will treat the letter as a protective claim(s) with respect to issues raised in the letter to and within the jurisdiction of the competent authority and will not require a taxpayer to file the form described in Treasury regulation section 301.6402–3 with respect to those issues, provided that the request meets the other requirements described in section 9.02 (a). The letter

must include the caption "Protective claim pursuant to section 9.03 of Rev. Proc. 2002–52."

(c) *Notification Requirement.* After filing a protective claim, the taxpayer periodically must notify the U.S. competent authority whether the taxpayer still is considering filing for competent authority assistance. The notification must be filed every six months until the formal request for competent authority assistance is filed. The U.S. competent authority may deny competent authority assistance if the taxpayer fails to file this semi-annual notification.

(d) *No Consultation between Competent Authorities until Formal Request is Filed.* The U.S. competent authority generally will not undertake any consultation with the treaty country's competent authority with respect to a protective claim filed under section 9.03 of this revenue procedure. The U.S. competent authority will place the protective claim in suspense until either a formal request for competent authority assistance is filed or the taxpayer notifies the U.S. competent authority that competent authority consideration is no longer needed. In appropriate cases, the U.S. competent authority will send the taxpayer a formal notice of claim disallowance.

.04 Effect of a Protective Claim.

Protective claims filed under either section 9.02 or 9.03 of this revenue procedure will only allow a credit or a refund to the extent of the grounds set forth in the protective claim and only to the extent agreed to by the U.S. and foreign competent authorities or to the extent unilaterally allowed by the U.S. competent authority. This revenue procedure does not grant a taxpayer the right to invoke section 482 of the Code in its favor or compel the Service to allocate income or deductions or grant a tax credit or refund.

.05 Treaty Provisions Waiving Procedural Barriers.

In those cases where the mutual agreement article authorizes a competent authority to waive or remove procedural barriers to the credit or refund of tax, taxpayers may be allowed a credit or refund of tax even though the otherwise applicable period of limitations has expired, prior closing agreements have been entered into, or other actions have been taken or omitted that ordinarily would foreclose relief in the form of a credit or refund of tax. However, under these provisions there may still be situations in which taxpayers should take appropriate protective measures as described under this revenue procedure or under applicable foreign procedures. For example, procedural limitations cannot be waived if a request for competent authority assistance is declined or the competent authorities are unable to reach agreement. In addition, some countries may take the position that domestic statutes of limitation on refunds cannot be waived under the relevant treaty. Because there are circumstances that are not under the control of taxpayers or the U.S. competent authority that might have necessitated the taking of protective measures, it is advisable that taxpayers take protective measures to increase the possibility that appropriate relief is available to them in all circumstances.

SECTION 10. APPLICATION OF REV. PROC. 99–32

Rev. Proc. 99–32 generally provides a means to conform a taxpayer's accounts and allow repatriation of certain amounts following an allocation of income between related U.S. and foreign corporations under section 482 of the Code without the federal income tax consequences of the adjustments that would otherwise have been necessary to conform the taxpayer's accounts in light of the allocation of income. In situations where a section 482 allocation is the subject of a request for competent authority assistance, any new or pending requests for Rev. Proc. 99–32 treatment relating to such allocation must be disposed of by the competent authority. Accordingly, if a taxpayer intends to seek Rev. Proc. 99–32 treatment in connection with competent authority assistance relating to a section 482 allocation, the taxpayer must request Rev. Proc. 99–32 treatment in conjunction with its request for competent authority assistance. If a taxpayer has already requested Rev. Proc. 99–32 treatment at the time it submits a request for competent authority assistance relating to a section 482 allocation, consideration of Rev. Proc. 99–32 treatment must be transferred to competent authority and a copy of the pending Rev. Proc. 99–32 request forwarded along with the request for competent authority assistance.

SECTION 11. DETERMINATION OF CREDITABLE FOREIGN TAXES

For purposes of determining the amount of foreign tax creditable under sections 901 and 902 of the Code, any amounts paid to foreign tax authorities that would not have been due if the treaty country had made a correlative adjustment may not constitute a creditable foreign tax. *See* § 1.901–2(e)(5)(i) of the regulations and Rev. Rul. 92–75, 1992–2 C.B. 197. Acts or omissions by the taxpayer that preclude effective competent authority assistance, including failure to take protective measures as described in section 9 of this revenue procedure or failure to seek competent authority assistance, may constitute failure to exhaust all effective and practical remedies for purposes of § 1.901–2(e)(5)(i). Further, the fact that the taxpayer has sought competent authority assistance but obtained no relief, either because the competent authorities failed to reach an agreement or because the taxpayer rejected an agreement reached by the competent authorities, generally will not, in and of itself, demonstrate for purposes of § 1.901–2(e)(5)(i) that the taxpayer has exhausted all effective and practical remedies to reduce the taxpayer's liability for foreign tax (including liability pursuant to a foreign tax audit adjustment). Any determination within the Service of whether a taxpayer has exhausted the competent authority remedy must be made in consultation with the U.S. competent authority.

SECTION 12. ACTION BY U.S. COMPETENT AUTHORITY

.01 *Notification of Taxpayer*. Upon receiving a request for assistance pursuant to this revenue procedure, the U.S. competent authority will notify the taxpayer whether the facts provide a basis for assistance.

.02 *Denial of Assistance*. The U.S. competent authority generally will not accept a request for competent authority assistance or will cease providing assistance to the taxpayer if:

(a) the taxpayer is not entitled to the treaty benefit or safeguard in question or to the assistance requested;

(b) the taxpayer is willing only to accept a competent authority agreement under conditions that are unreasonable or prejudicial to the interests of the U.S. Government;

(c) the taxpayer rejected the competent authority resolution of the same or similar issue in a prior case;

(d) the taxpayer does not agree that competent authority negotiations are a government-to-government activity that does not include the taxpayer's participation in the negotiation proceedings;

(e) the taxpayer does not furnish upon request sufficient information to determine whether the treaty applies to the taxpayer's facts and circumstances;

(f) the taxpayer was found to have acquiesced in a foreign initiated adjustment that involved significant legal or factual issues that otherwise would be properly handled through the competent authority process and then unilaterally made a corresponding correlative adjustment or claimed an increased foreign tax credit, without initially seeking U.S. competent authority assistance;

(g) the taxpayer: (i) fails to comply with this revenue procedure; (ii) fails to cooperate with the U.S. competent authority (including failing to provide sufficient facts and documentation to support its claim of double taxation or taxation contrary to the treaty); or (iii) failed to cooperate with the Service during the examination of the periods in issue and such failure significantly impedes the ability of the U.S. competent authority to negotiate and conclude an agreement (*e.g.*, significant factual development is required that cannot effectively be completed outside the examination process); or

(h) the transaction giving rise to the request for competent authority assistance: (i) includes an issue pending in a U.S. Court, or designated for litigation, unless competent authority consideration is concurred in by the U.S. competent authority and the Associate Chief Counsel (International); or (ii) involves fraudulent activity by the taxpayer.

.03 *Extending Period of Limitations for Assessment*. If the U.S. competent authority accepts a request for assistance, the taxpayer may be requested to execute a consent extending the period of limitations for assessment of tax for the taxable periods in issue. Failure to comply with the provisions of this subsection can result in denial of assistance by the U.S. competent authority with respect to the request.

.04 *No Review of Denial of Request for Assistance*. The U.S. competent authority's denial of a taxpayer's request for assistance or dismissal of a matter previously accepted for consideration pursuant to this revenue procedure is final and not subject to administrative review.

.05 *Notification*. The U.S. competent authority will notify a taxpayer requesting assistance under this revenue procedure of any agreement that the U.S. and the foreign competent authorities reach with respect to the request. If the taxpayer accepts the resolution reached by the competent authorities, the agreement shall provide that it is final and is not subject to further administrative or judicial review. If the competent authorities fail to agree, or if the agreement reached is not acceptable to the taxpayer, the taxpayer may withdraw the request for competent authority assistance and may then pursue all rights to review otherwise available under the laws of the United States and the treaty country. Where the competent authorities fail to agree, no further competent authority remedies generally are available, except with respect to treaties that provide for arbitration of the dispute. *See*, *e.g.*, Article 25(5) of the U.S.-German income tax treaty. A request for arbitration shall be made in accordance with the procedures prescribed under the applicable treaty and related documents, including procedures which the Service may promulgate from time to time.

.06 *Closing Agreement*. When appropriate, the taxpayer will be requested to reflect the terms of the mutual agreement and of the competent authority assistance provided in a closing agreement, in accordance with section 6.07 and 6.17 of Rev. Proc. 68–16, 1968–1 C.B. 770.

.07 *Unilateral Withdrawal or Reduction of U.S. Initiated Adjustments*. With respect to U.S. initiated adjustments under section 482 of the Code, the primary goal of the mutual agreement procedure is to obtain a correlative adjustment from the treaty country. For other types of U.S. initiated adjustments, the primary goal of the U.S. competent authority is the avoidance of taxation in contravention of an applicable treaty. Unilateral withdrawal or reduction of U.S. initiated adjustments, therefore, generally will not be considered. For example, the U.S. competent authority will not withdraw or reduce an adjustment to income, deductions, credits or other items solely because the period of limitations has expired in the foreign country and the foreign competent authority has declined to grant any relief. If the period provided by the foreign statute of limitations has expired, the U.S. competent authority may take into account other relevant facts to determine whether such withdrawal or reduction is appropriate and may, in extraordinary circumstances and as a matter of discretion, provide such relief with respect to the adjustment to avoid actual or economic double taxation. In no event, however, will relief be granted where there is fraud or negligence with respect to the relevant transactions. In keeping with the U.S. Government's view that tax treaties should be applied in a balanced and reciprocal manner, the United States normally will not withdraw or reduce an adjustment where the treaty country does not grant similar relief in equivalent cases.

SECTION 13. REQUESTS FOR RULINGS

.01 *General*. Requests for advance rulings regarding the interpretation or application of a tax treaty, as distinguished from requests for assistance from the U.S. competent authority pursuant to this revenue procedure, must be submitted to the Associate Chief Counsel (International).

.02 *Foreign Tax Rulings*. The Service does not issue advance rulings on the effect of a tax treaty on the tax laws of a treaty country for purposes of determining the tax of the treaty country.

SECTION 14. FEES

Rev. Proc. 2002–1, 2002–1 I.R.B. 1, sec. 15, requires the payment of user fees for requests to the Service for rulings, opinion letters, determination letters and similar requests. No user fees are required for requests for competent authority assistance pursuant to this revenue procedure.

SECTION 15. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 96–13, 91–23 and Rev. Proc. 91–26 are modified and superseded by this revenue procedure. Rev. Proc. 96–53, 1996–2 C.B. 375 is amplified. Rev. Rul. 92–75, 1992–2 C.B. 197, is clarified. Rev. Proc. 96–14, 1996–1 C.B. 626, is modified and superseded. Section 10 of this revenue procedure generally restates Rev. Proc. 96–14, but without the requirement for the concurrence of the Director, International, in Rev. Proc. 99–32 treatment where competent authority assistance is not requested. References in this revenue procedure to Rev. Proc. 99–32 shall be treated as references to Rev. Proc. 65–17, 1965–1 C.B. 833, as modified, amplified and clarified from time to time, for taxable years beginning before August 24, 1999.

SECTION 16. EFFECTIVE DATE

This revenue procedure is effective for requests for competent authority assistance and Rev. Proc. 99–32 treatment filed after August 5, 2002.

DRAFTING INFORMATION

The principal authors of this revenue procedure are Aziz Benbrahim, Tax Treaty Division and Amanda Ehrlich of the Office of the Associate Chief Counsel (International). For further information regarding this revenue procedure, contact either Mr. Benbrahim at (202) 874–1671 or Ms. Ehrlich at (202) 622–3880 (not toll-free calls).

Note: This revenue procedure will be reprinted as the next revision of IRS Publication 1141, *General Rules and Specifications for Substitute Forms W–2 and W–3*.

26 CFR 601.602: Tax forms and instructions.
(Also Part I, Sections 6041, 6051, 6071, 6081, 6091; 1.6041–1, 1.6041–2, 31.6051–1, 31.6051–2, 31.6071(a)–1, 31.6081(a)–1, 31.6091–1.)

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Part A. General

Section 1. Purpose

.01 The purpose of this revenue procedure is to provide general rules and specifications of the Internal Revenue Service (IRS) and the Social Security Administration (SSA) for paper substitute forms for **Form W–2**, *Wage and Tax Statement*, and **Form W–3**, *Transmittal of Wage and Tax Statements*, for wages paid during the **2002** calendar year.

.02 For purposes of this revenue procedure, a substitute form is one that is not printed by the IRS. A substitute Form W–2 or W–3 **must** conform to the specifications in this revenue procedure to be acceptable to the IRS and the SSA. No IRS office is authorized to allow deviations from this revenue procedure. Preparers should also refer to the separate *2002 Instructions for Forms W–2 and W–3* for details on how to complete these forms. See Part C, Section 4, for information on obtaining the official IRS forms and instructions. See Part B, Section 2, for requirements for the copies of substitute forms furnished to employees.

.03 The IRS maintains a centralized call-site at its Martinsburg Computing Center (IRS/MCC) to answer questions related to information returns (Forms W–2, W–3, 1099 series, 1096, etc.). You can reach the call-site at 304–263–8700 **(not a toll-free number)** or 1–866–455–7438 **(toll-free)**. The Telecommunication Device for the Deaf (TDD) number is 304–267–3367 **(not a toll-free**

number). The hours of operation are Monday through Friday from 8:30 A.M. to 4:30 P.M. Eastern time. You may also send questions to the call-site via the Internet at *mccirp@irs.gov*. IRS/MCC does **not** process Forms W–2. Forms W–2 prepared on paper **and/or** magnetically/electronically must be filed with the SSA. IRS/MCC does, however, process waiver requests (**Form 8508**, *Request for Waiver From Filing Information Returns on Magnetic Media*) and extension of time to file requests (**Form 8809**, *Request for Extension of Time To File Information Returns*) for Forms W–2 and requests for an extension of time to furnish the employee copies of Forms W–2. See **Pub 1220**, *Specifications for Filing Forms 1098, 1099, 5498 and W–2G Magnetically or Electronically*, for information on waivers and extensions of time.

.04 The following publications provide more detailed filing procedures for certain information returns:

- *2002 Instructions for Forms W–2 and W–3*, and
- **Pub 1223**, *Specifications for Private Printing of Substitute Forms W–2c and W–3c*.

Section 2. Nature of Changes

.01 Because there were few changes to the format of Forms W–2 and W–3 since the last revision of Pub. 1141, most of the changes to this document are editorial in nature.

.02 The major changes are as follows:

- The format changed from 3–column to 1–column and follows an easier-to-read format.
- Parts and sections were eliminated, renamed, and repositioned.
- Throughout this revenue procedure, we differentiate between the two types of forms by using the following terms:
  - The official, IRS-printed red drop-out ink Forms W–2 (Copy A) and W–3 and their exact substitutes are referred to as **"red-ink."**
  - The SSA-approved, laser-printed, black-and-white Forms W–2 (Copy A) and W–3 are referred to as **"laser-printed."**
- To receive approval of the Laser-printed forms, you may first contact the SSA at *laser.forms@ssa.gov* to obtain a template and further instructions in pdf or Excel format. See Section B.1B.
- Most of the information regarding how to complete the forms and dealing with codes in Box 12 of Form W–2 was deleted to more clearly target the audience for this revenue procedure.
- Magnetic media/electronic filing information was concentrated in (new) section 3 of Part A.
- Readers are referred to the *2002 Instructions for Forms W–2 and W–3* and the SSA Website, *www.ssa.gov/employers*, for Employer Service Liaison Officer (ESLO) information and other information that was deleted from the revenue procedure.
- Redundancies were eliminated as much as possible.

Section 3. General Rules For Filing Forms W–2 or W–3 Magnetically or Electronically

.01 Employers **must** file Forms W–2 (Copy A) with the SSA magnetically or electronically if they file 250 or more calendar year 2002 Forms W–2 (Copy A). The SSA publication **MMREF–1**, *Magnetic Media Reporting and Electronic Filing*, contains specifications and procedures for filing Form W–2 information with the SSA magnetically or electronically. Employers are cautioned to obtain the most recent revision of MMREF–1 (and supplements) due to any subsequent changes in the specifications and procedures.

.02 You may obtain a copy of the MMREF–1 by:

- Writing to:

  Social Security Administration
  OCO, DES; Attn: Employer Reporting Services Center
  300 North Greene Street
  Baltimore, MD 21290–0300

- Accessing the SSA Website at *www.ssa.gov/employer*.
- Calling your local SSA Employer Service Liaison Officer (ESLO) (the ESLOs' telephone numbers are available at *www.ssa.gov/employer*) or by calling 1–800–772–6270, or
- Using the SSA Business Services Online (BSO) dial-up at (410) 966–4105 (not a toll-free number).

.03 Magnetic media or electronic filers do not file Form W–3. See the SSA publication MMREF–1 for guidance on transmitting Form W–2 information to SSA magnetically or electronically.

.04 Employers who do *not* comply with the magnetic media or electronic filing requirements for Form W–2 and who are not granted a waiver may be subject to penalties. Employers who file Form W–2 information with the SSA on magnetic media or electronically must not send the same data to the SSA on paper Forms W–2. Any duplicate reporting may subject filers to unnecessary contacts by the SSA or IRS.

Section 4. General Rules For Paper Forms W–2 And W–3

.01 Employers not filing magnetically or electronically **must** file a paper Form W–2 (Copy A) and Form W–3 with the SSA using either the official IRS form or a substitute form that **exactly** meets the specifications shown in Parts B and C of this revenue procedure. Employers who file with the SSA magnetically, electronically, or on paper may design their own statements to furnish to employees. These employee statements designed by employers **must** comply with the requirements shown in Parts B and C.

.02 Red-Ink substitute forms that **completely** conform to the specifications contained in this revenue procedure may be privately printed **without prior approval** from the IRS or the SSA. Forms **cannot** be submitted to the IRS or the SSA for specific approval, except for the black-and-white laser printed (laser-printed) forms submitted to SSA for initial approval (see Section 1B of Part B).

.03 Substitute forms filed with the SSA and substitute copies furnished to employees that do not conform completely to these specifications are unacceptable. Forms W–2 (Copy A) and W–3 filed with the SSA that do not conform may be returned. In addition, **penalties may be assessed** for not complying with the form specifications.

.04 If you are uncertain of any specification and want it clarified, submit a letter citing the specification, state your interpretation of that specification, and enclose an example (if appropriate) of how the form would appear if produced using your understanding of the specification.

.05 Any questions about Copies 1, B, C, 2, and D of Form W–2 should be sent to:

Internal Revenue Service
Attn: Substitute Form W–2 Coordinator
W:CAR:MP:FP:S:SP
1111 Constitution Ave., N.W.
Room 6411 IR
Washington, DC 20224

Any questions about Form W–2 (Copy A) or Form W–3 should be sent to:

Social Security Administration
Wilkes-Barre Data Operations Center
ATTN: Program Analyst Office, Room 449
1150 E. Mountain Drive
Wilkes-Barre, PA 18702–7997

Note: *You should allow at least **30** days for the IRS or the SSA to respond.*

.06 Forms W–2 and W–3 are subject to annual review and possible change. Therefore, employers are cautioned against overstocking supplies of privately-printed substitutes.

.07 Separate instructions for Forms W–2 and W–3 are provided in the *2002 Instructions for Forms W–2 and W–3*. Form W–3 should be used only to transmit paper Forms W–2 (Copy A). Form W–3 is a single sheet including only essential filing information. **Be sure to make a copy of your completed Form W–3 for your records**. Copies of the current year official IRS Forms W–2 and W–3, and the instructions for those forms may be obtained from most IRS offices or by calling 1–800–829–3676. The IRS provides only cutsheet sets of Forms W–2 and cutsheets of Form W–3. The instructions and information copies of the forms may be found on the IRS Website at *www.irs.gov*.

.08 Because substitute Forms W–2 (Copy A) and W–3 are machine-imaged and scanned by the SSA, the forms ***must*** meet the same specifications as the official IRS Forms W–2 and W–3 (as shown in the exhibits).

Part B. Specifications for Substitute Forms W–2 and W–3

Section 1A. Specifications for "Red-Ink" Substitute Forms W–2 (Copy A) and W–3 Filed With the SSA

.01 Employers may file substitute Forms W–2 and W–3 with the SSA. The substitute forms **must** be exact replicas of the official IRS forms with respect to layout and content because they will be read by scanner equipment.

