

HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

Rev. Rul. 2005-45, page 123.

LIFO; price indexes; department stores. The May 2005 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, May 31, 2005.

Rev. Rul. 2005-46, page 120.

Disaster relief grants for businesses. This ruling holds that a grant received by a business under a state program to reimburse businesses for losses incurred for damage or destruction of real and personal property on account of a disaster is not excludable from gross income under the general welfare exclusion, as a gift under section 102 of the Code, as a qualified disaster relief payment under section 139, or as a contribution to the capital of a corporation under section 118. The business may elect under section 1033 to defer including in income gain realized from receipt of the grant to the extent the grant proceeds are used to timely purchase property similar or related in service or use to the destroyed or damaged property.

Rev. Proc. 2005-46, page 142.

This procedure prescribes the procedure to be followed with respect to the claiming of any setoffs to adjustments proposed by the Commissioner pursuant to section 482 of the Code. Rev. Proc. 70-8 modified.

Announcement 2005-50, page 152.

This document contains a correction to Table 2 of Rev. Rul. 2005-41, 2005-28 I.R.B. 69, relating to Farm Rates 2005. Rev. Rul. 2005-41 corrected.

EMPLOYEE PLANS

Notice 2005-54, page 127.

Weighted average interest rate update; corporate bond indices; 30-year Treasury securities. The weighted average interest rate for July 2005 and the resulting permissible range of interest rates used to calculate current liability and to determine the required contribution are set forth.

EXCISE TAX

Rev. Proc. 2005-45, page 141.

This procedure provides that a list of rural airports published by the U.S. Department of Transportation, Office of the Secretary of Transportation, may be relied upon to determine whether an airport is a "rural airport" as defined in section 4261(e)(1)(B) of the Code, for purposes of the exception from tax on the amount paid for a domestic segment of taxable transportation by air. Rev. Proc. 98-18 obsolete.

ADMINISTRATIVE

Rev. Rul. 2005-49, page 125.

Judicial remedy for wrongful levies. This ruling clarifies that a wrongful levy action under section 7426 of the Code is the only remedy available to a third person whose property was levied to satisfy the tax debt of another.

(Continued on the next page)

Announcements of Disbarments and Suspensions begin on page 144.
Finding Lists begin on page ii.
Index for July begins on page iv.



Rev. Rul. 2005–50, page 124.

Discharge of property; refund action. This ruling clarifies that, in light of amendments to sections 6325 and 7426 of the Code made by the IRS Restructuring and Reform Act of 1998, a person not liable for the underlying tax may not file a refund action under the holding of *United States v. Williams*, 514 U.S. 527 (1995).

Rev. Proc. 2005–42, page 128.

Publication 1245 is revised for tax year 2005. Follow the specifications in this revenue procedure when submitting Form W–4 electronically or magnetically. Rev. Proc. 2001–16 superseded.

The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by

applying the tax law with integrity and fairness to all.

Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

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

Part II.—Treaties and Tax Legislation.

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

Part III.—Administrative, Procedural, and Miscellaneous.

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

Part IV.—Items of General Interest.

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

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

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

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

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

Section 61.—Gross Income Defined

26 CFR 1.61-1(a): *Gross income.*
(Also: §§ 102, 118, 139, 165, 1033; 1.102-1, 1.118-1, 1.165-1, 1.1033(a)-1.)

Disaster relief grants for businesses.

This ruling holds that a grant received by a business under a state program to reimburse businesses for losses incurred for damage or destruction of real and personal property on account of a disaster is not excludable from gross income under the general welfare exclusion, as a gift under section 102 of the Code, as a qualified disaster relief payment under section 139, or as a contribution to the capital of a corporation under section 118. The business may elect under section 1033 to defer including in income gain realized from receipt of the grant to the extent the grant proceeds are used to timely purchase property similar or related in service or use to the destroyed or damaged property.

Rev. Rul. 2005-46

ISSUES:

(1) Is a grant that a qualifying business receives under a state's program to reimburse losses that any qualifying business incurred for damage or destruction of real and personal property on account of a disaster excludable from gross income —

- (a) under the general welfare exclusion;
- (b) as a gift under § 102 of the Internal Revenue Code;
- (c) as a qualified disaster relief payment under § 139; or
- (d) as a contribution to the capital of a corporation under § 118?

(2) May a qualifying business defer, under § 1033, recognition of gain realized on receipt of a grant payment made under the state program?

FACTS

An area within state *ST* was affected by a disaster. To aid in the recovery of the area of *ST* affected by the disaster, *ST* enacted emergency legislation appropriating funds for grants to reimburse uncom-

pensated losses that any qualifying business incurred due to damage to, or destruction of, real property and other tangible assets, including buildings, structures, fixtures, equipment, and inventory (collectively, the "eligible losses") on account of the disaster.

The grants are available only if the qualifying business agrees to continue its operations for a minimum of 5 years in or near the area in *ST* affected by the disaster. Reimbursement of eligible losses is limited to the fair market value of the property just before the time of the loss and is reduced by any other reimbursement that the qualifying business received to compensate for the property losses. A qualifying business must submit an application to *ST* describing the nature, extent, and amount of the uncompensated eligible losses that the qualifying business incurred.

As a result of the disaster, *X*, a corporation, incurred \$90,000 of uncompensated eligible losses for destruction of equipment used by *X* in its trade or business. The adjusted basis of the equipment was \$10,000. *X* did not deduct the \$10,000 loss for the destruction of the equipment on any federal income tax return. *X* submitted an application to *ST* for a grant to reimburse *X* for the uncompensated eligible losses. During *X*'s subsequent taxable year, *ST* officials approved a \$90,000 grant based on the destruction of *X*'s property and paid the \$90,000 to *X*.

Within the 2-year period prescribed by § 1033(a), *X* purchased for \$150,000 (by using the entire grant proceeds of \$90,000 plus \$60,000 of other funds) equipment to replace the destroyed equipment. The replacement equipment was similar or related in service or in use to the destroyed equipment. *X* has used the replacement equipment in its trade or business since the time of the purchase. *X* elected under § 1033(a)(2)(A) to defer gain realized on the involuntary conversion of its equipment into money.

LAW AND ANALYSIS

Section 61(a) provides that, except as otherwise provided by law, gross income means all income from whatever source

derived. Under § 61, Congress intends to tax all gains or undeniable accessions to wealth, clearly realized, over which taxpayers have complete dominion. *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426 (1955), 1955-1 C.B. 207.

The Internal Revenue Service has consistently concluded that payments to individuals by governmental units under legislatively provided social benefit programs for the promotion of the general welfare are not included in a recipient's gross income ("general welfare exclusion"). See, e.g., Rev. Rul. 74-205, 1974-1 C.B. 20; Rev. Rul. 98-19, 1998-1 C.B. 840. To qualify under the general welfare exclusion, payments must (i) be made from a governmental fund, (ii) be for the promotion of the general welfare (i.e., generally based on individual or family needs), and (iii) not represent compensation for services. Rev. Rul. 75-246, 1975-1 C.B. 24; Rev. Rul. 82-106, 1982-1 C.B. 16. Payments to businesses generally do not qualify under the general welfare exclusion because the payments are not based on individual or family needs. See *Bailey v. Commissioner*, 88 T.C. 1293, 1300-1301 (1987), *acq.*, 1989-2 C.B. 1; Rev. Rul. 76-131, 1976-1 C.B. 16; Notice 2003-18, 2003-1 C.B. 699.

Section 102(a) provides that the value of property acquired by gift is excluded from gross income. Under § 102(a), a gift must proceed "from a 'detached and disinterested generosity,' ... 'out of affection, respect, admiration, charity or like impulses.'" *Commissioner v. Duberstein*, 363 U.S. 278, 285 (1960), 1960-2 C.B. 428. On the other hand, payments that proceed "primarily from the 'constraining force of any moral or legal duty' or from 'the incentive of anticipated benefit' of an economic nature" are not gifts. *Duberstein* at 285. Governmental grants in response to a disaster (whether to a business or an individual) generally do not qualify as gifts because the government's intent in making the payments proceeds from a government's duty to relieve the hardship caused by the disaster. In addition, a government can expect an economic benefit from programs that relieve business or individual hardships. See *Kroon v. United States*,

Civil No. A-90-71 (D. Alaska 1974), and Rev. Rul. 2003-12, 2003-1 C.B. 283.

Section 139(a) excludes from gross income any amount received by an individual as a qualified disaster relief payment. Section 139(b) provides, in part, that the term “qualified disaster relief payment” means any amount paid to or for the benefit of an individual —

(1) to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster (§ 139(b)(1));

(2) to reimburse or pay reasonable and necessary expenses incurred for the repair or rehabilitation of a personal residence, or repair or replacement of its contents, to the extent that the need for such repair, rehabilitation, or replacement is attributable to a qualified disaster (§ 139(b)(2)); or

(3) if such amount is paid by a federal, state, or local government, or agency or instrumentality thereof, in connection with a qualified disaster in order to promote the general welfare (§ 139(b)(4)). Thus, § 139(b)(4) codifies (but does not supplant) the administrative general welfare exclusion with respect to certain disaster relief payments to individuals.

Section 118(a) provides that, in the case of a corporation, gross income does not include any contribution to the capital of the taxpayer. Section 1.118-1 of the Income Tax Regulations provides that § 118 also applies to contributions to capital made by persons other than shareholders. For example, the exclusion applies to the value of land or other property contributed to a corporation by a governmental unit or by a civic group for the purpose of inducing the corporation to locate its business in a particular community, or for the purpose of enabling the corporation to expand its operating facilities. However, the exclusion does not apply to any money or property transferred to the corporation in consideration for goods or services rendered, or to subsidies paid for the purpose of inducing the taxpayer to limit production.

The Supreme Court of the United States has considered the contribution to capital concept. In *Detroit Edison Co. v. Commissioner*, 319 U.S. 98 (1943), 1943 C.B. 1019, the Court held that payments by prospective customers to an electric utility company to cover the cost of extending the utility’s facilities to their homes were part of the price of service rather than con-

tributions to capital. The case concerned customers’ payments to a utility company for the estimated cost of constructing service facilities that the utility company otherwise was not obligated to provide.

Later, the Court held that payments to a corporation by community groups to induce the location of a factory in their community represented a contribution to capital. *Brown Shoe Co. v. Commissioner*, 339 U.S. 583 (1950), 1950-1 C.B. 38. The Court concluded that the contributions made by the citizens were made without anticipation of any direct service or recompense, but rather with the expectation that the contributions would prove advantageous to the community at large. *Brown Shoe Co.* at 591. The contract entered into by the community groups and the corporation provided that in exchange for a contribution of land and cash, the corporation agreed to construct a factory, operate it for at least 10 years, and meet a minimum payroll. *Brown Shoe Co.* at 586.

Finally, in *United States v. Chicago, B. & Q. R. Co.*, 412 U.S. 401 (1973), 1973-2 C.B. 428, the Court, in determining whether a taxpayer was entitled to depreciate the cost of certain facilities that had been funded by the federal government, held that the governmental subsidies were not contributions to the taxpayer’s capital. The Court recognized that the holding in *Detroit Edison Co.* had been qualified by its decision in *Brown Shoe Co.* The Court in *Chicago, B. & Q. R. Co.* found that the distinguishing characteristic between those two cases was the differing purposes motivating the respective transfers. In *Brown Shoe Co.*, the only expectation of the contributors was that such contributions might prove advantageous to the community at large. Thus, in *Brown Shoe Co.*, because the transfers were made with the purpose, not of receiving direct service or recompense, but only of obtaining advantage for the general community, the result was a contribution to capital.

The Court in *Chicago, B. & Q. R. Co.* also stated that there were other characteristics of a nonshareholder contribution to capital implicit in *Detroit Edison Co.* and *Brown Shoe Co.* From these two cases, the Court distilled some of the characteristics of a nonshareholder contribution to capital under both the 1939 and 1954 Codes —

1. It must become a permanent part of the transferee’s working capital structure;

2. It may not be compensation, such as a direct payment for a specific, quantifiable service provided for the transferor by the transferee;

3. It must be bargained for;

4. The asset transferred must foreseeably result in a benefit to the transferee in an amount commensurate with its value; and

5. The asset ordinarily, if not always, will be employed in or contribute to the production of additional income and its value will be assured in that respect.

Under § 362(c)(2), if money is received by a corporation as a contribution to capital, and is not contributed by a shareholder as such, then the basis of any property acquired with such money during the 12-month period beginning on the day the contribution is received shall be reduced by the amount of such contribution. The excess (if any) of the amount of such contribution over the amount of the reduction shall be applied to the reduction of the basis of any other property held by the taxpayer.

Section 165(a) allows a deduction for any loss sustained during the taxable year and not compensated for by insurance or otherwise. Section 165(b) limits the amount of the deduction for the loss to the adjusted basis of the property, as determined under § 1011. Section 1.165-1(d)(2)(iii) provides that if a taxpayer has deducted a loss and in a subsequent taxable year receives reimbursement for such loss, the amount of the reimbursement must be included in gross income for the taxable year in which received, subject to the provisions of § 111, relating to recovery of amounts previously deducted.

Section 1033(a) provides that if property, as a result of its destruction in whole or in part, is involuntarily converted into money, the gain, if any, is recognized except to the extent that the electing taxpayer, within 2 years after the close of the first taxable year in which any gain was realized (or at the close of such later date as may be designated pursuant to an application of the taxpayer under § 1033(a)(2)(B)(ii)), purchases other property similar or related in service or use to the property so converted (“qualified replacement property”). Under § 1033(a)(2), qualified replacement property is treated as purchased only if, but for the provisions of § 1033(b), its unadjusted basis would be

determined under § 1012. In accordance with § 1033(a), the gain is recognized only to the extent that the amount realized upon such conversion exceeds the cost of the qualified replacement property.

Under § 61, X must include in gross income ST's \$90,000 grant payment unless another provision of the Code excludes it from income or defers recognition of the income.

X may not exclude ST's \$90,000 grant payment from gross income under the general welfare exclusion, because that exclusion is limited to individuals who receive governmental payments to help with their individual needs (*e.g.*, housing, education, and basic sustenance expenses).

