TAX DEPOSITION QUESTIONS: 7. 4th AMENDMENT

7. FOURTH AMENDMENT

Introduction

The 4th Amendment to the Constitution explicitly requires a signed court order or warrant for the Government to seize property or conduct a search.

IRS blatantly disregards the 4th Amendment in direct violation of the Constitution by administratively sending pieces of paper with titles like "Notice of Levy" (and such) to third parties (such as employers and banks) that do NOT have the legal authority of a court order.

IRS's daily operating practices routinely, and by design, deny the average citizen due process of law to perpetuate the unlawful collection of income taxes. A tax system that violates the basic protection of due process is not constitutional.

IRS agents illegally and fraudulently alters tax payers' Individual Master Files (IMF) for the purposes of:

- **Unlawfully Evading statutory time-barred tax assessments,**
- **Generating and providing fraudulent certifications of official records to the courts to support illegal assessments,**
- **Unlawfully depriving tax payers interest legally owed them by the government,**
- **Levying upon tax payers' Social Security benefits in direct violation of U.S. law,**
- **Willfully and intentionally creating fraudulent penalty and interest charges against taxpayers, and**
- **Willfully and intentionally violating taxpayers due process rights.**

Findings and Conclusions

With the assistance of the following questions, we will show that the IRS routinely violated Fourth Amendment due process protections of Americans by seizing assets without lawful authority or a court order. We will also show that:

- **The 4th Amendment to the Constitution explicitly requires a signed court order or warrant to seize property or conduct a search.**
- **IRS blatantly disregards the 4th Amendment in violation of the Constitution.**
- **Employers are deceived about their true legal responsibility by the misleading content found on the IRS salary/wage "levy" form and instructions.**
- **3rd parties such as banks, corporations, etc have no incentive to, and perhaps fear IRS retaliation for, challenging Notices of Levy and Seizure on their customers and/or employees.**

Bottom Line: The 4th Amendment does not matter to the IRS.

IRS Fraud: Creation of Time-Barred Assessments: Questions 7.19 through 7.25

- **IRS agents unlawfully and fraudulently alter its computer files to facilitate the illegal assessment and collection of taxes from the American public.**
- **There is proof and sworn testimony of widespread and intentional illegal tax assessments and accounting practices by agents of the United States Internal Revenue Service.**

- **The evidence documents IRS fraud and abuse including: manipulation of taxpayers' master files, illegal time-barred assessments, underpayment of interest owed to taxpayers, illegal levies and liens against taxpayers' social security benefits, illegal civil penalties, fraudulent certifications of records and more.**
- **IRS agents are entering fraudulent transaction dates in some taxpayer's master files to cover-up and conceal illegal time barred assessments.**
- **Prior to the 1998 IRS Reform and Restructuring Act, a taxpayer had no way to prove that the IRS had committed illegal or fraudulent accounting against them. IRS master files for each and every taxpayer were, and continue to be written, in a complex, technical code. Any illegal activity by the IRS could not be decoded. But the IRS was forced to release the code as a result of the 1998 Reform and Restructuring Act.**

***Bottom Line*:** IRS agents are falsifying official records and committing other criminal acts.

IRS Routinely Violated Citizen's Due Process Rights: Questions 7.26 through 7.85

- **Due process is guaranteed by the Constitution.**
- **IRS's daily operating practices routinely deny the average citizen due process of law.**
- **"U.S. Tax Court" is not a "real" legal court. It is an administrative body of the IRS.**
- **The IRS administratively creates "dummy returns" without legal authority as a first step in unlawfully "assessing" and collecting income taxes.**
- **Even though explicitly provided for by U.S. law, certain IRS administrative procedures are routinely denied to the typical citizen because the IRS does not want to answer questions about the basis of their legal authority.**
- **IRS denies due process procedures to rapidly push citizens into the biased U.S. Tax "Court" where the price of securing justice rises dramatically, and prohibitively.**
- **IRS routinely refuses to cite its legal authority or to answer detailed legal questions about U.S tax law or the enforcement thereof.**

Bottom Line: A tax system that violates due process is, prima facie, unconstitutional.

Section Summary

Witnesses:

- Noel Spade (Tax Attorney)
- John Turner (Ex. IRS Collection Agent for 10 years)
- Irwin Schiff (National Tax Expert)
- Joe Bannister (Ex. IRS Criminal Investigator)
- Larry Becraft (Constitutional Law Attorney)
- Victoria Osborne (Time Barred Assessments)

Transcripts

- Part 1
- Part 2
- Part 3

Acrobat version of this section including questions and evidence (large: 7.19 Mbytes)

Further Study On Our Website:

- Great IRS Hoax book:
    - Section 3.10.8.2: 4th Amendment: Prohibition Against Violation of Privacy and Unreasonable Search and Seizure Without Probable Cause
    - Section 3.19.4: Due Process
    - Section 5.4: The Truth About The "Voluntary" Aspect of Income Taxes
    - Section 7.9: Tax "Misenforcement"
- Sovereignty Forms and Instructions Manual book:
    - Section 2.5.4.21: Challenge All Liens and Levies
    - Section 2.5.4.22: Protect Yourself from Illegal Acts of Government Extortion
- "Warrantless IRS Seizures"-Antishyster News Magazine, Vol. 11, No. 1

7.1. Admit that 26 U.S.C. §6331 is the authority by which distraint in the collection of Subtitle A income taxes against individuals is instituted. (WTP #400)

- Click here for 26 U.S.C. §6331

7.2. Admit that 26 U.S.C. §6331(a) identifies the only entities against whom distraint may be instituted. If there are other entities besides those in 26 U.S.C. §6331(a), so indicate the statute or regulation which identifies them. (WTP #401)

- Click here for 26 U.S.C. §6331

7.3. Admit that 26 U.S.C. §6331(a) identifies that levy may be made against only the following individuals: (WTP #402)

> *"(a)...Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer (as defined in section 3401(d)) of such officer, employee, or elected official."*

- Click here for 26 U.S.C. §6331

7.4. Admit that 26 CFR §31.3401(c) identifies the definition of "employee" as: (WTP #403)

> *26 CFR § 31.3401(c) Employee: "...the term [employee] includes officers and employees,* whether elected or appointed, ***of the United States, a [federal] State, Territory, Puerto Rico or any political subdivision, thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing****. The term 'employee' also includes an* ***officer of a corporation****."*

- Click here for evidence

7.5. Admit that the IRS Form 668-A(c)(DO) is the Notice of Levy form routinely delivered to private, nongovernmental employers by the IRS to institute distraint against their employees. (WTP #404)

- Click here for IRS Form 668-A(c)(DO) evidence

7.6. Admit that the reverse side of IRS Form 668-A(c)(DO) shows 26 U.S.C. §6331 but has paragraph (a) removed. (WTP #405)

- Click here for IRS Form 668-A(c)(DO) evidence

7.7. Admit that the removal of 26 U.S.C. §6331(a) from the reverse side of IRS Form 668-A(c)(DO) could lead private employers who do not employ federal "employees" to incorrectly honor a Notice of Levy. (WTP #406)

- Click here for IRS Form 668-A(c)(DO) evidence
- Click here for 26 U.S.C. §6331

7.8. Admit that inclusion of 26 U.S.C. §6331(a) on the reverse side of the IRS Form 668-A(c)(DO) would make it less likely to cause private employers to misinterpret or misapply the law in processing an IRS Notice of Levy. (WTP #407)

- Click here for IRS Form 668-A(c)(DO) evidence
- Click here for 26 U.S.C. §6331

7.9. Admit that the Fourth Amendment requires that all seizures of property by the U.S. government must be preceded by service of a warrant upon the party whose property is to be seized. (WTP #408)

- Click here for Annotated Fourth Amendment

7.10. Admit that the Fourth Amendment requires that the person who signs or issues the warrant authorizing seizure must be a neutral magistrate as indicated in the annotated Fourth Amendment found at http://caselaw.lp.findlaw.com/data/constitution/amendment04/02.html. (WTP #409)

> ***Issuance by Neutral Magistrate*** *.--In numerous cases, the Court has referred to the necessity that warrants be issued by a "judicial officer" or a "magistrate."[1] "The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime. Any assumption that evidence sufficient to support a magistrate's disinterested determination to issue a search warrant will justify the officers in making a search without a warrant would reduce the Amendment to a nullity and leave the people's homes secure only in the discretion of police officers."[2] These cases do not mean that only a judge or an official who is a lawyer may issue warrants, but they do stand for two tests of the validity of the power of the issuing party to so act. "He must be neutral and detached, and he must be capable of determining whether probable cause exists for the requested arrest or search."[3] The first test cannot be met when the issuing party is himself engaged in law enforcement activities,[4] but the Court has not required that an issuing party have that independence of tenure and guarantee of salary which characterizes federal judges. [5] And in passing on the second test, the Court has been essentially pragmatic in assessing whether the issuing party possesses the capacity to determine probable cause. [6]*
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> _____
>
> *[1] United States v. Lefkowitz, 285 U.S. 452, 464 (1932); Giordenello v. United States, 357 U.S. 480,*

486 (1958); Jones v. United States, 362 U.S. 257, 270 (1960); Katz v. United States, 389 U.S. 347, 356 (1967); United States v. United States District Court, 407 U.S. 297, 321 (1972); United States v. Chadwick, 433 U.S. 1, 9 (1977); Lo-Ji Sales v. New York, 442 U.S. 319, 326 (1979).

[2] Johnson v. United States, 333 U.S. 10, 13 -14 (1948).

[3] Shadwick v. City of Tampa, 407 U.S. 345, 354 (1972).

[4] Coolidge v. New Hampshire, 403 U.S. 443, 449 -51 (1971) (warrant issued by state attorney general who was leading investigation and who as a justice of the peace was authorized to issue warrants); Mancusi v. DeForte, 392 U.S. 364, 370 -72 (1968) (subpoena issued by district attorney could not qualify as a valid search warrant); Lo-Ji Sales v. New York, 442 U.S. 319 (1979) (justice of the peace issued open-ended search warrant for obscene materials, accompanied police during its execution, and made probable cause determinations at the scene as to particular items).

[5] Jones v. United States, 362 U.S. 257, 270 -71 (1960) (approving issuance of warrants by United States Commissioners, many of whom were not lawyers and none of whom had any guarantees of tenure and salary); Shadwick v. City of Tampa, 407 U.S. 345 (1972) (approving issuance of arrest warrants for violation of city ordinances by city clerks who were assigned to and supervised by municipal court judges). The Court reserved the question "whether a State may lodge warrant authority in someone entirely outside the sphere of the judicial branch. Many persons may not qualify as the kind of 'public civil officers' we have come to associate with the term 'magistrate.' Had the Tampa clerk been entirely divorced from a judicial position, this case would have presented different considerations." Id. at 352.

[6] Id. at 350-54 (placing on defendant the burden of demonstrating that the issuing official lacks capacity to determine probable cause). See also Connally v. Georgia, 429 U.S. 245 (1977) (unsalaried justice of the peace who receives a sum of money for each warrant issued but nothing for reviewing and denying a warrant not sufficiently detached).

7.11. Admit that the IRS routinely seizes property from citizens without first litigating to obtain a warrant from a neutral magistrate. (WTP #410)

7.12. (CH) Admit that the Supreme Court said that persons are entitled to a due process hearing prior to the seizing of property as follows: (WTP #411)

*"While "many controversies have raged about . . . the Due Process Clause," ibid., it is fundamental that except in **emergency situations (and this is not one)*fn5 due process requires that when a State seeks to terminate an interest such as that here involved, it must afford "notice and opportunity for hearing appropriate to the nature of the case" before the termination becomes effective**. Ibid. Opp Cotton Mills v. Administrator, 312 U.S., at 152-156; Sniadach v. Family Finance Corp., supra; Goldberg v. Kelly, supra; Wisconsin v. Constantineau, 400 U.S. 433 (1971)."*
***Bell v. Burson**, 402 U.S. 535, 542, Wisconsin v. Constantineau, 400 U.S. 433, Goldberg v. Kelly, 397 U.S. 254, Armstrong v. Manzo, 380 U.S. 551, United States v. Illinois Central R. Co.*

"*fn5 See, e. g., Fahey v. Mallonee, 332 U.S. 245 (1947); Ewing v. Mytinger & Casselberry,"

- Click here for evidence

7.13. (CH)Admit that the due process hearing prior to seizure must occur at the point where the seizure of property can

be prevented: (WTP #412)

> If the right to notice and a hearing is to serve its full purpose, it is clear that it must be granted at a time when the deprivation can still be prevented. At a later hearing, an individual's possessions can be returned to him if they were unfairly or mistakenly taken in the first place. Damages may even be awarded him for wrongful deprivation. But no later hearing and no damage award can undo the fact that the arbitrary taking that was subject to the right of due process has already occurred.
>
> *"This Court [the Supreme Court] has not embraced the general proposition that a wrong may be done if it can be undone....*
>
> *The establishment of prompt efficacious procedures to achieve legitimate state ends is a proper state interest worthy of cognizance in constitutional adjudication. But the Constitution recognizes higher values than speed and efficiency.*fn8 Indeed, one might fairly say of the Bill of Rights in general, and the Due Process Clause in particular, that they were designed to protect the fragile values of a vulnerable citizenry from the overbearing concern for efficiency and efficacy that may characterize praiseworthy government officials no less, and perhaps more, than mediocre ones.*
>
> *Procedure by presumption is always cheaper and easier than individualized determination. But when, as here, the procedure forecloses the determinative issues of competence and care, when it explicitly disdains present realities in deference to past formalities, it needlessly risks running roughshod over the important interests of both parent and child. It therefore cannot stand.*fn9"*
>
> *" **Stanley v. Illinois**, 405 U.S. 645, 647, 31 L.Ed.2d 551, 556, 92 S.Ct. 1208 (1972)*

- Click here for evidence

7.14. Admit that 26 U.S.C. §7805(a) authorizes and empowers the Secretary of the Treasury as follows: (WTP #413)

> *Sec. 7805. - Rules and regulations*
>
> *(a) Authorization*
>
> *Except where such authority is expressly given by this title to any person other than an officer or employee of the Treasury Department, **the Secretary shall prescribe all needful rules and regulations for the enforcement of this title,** including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.*

- Click here for evidence

7.15. Admit that there are no implementing regulations applicable to Part 1 of Title 26 of the Code of Federal Regulations which authorize assessment of the tax imposed under 26 U.S.C. §1 or 26 U.S.C. §871(b) by other than the taxpayer filling out the form. (WTP #414)

- Click here for evidence
- IRS Due Process Meeting Worksheet

7.16. Admit that there are no implementing regulations applicable to Part 1 of Title 26 of the Code of Federal Regulations which require record keeping for the tax imposed under 26 U.S.C. §1 or 26 U.S.C. §871(b). (WTP #415)

- Click here for evidence
- IRS Due Process Meeting Worksheet

7.17. Admit that there are no implementing regulations applicable to Part 1 of Title 26 of the Code of Federal Regulations which authorize IRS collection of the tax imposed under 26 U.S.C. §1 or 26 U.S.C. §871(b). (WTP #416)

- Click here for evidence
- IRS Due Process Meeting Worksheet

7.18. Admit that there are no implementing regulations applicable to Part 1 of Title 26 of the Code of Federal Regulations which authorize imposition by the government of penalties or interest for nonpayment of the tax imposed under 26 U.S.C. §1 or 26 U.S.C. §871(b). (WTP #417)

- Click here for evidence
- IRS Due Process Meeting Worksheet

IRS FRAUD: CREATION OF TIME BARRED ASSESSMENTS: Questions 7.19 through 7.25

7.19. Admit the IRS is placing levies on taxpayers federal social security benefits in direct violation of the law. (See 42 U.S.C. §407). (WTP #231a)

- Click here for evidence

7.20. Admit the IRS is exceeding the 15% lawful restriction on collection of continuing levies. (See 26 U.S.C. §6331). (WTP #231b)

- Click here for evidence

7.21. Admit that the IRS is making illegal time barred assessments and concealing those assessments by placing fraudulent information on taxpayer master files. (See 26 U.S.C. §6020(b)). (WTP #231c)

- Click here for evidence
- Click here for description of statutory requirements for a valid assessment

7.22. Admit that the IRS is submitting fraudulent CERTIFICATES OF OFFICIAL RECORDS to the courts to substantiate lawful assessments. (WTP #231d)

- Click here for Certificate of official record data evidence

7.23. Admit that the IRS illegally transfers taxpayer payments from their master file to an account called "excess collections" for the purpose of creating fraudulent penalty and interest charges against the taxpayer. (WTP #231e)

- Click here for interest owed to taxpayer evidence
- Click here for date of advance payment evidence

7.24. Admit that the IRS collection division agents put accounting hold codes on taxpayers' accounting modules which forces all entry of data to be inputted manually by the agents and prevents the computer from performing the taxpayers' accounting according to its programming and according to the law. (WTP #231f)

- Click here for interest owed to taxpayer evidence
- Click here for date of advance payment evidence

7.25. Admit that the IRS is short-paying taxpayers' lawful interest owed to them by placing wrongful dates and codes on taxpayers' master files. (WTP #231g)

- Click here for interest owed to taxpayer evidence
- Click here for date of advance payment evidence

IRS VIOLATES CITIZENS' DUE PROCESS RIGHTS: Questions 7.26 through 7.86

7.26 Admit that after the IRS has audited a taxpayer, and there is disagreement, the Code of Federal Regulations requires IRS to take certain procedural steps to ensure the American Citizen administrative level action for hearings on those disagreements, including an examination of the audit with the agent, followed by a meeting with the IRS' agent's supervisor, followed by a 30 day letter which sets out the IRS' disputed items with the American Citizen and an administrative appeal of the IRS' decision on the audit. (See 26 CFR §601.105 and §601.106) (WTP #256a)

- Click here for 26 CFR §601.105 and §601.106

7.27 Admit that the purpose of these administrative steps is to afford the American an opportunity to have his disputed audit resolved at the administrative level. In other words, that these are pre-court or pre-litigation steps, which are designed to help the People avoid the expensive procedure known as Tax Court. (WTP #256b)

7.28 Admit that if the dispute is not resolved at the administrative level, the taxpayer's only affordable remedy is to petition Tax Court. (WTP #256c)

7.29 Admit that IRS Publication 1, IRS Publication 5, and IRS Publication 556, are all given to the taxpayer during the audit through appeals procedure and that these publications state that these administrative, procedural (due process) steps are available to the American Citizen. (WTP #256d)

- Click here for IRS Publication 1
- Click here for IRS Publication 5
- Click here for IRS Publication 556

7.30 Admit that when the People request these administrative, procedural (due process) steps, they are more often than not denied by the IRS. (WTP #256e)

7.31. Admit that Tax Court is an extremely expensive remedy for the average American. (WTP #256f)

7.32. Admit that the IRS is the only party that benefits as taxpayers are forced into Tax Court. (WTP #256g)

7.33. Admit that the Tax Court, in *Minahan v. Commissioner*, 88 T.C. 492, ruled that the taxpayer must demand his procedural, due process rights or any right he might ever have in to obtain attorney fees in a favorable outcome of his

case or else his case is automatically in jeopardy. (WTP #256h)

- Click here for Minahan v. Commissioner, 88 T.C. 492

7.34 Admit that the IRS Restructuring and Reform Act of 1998 requires an American to go through these administrative, procedural (due process) steps in order to prove his "cooperativeness" with the IRS, and to shift the burden of proof to the IRS during the administrative hearing and at trial. (See IRS RRA of 1998, Section 3001, 26 U.S.C. §7491) (WTP #256i)

- Click here for 26 U.S.C. §7491
- Click here for IRS RRA 1998, Section 3001

7.35 Admit that the IRS routinely ignores the Peoples' demands for their procedural, due process, and statutory rights, thereby ignoring IRS publications 1, 5, 556, the regulations they are supposed to use in making their determination and the underlying statutes. (WTP #256j)

- Click here for IRS Publication 1
- Click here for IRS Publication 5
- Click here for IRS Publication 556

7.36 Admit that there is no penalty for IRS agents if they violate the income tax statutes by denying the People their due process rights, but the statutes contain a multitude of penalties for the People if they violate the income tax statutes, and those penalties are almost always imposed. (See Index of the IRS Tax Code, Penalties). (WTP #256k)

7.37 Admit that the IRS frequently denies persons their administrative, statutory, due process rights because the statute of limitations (26 U.S.C. 6501 et seq.) is running out for them to get the statutory Notice of Deficiency (26 U.S.C. §6212) out and they are in fear of losing the whole year of taxation from that person. (WTP #256l)

- Click here for 26 U.S.C. 6501 et. seq (WTP Exhibit 160h)
- Click here for 26 U.S.C. 6212 (WTP Exhibit 160i)

7.38. Admit that the IRS races to issue a STATUTORY NOTICE OF DEFICIENCY, 26 U.S.C. §6212, rather than give the People their due process rights to administrative level resolution required by 26 CFR §601.605, 601.606, because the IRS has greater resources and power in TAX COURT than the average American. (WTP #256m)

- Click here for 26 U.S.C. §6212

7.39. Admit that a Notice of Deficiency is, in most cases, completely erroneous, and always greatly in favor of the IRS. (WTP #256n)

7.40. Admit that many people default on their Notice of Deficiency because they don't have the money to get to Tax Court. (WTP #256oo)

7.41. Admit that the IRS often uses erroneous figures for Income when they send out a Notice of Deficiency. (WTP #256p)

7.42. Admit that there are other ways that the IRS uses figures that it knows are false on its Notice of Deficiencies under 26 U.S.C. §6212. (WTP #256q)

- Click here for 26 U.S.C. §6212

7.43. Admit that the result of this the fact is that the TAXPAYER is often sent an entirely false Notice of Deficiency. (WTP #256r)

7.44 Admit that 26 U.S.C. §6211 is used to determine how a deficiency is made and it does not allow for "0" deductions when the American has claimed deductions. (WTP #256s)

- Click here for 26 U.S.C. §6211 (WTP Exhibit 159)

7.45. Admit that the Tax Court has, however, ruled that the use of "0" line deduction in IRS issued Notices of Deficiency is permissible, even if the taxpayer has claimed deductions. (WTP #256t)

7.46. Admit that the law (26 U.S.C. §6211 Definition of Deficiency) does not permit the "bank deposit analysis" method of determining gross income of a person. (WTP #256u)

- Click here for 26 U.S.C. §6211 (WTP Exhibit 159)

7.47. Admit that the IRS routinely issues Notices of Deficiency that are based on assessments that the IRS makes without following its own procedures and manuals. (WTP #256v)

7.48. Admit that the issuance of a Notice of Deficiency or "90 day Notice" letter is the triggering event and a person so receiving such a letter must file his case in Tax Court within 90 days or forever be held to the often totally false liability assessed in the grossly false Notice of Deficiency. (See 26 U.S.C. §6213) (WTP #256w)

- Click here for 26 U.S.C. §6213 (WTP Exhibit 160j)

7.49 Admit that this is why the administrative, statutory due process steps are so important. (WTP #256x)

7.50. Admit that the federal district court has refused to reach the merits of a claim that Tax Court lacks subject matter jurisdiction in those cases where the IRS has issued Notices of Deficiency after denying the taxpayers their administrative, statutory due process rights. (WTP #256y)

7.51. Admit that the IRS Handbook for Examination of Returns reads in part: (WTP #256z)

> "Examiners are responsible for determining the correct tax liability as prescribed by the Internal Revenue Code. It is imperative that examiners can identify the applicable law, correctly interpret its meaning in light of congressional intent, and, in a fair and impartial manner, correctly apply the law based on the facts and circumstances of the case. " (See IRS Internal Revenue Manual, Section 4.10.7.1)

- Click here for Internal Revenue Manual, Section 4.10.7.1, Examination of Returns

7.52. Admit that the IRS Handbook for Examination of Returns also reads in part: (WTP #256aa)

> "Conclusions reached by examiners must reflect correct application of the law, regulations, court cases, revenue rulings, etc. Examiners must correctly determine the meaning of statutory provisions and not adopt strained interpretation." (See IRS Internal Revenue Manual, Section 4.10.7.1)

- Click here for Internal Revenue Manual, Section 4.10.7.2, Examination of Returns

7.53. Admit that when a taxpayer requests what regulations and statutes the examiner used in making his determination of tax liability, the IRS routinely refuses to cite the law in the majority of cases. (WTP #256bb)

7.54. Admit that without an assessment there can be no liability. (WTP #256cc)

7.55. Admit that some IRS disclosure officers are making the assessments. (WTP #256dd)

7.56. Admit that there is not law in which a disclosure officer is authorized to make an assessment. (WTP #256ee)

7.57. Admit that an assessment made by a disclosure officer is invalid as a matter of law. (WTP #256ff)

7.58. Admit that there are over 100 regulations that apply to Form 1040 cross referenced by OMB #1545-0074, and that the IRS refuses to identify which ones they use in making determinations that a citizen is liable to file a Form 1040 and is liable to pay the tax. (WTP #256gg)

7.59. Admit that a lien arises at the time an assessment is made (See 26 U.S.C. §6322). (WTP #256hh)

- Click here for 26 U.S.C. §6322

7.60 Admit that the evidence underlying the entries on the Certificate of Assessments and Payments is relevant to the issue of whether an assessment was made. [See *Beall v. U.S.*, Civil Action 89 C 6500 (N.D. Ill. Eastern Division), which relies on *Psaty v. U.S.*, 442 F.2d 1154 (3rd Cir. 1971), and U.S. v. Hart, 89-1 USTC para 9255 (C D Ill, 1989)]. (WTP #256ii)

- Click here for *Beall v. U.S.*, Civil Action 89 C 6500 (N.D. Ill. Eastern Division), which relies on *Psaty v. U.S.*, 442 F.2d 1154 (3rd Cir. 1971

7.61. Admit that without an assessment there is no liability. (WTP #256jj)

- Click here to see U.S. v. Nipper, No. 00-5057 (D.C. No. 98-CV-526-K)(N.D. Okla.) (10th. Cir. 2001) (WTP Exhibit 160n)

7.62. Admit that the taxpayer is helpless as he tries to exercise his statutory (due process) rights to these lower level administrative remedies to resolve his audit difference without going to tax court. (WTP #256kk)

7.63 Admit that the tax imposed upon individuals required to make a return under Section 6012(a) of the Internal Revenue Code is imposed upon the individual's "taxable income." (See 26 U.S.C. §6012(a)) (WTP #257)

- Click here for 26 U.S.C. §6012(a) (WTP Exhibit 20)

7.64 Admit that the Section 6020(b) requirement for the Secretary to make the required Section 6012(a) return is to require the Secretary to compute the taxpayers taxable income so the correct amount of tax owed can be calculated [See 26 U.S.C. §6012(a) and 6020(b)] (WTP #258)

- Click here for 26 U.S.C. §6012(a) (WTP Exhibit 20)
- Click here for 26 U.S.C. §6020(b) (WTP Exhibit 161)

7.65 Admit that when an individual required to make a return under 26 U.S.C. §6012(a) of the I.R.C. fails to make the required return, and the Internal Revenue Service issues a notice of deficiency, the amount of tax claimed as due by the Secretary is not based upon the taxable income, but is computed without regard to the requirements of Sections 62 and 63 of the Internal Revenue Code from which adjusted gross income and taxable income are computed from gross income. [See 26 U.S.C. §62, 26 U.S.C. §63, and 26 U.S.C. §6012(a)] (WTP #259)

- Click here for 26 U.S.C. §62 (WTP Exhibit 162)
- Click here for 26 U.S.C. §63 (WTP Exhibit 86)
- Click here for 26 U.S.C. §6012(a) (WTP Exhibit 20)

7.66. Admit that the IRS attempts to obtain assessments of more tax than would otherwise be required by law as an unauthorized additional penalty on those who are required to, but do not, make federal income tax returns. (See Turner Affidavit) (WTP #260)

7.67. Admit that the word "shall" as contained in 26 U.S.C. §6001 imposes a mandatory duty on those to whom the statute applies to keep records, render statements, make returns and to comply with rules and regulations promulgated by the Secretary of the Treasury. [See 26 U.S.C. §6001] (WTP #261)

- Click here for 26 U.S.C. §6001

7.68. Admit that the word "shall" as contained in Section 6011 of the Internal Revenue Code imposes a mandatory duty on those to whom the statue applies to make a return or statement according to the forms and regulations prescribed by the Secretary of the Treasury. [See 26 U.S.C. §6011] (WTP #262)

- Click here for 26 U.S.C. §6011

7.69. Admit that the word "shall" as contained in Section 6012 of the Internal Revenue Code imposes a mandatory duty on those to whom the statute applies to make returns. (See 26 U.S.C. §6012) (WTP #263)

- Click here for 26 U.S.C. §6012

7.70. Admit that the word "shall" as contained in Section 6020(b) of the Internal Revenue Code imposes a mandatory duty on those to whom the statute applies to make returns. [See 26 U.S.C. §6020(b)] (WTP #264)

- Click here for 26 U.S.C. §6020(b)

7.71. Admit that Section 6020(b) of the Internal Revenue Code states: (WTP #265)

> "If any person fails to make any return required by an internal revenue law or regulation made there under at the time prescribed therefore, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise." [See 26 U.S.C. 6020(b)]

- Click here for 26 U.S.C. §6020(b)

7.72. Admit that nowhere in the Internal Revenue Code has Congress indicated that the word "shall" as used in Section 6020(b) of the Internal Revenue Code has a different meaning than is used in Sections 6001, 6011, and/or 6012 of the

Internal Revenue Code. [See Title 26, United States Code, in its entirety) (WTP #266)

- Click here for 26 U.S.C. §6001
- Click here for 26 U.S.C. §6011
- Click here for 26 U.S.C. §6020(b)

7.73. Admit that in the absence of a Congressionally declared distinction for a word used in the same Code (here the Internal Revenue Code), in the same subtitle (here Subtitle F), in the same Chapter (here Chapter 61) and in the same Subchapter (here subchapter A) to be given a different meaning, the same word is to be given the same meaning. (WTP #267)

7.74. Admit that if an individual required to make a return under Section 6012(a) of the Internal Revenue Code fails to make the required return, the Secretary of the Treasury does not make the return mandated by Section 6020(b) of the Internal Revenue Code. (See Turner Affidavit, we are looking for a denial). (WTP #268)

- Click here for evidence
- Click here for 26 U.S.C. §6020(b)

7.75. Admit that the IRS computers system, the IDRS (Integrated Data Retrieval System) was programmed to require a tax return to be filed in order to create a tax module for each taxable year. (WTP #269)

7.76. Admit that if an individual required to make and file a return under Section 6012(a) fails to file such a return, that the Secretary creates a "dummy return" showing zero tax due and owing. [See *Blair v. C.I.R.*, 57 T.C.M. (CCH) 1396 (1989; *Phillips v. C.I.R.*, 851 F.2d 1492 (D.C. Cir. 1988); *Schiff v. United States*, 71A A.F.T.R.2d 9303271 (1989)] (WTP #270)

- Click here for Blair v. C.I.R., 57 T.C.M. (CCH) 1396 (1989)
- Click here for Phillips v. C.I.R., 851 F.2d 1492 (D.C. Cir. 1988)
- Click here for Schiff v. United States, 71A A.F.T.R.2d 9303271 (1989))

7.77. Admit that this "dummy return" sets forth no financial data from which the gross income, adjusted gross income or taxable income can be computed. [See *Blair v. C.I.R.*, 57 T.C.M. (CCH) 1396 (1989; *Phillips v. C.I.R.*, 851 F.2d 1492 (D.C. Cir. 1988); *Schiff v. United States*, 71A A.F.T.R.2d 9303271 (1989)] (WTP #271)

- Click here for Blair v. C.I.R., 57 T.C.M. (CCH) 1396 (1989)
- Click here for Phillips v. C.I.R., 851 F.2d 1492 (D.C. Cir. 1988)
- Click here for Schiff v. United States, 71A A.F.T.R.2d 9303271 (1989))

7.78. Admit that this "dummy return" is not signed. [See *Blair v. C.I.R.*, 57 T.C.M. (CCH) 1396 (1989; *Phillips v. C.I.R.*, 851 F.2d 1492 (D.C. Cir. 1988); *Schiff v. United States*, 71A A.F.T.R.2d 9303271 (1989)] (WTP #272)

- Click here for Blair v. C.I.R., 57 T.C.M. (CCH) 1396 (1989)
- Click here for Phillips v. C.I.R., 851 F.2d 1492 (D.C. Cir. 1988)
- Click here for Schiff v. United States, 71A A.F.T.R.2d 9303271 (1989))

7.79. Admit that a "dummy return" is physically created on the IRS Form 1040. [See *Blair v. C.I.R.*, 57 T.C.M. (CCH) 1396 (1989; *Phillips v. C.I.R.*, 851 F.2d 1492 (D.C. Cir. 1988); *Schiff v. United States*, 71A A.F.T.R.2d 9303271 (1989)] (WTP #273)

- Click here for Blair v. C.I.R., 57 T.C.M. (CCH) 1396 (1989)
- Click here for Phillips v. C.I.R., 851 F.2d 1492 (D.C. Cir. 1988)
- Click here for Schiff v. United States, 71A A.F.T.R.2d 9303271 (1989))

7.80. Admit that Congress has not authorized the Internal Revenue Code or Treasury Regulations that authorizes the creation of "dummy returns". (See Title 26, United States Code, in its entirety). (WTP #274)

7.81. Admit that if an individual required to make a return under 26 U.S.C. §6012(a) files a return that does not contain the financial information necessary to allow the IRS to compute gross income, adjusted gross income and/or taxable income, the IRS calls such a return a "zero return." (WTP #275)

- Click here for *Hopkins v. United States*, 56 A.F.T.R.2d 85-5940 (1985) (WTP Exhibit 169)
- Click here for *Nichols v. United States*, 575 F.Supp. 320 (D.C.Minn 1983) (WTP Exhibit 170)
- Click here for *Tornichio v. United States*, 81 A.F.T.R.2d 98-1377 (1988) (WTP Exhibit 171)
- Click here for 26 U.S.C. §6012

7.82. Admit that if an individual required to make a return under Section 6012(a) files a return that does not contain the financial information necessary to allow the IRS to compute gross income, adjusted gross income and/or taxable income, the IRS takes the position that no return has been filed. (See *Hopkins v. United States*, 56 A.F.T.R.2d 85-5940 (1985); *Nichols v. United States*, 575 F.Supp. 320 (D.C. Minn. 1983); *Tornichio v. United States*, 81 A.F.T.R.2d 98-1377 (1988). (WTP #276)

- Click here for *Hopkins v. United States*, 56 A.F.T.R.2d 85-5940 (1985) (WTP Exhibit 169)
- Click here for *Nichols v. United States*, 575 F.Supp. 320 (D.C.Minn 1983) (WTP Exhibit 170)
- Click here for *Tornichio v. United States*, 81 A.F.T.R.2d 98-1377 (1988) (WTP Exhibit 171)

7.83. Admit that if an individual required to make a return under Section 6012(a) files a return that does not contain the financial information necessary to allow the IRS to compute gross income, adjusted gross income and/or taxable income, the IRS takes the position that the return is "frivolous" and imposes a $500 penalty. (See *Hopkins v. United States*, 56 A.F.T.R.2d 85-5940 (1985); *Nichols v. United States*, 575 F.Supp. 320 (D.C. Minn. 1983); *Tornichio v. United States*, 81 A.F.T.R.2d 98-1377 (1988). (WTP #277)

- Click here for *Hopkins v. United States*, 56 A.F.T.R.2d 85-5940 (1985) (WTP Exhibit 169)
- Click here for *Nichols v. United States*, 575 F.Supp. 320 (D.C.Minn 1983) (WTP Exhibit 170)
- Click here for *Tornichio v. United States*, 81 A.F.T.R.2d 98-1377 (1988) (WTP Exhibit 171)

7.84. Admit that if an individual required to make a return under Section 6012(a) files a return that does not contain a signature made under penalty of perjury, the IRS takes the position that no return was filed. (WTP #278)

- Click here to see 26 U.S.C. §6065
- Click here to see *Doll v. C.I.R.*, 358 F.2d 713 (3rd Cir. 1966)
- Click here to see *Elliott v. C.I.R.*, 113 T.C. 125 (1999)
- Click here to see *Richardson v. C.I.R.*, 72 T.C. 818 (1979)
- Click here for 26 U.S.C. §6012

7.85. Admit that if an individual required to make a return under Section 6012(a) files a return that does not contain a signature under penalties of perjury, the IRS takes the position that the return is "frivolous" and imposes a $500 penalty. (WTP #279)

- Click here to see *Green v. United States*, 593 F.Supp. 1341 (D.C.Ind. 1984) (WTP Exhibit 176)
- Click here to see *McNally v. United States*, 56 A.F.T.R.2d 85-5757 (1985) (WTP Exhibit 177)
- Click here for 26 U.S.C. §6012

7.86. Admit that an IMF record bearing the code "SFR 150" indicates that a fully paid IRS form 1040a was filed. [See LEM III 3(27)(68)0-34]. (WTP #280)

- Click here to see Law Enforcement Manual III 3(27)(68)0-34 (WTP Exhibit 178)

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SECTION 7-FOURTH AMENDMENT SUMMARY

The 4th Amendment to the U.S Constitution provides protection against unlawful searches and seizures of persons and property.

In general, for the government to seize property it must have signed court order. This usually means that some form of litigation or due process has resulted in a judgment against a citizen and the property is being seized to satisfy that judgment.

Unfortunately for the People, the IRS believes it can simply create an administrative request and take the property of its choosing.

In daily practice, the IRS generates large numbers of "levy" and "seizure" "Notices" and sends them to banks, auto companies and employers. These third parties, with little question, take citizens' property and convey it to the IRS. These are merely "Notices" of levy and seizure and do not the authority of law behind them.

These takings occur without signed court orders and in plain violation of the 4th Amendment protections of property.

Again, it seems as though in tax matters, the Constitution takes a back seat to expediency and efficiency, and unfortunately, results in unlawful abuse.

Given the serious questions of the legitimacy of the tax system presented during this hearing, we must consider once just how far we as a People have let our tax system and our government infringe on the plain constructs and protections of our Constitution.

The unalienable right to due process is not restricted to the courts or criminal matters. In fact, most citizens first taste of IRS due process occurs as the IRS administrative operations are encountered on a daily basis.

As the evidence and testimony will demonstrate, the IRS grossly and systemically denies citizens their due process rights in direct and willful violation of the law and the Constitution.

The legacy of these violations of due process at the administrative level result in continuing troubles for the average tax payer because many "findings" at this level are routinely accepted as legal "fact" and cannot be effectively challenged in subsequent legal proceedings – even criminal proceedings in U.S. District Court.

By short-cutting and denying citizens their legal right to bona fide due process hearings, IRS speed up the process of creating "statutory notice of deficiencies" which left unchallenged in Tax Court, result in the de facto, unlawful assessment of a tax.

Most of the People do not know that Tax Court is not a "real" court of law. It is an administrative tribunal run by and paid for by the IRS! As you may suspect, Tax Court also routinely violates due process with their "liberal" applications of basic due process protections such as the Federal Rules of Evidence (FRE) under which they are legally bound.

Furthermore, it is interesting that in tax matters alone, it is the taxpayer's duty to show "burden of proof". This burden only shifts to the IRS if the taxpayer remains "cooperative" during the execution of IRS administrative procedures.

In the end, all the IRS wants is your money. They need to create a tax "assessment" to proceed to collect a tax. For the average person, the IRS does not have the legal authority to create such an assessment.

The IRS has elaborate procedures to create computer records via (unauthorized) "dummy returns" which set in motion the "enforcement" machinery. They have elaborate administrative procedures that, even if made available, provide

merely the form, but not the substance of bona fide due process.

Legal questions from tax payers are routinely ignored. Legal authority is never produced.

Evidence is suppressed. Due process hearings are denied. Rules of Evidence and discovery/procedural rules are ignored. Computer systems are unlawfully used. "Audits" and threatening form letters are generated by the truckload. And each day, administrative employees, without court orders and without any explicitly delegated statutory authority make tax "assessments" against ordinary Americans.

Is this the tax system of a free People?

This section and the whistle-blowing testimony from an ex-IRS agent and a "forensic" CPA establish sworn testimony and evidence about widespread and unlawful manipulation of IRS computer files. These unlawful and fraudulent uses of computer records continue to result in widespread:

- False tax assessments and the subsequent tax "enforcement" actions,
- Fraudulent "certificates of official records" for the courts that purport to substantiate otherwise fraudulent tax payer records
- The theft of lawful interest owed by the government to taxpayers (by altering dates of payment and receipt, etc.)
- Willful and intentional creation of fraudulent interest and arbitrary and excessive tax penalties
- Levies of Social Security benefits in direct violation of U.S. law
- Gross violations of citizen Due Process rights

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THE GREAT IRS HOAX: WHY WE DON'T OWE INCOME TAX

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Back GO TO SOVEREIGNTY FORMS AND INSTRUCTIONS AREA

WATCH OUR FREE MOVIE ONLINE! CLICK HERE!

"Who is John Galt?"

Welcome to our free download page. The *Great IRS Hoax: Why We Don't Owe Income Tax* is a an ***amazing*** documentary that exposes the lie that the IRS and our tyrannical government "servants" have foisted upon us all these years:

> *"That we are liable for IRC Subtitle A income tax as American Nationals living in the 50 states of the Union with earnings from within the 50 states of the Union that does not originate from the government."*

Through a detailed and very thorough analysis of both enacted law and IRS behavior unrefuted by any of the 100,000 people who have downloaded the book, including present and former (after they learn the truth!) employees of the Treasury and IRS, it reveals why Subtitle A of the Internal Revenue Code is private law/special law that one only becomes subject to by engaging in an excise taxable activity such as a "trade or business", which is a type of federal employment and agency that puts people under federal jurisdiction who would not otherwise be subject. It proves using the government's own laws and publications and court rulings that for everyone in states of the Union who has not availed themselves of this excise taxable privilege of federal employment/agency, Subtitle A of the I.R.C. is not "law" and does not require the average American domiciled in states of the Union to pay a "tax" to the federal government. The book also explains how Social Security is the de facto mechanism by which "taxpayers" are recruited, and that the program is illegally administered in order to illegally expand federal jurisdiction into the states using private law. This book does not challenge or criticize the constitutionality of any part of the Internal Revenue Code nor any state revenue code, but simply proves that these codes are being misrepresented and illegally enforced by the IRS and state revenue agencies against persons who are not their proper subject. This book might just as well be called *The Emperor Who Had No Clothes* because of the massive and blatant fraud that it exposes on the part of our public servants.

"But Dad, the emperor is naked!"

Five years of continuous research by the author(s) and their readers went into writing this very significant and incredible book. This book is *very different* from most other tax books because:

1. The book is written in part by our tens of thousands of readers and growing...***THAT'S YOU***! We invite and frequently receive good new ideas and materials from legal researchers and ordinary people like YOU, and when we get them, we add them to the book after we research and verify them for ourselves to ensure their accuracy. Please keep your excellent ideas coming, because this is a team effort, guys!
2. *We use words right out of the government's own mouth, in most cases, as evidence of most assertions we make*. If the government calls the research and processes found in this book frivolous, they would have to call the Supreme Court, the Statutes at Large, the Treasury Regulations (26 C.F.R.) and the U.S. Code frivolous, because everything derives from these sources.
3. Ever since the first version was published back in Nov. 2000, we have invited, and even *begged*, the government continually and repeatedly, both on our website and in our book and in correspondence with the IRS and the Senate Finance Committee (click here to read our letter to Senator Grassley under "Political Activism"), and in the We The People Truth in Taxation Hearings to provide a signed affidavit on government stationary along with supporting evidence that disproves *anything* in this book . We have even promised to post the government's rebuttal on our web site *unedited* because we are more interested in the truth than in our own agenda. Yet, some ***criminal public servants*** have consistently and steadfastly refused their legal duty under the First Amendment Petition Clause to answer our concerns and questions, thereby hiding from the truth and obstructing justice in violation of 18 U.S.C. Chapter 73. By their failure to answer they have defaulted and admitted to the complete truthfulness of this book pursuant to Federal Rule of Civil Procedure 8(d). If the "court of public opinion" really were a court, and if the public really were *fully educated* about the law as it is the purpose of this book to bring about, the IRS and our federal government would have been convicted long ago of the following crimes by their own treasonous words and actions thoroughly documented in this book (click here for more details):

    - Establishment of the U.S. government as a "religion" in violation of First Amendment (see section 4.3.2 of this book and our article entitled: Our Government has Become Idolatry and a False Religion)
    - Obstruction of justice under 18 U.S.C. Chapter 73
    - Conspiracy against rights under 18 U.S.C. §241
    - Extortion under 18 U.S.C. §872 .
    - Wrongful actions of Revenue Officers under 26 U.S.C. §7214
    - Engaging in monetary transactions derived from unlawful activity under 18 U.S.C. §1957
    - Mailing threatening communications under 18 U.S.C. §876
    - False writings and fraud under 18 U.S.C. §1018
    - Taking of property without due process of law under 26 CFR §601.106(f)(1)
    - Fraud under 18 U.S.C. §1341
    - Continuing financial crimes enterprise (RICO) under 18 U.S.C. §225
    - Conflict of interest of federal judges under 28 U.S.C. §455
    - Treason under Article III, Section 3, Clause 1 of the U.S. Constitution
    - Breach of fiduciary duty in violation of 26 CFR 2635.101, Executive order order 12731, and Public Law 96-303
    - Peonage and obstructing enforcement under Thirteenth Amendment, 18 U.S.C. §1581 and 42 U.S.C. §1994
    - Bank robbery under 18 U.S.C. §2113 (in the case of fraudulent notice of levies)

4. We keep the level of the writing to where a person of average intelligence and no legal background can understand and substantiate the claims we are making for himself.
5. We show you how and where to go to substantiate every claim we make and we encourage you to check the facts for yourself so you will believe what we say is absolutely accurate and truthful.
6. All inferences made are backed up by extensive legal research and justification, and therefore tend to be more convincing and authoritative and understandable than most other tax books. We assume up front that you will

question *absolutely every assertion* that we make because we encourage you to do exactly that, so we try to defend every assertion in advance by answering the most important questions that we think will come up. We try to reach *no* unsubstantiated conclusions whatsoever and we avoid the use of personal opinions or anecdotes or misleading IRS publications. Instead, we always try to back up our conclusions with evidence or an authoritative government source such as a court cite or a regulation or statute or quotes from the authors of the law themselves, and we verify every cite so we don't destroy our credibility with irrelevant or erroneous data or conclusions. Frequent corrections and feedback from our 100,000 readers (and growing) also helps considerably to ensure continual improvements in the accuracy and authority and credibility of the document.

7. Absolutely everything in the book is consistent with itself and we try very hard not to put the reader into a state of "cognitive dissonance", which is a favorite obfuscation technique of our public dis-servants and legal profession. No part of this book conflicts with any other part and there is complete "cognitive unity". Every point made supports and enhances every other point. If the book is truthful, then this must be the case. A true statement cannot conflict with itself or it simply can't be truthful.
8. With every point we make, we try to answer the question of "why" things are the way they are so you can understand our reasoning. We don't flood you with a bunch of rote facts to memorize without explaining why they are important and how they fit in the big picture so you can decide for yourself whether you think it is worth your time to learn them. That way you can learn to think strategically, like most lawyers do.
9. We practice exactly what we preach and what we put in the book is based on lessons learned actually doing what is described. That way you will believe what we say and see by our example that we are very sincere about everything that we are telling you. Since we aren't trying to sell you anything, then there *can't* be any other agenda than to help you learn the truth and achieve personal freedom.
10. This is also the ONLY book that explains and compares all the major theories and tax honesty groups and sifts the wheat from the chaff to extract the "best of breed" approach from each advocate which has the best foundation in law and can most easily be defended in court.
11. The entire book, we believe, completely, truthfully, and convincingly answers the following very important question:

    "How can we interpret and explain the Internal Revenue Code in a way that makes it completely lawful and Constitutional, both from the standpoint of current law and from a historical perspective?"

If you don't have a lot of time to read EVERYTHING, we recommend reading at least the following chapters in the order listed: 1, 3, 4, 5 (these are mandatory).

TESTIMONIALS: Click here to hear what people are saying about this book!

If you are from the government and think that this book might be encouraging some kind of illegal activity, click here to find a rebuttal of such an accusation and detailed research on why we are *not* subject to state or federal jurisdiction for anything related to this website or our ministry.

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Chapter #	*Title*	*Pages*	*Size (kbytes)*	*FAST Mirror Site #1*	*SLOW Main server*
	WHOLE DOCUMENT (last revision 3JAN07, version 4.29!)	1,974	19,876	PDF	PDF
	Preface and Table of Contents	129	966	PDF	PDF
1	Introduction	115	1,275	PDF	PDF

2	U.S. Government Background	128	1,432		
3	Legal Authority for Income Taxes in the United States	173	1,833		
4	Know Your Citizenship Status and Rights!	376	4,424		
5	The Evidence: Why We Aren't Liable to File Returns or Pay Income Tax	539	5,467		
6	History of Federal Government Income Tax Fraud, Racketeering, and Extortion in the U.S.A.	179	1,864		
7	Case Studies	45	420		
8	Resources for Tax Freedom Fighters	9	97		
9	Definitions	14	220		

The *Great IRS Hoax* book draws on works from several prominent sources and authors, such as:

1. The U.S. Constitution.
2. The Family Constitution
3. Amendments to the U.S. Constitution.
4. The Declaration of Independence.
5. The United States Code (U.S.C.), Title 26 (Internal Revenue Code), both the current version and amended past versions.
6. U.S. Supreme Court Cases.
7. U.S. Tax Court findings.
8. The Code of Federal Regulations (CFR), Title 26, both the current version and amended past versions.
9. IRS Forms and Publications (directly from the IRS Website at http://www.irs.gov).
10. U.S. Treasury Department Decisions.
11. Federal District Court cases.
12. Federal Appellate (circuit) court cases.
13. Several websites.
14. A book entitled *Losing Your Illusions* by Gordon Phillips of Private Arena (http://privatearena.com/).

15. A book entitled *IRS Humbug*, by Frank Kowalik.
16. A book entitled *Federal Mafia*, by Irwin Schiff (http://paynoincometax.com).
17. A book entitled *Constitutional Income*, by Phil Hart (http://constitutionalincome.com/).
18. Case studies of IRS enforcement tactics (http://www.neo-tech.com/irs-class-action/).
19. Case studies of various tax protester groups.
20. The IRS' own publications about Tax Protesters.
21. A book entitled *Why No One is Required to File Tax Returns* by William Conklin (http://www.anti-irs.com)
22. Writings of Thomas Jefferson, the author of the Declaration of Independence.
23. Department of Justice, Tax Division, Criminal Tax Manual
24. Several other books mentioned on our Recommended Reading page.

Below is a complete outline of the content of this very extensive work:

PREFACE

Testimonials
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1.4.7.2 Question 2: Do you have any court cites favorable to your position?
1.4.7.3 Question 3: Isn't it a contradiction for you to be working for the government on the one hand and criticizing the government on the other hand.
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the government that you tell people not to pay?
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1.4.7.6 Question 6: Aren't you endangering yourself by criticizing government?
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1.5 Who Is Really Liable for the Income Tax?
1.6 Amazing Facts About the Income Tax
1.7 So if citizens don't need to pay income tax, how could so many people be fooled for so long?
1.8 Our Own Ignorance, Laziness, Arrogance, Disorganization, and Apathy: Public Enemy #1
1.9 Political "Tax" Prisoners
1.10 What Attitude are Christians Expected to Have About This Document?

1.10.1 Jesus Christ, Son of God, was a tax protester!
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3.14.24 1970: Brady v. U.S. (379 U.S. 742)
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3.15.7 1939: Graves v. People of State of New York (306 S.Ct. 466)

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3.15.9 1946: Lauderdale Cemetary Assoc. v. Mathews, 345 PA 239, 47 A. 2d 277, 280
3.15.10 1947: McCutchin v. Commissioner of IRS, 159 F2d 472 5th Cir. 02/07/1947
3.15.11 1952: Anderson Oldsmobile , Inc. vs Hofferbert, 102 F. Supp. 902
3.15.12 1955: Oliver v. Halstead, 196 VA 992, 86 S.E. 2d 858
3.15.13 1958: Lyddon Co. vs. U.S., 158 Fed. Supp 951
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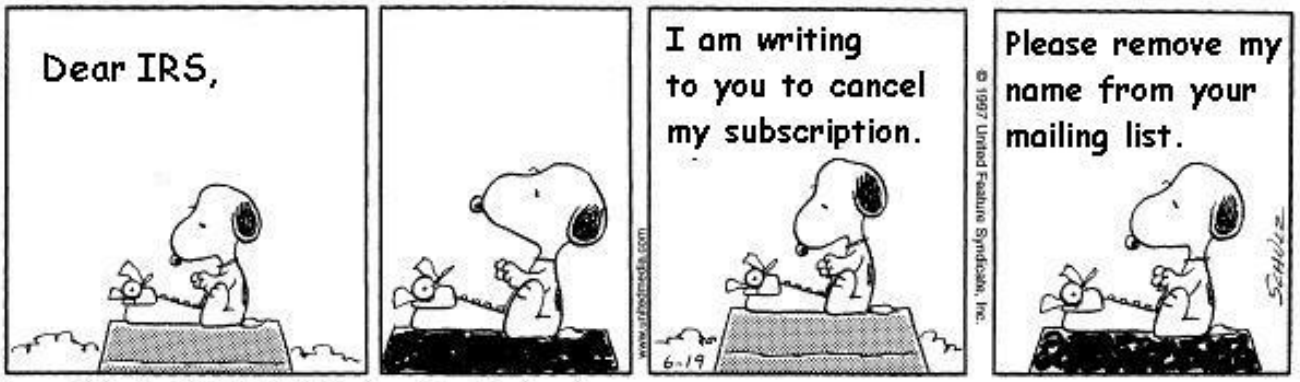

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Warrantless IRS Seizures Unlawful

by Virginia L. Cropsey, J.D.

According to Fox News and the Associated Press, on December 26, 2000, Michael McDermott went to work as usual, chatting with co-workers about the holidays. But shortly after 11 a.m., the Massachusetts software tester embarked on a deadly rampage that killed seven people.

McDermott allegedly shot one woman in the back as she sat at her desk, crippled another woman with two shots to the leg before finishing her off with a shot to the head and shot another man as he tried to crawl away. When McDermott discovered that employees in the accounting office had barricaded themselves behind a locked door, he "blew the door off with a shotgun."

McDermott seemed to focus his rage on the accounting department, which had recently been ordered by the IRS to garnish McDermott's wages.

The Edgewater Technology company (McDermott's employer) released a statement to absolve itself of responsibility in the shootings, saying there was no way to have predicted actions that "apparently stem from occurrences in [McDermott's] personal life" or "any apparent reasons to restrict his access to the building."

Nothing quite so compassionate as a corporation, hmm?

Too bad about the seven victims, but for damn sure there's no way this corporation is responsible.

However, as you'll see in the following analysis by attorney Virginia Cropsey, it's arguable that the IRS precipitated this tragedy by attempting to seize part of Mr. McDermott's wages without lawful authority. If attorney Cropsey's analysis is correct, the victims, their heirs or perhaps even Mr. McDermott might have a basis for a civil action against the IRS.

Of course, suing the IRS is something of a fool's errand. Even if attorney Cropsey is correct, it's always tough to sue a government agency.

But Ms. Cropsey implies that her arguments might also be used

against the victims' employer—which acted on behalf of the IRS. Perhaps—despite its initial disclaimer of responsibility—if the Edgewater Technology corporation knew or should've known that it was illegal to seize money from Mr. McDermott's wages without a lawful warrant, that corporation might be held partially liable for the seven deaths.

The implications are large.

Reports indicate an employee of a Boston Internet consulting firm shot and killed seven co-workers who apparently participated in plans to honor warrant-less government searches for and seizures of the employee's earnings, accrued and future.

The law, constitutional and statutory, requires a 4th Amendment warrant, judicial or *executive*, for tax searches and seizures. The warrant is critical to show all the necessary procedures and laws have been complied with to allow the government to seize the property. Without a valid warrant, there is no legally valid proof that a tax debt exists.

Nevertheless, the IRS routinely operates without warrants and thus provokes an outcry, producing litigation, and fomenting office stress that has now resulted in violence.

Apparently, the IRS can't get a warrant for tax seizures because no competent authority can *swear* the tax debt is due and owing. Without a warrant, government seizure of a person's property appears to be a *direct* tax. But the Constitution prohibits direct taxes without apportionment.

The 4th Amendment was inspired by the 1761 speech against the writs of assistance by James Otis, an attorney engaged by the merchants of Boston. British writs of assistance, which are similar to the current IRS "process" led to the Revolutionary War.

A young John Adams, later second President of the United States, heard the **Otis speech** and was inspired to draft Article XIV for the 1780 Massachusetts Declaration of Rights, which later became the basic language for the 4th Amendment.

At the time of the construction of the Bill of Rights, Richard Henry Lee, Senator from Virginia, and ancestor of Robert E. Lee, saw to it the word "effects" rather than "possessions" was used in the 4th Amendment, so that accounts receivable (which include earnings due

employees), have 4th Amendment protection. As shown by 4th and 5th Amendment pre-judgment seizure case law, this means that a warrant is required.

Additionally, under the Supreme Court decision in *Sniadach v. Family Finance Corp*, wages are special property for purposes of pre-judgment seizure. You can't seize property for taxes pre-judgment without a *sworn* statement. Instead, the government should have to swear the debt is owed and demonstrate probable cause for these searches and seizures. The IRS has no business writing your employer about you and interfering with your employment relations without proper authorization.

Recently I showed that the 4th Amendment's "no warrants" clause was intended by the Framers to require at minimum, an *executive* branch warrant for tax seizures. I call it "all about adjectives." I carefully read the Supreme Court's 1977 opinion in *GM Leasing* and found that a *judicial* warrant was necessary for entry into *private* premises for tax seizures.

I knew from the plain language of the 4th Amendment, and from research I did (including the 1762 British sedition case of *Entick v. Carrington & Three Other King's Messengers*) that at least an *executive branch warrant* was necessary for other tax seizures. I'm a bit like the kid in "6th Sense" movie – I don't see dead people, but I do see something the others don't due to my careful reading of the 4th Amendment's 'no warrants' clause – I see *executive* branch warrants.

Executive branch warrants are not figments of my imagination but have been held by the courts to be required for federal tax seizures. In a 1998 opinion in ***Williams v. Boulder Dam Credit Union***, a Clark County, Nevada Magistrate exposed pre-1954 case law which held the executive branch warrant is required. I've spent over 1,000 hours researching the issue and filed a 60-page brief on the subject in the Michigan Court of Appeals.

The pre-1954 case law was continued in effect by Congress under the 1954 IRS Code. Since then, a consumer snatch-back line of cases in the Supreme Court makes clear that the Due Process clause of the 5th Amendment requires sworn statements for pre-judgment seizure. These standards also apply to federal tax seizures according to the Supreme Court.

I've also researched the question of whether private sector employers are required to withhold wages without a signed wage withholding order in effect. My re-

search also shows *future* earnings aren't property under state law and therefore, under 26 U.S.C. Sec. 6331 (the federal tax levy statute), the IRS cannot lawfully reach future earnings with current levy process as they currently do

Cases concerning the issue of warrant requirements are just beginning to make their way through the courts. In order to avoid a 4th Amendment test, the government does not cross the line and technically seize the property. Government has not used the language obfuscated case law says is required for seizure – "is seized and levied upon." They used quite a few standard legal tricks. It was a textbook case of stealthy encroachment. But as a result, the levy situation leaves banks and employers subject to suit on contracts, and without a defense that they honored a levy under 26 U.S.C. 6331 & 6332 *since no levy has actually occurred*.

The government avoids a constitutional test of the income tax by not technically seizing the property. It's a double-end run of the Constitution, one 4th Amendment's language was written to prevent, and one which must end immediately. The IRS has engaged in a calculated campaign to intimidate attorneys, legislators and others who should have reported this situation into silence – the situation is grim and despicable. Every member of Congress, every President in modern times, bears responsibility for allowing these warrant-less seizures to occur. I encourage citizens to write Congress and the President and demand the IRS obtain the warrants the Constitution requires for tax searches and seizures.

Let's assume attorney Cropsey is correct: The IRS must have a warrant to lawfully seize money from an employee's wages or bank account.

If so, what do you suppose would happen if an employer which seized (or was about to seize) your wages on behalf of the IRS were put on proper administrative notice of the law requiring a warrant before lawful seizure could commence? With proper notice, the corporation might be forced to demand the IRS to show proof of a lawful warrant (not just a Notice of Levy), or decline to assist in the seizure less it become *personally liable* to the employee whose wages were unlawfully seized.

What do you suppose would happen if you knew the IRS wanted to seize savings in your bank account, and you put your bank on

proper notice that the seizure could not take place without a proper warrant? Would your bank risk being sued just to help the IRS?

Of course, the IRS might be able to get a lawful warrant. But the legal process of getting an individual warrant for *every* IRS seizure and levy would be so expensive, time-consuming and prone to endless litigation, that the actual number of seizures and levies would probably decline precipitously.

But is Ms. Cropsey's analysis of warrants valid, flawed, or completely mistaken? I don't know. But judging from her research, I don't think anyone else knows either. In other words, until the Supreme Court absolutely settles the issue, perhaps *nobody knows*.

That suggests that 1) you could legally raise this question in your confrontations with the IRS, your employer or bank; and 2) it might take at least two or three years for your lawsuit based on attorney Cropsey's theory (and variations thereon) to be decided by the Supreme Court.

If so, there may be a two or three year "window" wherein every employer and bank who tried to enforce the IRS liens and levies without proper warrant might expect to be sued by their own employees or depositors. And since the persons suing the employers and banks are targets of the IRS, it's fairly certain that they'll be broke by the time the issue is resolved. If so, the employers and banks would have little hope of recovering their legal fees in court. And each of those lawsuits would probably cost the corporation or bank *at least* $5,000 or $10,000 in legal fees for their defense attorneys, plus no end of bad publicity—and that's assuming they ultimately win. (Can you say "Pyrrhic Victory," boys and girls?)

I don't know if the idea that employers or banks who help the IRS might face untenable legal fees makes you smile, but it makes me giggle like a little kid.

Today, some of us know enough law to be a real pain the buns. For example, even if you're some crazy pro se litigant who's not good enough to win a seatbelt case in traffic court, you're probably good enough to file enough motions and counter-suits (all of which require a response) to cause your adversary to spend big bucks on his lawyers. Does the system want to spend $5,000 in lawyer fees to prosecute a $75 seatbelt ticket all the way to the state Supreme Court?

Prob'ly not.

Similarly, are corporations and banks willing to expose themselves to $10,000 in legal fees to seize $2,000 from your wages or bank account and give it to the IRS?

I don't think so.

And don't imagine that the corporations and banks are on the IRS's side. They generally

§ 6331. Levy and distraint

(a) Authority of Secretary

If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer (as defined in section 3401(d)) of such officer, employee, or elected official. If the Secretary makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in this section.

(b) Seizure and sale of property

The term "levy" as used in this title includes the power of distraint and seizure by any means. Except as otherwise provided in subsection (e), a levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the Secretary may levy upon property or rights to property, he may seize and sell such property or rights to property (whether real or personal, tangible or intangible).

(c) Successive seizures

Whenever any property or right to property upon which levy has been made

by virtue of subsection (a) is not sufficient to satisfy the claim of the United States for which levy is made, the Secretary may, thereafter, and as often as may be necessary, proceed to levy in like manner upon any other property liable to levy of the person against whom such claim exists, until the amount due from him, together with all expenses, is fully paid.

(d) Requirement of notice before levy

(1) In general

Levy may be made under subsection (a) upon the salary or wages or other property of any person with respect to any unpaid tax only after the Secretary has notified such person in writing of his intention to make such levy.

(2) 30-day requirement

The notice required under paragraph (1) shall be—

(A) given in person,

(B) left at the dwelling or usual place of business of such person, or

(C) sent by certified or registered mail to such persons's last known address,

no less than 30 days before the day of the levy.

(3) Jeopardy

Paragraph (1) shall not apply to a levy if the Secretary has made a finding under the last sentence of subsection (a) that the collection of tax is in jeopardy.

(4) Information included with notice

The notice required under paragraph (1) shall include a brief statement which sets forth in simple and nontechnical terms—

(A) the provisions of this title relating to levy and sale of property,

(B) the procedures applicable to the levy and sale of property under this title,

(C) the administrative appeals available to the taxpayer with respect to such levy and sale and the procedures relating to such appeals,

(D) the alternatives available to taxpayers which could prevent levy on the property (including installment agreements under section 6159),

(E) the provisions of this title relating to redemption of property and release of liens on property, and

(F) the procedures applicable to the redemption of property and the release of a lien on property under this title.

