

Internal Revenue bulletin

Bulletin No. 1998-9
March 2, 1998

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

T.D. 8752, page 4.

Final regulations under sections 354, 355, and 356 of the Code provide for nonrecognition of gain or loss on the receipt, in pursuance of a reorganization, of rights to acquire stock of a corporation that is a party to the reorganization.

T.D. 8753, page 6.

REG-121755-97, page 13.

Temporary and proposed regulations provide guidance under section 356(e) of the Code on when nonqualified preferred stock will not be treated as stock or securities for purposes of sections 354, 355, and 356 of the Code. A public hearing on the proposed regulations will be held on May 5, 1998.

EMPLOYEE PLANS

Notice 98-15, page 8.

Weighted average interest rate update. Guidelines are set forth for determining for February 1998, the weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability for purposes of the full funding limitation of section 412(c)(7) of the Code as amended by the Omnibus Budget Reconciliation Act of 1987 and by the Uruguay Round Agreements Act (GATT).

EXEMPT ORGANIZATIONS

Announcement 98-16, page 17.

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

ADMINISTRATIVE

REG-109333-97, page 9.

Proposed regulations under section 7702B of the Code relate to consumer protection with respect to qualified long-term care insurance contracts. A public hearing will be held on May 13, 1998.

REG-251502-96, page 14.

Proposed regulations under section 7433 of the Code relate to civil causes of action for damages caused by unlawful collection actions of officers and employees of the Internal Revenue Service.

Announcement 98-17, page 16.

This announcement supersedes Announcement 98-6, 1998-5 I.R.B. 25, and clarifies Rev. Proc. 97-34, 1997-30 I.R.B. 14 dated July 28, 1997, regarding the use of the IRA, SEP, and SIMPLE indicators on Form 5498 for magnetic or electronic filing.

Finding Lists begin on page 22.

Announcement of Disbarments and Suspensions begins on page 19.

Index for January-February begins on page 24.



Department of the Treasury
Internal Revenue Service

Mission of the Service

The purpose of the Internal Revenue Service is to collect the proper amount of tax revenue at the least cost; serve the public by continually improving the quality of our prod-

ucts and services; and perform in a manner warranting the highest degree of public confidence in our integrity, efficiency, and fairness.

Statement of Principles of Internal Revenue Tax Administration

The function of the Internal Revenue Service is to administer the Internal Revenue Code. Tax policy for raising revenue is determined by Congress.

With this in mind, it is the duty of the Service to carry out that policy by correctly applying the laws enacted by Congress; to determine the reasonable meaning of various Code provisions in light of the Congressional purpose in enacting them; and to perform this work in a fair and impartial manner, with neither a government nor a taxpayer point of view.

At the heart of administration is interpretation of the Code. It is the responsibility of each person in the Service, charged with the duty of interpreting the law, to try to find the true meaning of the statutory provision and not to adopt a strained construction in the belief that he or she is "protecting the revenue." The revenue is properly protected only when we ascertain and apply the true meaning of the statute.

The Service also has the responsibility of applying and administering the law in a reasonable, practical manner. Issues should only be raised by examining officers when they have merit, never arbitrarily or for trading purposes. At the same time, the examining officer should never hesitate to raise a meritorious issue. It is also important that care be exercised not to raise an issue or to ask a court to adopt a position inconsistent with an established Service position.

Administration should be both reasonable and vigorous. It should be conducted with as little delay as possible and with great courtesy and considerateness. It should never try to overreach, and should be reasonable within the bounds of law and sound administration. It should, however, be vigorous in requiring compliance with law and it should be relentless in its attack on unreal tax devices and fraud.

Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

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

Part II.—Treaties and Tax Legislation.

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

Part III.—Administrative, Procedural, and Miscellaneous.

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

Part IV.—Items of General Interest.

With the exception of the Notice of Proposed Rulemaking and the disbarment and suspension list included in this part, none of these announcements are consolidated in the Cumulative Bulletins.

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

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

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

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

Section 354.—Exchanges of Stock and Securities in Certain Reorganizations

26 CFR 1.354-1: Exchanges of stocks and securities in certain reorganizations.

T.D. 8752

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Reorganizations/Treatment of Warrants as Securities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations

SUMMARY: This document contains final regulations that in certain instances provide for nonrecognition of gain or loss on the receipt, in pursuance of a reorganization, of rights to acquire stock of a corporation that is a party to the reorganization. These regulations change the existing rules for such rights under sections 354, 355, and 356 of the Internal Revenue Code. These regulations will affect holders of these rights who are involved in corporate reorganizations under sections 355 and 368.

DATES: These regulations are effective March 9, 1998.

FOR FURTHER INFORMATION CONTACT: Michael J. Danbury, (202) 622-7750 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 23, 1996, the IRS and Treasury Department published a notice of proposed rulemaking (REG-249819-96 [1997-1 C.B. 793]) in the **Federal Register** (61 F.R. 67508) containing proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 354, 355, and 356, relating to exchanges of stock and securities in certain reorganizations and corporate divisions. Written and oral comments responding to this notice were received. There were no requests to attend a public hearing and none was held.

After consideration of all comments received, the proposed amendments are adopted as revised by this Treasury decision. The principal changes to the regulations, as well as the major comments and suggestions, are discussed below.

Explanation of Provisions

A. *The Proposed Regulations*

In general, sections 354, 355, and 356 provide for nonrecognition of gain or loss, in whole or in part, to a stockholder or security holder on the exchange of stock or securities of parties to a reorganization and in pursuance of a plan of reorganization.

The proposed regulations would extend the nonrecognition rule of sections 354, 355, and 356 to certain rights to acquire stock. Thus, for purposes of sections 354, 355, and 356, the proposed regulations would treat rights to acquire stock issued by a corporation that is a party to a reorganization as securities of the corporation with no principal amount. The preamble to the proposed regulations provided that, for this purpose, the term *rights to acquire stock* issued by that corporation would have the same meaning as the term has in sections 305(d)(1) and 317(a). In addition, the preamble stated that the proposed regulations would have no effect on other Internal Revenue Code rules that pertain to securities, including sections 83 and 421 through 424 and the regulations thereunder.

B. *Comments on the Proposed Regulations*

1. *Elaboration on the Definition of "Rights To Acquire Stock"*

Commentators recommended that the final regulations include an explicit definition of *rights to acquire stock*. They submitted particular examples for inclusion in the definition.

The final regulations add a cross-reference to sections 305 and 317(a) in defining *rights to acquire stock*. This cross-reference should provide sufficient guidance in most cases for taxpayers to determine the consequences on a receipt of rights. The IRS and Treasury believe that illustrating the terms of sections 305 and 317 is outside the scope of these regulations. Accordingly, the final regulations

provide no definition other than the cross-reference.

2. *Treatment of Stock-For-Warrant Exchanges*

Section 1.354-1(d), *Example 3*, states that section 354 does not apply to a shareholder's receipt of solely debt securities in exchange for stock. Commentators requested confirmation that section 354 also does not apply to a shareholder's receipt of solely securities that are rights to acquire stock in exchange for stock. The final regulations confirm this result in *Example 4* to §1.354-1(d).

3. *Effective Date*

These final regulations are effective March 9, 1998. This accords with the delayed effective date in the proposed regulations. Commentators requested more immediate effectiveness.

The IRS and Treasury are concerned that taxpayers who have planned transactions based on the proposed regulations' delayed effective date could be disadvantaged by a change in the effective date. Accordingly, the final regulations retain the delayed effective date.

4. *Interrelationship With Section 83*

The preamble to the proposed regulations noted that the rules would apply to rights to acquire stock only for purposes of sections 354 through 356, and that such rights may remain subject to other special rules under the Internal Revenue Code and the regulations including sections 83 and 421 through 424.

Commentators recommended an explicit statement to that effect in the final regulations. The regulations adopt this recommendation.

5. *Effect in "B" Reorganizations*

Commentators requested a review of published guidance that concerns exchanges of rights to acquire stock as part of a larger transaction that includes a stock-for-stock reorganization under section 368(a)(1)(B). The IRS intends to address this issue in the near future.

6. *No Principal Amount*

Commentators sought clarification of the proposed rule that rights to acquire stock would have no principal amount.

The IRS and Treasury add *Examples 7, 8, and 9* to §1.356-3(b) to illustrate the effect of a right to acquire stock having no principal amount.