X may not exclude the grant payment from gross income under § 102 because ST's intent in making the grant payments proceeds, not from charity or detached or disinterested generosity, but from the government's duty to relieve the hardship resulting from the disaster and the economic benefits it anticipates from a revitalized economy in the area of ST affected by the disaster. *See Kroon*. ST did not enact the legislation authorizing the grant program for any donative purpose.

X may not exclude the grant payment from gross income under § 139 because that exclusion applies only to individuals. Even if X's business were a sole proprietorship or the disaster were a qualified disaster under § 139, the grant payments would not qualify for exclusion from gross income under § 139 because the grant payments are not made for any of the specific purposes described in § 139(b)(1), (2), and (4).

X may not exclude the \$90,000 grant payment from gross income under § 118. The ST grant program compensates qualifying businesses for uncompensated eligible losses they incurred as a result of the disaster. Accordingly, these payments are more akin to insurance payments received for losses than contributions to capital of a corporation within the definition of § 118 and the case law. Because the \$90,000 grant payment is not excludable from gross income under § 118, the basis of the replacement equipment purchased by X is not determined under § 362(c)(2).

Under § 61, X realizes gain of \$80,000 (\$90,000 grant proceeds received less \$10,000 adjusted basis in the destroyed equipment). X must recognize the \$80,000 gain unless X elects to defer recognition of the gain under § 1033.

X may defer including in income the entire \$80,000 gain because X meets all of the requirements to defer the gain under § 1033. First, the grant payments are compensation for the involuntarily converted property. Second, X made the required election under § 1033 and, within 2 years after the close of the taxable year in which X received the ST grant payment, replaced the destroyed equipment with qualified replacement property, the basis of which would be determined under § 1012 if § 1033(b) did not apply. Third, the cost of the qualified replacement property (\$150,000) exceeds the gain realized on the conversion of the destroyed equipment into money (\$80,000). Amounts paid by X to repair damaged or destroyed property, including amounts paid for debris removal and other clean-up costs, are generally treated as amounts paid to purchase qualified replacement property.

X's basis in the replacement equipment is \$70,000 (\$150,000 cost of qualified replacement property less \$80,000 unrecognized gain on the conversion of the destroyed equipment into money). *See* § 1033(b)(2).

The ST grant program reimburses uncompensated eligible losses incurred by any qualifying business. Therefore, the grant payments are treated as compensation received for such losses under § 165. If X had properly deducted the \$10,000 adjusted basis of the equipment as a loss on a prior year federal income tax return, and the loss reduced the amount of X's tax in that year, then X would be required by § 111 and the tax benefit rule to include \$10,000 of the \$90,000 gain realized from the receipt of the ST grant in gross income, as ordinary income, on its federal income tax return for the year it received the grant. *See* § 1.165-1(d)(2)(iii). Under § 1033, X could defer including in income the remaining \$80,000 of gain (\$90,000 grant less \$0 adjusted basis in the converted property less \$10,000 recovery of the prior year deduction). In addition, X's

basis in the replacement equipment would equal \$70,000 (excess of \$150,000 cost of replacement property over \$80,000 gain not recognized).

HOLDINGS

Under the facts of this ruling:

(1) A grant that a qualifying business receives under a state's program to reimburse losses that any qualifying business incurred for damage or destruction of real and personal property on account of a disaster is not excludable from gross income

- (a) under the general welfare exclusion;
- (b) as a gift under § 102;
- (c) as a qualified disaster relief payment under § 139; or

(d) as a contribution to the capital of a corporation under § 118.

(2) A qualifying business that receives a grant payment under the state's program to reimburse losses that the qualifying business incurred for damage or destruction of real and personal property may elect to defer including in income gain realized from receipt of the grant under § 1033 to the extent the grant proceeds (or other funds in lieu of the grant proceeds) are used to timely purchase property similar or related in service or use to the destroyed or damaged property.

DRAFTING INFORMATION

The principal author of this revenue ruling is Sheldon A. Iskow of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Iskow at (202) 622-4920 (not a toll-free call).

Section 102.—Gifts and Inheritances

26 CFR 1.102-1: Gifts and inheritances.

A grant received by a business under a state program to reimburse businesses for losses incurred for damage or destruction of real and personal property on account of a disaster is not excludable from gross income as a gift under section 102 of the Code. *See* Rev. Rul. 2005-46, page 120.

Section 118.—Contributions to the Capital of a Corporation

26 CFR 1.118-1: Contributions to the capital of a corporation.

A grant received by a business under a state program to reimburse businesses for losses incurred for damage or destruction of real and personal property on account of a disaster is not excludable from gross income as a contribution to the capital of a corporation under section 118 of the Code. See Rev. Rul. 2005-46, page 120.

Section 139.—Disaster Relief Payments

A grant received by a business under a state program to reimburse businesses for losses incurred for damage or destruction of real and personal property on account of a disaster is not excludable from gross income as a qualified disaster relief payment under section 139 of the Code. See Rev. Rul. 2005-46, page 120.

Section 165.—Losses

26 CFR 1.165-1: Losses.

A taxpayer that deducted a loss under section 165 of the Code for damage or destruction of real and personal property on account of a disaster and that receives a grant under a state program to reimburse businesses for such losses may be required to include an amount in gross income. See Rev. Rul. 2005-46, page 120.

Section 472.—Last-in, First-out Inventories

26 CFR 1.472-1: Last-in, first-out inventories.

LIFO; price indexes; department stores. The May 2005 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, May 31, 2005.

Rev. Rul. 2005-45

The following Department Store Inventory Price Indexes for May 2005 were issued by the Bureau of Labor Statistics. The indexes are accepted by the Internal Revenue Service, under § 1.472-1(k) of the Income Tax Regulations and Rev. Proc. 86-46, 1986-2 C.B. 739, for appropriate application to inventories of department stores employing the retail inventory and last-in, first-out inventory methods for tax years ended on, or with reference to, May 31, 2005.

The Department Store Inventory Price Indexes are prepared on a national basis and include (a) 23 major groups of departments, (b) three special combinations of the major groups — soft goods, durable goods, and miscellaneous goods, and (c) a store total, which covers all departments, including some not listed separately, except for the following: candy, food, liquor, tobacco, and contract departments.

BUREAU OF LABOR STATISTICS, DEPARTMENT STORE
INVENTORY PRICE INDEXES BY DEPARTMENT GROUPS
(January 1941 = 100, unless otherwise noted)

Groups	May 2004	May 2005	Percent Change from May 2004 to May 2005 ¹
1. Piece Goods	483.5	487.9	0.9
2. Domestic and Draperies	542.2	533.8	-1.5
3. Women's and Children's Shoes	645.0	666.7	3.4
4. Men's Shoes	868.4	878.3	1.1
5. Infants' Wear	575.6	572.5	-0.5
6. Women's Underwear	512.2	544.1	6.2
7. Women's Hosiery	338.2	343.1	1.4
8. Women's and Girls' Accessories	567.5	594.1	4.7
9. Women's Outerwear and Girls' Wear	377.2	366.8	-2.8
10. Men's Clothing	548.4	563.9	2.8
11. Men's Furnishings	594.3	585.5	-1.5
12. Boys' Clothing and Furnishings	445.2	431.0	-3.2
13. Jewelry	905.2	892.1	-1.4
14. Notions	797.5	811.0	1.7
15. Toilet Articles and Drugs	1001.4	999.7	-0.2
16. Furniture and Bedding	613.8	606.8	-1.1
17. Floor Coverings	587.9	599.4	2.0
18. Housewares	714.8	716.6	0.3
19. Major Appliances	201.6	204.5	1.4
20. Radio and Television	42.4	39.5	-6.8
21. Recreation and Education ²	80.8	78.5	-2.8
22. Home Improvements ²	129.1	136.5	5.7
23. Automotive Accessories ²	112.1	114.6	2.2
Groups 1-15: Soft Goods	570.1	568.3	-0.3
Groups 16-20: Durable Goods	384.2	382.3	-0.5
Groups 21-23: Misc. Goods ²	93.4	93.2	-0.2

BUREAU OF LABOR STATISTICS, DEPARTMENT STORE
INVENTORY PRICE INDEXES BY DEPARTMENT GROUPS
(January 1941 = 100, unless otherwise noted)

Groups	May 2004	May 2005	Percent Change from May 2004 to May 2005 ¹
Store Total ³	503.2	501.5	-0.3

¹Absence of a minus sign before the percentage change in this column signifies a price increase.

²Indexes on a January 1986 = 100 base.

³The store total index covers all departments, including some not listed separately, except for the following: candy, food, liquor, tobacco and contract departments.

DRAFTING INFORMATION

The principal author of this revenue ruling is Michael Burkom of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Burkom at (202) 622-7924 (not a toll-free call).

Section 1033.—Involuntary Conversions

26 CFR 1.1033(a)-1: Involuntary conversion; non-recognition of gain.

Under section 1033 of the Code, a taxpayer may elect to defer including in income gain realized from the receipt of a grant under a state program to reimburse businesses for losses incurred for damage or destruction of real and personal property on account of a disaster to the extent the grant proceeds are used to timely purchase property similar or related in service or use to the destroyed or damaged property. See Rev. Rul. 2005-46, page 120.

Section 6325.—Release of Lien or Discharge of Property

Discharge of property; refund action. This ruling clarifies that, in light of amendments to sections 6325 and 7426 of the Code made by the IRS Restructuring and Reform Act of 1998, a person not liable for the underlying tax may not file a refund action under the holding of *United States v. Williams*, 514 U.S. 527 (1995).

Rev. Rul. 2005-50

ISSUES

- Whether a third party can maintain a refund action under section 1346(a)(1) of Title 28 in light of the 1998 amendments to sections 6325 and 7426 of the Internal Revenue Code (the Code)?
- Whether a judicial remedy is available to a third party who seeks discharge of a federal tax lien under section 6325(b)(2) of the Code?

FACTS

Situation 1: The Service filed a notice of federal tax lien in County A listing an amount due of \$100,000 for taxes assessed against Taxpayer. Taxpayer and Taxpayer's spouse, Person A, who is not liable for the tax assessed against Taxpayer, jointly own real property in County A. The real property is valued at \$150,000. After the notice of lien was filed, Taxpayer deeded her interest in the property to Person A pursuant to a divorce decree. Person A sought a discharge of the tax lien from the property and was informed by the Service that the value of the interest of the United States was \$100,000. Person A deposited \$100,000 with the Service, and the Service issued a certificate of discharge under section 6325(b)(4). Person A then requested the return of \$25,000 of the deposit, arguing that the tax lien attached only to Taxpayer's 50% interest in the property. The Service disagreed and declined to return any portion of the deposit. Person A did not file suit under section 7426(a)(4) within 120 days after the

certificate of discharge was issued. Within 60 days after the 120-day period expired, the Service applied the \$100,000 deposit to Taxpayer's outstanding tax liability. Two hundred days after the certificate of discharge was issued, Person A filed an administrative claim for refund. The Service did not act on the claim and, six months later, Person A filed an action in district court pursuant to 28 U.S.C. § 1346(a)(1), seeking a refund of \$25,000 of the deposited funds.

Situation 2: Same as above, except instead of depositing funds under section 6325(b)(4), Person A waived his right to make a deposit under section 6325(b)(4) under applicable Service procedures. The Service determined that the value of the lien interest of the United States was \$75,000 and Person A made a partial payment in that amount under section 6325(b)(2). The Service issued a certificate of discharge pursuant to section 6325(b)(2). Person A filed an administrative claim for refund 200 days after issuance of the certificate of discharge, challenging the Service's determination of the value of the lien interest of the United States. The Service did not act on the administrative claim and, six months later, Person A filed an action in district court seeking a refund of the \$75,000 payment.

LAW AND ANALYSIS

Section 6321 provides that if any person liable to pay any tax neglects or refuses to pay after notice and demand for payment, the amount due shall be a lien in favor of the United States on all property and rights to property, whether real or personal, belonging to that person. Sec-

tion 6322 provides that once the federal tax lien has arisen, it continues until the tax liability giving rise to the lien is paid or becomes unenforceable by reason of lapse of time. See I.R.C. § 6502 (collection after assessment). In order for the lien imposed by section 6321 to be valid against certain persons, notice must be filed by the Service in accordance with section 6323.

Section 6325(b) provides several procedures for discharging property subject to a lien imposed by section 6321. Under section 6325(b)(2)(A), the Service may issue a certificate of discharge pursuant to which the government is paid the value of its lien interest in the property to be discharged. Persons who request a certificate of discharge under section 6325(b)(2)(A) may not seek judicial review of the Service's valuation determination through a refund action under 28 U.S.C. § 1346(a)(1). See *City of Richmond v. United States*, 348 F. Supp. 2d 807, 813–14 (E.D. Ky. 2004). Persons who request a certificate of discharge under section 6325(b)(2)(A) also may not seek judicial review of the Service's valuation determination through an action for substitution of value under section 7426(a)(4).

A second discharge procedure is set forth in section 6325(b)(4), under which the owner of property subject to a federal tax lien (other than the person liable for the tax) has the right to obtain a discharge upon either depositing cash or furnishing a bond acceptable to the Service in the amount the Service has determined to be the value of the lien interest of the United States. I.R.C. § 6325(b)(4)(A). The Service must refund the amount deposited or release the bond, to the extent that it determines that the taxpayer's unsatisfied liability giving rise to the lien can be satisfied from a source other than property owned (or owned in part) by the third party, or to the extent that it determines that the value of the interest of the United States in the property is less than the Service's prior determination of value. I.R.C. § 6325(b)(4)(B). Any amount not used to satisfy the liability shall be refunded to the owner of the property. I.R.C. § 6325(b)(4)(C).

The owner of the property has 120 days after the date the certificate of discharge under section 6325(b)(4) is issued to file a substitution of value action in district court challenging the Service's determina-

tion of the value of the lien interest of the United States. I.R.C. § 7426(a)(4). If the owner of the property does not challenge the Service's determination within the 120-day period, the Service shall, within 60 days after the expiration of the 120-day period, apply the amount deposited or collect on the bond to the extent necessary to satisfy the liability secured by the lien. If the owner successfully challenges the Service's determination of the value of the lien interest of the United States, the court shall enter judgment ordering a refund of the amount deposited or a release of the bond to the extent that the amount of the deposit or bond exceeds the value of the lien interest determined by the court. I.R.C. § 7426(b)(5).