(e) Continuing levy on salary and wages

The effect of a levy on salary or wages payable to or received by a taxpayer shall be continuous from the date such levy is first made until such levy is released under section 6343.

(f) Uneconomical levy

No levy may be made on any property if the amount of the expenses which the Secretary estimates (at the time of levy) would be incurred by the Secretary with respect to the levy and sale of such property exceeds the fair

market value of such property at the time of levy.

(g) Levy on appearance date of summons

(1) In general

No levy may be made on the property of any person on any day on which such person (or officer or employee of such person) is required to appear in response to a summons issued by the Secretary for the purpose of collecting any underpayment of tax.

(2) No application in case of jeopardy

This subsection shall not apply if the Secretary finds that the collection of tax is in jeopardy.

(h) Continuing levy on certain payments

(1) In general

If the Secretary approves a levy under this subsection, the effect of such levy on specified payments to or received by a taxpayer shall be continuous from the date such levy is first made until such levy is released. Notwithstanding section 6334, such continuous levy shall attach to up to 15 percent of any specified payment due to the taxpayer.

(2) Specified payment

For the purposes of paragraph (1), the term "specified payment" means —

(A) any Federal payment other than a payment for which eligibility is based on the income or assets (or both) of a payee,

(B) any payment described in paragraph (4), (7), (9), or (11) of section 6334 (a), and

(C) any annuity or pension payment under the Railroad Retirement Act or benefit under the Railroad Unemployment Insurance Act.

(3) Increase in levy for certain payments

Paragraph (1) shall be applied by substituting "100 percent" for "15 percent" in the case of any specified payment due to a vendor of goods or services sold or leased to the Federal Government.

(i) No levy during pendency of proceedings for refund of divisible tax

(1) In general

No levy may be made under subsection (a) on the property or rights to property of any person with respect to any unpaid divisible tax during the pendency of any proceeding brought by such person in a proper Federal trial court for the recovery of any portion of such divisible tax which was paid by such person if—

(A) the decision in such proceeding would be res judicata with respect to such unpaid tax; or

(B) such person would be collaterally estopped from contesting such unpaid tax by reason of such proceeding.

(2) Divisible tax

For purposes of paragraph (1), the term "divisible tax" means—

(A) any tax imposed by subtitle C; and

(B) the penalty imposed by section 6672 with respect to any such tax.

(3) Exceptions

(A) Certain unpaid taxes

This subsection shall not apply with respect to any unpaid tax if—

(i) the taxpayer files a written notice with the Secretary which waives the restriction imposed by this subsection on levy with respect to such tax; or

(ii) the Secretary finds that the collection of such tax is in jeopardy.

(B) Certain levies

This subsection shall not apply to—

(i) any levy to carry out an offset under section 6402; and

(ii) any levy which was first made before the date that the applicable proceeding under this subsection commenced.

(4) Limitation on collection activity; authority to enjoin collection

(A) Limitation on collection

No proceeding in court for the collection of any unpaid tax to which paragraph (1) applies shall be begun by the Secretary during the pendency of a proceeding under such paragraph. This subparagraph shall not apply to—

(i) any counterclaim in a proceeding under such paragraph; or

(ii) any proceeding relating to a proceeding under such paragraph.

(B) Authority to enjoin

Notwithstanding section 7421 (a), a levy or collection proceeding prohibited by this subsection may be enjoined (during the period such prohibition is in force) by the court in which the proceeding under paragraph (1) is brought.

(5) Suspension of statute of limitations on collection

The period of limitations under section 6502 shall be suspended for the period during which the Secretary is prohibited under this subsection from making a levy.

(6) Pendency of proceeding

For purposes of this subsection, a proceeding is pending beginning on the date such proceeding commences and ending on the date that a final order or judgment from which an appeal may be taken is entered in such proceeding.

(j) No levy before investigation of status of property

(1) In general

For purposes of applying the provisions of this subchapter, no levy may be made on any property or right to property which is to be sold under section 6335 until a thorough investigation of the status of such property has been completed.

(2) Elements in investigation

For purposes of paragraph (1), an investigation of the status of any property shall include—

(A) a verification of the taxpayer's liability;

(B) the completion of an analysis under subsection (f);

(C) the determination that the equity in such property is sufficient to yield net proceeds from the sale of such property to apply to such liability; and

(D) a thorough consideration of alternative collection methods.

(k) No levy while certain offers pending or installment agreement pending or in effect

(1) Offer-in-compromise pending

No levy may be made under subsection (a) on the property or rights to property of any person with respect to any unpaid tax—

(A) during the period that an offer-in-compromise by such person under section 7122 of such unpaid tax is pending with the Secretary; and

(B) if such offer is rejected by the Secretary, during the 30 days thereafter (and, if an appeal of such rejection is filed within such 30 days, during the period that such appeal is pending).

For purposes of subparagraph (A), an offer is pending beginning on the date the Secretary accepts such offer for processing.

(2) Installment agreements

No levy may be made under subsection (a) on the property or rights to property of any person with respect to any unpaid tax—

(A) during the period that an offer by such person for an installment agreement under section 6159 for payment of such unpaid tax is pending with the Secretary;

(B) if such offer is rejected by the Secretary, during the 30 days thereafter (and, if an appeal of such rejection is filed within such 30 days, during the period that such appeal is pending);

(C) during the period that such an installment agreement for payment of such unpaid tax is in effect; and

(D) if such agreement is terminated by the Secretary, during the 30 days thereafter (and, if an appeal of such termination is filed within such 30 days, during the period that such appeal is pending).

(3) Certain rules to apply

Rules similar to the rules of—

(A) paragraphs (3) and (4) of subsection (i), and

(B) except in the case of paragraph (2)(C), paragraph (5) of subsection (i),

shall apply for purposes of this subsection.

(l) Cross references

(1) For provisions relating to jeopardy, see subchapter A of chapter 70.

(2) For proceedings applicable to sale of seized property see section 6335.

(3) For release and notice of release of levy, see section 6343.

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Sec. 6331. - Levy and distraint

(a) Authority of Secretary

If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer (as defined in section 3401(d)) of such officer, employee, or elected official. If the Secretary makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in this section.

(b) Seizure and sale of property

The term ''levy'' as used in this title includes the power of distraint and seizure by any means. Except as otherwise provided in subsection (e), a levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the Secretary may levy upon property or rights to property, he may seize and sell such property or rights to property (whether real or personal, tangible or intangible).

(c) Successive seizures

Whenever any property or right to property upon which levy has been made by virtue of subsection (a) is not sufficient to satisfy the claim of the United States for which

levy is made, the Secretary may, thereafter, and as often as may be necessary, proceed to levy in like manner upon any other property liable to levy of the person against whom such claim exists, until the amount due from him, together with all expenses, is fully paid.

(d) Requirement of notice before levy

(1) In general

Levy may be made under subsection (a) upon the salary or wages or other property of any person with respect to any unpaid tax only after the Secretary has notified such person in writing of his intention to make such levy.

(2) 30-day requirement

The notice required under paragraph (1) shall be -

(A)

given in person,

(B)

left at the dwelling or usual place of business of such person, or

(C)

sent by certified or registered mail to such persons's last known address,

no less than 30 days before the day of the levy.

(3) Jeopardy

Paragraph (1) shall not apply to a levy if the Secretary has made a finding under the last sentence of subsection (a) that the collection of tax is in jeopardy.

(4) Information included with notice

The notice required under paragraph (1) shall include a brief statement which sets forth in simple and nontechnical terms -

(A)

the provisions of this title relating to levy and sale of property,

(B)

the procedures applicable to the levy and sale of property under this title,

(C)

the administrative appeals available to the taxpayer with respect to such levy and sale and the procedures relating to such appeals,

(D)

the alternatives available to taxpayers which could prevent levy on the property (including installment agreements under section 6159),

(E)

the provisions of this title relating to redemption of property and release of liens on property, and

(F)

the procedures applicable to the redemption of property and the release of a lien on property under this title.

(e) Continuing levy on salary and wages

The effect of a levy on salary or wages payable to or received by a taxpayer shall be continuous from the date such levy is first made until such levy is released under section 6343.

(f) Uneconomical levy

No levy may be made on any property if the amount of the expenses which the Secretary estimates (at the time of levy) would be incurred by the Secretary with respect to the levy and sale of such property exceeds the fair market value of such property at the time of levy.

(g) Levy on appearance date of summons

(1) In general

No levy may be made on the property of any person on any day on which such person (or officer or employee of such person) is required to appear in response to a summons issued by the Secretary for the purpose of collecting any underpayment of tax.

(2) No application in case of jeopardy

This subsection shall not apply if the Secretary finds

that the collection of tax is in jeopardy.

(h) Continuing levy on certain payments

(1) In general

If the Secretary approves a levy under this subsection, the effect of such levy on specified payments to or received by a taxpayer shall be continuous from the date such levy is first made until such levy is released. Notwithstanding section 6334, such continuous levy shall attach to up to 15 percent of any specified payment due to the taxpayer.

(2) Specified payment

For the purposes of paragraph (1), the term ''specified payment'' means -

(A)

any Federal payment other than a payment for which eligibility is based on the income or assets (or both) of a payee,

(B)

any payment described in paragraph (4), (7), (9), or (11) of section 6334(a), and

(C)

any annuity or pension payment under the Railroad Retirement Act or benefit under the Railroad Unemployment Insurance Act.

(i) No levy during pendency of proceedings for refund of divisible tax

(1) In general

No levy may be made under subsection (a) on the property or rights to property of any person with respect to any unpaid divisible tax during the pendency of any proceeding brought by such person in a proper Federal trial court for the recovery of any portion of such divisible tax which was paid by such person if -

(A)

the decision in such proceeding would be res judicata with respect to such unpaid tax; or

(B)

such person would be collaterally estopped from contesting such unpaid tax by reason of such proceeding.

(2) Divisible tax

For purposes of paragraph (1), the term ''divisible tax'' means -

(A)

any tax imposed by subtitle C; and

(B)

the penalty imposed by section 6672 with respect to any such tax.

(3) Exceptions

(A) Certain unpaid taxes

This subsection shall not apply with respect to any unpaid tax if -

(i)

the taxpayer files a written notice with the Secretary which waives the restriction imposed by this subsection on levy with respect to such tax; or

(ii)

the Secretary finds that the collection of such tax is in jeopardy.

(B) Certain levies

This subsection shall not apply to -

(i)

any levy to carry out an offset under section 6402; and

(ii)

any levy which was first made before the date that the applicable proceeding under this subsection commenced.

(4) Limitation on collection activity; authority to enjoin collection

(A) Limitation on collection

No proceeding in court for the collection of any unpaid tax to which paragraph (1) applies shall be begun by the Secretary during the pendency of a proceeding under such paragraph. This subparagraph shall not apply to -

(i)

any counterclaim in a proceeding under such paragraph; or

(ii)

any proceeding relating to a proceeding under such paragraph.

(B) Authority to enjoin

Notwithstanding section 7421(a), a levy or collection proceeding prohibited by this subsection may be enjoined (during the period such prohibition is in force) by the court in which the proceeding under paragraph (1) is brought.

(5) Suspension of statute of limitations on collection

The period of limitations under section 6502 shall be suspended for the period during which the Secretary is prohibited under this subsection from making a levy.

(6) Pendency of proceeding

For purposes of this subsection, a proceeding is pending beginning on the date such proceeding commences and ending on the date that a final order or judgment from which an appeal may be taken is entered in such proceeding.

(j) No levy before investigation of status of property

(1) In general

For purposes of applying the provisions of this subchapter, no levy may be made on any property or right to property which is to be sold under section 6335 until a thorough investigation of the status of such property has been completed.

(2) Elements in investigation

For purposes of paragraph (1), an investigation of the status of any property shall include -

(A)

a verification of the taxpayer's liability;

(B)

the completion of an analysis under subsection (f);

(C)

the determination that the equity in such property is sufficient to yield net proceeds from the sale of such property to apply to such liability; and

(D)

a thorough consideration of alternative collection methods.

(k) No levy while certain offers pending or installment agreement pending or in effect

(1) Offer-in-compromise pending

No levy may be made under subsection (a) on the property or rights to property of any person with respect to any unpaid tax -

(A)

during the period that an offer-in-compromise by such person under section 7122 of such unpaid tax is pending with the Secretary; and

(B)

if such offer is rejected by the Secretary, during the 30 days thereafter (and, if an appeal of such rejection is filed within such 30 days, during the period that such appeal is pending).

For purposes of subparagraph (A), an offer is pending beginning on the date the Secretary accepts such offer for processing.

(2) Installment agreements

No levy may be made under subsection (a) on the property or rights to property of any person with respect to any unpaid tax -

(A)

during the period that an offer by such person for an installment agreement under section 6159 for

payment of such unpaid tax is pending with the Secretary;

(B)

if such offer is rejected by the Secretary, during the 30 days thereafter (and, if an appeal of such rejection is filed within such 30 days, during the period that such appeal is pending);

(C)

during the period that such an installment agreement for payment of such unpaid tax is in effect; and

(D)

if such agreement is terminated by the Secretary, during the 30 days thereafter (and, if an appeal of such termination is filed within such 30 days, during the period that such appeal is pending).

(3) Certain rules to apply

Rules similar to the rules of paragraphs (3) and (4) of subsection (i) shall apply for purposes of this subsection.

(l)

Cross references

(1)

For provisions relating to jeopardy, see subchapter A of chapter 70.

(2)

For proceedings applicable to sale of seized property see section 6335.

(3)

For release and notice of release of levy, see section 6343

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§ 3401. Definitions

How Current is This?

(a) Wages

For purposes of this chapter, the term "wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include remuneration paid—

(1) for active service performed in a month for which such employee is entitled to the benefits of section 112 (relating to certain combat zone compensation of members of the Armed Forces of the United States) to the extent remuneration for such service is excludable from gross income under such section; or

(2) for agricultural labor (as defined in section 3121 (g)) unless the remuneration paid for such labor is wages (as defined in section 3121 (a)); or

(3) for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority; or

(4) for service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is $50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if—

(A) on each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business; or

(B) such individual was regularly employed (as determined under subparagraph (A)) by such employer in the performance of such service during the preceding calendar quarter; or

(5) for services by a citizen or resident of the United States for a foreign government or an international organization; or

(6) for such services, performed by a nonresident alien individual, as may be designated by regulations prescribed by the Secretary; or

[(7) Repealed. Pub. L. 89–809, title I, § 103(k), Nov. 13, 1966, 80 Stat. 1554]

(8)

(A) for services for an employer (other than the United States or any agency thereof)—

(i) performed by a citizen of the United States if, at the time of the payment of such remuneration, it is reasonable to believe that such remuneration will be excluded from gross income under section 911; or

(ii) performed in a foreign country or in a possession of the United States by such a citizen if, at the time of the payment of such remuneration, the employer is required by the law of any foreign country or possession of the United States to withhold income tax upon such remuneration; or

(B) for services for an employer (other than the United States or any agency thereof) performed by a citizen of the United States within a possession of the United States (other than Puerto Rico), if it is reasonable to believe that at least 80 percent of the remuneration to be paid to the employee by such employer during the calendar year will be for such services; or

(C) for services for an employer (other than the United States or any agency thereof) performed by a citizen of the United States within Puerto Rico, if it is reasonable to believe that during the entire calendar year the employee will be a bona fide resident of Puerto Rico; or

(D) for services for the United States (or any agency thereof) performed by a citizen of the United States within a possession of the United States to the extent the United States (or such agency) withholds taxes on such remuneration pursuant to an agreement with such possession; or

(9) for services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or

(10)

(A) for services performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution; or

(B) for services performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such services, or is entitled to

be credited with the unsold newspapers or magazines turned back; or

(11) for services not in the course of the employer's trade or business, to the extent paid in any medium other than cash; or

(12) to, or on behalf of, an employee or his beneficiary—

(A) from or to a trust described in section 401 (a) which is exempt from tax under section 501 (a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust; or

(B) under or to an annuity plan which, at the time of such payment, is a plan described in section 403 (a); or

(C) for a payment described in section 402 (h)(1) and (2) if, at the time of such payment, it is reasonable to believe that the employee will be entitled to an exclusion under such section for payment; or

(D) under an arrangement to which section 408 (p) applies; or

(E) under or to an eligible deferred compensation plan which, at the time of such payment, is a plan described in section 457 (b) which is maintained by an eligible employer described in section 457 (e)(1)(A), [1] or

(13) pursuant to any provision of law other than section 5(c) or 6(1) of the Peace Corps Act, for service performed as a volunteer or volunteer leader within the meaning of such Act; or

(14) in the form of group-term life insurance on the life of an employee; or

(15) to or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 217 (determined without regard to section 274 (n)); or

(16)

(A) as tips in any medium other than cash;

(B) as cash tips to an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is $20 or more; [2]

(17) for service described in section 3121 (b)(20); [2]

(18) for any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127, 129, 134 (b)(4), or 134 (b)(5); [2](19) for any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 74 (c), 108 (f)(4), 117, or 132; [2]

(20) for any medical care reimbursement made to or for the benefit of an employee under a self-insured medical reimbursement plan (within the meaning of section 105 (h)(6)); [2]

(21) for any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106 (b); or

(22) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106 (d).

The term "wages" includes any amount includible in gross income of an employee under section 409A and payment of such amount shall be treated as having been made in the taxable year in which the amount is so includible.

(b) Payroll period

For purposes of this chapter, the term "payroll period" means a period for which a payment of wages is ordinarily made to the employee by his employer, and the term "miscellaneous payroll period" means a payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual or annual payroll period.

(c) Employee

For purposes of this chapter, the term "employee" includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.

(d) Employer

For purposes of this chapter, the term "employer" means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that—

(1) if the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term "employer" (except for purposes of subsection (a)) means the person having control of the payment of such wages, and

(2) in the case of a person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, the term "employer" (except for purposes of subsection (a)) means such person.

(e) Number of withholding exemptions claimed

For purposes of this chapter, the term "number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under section 3402 (f), or in effect under the corresponding section of prior law, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero.

(f) Tips

For purposes of subsection (a), the term "wages" includes tips received by an employee in the course of his employment. Such wages shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053 (a) or (if no statement including such tips is so furnished) at the time received.

[(g) Repealed. Pub. L. 101–140, title II, §●203(a)(2), Nov. 8, 1989, 103 Stat. 830]

(h) Crew leader rules to apply

Rules similar to the rules of section 3121 (o) shall apply for purposes of this chapter.

[1] So in original. The comma probably should be a semicolon.

[2] So in original. Probably should be followed by "or".

Prev | Next

Code **Sec. 31.3401(c)-1 Employee.**

(a) The term EMPLOYEE includes every individual performing services if the relationship between him and the person for whom he performs such services is the legal relationship of employer and employee. The term includes officers and employees, whether elected or appointed, of the United States, a State, Territory, Puerto Rico, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing.

(b) Generally the relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is an employer. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools and the furnishing of a place to work to the individual who performs the services. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, he is not an employee.

(c) Generally, physicians, lawyers, dentists, veterinarians, contractors, subcontractors, public stenographers, auctioneers, and others who follow an independent trade, business, or profession, in which they offer their services to the public, are not employees.

(d) Whether the relationship of employer and employee exists will in doubtful cases be determined upon an examination of the particular facts of each case.

(e) If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if such relationship exists, it is of no consequence that the employee is designated as a partner, coadventurer, agent, independent contractor, or the like.

(f) All classes or grades of employees are included within the relationship of employer and employee. Thus, superintendents, managers and other supervisory personnel are employees. Generally, an officer of a corporation is an employee of the corporation. However, an officer of a corporation who as such does not perform any services or performs only minor services and who neither receives nor is entitled to receive, directly or indirectly, any remuneration is not considered to

be an employee of the corporation. A director of a corporation in his capacity as such is not an employee of the corporation.

(g) The term EMPLOYEE includes every individual who receives a supplemental unemployment compensation benefit which is treated under paragraph (b)(14) of Section 31.3401(a)-1 as if it were wages.

(h) Although an individual may be an employee under this section, his services may be of such a nature, or performed under such circumstances, that the remuneration paid for such services does not constitute wages within the meaning of section 3401(a).

[T.D. 6516, 25 FR 13096, Dec. 20, 1960, as amended by T.D. 7068, 35 FR 17329, Nov. 11, 1970]

Form **668-A(c) (DO)**
(Rev. Sept. 1997)

Department of the Treasury — **Internal Revenue Service**

Notice of Levy

DATE:

DISTRICT:

TELEPHONE NUMBER
OF IRS OFFICE:

REPLY TO:

NAME AND ADDRESS OF TAXPAYER:

TO:

IDENTIFYING NUMBER(S):

THIS ISN'T A BILL FOR TAXES YOU OWE. THIS IS A NOTICE OF LEVY WE ARE USING TO COLLECT MONEY OWED BY THE TAXPAYER NAMED ABOVE.

Kind of Tax	Tax Period Ended	Unpaid Balance of Assessment	Statutory Additions	Total
THIS LEVY WON'T ATTACH FUNDS IN IRAs, SELF-EMPLOYED INDIVIDUALS' RETIREMENT PLANS, OR ANY OTHER RETIREMENT PLANS IN YOUR POSSESSION OR CONTROL, UNLESS IT IS SIGNED IN THE BLOCK TO THE RIGHT. →		Total Amount Due ▶		

We figured the interest and late payment penalty to _____

The Internal Revenue Code provides that there is a lien for the amount that is owed. Although we have given the notice and demand required by the Code, the amount owed hasn't been paid. This levy requires you to turn over to us this person's property and rights to property (such as money, credits, and bank deposits) that you have or which you are already obligated to pay this person. However, don't send us more than the "Total Amount Due."

Money in banks, credit unions, savings and loans, and similar institutions described in section 408(n) of the Internal Revenue Code must be held for 21 calendar days from the day you receive this levy before you send us the money. Include any interest the person earns during the 21 days. Turn over any other money, property, credits, etc. that you have or are already obligated to pay the taxpayer, when you would have paid it if this person asked for payment.

Make a reasonable effort to identify all property and rights to property belonging to this person. At a minimum, search your records using the taxpayer's name, address, and identifying numbers(s) shown on this form. Don't offset money this person owes you without contacting us at the telephone number shown above for instructions. You may not subtract a processing fee from the amount you send us.

To respond to this levy:

1. Make your check or money order payable to Internal Revenue Service.
2. Write the taxpayer's name, identifying number(s), kind of tax and tax period shown on this form, and "LEVY PROCEEDS" on your check or money order (not on a detachable stub.).
3. Complete the back of Part 3 of this form and mail it to us with your payment in the enclosed envelope.
4. Keep Part 1 of this form for your records and give the taxpayer Part 2 within 2 days.

If you don't owe any money to the taxpayer, please complete the back of Part 3, and mail that part back to us in the enclosed envelope.

Signature of Service Representative	Title

Excerpts from the Internal Revenue Code

* * * * * * * * * *

SEC. 6331. LEVY AND DISTRAINT.

(b) Seizure and Sale of Property.—The term "levy" as used in this title includes the power of distraint and seizure by any means. Except as otherwise provided in subsection (e), a levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the Secretary may levy upon property or rights to property, he may seize and sell such property or rights to property (whether real or personal, tangible or intangible).

(c) Successive Seizures.—Whenever any property or right to property upon which levy has been made by virtue of subsection (a) is not sufficient to satisfy the claim of the United States for which levy is made, the Secretary may, thereafter, and as often as may be necessary, proceed to levy in like manner upon any other property liable to levy of the person against whom such claim exists, until the amount due from him, together with all expenses, is fully paid.

SEC. 6332. SURRENDER OF PROPERTY SUBJECT TO LEVY.

(a) Requirement.—Except as otherwise provided in subsections (b) and (c), any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made shall, upon demand of the Secretary, surrender such property or rights (or discharge such obligation) to the Secretary, except such part of the property or rights as is, at the time of such demand, subject to an attachment or execution under any judicial process.

(b) Special Rule for Life Insurance and Endowment Contracts.

(1) In general.—A levy on an organization with respect to a life insurance or endowment contract issued by such organization shall, without necessity for the surrender of the contract document, constitute a demand by the Secretary for payment of the amount described in paragraph (2) and the exercise of the right of the person against whom the tax is assessed to the advance of such amount. Such organization shall pay over such amount 90 days after service of notice of levy. Such notice shall include a certification by the Secretary that a copy of such notice has been mailed to the person against whom the tax is assessed at his last known address.

(2) Satisfaction of levy.—Such levy shall be deemed to be satisfied if such organization pays over to the Secretary the amount which the person against whom the tax is assessed could have had advanced to him by such organization on the date prescribed in paragraph (1) for the satisfaction of such levy, increased by the amount of any advance (including contractual interest thereon) made to such person on or after the date such organization had actual notice or knowledge (within the meaning of section 6328 (i)(1)) of the existence of the lien with respect to which such levy is made, other than an advance (including contractual interest thereon) made automatically to maintain such contract in force under an agreement entered into before such organization had such notice or knowledge.

(3) Enforcement proceedings.—The satisfaction of a levy under paragraph (2) shall be without prejudice to any civil action for the enforcement of any lien imposed by this title with respect to such contract.

(c) Special Rule for Banks.—Any bank (defined in section 408(n)) shall surrender (subject to an attachment or execution under judicial process) any deposits (including interest thereon) in such bank only after 21 days after service of levy.

(d) Enforcement of Levy.

(1) Extent of personal liability.—Any person who fails or refuses to surrender any property or rights to property, subject to levy, upon demand by the Secretary, shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of taxes for the collection of which such levy has been made, together with costs and interest on such sum at the underpayment rate established under section 6621 from the date of such levy (or, in the case of a levy described in section 6331 (d)(3), from the date such person would otherwise have been obligated to pay over such amounts to the taxpayer). Any amount (other than costs) recovered under this paragraph shall be credited against the tax liability for the collection of which such levy was made.

(2) Penalty for violation.—In addition to the personal liability imposed by paragraph (1), if any person required to surrender property or rights to property fails or refuses to surrender such property or rights to property without reasonable cause, such person shall be liable to a penalty equal to 50 percent of the amount recoverable under paragraph (1). No part of such penalty shall be credited against the tax liability for the collection of which such levy was made.

(e) Effect of honoring levy.—Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made who, upon demand by the Secretary, surrenders such property or rights to property (or discharges such obligation) to the Secretary (or who pays a liability under subsection (d)(1) shall be discharged from any obligation or liability to the delinquent taxpayer and any other person with respect to such property or rights to property arising from such surrender or payment.

SEC. 6333. PRODUCTION OF BOOKS.

If a levy has been made or is about to be made on any property, or right to property, any person having custody or control of any books or records, containing evidence or statements relating to the property or right to property subject to levy, shall, upon demand of the Secretary, exhibit such books or records to the Secretary.

SEC. 6343. AUTHORITY TO RELEASE LEVY AND RETURN PROPERTY.

(a) Release of Levy and Notice of Release.—

(1) In general.—Under regulations prescribed by the Secretary, the Secretary shall release the levy upon all, or part of, the property or rights to property levied upon and shall promptly notify the person upon whom such levy was made (if any) that such levy has been released if—

(A) the liability for which such levy was made is satisfied or becomes unenforceable by reason of lapse of time,

(B) release of such levy will facilitate the collection of such liability,

(C) the taxpayer has entered into an agreement under section 6159 to satisfy such liability by means of installment payments, unless such agreement provides otherwise.

(D) the Secretary has determined that such levy is creating an economic hardship due to the financial condition of the taxpayer, or

(E) the fair market value of the property exceeds such liability and release of the levy on a part of such property could be made without hindering the collection of such liability.

For purposes of subparagraph (C), the Secretary is not required to release such levy if such release would jeopardize the secured creditor status of the Secretary.

(2) Expedited determination on certain business property.—In the case of any tangible personal property essential in carrying on the trade or business of the taxpayer, the Secretary shall provide for an expedited determination under paragraph (1) if levy on such tangible personal property would prevent the taxpayer from carrying on such trade or business.

(3) Subsequent levy.—The release of levy on any property under paragraph (1) shall not prevent any subsequent levy on such property.

(b) Return of Property.—If the Secretary determines that property has been wrongfully levied upon, it shall be lawful for the Secretary to return—

(1) The specific property levied upon,

(2) an amount of money equal to the amount of money levied upon, or

(3) an amount of money equal to the amount of money received by the United States from a sale of such property.

Property may be returned at any time. An amount equal to the amount of money levied upon or received from such sale may be returned at any time before the expiration of 9 months from the date of such levy. For purposes of paragraph (3), if property is declared purchased by the United States at a sale pursuant to section 6335(e) (relating to manner and conditions of sale), the United States shall be treated as having received an amount of money equal to the minimum price determined pursuant to such section or (if larger) the amount received by the United States from the resale of such property.

(c) Return of Property in Certain Cases.--If--

(1) any property has been levied upon, and

(2) the Secretary determines that--

(A) the levy on such property was premature or otherwise not in accordance with administrative procedures of the Secretary,

(B) the taxpayer has entered into an agreement under section 6159 to satisfy the tax liability for which the levy was imposed by means of installment payments, unless such agreement provides otherwise,

(C) the return of such property will facilitate the collection of the tax liability, or

(D) with the consent of the taxpayer or the Taxpayer Advocate, the return of such property would be in the best interests of the taxpayer (as determined by the Taxpayer Advocate) and the United States,

the provisions of subsection (b) shall apply in the same manner as if such property had been wrongly levied upon, except that no interest shall be allowed.

* * * * * * * *

Applicable Sections of Internal Revenue Code

6321. LIEN FOR TAXES.
6322. PERIOD OF LIEN.
6325. RELEASE OF LIEN OR DISCHARGE OF PROPERTY.
6331. LEVY AND DISTRAINT.
6332. SURRENDER OF PROPERTY SUBJECT TO LEVY.
6333. PRODUCTION OF BOOKS.
6334. PROPERTY EXEMPT FROM LEVY.
6343. AUTHORITY TO RELEASE LEVY AND RETURN PROPERTY.
7426. CIVIL ACTIONS BY PERSONS OTHER THAN TAXPAYERS.
7429. REVIEW OF JEOPARDY LEVY OR ASSESSMENT PROCEDURES.

For more information about this notice, please call the phone number on the front of this form.

U.S. Constitution: Fourth Amendment

Fourth Amendment - Search and Seizure

Amendment Text | Annotations

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Annotations

- Search and Seizure
- History and Scope of the Amendment
  - History
  - Scope of the Amendment
  - The Interest Protected
  - Arrests and Other Detentions
  - Searches and Inspections in Noncriminal Cases
- Searches and Seizures Pursuant to Warrant
  - Issuance by Neutral Magistrate
  - Probable Cause
  - Particularity
  - First Amendment Bearing on Probable Cause and Particularity
  - Property Subject to Seizure
  - Execution of Warrants
- Valid Searches and Seizures Without Warrants
  - Detention Short of Arrest: Stop-and-Frisk
  - Search Incident to Arrest
  - Vehicular Searches

- Vessel Searches
- Consent Searches
- Border Searches
- "Open Fields"
- "Plain View"
- Public Schools
- Government Offices
- Prisons and Regulation of Probation
- Drug Testing

- **Electronic Surveillance and the Fourth Amendment**
  - The Olmstead Case
  - Federal Communications Act
  - Nontelephonic Electronic Surveillance
  - The Berger and Katz Cases
  - Warrantless "National Security" Electronic Surveillance

- **Enforcing the Fourth Amendment: The Exclusionary Rule**
  - Alternatives to the Exclusionary Rule
  - Development of the Exclusionary Rule
  - The Foundations of the Exclusionary Rule
  - Narrowing Application of the Exclusionary Rule
  - Operation of the Rule: Standing

Searches and Seizures Pursuant to Warrant

Emphasis upon the necessity of warrants places the judgment of an independent magistrate between law enforcement officers and the privacy of citizens, authorizes invasion of that privacy only upon a showing that constitutes probable cause, and limits that invasion by specification of the person to be seized, the place to be searched, and the evidence to be sought. 87 While a warrant is issued ex parte, its validity may be contested in a subsequent suppression hearing if incriminating evidence is found and a prosecution is brought. 88

Issuance by Neutral Magistrate .--In numerous cases, the Court has referred to the necessity that warrants be issued by a "judicial officer" or a "magistrate." 89 "The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime. Any assumption that evidence sufficient to support a magistrate's disinterested determination to issue a search warrant will justify the officers in making a search without a warrant would reduce the Amendment to a nullity and leave the people's homes secure only in the discretion of police officers." 90 These cases do not mean that only a judge or an official who is a lawyer may issue warrants, but they do stand for two tests of the validity of the power of the issuing party to so act. "He must be neutral and detached, and he must be capable of determining whether probable cause exists for the requested arrest or search." 91 The first test cannot be met when the issuing party is himself engaged in law enforcement activities, 92 but the Court has not required that an issuing party have that independence of tenure and guarantee of salary which characterizes federal judges. 93 And in passing on the second test, the Court has been essentially pragmatic in assessing whether the issuing party possesses the capacity to determine probable cause. 94

Probable Cause .--The concept of "probable cause" is central to the meaning the warrant clause. Neither the Fourth Amendment nor the federal statutory

provisions relevant to the area define "probable cause;" the definition is entirely a judicial construct. An applicant for a warrant must present to the magistrate facts sufficient to enable the officer himself to make a determination of probable cause. "In determining what is probable cause . . . [w]e are concerned only with the question whether the affiant had reasonable grounds at the time of his affidavit . . . for the belief that the law was being violated on the premises to be searched; and if the apparent facts set out in the affidavit are such that a reasonably discreet and prudent man would be led to believe that there was a commission of the offense charged, there is probable cause justifying the issuance of a warrant." 95 Probable cause is to be determined according to "the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." 96 Warrants are favored in the law and utilization of them will not be thwarted by a hypertechnical reading of the sup porting affidavit and supporting testimony. 97 For the same reason, reviewing courts will accept evidence of a less "judicially competent or persuasive character than would have justified an officer in acting on his own without a warrant." 98 Courts will sustain the determination of probable cause so long as "there was substantial basis for [the magistrate] to conclude that" there was probable cause. 99

Much litigation has concerned the sufficiency of the complaint to establish probable cause. Mere conclusory assertions are not enough. 100 In United States v. Ventresca, 101 however, an affidavit by a law enforcement officer asserting his belief that an illegal distillery was being operated in a certain place, explaining that the belief was based upon his own observations and upon those of fellow investigators, and detailing a substantial amount of these personal observations clearly supporting the stated belief, was held to be sufficient to constitute probable cause. "Recital of some of the underlying circumstances in the affidavit is essential," the Court said, observing that "where these circumstances are detailed, where reason for crediting the source of the information is given, and when a magistrate has found probable cause," the reliance on the warrant process should not be deterred by insistence on too stringent a showing. 102

Requirements for establishing probable cause through reliance on information received from an informant has divided the Court in several cases. Although involving a warrantless arrest, Draper v. United States 103 may be said to have begun the line of cases. A previously reliable, named informant reported to an officer that the defendant would arrive with narcotics on a particular train, and described the clothes he would be wearing and the bag he would be carrying; the informant, however, gave no basis for his information. FBI agents met the train, observed that the defendant fully answered the description, and arrested him. The Court held that the corroboration of part of the informer's tip established probable cause to support the arrest. A case involving a search warrant, Jones v. United States, 104 apparently utilized a test of considering the affidavit as a whole to see whether the tip plus the corroborating information provided a substantial basis for finding probable cause, but the affidavit also set forth the reliability of the informer and sufficient detail to indicate that the tip was based on the informant's personal observation. Aguilar v. Texas 105 held insufficient an affidavit which merely asserted that the police had "reliable information from a credible person" that narcotics were in a certain place, and held that when the affiant relies on an informant's tip he must present two types of evidence to the magistrate. First, the affidavit must indicate the informant's basis of knowledge--the circumstances from which the informant concluded that evidence was present or that crimes had been committed--and, second, the affiant must present information which would permit the magistrate to decide whether or not the informant was trustworthy. Then, in Spinelli v. United States, 106 the Court applied Aguilar in a situation in which the affidavit contained both an informant's tip and police information of a corroborating nature.

The Court rejected the "totality" test derived from Jones and held that the informant's tip and the corroborating evidence must be separately considered. The tip was rejected because the affidavit contained neither any information which showed the basis of the tip nor any information which showed the informant's credibility. The corroborating evidence was rejected as insufficient because it did not

establish any element of criminality but merely related to details which were innocent in themselves. No additional corroborating weight was due as a result of the bald police assertion that defendant was a known gambler, although the tip related to gambling. Returning to the totality test, however, the Court in United States v. Harris 107 approved a warrant issued largely on an informer's tip that over a two-year period he had purchased illegal whiskey from the defendant at the defendant's residence, most re cently within two weeks of the tip. The affidavit contained rather detailed information about the concealment of the whiskey, and asserted that the informer was a "prudent person," that defendant had a reputation as a bootlegger, that other persons had supplied similar information about him, and that he had been found in control of illegal whiskey within the previous four years. The Court determined that the detailed nature of the tip, the personal observation thus revealed, and the fact that the informer had admitted to criminal behavior by his purchase of whiskey were sufficient to enable the magistrate to find him reliable, and that the supporting evidence, including defendant's reputation, could supplement this determination.

The Court expressly abandoned the two-part Aguilar-Spinelli test and returned to the "totality of the circumstances" approach to evaluate probable cause based on an informant's tip in Illinois v. Gates. 108 The main defect of the two-part test, Justice Rehnquist concluded for the Court, was in treating an informant's reliability and his basis for knowledge as independent requirements. Instead, "a deficiency in one may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability." 109 In evaluating probable cause, "[t]he task of the issuing magistrate is simply to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place." 110

Particularity .--"The requirement that warrants shall particularily describe the things to be seized makes general searches under them impossible and prevents the seizure of one thing under a warrant describing another. As to what is to be taken, nothing is left to the discretion of the officer executing the warrant." 111 This requirement thus acts to limit the scope of the search, inasmuch as the executing officers should be limited to looking in places where the described object could be expected to be found. 112

First Amendment Bearing on Probable Cause and Particularity .-- Where the warrant process is used to authorize seizure of books and other items entitled either to First Amendment protection or to First Amendment consideration, the Court has required government to observe more exacting standards than in other cases. 113 Seizure of materials arguably protected by the First Amendment is a form of prior restraint that requires strict observance of the Fourth Amendment. At a minimum, a warrant is required, and additional safeguards may be required for large-scale seizures. Thus, in Marcus v. Search Warrant, 114 the seizure of 11,000 copies of 280 publications pursuant to warrant issued ex parte by a magistrate who had not examined any of the publications but who had relied on the conclusory affidavit of a policeman was voided. Failure to scrutinize the materials and to particularize the items to be seized was deemed inadequate, and it was further noted that police "were provided with no guide to the exercise of informed discretion, because there was no step in the procedure before seizure designed to focus searchingly on the question of obscenity." 115 A state procedure which was designed to comply with Marcus by the presentation of copies of books to be seized to the magistrate for his scrutiny prior to issuance of a warrant was nonetheless found inadequate by a plurality of the Court, which concluded that "since the warrant here authorized the sheriff to seize all copies of the specified titles, and since [appellant] was not afforded a hearing on the question of the obscenity even of the seven novels [seven of 59 listed titles were reviewed by the magistrate] before the warrant issued, the procedure was . . . constitutionally deficient." 116 Confusion remains, however, about the necessity for and the character of prior adversary hearings on the issue of obscenity. In a later decision the Court held that, with

adequate safeguards, no pre-seizure adversary hearing on the issue of obscenity is required if the film is seized not for the purpose of destruction as contraband (the purpose in Marcus and A Quantity of Books), but instead to preserve a copy for evidence. 117 It is constitutionally permissible to seize a copy of a film pursuant to a warrant as long as there is a prompt post- seizure adversary hearing on the obscenity issue. Until there is a judicial determination of obscenity, the Court advised, the film may continue to be exhibited; if no other copy is available either a copy of it must be made from the seized film or the film itself must be returned. 118

The seizure of a film without the authority of a constitutionally sufficient warrant is invalid; seizure cannot be justified as incidental to arrest, inasmuch as the determination of obscenity may not be made by the officer himself. 119 Nor may a warrant issue based "solely on the conclusory assertions of the police officer without any inquiry by the [magistrate] into the factual basis for the officer's conclusions." 120 Instead, a warrant must be "supported by affidavits setting forth specific facts in order that the issuing magistrate may 'focus searchingly on the question of obscenity.'" 121 This does not mean, however, that a higher standard of probable cause is required in order to obtain a warrant to seize materials protected by the First Amendment. "Our reference in Roaden to a 'higher hurdle . . . of reasonableness' was not intended to establish a 'higher' standard of probable cause for the issuance of a warrant to seize books or films, but instead related to the more basic requirement, imposed by that decision, that the police not rely on the 'exigency' exception to the Fourth Amendment warrant requirement, but instead obtain a warrant from a magistrate . . . ." 122

In Stanford v. Texas, 123 a seizure of more than 2,000 books, pamphlets, and other documents pursuant to a warrant which merely authorized the seizure of books, pamphlets, and other written instruments "concerning the Communist Party of Texas" was voided. "[T]he constitutional requirement that warrants must particularly describe the 'things to be seized' is to be accorded the most scrupulous exactitude when the 'things' are books, and the basis for their seizure is the ideas which they contain. . . . No less a standard could be faithful to First Amendment freedoms." 124

However, the First Amendment does not bar the issuance or execution of a warrant to search a newsroom to obtain photographs of demonstrators who had injured several policemen, although the Court appeared to suggest that a magistrate asked to issue such a warrant should guard against interference with press freedoms through limits on type, scope, and intrusiveness of the search. 125

Property Subject to Seizure .--There has never been any doubt that search warrants could be issued for the seizure of contraband and the fruits and instrumentalities of crime. 126 But in Gouled v. United States, 127 a unanimous Court limited the classes of property subject to seizures to these three and refused to permit a seizure of "mere evidence," in this instance defendant's papers which were to be used as evidence against him at trial. The Court recognized that there was "no special sanctity in papers, as distinguished from other forms of property, to render them immune from search and seizure," 128 but their character as evidence rendered them immune. This immunity "was based upon the dual, related premises that historically the right to search for and seize property depended upon the assertion by the Government of a valid claim of superior interest, and that it was not enough that the purpose of the search and seizure was to obtain evidence to use in appre hending and convicting criminals." 129 More evaded than followed, the "mere evidence" rule was overturned in 1967. 130 It is now settled that such evidentiary items as fingerprints, 131 blood, 132 urine samples, 133 fingernail and skin scrapings, 134 voice and handwriting exemplars, 135 conversations, 136 and other demonstrative evidence may be obtained through the warrant process or without a warrant where "special needs" of government are shown. 137

However, some medically assisted bodily intrusions have been held impermissible, e.g., forcible

administration of an emetic to induce vomiting, 138 and surgery under general anesthetic to remove a bullet lodged in a suspect's chest. 139 Factors to be weighed in determining which medical tests and procedures are reasonable include the extent to which the procedure threatens the individual's safety or health, "the extent of the intrusion upon the individual's dignitary interests in personal privacy and bodily integrity," and the importance of the evidence to the prosecution's case. 140

In Warden v. Hayden, 141 Justice Brennan for the Court cautioned that the items there seized were not "'testimonial' or 'communicative' in nature, and their introduction therefore did not compel respondent to become a witness against himself in violation of the Fifth Amendment. . . . This case thus does not require that we consider whether there are items of evidential value whose very nature precludes them from being the object of a reasonable search and seizure." This merging of Fourth and Fifth Amendment considerations derived from Boyd v. United States, 142 the first case in which the Supreme Court considered at length the meaning of the Fourth Amendment. Boyd was a quasi-criminal proceeding for the forfeiture of goods alleged to have been imported in violation of law, and concerned a statute which authorized court orders to require defendants to produce any document which might "tend to prove any allegation made by the United States." 143 That there was a self-incrimination problem the entire Court was in agreement, but Justice Bradley for a majority of the Justices also utilized the Fourth Amendment.

While the statute did not authorize a search but instead compulsory production, the Justice concluded that the law was well within the restrictions of the search and seizure clause. 144 With this point established, the Justice relied on Lord Camden's opinion in Entick v. Carrington 145 for the proposition that seizure of items to be used as evidence only was impermissible. Justice Bradley announced that the "essence of the offence" committed by the Government against Boyd "is not the breaking of his doors, and the rummaging of his drawers . . . but it is the invasion of his indefeasible right of personal security, personal liberty and private property. . . . Breaking into a house and opening boxes and drawers are circumstances of aggravation; but any forcible and compulsory extortion of a man's own testimony or of his private papers to be used as evidence to convict him of crime or to forfeit his goods, is within the condemnation of that judgment. In this regard the Fourth and Fifth Amendments run almost into each other." 146

While it may be doubtful that the equation of search warrants with subpoenas and other compulsory process ever really amounted to much of a limitation, 147 the present analysis of the Court dispenses with any theory of "convergence" of the two Amendments. 148 Thus, in Andresen v. Maryland, 149 police executed a warrant to search defendant's offices for specified documents pertaining to a fraudulent sale of land, and the Court sustained the admission of the papers discovered as evidence at his trial. The Fifth Amendment was inapplicable, the Court held, because there had been no compulsion of defendant to produce or to authenticate the documents. 150 As for the Fourth Amendment, inasmuch as the "business records" seized were evidence of criminal acts, they were properly seizable under the rule of Warden v. Hayden; the fact that they were "testimonial" in nature, records in the defendant's handwriting, was irrelevant. 151 Acknowledging that "there are grave dangers inherent in executing a warrant authorizing a search and seizure of a person's papers," the Court's response was to observe that while some "innocuous documents" would have to be examined to ascertain which papers were to be seized, authorities, just as with electronic "seizures" of conversations, "must take care to assure that they are conducted in a manner that minimizes unwarranted intrusions upon privacy." 152

Although Andresen was concerned with business records, its discussion seemed equally applicable to "personal" papers, such as diaries and letters, as to which a much greater interest in privacy most certainly exists. The question of the propriety of seizure of such papers continues to be the subject of reservation in opinions, 153 but it is far from clear that the Court would accept any such exception

should the issue be presented. 154

Execution of Warrants .--The manner of execution of warrants is generally governed by statute and rule, as to time of execution, 155 method of entry, and the like. It was a rule at common law that before an officer could break and enter he must give notice of his office, authority, and purpose and must in effect be refused admittance, 156 and until recently this has been a statutory requirement in the federal system 157 and generally in the States. In Ker v. California, 158 the Court considered the rule of announcement as a constitutional requirement, although a majority there found circumstances justifying entry without announcement. In Wilson v. Arkansas, Supp.2 the Court determined that the common law "knock and announce" rule is an element of the Fourth Amendment reasonableness inquiry. The rule does not, however, require announcement under all circumstances. The presumption in favor of announcement yields under various circumstances, including those posing a threat of physical violence to officers, those in which a prisoner has escaped and taken refuge in his dwelling, and those in which officers have reason to believe that destruction of evidence is likely. Recent federal laws providing for the issuance of warrants authorizing in certain circumstances "no-knock" entries to execute warrants will no doubt present the Court with opportunities to explore the configurations of the rule of announcement. 159 A statute regulating the expiration of a warrant and issuance of another "should be liberally construed in favor of the individual." 160 Similarly, inasmuch as the existence of probable cause must be established by fresh facts, so the execution of the warrant should be done in timely fashion so as to ensure so far as possible the continued existence of probable cause. 161

In executing a warrant for a search of premises and of named persons on the premises, police officers may not automatically search someone else found on the premises. 162 If they can articulate some reasonable basis for fearing for their safety they may conduct a "patdown" of the person, but in order to search they must have probable cause particularized with respect to that person. However, in Michigan v. Summers, 163 the Court held that officers arriving to execute a warrant for the search of a house could detain, without being required to articulate any reasonable basis and necessarily therefore without probable cause, the owner or occupant of the house, whom they encountered on the front porch leaving the premises. Applying its intrusiveness test, 164 the Court determined that such a detention, which was "substantially less intrusive" than an arrest, was justified because of the law enforcement interests in minimizing the risk of harm to officers, facilitating entry and conduct of the search, and preventing flight in the event incriminating evidence is found. 165 Also, under some circumstances officers may search premises on the mistaken but reasonable belief that the premises are described in an otherwise valid warrant. 166

Although for purposes of execution, as for many other matters, there is little diffence between search warrants and arrest warrants, one notable difference is that the possession of a valid arrest warrant cannot authorize authorities to enter the home of a third party looking for the person named in the warrant; in order to do that, they need a search warrant signifying that a magistrate has determined that there is probable cause to believe the person named is on the premises. 167

Footnotes

[Footnote 87] While the exceptions may be different as between arrest warrants and search warrants, the requirements for the issuance of the two are the same. Aguilar v. Texas, 378 U.S. 108, 112 n.3 (1964). Also, the standards by which the validity of warrants are to be judged are the same, whether federal or state officers are involved. Ker v. California, 374 U.S. 23 (1963).

[Footnote 88] Most often, in the suppression hearings, the defendant will challenge the sufficiency of the evidence presented to the magistrate to constitute probable cause. Spinelli v. United States, 393 U.S.

410 (1969); United States v. Harris, 403 U.S. 573 (1971). He may challenge the veracity of the statements used by the police to procure the warrant and otherwise contest the accuracy of the allegations going to establish probable cause, but the Court has carefully hedged his ability to do so. Franks v. Delaware, 438 U.S. 154 (1978). He may also question the power of the official issuing the warrant, Coolidge v. New Hampshire, 403 U.S. 443, 449 -53 (1971), or the specificity of the particularity required. Marron v. United States, 275 U.S. 192 (1927).

[Footnote 89] United States v. Lefkowitz, 285 U.S. 452, 464 (1932); Giordenello v. United States, 357 U.S. 480, 486 (1958); Jones v. United States, 362 U.S. 257, 270 (1960); Katz v. United States, 389 U.S. 347, 356 (1967); United States v. United States District Court, 407 U.S. 297, 321 (1972); United States v. Chadwick, 433 U.S. 1, 9 (1977); Lo-Ji Sales v. New York, 442 U.S. 319, 326 (1979).

[Footnote 90] Johnson v. United States, 333 U.S. 10, 13 -14 (1948).

[Footnote 91] Shadwick v. City of Tampa, 407 U.S. 345, 354 (1972).

[Footnote 92] Coolidge v. New Hampshire, 403 U.S. 443, 449 -51 (1971) (warrant issued by state attorney general who was leading investigation and who as a justice of the peace was authorized to issue warrants); Mancusi v. DeForte, 392 U.S. 364, 370 -72 (1968) (subpoena issued by district attorney could not qualify as a valid search warrant); Lo-Ji Sales v. New York, 442 U.S. 319 (1979) (justice of the peace issued open-ended search warrant for obscene materials, accompanied police during its execution, and made probable cause determinations at the scene as to particular items).

[Footnote 93] Jones v. United States, 362 U.S. 257, 270 -71 (1960) (approving issuance of warrants by United States Commissioners, many of whom were not lawyers and none of whom had any guarantees of tenure and salary); Shadwick v. City of Tampa, 407 U.S. 345 (1972) (approving issuance of arrest warrants for violation of city ordinances by city clerks who were assigned to and supervised by municipal court judges). The Court reserved the question "whether a State may lodge warrant authority in someone entirely outside the sphere of the judicial branch. Many persons may not qualify as the kind of 'public civil officers' we have come to associate with the term 'magistrate.' Had the Tampa clerk been entirely divorced from a judicial position, this case would have presented different considerations." Id. at 352.

[Footnote 94] Id. at 350-54 (placing on defendant the burden of demonstrating that the issuing official lacks capacity to determine probable cause). See also Connally v. Georgia, 429 U.S. 245 (1977) (unsalaried justice of the peace who receives a sum of money for each warrant issued but nothing for reviewing and denying a warrant not sufficiently detached).

[Footnote 95] Dumbra v. United States, 268 U.S. 435, 439 , 441 (1925). "[T]he term 'probable cause'. . . means less than evidence which would justify condemnation." Lock v. United States, 11 U.S. (7 Cr.) 339, 348 (1813). See Steele v. United States, 267 U.S. 498, 504 -05 (1925). It may rest upon evidence which is not legally competent in a criminal trial, Draper v. United States, 358 U.S. 307, 311 (1959), and it need not be sufficient to prove guilt in a criminal trial. Brinegar v. United States, 338 U.S. 160, 173 (1949). See United States v. Ventresca, 380 U.S. 102, 107 -08 (1965).

[Footnote 96] Brinegar v. United States, 338 U.S. 160, 175 (1949).

[Footnote 97] United States v. Ventresca, 380 U.S. 102, 108 -09 (1965).

[Footnote 98] Jones v. United States, 362 U.S. 257, 270 -71 (1960). Similarly, the preference for

proceeding by warrant leads to a stricter rule for appellate review of trial court decisions on warrantless stops and searches than is employed to review probable cause to issue a warrant. Ornelas v. United States, 116 S. Ct. 1657 (1996) (determinations of reasonable suspicion to stop and probable cause to search without a warrant should be subjected to de novo appellate review).

[Footnote 99] Aguilar v. Texas, 378 U.S. 108, 111 (1964). It must be emphasized that the issuing party "must judge for himself the persuasiveness of the facts relied on by a [complainant] to show probable cause." Giordenello v. United States, 357 U.S. 480, 486 (1958). An insufficient affidavit cannot be rehabilitated by testimony after issuance concerning information possessed by the affiant but not disclosed to the magistrate. Whiteley v. Warden, 401 U.S. 560 (1971).

[Footnote 100] Byars v. United States, 273 U.S. 28 (1927) (affiant stated he "has good reason to believe and does believe" that defendant has contraband materials in his possession); Giordenello v. United States, 357 U.S. 480 (1958) (complainant merely stated his conclusion that defendant had committed a crime). See also Nathanson v. United States, 290 U.S. 41 (1933).

[Footnote 101] 380 U.S. 102 (1965).

[Footnote 102] Id. at 109.

[Footnote 103] 358 U.S. 307 (1959). For another case applying essentially the same probable cause standard to warrantless arrests as govern arrests by warrant, see McCray v. Illinois, 386 U.S. 300 (1967) (informant's statement to arresting officers met Aguilar probable cause standard). See also Whitely v. Warden, 401 U.S. 560, 566 (1971) (standards must be "at least as stringent" for warrantless arrest as for obtaining warrant).

[Footnote 104] 362 U.S. 257 (1960).

[Footnote 105] 378 U.S. 108 (1964).

[Footnote 106] 393 U.S. 410 (1969). Both concurring and dissenting Justices recognized tension between Draper and Aguilar. See id. at 423 (Justice White concurring), id. at 429 (Justice Black dissenting and advocating the overruling of Aguilar).

[Footnote 107] 403 U.S. 573 (1971). See also Adams v. Williams, 407 U.S. 143, 147 (1972) (approving warrantless stop of motorist based on informant's tip that "may have been insufficient" under Aguilar and Spinelli as basis for warrant).

[Footnote 108] 462 U.S. 213 (1983) (Justice Rehnquist's opinion of the Court was joined by Chief Justice Burger and by Justices Blackmun, Powell, and O'Connor. Justices Brennan, Marshall, and Stevens dissented.

[Footnote 109] 462 U.S. at 213 .

[Footnote 110] 462 U.S. at 238 .

[Footnote 111] Marron v. United States, 275 U.S. 192, 196 (1927). See Stanford v. Texas, 379 U.S. 476 (1965). Of course, police who are lawfully on the premises pursuant to a warrant may seize evidence of crime in "plain view" even if that evidence is not described in the warrant. Coolidge v. New Hampshire, 403, U.S. 443, 464-71 (1971).

[Footnote 112] "This Court has held in the past that a search which is reasonable at its inception may violate the Fourth Amendment by virtue of its intolerable intensity and scope. Kremen v. United States, 353 U.S. 346 (1957); Go-Bart Importing Co. v. United States, 282 U.S. 344, 356 -58 (1931); see United States v. Di Re, 332 U.S. 581, 586 -87 (1948). The scope of the search must be 'strictly tied to and justified by' the circumstances which rendered its initiation permissible. Warden v. Hayden, 387 U.S. 294, 310 (1967) (Mr. Justice Fortas concurring); see, e.g., Preston v. United States, 376 U.S. 364, 367 -368 (1964); Agnello v. United States, 296 U.S. 20, 30 -31 (1925)." Terry v. Ohio, 392 U.S. 1, 18 -19, (1968). See also Andresen v. Maryland, 427 U.S. 463, 470 -82 (1976), and id. at 484, 492-93 (Justice Brennan dissenting). In Stanley v. Georgia, 394 U.S. 557, 569 (1969), Justices Stewart, Brennan, and White would have based decision on the principle that a valid warrant for gambling paraphernalia did not authorize police upon discovering motion picture films in the course of the search to project the films to learn their contents.

[Footnote 113] Marcus v. Search Warrant, 367 U.S. 717, 730 -31 (1961); Stanford v. Texas, 379 U.S. 476, 485 (1965).

[Footnote 114] 367 U.S. 717 (1961). See Kingsley Books v. Brown, 354 U.S. 436 (1957).

[Footnote 115] Marcus v. Search Warrant, 367 U.S. 717, 732 (1961).

[Footnote 116] A Quantity of Books v. Kansas, 378 U.S. 205, 210 (1964).

[Footnote 117] Heller v. New York, 413 U.S. 483 (1973).

[Footnote 118] Id. at 492-93. But cf. New York v. P.J. Video, Inc., 475 U.S. 868, 875 n.6 (1986), rejecting the defendant's assertion, based on Heller, that only a single copy rather than all copies of allegedly obscene movies should have been seized pursuant to warrant.

[Footnote 119] Roaden v. Kentucky, 413 U.S. 496 (1973). See also Lo-Ji Sales v. New York, 442 U.S. 319 (1979); Walter v. United States, 447 U.S. 649 (1980). These special constraints are inapplicable when obscene materials are purchased, and there is consequently no Fourth Amendment search or seizure. Maryland v. Macon, 472 U.S. 463 (1985).

[Footnote 120] Lee Art Theatre, Inc. v. Virginia, 392 U.S. 636, 637 (1968) (per curiam).

[Footnote 121] New York v. P.J. Video, Inc., 475 U.S. 868, 873 -74 (1986) (quoting Marcus v. Search Warrant, 367 U.S. 717, 732 (1961)).

[Footnote 122] New York v. P.J. Video, Inc., 475 U.S. 868, 875 n.6 (1986).

[Footnote 123] 379 U.S. 476 (1965).

[Footnote 124] Id. at 485-86. See also Marcus v. Search Warrant, 367 U.S. 717, 723 (1961).

[Footnote 125] Zurcher v. Stanford Daily, 436 U.S. 547 (1978). See id. at 566 (containing suggestion mentioned in text), and id. at 566 (Justice Powell concurring) (more expressly adopting that position). In the Privacy Protection Act, Pub. L. No. 96-440, 94 Stat. 1879 (1980), 42 U.S.C. Sec. 2000aa, Congress provided extensive protection against searches and seizures not only of the news media and news people but also of others engaged in disseminating communications to the public, unless there is probable cause to believe the person protecting the materials has committed or is committing the crime

to which the materials relate.

[Footnote 126] United States v. Lefkowitz, 285 U.S. 452, 465 -66 (1932). Of course, evidence seizable under warrant is subject to seizure without a warrant in circumstances in which warrantless searches are justified.

[Footnote 127] 255 U.S. 298 (1921). United States v. Lefkowitz, 285 U.S. 452 (1932), applied the rule in a warrantless search of premises. The rule apparently never applied in case of a search of the person. Cf. Schmerber v. California, 384 U.S. 757 (1966).

[Footnote 128] Gouled v. United States, 255 U.S. 298, 306 (1921).

[Footnote 129] Warden v. Hayden, 387 U.S. 294, 303 (1967). See Gouled v. United States, 255 U.S. 298, 309 (1921). The holding was derived from dicta in Boyd v. United States, 116 U.S. 616, 624 -29 (1886).

[Footnote 130] Warden v. Hayden, 387 U.S. 294 (1967). Justice Douglas dissented, wishing to retain the rule, id. at 312, and Justice Fortas with Chief Justice Warren concurred in the result while apparently wishing to retain the rule in warrant cases. Id. at 310, 312.

[Footnote 131] Davis v. Mississippi, 394 U.S. 721 (1969).

[Footnote 132] Schmerber v. California, 384 U.S. 757 (1966). Skinner v. Railway Labor Executives' Ass'n, 489 U.S. 602 (1989) (warrantless blood testing for drug use by railroad employee involved in accident).

[Footnote 133] Skinner v. Railway Labor Executives' Ass'n, 489 U.S. 602 (1989) (warrantless drug testing of railroad employee involved in accident).

[Footnote 134] Cupp v. Murphy, 412 U.S. 291 (1973) (sustaining warrantless taking of scrapings from defendant's fingernails at the stationhouse, on the basis that it was a very limited intrusion and necessary to preserve evanescent evidence).

[Footnote 135] United States v. Dionisio, 410 U.S. 1 (1973); United States v. Mara, 410 U.S. 19 (1973) (both sustaining grand jury subpoenas to produce voice and handwriting exemplars; no reasonable expectation of privacy with respect to those items).

[Footnote 136] Berger v. New York, 388 U.S. 41, 44 n.2 (1967). See also id. at 97 n.4, 107-08 (Justices Harlan and White concurring), 67 (Justice Douglas concurring).

[Footnote 137] Another important result of Warden v. Hayden is that third parties not suspected of culpability in crime are subject to the issuance and execution of warrants for searches and seizures of evidence. Zurcher v. Stanford Daily, 436 U.S. 547, 553 -60 (1978). Justice Stevens argued for a stiffer standard for issuance of warrants to nonsuspects, requiring in order to invade their privacy a showing that they would not comply with a less intrusive method, such as a subpoena. Id. at 577 (dissenting).

[Footnote 138] Rochin v. California, 342 U.S. 165 (1952).

[Footnote 139] Winston v. Lee, 470 U.S. 753 (1985).

[Footnote 140] Winston v. Lee, 470 U.S. 753, 761 -63 (1985). Chief Justice Burger concurred on the basis of his reading of the Court's opinion "as not preventing detention of an individual if there are reasonable grounds to believe that natural bodily functions will disclose the presence of contraband materials secreted internally." id. at at 767. Cf. United States v. Montoya de Hernandez, 473 U.S. 531 (1985).

[Footnote 141] 387 U.S. 294, 302 -03 (1967). Seizure of a diary was at issue in Hill v. California, 401 U.S. 797, 805 (1971), but it had not been raised in the state courts and was deemed waived.

[Footnote 142] 116 U.S. 616 (1886).

[Footnote 143] Act of June 22, 1874, Sec. 5, 18 Stat. 187.

[Footnote 144] Boyd v. United States, 116 U.S. 616, 622 (1886).

[Footnote 145] Howell's State Trials 1029, 95 Eng. Rep. 807 (1765).

[Footnote 146] Boyd v. United States, 116 U.S. 616, 630 (1886).

[Footnote 147] E.g., Oklahoma Press Pub Co. v. Walling, 327 U.S. 186, 209 - 09 (1946).

[Footnote 148] Andresen v. Maryland, 427 U.S. 463 (1976); Fisher v. United States, 425 U.S. 391, 405 -14 (1976). Fisher states that "the precise claim sustained in Boyd would now be rejected for reasons not there considered." Id. at 408.

[Footnote 149] 427 U.S. 463 (1976).

[Footnote 150] Id. at 470-77.

[Footnote 151] Id. at 478-84.

[Footnote 152] Id. at 482 n.11. Minimization, as required under federal law, has not proved to be a significant limitation. Scott v. United States, 425 U.S. 917 (1976).

[Footnote 153] E.g., United States v. Miller, 425 U.S. 435, 440 , 444 (1976); Fisher v. United States, 425 U.S. 391, 401 (1976); California Bankers Ass'n v. Shultz, 416 U.S. 21, 78 -79 (1974) (Justice Powell concurring).

[Footnote 154] See Note, Formalism, Legal Realism, and Constitutionally Protected Privacy Under the Fourth and Fifth Amendments, 90 Harv. L. Rev. 945 (1977).

[Footnote 155] Rule 41(c), Federal Rules of Criminal Procedure, provides, inter alia, that the warrant shall command its execution in the daytime, unless the magistrate "for reasonable cause shown" directs in the warrant that it be served at some other time. See Jones v. United States, 357 U.S. 493, 498 -500 (1958); Gooding v. United States, 416 U.S. 430 (1974). The rule is more relaxed for narcotics cases. 21 U.S.C. Sec. 879(a).