.02 Paper used for substitute Form W–2 (Copy A) and Form W–3 (cutsheets and continuous-pinfed forms) that are to be filed with the SSA must be white 100% bleached chemical wood, **18-20 pound paper only**, optical character recognition (OCR) bond produced in accordance with the specifications shown as follows:

- Acidity: Ph value, average, not less than 4.5
- Basis Weight: 17 x 22 inch 500 cut sheets, pound 18-20
- Metric equivalent — gm/sq. meter 68–75
  (a tolerance of +5 pct. is allowed)
- Stiffness: Average, each direction, not less than—milligrams
  Cross direction 50
  Machine direction 80

- Tearing strength: Average, each direction, not less than—grams 40
- Opacity: Average, not less than—percent 82
- Reflectivity: Average, not less than—percent 68
- Thickness: Average—inch 0.0038
  Metric equivalent—mm 0.097
  (a tolerance of +0.0005 inch (0.0127 mm) is allowed): paper cannot vary more than 0.0004 inch (0.0102 mm) from one edge to the other.
- Porosity: Average, not less than—seconds 10
- Finish (smoothness): Average, each side—seconds 20-55
  (for information only) the Sheffield equivalent—units 170–d200
- Dirt: Average, each side, not to exceed—parts per million 8

Note: *Reclaimed fiber in any percentage is permitted, provided the requirements of this standard are met.*

.03 All printing of substitute Forms W–2 (Copy A) and W–3 **must** be in Flint red OCR dropout ink **except** as specified below. The following **must** be printed in **nonreflective black ink**:

- Identifying control number "22222" or "33333" at the top of the forms.
- Tax year at the bottom of the forms using 24-point OCR-A font.
- The four (4) corner register marks on the forms.
- The jurat and "Signature, Title, Date" line at the bottom of Form W–3.
- The form identification number ("W–3") at the bottom of Form W–3.
- All the instructions below Form W–3 beginning with "Send this entire page...." line to the bottom of Form W–3.

.04 As in the past, Form W–2 (Copy A) and Form W–3 may be generated using a laser-printer by following all guidelines and specifications. In general, regardless of the method of entering data, the use of black ink on Forms W–2 and W–3 provides better readability for processing by scanning equipment. Colors other than black are not easily read by the scanner and/or may result in delays/errors in the processing of Forms W–2 and W–3. The printing of the data should be centered within the boxes. Type **must** be substantially identical in size and shape to the official form. All other printing, including shading and dollar signs for money boxes, on Form W–2 (Copy A) and W–3 **must** be in Flint J–6983 **red** OCR dropout ink or an exact match.

.05 The vertical and horizontal spacing for all federal payment and data boxes on Forms W–2 and W–3 **must** meet specifications. On Form W–3 and Form W–2 (Copy A), all the perimeter rules **must** be 1-point (0.014-inch), while all other rules must be one-half point (0.007-inch). Vertical rules **must** be parallel to the left edge of the form; horizontal rules parallel to the top edge.

.06 Employers filing Forms W–2 (Copy A) with the SSA on paper **must** also file a Form W–3. Form W–3 **must** be the same width (8.0 inches) as the Forms W–2. One Form W–3 is printed on standard-size, 8.5 x 11–inch paper. Two official Forms W–2 (Copy A) are contained on a single page that is 8.5 inches wide by 11 inches deep (exclusive of any snap-stubs). The official red-ink Form W–3 and Forms W–2 (Copy A) are 8.0 inches wide.

.07 The top margin for the Form W–2 (Copy A) and Form W–3 is .375 inch (3/8 inch). The right margin **must** be .2-inch and the left margin is .3-inch (plus or minus .0313-inch). Margins **must** be free of all printing.

.08 The form identifying control numbers are "22222" for Form W–2 (Copies A and 1) and "33333" for Form W–3. No printing should appear anywhere near the Form ID control numbers. For both Form W–2 (Copy A) and Form W–3, the combination width of box a (Control number) and the box containing the form identifying number (22222) **must** always be 2.54 inches.

Note: *The form identifying control number **must** be printed in nonreflective black ink in OCR-A font of **10** characters per inch.*

.09 The depth of the individual scannable image on a page **must** be the same as that on the official IRS forms. For Form W–2, the total depth of an individual form **must** be 4.94 inches. The depth of the Form W–3 on a page **must** be 4.8 inches.

.10 Continuous-pinfed Forms W–2 (Copy A) must be separated into 11-inch deep pages. The pinfed strips must be removed when Forms W–2 are filed with the SSA. The two Copies A of Form W–2 on the 11-inch page must **not** be separated (only the pages are to be separated (burst)). The words "Do Not Cut, Fold, or Staple Forms on This Page" **must** be printed **twice** between the two Copies A in Flint red OCR dropout ink. Perforations are required on all other copies (Copies 1, B, C, 2, and D) to enable the separation of individual forms.

.11 Box 12 of Form W–2 (Copy A) contains four entry boxes — 12a, 12b, 12c, and 12d. Do **not** make more than one entry per box. Enter your first code in box 12a (*i.e.*, enter Code D in box 12a, not 12d, if it is your first entry). If more than four items need to be reported in box 12, use a second Form W–2 to report the additional items (see "Multiple forms" in the *2002 Instructions for Forms W–2 and W–3*). Do not report the same federal tax data to the SSA on more than one Form W–2 (Copy A). However, repeat the identifying information (name, address, EIN, etc.) on each additional form.

.12 The checkboxes in box 13 of Forms W–2 (Copy A) must be .14 inches each; the spacing on each side of the 3 checkboxes is .36-inches; the space after the 3rd checkbox is .46 inches (see Exhibit A). The checkboxes in box b of Form W–3 **must** be .14 inches (see Exhibit B).

Note: *More than 50% of an applicable checkbox **must** be covered by an "X."*

.13 All substitute Forms W–2 (Copy A) and W–3 in the red-ink format must have the tax year, form number, and form title printed on the bottom face of each form using identical type to that of the official IRS form. The red-ink substitute Form W–2 (Copy A) and Form W–3 **must** have the form producer's EIN entered to the left of "Department of the Treasury."

.14 The words "For Privacy Act and Paperwork Reduction Act Notice, see separate instructions," **must** be printed in Flint red OCR dropout ink in the same location as on Forms W–2 (Copy A). The *2002 Instructions for Forms W–2 and W–3* contain the Privacy Act Notice previously shown on the Form W–3.

.15 The Office of Management and Budget (OMB) Number **must** be printed on substitute Form W–3 and on each ply of substitute Form W–2 in the same location as the official IRS forms.

.16 All substitute Forms W–3 must include the instructions that are printed on the same sheet below the official IRS form.

.17 The back of substitute Forms W–2 (Copy A) and Form W–3 **must** be free of all printing.

.18 All copies must be **clearly legible**. Hot wax and cold carbon spots **are not** permitted for Form W–2 (Copy A). **Interleaved carbon** should be black and must be of good quality to assure legibility on all copies and to avoid smudging. Fading must be minimized to assure legibility.

.19 Chemical transfer paper is permitted for Form W–2 (Copy A) only if the following standards are met:

- Only **chemically-backed** paper is acceptable for Form W–2 (Copy A). Front and back chemically-treated paper cannot be processed properly by scanning equipment.
- Chemically-transferred images must be black.
- Carbon-coated forms are not permitted.

.20 The Government Printing Office (GPO) symbol and the Catalog Number (Cat. No.) must be deleted from substitute Form W–2 (Copy A) and Form W–3.

Section 1B. Specifications for "Laser-Printed" Substitute Forms W–2 (Copy A) and W–3 Filed With the SSA

.01 Specifications for the laser-printed black-and-white Forms W–2 (Copy A) and W–3 are similar to the red-ink forms (Part B, Section 1A) except for the following items and the actual form dimensions (in Exhibits D and E). Exhibits are samples only and must not be downloaded to meet tax obligations.

1. Forms must be printed on 8.5 x 11-inch single-sheet paper only, **not** on continuous-feed using a laser printer. **There must be two Forms W–2 printed on a page**. There must be no horizontal perforations between the two Copies A of Form W–2 on each page.
2. All forms and data must be printed in nonreflective black ink only.
3. **The data and forms must be programmed to print simultaneously**. Forms cannot be produced separately from wage data entries.
4. The forms must contain **no** corner register marks.
5. The forms must not contain any shaded areas including those boxes that are entirely shaded on the red-ink forms.
6. Form ID Numbers on both Forms W–2 (**22222**) and Form W–3 (**33333**) must be preprinted in 14-point Arial bold font.
7. The form numbers ("W–2" and "W–3") and the tax year ("2002") on Form W–2 must be in 18-point Arial font. The tax year ("2002") on Form W–3 must be in 24-point Arial font.
8. No part of the box titles or the data printed on the forms may touch any of the vertical or horizontal lines, nor should any of the data intermingle with the box titles. The data should be centered in the boxes.
9. Do not print any information in the margins of the laser-printed forms (*i.e.*, do not print "DO NOT STAPLE OR FOLD" in the top margin of Form W–3).
10. The word "Code" must **not** appear in box 12 on Form W–2 (Copy A).
11. A 4-digit vendor code must appear in 12-point Arial font under the tax year in place of the Cat. No. on Copy A of Form W–2 and in the bottom right corner of the "For Official Use Only" box at the bottom of Form W–3. Do **not** display the form producer's EIN to the left of "Department of the Treasury." The vendor code will be used to identify the form producer.
12. Do not print Catalog Numbers (Cat. No.) on the forms (10134D for Form W–2; 10159Y for Form W–3).
13. Do **not** print the checkboxes in:
    - Box b of Form W–3. The "X" should be programmed to be printed and centered directly below the applicable "Kind of Payer."
    - The "Void" box of Form W–2 (Copy A). The "X" should be programmed to be printed to the right of "Void" because of space limitations.
    - Box 13 of Form W–2 (Copy A). The "X" should be programmed to be printed and centered directly below the applicable box title.
14. Do **not** print dollar signs. If there are no money amounts being reported, the entire field should be left blank.

.02 You **must** submit samples of your laser-printed substitute forms to the SSA. Only laser-printed, black-and-white substitute Forms W–2 (Copy A) and W–3 for tax year 2002 will be accepted for approval by the SSA. Questions regarding other forms (*i.e.*, Forms W–2c, W–3c, 1099 series, 1096, etc.) must be directed to the IRS.

.03 You will be required to send one set of blank and one set of dummy-data, laser-printed substitute Forms W–2 (Copy A) and W–3. Sample data entries should be filled in to the maximum length for each box entry using numeric data or alpha data depending upon the type being entered. Include in your submission the name, telephone number, fax number, and e-mail address of a contact person who can answer questions regarding your sample forms.

.04 To receive approval, you may first contact the SSA at *laser.forms@ssa.gov* to obtain a template and further instructions in pdf or Excel format. You may also send your 2002 sample, laser-printed substitute forms to:

Social Security Administration
Wilkes-Barre Data Operations Center
Attn: Data Processing Branch, Room 359
1150 E. Mountain Drive
Wilkes-Barre, PA 18702–7997

Send your sample forms via private mail carrier or certified mail in order to verify their receipt. You can expect approval (or disapproval) by the SSA within **30** days of receipt of your sample forms.

.05 The 4-digit vendor code must be preprinted on the sample, laser-printed substitute forms. **Forms not containing a vendor code will be rejected and will not be submitted for testing or approval**. If you do not have a vendor code, you may contact the National Association of Computerized Tax Processors via e-mail at *president@nactp.org*.

.06 If you use forms produced by a vendor and have questions concerning approval, do **not** send the forms to the SSA for approval. Instead, contact the software vendor to obtain a copy of SSA's dated approval notice supplied to that vendor.

Section 2. Requirements for Substitute Forms Furnished to Employees (Copies B, C, and 2 of Form W–2)

.01 All employers (including those who file on magnetic media or electronically) must furnish employees with at least two copies of Form W–2 (three or more for employees required to file a state, city, or local income tax return). The dimensions of these copies (Copies B, C, and 2), but not Copy A, may differ from the dimensions of the official IRS form to allow space for reporting additional information, including additional entries such as withholding for health insurance, union dues, bonds, or charity in box 14. The limitation of a maximum of **four items** in box 12 of Form W–2 applies **only** to **Copy A** that is filed with the SSA.

Note: *Printers are cautioned that the rules in Part B, Section 2, apply only to employee copies of Form W–2 (Copies B, C, and 2). Paper filers who send Forms W–2 (Copy A) to the SSA* ***must*** *follow the requirements in Part B, Sections 1A and 1B.*

.02 The **minimum** allowable dimensions for employee copies **only** (not Copy A) of Form W–2 are 2.67 inches deep by 4.25 inches wide. The **maximum** allowable dimensions are no more than 6.5 inches deep by no more than 8.5 inches wide.

Note: *The maximum and minimum size specifications are for tax year 2002 only and may change in future years.*

.03 Either horizontal or vertical format is permitted (see Exhibit D).

.04 The paper for all copies **must** be white. The substitute Form W–2 (Copy B), which employees are instructed to attach to their federal income tax return, must be at least 12-pound paper (basis 17 x 22–500). The other copies furnished to the employee must be at least 9-pound paper (basis 17 x 22–500).

.05 Employee copies of Forms W–2 (Copies B, C, and 2), including those that are printed on a single sheet of paper, **must** be easily separated. Including perforations between the individual copies satisfies this requirement, but using scissors to separate Copies B, C, and 2 does not.

.06 Interleaved carbon and chemical transfer paper employee copies must be **clearly legible**. Hot wax and cold-carbon spots **are not** permitted for employee copies. All copies **must** be able to be photocopied. **Interleaved carbon** should be black and must be of good quality to assure legibility on all copies and to avoid smudging. Fading must be minimized to assure legibility.

.07 The electronic tax logo on the IRS official employee copies is **not** required on any of the substitute form copies. To avoid confusion and questions by employees, employers are encouraged to delete the form identifying number (22222) and the word "Void" and its associated checkbox from the employee copies of Forms W–2.

.08 All substitute employee copies **must** contain the boxes, box numbers, and box titles that, **when applicable**, match the official IRS Form W–2. However, certain **core information** is required. The placement, numbering, and size of this information is specified as follows:

- The items and box numbers that constitute the core data are:
  Box 1 — Wages, tips, other compensation,
  Box 2 — Federal income tax withheld,
  Box 3 — Social security wages,
  Box 4 — Social security tax withheld,
  Box 5 — Medicare wages and tips, and
  Box 6 — Medicare tax withheld.

  The core boxes **must** be printed in the exact order shown on the official IRS form.

- The core data boxes (1 through 6) **must** be placed in the upper right of the form. Substitute vertical-format copies may have the core data across the top of the form (see Exhibit D). **In no instance**, will boxes or other information be permitted to the right of the core data.
- The form title, number, or copy designation (B, C, or 2) may be at the top of the form. Also, a reversed or blocked-out area to accommodate a postal permit number or other postal considerations is allowed in the upper-right.
- Boxes 1 through 6 **must** each be a minimum of 1 3/8 inches wide x ¼ inch deep.
- Other required boxes are:
  b) Employer identification number (EIN),
  c) Employer's name, address, and ZIP code,
  d) Employee's social security number,
  e) Employee's name, and
  f) Employee's address and ZIP code.

  Identifying items **must** be present on the form and be in boxes similar to those on the official IRS form. However, they may be placed in any location other than the top or upper right. You do not need to use the lettering system (b-f) used on the official IRS form. The employer identification number (EIN) may be included with the employer's name and address and not in a separate box.

Note: *Box a ("Control number") is not required.*

.09 All copies of Form W–2 **must** clearly show the form number, the form title, and the tax year prominently displayed together in one area of the form. The title of Form W–2 is "Wage and Tax Statement." It is recommended (but not required) that this be located on the bottom left of Form W–2. The reference to the "Department of the Treasury — Internal Revenue Service" **must** be on all copies of Form W–2 provided to the employee. It is recommended (but not required) that this be located on the bottom right of Form W–2.

.10 If the substitute employee copies are labeled, the forms **must** contain the applicable description:

- "Copy B, To Be Filed With Employee's FEDERAL Tax Return."
- "Copy C, for EMPLOYEES RECORDS."
- "Copy 2, To Be Filed with Employee's State, City, or Local Income Tax Return."

It is recommended (but not required) that these be located on the lower-left of Form W–2. If the substitute employee copies are **not labeled** as to the disposition of the copies, then written notification **must** be provided to each employee using similar wording.

.11 The tax year (2002) must be clearly printed **in nonreflective black ink** on all copies of substitute Forms W–2. It is recommended (but not required) that this information be in the middle at the bottom of the Form W–2. The use of 24 pt. OCR-A font is recommended (but not required).

.12 Boxes 1, 2, and 9 (if applicable) on **Copy B** must be outlined in **bold** 2-point rule or highlighted in some manner to distinguish them. If "Allocated tips" are being reported, it is recommended (but not required) that box 8 also be outlined. If reported, "Social security tips" (box 7) **must** be shown separately from "Social security wages" (box 3).

Note: *Boxes 8 and 9 may be omitted if not applicable.*

.13 If employers are required to withhold and report state or local income tax, the applicable boxes are also considered core information and **must** be placed at the bottom of the form. State information is included in:

- Box 15 (State, Employer's state ID number)
- Box 16 (State wages, tips, etc.)
- Box 17 (State income tax)

Local information is included in:

- Box 18 (Local wages, tips, etc.)
- Box 19 (Local income tax)
- Box 20 (Locality name)

.14 Boxes 7 through 14 may be omitted from substitute employee copies **unless** the employer must report related information to the employee. For example, if an employee did not have Social security tips (box 7), the form could be printed without that box. But if an employer provided dependent care benefits, the amount must be reported separately, shown in box 10, and labeled "Dependent care benefits."

.15 Employers may enter more than four codes in box 12 of Copies 1, B, C, 2, and D of Form W–2, but each entry **must** use **Codes A-V** (see the *2002 Instructions for Forms W–2 and W–3*).

.16 If an employer has employees in any of the three categories in box 13, all checkboxes must be shown and the proper checkmark made where applicable.

.17 You may use box 14 for any other information you wish to give to your employees. Each item must be labeled. (See the instructions for box 14 in the *2002 Instructions for Forms W–2 and W–3.*)

.18 Copy C of a substitute Form W–2 must contain the note "This information is being furnished to the Internal Revenue Service. If you are required to file a tax return, a negligence penalty or other sanction may be imposed on you if this income is taxable and you fail to report it."

.19 Instructions similar to those contained on the back of Copies B and C of the official IRS Form W–2 **must** be provided to each employee. An employer may modify or delete instructions (*i.e.*, removing Railroad Retirement Tier 1 and Tier 2 compensation information for nonrailroad employees or information about dependent care benefits that the employer does not provide) that do not apply to its employees.

.20 Employers **must** notify their employees who have no income tax withheld that they may be able to claim a tax refund because of the earned income credit (EIC). You will meet this notification requirement if you furnish a substitute Form W–2 with the EIC notice on the back of Copy B, IRS **Notice 797**, *Possible Federal Tax Refund Due to the Earned Income Credit (EIC)*, or your own statement containing the same wording. You may also change the font on Copy C so that the EIC notification and Form W–2 instructions fit entirely on the back. For more information about notification requirements, see **Notice 1015**, *Have You Told Your Employees About the Earned Income Credit (EIC)?*

Part C. Additional Instructions

Section 1. Additional Instructions for Form Printers

.01 If magnetic or electronic media is not used for filing with the SSA, the substitute copies of Forms W–2 (either red-ink or laser-printed) should be assembled in the same order as the official IRS Forms W–2. Copy A should be first, followed sequentially by perforated sets (Copies 1, B, C, 2, and D).

.02 The substitute form to be filed by the employer with the SSA must carry the designation "Copy A."

Note: *Magnetic media/electronic filers do not submit paper Copy A (red-ink or laser-printed) of Form W–2 or Form W–3 (red-ink or laser-printed) to the SSA.*

.03 Substitute forms (red-ink or laser-printed) do not require a copy to be retained by employers (Copy D). However, employers **must** be prepared to verify or duplicate the information if it is requested by the IRS or the SSA. Paper filers who do not keep a Copy D should be able to generate a facsimile of Copy A in case of loss.

.04 Except for copies in the official assembly, no additional copies that may be prepared by employers should be placed ahead of Form W–2 (Copy C) "For EMPLOYEE'S RECORDS."

.05 Instructions similar to those contained on the back of **Copies B and C** of the official IRS Form W–2 **must** be provided to each employee. These instructions may be printed on the back of the substitute Copies B and C or may be provided to employees on a separate statement. **Do not** print these instructions on the back of Copy 1 or 2 that is to be filed with the employee's state, city, or local income tax return. Any Forms W–2 (Copy A) and W–3 that are filed with the SSA **must** have no printing on the reverse side. Instructions similar to those provided as part of the IRS official forms **must** be provided as part of any substitute Form W–2 (Copy A) or Form W–3.

Section 2. Instructions For Employers

.01 Only originals of Form W–2 (Copy A) and Form W–3 may be filed with the SSA. **Carbon copies and photocopies are unacceptable.**

.02 Employers should type or machine-print data entries on non-laser-generated forms whenever possible. Ensure good quality by using a high quality type face, inserting data in the middle of blocks that are well separated from other printing and guidelines, and taking any other measures that will guarantee clear, sharp images. Black ink **must** be used with no script type, inverted font, italics, or dual-case alpha characters.