7. *Comments Not Addressed in the Final Regulations*

Comments were received with regard to the tax issues of rights to acquire stock under sections 302, 305, 306, and 351. Resolution of these issues is beyond the scope of this project and they are not addressed herein.

8. *Interrelationship With Nonqualified Preferred Stock Provisions*

In connection with the finalization of these regulations, the IRS and Treasury became aware that additional rules were needed to coordinate these regulations with the treatment of rights to acquire nonqualified preferred stock and new sections 354(a)(2)(C), 355(a)(3)(D), and 356(e). See §1.356-6T (T.D. 8753) on page 6 of this Bulletin.

Special Analyses

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

Drafting Information

The principal author of these regulations is Michael J. Danbury of the Office of Assistant Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par 2. Section 1.354-1 is amended by:

- 1. In paragraph (d), redesignating *Example (1)* through *Example (3)* as *Example 1* through *Example 3*.
- 2. Adding *Example 4* to paragraph (d).
- 3. Revising paragraph (e).

The addition and revision read as follows:

§1.354-1 Exchanges of stock and securities in certain reorganizations.

* * * * *

(d) * * *

Example 4. The facts are the same as in *Example 3* of this paragraph (d), except that C receives solely rights to acquire stock in Corporation Z. Section 354 does not apply.

(e) Except as provided in §1.356-6T, for purposes of section 354, the term *securities* includes rights issued by a party to the reorganization to acquire its stock. For purposes of this section and section 356(d)(2)(B), a right to acquire stock has no principal amount. For this purpose, rights to acquire stock has the same meaning as it does under sections 305 and 317(a). Other Internal Revenue Code provisions governing the treatment of rights to acquire stock may also apply to certain exchanges occurring in connection with a reorganization. See, for example, sections 83 and 421 through 424 and the regulations thereunder. This paragraph (e) applies to exchanges occurring on or after March 9, 1998.

Par 3. Section 1.355-1 is amended by removing the last sentence of paragraph (b) and adding paragraph (c) to read as follows:

§1.355-1 Distribution of stock and securities of a controlled corporation.

* * * * *

(c) *Stock rights.* Except as provided in §1.356-6T, for purposes of section 355, the term *securities* includes rights issued by the distributing corporation or the controlled corporation to acquire the stock of that corporation. For purposes of this section and section 356(d)(2)(B), a right to acquire stock has no principal amount. For this purpose, rights to acquire stock has the same meaning as it does under sections 305 and 317(a). Other Internal Revenue Code provisions governing the treatment of rights to acquire stock may also apply to certain distributions occurring in connection with a transaction described in section 355. See, for example, sections 83 and 421 through 424 and the regulations thereunder. This paragraph (c) applies to distributions occurring on or after March 9, 1998.

Par 4. Section 1.356-3 is amended by:

- 1. Redesignating paragraph (b) as paragraph (c).
- 2. Adding a new paragraph (b).
- 3. In newly designated paragraph (c), redesignating *Example (1)* through *Example (6)* as *Example 1* through *Example 6*.
- 4. Revising paragraph (c) introductory text.
- 5. Adding *Example 7* through *Example 9* to paragraph (c).

The revisions and additions read as follows:

§1.356-3 Rules for treatment of securities as “other property.”

* * * * *

(b) Except as provided in §1.356-6T, for purposes of this section, a right to acquire stock that is treated as a security for purposes of section 354 or 355 has no principal amount. Thus, such right is not *other property* when received in a transaction to which section 356 applies (regardless of whether securities are surrendered in the exchange). This paragraph (b) applies to transactions occurring on or after March 9, 1998.

(c) In the examples in this paragraph (c), *stock* means common stock and *warrants* means rights to acquire common stock. The following examples illustrate the rules of paragraph (a) of this section:

* * * * *

Example 7. G, an individual, exchanged stock for stock and a warrant. The warrant had no principal amount. Thus, G received no excess principal amount within the meaning of section 356(d).

Example 8. H, an individual, exchanged a warrant for stock and a warrant. The warrants had no principal amount. Thus, H received no excess principal amount within the meaning of section 356(d).

Example 9. I, an individual, exchanged a warrant for stock and a debt security. The warrant had no principal amount. The debt security had a \$100 principal amount. I received \$100 of excess principal amount within the meaning of section 356(d).

Michael P. Dolan,
Deputy Commissioner of
Internal Revenue.

Approved December 17, 1997.

Donald C. Lubick,
Acting Assistant Secretary of
the Treasury.

(Filed by the Office of the Federal Register on January 5, 1998, 8:45 a.m., and published in the issue of the Federal Register for January 6, 1998, 63 F.R. 409)

Section 356.—Receipt of Additional Consideration

*26 CFR 1.356-6T: Rules for treatment of
nonqualified preferred stock as "other property"
(temporary).*

T.D. 8753

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Reorganizations; Nonqualified Preferred Stock

AGENCY: Internal Revenue Service
(IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains a temporary regulation providing guidance under section 356(e) of the Internal Revenue Code (Code) on when nonqualified preferred stock (as defined in section 351(g)(2)) will not be treated as stock or securities for purposes of sections 354, 355, and 356 of the Code. The guidance also addresses the treatment of the receipt of a right to acquire nonqualified preferred stock. The temporary regulation provides that in some circumstances the

terms *stock* and *securities* will not include nonqualified preferred stock, or a right to acquire such stock, when received in exchange for stock or rights to acquire stock. The text of this temporary regulation also serves as the text of REG-121755-97, page 13 of this Bulletin.

DATES: This regulation is effective March 9, 1998.

FOR FURTHER INFORMATION CONTACT: Concerning the temporary regulation, Michael J. Danbury, (202) 622-7750 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

A. In General

This document contains a temporary regulation under section 356(e) of the Internal Revenue Code as added by section 1014 of the Taxpayer Relief Act of 1997 (TRA of 1997), Public Law 105-34. Section 1014 of the TRA of 1997, enacted on August 5, 1997, amended sections 351, 354, 355, 356, and 1036 of the Code. As amended, sections 354, 355, and 356, in general, provide that nonqualified preferred stock (as defined in section 351(g)(2)) received in exchange for stock other than nonqualified preferred stock will not be treated as stock or securities but, instead, will be treated as "other property" or "boot." As a result, unless the transition rule of section 1014(f)(2) of TRA of 1997 or another exception applies, the receipt of nonqualified preferred stock will result in gain recognition.

Section 351(g)(4) provides authority to issue regulations coordinating the rules for nonqualified preferred stock with other provisions of the Code. In connection with the issuance of final regulations treating certain rights to acquire stock as securities which can be received tax-free under sections 354, 355, and 356 (see §§1.354-1(e), 1.355-1(c), and 1.356-3(b) (T.D. 8752) also published on page 4 of this Bulletin, the IRS and Treasury became aware that additional rules were needed to address the treatment of rights to acquire nonqualified preferred stock to coordinate with new sections 354(a)(2)-(C), 355(a)(3)(D), and 356(e). Accordingly, this temporary regulation provides

that, notwithstanding §§1.354-1(e), 1.355-1(c), and 1.356-3(b), a right to acquire nonqualified preferred stock received in exchange for stock other than nonqualified preferred stock (or for a right to acquire stock other than nonqualified preferred stock) will not be treated as a security, and that nonqualified preferred stock received in exchange for stock other than nonqualified preferred stock (or for a right to acquire stock other than nonqualified preferred stock) will not be treated as stock or a security.

This regulation does not attempt to address all questions and issues that may arise regarding the exchange or receipt of nonqualified preferred stock. The IRS and Treasury recognize that further guidance is necessary on these matters and intend to provide it in the future. Accordingly, comments are requested not only on these temporary and proposed regulations, but also with regard to the types of guidance needed and other issues under section 351(g) and the related provisions.

B. Effective Date

Except as provided in section 1014(f)(2) of TRA of 1997, this temporary regulation applies to nonqualified preferred stock (or a right to acquire such stock) received in connection with a transaction occurring on or after March 9, 1998.

Special Analyses

It has been determined that this Treasury decision 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 this regulation. Because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking accompanying this regulation is being sent to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of this regulation is Michael J. Danbury of the Office of Assistant Chief Counsel (Corporate). How-

ever, other personnel from the IRS and Treasury Department participated in its development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.356-6T is added to read as follows:

§1.356-6T Rules for treatment of nonqualified preferred stock as “other property” (temporary).