[Footnote 156] Semayne's Case, 5 Coke's Rep. 91a, 77 Eng. Rep. 194 (K.B. 1604).

[Footnote 157] 18 U.S.C. Sec. 3109. See Miller v. United States, 357 U.S. 301 (1958); Wong Sun v.

United States, 371 U.S. 471 (1963).

[Footnote 158] 374 U.S. 23 (1963). Ker was an arrest warrant case, but no reason appears for differentiating search warrants. Eight Justices agreed that federal standards should govern and that the rule of announcement was of constitutional stature, but they divided 4-to-4 whether entry in this case had been pursuant to a valid exception. Justice Harlan who had dissented from the federal standards issue joined the four finding a justifiable exception to carry the result.

[Footnote 2 (1996 Supplement)] 115 S. Ct. 1914 (1995).

[Footnote 159] In narcotics cases, magistrates are authorized to issue "no-knock" warrants if they find there is probable cause to believe (1) the property sought may, and if notice is given, will be easily and quickly destroyed or (2) giving notice will endanger the life or safety of the executing officer or another person. 21 U.S.C. Sec. 879(b). See also D.C. Code, Sec. 23-591.

[Footnote 160] Sgro v. United States, 287 U.S. 206 (1932).

[Footnote 161] Id.

[Footnote 162] Ybarra v. Illinois, 444 U.S. 85 (1979) (patron in a bar), relying on and reaffirming United States v. Di Re, 332 U.S. 581 (1948) (occupant of vehicle may not be searched merely because there are grounds to search the automobile).

[Footnote 163] 452 U.S. 692 (1981).

[Footnote 164] Supra, p.1208. See Michigan v. Summers, 452 U.S. 692, 696 - 701 (1981).

[Footnote 165] Id. at 701-06. Ybarra was distinguished on the basis of its greater intrusiveness and the lack of sufficient connection with the premises. Id. at 695 n.4. By the time Summers was searched, police had probable cause to do so. Id. at 695. The warrant here was for contraband, id. at 701, and a different rule possibly may apply with respect to warrants for other evidence.

[Footnote 166] Maryland v. Garrison, 480 U.S. 79 (1987) (officers reasonably believed there was only one "third floor apartment" in city row house when in fact there were two).

[Footnote 167] Steagald v. United States, 451 U.S. 204 (1981). An arrest warrant is a necessary and sufficient authority to enter a suspect's home to arrest him. Payton v. New York, 445 U.S. 573 (1980).

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Searches and Seizures Pursuant to Warrant

Emphasis upon the necessity of warrants places the judgment of an independent magistrate between law enforcement officers and the privacy of citizens, authorizes invasion of that privacy only upon a showing that constitutes probable cause, and limits that invasion by specification of the person to be seized, the place to be searched, and the evidence to

be sought. 87 While a warrant is issued ex parte, its validity may be contested in a subsequent suppression hearing if incriminating evidence is found and a prosecution is brought. 88

Issuance by Neutral Magistrate .--In numerous cases, the Court has referred to the necessity that warrants be issued by a "judicial officer" or a "magistrate." 89 "The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime. Any assumption that evidence sufficient to support a magistrate's disinterested determination to issue a search warrant will justify the officers in making a search without a warrant would reduce the Amendment to a nullity and leave the people's homes secure only in the discretion of police officers." 90 These cases do not mean that only a judge or an official who is a lawyer may issue

warrants, but they do stand for two tests of the validity of the power of the issuing party to so act. "He must be neutral and detached, and he must be capable of determining whether probable cause exists for the requested arrest or search." 91 The first test cannot be met when the issuing party is himself engaged in law enforcement activities, 92 but the Court has not required that an issuing party have that independence of tenure and guarantee of salary which characterizes federal judges. 93 And in passing on the second test, the Court has been essentially pragmatic in assessing whether the issuing party possesses the capacity to determine probable cause. 94

Probable Cause .--The concept of "probable cause" is central to the meaning of the warrant clause. Neither the Fourth Amendment nor the federal statutory provisions relevant to the area define "probable cause;" the definition is entirely a judicial construct. An applicant for a warrant must present to the magistrate facts sufficient to enable the officer himself to make a determination of probable cause. "In determining what is probable cause . . . [w]e are concerned

only with the question whether the affiant had reasonable grounds at the time of his affidavit . . . for the belief that the law was being violated on the premises to be searched; and if the apparent facts set out in the affidavit are such that a reasonably discreet and prudent man would be led to believe that there was a commission of the offense charged, there is probable cause justifying the issuance of a warrant." 95 Probable cause is to be determined according to "the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." 96 Warrants are favored in the law and utilization of them will not be thwarted by a hypertechnical reading of the sup porting affidavit and supporting testimony. 97 For the same reason, reviewing courts will accept evidence of a less "judicially competent or persuasive character than would have justified an officer in acting on his own without a warrant." 98 Courts will sustain the determination of probable cause so long as "there was substantial basis for [the magistrate] to conclude that" there was probable cause. 99

Much litigation has concerned

the sufficiency of the complaint to establish probable cause. Mere conclusory assertions are not enough. 100 In United States v. Ventresca, 101 however, an affidavit by a law enforcement officer asserting his belief that an illegal distillery was being operated in a certain place, explaining that the belief was based upon his own observations and upon those of fellow investigators, and detailing a substantial amount of these personal observations clearly supporting the stated belief, was held to be sufficient to constitute probable cause. "Recital of some of the underlying circumstances in the affidavit is essential," the Court said, observing that "where these circumstances are detailed, where reason for crediting the source of the information is given, and when a magistrate has found probable cause," the reliance on the warrant process should not be deterred by insistence on too stringent a showing. 102

Requirements for establishing probable cause through reliance on information received from an informant has divided the Court in several cases. Although involving a warrantless arrest, Draper v. United States 103

may be said to have begun the line of cases. A previously reliable, named informant reported to an officer that the defendant would arrive with narcotics on a particular train, and described the clothes he would be wearing and the bag he would be carrying; the informant, however, gave no basis for his information. FBI agents met the train, observed that the defendant fully answered the description, and arrested him. The Court held that the corroboration of part of the informer's tip established probable cause to support the arrest. A case involving a search warrant, Jones v. United States, 104 apparently utilized a test of considering the affidavit as a whole to see whether the tip plus the corroborating information provided a substantial basis for finding probable cause, but the affidavit also set forth the reliability of the informer and sufficient detail to indicate that the tip was based on the informant's personal observation. Aguilar v. Texas 105 held insufficient an affidavit which merely asserted that the police had "reliable information from a credible person" that narcotics were in a certain place, and held that when the affiant relies on an informant's tip he must present two types of

evidence to the magistrate. First, the affidavit must indicate the informant's basis of knowledge--the circumstances from which the informant concluded that evidence was present or that crimes had been committed--and, second, the affiant must present information which would permit the magistrate to decide whether or not the informant was trustworthy. Then, in Spinelli v. United States, 106 the Court applied Aguilar in a situation in which the affidavit contained both an informant's tip and police information of a corroborating nature.

The Court rejected the "totality" test derived from Jones and held that the informant's tip and the corroborating evidence must be separately considered. The tip was rejected because the affidavit contained neither any information which showed the basis of the tip nor any information which showed the informant's credibility. The corroborating evidence was rejected as insufficient because it did not establish any element of criminality but merely related to details which were innocent in themselves. No additional corroborating weight was due as a result of the bald police assertion that

defendant was a known gambler, although the tip related to gambling. Returning to the totality test, however, the Court in United States v. Harris 107 approved a warrant issued largely on an informer's tip that over a two-year period he had purchased illegal whiskey from the defendant at the defendant's residence, most re cently within two weeks of the tip. The affidavit contained rather detailed information about the concealment of the whiskey, and asserted that the informer was a "prudent person," that defendant had a reputation as a bootlegger, that other persons had supplied similar information about him, and that he had been found in control of illegal whiskey within the previous four years. The Court determined that the detailed nature of the tip, the personal observation thus revealed, and the fact that the informer had admitted to criminal behavior by his purchase of whiskey were sufficient to enable the magistrate to find him reliable, and that the supporting evidence, including defendant's reputation, could supplement this determination.

The Court expressly abandoned the two-part Aguilar-Spinelli test and

returned to the "totality of the circumstances" approach to evaluate probable cause based on an informant's tip in Illinois v. Gates. 108 The main defect of the two-part test, Justice Rehnquist concluded for the Court, was in treating an informant's reliability and his basis for knowledge as independent requirements. Instead, "a deficiency in one may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability." 109 In evaluating probable cause, "[t]he task of the issuing magistrate is simply to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place." 110

Particularity .--"The requirement that warrants shall particularily describe the things to be seized makes general searches under them impossible and prevents the seizure of one thing under a warrant describing another.

As to what is to be taken, nothing is left to the discretion of the officer executing the warrant." 111 This requirement thus acts to limit the scope of the search, inasmuch as the executing officers should be limited to looking in places where the described object could be expected to be found. 112

First Amendment Bearing on Probable Cause and Particularity .-- Where the warrant process is used to authorize seizure of books and other items entitled either to First Amendment protection or to First Amendment consideration, the Court has required government to observe more exacting standards than in other cases. 113 Seizure of materials arguably protected by the First Amendment is a form of prior restraint that requires strict observance of the Fourth Amendment. At a minimum, a warrant is required, and additional safeguards may be required for large-scale seizures. Thus, in Marcus v. Search Warrant, 114 the seizure of 11,000 copies of 280 publications pursuant to warrant issued ex parte by a magistrate who had not examined any of the publications but who had relied on the conclusory affidavit of a policeman was

voided. Failure to scrutinize the materials and to particularize the items to be seized was deemed inadequate, and it was further noted that police "were provided with no guide to the exercise of informed discretion, because there was no step in the procedure before seizure designed to focus searchingly on the question of obscenity." 115 A state procedure which was designed to comply with Marcus by the presentation of copies of books to be seized to the magistrate for his scrutiny prior to issuance of a warrant was nonetheless found inadequate by a plurality of the Court, which concluded that "since the warrant here authorized the sheriff to seize all copies of the specified titles, and since [appellant] was not afforded a hearing on the question of the obscenity even of the seven novels [seven of 59 listed titles were reviewed by the magistrate] before the warrant issued, the procedure was . . . constitutionally deficient." 116 Confusion remains, however, about the necessity for and the character of prior adversary hearings on the issue of obscenity. In a later decision the Court held that, with adequate safeguards, no pre-seizure adversary hearing on the issue of obscenity is

required if the film is seized not for the purpose of destruction as contraband (the purpose in Marcus and A Quantity of Books), but instead to preserve a copy for evidence. 117 It is constitutionally permissible to seize a copy of a film pursuant to a warrant as long as there is a prompt post-seizure adversary hearing on the obscenity issue. Until there is a judicial determination of obscenity, the Court advised, the film may continue to be exhibited; if no other copy is available either a copy of it must be made from the seized film or the film itself must be returned. 118

The seizure of a film without the authority of a constitutionally sufficient warrant is invalid; seizure cannot be justified as incidental to arrest, inasmuch as the determination of obscenity may not be made by the officer himself. 119 Nor may a warrant issue based "solely on the conclusory assertions of the police officer without any inquiry by the [magistrate] into the factual basis for the officer's conclusions." 120 Instead, a warrant must be "supported by affidavits setting forth specific facts in order that the issuing magistrate may 'focus

searchingly on the question of obscenity.'" 121 This does not mean, however, that a higher standard of probable cause is required in order to obtain a warrant to seize materials protected by the First Amendment. "Our reference in Roaden to a 'higher hurdle . . . of reasonableness' was not intended to establish a 'higher' standard of probable cause for the issuance of a warrant to seize books or films, but instead related to the more basic requirement, imposed by that decision, that the police not rely on the 'exigency' exception to the Fourth Amendment warrant requirement, but instead obtain a warrant from a magistrate . . . ." 122

In Stanford v. Texas, 123 a seizure of more than 2,000 books, pamphlets, and other documents pursuant to a warrant which merely authorized the seizure of books, pamphlets, and other written instruments "concerning the Communist Party of Texas" was voided. "[T]he constitutional requirement that warrants must particularly describe the 'things to be seized' is to be accorded the most scrupulous exactitude when the 'things' are books, and the basis for their seizure is the ideas which they contain. . . . No

less a standard could be faithful to First Amendment freedoms." 124

However, the First Amendment does not bar the issuance or execution of a warrant to search a newsroom to obtain photographs of demonstrators who had injured several policemen, although the Court appeared to suggest that a magistrate asked to issue such a warrant should guard against interference with press freedoms through limits on type, scope, and intrusiveness of the search. 125

Property Subject to Seizure .--There has never been any doubt that search warrants could be issued for the seizure of contraband and the fruits and instrumentalities of crime. 126 But in Gouled v. United States, 127 a unanimous Court limited the classes of property subject to seizures to these three and refused to permit a seizure of "mere evidence," in this instance defendant's papers which were to be used as evidence against him at trial. The Court recognized that there was "no special sanctity in papers, as distinguished from other forms of property, to render them immune from search and seizure," 128 but

their character as evidence rendered them immune. This immunity "was based upon the dual, related premises that historically the right to search for and seize property depended upon the assertion by the Government of a valid claim of superior interest, and that it was not enough that the purpose of the search and seizure was to obtain evidence to use in appre hending and convicting criminals." 129 More evaded than followed, the "mere evidence" rule was overturned in 1967. 130 It is now settled that such evidentiary items as fingerprints, 131 blood, 132 urine samples, 133 fingernail and skin scrapings, 134 voice and handwriting exemplars, 135 conversations, 136 and other demonstrative evidence may be obtained through the warrant process or without a warrant where "special needs" of government are shown. 137

However, some medically assisted bodily intrusions have been held impermissible, e.g., forcible administration of an emetic to induce vomiting, 138 and surgery under general anesthetic to remove a bullet lodged in a suspect's chest. 139 Factors to be weighed in determining which medical tests and procedures are

reasonable include the extent to which the procedure threatens the individual's safety or health, "the extent of the intrusion upon the individual's dignitary interests in personal privacy and bodily integrity," and the importance of the evidence to the prosecution's case. 140

In Warden v. Hayden, 141 Justice Brennan for the Court cautioned that the items there seized were not "'testimonial' or 'communicative' in nature, and their introduction therefore did not compel respondent to become a witness against himself in violation of the Fifth Amendment. . . . This case thus does not require that we consider whether there are items of evidential value whose very nature precludes them from being the object of a reasonable search and seizure." This merging of Fourth and Fifth Amendment considerations derived from Boyd v. United States, 142 the first case in which the Supreme Court considered at length the meaning of the Fourth Amendment. Boyd was a quasi-criminal proceeding for the forfeiture of goods alleged to have been imported in violation of law, and concerned a statute which authorized court orders to require defendants to produce

any document which might "tend to prove any allegation made by the United States." 143 That there was a self-incrimination problem the entire Court was in agreement, but Justice Bradley for a majority of the Justices also utilized the Fourth Amendment.

While the statute did not authorize a search but instead compulsory production, the Justice concluded that the law was well within the restrictions of the search and seizure clause. 144 With this point established, the Justice relied on Lord Camden's opinion in Entick v. Carrington 145 for the proposition that seizure of items to be used as evidence only was impermissible. Justice Bradley announced that the "essence of the offence" committed by the Government against Boyd "is not the breaking of his doors, and the rummaging of his drawers . . . but it is the invasion of his indefeasible right of personal security, personal liberty and private property. . . . Breaking into a house and opening boxes and drawers are circumstances of aggravation; but any forcible and compulsory extortion of a man's own testimony or of his private papers to be used as evidence to convict him of

crime or to forfeit his goods, is within the condemnation of that judgment. In this regard the Fourth and Fifth Amendments run almost into each other." 146

While it may be doubtful that the equation of search warrants with subpoenas and other compulsory process ever really amounted to much of a limitation, 147 the present analysis of the Court dispenses with any theory of "convergence" of the two Amendments. 148 Thus, in Andresen v. Maryland, 149 police executed a warrant to search defendant's offices for specified documents pertaining to a fraudulent sale of land, and the Court sustained the admission of the papers discovered as evidence at his trial. The Fifth Amendment was inapplicable, the Court held, because there had been no compulsion of defendant to produce or to authenticate the documents. 150 As for the Fourth Amendment, inasmuch as the "business records" seized were evidence of criminal acts, they were properly seizable under the rule of Warden v. Hayden; the fact that they were "testimonial" in nature, records in the defendant's handwriting, was irrelevant. 151 Acknowledging that "there

are grave dangers inherent in executing a warrant authorizing a search and seizure of a person's papers," the Court's response was to observe that while some "innocuous documents" would have to be examined to ascertain which papers were to be seized, authorities, just as with electronic "seizures" of conversations, "must take care to assure that they are conducted in a manner that minimizes unwarranted intrusions upon privacy." 152

Although Andresen was concerned with business records, its discussion seemed equally applicable to "personal" papers, such as diaries and letters, as to which a much greater interest in privacy most certainly exists. The question of the propriety of seizure of such papers continues to be the subject of reservation in opinions, 153 but it is far from clear that the Court would accept any such exception should the issue be presented. 154

Execution of Warrants .-- The manner of execution of warrants is generally governed by statute and rule, as to time of execution, 155 method of entry, and the like. It was a rule at common law

that before an officer could break and enter he must give notice of his office, authority, and purpose and must in effect be refused admittance, 156 and until recently this has been a statutory requirement in the federal system 157 and generally in the States. In Ker v. California, 158 the Court considered the rule of announcement as a constitutional requirement, although a majority there found circumstances justifying entry without announcement. In Wilson v. Arkansas, Supp.2 the Court determined that the common law "knock and announce" rule is an element of the Fourth Amendment reasonableness inquiry. The rule does not, however, require announcement under all circumstances. The presumption in favor of announcement yields under various circumstances, including those posing a threat of physical violence to officers, those in which a prisoner has escaped and taken refuge in his dwelling, and those in which officers have reason to believe that destruction of evidence is likely. Recent federal laws providing for the issuance of warrants authorizing in certain circumstances "no-knock" entries to execute warrants will no doubt present

the Court with opportunities to explore the configurations of the rule of announcement. 159 A statute regulating the expiration of a warrant and issuance of another "should be liberally construed in favor of the individual." 160 Similarly, inasmuch as the existence of probable cause must be established by fresh facts, so the execution of the warrant should be done in timely fashion so as to ensure so far as possible the continued existence of probable cause. 161

In executing a warrant for a search of premises and of named persons on the premises, police officers may not automatically search someone else found on the premises. 162 If they can articulate some reasonable basis for fearing for their safety they may conduct a "patdown" of the person, but in order to search they must have probable cause particularized with respect to that person. However, in Michigan v. Summers, 163 the Court held that officers arriving to execute a warrant for the search of a house could detain, without being required to articulate any reasonable basis and necessarily therefore without probable cause, the owner or occupant of the house, whom

they encountered on the front porch leaving the premises. Applying its intrusiveness test, 164 the Court determined that such a detention, which was "substantially less intrusive" than an arrest, was justified because of the law enforcement interests in minimizing the risk of harm to officers, facilitating entry and conduct of the search, and preventing flight in the event incriminating evidence is found. 165 Also, under some circumstances officers may search premises on the mistaken but reasonable belief that the premises are described in an otherwise valid warrant. 166

Although for purposes of execution, as for many other matters, there is little diffence between search warrants and arrest warrants, one notable difference is that the possession of a valid arrest warrant cannot authorize authorities to enter the home of a third party looking for the person named in the warrant; in order to do that, they need a search warrant signifying that a magistrate has determined that there is probable cause to believe the person named is on the premises. 167

Footnotes

[Footnote 87] While the exceptions may be different as between arrest warrants and search warrants, the requirements for the issuance of the two are the same. Aguilar v. Texas, 378 U.S. 108, 112 n.3 (1964). Also, the standards by which the validity of warrants are to be judged are the same, whether federal or state officers are involved. Ker v. California, 374 U.S. 23 (1963).

[Footnote 88] Most often, in the suppression hearings, the defendant will challenge the sufficiency of the evidence presented to the magistrate to constitute probable cause. Spinelli v. United States, 393 U.S. 410 (1969); United States v. Harris, 403 U.S. 573 (1971). He may challenge the veracity of the statements used by the police to procure the warrant and otherwise contest the accuracy of the allegations going to establish probable cause, but the Court has carefully hedged his ability to do so. Franks v. Delaware, 438 U.S. 154 (1978). He may also question the power of the official issuing the warrant, Coolidge v. New Hampshire, 403 U.S. 443, 449 -53 (1971), or the specificity of the particularity required. Marron v. United States, 275 U.S. 192 (1927).

[Footnote 89] United States v. Lefkowitz, 285 U.S. 452, 464 (1932); Giordenello v. United States, 357 U.S. 480, 486 (1958); Jones v. United States, 362 U.S. 257, 270 (1960); Katz v. United States, 389 U.S. 347, 356 (1967); United States v. United States District Court, 407 U.S. 297, 321 (1972); United States v. Chadwick, 433 U.S. 1, 9 (1977); Lo-Ji Sales v. New York, 442 U.S. 319, 326 (1979).

[Footnote 90] Johnson v. United States, 333 U.S. 10, 13 -14 (1948).

[Footnote 91] Shadwick v. City of Tampa, 407 U.S. 345, 354 (1972).

[Footnote 92] Coolidge v. New Hampshire, 403 U.S. 443, 449 -51 (1971) (warrant issued by state attorney general who was leading investigation and who as a justice of the peace was authorized to issue warrants); Mancusi v. DeForte, 392 U.S. 364, 370 -72 (1968) (subpoena issued by district attorney could not qualify as a valid search warrant); Lo-Ji Sales v. New York, 442 U.S. 319 (1979) (justice of the

peace issued open-ended search warrant for obscene materials, accompanied police during its execution, and made probable cause determinations at the scene as to particular items).

[Footnote 93] Jones v. United States, 362 U.S. 257, 270 -71 (1960) (approving issuance of warrants by United States Commissioners, many of whom were not lawyers and none of whom had any guarantees of tenure and salary); Shadwick v. City of Tampa, 407 U.S. 345 (1972) (approving issuance of arrest warrants for violation of city ordinances by city clerks who were assigned to and supervised by municipal court judges). The Court reserved the question "whether a State may lodge warrant authority in someone entirely outside the sphere of the judicial branch. Many persons may not qualify as the kind of 'public civil officers' we have come to associate with the term 'magistrate.' Had the Tampa clerk been entirely divorced from a judicial position, this case would have presented different considerations." Id. at 352.

[Footnote 94] Id. at 350-54 (placing on defendant the burden of demonstrating that the issuing official lacks

capacity to determine probable cause). See also Connally v. Georgia, 429 U.S. 245 (1977) (unsalaried justice of the peace who receives a sum of money for each warrant issued but nothing for reviewing and denying a warrant not sufficiently detached).

[Footnote 95] Dumbra v. United States, 268 U.S. 435, 439 , 441 (1925). "[T]he term 'probable cause'. . . means less than evidence which would justify condemnation." Lock v. United States, 11 U.S. (7 Cr.) 339, 348 (1813). See Steele v. United States, 267 U. S. 498, 504 -05 (1925). It may rest upon evidence which is not legally competent in a criminal trial, Draper v. United States, 358 U.S. 307, 311 (1959), and it need not be sufficient to prove guilt in a criminal trial. Brinegar v. United States, 338 U.S. 160, 173 (1949). See United States v. Ventresca, 380 U.S. 102, 107 -08 (1965).

[Footnote 96] Brinegar v. United States, 338 U.S. 160, 175 (1949).

[Footnote 97] United States v. Ventresca, 380 U.S. 102, 108 -09 (1965).

[Footnote 98] Jones v. United States, 362 U.S. 257, 270 -71 (1960). Similarly, the preference for proceeding by warrant leads to a stricter rule for appellate review of trial court decisions on warrantless stops and searches than is employed to review probable cause to issue a warrant. Ornelas v. United States, 116 S. Ct. 1657 (1996) (determinations of reasonable suspicion to stop and probable cause to search without a warrant should be subjected to de novo appellate review).

[Footnote 99] Aguilar v. Texas, 378 U.S. 108, 111 (1964). It must be emphasized that the issuing party "must judge for himself the persuasiveness of the facts relied on by a [complainant] to show probable cause." Giordenello v. United States, 357 U.S. 480, 486 (1958). An insufficient affidavit cannot be rehabilitated by testimony after issuance concerning information possessed by the affiant but not disclosed to the magistrate. Whiteley v. Warden, 401 U.S. 560 (1971).

[Footnote 100] Byars v. United States, 273 U.S. 28 (1927) (affiant stated he "has good reason to believe and does believe" that defendant has contraband materials in

his possession); Giordenello v. United States, 357 U.S. 480 (1958) (complainant merely stated his conclusion that defendant had committed a crime). See also Nathanson v. United States, 290 U.S. 41 (1933).

[Footnote 101] 380 U.S. 102 (1965).

[Footnote 102] Id. at 109.

[Footnote 103] 358 U.S. 307 (1959). For another case applying essentially the same probable cause standard to warrantless arrests as govern arrests by warrant, see McCray v. Illinois, 386 U.S. 300 (1967) (informant's statement to arresting officers met Aguilar probable cause standard). See also Whitely v. Warden, 401 U.S. 560, 566 (1971) (standards must be "at least as stringent" for warrantless arrest as for obtaining warrant).

[Footnote 104] 362 U.S. 257 (1960).

[Footnote 105] 378 U.S. 108 (1964).

[Footnote 106] 393 U.S. 410 (1969). Both concurring and dissenting Justices recognized tension between Draper and

Aguilar. See id. at 423 (Justice White concurring), id. at 429 (Justice Black dissenting and advocating the overruling of Aguilar).

[Footnote 107] 403 U.S. 573 (1971). See also Adams v. Williams, 407 U.S. 143, 147 (1972) (approving warrantless stop of motorist based on informant's tip that "may have been insufficient" under Aguilar and Spinelli as basis for warrant).

[Footnote 108] 462 U.S. 213 (1983) (Justice Rehnquist's opinion of the Court was joined by Chief Justice Burger and by Justices Blackmun, Powell, and O'Connor. Justices Brennan, Marshall, and Stevens dissented.

[Footnote 109] 462 U.S. at 213 .

[Footnote 110] 462 U.S. at 238 .

[Footnote 111] Marron v. United States, 275 U.S. 192, 196 (1927). See Stanford v. Texas, 379 U.S. 476 (1965). Of course, police who are lawfully on the premises pursuant to a warrant may seize evidence of crime in "plain view" even if that

evidence is not described in the warrant. Coolidge v. New Hampshire, 403, U.S. 443, 464-71 (1971).

[Footnote 112] "This Court has held in the past that a search which is reasonable at its inception may violate the Fourth Amendment by virtue of its intolerable intensity and scope. Kremen v. United States, 353 U.S. 346 (1957); Go-Bart Importing Co. v. United States, 282 U.S. 344, 356 -58 (1931); see United States v. Di Re, 332 U.S. 581, 586 -87 (1948). The scope of the search must be 'strictly tied to and justified by' the circumstances which rendered its initiation permissible. Warden v. Hayden, 387 U.S. 294, 310 (1967) (Mr. Justice Fortas concurring); see, e.g., Preston v. United States, 376 U.S. 364, 367 -368 (1964); Agnello v. United States, 296 U.S. 20, 30 -31 (1925)." Terry v. Ohio, 392 U.S. 1, 18 -19, (1968). See also Andresen v. Maryland, 427 U.S. 463, 470 -82 (1976), and id. at 484, 492-93 (Justice Brennan dissenting). In Stanley v. Georgia, 394 U.S. 557, 569 (1969), Justices Stewart, Brennan, and White would have based decision on the principle that a valid warrant for gambling paraphernalia

did not authorize police upon discovering motion picture films in the course of the search to project the films to learn their contents.

[Footnote 113] Marcus v. Search Warrant, 367 U.S. 717, 730 -31 (1961); Stanford v. Texas, 379 U.S. 476, 485 (1965).

[Footnote 114] 367 U.S. 717 (1961). See Kingsley Books v. Brown, 354 U.S. 436 (1957).

[Footnote 115] Marcus v. Search Warrant, 367 U.S. 717, 732 (1961).

[Footnote 116] A Quantity of Books v. Kansas, 378 U.S. 205, 210 (1964).

[Footnote 117] Heller v. New York, 413 U.S. 483 (1973).

[Footnote 118] Id. at 492-93. But cf. New York v. P.J. Video, Inc., 475 U.S. 868, 875 n.6 (1986), rejecting the defendant's assertion, based on Heller, that only a single copy rather than all copies of allegedly obscene movies should have been seized pursuant to warrant.

[Footnote 119] Roaden v.

Kentucky, 413 U.S. 496 (1973). See also Lo-Ji Sales v. New York, 442 U.S. 319 (1979); Walter v. United States, 447 U.S. 649 (1980). These special constraints are inapplicable when obscene materials are purchased, and there is consequently no Fourth Amendment search or seizure. Maryland v. Macon, 472 U.S. 463 (1985).

[Footnote 120] Lee Art Theatre, Inc. v. Virginia, 392 U.S. 636, 637 (1968) (per curiam).

[Footnote 121] New York v. P.J. Video, Inc., 475 U.S. 868, 873 -74 (1986) (quoting Marcus v. Search Warrant, 367 U.S. 717, 732 (1961)).

[Footnote 122] New York v. P.J. Video, Inc., 475 U.S. 868, 875 n.6 (1986).

[Footnote 123] 379 U.S. 476 (1965).

[Footnote 124] Id. at 485-86. See also Marcus v. Search Warrant, 367 U.S. 717, 723 (1961).

[Footnote 125] Zurcher v. Stanford Daily, 436 U.S. 547 (1978). See id. at 566 (containing suggestion

mentioned in text), and id. at 566 (Justice Powell concurring) (more expressly adopting that position). In the Privacy Protection Act, Pub. L. No. 96-440, 94 Stat. 1879 (1980), 42 U.S.C. Sec. 2000aa, Congress provided extensive protection against searches and seizures not only of the news media and news people but also of others engaged in disseminating communications to the public, unless there is probable cause to believe the person protecting the materials has committed or is committing the crime to which the materials relate.

[Footnote 126] United States v. Lefkowitz, 285 U.S. 452, 465 -66 (1932). Of course, evidence seizable under warrant is subject to seizure without a warrant in circumstances in which warrantless searches are justified.

[Footnote 127] 255 U.S. 298 (1921). United States v. Lefkowitz, 285 U.S. 452 (1932), applied the rule in a warrantless search of premises. The rule apparently never applied in case of a search of the person. Cf. Schmerber v. California, 384 U.S. 757 (1966).

[Footnote 128] Gouled v. United States, 255 U.S. 298, 306 (1921).

[Footnote 129] Warden v. Hayden, 387 U.S. 294, 303 (1967). See Gouled v. United States, 255 U.S. 298, 309 (1921). The holding was derived from dicta in Boyd v. United States, 116 U.S. 616, 624 -29 (1886).

[Footnote 130] Warden v. Hayden, 387 U.S. 294 (1967). Justice Douglas dissented, wishing to retain the rule, id. at 312, and Justice Fortas with Chief Justice Warren concurred in the result while apparently wishing to retain the rule in warrant cases. Id. at 310, 312.

[Footnote 131] Davis v. Mississippi, 394 U.S. 721 (1969).

[Footnote 132] Schmerber v. California, 384 U.S. 757 (1966). Skinner v. Railway Labor Executives' Ass'n, 489 U.S. 602 (1989) (warrantless blood testing for drug use by railroad employee involved in accident).

[Footnote 133] Skinner v. Railway Labor Executives' Ass'n, 489 U.S. 602 (1989) (warrantless drug testing of

railroad employee involved in accident).

[Footnote 134] Cupp v. Murphy, 412 U.S. 291 (1973) (sustaining warrantless taking of scrapings from defendant's fingernails at the stationhouse, on the basis that it was a very limited intrusion and necessary to preserve evanescent evidence).

[Footnote 135] United States v. Dionisio, 410 U.S. 1 (1973); United States v. Mara, 410 U.S. 19 (1973) (both sustaining grand jury subpoenas to produce voice and handwriting exemplars; no reasonable expectation of privacy with respect to those items).

[Footnote 136] Berger v. New York, 388 U.S. 41, 44 n.2 (1967). See also id. at 97 n.4, 107-08 (Justices Harlan and White concurring), 67 (Justice Douglas concurring).

[Footnote 137] Another important result of Warden v. Hayden is that third parties not suspected of culpability in crime are subject to the issuance and execution of warrants for searches and seizures of evidence. Zurcher v. Stanford Daily, 436 U.S. 547, 553 -60 (1978). Justice Stevens argued for a stiffer

standard for issuance of warrants to nonsuspects, requiring in order to invade their privacy a showing that they would not comply with a less intrusive method, such as a subpoena. Id. at 577 (dissenting).

[Footnote 138] Rochin v. California, 342 U.S. 165 (1952).

[Footnote 139] Winston v. Lee, 470 U.S. 753 (1985).

[Footnote 140] Winston v. Lee, 470 U.S. 753, 761 -63 (1985). Chief Justice Burger concurred on the basis of his reading of the Court's opinion "as not preventing detention of an individual if there are reasonable grounds to believe that natural bodily functions will disclose the presence of contraband materials secreted internally." id. at at 767. Cf. United States v. Montoya de Hernandez, 473 U.S. 531 (1985).

[Footnote 141] 387 U.S. 294, 302 -03 (1967). Seizure of a diary was at issue in Hill v. California, 401 U.S. 797, 805 (1971), but it had not been raised in the state courts and was deemed waived.

[Footnote 142] 116 U.S. 616

(1886).

[Footnote 143] Act of June 22, 1874, Sec. 5, 18 Stat. 187.

[Footnote 144] Boyd v. United States, 116 U.S. 616, 622 (1886).

[Footnote 145] Howell's State Trials 1029, 95 Eng. Rep. 807 (1765).

[Footnote 146] Boyd v. United States, 116 U.S. 616, 630 (1886).

[Footnote 147] E.g., Oklahoma Press Pub Co. v. Walling, 327 U.S. 186, 209 -09 (1946).

[Footnote 148] Andresen v. Maryland, 427 U.S. 463 (1976); Fisher v. United States, 425 U.S. 391, 405 -14 (1976). Fisher states that "the precise claim sustained in Boyd would now be rejected for reasons not there considered." Id. at 408.

[Footnote 149] 427 U.S. 463 (1976).

[Footnote 150] Id. at 470-77.

[Footnote 151] Id. at 478-84.

[Footnote 152] Id. at 482

n.11. Minimization, as required under federal law, has not proved to be a significant limitation. Scott v. United States, 425 U.S. 917 (1976).

[Footnote 153] E.g., United States v. Miller, 425 U.S. 435, 440 , 444 (1976); Fisher v. United States, 425 U.S. 391, 401 (1976); California Bankers Ass'n v. Shultz, 416 U.S. 21, 78 -79 (1974) (Justice Powell concurring).

[Footnote 154] See Note, Formalism, Legal Realism, and Constitutionally Protected Privacy Under the Fourth and Fifth Amendments, 90 Harv. L. Rev. 945 (1977).

[Footnote 155] Rule 41(c), Federal Rules of Criminal Procedure, provides, inter alia, that the warrant shall command its execution in the daytime, unless the magistrate "for reasonable cause shown" directs in the warrant that it be served at some other time. See Jones v. United States, 357 U.S. 493, 498 -500 (1958); Gooding v. United States, 416 U.S. 430 (1974). The rule is more relaxed for narcotics cases. 21 U.S.C. Sec. 879(a).

[Footnote 156] Semayne's

Case, 5 Coke's Rep. 91a, 77 Eng. Rep. 194 (K.B. 1604).

[Footnote 157] 18 U.S.C. Sec. 3109. See Miller v. United States, 357 U.S. 301 (1958); Wong Sun v. United States, 371 U.S. 471 (1963).

[Footnote 158] 374 U.S. 23 (1963). Ker was an arrest warrant case, but no reason appears for differentiating search warrants. Eight Justices agreed that federal standards should govern and that the rule of announcement was of constitutional stature, but they divided 4-to-4 whether entry in this case had been pursuant to a valid exception. Justice Harlan who had dissented from the federal standards issue joined the four finding a justifiable exception to carry the result.

[Footnote 2 (1996 Supplement)] 115 S. Ct. 1914 (1995).

[Footnote 159] In narcotics cases, magistrates are authorized to issue "no-knock" warrants if they find there is probable cause to believe (1) the property sought may, and if notice is given, will be easily and quickly destroyed or (2) giving notice will endanger the life or safety of the

executing officer or another person. 21 U.S.C. Sec. 879 (b). See also D.C. Code, Sec. 23-591.

[Footnote 160] Sgro v. United States, 287 U.S. 206 (1932).

[Footnote 161] Id.

[Footnote 162] Ybarra v. Illinois, 444 U.S. 85 (1979) (patron in a bar), relying on and reaffirming United States v. Di Re, 332 U.S. 581 (1948) (occupant of vehicle may not be searched merely because there are grounds to search the automobile).

[Footnote 163] 452 U.S. 692 (1981).

[Footnote 164] Supra, p.1208. See Michigan v. Summers, 452 U.S. 692, 696 - 701 (1981).

[Footnote 165] Id. at 701-06. Ybarra was distinguished on the basis of its greater intrusiveness and the lack of sufficient connection with the premises. Id. at 695 n.4. By the time Summers was searched, police had probable cause to do so. Id. at 695. The warrant here was for contraband, id. at 701, and a different rule possibly may apply with respect to warrants

for other evidence.

[Footnote 166] Maryland v. Garrison, 480 U.S. 79 (1987) (officers reasonably believed there was only one "third floor apartment" in city row house when in fact there were two).

[Footnote 167] Steagald v. United States, 451 U.S. 204 (1981). An arrest warrant is a necessary and sufficient authority to enter a suspect's home to arrest him. Payton v. New York, 445 U.S. 573 (1980).

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THOMSON FINDLAW

BELL v. ***BURSON*** (05/24/71)

[1] SUPREME COURT OF THE UNITED STATES

[2] No. 5586

[3] 1971.SCT.41919 <http://www.versuslaw.com>; 402 U.S. 535, 91 S. Ct. 1586, 29 L. Ed. 2d 90

[4] decided: May 24, 1971.

[5] ***BELL***
v.
***BURSON*, DIRECTOR, GEORGIA DEPARTMENT OF PUBLIC SAFETY**

[6] CERTIORARI TO THE COURT OF APPEALS OF GEORGIA.

[7] Elizabeth Roediger Rindskopf argued the cause for petitioner pro hac vice. With her on the brief was Howard Moore, Jr.

[8] Dorothy T. Beasley, Assistant Attorney General of Georgia, argued the cause for respondent. With her on the brief were Arthur K. Bolton, Attorney General, Harold N. Hill, Jr., Executive Assistant Attorney General, and Courtney Wilder Stanton, Assistant Attorney General.

[9] Brennan, J., delivered the opinion of the Court, in which Douglas, Harlan, Stewart, White, and Marshall, JJ., joined. Burger, C. J., and Black and Blackmun, JJ., concurred in the result.

[10] Author: Brennan

[11] MR. JUSTICE BRENNAN delivered the opinion of the Court.

[12] Georgia's Motor Vehicle Safety Responsibility Act provides that the motor vehicle registration and driver's license of an uninsured motorist involved in an accident shall be suspended unless he posts security to cover the amount of damages claimed by aggrieved parties in reports of the accident.[*fn1] The administrative hearing conducted prior to the suspension excludes consideration of the motorist's fault or liability for the accident. The

Georgia Court of Appeals rejected petitioner's contention that the State's statutory scheme, in failing before suspending the licenses to afford him a hearing on the question of his fault or liability, denied him due process in violation of the Fourteenth Amendment: the court held that "'Fault' or 'innocence' are completely irrelevant factors." 121 Ga. App. 418, 420, 174 S. E. 2d 235, 236 (1970). The Georgia Supreme Court denied review. App. 27. We granted certiorari. 400 U.S. 963 (1970). We reverse.

[13] Petitioner is a clergyman whose ministry requires him to travel by car to cover three rural Georgia communities. On Sunday afternoon, November 24, 1968, petitioner was involved in an accident when five-year-old Sherry Capes rode her bicycle into the side of his automobile. The child's parents filed an accident report with the Director of the Georgia Department of Public Safety indicating that their daughter had suffered substantial injuries for which they claimed damages of $5,000. Petitioner was thereafter informed by the Director that unless he was covered by a liability insurance policy in effect at the time of the accident he must file a bond or cash security deposit of $5,000 or present a notarized release from liability, plus proof of future financial responsibility,*fn2 or suffer the suspension of his driver's license and vehicle registration. App. 9. Petitioner requested an administrative hearing before the Director asserting that he was not liable as the accident was unavoidable, and stating also that he would be severely handicapped in the performance of his ministerial duties by a suspension of his licenses. A hearing was scheduled but the Director informed petitioner that "the only evidence that the Department can accept and consider is: (a) was the petitioner or his vehicle involved in the accident; (b) has petitioner complied with the provisions of the Law as provided; or (c) does petitioner come within any of the exceptions of the Law." App. 11.*fn3 At the administrative hearing the Director rejected petitioner's proffer of evidence on liability, ascertained that petitioner was not within any of the statutory exceptions, and gave petitioner 30 days to comply with the security requirements or suffer suspension. Petitioner then exercised his statutory right to an appeal de novo in the Superior Court. Ga. Code Ann. § 92A-602 (1958). At that hearing, the court permitted petitioner to present his evidence on liability, and, although the claimants were neither parties nor witnesses, found petitioner free from fault. As a result, the Superior Court ordered "that the petitioner's driver's license not be suspended . . . [until] suit is filed against petitioner for the purpose of recovering damages for the injuries sustained by the child . . . ." App. 15. This order was reversed by the Georgia Court of Appeals in overruling petitioner's constitutional contention. If the statute barred the issuance of licenses to all motorists who did not carry liability insurance or who did not post security, the statute would not, under our cases, violate the Fourteenth Amendment. Ex parte Poresky, 290 U.S. 30 (1933); Continental Baking Co. v. Woodring, 286 U.S. 352 (1932); Hess v. Pawloski, 274 U.S. 352 (1927). It does not follow, however, that the amendment also permits the Georgia statutory scheme where not all motorists, but rather only motorists involved in accidents, are required to post security under penalty of loss of the licenses. See Shapiro v. Thompson, 394 U.S. 618 (1969); Frost & Frost Trucking Co. v. Railroad Comm'n, 271 U.S. 583 (1926). Once licenses are issued, as in petitioner's case, their continued possession may become essential in the pursuit of a livelihood. Suspension of issued licenses thus involves state action that adjudicates important interests of the licensees. In such cases the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment. Sniadach v. Family Finance Corp., 395 U.S. 337 (1969); Goldberg v. Kelly, 397 U.S. 254 (1970). This is but an application of the general proposition that relevant constitutional restraints limit state power to terminate an

entitlement whether the entitlement is denominated a "right" or a "privilege." Sherbert v. Verner, 374 U.S. 398 (1963) (disqualification for unemployment compensation); Slochower v. Board of Education, 350 U.S. 551 (1956) (discharge from public employment); Speiser v. Randall, 357 U.S. 513 (1958) (denial of a tax exemption); Goldberg v. Kelly, supra (withdrawal of welfare benefits). See also Londoner v. Denver, 210 U.S. 373, 385-386 (1908); Goldsmith v. Board of Tax Appeals, 270 U.S. 117 (1926); Opp Cotton Mills v. Administrator, 312 U.S. 126 (1941).

[14] We turn then to the nature of the procedural due process which must be afforded the licensee on the question of his fault or liability for the accident.*fn4 A procedural rule that may satisfy due process in one context may not necessarily satisfy procedural due process in every case. Thus, procedures adequate to determine a welfare claim may not suffice to try a felony charge. Compare Goldberg v. Kelly, 397 U.S., at 270-271, with Gideon v. Wainwright, 372 U.S. 335 (1963). Clearly, however, the inquiry into fault or liability requisite to afford the licensee due process need not take the form of a full adjudication of the question of liability. That adjudication can only be made in litigation between the parties involved in the accident. Since the only purpose of the provisions before us is to obtain security from which to pay any judgments against the licensee resulting from the accident, we hold that procedural due process will be satisfied by an inquiry limited to the determination whether there is a reasonable possibility of judgments in the amounts claimed being rendered against the licensee.

[15] The State argues that the licensee's interest in avoiding the suspension of his licenses is outweighed by countervailing governmental interests and therefore that this procedural due process need not be afforded him. We disagree. In cases where there is no reasonable possibility of a judgment being rendered against a licensee, Georgia's interest in protecting a claimant from the possibility of an unrecoverable judgment is not, within the context of the State's fault-oriented scheme, a justification for denying the process due its citizens. Nor is additional expense occasioned by the expanded hearing sufficient to withstand the constitutional requirement. "'While the problem of additional expense must be kept in mind, it does not justify denying a hearing meeting the ordinary standards of due process.'" Goldberg v. Kelly, 397 U.S., at 261, quoting Kelly v. Wyman, 294 F.Supp. 893, 901 (SDNY 1968).

[16] The main thrust of Georgia's argument is that it need not provide a hearing on liability because fault and liability are irrelevant to the statutory scheme. We may assume that were this so, the prior administrative hearing presently provided by the State would be "appropriate to the nature of the case." Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950). But "in reviewing state action in this area . . . we look to substance, not to bare form, to determine whether constitutional minimums have been honored." Willner v. Committee on Character, 373 U.S. 96, 106-107 (1963) (concurring opinion). And looking to the operation of the State's statutory scheme, it is clear that liability, in the sense of an ultimate judicial determination of responsibility, plays a crucial role in the Safety Responsibility Act. If prior to suspension there is a release from liability executed by the injured party, no suspension is worked by the Act. Ga. Code Ann. § 92A-606 (1958). The same is true if prior to suspension there is an adjudication of non-liability. Ibid. Even after suspension has been declared, a release from liability or an adjudication of non-

liability will lift the suspension. Ga. Code Ann. § 92A-607 (Supp. 1970). Moreover, other of the Act's exceptions are developed around liability-related concepts. Thus, we are not dealing here with a no-fault scheme. Since the statutory scheme makes liability an important factor in the State's determination to deprive an individual of his licenses, the State may not, consistently with due process, eliminate consideration of that factor in its prior hearing.

[17] The hearing required by the Due Process Clause must be "meaningful," Armstrong v. Manzo, 380 U.S. 545, 552 (1965), and "appropriate to the nature of the case." Mullane v. Central Hanover Bank & Trust Co., supra, at 313. It is a proposition which hardly seems to need explication that a hearing which excludes consideration of an element essential to the decision whether licenses of the nature here involved shall be suspended does not meet this standard.

[18] Finally, we reject Georgia's argument that if it must afford the licensee an inquiry into the question of liability, that determination, unlike the determination of the matters presently considered at the administrative hearing, need not be made prior to the suspension of the licenses. While "many controversies have raged about . . . the Due Process Clause," ibid., it is fundamental that except in emergency situations (and this is not one)[*fn5] due process requires that when a State seeks to terminate an interest such as that here involved, it must afford "notice and opportunity for hearing appropriate to the nature of the case" before the termination becomes effective. Ibid. Opp Cotton Mills v. Administrator, 312 U.S., at 152-156; Sniadach v. Family Finance Corp., supra; Goldberg v. Kelly, supra; Wisconsin v. Constantineau, 400 U.S. 433 (1971).

[19] We hold, then, that under Georgia's present statutory scheme, before the State may deprive petitioner of his driver's license and vehicle registration it must provide a forum for the determination of the question whether there is a reasonable possibility of a judgment being rendered against him as a result of the accident. We deem it inappropriate in this case to do more than lay down this requirement. The alternative methods of compliance are several. Georgia may decide merely to include consideration of the question at the administrative hearing now provided, or it may elect to postpone such a consideration to the de novo judicial proceedings in the Superior Court. Georgia may decide to withhold suspension until adjudication of an action for damages brought by the injured party. Indeed, Georgia may elect to abandon its present scheme completely and pursue one of the various alternatives in force in other States.[*fn6] Finally, Georgia may reject all of the above and devise an entirely new regulatory scheme. The area of choice is wide: we hold only that the failure of the present Georgia scheme to afford the petitioner a prior hearing on liability of the nature we have defined denied him procedural due process in violation of the Fourteenth Amendment.

[20] The judgment is reversed and the case is remanded for further proceedings not inconsistent with this opinion.

[21] It is so ordered.

[22] THE CHIEF JUSTICE, MR. JUSTICE BLACK, and MR. JUSTICE BLACKMUN concur in the result.

[23] Disposition

[24] 121 Ga. App. 418, 174 S. E. 2d 235, reversed and remanded.

Opinion Footnotes

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[25] *fn1 Motor Vehicle Safety Responsibility Act, Ga. Code Ann. § 92A-601 et seq. (1958). In pertinent part the Act provides that anyone involved in an accident must submit a report to the Director of Public Safety. Ga. Code Ann. § 92A-604 (Supp. 1970). Within 30 days of the receipt of the report the Director "shall suspend the license and all registration certificates and all registration plates of the operator and owner of any motor vehicle in any manner involved in the accident unless or until the operator or owner has previously furnished or immediately furnishes security, sufficient . . . to satisfy any judgments for damages or injuries resulting . . . and unless such operator or owner shall give proof of financial responsibility for the future as is required in section 92A-615.1. . . ." Ga. Code Ann. § 92A-605 (a) (Supp. 1970). Section 92A-615.1 (Supp. 1970) requires that "such proof must be maintained for a one-year period." Section 92A-605 (a) works no suspension, however, (1) if the owner or operator had in effect at the time of the accident a liability insurance policy or other bond, Ga. Code Ann. § 92A-605 (c) (Supp. 1970); (2) if the owner or operator qualifies as a self-insurer, ibid.; (3) if only the owner or operator was injured, Ga. Code Ann. § 92A-606 (1958); (4) if the automobile was legally parked at the time of the accident, ibid.; (5) if as to an owner, the automobile was being operated without permission, ibid.; or (6) "if, prior to the date that the Director would otherwise suspend license and registration . . . there shall be filed with the Director evidence satisfactory to him that the person who would otherwise have to file security has been released from liability or been finally adjudicated not to be liable or has executed a duly acknowledged written agreement providing for the payment of an agreed amount in installments . . . ." Ibid.

[26] *fn2 Questions concerning the requirement of proof of future financial responsibility are not

before us. The State's brief, at 4, states: "The one year period for proof of financial responsibility has now expired, so [petitioner] would not be required to file such proof, even if the Court of Appeals decision were affirmed."

[27] *fn3 Ga. Code Ann. § 92A-602 (1958) provides:

"The Director shall administer and enforce the provisions of this Chapter and may make rules and regulations necessary for its administration and shall provide for hearings upon request of persons aggrieved by orders or acts of the Director under the provisions of this Chapter. Such hearing need not be a matter of record and the decision as rendered by the Director shall be final unless the aggrieved person shall desire an appeal, in which case he shall have the right to enter an appeal to the superior court of the county of his residence, by notice to the Director, in the same manner as appeals are entered from the court of ordinary, except that the appellant shall not be required to post any bond nor pay the costs in advance. If the aggrieved person desires, the appeal may be heard by the judge at term or in chambers or before a jury at the first term. The hearing on the appeal shall be de novo, however, such appeal shall not act as a supersedeas of any orders or acts of the Director, nor shall the appellant be allowed to operate or permit a motor vehicle to be operated in violation of any suspension or revocation by the Director, while such appeal is pending. A notice sent by registered mail shall be sufficient service on the Director that such appeal has been entered."

[28] *fn4 Petitioner stated at oral argument that while "it would be possible to raise [an equal protection argument] . . . we don't raise this point here." Tr. of Oral Arg. 14.

[29] *fn5 See, e. g., Fahey v. Mallonee, 332 U.S. 245 (1947); Ewing v. Mytinger & Casselberry, 339 U.S. 594 (1950).

[30] *fn6 The various alternatives include compulsory insurance plans, public or joint public-private unsatisfied judgment funds, and assigned claims plans. See R. Keeton & J. O'Connell, After Cars Crash (1967).

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STANLEY v. ***ILLINOIS*** (04/03/72)

[1] SUPREME COURT OF THE UNITED STATES

[2] No. 70-5014

[3] 1972.SCT.41241 <http://www.versuslaw.com>; 405 U.S. 645, 92 S. Ct. 1208, 31 L. Ed. 2d 551

[4] decided: April 3, 1972.

[5] ***STANLEY***
v.
ILLINOIS

[6] CERTIORARI TO THE SUPREME COURT OF ***ILLINOIS***.

[7] Patrick T. Murphy argued the cause and filed a brief for petitioner.

[8] Morton E. Friedman, Assistant Attorney General of ***Illinois***, argued the cause for respondent. With him on the brief were William J. Scott, Attorney General, and Joel M. Flaum, First Assistant Attorney General.

[9] Jonathan Weiss and E. Judson Jennings filed a brief for the Center on Social Welfare Policy and Law as amicus curiae urging reversal.

[10] Calvin Sawyier and Richard L. Mandel filed a brief for the Child Care Association of ***Illinois***, Inc., as amicus curiae.

[11] White, J., delivered the opinion of the Court, in which Brennan, Stewart, and Marshall, JJ., joined, and in Parts I and II of which Douglas, J., joined. Burger, C. J., filed a dissenting opinion, in which Blackmun, J., joined, post, p. 659. Powell and Rehnquist, JJ., took no part in the consideration or decision of the case.

[12] Author: White

[13] MR. JUSTICE WHITE delivered the opinion of the Court.

[14] Joan ***Stanley*** lived with Peter ***Stanley*** intermittently for 18 years, during which time they had three children.[*fn1] When Joan ***Stanley*** died, Peter ***Stanley*** lost not only her but also his children. Under ***Illinois*** law, the children of unwed fathers become wards of the State upon the death of the mother. Accordingly, upon Joan ***Stanley***'s death, in a dependency proceeding instituted by the State of ***Illinois***, Stanley's children[*fn2] were declared wards of the State and placed with court-appointed guardians. ***Stanley*** appealed, claiming that he had never been shown to be an unfit parent and that since married fathers and unwed mothers could not be deprived of their children without such a showing, he had been deprived of the equal protection of the laws guaranteed him by the Fourteenth Amendment. The ***Illinois*** Supreme Court accepted the fact that ***Stanley***'s own unfitness had not been established but rejected the equal protection claim, holding that ***Stanley*** could properly be separated from his children upon proof of the single fact that he and the dead mother had not been married. ***Stanley***'s actual fitness as a father was irrelevant. In re ***Stanley***, 45 Ill. 2d 132, 256 N. E. 2d 814 (1970).

[15] ***Stanley*** presses his equal protection claim here. The State continues to respond that unwed fathers are presumed unfit to raise their children and that it is unnecessary to hold individualized hearings to determine whether particular fathers are in fact unfit parents before they are separated from their children. We granted certiorari, 400 U.S. 1020 (1971), to determine whether this method of procedure by presumption could be allowed to stand in light of the fact that ***Illinois*** allows married fathers -- whether divorced, widowed, or separated -- and mothers -- even if unwed -- the benefit of the presumption that they are fit to raise their children.

[16] I

[17] At the outset we reject any suggestion that we need not consider the propriety of the dependency proceeding that separated the Stanleys because ***Stanley*** might be able to regain custody of his children as a guardian or through adoption proceedings. The suggestion is that if ***Stanley*** has been treated differently from other parents, the difference is immaterial and not legally cognizable for the purposes of the Fourteenth Amendment. This Court has not, however, embraced the general proposition that a wrong may be done if it can be undone. Cf. Sniadach v. Family Finance Corp., 395 U.S. 337 (1969). Surely, in the case before us, if there is delay between the doing and the undoing petitioner suffers from the deprivation of his children, and the children suffer from uncertainty and dislocation.

[18] It is clear, moreover, that ***Stanley*** does not have the means at hand promptly to erase the adverse consequences of the proceeding in the course of which his children were declared wards of the State. It is first urged that ***Stanley*** could act to adopt his children. But under ***Illinois*** law, ***Stanley*** is treated not as a parent but as a stranger to his children, and the dependency proceeding has gone forward on the presumption that he is unfit to exercise parental rights. Insofar as we are informed, ***Illinois*** law affords him no priority in adoption proceedings. It would be his burden to establish not only that he would be a suitable parent but also that he would be the most suitable of all who might want custody of the children. Neither can we ignore that in the proceedings from which this action developed, the

"probation officer," see App. 17, the assistant state's attorney, see id., at 29-30, and the judge charged with the case, see id., at 16-18, 23, made it apparent that ***Stanley***, unmarried and impecunious as he is, could not now expect to profit from adoption proceedings.[*fn3] The ***Illinois*** Supreme Court apparently recognized some or all of these considerations, because it did not suggest that ***Stanley***'s case was undercut by his failure to petition for adoption.

[19] Before us, the State focuses on ***Stanley***'s failure to petition for "custody and control" -- the second route by which, it is urged, he might regain authority for his children. Passing the obvious issue whether it would be futile or burdensome for an unmarried father -- without funds and already once presumed unfit -- to petition for custody, this suggestion overlooks the fact that legal custody is not parenthood or adoption. A person appointed guardian in an action for custody and control is subject to removal at any time without such cause as must be shown in a neglect proceeding against a parent. Ill. Rev. Stat., c. 37, § 705-8. He may not take the children out of the jurisdiction without the court's approval. He may be required to report to the court as to his disposition of the children's affairs. Ill. Rev. Stat., c. 37, § 705-8. Obviously then, even if ***Stanley*** were a mere step away from "custody and control," to give an unwed father only "custody and control" would still be to leave him seriously prejudiced by reason of his status.

[20] We must therefore examine the question that ***Illinois*** would have us avoid: Is a presumption that distinguishes and burdens all unwed fathers constitutionally repugnant? We conclude that, as a matter of due process of law, ***Stanley*** was entitled to a hearing on his fitness as a parent before his children were taken from him and that, by denying him a hearing and extending it to all other parents whose custody of their children is challenged, the State denied ***Stanley*** the equal protection of the laws guaranteed by the Fourteenth Amendment.

[21] II

[22] ***Illinois*** has two principal methods of removing non-delinquent children from the homes of their parents. In a dependency proceeding it may demonstrate that the children are wards of the State because they have no surviving parent or guardian. Ill. Rev. Stat., c. 37, §§ 702-1, 702-5. In a neglect proceeding it may show that children should be wards of the State because the present parent(s) or guardian does not provide suitable care. Ill. Rev. Stat., c. 37, §§ 702-1, 702-4.

[23] The State's right -- indeed, duty -- to protect minor children through a judicial determination of their interests in a neglect proceeding is not challenged here. Rather, we are faced with a dependency statute that empowers state officials to circumvent neglect proceedings on the theory that an unwed father is not a "parent" whose existing relationship with his children must be considered.[*fn4] "Parents," says the State, "means the father and mother of a legitimate child, or the survivor of them, or the natural mother of an illegitimate child, and includes any adoptive parent," Ill. Rev. Stat., c. 37, § 701-14, but the

term does not include unwed fathers.

[24] Under ***Illinois*** law, therefore, while the children of all parents can be taken from them in neglect proceedings, that is only after notice, hearing, and proof of such unfitness as a parent as amounts to neglect, an unwed father is uniquely subject to the more simplistic dependency proceeding. By use of this proceeding, the State, on showing that the father was not married to the mother, need not prove unfitness in fact, because it is presumed at law. Thus, the unwed father's claim of parental qualification is avoided as "irrelevant."

[25] In considering this procedure under the Due Process Clause, we recognize, as we have in other cases, that due process of law does not require a hearing "in every conceivable case of government impairment of private interest." Cafeteria Workers v. McElroy, 367 U.S. 886, 894 (1961). That case explained that "the very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation" and firmly established that "what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by governmental action." Id., at 895; Goldberg v. Kelly, 397 U.S. 254, 263 (1970).

[26] The private interest here, that of a man in the children he has sired and raised, undeniably warrants deference and, absent a powerful countervailing interest, protection. It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children "come[s] to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements." Kovacs v. Cooper, 336 U.S. 77, 95 (1949) (Frankfurter, J., concurring).

[27] The Court has frequently emphasized the importance of the family. The rights to conceive and to raise one's children have been deemed "essential," Meyer v. Nebraska, 262 U.S. 390, 399 (1923), "basic civil rights of man," Skinner v. Oklahoma, 316 U.S. 535, 541 (1942), and "rights far more precious . . . than property rights," May v. Anderson, 345 U.S. 528, 533 (1953). "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." Prince v. Massachusetts, 321 U.S. 158, 166 (1944). The integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment, Meyer v. Nebraska, supra, at 399, the Equal Protection Clause of the Fourteenth Amendment, Skinner v. Oklahoma, supra, at 541, and the Ninth Amendment, Griswold v. Connecticut, 381 U.S. 479, 496 (1965) (Goldberg, J., concurring).

[28] Nor has the law refused to recognize those family relationships unlegitimized by a marriage ceremony. The Court has declared unconstitutional a state statute denying natural, but illegitimate, children a wrongful-death action for the death of their mother, emphasizing that such children cannot be denied the right of other children because familial bonds in such cases were often as warm, enduring, and important as those arising within a more formally organized family unit. Levy v. Louisiana, 391 U.S. 68, 71-72

(1968). "To say that the test of equal protection should be the 'legal' rather than the biological relationship is to avoid the issue. For the Equal Protection Clause necessarily limits the authority of a State to draw such 'legal' lines as it chooses." Glona v. American Guarantee Co., 391 U.S. 73, 75-76 (1968).

[29] These authorities make it clear that, at the least, ***Stanley***'s interest in retaining custody of his children is cognizable and substantial.

[30] For its part, the State has made its interest quite plain: ***Illinois*** has declared that the aim of the Juvenile Court Act is to protect "the moral, emotional, mental, and physical welfare of the minor and the best interests of the community" and to "strengthen the minor's family ties whenever possible, removing him from the custody of his parents only when his welfare or safety or the protection of the public cannot be adequately safeguarded without removal . . . ." Ill. Rev. Stat., c. 37, § 701-2. These are legitimate interests, well within the power of the State to implement. We do not question the assertion that neglectful parents may be separated from their children.

[31] But we are here not asked to evaluate the legitimacy of the state ends, rather, to determine whether the means used to achieve these ends are constitutionally defensible. What is the state interest in separating children from fathers without a hearing designed to determine whether the father is unfit in a particular disputed case? We observe that the State registers no gain towards its declared goals when it separates children from the custody of fit parents. Indeed, if ***Stanley*** is a fit father, the State spites its own articulated goals when it needlessly separates him from his family.

[32] In Bell v. Burson, 402 U.S. 535 (1971), we found a scheme repugnant to the Due Process Clause because it deprived a driver of his license without reference to the very factor (there fault in driving, here fitness as a parent) that the State itself deemed fundamental to its statutory scheme. ***Illinois*** would avoid the self-contradiction that rendered the Georgia license suspension system invalid by arguing that ***Stanley*** and all other unmarried fathers can reasonably be presumed to be unqualified to raise their children.[*fn5] It may be, as the State insists, that most unmarried fathers are unsuitable and neglectful parents.[*fn6] It may also be that ***Stanley*** is such a parent and that his children should be placed in other hands. But all unmarried fathers are not in this category; some are wholly suited to have custody of their children.[*fn7] This much the State readily concedes, and nothing in this record indicates that ***Stanley*** is or has been a neglectful father who has not cared for his children. Given the opportunity to make his case, ***Stanley*** may have been seen to be deserving of custody of his offspring. Had this been so, the State's statutory policy would have been furthered by leaving custody in him.

[33] Carrington v. Rash, 380 U.S. 89 (1965), dealt with a similar situation. There we recognized that Texas had a powerful interest in restricting its electorate to bona fide residents. It was not disputed that most servicemen stationed in Texas had no intention of remaining in the State; most therefore could be deprived of a vote in state affairs. But we refused to tolerate

a blanket exclusion depriving all servicemen of the vote, when some servicemen clearly were bona fide residents and when "more precise tests," id., at 95, were available to distinguish members of this latter group. "By forbidding a soldier ever to controvert the presumption of non-residence," id., at 96, the State, we said, unjustifiably effected a substantial deprivation. It viewed people one-dimensionally (as servicemen) when a finer perception could readily have been achieved by assessing a serviceman's claim to residency on an individualized basis.

[34] "We recognize that special problems may be involved in determining whether servicemen have actually acquired a new domicile in a State for franchise purposes. We emphasize that Texas is free to take reasonable and adequate steps, as have other States, to see that all applicants for the vote actually fulfill the requirements of bona fide residence. But [the challenged] provision goes beyond such rules. 'The presumption here created is . . . definitely conclusive -- incapable of being overcome by proof of the most positive character.'" Id., at 96.