Note: *12-point Courier font is preferred by the SSA.*

.03 Form W–2 (Copy A) requires decimal entries for wage data. Dollar signs are preformatted on **red-ink** Forms W–2 (Copy A) and W–3 and should not be entered as part of money amounts.

.04 The employer must provide a machine-scannable Form W–2 (Copy A). The employer must also provide payee copies (Copies B, C, and 2) that are legible and able to be photocopied (by the employee). Refrain from printing any data in the top margin of the forms. **Unless absolutely necessary, do not enter anything in box a (Control number) on Forms W–2 or W–3.** Make certain that entries do not cross over into the form identification box (22222 or 33333). See instructions for box a in the *2002 Instructions for Forms W–2 and W–3.*

.05 The employer's Employer identification number (EIN) **must** be entered in box b of Form W–2 and box e of Form W–3.

Note: *The EIN entered on Form(s) W–2 (box b) and Form W–3 (box e)* ***must*** *be the same as on Forms 941, 943, CT–1, Schedule H (Form 1040), or any other corresponding forms filed with the IRS.*

.06 The employer's name and address may be preprinted.

.07 Employers should use the official IRS preprinted Form W–3 they received with Pub. 393 or Pub. 2184, if available, when filing red-ink Forms W–2 (Copy A) with the SSA.

Section 3. OMB Requirements for Both Red-Ink and Laser-Printed Substitute Forms

.01 The Paperwork Reduction Act (the Act) of 1995 (Public Law 104–13) requires that:

- The OMB approves all IRS tax forms that are subject to the Act.
- Each IRS form contains (in or near the upper right corner) the OMB approval number, if any. (The official OMB numbers may be found on the official IRS printed forms and are also shown on the forms in Exhibits A, B, D, and E.)
- Each IRS form (or its instructions) states:
  1. Why the IRS needs the information,
  2. How it will be used, and
  3. Whether or not the information is required to be furnished to the IRS.

This information must be provided to any users of official or substitute IRS forms or instructions.

.02 The OMB requirements for substitute IRS forms are:

- Any substitute form or substitute statement to a recipient must show the OMB number as it appears on the official IRS form.
- For Form W–2 (Copy A) and Form W–3, the OMB number must appear exactly as shown on the official IRS form.
- For any copy of Form W–2 other than Copy A, the OMB number must use one of the following formats.
  1. OMB No. XXXX-XXXX (preferred) or
  2. OMB # XXXX-XXXX (acceptable).

.03 Any substitute Form W–2 (Copy A only) must state "For Privacy Act and Paperwork Reduction Act Notice, see separate instructions." Any substitute Form W–3 must state "For Privacy Act and Paperwork Reduction Act Notice, see the 2002 Instructions for Forms W–2 and W–3." If no instructions are provided to users of your forms, you must furnish them the exact text of the Privacy Act and Paperwork Reduction Act Notice.

Section 4. Copies of Forms

.01 You can obtain official IRS forms and information copies of federal tax materials at local offices or by calling the IRS Distribution Center at **1-800-829-3676.** Other ways to get federal tax material include:

- The Internet at *www.irs.gov*.
- IRS Fax Forms at 703-368-9694.
- CD-ROM.

Note: *Many IRS forms are provided electronically by fax, on the IRS Website, and on the federal tax forms CD-ROM. But copies of Form W–2 (Copy A) and Form W–3 cannot be used for filing with the IRS when obtained this way because the forms do not meet the specific printing specifications as described in this publication. Copies of Forms W–2 and W–3 obtained from these sources are for information purposes only*.

.02 You can access the IRS via the Internet by File Transfer Protocol (FTP) using *ftp.irs.gov* or by the World Wide Web using *www.irs.gov*.

.03 The IRS also offers an alternative to downloading electronic files and provides current and prior-year access to tax forms and instructions through its federal tax forms CD-ROM. The CD will be available for the upcoming filing season. Order Pub. 1796, *IRS Federal Tax Products CD-ROM*, by using the IRS's Internet Website at www.irs.gov/cdorders or by calling 1-877-CDFORMS (1-877-233-6767).

Section 5. Effect On Other Documents

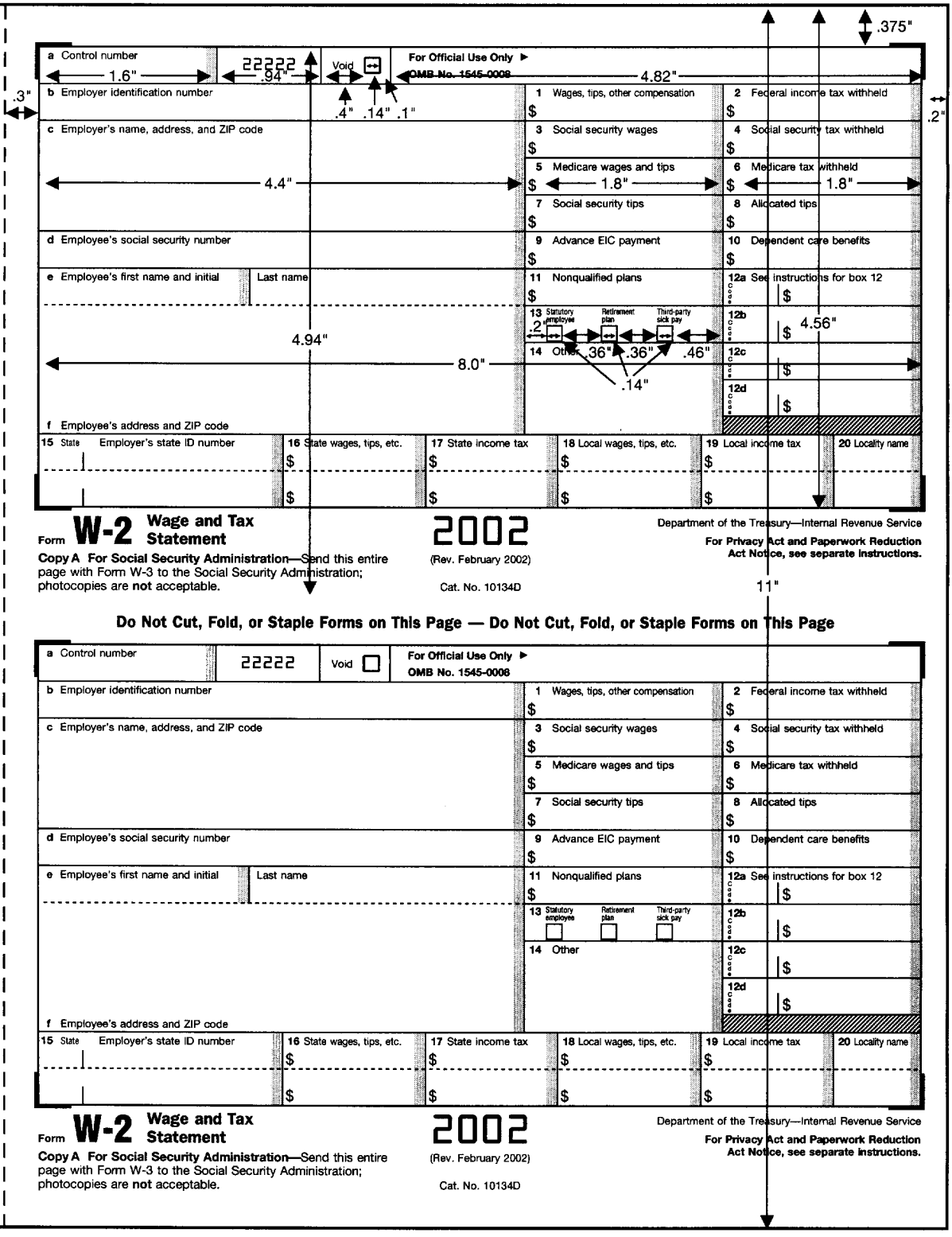
.01 Rev. Proc. 2001–26, 2001–1 C.B. 1093, (reprinted as Publication 1141, Revised 6–01), is superseded.

List of Exhibits

Exhibit A — Form W–2 (Copy A) (Red-Ink)
Exhibit B — Form W–3 (Red-Ink)
Exhibit C — Form W–2 (Copy B)
Exhibit D — Form W–2 (Alternative Employee Copies) (Illustrating Horizontal and Vertical Formats)
Exhibit E — Form W–2 (Copy A) (Laser-Printed)
Exhibit F — Form W–3 (Laser-Printed)

Exhibit A Form W-2 (Copy A)

(Red Ink)

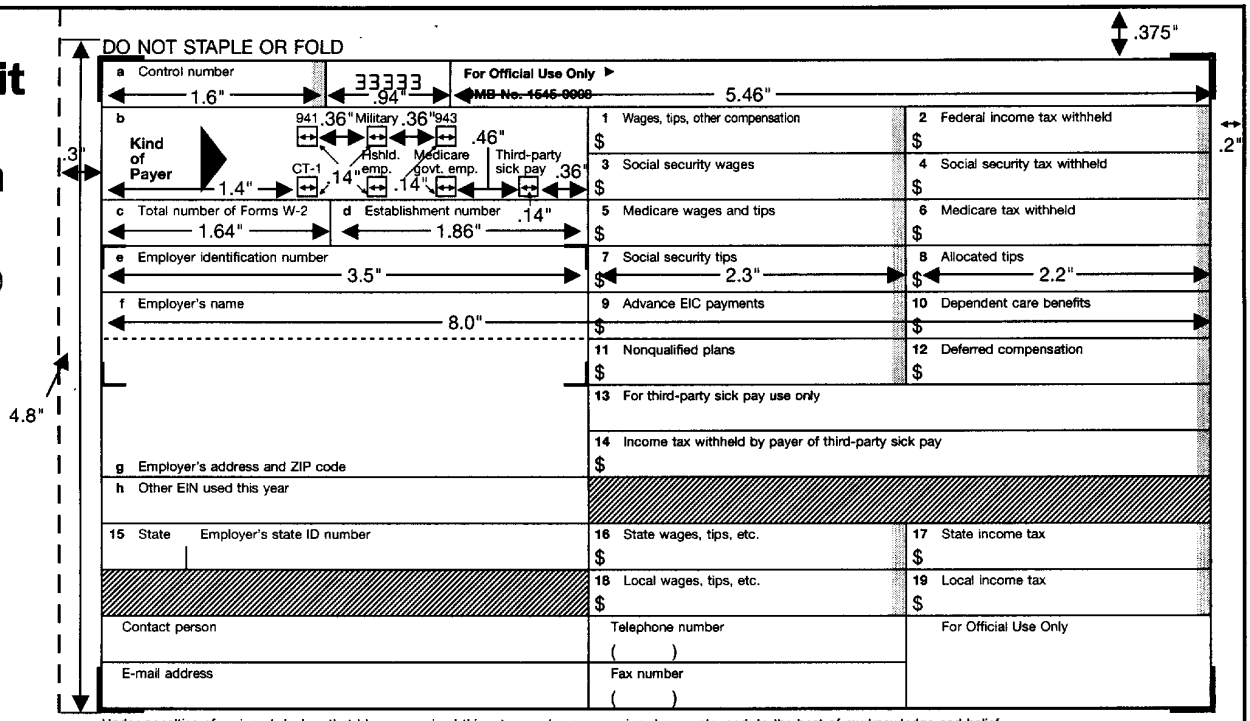


Do Not Cut, Fold, or Staple Forms on This Page — Do Not Cut, Fold, or Staple Forms on This Page

a Control number 22222 Void For Official Use Only ▶ OMB No. 1545-0008
b Employer identification number
1 Wages, tips, other compensation
2 Federal income tax withheld
c Employer's name, address, and ZIP code
3 Social security wages
4 Social security tax withheld
5 Medicare wages and tips
6 Medicare tax withheld
7 Social security tips
8 Allocated tips
d Employee's social security number
9 Advance EIC payment
10 Dependent care benefits
e Employee's first name and initial
Last name
11 Nonqualified plans
12a See instructions for box 12
13 Statutory employee
Retirement plan
Third-party sick pay
12b
14 Other
12c
12d
f Employee's address and ZIP code
15 State
Employer's state ID number
16 State wages, tips, etc.
17 State income tax
18 Local wages, tips, etc.
19 Local income tax
20 Locality name
Form W-2 Wage and Tax Statement
2002
Department of the Treasury—Internal Revenue Service
Copy A For Social Security Administration—Send this entire page with Form W-3 to the Social Security Administration; photocopies are not acceptable.
(Rev. February 2002)
Cat. No. 10134D
For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Exhibit B Form W-3

(Red Ink)



Under penalties of perjury, I declare that I have examined this return and accompanying documents, and, to the best of my knowledge and belief, they are true, correct, and complete.

Signature ▶ Title ▶ Date ▶

Form W-3 Transmittal of Wage and Tax Statements 2002

Department of the Treasury
Internal Revenue Service

Send this entire page with the entire Copy A page of Form(s) W-2 to the Social Security Administration. Photocopies are not acceptable.

Do not send any payment (cash, checks, money orders, etc.) with Forms W-2 and W-3.

An Item To Note

Separate instructions. See the separate **2002 Instructions for Forms W-2 and W-3** for information on completing this form.

Purpose of Form

Use this form to transmit Copy A of **Form(s) W-2,** Wage and Tax Statement. Make a copy of Form W-3, and keep it with Copy D (For Employer) of Form(s) W-2 for your records. Use Form W-3 for the correct year. **File Form W-3 even if only one Form W-2 is being filed.** If you are filing Form(s) W-2 on magnetic media or electronically, **do not** file Form W-3.

When To File

File Form W-3 with Copy A of Form(s) W-2 by February 28, 2003.

Where To File

Send this entire page with the entire Copy A page of Form(s) W-2 to:

Social Security Administration
Data Operations Center
Wilkes-Barre, PA 18769-0001

Note: *If you use "Certified Mail" to file, change the ZIP code to "18769-0002." If you use an IRS approved private delivery service, add "ATTN: W-2 Process, 1150 E. Mountain Dr." to the address and change the ZIP code to "18702-7997." See* ***Circular E,*** *Employer's Tax Guide (Pub. 15), for a list of IRS approved private delivery services.*

Do **not** send magnetic media to the address shown above.

For Privacy Act and Paperwork Reduction Act Notice, see the 2002 Instructions for Forms W-2 and W-3.

Cat. No. 10159Y

Printed on recycled paper

Exhibit C Form W-2 (Copy B)

a Control number		OMB No. 1545-0008	Safe, accurate, FAST! Use IRS e-file — Visit the IRS Web Site at www.irs.gov.
b Employer identification number		1 Wages, tips, other compensation	2 Federal income tax withheld
c Employer's name, address, and ZIP code		3 Social security wages	4 Social security tax withheld
		5 Medicare wages and tips	6 Medicare tax withheld
		7 Social security tips	8 Allocated tips
d Employee's social security number		9 Advance EIC payment	10 Dependent care benefits
e Employee's first name and initial Last name		11 Nonqualified plans	12a See instructions for box 12 Code
		13 Statutory employee ☐ Retirement plan ☐ Third-party sick pay ☐	12b Code
		14 Other	12c Code
			12d Code
f Employee's address and ZIP code			

15 State	Employer's state ID number	16 State wages, tips, etc.	17 State income tax	18 Local wages, tips, etc.	19 Local income tax	20 Locality name

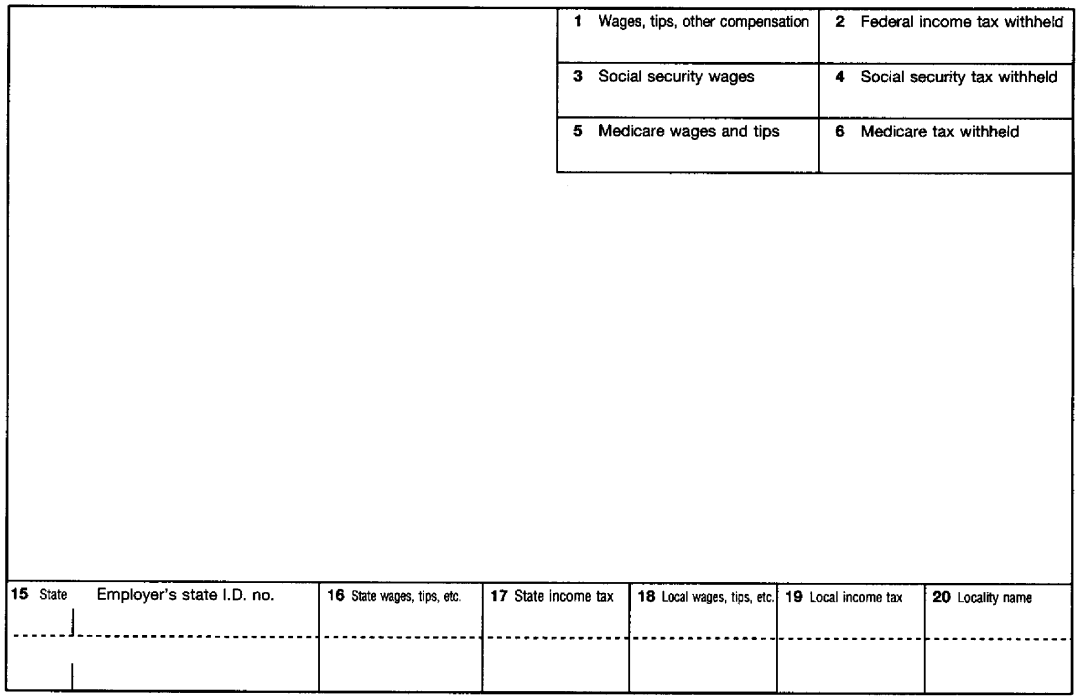
Form **W-2** **Wage and Tax Statement** 2002 (Rev. February 2002)

Department of the Treasury—Internal Revenue Service

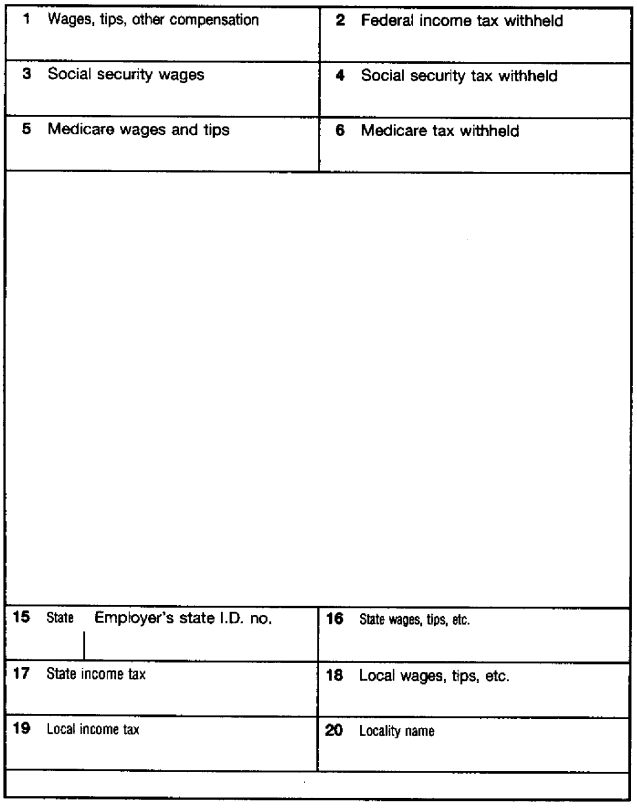
Copy B To Be Filed with Employee's FEDERAL Tax Return.
This information is being furnished to the Internal Revenue Service.

Exhibit D Form W-2 Alternative Employee Copies

(Illustrating Horizontal and Vertical Formats)



Horizontal Format



Vertical Format

Note: Exhibit D provides examples of employee copies of Form W-2 only. Copy A, which is sent to SSA, MUST conform to the dimensions in Exhibit A or Exhibit E.

The core data boxes are 1 through 6 and, if applicable, 15 through 20. The core data must be similarly positioned, exactly numbered, and exactly titled as shown for each format. Other data may be placed in unoccupied areas based upon the employer's needs. Form identification may be placed before or after the core data. However, the employer's non-core elements may be positioned only between the sections of core data.

Exhibit E Form W-2 (Copy A)

(Laser-Printed)

This form may be subject to change.