Sections 6325(b)(4) and 7426(a)(4) were enacted as part of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105–206, 112 Stat. 685, in response to the inadequate remedy problem identified by the Supreme Court in *United States v. Williams*, 514 U.S. 527 (1995). See S. Rep. No. 105–174, at 54–55 (1998), reprinted in 1998–3 C.B. 537, 590–91. In *Williams*, the Court held that a third party who paid another person's tax liability under protest had standing to bring a refund action under 28 U.S.C. § 1346(a)(1). The Court noted that the third party “had no realistic alternative to payment of a tax she did not owe, and we do not believe that Congress intended to leave parties in respondent's position without a remedy.” 514 U.S. at 529 (footnote omitted).

Sections 6325(b)(4) and 7426(a)(4) provide the remedy that was unavailable to the third party in *Williams*. Section 7426(a)(4) specifically states that “[n]o other action may be brought by such person for such a determination.” Additionally, section 7426(a)(4) imposes a strict 120-day time limit for filing a substitution of value action in district court challenging the Service's determination of value. Permitting a third party to bring another action, such as a refund suit, would conflict with the 120-day limit Congress imposed on actions brought under section 7426(a)(4). See *City of Richmond*, 348 F. Supp. 2d at 813–14.

The cause of action Congress provided in section 7426(a)(4) is limited to cases in which a third party has received a certificate of discharge from the Service under

section 6325(b)(4). *Wilson v. United States*, 2004 WL 790220, at *2, 93 AFTR 2d 2004–1390 (E.D. Tenn. Feb. 24, 2004) (“On its face, 26 U.S.C. § 7426(a)(4) limits itself to permitting claims pursuant to 6325(b)(4).”). Courts lack subject matter jurisdiction over cases brought challenging the Service's valuation determination if the certificate of discharge was sought under section 6325(b)(2), rather than section 6325(b)(4). *Wilson*, 2004 WL 790220, at *2.

HOLDINGS

Situation 1. Person A cannot maintain a refund action under 28 U.S.C. § 1346(a). If a discharge is obtained under section 6325(b)(4), the owner of the property has 120 days after the date the certificate of discharge was issued to bring a judicial action under section 7426(a)(4). Person A did not file a timely suit under section 7426(a)(4), and no other action may be brought.

Situation 2. Person A cannot maintain a refund action under 28 U.S.C. § 1346(a) or an action for substitution of value under section 7426(a)(4). A substitution of value action is available only to a third party who seeks a discharge and makes a deposit or furnishes a bond pursuant to section 6325(b)(4).

DRAFTING INFORMATION

The principal author of this revenue ruling is Deborah Grogan of the Office of Associate Chief Counsel (Procedure and Administration). For further information regarding this revenue ruling, contact Ms. Grogan at (202) 622–3610 (not a toll-free call).

Section 7426.—Civil Actions by Persons Other Than Taxpayers

A revenue ruling clarifies that, in light of amendments to sections 6325 and 7426 of the Code made by the IRS Restructuring and Reform Act of 1998, a person not liable for the underlying tax may not file a refund action. See Rev. Rul. 2005–50, page 124.

26 CFR 301.7426–1(a)(1): Wrongful levy.

Judicial remedy for wrongful levies. This ruling clarifies that a wrongful levy action under section 7426 of the Code is

the only remedy available to a third person whose property was levied to satisfy the tax debt of another.

Rev. Rul. 2005-49

ISSUE

Whether a wrongful levy suit is the only judicial remedy for a person asserting that its property was wrongfully levied upon by the Internal Revenue Service (the Service) to satisfy the tax debt of another?

FACTS

On June 1, 2002, the Service assessed taxes against X. The Service sent notice and demand for payment to X, who refused to pay. The Service discovers and identifies a bank account that it believes belongs to X, but that is held in the name of Y. Y is not liable for the taxes assessed against X. After providing notification of collection due process rights to X, on January 2, 2003, the Service served a levy on the bank requesting that it turn over all property belonging to X, including the account held in the name of Y. In response to the levy, the bank turned over to the Service cash from the account that was held in the name of Y. On October 15, 2003, Y filed an action in district court seeking a return of its property. In its complaint, Y asserted a wrongful levy claim under section 7426(a)(1) and, in the alternative, asserted a claim under 28 U.S.C. § 1346(a)(1) for refund of taxes erroneously or illegally collected.

LAW AND ANALYSIS

If a person liable to pay any tax fails to pay the tax after notice and demand for payment and notification of collection due process rights under section 6330, pursuant to section 6331, the Service may collect such tax by levy upon all property or rights to property belonging to such person. A person other than the person against whom the tax is assessed (a third person) claiming an interest in levied property may bring a wrongful levy suit under section 7426(a)(1). A third person also may file an administrative request under section 6343(b) and section 301.6343-2(b) of the

Regulations on Procedure and Administration for the return of property wrongfully levied upon. An administrative request under section 6343 is not a prerequisite to filing suit for wrongful levy under section 7426. Unless a timely administrative request for the return of wrongfully levied property is filed with the Service, “no suit or proceeding under section 7426 shall be begun after the expiration of 9 months from the date of the levy. . . .” I.R.C. § 6532(c)(1).

A taxpayer may file a civil action under 28 U.S.C. § 1346(a)(1) for the refund of taxes erroneously or illegally collected. Under section 7422(a), no suit for the recovery of taxes shall be made before an administrative claim for refund is filed with the Secretary in accordance with section 6511 and the regulations thereunder. No suit may be filed for six months after an administrative claim is filed, unless the Secretary acts earlier to deny the claim. In all events, no suit may be filed later than two years from the date the Secretary’s notice of disallowance of the claim is mailed. I.R.C. § 6532(a).

Courts have held that the exclusive judicial remedy for a third person claiming an interest in property levied upon by the Service is a wrongful levy suit under section 7426. *See, e.g., Dahn v. United States*, 127 F.3d 1249 (10th Cir. 1997); *EC Term of Years Trust v. United States*, 93 A.F.T.R.2d 2004-2005, 2004 WL 911307 (W.D. Tex. Apr. 23, 2004). The Ninth Circuit held to the contrary in *WWSM Investors v. United States*, 64 F.3d 456 (9th Cir. 1995). *WWSM* was, however, incorrectly decided. In *WWSM*, the Ninth Circuit held that a third person claiming an interest in property levied upon by the Service may file a refund suit after the nine-month limitations period for filing a wrongful levy suit has run. The court relied on *United States v. Williams*, 514 U.S. 527 (1995), which held that 28 U.S.C. § 1346(a)(1) permits a refund suit when a third person pays a tax under protest to discharge a tax lien from its property. The Supreme Court’s opinion in *Williams* was premised on a finding that in the absence of a refund suit, the third person would have no meaningful judicial remedy. The Tenth

Circuit, in *Dahn*, disagreed with *WWSM* and distinguished *Williams* as addressing only the unavailability of a wrongful levy or any other remedy to the third person whose property was encumbered by a federal tax lien. *Dahn*, 127 F.3d at 1253.

The Service agrees with and will follow the holding in *Dahn* that *Williams* should be limited to the unique facts of that case and did not overturn the established principle that section 7426 is the exclusive remedy in the case of a wrongful levy. The rationale in *Williams* is inapplicable to wrongful levy suits because Congress created an exclusive remedy under section 7426 for third persons claiming an interest in property levied upon by the Service. Moreover, because Congress has now provided a judicial remedy for third persons seeking to challenge the value of a federal tax lien encumbering their property, *Williams* would appear to have limited applicability. *See City of Richmond v. United States*, 348 F. Supp. 2d 807, 813-18 (E.D. Ky. 2004) (citing section 6325(b)(4) (third person may request a certificate of discharge in exchange for a deposit or bond) and section 7426(a)(4) (cause of action for third persons requesting certificate of discharge under section 6325(b)(4))); *see also* IRS Restructuring and Reform Act of 1998, Pub. L. No. 105-206, § 3106, 112 Stat. 685 (1998) (enacting section 6325(b)(4) and 7426(a)(4)).

HOLDING

Y’s only judicial remedy is to file a wrongful levy suit under section 7426(a). Because Y failed to file a wrongful levy suit within nine months from the date of the levy, the court lacks jurisdiction over Y’s suit.

DRAFTING INFORMATION

The principal author of this revenue ruling is Glenn Thomas of the Office of Associate Chief Counsel, Procedure and Administration (Collection, Bankruptcy & Summonses Division). For further information regarding this revenue ruling, contact Branch 1 of the Collection, Bankruptcy and Summonses Division at (202) 622-3610 (not a toll-free call).

Part III. Administrative, Procedural, and Miscellaneous

Weighted Average Interest Rates Update

Notice 2005-54

This notice provides guidance as to the corporate bond weighted average interest rate and the permissible range of interest rates specified under § 412(b)(5)(B)(ii)(II) of the Internal Revenue Code. In addition, it provides guidance as to the interest rate on 30-year Treasury securities under § 417(e)(3)(A)(ii)(II), and the weighted average interest rate and permissible ranges of interest rates based on the 30-year Treasury securities rate.

CORPORATE BOND WEIGHTED AVERAGE INTEREST RATE

Sections 412(b)(5)(B)(ii) and 412(l)(7)(C)(i), as amended by the Pension Funding Equity Act of 2004, provide that the interest rates used to calculate current liability and to determine the required contribution under § 412(l) for plan years beginning in 2004 or 2005 must be within a permissible range based on the weighted average of the rates of interest on amounts invested conservatively in long term investment grade corporate bonds during the 4-year period ending on the last day before the beginning of the plan year.

Notice 2004-34, 2004-1 C.B. 848, provides guidelines for determining the corporate bond weighted average interest rate

and the resulting permissible range of interest rates used to calculate current liability. That notice establishes that the corporate bond weighted average is based on the monthly composite corporate bond rate derived from designated corporate bond indices.

The composite corporate bond rate for June 2005 is 5.26 percent. Pursuant to Notice 2004-34, the Service has determined this rate as the average of the monthly yields for the included corporate bond indices for that month.

The following corporate bond weighted average interest rate was determined for plan years beginning in the month shown below.

Month	For Plan Years Beginning in: Year	Corporate Bond Weighted Average	90% to 100% Permissible Range
July	2005	5.90	5.31 to 5.90

30-YEAR TREASURY SECURITIES WEIGHTED AVERAGE INTEREST RATE

Section 417(e)(3)(A)(ii)(II) defines the applicable interest rate, which must be used for purposes of determining the minimum present value of a participant's benefit under § 417(e)(1) and (2), as the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or such other time as the Secretary may by regulations prescribe. Section 1.417(e)-1(d)(3) of the Income

Tax Regulations provides that the applicable interest rate for a month is the annual interest rate on 30-year Treasury securities as specified by the Commissioner for that month in revenue rulings, notices or other guidance published in the Internal Revenue Bulletin.

Section 404(a)(1) of the Code, as amended by the Pension Funding Equity Act of 2004, permits an employer to elect to disregard subclause (II) of § 412(b)(5)(B)(ii) to determine the maximum amount of the deduction allowed under § 404(a)(1).

imum amount of the deduction allowed under § 404(a)(1).

The rate of interest on 30-year Treasury securities for June 2005 is 4.29 percent. Pursuant to Notice 2002-26, 2002-1 C.B. 743, the Service has determined this rate as the monthly average of the daily determination of yield on the 30-year Treasury bond maturing in February 2031.

The following 30-year Treasury rates were determined for the plan years beginning in the month shown below.

Month	For Plan Years Beginning in: Year	30-Year Treasury Weighted Average	90% to 105% Permissible Range	90% to 110% Permissible Range
July	2005	4.97	4.47 to 5.21	4.47 to 5.46

Drafting Information

The principal authors of this notice are Paul Stern and Tony Montanaro of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice,

please contact the Employee Plans' taxpayer assistance telephone service at 1-877-829-5500 (a toll-free number), between the hours of 8:00 a.m. and 6:30 p.m. Eastern time, Monday through Friday. Mr. Stern may be reached at

1-202-283-9703. Mr. Montanaro may be reached at 1-202-283-9714. The telephone numbers in the preceding sentences are not toll-free.

IMPORTANT NOTES:

IRS/ECC-MTB now offers an Internet connection at <http://fire.irs.gov> for electronic filing. The FIRE System will be down from Dec. 23, 2005 through Jan. 3, 2006 for upgrading. It is not available during this time for submissions.

Beginning in Tax Year 2006, processing year 2007, IRS/ECC-MTB will no longer accept 3 1/2-inch diskettes for filing information returns.

26 CFR 601.602: Tax forms and instructions.

**Specifications for Filing Form W-4, Employee's Withholding Allowance Certificate,
Electronically or Magnetically**

Rev. Proc. 2005-42

TABLE OF CONTENTS

PART A. GENERAL

SEC. 1. PURPOSE	129
SEC. 2. NATURE OF CHANGES	129
SEC. 3. WHERE TO FILE AND HOW TO CONTACT THE IRS, ENTERPRISE COMPUTING CENTER — MARTINSBURG	129
SEC. 4. FILING REQUIREMENTS	130
SEC. 5. FORM 4419, APPLICATION FOR FILING INFORMATION RETURNS ELECTRONICALLY/MAGNETICALLY	130
SEC. 6. FILING FORMS W-4 ELECTRONICALLY/MAGNETICALLY	131
SEC. 7. REPLACEMENT FILES	131
SEC. 8. STATE ABBREVIATIONS	132
SEC. 9. DEFINITION OF TERMS	132

PART B. ELECTRONIC FILING SPECIFICATIONS

SEC. 1. GENERAL	133
SEC. 2. ADVANTAGES OF FILING ELECTRONICALLY	133
SEC. 3. ELECTRONIC FILING APPROVAL PROCEDURE	133
SEC. 4. ELECTRONIC SUBMISSIONS	133
SEC. 5. PIN REQUIREMENTS	134
SEC. 6. ELECTRONIC FILING SPECIFICATIONS	134
SEC. 7. CONNECTING TO THE FIRE SYSTEM	134
SEC. 8. COMMON PROBLEMS AND QUESTIONS ASSOCIATED WITH ELECTRONIC FILING	136

PART C. MAGNETIC MEDIA SPECIFICATIONS

SEC. 1. GENERAL	137
SEC. 2. TAPE CARTRIDGE SPECIFICATIONS	137

PART A. GENERAL

Sec. 1. Purpose

.01 The purpose of this revenue procedure is to update Rev. Proc. 2001-16, 2001-4 I.R.B. 376, IRS Pub. 1245 Rev. 02-2003, which outlines the requirements and conditions for submitting certain Forms W-4, Employee’s Withholding Allowance Certificate, electronically or magnetically to the Internal Revenue Service (IRS), Enterprise Computing Center — Martinsburg (ECC-MTB).