(a) *In general.* For purposes of §§1.354-1(e), 1.355-1(c), and 1.356-3(b), the terms *stock* and *securities* do not include—

(1) Nonqualified preferred stock, as defined in section 351(g)(2), received in exchange for (or in a distribution with respect to) stock, or a right to acquire stock, other than nonqualified preferred stock; or

(2) A right to acquire such nonqualified preferred stock, received in exchange for (or in a distribution with respect to) stock, or a right to acquire stock, other than nonqualified preferred stock.

(b) *Exceptions.* The following exceptions apply:

(1) *Certain recapitalizations.* Paragraph (a) of this section does not apply in the case of a recapitalization under section 368(a)(1)(E) of a family-owned corporation as described in section 354(a)-(2)(C)(ii)(II).

(2) *Transition rule.* Paragraph (a) of this section does not apply to a transaction described in section 1014(f)(2) of the Taxpayer Relief Act of 1997 (111 Stat. 921).

(c) *Effective date.* This section applies to nonqualified preferred stock, or a right to acquire such stock, received in connection with a transaction occurring on or after March 9, 1998.

Michael P. Dolan,
Deputy Commissioner of Internal Revenue.

Approved December 17, 1997.

Donald C. Lubick,
Acting Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on January 5, 1998, 8:45 a.m., and published in the issue of the Federal Register for January 6, 1998, 63 FR. 411)

Part III. Administrative, Procedural, and Miscellaneous

Weighted Average Interest Rate Update

Notice 98-15

Notice 88-73 provides guidelines for determining the weighted average interest rate and the resulting permissible range of

interest rates used to calculate current liability for the purpose of the full funding limitation of § 412(c)(7) of the Internal Revenue Code as amended by the Omnibus Budget Reconciliation Act of 1987 and as further amended by the Uruguay Round Agreements Act, Pub. L. 103-465 (GATT).

The average yield on the 30-year Treasury Constant Maturities for January 1998 is 5.81 percent.

The following rates were determined for the plan years beginning in the month shown below.

Month	Year	Weighted Average	90% to 106% Permissible Range	90% to 110% Permissible Range
February	1998	6.73	6.06 to 7.14	6.06 to 7.41

Drafting Information

The principal author of this notice is Donna Prestia of the Employee Plans Di-

vision. For further information regarding this notice, call (202) 622-6076 between 2:30 and 3:30 p.m. Eastern time (not a toll-free number). Ms. Prestia's number

is (202) 622-7377 (also not a toll-free number).

Part IV. Items of General Interest

Notice of Proposed Rulemaking
and Notice of Public Hearing

Qualified Long-Term Care
Insurance Contracts

REG-109333-97

AGENCY: Internal Revenue Service
(IRS), Treasury.

ACTION: Notice of proposed rulemak-
ing and notice of public hearing.

SUMMARY: This document contains
proposed regulations relating to consumer
protection with respect to qualified long-
term care insurance contracts and relating
to events that will be considered material
changes with respect to long-term care in-
surance contracts issued prior to January
1, 1997. Changes to the applicable law
were made by the Health Insurance Porta-
bility and Accountability Act of 1996.
The regulations affect issuers of long-
term care insurance contracts and individ-
uals entitled to receive payments under
these contracts. The regulations are nec-
essary to provide these taxpayers with
guidance needed to comply with these
changes.

DATES: Written comments must be re-
ceived by April 2, 1998. Outlines of top-
ics to be discussed at the public hearing
scheduled for May 13, 1998, must be re-
ceived by April 2, 1998.

ADDRESSES: Send submissions to:
CC:DOM:CORP:R (REG-109333-97),
room 5226, Internal Revenue Service,
POB 7604, Ben Franklin Station, Wash-
ington, DC 20044. Submissions may be
hand delivered between the hours of 8
a.m. and 5 p.m. to CC:DOM:CORP:R
(REG-109333-97), Courier's Desk, In-
ternal Revenue Service, 1111 Constitution
Avenue NW, Washington, DC. Alternat-
ively, taxpayers may also submit com-
ments electronically via the Internet by
selecting the "Tax Regs" option on the
IRS Home Page, or by submitting com-
ments directly to the IRS Internet site at
[http://www.irs.ustreas.gov/prod/tax_regs/
comments.html](http://www.irs.ustreas.gov/prod/tax_regs/comments.html). The public hearing will
be held in room 2615, Internal Revenue
Building, 1111 Constitution Avenue NW,
Washington, DC.

FOR FURTHER INFORMATION CON-
TACT: Concerning the regulations,
Katherine A. Hossfosky, (202) 622-3477;
concerning submissions and the hearing,
LaNita VanDyke, (202) 622-7190 (not
toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed
amendments to the Income Tax Regula-
tions (26 CFR part 1) to provide rules
under section 7702B of the Internal Re-
venue Code of 1986 (the "Code"). Section
7702B was added by sections 321 and
325 of the Health Insurance Portability
and Accountability Act of 1996 (Pub. L.
104-191, 110 Stat. 1936, 2054 and 110
Stat. at 2063)("HIPAA"). Notice 97-31,
1997-21 I.R.B. 5 (May 6, 1997), provides
interim guidance on certain provisions of
section 7702B and other provisions of the
Code added or amended by HIPAA.

Explanation of Statutory Provisions

Section 7702B establishes the tax treat-
ment for qualified long-term care insur-
ance contracts. Sections 7702B(a)(1) and
(3) provide that a qualified long-term care
insurance contract is treated as an acci-
dent and health insurance contract and
that any employer plan providing cover-
age under a qualified long-term care in-
surance contract is treated as an accident
or health plan with respect to that cover-
age.

Section 7702B(a)(2) provides that
amounts (other than policyholder divi-
dends and premium dividends) received
under a qualified long-term care insur-
ance contract are generally excludable
from gross income as amounts received
for personal injuries and sickness.

Section 213(d)(1)(D) was amended by
section 322 of HIPAA to provide that eli-
gible long-term care premiums as defined
in section 213(d)(10) are deductible med-
ical expenses.

Under section 7702B(b)(1)(F), a quali-
fied long-term care insurance contract
must meet the consumer protection provi-
sions of section 7702B(g). In addition,
section 4980C imposes an excise tax on
issuers of qualified long-term care insur-

ance contracts that do not provide further
consumer protections.

Section 7702B of the Code applies to
contracts issued after December 31, 1996.
Section 321(f)(2) of HIPAA treats a con-
tract issued before January 1, 1997, as a
qualified long-term care insurance con-
tract under section 7702B(b) of the Code,
and services provided or reimbursed
under such a contract as qualified long-
term care services under section 7702B(c)
of the Code, provided the contract met the
long-term care requirements of the State
in which the contract was situated at the
time the contract was issued. Section
321(f)(2) of HIPAA also provides that in
the case of an individual covered on De-
cember 31, 1996, by a State long-term
care plan under section 7702B(f) of the
Code, the terms of the plan on that date
are treated as a contract meeting the long-
term care insurance requirements of that
State.

Section 321(f)(4) of HIPAA provides
that for purposes of applying sections
101(f), 7702, and 7702A of the Code, nei-
ther the issuance of a rider that is treated
as a qualified long-term care insurance
contract nor the addition of any provision
required to conform any other long-term
care rider to the requirements applica-
ble to a qualified long-term care insurance
contract is treated as a modification or
material change of the contract.

Explanation of Provisions

The proposed regulations provide guid-
ance concerning

- the consumer protection require-
ments that apply to qualified long-term
care insurance contracts under sections
7702B(g), 7702B(b)(1)(F), and 4980C
of the Code; and
- the grandfather provisions of section
321(f)(2) of HIPAA under which pre-
1997 contracts are treated as qualified
long-term care insurance contracts if
certain conditions are met.

The standards in the proposed regula-
tions are based on safe harbors that were ori-
ginally set forth in Notice 97-31. They re-
flect comments made by consumer repre-
sentatives, issuers of long-term care
insurance, independent sales agents, State
regulators of long-term care insurance,

and others. The proposed regulations are intended to provide clear and workable rules to assist those who want to ensure that a contract issued before 1997 retains its status as a qualified long-term care insurance contract.

Notice 97-31

Notice 97-31 was issued to provide interim standards for taxpayers to use in interpreting the new long-term care provisions and to facilitate operation of the insurance market by avoiding the need to amend contracts. For example, Notice 97-31 includes interim guidance on the determination of whether an individual is a “chronically ill individual,” including safe harbor definitions of the terms “substantial assistance,” “hands-on assistance,” “standby assistance,” “severe cognitive impairment,” and “substantial supervision.” The standards contained in Notice 97-31 include interim guidance on both the consumer protection provisions and the scope of the statutory grandfather provisions that apply to long-term care insurance contracts issued before 1997.

