Bulletin No. 1997–6
February 10, 1997

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. 8694, page 11.
Final regulations amend section 6103 of the Code, which authorizes the disclosure of certain information to the U.S. Customs Service.

T.D. 8696, page 4.
Final regulations for S corporations and their shareholders relate to the definitions and the special rule provided in section 1377 of the Code.

REG–209828–96, page 15.
Proposed regulations under section 468A of the Code relate to requests for revised schedules of ruling amounts for nuclear decommissioning reserve funds. A public hearing will be held on May 13, 1997.

EXEMPT ORGANIZATIONS

Announcement 97–11, page 19.
A list is given of organizations now classified as private foundations.

EMPLOYMENT TAX

T.D. 8699, page 4.
Temporary regulations under section 45B of the Code, pertaining to the credit for employer FICA taxes paid with respect to certain tips received by employees of food or beverage establishments, are removed.

REG–209672–93, page 15.
Proposed regulations under section 45B of the Code, relating to the credit for employer FICA taxes paid with respect to certain tips received by employees of food or beverage establishments, are withdrawn.

EXCISE TAX

T.D. 8693, page 9.
REG–247678–96, page 17.
Temporary and proposed regulations under section 4082 of the Code relate to the application of the diesel fuel excise tax to fuel used in Alaska.

ADMINISTRATIVE

Rev. Proc. 97–11, page 13.
Photocopy fee increase. Effective May 1, 1997, the fee for a copy of a tax return or other related document will increase from $14 to $23. The next revision of Form 4506 will reflect the $23 charge. Rev. Procs. 66–3 and 87–21 modified. Rev. Proc. 94–52 revoked.

Notice 97–13, page 13.
Change in accounting method; alternative minimum tax. Taxpayers are informed that the Service intends to provide approval for farmers to change their method of accounting for income from certain deferred payment sales contracts for purposes of computing their alternative minimum tax.

Finding Lists begin on page 23.
Announcement of Disbarments and Suspensions begins on page 21.

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

The Bulletin is divided into four parts as follows:

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

Part II.—Treaties and Tax Legislation.
This part is divided into two subparts as follows: Subpart A, Tax Conventions, and 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 an index for the matters published during the preceding month. These monthly indexes are cumulated on a quarterly and semiannual basis, and are published in the first Bulletin of the succeeding quarterly and semi-annual period, respectively.

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

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

Section 45B.—Credit for Portion of Employer Social Security Taxes Paid With Respect To Employee Cash Tips

26 CFR 1.45B–1T: Credit for certain employer social security taxes paid with respect to employee tips (Temporary).

T.D. 8699

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Credit for Employer Social Security Taxes Paid on Employee Tips

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Removal of temporary regulations.

SUMMARY: This document removes the temporary regulations pertaining to the credit for employer FICA taxes paid with respect to certain tips received by employees of food or beverage establishments. The temporary regulations were published in the **Federal Register** on December 23, 1993. Statutory changes made by the Small Business Job Protection Act of 1996 have made these temporary regulations obsolete.

EFFECTIVE DATE: The removal of the temporary regulations is effective January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Jean M. Casey at (202) 622–6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 23, 1993, the IRS published temporary regulations (T.D. 8503 [1994–1 C.B. 17])(58 FR 68033) under section 45B of the Internal Revenue Code of 1986 (Code). Amendments made by section 1112(a) of the Small Business Job Protection Act of 1996 (Public Law 104–188) render the temporary regulations obsolete. Therefore, temporary regulation § 1.45B–1T is being removed.

On December 23, 1993, the IRS also issued a notice of proposed rulemaking (EE–71–93 [1994–1 C.B. 784])(58 FR 68091) under section 45B of the Code. This notice of proposed rulemaking is being withdrawn in a separate document.

Explanation of Provisions

Section 45B of the Code describes a business tax credit allowable under section 38 for food and beverage establishments. The credit is equal to the employer's Federal Insurance Contributions Act (FICA) obligation attributable to certain employee tips. The credit is reduced, however, if the nontip wages paid to an employee during a month are less than the amount that would have been payable to the employee at the federal minimum wage rate. The temporary regulations provide that this credit is available only for employer FICA taxes paid after December 31, 1993, with respect to tips received for services performed after December 31, 1993. The temporary regulations also provide that the credit applies only to taxes paid on tips that are reported to the employer by its employees.

Section 1112(a) of the Small Business Job Protection Act of 1996 amended Code section 45B to provide that the credit is available for employer FICA taxes paid after December 31, 1993, regardless of when the services with respect to which the tips are received were performed. Section 1112(a) also provides that the credit is available whether or not the tips on which the employer FICA taxes were paid were reported to the employer by the employee. These provisions are effective as if included in the legislation under which section 45B was originally enacted, and thus render the temporary regulations obsolete.

Drafting Information

The principal author of these regulations is Jean M. Casey of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Removal of Temporary Regulations

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 * * *

§ 1.45B–1T [Removed]

Par. 2. Section 1.45B–1T is removed.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved December 11, 1996.

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

(Filed by the Office of the Federal Register on December 19, 1996, 8:45 a.m., and published in the issue of the Federal Register for December 20, 1996, 61 F.R. 67212)

Section 56.—Adjustments in Computing Alternative Minimum Taxable Income

26 CFR 1.55–1: Alternative minimum taxable income.

Will the Internal Revenue Service provide approval for taxpayers engaged in the business of farming to change their method of accounting for the income from certain deferred payment sales contracts for purposes of computing their alternative minimum tax. See Notice 97–13, page 13.

Section 1377.—Definitions and Special Rules

26 CFR 1.1377: Pro rata share.

T.D. 8696

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Parts 1, 18, and 602

Definitions under Subchapter S of the Internal Revenue Code

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations for S corporations and their shareholders relating to the definitions and the special rule provided in section 1377 of the Internal Revenue Code. The final regulations reflect changes to the law made by the Subchapter S Revision Act of 1982 and the Small Business Job Protection Act of 1996. These final regulations are necessary to provide guidance for taxpayers to comply with the law.

EFFECTIVE DATE: These regulations are effective January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Laura Howell, (202) 622–3060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1462. Responses to this collection of information are required to verify the event giving rise to the making of an election under section 1377(a)(2) by an S corporation.

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

The estimated annual burden per respondent varies from .2 hour to .5 hour, depending on individual circumstances, with an estimated average of .25 hour.

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

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

Background

On July 12, 1995, the IRS published in the **Federal Register** a notice of proposed rulemaking (PS–268–82, 1995–2 C.B. 491) containing proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 1377 of the Internal Revenue Code (Code). These amendments were proposed to conform the regulations to the addition of section 1377 to the Code by section 2 of the Subchapter S Revision Act of 1982, Public Law 97–354 (1982–2 C.B. 702, 710). Written comments responding to this notice were received. No public hearing was held because no hearing was requested. On August 20, 1996, the Small Business Job Protection Act of 1996, Public Law 104–188, 110 Stat. 1755, was enacted. Sections 1306 and 1307 of the Small Business Job Protection Act of 1996 amended section 1377 of the Code. After consideration of all comments received, and the changes to section 1377 by the Small Business Job Protection Act of 1996, the proposed amendments are adopted as revised by this Treasury decision.

Explanation of Provisions

Days on which stock has not been issued

Section 1366(a)(1) requires a shareholder of an S corporation to take into account the shareholder's pro rata share of the corporation's items of income, loss, deduction, and credit. Section 1377(a) provides that, except in the case of an election under section 1377(a)(2), each shareholders's pro rata share of any item for any taxable year shall be the sum of the amounts determined with respect to the shareholder by assigning an equal portion of such item to each day of the taxable year, and then by dividing that portion pro rata among the shares outstanding on such day. The proposed regulations provide that solely for purposes of determining a shareholder's pro rata share of an item, an S corporation's taxable year does not include any day on which the corporation has no shareholders.

One commentator suggested that a person who beneficially owns the corporation should be treated as a shareholder of an S corporation for any day on which the corporation has assets and conducts business, but has not issued any stock. The final regulations revise the rule concerning no shareholder days and provide that, solely for purposes of determining a shareholder's pro rata share of an item for a taxable year under section 1377(a), the beneficial owners of the corporation are treated as the shareholders of the corporation for any day on which the corporation has not issued any stock.

When a Post-Termination Transition Period Arises

The proposed regulations provide that a post-termination transition period (PTTP) arises following the termination under section 1362(d) of a corporation's S election. By example, the proposed regulations state that a PTTP arises when a C corporation acquires the assets of an S corporation in a transaction to which section 381(a)(2) applies. Several commentators requested clarification concerning whether the example results in a termination under section 1362(d) of the corporation's election to be an S corporation or merely the cessation of the S corporation's taxable year. The final regulations clarify that, pursuant to the rule in section 1377(b)(1), a PTTP arises the day after the last day that an S corporation was in existence if a C corporation acquires the assets of an S corporation in a transaction to which section 381(a)(2) applies. Changes to section 1377 made by the Small Business Job Protection Act of 1996.

Agreement to Terminate Year

Section 1306 of the Small Business Job Protection Act of 1996 amended section 1377(a)(2) to provide that only the affected shareholders and the corporation must consent to an election to treat the corporation's taxable year as two taxable years in the event of a complete termination of a shareholder's interest in the corporation. In addition, the terminating election under section 1377(a)(2) applies only to the affected shareholders. H.R. Conf. Rep. No. 104–737, 104th Cong. 2d Sess. 222 (1986). The term *affected shareholders* is defined as the shareholder whose interest is terminated and all shareholders to whom the shareholder has transferred shares during the taxable year. If the shareholder has transferred shares to the corporation, *affected shareholders* include all persons who are shareholders during the taxable year. The final regulations reflect these changes made to section 1377(a)(2) by the Small Business Job Protection Act of 1996.