.02 Revenue procedures are generally revised to reflect legislative, regulatory and form changes. Comments concerning this revenue procedure or suggestions for making it more helpful can be addressed to Internal Revenue Service, Enterprise Computing Center — Martinsburg, ATTN: Information Reporting Program, 230 Murall Drive, Kearneysville, WV 25430.

.03 The following revenue procedures and publications provide more detailed filing procedures for certain information returns and can be obtained on our web site www.irs.gov or by calling 1-800-829-3676:

- (a) Instructions for Forms 1099, 1098, 5498, and W-2G providing specific instructions on completing and submitting information returns to IRS.
- (b) Rev. Proc. 84-33, 1984-1 C.B. 502, regarding the optional method for agents to report and deposit backup withholding.
- (c) Publication 1179, Rules and Specifications for Substitute Forms 1096, 1098, 1099 Series, 5498, and W-2G.
- (d) Publication 1220, Specifications for Filing Forms 1098, 1099, 5498, and W-2G Electronically or Magnetically.
- (e) Publication 1239, Specifications for Filing Form 8027, Employer’s Annual Information Return of Tip Income and Allocated Tips, Electronically or Magnetically.

.04 Refer to Part A, Sec. 9, for definitions of terms used in this publication.

Sec. 2. Nature of Changes

Numerous editorial changes have been made to this revenue procedure. Please read the publication carefully and in its entirety before attempting to prepare your electronic/magnetic file for submission. Major changes are italicized. The changes are as follows:

.01 Employers are no longer required to routinely submit Forms W-4 to the Service. However, Forms W-4 are still subject to review. Employers may be directed (in a written notice or in future published guidance) to send certain Forms W-4 to the Service.

.02 IRS/ECC-MTB no longer accepts 8mm, 4mm, Quarter-Inch Cartridges (QIC) for the processing of information returns. Filing with 3 1/2-inch diskettes will be discontinued for Tax Year 2006. While IRS/ECC-MTB will accept 3 1/2-inch diskette filing for Tax Year 2005, specifications were deleted from this revision since this publication is revised infrequently. Filers should consult previous revisions for diskette specifications if you are planning to submit 3 1/2-inch diskettes this year.

.03 The Martinsburg Computing Center’s name was changed to the Enterprise Computing Center — Martinsburg (ECC-MTB).

.04 The title of Publication 1245 is changed to Specifications for Filing Form W-4 Employee’s Withholding Allowance Certificate, Electronically or Magnetically.

.05 Part B, Electronic Filing Specifications, was completely revised. Please read carefully. We now offer an internet connection at <http://fire.irs.gov>.

.06 The organization of information in Publication 1245 was changed for emphasis and clarity. Part D, Miscellaneous Information, was deleted since this information is found in Part A, Sec. 3. Part B is now Electronic Filing Specifications, Part C is Magnetic Media Specifications.

.07 Additional editorial changes of a clarifying nature have been made throughout this publication. Please read the entire publication carefully.

Sec. 3. Where to File and How to Contact the IRS, Enterprise Computing Center — Martinsburg

.01 All Forms W-4 filed electronically or magnetically are processed at IRS/ECC-MTB. Magnetic media containing Forms W-4 is to be sent to the following address:

IRS-Enterprise Computing Center — Martinsburg
 Information Reporting Program
 230 Murall Drive
 Kearneysville WV 25430

.02 Requests for paper forms and publications can be made by calling the “Forms Only Number” listed in your local telephone directory or by calling the IRS toll-free number **1-800-TAX-FORM (1-800-829-3676)**.

.03 Questions pertaining to electronic/magnetic media filing of Forms W-2 **must** be directed to the Social Security Administration (SSA). Filers can call 1-800-SSA-6270 to obtain the phone number of the SSA Employer Service Liaison Officer for their area.

.04 A taxpayer or authorized representative may request a copy of a tax return or a Form W-2 filed with a return by submitting Form 4506, Request for Copy of Tax Return, to IRS. This form may be obtained by calling **1-800-TAX-FORM (1-800-829-3676)**.

.05 The Information Reporting Program Customer Service Section (IRP/CSS), located at IRS/ECC-MTB, answers electronic/magnetic media, paper filing, and tax law questions from the payer community relating to the correct preparation and filing of business information returns (Forms 1096, 1098, 1099, 5498, 8027, W-2G, and W-4). IRP/CSS also answers questions relating to the electronic/magnetic media filing of Forms 1042-S and to the tax law criteria and paper filing instructions for Forms W-2 and W-3. Inquiries dealing with backup withholding and reasonable cause requirements due to missing and incorrect taxpayer identification numbers are also addressed by IRP/CSS. Assistance is available year-round to payers, transmitters, and employers nationwide, Monday through Friday, 8:30 a.m. to 4:30 p.m. Eastern time, by calling toll-free **1-866-455-7438** or via email at mccirp@irs.gov. **Do not include SSNs or EINs in emails since this is not a secure line.** The Telecommunications Device for the Deaf (TDD) toll number is **304-267-3367**. Call as soon as questions arise to avoid the busy filing seasons at the end of January and February. Recipients of information returns (payees) should continue to contact 1-800-829-1040 with any questions on how to report the information returns data on their tax returns.

.06 Telephone inquiries may be made Monday through Friday between 8:30 a.m. and 4:30 p.m. Eastern time. The telephone numbers for electronic/magnetic media inquiries or electronic submissions are:

Information Reporting Program Customer Service Section

TOLL-FREE 1-866-455-7438 or outside the U.S. 1-304-263-8700

email at mccirp@irs.gov

**304-267-3367 — TDD
(Telecommunication Device for the Deaf)**

**304-264-5602 — Fax Machine
Electronic Filing — FIRE system**

<http://fire.irs.gov>

TO OBTAIN FORMS:

1-800-TAX-FORM (1-800-829-3676)

www.irs.gov — IRS Website access to forms

Sec. 4. Filing Requirements

.01 *On April 14, 2005, the IRS issued temporary regulations (Treasury Decision 9196, 2005-19 I.R.B. 1000) that eliminated the requirement that employers routinely send copies of these potentially questionable Forms W-4 to the IRS. However, Forms W-4 are still subject to review. Employers may be directed (in a written notice or in future published guidance) to send certain Forms W-4 to the Service. These temporary regulations provide rules for the submission of copies of certain Forms W-4 to the IRS, the notification provided to the employer and the employee of the maximum number of exemptions permitted (“lock-in letters”), and the use of substitute forms. See T.D. 9196 at <http://www.irs.gov/pub/irs-irbs/irb05-19.pdf>.*

.02 When instructed by IRS, employers may submit all information electronically or magnetically; a combination of electronic/magnetic files and paper documents is acceptable, provided there are no duplications or omissions of documents.

.03 Electronic/magnetic reporting to IRS eliminates the need to submit copies of paper Forms W-4.

.04 If part of the Forms W-4 are reported electronically/magnetically and the remainder are reported on paper forms, the paper Forms W-4 must be mailed to the Cincinnati Service Center, Cincinnati, OH 45999.

Sec. 5. Form 4419, Application for Filing Information Returns Electronically/Magnetically

.01 Employers, or their transmitters, who wish to file Forms W-4 electronically or magnetically, must first submit a Form 4419, Application for Filing Information Returns Electronically/Magnetically. Instructions for its completion are on the reverse of the form.

.02 Electronic/magnetic files may not be submitted to IRS/ECC-MTB until authorization to file is received by the employer. Requests will be approved or disapproved within 30 days of receipt.

.03 Once authorization to file has been granted, a five-character alpha/numeric Transmitter Control Code (TCC) will be assigned. Approval will continue in effect in succeeding years provided the requirements of the current revenue procedure are met. Although a TCC may have already been assigned to a transmitter for the filing of other information returns, the Form W-4 requires a separate TCC. This TCC must appear on all transmittal forms submitted with electronic/magnetic files, as well as other correspondence. The TCC must also be coded into positions 319-323 of the Form W-4 record. (See Part C, Sec. 3.)

.04 A new application (Form 4419) is required if:

- (a) You discontinue filing electronically/magnetically for two years, in which case your TCC may have been reassigned. You may call IRS/ECC-MTB to verify if your TCC is still valid.
- (b) You previously used a service bureau with its own TCC, but you now have computer equipment compatible with that of IRS, in which case you must request your own TCC.

Sec. 6. Filing Forms W-4 Electronically/Magnetically

.01 Employers who choose to file electronically/magnetically must send a Form 6466, Transmittal of Forms W-4 Reported Electronically/Magnetically, to the IRS/ECC-MTB as prescribed in Part A, Sec. 3.

.02 Form 6466 **MUST** be signed by the employer or the transmitter, service bureau, paying agent, or disbursing agent (all hereafter referred to as agent), on behalf of the employer if the agent has the authority to sign the affidavit under an agency agreement (either oral, written, or implied) that is valid under state law and adds the caption "FOR: (name of employer)."

.03 Although a duly authorized agent signs the affidavit, the employer(s) is held responsible for the accuracy of the Forms W-4 filed electronically or magnetically.

.04 DO NOT REPORT THE SAME INFORMATION ON PAPER DOCUMENTS THAT YOU REPORT ELECTRONICALLY/MAGNETICALLY. If you report part of your Forms W-4 on paper and part electronically or magnetically, be sure that duplicate information is not included on both.

.05 Before submitting your electronic/magnetic file, include the following:

- (a) A signed Form 6466, Transmittal of Forms W-4 Reported Electronically/Magnetically along with a Form 6467, Transmittal of Forms W-4 Reported Electronically/Magnetically (Continuation), if you submit data for multiple employers. These forms must be mailed or faxed the same day electronic files are submitted.
- (b) Your media (diskette or cartridge) with an external identifying label. Notice 1027 describes the information which should be included on this self-prepared label.
- (c) On the outside of the shipping container, affix the label IRB Special Projects.

.06 IRS/ECC-MTB will not return filers' magnetic media after it has been successfully processed. Should filers wish to know if their media was received by IRS/ECC-MTB, a delivery service that provides certification of delivery is recommended.

.07 IRS cannot accept any Collect-On-Delivery (COD) or Charged-to-IRS shipments of reportable tax information that an individual or organization is legally required to file. Because of the high volume of data received and shipping cost involved, special shipping containers will not be returned.

Sec. 7. Replacement Files

THE ELECTRONIC/MAGNETIC MEDIA SPECIFICATIONS CONTAINED IN PART B AND C OF THIS REVENUE PROCEDURE MUST BE STRICTLY ADHERED TO. If ECC-MTB cannot process your files, we will request replacement files. Replacement files must be submitted to IRS/ECC-MTB within 45 days of the date of the enclosed letter. The media should be identified as replacement data by writing, typing or printing "Magnetic Media Replacement" on the external label of the magnetic media and marking the replacement box on the Form 6466. If filing electronically, you should choose replacement when asked for the type of submission to identify a replacement file before transmission begins.

Sec. 8. State Abbreviations

.01 The following state and U.S. territory abbreviations are to be used when developing the state code portion of address fields.

State	Code	State	Code	State	Code
Alabama	AL	Kentucky	KY	No. Mariana Islands	MP
Alaska	AK	Louisiana	LA	Ohio	OH
American Samoa	AS	Maine	ME	Oklahoma	OK
Arizona	AZ	Marshall Islands	MH	Oregon	OR
Arkansas	AR	Maryland	MD	Pennsylvania	PA
California	CA	Massachusetts	MA	Puerto Rico	PR
Colorado	CO	Michigan	MI	Rhode Island	RI
Connecticut	CT	Minnesota	MN	South Carolina	SC
Delaware	DE	Mississippi	MS	South Dakota	SD
District of Columbia	DC	Missouri	MO	Tennessee	TN
Federated States of Micronesia	FM	Montana	MT	Texas	TX
Florida	FL	Nebraska	NE	Utah	UT
Georgia	GA	Nevada	NV	Vermont	VT
Guam	GU	New Hampshire	NH	Virginia	VA
Hawaii	HI	New Jersey	NJ	(U.S.) Virgin Islands	VI
Idaho	ID	New Mexico	NM	Washington	WA
Illinois	IL	New York	NY	West Virginia	WV
Indiana	IN	North Carolina	NC	Wisconsin	WI
Iowa	IA	North Dakota	ND	Wyoming	WY
Kansas	KS				

.02 Filers must adhere to the city, state, and ZIP Code format for U.S. addresses. This also includes American Samoa, Federated States of Micronesia, Guam, Marshall Islands, Northern Mariana Islands, Puerto Rico, and the U. S. Virgin Islands.

Sec. 9. Definition of Terms

Term	Definition
Employer	Generally, an employer is a person or organization for whom a worker performs a service as an employee. The employer has the right to direct and control the worker. A person or organization paying wages to a former employee after the work ends is also considered an employer.
Employee	One who performs services for an employer.
EIN	Employer Identification Number that has been assigned to the employer by IRS.
File	For purposes of this procedure, a file consists of all electronic/magnetic records submitted by an employer or transmitter.
Special Character	Any character that is not a numeric, an alpha or a blank.
Social Security Number (SSN)	Social Security Number (SSN) that has been assigned to the employee by the Social Security Administration.
Transmitter	Person or organization preparing and/or submitting electronic/magnetic file(s).
Transmitter Control Code (TCC)	A five-character alpha/numeric number assigned by IRS to the transmitter prior to actual filing electronically/magnetically. This number is inserted in Positions 319–323 of your files and must be present before the file can be processed. An application Form 4419 must be filed with IRS to receive this number.

PART B. ELECTRONIC FILING SPECIFICATIONS

Note: The FIRE System is now on the Internet at <http://fire.irs.gov>. It is no longer a dial-up connection.