[35] "All servicemen not residents of Texas before induction," we concluded, "come within the provision's sweep. Not one of them can ever vote in Texas, no matter" what their individual qualifications. Ibid. We found such a situation repugnant to the Equal Protection Clause.

[36] Despite Bell and Carrington, it may be argued that unmarried fathers are so seldom fit that ***Illinois*** need not undergo the administrative inconvenience of inquiry in any case, including ***Stanley***'s. The establishment of prompt efficacious procedures to achieve legitimate state ends is a proper state interest worthy of cognizance in constitutional adjudication. But the Constitution recognizes higher values than speed and efficiency.*fn8 Indeed, one might fairly say of the Bill of Rights in general, and the Due Process Clause in particular, that they were designed to protect the fragile values of a vulnerable citizenry from the overbearing concern for efficiency and efficacy that may characterize praiseworthy government officials no less, and perhaps more, than mediocre ones.

[37] Procedure by presumption is always cheaper and easier than individualized determination. But when, as here, the procedure forecloses the determinative issues of competence and care, when it explicitly disdains present realities in deference to past formalities, it needlessly risks running roughshod over the important interests of both parent and child. It therefore cannot stand.*fn9

[38] Bell v. Burson held that the State could not, while purporting to be concerned with fault in suspending a driver's license, deprive a citizen of his license without a hearing that would assess fault. Absent fault, the State's declared interest was so attenuated that administrative convenience was insufficient to excuse a hearing where evidence of fault could be considered. That drivers involved in accidents, as a statistical matter, might be very likely to have been wholly or partially at fault did not foreclose hearing and proof in specific cases before licenses were suspended.

[39] We think the Due Process Clause mandates a similar result here. The State's interest in caring for ***Stanley***'s children is de minimis if ***Stanley*** is shown to be a fit father. It insists on presuming rather than proving ***Stanley***'s unfitness solely because it is more convenient to presume than to prove. Under the Due Process Clause that advantage is insufficient to justify refusing a father a hearing when the issue at stake is the dismemberment of his family.

[40] III

[41] The State of ***Illinois*** assumes custody of the children of married parents, divorced parents, and unmarried mothers only after a hearing and proof of neglect. The children of unmarried fathers, however, are declared dependent children without a hearing on parental fitness and without proof of neglect. ***Stanley***'s claim in the state courts and here is that failure to afford him a hearing on his parental qualifications while extending it to other parents denied him equal protection of the laws. We have concluded that all ***Illinois*** parents are constitutionally entitled to a hearing on their fitness before their children are removed from their custody. It follows that denying such a hearing to ***Stanley*** and those like him while granting it to other ***Illinois*** parents is inescapably contrary to the Equal Protection Clause.[*fn10] The judgment of the Supreme Court of ***Illinois*** is reversed and the case is remanded to that court for proceedings not inconsistent with this opinion.

[42] It is so ordered.

[43] MR. JUSTICE POWELL and MR. JUSTICE REHNQUIST took no part in the consideration or decision of this case.

[44] MR. JUSTICE DOUGLAS joins in Parts I and II of this opinion.

[45] Disposition

[46] 45 Ill. 2d 132, 256 N. E. 2d 814, reversed and remanded.

[47] MR. CHIEF JUSTICE BURGER, with whom MR. JUSTICE BLACKMUN concurs, dissenting.

[48] The only constitutional issue raised and decided in the courts of ***Illinois*** in this case was whether the ***Illinois*** statute that omits unwed fathers from the definition of "parents" violates the Equal Protection Clause. We granted certiorari to consider whether the ***Illinois*** Supreme Court properly resolved that equal protection issue when it unanimously upheld the statute against petitioner ***Stanley***'s attack.

[49] No due process issue was raised in the state courts; and no due process issue was decided by any state court. As MR. JUSTICE DOUGLAS said for this Court in State Farm Mutual Automobile Ins. Co. v. Duel, 324 U.S. 154, 160 (1945), "Since the [state] Supreme Court did not pass on the question, we may not do so." We had occasion more recently to deal with this aspect of the jurisdictional limits placed upon this Court by 28 U. S. C. § 1257 when we decided Hill v. California, 401 U.S. 797 (1971). Having rejected the claim that Chimel v. California, 395 U.S. 752 (1969), should be retroactively applied to invalidate petitioner Hill's conviction on the ground that a search incident to arrest was overly extensive in scope, the Court noted Hill's additional contention that his personal diary, which was one of the items of evidence seized in that search, should have been excluded on Fifth Amendment grounds as well. MR. JUSTICE WHITE, in his opinion for the Court, concluded that we lacked jurisdiction to consider the Fifth Amendment contention:

[50] "Counsel for [the petitioner] conceded at oral argument that the Fifth Amendment issue was not raised at trial. Nor was the issue raised, briefed, or argued in the California appellate courts. [Footnote omitted.] The petition for certiorari likewise ignored it. In this posture of the case, the question, although briefed and argued here, is not properly before us." 401 U.S., at 805.

[51] In the case now before us, it simply does not suffice to say, as the Court in a footnote does say, that "we dispose of the case on the constitutional premise raised below, reaching the result by a method of analysis readily available to the state court." Ante, at 658 n. 10. The Court's method of analysis seems to ignore the strictures of JUSTICES DOUGLAS and WHITE, but the analysis is clear: the Court holds sua sponte that the Due Process Clause requires that ***Stanley***, the unwed biological father, be accorded a hearing as to his fitness as a parent before his children are declared wards of the state court; the Court then reasons that since ***Illinois*** recognizes such rights to due process in married fathers, it is required by the Equal Protection Clause to give such protection to unmarried fathers. This "method of analysis" is, of course, no more or less than the use of the Equal Protection Clause as a shorthand condensation of the entire Constitution: a State may not deny any constitutional right to some of its citizens without violating the Equal Protection Clause through its failure to deny such rights to all of its citizens. The limits on this Court's jurisdiction are not properly expandable by the use of such semantic devices as that. Not only does the Court today use dubious reasoning in dealing with limitations upon its jurisdiction, it proceeds as well to strike down the ***Illinois*** statute here involved by "answering" arguments that are nowhere to be found in the record or in the State's brief -- or indeed in the oral argument. I have been unable, for example, to discover where or when the State has advanced any argument that "it is unnecessary to hold individualized hearings to determine whether particular fathers are in fact unfit parents before they are separated from their children." Ante, at 647. Nor can I discover where the State has "argu[ed] that ***Stanley*** and all other unmarried fathers can reasonably be presumed to be unqualified to raise their children." Ante, at 653. Or where anyone has even remotely suggested the "argu[ment] that unmarried fathers are so seldom fit that ***Illinois*** need not undergo the administrative inconvenience of inquiry in any case, including ***Stanley***'s." Ante, at 656. On the other hand, the arguments actually advanced by the State are largely ignored by the Court.[*fn1] All of those persons in ***Illinois*** who may have followed the progress of this case will, I expect,

experience no little surprise at the Court's opinion handed down today. ***Stanley*** will undoubtedly be surprised to find that he has prevailed on an issue never advanced by him. The judges who dealt with this case in the state courts will be surprised to find their decisions overturned on a ground they never considered. And the legislators and other officials of the State of ***Illinois***, as well as those attorneys of the State who are familiar with the statutory provisions here at issue, will be surprised to learn for the first time that the ***Illinois*** Juvenile Court Act establishes a presumption that unwed fathers are unfit. I must confess my own inability to find any such presumption in the ***Illinois*** Act. Furthermore, from the record of the proceedings in the Juvenile Court of Cook County in this case, I can only conclude that the judge of that court was unaware of any such presumption, for he clearly indicated that ***Stanley***'s asserted fatherhood of the children would stand him in good stead, rather than prejudice him, in any adoption or guardianship proceeding. In short, far from any intimations of hostility toward unwed fathers, that court gave ***Stanley*** "merit points" for his acknowledgment of paternity and his past assumption of at least marginal responsibility for the children.[*fn2]

[52] In regard to the only issue that I consider properly before the Court, I agree with the State's argument that the Equal Protection Clause is not violated when ***Illinois*** gives full recognition only to those father-child relationships that arise in the context of family units bound together by legal obligations arising from marriage or from adoption proceedings. Quite apart from the religious or quasi-religious connotations that marriage has -- and has historically enjoyed -- for a large proportion of this Nation's citizens, it is in law an essentially contractual relationship, the parties to which have legally enforceable rights and duties, with respect both to each other and to any children born to them. ***Stanley*** and the mother of these children never entered such a relationship. The record is silent as to whether they ever privately exchanged such promises as would have bound them in marriage under the common law. See Cartwright v. McGown, 121 Ill. 388, 398, 12 N. E. 737, 739 (1887). In any event, ***Illinois*** has not recognized common-law marriages since 1905. Ill. Rev. Stat., c. 89, § 4. ***Stanley*** did not seek the burdens when he could have freely assumed them.

[53] Where there is a valid contract of marriage, the law of ***Illinois*** presumes that the husband is the father of any child born to the wife during the marriage; as the father, he has legally enforceable rights and duties with respect to that child. When a child is born to an unmarried woman, ***Illinois*** recognizes the readily identifiable mother, but makes no presumption as to the identity of the biological father. It does, however, provide two ways, one voluntary and one involuntary, in which that father may be identified. First, he may marry the mother and acknowledge the child as his own; this has the legal effect of legitimating the child and gaining for the father full recognition as a parent. Ill. Rev. Stat., c. 3, § 12-8. Second, a man may be found to be the biological father of the child pursuant to a paternity suit initiated by the mother; in this case, the child remains illegitimate, but the adjudicated father is made liable for the support of the child until the latter attains age 18 or is legally adopted by another. Ill. Rev. Stat., c. 106 3/4, § 52.

[54] ***Stanley*** argued before the Supreme Court of ***Illinois*** that the definition of "parents," set out in Ill. Rev. Stat., c. 37, § 701-14, as including "the father and mother of a legitimate child, or the survivor of them, or the natural mother of an illegitimate child, [or] . . . any adoptive

parent,"[*fn3] violates the Equal Protection Clause in that it treats unwed mothers and unwed fathers differently. ***Stanley*** then enlarged upon his equal protection argument when he brought the case here; he argued before this Court that ***Illinois*** is not permitted by the Equal Protection Clause to distinguish between unwed fathers and any of the other biological parents included in the statutory definition of legal "parents."

[55] The ***Illinois*** Supreme Court correctly held that the State may constitutionally distinguish between unwed fathers and unwed mothers. Here, ***Illinois***' different treatment of the two is part of that State's statutory scheme for protecting the welfare of illegitimate children. In almost all cases, the unwed mother is readily identifiable, generally from hospital records, and alternatively by physicians or others attending the child's birth. Unwed fathers, as a class, are not traditionally quite so easy to identify and locate. Many of them either deny all responsibility or exhibit no interest in the child or its welfare; and, of course, many unwed fathers are simply not aware of their parenthood.

[56] Furthermore, I believe that a State is fully justified in concluding, on the basis of common human experience, that the biological role of the mother in carrying and nursing an infant creates stronger bonds between her and the child than the bonds resulting from the male's often casual encounter. This view is reinforced by the observable fact that most unwed mothers exhibit a concern for their offspring either permanently or at least until they are safely placed for adoption, while unwed fathers rarely burden either the mother or the child with their attentions or loyalties. Centuries of human experience buttress this view of the realities of human conditions and suggest that unwed mothers of illegitimate children are generally more dependable protectors of their children than are unwed fathers. While these, like most generalizations, are not without exceptions, they nevertheless provide a sufficient basis to sustain a statutory classification whose objective is not to penalize unwed parents but to further the welfare of illegitimate children in fulfillment of the State's obligations as parens patriae.[*fn4]

[57] ***Stanley*** depicts himself as a somewhat unusual unwed father, namely, as one who has always acknowledged and never doubted his fatherhood of these children. He alleges that he loved, cared for, and supported these children from the time of their birth until the death of their mother. He contends that he consequently must be treated the same as a married father of legitimate children. Even assuming the truth of ***Stanley***'s allegations, I am unable to construe the Equal Protection Clause as requiring ***Illinois*** to tailor its statutory definition of "parents" so meticulously as to include such unusual unwed fathers, while at the same time excluding those unwed, and generally unidentified, biological fathers who in no way share ***Stanley***'s professed desires. Indeed, the nature of Stanley's own desires is less than absolutely clear from the record in this case. Shortly after the death of the mother, ***Stanley*** turned these two children over to the care of a Mr. and Mrs. Ness; he took no action to gain recognition of himself as a father, through adoption, or as a legal custodian, through a guardianship proceeding. Eventually it came to the attention of the State that there was no living adult who had any legally enforceable obligation for the care and support of the children; it was only then that the dependency proceeding here under review took place and that ***Stanley*** made himself known to the juvenile court in connection with these two children.[*fn5] Even then, however, ***Stanley*** did not ask to be charged with the legal

responsibility for the children. He asked only that such legal responsibility be given to no one else. He seemed, in particular, to be concerned with the loss of the welfare payments he would suffer as a result of the designation of others as guardians of the children.

[58] Not only, then, do I see no ground for holding that ***Illinois***' statutory definition of "parents" on its face violates the Equal Protection Clause; I see no ground for holding that any constitutional right of ***Stanley*** has been denied in the application of that statutory definition in the case at bar.

[59] As Mr. Justice Frankfurter once observed, "Invalidating legislation is serious business . . . ." Morey v. Doud, 354 U.S. 457, 474 (1957) (dissenting opinion). The Court today pursues that serious business by expanding its legitimate jurisdiction beyond what I read in 28 U. S. C. § 1257 as the permissible limits contemplated by Congress. In doing so, it invalidates a provision of critical importance to ***Illinois***' carefully drawn statutory system governing family relationships and the welfare of the minor children of the State. And in so invalidating that provision, it ascribes to that statutory system a presumption that is simply not there and embarks on a novel concept of the natural law for unwed fathers that could well have strange boundaries as yet undiscernible.

Opinion Footnotes

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[60] *fn1 Uncontradicted testimony of Peter ***Stanley***, App. 22.

[61] *fn2 Only two children are involved in this litigation.

[62] *fn3 The ***Illinois*** Supreme Court's opinion is not at all contrary to this conclusion. That court said: "The trial court's comments clearly indicate the court's willingness to consider a future request by the father for custody and guardianship." 45 Ill. 2d 132, 135, 256 N. E. 2d 814, 816. (Italics added.) See also the comment of ***Stanley***'s counsel on oral argument: "If Peter ***Stanley*** could have adopted his children, we would not be here today." Tr. of Oral Arg. 7.

[63] *fn4 Even while refusing to label him a "legal parent," the State does not deny that ***Stanley*** has a special interest in the outcome of these proceedings. It is undisputed that he is the

father of these children, that he lived with the two children whose custody is challenged all their lives, and that he has supported them.

[64] *fn5 ***Illinois*** says in its brief, at 21-23.

"The only relevant consideration in determining the propriety of governmental intervention in the raising of children is whether the best interests of the child are served by such intervention. "In effect, ***Illinois*** has imposed a statutory presumption that the best interests of a particular group of children necessitates some governmental supervision in certain clearly defined situations. The group of children who are illegitimate are distinguishable from legitimate children not so much by their status at birth as by the factual differences in their upbringing. While a legitimate child usually is raised by both parents with the attendant familial relationships and a firm concept of home and identity, the illegitimate child normally knows only one parent -- the mother. . . . ". . . The petitioner has premised his argument upon particular factual circumstances -- a lengthy relationship with the mother . . . a familial relationship with the two children, and a general assumption that this relationship approximates that in which the natural parents are married to each other. ". . . Even if this characterization were accurate (the record is insufficient to support it) it would not affect the validity of the statutory definition of parent. . . . The petitioner does not deny that the children are illegitimate. The record reflects their natural mother's death. Given these two factors, grounds exist for the State's intervention to ensure adequate care and protection for these children. This is true whether or not this particular petitioner assimilates all or none of the normal characteristics common to the classification of fathers who are not married to the mothers of their children." See also ***Illinois***' Brief 23 ("The comparison of married and putative fathers involves exclusively factual differences. The most significant of these are the presence or absence of the father from the home on a day-to-day basis and the responsibility imposed upon the relationship"), id., at 24 (to the same effect), id., at 31 (quoted below in n. 6), id., at 24-26 (physiological and other studies are cited in support of the proposition that men are not naturally inclined to childrearing), and Tr. of Oral Arg. 31 ("We submit that both based on history or [sic] culture the very real differences . . . between the married father and the unmarried father, in terms of their interests in children and their legal responsibility for their children, that the statute here fulfills the compelling governmental objective of protecting children . . .").

[65] *fn6 The State speaks of "the general disinterest of putative fathers in their illegitimate children" (Brief 8) and opines that "in most instances, the natural father is a stranger to his children." Brief 31.

[66] *fn7 See In re Mark T., 8 Mich. App. 122, 154 N. W. 2d 27 (1967). There a panel of the Michigan Court of Appeals in unanimously affirming a circuit court's determination that the father of an illegitimate son was best suited to raise the boy, said:

"The appellants' presentation in this case proceeds on the assumption that placing Mark for adoption is inherently preferable to rearing by his father, that uprooting him from the family which he knew from birth until he was a year and a half old, secretly institutionalizing him and later transferring him to strangers is so incontrovertibly better

that no court has the power even to consider the matter. Hardly anyone would even suggest such a proposition if we were talking about a child born in wedlock. "We are not aware of any sociological data justifying the assumption that an illegitimate child reared by his natural father is less likely to receive a proper upbringing than one reared by his natural father who was at one time married to his mother, or that the stigma of illegitimacy is so pervasive it requires adoption by strangers and permanent termination of a subsisting relationship with the child's father." Id., at 146, 154 N. W. 2d, at 39.

[67] *fn8 Cf. Reed v. Reed, 404 U.S. 71, 76 (1971). "Clearly the objective of reducing the workload on probate courts by eliminating one class of contests is not without some legitimacy. . . . [But to] give a mandatory preference to members of either sex over members of the other, merely to accomplish the elimination of hearings on the merits, is to make the very kind of arbitrary legislative choice forbidden by the Equal Protection Clause of the Fourteenth Amendment." Carrington v. Rash, 380 U.S. 89, 96 (1965), teaches the same lesson. ". . . States may not casually deprive a class of individuals of the vote because of some remote administrative benefit to the State. Oyama v. California, 332 U.S. 633. By forbidding a soldier ever to controvert the presumption of non-residence, the Texas Constitution imposes an invidious discrimination in violation of the Fourteenth Amendment."

[68] *fn9 We note in passing that the incremental cost of offering unwed fathers an opportunity for individualized hearings on fitness appears to be minimal. If unwed fathers, in the main, do not care about the disposition of their children, they will not appear to demand hearings. If they do care, under the scheme here held invalid, ***Illinois*** would admittedly at some later time have to afford them a properly focused hearing in a custody or adoption proceeding.

Extending opportunity for hearing to unwed fathers who desire and claim competence to care for their children creates no constitutional or procedural obstacle to foreclosing those unwed fathers who are not so inclined. The ***Illinois*** law governing procedure in juvenile cases, Ill. Rev. Stat., c. 37, § 704-1 et seq., provides for personal service, notice by certified mail, or for notice by publication when personal or certified mail service cannot be had or when notice is directed to unknown respondents under the style of "All whom it may Concern." Unwed fathers who do not promptly respond cannot complain if their children are declared wards of the State. Those who do respond retain the burden of proving their fatherhood.

[69] *fn10 Predicating a finding of constitutional invalidity under the Equal Protection Clause of the Fourteenth Amendment on the observation that a State has accorded bedrock procedural rights to some, but not to all similarly situated, is not contradictory to our holding in Picard v. Connor, 404 U.S. 270 (1971). In that case a due process, rather than an equal protection, claim was raised in the state courts. The federal courts were, in our opinion, barred from reversing the state conviction on grounds of contravention of the Equal Protection Clause when that clause had not been referred to for consideration by the state authorities. Here, in contrast, we dispose of the case on the constitutional premise raised below, reaching the result by a method of analysis readily available to the state court.

For the same reason the strictures of Cardinale v. Louisiana, 394 U.S. 437 (1969), and Hill v. California, 401 U.S. 797 (1971), have been fully observed.

Dissent Footnotes

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[70] *fn1 In reaching out to find a due process issue in this case, the Court seems to have misapprehended the entire thrust of the State's argument. When explaining at oral argument why ***Illinois*** does not recognize the unwed father, counsel for the State presented two basic justifications for the statutory definition of "parents" here at issue. See Tr. of Oral Arg. 25-26. First, counsel noted that in the case of a married couple to whom a legitimate child is born, the two biological parents have already "signified their willingness to work together" in caring for the child by entering into the marriage contract; it is manifestly reasonable, therefore, that both of them be recognized as legal parents with rights and responsibilities in connection with the child. There has been no legally cognizable signification of such willingness on the part of unwed parents, however, and "the male and female . . . may or may not be willing to work together towards the common end of child rearing." To provide legal recognition to both of them as "parents" would often be "to create two conflicting parties competing for legal control of the child."

The second basic justification urged upon us by counsel for the State was that, in order to provide for the child's welfare, "it is necessary to impose upon at least one of the parties legal responsibility for the welfare of [the child], and since necessarily the female is present at the birth of the child and identifiable as the mother," the State has selected the unwed mother, rather than the unwed father, as the biological parent with that legal responsibility. It was suggested to counsel during an ensuing colloquy with the bench that identification seemed to present no insuperable problem in ***Stanley***'s case and that, although ***Stanley*** had expressed an interest in participating in the rearing of the children, "Illinois won't let him." Counsel replied that, on the contrary, "***Illinois*** encourages him to do so if he will accept the legal responsibility for those children by a formal proceeding comparable to the marriage ceremony, in which he is evidencing through a judicial proceeding his desire to accept legal responsibility for the children." ***Stanley***, however, "did not ask for custody. He did not ask for legal responsibility. He only objected to someone [else] having legal control over the children." Tr. of Oral Arg. 38, 39-40.

[71] *fn2 The position that ***Stanley*** took at the dependency proceeding was not without ambiguity. Shortly after the mother's death, he placed the children in the care of Mr. and Mrs. Ness, who took the children into their home. The record is silent as to whether the Ness household was an approved foster home. Through ***Stanley***'s act, then, the Nesses were

already the actual custodians of the children. At the dependency proceeding, he resisted only the court's designation of the Nesses as the legal custodians; he did not challenge their suitability for that role, nor did he seek for himself either that role or any other role that would have imposed legal responsibility upon him. Had he prevailed, of course, the status quo would have obtained: the Nesses would have continued to play the role of actual custodians until either they or ***Stanley*** acted to alter the informal arrangement, and there would still have been no living adult with any legally enforceable obligation for the care and support of the infant children.

[72] *fn3 The Court seems at times to ignore this statutory definition of "parents," even though it is precisely that definition itself whose constitutionality has been brought into issue by ***Stanley***. In preparation for finding a purported similarity between this case and Bell v. Burson, 402 U.S. 535 (1971), the Court quotes the legislatively declared aims of the Juvenile Court Act to "strengthen the minor's family ties whenever possible, removing him from the custody of his parents only when his welfare or safety or the protection of the public cannot be adequately safeguarded without removal." (Emphasis added.) The Court then goes on to find a "self-contradiction" between that stated aim and the Act's non-recognition of unwed fathers. Ante, at 653. There is, of course, no such contradiction. The word "parent" in the statement of legislative purpose obviously has the meaning given to it by the definitional provision of the Act.

[73] *fn4 When the marriage between the parents of a legitimate child is dissolved by divorce or separation, the State, of course, normally awards custody of the child to one parent or the other. This is considered necessary for the child's welfare, since the parents are no longer legally bound together. The unmarried parents of an illegitimate child are likewise not legally bound together. Thus, even if Illinois did recognize the parenthood of both the mother and father of an illegitimate child, it would, for consistency with its practice in divorce proceedings, be called upon to award custody to one or the other of them, at least once it had by some means ascertained the identity of the father.

[74] *fn5 As the majority notes, ante, at 646, Joan ***Stanley*** gave birth to three children during the 18 years Peter ***Stanley*** was living "intermittently" with her. At oral argument, we were told by ***Stanley***'s counsel that the oldest of these three children had previously been declared a ward of the court pursuant to a neglect proceeding that was "proven against" ***Stanley*** at a time, apparently, when the juvenile court officials were under the erroneous impression that Peter and Joan ***Stanley*** had been married. Tr. of Oral Arg. 19.

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§ 7805. Rules and regulations

(a) Authorization

Except where such authority is expressly given by this title to any person other than an officer or employee of the Treasury Department, the Secretary shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.

(b) Retroactivity of regulations

(1) In general

Except as otherwise provided in this subsection, no temporary, proposed, or final regulation relating to the internal revenue laws shall apply to any taxable period ending before the earliest of the following dates:

(A) The date on which such regulation is filed with the Federal Register.

(B) In the case of any final regulation, the date on which any proposed or temporary regulation to which such final regulation relates was filed with the Federal Register.

(C) The date on which any notice substantially describing the expected contents of any temporary, proposed, or final regulation is issued to the public.

(2) Exception for promptly issued regulations

Paragraph (1) shall not apply to regulations filed or issued within 18 months of the date of the enactment of the statutory provision to which the regulation relates.

(3) Prevention of abuse

The Secretary may provide that any regulation may take effect or apply retroactively to prevent abuse.

(4) Correction of procedural defects

The Secretary may provide that any regulation may apply retroactively to correct a procedural defect in the issuance of any prior regulation.

(5) Internal regulations

The limitation of paragraph (1) shall not apply to any regulation relating to internal Treasury Department policies, practices, or procedures.

(6) Congressional authorization

The limitation of paragraph (1) may be superseded by a legislative grant from Congress authorizing the Secretary to prescribe the effective date with respect to any regulation.

(7) Election to apply retroactively

The Secretary may provide for any taxpayer to elect to apply any regulation before the dates specified in paragraph (1).

(8) Application to rulings

The Secretary may prescribe the extent, if any, to which any ruling (including any judicial decision or any administrative determination other than by regulation) relating to the internal revenue laws shall be applied without retroactive effect.

(c) Preparation and distribution of regulations, forms, stamps, and other matters

The Secretary shall prepare and distribute all the instructions, regulations, directions, forms, blanks, stamps, and other matters pertaining to the assessment and collection of internal revenue.

(d) Manner of making elections prescribed by Secretary

Except to the extent otherwise provided by this title, any election under this title shall be made at such time and in such manner as the Secretary shall prescribe.

(e) Temporary regulations

(1) Issuance

Any temporary regulation issued by the Secretary shall also be issued as a proposed regulation.

(2) 3-year duration

Any temporary regulation shall expire within 3 years after the date of issuance of such regulation.

(f) Review of impact of regulations on small business

(1) Submissions to Small Business Administration

After publication of any proposed or temporary regulation by the Secretary, the Secretary shall submit such regulation to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of such regulation on small business. Not later than the

date 4 weeks after the date of such submission, the Chief Counsel for Advocacy shall submit comments on such regulation to the Secretary.

(2) Consideration of comments

In prescribing any final regulation which supersedes a proposed or temporary regulation which had been submitted under this subsection to the Chief Counsel for Advocacy of the Small Business Administration—

(A) the Secretary shall consider the comments of the Chief Counsel for Advocacy on such proposed or temporary regulation, and

(B) the Secretary shall discuss any response to such comments in the preamble of such final regulation.

(3) Submission of certain final regulations

In the case of the promulgation by the Secretary of any final regulation (other than a temporary regulation) which does not supersede a proposed regulation, the requirements of paragraphs (1) and (2) shall apply; except that—

(A) the submission under paragraph (1) shall be made at least 4 weeks before the date of such promulgation, and

(B) the consideration (and discussion) required under paragraph (2) shall be made in connection with the promulgation of such final regulation.

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(e) Temporary regulations

(1) Issuance

Any temporary regulation issued by the Secretary shall also be issued as a proposed regulation.

(2) 3-year duration

Any temporary regulation shall expire within 3 years after the date of issuance of such regulation.

(f) Review of impact of regulations on small business

(1) Submissions to Small Business Administration

After publication of any proposed or temporary regulation by the Secretary, the Secretary shall submit such regulation to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of such regulation on small business. Not later than the date 4 weeks after the date of such submission, the Chief Counsel for Advocacy shall submit comments on such regulation to the Secretary.

(2) Consideration of comments

In prescribing any final regulation which supersedes a proposed or temporary regulation which had been submitted under this subsection to the Chief Counsel for Advocacy of the Small Business Administration -

(A)

the Secretary shall consider the comments of the Chief Counsel for Advocacy on such proposed or temporary regulation, and

(B)

the Secretary shall discuss any response to such comments in the preamble of such final regulation.

(3) Submission of certain final regulations

In the case of the promulgation by the Secretary of any final regulation (other than a temporary regulation) which does not supersede a proposed regulation, the requirements of paragraphs (1) and (2) shall apply; except that -

(A)

the submission under paragraph (1) shall be made at least 4 weeks before the date of such promulgation, and

(B)

the consideration (and discussion) required under paragraph (2) shall be made in connection with the promulgation of such final regulation

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§ 1. Tax imposed

How Current is This?

(a) Married individuals filing joint returns and surviving spouses

There is hereby imposed on the taxable income of—

(1) every married individual (as defined in section 7703) who makes a single return jointly with his spouse under section 6013, and

(2) every surviving spouse (as defined in section 2 (a)),

a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over $36,900	15% of taxable income.
Over $36,900 but not over $89,150	$5,535, plus 28% of the excess over $36,900.
Over $89,150 but not over $140,000	$20,165, plus 31% of the excess over $89,150.
Over $140,000 but not over $250,000	$35,928.50, plus 36% of the excess over $140,000.
Over $250,000	$75,528.50, plus 39.6% of the excess over $250,000.

(b) Heads of households

There is hereby imposed on the taxable income of every head of a household (as defined in section 2 (b)) a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over $29,600	15% of taxable income.
Over $29,600 but not over $76,400	$4,440, plus 28% of the excess over $29,600.
Over $76,400 but not over $127,500	$17,544, plus 31% of the excess over $76,400.
Over $127,500 but not over $250,000	$33,385, plus 36% of the excess over $127,500.
Over $250,000	$77,485, plus 39.6% of the excess over $250,000.

(c) Unmarried individuals (other than surviving spouses and heads of households)

There is hereby imposed on the taxable income of every individual (other than a surviving spouse as defined in section 2 (a) or the head of a household as defined in section 2 (b)) who is not a married individual (as defined in section 7703) a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over $22,100	15% of taxable income.
Over $22,100 but not over $53,500	$3,315, plus 28% of the excess over $22,100.
Over $53,500 but not over $115,000	$12,107, plus 31% of the excess over $53,500.
Over $115,000 but not over $250,000	$31,172, plus 36% of the excess over $115,000.
Over $250,000	$79,772, plus 39.6% of the excess over $250,000.

(d) Married individuals filing separate returns

There is hereby imposed on the taxable income of every married individual (as defined in section 7703) who does not make a single return jointly with his spouse under section 6013, a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over $18,450	15% of taxable income.
Over $18,450 but not over $44,575	$2,767.50, plus 28% of the excess over $18,450.
Over $44,575 but not over $70,000	$10,082.50, plus 31% of the excess over $44,575.
Over $70,000 but not over $125,000	$17,964.25, plus 36% of the excess over $70,000.
Over $125,000	$37,764.25, plus 39.6% of the excess over $125,000.

(e) Estates and trusts

There is hereby imposed on the taxable income of—

(1) every estate, and

(2) every trust,

taxable under this subsection a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over $1,500	15% of taxable income.
Over $1,500 but not over $3,500	$225, plus 28% of the excess over $1,500.
Over $3,500 but not over $5,500	$785, plus 31% of the excess over $3,500.
Over $5,500 but not over $7,500	$1,405, plus 36% of the excess over $5,500.
Over $7,500	$2,125, plus 39.6% of the excess over $7,500.

(f) Phaseout of marriage penalty in 15-percent bracket; adjustments in tax tables so that inflation will not result in tax increases

(1) In general

Not later than December 15 of 1993, and each subsequent calendar year, the Secretary shall prescribe tables which shall apply in lieu of the tables contained in subsections (a), (b), (c), (d), and (e) with respect to taxable years beginning in the succeeding calendar year.

(2) Method of prescribing tables

The table which under paragraph (1) is to apply in lieu of the table contained in subsection (a), (b), (c), (d), or (e), as the case may be, with respect to taxable years beginning in any calendar year shall be prescribed—

(A) except as provided in paragraph (8), by increasing the minimum and maximum dollar amounts for each rate bracket for which a tax is imposed under such table by the cost-of-living adjustment for such calendar year,

(B) by not changing the rate applicable to any rate bracket as adjusted under subparagraph (A), and

(C) by adjusting the amounts setting forth the tax to the extent necessary to reflect the adjustments in the rate brackets.

(3) Cost-of-living adjustment

For purposes of paragraph (2), the cost-of-living adjustment for any calendar year is the percentage (if any) by which—

(A) the CPI for the preceding calendar year, exceeds

(B) the CPI for the calendar year 1992.

(4) CPI for any calendar year

For purposes of paragraph (3), the CPI for any calendar year is the average of the Consumer Price Index as of the close of the 12-month period ending on August 31 of such calendar year.

(5) Consumer Price Index

For purposes of paragraph (4), the term "Consumer Price Index" means the last Consumer Price Index for all-urban consumers published by the Department of Labor. For purposes of the preceding sentence, the revision of the Consumer Price Index which is most consistent with the Consumer Price Index for calendar year 1986 shall be used.

(6) Rounding

(A) In general

If any increase determined under paragraph (2)(A), section 63 (c)(4), section 68(b)(2) or section 151 (d)(4) is not a multiple of $50, such increase shall be rounded to the next lowest multiple of $50.

(B) Table for married individuals filing separately

In the case of a married individual filing a separate return, subparagraph (A) (other than with respect to sections 63 (c)(4) and 151 (d)(4)(A)) shall be applied by substituting "$25" for "$50" each place it appears.

(7) Special rule for certain brackets

(A) Calendar year 1994

In prescribing the tables under paragraph (1) which apply with respect to taxable years beginning in calendar year 1994, the Secretary shall make no adjustment to the dollar amounts at which the 36 percent rate bracket begins or at which the 39.6 percent rate begins under any table contained in subsection (a), (b), (c), (d), or (e).

(B) Later calendar years

In prescribing tables under paragraph (1) which apply with respect to taxable years beginning in a calendar year after 1994, the cost-of-living adjustment used in making adjustments to the dollar amounts referred to in subparagraph (A) shall be determined under paragraph (3) by substituting "1993" for "1992".

(8) Elimination of marriage penalty in 15-percent bracket

With respect to taxable years beginning after December 31, 2003, in prescribing the tables under paragraph (1)—

(A) the maximum taxable income in the 15-percent rate bracket in the table contained in subsection (a) (and the minimum taxable income in the next higher taxable income bracket in such table) shall be 200 percent of the maximum taxable income in the 15-percent rate bracket in the table contained in subsection (c) (after any other adjustment under this subsection), and

(B) the comparable taxable income amounts in the table contained in subsection (d) shall be 1/2 of the amounts determined under subparagraph (A).

(g) Certain unearned income of minor children taxed as if parent's income

(1) In general

In the case of any child to whom this subsection applies, the tax imposed by this section shall be equal to the greater of—

(A) the tax imposed by this section without regard to this subsection, or

(B) the sum of—

(i) the tax which would be imposed by this section if the taxable income of such child for the taxable year were reduced by the net unearned income of such child, plus

(ii) such child's share of the allocable parental tax.

(2) Child to whom subsection applies

This subsection shall apply to any child for any taxable year if—

(A) such child has not attained age 14 before the close of the taxable year, and

(B) either parent of such child is alive at the close of the taxable year.

(3) Allocable parental tax

For purposes of this subsection—

(A) In general

The term "allocable parental tax" means the excess of—

(i) the tax which would be imposed by this section on the parent's taxable income if such income included the net unearned income of all children of the parent to whom this subsection applies, over

(ii) the tax imposed by this section on the parent without regard to this subsection.

For purposes of clause (i), net unearned income of all children of the parent shall not be taken into account in computing any exclusion, deduction, or credit of the parent.

(B) Child's share

A child's share of any allocable parental tax of a parent shall be equal to an amount which bears the same ratio to the total allocable parental tax as the child's net unearned income bears to the aggregate net unearned income of all children of such parent to whom this subsection applies.

(C) Special rule where parent has different taxable year

Except as provided in regulations, if the parent does not have the same taxable year as the child, the allocable parental tax shall be determined on the basis of the taxable year of the parent ending in the child's taxable year.

(4) Net unearned income

For purposes of this subsection—

(A) In general

The term "net unearned income" means the excess of—

(i) the portion of the adjusted gross income for the taxable year which is not attributable to earned income (as defined in section

911 (d)(2)), over

(ii) the sum of—

(I) the amount in effect for the taxable year under section 63 (c)(5)(A) (relating to limitation on standard deduction in the case of certain dependents), plus

(II) the greater of the amount described in subclause (I) or, if the child itemizes his deductions for the taxable year, the amount of the itemized deductions allowed by this chapter for the taxable year which are directly connected with the production of the portion of adjusted gross income referred to in clause (i).

(B) Limitation based on taxable income

The amount of the net unearned income for any taxable year shall not exceed the individual's taxable income for such taxable year.

(5) Special rules for determining parent to whom subsection applies

For purposes of this subsection, the parent whose taxable income shall be taken into account shall be—

(A) in the case of parents who are not married (within the meaning of section 7703), the custodial parent (within the meaning of section 152 (e)) of the child, and

(B) in the case of married individuals filing separately, the individual with the greater taxable income.

(6) Providing of parent's TIN

The parent of any child to whom this subsection applies for any taxable year shall provide the TIN of such parent to such child and such child shall include such TIN on the child's return of tax imposed by this section for such taxable year.

(7) Election to claim certain unearned income of child on parent's return

(A) In general

If—

(i) any child to whom this subsection applies has gross income for the taxable year only from interest and dividends (including Alaska Permanent Fund dividends),

(ii) such gross income is more than the amount described in paragraph (4)(A)(ii)(I) and less than 10 times the amount so described,

(iii) no estimated tax payments for such year are made in the name and TIN of such child, and no amount has been deducted and withheld under section 3406, and

(iv) the parent of such child (as determined under paragraph (5)) elects the application of subparagraph (B),

such child shall be treated (other than for purposes of this paragraph) as having no gross income for such year and shall not be required to file a return under section 6012.

(B) Income included on parent's return

In the case of a parent making the election under this paragraph—

(i) the gross income of each child to whom such election applies (to the extent the gross income of such child exceeds twice the amount described in paragraph (4)(A)(ii)(I)) shall be included in such parent's gross income for the taxable year,

(ii) the tax imposed by this section for such year with respect to such parent shall be the amount equal to the sum of—

(I) the amount determined under this section after the application of clause (i), plus

(II) for each such child, 10 percent of the lesser of the amount described in paragraph (4)(A)(ii)(I) or the excess of the gross income of such child over the amount so described, and

(iii) any interest which is an item of tax preference under section 57(a)(5) of the child shall be treated as an item of tax preference of such parent (and not of such child).

(C) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph.

(h) Maximum capital gains rate

(1) In general

If a taxpayer has a net capital gain for any taxable year, the tax imposed by this section for such taxable year shall not exceed the sum of—

(A) a tax computed at the rates and in the same manner as if this subsection had not been enacted on the greater of—

(i) taxable income reduced by the net capital gain; or

(ii) the lesser of—

(I) the amount of taxable income taxed at a rate below 25 percent; or

(II) taxable income reduced by the adjusted net capital gain;

(B) 5 percent (0 percent in the case of taxable years beginning after 2007) of so much of the adjusted net capital gain (or, if less, taxable income) as does not exceed the excess (if any) of—

(i) the amount of taxable income which would (without regard to this paragraph) be taxed at a rate below 25 percent, over

(ii) the taxable income reduced by the adjusted net capital gain;

(C) 15 percent of the adjusted net capital gain (or, if less, taxable income) in excess of the amount on which a tax is determined under subparagraph (B);

(D) 25 percent of the excess (if any) of—

(i) the unrecaptured section 1250 gain (or, if less, the net capital gain (determined without regard to paragraph (11))), over

(ii) the excess (if any) of—

(I) the sum of the amount on which tax is determined under subparagraph (A) plus the net capital gain, over

(II) taxable income; and

(E) 28 percent of the amount of taxable income in excess of the sum of the amounts on which tax is determined under the preceding subparagraphs of this paragraph.

(2) Net capital gain taken into account as investment income

For purposes of this subsection, the net capital gain for any taxable year shall be reduced (but not below zero) by the amount which the taxpayer takes into account as investment income under section 163 (d)(4)(B)(iii).

(3) Adjusted net capital gain

For purposes of this subsection, the term "adjusted net capital gain" means the sum of—

(A) net capital gain (determined without regard to paragraph (11)) reduced (but not below zero) by the sum of—

(i) unrecaptured section 1250 gain, and

(ii) 28-percent rate gain, plus

(B) qualified dividend income (as defined in paragraph (11)).

(4) 28-percent rate gain

For purposes of this subsection, the term "28-percent rate gain" means the excess (if any) of—

(A) the sum of—

(i) collectibles gain; and

(ii) section 1202 gain, over

(B) the sum of—

(i) collectibles loss;

(ii) the net short-term capital loss; and

(iii) the amount of long-term capital loss carried under section 1212 (b)(1)(B) to the taxable year.

(5) Collectibles gain and loss

For purposes of this subsection—

(A) In general

The terms "collectibles gain" and "collectibles loss" mean gain or loss (respectively) from the sale or exchange of a collectible (as defined in section 408 (m) without regard to paragraph (3) thereof) which is a capital asset held for more than 1 year but only to the extent such gain is taken into account in computing gross income and such loss is taken into account in computing taxable income.

(B) Partnerships, etc.

For purposes of subparagraph (A), any gain from the sale of an interest in a partnership, S corporation, or trust which is attributable to unrealized appreciation in the value of collectibles shall be treated as gain from the sale or exchange of a collectible. Rules similar to

the rules of section 751 shall apply for purposes of the preceding sentence.

(6) Unrecaptured section 1250 gain

For purposes of this subsection—

(A) In general

The term "unrecaptured section 1250 gain" means the excess (if any) of—

(i) the amount of long-term capital gain (not otherwise treated as ordinary income) which would be treated as ordinary income if section 1250 (b)(1) included all depreciation and the applicable percentage under section 1250 (a) were 100 percent, over

(ii) the excess (if any) of—

(I) the amount described in paragraph (4)(B); over

(II) the amount described in paragraph (4)(A).

(B) Limitation with respect to section 1231 property

The amount described in subparagraph (A)(i) from sales, exchanges, and conversions described in section 1231 (a)(3)(A) for any taxable year shall not exceed the net section 1231 gain (as defined in section 1231 (c)(3)) for such year.

(7) Section 1202 gain

For purposes of this subsection, the term "section 1202 gain" means the excess of—

(A) the gain which would be excluded from gross income under section 1202 but for the percentage limitation in section 1202 (a), over

(B) the gain excluded from gross income under section 1202.

(8) Coordination with recapture of net ordinary losses under section 1231

If any amount is treated as ordinary income under section 1231 (c), such amount shall be allocated among the separate categories of net section 1231 gain (as defined in section 1231 (c)(3)) in such manner as the Secretary may by forms or regulations prescribe.

(9) Regulations

The Secretary may prescribe such regulations as are appropriate (including regulations requiring reporting) to apply this subsection in the case of sales and exchanges by pass-thru entities and of interests in such entities.

(10) Pass-thru entity defined

For purposes of this subsection, the term "pass-thru entity" means—

(A) a regulated investment company;

(B) a real estate investment trust;

(C) an S corporation;

(D) a partnership;

(E) an estate or trust;

(F) a common trust fund; and

(G) a qualified electing fund (as defined in section 1295).

(11) Dividends taxed as net capital gain

(A) In general

For purposes of this subsection, the term "net capital gain" means net capital gain (determined without regard to this paragraph) increased by qualified dividend income.

(B) Qualified dividend income

For purposes of this paragraph—

(i) In general The term "qualified dividend income" means dividends received during the taxable year from—

(I) domestic corporations, and

(II) qualified foreign corporations.

(ii) Certain dividends excluded Such term shall not include—

(I) any dividend from a corporation which for the taxable year of the corporation in which the distribution is made, or the preceding taxable year, is a corporation exempt from tax under section 501 or 521,

(II) any amount allowed as a deduction under section 591 (relating to deduction for dividends paid by mutual savings banks, etc.), and

(III) any dividend described in section 404 (k).

(iii) Coordination with section 246 (c) Such term shall not include any dividend on any share of stock—

(I) with respect to which the holding period requirements of section 246 (c) are not met (determined by substituting in section 246 (c) "60 days" for "45 days" each place it appears and by substituting "121-day period" for "91-day period"), or

(II) to the extent that the taxpayer is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property.

(C) Qualified foreign corporations

(i) In general Except as otherwise provided in this paragraph, the term "qualified foreign corporation" means any foreign corporation if—

(I) such corporation is incorporated in a possession of the United States, or

(II) such corporation is eligible for benefits of a comprehensive income tax treaty with the United States which the Secretary determines is satisfactory for purposes of this paragraph and which includes an exchange of information program.

(ii) Dividends on stock readily tradable on United States securities market A foreign corporation not otherwise treated as a qualified foreign corporation under clause (i) shall be so treated with

respect to any dividend paid by such corporation if the stock with respect to which such dividend is paid is readily tradable on an established securities market in the United States.

(iii) Exclusion of dividends of certain foreign corporations Such term shall not include any foreign corporation which for the taxable year of the corporation in which the dividend was paid, or the preceding taxable year, is a passive foreign investment company (as defined in section 1297).

(iv) Coordination with foreign tax credit limitation Rules similar to the rules of section 904 (b)(2)(B) shall apply with respect to the dividend rate differential under this paragraph.

(D) Special rules

(i) Amounts taken into account as investment income Qualified dividend income shall not include any amount which the taxpayer takes into account as investment income under section 163 (d)(4)(B).

(ii) Extraordinary dividends If a taxpayer to whom this section applies receives, with respect to any share of stock, qualified dividend income from 1 or more dividends which are extraordinary dividends (within the meaning of section 1059 (c)), any loss on the sale or exchange of such share shall, to the extent of such dividends, be treated as long-term capital loss.

(iii) Treatment of dividends from regulated investment companies and real estate investment trusts A dividend received from a regulated investment company or a real estate investment trust shall be subject to the limitations prescribed in sections 854 and 857.

(i) Rate reductions after 2000

(1) 10-percent rate bracket

(A) In general

In the case of taxable years beginning after December 31, 2000—

(i) the rate of tax under subsections (a), (b), (c), and (d) on taxable income not over the initial bracket amount shall be 10 percent, and

(ii) the 15 percent rate of tax shall apply only to taxable income over the initial bracket amount but not over the maximum dollar amount for the 15-percent rate bracket.

(B) Initial bracket amount

For purposes of this paragraph, the initial bracket amount is—

(i) $14,000 in the case of subsection (a),

(ii) $10,000 in the case of subsection (b), and

(iii) 1/2 the amount applicable under clause (i) (after adjustment, if any, under subparagraph (C)) in the case of subsections (c) and (d).

(C) Inflation adjustment

In prescribing the tables under subsection (f) which apply with respect to taxable years beginning in calendar years after 2003—

(i) the cost-of-living adjustment shall be determined under subsection (f)(3) by substituting "2002" for "1992" in subparagraph (B) thereof, and

(ii) the adjustments under clause (i) shall not apply to the amount referred to in subparagraph (B)(iii).

If any amount after adjustment under the preceding sentence is not a multiple of $50, such amount shall be rounded to the next lowest multiple of $50.

(D) Coordination with acceleration of 10 percent rate bracket benefit for 2001

This paragraph shall not apply to any taxable year to which section 6428 applies.

(2) Reductions in rates after June 30, 2001

In the case of taxable years beginning in a calendar year after 2000, the corresponding percentage specified for such calendar year in the following table shall be substituted for the otherwise applicable tax rate in the tables under subsections (a), (b), (c), (d), and (e).

In the case of taxable years beginning during calendar year:	The corresponding percentages shall be substituted for the following percentages:	28%	31%	36%	39.6%
2001	27.5%	30.5%	35.5%	39.1%	
2002	27.0%	30.0%	35.0%	38.6%	
2003 and thereafter	25.0%	28.0%	33.0%	35.0%	

(3) Adjustment of tables

The Secretary shall adjust the tables prescribed under subsection (f) to carry out this subsection.

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Sec. 1. - Tax imposed

(a) Married individuals filing joint returns and surviving spouses

There is hereby imposed on the taxable income of -

(1)

every married individual (as defined in section 7703) who makes a single return jointly with his spouse under section 6013, and

(2)

every surviving spouse (as defined in section 2(a)),

a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over $36,900	15% of taxable income.
Over $36,900 but not over $89,150	$5,535, plus 28% of the excess over $36,900.
Over $89,150 but not over $140,000	$20,165, plus 31% of the excess over $89,150.
Over $140,000 but not over $250,000	$35,928.50, plus 36% of the excess over $140,000.
Over $250,000	$75,528.50, plus 39.6% of the excess over $250,000.

(b) Heads of households

There is hereby imposed on the taxable income of every head of a household (as defined in section 2(b)) a tax determined in accordance with the following table:

If taxable income is:	The tax is:

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Not over $29,600	15% of taxable income.
Over $29,600 but not over $76,400	$4,440, plus 28% of the excess over $29,600.
Over $76,400 but not over $127,500	$17,544, plus 31% of the excess over $76,400.
Over $127,500 but not over $250,000	$33,385, plus 36% of the excess over $127,500.
Over $250,000	$77,485, plus 39.6% of the excess over $250,000.

(c) Unmarried individuals (other than surviving spouses and heads of households)

There is hereby imposed on the taxable income of every individual (other than a surviving spouse as defined in section 2(a) or the head of a household as defined in section 2(b)) who is not a married individual (as defined in section 7703) a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over $22,100	15% of taxable income.
Over $22,100 but not over $53,500	$3,315, plus 28% of the excess over $22,100.
Over $53,500 but not over $115,000	$12,107, plus 31% of the excess over $53,500.
Over $115,000 but not over $250,000	$31,172, plus 36% of the excess over $115,000.
Over $250,000	$79,772, plus 39.6% of the excess over $250,000.

(d) Married individuals filing separate returns

There is hereby imposed on the taxable income of every married individual (as defined in section 7703) who does not make a single return jointly with his spouse under section 6013, a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over $18,450	15% of taxable income.
Over $18,450 but not over $44,575	$2,767.50, plus 28% of the excess over $18,450.
Over $44,575 but not over $70,000	$10,082.50, plus 31% of the excess over $44,575.

Over $70,000 but not over $125,000	$17,964.25, plus 36% of the excess over $70,000.
Over $125,000	$37,764.25, plus 39.6% of the excess over $125,000.

(e) Estates and trusts

There is hereby imposed on the taxable income of -

(1)

every estate, and

(2)

every trust,

taxable under this subsection a tax determined in accordance with the following table

If taxable income is:	**The tax is:**
Not over $1,500	15% of taxable income.
Over $1,500 but not over $3,500	$225, plus 28% of the excess over $1,500.
Over $3,500 but not over $5,500	$785, plus 31% of the excess over $3,500.
Over $5,500 but not over $7,500	$1,405, plus 36% of the excess over $5,500.
Over $7,500	$2,125, plus 39.6% of the excess over $7,500.

(f) Adjustments in tax tables so that inflation will not result in tax increases

(1) In general

Not later than December 15 of 1993, and each subsequent calendar year, the Secretary shall prescribe tables which shall apply in lieu of the tables contained in subsections (a), (b), (c), (d), and (e) with respect to taxable years beginning in the succeeding calendar year.

(2) Method of prescribing tables

The table which under paragraph (1) is to apply in lieu of the table contained in subsection (a), (b), (c), (d), or (e), as the case may be, with respect to taxable years beginning in any calendar year shall be prescribed -

(A)

by increasing the minimum and maximum dollar amounts for each rate bracket for which a tax is imposed under such table by the cost-of-living adjustment for such calendar year,

(B)

by not changing the rate applicable to any rate bracket as adjusted under subparagraph (A), and

(C)

by adjusting the amounts setting forth the tax to the extent necessary to reflect the adjustments in the rate brackets.

(3) Cost-of-living adjustment

For purposes of paragraph (2), the cost-of-living adjustment for any calendar year is the percentage (if any) by which -

(A)

the CPI for the preceding calendar year, exceeds

(B)

the CPI for the calendar year 1992.

(4) CPI for any calendar year

For purposes of paragraph (3), the CPI for any calendar year is the average of the Consumer Price Index as of the close of the 12-month period ending on August 31 of such calendar year.

(5) Consumer Price Index

For purposes of paragraph (4), the term ''Consumer Price Index'' means the last Consumer Price Index for all-urban consumers published by the Department of Labor. For purposes of the preceding sentence, the revision of the Consumer Price Index which is most consistent with the Consumer Price Index for calendar year 1986 shall be used.

(6) Rounding

(A) In general

If any increase determined under paragraph (2)(A), section 63(c)(4), section 68(b)(2) or section 151(d)(4) is not a multiple of $50, such increase shall be

rounded to the next lowest multiple of $50.

(B) Table for married individuals filing separately

In the case of a married individual filing a separate return, subparagraph (A) (other than with respect to subsection (c)(4) of section 63 (as it applies to subsections (c)(5)(A) and (f) of such section) and section 151(d)(4)(A)) shall be applied by substituting ''$25'' for ''$50'' each place it appears.

(7) Special rule for certain brackets

(A) Calendar year 1994

In prescribing the tables under paragraph (1) which apply with respect to taxable years beginning in calendar year 1994, the Secretary shall make no adjustment to the dollar amounts at which the 36 percent rate bracket begins or at which the 39.6 percent rate begins under any table contained in subsection (a), (b), (c), (d), or (e).

(B) Later calendar years

In prescribing tables under paragraph (1) which apply with respect to taxable years beginning in a calendar year after 1994, the cost -of-living adjustment used in making adjustments to the dollar amounts referred to in subparagraph (A) shall be determined under paragraph (3) by substituting ''1993'' for ''1992''.

(g) Certain unearned income of minor children taxed as if parent's income

(1) In general

In the case of any child to whom this subsection applies, the tax imposed by this section shall be equal to the greater of -

(A)

the tax imposed by this section without regard to this subsection, or

(B)

the sum of -

(i)

the tax which would be imposed by this section if

the taxable income of such child for the taxable year were reduced by the net unearned income of such child, plus

(ii)

such child's share of the allocable parental tax.

(2) Child to whom subsection applies

This subsection shall apply to any child for any taxable year if -

(A)

such child has not attained age 14 before the close of the taxable year, and

(B)

either parent of such child is alive at the close of the taxable year.

(3) Allocable parental tax

For purposes of this subsection -

(A) In general

The term ''allocable parental tax'' means the excess of -

(i)

the tax which would be imposed by this section on the parent's taxable income if such income included the net unearned income of all children of the parent to whom this subsection applies, over

(ii)

the tax imposed by this section on the parent without regard to this subsection.

For purposes of clause (i), net unearned income of all children of the parent shall not be taken into account in computing any exclusion, deduction, or credit of the parent.

(B) Child's share

A child's share of any allocable parental tax of a parent shall be equal to an amount which bears the same ratio to the total allocable parental tax as the

child's net unearned income bears to the aggregate net unearned income of all children of such parent to whom this subsection applies.

(C) Special rule where parent has different taxable year

Except as provided in regulations, if the parent does not have the same taxable year as the child, the allocable parental tax shall be determined on the basis of the taxable year of the parent ending in the child's taxable year.

(4) Net unearned income

For purposes of this subsection -

(A) In general

The term ''net unearned income'' means the excess of -

(i)

the portion of the adjusted gross income for the taxable year which is not attributable to earned income (as defined in section 911(d)(2)), over

(ii)

the sum of -

(I)

the amount in effect for the taxable year under section 63(c)(5)(A) (relating to limitation on standard deduction in the case of certain dependents), plus

(II)

the greater of the amount described in subclause (I) or, if the child itemizes his deductions for the taxable year, the amount of the itemized deductions allowed by this chapter for the taxable year which are directly connected with the production of the portion of adjusted gross income referred to in clause (i).

(B) Limitation based on taxable income

The amount of the net unearned income for any taxable year shall not exceed the individual's taxable income for such taxable year.

(5) Special rules for determining parent to whom subsection applies

For purposes of this subsection, the parent whose taxable income shall be taken into account shall be -

(A)

in the case of parents who are not married (within the meaning of section 7703), the custodial parent (within the meaning of section 152(e)) of the child, and

(B)

in the case of married individuals filing separately, the individual with the greater taxable income.

(6) Providing of parent's TIN

The parent of any child to whom this subsection applies for any taxable year shall provide the TIN of such parent to such child and such child shall include such TIN on the child's return of tax imposed by this section for such taxable year.

(7) Election to claim certain unearned income of child on parent's return

(A) In general

If -

(i)

any child to whom this subsection applies has gross income for the taxable year only from interest and dividends (including Alaska Permanent Fund dividends),

(ii)

such gross income is more than the amount described in paragraph (4)(A)(ii)(I) and less than 10 times the amount so described,

(iii)

no estimated tax payments for such year are made in the name and TIN of such child, and no amount has been deducted and withheld under section 3406, and

(iv)

the parent of such child (as determined under paragraph (5)) elects the application of subparagraph (B),

such child shall be treated (other than for purposes of this paragraph) as having no gross income for such year and shall not be required to file a return under section 6012.

(B) Income included on parent's return

In the case of a parent making the election under this paragraph -

(i)

the gross income of each child to whom such election applies (to the extent the gross income of such child exceeds twice the amount described in paragraph (4)(A)(ii)(I)) shall be included in such parent's gross income for the taxable year,

(ii)

the tax imposed by this section for such year with respect to such parent shall be the amount equal to the sum of -

(I)

the amount determined under this section after the application of clause (i), plus

(II)

for each such child, 15 percent of the lesser of the amount described in paragraph (4)(A)(ii)(I) or the excess of the gross income of such child over the amount so described, and

(iii)

any interest which is an item of tax preference under section 57(a)(5) of the child shall be treated as an item of tax preference of such parent (and not of such child).

(C) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph.

(h) Maximum capital gains rate

(1) In general

If a taxpayer has a net capital gain for any taxable year, the tax imposed by this section for such taxable year shall not exceed the sum of -

(A)

a tax computed at the rates and in the same manner as if this subsection had not been enacted on the greater of -

(i)

taxable income reduced by the net capital gain; or

(ii)

the lesser of -

(I)

the amount of taxable income taxed at a rate below 28 percent; or

(II)

taxable income reduced by the adjusted net capital gain;

(B)

10 percent of so much of the adjusted net capital gain (or, if less, taxable income) as does not exceed the excess (if any) of -

(i)

the amount of taxable income which would (without regard to this paragraph) be taxed at a rate below 28 percent, over

(ii)

the taxable income reduced by the adjusted net capital gain;

(C)

20 percent of the adjusted net capital gain (or, if less, taxable income) in excess of the amount on which a tax is determined under subparagraph (B);

(D)

25 percent of the excess (if any) of -

(i)

the unrecaptured section 1250 gain (or, if less, the net capital gain), over

(ii)

the excess (if any) of -

(I)

the sum of the amount on which tax is determined under subparagraph (A) plus the net capital gain, over

(II)

taxable income; and

(E)

28 percent of the amount of taxable income in excess of the sum of the amounts on which tax is determined under the preceding subparagraphs of this paragraph.

(2) Reduced capital gain rates for qualified 5-year gain

(A) Reduction in 10-percent rate

In the case of any taxable year beginning after December 31, 2000, the rate under paragraph (1)(B) shall be 8 percent with respect to so much of the amount to which the 10-percent rate would otherwise apply as does not exceed qualified 5-year gain, and 10 percent with respect to the remainder of such amount.

(B) Reduction in 20-percent rate

The rate under paragraph (1)(C) shall be 18 percent with respect to so much of the amount to which the 20-percent rate would otherwise apply as does not exceed the lesser of -

(i)

the excess of qualified 5-year gain over the amount of such gain taken into account under subparagraph (A) of this paragraph; or

(ii)

the amount of qualified 5-year gain (determined by taking into account only property the holding period for which begins after December 31, 2000),

and 20 percent with respect to the remainder of such amount. For purposes of determining under the preceding sentence whether the holding period of property begins after December 31, 2000, the holding period of property acquired pursuant to the exercise of an option (or other right or obligation to acquire property) shall include the period such option (or other right or obligation) was held.

(3) Net capital gain taken into account as investment income

For purposes of this subsection, the net capital gain for any taxable year shall be reduced (but not below zero) by the amount which the taxpayer takes into account as investment income under section 163(d)(4)(B)(iii).

(4) Adjusted net capital gain

For purposes of this subsection, the term ''adjusted net capital gain'' means net capital gain reduced (but not below zero) by the sum of -

(A)

unrecaptured section 1250 gain; and

(B)

28-percent rate gain.

(5) 28-percent rate gain

For purposes of this subsection, the term ''28-percent rate gain'' means the excess (if any) of -

(A)

the sum of -

(i)

collectibles gain; and

(ii)

section 1202 gain, over

(B)

the sum of -

(i)

collectibles loss;

(ii)

the net short-term capital loss; and

(iii)

the amount of long-term capital loss carried under section 1212(b)(1)(B) to the taxable year.

(6) Collectibles gain and loss

For purposes of this subsection -

(A) In general

The terms ''collectibles gain'' and ''collectibles loss'' mean gain or loss (respectively) from the sale or exchange of a collectible (as defined in section 408(m) without regard to paragraph (3) thereof) which is a capital asset held for more than 1 year but only to the extent such gain is taken into account in computing gross income and such loss is taken into account in computing taxable income.

(B) Partnerships, etc.

For purposes of subparagraph (A), any gain from the sale of an interest in a partnership, S corporation, or trust which is attributable to unrealized appreciation in the value of collectibles shall be treated as gain from the sale or exchange of a collectible. Rules similar to the rules of section 751 shall apply for purposes of the preceding sentence.

(7) Unrecaptured section 1250 gain

For purposes of this subsection -

(A) In general

The term ''unrecaptured section 1250 gain'' means the excess (if any) of -

(i)

the amount of long-term capital gain (not otherwise treated as ordinary income) which would

be treated as ordinary income if section 1250(b)(1) included all depreciation and the applicable percentage under section 1250(a) were 100 percent, over

(ii)

the excess (if any) of -

(I)

the amount described in paragraph (5)(B); over

(II)

the amount described in paragraph (5)(A).

(B) Limitation with respect to section 1231 property

The amount described in subparagraph (A)(i) from sales, exchanges, and conversions described in section 1231(a)(3)(A) for any taxable year shall not exceed the net section 1231 gain (as defined in section 1231 (c)(3)) for such year.

(8) Section 1202 gain

For purposes of this subsection, the term ''section 1202 gain'' means the excess of -

(A)

the gain which would be excluded from gross income under section 1202 but for the percentage limitation in section 1202(a), over

(B)

the gain excluded from gross income under section 1202.

(9) Qualified 5-year gain

For purposes of this subsection, the term ''qualified 5-year gain'' means the aggregate long-term capital gain from property held for more than 5 years. The determination under the preceding sentence shall be made without regard to collectibles gain, gain described in paragraph (7)(A)(i), and section 1202 gain.

(10) Coordination with recapture of net ordinary losses under section 1231

If any amount is treated as ordinary income under section 1231(c), such amount shall be allocated among

the separate categories of net section 1231 gain (as defined in section 1231(c)(3)) in such manner as the Secretary may by forms or regulations prescribe.

(11) Regulations

The Secretary may prescribe such regulations as are appropriate (including regulations requiring reporting) to apply this subsection in the case of sales and exchanges by pass-thru entities and of interests in such entities.

(12) Pass-thru entity defined

For purposes of this subsection, the term ''pass-thru entity'' means -

(A)

a regulated investment company;

(B)

a real estate investment trust;

(C)

an S corporation;

(D)

a partnership;

(E)

an estate or trust;

(F)

a common trust fund;

(G)

a foreign investment company which is described in section 1246(b)(1) and for which an election is in effect under section 1247; and

(H)

a qualified electing fund (as defined in section 1295).