Expansion of Post-Termination Transition Period

Section 1307(a) of the Small Business Job Protection Act of 1996 expands the definition of PTTP under section 1377(b)(1) to include the 120-day period beginning on the date of any determination pursuant to an audit of the taxpayer that follows the termination of the S corporation's election and that adjusts a subchapter S item of income, loss, or deduction of the S corporation during the S period. In addition, the definition of *determination* is expanded to include any determination under section 1313(a). The effect of this change is to expand the definition of *determination* to include a final disposition by the Secre-

tary of a claim for refund and certain agreements between the Secretary and any person relating to the tax liability of the person. The final regulations reflect these changes made to section 1377(b) by section 1307 of the Small Business Job Protection Act of 1996.

Coordination With Other Provisions and Other Clarifying Changes

In response to comments, the final regulations add cross-references and make certain clarifying revisions. The proposed regulations coordinate the application of the terminating election under section 1377(a)(2) with the election that may be made under § 1.1368–1(g)(2) when there is a qualifying disposition by: (i) removing the section 1377 reference in § 1.1368–1(g)(1) because all of the rules for a section 1377(a)(2) terminating election are now entirely stated in these final regulations; and (ii) amending § 1.1368–1(g)(2) to provide that a qualifying disposition election cannot be made if a transfer results in a termination of the shareholder's entire interest as a shareholder.

The proposed regulations provide that a section 1377(a)(2) terminating election must contain the written consent of each shareholder. The final regulations revise the shareholder consent rules by removing the written consent requirement for each shareholder. The final regulations merely require an S corporation to include a statement by the corporation that each affected shareholder and the corporation consent to the election.

In response to comments, the final regulations clarify that a shareholder's entire interest in an S corporation is not terminated if the shareholder retains ownership of any stock, including an interest treated as stock under § 1.1361–1(l), that would result in the shareholder continuing to be considered a shareholder of the corporation for purposes of section 1362(a)(2). In addition, the final regulations clarify that a shareholder whose entire interest in an S corporation is terminated in an event for which a terminating election was made is not required to consent to an election under section 1377(a)(2) for a subsequent termination of another shareholder within the taxable year unless the shareholder is an affected shareholder with respect to the subsequent termination.

Effective Date

These regulations apply to taxable years of an S corporation beginning after December 31, 1996.

Special Analysis

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 the notice of proposed rulemaking preceding the regulations was issued prior to March 29, 1996, 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 Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Laura Howell, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 18, and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

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

Section 1.1377–1 also issued under 26 U.S.C. 1377(a)(2) and (c). * * *

Par. 2. Section 1.1368–0 is amended by:

1. Revising the entry for paragraphs (g) and (g)(1) of § 1.1368–1.

2. Adding an entry for paragraph (g)(2)(iv) of § 1.1368–1.

The revisions and addition read as follows:

§ 1.1368–0 Table of contents.

* * * * *

§ 1.1368–1 Distributions by S corporations.

* * * * *

(g) Special rule.

(1) Election to terminate year under § 1.1368–1(g)(2).

(2) * * *

(iv) Coordination with election under section 1377(a)(2).

* * * * *

Par. 3. Section 1.1368–1 is amended by:

1. Revising the heading for paragraph (g).

2. Revising paragraph (g)(1).

3. Adding paragraph (g)(2)(iv).

The revisions and addition read as follows:

§ 1.1368–1 Distributions by S corporations.

* * * * *

(g) *Special rule*—(1) *Election to terminate year under § 1.1368–1(g)(2).* If an election is made under paragraph (g)(2) of this section to terminate the year when there is a qualifying disposition, this section applies as if the taxable year consisted of separate taxable years, the first of which ends at the close of the day on which there is a qualifying disposition of stock.

(2) * * *

(iv) *Coordination with election under section 1377(a)(2).* If the event resulting in a qualifying disposition also results in a termination of a shareholder's entire interest as described in § 1.1377–1(b)(4), the election under this paragraph (g)(2) cannot be made. Rather, the election under section 1377(a)(2) and § 1.1377–1(b) may be made. See § 1.1377–1(b) (concerning the election under section 1377(a)(2)). Par. 4. Sections 1.1377–0, 1.1377–1, 1.1377–2, and 1.1377–3 are added under the undesignated center heading ''Small Business Corporations and Their Shareholders'' to read as follows:

§ 1.1377–0 Table of contents.

The following table of contents is provided to facilitate the use of §§ 1.1377–1 through 1.1377–3:

§ 1.1377–1 Pro rata share.

(a) Computation of pro rata shares.

(1) In general.

(2) Special rules.

(i) Days on which stock has not been issued.

(ii) Determining shareholder for day of stock disposition.

(b) Election to terminate year.

(1) In general.

(2) Affected shareholders.

(3) Effect of the terminating election.

(i) In general.

(ii) Due date of S corporation return.

(iii) Taxable year of inclusion by shareholder.

(iv) S Corporation that is a partner in a partnership.

(4) Determination of whether an S shareholder's entire interest has terminated.

(5) Time and manner of making a terminating election.

(i) In general.

(ii) Affected shareholders required to consent.

(iii) More than one terminating election.

(c) Examples.

§ 1.1377–2 Post-termination transition period.

(a) In general.

(b) Special rules for post-termination transition period.

(c) Determination defined.

(d) Date a determination becomes effective.

(1) Determination under section 1313(a).

(2) Written agreement.

(3) Implied agreement.

§ 1.1377–3 Effective date.

§ 1.1377–1 Pro rata share.

(a) *Computation of pro rata shares*—(1) *In general.* For purposes of subchapter S of chapter 1 of the Internal Revenue Code and this section, each shareholder's pro rata share of any S corporation item described in section 1366(a) for any taxable year is the sum of the amounts determined with respect to the shareholder by assigning an equal portion of the item to each day of the S corporation's taxable year, and then dividing that portion pro rata among the shares outstanding on that day. See paragraph (b) of this section for rules pertaining to the computation of each shareholder's pro rata share when an election is made under section 1377(a)(2) to treat the taxable year of an S corporation as if it consisted of two taxable years in the case of a termination of a shareholder's entire interest in the corporation.

(2) *Special rules*—(i) *Days on which stock has not been issued.* Solely for purposes of determining a shareholder's pro rata share of an item for a taxable year under section 1377(a) and this section, the beneficial owners of the corporation are treated as the shareholders of the corporation for any day on which the corporation has not issued any stock.

(ii) *Determining shareholder for day of stock disposition.* A shareholder who disposes of stock in an S corporation is treated as the shareholder for the day of the disposition. A shareholder who dies is treated as the shareholder for the day of the shareholder's death.

(b) *Election to terminate year*—(1) *In general.* If a shareholder's entire interest in an S corporation is terminated during the S corporation's taxable year and the corporation and all affected shareholders agree, the S corporation may elect under section 1377(a)(2) and this paragraph (b) (terminating election) to apply paragraph (a) of this section to the affected shareholders as if the corporation's taxable year consisted of two separate taxable years, the first of which ends at the close of the day on which the shareholder's entire interest in the S corporation is terminated. If the event resulting in the termination of the shareholder's entire interest also constitutes a qualifying disposition as described in § 1.1368–1(g)(2)(i), the election under § 1.1368–1(g)(2) cannot be made. An S corporation may not make a terminating election if the cessation of a shareholder's interest occurs in a transaction that results in a termination under section 1362(d)(2) of the corporation's election to be an S corporation. (See section 1362(e)(3) for an election to have items assigned to each short taxable year under normal tax accounting rules in the case of a termination of a corporation's election to be an S corporation.) A terminating election is irrevocable and is effective only for the terminating event for which it is made.

(2) *Affected shareholders.* For purposes of the terminating election under section 1377(a)(2) and paragraph (b) of this section, the term *affected shareholders* means the shareholder whose interest is terminated and all shareholders to whom such shareholder has transferred shares during the taxable year. If such shareholder has transferred shares to the corporation, the term *affected shareholders* includes all persons who are shareholders during the taxable year.

(3) *Effect of the terminating election*—(i) *In general.* An S corporation that makes a terminating election for a taxable year must treat the taxable year as separate taxable years for all affected shareholders for purposes of allocating items of income (including tax-exempt income), loss, deduction, and credit; making adjustments to the accumulated adjustments account, earnings and profits, and basis; and determining the tax effect of a distribution. An S corporation that makes a terminating election must assign items of income (including tax-exempt income), loss, deduction, and credit to each deemed separate taxable year using its normal method of accounting as determined under section 446(a).

(ii) *Due date of S corporation return.* A terminating election does not affect the due date of the S corporation's return required to be filed under section 6037(a) for a taxable year (determined without regard to a terminating election).

(iii) *Taxable year of inclusion by shareholder.* A terminating election does not affect the taxable year in which an affected shareholder must take into account the affected shareholder's pro rata share of the S corporation's items of income, loss, deduction, and credit.

(iv) *S corporation that is a partner in a partnership.* A terminating election by an S corporation that is a partner in a partnership is treated as a sale or exchange of the corporation's entire interest in the partnership for purposes of section 706(c) (relating to closing the partnership taxable year), if the taxable year of the partnership ends after the shareholder's interest is terminated and within the taxable year of the S corporation (determined without regard to any terminating election) for which the terminating election is made.

(4) *Determination of whether an S shareholder's entire interest has terminated.* For purposes of the terminating election under section 1377(a)(2) and paragraph (b) of this section, a shareholder's entire interest in an S corporation is terminated on the occurrence of any event through which a shareholder's entire stock ownership in the S corporation ceases, including a sale, exchange, or other disposition of all of the stock held by the shareholder; a gift under section 102(a) of all the shareholder's stock; a spousal transfer under section 1041(a) of all the shareholder's stock; a redemption, as defined in section 317(b), of all the shareholder's stock, regardless of the tax treatment of the redemption under section 302; and the death of the shareholder. A shareholder's entire interest in an S corporation is not terminated if the shareholder retains ownership of any stock (including an interest treated as stock under § 1.1361–1(l)) that would result in the shareholder continuing to be considered a shareholder of the corporation for purposes of section 1362(a)(2). Thus, in determining

whether a shareholder's entire interest in an S corporation has been terminated, any interest held by the shareholder as a creditor, employee, director, or in any other non-shareholder capacity is disregarded.