Consumer Protection Requirements

Under sections 7702B(b)(1)(F), 7702B(g), and 4980C, qualified long-term care insurance contracts and issuers of those contracts are required to satisfy certain provisions of the model act and model regulation promulgated by the National Association of Insurance Commissioners (NAIC) for long-term care insurance as of January 1993. The requirements relate to guaranteed renewability, unintentional lapse, disclosure, prohibitions against post-claims underwriting, inflation protection, and prohibitions against pre-existing conditions exclusions and probationary periods. Section 4980C imposes an excise tax on an issuer of a qualified long-term care insurance contract if, after 1996, the issuer fails to satisfy certain requirements, including requirements relating to application forms, reporting, marketing, appropriateness of recommended purchase, standard format outline of coverage, delivery of a shopper’s guide, right to return, outline of coverage, and incontestability. Most of these requirements are based on the NAIC model act and regulation.

The proposed regulations reflect the standards that were set forth in Notice 97-

31. For example, the consumer protection requirements will be considered satisfied if a contract complies with State law in a State that has adopted the related NAIC model or a more stringent version of the model.

Pre-1997 Long-Term Care Insurance Contracts

Section 321(f)(2) of HIPAA provides that a contract issued before January 1, 1997, is treated as a qualified long-term care insurance contract if the contract met the “long-term care insurance requirements of the State” in which the contract was situated at the time it was issued. Under the proposed regulations, the date on which a long-term care insurance contract other than a group long-term care insurance contract is issued is generally the date assigned to the contract by the insurance company. In no event is the issue date earlier than the date on which the policyholder submitted a signed application for coverage to the insurance company. In addition, if the period between the date of application and the date on which the long-term care insurance contract actually becomes effective is substantially longer than under the insurance company’s usual business practice, then the issue date is the date the contract becomes effective. For purposes of applying the grandfather rule of section 321(f)(2) to a group long-term care insurance contract, the issue date of the contract is the date the group contract was issued. As a result, coverage for an individual who joins a grandfathered group long-term care insurance contract on or after January 1, 1997, is accorded the same treatment under section 321(f)(2) as is accorded coverage for those who joined the group before that date.

For purposes of applying section 321(f)(2) of HIPAA to long-term care insurance contracts issued before January 1, 1997, a material change in the contract generally is considered the issuance of a new contract. Notice 97-31 provides that a material change includes any change in the terms of the contract altering the amount or timing of any item payable by the policyholder (or certificate holder), the insured, or the insurance company. Notice 97-31 also provides that the exercise of an option or right granted to a pol-

icyholder under a qualified long-term care insurance contract as in effect on December 31, 1996, does not constitute a material change.¹

After Notice 97-31 was issued, commentators recommended that certain common practices should not cause long-term care insurance contracts issued before January 1, 1997, to lose their grandfathered status. In response to these comments, the proposed regulations provide additional exceptions to the general rule that a material change in a long-term care insurance contract issued before January 1, 1997, will be considered the issuance of a new contract.

- The proposed regulations provide that the exercise of any right provided to a policyholder (*i.e.*, a right that can be exercised without the issuer’s consent and without other conditions, such as underwriting) or the addition of any right that is required by State law to be provided to the policyholder will not be treated as a material change to a long-term care insurance contract.
- In addition, the proposed regulations provide that the following practices will not be treated as material changes for purposes of section 7702B: (1) any change in the mode of premium payment, such as a change from paying premiums monthly to quarterly; (2) any classwide increase or decrease in premiums for contracts that have been issued on a guaranteed renewable basis; (3) a reduction in premiums due to the purchase of a long-term care insurance policy by a member of the policyholder’s family; (4) any reduction in coverage (with correspondingly lower premiums) made at the request of a policyholder; (5) the addition, without an increase in premiums, of alternative forms of benefits that may be selected by the policyholder; (6) the purchase of a rider to increase benefits under a pre-1997 contract if the rider would constitute a qualified long-term care insurance contract if it were a separate

¹The definition of material change in Notice 97-31 is narrower than the definition of material change for purposes of other sections of the Code. For example, the exercise of an option in a life insurance contract results in the loss of grandfathering under section 7702 if the option only guarantees terms that are likely to be available when the option is exercised.

contract;² (7) the deletion of a rider or provision of a contract (called an HHS rider) that prohibited coordination of benefits with Medicare; and (8) the effectuation of a continuation or conversion of coverage right under a group contract following an individual's ineligibility for continued coverage under the group contract.

The proposed regulations include examples illustrating certain of these standards. The exceptions to the general rule that a material change results in the issuance of a new contract apply solely for purposes of determining whether a pre-1997 insurance contract is treated as a qualified long-term care insurance contract under section 7702B.³

Comments are requested on these standards, including (1) whether the material change rules in the proposed regulations should be limited to pre-1997 long-term care insurance contracts that cannot have cash surrender value; (2) whether there are any conditions under which the expansion of coverage under a group long-term care insurance contract in connection with a corporate merger, acquisition or similar transaction should not constitute a material change; and (3) whether the extension of a group long-term care contract to a collective bargaining unit is a material change in all cases. For example, should the extension of a group long-term care contract to a bargaining unit after 1997 be treated as a material change

²Thus, for example, the only coverage provided under the rider must be coverage for qualified long-term care services and the purchase must satisfy the consumer protection requirements of section 7702B(g) of the Code. (This would not include protections that apply only the first time a contract is purchased, *i.e.*, subsections (g)(2)(A)(i)(III), (V),(VII)(other than section 6B of the NAIC model regulation), and (X),(g)(3), and (g)(4) of section 7702B. Similarly, subsections (c)(1)(A)(i) and (c)(2) of section 4980C would apply only the first time a contract is purchased.)

³The exceptions depart from the definition of material change that would apply for purposes of other sections of the Code, including sections 7702, 7702A, 101(f), and 264. These exceptions are consistent with the purpose of section 7702B, which has the effect of expanding the tax benefits for certain long-term care insurance contracts. By contrast, sections 7702, 7702A, 101(f), and 264, for example, limit the tax benefits associated with certain insurance products and, unlike pre-1997 long-term care insurance contracts, apply to contracts with a substantial investment orientation.

if the bargaining agreement for the unit has not been renewed since before the group contract was first adopted?

Comments also are requested on what the effective date of the final regulations should be. It is intended that the regulations will not be effective until after the end of a specified period following adoption of the final regulations. Taxpayers may rely on these proposed regulations for guidance pending the issuance of final regulations. If, and to the extent, future guidance is more restrictive than the guidance in these proposed regulations, the future guidance will be applied without retroactive effect. In addition, until further notice, taxpayers may continue to rely on Notice 97-31.

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, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, 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

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS (a signed original and eight (8) copies). All comments will be available for public inspection and copying.

A public hearing has been scheduled for May 13, 1998, at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by April 2, 1998 and submit an outline of the topics to be discussed and the time to be devoted to each topic by April 2, 1998.

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 Katherine A. Hossofsky, Office of Assistant Chief Counsel (Financial Institutions & Products). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

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 * * *

Par. 2. Sections 1.7702B-1 through 1.7702B-2 are added to read as follows:

§ 1.7702B-1 Consumer protection provisions.

(a) *In general.* Under sections 7702B(b)(1)(F), 7702B(g), and 4980C, qualified long-term care insurance contracts and issuers of those contracts are required to satisfy certain provisions of the Long-Term Care Insurance Model Act (Model Act) and Long-Term Care Insurance Model Regulation (Model Regulation) promulgated by the National Association of Insurance Commissioners (NAIC), as adopted as of January 1993. The requirements for qualified long-term care insurance contracts under sections 7702B(b)(1)(F) and 7702B(g) relate to guaranteed renewal or noncancellability, prohibitions on limitations and exclusions, extension of benefits, continuation or conversion of coverage, discontinuance and replacement of policies, unintentional lapse, disclosure, prohibitions

against post-claims underwriting, minimum standards, inflation protection, prohibitions against pre-existing conditions exclusions and probationary periods, and prior hospitalization. The requirements for qualified long-term care insurance contracts under section 4980C relate to application forms and replacement coverage, reporting requirements, filing requirements for marketing, standards for marketing, appropriateness of recommended purchase, standard format outline of coverage, delivery of a shopper's guide, right to return, outline of coverage, certificates under group plans, policy summary, monthly reports on accelerated death benefits, and incontestability period.