Sec. 1. General

.01 Electronic filing of Forms W-4 information returns, originals and replacements, is offered as an alternative to magnetic media (tape cartridge or diskette) or paper filing. If the original file was sent magnetically, but IRS/ECC-MTB has requested a replacement file, the replacement may be transmitted electronically. Also, if the original file was submitted via magnetic media, any corrections may be transmitted electronically.

.02 All electronic filing of information returns are received at IRS/ECC-MTB via the FIRE (Filing Information Returns Electronically) System. To connect to the FIRE System, point your browser to <http://fire.irs.gov>. The system is designed to support the electronic filing of information returns only.

.03 The electronic filing of information returns is not affiliated with any other IRS electronic filing programs. Filers must obtain separate approval to participate in each of them. Only inquiries concerning electronic filing of information returns should be directed to IRS/ECC-MTB.

.04 Files submitted to IRS/ECC-MTB electronically must be in standard ASCII code. Do not send magnetic media or paper forms with the same information as electronically submitted files. This would create duplicate reporting.

.05 The record format is the same for both electronically or magnetically filed records. See Part C, Magnetic Media Specifications.

Sec. 2. Advantages of Filing Electronically

Some of the advantages of filing electronically are:

- (1) Security – Secure Socket Layer (SSL) 128-bit encryption.
- (2) Results available within 20 business days regarding the acceptability of the data transmitted. It is the filer's responsibility to log into the system and check results.
- (3) Better customer service due to on-line availability of transmitter's files for research purposes.

Sec. 3. Electronic Filing Approval Procedure

.01 Filers must obtain a Transmitter Control Code (TCC) prior to submitting files electronically. Filers who currently have a TCC for magnetic media filing for Form W-4 may use their assigned TCC for electronic filing. Refer to Part A, Sec. 5, for information on how to obtain a TCC.

.02 Once a TCC is obtained, electronic filers assign their own user ID, password and PIN (Personal Identification Number) and do not need prior or special approval. See Part B, Sec. 5, for more information on the PIN.

.03 If a filer is submitting files for more than one TCC, it is not necessary to create a separate logon and password for each TCC.

.04 For all passwords, it is the user's responsibility to remember the password and not allow the password to be compromised. Passwords are user assigned at first logon and must be 8 alpha/numerics containing at least 1 uppercase, 1 lowercase, and 1 numeric. However, filers who forget their password or PIN, can call **toll-free 1-866-455-7438** for assistance. The FIRE System may require users to change their passwords on a yearly basis.

Sec. 4. Electronic Submissions

.01 Electronically filed information may be submitted to IRS/ECC-MTB 24 hours a day, 7 days a week. Technical assistance will be available Monday through Friday between 8:30 a.m. and 4:30 p.m. Eastern time by calling **toll-free 1-866-455-7438**.

.02 **The FIRE System will be down from December 23, 2005 through January 3, 2006.** This allows IRS/ECC-MTB to update its system to reflect current year changes.

.03 If you are sending files larger than 10,000 records electronically, data compression is encouraged. If you are considering sending files larger than 5 million records, please contact IRS/ECC-MTB for specifics. WinZip and PKZip are the only acceptable compression packages. IRS/ECC-MTB cannot accept self-extracting zip files or compressed files containing multiple files. The time required to transmit information returns electronically will vary depending upon the type of connection to the internet and if data compression is used. **The time required to transmit a file can be reduced by as much as 95 percent by using compression.**

.04 Transmitters may create files using self assigned files name(s). Files submitted electronically will be assigned a new unique file name by the FIRE System. The filename assigned by the FIRE System will consist of submission type (ORIG [original], CORR [correction], and REPL [replacement]), the filer's TCC and a four digit number sequence. The sequence number will be incremented for every file sent. For example, if it is your first original file for the calendar year and your TCC is 44444, the IRS assigned filename would be ORIG.44444.0001. **Record the filename.** This information will be needed by ECC-MTB to identify the file, if assistance is required.

.05 If a file was transmitted timely and is bad, the filer will have up to 60 days from the day the file was sent to transmit an acceptable file. This only applies to files originally submitted electronically.

.06 The following definitions have been provided to help distinguish between a correction and a replacement:

- A **correction** is an information return submitted by the transmitter to correct an information return that was previously submitted to and successfully processed by IRS/ECC-MTB, but contained erroneous information. (See Note.)

Note: Corrections should only be made to forms that have been submitted incorrectly, not the entire file.

- A **replacement** is an information return file sent by the filer because the CHECK FILE STATUS option on the FIRE System indicated the original file was bad. After the necessary changes have been made, the file must be transmitted through the FIRE System. (See Note.)

Note: Filers should never transmit anything to IRS/ECC-MTB as a “Replacement” file unless the CHECK FILE STATUS option on the FIRE System indicates the file is bad.

.07 The TCC in the Transmitter “T” Record must be the TCC used to transmit the file; otherwise, the file will be considered an error.

Sec. 5. PIN Requirements

.01 Filers will be prompted to create a PIN consisting of 10 numeric characters when establishing their initial logon name and password.

.02 The PIN is required each time an ORIGINAL, CORRECTION, or REPLACEMENT file is sent electronically and is permission to release the file. It is not needed for a TEST file. An authorized agent may enter their PIN, however, the payer is responsible for the accuracy of the returns. If you forget your PIN, please call toll-free 1-866-455-7438 for assistance.

Sec. 6. Electronic Filing Specifications

.01 The FIRE System is designed exclusively for the filing of Forms 1042-S, 1098, 1099, 5498, 8027, W-2G and W-4.

.02 A transmitter must have a TCC (see Part A, Sec. 5) before a file can be transmitted. A TCC assigned for magnetic media filing of Forms W-4 should also be used for electronic filing.

.03 The results of the electronic transmission will be available in the CHECK FILE STATUS area of the FIRE System within 20 business days. It is the filer’s responsibility to verify the acceptability of files submitted by selecting the CHECK FILE STATUS option.

Sec. 7. Connecting to the FIRE System

.01 Point your browser to <http://fire.irs.gov> to connect to the FIRE System.

.02 When running Norton Internet Security or similar software, you may need to disable this feature if your file transfer does not complete properly.

.03 Before connecting, have your TCC and EIN available.

.04 Your browser must support SSL 128-bit encryption.

.05 Your browser must be set to receive “cookies”. Cookies are used to preserve your User ID status.

First time connection to The FIRE System (If you have logged on previously, skip to Subsequent Connections to the FIRE System.)

Click “*Create New Account*”.

Fill out the registration form and click “*Submit*”.

Enter your *User ID* (most users logon with their first and last name).

Enter and verify your *password* (the password is user assigned and must be 8 alpha/numerics, containing at least 1 uppercase, 1 lowercase and 1 numeric). FIRE may require you to change the password once a year.

Click “*Create*”.

If you receive the message “**Account Created**”, click “*OK*”.

Enter and verify your 10-digit self-assigned PIN (Personal Identification Number).

Click “*Submit*”.

If you receive the message “**Your PIN has been successfully created!**”, click “*OK*”.

Read the bulletin(s) and/or click “*Start the FIRE application*”.

Subsequent connections to The FIRE System

Click "**Log On**".

Enter your **User ID** (most users logon with their first and last name).

Enter your **password** (the password is user assigned and is case sensitive).

Uploading your file to the FIRE System

At Menu Options:

Click "**Send Information Returns**".

Enter your **TCC**:

Enter your **EIN**:

Click "**Submit**".

The system will then display the company name, address, city, state, ZIP code, phone number, contact and email address. This information will be used to contact or send correspondence (if necessary) regarding this transmission. Update as appropriate and/or Click "**Accept**".

Click one of the following:

Original File

Correction File

Replacement File (if you select this option, select one of the following):

NEW FIRE Replacement (file was originally transmitted on this system)

Click the file to be replaced.

Magnetic Media Replacement

Enter the alpha character from Form 9267, Media Tracking Slip, that was sent with the request for replacement file. Click "**Submit**".

Enter your 10-digit PIN.

Click "**Submit**".

Click "**Browse**" to locate the file and open it.

Click "**Upload**".

When the upload is complete, the screen will display the total bytes received and tell you the name of the file you just uploaded.

If you have more files to upload for that TCC:

Click "**File Another?**"; otherwise,

Click "**Main Menu**".

It is your responsibility to check the acceptability of your file; therefore, be sure to check back into the system in 20 business days using the CHECK FILE STATUS option.

Checking your FILE STATUS

At the Main Menu:

Click "**Check File Status**".

Enter your **TCC**:

Enter your **EIN**:

Click "**Search**".

Checking your FILE STATUS

If “Results” indicate:

“*Good*” — File has been released to our mainline processing.

“*Bad*” — Correct the errors and timely resubmit the file as a “replacement”.

“*Not yet processed*” — File has been received, but we do not have results available yet. Please check back in a few days.

Click on the desired file for a detailed report of your transmission.

When you are finished, click on **Main Menu**.

Click “*Log Out*”.

Close your Web Browser.

Sec. 8. Common Problems and Questions Associated with Electronic Filing

.01 The following are the major errors associated with electronic filing:

NON-FORMAT ERRORS

1. Transmitter does not check the FIRE System to determine file acceptability.

The results of your file transfer are posted to the FIRE System within 20 business days. It is your responsibility to verify file acceptability and, if the file contains errors, you can get an online listing of the errors. Date received and number of payee records are also displayed.

2. Incorrect file is not replaced timely.

If your file is bad, correct the file and timely resubmit as a replacement.

3. Transmitter compresses several files into one.

Only compress one file at a time. For example, if you have 10 uncompressed files to send, compress each file separately and send 10 separate compressed files.

4. Transmitter sends a file and CHECK FILE STATUS indicates that the file is good, but the transmitter wants to send a replacement or correction file to replace the original/correction/replacement file.

Once a file has been transmitted, you cannot send a replacement file unless CHECK FILE STATUS indicates the file is bad (20 business days after file was transmitted). If you do not want us to process the file, you must first contact us toll-free 1-866-455-7438 to see if this is a possibility.

5. Transmitter sends an original file that is good, and then sends a correction file for the entire file even though there are only a few changes.

The correction file, containing the proper coding, should only contain the records needing correction, not the entire file.

6. File is formatted as EBCDIC.

All files submitted electronically must be in standard ASCII code.

7. Transmitter has one TCC number, but is filing for multiple companies, which EIN should be used when logging into the system to send the file?

When sending the file electronically, you will need to enter the EIN of the company assigned to the TCC. When you upload the file, it will contain the EINs for the other companies that you are filing for. This is the information that will be passed forward.

8. Transmitter sent the wrong file, what should be done?

Call us as soon as possible toll-free 1-866-455-7438. We may be able to stop the file before it has been processed. **Please do not send a replacement for a file that is marked as a good file.**

PART C. MAGNETIC MEDIA SPECIFICATIONS

Sec. 1. General

.01 The specifications contained in this part of the revenue procedure define the required format and content of the records to be included in the electronic/magnetic file.

.02 An external label must appear on each tape cartridge and diskette submitted. Notice 1027 details what information must be on the label. The diskettes used must be MS/DOS compatible.

Sec. 2. Tape Cartridge Specifications

.01 In most instances, IRS/ECC-MTB can process tape cartridges that meet the following specifications:

- (a) Must be IBM 3480, 3490, 3490E, 3590, or 3590E.
- (b) Must meet American National Standard Institute (ANSI) standards, and have the following characteristics:
 - (1) Tape cartridges will be 1/2-inch tape contained in plastic cartridges which are approximately 4-inches by 5-inches by 1-inch in dimension.
 - (2) Magnetic tape will be chromium dioxide particle based 1/2-inch tape.
 - (3) Cartridges must be 18-track, 36-track, 128-track or 256-track parallel (**See Note**).
 - (4) Cartridges will contain 37,871 CPI (characters per inch) or 3590 CPI.
 - (5) Mode will be full function.
 - (6) The data may be compressed using EDRC (Memorex) or IDRC (IBM) compression.
 - (7) Either EBCDIC (Extended Binary Coded Decimal Interchange Code) or ASCII (American Standard Coded Information Interchange) may be used.

.02 The tape cartridge records defined in this revenue procedure may be blocked subject to the following:

- (a) A block **must not** exceed 32,550 tape positions.
- (b) If the use of blocked records would result in a short block, all remaining positions of the block must be filled with 9s; however, the last block of the file may be filled with 9s or truncated. **Do not pad a block with blanks.**
- (c) All records, except the header and trailer labels, may be blocked or unblocked. A record may not contain any control fields or block descriptor fields which describe the length of the block or the logical records within the block. The number of logical records within a block (the blocking factor) must be constant in every block with the exception of the last block which may be shorter (see item (b) above). The block length must be evenly divisible by 350.
- (d) Records may not span blocks.

.03 Tape cartridges may be labeled or unlabeled.

.04 For the purposes of this revenue procedure, the following must be used:

Tape Mark:

- (a) Used to signify the physical end of the recording on tape.
- (b) For even parity, use BCD configuration 001111(8421).
- (c) May follow the header label and precede and/or follow the trailer label.

Note: Filers should indicate on the external media label and transmittal Form 6466 whether the cartridge is 18-track, 36-track, 128-track or 256-track.

Sec. 3. Record Format Specifications and Record Layout

.01 This record is used to identify the employer, the employee, number of allowances, and other information that is reported on the paper Form W-4.

.02 ALL RECORDS MUST BE A FIXED LENGTH OF 350 POSITIONS.

.03 Do not begin any record at the end of a block or diskette and continue the same record into the next block or diskette.