(5) *Time and manner of making a terminating election*—(i) *In general.* An S corporation makes a terminating election by attaching a statement to its timely filed original or amended return required to be filed under section 6037(a) (that is, a Form 1120S) for the taxable year during which a shareholder's entire interest is terminated. A single election statement may be filed by the S corporation for all terminating elections for the taxable year. The election statement must include—

(A) A declaration by the S corporation that it is electing under section 1377(a)(2) and this paragraph (b) to treat the taxable year as if it consisted of two separate taxable years;

(B) Information setting forth when and how the shareholder's entire interest was terminated (for example, a sale or gift);

(C) The signature on behalf of the S corporation of an authorized officer of the corporation under penalties of perjury; and

(D) A statement by the corporation that the corporation and each affected shareholder consent to the S corporation making the terminating election.

(ii) *Affected shareholders required to consent.* For purposes of paragraph (b)(5)(i)(D) of this section, a shareholder of the S corporation for the taxable year is a shareholder as described in section 1362(a)(2). For example, the person who under § 1.1362–6(b)(2) must consent to a corporation's S election in certain special cases is the person who must consent to the terminating election. In addition, an executor or administrator of the estate of a deceased affected shareholder may consent to the terminating election on behalf of the deceased affected shareholder.

(iii) *More than one terminating election.* A shareholder whose entire interest in an S corporation is terminated in an event for which a terminating election was made is not required to consent to a terminating election made with respect to a subsequent termination within the same taxable year unless the shareholder is an affected shareholder with respect to the subsequent termination.

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

Example 1. Shareholder's pro rata share in the case of a partial disposition of stock. (i) On January 6, 1997, X incorporates as a calendar year corporation, issues 100 shares of common stock to each of A and B, and files an election to be an S corporation for its 1997 taxable year. On July 24, 1997, B sells 50 shares of X stock to C. Thus, in 1997, A owned 50 percent of the outstanding shares of X on each day of X's 1997 taxable year, B owned 50 percent on each day from January 6, 1997, to July 24, 1997 (200 days), and 25 percent from July 25, 1997, to December 31, 1997 (160 days), and C owned 25 percent from July 25, 1997, to December 31, 1997 (160 days).

(ii) Because B's entire interest in X is not terminated when B sells 50 shares to C on July 24, 1997, X cannot make a terminating election under section 1377(a)(2) and paragraph (b) of this section for B's sale of 50 shares to C. Although B's sale of 50 shares to C is a qualifying disposition under § 1.1368–1(g)(2)(i), X does not make an election to terminate its taxable year under § 1.1368–1(g)(2). During its 1997 taxable year, X has nonseparately computed income of $720,000.

(iii) For each day in X's 1997 taxable year, A's daily pro rata share of X's nonseparately computed income is $1,000 ($720,000/360 days x 50%). Thus, A's pro rata share of X's nonseparately computed income for 1997 is $360,000 ($1,000 x 360 days). B's daily pro rata share of X's nonseparately computed income is $1,000 ($720,000/360 x 50%) for the first 200 days of X's 1997 taxable year, and $500 ($720,000/360 x 25%) for the following 160 days in 1997. Thus, B's pro rata share of X's nonseparately computed income for 1997 is $280,000 (($1,000 x 200 days) + ($500 x 160 days)). C's daily pro rata share of X's nonseparately computed income is $500 ($720,000/360 x 25%) for 160 days in 1997. Thus, C's pro rata share of X's nonseparately computed income for 1997 is $80,000 ($500 x 160 days).

Example 2. Shareholder's pro rata share when an S corporation makes a terminating election under section 1377(a)(2). (i) On January 6, 1997, X incorporates as a calendar year corporation, issues 100 shares of common stock to each of A and B, and files an election to be an S corporation for its 1997 taxable year. On July 24, 1997, B sells B's entire 100 shares of X stock to C. With the consent of B and C, X makes an election under section 1377(a)(2) and paragraph (b) of this section for the termination of B's entire interest arising from B's sale of 100 shares to C. As a result of the election, the pro rata shares of B and C are determined as if X's taxable year consisted of two separate taxable years, the first of which ends on July 24, 1997, the date B's entire interest in X terminates. Because A is not an affected shareholder as defined by section 1377(a)(2)(B) and paragraph (b)(2) of this section, the treatment as separate taxable years does not apply to A.

(ii) During its 1997 taxable year, X has nonseparately computed income of $720,000. Under X's normal method of accounting, $200,000 of the $720,000 of nonseparately computed income is allocable to the period of January 6, 1997, through July 24, 1997 (the first deemed taxable year), and the remaining $520,000 is allocable to the period of July 25, 1997, through December 31, 1997 (the second deemed taxable year).

(iii) B's pro rata share of the $200,000 of nonseparately computed income for the first deemed taxable year is determined by assigning the $200,000 of nonseparately computed income to each day of the first deemed taxable year ($200,000/200 days = $1,000 per day). Because B held 50% of X's authorized and issued shares on each day of the first deemed taxable year, B's daily pro rata share for each day of the first deemed taxable year is $500 ($1,000 per day x 50%). Thus, B's pro rata share of the $200,000 of nonseparately computed income for the first deemed taxable year is $100,000 ($500 per day x 200 days). B must report this amount for B's taxable year with or within which X's full taxable year ends (December 31, 1997).

(iv) C's pro rata share of the $520,000 of nonseparately computed income for the second deemed taxable year is determined by assigning the $520,000 of nonseparately computed income to each day of the second deemed taxable year ($520,000/160 days = $3,250 per day). Because C held 50% of X's authorized and issued shares on each day of the second deemed taxable year, C's daily pro rata shares for each day of the second deemed taxable year is $1,625 ($3,250 per day x 50%). Therefore, C's pro rata share of the $520,000 of nonseparately computed income is $260,000 ($1,625 per day x 160 days). C must report this amount for C's taxable year with or within which X's full taxable year ends (December 31, 1997).

§ 1.1377–2 Post-termination transition period.

(a) *In general.* For purposes of subchapter S of chapter 1 of the Internal Revenue Code (Code) and this section, the term *post-termination transition period* means—

(1) The period beginning on the day after the last day of the corporation's last taxable year as an S corporation and ending on the later of—

(i) The day which is 1 year after such last day; or

(ii) The due date for filing the return for the last taxable year as an S corporation (including extensions);

(2) The 120-day period beginning on the date of any determination pursuant to an audit of the taxpayer which follows the termination of the corporation's election and which adjusts a subchapter S item of income, loss, or deduction of the corporation arising during the S period (as defined in section 1368(e)(2)); and

(3) The 120-day period beginning on the date of a determination that the corporation's election under section 1362(a) had terminated for a previous taxable year.

(b) *Special rules for post-termination transition period.* Pursuant to section 1377(b)(1) and paragraph (a)(1) of this section, a post-termination transition period arises the day after the last day that an S corporation was in existence if a C corporation acquires the assets of the S corporation in a transaction to which section 381(a)(2) applies. However, if an S corporation acquires the assets of another S corporation in a transaction to which section 381(a)(2) applies, a post-

termination transition period does not arise. (See § 1.1368–2(d)(2) for the treatment of the acquisition of the assets of an S corporation by another S corporation in a transaction to which section 381(a)(2) applies.) The special treatment under section 1371(e)(1) of distributions of money by a corporation with respect to its stock during the post-termination transition period is available only to those shareholders who were shareholders in the S corporation at the time of the termination.

(c) *Determination defined.* For purposes of section 1377(b)(1) and paragraph (a) of this section, the term *determination* means—

(1) A determination as defined in section 1313(a);

(2) A written agreement between the corporation and the Commissioner (including a statement acknowledging that the corporation's election to be an S corporation terminated under section 1362(d)) that the corporation failed to qualify as an S corporation;

(3) For a corporation subject to the audit and assessment provisions of subchapter C of chapter 63 of subtitle A of the Code, the expiration of the period specified in section 6226 for filing a petition for readjustment of a final S corporation administrative adjustment finding that the corporation failed to qualify as an S corporation, provided that no petition was timely filed before the expiration of the period; and

(4) For a corporation not subject to the audit and assessment provisions of subchapter C of chapter 63 of subtitle A of the Code, the expiration of the period for filing a petition under section 6213 for the shareholder's taxable year for which the Commissioner has made a finding that the corporation failed to qualify as an S corporation, provided that no petition was timely filed before the expiration of the period.

(d) *Date a determination becomes effective*—(1) *Determination under section 1313(a).* A determination under paragraph (c)(1) of this section becomes effective on the date prescribed in section 1313 and the regulations thereunder.

(2) *Written agreement.* A determination under paragraph (c)(2) of this section becomes effective when it is signed by the district director having jurisdiction over the corporation (or by another Service official to whom authority to sign the agreement is delegated) and by an officer of the corporation authorized to sign on its behalf. Neither the request for a written agreement nor the terms of the written agreement suspend the running of any statute of limitations.

(3) *Implied agreement.* A determination under paragraph (c)(3) or (4) of this section becomes effective on the day after the date of expiration of the period specified under section 6226 or 6213, respectively.

§ 1.1377–3 Effective date.

Sections 1.1377–1 and 1.1377–2 apply to taxable years of an S corporation beginning after December 31, 1996.