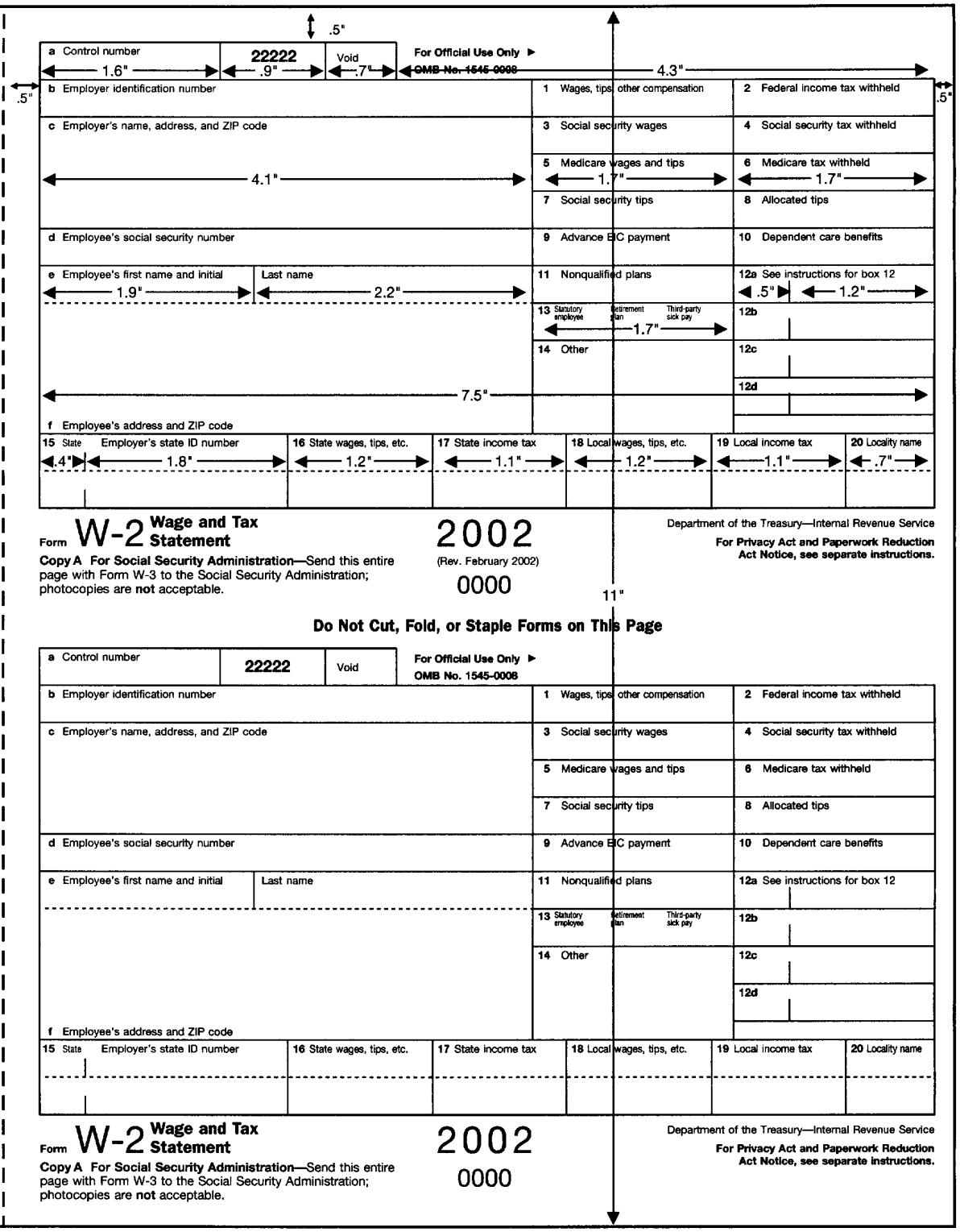


Exhibit F Form W-3

(Laser-Printed)

This form may be subject to change.

.5"

a Control number (1.6")	33333 (.9")	For Official Use Only ► OMB No. 1545-0008 (5.0")

b Kind of Payer (3.2")	941	Military	943	CT-1	Hshld. emp.	Medicare govt. emp.	Third-party sick pay

c Total number of Forms W-2 (1.6")	d Establishment number (1.6")
e Employer identification number (3.2")	
f Employer's name (7.5")	
g Employer's address and ZIP code	
h Other EIN used this year	

1 Wages, tips, other compensation	2 Federal income tax withheld
3 Social security wages	4 Social security tax withheld
5 Medicare wages and tips	6 Medicare tax withheld
7 Social security tips (2.15")	8 Allocated tips (2.15")
9 Advance EIC payments	10 Dependent care benefits
11 Nonqualified plans	12 Deferred compensation
13 For third-party sick pay use only	
14 Income tax withheld by payer of third-party sick pay	

15 State	Employer's state ID number	16 State wages, tips, etc.	17 State income tax
		18 Local wages, tips, etc.	19 Local income tax
Contact person		Telephone number	For Official Use Only 0000
E-mail address		Fax number	

.5"

Under penalties of perjury, I declare that I have examined this return and accompanying documents, and, to the best of my knowledge and belief, they are true, correct, and complete.

Signature ► Title ► Date ►

Form W-3 Transmittal of Wage and Tax Statements 2002

Department of the Treasury
Internal Revenue Service

Send this entire page with the entire Copy A page of Form(s) W-2 to the Social Security Administration. Photocopies are not acceptable.

Do not send any payment (cash, checks, money orders, etc.) with Forms W-2 and W-3.

An Item To Note

Separate instructions. See the separate **2002 Instructions for Forms W-2 and W-3** for information on completing this form.

Purpose of Form

Use this form to transmit Copy A of **Form(s) W-2,** Wage and Tax Statement. Make a copy of Form W-3, and keep it with Copy D (For Employer) of Form(s) W-2 for your records. Use Form W-3 for the correct year. **File Form W-3 even if only one Form W-2 is being filed.** If you are filing Form(s) W-2 on magnetic media or electronically, **do not** file Form W-3.

When To File

File Form W-3 with Copy A of Form(s) W-2 by February 28, 2003.

Where To File

Send this entire page with the entire Copy A page of Form(s) W-2 to:

Social Security Administration
Data Operations Center
Wilkes-Barre, PA 18769-0001

Note: *If you use "Certified Mail" to file, change the ZIP code to "18769-0002." If you use an IRS approved private delivery service, add "ATTN: W-2 Process, 1150 E. Mountain Dr." to the address and change the ZIP code to "18702-7997." See* ***Circular E,*** *Employer's Tax Guide (Pub. 15), for a list of IRS approved private delivery services.*

Do **not** send magnetic media to the address shown above.

For Privacy Act and Paperwork Reduction Act Notice, see the 2002 Instructions for Forms W-2 and W-3.

Part IV. Items of General Interest

Notice of Proposed Rulemaking and Notice of Public Hearing

Receipt of Multiple Notices With Respect to Incorrect Taxpayer Identification Numbers

REG–116644–01

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations relating to backup withholding. The regulations clarify the method of determining whether the payor has received two notices that a payee's taxpayer identification number (TIN) is incorrect. If a payor receives two or more such notices with respect to the same account during a three-year period, the payor must begin backup withholding unless the payee provides verification of its correct TIN pursuant to the regulations. This document also contains proposed regulations which clarify when an information return filer must solicit a payee's TIN following the receipt of a penalty notice. In addition, this document provides notice of a public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by October 1, 2002. Requests to speak (with outlines of topics to be discussed) at the public hearing scheduled for October 22, 2002, at 10:00 a.m., must be received by October 1, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–116644–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–116644–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at *www.irs.gov/regs*. The public hearing will be held in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Nancy Rose (202) 622–4910; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Treena Garrett at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Employment Tax Regulations (26 CFR Part 31) under section 3406 of the Internal Revenue Code (Code), and to the Procedure and Administration Regulations (26 CFR Part 301) under section 6724 of the Code. These proposed amendments to the regulations would revise existing §§ 31.3406(d)–5(d)(2)(ii) and (g)(4), and 301.6724–1(f)(2), (f)(3), (f)(5) and (k).

These proposed regulations address certain issues identified by the Commissioner's Information Reporting Program Advisory Committee (IRPAC) and take into account comments and information provided by IRPAC members.

Section 3406

Section 3406 imposes a requirement to backup withhold on any reportable payment where the Secretary notifies the payor that the TIN furnished by the payee is incorrect. After receiving a notice of incorrect TIN, the payor must backup withhold on reportable payments until the payee furnishes another TIN. However, if the payor receives two notices with respect to the same account within a three year period, the payor must backup withhold on reportable payments until the payor receives a verification of the payee's TIN from the Social Security Administration or the IRS.

The regulations under section 3406 set forth detailed procedures for payors to follow after receipt of a notice of incorrect TIN from the IRS. When the first such notice is received by the payor, the payor must send a notice (commonly referred to as a "B" notice) to the payee stating that the payee will be subject to backup withholding if the payee does not furnish a certified TIN. If a second notice of incorrect TIN is received by a payor with respect to the payee's account within a three-year period, the payor must send a second "B" notice to the payee stating that the payee will be subject to backup withholding unless the payor receives verification of the payee's TIN from the Social Security Administration or IRS.

If the payor receives two or more notices of incorrect TIN with respect to a payee's account within the same calendar year, the regulations provide that the multiple notices may be treated as one notice for purposes of sending out a first "B" notice, and must be treated as one notice for purposes of sending out a second B notice. However, in some cases, a payor may receive multiple notices of incorrect TIN in different calendar years which relate to the same payee's account for the same year. This may occur where a payor files different types of information returns with respect to the same payee, such as a Form 1099–B (gross proceeds reported by brokers) and a Form 1099–DIV (payment of dividends). Typically these information returns all contain the same TIN, following information contained in the payor's records. Variations in the processing of such returns by the IRS may result in the issuance of incorrect TIN notices at different times.

The regulations currently do not provide that two or more notices of incorrect TIN relating to the same payee and the same year, but which are received in different calendar years, count as one notice. Accordingly, a payor must send a first "B" notice to the payee after receipt of the first notice of incorrect TIN, and a second "B" notice after receipt of the second notice of incorrect TIN, even if the second notice relates to an information return filed for the same year as the first notice. The payee must respond to the second notice by obtaining verification of

its TIN from the IRS or Social Security Administration.

To avoid this burden on both payor and payee, the proposed amendments to the regulations provide that when a payor receives two or more notices of incorrect TIN with respect to the same payee's account for the same year, the payor is treated as receiving one notice, regardless of the calendar year in which the notices are received.

Section 6724

Section 6724 provides for a waiver of information reporting penalties under sections 6721 through 6723 where the failure giving rise to such penalties was due to reasonable cause and not willful neglect. Under § 301.6724–1(a) of the regulations, in order to prove reasonable cause for a failure, the filer must establish either that there are significant mitigating factors with respect to the failure or that the failure arose from events beyond the filer's control. In addition, the filer must have acted in a responsible manner both before and after the failure.

The regulation provides that certain actions of the payee or another person providing necessary information with respect to the return may be an event beyond the filer's control. Thus, a payee's furnishing of an incorrect TIN to a payor may be an event beyond the payor's control. However, the payor must also act in a responsible manner with respect to the failure. Section 301.6724–1(f) sets forth special rules for acting in a responsible manner with respect to incorrect TINs. The filer is required to make an initial solicitation for the payee's correct TIN at the time the account is opened, and up to two annual solicitations following receipt of penalty notices.

Under the current regulation, if a filer receives a penalty notice with respect to an incorrect payee TIN and a notice of incorrect TIN under section 3406(a)(1)(B) during the same calendar year for the same payee, the filer will satisfy the section 6724 annual solicitation requirements by sending the required "B" notice. The filer does not have to make another solicitation pursuant to section 6724. However, if the filer receives a section 3406(a)(1)(B) notice with respect to a payee in one year, and the following year receives a penalty notice with respect to the same payee and the same year as the section 3406(a)(1)(B) notice, the filer must make an annual solicitation pursuant to section 6724.

To avoid this burden, the proposed amendments to the regulations provide that if a filer receives a section 3406(a)(1)(B) notice with respect to a payee in one year and the following year receives a penalty notice with respect to the same payee and the same year as the 3406(a)(1)(B) notice, the filer is not required to make an annual solicitation for the payee's TIN pursuant to section 6724 provided the filer has sent the required B notice.

Effective Date of Proposed Regulations

The provisions of these regulations are proposed to be applicable the beginning of the first calendar year that begins after these regulations are published in the **Federal Register** as final regulations.

Special Analyses

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

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight (8) copies) that are submitted timely (in the manner described in the **ADDRESSES** portion of this preamble) to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. Written comments on the proposed regulations are due by October 1, 2002.

A public hearing has been scheduled for October 22, 2002, beginning at 10:00 a.m. in Room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** portion of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by October 1, 2002. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for reviewing outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Nancy L. Rose, Office of Associate Chief Counsel (Procedure and Administration). However, other personnel from the IRS and the Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 31 and 301 are proposed to be amended as follows:

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

Par. 1. The authority citation for part 31 continues to read in part as follows:

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

Par. 2. Section 31.3406(d)–5 is amended by revising paragraphs (d)(2)(ii) and (g)(4) to read as follows:

§ 31.3406(d)–5 Backup withholding when the Service or a broker notifies the payor to withhold because the payee's taxpayer identification number is incorrect.

* * * * *

(d) * * *

(2) * * *

(ii) *Two or more notices for an account for the same year or received in the same year*. A payor who receives, under the same payor taxpayer identification number, two or more notices under paragraph (c)(1) or (2) of this section with respect to the same payee's account for the same year, or in the same calendar year, need only send one notice to the payee under this section.

* * * * *

(g) * * *

(4) *Receipt of two notices for the same year or in the same calendar year*. A payor who receives, under the same payor taxpayer identification number, two or more notices under paragraph (c)(1) or (2) of this section with respect to the same payee's account for the same year, or in the same calendar year, must treat such notices as one notice for purposes of this paragraph (g).

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

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

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

Par. 4. Section 301.6724–1 is amended as follows:

1. Revising paragraphs (f)(2) and (f)(3).

2. Amending paragraph (f)(5)(vi), last sentence, by removing the language "paragraph (f)(2)" and adding "paragraph (f)(3)" in its place.

3. Amending paragraph (k), *Example 3*(ii), second sentence, by removing the language "§ 35a.3406–1(c)(1) of this paragraph" and adding "§ 31.3406(d)–5(d)(2)(i)" in its place; and by removing the language "(f)(2)" and adding "(f)(3)" in its place.

4. Amending paragraph (k), *Example 3*(ii), fifth sentence, by removing the language "§ 301.6721–1T" and adding "§ 301.6721–1" in its place.

5. Amending paragraph (k), *Example 3*(iii), fifth sentence, by removing the language "§ 35a.3406–1(c)(1)" and adding "§ 31.3406(d)–5(d)(2)(i)" in its place.

6. Amending paragraph (k), *Example 3*(iii), last sentence, by removing the language "§ 301.6721–1T" and adding "§ 301.6721–1" in its place.

7. Amending paragraph (k), *Example 5*, final sentence, by removing the language "§ 301.6721–1T" and adding "§ 301.6721–1" in its place.

8. Amending paragraph (k), *Example 6*(ii), sixth sentence, by removing the language "(f)(3)" and adding the language "(f)(2)" in its place.

9. Amending paragraph (k), *Example 7*(ii), fourth sentence, by removing the language "(f)(2)" and adding "(f)(3)" in its place; and by removing the language "§ 35a.3406(c)(1)" and adding "§ 31.3406(d)–5(g)(1)(ii)" in its place.

10. Amending paragraph (k), *Example 7*(ii), fifth sentence, by removing the language "§ 35a.3406–1(c)(1)" and adding "§ 31.3406(d)–5(g)(1)(ii)" in its place.

The revisions read as follows:

§ 301.6724–1 Reasonable cause.

* * * * *

(f) * * *

(2) *Manner of making annual solicitation if notified pursuant to section 6721*. A filer that has been notified of an incorrect TIN by a penalty notice or other notification pursuant to section 6721 may satisfy the solicitation requirement of this paragraph (f) either by mail, in the manner set forth in paragraph (e)(2)(i) of this section; by telephone, in the manner set forth in paragraph (e)(2)(ii) of this section; or by requesting the TIN in person.

(3) *Coordination with solicitations under section 3406(a)(1)(b)*. (i) A filer that has been notified of an incorrect TIN pursuant to section 3406(a)(1)(B) (except filers to which § 31.3406(d)–5(b)(4)(i)(A) of this chapter applies) will satisfy the solicitation requirement of this paragraph (f) only if it makes a solicitation in the manner and within the time period required under § 31.3406(d)–5(d)(2)(i) or (g)(1)(ii) of this chapter, whichever applies.

(ii) A filer that has been notified of an incorrect TIN by a notice pursuant to section 6721 (except filers to which § 31.3406(d)–5(b)(4)(i)(A) of this chapter applies) is not required to make the annual solicitation of this paragraph (f) if—

(A) The filer has received an effective notice pursuant to section 3406(a)(1)(B) with respect to the same payee, either during the same calendar year or for information returns filed for the same year; and

(B) The filer makes a solicitation in the manner and within the time period required under § 31.3406(d)–5(d)(2)(i) or (g)(1)(ii) of this chapter, whichever applies, before the filer is required to make the annual solicitation of this paragraph (f).

(iii) A filer that has been notified of an incorrect TIN by a notice pursuant to section 6721 with respect to a fiduciary or nominee account to which § 31.3406(d)–5(b)(4)(i)(A) of this chapter applies is required to make the annual solicitation of this paragraph (f).

* * * * *

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on July 2, 2002, 8:45 a.m., and published in the issue of the Federal Register for July 3, 2002, 67 F.R. 44579)

Notice of Proposed Rulemaking and Notice of Public Hearing

10 or More Employer Plans

REG–165868–01

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations that provide guidance regarding whether a welfare benefit fund is part of a 10 or more employer plan. The regulations reflect changes to the law made by the Deficit Reduction Act of 1984. The regulations will affect certain employers that provide welfare benefits to employees through a plan to

which more than one employer contributes. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by October 9, 2002. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for Tuesday, November 5, 2002, must be received by Tuesday, October 15, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–165868–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:ITA:RU (REG–165868–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments to the IRS Internet site at *www.irs.gov/regs*. The public hearing will be held in Room 4718, Internal Revenue Service Building, 1111 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Betty J. Clary, (202) 622–6080; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Regulations Unit Paralegal (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, W:CAR: MP:FP:S Washington, DC 20224. Comments on the collections of information should be received by September 9, 2002. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

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

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

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

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

The collections of information in this proposed regulation are in § 1.419A (f)(6)–1(a)(2) and § 1.419A(f)(6)–1(e). These collections of information are authorized by section 419A(i) of the Internal Revenue Code. This information will be required by the Commissioner and by employers participating in a plan that is intended to be a 10 or more employer plan described in section 419A(f)(6) to verify the plan's compliance with section 419A(f)(6). This information will be used by the Commissioner and by the employers to determine whether the provisions of sections 419 and 419A, concerning the deductibility of employer contributions to a welfare benefit fund, are applicable to the employers participating in the plan. The respondents are administrators of plans that include certain taxable or tax-exempt welfare benefit funds.

Estimated total annual reporting and/or recordkeeping burden: 2500 hours

Estimated average annual burden hours per respondent and/or recordkeeper: 25 hours

Estimated number of respondents and/or recordkeepers: 100

Estimated annual frequency of responses: On occasion

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

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

Background

This document contains proposed amendments to the Income Tax Regulations under section 419A of the Internal Revenue Code. Sections 419 and 419A, which were added to the Code by section 511 of the Deficit Reduction Act of 1984, Public Law 98–369 (98 Stat. 494), set forth special rules for the deduction of contributions to a welfare benefit fund that would otherwise be deductible, including limitations on the amount of the deduction. Pursuant to section 419A(f)(6), the rules of sections 419 and 419A do not apply in the case of a welfare benefit fund that is part of a plan to which more than one employer contributes and to which no employer normally contributes more than 10 percent of the contributions of all employers under the plan. However, this exception for 10 or more employer plans does not apply to any plan that maintains experience-rating arrangements with respect to individual employers.

Section 419A(i) of the Code provides that the Secretary shall prescribe regulations as may be appropriate to carry out the purposes of sections 419 and 419A. Section 419A(i) further provides that the regulations may provide that the plan administrator of any welfare benefit fund to which more than one employer contributes shall submit such information to the employers contributing to the fund as may be necessary to enable the employers to comply with the provisions of section 419A.