(b) *Coordination with State requirements*—(1) *Contracts issued in a State that imposes more stringent requirements.* If a State imposes a requirement that is more stringent than the analogous requirement imposed by section 7702B(g) or 4980C, then, under section 4980C(f), compliance with the more stringent requirement of State law is considered compliance with the parallel requirement of section 7702B(g) or 4980C. The principles of paragraph (b)(3) of this section apply to any case in which a State imposes a requirement that is more stringent than the analogous requirement imposed by section 7702B(g) or 4980C (as described in this paragraph (b)(1)), but in which there has been a failure to comply with that State requirement.

(2) *Contracts issued in a State that has adopted the model provisions.* If a State imposes a requirement that is the same as the parallel requirement imposed by section 7702B(g) or 4980C, compliance with that requirement of State law is considered compliance with the parallel requirement of section 7702B(g) or 4980C, and failure to comply with that requirement of State law is considered failure to comply with the parallel requirement of section 7702B(g) or 4980C.

(3) *Contracts issued in a State that has not adopted the model provisions or more stringent requirements.* If a State has not adopted the Model Act, the Model Regulation, or a requirement that is the same as or more stringent than the analogous requirement imposed by section 7702B(g) or 4980C, then the language, caption, format, and content requirements imposed by sections 7702B(g) and 4980C with re-

spect to contracts, applications, outlines of coverage, policy summaries, and notices will be considered satisfied for a contract subject to the law of that State if the language, caption, format, and content are substantially similar to those required under the parallel provision of the Model Act or Model Regulation. Only nonsubstantive deviations are permitted in order for language, caption, format, and content to be considered substantially similar to the requirements of the Model Act or Model Regulation.

§1.7702B-2 Special rules for pre-1997 long-term care insurance contracts.

(a) *Scope.* The definitions and special provisions of this section apply solely for purposes of determining whether an insurance contract (other than a qualified long-term care insurance contract described in section 7702B(b) and any regulations issued thereunder) is treated as a qualified long-term care insurance contract for purposes of the Internal Revenue Code.

(b) *Pre-1997 long-term care insurance contracts.*—(1) *In general.* A pre-1997 long-term care insurance contract is treated as a qualified long-term care insurance contract, regardless of whether the contract satisfies section 7702B(b) and any regulations issued thereunder.

(2) *Pre-1997 long-term care insurance contract defined.* A pre-1997 long-term care insurance contract is any insurance contract with an issue date before January 1, 1997, that met the long-term care insurance requirements of the State in which the contract was situated on the issue date. For this purpose, the long-term care insurance requirements of the State are the State laws (including statutory and administrative law) that are intended to regulate insurance coverage that constitutes “long-term care insurance” (as defined in section 4 of the National Association of Insurance Commissioners (NAIC) Long-Term Care Insurance Model Act, as in effect on August 21, 1996), regardless of the terminology used by the State in describing the insurance coverage.

(3) *Issue date of a contract.* (i) *In general.* The issue date of a contract is the issue date assigned to the contract by the insurance company, but in no event is the issue date earlier than the date the policy-

holder submitted a signed application for coverage to the insurance company. However, if the period between the date the signed application is submitted to the insurance company and the date coverage under the contract actually becomes effective is substantially longer than under the insurance company's usual business practice, then the issue date is the date coverage under the contract becomes effective (if this is later than the issue date assigned to the contract by the insurance company). A policyholder's right to return a contract within a “free-look” period following delivery for a full refund of any premiums paid is not taken into account in determining the contract's issue date.

(ii) *Special rule for group contracts.* The issue date of a group contract (including any certificate issued thereunder) is the date on which coverage under the group contract becomes effective.

(iii) *Exchange of contract or material change in a contract treated as a new issuance.* For purposes of this paragraph (b)(3)—

(A) A contract issued in exchange for an existing contract after December 31, 1996, is considered a contract issued after that date;

(B) Any material change (as defined in paragraph (b)(4) of this section) in a contract is treated as the issuance of a new contract with an issue date no earlier than the date the material change goes into effect; and

(C) If a material change occurs with regard to one or more, but fewer than all, of the certificates evidencing coverage under a group contract, then the insurance coverage under the changed certificates is treated as coverage under a newly issued group contract (and the insurance coverage provided by any unchanged certificate continues to be treated as coverage under the original group contract).

(4) *Material change.* (i) *In general.* For purposes of paragraph (b)(3) of this section, except as provided in paragraph (b)(4)(ii) of this section, a material change means—

(A) A change in the terms of a contract that alters the amount or timing of an item payable by the policyholder (or certificate holder), the insured, or the insurance company;

(B) A substitution of the insured under an individual contract; or

(C) A change (other than an immaterial change) in the eligibility for membership in the group covered under a group contract.

(ii) *Exceptions.* For purposes of this paragraph (b)(4), the following changes are not treated as a material change:

(A) A policyholder's exercise of any right provided under the terms of the contract as in effect on December 31, 1996, or a right required by applicable State law to be provided to the policyholder;

(B) A change in the mode of premium payment (for example, a change from monthly to quarterly premiums);

(C) In the case of a policy that is guaranteed renewable or noncancellable, a classwide increase or decrease in premiums;

(D) A reduction in premiums due to the purchase of a long-term care insurance contract by a family member of the policyholder;

(E) A reduction in coverage (with a corresponding reduction in premiums) made at the request of a policyholder;

(F) The addition, without an increase in premiums, of alternative forms of benefits that may be selected by the policyholder;

(G) The addition of a rider (including any similarly identifiable amendment) to a pre-1997 long-term care insurance contract in any case in which the rider, if issued as a separate contract of insurance, would itself be a qualified long-term care insurance contract under section 7702B and any regulations issued thereunder (including the consumer protection provisions in section 7702B(g) to the extent applicable to the addition of a rider);

(H) The deletion of a rider or provision of a contract (often referred to as an HHS rider) that prohibited coordination of benefits with Medicare; and

(I) The effectuation of a continuation or conversion of coverage right provided under a group contract following an individual's ineligibility for continued coverage under the group contract.

(5) *Examples.* The following examples illustrate the principles of this paragraph (b):

Example 1. (i) On December 3, 1996, A, an individual, submits a signed application to an insurance company to purchase a nursing home contract that meets the long-term care insurance requirements of the State in which the contract is situated. The insurance company decides on December 20, 1996, that it

will issue the contract, and assigns December 20, 1996, as the issue date for the contract. Under the terms of the contract, A's insurance coverage becomes effective on January 1, 1997. The company delivers the contract to A on January 3, 1997. A has the right to return the contract within 15 days following delivery for a refund of all premiums paid.

(ii) Under paragraph (b)(3)(i) of this section, the issue date of the contract is December 20, 1996. Thus, the contract is a pre-1997 long-term care insurance contract that is treated as a qualified long-term care insurance contract.

Example 2. (i) The facts are the same as in *Example 1*, except that the insurance coverage under the contract does not become effective until March 1, 1997. Under the insurance company's usual business practice, the period between the date of the application and the date the contract becomes effective is 30 days or less.

(ii) Under paragraph (b)(3)(i) of this section, the issue date of the contract is March 1, 1997. Thus, the contract is not a pre-1997 long-term care insurance contract, and, accordingly, the contract must meet the requirements of section 7702B(b) and any regulations issued thereunder to be a qualified long-term care insurance contract.

Example 3. (i) B, an individual, is the policyholder under a long-term care insurance contract purchased in 1995. On June 15, 2000, the insurance coverage and premiums under the contract are increased by agreement between B and the insurance company.

(ii) Under paragraph (b)(4)(i)(A) of this section, a change in the terms of a contract that alters the amount or timing of an item payable by the policyholder or the insurance company is a material change in the contract. Thus, B's coverage is treated as coverage under a contract issued on June 15, 2000, and, accordingly, the contract must meet the requirements of section 7702B(b) and any regulations issued thereunder in order to be a qualified long-term care insurance contract.

Example 4. (i) C, an individual, is the policyholder under a long-term care insurance contract purchased in 1994. At that time and through December 31, 1996, the contract met the long-term care insurance requirements of the State in which the contract was situated. In 1996, the policy was amended to add a provision requiring the policyholder to be offered the right to increase dollar limits for inflation every three years (without the policyholder being required to pass a physical or satisfy any other underwriting requirements). During 2002, C elects to increase the amount of insurance coverage (with a resulting premium increase) pursuant to the inflation protection provision.