(13) Special rules

(A) Determination of 28-percent rate gain

In applying paragraph (5) -

(i)

the amount determined under subparagraph (A) of paragraph (5) shall include long-term capital gain (not otherwise described in such subparagraph) -

(I)

which is properly taken into account for the portion of the taxable year before May 7, 1997; or

(II)

from property held not more than 18 months which is properly taken into account for the portion of the taxable year after July 28, 1997, and before January 1, 1998;

(ii)

the amount determined under subparagraph (B) of paragraph (5) shall include long-term capital loss (not otherwise described in such subparagraph) -

(I)

which is properly taken into account for the portion of the taxable year before May 7, 1997; or

(II)

from property held not more than 18 months which is properly taken into account for the portion of the taxable year after July 28, 1997, and before January 1, 1998; and

(iii)

subparagraph (B) of paragraph (5) (as in effect immediately before the enactment of this clause) shall apply to amounts properly taken into account before January 1, 1998.

(B) Determination of unrecaptured section 1250 gain

The amount determined under paragraph (7)(A)(i) shall not include gain -

(i)

which is properly taken into account for the portion

of the taxable year before May 7, 1997; or

(ii)

from property held not more than 18 months which is properly taken into account for the portion of the taxable year after July 28, 1997, and before January 1, 1998.

(C) Special rules for pass-thru entities

In applying this paragraph with respect to any pass-thru entity, the determination of when gains and loss are properly taken into account shall be made at the entity level.

(D) Charitable remainder trusts

Subparagraphs (A) and (B)(ii) shall not apply to any capital gain distribution made by a trust described in section 664.'

Next

Sec. 871. - Tax on nonresident alien individuals

(a)

Income not connected with United States business - 30 percent tax

(1) Income other than capital gains

Except as provided in subsection (h), there is hereby imposed for each taxable year a tax of 30 percent of the amount received from sources within the United States by a nonresident alien individual as -

(A)

interest (other than original issue discount as defined in section 1273), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income,

(B)

gains described in section 631(b) or (c), and gains on transfers described in section 1235 made on or before October 4, 1966,

(C)

in the case of -

(i)

a sale or exchange of an original issue discount obligation, the amount of the original issue discount accruing while such obligation was held by the nonresident alien individual (to the extent such discount was not theretofore taken into account under clause (ii)), and

(ii)

a payment on an original issue discount obligation, an amount equal to the original issue discount accruing while such obligation was held by the nonresident alien individual (except that such original issue discount shall be taken into account under this clause only to the extent such discount was not theretofore taken into account under this clause and only to the extent that the tax thereon does not exceed the payment less the tax imposed by subparagraph (A) thereon), and

(D)

gains from the sale or exchange after October 4, 1966, of patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like property, or of any interest in any such property, to the extent such gains are from payments which are contingent on the productivity, use, or disposition of the property or interest sold or exchanged,

but only to the extent the amount so received is not effectively connected with the conduct of a trade or business within the United States.

(2) Capital gains of aliens present in the United States 183 days or more

In the case of a nonresident alien individual present in the United States for a period or periods aggregating 183 days or more during the taxable year, there is hereby imposed for such year a tax of 30 percent of the amount by which his gains, derived from sources within the United States, from the sale or exchange at any time during such year of capital assets exceed his losses, allocable to sources within the United States, from the sale or exchange at any time during such year of capital assets. For purposes of this paragraph, gains and losses shall be taken into account only if, and to the extent that, they would be recognized and taken into account if such gains and losses were effectively connected with the conduct of a trade or business within the United States, except that such gains and losses shall be determined without regard to section 1202 and such losses shall be determined without the benefits of the capital loss carryover provided in section 1212. Any gain or loss which is taken into account in determining the tax under paragraph (1) or subsection (b) shall not be taken into account in determining the tax under this paragraph. For purposes of the 183-day requirement of this paragraph, a nonresident alien individual not engaged in trade or

business within the United States who has not established a taxable year for any prior period shall be treated as having a taxable year which is the calendar year.

(3) Taxation of social security benefits

For purposes of this section and section 1441 -

(A)

85 percent of any social security benefit (as defined in section 86(d)) shall be included in gross income (notwithstanding section 207 of the Social Security Act), and

(B)

section 86 shall not apply.

For treatment of certain citizens of possessions of the United States, see section 932(c). [1]

(b)

Income connected with United States business - graduated rate of tax

(1) Imposition of tax

A nonresident alien individual engaged in trade or business within the United States during the taxable year shall be taxable as provided in section 1 or 55 on his taxable income which is effectively connected with the conduct of a trade or business within the United States.

(2) Determination of taxable income

In determining taxable income for purposes of paragraph (1), gross income includes only gross income which is effectively connected with the conduct of a trade or business within the United States.

(c) Participants in certain exchange or training programs

For purposes of this section, a nonresident alien individual who (without regard to this subsection) is not engaged in trade or business within the United States and who is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act, as amended (8 U.S.C. 1101(a)(15)(F), (J), (M), or (Q)), shall be treated as a nonresident alien individual engaged in trade or business within the United States, and any income

described in the second sentence of section 1441(b) which is received by such individual shall, to the extent derived from sources within the United States, be treated as effectively connected with the conduct of a trade or business within the United States.

(d) Election to treat real property income as income connected with United States business

(1) In general

A nonresident alien individual who during the taxable year derives any income -

(A)

from real property held for the production of income and located in the United States, or from any interest in such real property, including

(i)

gains from the sale or exchange of such real property or an interest therein,

(ii)

rents or royalties from mines, wells, or other natural deposits, and

(iii)

gains described in section 631(b) or (c), and

(B)

which, but for this subsection, would not be treated as income which is effectively connected with the conduct of a trade or business within the United States,

may elect for such taxable year to treat all such income as income which is effectively connected with the conduct of a trade or business within the United States. In such case, such income shall be taxable as provided in subsection (b)(1) whether or not such individual is engaged in trade or business within the United States during the taxable year. An election under this paragraph for any taxable year shall remain in effect for all subsequent taxable years, except that it may be revoked with the consent of the Secretary with respect to any taxable year.

(2) Election after revocation

If an election has been made under paragraph (1) and such election has been revoked, a new election may not be made under such paragraph for any taxable year before the 5th taxable year which begins after the first taxable year for which such revocation is effective, unless the Secretary consents to such new election.

(3) Form and time of election and revocation

An election under paragraph (1), and any revocation of such an election, may be made only in such manner and at such time as the Secretary may by regulations prescribe.

(e)

Repealed. Pub. L. 99-514, title XII, Sec. 1211(b)(5), Oct. 22, 1986, 100 Stat. 2536)

(f) Certain annuities received under qualified plans

(1) In general

For purposes of this section, gross income does not include any amount received as an annuity under a qualified annuity plan described in section 403(a)(1), or from a qualified trust described in section 401(a) which is exempt from tax under section 501(a), if -

(A)

all of the personal services by reason of which the annuity is payable were either -

(i)

personal services performed outside the United States by an individual who, at the time of performance of such personal services, was a nonresident alien, or

(ii)

personal services described in section 864(b)(1) performed within the United States by such individual, and

(B)

at the time the first amount is paid as an annuity under the annuity plan or by the trust, 90 percent or more of the employees for whom contributions or benefits are provided under such annuity plan, or under the plan or plans of which the trust is a part,

are citizens or residents of the United States.

(2) Exclusion

Income received during the taxable year which would be excluded from gross income under this subsection but for the requirement of paragraph (1)(B) shall not be included in gross income if -

(A)

the recipient's country of residence grants a substantially equivalent exclusion to residents and citizens of the United States; or

(B)

the recipient's country of residence is a beneficiary developing country under title V of the Trade Act of 1974 (19 U.S.C. 2461 et seq.).

(g) Special rules for original issue discount

For purposes of this section and section 881 -

(1) Original issue discount obligation

(A) In general

Except as provided in subparagraph (B), the term ''original issue discount obligation'' means any bond or other evidence of indebtedness having original issue discount (within the meaning of section 1273).

(B) Exceptions

The term ''original issue discount obligation'' shall not include -

(i) Certain short-term obligations

Any obligation payable 183 days or less from the date of original issue (without regard to the period held by the taxpayer).

(ii) Tax-exempt obligations

Any obligation the interest on which is exempt from tax under section 103 or under any other provision of law without regard to the identity of the holder.

(2) Determination of portion of original issue discount accruing during any period

The determination of the amount of the original issue discount which accrues during any period shall be made under the rules of section 1272 (or the corresponding provisions of prior law) without regard to any exception for short-term obligations.

(3) Source of original issue discount

Except to the extent provided in regulations prescribed by the Secretary, the determination of whether any amount described in subsection (a)(1)(C) is from sources within the United States shall be made at the time of the payment (or sale or exchange) as if such payment (or sale or exchange) involved the payment of interest.

(4) Stripped bonds

The provisions of section 1286 (relating to the treatment of stripped bonds and stripped coupons as obligations with original issue discount) shall apply for purposes of this section.

(h) Repeal of tax on interest of nonresident alien individuals received from certain portfolio debt investments

(1) In general

In the case of any portfolio interest received by a nonresident individual from sources within the United States, no tax shall be imposed under paragraph (1)(A) or (1)(C) of subsection (a).

(2) Portfolio interest

For purposes of this subsection, the term ''portfolio interest'' means any interest (including original issue discount) which would be subject to tax under subsection (a) but for this subsection and which is described in any of the following subparagraphs:

(A) Certain obligations which are not registered

Interest which is paid on any obligation which -

(i)

is not in registered form, and

(ii)

is described in section 163(f)(2)(B).

(B) Certain registered obligations

Interest which is paid on an obligation -

(i)

which is in registered form, and

(ii)

with respect to which the United States person who would otherwise be required to deduct and withhold tax from such interest under section 1441 (a) receives a statement (which meets the requirements of paragraph (5)) that the beneficial owner of the obligation is not a United States person.

(3) Portfolio interest not to include interest received by 10-percent shareholders

For purposes of this subsection -

(A) In general

The term ''portfolio interest'' shall not include any interest described in subparagraph (A) or (B) of paragraph (2) which is received by a 10-percent shareholder.

(B) 10-Percent shareholder

The term ''10-percent shareholder'' means -

(i)

in the case of an obligation issued by a corporation, any person who owns 10 percent or more of the total combined voting power of all classes of stock of such corporation entitled to vote, or

(ii)

in the case of an obligation issued by a partnership, any person who owns 10 percent or more of the capital or profits interest in such partnership.

(C) Attribution rules

For purposes of determining ownership of stock under subparagraph (B)(i) the rules of section 318(a) shall apply, except that -

(i)

section 318(a)(2)(C) shall be applied without

regard to the 50-percent limitation therein,

(ii)

section 318(a)(3)(C) shall be applied -

(I)

without regard to the 50-percent limitation therein; and

(II)

in any case where such section would not apply but for subclause (I), by considering a corporation as owning the stock (other than stock in such corporation) which is owned by or for any shareholder of such corporation in that proportion which the value of the stock which such shareholder owns in such corporation bears to the value of all stock in such corporation, and

(iii)

any stock which a person is treated as owning after application of section 318(a)(4) shall not, for purposes of applying paragraphs (2) and (3) of section 318(a), be treated as actually owned by such person.

Under regulations prescribed by the Secretary, rules similar to the rules of the preceding sentence shall be applied in determining the ownership of the capital or profits interest in a partnership for purposes of subparagraph (B)(ii).

(4) Portfolio interest not to include certain contingent interest

For purposes of this subsection -

(A) In general

Except as otherwise provided in this paragraph, the term ''portfolio interest'' shall not include -

(i)

any interest if the amount of such interest is determined by reference to -

(I)

any receipts, sales or other cash flow of the debtor or a related person,

(II)

any income or profits of the debtor or a related person,

(III)

any change in value of any property of the debtor or a related person, or

(IV)

any dividend, partnership distributions, or similar payments made by the debtor or a related person, or

(ii)

any other type of contingent interest that is identified by the Secretary by regulation, where a denial of the portfolio interest exemption is necessary or appropriate to prevent avoidance of Federal income tax.

(B) Related person

The term ''related person'' means any person who is related to the debtor within the meaning of section 267(b) or 707(b)(1), or who is a party to any arrangement undertaken for a purpose of avoiding the application of this paragraph.

(C) Exceptions

Subparagraph (A)(i) shall not apply to -

(i)

any amount of interest solely by reason of the fact that the timing of any interest or principal payment is subject to a contingency,

(ii)

any amount of interest solely by reason of the fact that the interest is paid with respect to nonrecourse or limited recourse indebtedness,

(iii)

any amount of interest all or substantially all of which is determined by reference to any other

amount of interest not described in subparagraph (A) (or by reference to the principal amount of indebtedness on which such other interest is paid),

(iv)

any amount of interest solely by reason of the fact that the debtor or a related person enters into a hedging transaction to manage the risk of interest rate or currency fluctuations with respect to such interest,

(v)

any amount of interest determined by reference to -

(I)

changes in the value of property (including stock) that is actively traded (within the meaning of section 1092(d)) other than property described in section 897(c)(1) or (g),

(II)

the yield on property described in subclause (I), other than a debt instrument that pays interest described in subparagraph (A), or stock or other property that represents a beneficial interest in the debtor or a related person, or

(III)

changes in any index of the value of property described in subclause (I) or of the yield on property described in subclause (II), and (vi) any other type of interest identified by the Secretary by regulation.

(D) Exception for certain existing indebtedness

Subparagraph (A) shall not apply to any interest paid or accrued with respect to any indebtedness with a fixed term -

(i)

which was issued on or before April 7, 1993, or

(ii)

which was issued after such date pursuant to a written binding contract in effect on such date and

at all times thereafter before such indebtedness was issued.

(5) Certain statements

A statement with respect to any obligation meets the requirements of this paragraph if such statement is made by -

(A)

the beneficial owner of such obligation, or

(B)

a securities clearing organization, a bank, or other financial institution that holds customers' securities in the ordinary course of its trade or business.

The preceding sentence shall not apply to any statement with respect to payment of interest on any obligation by any person if, at least one month before such payment, the Secretary has published a determination that any statement from such person (or any class including such person) does not meet the requirements of this paragraph.

(6) Secretary may provide subsection not to apply in cases of inadequate information exchange

(A) In general

If the Secretary determines that the exchange of information between the United States and a foreign country is inadequate to prevent evasion of the United States income tax by United States persons, the Secretary may provide in writing (and publish a statement) that the provisions of this subsection shall not apply to payments of interest to any person within such foreign country (or payments addressed to, or for the account of, persons within such foreign country) during the period -

(i)

beginning on the date specified by the Secretary, and

(ii)

ending on the date that the Secretary determines that the exchange of information between the United States and the foreign country is adequate to prevent the evasion of United States income tax

by United States persons.

(B) Exception for certain obligations

Subparagraph (A) shall not apply to the payment of interest on any obligation which is issued on or before the date of the publication of the Secretary's determination under such subparagraph.

(7) Registered form

For purposes of this subsection, the term ''registered form'' has the same meaning given such term by section 163(f).

(i) Tax not to apply to certain interest and dividends

(1) In general

No tax shall be imposed under paragraph (1)(A) or (1)(C) of subsection (a) on any amount described in paragraph (2).

(2) Amounts to which paragraph (1) applies

The amounts described in this paragraph are as follows:

(A)

Interest on deposits, if such interest is not effectively connected with the conduct of a trade or business within the United States.

(B)

A percentage of any dividend paid by a domestic corporation meeting the 80-percent foreign business requirements of section 861(c)(1) equal to the percentage determined for purposes of section 861(c)(2)(A).

(C)

Income derived by a foreign central bank of issue from bankers' acceptances.

(3) Deposits

For purposes of paragraph (2), the term ''deposits'' means amounts which are -

(A)

deposits with persons carrying on the banking business,

(B)

deposits or withdrawable accounts with savings institutions chartered and supervised as savings and loan or similar associations under Federal or State law, but only to the extent that amounts paid or credited on such deposits or accounts are deductible under section 591 (determined without regard to sections 265 and 291) in computing the taxable income of such institutions, and

(C)

amounts held by an insurance company under an agreement to pay interest thereon.

(j) Exemption for certain gambling winnings

No tax shall be imposed under paragraph (1)(A) of subsection (a) on the proceeds from a wager placed in any of the following games: blackjack, baccarat, craps, roulette, or big-6 wheel. The preceding sentence shall not apply in any case where the Secretary determines by regulation that the collection of the tax is administratively feasible.

(k)

Cross references

(1)

For tax treatment of certain amounts distributed by the United States to nonresident alien individuals, see section 402(e)(2).

(2)

For taxation of nonresident alien individuals who are expatriate United States citizens, see section 877.

(3)

For doubling of tax on citizens of certain foreign countries, see section 891.

(4)

For adjustment of tax in case of nationals or residents of certain foreign countries, see section 896.

(5)

For withholding of tax at source on nonresident alien individuals, see section 1441.

(6)

For election to treat married nonresident alien individual as resident of United States in certain cases, see subsections (g) and (h) of section 6013.

(7)

For special tax treatment of gain or loss from the disposition by a nonresident alien individual of a United States real property interest, see section 897

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[1] See References in Text note below.

Next

Embedded Secure Document

The file *http://famguardian.org/TaxFreedom/Forms/TaxExamAudit/IRSDueProcMtgWorksheet.pdf* is a secure document that has been embedded in this document. Double click the pushpin to view.

§ 407. Assignment of benefits

(a) In general

The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

(b) Amendment of section

No other provision of law, enacted before, on, or after April 20, 1983, may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section.

(c) Withholding of taxes

Nothing in this section shall be construed to prohibit withholding taxes from any benefit under this subchapter, if such withholding is done pursuant to a request made in accordance with section 3402(p)(1) of the Internal Revenue Code of 1986 by the person entitled to such benefit or such person's representative payee.

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Sec. 6331. - Levy and distraint

(a) Authority of Secretary

If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer (as defined in section 3401(d)) of such officer, employee, or elected official. If the Secretary makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in this section.

(b) Seizure and sale of property

The term ''levy'' as used in this title includes the power of distraint and seizure by any means. Except as otherwise provided in subsection (e), a levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the Secretary may levy upon property or rights to property, he may seize and sell such property or rights to property (whether real or personal, tangible or intangible).

(c) Successive seizures

Whenever any property or right to property upon which levy has been made by virtue of subsection (a) is not sufficient to satisfy the claim of the United States for which

levy is made, the Secretary may, thereafter, and as often as may be necessary, proceed to levy in like manner upon any other property liable to levy of the person against whom such claim exists, until the amount due from him, together with all expenses, is fully paid.

(d) Requirement of notice before levy

(1) In general

Levy may be made under subsection (a) upon the salary or wages or other property of any person with respect to any unpaid tax only after the Secretary has notified such person in writing of his intention to make such levy.

(2) 30-day requirement

The notice required under paragraph (1) shall be -

(A)

given in person,

(B)

left at the dwelling or usual place of business of such person, or

(C)

sent by certified or registered mail to such persons's last known address,

no less than 30 days before the day of the levy.

(3) Jeopardy

Paragraph (1) shall not apply to a levy if the Secretary has made a finding under the last sentence of subsection (a) that the collection of tax is in jeopardy.

(4) Information included with notice

The notice required under paragraph (1) shall include a brief statement which sets forth in simple and nontechnical terms -

(A)

the provisions of this title relating to levy and sale of property,

(B)

the procedures applicable to the levy and sale of property under this title,

(C)

the administrative appeals available to the taxpayer with respect to such levy and sale and the procedures relating to such appeals,

(D)

the alternatives available to taxpayers which could prevent levy on the property (including installment agreements under section 6159),

(E)

the provisions of this title relating to redemption of property and release of liens on property, and

(F)

the procedures applicable to the redemption of property and the release of a lien on property under this title.

(e) Continuing levy on salary and wages

The effect of a levy on salary or wages payable to or received by a taxpayer shall be continuous from the date such levy is first made until such levy is released under section 6343.

(f) Uneconomical levy

No levy may be made on any property if the amount of the expenses which the Secretary estimates (at the time of levy) would be incurred by the Secretary with respect to the levy and sale of such property exceeds the fair market value of such property at the time of levy.

(g) Levy on appearance date of summons

(1) In general

No levy may be made on the property of any person on any day on which such person (or officer or employee of such person) is required to appear in response to a summons issued by the Secretary for the purpose of collecting any underpayment of tax.

(2) No application in case of jeopardy

This subsection shall not apply if the Secretary finds

that the collection of tax is in jeopardy.

(h) Continuing levy on certain payments

(1) In general

If the Secretary approves a levy under this subsection, the effect of such levy on specified payments to or received by a taxpayer shall be continuous from the date such levy is first made until such levy is released. Notwithstanding section 6334, such continuous levy shall attach to up to 15 percent of any specified payment due to the taxpayer.

(2) Specified payment

For the purposes of paragraph (1), the term ''specified payment'' means -

(A)

any Federal payment other than a payment for which eligibility is based on the income or assets (or both) of a payee,

(B)

any payment described in paragraph (4), (7), (9), or (11) of section 6334(a), and

(C)

any annuity or pension payment under the Railroad Retirement Act or benefit under the Railroad Unemployment Insurance Act.

(i) No levy during pendency of proceedings for refund of divisible tax

(1) In general

No levy may be made under subsection (a) on the property or rights to property of any person with respect to any unpaid divisible tax during the pendency of any proceeding brought by such person in a proper Federal trial court for the recovery of any portion of such divisible tax which was paid by such person if -

(A)

the decision in such proceeding would be res judicata with respect to such unpaid tax; or

(B)

such person would be collaterally estopped from contesting such unpaid tax by reason of such proceeding.

(2) Divisible tax

For purposes of paragraph (1), the term ''divisible tax'' means -

(A)

any tax imposed by subtitle C; and

(B)

the penalty imposed by section 6672 with respect to any such tax.

(3) Exceptions

(A) Certain unpaid taxes

This subsection shall not apply with respect to any unpaid tax if -

(i)

the taxpayer files a written notice with the Secretary which waives the restriction imposed by this subsection on levy with respect to such tax; or

(ii)

the Secretary finds that the collection of such tax is in jeopardy.

(B) Certain levies

This subsection shall not apply to -

(i)

any levy to carry out an offset under section 6402; and

(ii)

any levy which was first made before the date that the applicable proceeding under this subsection commenced.

(4) Limitation on collection activity; authority to enjoin collection

(A) Limitation on collection

No proceeding in court for the collection of any unpaid tax to which paragraph (1) applies shall be begun by the Secretary during the pendency of a proceeding under such paragraph. This subparagraph shall not apply to -

(i)

any counterclaim in a proceeding under such paragraph; or

(ii)

any proceeding relating to a proceeding under such paragraph.

(B) Authority to enjoin

Notwithstanding section 7421(a), a levy or collection proceeding prohibited by this subsection may be enjoined (during the period such prohibition is in force) by the court in which the proceeding under paragraph (1) is brought.

(5) Suspension of statute of limitations on collection

The period of limitations under section 6502 shall be suspended for the period during which the Secretary is prohibited under this subsection from making a levy.

(6) Pendency of proceeding

For purposes of this subsection, a proceeding is pending beginning on the date such proceeding commences and ending on the date that a final order or judgment from which an appeal may be taken is entered in such proceeding.

(j) No levy before investigation of status of property

(1) In general

For purposes of applying the provisions of this subchapter, no levy may be made on any property or right to property which is to be sold under section 6335 until a thorough investigation of the status of such property has been completed.

(2) Elements in investigation

For purposes of paragraph (1), an investigation of the status of any property shall include -

(A)

a verification of the taxpayer's liability;

(B)

the completion of an analysis under subsection (f);

(C)

the determination that the equity in such property is sufficient to yield net proceeds from the sale of such property to apply to such liability; and

(D)

a thorough consideration of alternative collection methods.

(k) No levy while certain offers pending or installment agreement pending or in effect

(1) Offer-in-compromise pending

No levy may be made under subsection (a) on the property or rights to property of any person with respect to any unpaid tax -

(A)

during the period that an offer-in-compromise by such person under section 7122 of such unpaid tax is pending with the Secretary; and

(B)

if such offer is rejected by the Secretary, during the 30 days thereafter (and, if an appeal of such rejection is filed within such 30 days, during the period that such appeal is pending).

For purposes of subparagraph (A), an offer is pending beginning on the date the Secretary accepts such offer for processing.

(2) Installment agreements

No levy may be made under subsection (a) on the property or rights to property of any person with respect to any unpaid tax -

(A)

during the period that an offer by such person for an installment agreement under section 6159 for

payment of such unpaid tax is pending with the Secretary;

(B)

if such offer is rejected by the Secretary, during the 30 days thereafter (and, if an appeal of such rejection is filed within such 30 days, during the period that such appeal is pending);

(C)

during the period that such an installment agreement for payment of such unpaid tax is in effect; and

(D)

if such agreement is terminated by the Secretary, during the 30 days thereafter (and, if an appeal of such termination is filed within such 30 days, during the period that such appeal is pending).

(3) Certain rules to apply

Rules similar to the rules of paragraphs (3) and (4) of subsection (i) shall apply for purposes of this subsection.

(l)

Cross references

(1)

For provisions relating to jeopardy, see subchapter A of chapter 70.

(2)

For proceedings applicable to sale of seized property see section 6335.

(3)

For release and notice of release of levy, see section 6343

Next

§ 6020. Returns prepared for or executed by Secretary

How Current is This?

(a) Preparation of return by Secretary

If any person shall fail to make a return required by this title or by regulations prescribed thereunder, but shall consent to disclose all information necessary for the preparation thereof, then, and in that case, the Secretary may prepare such return, which, being signed by such person, may be received by the Secretary as the return of such person.

(b) Execution of return by Secretary

(1) Authority of Secretary to execute return

If any person fails to make any return required by any internal revenue law or regulation made thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.

(2) Status of returns

Any return so made and subscribed by the Secretary shall be prima facie good and sufficient for all legal purposes.

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Sec. 6020. - Returns prepared for or executed by Secretary

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STATUTORY REQUIRMENTS OF A VALID ASSESSMENT

This is a description of the authority used in analyzing a master file account to determine if an assessment has been lawfully made.

Howell v. U.S., [96-2] USTC provides the authority for the assessment process that must be followed for a valid enforceable assessment.

An assessment pursuant to **26 C.F.R. 301.6203-1**, by which the IRS records and demands payment of tax obligations, is a several step process:

1. creation of a summary record of assessment,
2. maintenance of supporting documents,
3. notification of liable parties and,
4. upon request by a targeted taxpayer, the production of pertinent information to liable parties.

The first step of the assessment process is the creation of a summary record which summarizes all assessments made in a particular district on a particular date. The date on which an authorized official signs a summary record sheet becomes its "date of creation". The summary record sheet must be augmented by supporting records which relate to the summary record.
Supporting records must provide at least **four** pieces of information:

1. identification of the taxpayer;
2. the character of the liability assessed;
3. the taxable period, if applicable; and
4. the amount of the assessment. **26 C.F.R 301.6203-1.**

26 C.F.R. 301.6203-1 states that if the taxpayer requests a copy of the record of assessment, he shall be furnished a copy of the pertinent parts of the assessment which sets forth **five** pieces of information:

1. The name of the taxpayer
2. The date of assessment

3. The character of the liability assessed
4. The taxable period
5. The amounts assessed

This differs from the supporting-records requirements in at least two ways: the pieces of information required and the purpose for the information.

The information sent to a requesting taxpayer must include all of the pertinent information in the supporting documents section discussed above, **plus it must contain the date of assessment.**

The additional datum required for distribution to the taxpayer –**the assessment date**—is often found on the supporting records, a copy of which the IRS typically sends to the taxpayer. There is no prescribed format in which the assessment date is to be sent, other than it be a copy of pertinent parts of the assessment.

Several cases have dealt with the failure of the IRS to send a copy of the actual signed and dated summary record to the taxpayer, all courts have considered this practice acceptable, if the supporting documentation records that a summary record was created.

A Form 4340, Certificate of Assessments and Payments, typically contains two date columns titled **"Date"** and **"23C Date"**. In some cases, the validity of Certificates of Assessments and Payments to establish that summary records have been created has been questioned if the **"23C date"** is missing. The **"23C Date"** is significant for it provides the sufficient evidence—in the absence of a copy of a Summary Record—that a summary record was indeed created.

The significance of the lack of a **"23C Date"** has typically been coupled with the failure of the IRS to provide any additional information which indicates that a valid assessment was made, such as a signed summary record.

The second difference between the supporting documentation and the documentation sent to the requesting taxpayer is the purpose for which the information is used. The purpose for the supporting documentation is to allow the IRS to identify the individual parties and calculate how their combined assessments total the aggregate assessment amount which appears on the signed summary record.

The purpose for the pertinent information sent to requesting taxpayers is to allow taxpayers to understand for what purpose they have been assessed a tax, interest, or penalty. According to a General Counsel Memorandum prepared by the Interpretative Division of

the IRS, **GCM 39392 (August 1, 1985):**

Treas. Reg. Section **301.6203-1** provides that the copy of the record of assessment furnished to a taxpayer, upon request, shall include the character of the liability assessed. We think the character of the liability assessed includes not only that the liability is tax, interest, or penalty but also the basis for the assessment.

The taxpayer needs to know the basis for an assessment as a necessary part of checking the correctness of the taxpayer's assessed tax liability.

As stated above, we think a copy of the record of assessment is furnished so that the taxpayer can make this check.

On Form 4340 and the Privacy Act Transcript the [IRS] does furnish the bases for assessments to taxpayer in certain situations. We believe the bases for assessments should also be furnished to taxpayer as a pertinent part of the record of assessment under section **6203.**

The copy of the computer equivalent of a **23C Form**, signed by an assessment officer-provides uncontroverted proof that an assessment occurred on a specific date. This, however, does not establish any of the additional required information. ***Stallard v. U.S. [92-2 USTC 50,596],*** (a signed and dated **Form 23C** does not identify the taxpayer, identify the character of the liability assessed, identify the tax period, or state that amount of the assessment).

The remaining information, then, must be found on the nine pages of the taxpayer's (Rogers) IMF, six of the nine pages display the taxpayers (Rogers) name, and all nine pages show his account number and name as "ROGE." This suffices.

The remainder of the information on the IMF is presented in cryptic form with hundreds of codes, acronyms, numbers, and sundry enigmatic entries. The IRS offered neither Rogers nor the Court any guide to assist in deciphering the confusing forms. Indeed, the IRS did not attempt to refer to or rely on the encoded information in asserting its compliance with the statute and the regulations. Nonetheless, the Court has attempted to make sense of the IMF, relying on its own resources.

Characterization. The following two entries, by their resemblance to Defendant's Exhibit C, appear to be pertinent portions of the IMF

240 120588 58,560.00 8847 29254-715-52122-8
PEN CODE-618 PRC

290 120588 0.00 8847 29254-715-52122-8
HC ARC INTD PC
CORRESPONDDT- CREDIT DT-
RCVD DT-

The duty imposed upon the IRS by the regulation is to supply the requisite information upon request. This is done for a purpose. It seems to this Court that in return for allowing a summary sheet with entries affecting hundreds or thousands of different taxpayers to be used, the IRS by regulation is required to furnish particularized information concerning the assessment to an assessed party upon the party's request. This enables the party to evaluate the propriety of the assessment.

The information furnished to the taxpayer (Rogers) is deficient. Without further information, all that can be learned from the entry is that it is a numbered penalty. **Code 240,** nearly as ambiguous as the Penalty Code 618, means nothing more than "Miscellaneous Penalty." The Internal Revenue Manual lists that a "Miscellaneous Penalty" refers to numerous penalties. While as noted above, the significance of the **PEN CODE 618** entry may be deciphered by a legal researcher possessing sufficient computer skills, it is practically meaningless to a taxpayer.

The information on the IMF did not allow the taxpayer (Rogers) to know the character of the liability assessed so that he could check its correctness. This Court concludes that the IMF that the IRS sent to the Taxpayer (Rogers) in response to his section **6203** request is deficient. It fall short of the standards articulated in **GCM 39302 (August 1, 1985)** and the Treasury regulations to which it refers.

Taxable Period. The taxable period only has to be provided to the taxpayer if applicable. In the present case the IRS contends it is not applicable. The IRS claims that the method of assessment of a **26 C.F.R. 301.6372-1** 100% Penalty is as follows: a corporation fails to pay withholding taxes for certain taxable periods; upon not paying, the specific party within the corporation that was responsible for having failed to make the payments is assessed a penalty on a separate day for the taxable periods during which the corporation was delinquent. Therefore, the penalty is assessed at once, and not for a taxable period per se. ***Stallard v. United States [94-1 USTC 50,056],*** rejected such an argument –an argument the Fifth Circuit characterized as "patently specious." As Stallard explains,

A taxpayer is liable for a penalty under **6672** if, and only if that person is a responsible party." That taxpayer is a responsible party if he was both 1) under a duty to collect and : such liability is imposed only on those who were responsible parties for particular tax periods.

To determine whether a person is liability because he has the power to pay those taxes without also considering whether he held that power in the particular tax periods in which the deficiency accrued would be nonsensical.

Bureaucratic ineptitude and indifference coupled with judicial admissions made as part of a confused litigation strategy-have combined to produce an untenable argument by the Government; that the assessment of penalty tax under **6672** need not refer to particular tax periods to be valid. We reject this argument as unsound, contrary to precendent, and contrary to the strictures of the IRS's own regulations. Consequently, we conclude that the IRS's failure here to assess taxes under **6672** for the proper tax period renders that assessment invalid.

The opinion of the Fifth Circuit is persuasive.

In this case, the IRS was required to send taxable period information to the taxpayer (Rogers) . The taxpayer had a right to know if the penalty stemmed from a period during which he was a responsible and willful person according to **26 C.F.R. 301.6672**. As noted above, the copy of the computer equivalent of a **23C Form** does not provide information on the taxable periods. The only other information which the taxpayer (Rogers) received which might contain this information is the IMF. The IRS has not demonstrated where the information can be found. The only apparently relevant information, the Court can identify in the IMF is the following entry found on page eight:

LAST RET-91 M/E COND-E FLC-29 9227

TAX PERIOD 55 8803 REASON CD- MOD EXT CYC-9318

FS-0 CRINV- LIEN-4 29254-715-52122-8 CAF- FZ>VT-

It appears that the "8803" entry in the starred-box may refer to the tax period March, 1988. However, without any guidance from the IRS and without any adequate explanation for the "55" – or the other codes which surround the entry – the March, 1988 period is nothing more than a guess. Furnishing, such enigmatic information without any explanation denies the taxpayer's rights under **26 C.F.R. 301.6203-1.** See **GCM 39392 (August 1, 1985).** Accordingly, this Court concludes that the IRS has failed to provide Mr. Rogers with pertinent parts of the record of the assessment which set forth the taxable period in response to Rogers' section **6203** request.

CONCLUSION

The IRS failed to meet its burden of proof. The IRS was required to demonstrate that upon the taxpayers (Rogers) request, the taxpayer (Rogers) was sent pertinent parts of the assessment record containing the name of the taxpayer, the date of assessment, the character of the liability assessed, the taxable period, and the amounts assessed. While the record shows that the IRS did furnish the required name, date, and amount information to the taxpayer (Rogers) , the record fails to show that IRS furnished the requisite information concerning the characterization and taxable period of the assessment. Consequently, the Court must conclude that a valid and enforceable assessment was not made. ***Stallard v. United States [94-1] USTC 50,056, 12F.3d 489 (5th Cir. 1994)***

David Stallard v. United States
U.S. District Court, West. Dist. Tex., Austin Div.: A-91-CA-954, 10/30/92

From the time the taxpayer was notified of a proposed assessment of tax as a responsible person, he did everything in his power to help the IRS clear up and conclude the matter. He continuously pointed out IRS errors in referring to the wrong period of assessment and requested conferences which the IRS refused. As a last resort, the taxpayer filed a refund suit to determine the matter. The taxpayer was entitled to summary judgment on his suit for refund of tax penalties paid and for the release of federal tax liens related to the penalties.

Internal Revenue Code (IRC) **6672** provides generally that any person required "to collect, truthfully account for, and pay over" trust fund taxes who willfully fails to do so or willfully attempts to avoid payment shall be liable for penalties. However, a tax penalty must be properly assessed and the taxpayer properly noticed before the penalty is enforceable. **IRC 6203, 6303** and **6671(a).**See also, ***Sage v. United States [90-2 USTC 50453], 908 F.2d 18,21 (5th Cir. 1990).*** Furthermore, assessment and notice must be completed within the time permitted by the statute of limitations. See ***Brafman v. U.S. [67-2 USTC 12,494], 484 F.2d 863, 865 (5th Cir. 1967).***

Stallard (taxpayer) contends the IRS did not comply with the statutory requirements for assessment or notice within the statute of limitations, as extend by the waiver, and therefore, he is not required to pay the penalty.

IRC **6303** provides "Where it is not otherwise provided by this rule, the Secretary shall , as soon as practicable, and within 60 days, after making of an assessment of a tax pursuant to section **6203,** give notice to each person liable for the unpaid tax, stating the amount and demanding payment, thereof." The accompanying federal regulation, Treasury Regulation

301.6303-1, provides the notice shall identify the individual liable for the unpaid tax, state the amount and demand.

IRC 6201 requires the Secretary of the Treasury to assess all penalties which have not been paid. Section **6203** provides, "The assessment shall be made by recording the liability in accordance with rules or regulations prescribed by the Secretary. Upon request of the taxpayer the Secretary shall furnish the taxpayer a copy of the record of assessment."

Treasure Regulation **301.6203-1** provides "The assessment shall be made by an assessment officer signing the summary record of assessment. The summary record, through supporting records, shall provide identification of the taxpayer, the character of the liability assessed, the taxable period, if applicable, and the amount of the assessment… The date of the assessment is the date the summary record is signed by an assessment officer. If the taxpayer requests a copy of the record of assessment, he shall be furnished a copy of the pertinent parts of the assessment which set forth the name of the taxpayer, the date of assessment, the character of the liability assessed, the taxable period if applicable, and the amounts assessed."

Neither **6203** nor Treasury Regulation **301.6203-1** provides any guidance when a tax period is "applicable" and must be included in the summary record or the supporting records. However, trust fund taxes are assessed quarterly. It is, therefore, undeniable that the taxable period is "applicable" and must be contained in the summary record of assessment or the supporting records and furnished to the taxpayer upon request.

IRS presented four documents to the Court that it contends, when read together, satisfy the requirements of **6203** and **301.6203-1.** These four documents are:

1. the summary record of assessment
2. the "Proposed Assessment of 100 Percent Penalty" (Form 2751)
3. the "Certificate of Assessment and Payments" (Form 4340)
4. the "Request for 100-Percent Penalty Assessment" (Form 2749)

The US insists that the "Notice of Penalty Charge" (Form 8449) does not constitute the summary record of assessment or supporting records, "this document is merely to put the taxpayer on notice that the penalty has been assessed and to demand payment." Additional, the US does not contend that either of the "Notice of Federal Tax Lien Under Internal Revenue Laws" filed against Stallard are the summary record of assessment or supporting records.

The IRS submitted a **"Form 23C"** which it asserts is a summary record of assessment. It is dated June 12, 1988 and was signed by an assessment officer. Other than the assessment

officer's signature, it does not contain any of the **6203** or **301.6203-1** requirements. It does not identify the taxpayer, identify the character the liability assessed, identify the tax period, or state the amount of the assessment. The IRS admits, "It is a summary of assessments made by one service center that have [been] posted to the Internal Revenue Services main computer for one day. No individual assessment is shown on a **23C**; it only shows totals for the service center for each class of tax." Therefore, unless the supporting records satisfy the statutory requirements, there is no evidence that the IRS made a valid assessment against Stallard for the tax period ended March 31, 1982, before the extended statute of limitations expired on December 31, 1990.

SUPPORTING RECORDS

"Certificate of Assessment and Payments (Form 4340). The "Certificate of Assessment and Payment" presented to the Court reflects that the IRS assessed the taxpayer (Stallard) a "100% penalty" on June 13, 1988. The Certificate identifies the taxpayer (Stallard), as the taxpayer assessed, by name, address and social security number. It also reflects June 13, 1988, as the date the IRS claims it assessed the taxpayer (Stallard), reflects the character of the liability (100% penalty), identifies the tax period and states the amount assessed. In sum, it provides al the specific information required by IRC **6203** and **301.6203-1.** Ordinarily, the "Certificate of Assessment and Payments" is presumptive proof of a valid assessment. However, for the reasons stated below, the Court does not believe the presumption arises in this case.

In ***Brafman v. United States***, the taxpayer contended she was not liable for penalties because the United States had not complied with the requirements of **IRC 6203** and Treasury Regulation **301.6203-1.** The assessment officer had not signed the assessment certificate. The Court quoting ***United States v. Lehigh [62-1 USTC 9179], 201 F.Supp. 224, 234 (W.D. Ark. 1961***) stated, "Neglect to comply with [the procedures outlined in **IRC 6203** and Treasure Reg. **301.6203-1]** may entail consequences which the neglecting party must be prepared to face, whether such party be the taxpayer or the Government." The Court held, "Since the assessment certificate in this case was not signed by the proper official, as prescribed by the applicable Trea. Reg., within the statutory period after the filing of the estate tax return, this suit for collection of any deficiency is barred by the statute of limitations. The basic message of ***Brafman*** is the IRS must strictly comply with **IRC 6203** and Treasury Regulation **301.6203-1** and it must do so within the statutory period, or there is not a valid assessment.

In this case, the "Certificate of Assessments and Payments" was prepared and executed on February 10, 1992; subsequent to the filing of the lawsuit and, more importantly, subsequent to December 31, 190, the date the extended statute of limitations expired. If the

Court accepts this as presumptive proof that a valid assessment occurred or as any evidence that a valid assessment occurred, the statute of limitations becomes meaningless. Therefore, a "Certificate of Assessment and Payments' prepared and executed after the expiration of the statute of limitations is no evidence that a valid assessment occurred.

In sum, the IRS refused to follow the IRC and its own regulations and, under the circumstances of this case, demonstrated gross and unjustifiable incompetence. ***Stallard*** did not "lay behind the log" waiting for the limitations period to expire and then claim no valid assessment had occurred. He in fact did everything within his power to help the IRS clear up and conclude this matter.

Joseph R. Pursifull v. United States
U.S. District Court, So. Dist. Ohio, Wst. Div.; C-1-91-0248, 3/26/92

Jurisdiction is alleged pursuant to **28 U.S.C. 1340, 1346, 2410**. Plaintiff contends,

1. the IRS failed to follow the mandated procedures for making a valid assessment and
2. levy
3. the IRS failed to comply with the notice and demand requirements of **26 USC 6303(a) and 6331(d)**
4. the IRS deprived him of property in violation of the taxing and due process clauses of the Constitution and
5. violated numerous other provisions including **26 USC 6201, 6203, 6204, 6321, 6322, 6501(c)(3)** and regulations **26 CFR 301.6201-1, 301.6204-1, 601.103 (a) & (b).**

"The assessment shall be made by recording the liability of the taxpayer in the office of the Secretary in accordance with rules or regulations prescribed by the Secretary." **26 USC 6203**. Pursuant to regulation:

The assessment shall be made by an assessment officer signing the summary record of assessment. The summary record, through supporting records, shall provide identification of the taxpayer, the character of the liability assessed, the taxable period, if applicable, and the amount of the assessment….The date of the assessment is the date the summary record is signed by an assessment officer. If the taxpayer requests a copy of the record of assessment, he shall be furnished a copy of the pertinent parts of the assessment, which set forth the name of the taxpayer, the date of the assessment, the character of the liability assessed, the taxable period, if applicable, and the amounts assessed.

Within sixty days of the assessment, the IRS must "give notice to each person liable for the unpaid tax, stating the amount due and demanding payment thereof. Such notice shall be left at the dwelling or usual place of business of such person, or shall be sent by mail to such person's last known address." **26 USC 6303.**

The government attempted to establish, during trial, the date of assessment by use of the **23C Date** on a Certificate of Assessments and Payments. The court ruled that "the definition of **'23C Date'** fell within " Federal Rule of Evidence 201(b)(2) because it was capable of "accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." ***Posner [76-1 USTC 9224], 405 F.Supp. at 936 & n.3.*** The court granted the government time to submit an affidavit as to the definition of the **23C Date**. After such an affidavit was submitted, the court took judicial notice that the **23C Date** referred to the date on which the summary records of assessment were signed by the assessment officer. ***Id. at 936-37***. ***Posner*** does not dictate the result in this case because here the United States seeks to use the **23C Date** to establish not only the date of assessment, but also the fact that a valid assessment was made by the signing and dating of summary records, such as **Forms 23C**, by an assessment officer.

In ***United States v. Dixon [87-2 USTC 9485], 672 F.Supp. 503 (M.D. Ala. 1987), affd., 849 F.2d 1478 (11th Cir. 1988),*** the IRS admitted that it no longer possessed the signed **Form 23C**. Instead, it relied on the **23C Date** on a certified copy of the Certificate of Assessments and Payments to establish a valid assessment. The ***Dixon*** court noted that other courts had accepted this document as proof that an assessment had been entered in accordance with the statute and regulations and that the ***Posner*** court took judicial notice of the significance of the **23C Date**. Accordingly, the Dixon court accepted the Certificate of Assessments and Payments as presumptive proof of a valid assessment. Because the taxpayer produced no evidence to counter this presumption, the Court found that the government established that the tax liability at issue was properly assessed. In the instant case, unlike Dixon, the United States has not claimed that it no longer has the signed and dated **Form 23C,** which constitutes proof of valid assessment preferable to that of the **23C Date**.

Plaintiff has submitted a copy of a May 7, 1991 request for documents, allegedly served on the United States Attorney, that seeks copies of the signed summary records of assessments, **Form 23C**, and of the **6303** Notice and Demands. Plaintiff contends that the United States has not responded to his discovery request, and the United States has not addressed this allegation. On March 9, 1992, plaintiff filed a motion to compel, to which a response is not yet due. Generally, the IRS need only provide an inquiring taxpayer with "the pertinent parts of the assessment, which set forth the name of the taxpayer, the date of the assessment, the character of the liability assessed, the taxable period, if applicable, and

the amounts assessed." **26 CFR 301.6203-1**. In this Court, however, plaintiff is more than an inquiring taxpayer. He is a litigant in a civil adversarial matter who is entitled to request discovery and receive a response from his opponent. Therefore, it is inappropriate to grant summary judgment until plaintiff has had an opportunity to complete adequate discovery.

Moreover, Dixon and the other cases cited by the United States establish only that the Certificates of Assessments and Payments submitted by the United States enjoy a presumption of validity. In the instant case, plaintiff submitted an April 1990 IRS memorandum indicating that **Forms 23C** had been generated by computer, were unsigned, and were invalid under the current regulations. This memorandum, absent any explanation by the United States, raises a question as to whether the summary records or **Forms 23C** relating to plaintiff's assessments were properly signed and dated. Accordingly, plaintiff has rebutted the presumption of validity, making summary judgment improper.

Robert Alan Jones v. United States
U.S. Court of Appeals, 9th Circuit; 93-16960 7/13/95. Reversing and remanding a District Court decision, 93-2 USTC 50,446

A genuine issue of fact existed as to whether the IRS had assessed the trust fund recovery penalties within the period of limitation.

In an action to collect a tax, the government bears the initial burden of proof. ***Oliver v. US [91-1 USTC 50,010], 921 F.2d 916, 919 (9th Cir. 1990).*** The assessment of tax ordinarily establishes the government's prima facie case, so it becomes incumbent on the taxpayer to establish an issue of fact. Id.

The government's position is that it can collect from a "responsible person" "at any time," without regard to any statute of limitations. We agree with the Fifth Circuit, that "[t]he assessment itself must be made within three years of the filing of the return giving rise to the [responsible person] liability." ***Stallard v. United States [94-1 USTC 50, 056], 12 F.3d 489, 493 (5th Cir. 1994)***

In the case at bar, the government introduced three items of evidence regarding the assessment:

1. A July 27, 1990 certificate of official record certifying a **Form 23C** summary record of assessment dated November 19, 1984
2. A July 26, 1990 certificate of official record certifying a Form 4340 certificate

of assessments and payments for Mr. Jones for the third quarter of 1982, also dated July 26, 1990

3. A undated form 2751, "Proposed Assessment of 100 Percent Penalty" to Mr. Jones, listing the penalties for all the 1981 and 1982 quarters.

No affidavits were introduced to show when the 4340 or 2751 were prepared.

Mr. Jones argues that the details of these documents themselves establish a genuine issue of fact as to whether the assessment was made prior to 1990. He is right. The **23C** says on its face that it was made November 19, 1984 and is signed on that date, which would be timely, but it does not identify any party as having been assessed. It recites that the assessments "are specified in supporting records, "but those records were not offered as evidence. There was no evidence to show that the 4340 or 2751 was the supporting records referred to in the **23C**, and some evidence to show the contrary, that they were prepared in 1990. One was undated, and other said on its face that it was prepared in 1990.

None of the amounts for taxes or penalties on the **23C** prepared in 1984 match any of the assessments now claimed against Mr. Jones. Evidently multiple taxpayers' taxes and penalties are accumulated in the totals on the **23C**. No penalties for excise taxes are shown on the current portion of the form, and no penalties for withholding taxes are shown on the deficiency portion of the form. There is no separate category for penalties standing alone: On its face, the form is inconsistent with the claim now made by the government against Mr. Jones for Section 6672 penalties encompassing both unpaid excise and unpaid withholding taxes.

If there were some way to reconcile what the form says with what the government claims, it was incumbent on the government to submit evidence so demonstrating. The Form 4340 says on its second page that it was prepared in 1990, so it cannot be the "supporting record [ ]" referred to in the 1984 **Form 23C.** It appears to be an analysis prepared by the government during litigation. Likewise the undated Proposed Assessment of 100 Percent Penalty, Form 2751, shows no indication of when it was prepared. The evidence supports the inference that no assessment was made until 1990 for the amounts now claimed against Mr. Jones. So late an assessment would be too late under the statute of limitations.

Thus, Mr. Jones has established a genuine issue of fact as to whether the amounts now claimed by the IRS were assessed within the statute of limitations period. "Official certificates, such as Form 4340, can constitute proof of the fact that the assessments were actually made. Where the official certificates do not support the proposition which must be proved, however, and lend themselves to an inference that the proposition is false, then the existence of official certificates does not suffice for summary judgment. One must read the

official documents to see what they say. It is insufficient merely that they exist. The issue of fact arises not only because the form 4340 was prepared after the three years limitation period had expired. ***Stallard v. United States.*** In addition to the lateness of the date of assessment, the numbers on the Form 23C did not match up with the amounts assessed. A notice of assessment prepared many years after the taxes allegedly became due, where there is evidence that the amounts were not assessed within the three year statute of limitations, is insufficient for summary judgment. The dates and the discrepancies establish a genuine issue of fact with rebuts the presumption of timely assessment.

The presumption in favor of the IRS was rebutted, as to the timeliness of assessment. The summary judgment is reversed, because there was a genuine issue of fact as to whether the assessment was timely, and if it was, whether Mr. Jones was a "responsible person" who "willfully" failed to pay over at least some of the taxes which became due after the receiver was appointed.

CERTIFICATE OF ASSESSMENTS, PAYMENTS, AND OTHER SPECIFIED MATTERS

ROBERT C MAGELVAIN

EIN/SSN: 181-22-4851
410-46-9094*

U.S. INDIVIDUAL INCOME TAX RETURN
FORM: 1040 PERIOD ENDING: DEC. 1985

DATE	EXPLANATION OF TRANSACTIONS	ASSESSMENT, OTHER DEBITS (REVERSAL)	PAYMENT, CREDIT (REVERSAL)	ASSESSMENT DATE (23C, RAC 006)
	ADJUSTED GROSS INCOME 140,600.00			
	TAXABLE INCOME 139,483.00			
04/20/1986	RETURN FILED AND TAX ASSESSED 98211-179-10204-6 198634	7.00		09/01/1986
04/16/1986	PAYMENT WITH RETURN		7.00	
02/03/1992	AUDIT DEFICIENCY PER DEFAULT OF 90 DAY LETTER 49247-413-90065-2			
	IRC 6662(D)-ACCURACY PENALTY 63251-346-12101-1 199215	15,245.00		12/12/1991
	QUICK ASSESSMENT 63251-346-12101-1 199215	60,979.00		12/12/1991
	FRAUD PENALTY 199215	54,778.25		12/12/1991
	RESTRICTED INTEREST ASSESSED 199215	74,338.56		12/12/1991
11/03/1992	FEDERAL TAX LIEN			
12/01/1992	FEDERAL TAX LIEN			
02/26/1993	FEDERAL TAX LIEN			

U.S. Code as of: 01/05/99

Section 6611. Interest on overpayments

Related Resources

Tax Law Guide

Tax Articles and Documents

Tax Discussion

(a) Rate
Interest shall be allowed and paid upon any overpayment in respect of any internal revenue tax at the overpayment rate established under section 6621.

(b) Period
Such interest shall be allowed and paid as follows:

(1) Credits
In the case of a credit, from the date of the overpayment to the due date of the amount against which the credit is taken.

(2) Refunds
In the case of a refund, from the date of the overpayment to a date (to be determined by the Secretary) preceding the date of the refund check by not more than 30 days, whether or not such refund check is accepted by the taxpayer after tender of such check to the taxpayer. The acceptance of such check shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon.

(3) Late returns
Notwithstanding paragraph (1) or (2) in the case of a return of tax which is filed after the last date prescribed for filing such return (determined with regard to extensions), no interest shall be allowed or paid for any day before the date on which the return is filed.

((c) Repealed. Pub. L. 85-866, title I, Sec. 83(c), Sept. 2, 1958, 72 Stat. 1664)

(d) Advance payment of tax, payment of estimated tax, and credit for income tax withholding
The provisions of section 6513 (except the provisions of subsection (c) thereof, applicable in determining the date of payment of tax for purposes of determining the period of limitation on credit or refund, shall be applicable in determining the date of payment for purposes of subsection (a).

(e) Disallowance of interest on certain overpayments

(1) Refunds within 45 days after return is filed
If any overpayment of tax imposed by this title is refunded within 45 days after the last day prescribed for filing the return of such tax (determined without regard to any extension of time for filing the return) or, in the case of a return filed after such last date, is refunded within 45 days after the date the return is filed, no interest shall be allowed under subsection (a) on such overpayment.

(2) Refunds after claim for credit or refund
If -
(A) the taxpayer files a claim for a credit or refund for any overpayment of tax imposed by this title, and
(B) such overpayment is refunded within 45 days after such claim is filed,
no interest shall be allowed on such overpayment from the date the claim is filed until the day the refund is made.
(3) IRS initiated adjustments
If an adjustment initiated by the Secretary, results in a refund or credit of an overpayment, interest on such overpayment shall be computed by subtracting 45 days from the number of days interest would otherwise be allowed with respect to such overpayment.
(f) Refund of income tax caused by carryback or adjustment for certain unused deductions
(1) Net operating loss or capital loss carryback
For purposes of subsection (a), if any overpayment of tax imposed by subtitle A results from a carryback of a net operating loss or net capital loss, such overpayment shall be deemed not to have been made prior to the filing date for the taxable year in which such net operating loss or net capital loss arises.
(2) Foreign tax credit carrybacks
For purposes of subsection (a), if any overpayment of tax imposed by subtitle A results from a carryback of tax paid or accrued to foreign countries or possessions of the United States, such overpayment shall be deemed not to have been made before the filing date for the taxable year in which such taxes were in fact paid or accrued, or, with respect to any portion of such credit carryback from a taxable year attributable to a net operating loss carryback or a capital loss carryback from a subsequent taxable year, such overpayment shall be deemed not to have been made before the filing date for such subsequent taxable year.
(3) Certain credit carrybacks
(A) In general
For purposes of subsection (a), if any overpayment of tax imposed by subtitle A results from a credit carryback, such overpayment shall be deemed not to have been made before the filing date for the taxable year in which such credit carryback arises, or, with respect to any portion of a credit carryback from a taxable year attributable to a net operating loss carryback, capital loss carryback, or other credit carryback from a subsequent taxable year, such overpayment shall be deemed not to have been made before the filing date for such subsequent taxable year.
(B) Credit carryback defined
For purposes of this paragraph, the term ''credit carryback'' has the meaning given such term by section 6511(d)(4)(C).
(4) Special rules for paragraphs (1), (2), and (3)
(A) Filing date
For purposes of this subsection, the term ''filing date'' means the last date prescribed for filing the return of tax imposed by subtitle A for the taxable year (determined without regard to extensions).
(B) Coordination with subsection (e)
(i) In general
For purposes of subsection (e) -
(I) any overpayment described in paragraph (1), (2), or (3) shall be treated as an overpayment for the loss year,
(II) such subsection shall be applied with respect to

such overpayment by treating the return for the loss year as not filed before claim for such overpayment is filed.

(ii) Loss year

For purposes of this subparagraph, the term ''loss year'' means -

(I) in the case of a carryback of a net operating loss or net capital loss, the taxable year in which such loss arises,

(II) in the case of a carryback of taxes paid or accrued to foreign countries or possessions of the United States, the taxable year in which such taxes were in fact paid or accrued (or, with respect to any portion of such carryback from a taxable year attributable to a net operating loss carryback or a capital loss carryback from a subsequent taxable year, such subsequent taxable year), and

(III) in the case of a credit carryback (as defined in paragraph (3)(B)), the taxable year in which such credit carryback arises (or, with respect to any portion of a credit carryback from a taxable year attributable to a net operating loss carryback, a capital loss carryback, or other credit carryback from a subsequent taxable year, such subsequent taxable year).

(C) Application of subparagraph (B) where section 6411(a) claim filed

For purposes of subparagraph (B)(i)(II), if a taxpayer -

(i) files a claim for refund of any overpayment described in paragraph (1), (2), or (3) with respect to the taxable year to which a loss or credit is carried back, and

(ii) subsequently files an application under section 6411(a) with respect to such overpayment,

then the claim for overpayment shall be treated as having been filed on the date the application under section 6411(a) was filed.

(g) No interest until return in processible form

(1) For purposes of subsections (b)(3), (FOOTNOTE 1) and (e), a return shall not be treated as filed until it is filed in processible form.

(FOOTNOTE 1) So in original. The comma probably should not appear.

(2) For purposes of paragraph (1), a return is in a processible form if -

(A) such return is filed on a permitted form, and

(B) such return contains -

(i) the taxpayer's name, address, and identifying number and the required signature, and

(ii) sufficient required information (whether on the return or on required attachments) to permit the mathematical verification of tax liability shown on the return.

(h) Prohibition of administrative review

For prohibition of administrative review, see section 6406.

Previous [Notes] Next

U.S. Code as of: 01/05/99

Section 6513. Time return deemed filed and tax considered paid

Related Resources

Tax Law Guide

Tax Articles and Documents

Tax Discussion

(a) Early return or advance payment of tax

For purposes of section 6511, any return filed before the last day prescribed for the filing thereof shall be considered as filed on such last day. For purposes of section 6511(b)(2) and (c) and section 6512, payment of any portion of the tax made before the last day prescribed for the payment of the tax shall be considered made on such last day. For purposes of this subsection, the last day prescribed for filing the return or paying the tax shall be determined without regard to any extension of time granted the taxpayer and without regard to any election to pay the tax in installments.

(b) Prepaid income tax

For purposes of section 6511 or 6512 -

(1) Any tax actually deducted and withheld at the source during any calendar year under chapter 24 shall, in respect of the recipient of the income, be deemed to have been paid by him on the 15th day of the fourth month following the close of his taxable year with respect to which such tax is allowable as a credit under section 31.

(2) Any amount paid as estimated income tax for any taxable year shall be deemed to have been paid on the last day prescribed for filing the return under section 6012 for such taxable year (determined without regard to any extension of time for filing such return).

(3) Any tax withheld at the source under chapter 3 shall, in respect of the recipient of the income, be deemed to have been paid by such recipient on the last day prescribed for filing the return under section 6012 for the taxable year (determined without regard to any extension of time for filing) with respect to which such tax is allowable as a credit under section 1462. For this purpose, any exemption granted under section 6012 from the requirement of filing a return shall be disregarded.

(c) Return and payment of social security taxes and income tax withholding

Notwithstanding subsection (a), for purposes of section 6511 with respect to any tax imposed by chapter 3, 21, or 24 -

(1) If a return for any period ending with or within a calendar year is filed before April 15 of the succeeding calendar year, such return shall be considered filed on April 15 of such succeeding calendar year; and

(2) If a tax with respect to remuneration or other amount paid

during any period ending with or within a calendar year is paid before April 15 of the succeeding calendar year, such tax shall be considered paid on April 15 of such succeeding calendar year.

(d) Overpayment of income tax credited to estimated tax

If any overpayment of income tax is, in accordance with section 6402(b), claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of the income tax for the succeeding taxable year (whether or not claimed as a credit in the return of estimated tax for such succeeding taxable year), and no claim for credit or refund of such overpayment shall be allowed for the taxable year in which the overpayment arises.

(e) Payments of Federal unemployment tax

Notwithstanding subsection (a), for purposes of section 6511 any payment of tax imposed by chapter 23 which, pursuant to section 6157, is made for a calendar quarter or other period within a calendar year shall, if made before the last day prescribed for filing the return for the calendar year (determined without regard to any extension of time for filing), be considered made on such last day.

Previous **[Notes]** **Next**

Code **Sec. 31.3401(c)-1 Employee.**

(a) The term EMPLOYEE includes every individual performing services if the relationship between him and the person for whom he performs such services is the legal relationship of employer and employee. The term includes officers and employees, whether elected or appointed, of the United States, a State, Territory, Puerto Rico, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing.

(b) Generally the relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is an employer. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools and the furnishing of a place to work to the individual who performs the services. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, he is not an employee.

(c) Generally, physicians, lawyers, dentists, veterinarians, contractors, subcontractors, public stenographers, auctioneers, and others who follow an independent trade, business, or profession, in which they offer their services to the public, are not employees.

(d) Whether the relationship of employer and employee exists will in doubtful cases be determined upon an examination of the particular facts of each case.

(e) If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if such relationship exists, it is of no consequence that the employee is designated as a partner, coadventurer, agent, independent contractor, or the like.

(f) All classes or grades of employees are included within the relationship of employer and employee. Thus, superintendents, managers and other supervisory personnel are employees. Generally, an officer of a corporation is an employee of the corporation. However, an officer of a corporation who as such does not perform any services or performs only minor services and who neither receives nor is entitled to receive, directly or indirectly, any remuneration is not considered to

be an employee of the corporation. A director of a corporation in his capacity as such is not an employee of the corporation.

(g) The term EMPLOYEE includes every individual who receives a supplemental unemployment compensation benefit which is treated under paragraph (b)(14) of Section 31.3401(a)-1 as if it were wages.

(h) Although an individual may be an employee under this section, his services may be of such a nature, or performed under such circumstances, that the remuneration paid for such services does not constitute wages within the meaning of section 3401(a).

[T.D. 6516, 25 FR 13096, Dec. 20, 1960, as amended by T.D. 7068, 35 FR 17329, Nov. 11, 1970]

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

(a) Processing of returns.

When the returns are filed in the office of the district director of internal revenue or the office of the director of a regional service center, they are checked first for form, execution, and mathematical accuracy. Mathematical errors are corrected and a correction notice of any such error is sent to the taxpayer. Notice and demand is made for the payment of any additional tax so resulting, or refund is made of any overpayment. Returns are classified for examination at regional service centers. Certain individual income tax returns with potential unallowable items are delivered to Examination Divisions at regional service centers for correction by correspondence. Otherwise, returns with the highest examination potential are delivered to district Examinations Divisions based on workload capacities. Those most in need of examination are selected for office or field examination.

(b) Examination of returns - (1) General. The original examination of income (including partnership and fiduciary), estate, gift, excise, employment, exempt organization, and information returns is a primary function of examiners in the Examination Division of the office of each district director of internal revenue. Such examiners are organized in groups, each of which is under the immediate supervision of a group supervisor designated by the district director. Revenue agents (and such other officers or employees of the Internal Revenue Service as may be designated for this purpose by the Commissioner) are authorized to examine any books, papers, records, or memoranda bearing upon matters required to be included in Federal tax returns and to take testimony relative thereto and to administer oaths. See section 7602 of the Code and the regulations thereunder. There are two general types of examination. These are commonly called 'office examination' and

'field examination'. During the examination of a return a taxpayer may be represented before the examiner by an attorney, certified public accountant, or other representative. See Subpart E of this part for conference and practice requirements.

(2) Office examination - (i) Adjustments by Examination Division at service center. Certain individual income tax returns identified as containing potential unallowable items are examined by Examination Divisions at regional service centers. Correspondence examination techniques are used. If the taxpayer requests an interview to discuss the proposed adjustments, the case is transferred to the taxpayer's district office. If the taxpayer does not agree to proposed adjustments, regular appellate procedures apply.