The legislative history of sections 419 and 419A of the Code explains that the principal purpose of the deduction limits for contributions to welfare benefit funds "is to prevent employers from taking premature deductions, for expenses which have not yet been incurred, by interposing an intermediary organization which holds assets which are used to provide benefits

to the employees of the employer." H.R. Conf. Rep. No. 861, 98th Cong., 2d Sess. 1155 (1984), 1984–3 C.B. (Vol. 2) 1, 409. The section 419(e)(3) definition of fund includes taxable trusts and organizations described in section 501(c)(9) and includes regulatory authority to encompass "any account held for an employer by any person." The legislative history indicates that the regulatory definition of fund should be broad and should encompass situations "in which an employer may, in some cases, pay an insurance company more in a year than the benefit costs incurred in that year and the employer has an unconditional right in a later year to a refund or credit of the excess of payments over benefit costs." H.R. Conf. Rep. No. 861, 98th Cong., 2d Sess. 1155 (1984), 1984–3 C.B. (Vol. 2) 1, 409.[1]

The legislative history of section 419A(f)(6) of the Code explains that the reason the deduction limits of sections 419 and 419A do not generally apply to a fund that is part of a 10 or more employer plan is that "the relationship of a participating employer to [such a] plan often is similar to the relationship of an insured to an insurer." H.R. Conf. Rep. No. 861, 98th Cong., 2d Sess. 1159 (1984), 1984–3 C.B. (Vol. 2) 1, 413. Thus, the premise underlying the exception is that no special limitation on deductions is necessary in situations where a payment by an employer in excess of the minimum necessary to currently provide for the benefits under the plan is effectively lost to that employer, because the economics of the plan will discourage excessive contributions.

The exception to the deduction limitation does not apply, however, where the plan maintains experience-rating arrangements with respect to individual employers. The reason for excluding these plans from the exception is that an experience-rating arrangement with respect to an individual employer changes the economics of the plan and allows an employer to contribute an amount in excess of the minimum amount necessary to provide for the current benefits with the confidence that the excess will inure to the benefit of that employer or its employees. The legislative history notes that making the exception to the deduction limits unavailable to plans that determine contributions on the basis of experience rating is consistent with the general rules relating to the definition of fund because "the employer's interest with respect to such a plan is more similar to the relationship of an employer to a fund than an insured to an insurer." H.R. Conf. Rep. No. 861, 98th Cong., 2d Sess. 1159 (1984), 1984–3 C.B. (Vol. 2) 1, 413.

In Notice 95–34, 1995–1 C.B. 309, the IRS identified certain types of arrangements that do not satisfy the requirements of section 419A(f)(6). Those arrangements typically require large employer contributions relative to the cost of the coverage for the benefits to be provided under the plan. The plans identified in the Notice often maintain separate accounting of the assets attributable to the contributions made by each participating employer.[2] In some cases an employer's contributions are related to the claims experience of its employees, while in other cases benefits are reduced if assets derived from an employer's contributions are insufficient to fund the benefits to that employer's employees. Thus, a particular employer's contributions or its employees' benefits may be determined in a way that insulates the employer to a significant extent from the experience of other participating employers.

The arrangements described in Notice 95–34 and similar arrangements do not satisfy the requirements of section 419A(f)(6) of the Code and do not provide the tax deductions claimed by their promoters for any of several reasons. For example, such an arrangement may be providing deferred compensation; the arrangement may be separate plans maintained for each employer; or the plan may be maintaining, in form or in operation, experience-rating arrangements with respect to individual employers (*e.g.*, where the employers have reason to expect that, at least for the most part, their contributions will benefit only their own employees). The Notice also states that even if an arrangement satisfies the requirements of section 419A(f)(6), so that the deduction limits of sections 419 and 419A do not apply to the arrangement, the employer contributions may represent expenses that are not deductible under other sections of the Code.

In Notice 2000–15, 2000–1 C.B. 826 (supplemented and superseded by Notice 2001–51, 2001–34 I.R.B. 190), the Service identified transactions that are the same as or substantially similar to the transactions described in Notice 95–34 as *listed transactions* for purposes of § 1.6011–4T(b)(2) of the Temporary Income Tax Regulations and § 301.6111–2T(b)(2) of the Temporary Procedure and Administration Regulations. Independent of their classification as "listed transactions" for purposes of §§ 1.6011–4T(b)(2) and 301.6111–2T(b)(2), such transactions may also be subject to the disclosure requirements of section 6011, the tax shelter registration requirements of section 6111, or the list maintenance requirements of section 6112 under the regulations issued in February 2000 (§§ 1.6011–4T, 301.6111–2T and 301.6112–1T, A–4), as well as the regulations issued in 1984 and amended in 1986 (§§ 301.6111–1T and 301.6112–1T, A–3). Persons required to register these tax shelters who have failed to register the shelters may be subject to the penalty under section 6707(a), and to the penalty under section 6708(a) if the requirements of section 6112 are not satisfied.

Explanation of provisions

These proposed regulations provide guidance under section 419A(f)(6) of the Code regarding the requirements that a welfare benefit fund must satisfy in order for an employer's contribution to the fund to be excepted from the rules of sections 419 and 419A. These regulations are consistent with the IRS's analysis of the arrangements described in Notice 95–34, discussed above and reproduced below.

[1] Section 1851 of the Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2085), modified the definition of "fund" in section 419(e) to exclude amounts held pursuant to a specific type of insurance contract. While section 419(e)(4), as amended, clarifies that assets held by an insurance company under certain experience-rated contracts do not constitute a fund (so that premiums under those contracts are not subject to the deduction limitations of section 419), this amendment has no relevance in determining whether a plan intended to be described in section 419A(f)(6) has an experience-rating arrangement with respect to individual employers. Any insurance contracts purchased under a 10 or more employer plan are investments of the fund and are not the fund itself.

[2] *See Booth v. Commissioner*, 108 T.C. 524 (1997), for an arrangement using a separate accounting system that does not qualify under the 10 or more employer plan exception.

Section 419A(f)(6) of the Code provides that sections 419 and 419A do not apply in the case of a welfare benefit fund that is part of a 10 or more employer plan that does not maintain experience-rating arrangements with respect to individual employers. A *10 or more employer plan* is a plan to which more than one employer contributes and to which no employer normally contributes more than 10 percent of the total contributions contributed under the plan by all employers.

Pursuant to the authority set forth in section 419A(i), the proposed regulations provide a special rule to assist participating employers and the Commissioner in verifying that the arrangement satisfies the section 419A(f)(6) requirements. Under that rule, an arrangement satisfies the requirements of section 419A(f)(6) and the regulations only if the plan is maintained pursuant to a written document that (1) requires the plan administrator to maintain records sufficient for the Commissioner or any participating employer to readily verify the plan's compliance with section 419A(f)(6) and (2) provides the Commissioner and each participating employer with the right to inspect and copy all such records.

In addition, the proposed regulations make clear that in order to be eligible for the exception from the deduction limits of sections 419 and 419A, a plan must satisfy the requirements of section 419A(f)(6) and these regulations both in form and operation. For purposes of these regulations, the term *plan* means the totality of the arrangement and all related facts and circumstances, including any related insurance contracts. Thus, all agreements and understandings (including promotional materials and policy illustrations) will be taken into account in determining whether the requirements of section 419A(f)(6) are satisfied in form and in operation. For example, if promotional materials indicate that an employer or its employees will receive a future benefit based on the employer's accumulated contributions, the plan will be treated as maintaining experience-rating arrangements with respect to individual employers, even if the formal plan does not specifically provide for experience rating.

The proposed regulations clarify the situations in which a plan maintains experience-rating arrangements with respect to individual employers for purposes of section 419A(f)(6). A plan maintains an experience-rating arrangement with respect to an employer if the employer's cost of coverage for any period is based, in whole or in part, either on the benefits experience or on the overall experience (or on any proxy for the benefits experience or overall experience) of that employer or one or more employees of that employer. The prohibition against experience rating with respect to individual employers applies under all circumstances, including employer withdrawals and plan terminations.

For purposes of the proposed regulations, an employer's *cost of coverage* is the relationship between that employer's contributions (including those of its employees) under the plan and the benefits or other amounts payable under the plan with respect to that employer. The term *benefits or other amounts payable* includes all amounts payable or distributable (or that will be otherwise provided), regardless of the form of the payment or distribution. *Benefits experience* refers, generally, to the benefits and other amounts incurred, paid, or distributed (or otherwise provided) in the past. The *overall experience* of an employer is the balance that would have accumulated in a welfare benefit fund if that employer were the only employer providing benefits under the plan. The *overall experience* of an employee is the balance that would have accumulated in a welfare benefit fund if that employee were the only employee being provided benefits under the plan. *Overall experience* is defined similarly for a group of employers or a group of employees.

The proposed regulations illustrate various ways a plan can violate the prohibition against maintaining experience-rating arrangements with respect to individual employers: by adjusting an employer's contributions, by adjusting the benefits for its employees, or by adjusting both, based on the benefits experience or overall experience of the employees of that employer.

Thus, a plan maintains an experience-rating arrangement with respect to an individual employer if the current (or future) cost of coverage of the employer is (or will be) based on either the past benefits or other amounts paid with respect to one or more of that employer's employees (or any proxy therefor) or on the balance accumulated in the fund as a result of the employer's or its employees' past contributions (or any proxy therefor). Accordingly, the process for determining whether a plan maintains an experience-rating arrangement is to inquire whether the past experience of an individual employer or its employees is used, in whole or in part, to determine the employer's cost of coverage. This determination is not intended to be purely a computational one (although actual numbers often can be used to demonstrate the existence of an experience-rating arrangement).

The proposed regulations also include special rules that apply in certain situations. One rule applies where a plan specifies a minimum contribution required to maintain a benefit level, but permits an employer to contribute more, and the amount of benefits and duration of coverage are fixed. These plans commonly involve universal life insurance contracts with flexible premiums. When analyzing these arrangements, for purposes of determining whether an employer's cost of coverage is based on past experience, the Commissioner may treat the employer as contributing the minimum contribution amount needed to maintain that coverage. The relevant question would then be whether the relationship between the minimum amount the employer must contribute and the benefits or other amounts payable under the arrangement depends on the past experience of that employer or its employees.

Another special rule is provided in the case of a plan maintaining an experience-rating arrangement with respect to a group of participating employers or a group of employees covered under the plan (a rating group). Under that rule, a plan will not be treated as maintaining an experience-rating arrangement with respect to an individual employer merely because the cost of coverage under a plan with respect to the employer is based, in whole or in part, on the benefits experience or the overall experience (or a proxy for either type of experience) of a rating group that includes the employer or one or more of its employees, provided that

the employer does not normally contribute more than 10 percent of all contributions with respect to that rating group.

Other special rules relate to the treatment of insurance contracts. Under those rules, insurance contracts under an arrangement are treated as assets of the fund. Thus, any payments under an arrangement from an employer or its employees directly to an insurance company will be treated as contributions to the fund, and any amounts paid by the insurance company under the arrangement will be treated as paid by the fund. Further, as of any date, the fund will be treated as having either a gain or loss with respect to an insurance contract, depending upon the benefits paid under the contract, the value of the contract, and the premiums paid on the contract.

These special rules relating to insurance contracts recognize that if whole life insurance policies, or similar policies that generate a savings element, are purchased under an arrangement, the retained values of those policies (including cash values, reserves, and any other economic values, such as conversion credits or high dividend rates) reflect the past experience of the employees who participate under the plan. As a result, if the retained values associated with policies insuring an employer's employees under an arrangement are used to determine the current cost of coverage for that employer (as opposed to being shared among all of the employers participating in the plan), the employer can anticipate that its past contributions in excess of incurred losses for claims for its employees will inure to the benefit of the employer (as opposed to the other employers participating in the plan). This assurance that the employer will benefit from favorable past experience is the hallmark of an experience-rating arrangement. It is also the hallmark of the type of welfare benefit fund that Congress intended to be subject to the deduction limitations of sections 419 and 419A.

Furthermore, Congress' expectation that employers participating in 10 or more employer plans would not have a financial incentive to over-contribute was the basis for providing the section 419A(f)(6) exception from the deduction limits of sections 419 and 419A. Allowing a 10 or more employer plan to use insurance contracts for an employer's employees with retained values would provide a financial incentive for the employer to over-contribute to the plan, contrary to the premise underlying the intent of Congress in providing the exception for 10 or more employer plans. If the retained values of life insurance contracts relating to an employer's employees are used to determine that employer's cost of coverage, the arrangement results in a prohibited experience-rating arrangement under these proposed regulations.

These proposed regulations also identify five characteristics that are indications that an employer's interest with respect to the plan is more similar to the relationship of an individual employer to a fund than an insured to an insurer. (See, H.R. Conf. Rep. No. 861, 98th Cong., 2d Sess. 1155 (1984), 1984–3 C.B. (Vol. 2) 1, 413.) The presence of some of these characteristics in a plan suggests that there are multiple plans present instead of a single plan. The presence of others tends to indicate that an employer's cost of coverage is (or will be) based on that employer's benefits experience. Others tend to indicate that the plan is expected to accumulate a surplus that ultimately will be used for the benefit of the individual employers (or their employees). One way this surplus might be used would be to reduce future contributions for the individual employers based on past contributions or claims of the employers. Another way would be to pay benefits to an employer's employees based on the employer's share of the surplus on the occasion of the withdrawal of the employer or at plan termination, thereby violating the rule that an employer's cost of coverage cannot be based on its overall experience. Accordingly, these regulations provide that a plan exhibiting any of these characteristics is not a 10 or more employer plan described in section 419A(f)(6) unless it is established to the satisfaction of the Commissioner that the plan satisfies the requirements of section 419A(f)(6) and these proposed regulations. It should be noted that the fact that a plan has none of these characteristics does not create an inference that it is a 10 or more employer plan described in section 419A(f)(6).

The first characteristic indicating that a plan is not a 10 or more employer plan described in section 419A(f)(6) is that the assets of the plan are allocated among the participating employers through a separate accounting of contributions and expenditures for individual employers or otherwise. The second characteristic is that amounts charged under the plan differ among the employers in a manner that is not reflective of differences in risk or rating factors that are commonly taken into account in manual rates used by insurers (such as age, gender, dependents covered, geographic locale, or the benefit package). The third characteristic is that the plan does not provide for fixed welfare benefits for a fixed coverage period for a fixed price. The fourth characteristic is that the plan charges the participating employers an unreasonably high amount for the covered risk. The fifth characteristic is that the plan provides for payment of benefits upon triggering events other than the illness, personal injury, or death of an employee or family member, or the employee's involuntary termination of employment.

A number of examples are provided in the proposed regulations illustrating the application of the rules regarding experience-rating arrangements to specific fact situations. Many of these arrangements exhibit the characteristics of a fund that Congress intended to be subject to the deduction limitations of sections 419 and 419A. Each example illustrates only the application of the definition of experience-rating arrangements under section 419A(f)(6) and these regulations, and no inference should be drawn from the scope of the examples about whether these plans are otherwise described in section 419A(f)(6) or about any other provision of the Code. For example, no inference should be drawn about whether any plan described in the examples is a single plan. In addition, no inference should be drawn about the applicability or nonapplicability of any other Code provision, such as section 404, that might limit or preclude the deduction for contributions to the arrangement. For example, in *Neonatology Associates, P.A., v. Commissioner*, 115 T.C. 43 (2000), *appeal docketed*, No. 01–2862 (3d Cir.), the Tax Court held that the contributions were in large part constructive dividends to the employee/owners (and thus did not reach the government's alternative contention that the

plan was maintaining experience-rating arrangements with respect to individual employers). In *Booth v. Commissioner*, 108 T.C. 524 (1997), the Tax Court held that the arrangement was an aggregation of separate plans (and thus was not a single plan) and that there were experience-rating arrangements with respect to the individual employers.

Finally, these proposed regulations provide that the plan administrator of a plan that is intended to be a 10 or more employer plan shall maintain records sufficient to substantiate that the plan is described in section 419A(f)(6). An opinion letter stating the plan is described in section 419A(f)(6) does not constitute substantiation.

Proposed Effective Date

Except as explained below, these regulations – which generally clarify existing law – are proposed to be effective for contributions paid or incurred in taxable years of an employer beginning on or after the date of publication of this Notice of Proposed Rulemaking in the **Federal Register**. For contributions made before this proposed effective date, the IRS will continue applying existing law, including the analysis set forth in Notice 95–34 and relevant case law. Thus, taxpayers should not infer that a contribution that would be nondeductible under the regulations would be deductible if made before that date. In this regard, taxpayers are reminded that, as noted above, the IRS has already identified transactions that are the same as or substantially similar to the transactions described in Notice 95–34 as *listed transactions* for purposes of § 1.6011–4T(b)(2) of the Temporary Income Tax Regulations and § 301.6111–2T(b)(2) of the Temporary Procedure and Administration Regulations.

The requirement that written plan documents contain specified provisions relating to compliance information and the record maintenance requirement for plan administrators are proposed to be effective for taxable years of a welfare benefit fund beginning after the publication of final regulations. Existing record retention requirements and record production requirements under section 6001 continue to apply to employers and promoters.

For the convenience of taxpayers, Notice 95–34 is reproduced below.

APPENDIX

Notice 95–34

Taxpayers and their representatives have inquired as to whether certain trust arrangements qualify as multiple employer welfare benefit funds exempt from the limits of section 419 and section 419A of the Internal Revenue Code. The Service is issuing this Notice to alert taxpayers and their representatives to some of the significant tax problems that may be raised by these arrangements.

In general, contributions to a welfare benefit fund are deductible when paid, but only if they qualify as ordinary and necessary business expenses of the taxpayer and only to the extent allowable under section 419 and section 419A of the Code. Those sections impose strict limits on the amount of tax-deductible prefunding permitted for contributions to a welfare benefit fund.

Section 419A(f)(6) provides an exemption from section 419 and section 419A for certain welfare benefit funds. In general, for this exemption to apply, an employer normally cannot contribute more than 10 percent of the total contributions, and the plan must not be experience rated with respect to individual employers. The legislative history states that the exemption under section 419A(f)(6) is provided because "the relationship of a participating employer to [such a] plan often is similar to the relationship of an insured to an insurer." Even if the 10 percent contribution limit is satisfied, the exemption does not apply to a plan that is experience rated with respect to individual employers, because the "employer's interest with respect to such a plan is more similar to the relationship of an employer to a fund than an insured to an insurer." H.R. Rep. No. 98–861, 98th Cong., 2d Sess., 1159 (1984–3 C.B. (Vol. 2) 1, 413).

In recent years, a number of promoters have offered trust arrangements that they claim satisfy the requirements for the 10–or-more-employer plan exemption and that are used to provide benefits such as life insurance, disability, and severance pay benefits. Promoters of these arrangements claim that all employer contributions are tax-deductible when paid, relying on the 10-or-more-employer exemption from the section 419 limits and on the fact that they have enrolled at least 10 employers in their multiple employer trusts.

These arrangements typically are invested in variable life or universal life insurance contracts on the lives of the covered employees, but require large employer contributions relative to the cost of the amount of term insurance that would be required to provide the death benefits under the arrangement. The trust owns the insurance contracts. The trust administrator may obtain the cash to pay benefits, other than death benefits, by such means as cashing in or withdrawing the cash value of the insurance policies. Although, in some plans, benefits may appear to be contingent on the occurrence of unanticipated future events, in reality, most participants and their beneficiaries will receive their benefits.

The trusts often maintain separate accounting of the assets attributable to the contributions made by each subscribing employer. Benefits are sometimes related to the amounts allocated to the employees of the participant's employer. For example, severance and disability benefits may be subject to reduction if the assets derived from an employer's contributions are insufficient to fund all benefits promised to that employer's employees. In other cases, an employer's contributions are related to the claims experience of its employees. Thus, pursuant to formal or informal arrangements or practices, a particular employer's contributions or its employees' benefits may be determined in a way that insulates the employer to a significant extent from the experience of other subscribing employers.

In general, these arrangements and other similar arrangements do not satisfy the requirements of the section 419A(f)(6) exemption and do not provide the tax deductions claimed by their promoters for any one of several reasons, including the following:

1) The arrangements may actually be providing deferred compensation. This is an especially important consideration in arrangements similar to that in *Wellons v. Commissioner*, 31 F.3d 569 (7th Cir. 1994), aff'g, 64 T.C.M. (CCH) 1498 (1992), where the courts held that an

arrangement purporting to be a severance pay plan was actually deferred compensation. If the plan is a nonqualified plan of deferred compensation, deductions for contributions will be governed by section 404(a)(5), and contributions to the trust may, in some cases, be includible in employees' income under section 402(b). Section 404(a)(5) provides that contributions to a nonqualified plan of deferred compensation are deductible when amounts attributable to the contributions are includible in the employees' income, and that deductions are allowed only if separate accounts are maintained for each employee.

2) The arrangements may be, in fact, separate plans maintained for each employer. As separate plans, they do not qualify for the 10–or-more employer plan exemption in section 419A(f)(6).

3) The arrangements may be experience rated with respect to individual employers in form or operation. This is because, among other things, the trust maintains, formally or informally, separate accounting for each employer and the employers have reason to expect that, at least for the most part, their contributions will benefit only their own employees. Arrangements that are experience rated with respect to individual employers do not qualify for the exemption in section 419A(f)(6).

4) Even if the arrangements qualify for the exemption in section 419A(f)(6), employer contributions to the arrangements may represent prepaid expenses that are nondeductible under other sections of the Internal Revenue Code.

Taxpayers and their representatives should be aware that the Service has disallowed deductions for contributions to these arrangements and is asserting the positions discussed above in litigation.