Form W-4 Record Format

Field Position	Field Title	Length	Description and Remarks
1-9	Employee Social Security Number (SSN)	9	Required. Enter the nine-digit SSN assigned to the employee. DO NOT ENTER HYPHENS OR ALPHA CHARACTERS. All zeroes, ones, twos, etc., will have the effect of an incorrect TIN.
10-44	Employee Name Line 1	35	<p>Required. Enter the name of the employee whose TIN appears in field positions 1-9. Enter the name in the following order: first name, middle name (if present), and surname. (Use initials for the first and middle names where necessary to insure that the entire employee surname fits in the field.) If fewer than 35 characters are used, left-justify and fill unused positions with blanks.</p> <p>(1) A blank must be surrounded by alphas or continued to the end of the field (e.g., ab...b, aba).</p> <p>(2) A hyphen in the first position is to identify an employee with surname only. Hyphens must be surrounded by alphas or numerics and must never occur in the first position of a name unless immediately followed by a caret.</p> <p>(3) A caret is used to define an internal name control. It must immediately precede the employee surname in place of the blank. A second caret is used to separate a suffix from the surname (e.g., JOHN J.<BLACK; BILL<OAK<JR; AMY FERN<BROWN< MD).</p>
<p>Note: The only allowable characters are alphas, blanks, numerics, ampersands, hyphens, and slashes. A minimum of one and a maximum of two carets (<) can be used. Punctuation, such as periods and commas, are not allowed and will cause your file to be returned.</p>			
45-79	Employee Name Line 2	35	Optional. This line is designated for an "in care of" (c/o) situation. Left-justify and fill unused positions with blanks. Hyphens and slashes must be surrounded by alphas or numerics; ampersands must be surrounded by blanks; blanks must be surrounded by alphas or numerics or continued to the end of the field (e.g., ab...b, aba).
<p>Note: The same exceptions apply as set forth in "Employee Name Line 1", also the use of a percent sign (%) is not valid, use c/o if necessary.</p>			
80-114	Employee Street Address	35	Required. Enter mailing address of employee. Street address should include number, street, apartment or suite number (or P. O. Box if mail is not delivered to street address). Left-justify and fill unused positions with blanks. Position 80 must be an alpha or numeric; hyphens and slashes must be surrounded by alphas or numerics; ampersands must be surrounded by blanks; blanks must be surrounded by alphas or numerics or continued to the end of the field (e.g., ab...b, aba).
<p>Note: The only allowable characters are alphas, blanks, numerics, ampersands, hyphens and slashes. Punctuation, such as periods and commas, are not allowed and will cause your file to be returned. For example, the address 210 N. Queen St., Suite #300 must be entered as 210 N Queen St Suite 300.</p>			
115-139	Employee City	25	Required. Enter the city, town, or post office. If a foreign address, see Note 2. Left-justify and fill unused positions with blanks. Enter APO or FPO, if applicable. Do not enter state and ZIP Code information in this field. Position 115 must be an alpha or numeric; hyphens must be surrounded by alphas or numerics; blanks must be surrounded by alphas or numerics or continued to the end of the field (e.g., ab...b, aba).

Form W-4 Record Format

Field Position	Field Title	Length	Description and Remarks										
<p>Note 1: The only allowable characters are alphas, blanks, numerics, ampersands, hyphens, and slashes. Punctuation, such as periods and commas, are not allowed and will cause your file to be returned. For example, the city St. Louis must be entered as St Louis.</p>													
<p>Note 2: For foreign addresses, you may use the 25 position Employee City field to provide the following information: city and country name.</p>													
140-141	Employee State	2	Required. Enter the valid U.S. Postal state abbreviation. Refer to Part A, Sec. 8.										
<p>Note: For foreign addresses, enter XX in this field.</p>													
142-150	Employee ZIP Code	9	Required. Enter the valid nine-digit ZIP Code of employee. IF YOU ONLY HAVE FIVE-DIGITS AVAILABLE, LEFT-JUSTIFY AND ZERO FILL. Blank fill only if the employee's ZIP Code is not available.										
151	Marital Status	1	<p>Required. Enter appropriate code from the table below:</p> <table border="0"> <thead> <tr> <th align="left"><u>Marital Status Designated</u></th> <th align="left"><u>Code</u></th> </tr> </thead> <tbody> <tr> <td>Single</td> <td>S</td> </tr> <tr> <td>Married</td> <td>M</td> </tr> <tr> <td>Married, withhold at single rate</td> <td>W</td> </tr> <tr> <td>No marital status designated</td> <td>A</td> </tr> </tbody> </table>	<u>Marital Status Designated</u>	<u>Code</u>	Single	S	Married	M	Married, withhold at single rate	W	No marital status designated	A
<u>Marital Status Designated</u>	<u>Code</u>												
Single	S												
Married	M												
Married, withhold at single rate	W												
No marital status designated	A												
152	Exempt Status	1	Required. Enter "E" if employee claims exempt status; otherwise, enter blank.										
153	Blank	1	Enter Blank.										
154-156	Allowances	3	Required. Must be a three-digit numeric field corresponding to the number of allowances claimed by employee. Field must be right-justified and zero filled. If no entry, or employee claimed exempt status, enter blanks.										
157-163	Additional Amount	7	Required. Enter any additional amount of withholding the employee wants deducted from each pay. Amount must be entered in U.S. dollars and cents. The right-most two positions represent cents. Do not enter dollar signs, commas, decimal points, or negative numbers. Right-justify and zero fill. If no entry, zero fill.										
164-169	Blank	6	Enter Blanks.										
170-178	Employer Identification Number	9	Required. Enter the nine-digit EIN assigned to the employer. DO NOT ENTER HYPHENS, or ALPHA CHARACTERS. All zeroes, ones, twos, etc., will have the effect of an incorrect TIN.										
179-213	Employer Name Line 1	35	Required. Enter the name of the employer as it appears on employment tax forms (e.g., Form 941). Any extraneous information must be deleted from this name line. Left-justify and fill with blanks. Position 179 must be alpha or numeric; hyphens and slashes must be surrounded by alphas or numerics; blanks must be surrounded by alphas or numerics or continued to the end of the field (e.g., ab...b, aba).										

Note: The only allowable characters are alphas, blanks, numerics, ampersands, hyphens, and slashes. Punctuation, such as periods and commas, are not allowed and will cause your file to be returned.

Form W-4 Record Format

Field Position	Field Title	Length	Description and Remarks
214-247	Employer Name Line 2	34	If the employer name requires more space than is available in Employer Name Line 1, enter the remaining portion of the name in this field. Left-justify and fill with blanks. Position 214 must be alpha or numeric; hyphens must be surrounded by alphas or numerics; blanks must be surrounded by alphas or numerics or continued to the end of the field (e.g., ab...b, aba).
Note: The same exceptions apply as set forth in “Employer Name Line 1”, also the use of a percent sign (%) is not valid, use c/o if necessary.			
248-282	Employer Street	35	Required. Enter mailing address of employer. Street address should include number, street, apartment, or suite number (or P. O. Box if mail is not delivered to street address). Left-justify and fill unused positions with blanks. Position 248 must be alpha or numeric; hyphens must be surrounded by alphas or numerics or continued to the end of the field (e.g., ab...b, aba).
Note: The only allowable characters are alphas, blanks, numerics, ampersands, hyphens and slashes. Punctuation, such as periods and commas, are not allowed and will cause your file to be returned. For example, the address 210 N. Queen St., Suite #300 must be entered as 210 N Queen St Suite 300.			
283-307	Employer City	25	Required. Enter the city, town or post office. Enter APO or FPO if applicable. Do not enter state and ZIP Code information in this field. Position 283 must be alpha or numeric; hyphens must be surrounded by alphas or numerics; blanks must be surrounded by alphas or numerics or continued to the end of the field (e.g., ab...b, aba).
Note: The only allowable characters are alphas, blanks, numerics, ampersands, hyphens, and slashes. Punctuation, such as periods and commas, are not allowed and will cause your file to be returned. For example, the city St. Louis must be entered as St Louis.			
308-309	Employer State Code	2	Required. Enter the valid U.S. Postal state abbreviation. Refer to Part A, Sec. 8.
310-318	Employer ZIP Code	9	Required. Enter the valid nine-digit ZIP Code of employer. IF YOU ONLY HAVE FIVE-DIGITS AVAILABLE, LEFT-JUSTIFY AND ZERO FILL. Blank fill only if employer’s ZIP Code is not available.
319-323	Transmitter Control Code	5	Required. Enter five-character alpha/numeric Transmitter Control Code (TCC) assigned by IRS/ECC-MTB.
324-331	Form W-4 Date	8	Required. Enter date located on signature line Form W-4. If no date entered, generate current system date. Format as YYYYMMDD (e.g., 20051231). Exempt Status Form W-4 compare “year effective date” on Line 7 to signature date. If year entered on Line 7 is later than the signature date, use W-4 date as a 01/01 receipt for subsequent calendar year (e.g., Line 7 of Form W-4 shows an exempt status date of 2005 but signature date is 20041031, use 20050101 as Form W-4 date.)
332-348	Blank	17	Enter Blanks.
349-350	Blank	2	Enter blanks, or carriage return/line.

FORM W-4 RECORD LAYOUT

Employee Social Security Number	Employee Name Line 1	Employee Name Line 2	Employee Street Address	Employee City
1-9	10-44	45-79	80-114	115-139

Employee State	Employee ZIP Code	Marital Status	Exempt Status	BLANK	Allowances
140–141	142–150	151	152	153	154–156

Additional Amount	BLANK	Employer Identification Number	Employer Name Line 1	Employer Name Line 2
157–163	164–169	170–178	179–213	214–247

Employer Street	Employer City	Employer State Code	Employer ZIP Code	Transmitter Control Code
248–282	283–307	308–309	310–318	319–323

Form W–4 Date	BLANK	BLANK or CR/LF
324–331	332–348	349–350

26 CFR 601.102: Classification of taxes collected by the Internal Revenue Service.
(Also Part I, § 4261; 49.4261–1.)

Rev. Proc. 2005–45

SECTION 1. PURPOSE

This revenue procedure provides that the list of rural airports published by the U.S. Department of Transportation, Office of the Secretary of Transportation, may be relied upon to determine whether an airport is a “rural airport,” as defined in § 4261(e)(1)(B) of the Internal Revenue Code, for purposes of the exception from tax on the amount paid for a domestic segment of taxable transportation by air.

SECTION 2. BACKGROUND

.01 Section 4261(a) generally imposes a tax equal to a percentage of the amount paid for taxable transportation of any person (percentage tax).

.02 Section 4261(b) imposes an additional tax on the amount paid for each domestic segment of taxable transportation by air (domestic segment tax).

.03 Section 4261(b)(2) generally defines a domestic segment as any segment consisting of one takeoff and one landing in the course of taxable transportation that begins and ends in the United States (or in Canada or Mexico at a point within 225 miles of the U.S. border).

.04 Section 4261(e)(1)(A) excepts from the domestic segment tax (but not the percentage tax) any domestic segment beginning or ending at an airport which is a rural airport for the calendar year in which such segment begins or ends (as the case may be).

.05 Section 4261(e)(1)(B) provides that an airport is a rural airport for a calendar year if (i) fewer than 100,000 commercial passengers departed by air during the second preceding calendar year from the airport, and (ii) the airport (I) is not located within 75 miles of another airport from which 100,000 or more commercial passengers departed during the second preceding calendar year or (II) is receiving essential air service subsidies as of August 5, 1997.

.06 Rev. Proc. 98–18, 1998–1 C.B. 435, provides a list of airports that qualify as rural airports. Since Rev. Proc. 98–18 was published, the airports that qualify as rural airports have changed.

SECTION 3. APPLICATION

.01 The U.S. Department of Transportation, Office of the Secretary of Transportation, in coordination with the Department of the Treasury, periodically publishes an updated list of airports that meet the requirements of § 4261(e)(1)(B). This list may be relied upon to determine whether an airport is a rural airport for purposes of the exception from the domestic segment

tax. The Service will not separately publish the updated list.

.02 The updated list of airports that meet the requirements of § 4261(e)(1)(B) is located at www.irs.gov/businesses/small/topic/index.html under the Excise Tax link.

.03 In addition, any airport not listed by the U.S. Department of Transportation, Office of the Secretary of Transportation, qualifies as a rural airport if it meets the requirements of § 4261(e)(1)(B).

.04 The list published by the U.S. Department of Transportation, Office of the Secretary of Transportation, may be relied upon unless and until supplemented or modified by a subsequent list.

SECTION 4. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 98–18, 1998–1 C.B. 435, is obsolete.

SECTION 5. EFFECTIVE DATE

This revenue procedure applies to domestic segments for which payment is made after July 25, 2005. In the case of domestic segments for which payment is made on or before July 25, 2005, the Service will not challenge reliance upon either the list of rural airports in Rev. Proc. 98–18 or the U.S. Department of Transportation, Office of the Secretary of

Transportation list in effect at the time of the domestic segment.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Taylor Cortright of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue procedure, contact Ms. Cortright at (202) 622-3130 (not a toll-free call).

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.

(Also: Part I, §§ 482; 1.482-1A, 1.482-1T, 1.482-1.)

Rev. Proc. 2005-46

SECTION 1. PURPOSE

This revenue procedure prescribes the procedure to be followed with respect to the claiming of any setoffs (hereinafter “§ 482 setoffs”) to adjustments proposed by the Commissioner pursuant to § 482 of the Internal Revenue Code (“Code”). Rev. Proc. 70-8, modified.

SECTION 2. BACKGROUND

.01 Section 1.482-1(g)(4)(i) of the Income Tax Regulations (T.D. 8552, 1994-2 C.B. 93, 125) provides in part:

If an allocation is made under section 482 with respect to a transaction between controlled taxpayers, the district director will also take into account the effect of any other non-arm’s length transaction between the same controlled taxpayers in the same taxable year which will result in a setoff against the original section 482 allocation. Such setoff, however, will be taken into account only if the requirements of § 1.482-1(g)(4)(ii) are satisfied.

.02 Section 1.482-1(g)(4)(ii) of the regulations further provides:

The district director will take a setoff into account only if the taxpayer—

(A) Establishes that the transaction that is the basis of the setoff was not at arm’s length and the amount of the appropriate arm’s length charge;

(B) Documents, pursuant to paragraph (g)(2) of this section, all correlative adjust-

ments resulting from the proposed setoff; and

(C) Notifies the district director of the basis of any claimed setoff within 30 days after the earlier of the date of a letter by which the district director transmits an examination report notifying the taxpayer of proposed adjustments or the date of the issuance of the notice of deficiency.

The relevant duties of the district director referred to in the regulations are now exercised by the director of field operations. For purposes of this revenue procedure, references to the Commissioner shall be to the director of field operations or other applicable delegate.

.03 The requirement that a taxpayer notify the Commissioner of the basis of any § 482 setoff is separate and distinct from the requirements that the taxpayer must:

(1) Establish that the transaction that is the basis of the setoff was not at arm’s length;

(2) Establish the amount of the appropriate arm’s length charge; and

(3) Document all correlative adjustments resulting from the § 482 setoff.