PART 18—TEMPORARY INCOME TAX REGULATIONS UNDER THE SUBCHAPTER S REVISION ACT OF 1982

Par. 5. The authority citation for part 18 continues to read as follows:

Authority: 26 U.S.C. 7805.

Section 18.1377–1 [Removed]

Par. 6. Section 18.1377–1 is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 7. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 8. In § 602.101, paragraph (c) is amended as follows:

1. Removing the following entry from the table:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
18.1377–1	1545–0130
* * * * *	

2. Adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.1377–1	1545–1462
* * * * *	

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved November 1, 1996.

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

(Filed by the Office of the Federal Register on December 20, 1996, 8:45 a.m., and published in the issue of the Federal Register for December 23, 1996, 61 F.R. 67454)

Section 4082.—Exemptions for Diesel Fuel

26 CFR 48.4082–5T: Diesel fuel; Alaska (temporary).

T.D. 8693

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 48

Diesel Fuel Excise Tax; Special Rules for Alaska

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the application of the diesel fuel excise tax to fuel used in Alaska. The regulations implement certain changes made by the Small Business Job Protection Act of 1996. They affect certain enterers, refiners, retailers, terminal operators, throughputters, wholesale distributors, and users. The text of these regulations also serves as the text of REG–247678–96, page 17, this Bulletin.

DATES: These regulations are effective December 17, 1996. For dates of applicability of these regulations, see §§ 48.4082–5T(g) and 48.6715–2T(b).

FOR FURTHER INFORMATION CONTACT: Frank Boland (202) 622–3130 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Section 4081 imposes a tax on certain removals, entries, and sales of diesel fuel. However, under section 4082, tax is not imposed if, among other conditions, the diesel fuel is indelibly dyed in accordance with Treasury regulations. Dyed diesel fuel can be used legally in nontaxable uses such as for heating oil, as fuel in stationary engines, or as fuel in nonhighway vehicles. A substantial penalty under section 6715 applies if

dyed diesel fuel is used for a taxable purpose such as in a registered highway vehicle.

A similar dyeing regime for diesel fuel is required by regulations issued under the Clean Air Act. That Act prohibits the use on highways of diesel fuel with a sulfur content exceeding prescribed levels. The Environmental Protection Agency (EPA) requires this ''high sulfur'' diesel fuel to be dyed.

Section 1801 of the Small Business Job Protection Act of 1996 amends section 4082 to create an exception to the IRS dyeing requirement. Under this amendment, which is effective October 1, 1996, the IRS dyeing requirement does not apply to diesel fuel that is removed, entered, or sold in a state for ultimate sale or use in an area of such state during the period such area is exempted from EPA's sulfur content and fuel dyeing requirements if the use of the fuel is certified pursuant to Treasury regulations.

Section 211(i)(4) of the Clean Air Act allows EPA to exempt the states of Alaska and Hawaii from the Clean Air Act's sulfur content requirements. In response to a petition from Alaska, the EPA granted a permanent exemption for remote areas of Alaska (that is, areas that are not served by the Federal Aid Highway System). In addition, a temporary exemption was granted for urban areas. This temporary exemption, which was originally scheduled to expire after September 30, 1996, has been extended by the EPA (61 FR 42812 (August 19, 1996)) for 24 months, or until a decision is made on Alaska's petition for a permanent exemption, whichever period is shorter.

Thus, under current EPA rules, the entire state of Alaska is exempt from the Clean Air Act's sulfur content requirements and, consequently, from the EPA's dyeing requirements. No part of Hawaii or any other state is similarly exempt.

Explanation of Provisions

These temporary regulations generally establish a system for collecting the federal diesel fuel tax at the wholesale level in Alaska. This system is similar to the pre-1994 federal system under section 4091 and the present system used by the state of Alaska for state fuel tax. The person liable for tax under the temporary regulations generally will be a person who is licensed by Alaska as a qualified dealer.

Under the temporary regulations, a qualified dealer may buy undyed diesel fuel tax free at a terminal rack and sell the fuel tax free to another qualified dealer or to a buyer for the buyer's own nontaxable use. However, a qualified dealer is liable for tax when it sells to a buyer for the buyer's taxable use or to a reseller that is not a qualified dealer.

A qualified dealer must keep adequate records to document the exempt nature of its nontaxable sales. Although the temporary regulations do not prescribe any specific documentation, taxpayers may consider using a format similar to the notification certificate in § 48.4081–5 as proof of tax-free sales between qualified dealers. As proof of tax-free sales for nontaxable uses, taxpayers may consider using Alaska's exemption certificate, when appropriate, or an adaptation of the certificate presently used to support tax-free sales of aviation fuel that is found in Notice 88–132, 1988–2 C.B. 552, 555. The IRS will consider whether the final regulations should specify model certificates to be used for documenting nontaxable transactions in the future.

Taxpayers are cautioned that the uses that are exempt from Alaska's state tax are not identical to the uses that are exempt from the federal tax. For example, Alaska exempts sales to all nonprofit organizations described in section 501(c)(3); the comparable federal rule exempts only sales to nonprofit educational organizations.

Taxpayers should also note that diesel fuel that is dyed in accordance with existing IRS regulations will continue to be exempt from the section 4081 tax in Alaska.

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 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 these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this temporary regulation will be 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 Frank Boland, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 48 is amended as follows:

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

Paragraph 1. The authority citation for part 48 is amended by adding an entry in numerical order to read in part as follows:

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

Section 48.4082–5T also issued under 26 U.S.C. 4082. * * *

Par. 2. Section 48.4082–5T is added to read as follows:

§ 48.4082–5T Diesel fuel; Alaska (temporary).

(a) *Application*. This section applies to diesel fuel removed, entered, or sold in Alaska for ultimate sale or use in an exempt area of Alaska.

(b) *Definitions.*

Exempt area of Alaska means the area of Alaska in which the sulfur content requirements for diesel fuel (see section 211(i) of the Clear Air Act (42 U.S.C. 7545(i))) do not apply because the Administrator of the Environmental Protection Agency has granted an exemption under section 211(i)(4) of that Act.

Nontaxable use means a use described in section 4082(b). Qualified dealer means any person that holds a qualified dealer license from the state of Alaska.

(c) *Tax-free removals and entries*. Notwithstanding § 48.4082–1, tax is not imposed by section 4081 on the removal or entry of any diesel fuel in an exempt area of Alaska if—

(1) The person that would be liable for tax under § 48.4081–2 or 48.4081–3 is a taxable fuel registrant and satisfies the requirements of paragraph (e) of this section;

(2) In the case of a removal from a terminal, the terminal is an approved terminal; and

(3) The owner of the diesel fuel immediately after the removal or entry holds the fuel for its own use in a nontaxable use or is a qualified dealer.

(d) *Sales after removals and entries*—(1) *In general*. Paragraph (c) of this section does not apply with respect to diesel fuel that is subsequently sold by a qualified dealer unless—

(i) The fuel is sold in an exempt area of Alaska;

(ii) The buyer purchases the fuel for its own use in a nontaxable use or is a qualified dealer; and

(iii) The seller satisfies the requirements of paragraph (e) of this section.

(2) *Tax imposed at time of sale; liability for tax*. Notwithstanding §§ 48.4081–2 and 48.4081–3, in any case in which paragraph (c) of this section does not apply with respect to diesel fuel because of a subsequent sale by a qualified dealer, the tax with respect to that fuel is imposed at the time of the subsequent sale and the qualified dealer is liable for the tax.

(3) *Rate of tax*. For the rate of tax, see section 4081.

(e) *Evidence of tax-free transactions*. The requirements of section 4082(c)(2) (relating to certification) and this paragraph (e) are satisfied if the person otherwise liable for tax is able to show the district director satisfactory evidence of the exempt nature of the transaction and has no reason to believe that the evidence is false. Satisfactory evidence may include copies of qualified dealer licenses or exemption certificates obtained for state tax purposes.

(f) *Cross reference*. For the tax on previously untaxed diesel fuel that is used for a taxable purpose, see § 48.4082–4.

(g) *Effective date*. This section is applicable with respect to diesel fuel removed or entered after December 31, 1996.

Par. 3. Section 48.6715–2T is added to read as follows:

§ 48.6715–2T Application of section 6715(a)(3) to Alaska (temporary).

(a) *In general*. The penalty provided by section 6715(a)(3) for willful alteration of dyed fuel will not be assessed if the alteration occurs in an exempt area of Alaska.

(b) *Effective date*. This section is applicable October 1, 1996.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved November 27, 1996.

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

(Filed by the Office of the Federal Register on December 16, 1996, 8:45 a.m., and published in the issue of the Federal Register for December 17, 1996, 61 F.R. 66215)

Section 6103.—Confidentiality and Disclosure of Returns and Return Information

26 CFR 301.6103(l)(14)–1: Disclosure of return information to United States Customs Service.

T.D. 8694

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 301

Disclosure of Return Information to the U.S. Customs Service

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: These amendments to the regulations under 26 CFR part 301 implement section 6103(l)(14) of the Internal Revenue Code, which authorizes the disclosure of certain return information to the U.S. Customs Service. The regulations specify the procedure by which return information may be disclosed and describe the conditions and restrictions on the use of the information by the U.S. Customs Service.

EFFECTIVE DATE: These regulations are effective December 17, 1996.

FOR FURTHER INFORMATION CONTACT: Donald Squires, 202–622–4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The North American Free Trade Agreement Implementation Act (Act), Public Law 103–182, 107 Stat. 2057, was signed into law on December 8, 1993. Section 522 of the Act added section 6103(l)(14) to the Internal Revenue Code (Code), authorizing the IRS to disclose certain tax data to the U.S. Customs Service. The Act directed the Treasury Department to adopt temporary regulations to implement the new section.

On March 11, 1994, temporary regulations were published in the **Federal Register** (59 FR 11547) specifying the procedure by which return information may be disclosed to officers and employees of the United States Customs Service, and describing the conditions and restrictions on the use and redisclosure of that information. A notice of proposed rulemaking (DL–21–94) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (59 FR 11566).