Finally, in response to questions raised by taxpayers and their representatives, we note that the Service has never issued a letter ruling approving the deductibility of contributions to a welfare benefit fund under section 419A(f)(6). Although a trust used to provide benefits under an arrangement of the type discussed in this Notice may have received a determination letter stating that the trust is exempt under section 501(c)(9), a letter of this type does not address the tax deductibility of contributions to such a trust.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collections of information in these regulations will not have a significant economic impact on a substantial number of small entities. The collections of information in the regulation are in § 1.419A(f)(6)–1(a)(2) and § 1.419A(f)(6)–1(e) and consist of the requirements that a plan administrator maintain certain information and that it provide that information upon request to the Commissioner and to employers participating in the plan. This certification is based on the fact that requests for such information are likely to be made, on average, less than once per year per employer and that the costs of maintaining and providing this information are small. In addition, relatively few small entities are plan administrators. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

A public hearing has been scheduled for November 5, 2002, at 10 a.m., in room 4718 of the Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Because of access restrictions, visitors must enter at the main entrance, located at 1111 Constitution Ave, NW. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" portion of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of topics to be discussed and time to be devoted to each topic (preferably a signed original and eight (8) copies) by October 15, 2002. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Betty J. Clary, Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

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Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Section 1.419A(f)(6)–1 is also issued under 26 U.S.C. 419A(i). * * *

Par. 2. Section 1.419A(f)(6)–1 is added to read as follows:

§ 1.419A(f)(6)–1. *Exception for 10 or more employer plan*

(a) *Requirements*—(1) *In general*. Sections 419 and 419A do not apply in the case of a welfare benefit fund that is part of a 10 or more employer plan described in section 419A(f)(6). A plan is a 10 or more employer plan described in section 419A(f)(6) only if it is a single plan—

(i) to which more than one employer contributes;

(ii) to which no employer normally contributes more than 10 percent of the total contributions contributed under the plan by all employers;

(iii) that does not maintain an experience-rating arrangement with respect to any individual employer; and

(iv) that satisfies the requirements of paragraph (a)(2) of this section.

(2) *Compliance information*. A plan satisfies the requirements of this paragraph (a)(2) if the plan is maintained pursuant to a written document that requires the plan administrator to maintain records sufficient for the Commissioner or any participating employer to readily verify that the plan satisfies the requirements of section 419A(f)(6) and this section and that provides the Commissioner and each participating employer (or a person acting on the participating employer's behalf) with the right, upon written request to the plan administrator, to inspect and copy all such records. See § 1.414(g)–1 for the definition of plan administrator.

(3) *Application of rules*—(i) *In general*. The requirements described in paragraph (a)(1) and (a)(2) of this section must be satisfied both in form and in operation.

(ii) *Plan includes totality of arrangement*. For purposes of this section, the term plan includes the totality of the arrangement and all related facts and circumstances, including any related insurance contracts. Accordingly, all agreements and understandings (including promotional materials and policy illustrations) and the terms of any insurance contract will be taken into account in determining whether the requirements are satisfied in form and in operation.

(b) *Experience-rating arrangements*—(1) *General rule*. A plan maintains an experience-rating arrangement with respect to an individual employer and thus does not satisfy the requirement of paragraph (a)(1)(iii) of this section if, with respect to that employer, there is any period for which the relationship of contributions under the plan to the benefits or other amounts payable under the plan (the *cost of coverage*) is or can be expected to be based, in whole or in part, on the benefits experience or overall experience (or a proxy for either type of experience) of that employer or one or more employees of that employer. For purposes of this paragraph (b)(1), an employer's contributions include all contributions made by or on behalf of the employer or the employer's employees. See paragraph (d) of this section for the definitions of *benefits experience*, *overall experience*, and *benefits or other amounts payable*. The rules of this paragraph (b) apply under all circumstances, including employer withdrawals and plan terminations.

(2) *Adjustment of contributions*. An example of a plan that maintains an experience-rating arrangement with respect to an individual employer is a plan that entitles an employer to (or for which the employer can expect) a reduction in future contributions if that employer's overall experience is positive. Similarly, a plan maintains an experience-rating arrangement with respect to an individual employer where an employer can expect its future contributions to be increased if the employer's overall experience is negative. A plan also maintains an experience-rating arrangement with respect to an individual employer where an employer is entitled to receive (or can expect to receive) a rebate of all or a portion of its contributions if that employer's overall experience is positive or, conversely, where an employer is liable to make additional contributions if its overall experience is negative.

(3) *Adjustment of benefits*. An example of a plan that maintains an experience-rating arrangement with respect to an individual employer is a plan under which benefits for an employer's employees are (or can be expected to be) increased if that employer's overall experience is positive or, conversely, under which benefits are (or can be expected to be) decreased if that employer's overall experience is negative. A plan also maintains an experience-rating arrangement with respect to an individual employer if benefits for an employer's employees are limited by reference, directly or indirectly, to the overall experience of the employer (rather than having all the plan assets available to provide the benefits).

(4) *Special rules*—(i) *Treatment of insurance contracts*—(A) *In general*. For purposes of this section, insurance contracts under the arrangement will be treated as assets of the fund. Accordingly, the value of the insurance contracts (including non-guaranteed elements) is included in the value of the fund, and amounts paid between the fund and the insurance company are disregarded, except to the extent they generate gains or losses as described in paragraph (b)(4)(i)(C) of this section.

(B) *Payments to and from an insurance company*. Payments from a participating employer or its employees to an insurance company pursuant to insurance contracts under the arrangement will be treated as contributions made to the fund, and amounts paid under the arrangement from an insurance company will be treated as payments from the fund.

(C) *Gains and losses from insurance contracts*. As of any date, if the sum of the benefits paid by the insurer and the value of the insurance contract (including non-guaranteed elements) is greater than the cumulative premiums paid to the insurer, the excess is treated as a gain to the fund. As of any date, if the cumulative premiums paid to the insurer are greater than the sum of the benefits paid by the insurer and the value of the insurance contract (including non-guaranteed elements), the excess is treated as a loss to the fund.

(ii) *Treatment of flexible contribution arrangements*. Solely for purposes of determining the cost of coverage under a plan, if contributions for any period can vary with respect to a benefit package, the Commissioner may treat the employer as contributing the minimum amount that would maintain the coverage for that period.

(iii) *Experience rating by group of employers or group of employees*. A plan will not be treated as maintaining an experience-rating arrangement with respect to an individual employer merely because the cost of coverage under the plan with respect to the employer is based, in whole or in part, on the benefits experience or the overall experience (or a proxy for either type of experience) of a rating group, provided that no employer normally contributes more than 10 percent of all contributions with respect to that rating group. For this purpose, a *rating group* means a group of participating employers that includes the employer or a group of employees covered under the plan that includes one or more employees of the employer.

(iv) *Family members, etc*. For purposes of this section, contributions with respect to an employee include contributions with respect to any other person

(*e.g.*, a family member) who may be covered by reason of the employee's coverage under the plan and amounts provided with respect to an employee include amounts provided with respect to such a person.

(c) *Characteristics indicating a plan is not a 10 or more employer plan*—(1) *In general*. The presence of any of the characteristics described in paragraphs (c)(2) through (c)(6) of this section generally indicates that the plan is not a 10 or more employer plan described in section 419A(f)(6). Accordingly, unless established to the satisfaction of the Commissioner that the plan satisfies the requirements of section 419A(f)(6) and this section, a plan having any of the following characteristics is not a 10 or more employer plan described in section 419A(f)(6). A plan's lack of all the following characteristics does not create any inference that the plan is a 10 or more employer plan described in section 419A(f)(6).

(2) *Allocation of plan assets*. Assets of the plan or fund are allocated to a specific employer or employers through separate accounting of contributions and expenditures for individual employers, or otherwise.

(3) *Differential pricing*. The amount charged under the plan is not the same for all the participating employers, and those differences are not reflective of differences in risk or rating factors that are commonly taken into account in manual rates used by insurers (such as age, gender, geographic locale, number of covered dependents, and benefit terms) for the particular benefit or benefits being provided.

(4) *No fixed welfare benefit package*. The plan does not provide for fixed welfare benefits for a fixed coverage period for a fixed cost, within the meaning of paragraph (d)(5) of this section.

(5) *Unreasonably high cost*. The plan provides for fixed welfare benefits for a fixed coverage period for a fixed cost, but that cost is unreasonably high for the covered risk for the plan as a whole.

(6) *Nonstandard benefit triggers*. Benefits or other amounts payable can be paid, distributed, transferred, or otherwise provided from a fund that is part of the plan by reason of any event other than the illness, personal injury, or death of an employee or family member, or the employee's involuntary separation from employment. Thus, for example, a plan exhibits this characteristic if the plan provides for the payment of benefits to an employer's employees on the occasion of the employer's withdrawal from the plan.

(d) *Definitions*. For purposes of this section:

(1) *Benefits or other amounts payable*. The term *benefits or other amounts payable* includes all amounts that are payable or distributable (or that will be otherwise provided) directly or indirectly to employers, to employees or their beneficiaries, or to another fund as a result of a spinoff or transfer, and without regard to whether payable or distributable as welfare benefits, cash, dividends, rebates of contributions, property, promises to pay, or otherwise.

(2) *Benefits experience*. The *benefits experience* of an employer (or of an employee or a group of employers or employees) means the benefits and other amounts incurred, paid, or distributed (or otherwise provided) directly or indirectly, including to another fund as a result of a spinoff or transfer, with respect to the employer (or employee or group of employers or employees), and without regard to whether provided as welfare benefits, cash, dividends, credits, rebates of contributions, property, promises to pay, or otherwise.

(3) *Overall experience—(i) Employers*. The term *overall experience* means, with respect to an employer (or group of employers), the balance that would have accumulated in a welfare benefit fund if that employer (or those employers) were the only employer (or employers) providing welfare benefits under the plan. Thus, the overall experience is credited with the sum of the contributions under the plan with respect to that employer (or group of employers), less the benefits and other amounts paid or distributed (or otherwise provided) with respect to that employer (or group of employers) or the employees of that employer (or group of employers), and adjusted for gain or loss from insurance contracts (as described in paragraph (b)(4)(i) of this section), investment return, and expenses. Overall experience as of any date may be either a positive or a negative number.

(ii) *Employees*. The term *overall experience* means, with respect to an employee (or group of employees, whether or not employed by the same employer), the balance that would have accumulated in a welfare benefit fund if the employee (or group of employees) were the only employee (or employees) being provided welfare benefits under the plan. Thus, the overall experience is credited with the sum of the contributions under the plan with respect to that employee (or group of employees), less the benefits and other amounts paid or distributed (or otherwise provided) with respect to that employee (or group of employees), and adjusted for gain or loss from insurance contracts (as described in paragraph (b)(4)(i) of this section), investment return, and expenses. Overall experience as of any date may be either a positive or a negative number.

(4) *Employer*. The term *employer* means the employer whose employees are participating in the plan and those employers required to be aggregated with the employer under section 414(b), (c), or (m). In the case of an employer that is the recipient of services performed by a leased employee described in section 414(n) who participates in the plan, the leased employee is treated as an employee of the recipient and contributions made by the leasing organization attributable to service performed with the recipient are treated as made by the recipient.

(5) *Fixed welfare benefit package*—(i) *In general*. A plan provides for fixed welfare benefits for a fixed coverage period for a fixed cost, if it—

(A) defines one or more welfare benefits, each of which has a fixed amount that does not depend on the amount or type of assets held by the fund,

(B) specifies fixed contributions to provide for those welfare benefits, and

(C) specifies a coverage period during which the plan agrees to provide specified welfare benefits, subject to the payment of the specified contributions by the employer.

(ii) *Treatment of actuarial gains or losses*. A plan will not be treated as failing to provide for fixed welfare benefits for a fixed coverage period for a fixed cost merely because the plan does not pay

the promised benefits (or requires all participating employers to make proportionate additional contributions based on the fund's shortfall) when there are insufficient assets under the plan to pay the promised benefits. Similarly, a plan will not be treated as failing to provide for fixed welfare benefits for a fixed coverage period for a fixed cost merely because the plan provides a period of extended coverage after the end of the coverage period to all participating employers at no cost to the employers (or provides a proportionate refund of contributions to all participating employers) because of the plan-wide favorable actuarial experience during the coverage period.

(e) *Maintenance of records*. The plan administrator of a plan that is intended to be a 10 or more employer plan described in section 419A(f)(6) shall maintain permanent records and other documentary evidence sufficient to substantiate that the plan satisfies the requirements of section 419A(f)(6) and this section. (See § 1.414(g)–1 for the definition of plan administrator.)

(f) *Examples*. The provisions of paragraph (c) of this section and the provisions of section 419A(f)(6) and this section relating to experience-rating arrangements may be illustrated by the following examples. Unless stated otherwise, it should be assumed that any life insurance contract described in an example is non-participating and has no value other than the value of the policy's current life insurance protection plus its cash value. Paragraph (ii) of each example applies the characteristics listed in paragraph (c) of this section to the facts described in that example. Paragraphs (iii) and (iv) of each example analyze the facts described in the example to determine whether the plan maintains experience-rating arrangements with respect to individual employers. Paragraphs (iii) and (iv) of each example illustrate only the meaning of *experience-rating arrangements*. No inference should be drawn from these examples about whether these plans are otherwise described in section 419A(f)(6) or about the applicability or nonapplicability of any other Internal Revenue Code provision that may limit or deny the deduction of contributions to the arrangements. Further, no inference should be drawn from the examples concerning the tax treatment of employees as a result of the employer contributions or the provision of the benefits.

Example 1. (i) An arrangement provides welfare benefits to employees of participating employers. Each year a participating employer is required to contribute an amount equal to the claims and other expenses expected with respect to that employer for the year (based on age, gender, geographic locale, number of participating employees, benefit terms, and other risk or rating factors commonly taken into account in manual rates used by insurers for the benefits being provided), multiplied by the ratio of actual claims with respect to that employer for the previous year over the expected claims with respect to that employer for the previous year. No employer participating in the arrangement contributes more than 10 percent of the total contributions made under the arrangement by all the employers.

(ii) This arrangement exhibits at least one of the characteristics listed in paragraph (c) of this section generally indicating that the arrangement is not a 10 or more employer plan described in section 419A(f)(6). Differential pricing exists under this arrangement because the amount charged under the plan is not the same for all the participating employers, and those differences are not reflective of differences in risk or rating factors that are commonly taken into account in manual rates used by insurers for the particular benefit or benefits being provided.

(iii) This arrangement does not satisfy the requirements of section 419A(f)(6) and this section because, at a minimum, the requirement of paragraph (a)(1)(iii) of this section is not satisfied. Under the arrangement, an employer's cost of coverage for each year is based, in part, on that employer's benefits experience (*i.e.*, the benefits and other amounts provided in the past with respect to one or more employees of that employer). Accordingly, pursuant to paragraph (b)(1) of this section, the arrangement maintains experience-rating arrangements with respect to individual employers.

Example 2. (i) The facts are the same as in Example 1, except that the amount charged to an employer each year is equal to claims and other expenses expected with respect to that employer for the year (determined the same as in Example 1), multiplied by the ratio of actual claims for the previous year (determined on a plan-wide basis) over the expected claims for the previous year (determined on a plan-wide basis).

(ii) Based on the limited facts described above, this arrangement exhibits none of the characteristics listed in paragraph (c) of this section generally indicating that the arrangement is not a 10 or more employer plan described in section 419A(f)(6). Unlike the arrangement discussed in Example 1, there is no differential pricing under the arrangement because the only differences in the amounts charged to the employers are solely reflective of differences in risk or rating factors that are commonly taken into account in manual rates used by insurers for the particular benefit or benefits being provided.

(iii) Nothing in the facts described in this Example 2 indicates that the arrangement maintains experience-rating arrangements prohibited under section 419A(f)(6) and this section. An employer's cost of coverage under the arrangement is based, in part, on the benefits experience of that employer (as well as of all the other participating employers). However, pursuant to paragraph (b)(4)(iii) of this section, the arrangement will not be treated as maintaining experience-rating arrangements with respect to the individual employers merely because the employers' cost of coverage is based on the benefits experience of a group of employees eligible under the plan, provided no employer normally contributes more than 10 percent of all contributions with respect to the rating group that includes the employees of an individual employer. Under the arrangement described in this Example 2, the rating group includes all the participating employers (or all of their employees), and no employer normally contributes more than 10 percent of the contributions made under the arrangement by all the employers. Accordingly, absent other facts, the arrangement will not be treated as maintaining experience-rating arrangements with respect to individual employers.

Example 3. (i) Arrangement A provides welfare benefits to employees of participating employers. Each year an employer is required to contribute an amount equal to the claims and other expenses expected with respect to that employer for the year (based on risk or rating factors commonly taken into account in manual rates used by insurers for the benefits being provided), adjusted based on the employer's notional account. An employer's notional account is determined as follows. The account is credited with the sum of the employer's contributions previously paid under the plan less the benefit claims for that employer's employees. The notional account is further increased by a fixed five percent investment return (regardless of the actual investment return earned on the funds). If an employer's notional account is positive, the employer's contributions are reduced by a specified percentage of the notional account. If an employer's notional account is negative, the employer's contributions are increased by a specified percentage of the notional account.

(ii) Arrangement A exhibits at least two of the characteristics listed in paragraph (c) of this section generally indicating that the arrangement is not a 10 or more employer plan described in section 419A(f)(6). First, assets under the plan are allocated to specific employers. Second, differential pricing exists because the amount charged under the plan is not the same for all the participating employers, and those differences are not reflective of differences in risk or rating factors that are commonly taken into account in manual rates used by insurers for the particular benefit or benefits being provided.

(iii) Arrangement A does not satisfy the requirements of section 419A(f)(6) and this section because, at a minimum, the requirement of paragraph (a)(1)(iii) of this section is not satisfied. Under the arrangement, a participating employer's cost of coverage for each year is based on a proxy for that employer's overall experience. An employer's *overall experience*, as that term is defined in paragraph (d)(3) of this section, includes the balance that would have accumulated in the fund if that employer's employees were the only employees being provided benefits under the plan. Under that definition, the overall experience is credited with the sum of the contributions paid under the plan by or

on behalf of that employer less the benefits or other amounts provided to with respect to that employer's employees, and adjusted for gain or loss from insurance contracts, expenses, and investment return. Under the formula used by the arrangement in this example to determine employer contributions, expenses are disregarded and a fixed investment return of five percent is used instead of actual investment return. The disregard of expenses and substitution of the fixed investment return for the actual investment return merely results in an employer's notional account that is a proxy for the overall experience of that employer. Accordingly, the arrangement maintains experience-rating arrangements with respect to individual employers.

Example 4. (i) Under Arrangement B, death benefits are provided for eligible employees of each participating employer. Individual level premium life insurance policies are purchased to provide the death benefits. Each policy has a face amount equal to the death benefit payable with respect to the individual employee. Each year, a participating employer is charged an amount equal to the level premiums payable with respect to the employees of that employer. One participating employer, F, has an employee, P, whose coverage under the arrangement commenced at the beginning of 2000, when P was age 50. P is covered under the arrangement for $1 million of death benefits, and a life insurance policy with a face amount of $1 million has been purchased on P's life. The level annual premium on the policy is $23,000. At the beginning of 2005, when P is age 55, the $23,000 premium amount has been paid for five years and the policy, which continues to have a face amount of $1 million, has a cash value of $92,000. Another employer, G, has an employee, R, who is also 55 years old at the beginning of 2005 and is covered under Arrangement B for $1 million, for which a level premium life insurance policy with a face amount of $1 million has been purchased. However, R did not become covered under Arrangement B until the beginning of 2005. Because R's coverage began at age 55, the level annual premium charged for the policy on R's life is $30,000, or $7,000 more than the premiums payable on the policy in effect on P's life. Employer F is charged $23,000 and employer G is charged $30,000 for the death benefit for employees P and R, respectively. Assume that employees P and R are the only covered employees of their respective employers and that they are identical with respect to any risk and rating factors used by the insurer (other than age at policy issuance).

(ii) Arrangement B exhibits at least three of the characteristics listed in paragraph (c) of this section generally indicating that the arrangement is not a 10 or more employer plan described in section 419A(f)(6). First, assets of the plan are effectively allocated to specific employers. Second, there is differential pricing under the arrangement. That is, the amount charged under the plan during the year for a specific amount of death benefit coverage is not the same for all the employers (employer F is charged $23,000 each year for $1 million of death benefit coverage while employer G is charged $30,000 each year for the same coverage), and the difference is not reflective of differences in risk or rating factors that are commonly taken into account in manual rates used by insurers for the death benefit being provided (employees P and R are the same age). Third, there is unreasonably high cost, at least during the early years of coverage under the arrangement when the amounts charged to an employer for that employee's death benefit coverage are unreasonably high for the covered risk for the plan as a whole.