The notification requirement requires that the non-arm’s length transactions upon which the amount of the appropriate arm’s length charge is based be sufficiently identified in the notification to the Commissioner so as to constitute a reasonable foundation for the claimed § 482 setoff and to permit verification by the Commissioner. The listed requirements involve the proving of the § 482 setoff. Taxpayers must establish or document the requirements described in this section with reasonable specificity.

.04 The taxpayer must notify the Commissioner of the basis of any claimed § 482 setoff within 30 days after the earlier of the date of a letter by which the Commissioner transmits an examination report notifying the taxpayer of proposed adjustments (“30-day letter”) or the date of the issuance of the notice of deficiency. Ordinarily, the taxpayer will be able to notify the Commissioner of the basis of any claimed § 482 setoff during the course of an examination, prior to the time the Commissioner transmits a 30-day letter. In unusual circumstances, this may not be so. However, orderly administration of the Code necessitates a reasonable cutoff point

for claiming any § 482 setoffs. The timing provision concerning the notification accommodates both considerations. Accordingly, where a taxpayer does not file a protest to the 30-day letter, the notification must be filed within 30 days after the date of the 30-day letter, unless an extension has been granted by the Commissioner. The request for an extension must be filed before the 30-day period expires. Where the taxpayer files a timely protest, a notification that accompanies the protest will be considered timely. In all events, the notification must be filed no later than within 30 days after the date of the issuance of a notice of deficiency with respect to the adjustments pursuant to § 482. The provisions of § 7502 of the Code apply as to timeliness of any mailed notification.

.05 To meet the burden of proof concerning any claimed § 482 setoff it will be necessary for the taxpayer to furnish certain detailed information as specified in § 1.482-1(g)(4)(ii) of the regulations and § 2.03 of this revenue procedure. Early submission of such information, when possible, will be to the advantage of both the taxpayer and the Commissioner. Normally, the information should be submitted concurrently with the notification. The question concerning the appropriateness of granting additional time in this regard lies entirely within the administrative discretion of the Commissioner.

SECTION 3. OTHER PROCEDURES RELATING TO § 482 SETOFF CLAIMS

.01 The notification to the Commissioner of a § 482 setoff required under § 1.482-1(g)(4)(ii) of the regulations must be a separate written statement.

.02 The notification must sufficiently identify the non-arm’s length transaction(s) upon which the claimed § 482 setoff is based so as to constitute a reasonable foundation for the claimed § 482 setoff and permit verification by the Commissioner. Under § 1.482-1(g)(4)(i) of the regulations, the non-arm’s length transaction(s) must be between the same controlled taxpayers and in the same taxable year as involved in the transaction that is the subject of the adjustment pursuant to § 482 against which the § 482 setoff is claimed.

.03 The notification must also contain:

(1) The taxpayer's name, address, and U.S. employer identification number or Social Security number;

(2) The date and symbols on the 30-day letter or notice of deficiency specified in § 1.482-1(g)(4)(ii)(C) of the regulations and § 2.04 of this revenue procedure; and

(3) The taxable year(s) involved.

.04 The taxpayer must include with the notification a signed declaration under penalties of perjury that the statements made in the notification, and all evidence submitted, are true, correct, and complete to the best of the taxpayer's knowledge and belief.

.05 If a duly authorized representative prepares or files the notification, instead of the declaration required by § 3.04 of this revenue procedure, the representative may substitute a declaration stating that the representative:

(1) Prepared the notification and accompanying documents, and

(2) Knows personally that the statements contained therein and all evidence submitted are true, correct, and complete to the best of the representative's knowledge and belief.

.06 An incomplete or improper notification will not extend the period within which the Commissioner is to be notified. Therefore, the taxpayer must be careful to include sufficient information in its notification and, if possible, to submit the notification in sufficient time to permit correction of any deficiencies within the prescribed limitation period. Thus, as indicated in § 2.04 of this revenue procedure, when possible, the notification should be submitted during the examination prior to the issuance of the 30-day letter.

.07 When appropriate, a previously submitted notification may be incorporated by reference into a protest filed by the taxpayer.

.08 To expedite the examination, information necessary to establish the claimed § 482 setoff must be submitted in accordance with § 2.05 of this revenue procedure.

.09 The taxpayer must make available to the Commissioner such information as the Commissioner may require to examine the transactions relied on by the taxpayer. In this connection, the taxpayer must execute such consents extending the statute of limitations as the Commissioner, in the exercise of the Commissioner's administrative discretion, determines to be necessary to enable an examination of the transactions claimed by the taxpayer as § 482 setoffs. If the taxpayer declines to execute such consents, the Commissioner may reject the claimed § 482 setoffs.

SECTION 4. EFFECTIVE DATE

.01 This revenue procedure is effective for taxable years beginning on or after July 25, 2005.

.02 Taxpayers may elect to apply this revenue procedure for any open taxable year beginning after October 6, 1994, but before July 25, 2005. Such election shall be effective for the taxable year of the election and all subsequent open taxable years.

.03 Although this revenue procedure is generally effective for taxable years as stated in §§ 4.01 and 4.02 of this revenue procedure, § 1.482-1(g)(4) of the regulations is generally effective for taxable years beginning after October 6, 1994 (or for earlier open taxable years pursuant to an election under § 1.482-1(j)(2) of the

regulations), and § 1.482-1T(d)(5) of the temporary Income Tax Regulations (T.D. 8470, 1993-1 C.B. 90, 110) is generally effective for taxable years beginning after April 21, 1993, but before October 7, 1994 (if no election pursuant to § 1.482-1(j)(2) of the regulations is applicable). For the taxable years beginning after April 21, 1993, to which this revenue procedure is not otherwise applicable pursuant to §§ 4.01 and 4.02 of this revenue procedure, taxpayers must apply § 1.482-1(g)(4) of the regulations and § 1.482-1T(d)(5) of the temporary regulations in a reasonable manner consistent with those regulations. The Commissioner considers an application of the provisions of this revenue procedure to be a reasonable manner of compliance with such regulations.

.04 For taxable years beginning prior to April 22, 1993, where no election pursuant to § 1.482-1(j)(2) of the regulations is applicable, Rev. Proc. 70-8, 1970-1 C.B. 434, prescribes the procedure to be followed with respect to the claiming of any § 482 setoffs pursuant to § 1.482-1A(d)(3) of the Income Tax Regulations (T.D. 6952, 1968-1 C.B. 218, 220).

SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 70-8 is modified.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Carol B. Tan of the Office of Associate Chief Counsel (International). For further information regarding this revenue procedure, contact Ms. Tan at (202) 435-5265 (not a toll-free call).

Part IV. Items of General Interest

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

Announcement 2005-48

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

person to practice before the Internal Revenue Service during a period of suspension, disbarment, or ineligibility of such other person.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify persons to whom these restrictions apply, the Director, Office of Professional Responsibility, will announce in the Internal Revenue Bulletin

their names, their city and state, their professional designation, the effective date of disciplinary action, and the period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks.

Consent Suspensions From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, an attorney, certified public accountant, enrolled agent, or enrolled actuary, in order to avoid institution or conclusion of a proceeding for his or her disbarment or suspension from practice before the Internal Revenue Service, may offer his or her consent to suspension from

such practice. The Director, Office of Professional Responsibility, in his discretion, may suspend an attorney, certified public accountant, enrolled agent or enrolled actuary in accordance with the consent offered.

The following individuals have been placed under consent suspension from

practice before the Internal Revenue Service:

Name	Address	Designation	Date of Suspension
Harrison, John S.	Oakland, CA	Attorney	Indefinite from January 25, 2005
Newkirk, Stephon	Winterville, NC	CPA	Indefinite from February 8, 2005
Goldman, Mark L.	East Meadow, NY	Attorney	Indefinite from February 18, 2005
Johnston, H. James	Knoxville, TN	CPA	Indefinite from March 16, 2005
Gapp, Edward J.	Greenwich, CT	CPA	Indefinite from March 28, 2005

Name	Address	Designation	Date of Suspension
Rowland, Mark C.	Westlake, OH	CPA	Indefinite from April 11, 2005
French Jr., Paul C.	Bangor, MI	CPA	Indefinite from April 25, 2005
Mynsberge, Richard C.	Mishawaka, IN	CPA	Indefinite from May 1, 2005
Specht Jr., Henry F.	N. Myrtle Beach, SC	CPA	Indefinite from May 1, 2005
Sostarich, Mark E.	S. Milwaukee, WI	Attorney	Indefinite from May 1, 2005
Gasa, William M.	Winfield, IL	Enrolled Agent	Indefinite from June 1, 2005
Leisure, Sally R.	Portland, OR	Attorney	Indefinite from June 9, 2005
Tuerk Jr., Carl E.	Annapolis, MD	Attorney	Indefinite from July 1, 2005

Expedited Suspensions From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, the Director, Office of Professional Responsibility, is authorized to immediately suspend from practice before the Internal Revenue Service any practitioner who, within five years from the date

the expedited proceeding is instituted (1) has had a license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause or (2) has been convicted of certain crimes.

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

Name	Address	Designation	Date of Suspension
Hawkins, Nicholas G.	Harrods Creek, KY	Attorney	Indefinite from February 11, 2005
Richey, Michael L.	Girardeau, MO	Attorney	Indefinite from February 11, 2005
Brown, Calvin D.	Dallas, TX	CPA	Indefinite from February 16, 2005

Name	Address	Designation	Date of Suspension
Bell, James M.	Bandera, TX	CPA	Indefinite from February 23, 2005
Fedynshyn, Michael P.	Broomfield, CO	Attorney	Indefinite from February 23, 2005
Harris, Ross	Pikeville, KY	Attorney	Indefinite from February 23, 2005
Tehin Jr., Nikolai	San Francisco, CA	Attorney	Indefinite from March 7, 2005
Ballance, Frank W.	Warrenton, NC	Attorney	Indefinite from March 7, 2005
Jacob, Arthur F.	Sykesville, MD	Attorney	Indefinite from March 8, 2005
Hefley, Lee D.	Burleson, TX	CPA	Indefinite from March 8, 2005
Beswick, Robert H.	Encino, CA	Attorney	Indefinite from March 8, 2005
Scarpello, Joseph R.	Tustin, CA	CPA	Indefinite from March 8, 2005
Machado, Lazaro J.	Santa Ana, CA	Attorney	Indefinite from March 8, 2005
McKnew, Donna K.	Ashland, KY	Attorney	Indefinite from March 8, 2005
Yarno Jr., William	Lafayette, LA	Attorney	Indefinite from March 8, 2005
Walker, Frank O.	Bay City, TX	CPA	Indefinite from March 8, 2005
Kafkas, Demetrios G.	Tewksbury, MA	Attorney	Indefinite from March 8, 2005
Scott, Bertram A.	Brooklyn, NY	Attorney	Indefinite from March 8, 2005

Name	Address	Designation	Date of Suspension
Templeton, Robert L.	Ashland, KY	Attorney	Indefinite from March 8, 2005
Christopher, Nathan H.	Salisbury, MD	Attorney	Indefinite from March 8, 2005
Willingham, Nathaniel J.	Jacksonville, NC	Attorney	Indefinite from March 8, 2005
Anderson, Brett I.	Des Moines, IA	Attorney	Indefinite from March 8, 2005
Broderick, Thomas F.	Somerville, MA	Attorney	Indefinite from March 14, 2005
Peoples, Brendan K.	Ft. Worth, TX	CPA	Indefinite from March 15, 2005
Tidmore, J. Todd	Addison, TX	CPA	Indefinite from March 15, 2005
Cox, Patricia A.	Victoria, TX	CPA	Indefinite from March 15, 2005
Rogers, Fred	Mansfield, LA	CPA	Indefinite from March 15, 2005
Bridgeforth, Wyvonnia	Oak Park, IL	Attorney	Indefinite from March 15, 2005
Bruce, Donna M.	Athens, AL	CPA	Indefinite from March 18, 2005
Teske, David S.	Seattle, WA	Attorney	Indefinite from March 18, 2005
Cobb Jr., Wayne H.	Kaufman, TX	Attorney	Indefinite from March 18, 2005
Swindell IV, Lewis H.	Avondale, AZ	Attorney	Indefinite from March 18, 2005
Murr, Mark D.	Houston, TX	Attorney	Indefinite from March 18, 2005
Nip, Raymond A.C.	Honolulu, HI	CPA	Indefinite from March 18, 2005

Name	Address	Designation	Date of Suspension
Asbury, Lloyd T.	Jacksonville, FL	Attorney	Indefinite from March 18, 2005
Lowell, Melinda E.	New York, NY	Attorney	Indefinite from March 18, 2005
Rub, Lawrence P.	Glenwood, MD	CPA	Indefinite from March, 18, 2005
Fagan, Charles G.	Severna Park, MD	CPA	Indefinite from March 21, 2005
Lewis, Larry L.	Woodbridge, VA	Attorney	Indefinite from March 28, 2005
Mpi, Afoma M.	Peoria, IL	Attorney	Indefinite from March 30, 2005
Gross, Hyath B.	Schenectady, NY	Attorney	Indefinite from April 1, 2005
Zick, Terry T.	Wrightville Beach, NC	Attorney	Indefinite from April 1, 2005
Atlas, Joan M.	Philadelphia, PA	Attorney	Indefinite from April 4, 2005
Rider, Lawrence C.	Boulder, CO	Attorney	Indefinite from April 5, 2005
Eller, Scott D.	Frisco, TX	CPA	Indefinite from April 6, 2005
Brenton, Robert O.	Overland Park, KS	CPA	Indefinite from April 6, 2005
Folks, Lloyd C.	Kinston, NC	CPA	Indefinite from April 6, 2005
Suckling, John R.	San Marcos, CA	CPA	Indefinite from April 6, 2005
Pulito, James P.	Phoenix, AZ	CPA	Indefinite from April 6, 2005
Garcia, Felix D.	Auroa, CO	Attorney	Indefinite from April 6, 2005