(ii) Examinations at district office. Certain returns are examined at district offices by office examination techniques. These returns include some business returns, besides the full range of nonbusiness individual income tax returns. Office examinations are conducted primarily by the interview method. Examinations are conducted by correspondence only when warranted by the nature of the questionable items and by the convenience and characteristics of the taxpayer. In a correspondence examination, the taxpayer is asked to explain or send supporting evidence by mail. In an office interview examination, the taxpayer is asked to come to the district director's office for an interview and to bring certain records in support of the return. During the interview examination, the taxpayer has the right to point out to the examiner any amounts included in the return which are not taxable, or any deductions which the taxpayer failed to claim on the return. If it develops that a field examination is necessary, the examiner may conduct such examination.

(3) Field examination. Certain returns are examined by field examination which involves an examination of the taxpayer's books and records on the taxpayer's premises. An examiner will check the entire return filed by the taxpayer and will examine all books, papers, records, and memoranda dealing with matters required to be included in the return. If the return presents an engineering or appraisal problem (e.g., depreciation or depletion deductions, gains or losses upon the sale or exchange of property, or losses on account of abandonment, exhaustion, or obsolescence), it may be investigated by an engineer agent who makes a separate report.

(4) Conclusion of examination. At the conclusion of an office or field examination, the taxpayer is given an opportunity to agree with the findings of the examiner. If the taxpayer does not agree, the examiner will inform the taxpayer of the appeal rights. If the taxpayer does agree with the proposed changes, the examiner will invite the taxpayer to execute either Form 870 or another appropriate agreement form. When the taxpayer agrees with the proposed changes but

does not offer to pay any deficiency or additional tax which may be due, the examiner will also invite payment (by check or money order), together with any applicable interest or penalty. If the agreed case involves income, profits, estate, gift, generation-skipping transfer, or Chapter 41, 42, 43, or 44 taxes, the agreement is evidenced by a waiver by the taxpayer of restrictions on assessment and collection of the deficiency, or an acceptance of a proposed overassessment. If the case involves excise or employment taxes or 100 percent penalty, the agreement is evidenced in the form of a consent to assessment and collection of additional tax or penalty and waiver of right to file claim for abatement, or the acceptance of the proposed overassessment. Even though the taxpayer signs an acceptance of a proposed overassessment the district director or the director of the regional service center remains free to assess a deficiency. On the other hand, the taxpayer who has given a waiver may still claim a refund of any part of the deficiency assessed against, and paid by, the taxpayer, or any part of the tax originally assessed and paid by the taxpayer. The taxpayer's acceptance of an agreed overassessment does not prevent the taxpayer from filing a claim and bringing a suit for an additional sum, nor does it preclude the Government from maintaining suit to recover an erroneous refund. As a matter of practice, however, waivers or acceptances ordinarily result in the closing of a case insofar as the Government is concerned.

(5) Technical advice from the National Office - (i) Definition and nature of technical advice. (a) As used in this subparagraph, 'technical advice' means advice or guidance as to the interpretation and proper application of internal revenue laws, related statutes, and regulations, to a specific set of facts, furnished by the National Office upon request of a district office in connection with the examination of a taxpayer's return or consideration of a taxpayer's return claim for refund or credit. It is furnished as a means of assisting Service personnel in closing cases and establishing and maintaining consistent holdings in the several districts. It does not include memorandums on matters of general technical application furnished to district offices where the issues are not raised in connection with the examination of the return of a specific taxpayer.

(b) The consideration or examination of the facts relating to a request for a determination letter is considered to be in connection with the examination or consideration of a return of the taxpayer. Thus, a district director may, in his discretion, request technical advice with respect to the consideration of a request for a determination letter.

(c) If a district director is of the opinion that a ruling letter previously issued to a taxpayer should be modified or revoked, and requests the National Office to reconsider the ruling, the reference of the matter to the National Office is treated as a request for technical advice and the procedures specified in subdivision (iii) of this subparagraph should be followed in order that the National Office

may consider the district director's recommendation. Only the National Office can revoke a ruling letter. Before referral to the National Office, the district director should inform the taxpayer of his opinion that the ruling letter should be revoked. The district director, after development of the facts and consideration of the taxpayer's arguments, will decide whether to recommend revocation of the ruling to the National Office. For procedures relating to a request for a ruling, see Sec. 601.201.

(d) The Assistant Commissioner (Technical), acting under a delegation of authority from the Commissioner of Internal Revenue, is exclusively responsible for providing technical advice in any issue involving the establishment of basic principles and rules for the uniform interpretation and application of tax laws other than those which are under the jurisdiction of the Bureau of Alcohol, Tobacco, and Firearms. This authority has been largely redelegated to subordinate officials.

(e) The provisions of this subparagraph apply only to a case under the jurisdiction of a district director but do not apply to an Employee Plans case under the jurisdiction of a key district director as provided in Sec. 601.201(o) or to an Exempt Organization case under the jurisdiction of a key district director as provided in Sec. 601.201(n). The technical advice provisions applicable to Employee Plans and Exempt Organization cases are set forth in Sec. 601.201(n)(9). The provisions of this subparagraph do not apply to a case under the jurisdiction of the Bureau of Alcohol, Tobacco, and Firearms. They also do not apply to a case under the jurisdiction of an Appeals office, including a case previously considered by Appeals. The technical advice provisions applicable to a case under the jurisdiction of an Appeals office, other than Employee Plans and Exempt Organizations cases, are set forth in Sec. 601.106(f)(10). A case remains under the jurisdiction of the district director even though an Appeals office has the identical issue under consideration in the case of another taxpayer (not related within the meaning of section 267 of the Code) in an entirely different transaction. Technical advice may not be requested with respect to a taxable period if a prior Appeals disposition of the same taxable period of the same taxpayer's case was based on mutual concessions (ordinarily with a Form 870-AD, Offer of Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and of Acceptance of Overassessment). However, technical advice may be requested by a district director on issues previously considered in a prior Appeals disposition, not based on mutual concessions, of the same taxable periods of the same taxpayer with the concurrence of the Appeals office that had the case.

> (ii) Areas in which technical advice may be requested. (a) District directors may request technical advice on any technical or procedural question that develops during the audit or examination of a return, or claim for refund or credit, of a taxpayer. These procedures are applicable as provided in subdivision (i) of this subparagraph.

(b) District directors are encouraged to request technical advice on any technical or procedural

question arising in connection with any case of the type described in subdivision (i) of this subparagraph, which cannot be resolved on the basis of law, regulations, or a clearly applicable revenue ruling or other precedent issued by the National Office. This request should be made at the earliest possible stage of the examination process.

(iii) Requesting technical advice. (a) It is the responsibility of the district office to determine whether technical advice is to be requested on any issue before that office. However, while the case is under the jurisdiction of the district director, a taxpayer or his/her representative may request that an issue be referred to the National Office for technical advice on the grounds that a lack of uniformity exists as to the disposition of the issue, or that the issue is so unusual or complex as to warrant consideration by the National Office. This request should be made at the earliest possible stage of the examination process. While taxpayers are encouraged to make written requests setting forth the facts, law, and argument with respect to the issue, and reason for requesting National Office advice, a taxpayer may make the request orally. If, after considering the taxpayer's request, the examiner is of the opinion that the circumstances do not warrant referral of the case to the National Office, he/she will so advise the taxpayer. (See subdivision (iv) of this subparagraph for taxpayer's appeal rights where the examiner declines to request technical advice.)

(b) When technical advice is to be requested, whether or not upon the request of the taxpayer, the taxpayer will be so advised, except as noted in (g) of this subdivision. If the examiner initiates the action, the taxpayer will be furnished a copy of the statement of the pertinent facts and the question or questions proposed for submission to the National Office. The request for advice submitted by the district director should be so worded as to avoid possible misunderstanding, in the National Office, of the facts or of the specific point or points at issue.

(c) After receipt of the statement of facts and specific questions from the district office, the taxpayer will be given 10 calendar days in which to indicate in writing the extent, if any, to which he may not be in complete agreement. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Examination Division. Every effort should be made to reach agreement as to the facts and specific point at issue. If agreement cannot be reached, the taxpayer may submit, within 10 calendar days after receipt of notice from the district office, a statement of his understanding as to the specific point or points at issue which will be forwarded to the National Office with the request for advice. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Examination Division.

(d) If the taxpayer initiates the action to request advice, and his statement of the facts and point or

points at issue are not wholly acceptable to the district officials, the taxpayer will be advised in writing as to the areas of disagreement. The taxpayer will be given 10 calendar days after receipt of the written notice to reply to the district official's letter. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Examination Division. If agreement cannot be reached, both the statements of the taxpayer and the district official will be forwarded to the National Office.

(e)(1) In the case of requests for technical advice the taxpayer must also submit, within the 10-day period referred to in (c) and (d) of this subdivision, whichever applicable (relating to agreement by the taxpayer with the statement of facts submitted in connection with the request for technical advice), the statement described in (f) of this subdivision of proposed deletions pursuant to section 6110(c) of the Code. If the statement is not submitted, the taxpayer will be informed by the district director that such a statement is required. If the district director does not receive the statement within 10 days after the taxpayer has been informed of the need for such statement, the district director may decline to submit the request for technical advice. If the district director decides to request technical advice in a case where the taxpayer has not submitted the statement of proposed deletions, the National Office will make those deletions which in the judgment of the Commissioner are required by section 6110(c) of the Code.

(2) The requirements included in Sec. 601.105(b)(5) with respect to submissions of statements and other material with respect to proposed deletions to be made from technical advice memoranda before public inspection is permitted to take place do not apply to requests made by the district director before November 1, 1976, or requests for any document to which section 6104 of the Code applies.

(f) In order to assist the Internal Revenue Service in making the deletions, required by section 6110(c) of the Code, from the text of technical advice memoranda which are open to public inspection pursuant to section 6110(a) of the Code, there must accompany requests for such technical advice either a statement of the deletions proposed by the taxpayer and the statutory basis for each proposed deletion, or a statement that no information other than names, addresses, and taxpayer identifying numbers need be deleted. Such statements shall be made in a separate document. The statement of proposed deletions shall be accompanied by a copy of all statements of facts and supporting documents which are submitted to the National Office pursuant to (c) or (d) of this subdivision, on which shall be indicated, by the use of brackets, the material which the taxpayer indicates should be deleted pursuant to section 6110(c) of the Code. The statement of proposed deletions shall indicate the statutory basis, under section 6110(c) of the Code, for each proposed deletion. The statement of proposed deletions shall not appear or be referred to anywhere in the request for technical advice. If the taxpayer decides to request additional deletions pursuant to

section 6110(c) of the Code prior to the time the National Office replies to the request for technical advice, additional statements may be submitted.

(g) If the taxpayer has not already done so, the taxpayer may submit a statement explaining the taxpayer's position on the issues, citing precedents which the taxpayer believes will bear on the case. This statement will be forwarded to the National Office with the request for advice. If it is received at a later date, it will be forwarded for association with the case file.

(h) At the time the taxpayer is informed that the matter is being referred to the National Office, the taxpayer will also be informed of the taxpayer's right to a conference in the National Office in the event an adverse decision is indicated, and will be asked to indicate whether such a conference is desired.

> (i) Generally, prior to replying to the request for technical advice, the National Office shall inform the taxpayer orally or in writing of the material likely to appear in the technical advice memorandum which the taxpayer proposed be deleted but which the Internal Revenue Service determined should not be deleted. If so informed, the taxpayer may submit within 10 days any further information, arguments or other material in support of the position that such material be deleted. The Internal Revenue Service will attempt, if feasible, to resolve all disagreements with respect to proposed deletions prior to the time the National Office replies to the request for technical advice. However, in no event shall the taxpayer have the right to a conference with respect to resolution of any disagreements concerning material to be deleted from the text of the technical advice memorandum, but such matters may be considered at any conference otherwise scheduled with respect to the request.

(j) The provisions of (a) through (i) of this subdivision, relating to the referral of issues upon request of the taxpayer, advising taxpayers of the referral of issues, the submission of proposed deletions, and the granting of conferences in the National Office, are not applicable to technical advice memoranda described in section 611(g)(5)(A) of the Code, relating to cases involving criminal or civil fraud investigations and jeopardy or termination assessments. However, in such cases the taxpayer shall be allowed to provide the statement of proposed deletions to the National Office upon the completion of all proceedings with respect to the investigations or assessments, but prior to the date on which the Commissioner mails the notice pursuant to section 6110(f)(1) of the Code of intention to disclose the technical advice memorandum.

(k) Form 4463, Request for Technical Advice, should be used for transmitting requests for technical advice to the National Office.

(iv) Appeal by taxpayers of determinations not to seek technical advice. (a) If the taxpayer has requested referral of an issue before a district office to the National Office for technical advice, and after consideration of the request the examiner is of the opinion that the circumstances do not warrant such referral, he will so advise the taxpayer.

(b) The taxpayer may appeal the decision of the examining officer not to request technical advice by submitting to that official, within 10 calendar days after being advised of the decision, a statement of the facts, law, and arguments with respect to the issue, and the reasons why he believes the matter should be referred to the National Office for advice. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Examination Division.

(c) The examining officer will submit the statement of the taxpayer through channels to the Chief, Examination Division, accompanied by a statement of his reasons why the issue should not be referred to the National Office. The Chief, Examination Division, will determine, on the basis of the statements submitted, whether technical advice will be requested. If he determines that technical advice is not warranted, he will inform the taxpayer in writing that he proposes to deny the request. In the letter to the taxpayer the Chief, Examination Division, will (except in unusual situations where such action would be prejudicial to the best interests of the Government) state specifically the reasons for the proposed denial. The taxpayer will be given 15 calendar days after receipt of the letter in which to notify the Chief, Examination Division, whether he agrees with the proposed denial. The taxpayer may not appeal the decision of the Chief, Examination Division, not to request technical advice from the National Office. However, if he does not agree with the proposed denial, all data relating to the issue for which technical advice has been sought, including taxpayer's written request and statements, will be submitted to the National Office, Attention: Director, Examination Division, for review. After review in the National Office, the district office will be notified whether the proposed denial is approved or disapproved.

(d) While the matter is being reviewed in the National Office, the district office will suspend action on the issue (except where the delay would prejudice the Government's interests) until it is notified of the National Office decision. This notification will be made within 30 days after receipt of the data in the National Office. The review will be solely on the basis of the written record and no conference will be held in the National Office.

(v) Conference in the National Office. (a) If, after a study of the technical advice request, it appears that advice adverse to the taxpayer should be given and a conference has been requested, the taxpayer will be notified of the time and place of the conference. If conferences are being arranged with respect to more than one request for advice involving the same taxpayer, they will be so scheduled as to cause the least

inconvenience to the taxpayer. The conference will be arranged by telephone, if possible, and must be held within 21 calendar days after contact has been made. Extensions of time will be granted only if justified in writing by the taxpayer and approved by the appropriate Technical branch chief.

(b) A taxpayer is entitled, as a matter of right, to only one conference in the National Office unless one of the circumstances discussed in (c) of this subdivision exists. This conference will usually be held at the branch level in the appropriate division (Corporation Tax Division or Individual Tax Division) in the office of the Assistant Commissioner (Technical), and will usually be attended by a person who has authority to act for the branch chief. In appropriate cases the examining officer may also attend the conference to clarify the facts in the case. If more than one subject is discussed at the conference, the discussion constitutes a conference with respect to each subject. At the request of the taxpayer or his representative, the conference may be held at an earlier stage in the consideration of the case than the Service would ordinarily designate. A taxpayer has no 'right' of appeal from an action of a branch to the director of a division or to any other National Office official.

(c) In the process of review of a holding proposed by a branch, it may appear that the final answer will involve a reversal of the branch proposal with a result less favorable to the taxpayer. Or it may appear that an adverse holding proposed by a branch will be approved, but on a new or different issue or on different grounds than those on which the branch decided the case. Under either of these circumstances, the taxpayer or his representative will be invited to another conference. The provisions of this subparagraph limiting the number of conferences to which a taxpayer is entitled will not foreclose inviting a taxpayer to attend further conferences when, in the opinion of National Office personnel, such need arises. All additional conferences of this type discussed are held only at the invitation of the Service.

(d) It is the responsibility of the taxpayer to furnish to the National Office, within 21 calendar days after the conference, a written record of any additional data, line of reasoning, precedents, etc., that were proposed by the taxpayer and discussed at the conference but were not previously or adequately presented in writing. Extensions of time will be granted only if justified in writing by the taxpayer and approved by the appropriate Technical branch chief. Any additional material and a copy thereof should be addressed to and sent to the National Office which will forward the copy to the appropriate district director. The district director will be requested to give the matter his prompt attention. He may verify the additional facts and data and comment upon it to the extent he deems it appropriate.

(e) A taxpayer or a taxpayer's representative desiring to obtain information as to the status of the

case may do so by contacting the following offices with respect to matters in the areas of their responsibility:

Official	Telephone numbers, (Area Code 202)
Director Corporation Tax Division,	566-4504 or 566-4505.
Director, Individual Tax Division	566-3767 or 566-3788.

(vi) Preparation of technical advice memorandum by the National Office. (a) Immediately upon receipt in the National Office, the technical employee to whom the case is assigned will analyze the file to ascertain whether it meets the requirements of subdivision (iii) of this subparagraph. If the case is not complete with respect to any requirement in subdivisions (iii) (a) through (d) of this subparagraph, appropriate steps will be taken to complete the file. If any request for technical advice does not comply with the requirements of subdivision (iii)(e) of this subparagraph, relating to the statement of proposed deletions, the National Office will make those deletions from the technical advice memorandum which in the judgment of the Commissioner are required by section 6110(c) of the Code.

(b) If the taxpayer has requested a conference in the National Office, the procedures in subdivision (v) of this subparagraph will be followed.

(c) Replies to requests for technical advice will be addressed to the district director and will be drafted in two parts. Each part will identify the taxpayer by name, address, identification number, and year or years involved. The first part (hereafter called the 'Technical Advice Memorandum') will contain (1) a recitation of the pertinent facts having a bearing on the issue; (2) a discussion of the facts, precedents, and reasoning of the National Office; and (3) the conclusions of the National Office. The conclusions will give direct answers, whenever possible, to the specific questions of the district office. The discussion of the issues will be in such detail that the district officials are apprised of the reasoning underlying the conclusion. There shall accompany the technical advice memorandum a notice pursuant to section 6110 (f)(1) of the Code of intention to disclose the technical advice memorandum (including a copy of the version proposed to be open to public

inspection and notations of third party communications pursuant to section 6110 (d) of the Code) which the district director shall forward to the taxpayer at such time that the district director furnishes a copy of the technical advice memorandum to the taxpayer pursuant to (e) of this subsection.

(d) The second part of the reply will consist of a transmittal memorandum. In the unusual cases it will serve as a vehicle for providing the district office administrative information or other information which, under the nondisclosure statutes, or for other reasons, may not be discussed with the taxpayer.

(e) It is the general practice of the Service to furnish a copy of the technical advice memorandum to the taxpayer after it has been adopted by the district director. However, in the case of technical advice memoranda described in section 6110(g)(5)(A) of the Code, relating to cases involving criminal or civil fraud investigations and jeopardy or termination assessments, a copy of the technical advice memorandum shall not be furnished the taxpayer until all proceedings with respect to the investigations or assessments are completed.

(f) After receiving the notice pursuant to section 6110(f)(1) of the Code of intention to disclose the technical advice memorandum, if the taxpayer desires to protest the disclosure of certain information in the technical advice memorandum, the taxpayer must within 20 days after the notice is mailed submit a written statement identifying those deletions not made by the Internal Revenue Service which the taxpayer believes should have been made. The taxpayer shall also submit a copy of the version of the technical advice memorandum proposed to be open to public inspection on which the taxpayer indicates, by the use of brackets, the deletions proposed by the taxpayer but which have not been made by the Internal Revenue Service. Generally the Internal Revenue Service will not consider the deletion under this subparagraph of any material which the taxpayer did not, prior to the time when the National Office sent its reply to the request for technical advice to the district director, propose be deleted. The Internal Revenue Service shall, within 20 days after receipt of the response by the taxpayer to the notice pursuant to section 6110(f)(1) of the Code, mail to the taxpayer its final administrative conclusion with respect to the deletions to be made.

> (vii) Action on technical advice in district offices. (a) Unless the district director feels that the conclusions reached by the National Office in a technical advice memorandum should be reconsidered and promptly requests such reconsideration, his office will proceed to process the taxpayer's case on the basis of the conclusions expressed in the technical advice memorandum.

(b) The district director will furnish to the taxpayer a copy of the technical advice memorandum

described in subdivision (vi)(c) of this subparagraph and the notice pursuant to section 6110(f)(1) of the Code of intention to disclose the technical advice memorandum (including a copy of the version proposed to be open to public inspection and notations of third party communications pursuant to section 6110(d) of the Code). The preceding sentence shall not apply to technical advice memoranda involving civil fraud or criminal investigations, or jeopardy or termination assessments, as described in subdivision (iii)(j) of this subparagraph or to documents to which section 6104 of the Code applies.

(c) In those cases in which the National Office advises the district director that he should not furnish a copy of the technical memorandum to the taxpayer, the district director will so inform the taxpayer if he requests a copy.

(viii) Effect of technical advice. (a) A technical advice memorandum represents an expression of the views of the Service as to the application of law, regulations, and precedents to the facts of a specific case, and is issued primarily as a means of assisting district officials in the examination and closing of the case involved.

(b) Except in rare or unusual circumstances, a holding in a technical advice memorandum that is favorable to the taxpayer is applied retroactively. Moreover, since technical advice, as described in subdivision (i) of this subparagraph, is issued only on closed transactions, a holding in a technical advice memorandum that is adverse to the taxpayer is also applied retroactively unless the Assistant Commissioner (Technical) exercises the discretionary authority under section 7805(b) of the Code to limit the retroactive effect of the holding. Likewise, a holding in a technical advice memorandum that modifies or revokes a holding in a prior technical advice memorandum will also be applied retroactively, with one exception. If the new holding is less favorable to the taxpayer, it will generally not be applied to the period in which the taxpayer relied on the prior holding in situations involving continuing transactions of the type described in Sec. 01.201(1) (7) and 601.201(1) (8).

(c) Technical advice memoranda often form the basis for revenue rulings. For the description of revenue rulings and the effect thereof, see Sec. 01.601(d)(2)(i)(a) and 601.601(d) (2) (v).

(d) A district director may raise an issue in any taxable period, even though he or she may have asked for and been furnished technical advice with regard to the same or a similar issue in any other taxable period.

(c) District procedure-(1) Office examination. (i) In a correspondence examination the taxpayer is furnished with a report of the examiner's findings by a form letter. The taxpayer is asked to sign and return an agreement if the taxpayer accepts the findings. The letter also provides a detailed explanation of the alternatives available if the taxpayer does not accept the findings, including

consideration of the case by an Appeals office, and requests the taxpayer to inform the district director, within the specified period, of the choice of action. An Appeals office conference will be granted to the taxpayer upon request without submission of a written protest.

(ii) If, at the conclusion of an office interview examination, the taxpayer does not agree with the adjustments proposed, the examiner will fully explain the alternatives available which include, if practicable, an immediate interview with a supervisor or an immediate conference with an Appeals Officer. If an immediate interview or Appeals office conference is not practicable, or is not requested by the taxpayer, the examination report will be mailed to the taxpayer under cover of an appropriate transmittal letter. This letter provides a detailed explanation of the alternatives available, including consideration of the case by an Appeals office, and requests the taxpayer to inform the district director, within the specified period, of the choice of action. An appeals office conference will be granted to the taxpayer upon request without submission of a written protest.

(2) Field examination. (i) If, at the conclusion of an examination, the taxpayer does not agree with the adjustments proposed, the examiner will prepare a complete examination report fully explaining all proposed adjustments. Before the report is sent to the taxpayer, the case file will be submitted to the district Centralized Services and, in some cases, Quality Review function for appropriate review. Following such review, the taxpayer will be sent a copy of the examination report under cover of a transmittal (30-day) letter, providing a detailed explanation of the alternatives available, including consideration of the case by an Appeals office, and requesting the taxpayer to inform the district director, within the specified period, of the choice of action.

(ii) If the total amount of proposed additional tax, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) does not exceed $2,500 for any taxable period, the taxpayer will be granted an Appeals office conference on request. A written protest is not required.

(iii) If for any taxable period the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) exceeds $2,500 but does not exceed $10,000, the taxpayer, on request, will be granted an Appeals office conference, provided a brief written statement of disputed issues is submitted.

(iv) If for any taxable period the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) exceeds $10,000, the taxpayer, on request, will be granted an Appeals office conference, provided a written protest is filed.

(d) Thirty-day letters and protests - (1) General. The report of the examiner, as approved after review, recommends one of four determinations:

(i) Acceptance of the return as filed and closing of the case;

(ii) Assertion of a given deficiency or additional tax;

(iii) Allowance of a given overassessment, with or without a claim for refund, credit, or abatement;

(iv) Denial of a claim for refund, credit, or abatement which has been filed and is found wholly lacking in merit. When a return is accepted as filed (as in subdivision (i) of this subparagraph), the taxpayer is notified by appropriate 'no change' letter. In an unagreed case, the district director sends to the taxpayer a preliminary or '30-day letter' if any one of the last three determinations is made (except a full allowance of a claim in respect of any tax). The 30-day letter is a form letter which states the determination proposed to be made. It is accompanied by a copy of the examiner's report explaining the basis of the proposed determination. It suggests to the taxpayer that if the taxpayer concurs in the recommendation, he or she indicate agreement by executing and returning a waiver or acceptance. The preliminary letter also informs the taxpayer of appeal rights available if he or she disagrees with the proposed determination. If the taxpayer does not respond to the letter within 30 days, a statutory notice of deficiency will be issued or other appropriate action taken, such as the issuance of a notice of adjustment, the denial of a claim in income, profits, estate, and gift tax cases, or an appropriate adjustment of the tax liability or denial of a claim in excise and employment tax cases.

(2) Protests. (i) No written protest or brief written statement of disputed issues is required to obtain an Appeals office conference in office interview and correspondence examination cases.

(ii) No written protest or brief written statement of disputed issues is required to obtain an Appeals office conference in a field examination case if the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be

compromised) is $2,500 or less for any taxable period.

(iii) A written protest is required to obtain Appeals consideration in a field examination case if the total amount of proposed tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) exceeds $10,000 for any taxable period.

(iv) A written protest is optional (although a brief written statement of disputed issues is required) to obtain Appeals consideration in a field examination case if for any taxable period the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) exceeds $2,500 but does not exceed $10,000.

(v) Instructions for preparation of written protests are sent to the taxpayer with the transmittal (30-day) letter.

(e) Claims for refund or credit. (1) After payment of the tax a taxpayer may (unless he has executed an agreement to the contrary) contest the assessment by filing a claim for refund or credit for all or any part of the amount paid, except as provided in section 6512 of the Code with respect to certain taxes determined by the Tax Court, the decision of which has become final. A claim for refund or credit of income taxes shall be made on Form 1040X, 1120X, or an amended income tax return, in accordance with Sec. 301.6402-3. In the case of taxes other than income taxes, a claim for refund or credit shall be made on Form 843. The appropriate forms are obtainable from district directors or directors of service centers. Generally, the claim, together with appropriate supporting evidence, must be filed at the location prescribed in Sec. 301.6402-2(a) (2). A claim for refund or credit must be filed within the applicable statutory period of limitation. In certain cases, a properly executed income tax return may operate as a claim for refund or credit of the amount of the overpayment disclosed by such return. (See Sec. 301.6402-3).

(2) When claims for refund or credit are examined by the Examination Division, substantially the same procedure is followed (including appeal rights afforded to taxpayers) as when taxpayers' returns are originally examined. But see Sec. 601.108 for procedure for reviewing proposed overpayment exceeding $200,000 of income, estate, and gift taxes.

(3) As to suits for refund, see Sec. 601.103 (c).

(4) (Reserved)

(5) There is also a special procedure applicable to applications for tentative carryback adjustments under section 6411 of the Code (consult Forms 1045 and 1139).

(6) For special procedure applicable to claims for payment or credit in respect of gasoline used on a farm for farming purposes, for certain nonhighway purposes, for use in commercial aircraft, or used by local transit systems, see sections 39, 6420, and 6421 of the Code and Sec. 601.402(c)(3). For special procedure applicable to claims for payment or credit in respect of lubricating oil used otherwise than in a highway motor vehicle, see sections 39 and 6424 of the Code and Sec. 601.402(c)(3). For special procedure applicable for credit or refund of aircraft use tax, see section 6426 of the Code and Sec. 601.402(c)(4). For special procedure applicable for payment or credit in respect of special fuels not used for taxable purposes, see sections 39 and 6427 of the Code and Sec. 601.402(c)(5).

(7) For special procedure applicable in certain cases to adjustment of overpayment of estimated tax by a corporation see section 6425 of the Code.

(f) Interruption of examination procedure. The process of field examination and the course of the administrative procedure described in this section and in the following section may be interrupted in some cases by the imminent expiration of the statutory period of limitations for assessment of the tax. To protect the Government's interests in such a case, the district director of internal revenue or other designated officer may be required to dispatch a statutory notice of deficiency (if the case is within jurisdiction of U.S. Tax Court), or take other appropriate action to assess the tax, even though the case may be in examination status. In order to avoid interruption of the established procedure (except in estate tax cases), it is suggested to the taxpayer that he execute an agreement on Form 872 (or such other form as may be prescribed for this purpose). To be effective this agreement must be entered into by the taxpayer and the district director or other appropriate officer concerned prior to the expiration of the time otherwise provided for assessment. Such a consent extends the period for assessment of any deficiency, or any additional or delinquent tax, and extends the period during which the taxpayer may claim a refund or credit to a date 6 months after the agreed time of extension of the assessment period. When appropriate, a consent may be entered into restricted to certain issues.

(g) Fraud. The procedure described in this section does not apply in any case in which criminal prosecution is under consideration. Such procedure does obtain, however, in cases involving the assertion of the civil fraud penalty after the criminal aspects of the case have been closed.

(h) Jeopardy assessments. If the district director believes that the assessment or collection of a tax will be jeorpardized by delay, he/she is authorized and required to assess the tax immediately,

together with interest and other additional amounts provided by law, notwithstanding the restrictions on assessment or collection of income, estate, gift, generation-skipping transfer, or Chapter 41, 42, 43, or 44 taxes contained in section 6213(a) of the Code. A jeopardy assessment does not deprive the taxpayer of the right to file a petition with the Tax Court. Collection of a tax in jeopardy may be immediately enforced by the district director upon notice and demand. To stay collection, the taxpayer may file with the district director a bond equal to the amount for which the stay is desired. The taxpayer may request a review in the Appeals office of whether the making of the assessment was reasonable under the circumstances and whether the amount assessed or demanded was appropriate under the circumstances. See section 7429. This request shall be made, in writing, within 30 days after the earlier of -

(1) The day on which the taxpayer is furnished the written statement described in section 7429(a)(1); or

(2) The last day of the period within which this statement is required to be furnished. An Appeals office conference will be granted as soon as possible and a decision rendered without delay.

(i) Regional post review of examined cases. Regional Commissioners review samples of examined cases closed in their district offices to insure uniformity throughout their districts in applying Code provisions, regulations, and rulings, as well as the general policies of the Service.

(j) Reopening of Cases Closed After Examination. (1) The Service does not reopen any case closed after examination by a district office or service center, to make an adjustment unfavorable to the taxpayer unless:

(i) There is evidence of fraud, malfeasance, collusion, concealment, or misrepresentation of a material fact; or

(ii) The prior closing involved a clearly defined substantial error based on an established Service position existing at the time of the previous examination; or

(iii) Other circumstances exist which indicate failure to reopen would be a serious administrative omission.

(2) All reopenings are approved by the Chief, Examination Division (District Director in streamlined districts), or by the Chief, Compliance Division, for cases under his/her jurisdiction. If an additional inspection of the taxpayer's books of account is necessary, the notice to the taxpayer required by Code section 7605(b) will be delivered to the taxpayer at the time the

reexamination is begun.

(k) Transfer of returns between districts. When request is received to transfer returns to another district for examination or the closing of a cased, the district director having jurisdiction may transfer the case, together with pertinent records to the district director of such other district. The Service will determine the time and place of the examination. In determining whether a transfer should be made, circumstances such as the following will be considered:

(1) Change of the taxpayer's domicile, either before or during examination.

(2) Discovery that taxpayer's books and records are kept in another district.

(3) Change of domicile of an executor or administrator to another district before or during examination.

(4) The effective administration of the tax laws.

(l) Special procedures for crude oil windfall profit tax cases. For special procedures relating to crude oil windfall profit tax cases, see Sec. 601.405. (5 U.S.C. 301 and 552) 80 Stat. 379 and 383; sec. 7805 of the Internal Revenue Code of 1954, 68A Stat. 917 (26 U.S.C. 7805))

[32 FR 15990, Nov. 22, 1967]

Sec. 601.106 Appeals functions.

(a) General.

(1)

(i) There are provided in each region Appeals offices with office facilities within the region.

Unless they otherwise specify, taxpayers living outside the United States use the facilities of the Washington, D.C., Appeals Office of the the Mid-Atlantic Region. Subject to the limitations set forth in subparagraphs (2) and (3) of this paragraph, the Commissioner has delegated to certain officers of the Appeals offices authority to represent the regional commissioner in those matters set forth in subdivisions (ii) through (v) of this subparagraph. If a statutory notice of deficiency was issued by a district director or the Director, Foreign Operations District, the Appeals office may waive jurisdiction to the director who issued the statutory notice during the 90-day (or 150-day) period for filing

a petition with the Tax Court, except where criminal prosecution has been recommended and not finally disposed of, or the statutory notice includes the ad valorem fraud penalty. After the filing of a petition in the Tax Court, the Appeals office will have exclusive settlement jurisdiction, subject to the provisions of subparagraph (2) of this paragraph, for a period of 4 months (but no later than the receipt of the trial calendar in regular cases and no later than 15 days before the calendar call in S cases), over cases docketed in the Tax Court. Subject to the exceptions and limitations set forth in subparagraph (2) of this paragraph, there is also vested in the Appeals offices authority to represent the regional commissioner in his/her exclusive authority to settle (a) all cases docketed in the Tax Court and designated for trial at any place within the territory comprising the region, and (b) all docketed cases originating in the office of any district director situated within the region, or in which jurisdiction has been transferred to the region, which are designated for trial at Washington, D.C., unless the petitioner resides in, and his/her books and records are located or can be made available in, the region which includes Washington, D.C.

(ii) Certain officers of the Appeals offices may represent the regional commissioner in his/her exclusive and final authority for the determination of -

(a) Federal income, profits, estate (including extensions for payment under section 6161(a)(2)), gift, generation-skipping transfer, or Chapter 41, 42, 43, or 44 tax liability (whether before or after the issuance of a statutory notice of deficiency);

(b) Employment or certain Federal excise tax liability; and

(c) Liability for additions to the tax, additional amounts, and assessable penalties provided under Chapter 68 of the Code, in any case originating in the office of any district director situated in the region, or in any case in which jurisdiction has been transferred to the region.

(iii) The taxpayer must request Appeals consideration.

(a) An oral request is sufficient to obtain Appeals consideration in (1) all office interview or correspondence examination cases or (2) a field examination case if the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) is $2,500 or less for any taxable period. No written protest or brief statement of

disputed issues is required.

(b) A brief written statement of disputed issues is required (a written protest is optional) to obtain Appeals consideration in a field examination case if the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) exceeds $2,500 but does not exceed $10,000 for any taxable period.

(c) A written protest is required to obtain Appeals consideration in a field examination case if the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) exceeds $10,000 for any taxable period.

(d) A written protest is required to obtain Appeals consideration in all employee plan and exempt organization cases.

(e) A written protest is required to obtain Appeals consideration in all partnership and S corporation cases.

(iv) Sections 6659(a)(1) and 6671(a) provide that additions to the tax, additional amounts, penalties and liabilities (collectively referred to in this subdivision as 'penalties') provided by Chapter 68 of the Code shall be paid upon notice and demand and shall be assessed and collected in the same manner as taxes. Certain Chapter 68 penalties may be appealed after assessment to the Appeals office. This post-assessment appeal procedure applies to all but the following cCapter 68 penalties:

(a) Penalties that are not subject to a reasonable cause or reasonable basis determination (examples are additions to the tax for failure to pay estimated income tax under sections 6654 and 6655);

(b) Penalties that are subject to the deficiency procedures of subchapter B of Chapter 63 of the Code (because the taxpayer has the right to appeal such penalties, such as those provided under section 6653 (a) and (b), prior to assessment):

(c) Penalties that are subject to an administratively granted preassessment appeal procedure such as that provided in Sec. 1.6694-2(a)(1) because

taxpayers are able to protest such penalties prior to assessment;

(d) The penalty provided in section 6700 for promoting abusive tax shelters (because the penalty is subject to the procedural rules of section 6703 which provides for an extension of the period of collection of the penalty when a person pays not less than 15 percent of the amount of such penalty); and

(e) The 100 percent penalty provided under section 6672 (because the taxpayer has the opportunity to appeal this penalty prior to assessment). The appeal may be made before or after payment, but shall be made before the filing of a claim for refund. Technical advice procedures are not applicable to an appeal made under this subdivision.

(v) The Appeals office considers cases involving the initial or continuing recognition of tax exemption and foundation classification. See Sec. 601.201(n)(5) and (n)(6). The Appeals office also considers cases involving the initial or continuing determination of employee plan qualification under Subchapter D of Chapter 1 of the Code. See Sec. 601.201(o)(6). However, the jurisdiction of the Appeals office in these cases is limited as follows:

(a) In cases under the jurisdiction of a key district director (or the National Office) which involve an application for, or the revocation or modification of, the recognition of exemption or the determination of qualification, if the determination concerning exemption is made by a National Office ruling, or if National Office technical advice is furnished concerning exemption or qualification, the decision of the National Office is final. The organization/plan has no right of appeal to the Appeals office or any other avenue of administrative appeal. See Sec. 601.201(n)(i), (n)(6)(ii)(b), (n)(9)(viii)(a), (o)(2)(iii), and (o)(6)(i).

(b) In cases already under the jurisdiction of an Appeals office, if the proposed disposition by that office is contrary to a National Office ruling concerning exemption, or to a National Office technical advice concerning exemption or qualification, issued prior to the case, the proposed disposition will be submitted, through the Office of the Regional Director of Appeals, to the Assistant Commissioner (Employee Plans and Exempt Organizations) or, in section 521 cases, to the Assistant Commissioner (Technical). The decision of the Assistant Commissioner will be followed by the Appeals office. See Sec.

601.201(n)(5)(iii), (n)(6)(ii)(d), (n)(6)(iv), and (o)(6)(iii).

(2) The authority described in subparagraph (1) of this paragraph does not include the authority to:

(i) Negotiate or make a settlement in any case docketed in the Tax Court if the notice of deficiency, liability or other determination was issued by Appeals officials;

(ii) Negotiate or make a settlement in any docketed case if the notice of deficiency, liability or other determination was issued after appeals consideration of all petitioned issues by the Employee Plans/Exempt Organizations function;

(iii) Negotiate or make a settlement in any docketed case if the notice of deficiency, liability or final adverse determination letter was issued by a District Director and is based upon a National Office ruling or National Office technical advice in that case involving a qualification of an employee plan or tax exemption and/or foundation status of an organization (but only to the extent the case involves such issue);

(iv) Negotiate or make a settlement if the case was docketed under Code sections 6110, 7477, or 7478;

(v) Eliminate the ad valorem fraud penalty in any case in which the penalty was determined by the district office or service center office in connection with a tax year or period, or which is related to or affects such year or period, for which criminal prosecution against the taxpayer (or related taxpayer involving the same transaction) has been recommended to the Department of Justice for willful attempt to evade or defeat tax, or for willful failure to file a return, except upon the recommendation or concurrence of Counsel; or

(vi) Act in any case in which a recommendation for criminal prosecution is pending, except with the concurrence of Counsel.

(3) The authority vested in Appeals does not extend to the determination of liability for any excise tax imposed by Subtitle E or by Subchapter D of chapter 78, to the extent it relates to Subtitle E.

(4) In cases under Appeals jurisdiction, the Appeals official has the authority to make and subscribe to a return under the provisions of section 6020 of the Code where taxpayer fails to make a required return.

(b) Initiation of proceedings before Appeals.

In any case in which the district director has issued a preliminary or '30-day letter' and the taxpayer requests Appeals consideration and files a written protest when required (see paragraph (c)(1) of Sec. 01.103, (c)(1) and (c)(2) of 601.105 and 601.507) against the proposed determination of tax liability, except as to those taxes described in paragraph (a)(3) of this section, the taxpayer has the right (and will be so advised by the district director) of administrative appeal to the Appeals organization. However, the appeal procedures do not extend to cases involving solely the failure or refusal to comply with the tax laws because of moral, religious, political, constitutional, conscientious, or similar grounds. Organizations such as labor unions and trade associations which have been examined by the district director to determine the amounts expended by the organization for purposes of lobbying, promotion or defeat of legislation, political campaigns, or propaganda related to those purposes are treated as 'taxpayers' for the purpose of this right of administrative appeal. Thus, upon requesting appellate consideration and filing a written protest, when required, to the district director's findings that a portion of member dues is to be disallowed as a deduction to each member because expended for such purposes, the organization will be afforded full rights of administrative appeal to the Appeals activity similar to those rights afforded to taxpayers generally. After review of any required written protest by the district director, the case and its administrative record are referred to Appeals. Appeals may refuse to accept a protested nondocketed case where preliminary review indicates it requires further consideration or development. No taxpayer is required to submit a case to Appeals for consideration. Appeal is at the option of the taxpayer. After the issuance by the district director of a statutory notice of deficiency, upon the taxpayer's request, Appeals may take up the case for settlement and may grant the taxpayer a conference thereon.

(c) Nature of proceedings before Appeals.

Proceedings before Appeals are informal. Testimony under oath is not taken, although matters alleged as facts may be required to be submitted in the form of affidavits, or declared to be true under the penalties of perjury. Taxpayers may represent themselves or designate a qualified representative to act for them. See Subpart E of this part for conference and practice requirements. At any conference granted by Appeals on a nondocketed case, the district director will be represented if the Appeals official having settlement authority and the district director deem it advisable. At any such conference on a case involving the ad valorem fraud penalty for which criminal prosecution against the taxpayer (or a related taxpayer involving the same transaction) has been recommended to the Department of Justice for willful attempt to evade or defeat tax, or for willful failure to file a return, the District Counsel will be represented if he or she so desires.

(d) Disposition and settlement of cases before Appeals.

(1) In general.

During consideration of a case, the Appeals office should neither reopen an issue as to which the taxpayer and the office of the district director are in agreement nor raise a new issue, unless the ground for such action is a substantial one and the potential effect upon the tax liability is material. If the Appeals raises a new issue, the taxpayer or the taxpayer's representative should be so advised and offered an opportunity for discussion prior to the taking of any formal action, such as the issuance of a statutory notice of deficiency.

(2) Cases not docketed in the Tax Court.

(i) If after consideration of the case by Appeals a satisfactory settlement of some or all the issues is reached with the taxpayer, the taxpayer will be requested to sign Form 870-AD or other appropriate agreement form waiving restrictions on the assessment and collection of any deficiency and accepting any overassessment resulting under the agreed settlement. In addition, in partially unagreed cases, a statutory notice of deficiency will be prepared and issued in accordance with subdivision (ii) of this subparagraph with respect to the unagreed issue or issues.

(ii) If after consideration of the case by Appeals it is determined that there is a deficiency in income, profits, estate, gift tax, generation-skipping transfer, or Chapter 41, 42, 43, or 44 tax liability to which the taxpayer does not agree, a statutory notice of deficiency will be prepared and issued by Appeals. Officers of the Appeals office having authority for the administrative determination of tax liabilities referred to in paragraph (a) of this section are also authorized to prepare, sign on behalf of the Commissioner, and send to the taxpayer by registered or certified mail any statutory notice of deficiency prescribed in sections 6212 and 6861 of the Code, and in corresponding provisions of the Internal Revenue Code of 1939. Within 90 days, or 150 days if the notice is addressed to a person outside of the States of the Union and the District of Columbia, after such a statutory notice of deficiency is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day), the taxpayer may file a petition with the U.S. Tax Court for a redetermination of the deficiency. In addition, if a claim for refund is disallowed in full or in part by the Appelate Division and the taxpayer does not sign Form 2297, Appeals will prepare the statutory notice of claim disallowance and send it to the taxpayer by certified mail (or registered mail if the taxpayer is outside the United States), with a carbon copy to the

taxpayer's representative by regular mail, if appropriate. In any other unagreed case, the case and its administrative file will be forwarded to the appropriate function with directions to take action with respect to the tax liability determined in Appeals. Administrative appeal procedures will apply to 100-percent penalty cases, except where an assessment is made because of Chief Counsel's request to support a third-party action in a pending refund suit. See Rev. Proc. 69-26.

(iii) Taxpayers desiring to further contest unagreed excise (other than those under Chapters 41 through 44 of the Code) and employment tax cases and 100-percent penalty cases must pay the additional tax (or portion thereof of divisible taxes) when assessed, file claim for refund within the applicable statutory period of limitations (ordinarily 3 years from time return was required to be filed or 2 years from payment, whichever expires later), and upon disallowance of claim or after 6 months from date claim was filed, file suit in U.S. District Court or U.S. Claims Court. Suits for refund of taxes paid are under the jurisdiction of the Department of Justice.

(3) Cases docketed in the Tax Court.

(i) If the case under consideration in Appeals is docketed in the Tax Court and agreement is reached with the taxpayer with respect to the issues involved, the disposition of the case is effected by a stipulation of agreed deficiency or overpayment to be filed with the Tax Court and in conformity with which the Court will enter its order.

(ii) If the case under consideration in Appeals is docketed in the Tax Court and the issues remain unsettled after consideration and conference in Appeals, the case will be referred to the appropriate district counsel for the region for defense of the tax liability determined.

(iii) If the deficiency notice in a case docketed in the Tax Court was not issued by the Appeals office and no recommendation for criminal prosecution is pending, the case will be referred by the district counsel to the Appeals office for settlement as soon as it is at issue in the Tax Court. The settlement procedure shall be governed by the following rules:

(a) The Appeals office will have exclusive settlement jurisdiction for a period of 4 months over certain cases docketed in the Tax Court. The 4-month period will commence at the time Appeals receives the case from Counsel, which will be after the case is at issue. Appeals will arrange settlement conferences in such

cases within 45 days of receipt of the case. In the event of a settlement, Appeals will prepare and forward to Counsel the necessary computations and any stipulation decisions secured. Counsel will prepare any needed settlement documents for execution by the parties and filing with the Tax Court. Appeals will also have authority to settle less than all the issues in the case and to refer the unsettled issues to Counsel for disposition. In the event of a partial settlement, Appeals will inform Counsel of the agreement of the petitioner(s) and Appeals may secure and forward to Counsel a stipulation covering the agreed issues. Counsel will, if necessary, prepare documents reflecting settlement of the agreed issues for execution by the parties and filing with the Tax Court at the appropriate time.

(b) At the end of the 4-month period, or before that time if Appeals determines the case is not susceptible of settlement, the case will be returned to Counsel. Thereafter, Counsel will have exclusive authority to dispose of the case. If, at the end of the 4-month period, there is substantial likelihood that a settlement of the entire case can be effected in a reasonable period of time, Counsel may extend Appeals settlement jurisdiction for a period not to exceed 60 days, but not beyond the date of the receipt of a trial calendar upon which the case appears. Extensions beyond the 50-day period or after the event indicated will be granted only with the personal approval of regional counsel and will be made only in those cases in which the probability of settlement of the case in its entirety by Appeals clearly outweighs the need to commence trial preparation.

(c) During the period of Appeals jurisdiction, Appeals will make available such files and information as may be necessary for Counsel to take any action required by the Court or which is in the best interests of the Government. When a case is referred by Counsel to Appeals, Counsel may indicate areas of needed factual development or areas of possible technical uncertainties. In referring a case to Counsel, Appeals will furnish its summary of the facts and the pertinent legal authorities.

(d) The Appeals office may specify that proposed Counsel settlements be referred back to Appeals for its views. Appeals may protest the proposed Counsel settlements. If Counsel disagrees with Appeals, the Regional Counsel will determine the disposition of the cases.

(e) If an offer is received at or about the time of trial in a case designated by the

Appeals office for settlement consultation, Counsel will endeavor to have the case placed on a motions calendar to permit consultation with and review by Appeals in accordance with the foregoing procedures.

(f) For issues in docketed and nondocketed cases pending with Appeals which are related to issues in docketed cases over which Counsel has jurisdiction, no settlement offer will be accepted by either Appeals or Counsel unless both agree that the offer is acceptable. The protest procedure will be available to Appeals and regional counsel will have authority to resolve the issue with respect to both the Appeals and Counsel cases. If settlement of the docketed case requires approval by regional counsel or Chief Counsel, the final decision with respect to the issues under the jurisdiction of both Appeals and Counsel will be made by regional counsel or Chief Counsel. See Rev. Proc. 79-59.

(g) Cases classified as 'Small Tax' cases by the Tax Court are given expeditious consideration because such cases are not included on a Trial Status Request. These cases are considered by the Court as ready for placing on a trial calendar as soon as the answer has been filed and are given priority by the Court for trial over other docketed cases. These cases are designated by the Court as small tax cases upon request of petitioners and will include letter 'S' as part of the docket number.

(e) Transfer and centralization of cases.

(1) An Appeals office is authorized to transfer settlement jurisdiction in a non-docketed case or in an excise or employment tax case to another region, if the taxpayer resides in and the taxpayer's books and records are located (or can be made available) in such other region. Otherwise, transfer to another region requires the approval of the Director of the Appeals Division.

(2) An Appeals office is authorized to transfer settlement jurisdiction in a docketed case to another region if the location for the hearing by the Tax Court has been set in such other region, except that if the place of hearing is Washington, D.C., settlement jurisdiction shall not be transferred to the region in which Washington, D.C., is located unless the petitioner resides in and the petitioner's books and records are located (or can be made available) in that region. Otherwise, transfer to another region requires the approval of the Director of the Appeals Division. Likewise, the Chief Counsel has corresponding authority to transfer the jurisdiction, authority, and duties of the regional counsel for any region to the regional counsel of another

region within which the case has been designated for trial before the Tax Court.

(3) Should a regional commissioner determine that it would better serve the interests of the Government, he or she may, by order in writing, withdraw any case not docketed before the Tax Court from the jurisdiction of the Appeals office, and provide for its disposition under his or her personal direction.

(f) Conference and practice requirements.

Practice and conference procedure before Appeals is governed by Treasury Department Circular 230 as amended (31 CFR Part 10), and the requirements of Subpart E of this part. In addition to such rules but not in modification of them, the following rules are also applicable to practice before Appeals:

(1) Rule I.

An exaction by the U.S. Government, which is not based upon law, statutory or otherwise, is a taking of property without due process of law, in violation of the Fifth Amendment to the U.S. Constitution. Accordingly, an Appeals representative in his or her conclusions of fact or application of the law, shall hew to the law and the recognized standards of legal construction. It shall be his or her duty to determine the correct amount of the tax, with strict impartiality as between the taxpayer and the Government, and without favoritism or discrimination as between taxpayers.

(2) Rule II.

Appeals will ordinarily give serious consideration to an offer to settle a tax controversy on a basis which fairly reflects the relative merits of the opposing views in light of the hazards which would exist if the case were litigated. However, no settlement will be made based upon nuisance value of the case to either party. If the taxpayer makes an unacceptable proposal of settlement under circumstances indicating a good faith attempt to reach an agred disposition of the case on a basis fair both to the Government and the taxpayer, the Appeals official generally should give an evaluation of the case in such a manner as to enable the taxpayer to ascertain the kind of settlement that would be recommended for acceptance. Appeals may defer action on or decline to settle some cases or issues (for example, issues on which action has been suspended nationwide) in order to achieve greater uniformity and enhance overall voluntary compliance with the tax laws.

(3) Rule III.

Where the Appeals officer recommends acceptance of the taxpayer's proposal of settlement, or, in the absence of a proposal, recommends action favorable to the taxpayer, and said recommendation is disapproved in whole or in part by a reviewing officer in Appeals the taxpayer shall be so advised and upon written request shall be accorded a conference with such reviewing officer. The Appeals office may disregard this rule where the interest of the Government would be injured by delay, as for example, in a case involving the imminent expiration of the period of limitations or the dissipation of assets.

(4) Rule IV.

Where the Appeals official having settlement authority and the district director deem it advisable, the district director may be represented at any Appeals conferences on a nondocketed case. This rule is also applicable to the Director, Foreign Operations District in the event his or her office issued the preliminary or '30-day letter'.

(5) Rule V.

In order to bring an unagreed income, profits, estate, gift, or Chapter 41, 42, 43, or 44 tax case in prestatutory notice status, an employment or excise tax case, a penalty case, an Employee Plans and Exempt Organization case, a termination of taxable year assessment case, a jeopardy assessment case, or an offer in compromise before the Appeals office, the taxpayer or the taxpayer's representative should first request Appeals consideration and, when required, file with the district office (including the Foreign Operations District) or service center a written protest setting forth specifically the reasons for the refusal to accept the findings. If the protest includes a statement of facts upon which the taxpayer relies, such statement should be declared, to be true under the penalties of perjury. The protest and any new facts, law, or arguments presented therewith will be reviewed by the receiving office for the purpose of deciding whether further development or action is required prior to referring the case to Appeals. Where Appeals has an issue under consideration it may, with the concurrence of the taxpayer, assume jurisdiction in a related case, after the office having original jurisdiction has completed any necessary action. The Director, Appeals Division, may authorize the regional Appeals office to accept jurisdiction (after any necessary action by office having original jurisdiction) in specified classes of cases without written protests provided written or oral requests for Appeals consideration are submitted by or for each taxpayer.

(6) Rule VI.

A taxpayer cannot withhold evidence from the district director of internal revenue and expect to introduce it for the first time before Appeals, at a conference in nondocketed status, without

being subject to having the case returned to the district director for reconsideration. Where newly discovered evidence is submitted for the first time to Appeals, in a case pending in nondocketed status, that office, in the reasonable exercise of its discretion, may transmit same to the district director for his or her consideration and comment.

(7) Rule VII.

Where the taxpayer has had the benefit of a conference before the Appeals office in the prestatutory notice status, or where the opportunity for such a conference was accorded but not availed of, there will be no conference granted before the Appeals office in the 90-day status after the mailing of the statutory notice of deficiency, in the absence of unusual circumstances.

(8) Rule VIII.

In cases not docketed in the United States Tax Court on which a conference is being conducted by the Appeals office, the district counsel may be requested to attend and to give legal advice in the more difficult cases, or on matters of legal or litigating policy.

(9) Rule IX - Technical advice from the National Office.

(i) Definition and nature of technical advice.

(a) As used in this subparagraph, 'technical advice' means advice or guidance as to the interpretation and proper application of internal revenue laws, related statutes, and regulations, to a specific set of facts, furnished by the National Office upon request of an Appeals office in connection with the processing and consideration of a nondocketed case. It is furnished as a means of assisting Service personnel in closing cases and establishing and maintaining consistent holdings in the various regions. It does not include memorandum on matters of general technical application furnished to Appeals offices where the issues are not raised in connection with the consideration and handling of a specific taxpayer's case.

(b) The provisions of this subparagraph do not apply to a case under the jurisdiction of a district director or the Bureau of Alcohol, Tobacco, and Firearms, to Employee Plans, Exempt Organization, or certain penalty cases being considered by an Appeals office, or to any case previously considered by an Appeals office. The technical advice provisions applicable to cases under the jurisdiction of a district director, other than Employee Plans and Exempt Organization cases, are set forth in Sec. 601.105(b)(5). The technical advice

provisions applicable to Employee Plans and Exempt Organization cases are set forth in Sec. 601.201(n)(9). Technical advice may not be requested with respect to a taxable period if a prior Appeals disposition of the same taxable period of the same taxpayer's case was based on mutual concessions (ordinarily with a form 870-AD, Offer of Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and of Acceptance of Overassessment). However, technical advice may be requested by a district director on issues previously considered in a prior Appeals disposition, not based on mutual concessions, of the same taxable periods of the same taxpayer with the concurrence of the Appeals office that had the case.

(c) The consideration or examination of the facts relating to a request for a determination letter is considered to be in connection with the consideration and handling of a taxpayer's case. Thus, an Appeals office may, under this subparagraph, request technical advice with respect to the consideration of a request for a determination letter. The technical advice provisions applicable to a request for a determination letter in Employee Plans and Exempt Organization cases are set forth in Sec. 601.201(n)(9).

(d) If an Appeals office is of the opinion that a ruling letter previously issued to a taxpayer should be modified or revoked and it requests the National Office to reconsider the ruling, the reference of the matter to the National Office is treated as a request for technical advice. The procedures specified in subdivision (iii) of this subparagraph should be followed in order that the National Office may consider the recommendation. Only the National Office can revoke a ruling letter. Before referral to the National Office, the Appeals office should inform the taxpayer of its opinion that the ruling letter should be revoked. The Appeals office, after development of the facts and consideration of the taxpayer's arguments, will decide whether to recommend revocation of the ruling to the National Office. For procedures relating to a request for a ruling, see Sec. 601.201.

(e) The Assistant Commissioner (Technical), acting under a delegation of authority from the Commissioner of Internal Revenue, is exclusively responsible for providing technical advice in any issue involving the establishment of basic principles and rules for the uniform interpretation and application of tax laws in cases under this subparagraph. This authority has been largely redelegated to

subordinate officials.

(ii) Areas in which technical advice may be requested.

(a) Appeals offices may request technical advice on any technical or procedural question that develops during the processing and consideration of a case. These procedures are applicable as provided in subdivision (i) of this subparagraph.

(b) As provided in Sec. 601.105(b)(5) (ii)(b) and (iii)(a), requests for technical advice should be made at the earliest possible stage of the examination process. However, if identification of an issue on which technical advice is appropriate is not made until the case is in Appeals, a decision to request such advice (in nondocketed cases) should be made prior to or at the first conference.

(c) Subject to the provisions of (b) of this subdivision, Appeals Offices are encouraged to request technical advice on any technical or procedural question arising in connection with a case described in subdivision (i) of this subparagraph which cannot be resolved on the basis of law, regulations, or a clearly applicable revenue ruling or other precedent issued by the National Office.

(iii) Requesting technical advice.

(a) It is the responsibility of the Appeals Office to determine whether technical advice is to be requested on any issue being considered. However, while the case is under the jurisdiction of the Appeals Office, a taxpayer or his/her representative may request that an issue be referred to the National Office for technical advice on the grounds that a lack of uniformity exists as to the disposition of the issue, or that the issue is so unusual or complex as to warrant consideration by the National Office. While taxpayers are encouraged to make written requests setting forth the facts, law, and argument with respect to the issue, and reason for requesting National Office advice, a taxpayer may make the request orally. If, after considering the taxpayer's request, the Appeals Officer is of the opinion that the circumstances do not warrant referral of the case to the National Office, he/she will so advice the taxpayer. (See subdivision (iv) of this subparagraph for taxpayer's appeal rights where the Appeals Officer declines to request technical advice.)

(b) When technical advice is to be requested, whether or not upon the request of the taxpayer, the taxpayer will be so advised, except as noted in (j) of this subdivision. If the Appeals Office initiates the action, the taxpayer will be furnished a copy of the statement of the pertinent facts and the question or questions proposed for submission to the National Office. The request for advice should be so worded as to avoid possible misunderstanding, in the National Office, of the facts or of the specific point or points at issue.

(c) After receipt of the statement of facts and specific questions, the taxpayer will be given 10 calendar days in which to indicate in writing the extent, if any, to which he/she may not be in complete agreement. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Appeals Office. Every effort should be made to reach agreement as to the facts and specific points at issue. If agreement cannot be reached, the taxpayer may submit, within 10 calendar days after receipt of notice from the Appeals Office, a statement of his/her understanding as to the specific point or points at issue which will be forwarded to the National Office with the request for advice. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Appeals Office.

(d) If the taxpayer initiates the action to request advice, and his/her statement of the facts and point or points at issue are not wholly acceptable to the Appeals Office, the taxpayer will be advised in writing as to the areas of disagreement. The taxpayer will be given 10 calendar days after receipt of the written notice to reply to such notice. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Appeals Office. If agreement cannot be reached, both the statements of the taxpayer and the Appeals Office will be forwarded to the National Office.

(e)

(1) In the case of requests for technical advice, the taxpayer must also submit, within the 10-day period referred to in (c) and (d) of this subdivision, whichever is applicable (relating to agreement by the taxpayer with the statement of facts and points submitted in connection with the request for technical advice), the statement described in (f) of this subdivision of proposed deletions pursuant to section 6110(c) of the Code. If the statement is not submitted, the taxpayer will be

informed by the Appeals Office that the statement is required. If the Appeals Office does not receive the statement within 10 days after the taxpayer has been informed of the need for the statement, the Appeals Office may decline to submit the request for technical advice. If the Appeals Office decides to request technical advice in a case where the taxpayer has not submitted the statement of proposed deletions, the National Office will make those deletions which in the judgment of the Commissioner are required by section 6110(c) of the Code.

(2) The requirements included in this subparagraph relating to the submission of statements and other material with respect to proposed deletions to be made from technical advice memoranda before public inspection is permitted to take place do not apply to requests for any document to which section 6104 of the Code applies.

(f) In order to assist the Internal Revenue Service in making the deletions required by section 6110(c) of the Code, from the text of technical advice memoranda which are open to public inspection pursuant to section 6110(a) of the Code, there must accompany requests for such technical advice either a statement of the deletions proposed by the taxpayer, or a statement that no information other than names, addresses, and taxpayer identifying numbers need be deleted. Such statements shall be made in a separate document. The statement of proposed deletions shall be accompanied by a copy of all statements of facts and supporting documents which are submitted to the National Office pursuant to (c) or (d) of this subdivision, on which shall be indicated, by the use of brackets, the material which the taxpayer indicates should be deleted pursuant to section 6110(c) of the Code. The statement of proposed deletions shall indicate the statutory basis for each proposed deletion. The statement of proposed deletions shall not appear or be referred to anywhere in the request for technical advice. If the taxpayer decides to request additional deletions pursuant to section 6110(c) of the Code prior to the time the National Office replies to the request for technical advice, additional statements may be submitted.

(g) If the taxpayer has not already done so, he/she may submit a statement explaining his/her position on the issues, citing precedents which the taxpayer believes will bear on the case. This statement will be forwarded to the National Office with the request for advice. If it is received at a later date, it will be

forwarded for association with the case file.

(h) At the time the taxpayer is informed that the matter is being referred to the National Office, he/she will also be informed of the right to a conference in the National Office in the event an adverse decision is indicated, and will be asked to indicate whether a conference is desired.

(i) Generally, prior to replying to the request for technical advice, the National Office shall inform the taxpayer orally or in writing of the material likely to appear in the technical advice memorandum which the taxpayer proposed be deleted but which the Internal Revenue Service determined should not be deleted. If so informed, the taxpayer may submit within 10 days any further information, arguments, or other material in support of the position that such material be deleted. The Internal Revenue Service will attempt, if feasible, to resolve all disagreements with respect to proposed deletions prior to the time the National Office replies to the request for technical advice. However, in no event shall the taxpayer have the right to a conference with respect to resolution of any disagreements concerning material to be deleted from the text of the technical advice memorandum, but such matters may be considered at any conference otherwise scheduled with respect to the request.

(j) The provisions of (a) through (i) of this subdivision, relating to the referral of issues upon request of the taxpayer, advising taxpayers of the referral of issues, the submission of proposed deletions, and the granting of conferences in the National Office, are not applicable to technical advice memoranda described in section 6110 (g)(5)(A) of the Code, relating to cases involving criminal or civil fraud investigations and jeopardy or termination assessments. However, in such cases, the taxpayer shall be allowed to provide the statement of proposed deletions to the National Office upon the completion of all proceedings with respect to the investigations or assessments, but prior to the date on which the Commissioner mails the notice pursuant to section 6110 (f)(1) of the Code of intention to disclose the technical advice memorandum.

(k) Form 4463, Request for Technical Advice, should be used for transmitting requests for technical advice to the National Office.

(iv) Appeal by taxpayers of determinations not to seek technical advice.

(a) If the taxpayer has requested referral of an issue before an Appeals Office

to the National Office for technical advice, and after consideration of the request, the Appeals Officer is of the opinion that the circumstances do not warrant such referral, he/she will so advise the taxpayer.