The IRS received two comments on the proposed regulations but did not hold a public hearing. After consideration of the comments, this Treasury decision adopts the proposed regulations without revision. The comments are discussed below.

Explanation of Provisions

The regulations authorize disclosure of return information only to the extent necessary to the purposes authorized by the statute, i.e., ascertaining the correctness of entries in audits under the Tariff Act of 1930 and other actions to recover any loss of revenue or collect amounts determined to be due and owing as a result of these audits. The regulations permit redisclosure to the Department of Justice for civil enforcement actions related to these collection efforts. Consistent with the statute's legislative history, the regulations prohibit disclosure of information (i) relating to Advance Pricing Agreements (as described in Rev. Proc. 91–22 (1991–1 C.B. 526)), or (ii) covered by tax treaties and executive agreements with respect to which the United States is a party. The regulations also specifically prohibit any use or redisclosure of the information by the Customs Service in a manner inconsistent with section 6103 and the regulations.

Notice to Taxpayers/Importers

One commentator suggested that the regulations should provide taxpayers with advance notice of a Customs Service request for tax data and an opportunity to comment upon or object to the request. The legislation authorizing these disclosures did not, however, make any provision for such advance notice and pre-disclosure challenges to Customs

Service requests for disclosure of tax data. Such procedures would, moreover, run counter to the existing statutory scheme of section 6103. Disclosures under section 6103 are governed by the requirements of that statute and applicable regulations, none of which offers a procedural opportunity for a taxpayer to challenge, in advance, a proposed disclosure of tax information by the IRS.

The same commentator suggested that, in the alternative, a taxpayer should be notified in the event of a disclosure so the taxpayer can prepare its response to inquiries from the Customs Service that might be based on such tax data. Otherwise, the commentator argued, the taxpayer would be forced to defend itself against an ''unexpressed suspicion'' based on information the taxpayer does not know the Customs Service has obtained and possibly has misinterpreted.

Nothing in the statute's legislative history suggests that Congress intended the Service to notify taxpayers upon disclosure of their tax data to the Customs Service. As noted above, such a requirement would be at odds with general practice under section 6103. Moreover, the IRS understands that the usual practice of the Customs Service is not to request information from the IRS unless the data has been first directly requested from, but not provided by, importers. When importers receive such a request, therefore, they will effectively be on notice, whether or not they choose to comply with the request, that the Customs Service is likely to consider tax information in the course of its audit.

Misinterpretation of Tax Data by Customs

Both commentators expressed a concern that due to the different reporting requirements of the IRS and the Customs Service, tax data is susceptible to misinterpretation by Customs Service auditors. For example, it was noted that the cost of goods reported for tax purposes includes certain amounts (*e.g.*, duty, transportation, insurance, storage, design costs) not relevant to, or included in, the value of goods for customs purposes.

Congress was aware when it enacted the legislation, however, that IRS tax information may not correlate exactly with the information required to be reported to the Customs Service. Congress nonetheless concluded that the value of the tax information to the Customs Service would outweigh the possible difficulties caused by the necessity of adjusting the IRS data for use in Customs Service audits. Moreover, the Customs Service has informed the IRS that the Customs Service is committed to a policy of full disclosure and communication with importers during audits. In light of that policy, any apparent discrepancies between tax data and Customs Service reporting will be brought to the attention of the importer when discovered in order to allow the importer to explain or reconcile the data. The Customs Service also notes that importers have an additional opportunity to review and comment upon the findings of an auditor before the preparation of the auditor's final report.

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 the notice of proposed rulemaking preceding the regulations was issued prior to March 29, 1996, 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 their impact on small business.

Drafting Information

The principal author of these regulations is Donald Squires, Office of the Assistant Chief Counsel (Disclosure Litigation), IRS. However, other personnel from the IRS, Customs Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by removing the entry for Section 301.6103(l)(14)–1T'' and adding an entry in numerical order to read as follows:

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

Section 301.6103(l)(14)–1 also issued under 26 U.S.C. 6103(l)(14). * * *

§ 301.6103(l)(14)–1T [Redesignated as § 301.6103(l)(14)–1]

Par. 2. Section 301.6103(l)(14)–1T is redesignated as § 301.6103(l)(14)–1 and the section heading is amended by removing the language ''(temporary)''.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved November 13, 1996.

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

(Filed by the Office of the Federal Register on December 16, 1996, 8:45 a.m., and published in the issue of the Federal Register for December 17, 1996, 61 F.R. 66218)

Part III. Administrative, Procedural, and Miscellaneous

Notice of Intent to Issue Guidance Allowing Farmers to Expeditiously Change Their Method of Accounting for Deferred Payment Sales Contracts in Computing Alternative Minimum Tax

Notice 97–13

SUMMARY: The Internal Revenue Service intends to provide approval for taxpayers engaged in the business of farming to change their method of accounting for the income from certain deferred payment sales contracts for purposes of computing their alternative minimum tax (AMT). Farmers will be allowed to change to a permissible method of accounting for this income, effective for taxable years beginning after December 31, 1996, by attaching Form 3115 to their 1997 federal income tax returns to be filed during 1998. Farmers who change their method of accounting in accordance with this procedure will then receive audit protection with respect to the use of an impermissible method of accounting for all taxable years prior to the change, in accordance with generally applicable rules.

BACKGROUND: The Service has received numerous inquiries on the proper treatment, for AMT purposes, of income from the sale of products raised by farmers or other inventory property sold in the ordinary course of the farming business under deferred payment sales contracts. A deferred payment sales contract is one where at least one payment is to be received after the close of the taxable year in which the product is sold.

Section 56(a)(6) of the Code provides that, in computing alternative minimum taxable income (AMTI), income from the disposition of property such as farm products is determined without regard to the installment method under § 453. Thus, a farmer using the cash method, who sells farm products under a deferred payment sales contract and does not elect out of the installment method of reporting, must include in AMTI in the year of the sale both the cash received and the fair market value (or the issue price) of the deferred payment obligation. Otherwise, the farmer is using an impermissible method of accounting. If the farmer elects not to apply the installment method to the sale, and reports the income in the year of the sale, there is no AMTI adjustment with respect to the sale.

Section 446(e) generally provides that a taxpayer that changes its method of accounting must secure the Commissioner's consent before computing income using the new method. In general, taxpayers who wish to change their method of accounting must file Form 3115, Application for Change in Accounting Method, with the Commissioner within the first 180 days of the taxable year in which the taxpayer desires to make the change, and must pay a user fee (ranging from $500 to $900). Treas. Reg. § 1.446–1(e)(3)(i). In addition, § 1.446–1(e)(3)(ii) authorizes the Commissioner to prescribe administrative procedures setting forth the limitations, terms, and conditions necessary to obtain consent to change a method of accounting.

AUTOMATIC CHANGE IN METHOD OF ACCOUNTING: The Service will issue guidance that will allow farmers currently using an impermissible method of accounting for income from the sale of farm products under deferred payment sales contracts for AMT purposes to automatically change to a permissible method of accounting. Under the forthcoming guidance, farmers will be allowed to request the method change by attaching Form 3115 to their timely filed 1997 federal income tax return (due in 1998). No user fee will be required.

The method change will be effective for taxable years beginning after December 31, 1996. In addition, the method change will result in audit protection for all prior taxable years with respect to the impermissible method of accounting (*i.e.*, the examining agent will not propose that a farmer change the impermissible method of accounting for any prior taxable year) in accordance with generally applicable rules. See Rev. Proc. 92–20, Section 10.12, 1992–1 C.B. 685. Farmers currently using an impermissible method of accounting for such sales should continue to use that method in computing AMT for taxable years ending prior to January 1, 1997.

The automatic method change procedure will not be available to farmers who have received written notification from an examining agent (*e.g.*, by examination plan, information document request, notification of proposed adjustments or income tax examination changes) prior to January 28, 1997, specifically citing as an issue under consideration the farmer's method of accounting for income from sales of farm products under deferred payment sales contracts for AMT purposes. In addition, the guidance will not apply if the farmer's method of accounting for such income for AMT purposes is an issue under consideration by an appeals office or a federal court.

DRAFTING INFORMATION: The principal author of this notice is William A. Jackson of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this notice, contact Jonathan Strum at (202) 622–4960 (not a toll-free call).

Rev. Proc. 97–11

Section 1. Purpose

The purpose of this revenue procedure is to increase the charge imposed for each request for a copy of a tax return or other related document (other than Employee Plans and Exempt Organization returns and related documents). In so doing, it further modifies Rev. Proc. 66–3, 1966–1 C.B. 601.

Section 2. Background

.01 Pursuant to I.R.C. § 6103 (p) (2), the Internal Revenue Service may prescribe a reasonable fee for furnishing copies of returns and related documents as authorized under the Internal Revenue Code.

.02 Rev. Proc. 66–3 sets forth procedures to be followed by District Directors of the Internal Revenue Service in permitting inspection of federal tax returns and related documents under the Internal Revenue Code, and in furnishing copies of such returns and documents. Section 15 of Rev. Proc. 66–3 is entitled ''Charges for Copies of Returns and Related Documents.''

.03 Rev. Proc. 87–21, 1987–1 C.B. 718, modified Rev. Proc. 66–3, as previously modified by Rev. Proc. 84–71, 1984–2 C.B. 735, and Rev. Proc. 85–56, 1985–2 C.B. 739, by substituting a new section 15, effective January 1, 1987. Section 15 as modified by Rev. Proc. 87–21 maintained a charge of $4.25, payable in advance, for each request for a copy of a return or other related document (other than Employee Plans

and Exempt Organizations returns and related documents), and maintained a charge of $1.00 for the first page and $.15 for each subsequent page for copies of Employee Plans and Exempt Organizations tax returns and related documents.