(iii) Arrangement B does not satisfy the requirements of section 419A(f)(6) and this section because, at a minimum, the requirement of paragraph (a)(1)(iii) of this section is not satisfied. Arrangement B maintains experience-rating arrangements with respect to individual employers because the cost of coverage for each year for any employer participating in the arrangement is based on a proxy for the overall experience of that employer. Under Arrangement B, employer F's cost of coverage for 2005 is $23,000 for $1 million of coverage. The $92,000 cash value at the beginning of 2005 in the policy insuring P's life is a proxy for employer F's overall experience. (The $92,000 is essentially the balance that would have accumulated in the fund if employer F were the only employer providing welfare benefits under Arrangement B.) Further, the $23,000 charged to F for the $1 million of coverage in 2005 is based on the $92,000 since, in the absence of the $92,000, employer F would have been charged $30,000 for P's $1 million death benefit coverage. (Note that the conclusion that the $92,000 balance is the basis for the lower premium charged to employer F is consistent with the fact that a $92,000 balance, if converted to a life annuity using the same actuarial assumptions as were used to calculate the cash value amount, would be sufficient to provide for annual annuity payments of $7,000 for the life of P — an amount equal to the $7,000 difference from the premium charged in 2005 to employer G for the $1 million of coverage on employee R's life.) Thus, F's cost of coverage for 2005 is based on a proxy for F's overall experience. Accordingly, Arrangement B maintains an experience-rating arrangement with respect to employer F.

(iv) Arrangement B also maintains an experience-rating arrangement with respect to employer G because it can be expected that each year G will be charged $30,000 for the $1 million of coverage on R's life. Each year, G's cost of coverage will reflect G's prior contributions and allocable earnings, so that G's cost of coverage will be based on a proxy for G's overall experience. Accordingly, Arrangement B maintains an experience-rating arrangement with respect to employer G. Similarly, Arrangement B maintains an experience-rating arrangement with respect to each other participating employer. Accordingly, Arrangement B maintains experience-rating arrangements with respect to individual employers. This would also be the result if Arrangement B maintained an experience-rating arrangement with respect to only one individual employer.

Example 5. (i) Under Arrangement C, death benefits are provided for eligible employees of each participating employer. Flexible premium universal life insurance policies are purchased to provide the death benefits. Each policy has a face amount equal to the death benefit payable with respect to the individual employee. Each participating employer can make any contributions to the arrangement provided that the amount paid for each employee is at least the amount needed to prevent the lapse of the policy. The amount needed to prevent the lapse of the universal life insurance policy is the excess, if any, of the mortality and expense charges for the year over the policy balance. All contributions made by an employer are paid as premiums to the universal life insurance policies purchased on the lives of the covered employees of that employer. Participating employers H and J each have a 50–year-old employee covered under Arrangement C for death benefits of $1 million, which is the face amount of the respective universal life insurance policies on the lives of the employees. In the first year of coverage employer H makes a contribution of $23,000 (the amount of a level premium) while employer J contributes only $6,000, which is the amount of the mortality and expense charges for the first year. At the beginning of year two, the balance in employer H's policy (including earnings) is $18,000, but the balance in J's policy is zero. Although H is not required to contribute anything in the second year of coverage, H contributes an additional $15,000 in the second year. Employer J contributes $7,000 in the second year.

(ii) Arrangement C exhibits at least two of the characteristics listed in paragraph (c) of this section generally indicating that the arrangement is not a 10 or more employer plan described in section 419A(f)(6). First, assets of the plan are effectively allocated to specific employers. Second, the arrangement does not provide for fixed welfare benefits for a fixed coverage period for a fixed cost.

(iii) Arrangement C does not satisfy the requirements of section 419A(f)(6) and this section because, at a minimum, the requirement of paragraph (a)(1)(iii) of this section is not satisfied. Arrangement C maintains experience-rating arrangements with respect to individual employers because the cost of coverage of an employer participating in the arrangement is based on a proxy for the overall experience of that employer. Pursuant to paragraph (b)(4)(ii) of this section (concerning treatment of flexible contribution arrangements), solely for purposes of determining an employer's cost of coverage, the Commissioner may treat an employer as contributing the minimum amount needed to maintain the coverage. Applying this treatment, H's cost of coverage for the first year of coverage under Arrangement C is $6,000 for $1 million of death benefit coverage, but for the second year it is zero for the same amount of coverage because that is the minimum amount needed to keep the insurance policy from lapsing. Employer H's overall experience at the beginning of the second year of coverage is $18,000, because that is the balance that would have accumulated in the fund if H were the only employer providing benefits under Arrangement C. (The special rule of paragraph (b)(4)(ii) of this section only applies to determine cost of coverage; it does not apply in determining overall experience.) The $18,000 balance in the policy insuring the life of employer H's employee is a proxy for H's overall experience. Employer H can choose not to make any contributions in the second year of coverage due to the $18,000 policy balance. Thus, H's cost of coverage for the second year is based on a proxy for H's overall experience. Accordingly, Arrangement C maintains an experience-rating arrangement with respect to employer H.

(iv) Arrangement C also maintains an experience-rating arrangement with respect to

employer J because in each year J can contribute more than the amount needed to prevent a lapse of the policy on the life of its employee and can expect that its cost of coverage for subsequent years will reflect its prior contributions and allocable earnings. Accordingly, Arrangement C maintains an experience-rating arrangement with respect to employer J.

Example 6. (i) Arrangement D provides death benefits for eligible employees of each participating employer. Each employer can choose to provide a death benefit of either one, two, or three times the annual compensation of the covered employees, provided that no employer contributes more than 10 percent of the total contributions under the plan by all employers. Under Arrangement D, the death benefit is payable only if the employee dies while employed by the employer. If an employee terminates employment with the employer or if the employer withdraws from the arrangement, the death benefit is no longer payable, no refund or other credit is payable to the employer or to the employees, and no policy or other property is transferrable to the employer or the employees. Furthermore, other than any conversion rights the employees may have under state law, the employees have no right under Arrangement D to coverage under any other arrangement and no right to purchase or to convert to an individual insurance policy. Arrangement D determines the amount required to be contributed by each employer for each month of coverage by aggregating the amount required to be contributed for each covered employee of the employer. The amount required to be contributed for each covered employee is determined by multiplying the amount of the death benefit coverage (in thousands) for the employee by five-year age bracket rates in a table specified by the plan. The rates in the specified table do not exceed the rates set forth in Table I of § 1.79–3(d)(2). The table is used uniformly for all covered employees of all employers participating in Arrangement D. Arrangement D uses the amount contributed by each employer to purchase one-year term insurance coverage on the lives of the covered employees with a face amount equal to the death benefit provided by the plan. No employer is entitled to any rebates or refunds provided under the insurance contract.

(ii) Arrangement D does not exhibit any of the characteristics listed in paragraph (c) of this section generally indicating that the arrangement is not a 10 or more employer plan described in section 419A(f)(6). Under Arrangement D, assets are not allocated to a specific employer or employers. Differences in the amounts charged to the employers are solely reflective of differences in risk or rating factors that are commonly taken into account in manual rates used by insurers for the particular benefit or benefits being provided. The arrangement provides for fixed welfare benefits for a fixed coverage period for a fixed cost, within the meaning of paragraph (d)(5) of this section. The cost charged under the arrangement is not unreasonably high for the covered risk of the plan as a whole. Finally, benefits and other amounts payable can be paid, distributed, transferred, or otherwise made available only by reason of the death of the employee, so that there is no nonstandard benefit trigger under the arrangement.

(iii) Nothing in the facts of this Example 6 indicates that Arrangement D fails to satisfy the requirements of section 419A(f)(6) or this section by reason of maintaining experience-rating arrangements with respect to individual employers. Based solely on the facts described above, Arrangement D does not maintain an experience rating-arrangement with respect to any individual employer because for each participating employer there is no period for which the employer's cost of coverage under the arrangement is based, in whole or in part, on either the benefits experience or the overall experience (or a proxy for either type of experience) of that employer or its employees.

Example 7. (i) The facts are the same as in Example 6, except that under the arrangement, any refund or rebate provided under that year's insurance contract is allocated among all the employers participating in the arrangement in proportion to their contributions, and is used to reduce the employers' contributions for the next year.

(ii) This arrangement exhibits at least one of the characteristics listed in paragraph (c) of this section generally indicating that the arrangement is not a 10 or more employer plan described in section 419A(f)(6). The arrangement includes nonstandard benefit triggers because amounts are made available to an employer by reason of the insurer providing a refund or rebate to the plan, an event that is other than the illness, personal injury, or death of an employee or family member, or an employee's involuntary separation from employment.

(iii) Based on the limited and specific facts described in this Example 7, an employer participating in this arrangement should be able to establish to the satisfaction of the Commissioner that the plan does not maintain experience-rating arrangements with respect to individual employers. A participating employer's cost of coverage is the relationship of its contributions to the death benefit coverage or other amounts payable with respect to that employer, including the employer's portion of the insurance company rebate and refund amounts. The rebate and refund amounts are allocated to an employer based on that employer's contribution for the prior year. However, even though an employer's overall experience includes its past contributions, contributions alone are not a proxy for an employer's overall experience under the particular facts described in this Example 7. As a result, a participating employer's cost of coverage under the arrangement for each year (or any other period) is not based on that employer's benefits experience or its overall experience (or a proxy for either type of experience), except as follows: If the total of the insurance company refund or rebate amounts is a proxy for the overall experience of all participating employers, a participating employer's cost of coverage will be based in part on that employer's overall experience (or a proxy therefor) by reason of that employer's overall experience being a portion of the overall experience of all participating employers. Under the special rule of paragraph (b)(2)(iii) of this section, however, that fact alone will not cause the arrangement to be treated as maintaining an experience-rating arrangement with respect to an individual employer because no employer normally contributes more than 10 percent of the total contributions under the plan by all employers (the rating group). Accordingly, the arrangement will not be treated as maintaining experience-rating arrangements with respect to individual employers.

Example 8. (i) Arrangement E provides medical benefits for covered employees of 90 participating employers. The level of medical benefits is determined by a schedule set forth in the trust document and does not vary by employer. Other than any rights an employee may have to COBRA continuation coverage, the medical benefits cease when an employee terminates employment with the employer. If an employer withdraws from the arrangement, there is no refund of any contributions and there is no transfer of anything of value to employees of the withdrawing employer. Arrangement E determines the amount required to be contributed by each employer for each year of coverage. To determine the amount to be contributed for each employer, Arrangement E classifies an employer based on the employer's location. These geographic areas are not changed once established under the arrangement. The amount charged for the coverage under the arrangement to the employers in a geographic area is initially determined from a rate-setting manual based on the benefit package, but adjusted to reflect the claims experience of the employers in that classification as a whole. Arrangement E does not have any geographic area classification for which one of the employers in the classification contributes more than 10 percent of the contributions made by all the employers in that classification.

(ii) Arrangement E exhibits at least one of the characteristics listed in paragraph (c) of this section generally indicating that the arrangement is not a 10 or more employer plan described in section 419A(f)(6). The amount charged under the arrangement to an employer in one geographic area can be expected to differ from that charged to an employer in another geographic area (and the differences are not merely reflective of risk or rating factors for those geographic areas), resulting in differential pricing.

(iii) Based on the facts described in this Example 8, an employer participating in Arrangement E should be able to establish to the satisfaction of the Commissioner that the plan does not maintain experience-rating arrangements with respect to individual employers even though there is differential pricing. Although an employer's cost of coverage for each year is based, in part, on its benefits experience (as well as the benefits experience of the other employers in its geographic area), that does not result in experience-rating arrangements with respect to any individual employer because the employers in each geographic area are a rating group and no employer normally contributes more than 10 percent of the contributions made by all the employers in its rating group. (See paragraph (b)(4)(iii) of this section.)

Example 9. (i) The facts of Arrangement F are the same as those described in Example 8 for Arrangement E, except that K, an employer in one of Arrangement F's geographic areas, contributes more than 10 percent of the contributions made by the employers in that geographic area.

(ii) For the same reasons as described in Example 8, Arrangement F results in differential pricing.

(iii) Arrangement F does not satisfy the requirements of section 419A(f)(6) and this section

because, at a minimum, the requirement of paragraph (a)(1)(iii) of this section is not satisfied. An employer's cost of coverage for each year is based, in part, on its benefits experience (as well as the benefits experience of the other employers in its geographic area) and the special rule for experience-rating by a rating group does not apply to Arrangement F because employer K contributes more than 10 percent of the contributions made by the employers in its rating group. Accordingly, Arrangement F maintains experience-rating arrangements with respect to individual employers.

Example 10. (i) The facts of Arrangement G are the same as those described in Example 8 for Arrangement E, except for the way that the arrangement classifies the employers. Under Arrangement G, the experience of each employer for the prior year is reviewed and then the employer is assigned to one of three classifications (low cost, intermediate cost, or high cost) based on the ratio of actual claims with respect to that employer to expected claims with respect to that employer. No employer in any classification contributes more than 10 percent of the contributions of all employers in that classification.

(ii) For the same reasons as described in Example 8, Arrangement G results in differential pricing.

(iii) Arrangement G does not satisfy the requirements of section 419A(f)(6) and this section because, at a minimum, the requirement of paragraph (a)(1)(iii) of this section is not satisfied. The special rule in paragraph (b)(4)(iii) of this section for rating groups can prevent a plan from being treated as maintaining experience-rating arrangements with respect to individual employers if the mere use of a rating group is the only reason a plan would be so treated. Under Arrangement G, however, an employer's cost of coverage for each year is based on the employer's benefits experience in two ways: the employer's benefits experience is part of the benefits experience of a rating group that is otherwise permitted under the special rule of paragraph (b)(4)(iii) of this section, and the employer's benefits experience is considered annually in redetermining the rating group to which the employer is assigned. Accordingly, Arrangement G maintains experience-rating arrangements with respect to individual employers.

Example 11. (i) Arrangement H provides a death benefit equal to a multiple of one, two, or three times compensation as elected by the participating employer for all of its covered employees. Universal life insurance contracts are purchased on the lives of the covered employees. The face amount of each contract is the amount of the death benefit payable upon the death of the covered employee. Under the arrangement, each employer is charged annually an amount equal to 200 percent of the mortality and expense charges under the contracts for that year covering the lives of the covered employees of that employer. Arrangement H pays the amount charged each employer to the insurance company. Thus, the insurance company receives an amount equal to 200 percent of the mortality and expense charges under the policies. The excess amounts charged and paid to the insurance company increase the policy value of the universal life insurance contracts. When an employer ceases to participate in Arrangement H, the insurance policies are distributed to each of the covered employees of the withdrawing employer.

(ii) Arrangement H exhibits at least three of the characteristics listed in paragraph (c) of this section generally indicating that the arrangement is not a 10 or more employer plan described in section 419A(f)(6). First, assets are effectively allocated to specific employers. Second, because the amount of the withdrawal benefit (*i.e.*, the value of the life insurance policies to be distributed) is unknown, the arrangement does not provide for fixed welfare benefits for a fixed coverage period for a fixed cost. Finally, Arrangement H includes nonstandard benefit triggers because amounts can be distributed under the arrangement for a reason other than the illness, personal injury, or death of an employee or family member, or an employee's involuntary separation from employement.

(iii) Arrangement H does not satisfy the requirements of section 419A(f)(6) and this section because, at a minimum, the requirement of paragraph (a)(1)(iii) of this section is not satisfied. Pursuant to paragraph (b)(1) of this section, the prohibition against maintaining experience-rating arrangements applies under all circumstances, including employer withdrawals. Arrangement H maintains experience-rating arrangements with respect to individual employers because the cost of coverage for a participating employer is based on a proxy for the overall experience of that employer. Under Arrangement H, the contributions of a participating employer are fixed. The benefits or other amounts payable with respect to an employer include the value of the life insurance policies that are distributable to the employees of that employer upon the withdrawal of that employer from the plan. Thus, the cost of coverage for any period of an employer's participation in Arrangement H is the relationship between the fixed contributions for that period and the variable benefits payable under the arrangement. The value of those variable benefits depends on the value of the policies that would be distributed if the employer were to withdraw at the end of the period. (Each year the insurance policies to be distributed to the employees in the event of the employer's withdrawal will increase in value due to the premium amounts paid on the policy in excess of current mortality and expense charges.) For reasons similar to those discussed above in Example 5, the aggregate value of the life insurance policies on the lives of an employer's employees is a proxy for that employer's overall experience. Thus, a participating's employer's cost of coverage for any period is based on a proxy for the overall experience of that employer. Accordingly, Arrangement H maintains experience-rating arrangements with respect to individual employers.

(iv) The result would be the same if, rather than distributing the policies, Arrangement H distributed cash amounts equal to the cash values of the policies. The result would also be the same if the distribution of policies or cash values is triggered by employees terminating their employment rather than by employers ceasing to participate in the arrangement.

Example 12. (i) The facts of Arrangement J are the same as those described in Example 11 for Arrangement H, except that (1) Arrangement J purchases a special term insurance policy on the life of each covered employee with a face amount equal to the death benefit payable upon the death of the covered employee, and (2) there is no benefit distributable upon an employer's withdrawal. The special term policy includes a rider that extends the term protection for a period of time beyond the term provided on the policy's face. The length of the extended term is not guaranteed, but is based on the excess of premiums over mortality and expense charges during the period of original term protection, increased by any investment return credited to the policies.

(ii) Arrangement J exhibits two of the characteristics listed in paragraph (c) of this section generally indicating that the arrangement is not a 10 or more employer plan described in section 419A(f)(6). First, assets of the plan are effectively allocated to specific employers. Second, the plan does not provide for fixed welfare benefits for a fixed coverage period for a fixed cost because the coverage period is not fixed.

(iii) Arrangement J does not satisfy the requirements of section 419A(f)(6) and this section because, at a minimum, the requirement of paragraph (a)(1)(iii) of this section is not satisfied. Arrangement J maintains experience-rating arrangements with respect to individual employers because the cost of coverage for a participating employer is based on a proxy for the overall experience of that employer. Under Arrangement J, the contributions of a participating employer are fixed. The benefits or other amounts payable with respect to an employer are the one-, two-, or three-times-compensation death benefit for each employee of the employer for the current year, plus the extended term protection coverage for future years. Thus, for any period extending to or beyond the end of the original term of one or more of the policies on the lives of an employer's employees, the employer's cost of coverage is the relationship between the fixed contributions for that period and the variable benefits payable under the arrangement. The value of those variable benefits depends on the aggregate value of the policies insuring the employer's employees (*i.e.*, the total of the premiums paid on the policies by Arrangement J to the insurance company, reduced by the mortality and expense charges that were needed to provide the original term protection, and increased by any investment return credited to the policies). The aggregate value of the policies insuring an employer's employees is, at any time, a proxy for the employer's overall experience. Thus, a participating employer's cost of coverage for any period described above is based on a proxy for the overall experience of that employer. Accordingly, Arrangement J maintains experience-rating arrangements with respect to individual employers.

Example 13. (i) Arrangement K provides a death benefit to employees of participating employers equal to a specified multiple of compensation. Under the arrangement, a flexible-premium universal life insurance policy is purchased on the life of each covered employee in the amount of that employee's death benefit. Each policy has a face amount equal to the employee's death benefit under the arrangement. Each participating employer is charged annually with the aggregate amount (if any) needed to maintain the policies covering the lives of its employees. However, each employer is permitted to make additional contributions to the arrangement and, upon doing so, the additional contributions are

paid to the insurance company and allocated to one or more contracts covering the lives of the employer's employees. In the event that any policy covering the life of an employee would lapse in the absence of new contributions from that employee's employer, and if at the same time there are policies covering the lives of other employees of the employer that have cash values in excess of the amounts needed to prevent their lapse, the employer has the option of reducing its otherwise-required contribution by amounts withdrawn from those other policies.

(ii) Arrangement K exhibits at least two of the characteristics listed in paragraph (c) of this section generally indicating that the arrangement is not a 10 or more employer plan described in section 419A(f)(6). First, assets of the plan are allocated to specific employers. Second, because the plan allows an employer to choose to contribute an amount that is different than that contributed by another employer for the same benefit, the amount charged under the plan is not the same for all participating employers (and the differences in the amounts are not reflective of differences in risk or rating factors that are commonly taken into account in manual rates used by insurers for the particular benefit or benefits being provided), resulting in differential pricing.

(iii) Arrangement K does not satisfy the requirements of section 419A(f)(6) and this section because, at a minimum, the requirement of paragraph (a)(1)(iii) of this section is not satisfied. Arrangement K maintains experience-rating arrangements with respect to individual employers because the cost of coverage for any employer participating in the arrangement is based on a proxy for the overall experience of that employer. Under Arrangement K the benefits with respect to an employer for any year are a fixed amount. For purposes of determining the employer's cost of coverage for that year, the Commissioner may treat the employer's contribution under the special rule of paragraph (b)(4)(ii) of this section (concerning treatment of flexible contribution arrangements) as being the minimum contribution amount needed to maintain the universal life policies with respect to that employer for the death benefit coverage for that year. Because the employer has the option to prevent the lapse of one policy by having amounts withdrawn from other policies, that minimum contribution amount will be based in part on the aggregate value on the policies on the lives of that employer's employees. That aggregate value is a proxy for the employer's overall experience. Accordingly, Arrangement K maintains experience-rating arrangements with respect to individual employers.