(b) The taxpayer may appeal the decision of the Appeals Officer not to request technical advice by submitting to that official, within 10 calendar days after being advised of the decision, a statement of the facts, law, and arguments with respect to the issue, and the reasons why the taxpayer believes the matter should be referred to the National Office for advice. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Appeals Office.

(c) The Appeals Officer will submit the statement of the taxpayer to the chief, Appeals Office, accompanied by a statement of the officer's reasons why the issue should not be referred to the National Office. The Chief will determine, on the basis of the statements submitted, whether technical advice will be requested. If the Chief determines that technical advice is not warranted, that official will inform the taxpayer in writing that he/she proposes to deny the request. In the letter to the taxpayer the Chief will (except in unusual situations where such action would be prejudicial to the best interests of the Government) state specifically the reasons for the proposed denial. The taxpayer will be given 15 calendar days after receipt of the letter in which to notify the Chief whether the taxpayer agrees with the proposed denial. The taxpayer may not appeal the decision of the Chief, Appeals Office not to request technical advice from the National Office. However, if the taxpayer does not agree with the proposed denial, all data relating to the issue for which technical advice has been sought, including the taxpayer's written request and statements, will be submitted to the National Office, Attention: Director, Appeals Division, for review. After review in the National Office, the Appeals Office will be notified whether the proposed denial is approved or disapproved.

(d) While the matter is being reviewed in the National Office, the Appeals Office will suspend action on the issue (except where the delay would prejudice the Government's interests) until it is notified of the National Office decision. This notification will be made within 30 days after receipt of the data in the National Office. The review will be solely on the basis of the written record and no conference will be held in the National Office.

(v) Conference in the National Office.

(a) If, after a study of the technical advice request, it appears that advice adverse to the taxpayer should be given and a conference has been requested, the taxpayer will be notified of the time and place of the conference. If conferences are being arranged with respect to more than one request for advice involving the same taxpayer, they will be so scheduled as to cause the least inconvenience to the taxpayer. The conference will be arranged by telephone, if possible, and must be held within 21 calendar days after contact has been made. Extensions of time will be granted only if justified in writing by the taxpayer and approved by the appropriate Technical branch chief.

(b) A taxpayer is entitled, as a matter of right, to only one conference in the National Office unless one of the circumstances discussed in (c) of this subdivision exists. This conference will usually be held at the branch level in the appropriate division (Corporation Tax Division or Individual Tax Division) in the Office of the Assistant Commissioner (Technical), and will usually be attended by a person who has authority to act for the branch chief. In appropriate cases the Appeals Officer may also attend the conference to clarify the facts in the case. If more than one subject is discussed at the conference, the discussion constitutes a conference with respect to each subject. At the request of the taxpayer or the taxpayer's representative, the conference may be held at an earlier stage in the consideration of the case than the Service would ordinarily designate. A taxpayer has no 'right' of appeal from an action of a branch to the director of a division or to any other National Office official.

(c) In the process of review of a holding proposed by a branch, it may appear that the final answer will involve a reversal of the branch proposal with a result less favorable to the taxpayer. Or it may appear that an adverse holding proposed by a branch will be approved, but on a new or different issue or on different grounds than those on which the branch decided the case. Under either of these circumstances, the taxpayer or the taxpayer's representative will be invited to another conference. The provisions of this subparagraph limiting the number of conferences to which a taxpayer is entitled will not foreclose inviting a taxpayer to attend further conferences when, in the opinion of National Office personnel, such need arises. All additional conferences of this type discussed are held only at the invitation of the Service.

(d) It is the responsibility of the taxpayer to furnish to the National Office, within 21 calendar days after the conference, a written record of any additional data, line of reasoning, precedents, etc., that were proposed by the taxpayer and discussed at the conference but were not previously or adequately presented in writing. Extensions of time will be granted only if justified in writing by the taxpayer and approved by the appropriate Technical branch chief. Any additional material and a copy thereof should be addressed to and sent to the National Office which will forward the copy to the appropriate Appeals Office. The Appeals Office will be requested to give the matter prompt attention, will verify the additional facts and data, and will comment on it to the extent deemed appropriate.

(e) A taxpayer or the taxpayer's representative desiring to obtain information as to the status of the case may do so by contacting the following offices with respect to matters in the areas of their responsibility:

TELEPHONE NUMBERS (AREA CODE 202) Official:

Director, Corporation Tax Division - 566-4504 or 566-4505

Director, Individual Tax Division - 566-3767 or 566-3788.

(vi) Preparation of technical advice memorandum by the National Office.

(a) Immediately upon receipt in the National Office, the technical employee to whom the case is assigned will analyze the file to ascertain whether it meets the requirements of subdivision (iii) of this subparagraph. If the case is not complete with respect to any requirement in subdivision (iii) (a) through (d) of this subparagraph, appropriate steps will be taken to complete the file. If any request for technical advice does not comply with the requirements of subdivision (iii)(e) of this subparagraph, relating to the statement of proposed deletions, the National Office will make those deletions from the technical advice memorandum which in the judgment of the Commissioner are required by section 6110(c) of the Code.

(b) If the taxpayer has requested a conference in the National Office, the procedures in subdivision (v) of this subparagraph will be followed.

(c) Replies to requests for technical advice will be addressed to the Appeals office and will be drafted in two parts. Each part will identify the taxpayer by

name, address, identification number, and year or years involved. The first part (hereafter called the 'technical advice memorandum') will contain (1) a recitation of the pertinent facts having a bearing on the issue; (2) a discussion of the facts, precedents, and reasoning of the National Office; and (3) the conclusions of the National Office. The conclusions will give direct answers, whenever possible, to the specific questions of the Appeals office. The discussion of the issues will be in such detail that the Appeals office is apprised of the reasoning underlying the conclusion. There shall accompany the technical advice memorandum a notice, pursuant to section 6110(f)(1) of the Code, of intention to disclose the technical advice memorandum (including a copy of the version proposed to be open to public inspection and notations of third party communications pursuant to section 6110(d) of the Code) which the Appeals office shall forward to the taxpayer at such time that it furnishes a copy of the technical advice memorandum to the taxpayer pursuant to (e) of this subdivision and subdivision (vii)(b) of this subparagraph.

(d) The second part of the reply will consist of a transmittal memorandum. In the unusual cases it will serve as a vehicle for providing the Appeals office administrative information or other information which, under the nondisclosure statutes, or for other reasons, may not be discussed with the taxpayer.

(e) It is the general practice of the Service to furnish a copy of the technical advice memorandum to the taxpayer after it has been adopted by the Appeals office. However, in the case of technical advice memorandums described in section 6110(g)(5)(A) of the Code, relating to cases involving criminal or civil fraud investigations and jeopardy or termination assessments, a copy of the technical advice memorandum shall not be furnished the taxpayer until all proceedings with respect to the investigations or assessments are completed.

(f) After receiving the notice pursuant to section 6110(f)(1) of the Code of intention to disclose the technical advice memorandum, the taxpayer, if desiring to protest the disclosure of certain information in the memorandum, must, within 20 days after the notice is mailed, submit a written statement identifying those deletions not made by the Internal Revenue Service which the taxpayer believes should have been made. The taxpayer shall also submit a copy of the version of the technical advice memorandum proposed to be open to public inspection on which the taxpayer indicates, by the use of brackets, the deletions proposed by the taxpayer but which have not been made by the Internal Revenue Service.

Generally, the Internal Revenue Service will not consider the deletion of any material which the taxpayer did not, prior to the time when the National Office sent its reply to the request for technical advice to the Appeals office, propose be deleted. The Internal Revenue Service shall, within 20 days after receipt of the response by the taxpayer to the notice pursuant to section 6110(f)(1) of the Code, mail to the taxpayer its final administrative conclusion regarding the deletions to be made.

(vii) Action on technical advice in Appeals offices.

(a) Unless the Chief, Appeals Office, feels that the conclusions reached by the National Office in a technical advice memorandum should be reconsidered and promptly requests such reconsideration, the Appeals office will proceed to process the taxpayer's case taking into account the conclusions expressed in the technical advice memorandum. The effect of technical advice on the taxpayer's case is set forth in subdivision (viii) of this subparagraph.

(b) The Appeals office will furnish the taxpayer a copy of the technical advice memorandum described in subdivision (vi)(c) of this subparagraph and the notice pursuant to section 6110(f)(1) of the Code of intention to disclose the technical advice memorandum (including a copy of the version proposed to be open to public inspection and notations of third-party communications pursuant to section 6110(d) of the Code). The preceding sentence shall not apply to technical advice memorandums involving civil fraud or criminal investigations, or jeopardy or termination assessments, as described in subdivision (iii)(j) of this subparagraph (except to the extent provided in subdivision (vi)(e) of this subparagraph) or to documents to which section 6104 of the Code applies.

(c) In those cases in which the National Office advises the Appeals office that it should not furnish a copy of the technical advice memorandum to the taxpayer, the Appeals office will so inform the taxpayer if he/she requests a copy.

(viii) Effect of technical advice.

(a) A technical advice memorandum represents an expression of the views of the Service as to the application of law, regulations, and precedents to the facts of a specific case, and is issued primarily as a means of assisting Service officials in the closing of the case involved.

(b) Except in rare or unusual circumstances, a holding in a technical advice memorandum that is favorable to the taxpayer is applied retroactively. Moreover, since technical advice, as described in subdivision (i) of this subparagraph, is issued only on closed transactions, a holding in a technical advice memorandum that is adverse to the taxpayer is also applied retroactively unless the Assistant Commissioner or Deputy Assisitant Commissioner (Technical) exercises the discretionary authority under section 7805(b) of the Code to limit the retroactive effect of the holding. Likewise, a holding in a technical advice memorandum that modifies or revokes a holding in a prior technical advice memorandum will also be applied retroactively, with one exception. If the new holding is less favorable to the taxpayer, it will generally not be applied to the period in which the taxpayer relied on the prior holding in situations involving continuing transactions of the type described in Sec. 601.201(l)(7) and Sec. 601.201(l)(8).

(c) The Appeals office is bound by technical advice favorable to the taxpayer. However, if the technical advice is unfavorable to the taxpayer, the Appeals office may settle the issue in the usual manner under existing authority. For the effect of technical advice in Employee Plans and Exempt Organization cases see Sec. 601.201(n)(9)(viii).

(d) In connection with section 446 of the Code, taxpayers may request permission from the Assistant Commissioner (Technical) to change a method of accounting and obtain a 10-year (or less) spread of the resulting adjustments. Such a request should be made prior to or at the first Appeals conference. The Appeals office has authority to allow a change and the resulting spread without referring the case to Technical.

(e) Technical advice memorandums often form the basis for revenue rulings. For the description of revenue rulings and the effect thereof, see Sec. 01.601(d)(2)(i)(a) and 601.601(d)(2)(v).

(f) An Appeals office may raise an issue in a taxable period, even though technical advice may have been asked for and furnished with regard to the same or a similar issue in any other taxable period.

(g) Limitation on the jurisdiction and function of Appeals.

(1) Overpayment of more than $200,000.

If Appeals determines that there is an overpayment of income, war profits, excess profits, estate, generation-skipping transfer, or gift tax, or any tax imposed by chapters 41 through 44, including penalties and interest, in excess of $200,000, such determination will be considered by the Joint Committee on Taxation, See Sec. 601.108

(2) Offers in compromise.

For jurisdiction of Appeals with respect to offers in compromise of tax liabilities, see Sec. 601.203.

(3) Closing agreements.

For jurisdiction of Appeals with respect to closing agreements under section 7121 of the Code relating to any internal revenue tax liability, see Sec. 601.202.

(h) Reopening closed cases not docketed in the Tax Court.

(1) A case not docketed in the Tax Court and closed by Appeals on the basis of concessions made by both the Appeals and the taxpayer will not be reopened by action initiated by the Service unless the disposition involved fraud, malfeasance, concealment or misrepresentation of material fact, or an important mistake in mathematical calculations, and then only with the approval of the Regional Director of Appeals.

(2) Under certain unusual circumstances favorable to the taxpayer, such as retroactive legislation, a case not docketed in the Tax Court and closed by Appeals on the basis of concessions made by both Appeals and the taxpayer may be reopened upon written application from the taxpayer, and only with the approval of the Regional Director of Appeals. The processing of an application for a tentative carryback adjustment or of a claim for refund or credit for an overassessment (for a year involved in the prior closing) attributable to a claimed deduction or credit for a carryback provided by law, and not included in a previous Appeals determination, shall not be considered a reopening requiring approval. A subsequent assessment of an excessive tentative allowance shall likewise not be considered such a reopening. The Director of the Appeals Division may authorize, in advance, the reopening of similar classes of cases where legislative enactments or compelling administrative reasons require such advance approval.

(3) A case not docketed in the Tax Court and closed by Appeals on a basis not involving concessions made by both Appeals and the taxpayer will not be reopened by action initiated by

the Service unless the disposition involved fraud, malfeasance, concealment or misrepresentation of material fact, an important mistake in mathematical calculation, or such other circumstance that indicates that failure to take such action would be a serious administrative omission, and then only with the approval of the Regional Director of Appeals.

(4) A case not docketed in the Tax Court and closed by the Appeals on a basis not involving concessions made by both Appeals and the taxpayer may be reopened by the taxpayer by any appropriate means, such as by the filing of a timely claim for refund.

(i) Special procedures for crude oil windfall profit tax cases.

For special procedures relating to crude oil windfall profit tax cases, see Sec. 601.405.

(5 U.S.C. 301 and 552) 80 Stat. 379 and 383; sec. 7805 of the Internal Revenue Code of 1954, 68A Stat. 917 (26 U.S.C. 7805))

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Your Rights as a Taxpayer

The first part of this publication explains some of your most important rights as a taxpayer. The second part explains the examination, appeal, collection, and refund processes. This publication is also available in Spanish.

Declaration of Taxpayer Rights

I. Protection of Your Rights

IRS employees will explain and protect your rights as a taxpayer throughout your contact with us.

II. Privacy and Confidentiality

The IRS will not disclose to anyone the information you give us, except as authorized by law. You have the right to know why we are asking you for information, how we will use it, and what happens if you do not provide requested information.

III. Professional and Courteous Service

If you believe that an IRS employee has not treated you in a professional, fair, and courteous manner, you should tell that employee's supervisor. If the supervisor's response is not satisfactory, you should write to the IRS director for your area or the center where you file your return.

IV. Representation

You may either represent yourself or, with proper written authorization, have someone else represent you in your place. Your representative must be a person allowed to practice before the IRS, such as an attorney, certified public accountant, or enrolled agent. If you are in an interview and ask to consult such a person, then we must stop and reschedule the interview in most cases.

You can have someone accompany you at an interview. You may make sound recordings of any meetings with our examination, appeal, or collection personnel, provided you tell us in writing 10 days before the meeting.

V. Payment of Only the Correct Amount of Tax

You are responsible for paying only the correct amount of tax due under the law—no more, no less. If you cannot pay all of your tax when it is due, you may be able to make monthly installment payments.

VI. Help With Unresolved Tax Problems

The Taxpayer Advocate Service can help you if you have tried unsuccessfully to resolve a problem with the IRS. Your local Taxpayer Advocate can offer you special help if you have a significant hardship as a result of a tax problem. For more information, call toll free 1–877–777–4778 (1–800–829–4059 for TTY/TDD) or write to the Taxpayer Advocate at the IRS office that last contacted you.

VII. Appeals and Judicial Review

If you disagree with us about the amount of your tax liability or certain collection actions, you have the right to ask the Appeals Office to review your case. You may also ask a court to review your case.

VIII. Relief From Certain Penalties and Interest

The IRS will waive penalties when allowed by law if you can show you acted reasonably and in good faith or relied on the incorrect advice of an IRS employee. We will waive interest that is the result of certain errors or delays caused by an IRS employee.

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.

Examinations, Appeals, Collections, and Refunds

Examinations (Audits)

We accept most taxpayers' returns as filed. If we inquire about your return or select it for examination, it does not suggest that you are dishonest. The inquiry or examination may or may not result in more tax. We may close your case without change; or, you may receive a refund.

The process of selecting a return for examination usually begins in one of two ways. First, we use computer programs to identify returns that may have incorrect amounts. These programs may be based on information returns, such as Forms 1099 and W-2, on studies of past examinations, or on certain issues identified by compliance projects. Second, we use information from outside sources that indicates that a return may have incorrect amounts. These sources may include newspapers, public records, and individuals. If we determine that the information is accurate and reliable, we may use it to select a return for examination.

Publication 556, *Examination of Returns, Appeal Rights, and Claims for Refund,* explains the rules and procedures that we follow in examinations. The following sections give an overview of how we conduct examinations.

By Mail

We handle many examinations and inquiries by mail. We will send you a letter with either a request for more information or a reason why we believe a change to your return may be needed. You can respond by mail or you can request a personal interview with an examiner. If you mail us the requested information or provide an explanation, we may or may not agree with you, and we will explain the reasons for any changes. Please do not hesitate to write to us about anything you do not understand.

By Interview

If we notify you that we will conduct your examination through a personal interview, or you request such an interview, you have the right to ask that the examination take place at a reasonable time and place that is convenient for both you and the IRS. If our examiner proposes any changes to your return, he or she will explain the reasons for the changes. If you do not agree with these changes, you can meet with the examiner's supervisor.

Repeat Examinations

If we examined your return for the same items in either of the 2 previous years and proposed no change to your tax liability, please contact us as soon as possible so we can see if we should discontinue the examination.

Appeals

If you do not agree with the examiner's proposed changes, you can appeal them to the Appeals Office of IRS. Most differences can be settled without expensive and time-consuming court trials. Your appeal rights are explained in detail in both Publication 5, *Your Appeal Rights and How To Prepare a Protest If You Don't Agree,* and Publication 556, *Examination of Returns, Appeal Rights, and Claims for Refund.*

If you do not wish to use the Appeals Office or disagree with its findings, you may be able to take your case to the U.S. Tax Court, U.S. Court of Federal Claims, or the U.S. District Court where you live. If you take your case to court, the IRS will have the burden of proving certain facts if you kept adequate records to show your tax liability, cooperated with the IRS, and meet certain other conditions. If the court agrees with you on most issues in your case and finds that our position was largely unjustified, you may be able to recover some of your administrative and litigation costs. You will not be eligible to recover these costs unless you tried to resolve your case administratively, including going through the appeals system, and you gave us the information necessary to resolve the case.

Collections

Publication 594, *The IRS Collection Process,* explains your rights and responsibilities regarding payment of federal taxes. It describes:

- What to do when you owe taxes. It describes what to do if you get a tax bill and what to do if you think your bill is wrong. It also covers making installment payments, delaying collection action, and submitting an offer in compromise.
- IRS collection actions. It covers liens, releasing a lien, levies, releasing a levy, seizures and sales, and release of property.

Your collection appeal rights are explained in detail in Publication 1660, *Collection Appeal Rights.*

Innocent Spouse Relief

Generally, both you and your spouse are responsible, jointly and individually, for paying the full amount of any tax, interest, or penalties due on your joint return. However, if you qualify for innocent spouse relief, you may not have to pay the tax, interest, and penalties related to your spouse (or former spouse). For information on innocent spouse relief and two other ways to get relief, see Publication 971, *Innocent Spouse Relief,* and Form 8857, *Request for Innocent Spouse Relief (And Separation of Liability and Equitable Relief).*

Refunds

You may file a claim for refund if you think you paid too much tax. You must generally file the claim within 3 years from the date you filed your original return or 2 years from the date you paid the tax, whichever is later. The law generally provides for interest on your refund if it is not paid within 45 days of the date you filed your return or claim for refund. Publication 556, *Examination of Returns, Appeal Rights, and Claims for Refund,* has more information on refunds.

If you were due a refund but you did not file a return, you must file within 3 years from the date the return was originally due to get that refund.

Tax Information

The IRS provides a great deal of free information. The following are sources for forms, publications, and additional information.

- ***Tax Questions: 1–800–829–1040*** (1–800–829–4059 for TTY/TDD)
- ***Forms and Publications: 1–800–829–3676*** (1–800–829–4059 for TTY/TDD)
- ***Internet:*** **www.irs.gov**
- ***TaxFax Service:*** From your fax machine, dial ***703–368–9694.***
- ***Small Business Ombudsman:*** If you are a small business entity, you can participate in the regulatory process and comment on enforcement actions of IRS by calling **1–888–REG–FAIR.**
- ***Treasury Inspector General for Tax Administration:*** If you want to confidentially report misconduct, waste, fraud, or abuse by an IRS employee, you can call ***1–800–366–4484*** (1–800–877–8339 for TTY/TDD). You can remain anonymous.

Your Appeal Rights and How To Prepare a Protest If You Don't Agree

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Introduction

This Publication tells you how to appeal your tax case if you don't agree with the Internal Revenue Service (IRS) findings.

If You Don't Agree

If you don't agree with any or all of the IRS findings given you, you may request a meeting or a telephone conference with the supervisor of the person who issued the findings. If you still don't agree, you may appeal your case to the Appeals Office of IRS.

If you decide to do nothing and your case involves an examination of your income, estate, gift, and certain excise taxes or penalties, you will receive a formal Notice of Deficiency. The Notice of Deficiency allows you to go to the Tax Court and tells you the procedure to follow. If you do not go to the Tax Court, we will send you a bill for the amount due.

If you decide to do nothing and your case involves a trust fund recovery penalty, or certain employment tax liabilities, the IRS will send you a bill for the penalty. If you do not appeal a denial of an offer in compromise or a denial of a penalty abatement, the IRS will continue collection action.

If you don't agree, we urge you to appeal your case to the Appeals Office of IRS. The Office of Appeals can settle most differences without expensive and time-consuming court trials. [Note: Appeals can not consider your reasons for not agreeing if they don't come within the scope of the tax laws (for example, if you disagree solely on moral, religious, political, constitutional, conscientious, or similar grounds.)]

The following general rules tell you how to appeal your case.

Appeals Within the IRS

Appeals is the administrative appeals office for the IRS. You may appeal most IRS decisions with your local Appeals Office. The Appeals Office is separate from - and independent of - the IRS Office taking the action you disagree with. The Appeals Office is the only level of administrative appeal within the IRS.

Conferences with Appeals Office personnel are held in an informal manner by correspondence, by telephone or at a personal conference. There is no need for you to have representation for an Appeals conference, but if you choose to have a representative, see the requirements under ***Representation.***

If you want an Appeals conference, follow the instructions in our letter to you. Your request will be sent to the Appeals Office to arrange a conference at a convenient time and place. You or your representative should prepare to discuss all issues you don't agree with at the conference. Most differences are settled at this level.

In most instances, you may be eligible to take your case to court if you don't reach an agreement at your Appeals conference, or if you don't want to appeal your case to the IRS Office of Appeals. See the later section *Appeals To The Courts.*

Protests

When you request an appeals conference, you may also need to file a formal written protest or a small case request with the office named in our letter to you. Also, see the special appeal request procedures in Publication 1660, Collection Appeal Rights, if you disagree with lien, levy, seizure, or denial or termination of an installment agreement.

You need to file a written protest:

- In all employee plan and exempt organization cases without regard to the dollar amount at issue.
- In all partnership and S corporation cases without regard to the dollar amount at issue.
- In all other cases, unless you qualify for the small case request procedure, or other special appeal procedures such as requesting Appeals consideration of liens, levies, seizures, or installment agreements. See Publication 1660.

How to prepare a protest:

When a protest is required, **send it within the time limit specified in the letter you received.** Include in your protest:

1) Your name and address, and a daytime telephone number,
2) A statement that you want to appeal the IRS findings to the Appeals Office,
3) A copy of the letter showing the proposed changes and findings you don't agree with (or the date and symbols from the letter),
4) The tax periods or years involved,
5) A list of the changes that you don't agree with, and why you don't agree.
6) The facts supporting your position on any issue that you don't agree with,
7) The law or authority, if any, on which you are relying.
8) You must sign the written protest, stating that it is true, under the penalties of perjury as follows:

"Under the penalties of perjury, I declare that I examined the facts stated in this protest, including any accompanying documents, and, to the best of my knowledge and belief, they are true, correct, and complete."

If your representative prepares and signs the protest for you, he or she must substitute a declaration stating:

1) That he or she submitted the protest and accompanying documents and
2) Whether he or she knows personally that the facts stated in the protest and accompanying documents are true and correct.

We urge you to provide as much information as you can, as this will help us speed up your appeal. This will save you both time and money.

Small Case Request:

If the total amount for any tax period is not more than $25,000, you may make a small case request instead of filing a formal written protest. In computing the total amount, include a proposed increase or decrease in tax (including penalties), or claimed refund. For an offer in compromise, in calculating the total amount, include total unpaid tax, penalty and interest due. For a small case request, follow the instructions in our letter to you by: sending a letter requesting Appeals consideration, indicating the changes you don't agree with, and the reasons why you don't agree.

Representation

You may represent yourself at your appeals conference, or you may have an attorney, certified public accountant, or an individual enrolled to practice before the IRS represent you. Your representative must be qualified to practice before the IRS. If you want your representative to appear without you, you must provide a properly completed power of attorney to the IRS before the representative can receive or inspect confidential information. Form 2848, Power of Attorney and Declaration of Representative, or any other properly written power of attorney or authorization may be used for this

purpose. You can get copies of Form 2848 from an IRS office, or by calling 1-800-TAX-FORM (1-800-829-3676).

You may also bring another person(s) with you to support your position.

Appeals To The Courts

If you and Appeals don't agree on some or all of the issues after your Appeals conference, or if you skipped our appeals system, you may take your case to the United States Tax Court, the United States Court of Federal Claims, or your United States District Court, after satisfying certain procedural and jurisdictional requirements as described below under each court. (However, if you are a nonresident alien, you cannot take your case to a United States District Court.) These courts are independent judicial bodies and have no connection with the IRS.

Tax Court

If your disagreement with the IRS is over whether you owe additional income tax, estate tax, gift tax, certain excise taxes or penalties related to these proposed liabilities, you can go to the United States Tax Court. (Other types of tax controversies, such as those involving some employment tax issues or manufacturers' excise taxes, cannot be heard by the Tax Court.) You can do this after the IRS issues a formal letter, stating the amounts that the IRS believes you owe. This letter is called a notice of deficiency. You have 90 days from the date this notice is mailed to you to file a petition with the Tax Court (or 150 days if the notice is addressed to you outside the United States). The last date to file your petition will be entered on the notice of deficiency issued to you by the IRS. If you don't file the petition within the 90-day period (or 150 days, as the case may be), we will assess the proposed liability and send you a bill. You may also have the right to take your case to the Tax Court in some other situations, for example, following collection action by the IRS in certain cases. See Publication 1660.

If you discuss your case with the IRS during the 90-day period (150-day period), the discussion will not extend the period in which you may file a petition with the Tax Court.

The court will schedule your case for trial at a location convenient to you. You may represent yourself before the Tax Court, or you may be represented by anyone permitted to practice before that court.

Note: If you don't choose to go to the IRS Appeals Office before going to court, normally you will have an opportunity to attempt settlement with Appeals before your trial date.

If you dispute not more than $50,000 for any one tax year, there are simplified procedures. You can get information about these procedures and other matters from the Clerk of the Tax Court, 400 Second St. NW, Washington, DC 20217.

Frivolous Filing Penalty

Caution: If the Tax Court determines that your case is intended primarily to cause a delay, or that your position is frivolous or groundless, the Tax Court may award a penalty of up to $25,000 to the United States in its decision.

District Court and Court of Federal Claims

If your claim is for a refund of any type of tax, you may take your case to your United States District Court or to the United States Court of Federal Claims. Certain types of cases, such as those involving some employment tax issues or manufacturers' excise taxes, can be heard only by these courts.

Generally, your District Court and the Court of Federal Claims hear tax cases only after you have paid the tax and filed a claim for refund with the IRS. You can get information about procedures for filing suit in either court by contacting the Clerk of your District Court or the Clerk of the Court of Federal Claims.

If you file a formal refund claim with the IRS, and we haven't responded to you on your claim within 6 months from the date you filed it, you may file suit for a refund immediately in your District Court or the Court of Federal Claims. If we send you a letter that proposes disallowing or disallows your claim, you may request Appeals review of the disallowance. If you wish to file a refund suit, you must file your suit no later than 2 years from the date of our notice of claim disallowance letter.

Note: Appeals review of a disallowed claim doesn't extend the 2 year period for filing suit. However, it may be extended by mutual agreement.

Recovering Administrative and Litigation Costs

You may be able to recover your reasonable litigation and administrative costs if you are the prevailing party, and if you meet the other requirements. You must exhaust your administrative remedies within the IRS to receive reasonable litigation costs. You must not unreasonably delay the administrative or court proceedings.

Administrative costs include costs incurred on or after the date you receive the Appeals decision letter, the date of the first letter of proposed deficiency, or the date of the notice of deficiency, whichever is earliest.

Recoverable litigation or administrative costs may include:

- Attorney fees that generally do not exceed $125 per hour. This amount will be indexed for a cost of living adjustment.
- Reasonable amounts for court costs or any administrative fees or similar charges by the IRS.
- Reasonable expenses of expert witnesses.
- Reasonable costs of studies, analyses, tests, or engineering reports that are necessary to prepare your case.

You are the prevailing party if you meet all the following requirements:

- You substantially prevailed on the amount in controversy, or on the most significant tax issue or issues in question.
- You meet the net worth requirement. For individuals or estates, the net worth cannot exceed $2,000,000 on the date from which costs are recoverable. Charities and certain cooperatives must not have more than 500 employees on the date from which costs are recoverable. And taxpayers other than the two categories listed above must not have net worth exceeding $7,000,000 and cannot have more than 500 employees on the date from which costs are recoverable.

You are not the prevailing party if:

- The United States establishes that its position was substantially justified. If the IRS does not follow applicable published guidance, the United States is presumed to not be substantially justified. This presumption is rebuttable. Applicable published guidance means regulations, revenue rulings, revenue procedures, information releases, notices, announcements, and, if they are issued to you, private letter rulings, technical advice memoranda and determination letters. The court will also take into account whether the Government has won or lost in the courts of appeals for other circuits on substantially similar issues, in determining if the United States is substantially justified.

You are also the prevailing party if:

- The final judgment on your case is less than or equal to a "qualified offer" which the IRS rejected, and if you meet the net worth requirements referred to above.

A court will generally decide who is the prevailing party, but the IRS makes a final determination of liability at the administrative level. This means you may receive administrative costs from the IRS without going to court. You must file your claim for administrative costs no later than the 90th day after the final determination of tax, penalty or interest is mailed to you. The Appeals Office makes determinations for the IRS on administrative costs. A denial of administrative costs may be appealed to the Tax Court no later than the 90th day after the denial.

Department of the Treasury
Internal Revenue Service

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Examination of Returns, Appeal Rights, and Claims for Refund

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Introduction

The Internal Revenue Service (IRS) accepts most federal tax returns as filed. However, the IRS examines (or audits) some returns to determine if income, expenses, and credits are being reported accurately.

If your return is selected for examination, it does not suggest that you made an error or are dishonest. Returns are chosen by computerized screening, by random sample, or by an income document matching program. See *Examination selection criteria,* later. You should also know that many examinations result in a refund or acceptance of the tax return without change.

This publication discusses general rules and procedures that the IRS follows in examinations. It explains what happens during an examination and your appeal rights, both within the IRS and in the federal court system. It also explains how to file a claim for refund of tax you already paid.

As a taxpayer, you have the right to be treated fairly, professionally, promptly, and courteously by IRS employees. Publication 1, *Your Rights as a Taxpayer,* explains your rights when dealing with the IRS.

Taxpayer Advocate Service. The Taxpayer Advocate Service is an independent program for people who have been unable to resolve their problems with the IRS.

TIP *Before contacting the Taxpayer Advocate, you should first discuss any problem with the employee's supervisor to expedite the resolution of your problem. Your local Taxpayer Advocate will assist you if you are unable to resolve the problem with the supervisor.*

See *How To Get Tax Help,* near the end of this publication for more information about the Taxpayer Advocate Service.

Comments and suggestions. We welcome your comments about this publication and your suggestions for future editions.

You can e-mail us while visiting our web site at **www.irs.gov/help/email2.html**.

You can write to us at the following address:

Internal Revenue Service
Technical Publications Branch
W:CAR:MP:FP:P
1111 Constitution Ave. NW
Washington, DC 20224

We respond to many letters by telephone. Therefore, it would be helpful if you would include your daytime phone number, including the area code, in your correspondence.

Comments on IRS enforcement actions. The Small Business and Agricultural Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards have been established to receive comments from small business about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of the IRS, call **1–888–734–3247.**

Useful Items

You may want to see:

Publication

- ☐ **1** Your Rights as a Taxpayer
- ☐ **5** Your Appeal Rights and How To Prepare a Protest If You Don't Agree
- ☐ **594** The IRS Collection Process
- ☐ **910** Guide to Free Tax Services
- ☐ **971** Innocent Spouse Relief (And Separation of Liability and Equitable Relief)
- ☐ **1546** The Taxpayer Advocate Service of the IRS
- ☐ **1660** Collection Appeal Rights

Form (and Instructions)

- ☐ **843** Claim for Refund and Request for Abatement
- ☐ **1040X** Amended U.S. Individual Income Tax Return
- ☐ **2848** Power of Attorney and Declaration of Representative
- ☐ **4506** Request for Copy or Transcript of Tax Form
- ☐ **8379** Injured Spouse Claim and Allocation
- ☐ **8857** Request for Innocent Spouse Relief (And Separation of Liability and Equitable Relief)

See *How To Get Tax Help,* near the end of this publication for information about getting these publications and forms.

Examination of Returns

Your return may be examined for a variety of reasons, and the examination may take place in any one of several ways. After the examination, if any changes to your tax are proposed, you can either agree with those changes and pay any additional tax, or you can disagree with the changes and appeal the decision.

Examination selection criteria. Your tax return can be selected for examination on the basis of computer scoring. A computer program called the Discriminant Function System (DiF) assigns a numeric score to each individual and some corporate tax returns after they have been processed. If your tax return is selected from DiF, it has received a high score. This means that there is a high potential for an examination of your return to result in change to your income tax liability.

Your return can also be selected for examination on the basis of information received from third-party documentation, such as Forms 1099 and W–2, that does not match the information reported on the tax return. Or, your return can be selected to address both the questionable treatment of an item and to study the behavior of similar taxpayers (a market segment) in handling a tax issue.

In addition, your return can be selected as a result of information received from other sources on potential noncompliance with the tax laws or inaccurate filing. This information can come from a number of sources, including the media, public records, or possibly informants. The information is evaluated for reliability and accuracy before it is used as the basis of an examination or investigation.

Notice of IRS contact of third parties. The IRS must give you reasonable notice ***before*** contacting other persons, that in examining or collecting your tax liability the IRS may contact third parties such as your neighbors, banks, employers, or employees. The IRS must also give you notice of specific contacts by providing you with a record of persons contacted on both a periodic basis and upon your request.

This provision does not apply:

- *To any pending criminal investigation,*
- *When providing notice would jeopardize collection of any tax liability,*
- *Where providing notice may result in reprisal against any person, or*
- *When you authorized the contact.*

If Your Return Is Examined

Some examinations are handled entirely by mail. Examinations not handled by mail can take place in your home, your place of business, an Internal Revenue office, or the office of your attorney, accountant, or enrolled agent. If the time, place, or method is not convenient for you, the examiner will try to work out something more suitable. However, the IRS makes the final determination of when, where, and how the examination will take place.

Throughout the examination, you can act on your own behalf or have someone represent you or accompany you. If you filed a joint return, either you or your spouse, or both, can meet with the IRS. You can have someone represent or accompany you. This person can be any federally authorized practitioner, including an attorney, a certified public accountant, an enrolled agent (a person enrolled to practice before the IRS), an enrolled actuary, or the person who prepared the return and signed it as the preparer.

If you want someone to represent you in your absence, you must furnish that representative with written authorization. Make the authorization on Form 2848 or any other properly written authorization. If you want to consult an attorney, a certified public accountant, an enrolled agent, or any other person permitted to represent a taxpayer during an interview for examining a tax return or collecting tax, IRS will suspend the interview and reschedule it. IRS cannot suspend the interview if you are there because of an administrative summons.

Paid preparer authorization. If you checked the box in the signature area of your Form 1040 to authorize the IRS to discuss your tax return with your paid preparer, this authorization does not replace Form 2848. The box you checked on Form 1040 only authorizes the preparer to receive information about the processing of your return and the status of your refund during the period your return is being processed. For more information, see the instructions for Form 1040.

Confidentiality privilege. Generally, the same confidentiality protection that you have with an attorney also applies to certain communications that you have with federally authorized practitioners.

This confidentiality protection cannot be used by you in any administrative or court proceeding with an agency other than the IRS.

Confidential communications are those that:

- Advise you on tax matters within the scope of the practitioner's authority to practice before the IRS,
- Would be confidential between an attorney and you, and
- Relate to noncriminal tax matters before the IRS, or
- Relate to noncriminal tax proceedings brought in federal court by or against the United States.

The confidentiality privilege ***does not apply*** to any written communication that:

- Takes place between a federally authorized practitioner and a corporate director, shareholder, officer, employee, agent, or representative, and
- Promotes the corporation's participation in a tax shelter.

A tax shelter is any entity, plan, arrangement, or transaction, a significant purpose of which is the avoidance or evasion of income tax.

Tape recordings. You can make an audio recording of the examination interview. Your request to record the interview should be made in writing. You must notify the examiner 10 days in advance and bring your own recording equipment. The IRS also can record an examination. If the IRS initiates the recording, you must be notified 10 days in advance and you can get a copy of the recording at your expense.

Transfers to another district. Generally, your return is examined in the IRS district where you live. But if your return can be examined more quickly and conveniently in another district, such as where your books and records are located, you can ask to have the case transferred to that district.

Repeat examinations. The IRS tries to avoid repeat examinations of the same items, but sometimes this happens. If your tax return was examined for the same items in either of the 2 previous years and no change was proposed to your tax liability, please contact the IRS as soon as possible to see if the examination should be discontinued.

The Examination

An examination usually begins when you are notified that your return has been selected. The IRS will tell you which records you will need. If you gather your records before the examination, it can be completed with the least effort.

Any proposed changes to your return will be explained to you or your authorized representative. It is important that you understand the reasons for any proposed changes. You should not hesitate to ask about anything that is unclear to you.

The IRS must follow the tax laws set forth by Congress in the Internal Revenue Code. The IRS also follows Treasury Regulations, other rules, and procedures that were written to administer the tax laws. The IRS also follows court decisions. However, the IRS can lose cases that involve taxpayers with the same issue and still apply its interpretation of the law to your situation.

Most taxpayers agree to changes proposed by examiners, and the examinations are closed at this level. If you do not agree, you can appeal any proposed change by following the procedures provided to you by the IRS. A more complete discussion of appeal rights is found later.

If You Agree

If you agree with the proposed changes, you can sign an agreement form and pay any additional tax you may owe. You must pay interest on any additional tax. If you pay when you sign the agreement, the interest is generally figured from the due date of your return to the date of your payment.

If you do not pay the additional tax when you sign the agreement, you will receive a bill that includes interest. If you pay the amount due within 10 business days of the billing date, you will not have to pay more interest or penalties. This period is extended to 21 calendar days if the amount due is less than $100,000.

If you are due a refund, you will receive it sooner if you sign the agreement form. You will be paid interest on the refund.

If the IRS accepts your tax return as filed, you will receive a letter in a few weeks stating that the examiner proposed no changes to your return. You should keep this letter with your tax records.

If You Do Not Agree

If you do not agree with the proposed changes, the examiner will explain your appeal rights. If your examination takes place in an IRS office, you can request an immediate meeting with the examiner's supervisor

to explain your position. If an agreement is reached, your case will be closed.

If you cannot reach an agreement with the supervisor at this meeting, or if the examination took place outside of an IRS office, the examiner will write up your case explaining your position and the IRS' position. The examiner will forward your case to the district office for processing.

Within a few weeks after your closing conference with the examiner and/or supervisor, you will receive a package with:

- A letter (known as a ***30-day letter***) notifying you of your right to appeal the proposed changes within 30 days,
- A copy of the examination report explaining the examiner's proposed changes,
- An agreement or waiver form, and
- A copy of Publication 5.

You generally have 30 days from the date of the 30-day letter to tell the IRS whether you will accept or appeal the proposed changes. The letter will explain what steps you should take, depending on which action you choose. Be sure to follow the instructions carefully. *Appeal Rights* are explained later.

If you do not respond to the 30-day letter, or if you later do not reach an agreement with an Appeals officer, the IRS will send you a **90-day letter,** *which is also known as a notice of deficiency.*

You will have 90 days (150 days if it is addressed to you outside the United States) from the date of this notice to file a petition with the Tax Court. Filing a petition with the Tax Court is discussed later under *Appeals to the Courts* and *Tax Court.*

The notice will show the 90th (and 150th) day by which you must file your petition with the Tax Court.

Suspension of interest and penalties. Generally, the IRS has 3 years from the date you filed your return (or the date the return was due, if later) to assess any additional tax. However, interest and certain penalties will be suspended if the IRS does not mail a notice to you, stating your liability and the basis for that liability, within an 18-month period beginning on the later of:

- The date on which you timely filed your tax return, or
- The due date (without extensions) of your tax return.

If the IRS mails a notice stating your liability and the basis for that liability after the 18-month period, interest and certain penalties applicable to the suspension period will be suspended.

Note. The suspension only applies to timely filers of individual income tax returns for tax years ending after July 22, 1998. Also, for tax years beginning after 2003, the suspension period will apply if the IRS does not mail the notice stating your liability and the basis for that liability within a 1-year period (rather than 18 months).

The suspension period begins the day after the close of the 18-month period and ends 21 days after the IRS mails a notice to you stating your liability and the basis for that liability. Also, the suspension period applies separately to each notice stating your liability and the basis for that liability received by you.

The suspension does not apply to a:

- *Failure-to-pay penalty,*
- *Penalty, interest, addition to tax, or additional amount with respect to any tax liability shown on your return,*
- *Fraudulent tax return, or*
- *Criminal penalty.*

If you later agree. If you agree with the examiner's changes after receiving the examination report or the 30-day letter, sign and return either the examination report or the waiver. Keep a copy for your records. You can pay any additional amount you owe without waiting for a bill. Include interest on the additional tax at the applicable rate. This interest rate is usually for the period from the due date of the return to the date of payment. The examiner can tell you the interest rate(s) or help you figure the amount.

You must pay interest on penalties and on additional tax for failing to file returns, for overstating valuations, for understating valuations on estate and gift tax returns, and for substantially understating tax liability. Interest is generally figured from the date (including extensions) the tax return is required to be filed to the date you pay the penalty and/or additional tax.

If you pay the amount due within 10 business days after the date of notice and demand for immediate payment, you will not have to pay any additional penalties and interest. This period is extended to 21 calendar days if the amount due is less than $100,000.

How To Stop Interest From Accruing

If you think that you will owe additional tax at the end of the examination, you can stop the further accrual of interest on the amount you think you will owe. You can do this by sending money to the IRS to cover all or part of the amount you think you will owe. Interest will stop accruing on any part of the amount you cover when the IRS receives your money.

You can send an amount either in the form of a deposit (cash bond) or as a payment of tax. Both a deposit and a payment stop any further accrual of interest. However, making a deposit or payment of tax will stop the accrual of interest on only the amount you sent. Because of compounding rules, interest will accrue on accrued interest, even if you have paid the underlying tax.

To stop the accrual of interest on both tax and interest, you must make a deposit or payment for both the tax and interest that has accrued as of the date of deposit or payment.

Payment or Deposit

Deposits differ from payments in two ways:

1) You can have all or part of your deposit returned to you without filing for a refund. However, if you request and receive your deposit and the IRS later assesses a deficiency for that period and type of tax, interest will be figured as if the funds were never on deposit. Also, your deposit will not be returned if one of the following situations applies:
   a) The IRS assesses a tax liability.
   b) The IRS determines, that by returning the deposit, it may not be able to collect a future deficiency.
   c) The IRS determines that the deposit should be applied against another tax liability.
2) Deposits do not earn interest. No interest will be included when a deposit is returned to you.

Notice not mailed. If you send money before the IRS mails you a notice of deficiency, you can ask the IRS to treat it as a deposit. You must make your request in writing.

If, after being notified of a proposed liability but before the IRS mails you a notice of deficiency, you send an amount large enough to cover the proposed liability, it will be considered a payment unless you request in writing that it be treated as a deposit.

If the amount you send is at least as much as the proposed liability and you do not request that it be treated as a deposit, the IRS will not send you a notice of deficiency. If you do not receive a notice of deficiency, you cannot take your case to the Tax Court. See *Tax Court,* later.

Notice mailed. If, after the IRS mails the notice of deficiency, you send money without written instructions, it will be treated as a payment. You will still be able to petition the Tax Court.

If you send money after receiving a notice of deficiency and you have specified in writing that it is a "deposit in the nature of a cash bond," the IRS will treat it as a deposit if you send it before either:

- The close of the 90-day or 150-day period for filing a petition with the Tax Court to appeal the deficiency, or
- The date the Tax Court decision is final, if you have filed a petition.

Using a Deposit To Pay the Tax

If you agree with the examiner's proposed changes after the examination, your deposit will be applied against any amount you may owe. The IRS will not mail you a notice of deficiency and you will not have the right to take your case to the Tax Court.

If you do not agree to the full amount of the deficiency after the examination, the IRS will mail you a notice of deficiency. Your deposit will be applied against the proposed deficiency unless you write to the IRS before the end of the 90-day or 150-day period stating that you still want the money to be treated as a deposit. You will still have the right to take your case to the Tax Court. See *If You Do Not Agree,* discussed earlier.

Installment Agreement Request

You can request a monthly installment plan if you cannot pay the full amount you owe. To be valid, your request must be approved by the IRS. However, if you owe $10,000 or less in tax and you meet certain other criteria, the IRS must accept your request.

Before you request an installment agreement, you should consider other less costly alternatives, such as a bank loan. You will be charged interest on the amount you owe and you may be charged a late payment penalty on any installment not paid by its due date. There is also a $43 fee if your installment agreement is approved.

For more information about installment agreements, visit the IRS web site at **www.irs.gov/ind_info/coll_stds/collect.html** or see Form 9465, *Installment Agreement Request.*

Interest Netting

If you owe interest to the IRS on an underpayment for the same period the IRS owes you interest on an overpayment, you will be charged interest on the amount of the underpayment (up to the amount of the overpayment) at the overpayment interest rate. As a result, the net rate is zero for that period.

Abatement of Interest Due to Error or Delay by the IRS

The IRS may abate (reduce) the amount of interest you owe if the interest is due to an unreasonable error or delay by an IRS officer or employee performing a ministerial or managerial act (discussed later). Only the amount of interest on income, estate, gift, generation-skipping, and certain excise taxes can be reduced.

Note. Interest due to an error or delay in performing a managerial act can be reduced only if it accrued with respect to a deficiency or payment for a tax year beginning after July 30, 1996.

The amount of interest will not be reduced if you or anyone related to you contributed significantly to the error or delay. Also, the interest will be reduced only if the error or delay happened after the IRS contacted you in writing about the deficiency or payment on which the interest is based. An audit notification letter is such a contact.

The IRS cannot reduce the amount of interest due to a general administrative decision, such as a decision on how to organize the processing of tax returns.

Ministerial act. This is a procedural or mechanical act, not involving the exercise of judgment or discretion, during the processing of a case after all prerequisites (for example, conferences and review by supervisors) have taken place. A decision concerning the proper application of federal tax law (or other federal or state law) is not a ministerial act.

Example 1. You move from one state to another before the IRS selects your tax return for examination. A letter stating that your return has been selected is sent to your old address and then forwarded to your new address. When you get the letter, you respond with a request that the examination be transferred to the district office closest to your new address. The examination group manager approves your request. After your request has been approved, the transfer is a ministerial act. The IRS can reduce the interest because of any unreasonable delay in transferring the case.

Example 2. An examination of your return reveals tax due for which a notice of deficiency (90-day letter) will be issued. After you and the IRS discuss the issues, the notice is prepared and reviewed. After the review process, issuing the notice of deficiency is a ministerial act. If there is an unreasonable delay in sending the notice of deficiency to you, the IRS can reduce the interest resulting from the delay.

Managerial act. This is an administrative act during the processing of a case that involves the loss of records or the exercise of judgment or discretion concerning the management of personnel. A decision concerning the proper application of federal tax law (or other federal or state law) is not a managerial act.

Example. A revenue agent is examining your tax return. During the middle of the examination, the agent is sent to an extended training course. The agent's supervisor decides not to reassign your case, so the work is unreasonably delayed until the agent returns. Interest from the unreasonable delay can be abated since both the decision to send the agent to the training class and not to reassign the case are managerial acts.

How to request abatement of interest. You request an abatement (reduction) of interest on Form 843. You should file the claim with the IRS service center where you filed the tax return that was affected by the error or delay. If you do not remember the service center where you filed that tax return, send your claim to the service center where you filed your last tax return.

If you have already paid the interest and you would like a credit or refund of interest paid, you must file Form 843 within 3 years from the date you filed your original return or 2 years from the date you paid the interest, whichever is later. If you have not paid any of the interest, these time limitations for filing Form 843 do not apply.

Generally, you should file a separate Form 843 for each tax period and each type of tax. However, complete only one Form 843 if the interest is from an IRS error or delay that affected your tax for more than one tax period or for more than one type of tax (for example, where two or more tax years were being examined). You do not have to figure the dollar amounts of interest that you want lowered.

If your request for abatement of interest is denied, you can appeal the decision to the IRS Appeals Office.

Failure to abate interest may be reviewable by Tax Court. The Tax Court can review the IRS' refusal to abate (reduce) interest when all of the following requirements are met.

1) You have filed a request for abatement of interest (Form 843) with the IRS.
2) The IRS has not denied your request for abatement before July 31, 1996.
3) The IRS has mailed you a notice of final determination or a notice of disallowance.
4) You have filed a petition for review of failure to abate interest under Code section 6404 with the Tax Court within 180 days of the mailing of the notice of final determination or the notice of disallowance.

You must also meet the following requirements.

1) For individual and estate taxpayers — your net worth must not exceed $2 million as of the filing date of your petition for review. For this purpose, individuals filing a joint return shall be treated as separate individuals.
2) For charities and certain cooperatives — you must not have more than 500 employees as of the filing date of your petition for review.
3) For all other taxpayers — your net worth must not exceed $7 million, and you must not have more than 500 employees as of the filing date of your petition for review.

Abatement of Interest for Individuals in Disaster Areas

If you live in an area declared a disaster area by the President after 1996, the IRS will abate interest on income tax for the length of any extension period granted for filing income tax returns and paying income tax.

If you were granted an extension, but were charged interest on income tax owed during the declared disaster period, the IRS can retroactively abate your interest. To the extent possible the IRS can do the following.

- Make appropriate adjustments to your account.
- Notify you when the adjustments are made.
- Refund any interest paid by you where appropriate.

For more information on disaster area losses, see *Disaster Area Losses* in Publication 547, *Casualties, Disasters, and Thefts.*

Offer in Compromise

In certain circumstances, the IRS will allow you to pay less than the full amount you owe. If you think you may qualify, you should submit your offer by filing Form 656, *Offer in Compromise.* The IRS may accept your offer for any of the following reasons.

- There is doubt about the amount you owe (or whether you owe it).

- There is doubt as to whether you can pay the amount you owe based on your financial situation.
- An economic hardship would result if you had to pay the full amount owed.
- Regardless of your financial circumstances, payment of the full amount owed would harm voluntary compliance by you or other taxpayers.

If your offer is rejected, you have 30 days to ask the Appeals Office of the IRS to reconsider your offer.

Generally, if you submit an Offer in Compromise, the IRS will delay certain collection activities. The IRS usually will not levy (take) your property to settle your tax bill during the following periods.

- While your Offer in Compromise is being evaluated by the IRS.
- For 30 days immediately after the offer is rejected.
- During any period that your timely-filed appeal is being considered by Appeals.

Also, if the IRS rejects your original offer and you submit a revised offer within 30 days of the rejection, the IRS generally will not levy your property while it considers your revised offer.

For more information about submitting an offer in compromise, see Form 656.

Appeal Rights

Because people sometimes disagree on tax matters, the Service has an appeals system. Most differences can be settled within this system without expensive and time-consuming court trials.

However, your reasons for disagreeing must come within the scope of the tax laws. For example, you cannot appeal your case based only on moral, religious, political, constitutional, conscientious, or similar grounds.

In most instances, you may be eligible to take your case to court if you do not reach an agreement at your appeals conference, or if you do not want to appeal your case to the IRS Office of Appeals. See *Appeals to the Courts,* later, for more information.

Appeal Within the IRS

You can appeal an IRS tax decision to a local Appeals Office, which is separate and independent of your local IRS office, service or compliance center. The Appeals Office is the only level of appeal within the IRS. Conferences with Appeals Office personnel are held in an informal manner by correspondence, by telephone, or at a personal conference.

If you want an appeals conference, follow the instructions in the letter you received. Your request will be sent to the Appeals Office to arrange a conference at a convenient time and place. You or your representative should be prepared to discuss all disputed issues at the conference. Most differences are settled at this level.

In most instances, if agreement is not reached at your appeals conference, you can, at any time, take your case to court. See *Appeals to the Courts,* later.

Protests and Small Case Requests

When you request an Appeals conference, you may also need to file either a formal written protest or a small case request with the office named in the letter you received. Also see the special appeal request procedures in Publication 1660.

Written protest. You need to file a written protest:

- In all employee plan and exempt organization cases without regard to the dollar amount at issue,
- In all partnership and S corporation cases without regard to the dollar amount at issue, and
- In all other cases, unless you qualify for the small case request procedure, or other special appeal procedures such as requesting Appeals consideration of liens, levies, seizures, or installment agreements. See Publication 1660.

If you must submit a written protest, see the instructions in Publication 5 about the information you need to provide. The IRS urges you to provide as much information as you can, as it will help speed up your appeal. That will save you both time and money.

Be sure to send the protest within the time limit specified in the letter you received.

Small case request. If the total amount for any tax period is not more than $25,000, you may make a small case request instead of filing a formal written protest. In computing the total amount, include a proposed increase or decrease in tax (including penalties), or claimed refund. For an offer in compromise, in calculating the total amount, include total unpaid tax, penalty, and interest due. For a small case request, follow the instructions in our letter to you by sending a letter:

- Requesting Appeals consideration,
- Indicating the changes you do not agree with, and
- Indicating the reasons why you do not agree.

Representation

You can represent yourself at your appeals conference, or you can be represented by any federally authorized practitioner, including an attorney, a certified public accountant, an enrolled actuary, or an enrolled agent.

If your representative attends a conference without you, he or she can receive or inspect confidential information only if you have filed a power of attorney or a tax information authorization. You can use a Form 2848 or any other properly written power of attorney or authorization.

You can also bring witnesses to support your position.

Confidentiality privilege. Generally, the same confidentiality protection that you have with an attorney also applies to certain communications that you have

with federally authorized practitioners. See *Confidentiality privilege,* under *If Your Return Is Examined,* earlier.

Appeals to the Courts

If you and the IRS still disagree after the appeals conference, you can take your case to the United States Tax Court, the United States Court of Federal Claims, or the United States District Court. These courts are independent of the IRS.

If you elect to bypass the IRS' appeals system, you also can take your case to one of the courts listed above. However, a case petitioned to the United States Tax Court will normally be considered for settlement by an Appeals Office before the Tax Court hears the case.

If you unreasonably fail to pursue the IRS' appeals system, or if your case is intended primarily to cause a delay, or your position is frivolous or groundless, the Tax Court may impose a penalty of up to $25,000. See Appeal Within the IRS, *earlier.*

Prohibition on requests to taxpayers to give up rights to bring civil action. The Government cannot ask you to waive your right to sue the United States or a Government officer or employee for any action taken in connection with the tax laws. However, your right to sue can be waived if:

- You knowingly and voluntarily waive that right,
- The request to waive that right is made in writing to your attorney or other federally authorized practitioner, or
- The request is made in person and your attorney or other representative is present.

Burden of proof. For court proceedings resulting from examinations started after July 22, 1998, the IRS has the burden of proof for any factual issue if you have introduced credible evidence relating to the issue. However, you also must have:

- Complied with all substantiation requirements of the Internal Revenue Code,
- Maintained all records required by the Internal Revenue Code,
- Cooperated with all reasonable requests by the IRS for information regarding the preparation and related tax treatment of any item reported on your tax return, and
- Had a net worth of $7 million or less at the time your tax liability is contested in any court proceeding if your tax return is for a corporation, partnership, or trust.

You must still keep and maintain records needed by the IRS to verify that all taxes have been properly determined and computed even if the IRS has the burden of proof on disputed factual issues.

The burden of proof does not change on an issue when another provision of the tax laws requires a specific burden of proof with respect to that issue.

Use of statistical information. The IRS has the burden of proof in court proceedings based on any reconstruction of income, for an individual taxpayer, solely through the use of statistical information on unrelated taxpayers.

Penalties. The IRS has the burden of initially producing evidence in court proceedings with respect to the liability of any individual taxpayer for any penalty, addition to tax, or additional amount imposed by the tax laws.

Recovering litigation or administrative costs. These are the expenses that you pay to defend your position to the IRS or the courts. You may be able to recover reasonable litigation or administrative costs if you are the prevailing party and if:

- You exhaust all administrative remedies within the IRS,
- Your net worth is below a certain limit (see *Net worth requirements,* later),
- You do not unreasonably delay the proceeding, and
- You apply for these costs within 90 days of the date on which the final decision of the IRS as to the determination of the tax, interest, or penalty was mailed to you.

Note. If the IRS denies your award of administrative costs, and you want to appeal, you must petition the Tax Court within 90 days of the date on which the IRS mails the denial notice.

Prevailing party. Generally, you are the prevailing party if:

1) You substantially prevail with respect to the amount in controversy or on the most significant tax issue or set of issues in question, and
2) You meet the net worth requirements, discussed later.

You will not be treated as the prevailing party if the United States establishes that its position was substantially justified. The position of the United States is presumed not to be substantially justified if the IRS:

- Did not follow its applicable published guidance (such as regulations, revenue rulings, notices, announcements, and private letter rulings and determination letters issued to the taxpayer) in the proceeding. This presumption can be overcome by evidence, or
- Has lost in courts of appeal for other circuits on substantially similar issues.

The court will generally decide who is the prevailing party.

Reasonable litigation costs. These costs include the following:

1) The reasonable costs of studies, analyses, engineering reports, tests, or projects found by the court to be necessary for the preparation of your case,
2) The reasonable costs of expert witnesses,
3) Attorney fees that generally may not exceed $140 per hour for calendar year 2000. The hourly rate is indexed for inflation. See *Attorney fees* later.

Reasonable administrative costs. These costs include the following:

1) Any administrative fees or similar charges imposed by the IRS,
2) The reasonable costs of studies, analyses, engineering reports, tests, or projects,
3) The reasonable costs of expert witnesses, and
4) Attorney fees that generally may not exceed $140 per hour for calendar year 2000.

Timing of costs. Administrative costs can be awarded for costs incurred after the earliest of:

- The date the first letter of proposed deficiency is sent that allows you an opportunity to request administrative review in the IRS Office of Appeals,
- The date you receive notice of the IRS Office of Appeals' decision, or
- The date of the notice of deficiency.

Net worth requirements. An individual taxpayer may be able to recover litigation or administrative costs when certain requirements are met:

- For individual and estate taxpayers — your net worth must not exceed $2 million as of the filing date of your petition for review. For this purpose, individuals filing a joint return shall be treated as separate individuals.
- For charities and certain cooperatives — you must not have more than 500 employees as of the filing date of your petition for review.
- For all other taxpayers — your net worth must not exceed $7 million, and you must not have more than 500 employees as of the filing date of your petition for review.

Qualified offer rule. You can also receive reasonable costs and fees and be treated as a prevailing party in a civil action or proceeding when:

1) You make a ***qualified offer*** to the IRS to settle your case,
2) The IRS does not accept that offer, and
3) The tax liability (not including interest) later determined by the court is equal to or less than the amount of your qualified offer.

You must also meet the net worth requirements, discussed earlier, to get the benefit of the qualified offer rule.

Qualified offer. This is a written offer made by you during the ***qualified offer period.*** It must specify:

- The amount of your liability (not including interest), and
- That it is a qualified offer when made.

It must also remain open until the earliest of:

- The date the offer is rejected,
- The date the trial begins, or
- 90 days from the date of the offer.

Qualified offer period. This is the period beginning with the date the first letter of proposed deficiency that allows you to request review by the IRS Office of Appeals is mailed by the IRS to you and ending on the date 30 days before the date your case is first set for trial.

Attorney fees. For the calendar year 2000, the basic rate for attorney fees is $140 per hour and can be higher in certain circumstances. Those circumstances include the difficulty of the issues in the case and the local availability of tax expertise. The basic rate will be subject to a cost-of-living adjustment each year.

Attorney fees include the fees paid by a taxpayer for the services of anyone who is authorized to practice before the Tax Court or before the IRS. In addition, attorney fees can be awarded in civil actions for unauthorized inspection or disclosure of a taxpayer's return or return information.

Fees can be awarded in excess of the actual amount charged if:

- The taxpayer is represented for no fee, or for a nominal fee, as a pro bono service, and
- The award is paid to the taxpayer's representative or to the representative's employer.

Jurisdiction for determination of employment status. The Tax Court can review IRS ***employment status determinations*** (for example, whether individuals hired by a taxpayer are in fact employees of that taxpayer or independent contractors). Tax Court review can take place only if, in connection with an audit of any person, there is an actual controversy involving a determination by the IRS as part of an examination that:

1) One or more individuals performing services for that person are employees of that person, or
2) That person is not entitled to relief under ***section 530(a)*** of the Revenue Act of 1978 (discussed later).

Further:

- A Tax Court petition to review these determinations can be filed only by the person for whom the services are performed,

- If the taxpayer receives an IRS determination notice by certified or registered mail, the request for Tax Court review must be filed within 90 days of the date of mailing of that notice,
- If during the Tax Court proceeding, the taxpayer begins to treat as an employee an individual whose employment status is at issue, the Tax Court will not consider that change in its decision,
- Assessment and collection of tax is suspended while the Tax Court review is taking place,
- There can be a ***de novo*** review by the Tax Court (a review which does not consider IRS administrative findings), and
- At the taxpayer's request and with the Tax Court's agreement, small tax case procedures (discussed later) are available to simplify the case resolution process when the amount at issue is $50,000 or less for each calendar quarter involved.

Section 530(a) of the Revenue Act of 1978. Briefly, this section relieves an employer of certain employment tax responsibilities for individuals treated as independent contractors and not as employees. It also provides relief to taxpayers under audit or involved in administrative or judicial proceedings.

Tax Court review of request for relief from joint and several liability on a joint return. As discussed later, under *Relief from joint and several liability on a joint return,* you can request relief from liability for tax you owe, plus related penalties and interest, that you believe should be paid by your spouse (or former spouse). You also can petition (ask) the Tax Court to review your request for innocent spouse relief or your election to allocate liability if:

- The IRS sends you a determination notice denying, in whole or in part, your request for or election of relief, or
- You have not received a determination notice from the IRS within 6 months from the date you file Form 8857.

You must petition the Tax Court to review your request during the 90-day period that begins on the date the IRS mails you a determination notice. See Publication 971 for more information.

Tax Court

You can take your case to the United States Tax Court if you disagree with the IRS over:

- Income tax,
- Estate tax,
- Gift tax, or
- Certain excise taxes of private foundations, public charities, qualified pension and other retirement plans, or real estate investment trusts.

For information on Tax Court review of an IRS refusal to abate interest, see *Failure to abate interest may be reviewable by Tax Court,* earlier.

To take your case to the Tax Court, the IRS must first send you a notice of deficiency. Then, you can only appeal your case if you file a petition within 90 days from the date this notice is mailed to you (150 days if it is addressed to you outside the United States).

The notice will show the 90th (and 150th) day by which you must file your petition with the Tax Court.

Note. If you consent, the IRS can withdraw any notice of deficiency. Once withdrawn, the limits on credits, refunds, and assessments concerning the notice are void, and you and the IRS have the rights and obligations that you had before the notice was issued. The suspension of any time limitation while the notice of deficiency was issued will not change when the notice is withdrawn.

After the notice is withdrawn, you cannot file a petition with the Tax Court based on the notice. Also, the IRS can later issue a notice of deficiency in a greater or lesser amount than the amount in the withdrawn deficiency.