.04 Rev. Proc. 94–52, 1994–2 C.B. 712, further modified Rev. Proc. 66–3, by further modifying section 15.01, effective October 1, 1994, to reflect a $14.00 charge for each request for a copy of a return or other related document (other than Employee Plans and Exempt Organizations returns and related documents).

Section 3. Procedures

.01 Rev. Proc. 66–3 as previously modified is further modified to reflect a $23.00 charge in section 15.01.

.02 The next revision of Form 4506, Request for Copy or Transcript of Tax Form, will reflect the $23.00 charge in section 15.01.

.03 Form 4506, Request for Copy or Transcript of Tax Form, is used by a taxpayer or the taxpayer's authorized representative to request a tax return and all attachments and schedules to the return for a charge of $23.00. Form 4506 is also used to request a tax return transcript, a copy of Form(s) W–2, or verification of nonfiling, free of charge. A return or account transcript can also be obtained, free of charge, by calling the Internal Revenue Service or by visiting a local Internal Revenue Service office. A return transcript shows most lines from the original return including accompanying forms and schedules. It does not reflect any changes the taxpayer or the IRS made to the original return, such as corrections due to mathematical errors. An account transcript, or statement of account, reflects a taxpayer's current account status including subsequent payments or amended returns.

.04 The revised section 15.01 shall read as follows:

Sec. 15. CHARGES FOR COPIES OF RETURNS AND RELATED DOCUMENTS

Charges for furnishing copies of returns and related documents will be as follows:

.01 Effective **May 1, 1997,** a charge of $23.00 will be made for each request for a copy of a return or other related document (other than Employee Plans and Exempt Organizations returns). Payments will be submitted in advance using Internal Revenue Service Form 4506, Request for Copy or Transcript of Tax Form. The completed Form 4506 should be sent to the Internal Revenue Service office where the return was filed.

Section 4. Effective Date

This revenue procedure is effective **May 1, 1997.**

Section 5. Effect on Other Revenue Procedures

Effective **May 1, 1997,** Rev. Proc. 66–3 as modified by Rev. Proc. 87–21 is further modified; Rev. Proc. 87–21 is modified; and Rev. Proc. 94–52 is revoked.

Section 6. Drafting Information

Questions concerning this revenue procedure should be directed to Janet Stadtmiller, T:C:O:A:CSC, at (606) 292–7886.

Part IV. Items of General Interest

Withdrawal of Notice of Proposed Rulemaking

Credit for Employer Social Security Taxes Paid on Employee Tips

REG–209672–93

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws the notice of proposed rulemaking relating to the credit for employer FICA taxes paid with respect to certain tips received by employees of food or beverage establishments. The proposed regulations were published in the **Federal Register** on December 23, 1993. Changes to the law made by the Small Business Job Protection Act of 1996 have made these proposed regulations obsolete.

FOR FURTHER INFORMATION CONTACT: Jean M. Casey at (202) 622–6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 23, 1993, the IRS issued proposed regulations (EE–71–93 [1994–1 C.B. 784])(58 FR 68091) under section 45B of the Internal Revenue Code relating to the credit for employer FICA taxes paid with respect to certain tips received by employees of food or beverage establishments. Amendments made by section 1112(a) of the Small Business Job Protection Act of 1996 (Public Law 104–188) render the proposed regulations obsolete. Therefore, proposed regulation § 1.45B–1 is being withdrawn.

On December 23, 1993, the IRS also published temporary regulations (T.D. 8503 [1994–1 C.B. 17])(58 FR 68033) under section 45B of the Code. These temporary regulations are being removed in a separate document.

* * * * *

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking that was published in the **Federal Register** on December 23, 1993 (58 FR 68091) is withdrawn.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on December 19, 1996, 8:45 a.m., and published in the issue of the Federal Register for December 20, 1996, 61 F.R. 67260)

Notice of Proposed Rulemaking and Notice of Public Hearing

Nuclear Decommissioning Funds; Revised Schedules of Ruling Amounts

REG–209828–96

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations relating to requests for revised schedules of ruling amounts for nuclear decommissioning reserve funds. The proposed regulations would amend existing regulations to ease the burden on affected taxpayers by permitting them to adjust their ruling amounts under a formula or method rather than by filing a request for a revised schedule of ruling amounts. This document also provides notice of a public hearing on these proposed regulations.

DATES: Comments must be received by March 24, 1997. Requests to speak and outlines of oral comments to be discussed at the public hearing scheduled for May 13, 1997, at 10 a.m., must be received by April 22, 1997.

ADDRESSES: Send submissions to CC:DOM:CORP:R [REG–209828–96], 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–209828–96], Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., 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. A public hearing will be held in the NYU Classroom, Second Floor, Room 2615, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Peter C. Friedman, (202) 622–3110 (not a toll-free number); concerning submissions and the hearing, Evangelista Lee, (202) 622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget,** Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service,** Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received by February 21, 1997. Comments are specifically requested concerning:

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

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

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

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

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

The collection of information is in § 1.468A–3. This information is required by the IRS to ensure compliance with the provisions of section 468A relating to deductions for payments made to nuclear decommissioning re-

serve funds. This information will be used by the IRS to support the issuance to taxpayers of schedules of ruling amounts under section 468A. The collection of information is voluntary to obtain a benefit. The likely recordkeepers are businesses or other for-profit institutions. Estimated total annual recordkeeping burden: **100 hours.** Estimated average annual burden per recordkeeper: **5 hours.** Estimated number of recordkeepers: **20.**

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

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

Background

This document contains proposed regulations under section 468A of the Internal Revenue Code. Section 468A was added to the Internal Revenue Code by section 91(c) of the Tax Reform Act of 1984 (Public Law 98–369). Significant amendments were made to section 468A by section 1917 of the Energy Policy Act of 1992 (Public Law 102–486).

Section 468A(a) allows an electing taxpayer to deduct the amount of payments made by the taxpayer to a nuclear decommissioning reserve fund. Section 468A(b) limits the amount of these payments for any taxable year to the lesser of the ruling amount or the amount of decommissioning costs included in the taxpayer's cost of service for ratemaking purposes for that taxable year.

Section 468A(d) provides that no deduction shall be allowed unless the taxpayer requests, and receives, a schedule of ruling amounts from the Secretary. A ruling amount is, with respect to any taxable year, the amount determined by the Secretary as necessary to (1) fund that portion of the nuclear decommissioning costs of the taxpayer with respect to the nuclear power plant which bears the same ratio to the total nuclear decommissioning costs with respect to such nuclear power plant as the period for which the nuclear decommissioning fund is in effect bears to the estimated useful life of such nuclear power plant; and (2) prevent any excessive funding of such costs or the funding of such costs at a rate more rapid than level funding, taking into account such discount rates as the Secretary deems appropriate. Section 468A(d)(3) provides that the Secretary shall, at least once during the useful life of the nuclear power plant (or more frequently, upon the request of the taxpayer), review and, if necessary, revise the schedule of ruling amounts.

Section 1.468A–3 sets forth the rules relating to the determination of ruling amounts. Section 1.468A–3(a)(4) permits the use of a formula or method for determining a schedule of ruling amounts (in lieu of a schedule of ruling amounts specifying a dollar amount for each taxable year), but only if the public utility commission establishing or approving the amount of decommissioning costs to be included in cost of service for ratemaking does not estimate the cost of decommissioning in future dollars.

Section 1.468A–3(i) contains provisions for the review and revision of schedules of ruling amounts. Section 1.468A–3(i)(1) sets forth circumstances under which a taxpayer must request a revision to its schedule of ruling amounts. In general, a schedule of ruling amounts must be reviewed at ten-year intervals. If the schedule is determined under a formula or method, however, the period between reviews may not exceed five years.

Section 1.468A–3(i)(2) provides that a taxpayer may request an elective review of its schedule of ruling amounts so long as such request is made in accordance with the rules of § 1.468A–3(h). A taxpayer seeking to maximize its deductions under section 468A generally needs to request an elective review of its schedule of ruling amounts each time a public utility commission changes previously established amounts of decommissioning costs. These proposed regulations amend § 1.468A–3(a)(4) by eliminating the restriction on the use of a formula or method for determining a schedule of ruling amounts. In addition, these proposed regulations revise the mandatory review requirements of § 1.468A–3(i)(1).

Explanation of Provisions

The proposed regulations provide that a taxpayer may request approval of a formula or method for determining a schedule of ruling amounts (rather than a schedule specifying a dollar amount for each taxable year) that is consistent with the principles and provisions of the rules relating to the determination of ruling amounts.

The proposed regulation would ease the filing burden on taxpayers by permitting them to adjust their ruling amounts under a formula or method (rather than by filing a request for a revised schedule of ruling amounts). Thus, under the proposed regulations, a taxpayer may maximize its deductions under section 468A without requesting a revised schedule of ruling amounts each time a public utility commission changes the amount of decommissioning costs included in the taxpayer's cost of service if, under the taxpayer's formula or method, the commission's action results in a corresponding change in ruling amounts.

In addition, the proposed regulations modify the mandatory review provisions applicable to schedules of ruling amounts determined under a formula or method. One modification eliminates the rule requiring review of those schedules after five years; the schedules will, however, be subject to the general rule requiring review at ten-year intervals. In addition, a taxpayer using a formula or method will be required to request a revised schedule of ruling amounts if, beginning with the second taxable year during which the most recently issued formula or method is in effect, the ruling amount for a taxable year (1) differs by more than 25 percent from the ruling amount for any preceding taxable year during which such formula or method was in effect; or (2) differs by more than 10 percent from the ruling amount for the immediately preceding taxable year. Under these circumstances a taxpayer must file a request for a revised schedule of ruling amounts on or before the deemed payment deadline for the next taxable year.