Name	Address	Designation	Date of Suspension
Wentzel, Gerald L.	Bloomington, IL	CPA	Indefinite from April 14, 2005
Williams, David W.	Simpsonville, KY	Attorney	Indefinite from April 19, 2005
Sykes III, Bernard G.	Riviera Beach, FL	Attorney	Indefinite from April 19, 2005
Hambrick Jr., J. C.	Branson, MO	Attorney	Indefinite from April 19, 2005
Adams, David M.	Charleston, SC	Attorney	Indefinite from April 19, 2005
Richardson, Jon M.	Danville, IL	Attorney	Indefinite from April 19, 2005
Rose, Shaun H.	Baltimore, MD	Attorney	Indefinite from April 19, 2005
Tanner, Fred L.	Bowling Green, KY	Attorney	Indefinite from April 19, 2005
Perry, David W.	Reading, MA	Attorney	Indefinite from April 19, 2005
Fleming, Bruce D.	Council Bluffs, IA	Attorney	Indefinite from April 19, 2005
Healy, Paul J.	Pembroke, MA	Attorney	Indefinite from April 19, 2005
Kaczynski, Ronald C.	Andover, MA	Attorney	Indefinite from April 19, 2005
Whalley, Lester F.	Yorba Linda, CA	Attorney	Indefinite from April 27, 2005
Tanner, Max	Las Vegas, NV	Attorney	Indefinite from May 3, 2005
Blackwell, Johnny L.	Fayetteville, NC	CPA	Indefinite from May 3, 2005
Szer, Steven	Fort Mill, SC	CPA	Indefinite from May 3, 2005

Name	Address	Designation	Date of Suspension
Chinn, David P.	Louisville, KY	Attorney	Indefinite from May 9, 2005
Bille, Anthony J.	Hopkinton, MA	Attorney	Indefinite from May 16, 2005
Dotson, Lewis S.	Mattoon, IL	Attorney	Indefinite from May 16, 2005
Palmer, Philip B.	Chubbuck, ID	Attorney	Indefinite from May 16, 2005
Wolterbeek, Mark E.	Rindge, NH	Attorney	Indefinite from May 31, 2005
James III., Charles M.	Cheverly, MD	Attorney	Indefinite from May 31, 2005
Jorgensen, Allen C.	Redlands, CA	Attorney	Indefinite from June 2, 2005
Brisbon, Brenda C.	Baltimore, MD	Attorney	Indefinite from June 7, 2005
Gilroy, John M.	Waterloo, NE	Attorney	Indefinite from June 7, 2005
Relphorde, Colin B.	Homewood, IL	Attorney	Indefinite from June 7, 2005
Pomeroy, John S.	Dedham, MA	Attorney	Indefinite from June 7, 2005
Gonick, Richard S.	Ipswich, MA	Attorney	Indefinite from June 7, 2005
Curran, Martin J.	Manchester, NH	Attorney	Indefinite from June 7, 2005
Koenigsdorf, Keith B.	Overland Park, KS	Attorney	Indefinite from June 7, 2005
Jambor, Daniel F.	St. Paul, MN	Attorney	Indefinite from June 7, 2005
LaFont Jr., Henry J.	Lockport, LA	Attorney	Indefinite from June 7, 2005

Name	Address	Designation	Date of Suspension
Janosik, Dennis M.	Parma, OH	CPA	Indefinite from June 9, 2005
Carter, Evalyn R.	Calera, OK	CPA	Indefinite from June 9, 2005
Chasnoff, Joel	Gaithersburg, MD	Attorney	Indefinite from June 9, 2005
O'Keefe, Michael E.	Oak Park, CA	Attorney	Indefinite from June 9, 2005
Wilkes, Richard C.	Bowbells, ND	Attorney	Indefinite from June 9, 2005
Rogers, Reginald J.	Bowie, MD	Attorney	Indefinite from June 9, 2005
Hindley, Charles T.	Colton, CA	Attorney	Indefinite from June 9, 2005
Morgan, Wendy B.	Scotts Valley, CA	Attorney	Indefinite from June 9, 2005

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

Under Title 31, Code of Federal Regulations, Part 10, after notice and an opportunity for a proceeding before an ad-

ministrative law judge, the following individuals have been placed under suspension

from practice before the Internal Revenue Service:

Name	Address	Designation	Effective Date
Cahill, Gary	Shelton, CT	Attorney	January 27, 2005 to January 26, 2008
Banks, Jean R.	Van Nuys, CA	Enrolled Agent	March 8, 2005 to December 7, 2006

Censure Issued by Consent

Under Title 31, Code of Federal Regulations, Part 10, in lieu of a proceeding being instituted or continued, an attorney, certified public accountant, enrolled agent,

or enrolled actuary, may offer his or her consent to the issuance of a censure. Censure is a public reprimand.

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

Name	Address	Designation	Date of Censure
Borden Kathleen	Bluffton, SC	Attorney	May 11, 2005
Williamson, Debra	Long Beach, CA	CPA	June 3, 2005

Farm Rates 2005; Correction Announcement 2005-50

PURPOSE

This document contains a correction to Rev. Rul. 2005-41, 2005-28 I.R.B. 69.

As published, Rev. Rul. 2005-41 contains an error that may prove to be misleading and is in need of clarification.

CORRECTION

On page 70 of I.R.B. 2005-28, under TABLE 2, on the first line of the table, the REV. RUL. 2004-41 TABLE 2 should read "REV. RUL. 2005-41 TABLE 2".

FOR FURTHER INFORMATION CONTACT

Lane Damazo at (202) 622-3090 (not a toll-free number).

Definition of Terms

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

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

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

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

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

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

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

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

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

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

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

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

Abbreviations

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

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

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

PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

Numerical Finding List¹

Bulletins 2005–27 through 2005–30

Announcements:

2005-46, 2005-27 I.R.B. 63
2005-47, 2005-28 I.R.B. 71
2005-48, 2005-29 I.R.B. 111
2005-49, 2005-29 I.R.B. 119
2005-50, 2005-30 I.R.B. 152

Notices:

2005-48, 2005-27 I.R.B. 9
2005-49, 2005-27 I.R.B. 14
2005-50, 2005-27 I.R.B. 14
2005-51, 2005-28 I.R.B. 74
2005-52, 2005-28 I.R.B. 75
2005-54, 2005-30 I.R.B. 127

Proposed Regulations:

REG-130241-04, 2005-27 I.R.B. 18

Revenue Procedures:

2005-35, 2005-28 I.R.B. 76
2005-36, 2005-28 I.R.B. 78
2005-37, 2005-28 I.R.B. 79
2005-38, 2005-28 I.R.B. 81
2005-39, 2005-28 I.R.B. 82
2005-40, 2005-28 I.R.B. 83
2005-41, 2005-29 I.R.B. 90
2005-42, 2005-30 I.R.B. 128
2005-43, 2005-29 I.R.B. 107
2005-44, 2005-29 I.R.B. 110
2005-45, 2005-30 I.R.B. 141
2005-46, 2005-30 I.R.B. 142

Revenue Rulings:

2005-38, 2005-27 I.R.B. 6
2005-39, 2005-27 I.R.B. 1
2005-40, 2005-27 I.R.B. 4
2005-41, 2005-28 I.R.B. 69
2005-42, 2005-28 I.R.B. 67
2005-43, 2005-29 I.R.B. 88
2005-44, 2005-29 I.R.B. 87
2005-45, 2005-30 I.R.B. 123
2005-46, 2005-30 I.R.B. 120
2005-49, 2005-30 I.R.B. 125
2005-50, 2005-30 I.R.B. 124

Tax Conventions:

2005-47, 2005-28 I.R.B. 71

¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2005–1 through 2005–26 is in Internal Revenue Bulletin 2005–26, dated June 27, 2005.

Finding List of Current Actions on Previously Published Items¹

Bulletins 2005–27 through 2005–30

Revenue Procedures:

64-54

Obsoluted by
Rev. Rul. 2005-43, 2005-29 I.R.B. 88

66-33

Obsoluted by
Rev. Rul. 2005-43, 2005-29 I.R.B. 88

69-13

Obsoluted by
Rev. Rul. 2005-43, 2005-29 I.R.B. 88

70-8

Modified by
Rev. Proc. 2005-46, 2005-30 I.R.B. 142

71-1

Obsoluted by
Rev. Rul. 2005-43, 2005-29 I.R.B. 88

72-22

Obsoluted by
Rev. Rul. 2005-43, 2005-29 I.R.B. 88

87-8

Obsoluted by
Rev. Proc. 2005-44, 2005-29 I.R.B. 110

87-9

Obsoluted by
Rev. Proc. 2005-44, 2005-29 I.R.B. 110

90-11

Modified by
Rev. Proc. 2005-40, 2005-28 I.R.B. 83

93-22

Obsoluted by
Rev. Proc. 2005-44, 2005-29 I.R.B. 110

98-18

Obsoluted by
Rev. Proc. 2005-45, 2005-30 I.R.B. 141

2000-49

Superseded by
Rev. Proc. 2005-41, 2005-29 I.R.B. 90

2001-16

Superseded by
Rev. Proc. 2005-42, 2005-30 I.R.B. 128

2002-9

Modified and amplified by
Rev. Rul. 2005-42, 2005-28 I.R.B. 67
Rev. Proc. 2005-35, 2005-28 I.R.B. 76
Rev. Proc. 2005-43, 2005-29 I.R.B. 107

Revenue Rulings:

65-109

Obsoluted by
Rev. Rul. 2005-43, 2005-29 I.R.B. 88

68-549

Obsoluted by
Rev. Rul. 2005-43, 2005-29 I.R.B. 88

82-29

Modified and clarified by
Rev. Proc. 2005-39, 2005-28 I.R.B. 82

2005-41

Corrected by
Ann. 2005-50, 2005-30 I.R.B. 152

Treasury Decisions:

9206

Corrected by
Ann. 2005-49, 2005-29 I.R.B. 119

¹ A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2005–1 through 2005–26 is in Internal Revenue Bulletin 2005–26, dated June 27, 2005.

INDEX

Internal Revenue Bulletins 2005–27 through 2005–30

The abbreviation and number in parenthesis following the index entry refer to the specific item; numbers in roman and italic type following the parentheses refer to the Internal Revenue Bulletin in which the item may be found and the page number on which it appears.

Key to Abbreviations:

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

EMPLOYEE PLANS

Full funding limitations, weighted average interest rate for:
July 2005 (Notice 54) 30, 127

Proposed Regulations:

26 CFR 1.401(a)(9)–6, revised; 1.401(k)–1, amended; 1.403(b)–3(b)(4)(ii), revised; 1.415–1 thru –10, removed; 1.415(a)–1, (b)–1, (b)–2, (c)–1, (c)–2, (d)–1, (f)–1, (g)–1, (j)–1, added; 1.457–4, –5, –6, –10, amended; 11.415(c)(4)–1, removed; limitations on benefits and contributions under qualified plans (REG–130241–04) 27, 18

Qualified retirement plans, limitations on benefits and contributions (REG–130241–04) 27, 18

EMPLOYMENT TAX

Alternative signature methods, facsimile signatures (RP 39) 28, 82

EXCISE TAX

Insurance, qualification of arrangements as insurance, comments requested (Notice 49) 27, 14

Rural airport, exception to tax on the amount paid for a domestic segment of taxable transportation by air (RP 45) 30, 141

EXEMPT ORGANIZATIONS

Insurance, qualification of arrangements as insurance, comments requested (Notice 49) 27, 14

List of organizations classified as private foundations (Ann 46) 27, 63

INCOME TAX

Accounting methods:

Automatic consent to change to a method under which a utility may treat an up-front payment for network upgrades as not being taxable income when received (RP 35) 28, 76

Uniform capitalization of costs, environmental remediation (RR 42) 28, 67

Arbitrage rebate payments:

Address change (Notice 52) 28, 75

Late payment (RP 40) 28, 83

Credits:

Health coverage tax credit (HCTC), miscellaneous issues (Notice 50) 27, 14

Low-income housing credit:

Carryovers to qualified states, 2005 National Pool (RP 36) 28, 78

Safe harbor for extending low-income housing commitments (RP 37) 28, 79

Satisfactory bond, “bond factor” amounts for the period January through September 2005 (RR 44) 29, 87

Disaster relief grants, treatment with respect to gross income (RR 46) 30, 120

Disciplinary actions involving attorneys, CPAs, enrolled agents, and enrolled actuaries (Ann 48) 29, 111

Forms:

W-4, specifications for filing electronically (RP 42) 30, 128
8027, Employer’s Annual Information Return of Tip Income and Allocated Tips, specifications for filing electronically or magnetically (RP 41) 29, 90

Information reporting, returns by donees relating to qualified intellectual property contributions (TD 9206) correction (Ann 49) 29, 119

Insurance companies, tax on insurance companies other than life insurance companies (RR 40) 27, 4

Insurance, qualification of arrangements as insurance, comments requested (Notice 49) 27, 14

Interest:

Investment:

Federal short-term, mid-term, and long-term rates for:
July 2005 (RR 38) 27, 6

Rates, farm real property, special use value (RR 41) 28, 69; correction (Ann 50) 30, 152

Taxpayer remedies when the Service fails to suspend interest as required by section 6404(g) (RP 38) 28, 81

Inventory:

LIFO, price indexes used by department stores for:
May 2005 (RR 45) 30, 123

Judicial remedy for third person asserting wrongful levy (RR 49) 30, 125

New York Liberty Zone, election out of section 1400L(c), 5-year property (RP 43) 29, 107

Obsoleting Rev. Proc. 64-54 and subsequent rulings (RR 43) 29, 88

Private foundations, organizations now classified as (Ann 46) 27, 63

Procedures for claiming section 482 setoffs (RP 46) 30, 142

INCOME TAX—Cont.

Publications:

1239, changes affecting tax year 2005 electronic or magnetic filing of Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips (RP 41) 29, 90

1245, changes affecting the filing of Form W-4, Employee's Withholding Allowance Certificate, electronically or magnetically (RP 42) 30, 128

Qualified green building and sustainable design projects, Brownfields Demonstration Program (Notice 48) 27, 9

Stocks, golden parachute payments, effect of election under section 83(b) for purposes of section 280G (RR 39) 27, 1

Tax conventions:

Canadian memorandum of understanding (MOU) on MAP (Ann 47) 28, 71

Representations required to claim exemption from withholding tax on personal services income under U.S. income tax treaties, students/teachers (RP 44) 29, 110

Third party not liable for tax, relief under sections 6325(b)(4) and 7426(a)(4) (RR 50) 30, 124

Tobacco marketing quotas, tax treatment of termination payments (Notice 51) 28, 74