(ii) Under paragraph (b)(4)(ii)(A) of this section, an increase in the amount of insurance coverage at the election of the policyholder (without the insurance company's consent and without underwriting or other limitations on the policyholder's rights) pursuant to a pre-1997 inflation protection provision does not constitute a material change in the contract. Thus, C's contract continues to be a pre-1997 long-term care insurance contract that is treated as a qualified long-term care insurance contract.

Michael P. Dolan,
Deputy Commissioner of
Internal Revenue.

(Filed by the Office of the Federal Register on December 31, 1997, 8:45 a.m., and published in the issue of the Federal Register for January 2, 1998, 63 F.R. 35)

Notice of Proposed Rulemaking and Notice of Public Hearing

Reorganizations; Nonqualified Preferred Stock

REG-121755-97

AGENCY: Internal Revenue Service
(IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In T.D. 8753, page 6 of this Bulletin, the IRS and Treasury Department are issuing a temporary regulation under section 356(e) of the Internal Revenue Code (Code) relating to the receipt of nonqualified preferred stock in certain exchanges. The temporary regulation provides guidance on when nonqualified preferred stock (as defined in section 351(g)(2)) will not be treated as stock or securities for purposes of sections 354, 355, and 356. The guidance also addresses the treatment of the receipt of a right to acquire nonqualified preferred stock. The temporary regulation provides that in certain circumstances the terms *stock* and *securities* will not include nonqualified preferred stock, or a right to acquire such stock, when received in exchange for stock or rights to acquire stock. The text of the temporary regulation also serves as the text of this proposed regulation. This document also provides notice of a public hearing on this proposed regulation.

DATES: Written comments must be received by April 6, 1998. Requests to appear and outlines of topics to be discussed at the public hearing scheduled for May 5, 1998, at 10 a.m. must be received by April 14, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R [REG-121755-97], 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:DOM:CORP:R

[REG-121755-97], Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page or by submitting comments directly to the IRS Internet site at: http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulation, Michael J. Danbury, (202) 622-7750; concerning submissions and the public hearing, LaNita Van Dyke, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

A temporary regulation in T.D. 8753 amends the Income Tax Regulations (26 CFR part 1) relating to section 356 by adding §1.356-6T. The text of that temporary regulation also serves as the text of this proposed regulation. The preamble to the temporary regulation explains the reason for the addition.

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 this regulation. Because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the 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

Before this proposed regulation is adopted as a final regulation, consideration will be given to any written comments (a signed original and eight (8)

copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for May 5, 1998, at 10 a.m. in room 2615, Internal Revenue Building, 1111 Constitution Ave., NW, Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written comments by April 6, 1998, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by April 14, 1998.

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 this regulation is Michael J. Danbury of the Office of Assistant Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in its 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 * * *

Par 2. Section 1.356-6 is added to read as follows:

§1.356-6 Rules for treatment of nonqualified preferred stock as "other property."

[The text of this proposed section is the same as the text of §1.356-6T published in T.D. 8753.]

Michael P. Dolan,
*Deputy Commissioner of
Internal Revenue.*

(Filed by the Office of the Federal Register on January 5, 1998, 8:45 a.m., and published in the issue of the Federal Register for January 6, 1998, 63 F.R. 453)

Notice of Proposed Rulemaking
Civil Cause of Action for Certain
Unauthorized Collection Actions
REG-251502-96

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to civil causes of action for damages caused by unlawful collection actions of officers and employees of the Internal Revenue Service (IRS). The proposed regulations reflect amendments made by the Taxpayer Bill of Rights 2. The proposed regulations affect all taxpayers who file civil actions for damages caused by unlawful collection actions of officers or employees of the IRS.

DATES: Written comments and requests for a public hearing must be received by March 31, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-251502-96), 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:DOM:CORP:R (REG-251502-96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Kevin B. Connelly, (202) 622-3640 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Procedure and Admin-

istration Regulations (26 CFR part 301) relating to civil actions for damages caused by unlawful collection actions of officers or employees of the IRS. The Taxpayer Bill of Rights 2 (TBOR2), Public Law 104-168, 110 Stat. 1465 (1996), amended section 7433 of the Internal Revenue Code of 1986 (Code) by raising the cap on the amount a taxpayer may be awarded for damages caused by unlawful collection actions from \$100,000 to \$1,000,000. Under prior law, a suit for damages could not be brought unless the taxpayer first exhausted administrative remedies available within the IRS. TBOR2 eliminated this jurisdictional prerequisite but authorized federal district courts to reduce damage awards if the taxpayer fails to exhaust administrative remedies. The proposed regulations reflect these changes.

Explanation of Provision

Section 801 of TBOR2 amended section 7433(a) of the Code by increasing from \$100,000 to \$1,000,000 the cap on the amount of damages that a taxpayer may recover in Federal district court from the United States for damages caused by any unauthorized collection actions of an officer or employee of the IRS occurring after July 30, 1996. Section 802 of TBOR2 amended section 7433(d)(1) of the Code by providing that a taxpayer's failure to exhaust administrative remedies available within the IRS shall only be a factor that the court may consider in determining whether to reduce the amount of an award. In actions filed prior to the enactment of TBOR2, the failure to exhaust administrative remedies was a jurisdictional bar to an action. The proposed regulations reflect the changes made by TBOR2.

The regulations that are being amended by these proposed regulations currently provide that administrative remedies shall be considered exhausted on the earlier of: (1) the date the decision is rendered by the IRS on an administrative claim for damages filed in accordance with the manner and form set forth in the regulations; or (2) the date six months after the date an administrative claim is filed in accordance with the manner and form set forth in the regulations. 26 CFR §301.7433-1(d). An exception to this rule is provided with respect to civil actions filed in fed-

eral district court prior to July 31, 1996. Under this exception, if an administrative claim is filed during the last six months of the period of limitations for filing a civil action for damages under section 7433 of the Code, administrative remedies shall be considered exhausted on the date the administrative claim is filed. The exception was included in the current regulations because, prior to the enactment of TBOR2, the failure to exhaust administrative remedies was a jurisdictional bar to an action. Without the exception, if a taxpayer filed an administrative claim during the last six months of the period of limitations and the IRS did not consider the claim before the limitations period expired, the taxpayer automatically would have been barred from filing suit. These provisions still apply to actions that were filed on or before July 30, 1996, the enactment date of TBOR2.

With respect to actions filed after July 30, 1996, the proposed regulations do not contain the exception for administrative claims filed during the last six months of the period of limitation because the failure to exhaust administrative remedies is no longer a bar to an action. Since the enactment of TBOR2, the failure to exhaust administrative remedies is just one factor the court may consider in determining whether to reduce an award of damages. Pursuant to the notice of proposed rulemaking, if a taxpayer waits until the last six months of the period of limitations to file an administrative claim, the IRS does not reach a determination before the limitations period expires, and the taxpayer files a timely action under section 7433, the court may consider the facts and circumstances of the case and decide what effect the late filing of the claim should have on the amount of damages awarded.

The proposed manner and form for filing an administrative claim for damages remain the same as those set forth in the current regulations at 26 CFR 301.7433-1(e)(1) and (2). The claim must be sent in writing to the district director (marked for the attention of the Chief, Special Procedures Function) of the district in which the taxpayer resides. The claim must include: (1) the name, current address, current home and work telephone numbers and any convenient times to be contacted, and taxpayer identification number of the taxpayer making the claim; (2) the

grounds, in reasonable detail, for the claim (include copies of any available substantiating documentation or correspondence with the Internal Revenue Service); (3) a description of the injuries incurred by the taxpayer filing the claim (include copies of any available substantiating documentation or evidence); (4) the dollar amount of the claim, including any damages that have not yet been incurred but which are reasonably foreseeable (include copies of any available substantiating documentation or evidence); and (5) the signature of the taxpayer or duly authorized representative.

The notice of proposed rulemaking does not have a new effective date paragraph because amended paragraphs (a), (d), and (e) set forth the effective dates of the new statutory provisions as well as the statutory provisions they are replacing.

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 also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, 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 Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (a signed original and eight (8) copies) to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Kevin B. Connelly, Office of Assistant Chief Counsel (General Litigation) CC:EL:GL, IRS. However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

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

PART 301—PROCEDURE AND ADMINISTRATION

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

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

Par. 2. In §301.7433-1, paragraphs (a), (d), (e), and (f) are revised to read as follows:

§301.7433 Civil cause of action for certain unauthorized collection actions.