Proposed Effective Date

The regulations are proposed to be effective for requests for schedules of ruling amounts made on or after the date that the final regulations are filed with the Federal Register.

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 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 Public Hearing

Before these proposed regulations are adopted as final regulations, 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 13, 1997, in room 2615. 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 comments by March 24, 1997, and submit an outline of the topics to be discussed and the time to be devoted to each topic by April 22, 1997.

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 Peter C. Friedman, Office of Assistant Chief Counsel (Passthroughs and Special Industries). 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. Section 1.468A–2 is amended as follows:

1. The text of paragraph (f)(3) is redesignated as paragraph (f)(3)(i).

2. Paragraph (f)(3)(ii) is added.

The addition reads as follows:

§ 1.468A–2 Treatment of electing taxpayer.

* * * * *

(f) * * *

(3) * * * (i) * * *

(ii) The requirement of this paragraph (f)(3) does not apply if the taxpayer determines its schedule of ruling amounts under a formula or method obtained under § 1.468A–3(a)(4) and the cost of service amount is a variable element of that formula or method.

* * * * *

Par. 3. Section 1.468A–3 is amended as follows:

1. Paragraph (a)(4) is revised.

2. Paragraph (e)(5) is added.

3. Paragraphs (i)(1)(ii)(A), (i)(1)(iii)-(A)(3), and (i)(1)(iii)(B) are revised.

4. Paragraph (i)(1)(iii)(C) is added.

The revisions and additions read as follows:

§ 1.468A–3 Ruling amount.

(a) * * *

(4) The Internal Revenue Service will approve, at the request of the taxpayer, a formula or method for determining a schedule of ruling amounts (rather than a schedule specifying a–11–dollar amount for each taxable year) that is consistent with the principles and provisions of this section. See paragraph (i)(1)(ii) of this section for a special rule relating to the mandatory review of ruling amounts that are determined pursuant to a formula or method.

* * * * *

(e) * * *

(5) A formula or method obtained under paragraph (a)(4) of this section may provide for changes in an estimated date described in paragraph (e)(1) or (2) of this section to reflect changes in the ratemaking assumptions used to determine rates (whether interim or final) that are established or approved by the applicable public utility commission after the filing of the request for approval of a formula or method.

* * * * *

(i) * * *

(1) * * *

(ii)(A) Any taxpayer that has obtained a formula or method for determining a schedule of ruling amounts for any taxable year under paragraph (a)(4) of this section must file a request for a revised schedule of ruling amounts on or before the deemed payment deadline for a taxable year if the period for which the most recently issued formula or method has been in effect (the ruling period) began at least two taxable years before such year and —

(*1*) The ruling amount for the preceding taxable year and the ruling amount for any earlier taxable year in the ruling period differ by more than 25 percent of the smaller amount; or

(*2*) The ruling amounts for the two most recent taxable years differ by more than 10 percent of the smaller amount.

* * * * *

(iii) * * *

(A) * * *

(*3*) Reduces the amount of decommissioning costs to be included in cost of service for any taxable year;

(B) The taxpayer's most recent request for a schedule of ruling amounts did not provide notice to the Internal Revenue Service of such action by the public utility commission; and

(C) In the case of a taxpayer that determines its schedule of ruling amounts under a formula or method obtained under paragraph (a)(4) of this section, the item increased, adjusted, or reduced is a fixed (rather than a variable) element of that formula or method.

* * * * *

Margaret Milner Richardson,
Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on December 20, 1996, 8:45 a.m., and published in the issue of the Federal Register for December 23, 1996, 61 F.R. 67510)

Notice of Proposed Rulemaking

Gasoline and Diesel Fuel Excise Tax; Special Rules for Alaska; Definition of Aviation Gasoline and Kerosene

REG–247678–96

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Proposed Rule and Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In T.D. 8693, page 9, this Bulletin, the IRS is issuing temporary regulations relating to the application of the diesel fuel excise tax to fuel used in Alaska. The text of those temporary regulations also serves as a portion of the text of these proposed regulations. This document also contains other proposed regulations relating to gasoline and diesel fuel excise taxes. The proposed regulations implement certain changes made by the Omnibus Budget Reconciliation Act of 1993 and the Small Business Job Protection Act of 1996 and affect certain enterers, refiners, retailers, terminal operators, throughputters, and users. DATES: Written comments and requests for a public hearing must be received by March 17, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–247678–96), 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–247678–96), 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: Frank Boland (202) 622–3130 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations published in T.D. 8693 provide rules relating to diesel fuel that is removed, entered, or sold in the state of Alaska. The text of those temporary regulations also serves as the text of these proposed regulations relating to Alaska. The preamble to the temporary regulations explains the temporary rules.

In addition, this document proposes definitions of *aviation gasoline*, for purposes of the tax on aviation gasoline as added by the Small Business Job Protection Act of 1996, and *kerosene*, for purposes of the tax on diesel fuel. These definitions are based on definitions used by the Department of Energy. This document also proposes changes to the effective date of proposed regulations relating to gasoline and diesel fuel that were published in the **Federal Register** on March 14, 1996 (61 FR 10490).

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 these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, 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 may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, a 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 Frank Boland, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 48 is proposed to be amended as follows:

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

Paragraph 1. The authority citation for part 48 is amended by adding an entry in numerical order to read in part as follows:

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

Section 48.4082–5 also issued under 26 U.S.C. 4082. * * *

Par. 2. Section 48.4081–1 is amended as follows:

1. Paragraph (b) is amended by adding new definitions in alphabetical order.

2. The second sentence of paragraph (c)(2)(i) is amended by adding the language ''aviation fuel (as defined in section 4093(a)),'' after ''does not include''.

3. Paragraph (d) is revised.

The additions and revision read as follows:

§ 48.4081–1 Taxable fuel; definitions.

* * * * *

(b) * * *

* * * * *

Aviation gasoline means all special grades of gasoline that are suitable for use in aviation reciprocating engines, as described in ASTM Specification D 910 and Military Specification MIL–G–5572 (For availability, see paragraph (c)(2)(i) of this section.).

* * * * *

Kerosene means No. 1–K and No. 2–K kerosene described in ASTM Specification D 3699 (the specification), applied without regard to any agreement permitted by the specification (For availability, see paragraph (c)(2)(i) of this section.). Any other fuel is not kerosene even if an agreement permitted by the specification modifies the applicable requirements and the fuel is treated as kerosene under the agreement.

* * * * *

(d) *Effective date.* This section is effective January 1, 1994, except that in paragraph (b) of this section the definitions of *aviation gasoline* and *kerosene* are effective on the date the final regulations are published in the **Federal Register**.

Par. 3. In § 48.4081–8(c) (as proposed in the **Federal Register** for March 14, 1996 (61 FR 10491)), the language ''October 1, 1996.'' is removed and ''the date that is 60 days after the date that the final regulations are published in the **Federal Register**.'' is added in its place.

Par. 4. In § 48.4082–1(d)(7) (as proposed in the **Federal Register** for

March 14, 1996 (61 FR 10491)), the language ''April 1, 1997.'' is removed and ''the date that is 180 days after the date that the final regulations are published in the **Federal Register**.'' is added in its place.

Par. 5. Section 48.4082–5 is added to read as follows:

§ 48.4082–5 Diesel fuel; Alaska.

[The text of this proposed section is the same as the text of § 48.4082–5T published in T.D. 8693, page 9.]

Par. 6. Section 48.6715–2 is added to read as follows:

§ 48.6715–2 Application of section 6715(a)(3) to Alaska.

[The text of this proposed section is the same as the text of § 48.6715–2T published in T.D. 8693, page 9.]

Margaret Milner Richardson,
Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on December 16, 1996, and published in the issue of the Federal Register for December 17, 1996, 61 F.R. 66246)

Foundations Status of Certain Organizations

Announcement 97–11

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:

A C O R N Inc., Green Bay, WI
Actors for Change (A Theatre of Broad Insight), Minneapolis, MN
Alisa Stevens Torhorst Foundation Inc., Monona, WI
Anoka County Chamber of Commerce Health and Civic Forum, Coon Rapids, MN
Aurora Child Development, Aurora, NE
College Community Little League Inc., Cedar Rapids, IA
Contractors Assistance Program Inc., St. Louis, MO
Coss Grove Institute, Iowa City, IA
County Rescue Life Divers Inc., St. Charles, MO
David and Chris Harris Foundation, St. Louis, MO
Deliverance Academy Christian Day, St. Louis, MO
Disadvantaged Youth of America, St. Louis, MO
Educational Concepts and Connections Inc., St. Louis, MO
Emma Cornelis Hospitality House Inc., Fort Madison, IA
Fair Field Educational Radio Station, Fair Field, IA
Family Values Institute, Rapid City, SD
FF-6 Fire Dept., Edwards, MO
Four Winds Institute Inc., Omaha, NE
Friends of Police on Bikes Inc., Omaha, NE
Friends of the Des Moines Human Rights Commission, Des Moines, IA
Friends of the West Des Moines Public Library, West Des Moines, IA
Friends of Warsaw University Inc., St. Louis, MO
Gates Park Youth Basketball League, Waterloo, IA
George Washington Carver Memorial, Fulton, MO
Glasgow High School Alumni Park Committee Inc., Glasgow, MT
Greyhound Companions, Waterloo, IA
Guatemala Neighbors, Plymouth, MN
Head of the Red Community Theatre Inc., Brecken Ridge, MN
Hellenic Spirit Foundation, St. Louis, MO
Helping Hands Recycling Centers Inc., Chesterfield, MO
Heritage Singers, Minot, ND
Hmong American Community Association Inc., Menomonie, WI
Humane Society of Beaverhead County Inc., Dillon, MT
International Counseling Foundation, St. Louis, MO
Iowa Education Coalition, Newton, IA
Jobs for Missourians, St. Louis, MO
Kansas City African American Progress Society, Kansas City, MO
Kansas City Missouri Public Housing, Kansas City, MO
Kansas City Shade Tree Fund Inc., Kansas City, MO
Kathleen W. McCartan, Ames, IA
Lake Campbell Improvement Association Inc., Brookings, SD
Lakota for Youth, Pine Ridge, SD
Little Soldier Sioux Pottery Inc., Mission, SD
Long Pine Recreation and Arts Center LTD., Long Pine, NE
Lost Sheep Mission Charitable Trust, Sedalia, MO
Love in the Name of Christ, Omaha, NE
MAC Foundation for the Arts, St. Louis, MO
M A C H Force Ministries, Bellevue, NE
MAC Sports Foundation, St. Louis, MO
Malcolm Public Schools Foundation, Malcolm, NE
Malcolm Youth Sports Association, Malcolm, NE
Marion Manor in a Corporation, Alexandria, SD
Maxwell Area Community Center, Maxwell, IA
M B R I Educational Services, St. Louis, MO
Men in Action Inc., Aberdeen, SD
Midtown Development Group of Kansas City Inc., Kansas City, MO
Ministry of Healing Inc., Kansas City, MO
Minority Museum, Kansas City, MO
Minot Community Hockey Promoters Inc., Minot, ND
Mission Mexico International, Milford, IA
Missoula Public Library Foundation Inc., Missoula, MT
Music Fest Midwest, Overland Park, MO
Naic Education & Research Foundation, Kansas City, MO
NBA GPVA Accessible Housing Inc., Overland, MO
Omaha Rowing Association, Omaha, NE
Operation Welcome Home Inc., Lees Summit, MO
Palestine Outreach Center, Kansas City, MO
Platte County Crimestoppers Inc., Columbus, NE
Project Respond, St. Louis, MO
Rockwood School and Student Foundation, St. Louis, MO
Saint Louis Youth Chamber Orchestra Inc., St. Louis, MO
San Blas Medical Mission, Bismarck, ND
Southeastern Nebraska Railroad Assoc. Inc., Nebraska City, NE
South Iron Fire Department, Annapolis, MD
Springfield Chapter of M O A D, Cabool, MO
Stinson Prairie Arts Council, Algona, IA
St. Louis Recovery, Fenton, MO

Sugar Bowl II Inc., Flandereau, SD
Transitional Family Turning Point, Columbia, MO
Tremont Place Housing Corporation, Kansas City, MO
Triad Archaeological Research Center Inc., Columbia, MO
Voice of the Environment Inc., Darby, MT
Watchful Home Inc., Mission, SD
Whitey Herzog Foundation, Hillsboro, MO
World Organization for Research Leadership Dev. & Educ., Lincoln, NE

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

Under Section 330, Title 31 of the United States Code, the Secretary of the Treasury, after due notice and opportunity for hearing, is authorized to suspend or disbar from practice before the Internal Revenue Service any person who has violated the rules and regulations governing the recognition of attorneys, certified public accountants, enrolled agents or enrolled actuaries to practice before the Internal Revenue Service.

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 under suspension from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify such disbarred or suspended practitioners, 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, enrolled agent, or enrolled actuary, and date of disbarment or period of suspension. This announcement will appear in the weekly Bulletin for five successive weeks or as long as it is practicable for each attorney, certified public accountant, enrolled agent, or enrolled actuary so suspended or disbarred and will be consolidated and published in the Cumulative Bulletin.

After due notice and opportunity for hearing before an administrative law judge, the following individuals have been disbarred from further practice before the Internal Revenue Service:

Name	Address	Designation	Effective Date
Noske, Joan Marie	Bismarck, ND	CPA	September 7, 1996
Dalrymple, John K.	Troy, MI	CPA	September 26, 1996

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

A—Individual.

Acq.—Acquiescence.

B—Individual.

BE—Beneficiary.

BK—Bank.

B.T.A.—Board of Tax Appeals.

C.—Individual.

C.B.—Cumulative Bulletin.

CFR—Code of Federal Regulations.

CI—City.

COOP—Cooperative.

Ct.D.—Court Decision.

CY—County.

D—Decedent.

DC—Dummy Corporation.

DE—Donee.

Del. Order—Delegation Order.

DISC—Domestic International Sales Corporation.

DR—Donor.

E—Estate.

EE—Employee.

E.O.—Executive Order.

ER—Employer.

ERISA—Employee Retirement Income Security Act.

EX—Executor.

F—Fiduciary.

FC—Foreign Country.

FICA—Federal Insurance 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. Rul.—Revenue Ruling.

S—Subsidiary.

S.P.R.—Statements of Procedural Rules.

Stat.—Statutes at Large.

T—Target Corporation.

T.C.—Tax Court.

T.D.—Treasury Decision.

TFE—Transferee.

TFR—Transferor.

T.I.R.—Technical Information Release.

TP—Taxpayer.

TR—Trust.

TT—Trustee.

U.S.C.—United States Code.

X—Corporation.

Y—Corporation.

Z—Corporation.

Numerical Finding List[1]

Bulletin 1997–1 through 1997–5

Announcements:

97–1, 1997–2 I.R.B. *63*
97–2, 1997–2 I.R.B. *63*
97–3, 1997–2 I.R.B. *63*
97–4, 1997–3 I.R.B. *14*
97–5, 1997–3 I.R.B. *15*
97–6, 1997–4 I.R.B. *11*
97–7, 1997–4 I.R.B. *12*
97–8, 1997–4 I.R.B. *12*
97–9, 1997–5 I.R.B. *27*

Notices:

97–1, 1997–2 I.R.B. *22*
97–2, 1997–2 I.R.B. *22*
97–3, 1997–1 I.R.B. *8*
97–4, 1997–2 I.R.B. *24*
97–5, 1997–2 I.R.B. *25*
97–6, 1997–2 I.R.B. *26*
97–7, 1997–1 I.R.B. *8*
97–8, 1997–4 I.R.B. *7*
97–9, 1997–2 I.R.B. *35*
97–10, 1997–2 I.R.B. *41*
97–11, 1997–2 I.R.B. *50*
97–12, 1997–3 I.R.B. *11*

Proposed Regulations:

REG–209762–95, 1997–3 I.R.B. *12*
REG–209834–96, 1997–4 I.R.B. *9*

Revenue Procedures:

97–1, 1997–1 I.R.B. *11*
97–2, 1997–1 I.R.B. *64*
97–3, 1997–1 I.R.B. *84*
97–4, 1997–1 I.R.B. *96*
97–5, 1997–1 I.R.B. *132*
97–6, 1997–1 I.R.B. *153*
97–7, 1997–1 I.R.B. *185*
97–8, 1997–1 I.R.B. *187*
97–9, 1997–2 I.R.B. *56*
97–10, 1997–2 I.R.B. *59*
97–12, 1997–4 I.R.B. *7*
97–13, 1997–5 I.R.B. *18*
97–14, 1997–5 I.R.B. *20*
97–15, 1997–5 I.R.B. *21*
97–17, 1997–5 I.R.B. *25*

Revenue Rulings:

97–1, 1997–2 I.R.B. *10*
97–2, 1997–2 I.R.B. *7*
97–3, 1997–2 I.R.B. *5*
97–4, 1997–3 I.R.B. *6*
97–5, 1997–4 I.R.B. *5*
97–6, 1997–4 I.R.B. *4*
97–7, 1997–5 I.R.B. *14*

Treasury Decisions:

8697, 1997–2 I.R.B. *11*
8688, 1997–3 I.R.B. *7*
8689, 1997–3 I.R.B. *9*
8692, 1997–3 I.R.B. *4*
8695, 1997–4 I.R.B. *5*
8690, 1997–5 I.R.B. *5*
8691, 1997–5 I.R.B. *16*

[1]A cumulative list of all Revenue Rulings, Revenue Procedures, Treasury Decisions, etc., published in Internal Revenue Bulletins 1996–27 through 1996–53 will be found in Internal Revenue Bulletin 1997–1, dated January 6, 1997.

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

Bulletin 1997–1 through 1997–5

*Denotes entry since last publication

Revenue Procedures:

92–20
Modified by
97–1, 1997–1 I.R.B. *11*

92–20
Modified by
97–10, 1997–2 I.R.B. *59*

92–90
Superseded by
97–1, 1997–1 I.R.B. *11*

96–1
Superseded by
97–1, 1997–1 I.R.B. *11*

96–2
Superseded by
97–2, 1997–1 I.R.B. *64*

96–3
Superseded by
97–3, 1997–1 I.R.B. *84*

96–4
Superseded by
97–4, 1997–1 I.R.B. *96*

96–5
Superseded by
97–5, 1997–1 I.R.B. *132*

96–6
Superseded by
97–6, 1997–1 I.R.B. *153*

96–7
Superseded by
97–7, 1997–1 I.R.B. *185*

96–8
Superseded by
97–8, 1997–1 I.R.B. *187*

Revenue Rulings:

70–480
Revoked by
97–6, 1997–4 I.R.B. *4*

92–19
Supplemented in part by
97–2, 1997–2 I.R.B. *7*

96–12
Superseded by
97–3, 1997–1 I.R.B. *84*

96–13
Modified by
97–1, 1997–1 I.R.B. *11*

96–22
Superseded by
97–3, 1997–1 I.R.B. *84*

96–34
Superseded by
97–3, 1997–1 I.R.B. *84*

Revenue Rulings—Continued

96–39
Superseded by
97–3, 1997–1 I.R.B. *84*

96–43
Superseded by
97–3, 1997–1 I.R.B. *84*

96–56
Superseded by
97–3, 1997–1 I.R.B. *84*

[1]A cumulative finding list for previously published items mentioned in Internal Revenue Bulletins 1996–27 through 1996–53 will be found in Internal Revenue Bulletin 1997–1, dated January 6, 1997.