(g) *Effective date*—(1) *In general*. Except as set forth in paragraph (g)(2) of this section, this section applies to contributions paid or incurred in taxable years of an employer beginning on or after July 11, 2002.

(2) *Compliance information and recordkeeping*. Paragraphs (a)(1)(iv), (a)(2), and (e) of this section apply for taxable years of a welfare benefit fund beginning after the date of publication of final regulations in the Federal Register.

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on July 10, 2002, 8:45 a.m., and published in the issue of the Federal Register for July 11, 2002, 67 F.R. 45933)

Carryback of Consolidated Net Operating Losses to Separate Return Years; Correction

Announcement 2002–68

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to temporary regulations.

SUMMARY: This document contains corrections to temporary regulations (T.D. 8997, 2002–26 I.R.B. 6) that were published in the **Federal Register** on Friday, May 31, 2002 (67 FR 38000) that affect corporations filing consolidated returns.

DATES: This correction is effective May 31, 2002.

FOR FURTHER INFORMATION CONTACT: Marie Milnes-Vasquez, (202) 622–7770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of these corrections are under sections 1502 and 172 of the Internal Revenue Code.

Need for Correction

As published, the temporary regulations contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the temporary regulations (T.D. 8997), that were the subject of FR Doc. 02–13576, is corrected as follows:

1. On page 38001, column 3, in the preamble under the paragraph heading "Background", third full paragraph, line 5, the language "elections are made on a year-by-basis." is corrected to read "elections are made on a year-by-year basis."

2. On page 38002, column 1, in the preamble under the paragraph heading "Special Analyses", first paragraph, lines 22 and 23, the language "to 5 USC 553(b)(B) and delayed effective date is not required pursuant to 5 USC" is corrected to read "to 5 U.S.C. 553(b)(3)(B) and delayed effective date is not required pursuant to 5 U.S.C.".

Cynthia E. Grigsby,
Chief, Regulations Unit,
Associate Chief Counsel (Income Tax and Accounting).

(Filed by the Office of the Federal Register on July 8, 2002, 8:45 a.m., and published in the issue of the Federal Register for July 9, 2002, 67 F.R. 45310)

Loss Limitation Rules; Correction

Announcement 2002–69

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to proposed rulemaking.

SUMMARY: This document contains a correction to REG–123305–02, 2002–26 I.R.B. 26, which was published in the **Federal Register** on Friday, May 31, 2002 (67 FR 38040), relating to loss limitation rules.

FOR FURTHER INFORMATION CONTACT: Guy R. Traynor, Regulations Unit, Associate Chief Counsel, (Income Tax & Accounting), (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of this correction is under sections 337 and 1502 of the Internal Revenue Code.

Need for correction

As published, REG–123305–02 contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–123305–02), which is the subject of FR Doc. 02–13575, is corrected as follows:

1. On page 38040, column 1, line four of the heading, the regulation number "[REG–102305–02]" is corrected to read "[REG–123305–02]".

2. On page 38040, column 2, in the preamble under the caption ADDRESSES:, line 2, the language "CC:ITA:RU (REG–102740–02), room" is corrected to read "CC:ITA:RU (REG–123305–02), room".

3. On page 38040, column 2, in the preamble under the caption ADDRESSES:, lines 7 and 8, the language "between the hours of 8 a.m. and 6 p.m. to CC:ITA:RU (REG–102740–02)," is corrected to read "between the hours of 8 a.m. and 5 p.m. to CC:ITA:RU (REG–123305–02),".

Cynthia E. Grigsby,
Chief, Regulations Unit,
Associate Chief Counsel
(Income Tax & Accounting).

(Filed by the Office of the Federal Register on July 9, 2002, 8:45 a.m., and published in the issue of the Federal Register for July 10, 2002, 67 F.R. 45683)

Foundations Status of Certain Organizations

Announcement 2002–70

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

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

22nd Street Martin Luther King Chess Academy, Inc., Tampa, FL
Actual Reality, Inc., Worthington, OH
AD Gentes, Inc., Tipp City, OH
Africa Help, Inc., Nairobi, Kenya
African American Jazz Preservation Society of Pittsburgh, Pittsburgh, PA
African Heritage Playhouse Theatre, Hackensack, NJ
Agonis Club of Columbus, Inc., Columbus, OH
American Foosball Association, Inc., Gainesville, FL
American Foundation for the Arts, McLean, VA
Angels in Overalls, Inc., Pittsburgh, PA
Anointed Christian Communications, Inc., Erie, PA
Antenna Arts Association, Inc., Cincinnati, OH
Art League of Cincinnati, Cincinnati, OH
Assisted Living Healthcare, Inc., Atlanta, GA
Association for the Elderly in Ofakim, Ofakim Israel, MD
Bash Association, Eaton, OH
Beach Historic Neighborhood Association, Inc., Savannah, GA
Bedouin Source Preservation & Research Center, Inc., Ashdown, AR
Bible and Life Ministries, Inc., Tampa, FL
Bible Missionaries Fellowship, Groveport, OH
Bighorn BMX, Reno, NV
Boorda Foundation, Burke, VA
Brighter Days Association, Inc., Dayton, OH
California Wind Orchestra, Carmichael, CA
Cape St. George Lighthouse Society, Inc., Apalachicola, FL
Central Ohio Firearms Educational Center, Pickerington, OH
Charity Mission, Hillsboro, OH
Cherokee Operation Round-Up Tr, Centre, AL
Children and Family Ministry, Inc., Maineville, OH
Childs First Impression, Inc., Lauderhill, FL
Chillicothe City Schools Soccer Club, Chillicothe, OH
Christian Alliance Outreach, Inc., Columbus, OH
Cincinnati Forum for Architecture & Urbanism, Cincinnati, OH
Cincinnati Sports Academy, Cincinnati, OH
Cincinnati Student Athlete Foundation, Inc., Cincinnati, OH
Cincinnati Suns Baseball, Cincinnati, OH
Closing the War and Coming Home, Inc., Cincinnati, OH
Columbus Black Womens Health Project of Central Ohio, Inc., Columbus, OH
Columbus Merrick Society, Galloway, OH
Community Hope, Inc., Kettering, OH
Comunidad Latinos Unidos, Inc., Coatesville, PA
Courage House, Inc., Cincinnati, OH
Culkin Scholarship Foundation, Inc., Sarasota, FL
Customs-Trade-Finance Symposium of the Americas, Inc., Miami, FL
Darwinian Notions, Sunbury, OH
Delaware Area Prevention Institute, Delaware, OH
DMB Group Homes, Inc., Edgewood, MD
Downtown Theatre Classics, Cincinnati, OH
Eagle Wings Ministries, Huber Heights, OH
Eagles Nest Christian Counseling and Training Center, Decatur, GA
Eden Now Ecological Institute, Inc., Homestead, FL
Eikon Ministries, Inc., Memphis, TN
Entrepretech, Los Angeles, CA
Federation of Families for Childrens Mental Health of Central, Columbus, OH
First Born Outreach Center, Inc., Ft. Valley, GA
Gabriel Carrera International Ministry, Inc., Hartford, CT
Genesis Life Center, Inc., Albany, GA

Grace Brethren Boys God Builds Boys, Reynoldsburg, OH
Greater Cincinnati Basketball Hall of Fame, Inc., Cincinnati, OH
Greater Cincinnati Cancer Registrars Association, Cincinnati, OH
Greater Cincinnati Housing Alliance, Inc., Cincinnati, OH
Greater Pittsburgh Community Leaders Prayer Breakfast, Pittsburgh, PA
Greater Southwest Arts Council, Columbus, OH
Heartlife Ministries, Inc., Huntingdon, PA
Henry Bailey, Inc., Snellville, GA
Hilltop Historical Society, Columbus, OH
Hispanic Association of Lucent Technologies Employees, Inc., Columbus, OH
Hocking Valley Water Safety Council, Logan, OH
Holistic Health Learning Center, Inc., Lancaster, OH
Home Buying Consultants, Memphis, TN
Hope in Recovery, Warner Robins, GA
Horizon House Apartments, Inc., Gainesville, FL
Inner-City Brighter Life Foundation, Inc., Tampa, FL
Institute for Celtic Studies in America, Inc., Bethel Park, PA
Institute of Language and Culture, Inc., Montevallo, AL
Interlink Community Development Corporation, Miami, FL
International Institute for Lifestyle Change, Inc., Chevy Chase, MD
Invisible Force, Hattiesburg, MS
Jefferson Amphitheater Foundation, Free Union, VA
Jimmy Rice Center for Victims of Predatory Abduction, Inc., Bay Harbor Island, FL
Jonesborough Repertory Theatre, Jonesborough, TN
Kettering-Oakwood Exchange Foundation, Inc., Kettering, OH
Kiamsha Community Development Corporation, Inc., College Park, GA
Kingstar Foundation, Palm Beach, FL
League at NCR, Dayton, OH
Lock Out Child Krime-Innocents Defense Initiative, Inc., Lore City, OH
Logan Shankletown Schools Association, Concord, NC
Lords Angels Ministries, Miami, FL
Maryland Association of Urban Bankers Foundation, Inc., Columbia, MD
Maryland Rockets All-Star Cheerleaders, Glen Burnie, MD
Middletown Economic Development Foundation, Middletown, OH
Midwest Rugby Development Foundation, Cincinnati, OH
Mid-South Aids Mastery Foundation, Memphis, TN
Migrant Farmworkers Connection, Inc., Dayton, OH
Miracle Makers, Columbus, OH
Miracles Aids Network, Inc., Douglasville, GA
Missions Medicine & Mankind, Columbus, OH
Mississippi Brain Tumor Foundation, Inc., Jackson, MS
Missouri Theatre Building Trust, Columbia, MO
Mixteco Ballet Folklorico, Houston, TX
Mohican Institute, Westerville, OH
Momazons, Inc., Columbus, OH
Monsterless Actors, Inc., New York, NY
Morning Star Community Care Center, Inc., Baltimore, MD
Mothers After Care Development, Inc., Durham, NC
Motorcycle Safety Fund of Arizona, Inc., Huachuca City, AZ
Multicom Buddhist Society, San Mateo, CA
Multi-Cultural Family & Youth Enrichment Program, Lincoln, NE
Murree Christian School Alumni Association, Inc., Atlanta, GA
Music Hall Foundation, Inc., St. George, UT
NA Wahine Ekolu Archaeology, Wailuku, HI
National Association for Education and Training, Inc., Greensboro, NC
National Council on Alcoholism and Drug Dependence Sonoma County, Rohnert Park, CA
Native American Long House Society, Inc.,-Keeper of the Spirit-Six Nation, Valley Stream, NY
Natural Products and Glycotechnology Research Institute, Durham, NC
N C Community Programs Administrative Services, Raleigh, NC
Neighborhood Care Outreach, Oakland, CA
Neighborhood Empowerment Council, Inc., Columbus, OH
Neshoba County Pro-Miss Team, Inc., Philadelphia, MS
New Bridge Concepts, Inc., New York, NY
New Horizons Chamber Ensemble, Inc., Baltimore, MD
New Life Ministries of Oxford, Inc., Oxford, AR
New Pathways, Inc., Steven Points, TX
New Richmond Advisory Council Family Childrens First, New Richmond, OH
Next Step, Inc., Nashville, TN
North Carolina Heritage, Inc., Raleigh, NC
North Wabash Community Association, Lakeland, FL
Northbay Gay and Lesbian Community Services Project, Sonoma, CA
Northern New Mexico Health Care Alliance, Inc., Las Vegas, NM
NVCSS Bechelli Lane, Inc., Redding, CA
NVCSS Hartford Place, Inc., Redding, CA
Ocean Gate Home and School Association, Ocean Gate, NJ
Oceanic Rescue Research, Seattle, WA
Ohio Food Policy & Anti-Poverty Action Center, Reynoldsburg, OH
Ohio Taekwondo Association, Inc., Columbus, OH
One Church One Child of Oregon, Portland, OR
Opera in the Hills, Fremont, CA
Opportunity Closet, Inc., Cincinnati, OH
Organization for Urban & Rural Health & Nutritional Development, Atlanta, GA
Orlando International Fringe Festival, Inc., Orlando, FL
Overseas Ukranian Russian Soul Winning, Inc., Statesboro, GA
Pacific Bays Youth Corps Foundation, Mt. View, CA
Pacific Northwest Housing Resources, Seattle, WA
Paine College National Alumni Association, Inc., Augusta, GA
Palmdale Education Foundation, Palmdale, CA
Pamlico Area Community Educators, Belhaven, NC
Parent Teacher Student Organization of Rich Rap School, Phoenix, AZ
Patania Eiland & the Fayetteville Community Mass Choir, Fayetteville, NC

PEDI Education Alliance, The Woodlands, TX
Pelican State Child Care Association, Inc., Maringouin, LA
Pet Rescue Foundation, Inc., Glen Allen, VA
Pet Search, Washington, PA
Petaluma Community Access, Inc., Petaluma, CA
Pittsburgh Instrumental Instruction Program, Sewickley, PA
Plasma at Cincinnati, Louisville, KY
Podiatric Research Society Corporation, S. Miami, FL
Pookies House, Rough Ready, CA
Positive Imaje Enterprise, Lynwood, CA
Potomac Valley Therapy Associates, Inc., Ellicot City, MD
PPEP First American Resources & Services Corporation, Tucson, AZ
Prahlad Foundation, Inc., Atlanta, GA
Primary Stafford Organization of Parents and Teachers, Stafford, TX
Private Industry Council of Louisville and Jefferson County, Inc., Louisville, KY
Project Enterprise, Inc., San Mateo, CA
Project Familybuild, Inc., Miami, FL
Promoting Economic Advancement and Career Education, Triangle, VA
Rachels Disabled Children Foundation, Vallejo, CA
Rainbow Ring Society, Inc., Lake Havasu City, AZ
Reach Ministries, Cincinnati, OH
Reaching Out to People Through Education, Jackson, MS
Recovery and Beyond, Altadena, CA
Red Ribbon Fund, Washington, DC
Regional Information Center of Southern California, Los Angeles, CA
Renewed Life Providers, Kailua, HI
Renewed Recovery Home, Fresno, CA
Resort at Squaw Creek Charities Foundation, Olympic Valley, CA
Respite Care, Incorporated, Beavercreek, OH
Restoration Ministries International, State College, PA
Rhema Christian Academy, Inc., Navarre, FL
Riding for Reading, Granite Bay, CA
Robbin's Fund, Inc., Davie, FL
Robert O. Finley III Foundation, Birmingham, AL
Robinson Community Foundation, Pittsburgh, PA
R.O.S.E. Cottage, Inc., Union City, PA
Rotary Club Foundation of Keller, Inc., Keller, TX
Rural Emergency Services, Inc., Sevierville, TN
S & M Rejuvenation, Inc., Jacksonville, FL
Sacramento Chamber Orchestra Association, Inc., Sacramento, CA
Safe Passage, Johnson City, TN
San Francisco Medic One Foundation, San Francisco, CA
Sandcastle Family Support Nursery, Walla Walla, WA
Santas Photo Sleigh, Seattle, WA
Save the Greenway, Salem, OR
Science and Technology Advisory Group Foundation, Inc., Boca Raton, FL
Second Mental Retardation Corporation, Dayton, OH
Seesholtz Residential Services, Inc., Bremen, OH
Sequoyah Booster Club, Madisonville, TN
Shekinah Enterprises, Inc., Fairfield, OH
Sheridan USA Boxing Association, Sheridan, WY
Shoemakers Christian Homes for Children and Adolescents, Inc., Washington Court House, OH
Sign Music Foundation, Inc., Lewisville, TX
Sino-US Joint Research Foundation, New York, NY
Sistahs of Columbia County, Inc., Lake City, FL
SJ Skate, San Jose, CA
Slaton-Bean Neighborhood Association, Inc., Lubbock, TX
Smithville Elementary Booster Club, Smithville, TX
Society of Photographic Art, Inc., Plantation, FL
Society of Russian American Culture, Houston, TX
Society of Workers in Early Arts & Trades, Auburndale, FL
Sounds of Saisa Institute of Vocal Jazz, Inc., Catonsville, MD
South Charlotte Middle School Musical Arts Council, Inc., Charlotte, NC
South Side Mission Project, Inc., Columbus, OH
Southeastern Ohio Civil War Roundtable, Cambridge, OH
Southeastern Panthers Pee Wee Football Team, Londonderry, OH
Southern California Lions-Quest Support Foundation, Los Angeles, CA
Southwest Foundation for Inclusive Communities, Richardson, TX
Southwestern Ohio Double Dutch League, Cincinnati, OH
Spectrum Theatricals, Inc., Cincinnati, OH
Sports Society, Miami Lakes, FL
Spring Lake Memorial Development Corporation, Spring Lake, NC
Square One With Doug Murren, Redmond, WA
St. Clair School PTO, Inc., Sanford, NC
St. Paul Baptist Church Community Service Agency, Inc., Baton Rouge, LA
Star View Children and Family Services, Inc., Oakland, CA
Stepping Out, Inc., San Francisco, CA
Stratford Art Works, Inc., Tucson, AZ
Sullivan County Character Counts, Inc., Kingsport, TN
Sunrise HIV-Aids Coalition of the Antelope Valley, Lancaster, CA
Sunset Apartments, Inc., Gainesville, FL
Synergy Integrating Community Health Education Emp & Human Svs, Oakland, CA
Tarpp Teamwork Ability & Resources Promoting Progress, Denver, CO
Tellers of Tales, Chattanooga, TN
Terre Haute Childrens Choir, Inc., Terre Haute, IN
Thin Air Magazine, Flagstaff, AZ
Third Mental Retardation Corporation, Dayton, OH
Thunder Mountain PTO Kids Activities, Grand Junction, CO
Tigard School District 23J, Tigard, OR
Tiger Medic Comprehensive Human Health Service, Oakland, CA
Tim Wilson Ministries, Inc., Valrico, FL
Tobacco Valley Youth Center, Eureka, MT
Tomball Intermediate School PTO, Inc., Tomball, TX
Toni Morrison Society, Inc., Decatur, GA
Transexual Research Associates in the Natural Sciences, Inc., San Jose, CA
Tri-County Eagles, Cincinnati, OH
Triumph Foundation, West Palm Beach, FL
Trueblood Theatre Ensemble, Inc., New York, NY
Tulare County Sheriffs Police Activities League, Visalia, CA
Tuscola High School Parent Teacher Organization, Inc., Waynesville, NC

Tyrone Hill Charitable Foundation, Cincinnati, OH
Ukrainian Dancers of Miami, Miami, FL
Union City Schools Foundation, Inc., Union City, TN
United States Capitol Police Retired Officers Foundation, Inc., Crofton, MD
University of Oklahoma Research Corporation, Norman, OK
University Womens Club of the University of Colorado at Boulder, Boulder, CO
Urban Economic Redevelopment Institute of Kansas City, Kansas City, MO
Urban Housing Foundation, Philadelphia, PA
Valley Futball Club, Inc., Corvallis, OR
Venice for a Positive Change, Hawthorne, CA
Villa Madonna, Inc., Palm Beach Gardens, FL
Volley Heat Volleyball Club, Inc., Overland Park, KS
Volunteer Center, Hampton, VA
Wards Taekwondo Junior Olympic Team, Red Wing, MN
Warm Hands Warm Hearts, Inc., Lancaster, OH
Warriors Baseball Club, Fort Worth, TX
Way of Life of NJ, Inc., East Orange, NJ
Weld Citizen Action Network, Inc., Greeley, CO
Weldon H. Smith Foundation, Richmond, VA
WES Watkins Area Vo-Tech Foundation, Wetumka, OK
West Coast Ballet, Santa Barbara, CA
West Coast Veterans Agency, Rockford, IL
West Point-Clay County Cultural-Historical Arts Museum, Inc., West Point, MS
Western Alamance Middle School PTO, Gibsonville, NC
Western Kentucky University Alumni Association, Inc., Bowling Green, KY
Whitehaven-Oakhaven Youth Development Program, Memphis, TN
Wilson Heights Community Development Corporation, Inc., Charlotte, NC
Wits End Club, Seattle, WA
Wolves Unlimited, Inc., Saratoga Springs, NY
Womens Wisdom Project, Sacramento, CA
Wood Elementary Dad's Club, Arlington, TX
Wright County Family Enrichment Team, Clarion, IA
Yahvah Enterprises, Inc., Rifle, CO
Yea, Inc., Maple Plain, MN
Youth of America, Inc., Silver Spring, MD
Zachary Raymond Gates Foundation, Alvadore, OR

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

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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Key to Abbreviations:

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

EMPLOYEE PLANS

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