(a) *In general.* If, in connection with the collection of a federal tax with respect to a taxpayer, an officer or an employee of the Internal Revenue Service recklessly or intentionally disregards any provision of the Internal Revenue Code or any regulation promulgated under the Internal Revenue Code, such taxpayer may bring a civil action for damages against the United States in federal district court. The taxpayer has a duty to mitigate damages. The total amount of damages recoverable is the lesser of \$1,000,000 (\$100,000 if the act giving rise to damages occurred before July 31, 1996) or the sum of—

(1) The actual, direct economic damages sustained as a proximate result of the reckless or intentional actions of the officer or employee; and

(2) Costs of the action.

* * * * *

(d) *Exhaustion of administrative remedies in suits brought prior to July 31, 1996—*(1) *General.* With respect to civil actions filed in federal district court prior to July 31, 1996, no action may be maintained before the exhaustion of administrative remedies. Administrative remedies are exhausted on the earlier of the following dates—

(i) The date the decision is rendered on an administrative claim filed in accordance with paragraph (f) of this section; or

(ii) The date six months after the date an administrative claim is filed in accordance with paragraph (f) of this section.

(2) *Exception.* If an administrative claim is filed in accordance with paragraph (f) of this section during the last six months of the period of limitations described in paragraph (g) of this section, the taxpayer may file an action in federal district court any time after the administrative claim is filed and before the expiration of the period of limitations.

(3) *No action in federal district court for any sum in excess of the dollar amount sought in the administrative claim.* With respect to civil actions filed in federal district court prior to July 31, 1996, no action may be instituted for any sum in excess of the amount (already incurred and estimated) of the administrative claim filed under paragraph (f) of this section, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time the administrative claim was filed, or upon allegation and proof of intervening facts relating to the amount of the claim.

(e) *Exhaustion of administrative remedies in suits brought after July 30, 1996—*(1) *General.* With respect to civil actions filed in federal district court after July 30, 1996, the amount of damages awarded under paragraph (a) of this section may be reduced if the court determines that the taxpayer has not exhausted the administrative remedies available within the Internal Revenue Service.

(2) *Administrative remedies exhausted.* Administrative remedies shall be considered exhausted on the earlier of—

(i) The date the decision is rendered on a claim filed in accordance with paragraph (f) of this section; or

(ii) The date six months after the date an administrative claim is filed in accordance with paragraph (f) of this section.

(f) *Procedures for an administrative claim—*(1) *Manner.* An administrative claim for damages shall be sent in writing to the district director (marked for the attention of the Chief, Special Procedures Function) of the district in which the taxpayer resides.

(2) *Form.* The administrative claim shall include—

(i) The name, current address, current home and work telephone numbers and any convenient times to be contacted, and taxpayer identification number of the taxpayer making the claim;

(ii) The grounds, in reasonable detail, for the claim (include copies of any available substantiating documentation or correspondence with the Internal Revenue Service);

(iii) A description of the injuries incurred by the taxpayer filing the claim (include copies of any available substantiating documentation or evidence);

(iv) The dollar amount of the claim, including any damages that have not yet been incurred but which are reasonably foreseeable (include copies of any available substantiating documentation or evidence); and

(v) The signature of the taxpayer or the taxpayer's duly authorized representative as defined in paragraph (f)(3) of this section.

(3) *Duly authorized representative.* For purposes of paragraph (f)(2)(v) of this section, a duly authorized representative is any attorney, certified public accountant, enrolled actuary, or any other person permitted to represent the taxpayer before the Internal Revenue Service who is not disbarred or suspended from practice before the Internal Revenue Service and who has a written power of attorney executed by the taxpayer.

* * * * *

Michael P. Dolan,
Deputy Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on December 30, 1997, 8:45 a.m., and published in the issue of the Federal Register for December 31, 1997, 62 F.R. 68242)

Change to Part B, Section 8 of Rev. Proc. 97-34; Correction Announcement 98-17

This announcement supersedes Announcement 98-6, 1998-5 I.R.B. 25, dated February 2, 1998.

The purpose of this announcement is to clarify information in Part B, Section 8 of Rev. Proc. 97-34, 1997-30 I.R.B. 14, dated July 28, 1997, reprinted as Pub.

1220, Specifications for Filing Forms 1098, 1099 series, 5498, 5498-MSA and W-2G Magnetically or Electronically.

In the Payee "B" Record, the field descriptions for the Form 5498 IRA, SEP,

and SIMPLE Indicators have been revised. The statement, "and not reporting contributions in Amount Codes 1, 6 or 7" has been removed. For Form 5498 information returns filed magnetically or elec-

tronically, an IRA, SEP, or SIMPLE Indicator must always be used in conjunction with Payment Amount Field 2 (Rollover) or Payment Amount Field 4 (Fair Market Value).

Field Position	Field Title	Length	Description and Remarks
141	Form 5498 IRA Indicator (Individual Retirement Arrangement)	1	Required. Form 5498 only. Enter '1' if reporting a rollover (Amount Code 2) or Fair Market Value (Amount Code 4) for an IRA. Otherwise, enter a blank.
142	Form 5498 SEP Indicator (Simplified Employee Pension)	1	Required. Form 5498 only. Enter '1' if reporting a rollover (Amount Code 2) or Fair Market Value (Amount Code 4) for a SEP. Otherwise, enter a blank.
143	Form 5498 SIMPLE Indicator (Savings Incentive Match Plan for Employees of Small Employers)	1	Required. Form 5498 only. Enter '1' if reporting a rollover (Amount Code 2) or Fair Market Value (Amount Code 4) for a SIMPLE. Otherwise, enter a blank.

Foundations Status of Certain Organizations

Announcement 98-16

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:

Cephas Ministry, Inc., Zephyrhills, FL
 Childrens Development Services Inc.,
 Leonia, NJ
 Childrens Heritage Montessori School,
 Cheyenne, WY
 Childrens Literature Assembly of the
 National Council of Teachers of
 English, Dekalb, IL
 Childrens Museum of Arkansas Inc.,
 Little Rock, AR
 Chisam Memorial Trust, Vienna, VA
 Christian Basketball Associates Inc., San
 Antonio, TX
 Christian Fellowship of San Antonio
 Firefighters, San Antonio, TX
 Christmas in April Greater Gateway, Inc.,
 Edwardsville, IL
 Christmas in April Joplin, Inc., Joplin,
 MO
 Chrysalis Inc., New Orleans, LA
 The Competitive America Foundation,
 Bethesda, MD
 Consolidated Community Development
 Inc., Fort Smith, AR

Consortium for Educational Process and
 Technology Incorporated, Princeton,
 NJ
 Constitution Football League, Lexington,
 KY
 Consultation and Counseling Services,
 Inc., Philadelphia, PA
 Consumer Credit Counseling of Northern
 Indiana, Inc., Mishawaka, IN
 Downstate Afro-American Hall of Fame
 Inc., Peoria, IL
 Downtown Crossville Inc., Crossville,
 TN
 Dr. John Gorrie Science Foundation of
 Franklin County Inc., Apalachicola,
 FL
 Eleusis Theater, Mobile, AL
 Elijah Thurston Organization for Training
 and Community Development,
 Homewood, IL
 Elim Retreat Center Inc., Chicago, IL
 Elite Ladies Association Inc., Miami, FL
 Elkhart County Safe Kids Coalition Inc.,
 Elkhart, IN

Elkhorn Day Care Center Inc., Elkhorn, WI.

Ellis County Child Protective Services Board, Waxahachie, TX

Fido Inc., Oklahoma City, OK

Final Net Inc., Memphis, TX

Fishermens Wharf Inc., Wheaton, IL

Five Leaf Clover Society Inc., Florence, KY

Flight for Life Incorporated, Gahanna, OH

Flint and Vicinity Action Community Economic Development Corporation, Flint, MI

French Quarter North and South Inc., New Orleans, LA

Fresh Beginnings Incorporated, Arlington, VA

Friend of Hospice Inc., Henderson, NC

Friends and Neighbors of the Greater Washington Area Inc., Washington, DC

Friends of Braddock Maryland Chapter, Silver Spring, MD

Friends of Challenger Inc., Akron, OH

Friends of Egypt Inc., McLean, VA

Friends of Geosphere Inc., Alpharetta, GA

Friends of Galena the Park Branch Library, Galena Park, TX

Friends of Gresham Inc., Chicago, IL

Frontline Productions Inc., Tulsa, OK

Fort Wayne Indiana Seminoles Baseball Club Inc., Fort Wayne, IN

Full Gospel Christian Center Inc., Taylorsville, KY

Fuller-Hunt Foundation Inc., Columbus, OH

Fund for Tenant Ownership Inc., Washington, DC

Handi-Capable in the Media, Inc., Atlanta, GA

Helping Gods Children Food Pantry, Lima, OH

Hemingford Community Care Center Foundation Inc., Alliance, NE

Henderson Catholic Education Endowment Inc., Henderson, KY

Henderson County Fire Chiefs Association Inc., Athens, TX

Henry County Family Housing Project Incorporated, Mt. Pleasant, IA

Henry County Step Ahead Council Incorporated, New Castle, IN

Henry Gonzales Nursing Education Foundation, Chicago, IL

Heritage Design Consortium Inc., Lafayette, IN

Heritage Rails to Trails Coalition, Amlin, OH

Jersey City Center for the Performing Arts Inc., Jersey City, NJ

Jesus Christ Hope Center Inc., Carmel, IN

Jobworks, Inc., St. Petersburg, FL

Keepers of Young Disadvantaged Students Inc., Toledo, OH

Kemetic Education for Young Scholars, Raleigh, NC

Kids Voting Georgia Inc., Macon, GA

Kidtech Inc., Austin, TX

Kimberly Bergalis Memorial Committee Inc., Ft. Pierce, FL

Kinderfest Inc., Kinder, LA

King Youth Soccer League, King, NC

Lamplight Communications Inc., Bradenton, FL

Lancaster Area Interfaith Coalition for Caring, Lancaster, PA

Lancaster Swim Team Booster Club Inc., Lancaster, OH

Lancelot H Owens Scholarship Foundation Inc., Jersey City, NJ

Lewis County Childrens Fund, Hohenwald, TN

Limestone Creek Community Development Corporation, Jupiter, FL

Limon Train Ride & Heritage Society, Limon, CO

Lincoln Arts & Humanities Foundation, Lincoln, KS

Max Samples Evangelistic Association, Inc., W. Frankfort, IL

Maximum Life Community Development Corporation, Baltimore, MD

Maxine Guy Wildlife Rehabilitation Center, Inc., Amado, AZ

Maya American Community Council Inc., Homestead, FL

Mayfield Country Club Scholarship Foundation, South Euclid, OH

Meals on Wheels of Jefferson County Inc., Meriden, KS

Mecklenburg Child Daycare Inc., Chase City, VA

Mediation Center of Kentucky Inc., Lexington, KY

Medical Awareness Association Inc., Annapolis, MD

Medical International Resource Reclamation Organization, Denver, CO

Medical Research Junior Board Foundation, Chicago, IL

Medici Foundation, Omaha, NE

Medina Community Playground, Medina, OH

Mediplex Hospice Foundation, Abilene, TX

Memphis City Relief Inc., Memphis, TN

Mending the Broken Hoop Inc., Phoenix, AZ

Meridian Hills Arts Foundation Inc., Indianapolis, IN

M O Educators Inc., Hollywood, FL

Network Community Services, Livonia, MI

New Directions, Inc., Lexington, KY

San Antonio Urban Network, San Antonio, TX

Texas Neurosciences Foundation, San Antonio, TX

Wilson Group, Inc., Princeton, NJ

The Word's Out, Chantilly, VA

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.

Announcement of the Consent Voluntary Suspension of Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries From Practice Before the Internal Revenue Service

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

Attorneys, certified public accountants, enrolled agents, and enrolled actuaries are prohibited in any Internal Revenue Ser-

vice matter from directly or indirectly employing, accepting assistance from, being employed by, or sharing fees with any practitioner disbarred or suspended from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify practitioners under consent suspension from practice before the Internal Revenue Service, the Director of Practice will announce in the Internal Revenue Bulletin the names and addresses of practitioners who have been suspended from such practice, their designation as attorney, certified public ac-

countant, enrolled agent, or enrolled actuary, and date or period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks or for as many weeks as is practicable for each attorney, certified public accountant, enrolled agent, or enrolled actuary so suspended and will be consolidated and published in the Cumulative Bulletin.

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

Name	Address	Designation	Date of Suspension
Trempus Jr., Joseph	Cabot, PA	CPA	October 1, 1997 to February 28, 1998
Tyler, Delbert D.	Monroeville, PA	CPA	October 23, 1997 to April 22, 2000
Gillmore, George P.	Hampton, NJ	CPA	Indefinite from October 10, 1997
Kamin, James C.	Chicago, IL	CPA	December 1, 1997 to May 31, 1999
Hubbard, Edward	Chicago, IL	Attorney	Indefinite from December 1, 1997
Retzlaff, Gene	Hortonville, WI	Enrolled Agent	December 1, 1997 to May 31, 1998
Conklin, Dennis M.	Arlington Hghts, IL	CPA	December 3, 1997 to December 2, 1998
Bowen, Roger H.	Lake Bluff, IL	CPA	December 4, 1997 to December 3, 1999
Ciconte, William	Wilmington, DE	Enrolled Agent	December 10, 1997 to December 9, 2000
Lopin, Paul I.	Chicago, IL	CPA	Indefinite from December 11, 1997
Goldstein, Benjamin	Des Plaines, IL	CPA	December 12, 1997 to June 11, 1998
Olsen Jr., Burton	Rancho Cordova, CA	CPA	December 15, 1997 to June 14, 1998
Hickman, Michael	Lawrence, KS	CPA	December 16, 1997 to April 15, 1998
Grant, Arthur J.	Morris Plains, NJ	CPA	January 1, 1998 to December 31, 2000
Zielinski, Henry	Woodstock, IL	CPA	January 1, 1998 to June 30, 1999
Rosales, John	Batavia, IL	CPA	January 1, 1998 to April 30, 1998
Reinstein, Maxwell	Potomac, MD	CPA	January 1, 1998 to March 31, 1998
Payne, Charlotte	Breckenridge, CO	CPA	January 1, 1998 to December 31, 1999
Ibrahim, Mongy	Raleigh, NC	CPA	January 1, 1998 to December 31, 1998
Koutek, Paul J.	Westchester, IL	CPA	January 1, 1998 to August 31, 1998
Doherty, Steven	Chicago, IL	CPA	January 1, 1998 to December 31, 1999
Deren, Patricia	Lackawanna, NY	Attorney	January 1, 1998 to December 31, 1998
Calhoun, Sandra	Louisville, KY	CPA	January 1, 1998 to March 31, 1998
Thurman, Stephen	Arcadia, CA	CPA	January 1, 1998 to December 31, 1998
Davidson, Mark	Tulsa, OK	CPA	January 15, 1998 to October 14, 1999
Hequembourg, Donald	Glencoe, MO	CPA	January 20, 1998 to July 19, 1998

Announcement of the Expedited Suspension of Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries From Practice Before the Internal Revenue Service

Under title 31 of the Code of Federal Regulations, section 10.76, the Director of Practice is authorized to immediately suspend from practice before the Internal Revenue Service any practitioner who, within five years from the date the expedited proceeding is instituted, (1) has had a license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause; or (2) has been convicted of any crime under title 26 of the United States Code or, of a felony under title 18 of the United States Code involving dishonesty or breach of trust.

Attorneys, certified public accountants, enrolled agents, and enrolled actuaries are

prohibited in any Internal Revenue Service matter from directly or indirectly employing, accepting assistance from, being employed by, or sharing fees with, any practitioner disbarred or suspended from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify practitioners under expedited suspension from practice before the Internal Revenue Service, the Director of Practice will announce in the Internal Revenue Bulletin the names and addresses of practitioners who have been suspended from such practice, their designation as attorney, certified public accountant, en-

rolled agent, or enrolled actuary, and date or period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks or for as many weeks as is practicable for each attorney, certified public accountant, enrolled agent, or enrolled actuary so suspended and will be consolidated and published in the Cumulative Bulletin.

The following individual has been placed under suspension from practice before the Internal Revenue Service by virtue of the expedited proceeding provisions of the applicable regulations:

Name	Address	Designation	Date of Suspension
Christensen, Reed K.	Roseville, CA	Enrolled Agent	Indefinite from December 16, 1997

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 ap-

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

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

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

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

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

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

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

Abbreviations

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

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

E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contribution Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign Corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.

PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Proc.—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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¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 1997-27 through 1997-52 will be found in Internal Revenue Bulletin 1998-1, dated January 5, 1998.

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Key to Abbreviations:

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

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