Generally, the Tax Court hears cases before any tax has been assessed and paid; however, you can pay the tax after the notice of deficiency has been issued and still petition the Tax Court for review. If you do not file your petition on time, the proposed tax will be assessed, a bill will be sent, and you will not be able to take your case to the Tax Court. Under the law, you must pay the tax within 10 days. After 10 days, the tax is subject to immediate collection. This collection can proceed even if you think that the amount is excessive. Publication 594 explains IRS collection procedures.

If you filed your petition on time, the Court will schedule your case for trial at a location convenient to you. You can represent yourself before the Tax Court or you can be represented by anyone admitted to practice before that Court.

Small tax case procedure. If the amount in your case is $50,000 or less for any one tax year or period, the Tax Court has a simple alternative to solve your case. At your request and if the Tax Court approves, your case can be handled under the small tax case procedure. In this procedure, you can present your case to the Tax Court for a decision that is final and that you cannot appeal. You can get more information regarding the small tax case procedure and other Tax Court matters from the United States Tax Court, 400 Second Street, N.W., Washington, DC 20217.

Motion to request redetermination of interest. In certain cases, you can file a motion asking the Tax Court to redetermine the amount of interest on either an underpayment or an overpayment. You can do this only in a situation that meets all of the following requirements.

1) The IRS has assessed a deficiency that was determined by the Tax Court.

2) The assessment included interest.

3) You have paid the entire amount of the deficiency plus the interest claimed by the IRS.

4) The Tax Court has found that you made an overpayment.

You must file the motion within one year after the decision of the Tax Court becomes final.

District Court and Court of Federal Claims

Generally, the District Court and the Court of Federal Claims hear tax cases only after you have paid the tax and filed a claim for a credit or refund. As explained later under *Claims for Refund,* you can file a claim with the IRS for a credit or refund if you think that the tax you paid is incorrect or excessive. If your claim is totally or partially disallowed by the IRS, you should receive a notice of claim disallowance. If the IRS does not act on your claim within 6 months from the date you filed it, you can then file suit for a refund. You must file suit for a credit or refund no later than 2 years after the IRS informs you that your claim has been rejected.

You can file suit for a credit or refund in your United States District Court or in the United States Court of Federal Claims. However, you cannot appeal to the United States Court of Federal Claims if your claim is for credit or refund of a penalty that relates to promoting an abusive tax shelter or to aiding and abetting the understatement of tax liability on someone else's return.

For information about procedures for filing suit in either court, contact the Clerk of your District Court or of the United States Court of Federal Claims.

Refund or Credit of Overpayments Before Final Determination

Any court with proper jurisdiction, including the Tax Court, can order the IRS to refund any part of a tax deficiency that the IRS collects from you during a period when the IRS is not permitted to assess, or to levy or engage in any court proceeding to collect that tax deficiency. In addition, the court can order a refund of any part of a tax deficiency that is not at issue in your appeal to the court. The court can order these refunds before its decision on the case is final.

Generally, the IRS is not permitted to take action on a tax deficiency during:

1) The 90-day (or 150-day if outside the United States) period that you have to petition a notice of deficiency to the Tax Court, or

2) The period that the case is under appeal.

Claims for Refund

Once you have paid your tax, you usually have the right to file a claim for a credit or refund if you believe the tax is too much. You can claim a credit or refund by filing Form 1040X.

File your claim by mailing it to the Internal Revenue service center where you filed your original return. File a separate form for each year or period involved. Include an explanation of each item of income, deduction, or credit on which you are basing your claim.

Corporations should file Form 1120X, *Amended U.S. Corporation Income Tax Return,* or other form appropriate to the type of credit or refund claimed.

Requesting a copy of your tax return. You can obtain a copy of the actual return you filed with the IRS for an earlier year. Use Form 4506 to make your request. You will be charged a fee, which you must pay when you submit Form 4506.

You may also use Form 4506 to request free copies of a tax return transcript, verification of nonfiling, or Form(s) W–2 information. The transcript will give you the following information:

- Type of return filed,
- Marital status,
- Tax shown on return,
- Adjusted gross income,
- Taxable income,
- Self-employment tax, and
- Number of exemptions.

Requesting a copy of your tax account information. You can also obtain a free copy of the tax account information for your individual income tax return. Tax account information lists certain items from your return and includes any later changes made by you or the IRS. To get your tax account information, call or write to your local Internal Revenue Service office.

Time for Filing a Claim for Refund

Generally, you must file a claim for a credit or refund within 3 years from the date you filed your original return or 2 years from the date you paid the tax, whichever is later. If you do not file a claim within this period, you may no longer be entitled to a credit or a refund.

If the due date to file a return or a claim for a credit or refund is a Saturday, Sunday, or legal holiday, it is filed on time if it is filed on the next business day. Returns you filed before the due date are considered filed on the due date. This is true even when the due date is a Saturday, Sunday, or legal holiday.

Nonfilers can get refund of overpayments paid within 3-year period. The Tax Court can consider taxes paid during the 3-year period preceding the date of a notice of deficiency for determining any refund due to a nonfiler. This means that if you do not file your return, and you receive a notice of deficiency in the third

year after the due date (with extensions) of your return and file suit with the Tax Court to contest the notice of deficiency, you may be able to receive a refund of excessive amounts paid within the 3-year period preceding the date of the notice of deficiency.

Claim for refund by estates electing the installment method of payment. The executor does not need to wait until all the installment payments have been made before filing a suit for refund with a Federal District Court or the U.S. Court of Federal Claims, for an estate:

- That consists largely of an interest in a closely-held business, and
- That elected to make tax payments through the installment method.

However, all the following must be true before a suit can be filed.

- All installment payments due on or before the date the suit is filed have been made.
- No accelerated installment payments have been made.
- No Tax Court case is pending with respect to any estate tax liability.
- The time for petitioning the Tax Court has passed if a notice of deficiency was issued to the estate regarding its liability for estate tax.
- No proceeding is pending for a declaratory judgment by the Tax Court on whether the estate is eligible to pay tax in installments.

In addition, the executor must:

- Not include any previously litigated issues in the current suit for refund, and
- Not discontinue making installment payments, timely, while the court considers the suit for refund.

TIP *If in its final decision on the suit for refund the court redetermines the estate's tax liability, the IRS must refund any part of the estate tax amount that is disallowed. This includes any part of the disallowed amount previously collected by the IRS.*

Limit on Amount of Refund

If you file your claim within 3 years after filing your return, the credit or refund cannot be more than the part of the tax paid within the 3 years (plus any extension of time for filing your return) before you filed the claim.

Example 1. You made estimated tax payments of $1,000 and got an automatic extension of time to August 16, 1999, to file your 1998 income tax return. When you filed your return on that date, you paid an additional $200 tax. Three years later, on August 16, 2002, you file an amended return and claim a refund of $700. Because you filed within the 3 years plus the 4-month extension period, you could get a refund of $700.

Example 2. The situation is the same as in Example 1, except that you filed your return on October 31, 1999, 2½ months after the extension period ended. You paid an additional $200 on that date. Three years later, on October 26, 2002, you file an amended return and claim a refund of $700. Although you filed your claim within 3 years from the date you filed your original return, the refund is limited to $200. The estimated tax of $1,000 was paid before the 3 years plus the 4-month extension period.

Claim filed after the 3-year period. If you file a claim after the 3-year period, but within 2 years from the time you paid the tax, the credit or refund cannot be more than the tax you paid within the 2 years immediately before you filed the claim.

Example. You filed your 1998 tax return on April 15, 1999. You paid $500 in tax. On November 3, 2000, after an examination of your 1998 return, you had to pay $200 in additional tax. On May 2, 2001, you file a claim for a refund of $300. Your refund will be limited to the $200 you paid during the 2 years immediately before you filed your claim.

Exceptions

The limits on your claim for refund can be affected by the type of item that forms the basis of your claim.

Special refunds. If you file a claim for refund based on one of the items listed below, the limits discussed earlier under *Time for Filing a Claim for Refund* may not apply. These special items are:

- A bad debt,
- A worthless security,
- A payment or accrual of foreign tax,
- A net operating loss carryback, and
- A carryback of certain tax credits.

The limits discussed earlier also may not apply if you have signed an agreement to extend the period of assessment of tax.

Periods of financial disability. The period of limitations on credits and refunds (3 years from the time you file your return or 2 years from the time you paid your tax) can be suspended during periods when you, an individual taxpayer, cannot manage your financial affairs because of physical or mental impairment that is medically determinable and either:

- Has lasted or can be expected to last continuously for at least 12 months, or
- Can be expected to result in death.

CAUTION *The period for filing a claim for refund will not be suspended for any time that someone else, such as your spouse or guardian, was authorized to act for you in financial matters.*

To claim that you were financially disabled, the following statements are to be submitted with the claim for credit or refund of tax:

1) A written statement signed by a physician, qualified to make the determination, that sets forth:
   a) The name and a brief description of your physical or mental impairment,
   b) The physician's medical opinion that your physical or mental impairment prevented you from managing your financial affairs,
   c) The physician's medical opinion that your physical or mental impairment resulted in or can be expected to result in death, or that it has lasted (or can be expected to last) for a continuous period of not less than 12 months, and
   d) To the best of the physician's knowledge, the specific time period during which you were prevented by such physical or mental impairment from managing your financial affairs, and
2) A written statement by you or the person signing the claim for credit or refund that no person, including your spouse, was authorized to act on your behalf in financial matters during the period described in paragraph (1)(d) of this section. Alternatively, if a person was authorized to act on your behalf in financial matters during any part of the period described in paragraph (1)(d), the beginning and ending dates of the period of time the person was so authorized.

The period of limitations will not be suspended on any claim for refund that (without regard to this provision) was barred as of July 22, 1998.

Processing Claims for Refund

Claims are usually processed shortly after they are filed. Your claim may be denied, accepted as filed, or it may be examined. If a claim is examined, the procedures are almost the same as in the examination of a tax return.

However, if you are filing a claim for credit or refund based only on contested income tax or on estate tax or gift tax issues considered in previously examined returns and you do not want to appeal within the IRS, you should request in writing that the claim be immediately rejected. A notice of claim disallowance will then be promptly sent to you. You have 2 years from the date of mailing of the notice of disallowance to file a refund suit in the United States District Court or in the United States Court of Federal Claims.

Explanation of Any Claim for Refund Disallowance

The IRS must explain to you the specific reasons why your claim for refund is disallowed or partially disallowed. Claims for refund are disallowed based on a preliminary review or on further examination. Some of the reasons your claim may be disallowed include the following.

- It was filed late.
- It was based solely on the unconstitutionality of the revenue acts.
- It was waived as part of a settlement.
- It covered a tax year or issues which were part of a closing agreement or an offer in compromise.
- It was related to a return closed by a final court order.

If your claim is disallowed for these, or any other reason, the IRS must send you an explanation.

Reduced Refund

Your refund may be reduced by an additional tax liability. Also, your refund may be reduced by amounts you owe for past-due child support, debts you owe to another federal agency, or past-due legally enforceable state income tax obligations. You will be notified if this happens. For those reductions, you cannot use the appeal and refund procedures discussed in this publication, but you may be able to take action against the other agency.

Offset of past-due state income tax obligations against overpayments. Federal tax overpayments can be used to offset past-due, legally enforceable state income tax obligations. For the offset procedure to apply, your federal income tax return must show an address in the state that requests the offset. In addition, the state must first:

- Notify you by certified mail with return receipt that the state plans to ask for an offset against your federal income tax overpayment,
- Give you at least 60 days to show that some or all of the state income tax is not past due or not legally enforceable,
- Consider any evidence from you in determining that income tax is past due and legally enforceable,
- Satisfy any other requirements to ensure that there is a valid past-due, legally enforceable state income tax obligation, and
- Show that all reasonable efforts to obtain payment have been made before requesting the offset.

Past-due, legally enforceable state income tax obligation. This is an obligation (debt):

1) Established by a court decision or administrative hearing and no longer subject to judicial review, or
2) That is assessed, uncollected, can no longer be redetermined, and is less than 10 years overdue.

Offset priorities. The amounts owed by you must be offset against your overpayments in the following order.

1) Federal income tax owed.
2) Past-due child support.

3) Past-due, legally enforceable debt owed to a federal agency.

4) Past-due, legally enforceable state income tax debt.

5) Future federal income tax liability.

Note. If more than one state agency requests an offset for separate debts, the offsets apply against your overpayment in the order in which the debts accrued. In addition, state income tax includes any local income tax administered by the chief tax administration agency of a state.

Note. The Tax Court cannot decide the validity or merits of the credits or offsets (for example, collection of delinquent child support or student loan payments) made that reduce or eliminate a refund to which you were otherwise entitled.

Injured spouse exception. When a joint return is filed and only one spouse owes past-due child and spousal support or a federal debt, the other spouse can be considered an ***injured spouse.*** An injured spouse can get a refund for his or her share of the overpayment that would otherwise be used to pay the past-due amount.

To be considered an injured spouse, you must have:

1) Filed a joint return,

2) Received income (such as wages, interest, etc.),

3) Made tax payments (such as federal income tax withheld from wages or estimated tax payments) or claimed a refundable credit (such as the earned income credit), and

4) Reported the income and tax payments on the joint return.

If you are an injured spouse, you can obtain your portion of the joint refund by completing Form 8379. Follow the instructions on the form.

Relief from joint and several liability on a joint return. Generally, joint and several liability applies to all joint returns. This means that both you and your spouse (or former spouse) are liable for any tax shown on a joint return plus any understatement of tax that may become due later. This is true even if a divorce decree states that a former spouse will be responsible for any amounts due on previously filed joint returns.

In some cases, a spouse will be relieved of the tax, interest, and penalties on a joint tax return. Three types of relief are available.

- Innocent spouse relief.
- Separation of liability.
- Equitable relief.

Form 8857. Each kind of relief is different and has different requirements. You must file Form 8857 to request relief. See the instructions for Form 8857 and Publication 971 for more information on these kinds of relief and who may qualify for them.

How To Get Tax Help

You can get help with unresolved tax issues, order free publications and forms, ask tax questions, and get more information from the IRS in several ways. By selecting the method that is best for you, you will have quick and easy access to tax help.

Contacting your Taxpayer Advocate. If you have attempted to deal with an IRS problem unsuccessfully, you should contact your Taxpayer Advocate.

The Taxpayer Advocate represents your interests and concerns within the IRS by protecting your rights and resolving problems that have not been fixed through normal channels. While Taxpayer Advocates cannot change the tax law or make a technical tax decision, they can clear up problems that resulted from previous contacts and ensure that your case is given a complete and impartial review.

To contact your Taxpayer Advocate:

- Call the Taxpayer Advocate at **1–877–777–4778.**
- Call the IRS at **1–800–829–1040.**
- Call, write, or fax the Taxpayer Advocate office in your area.
- Call **1–800–829–4059** if you are a TTY/TDD user.

For more information, see Publication 1546, *The Taxpayer Advocate Service of the IRS.*

Free tax services. To find out what services are available, get Publication 910, *Guide to Free Tax Services.* It contains a list of free tax publications and an index of tax topics. It also describes other free tax information services, including tax education and assistance programs and a list of TeleTax topics.

Personal computer. With your personal computer and modem, you can access the IRS on the Internet at **www.irs.gov**. While visiting our web site, you can select:

- *Frequently Asked Tax Questions* (located under *Taxpayer Help & Ed)* to find answers to questions you may have.
- *Forms & Pubs* to download forms and publications or search for forms and publications by topic or keyword.
- *Fill-in Forms* (located under *Forms & Pubs)* to enter information while the form is displayed and then print the completed form.
- *Tax Info For You* to view Internal Revenue Bulletins published in the last few years.
- *Tax Regs in English* to search regulations and the Internal Revenue Code (under *United States Code (USC)).*
- *Digital Dispatch* and *IRS Local News Net* (both located under *Tax Info For Business)* to receive our electronic newsletters on hot tax issues and news.

- *Small Business Corner* (located under *Tax Info For Business)* to get information on starting and operating a small business.

You can also reach us with your computer using File Transfer Protocol at **ftp.irs.gov**.

TaxFax Service. Using the phone attached to your fax machine, you can receive forms and instructions by calling **703–368–9694.** Follow the directions from the prompts. When you order forms, enter the catalog number for the form you need. The items you request will be faxed to you.

Phone. Many services are available by phone.

- *Ordering forms, instructions, and publications.* Call **1–800–829–3676** to order current and prior year forms, instructions, and publications.
- *Asking tax questions.* Call the IRS with your tax questions at **1–800–829–1040.**
- *TTY/TDD equipment.* If you have access to TTY/TDD equipment, call **1–800–829–4059** to ask tax questions or to order forms and publications.
- *TeleTax topics.* Call **1–800–829–4477** to listen to pre-recorded messages covering various tax topics.

Evaluating the quality of our telephone services. To ensure that IRS representatives give accurate, courteous, and professional answers, we evaluate the quality of our telephone services in several ways.

- A second IRS representative sometimes monitors live telephone calls. That person only evaluates the IRS assistor and does not keep a record of any taxpayer's name or tax identification number.
- We sometimes record telephone calls to evaluate IRS assistors objectively. We hold these recordings no longer than one week and use them only to measure the quality of assistance.
- We value our customers' opinions. Throughout this year, we will be surveying our customers for their opinions on our service.

Walk-in. You can walk in to many post offices, libraries, and IRS offices to pick up certain forms, instructions, and publications. Also, some libraries and IRS offices have:

- An extensive collection of products available to print from a CD-ROM or photocopy from reproducible proofs.
- The Internal Revenue Code, regulations, Internal Revenue Bulletins, and Cumulative Bulletins available for research purposes.

Mail. You can send your order for forms, instructions, and publications to the Distribution Center nearest to you and receive a response within 10 workdays after your request is received. Find the address that applies to your part of the country.

- **Western part of U.S.:**
  Western Area Distribution Center
  Rancho Cordova, CA 95743–0001
- **Central part of U.S.:**
  Central Area Distribution Center
  P.O. Box 8903
  Bloomington, IL 61702–8903
- **Eastern part of U.S. and foreign addresses:**
  Eastern Area Distribution Center
  P.O. Box 85074
  Richmond, VA 23261–5074

CD-ROM. You can order IRS Publication 1796, *Federal Tax Products on CD-ROM,* and obtain:

- Current tax forms, instructions, and publications.
- Prior-year tax forms, instructions, and publications.
- Popular tax forms which may be filled in electronically, printed out for submission, and saved for recordkeeping.
- Internal Revenue Bulletins.

The CD-ROM can be purchased from National Technical Information Service (NTIS) by calling **1–877–233–6767** or on the Internet at **www.irs.gov/cdorders.** The first release is available in mid-December and the final release is available in late January.

IRS Publication 3207, *The Business Resource Guide,* is an interactive CD-ROM that contains information important to small businesses. It is available in mid-February. You can get one free copy by calling **1–800–829–3676.**

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■

IRS
Department of the Treasury
Internal Revenue Service
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www.irs.gov

Your Rights as a Taxpayer

The first part of this publication explains some of your most important rights as a taxpayer. The second part explains the examination, appeal, collection, and refund processes. This publication is also available in Spanish.

Declaration of Taxpayer Rights

I. Protection of Your Rights

IRS employees will explain and protect your rights as a taxpayer throughout your contact with us.

II. Privacy and Confidentiality

The IRS will not disclose to anyone the information you give us, except as authorized by law. You have the right to know why we are asking you for information, how we will use it, and what happens if you do not provide requested information.

III. Professional and Courteous Service

If you believe that an IRS employee has not treated you in a professional, fair, and courteous manner, you should tell that employee's supervisor. If the supervisor's response is not satisfactory, you should write to the IRS director for your area or the center where you file your return.

IV. Representation

You may either represent yourself or, with proper written authorization, have someone else represent you in your place. Your representative must be a person allowed to practice before the IRS, such as an attorney, certified public accountant, or enrolled agent. If you are in an interview and ask to consult such a person, then we must stop and reschedule the interview in most cases.

You can have someone accompany you at an interview. You may make sound recordings of any meetings with our examination, appeal, or collection personnel, provided you tell us in writing 10 days before the meeting.

V. Payment of Only the Correct Amount of Tax

You are responsible for paying only the correct amount of tax due under the law—no more, no less. If you cannot pay all of your tax when it is due, you may be able to make monthly installment payments.

VI. Help With Unresolved Tax Problems

The Taxpayer Advocate Service can help you if you have tried unsuccessfully to resolve a problem with the IRS. Your local Taxpayer Advocate can offer you special help if you have a significant hardship as a result of a tax problem. For more information, call toll free 1–877–777–4778 (1–800–829–4059 for TTY/TDD) or write to the Taxpayer Advocate at the IRS office that last contacted you.

VII. Appeals and Judicial Review

If you disagree with us about the amount of your tax liability or certain collection actions, you have the right to ask the Appeals Office to review your case. You may also ask a court to review your case.

VIII. Relief From Certain Penalties and Interest

The IRS will waive penalties when allowed by law if you can show you acted reasonably and in good faith or relied on the incorrect advice of an IRS employee. We will waive interest that is the result of certain errors or delays caused by an IRS employee.

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.

Examinations, Appeals, Collections, and Refunds

Examinations (Audits)

We accept most taxpayers' returns as filed. If we inquire about your return or select it for examination, it does not suggest that you are dishonest. The inquiry or examination may or may not result in more tax. We may close your case without change; or, you may receive a refund.

The process of selecting a return for examination usually begins in one of two ways. First, we use computer programs to identify returns that may have incorrect amounts. These programs may be based on information returns, such as Forms 1099 and W-2, on studies of past examinations, or on certain issues identified by compliance projects. Second, we use information from outside sources that indicates that a return may have incorrect amounts. These sources may include newspapers, public records, and individuals. If we determine that the information is accurate and reliable, we may use it to select a return for examination.

Publication 556, *Examination of Returns, Appeal Rights, and Claims for Refund,* explains the rules and procedures that we follow in examinations. The following sections give an overview of how we conduct examinations.

By Mail

We handle many examinations and inquiries by mail. We will send you a letter with either a request for more information or a reason why we believe a change to your return may be needed. You can respond by mail or you can request a personal interview with an examiner. If you mail us the requested information or provide an explanation, we may or may not agree with you, and we will explain the reasons for any changes. Please do not hesitate to write to us about anything you do not understand.

By Interview

If we notify you that we will conduct your examination through a personal interview, or you request such an interview, you have the right to ask that the examination take place at a reasonable time and place that is convenient for both you and the IRS. If our examiner proposes any changes to your return, he or she will explain the reasons for the changes. If you do not agree with these changes, you can meet with the examiner's supervisor.

Repeat Examinations

If we examined your return for the same items in either of the 2 previous years and proposed no change to your tax liability, please contact us as soon as possible so we can see if we should discontinue the examination.

Appeals

If you do not agree with the examiner's proposed changes, you can appeal them to the Appeals Office of IRS. Most differences can be settled without expensive and time-consuming court trials. Your appeal rights are explained in detail in both Publication 5, *Your Appeal Rights and How To Prepare a Protest If You Don't Agree,* and Publication 556, *Examination of Returns, Appeal Rights, and Claims for Refund.*

If you do not wish to use the Appeals Office or disagree with its findings, you may be able to take your case to the U.S. Tax Court, U.S. Court of Federal Claims, or the U.S. District Court where you live. If you take your case to court, the IRS will have the burden of proving certain facts if you kept adequate records to show your tax liability, cooperated with the IRS, and meet certain other conditions. If the court agrees with you on most issues in your case and finds that our position was largely unjustified, you may be able to recover some of your administrative and litigation costs. You will not be eligible to recover these costs unless you tried to resolve your case administratively, including going through the appeals system, and you gave us the information necessary to resolve the case.

Collections

Publication 594, *The IRS Collection Process,* explains your rights and responsibilities regarding payment of federal taxes. It describes:

- What to do when you owe taxes. It describes what to do if you get a tax bill and what to do if you think your bill is wrong. It also covers making installment payments, delaying collection action, and submitting an offer in compromise.
- IRS collection actions. It covers liens, releasing a lien, levies, releasing a levy, seizures and sales, and release of property.

Your collection appeal rights are explained in detail in Publication 1660, *Collection Appeal Rights.*

Innocent Spouse Relief

Generally, both you and your spouse are responsible, jointly and individually, for paying the full amount of any tax, interest, or penalties due on your joint return. However, if you qualify for innocent spouse relief, you may not have to pay the tax, interest, and penalties related to your spouse (or former spouse). For information on innocent spouse relief and two other ways to get relief, see Publication 971, *Innocent Spouse Relief,* and Form 8857, *Request for Innocent Spouse Relief (And Separation of Liability and Equitable Relief).*

Refunds

You may file a claim for refund if you think you paid too much tax. You must generally file the claim within 3 years from the date you filed your original return or 2 years from the date you paid the tax, whichever is later. The law generally provides for interest on your refund if it is not paid within 45 days of the date you filed your return or claim for refund. Publication 556, *Examination of Returns, Appeal Rights, and Claims for Refund,* has more information on refunds.

If you were due a refund but you did not file a return, you must file within 3 years from the date the return was originally due to get that refund.

Tax Information

The IRS provides a great deal of free information. The following are sources for forms, publications, and additional information.

- ***Tax Questions: 1–800–829–1040*** (1–800–829–4059 for TTY/TDD)
- ***Forms and Publications: 1–800–829–3676*** (1–800–829–4059 for TTY/TDD)
- ***Internet:*** **www.irs.gov**
- ***TaxFax Service:*** From your fax machine, dial ***703–368–9694.***
- ***Small Business Ombudsman:*** If you are a small business entity, you can participate in the regulatory process and comment on enforcement actions of IRS by calling **1–888–REG–FAIR.**
- ***Treasury Inspector General for Tax Administration:*** If you want to confidentially report misconduct, waste, fraud, or abuse by an IRS employee, you can call ***1–800–366–4484*** (1–800–877–8339 for TTY/TDD). You can remain anonymous.

Your Appeal Rights and How To Prepare a Protest If You Don't Agree

IRS
Department of the Treasury
Internal Revenue Service
www.irs.ustreas.gov
Publication 5 **(Rev. 01-1999)**
Catalog Number **46074I**

Introduction

This Publication tells you how to appeal your tax case if you don't agree with the Internal Revenue Service (IRS) findings.

If You Don't Agree

If you don't agree with any or all of the IRS findings given you, you may request a meeting or a telephone conference with the supervisor of the person who issued the findings. If you still don't agree, you may appeal your case to the Appeals Office of IRS.

If you decide to do nothing and your case involves an examination of your income, estate, gift, and certain excise taxes or penalties, you will receive a formal Notice of Deficiency. The Notice of Deficiency allows you to go to the Tax Court and tells you the procedure to follow. If you do not go to the Tax Court, we will send you a bill for the amount due.

If you decide to do nothing and your case involves a trust fund recovery penalty, or certain employment tax liabilities, the IRS will send you a bill for the penalty. If you do not appeal a denial of an offer in compromise or a denial of a penalty abatement, the IRS will continue collection action.

If you don't agree, we urge you to appeal your case to the Appeals Office of IRS. The Office of Appeals can settle most differences without expensive and time-consuming court trials. [Note: Appeals can not consider your reasons for not agreeing if they don't come within the scope of the tax laws (for example, if you disagree solely on moral, religious, political, constitutional, conscientious, or similar grounds.)]

The following general rules tell you how to appeal your case.

Appeals Within the IRS

Appeals is the administrative appeals office for the IRS. You may appeal most IRS decisions with your local Appeals Office. The Appeals Office is separate from - and independent of - the IRS Office taking the action you disagree with. The Appeals Office is the only level of administrative appeal within the IRS.

Conferences with Appeals Office personnel are held in an informal manner by correspondence, by telephone or at a personal conference. There is no need for you to have representation for an Appeals conference, but if you choose to have a representative, see the requirements under ***Representation.***

If you want an Appeals conference, follow the instructions in our letter to you. Your request will be sent to the Appeals Office to arrange a conference at a convenient time and place. You or your representative should prepare to discuss all issues you don't agree with at the conference. Most differences are settled at this level.

In most instances, you may be eligible to take your case to court if you don't reach an agreement at your Appeals conference, or if you don't want to appeal your case to the IRS Office of Appeals. See the later section *Appeals To The Courts.*

Protests

When you request an appeals conference, you may also need to file a formal written protest or a small case request with the office named in our letter to you. Also, see the special appeal request procedures in Publication 1660, Collection Appeal Rights, if you disagree with lien, levy, seizure, or denial or termination of an installment agreement.

You need to file a written protest:

- In all employee plan and exempt organization cases without regard to the dollar amount at issue.
- In all partnership and S corporation cases without regard to the dollar amount at issue.
- In all other cases, unless you qualify for the small case request procedure, or other special appeal procedures such as requesting Appeals consideration of liens, levies, seizures, or installment agreements. See Publication 1660.

How to prepare a protest:

When a protest is required, **send it within the time limit specified in the letter you received.** Include in your protest:

1) Your name and address, and a daytime telephone number,
2) A statement that you want to appeal the IRS findings to the Appeals Office,
3) A copy of the letter showing the proposed changes and findings you don't agree with (or the date and symbols from the letter),
4) The tax periods or years involved,
5) A list of the changes that you don't agree with, and why you don't agree.
6) The facts supporting your position on any issue that you don't agree with,
7) The law or authority, if any, on which you are relying.
8) You must sign the written protest, stating that it is true, under the penalties of perjury as follows:

"Under the penalties of perjury, I declare that I examined the facts stated in this protest, including any accompanying documents, and, to the best of my knowledge and belief, they are true, correct, and complete."

If your representative prepares and signs the protest for you, he or she must substitute a declaration stating:

1) That he or she submitted the protest and accompanying documents and
2) Whether he or she knows personally that the facts stated in the protest and accompanying documents are true and correct.

We urge you to provide as much information as you can, as this will help us speed up your appeal. This will save you both time and money.

Small Case Request:

If the total amount for any tax period is not more than $25,000, you may make a small case request instead of filing a formal written protest. In computing the total amount, include a proposed increase or decrease in tax (including penalties), or claimed refund. For an offer in compromise, in calculating the total amount, include total unpaid tax, penalty and interest due. For a small case request, follow the instructions in our letter to you by: sending a letter requesting Appeals consideration, indicating the changes you don't agree with, and the reasons why you don't agree.

Representation

You may represent yourself at your appeals conference, or you may have an attorney, certified public accountant, or an individual enrolled to practice before the IRS represent you. Your representative must be qualified to practice before the IRS. If you want your representative to appear without you, you must provide a properly completed power of attorney to the IRS before the representative can receive or inspect confidential information. Form 2848, Power of Attorney and Declaration of Representative, or any other properly written power of attorney or authorization may be used for this

purpose. You can get copies of Form 2848 from an IRS office, or by calling 1-800-TAX-FORM (1-800-829-3676).

You may also bring another person(s) with you to support your position.

Appeals To The Courts

If you and Appeals don't agree on some or all of the issues after your Appeals conference, or if you skipped our appeals system, you may take your case to the United States Tax Court, the United States Court of Federal Claims, or your United States District Court, after satisfying certain procedural and jurisdictional requirements as described below under each court. (However, if you are a nonresident alien, you cannot take your case to a United States District Court.) These courts are independent judicial bodies and have no connection with the IRS.

Tax Court

If your disagreement with the IRS is over whether you owe additional income tax, estate tax, gift tax, certain excise taxes or penalties related to these proposed liabilities, you can go to the United States Tax Court. (Other types of tax controversies, such as those involving some employment tax issues or manufacturers' excise taxes, cannot be heard by the Tax Court.) You can do this after the IRS issues a formal letter, stating the amounts that the IRS believes you owe. This letter is called a notice of deficiency. You have 90 days from the date this notice is mailed to you to file a petition with the Tax Court (or 150 days if the notice is addressed to you outside the United States). The last date to file your petition will be entered on the notice of deficiency issued to you by the IRS. If you don't file the petition within the 90-day period (or 150 days, as the case may be), we will assess the proposed liability and send you a bill. You may also have the right to take your case to the Tax Court in some other situations, for example, following collection action by the IRS in certain cases. See Publication 1660.

If you discuss your case with the IRS during the 90-day period (150-day period), the discussion will not extend the period in which you may file a petition with the Tax Court.

The court will schedule your case for trial at a location convenient to you. You may represent yourself before the Tax Court, or you may be represented by anyone permitted to practice before that court.

Note: If you don't choose to go to the IRS Appeals Office before going to court, normally you will have an opportunity to attempt settlement with Appeals before your trial date.

If you dispute not more than $50,000 for any one tax year, there are simplified procedures. You can get information about these procedures and other matters from the Clerk of the Tax Court, 400 Second St. NW, Washington, DC 20217.

Frivolous Filing Penalty

Caution: If the Tax Court determines that your case is intended primarily to cause a delay, or that your position is frivolous or groundless, the Tax Court may award a penalty of up to $25,000 to the United States in its decision.

District Court and Court of Federal Claims

If your claim is for a refund of any type of tax, you may take your case to your United States District Court or to the United States Court of Federal Claims. Certain types of cases, such as those involving some employment tax issues or manufacturers' excise taxes, can be heard only by these courts.

Generally, your District Court and the Court of Federal Claims hear tax cases only after you have paid the tax and filed a claim for refund with the IRS. You can get information about procedures for filing suit in either court by contacting the Clerk of your District Court or the Clerk of the Court of Federal Claims.

If you file a formal refund claim with the IRS, and we haven't responded to you on your claim within 6 months from the date you filed it, you may file suit for a refund immediately in your District Court or the Court of Federal Claims. If we send you a letter that proposes disallowing or disallows your claim, you may request Appeals review of the disallowance. If you wish to file a refund suit, you must file your suit no later than 2 years from the date of our notice of claim disallowance letter.

Note: Appeals review of a disallowed claim doesn't extend the 2 year period for filing suit. However, it may be extended by mutual agreement.

Recovering Administrative and Litigation Costs

You may be able to recover your reasonable litigation and administrative costs if you are the prevailing party, and if you meet the other requirements. You must exhaust your administrative remedies within the IRS to receive reasonable litigation costs. You must not unreasonably delay the administrative or court proceedings.

Administrative costs include costs incurred on or after the date you receive the Appeals decision letter, the date of the first letter of proposed deficiency, or the date of the notice of deficiency, whichever is earliest.

Recoverable litigation or administrative costs may include:

- Attorney fees that generally do not exceed $125 per hour. This amount will be indexed for a cost of living adjustment.
- Reasonable amounts for court costs or any administrative fees or similar charges by the IRS.
- Reasonable expenses of expert witnesses.
- Reasonable costs of studies, analyses, tests, or engineering reports that are necessary to prepare your case.

You are the prevailing party if you meet all the following requirements:

- You substantially prevailed on the amount in controversy, or on the most significant tax issue or issues in question.
- You meet the net worth requirement. For individuals or estates, the net worth cannot exceed $2,000,000 on the date from which costs are recoverable. Charities and certain cooperatives must not have more than 500 employees on the date from which costs are recoverable. And taxpayers other than the two categories listed above must not have net worth exceeding $7,000,000 and cannot have more than 500 employees on the date from which costs are recoverable.

You are not the prevailing party if:

- The United States establishes that its position was substantially justified. If the IRS does not follow applicable published guidance, the United States is presumed to not be substantially justified. This presumption is rebuttable. Applicable published guidance means regulations, revenue rulings, revenue procedures, information releases, notices, announcements, and, if they are issued to you, private letter rulings, technical advice memoranda and determination letters. The court will also take into account whether the Government has won or lost in the courts of appeals for other circuits on substantially similar issues, in determining if the United States is substantially justified.

You are also the prevailing party if:

- The final judgment on your case is less than or equal to a "qualified offer" which the IRS rejected, and if you meet the net worth requirements referred to above.

A court will generally decide who is the prevailing party, but the IRS makes a final determination of liability at the administrative level. This means you may receive administrative costs from the IRS without going to court. You must file your claim for administrative costs no later than the 90th day after the final determination of tax, penalty or interest is mailed to you. The Appeals Office makes determinations for the IRS on administrative costs. A denial of administrative costs may be appealed to the Tax Court no later than the 90th day after the denial.

Department of the Treasury
Internal Revenue Service

Publication 556
(Rev. November 2000)
Cat. No. 15104N

Examination of Returns, Appeal Rights, and Claims for Refund

Get forms and other information faster and easier by:

Computer • www.irs.gov or **FTP** • ftp.irs.gov

FAX • 703-368-9694 (from your fax machine)

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Introduction

The Internal Revenue Service (IRS) accepts most federal tax returns as filed. However, the IRS examines (or audits) some returns to determine if income, expenses, and credits are being reported accurately.

If your return is selected for examination, it does not suggest that you made an error or are dishonest. Returns are chosen by computerized screening, by random sample, or by an income document matching program. See *Examination selection criteria,* later. You should also know that many examinations result in a refund or acceptance of the tax return without change.

This publication discusses general rules and procedures that the IRS follows in examinations. It explains what happens during an examination and your appeal rights, both within the IRS and in the federal court system. It also explains how to file a claim for refund of tax you already paid.

As a taxpayer, you have the right to be treated fairly, professionally, promptly, and courteously by IRS employees. Publication 1, *Your Rights as a Taxpayer,* explains your rights when dealing with the IRS.

Taxpayer Advocate Service. The Taxpayer Advocate Service is an independent program for people who have been unable to resolve their problems with the IRS.

TIP *Before contacting the Taxpayer Advocate, you should first discuss any problem with the employee's supervisor to expedite the resolution of your problem. Your local Taxpayer Advocate will assist you if you are unable to resolve the problem with the supervisor.*

See *How To Get Tax Help,* near the end of this publication for more information about the Taxpayer Advocate Service.

Comments and suggestions. We welcome your comments about this publication and your suggestions for future editions.

You can e-mail us while visiting our web site at **www.irs.gov/help/email2.html**.

You can write to us at the following address:

Internal Revenue Service
Technical Publications Branch
W:CAR:MP:FP:P
1111 Constitution Ave. NW
Washington, DC 20224

We respond to many letters by telephone. Therefore, it would be helpful if you would include your daytime phone number, including the area code, in your correspondence.

Comments on IRS enforcement actions. The Small Business and Agricultural Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards have been established to receive comments from small business about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of the IRS, call **1–888–734–3247.**

Useful Items

You may want to see:

Publication

- ☐ **1** Your Rights as a Taxpayer
- ☐ **5** Your Appeal Rights and How To Prepare a Protest If You Don't Agree
- ☐ **594** The IRS Collection Process
- ☐ **910** Guide to Free Tax Services
- ☐ **971** Innocent Spouse Relief (And Separation of Liability and Equitable Relief)
- ☐ **1546** The Taxpayer Advocate Service of the IRS
- ☐ **1660** Collection Appeal Rights

Form (and Instructions)

- ☐ **843** Claim for Refund and Request for Abatement
- ☐ **1040X** Amended U.S. Individual Income Tax Return
- ☐ **2848** Power of Attorney and Declaration of Representative
- ☐ **4506** Request for Copy or Transcript of Tax Form
- ☐ **8379** Injured Spouse Claim and Allocation
- ☐ **8857** Request for Innocent Spouse Relief (And Separation of Liability and Equitable Relief)

See *How To Get Tax Help,* near the end of this publication for information about getting these publications and forms.

Examination of Returns

Your return may be examined for a variety of reasons, and the examination may take place in any one of several ways. After the examination, if any changes to your tax are proposed, you can either agree with those changes and pay any additional tax, or you can disagree with the changes and appeal the decision.

Examination selection criteria. Your tax return can be selected for examination on the basis of computer scoring. A computer program called the Discriminant Function System (DiF) assigns a numeric score to each individual and some corporate tax returns after they have been processed. If your tax return is selected from DiF, it has received a high score. This means that there is a high potential for an examination of your return to result in change to your income tax liability.

Your return can also be selected for examination on the basis of information received from third-party documentation, such as Forms 1099 and W–2, that does not match the information reported on the tax return. Or, your return can be selected to address both the questionable treatment of an item and to study the behavior of similar taxpayers (a market segment) in handling a tax issue.

In addition, your return can be selected as a result of information received from other sources on potential noncompliance with the tax laws or inaccurate filing. This information can come from a number of sources, including the media, public records, or possibly informants. The information is evaluated for reliability and accuracy before it is used as the basis of an examination or investigation.

Notice of IRS contact of third parties. The IRS must give you reasonable notice ***before*** contacting other persons, that in examining or collecting your tax liability the IRS may contact third parties such as your neighbors, banks, employers, or employees. The IRS must also give you notice of specific contacts by providing you with a record of persons contacted on both a periodic basis and upon your request.

This provision does not apply:

- *To any pending criminal investigation,*
- *When providing notice would jeopardize collection of any tax liability,*
- *Where providing notice may result in reprisal against any person, or*
- *When you authorized the contact.*

If Your Return Is Examined

Some examinations are handled entirely by mail. Examinations not handled by mail can take place in your home, your place of business, an Internal Revenue office, or the office of your attorney, accountant, or enrolled agent. If the time, place, or method is not convenient for you, the examiner will try to work out something more suitable. However, the IRS makes the final determination of when, where, and how the examination will take place.

Throughout the examination, you can act on your own behalf or have someone represent you or accompany you. If you filed a joint return, either you or your spouse, or both, can meet with the IRS. You can have someone represent or accompany you. This person can be any federally authorized practitioner, including an attorney, a certified public accountant, an enrolled agent (a person enrolled to practice before the IRS), an enrolled actuary, or the person who prepared the return and signed it as the preparer.

If you want someone to represent you in your absence, you must furnish that representative with written authorization. Make the authorization on Form 2848 or any other properly written authorization. If you want to consult an attorney, a certified public accountant, an enrolled agent, or any other person permitted to represent a taxpayer during an interview for examining a tax return or collecting tax, IRS will suspend the interview and reschedule it. IRS cannot suspend the interview if you are there because of an administrative summons.

Paid preparer authorization. If you checked the box in the signature area of your Form 1040 to authorize the IRS to discuss your tax return with your paid preparer, this authorization does not replace Form 2848. The box you checked on Form 1040 only authorizes the preparer to receive information about the processing of your return and the status of your refund during the period your return is being processed. For more information, see the instructions for Form 1040.

Confidentiality privilege. Generally, the same confidentiality protection that you have with an attorney also applies to certain communications that you have with federally authorized practitioners.

This confidentiality protection cannot be used by you in any administrative or court proceeding with an agency other than the IRS.

Confidential communications are those that:

- Advise you on tax matters within the scope of the practitioner's authority to practice before the IRS,
- Would be confidential between an attorney and you, and
- Relate to noncriminal tax matters before the IRS, or
- Relate to noncriminal tax proceedings brought in federal court by or against the United States.

The confidentiality privilege ***does not apply*** to any written communication that:

- Takes place between a federally authorized practitioner and a corporate director, shareholder, officer, employee, agent, or representative, and
- Promotes the corporation's participation in a tax shelter.

A tax shelter is any entity, plan, arrangement, or transaction, a significant purpose of which is the avoidance or evasion of income tax.

Tape recordings. You can make an audio recording of the examination interview. Your request to record the interview should be made in writing. You must notify the examiner 10 days in advance and bring your own recording equipment. The IRS also can record an examination. If the IRS initiates the recording, you must be notified 10 days in advance and you can get a copy of the recording at your expense.

Transfers to another district. Generally, your return is examined in the IRS district where you live. But if your return can be examined more quickly and conveniently in another district, such as where your books and records are located, you can ask to have the case transferred to that district.

Repeat examinations. The IRS tries to avoid repeat examinations of the same items, but sometimes this happens. If your tax return was examined for the same items in either of the 2 previous years and no change was proposed to your tax liability, please contact the IRS as soon as possible to see if the examination should be discontinued.

The Examination

An examination usually begins when you are notified that your return has been selected. The IRS will tell you which records you will need. If you gather your records before the examination, it can be completed with the least effort.

Any proposed changes to your return will be explained to you or your authorized representative. It is important that you understand the reasons for any proposed changes. You should not hesitate to ask about anything that is unclear to you.

The IRS must follow the tax laws set forth by Congress in the Internal Revenue Code. The IRS also follows Treasury Regulations, other rules, and procedures that were written to administer the tax laws. The IRS also follows court decisions. However, the IRS can lose cases that involve taxpayers with the same issue and still apply its interpretation of the law to your situation.

Most taxpayers agree to changes proposed by examiners, and the examinations are closed at this level. If you do not agree, you can appeal any proposed change by following the procedures provided to you by the IRS. A more complete discussion of appeal rights is found later.

If You Agree

If you agree with the proposed changes, you can sign an agreement form and pay any additional tax you may owe. You must pay interest on any additional tax. If you pay when you sign the agreement, the interest is generally figured from the due date of your return to the date of your payment.

If you do not pay the additional tax when you sign the agreement, you will receive a bill that includes interest. If you pay the amount due within 10 business days of the billing date, you will not have to pay more interest or penalties. This period is extended to 21 calendar days if the amount due is less than $100,000.

If you are due a refund, you will receive it sooner if you sign the agreement form. You will be paid interest on the refund.

If the IRS accepts your tax return as filed, you will receive a letter in a few weeks stating that the examiner proposed no changes to your return. You should keep this letter with your tax records.

If You Do Not Agree

If you do not agree with the proposed changes, the examiner will explain your appeal rights. If your examination takes place in an IRS office, you can request an immediate meeting with the examiner's supervisor

to explain your position. If an agreement is reached, your case will be closed.

If you cannot reach an agreement with the supervisor at this meeting, or if the examination took place outside of an IRS office, the examiner will write up your case explaining your position and the IRS' position. The examiner will forward your case to the district office for processing.

Within a few weeks after your closing conference with the examiner and/or supervisor, you will receive a package with:

- A letter (known as a ***30-day letter***) notifying you of your right to appeal the proposed changes within 30 days,
- A copy of the examination report explaining the examiner's proposed changes,
- An agreement or waiver form, and
- A copy of Publication 5.

You generally have 30 days from the date of the 30-day letter to tell the IRS whether you will accept or appeal the proposed changes. The letter will explain what steps you should take, depending on which action you choose. Be sure to follow the instructions carefully. *Appeal Rights* are explained later.

If you do not respond to the 30-day letter, or if you later do not reach an agreement with an Appeals officer, the IRS will send you a **90-day letter,** *which is also known as a notice of deficiency.*

You will have 90 days (150 days if it is addressed to you outside the United States) from the date of this notice to file a petition with the Tax Court. Filing a petition with the Tax Court is discussed later under *Appeals to the Courts* and *Tax Court.*

The notice will show the 90th (and 150th) day by which you must file your petition with the Tax Court.

Suspension of interest and penalties. Generally, the IRS has 3 years from the date you filed your return (or the date the return was due, if later) to assess any additional tax. However, interest and certain penalties will be suspended if the IRS does not mail a notice to you, stating your liability and the basis for that liability, within an 18-month period beginning on the later of:

- The date on which you timely filed your tax return, or
- The due date (without extensions) of your tax return.

If the IRS mails a notice stating your liability and the basis for that liability after the 18-month period, interest and certain penalties applicable to the suspension period will be suspended.

Note. The suspension only applies to timely filers of individual income tax returns for tax years ending after July 22, 1998. Also, for tax years beginning after 2003, the suspension period will apply if the IRS does not mail the notice stating your liability and the basis for that liability within a 1-year period (rather than 18 months).

The suspension period begins the day after the close of the 18-month period and ends 21 days after the IRS mails a notice to you stating your liability and the basis for that liability. Also, the suspension period applies separately to each notice stating your liability and the basis for that liability received by you.

The suspension does not apply to a:

- *Failure-to-pay penalty,*
- *Penalty, interest, addition to tax, or additional amount with respect to any tax liability shown on your return,*
- *Fraudulent tax return, or*
- *Criminal penalty.*

If you later agree. If you agree with the examiner's changes after receiving the examination report or the 30-day letter, sign and return either the examination report or the waiver. Keep a copy for your records. You can pay any additional amount you owe without waiting for a bill. Include interest on the additional tax at the applicable rate. This interest rate is usually for the period from the due date of the return to the date of payment. The examiner can tell you the interest rate(s) or help you figure the amount.

You must pay interest on penalties and on additional tax for failing to file returns, for overstating valuations, for understating valuations on estate and gift tax returns, and for substantially understating tax liability. Interest is generally figured from the date (including extensions) the tax return is required to be filed to the date you pay the penalty and/or additional tax.

If you pay the amount due within 10 business days after the date of notice and demand for immediate payment, you will not have to pay any additional penalties and interest. This period is extended to 21 calendar days if the amount due is less than $100,000.

How To Stop Interest From Accruing

If you think that you will owe additional tax at the end of the examination, you can stop the further accrual of interest on the amount you think you will owe. You can do this by sending money to the IRS to cover all or part of the amount you think you will owe. Interest will stop accruing on any part of the amount you cover when the IRS receives your money.

You can send an amount either in the form of a deposit (cash bond) or as a payment of tax. Both a deposit and a payment stop any further accrual of interest. However, making a deposit or payment of tax will stop the accrual of interest on only the amount you sent. Because of compounding rules, interest will accrue on accrued interest, even if you have paid the underlying tax.

To stop the accrual of interest on both tax and interest, you must make a deposit or payment for both the tax and interest that has accrued as of the date of deposit or payment.

Payment or Deposit

Deposits differ from payments in two ways:

1) You can have all or part of your deposit returned to you without filing for a refund. However, if you request and receive your deposit and the IRS later assesses a deficiency for that period and type of tax, interest will be figured as if the funds were never on deposit. Also, your deposit will not be returned if one of the following situations applies:
   a) The IRS assesses a tax liability.
   b) The IRS determines, that by returning the deposit, it may not be able to collect a future deficiency.
   c) The IRS determines that the deposit should be applied against another tax liability.
2) Deposits do not earn interest. No interest will be included when a deposit is returned to you.

Notice not mailed. If you send money before the IRS mails you a notice of deficiency, you can ask the IRS to treat it as a deposit. You must make your request in writing.

If, after being notified of a proposed liability but before the IRS mails you a notice of deficiency, you send an amount large enough to cover the proposed liability, it will be considered a payment unless you request in writing that it be treated as a deposit.

If the amount you send is at least as much as the proposed liability and you do not request that it be treated as a deposit, the IRS will not send you a notice of deficiency. If you do not receive a notice of deficiency, you cannot take your case to the Tax Court. See *Tax Court,* later.

Notice mailed. If, after the IRS mails the notice of deficiency, you send money without written instructions, it will be treated as a payment. You will still be able to petition the Tax Court.

If you send money after receiving a notice of deficiency and you have specified in writing that it is a "deposit in the nature of a cash bond," the IRS will treat it as a deposit if you send it before either:

- The close of the 90-day or 150-day period for filing a petition with the Tax Court to appeal the deficiency, or
- The date the Tax Court decision is final, if you have filed a petition.

Using a Deposit To Pay the Tax

If you agree with the examiner's proposed changes after the examination, your deposit will be applied against any amount you may owe. The IRS will not mail you a notice of deficiency and you will not have the right to take your case to the Tax Court.

If you do not agree to the full amount of the deficiency after the examination, the IRS will mail you a notice of deficiency. Your deposit will be applied against the proposed deficiency unless you write to the IRS before the end of the 90-day or 150-day period stating that you still want the money to be treated as a deposit. You will still have the right to take your case to the Tax Court. See *If You Do Not Agree,* discussed earlier.

Installment Agreement Request

You can request a monthly installment plan if you cannot pay the full amount you owe. To be valid, your request must be approved by the IRS. However, if you owe $10,000 or less in tax and you meet certain other criteria, the IRS must accept your request.

Before you request an installment agreement, you should consider other less costly alternatives, such as a bank loan. You will be charged interest on the amount you owe and you may be charged a late payment penalty on any installment not paid by its due date. There is also a $43 fee if your installment agreement is approved.

For more information about installment agreements, visit the IRS web site at **www.irs.gov/ind_info/coll_stds/collect.html** or see Form 9465, *Installment Agreement Request.*

Interest Netting

If you owe interest to the IRS on an underpayment for the same period the IRS owes you interest on an overpayment, you will be charged interest on the amount of the underpayment (up to the amount of the overpayment) at the overpayment interest rate. As a result, the net rate is zero for that period.

Abatement of Interest Due to Error or Delay by the IRS

The IRS may abate (reduce) the amount of interest you owe if the interest is due to an unreasonable error or delay by an IRS officer or employee performing a ministerial or managerial act (discussed later). Only the amount of interest on income, estate, gift, generation-skipping, and certain excise taxes can be reduced.

Note. Interest due to an error or delay in performing a managerial act can be reduced only if it accrued with respect to a deficiency or payment for a tax year beginning after July 30, 1996.

The amount of interest will not be reduced if you or anyone related to you contributed significantly to the error or delay. Also, the interest will be reduced only if the error or delay happened after the IRS contacted you in writing about the deficiency or payment on which the interest is based. An audit notification letter is such a contact.

The IRS cannot reduce the amount of interest due to a general administrative decision, such as a decision on how to organize the processing of tax returns.

Ministerial act. This is a procedural or mechanical act, not involving the exercise of judgment or discretion, during the processing of a case after all prerequisites (for example, conferences and review by supervisors) have taken place. A decision concerning the proper application of federal tax law (or other federal or state law) is not a ministerial act.

Example 1. You move from one state to another before the IRS selects your tax return for examination. A letter stating that your return has been selected is sent to your old address and then forwarded to your new address. When you get the letter, you respond with a request that the examination be transferred to the district office closest to your new address. The examination group manager approves your request. After your request has been approved, the transfer is a ministerial act. The IRS can reduce the interest because of any unreasonable delay in transferring the case.

Example 2. An examination of your return reveals tax due for which a notice of deficiency (90-day letter) will be issued. After you and the IRS discuss the issues, the notice is prepared and reviewed. After the review process, issuing the notice of deficiency is a ministerial act. If there is an unreasonable delay in sending the notice of deficiency to you, the IRS can reduce the interest resulting from the delay.

Managerial act. This is an administrative act during the processing of a case that involves the loss of records or the exercise of judgment or discretion concerning the management of personnel. A decision concerning the proper application of federal tax law (or other federal or state law) is not a managerial act.

Example. A revenue agent is examining your tax return. During the middle of the examination, the agent is sent to an extended training course. The agent's supervisor decides not to reassign your case, so the work is unreasonably delayed until the agent returns. Interest from the unreasonable delay can be abated since both the decision to send the agent to the training class and not to reassign the case are managerial acts.

How to request abatement of interest. You request an abatement (reduction) of interest on Form 843. You should file the claim with the IRS service center where you filed the tax return that was affected by the error or delay. If you do not remember the service center where you filed that tax return, send your claim to the service center where you filed your last tax return.

If you have already paid the interest and you would like a credit or refund of interest paid, you must file Form 843 within 3 years from the date you filed your original return or 2 years from the date you paid the interest, whichever is later. If you have not paid any of the interest, these time limitations for filing Form 843 do not apply.

Generally, you should file a separate Form 843 for each tax period and each type of tax. However, complete only one Form 843 if the interest is from an IRS error or delay that affected your tax for more than one tax period or for more than one type of tax (for example, where two or more tax years were being examined). You do not have to figure the dollar amounts of interest that you want lowered.

If your request for abatement of interest is denied, you can appeal the decision to the IRS Appeals Office.

Failure to abate interest may be reviewable by Tax Court. The Tax Court can review the IRS' refusal to abate (reduce) interest when all of the following requirements are met.

1) You have filed a request for abatement of interest (Form 843) with the IRS.
2) The IRS has not denied your request for abatement before July 31, 1996.
3) The IRS has mailed you a notice of final determination or a notice of disallowance.
4) You have filed a petition for review of failure to abate interest under Code section 6404 with the Tax Court within 180 days of the mailing of the notice of final determination or the notice of disallowance.

You must also meet the following requirements.

1) For individual and estate taxpayers — your net worth must not exceed $2 million as of the filing date of your petition for review. For this purpose, individuals filing a joint return shall be treated as separate individuals.
2) For charities and certain cooperatives — you must not have more than 500 employees as of the filing date of your petition for review.
3) For all other taxpayers — your net worth must not exceed $7 million, and you must not have more than 500 employees as of the filing date of your petition for review.

Abatement of Interest for Individuals in Disaster Areas

If you live in an area declared a disaster area by the President after 1996, the IRS will abate interest on income tax for the length of any extension period granted for filing income tax returns and paying income tax.

If you were granted an extension, but were charged interest on income tax owed during the declared disaster period, the IRS can retroactively abate your interest. To the extent possible the IRS can do the following.

- Make appropriate adjustments to your account.
- Notify you when the adjustments are made.
- Refund any interest paid by you where appropriate.

For more information on disaster area losses, see *Disaster Area Losses* in Publication 547, *Casualties, Disasters, and Thefts.*

Offer in Compromise

In certain circumstances, the IRS will allow you to pay less than the full amount you owe. If you think you may qualify, you should submit your offer by filing Form 656, *Offer in Compromise.* The IRS may accept your offer for any of the following reasons.

- There is doubt about the amount you owe (or whether you owe it).

- There is doubt as to whether you can pay the amount you owe based on your financial situation.
- An economic hardship would result if you had to pay the full amount owed.
- Regardless of your financial circumstances, payment of the full amount owed would harm voluntary compliance by you or other taxpayers.

If your offer is rejected, you have 30 days to ask the Appeals Office of the IRS to reconsider your offer.

Generally, if you submit an Offer in Compromise, the IRS will delay certain collection activities. The IRS usually will not levy (take) your property to settle your tax bill during the following periods.

- While your Offer in Compromise is being evaluated by the IRS.
- For 30 days immediately after the offer is rejected.
- During any period that your timely-filed appeal is being considered by Appeals.

Also, if the IRS rejects your original offer and you submit a revised offer within 30 days of the rejection, the IRS generally will not levy your property while it considers your revised offer.

For more information about submitting an offer in compromise, see Form 656.

Appeal Rights

Because people sometimes disagree on tax matters, the Service has an appeals system. Most differences can be settled within this system without expensive and time-consuming court trials.

However, your reasons for disagreeing must come within the scope of the tax laws. For example, you cannot appeal your case based only on moral, religious, political, constitutional, conscientious, or similar grounds.

In most instances, you may be eligible to take your case to court if you do not reach an agreement at your appeals conference, or if you do not want to appeal your case to the IRS Office of Appeals. See *Appeals to the Courts,* later, for more information.

Appeal Within the IRS

You can appeal an IRS tax decision to a local Appeals Office, which is separate and independent of your local IRS office, service or compliance center. The Appeals Office is the only level of appeal within the IRS. Conferences with Appeals Office personnel are held in an informal manner by correspondence, by telephone, or at a personal conference.

If you want an appeals conference, follow the instructions in the letter you received. Your request will be sent to the Appeals Office to arrange a conference at a convenient time and place. You or your representative should be prepared to discuss all disputed issues at the conference. Most differences are settled at this level.

In most instances, if agreement is not reached at your appeals conference, you can, at any time, take your case to court. See *Appeals to the Courts,* later.

Protests and Small Case Requests

When you request an Appeals conference, you may also need to file either a formal written protest or a small case request with the office named in the letter you received. Also see the special appeal request procedures in Publication 1660.

Written protest. You need to file a written protest:

- In all employee plan and exempt organization cases without regard to the dollar amount at issue,
- In all partnership and S corporation cases without regard to the dollar amount at issue, and
- In all other cases, unless you qualify for the small case request procedure, or other special appeal procedures such as requesting Appeals consideration of liens, levies, seizures, or installment agreements. See Publication 1660.

If you must submit a written protest, see the instructions in Publication 5 about the information you need to provide. The IRS urges you to provide as much information as you can, as it will help speed up your appeal. That will save you both time and money.

Be sure to send the protest within the time limit specified in the letter you received.

Small case request. If the total amount for any tax period is not more than $25,000, you may make a small case request instead of filing a formal written protest. In computing the total amount, include a proposed increase or decrease in tax (including penalties), or claimed refund. For an offer in compromise, in calculating the total amount, include total unpaid tax, penalty, and interest due. For a small case request, follow the instructions in our letter to you by sending a letter:

- Requesting Appeals consideration,
- Indicating the changes you do not agree with, and
- Indicating the reasons why you do not agree.

Representation

You can represent yourself at your appeals conference, or you can be represented by any federally authorized practitioner, including an attorney, a certified public accountant, an enrolled actuary, or an enrolled agent.

If your representative attends a conference without you, he or she can receive or inspect confidential information only if you have filed a power of attorney or a tax information authorization. You can use a Form 2848 or any other properly written power of attorney or authorization.

You can also bring witnesses to support your position.

Confidentiality privilege. Generally, the same confidentiality protection that you have with an attorney also applies to certain communications that you have

with federally authorized practitioners. See *Confidentiality privilege,* under *If Your Return Is Examined,* earlier.

Appeals to the Courts

If you and the IRS still disagree after the appeals conference, you can take your case to the United States Tax Court, the United States Court of Federal Claims, or the United States District Court. These courts are independent of the IRS.

If you elect to bypass the IRS' appeals system, you also can take your case to one of the courts listed above. However, a case petitioned to the United States Tax Court will normally be considered for settlement by an Appeals Office before the Tax Court hears the case.

If you unreasonably fail to pursue the IRS' appeals system, or if your case is intended primarily to cause a delay, or your position is frivolous or groundless, the Tax Court may impose a penalty of up to $25,000. See Appeal Within the IRS, *earlier.*

Prohibition on requests to taxpayers to give up rights to bring civil action. The Government cannot ask you to waive your right to sue the United States or a Government officer or employee for any action taken in connection with the tax laws. However, your right to sue can be waived if:

- You knowingly and voluntarily waive that right,
- The request to waive that right is made in writing to your attorney or other federally authorized practitioner, or
- The request is made in person and your attorney or other representative is present.

Burden of proof. For court proceedings resulting from examinations started after July 22, 1998, the IRS has the burden of proof for any factual issue if you have introduced credible evidence relating to the issue. However, you also must have:

- Complied with all substantiation requirements of the Internal Revenue Code,
- Maintained all records required by the Internal Revenue Code,
- Cooperated with all reasonable requests by the IRS for information regarding the preparation and related tax treatment of any item reported on your tax return, and
- Had a net worth of $7 million or less at the time your tax liability is contested in any court proceeding if your tax return is for a corporation, partnership, or trust.

You must still keep and maintain records needed by the IRS to verify that all taxes have been properly determined and computed even if the IRS has the burden of proof on disputed factual issues.

The burden of proof does not change on an issue when another provision of the tax laws requires a specific burden of proof with respect to that issue.

Use of statistical information. The IRS has the burden of proof in court proceedings based on any reconstruction of income, for an individual taxpayer, solely through the use of statistical information on unrelated taxpayers.

Penalties. The IRS has the burden of initially producing evidence in court proceedings with respect to the liability of any individual taxpayer for any penalty, addition to tax, or additional amount imposed by the tax laws.

Recovering litigation or administrative costs. These are the expenses that you pay to defend your position to the IRS or the courts. You may be able to recover reasonable litigation or administrative costs if you are the prevailing party and if:

- You exhaust all administrative remedies within the IRS,
- Your net worth is below a certain limit (see *Net worth requirements,* later),
- You do not unreasonably delay the proceeding, and
- You apply for these costs within 90 days of the date on which the final decision of the IRS as to the determination of the tax, interest, or penalty was mailed to you.

Note. If the IRS denies your award of administrative costs, and you want to appeal, you must petition the Tax Court within 90 days of the date on which the IRS mails the denial notice.

Prevailing party. Generally, you are the prevailing party if:

1) You substantially prevail with respect to the amount in controversy or on the most significant tax issue or set of issues in question, and
2) You meet the net worth requirements, discussed later.

You will not be treated as the prevailing party if the United States establishes that its position was substantially justified. The position of the United States is presumed not to be substantially justified if the IRS:

- Did not follow its applicable published guidance (such as regulations, revenue rulings, notices, announcements, and private letter rulings and determination letters issued to the taxpayer) in the proceeding. This presumption can be overcome by evidence, or
- Has lost in courts of appeal for other circuits on substantially similar issues.

The court will generally decide who is the prevailing party.

Reasonable litigation costs. These costs include the following:

1) The reasonable costs of studies, analyses, engineering reports, tests, or projects found by the court to be necessary for the preparation of your case,
2) The reasonable costs of expert witnesses,
3) Attorney fees that generally may not exceed $140 per hour for calendar year 2000. The hourly rate is indexed for inflation. See *Attorney fees* later.

Reasonable administrative costs. These costs include the following:

1) Any administrative fees or similar charges imposed by the IRS,
2) The reasonable costs of studies, analyses, engineering reports, tests, or projects,
3) The reasonable costs of expert witnesses, and
4) Attorney fees that generally may not exceed $140 per hour for calendar year 2000.

Timing of costs. Administrative costs can be awarded for costs incurred after the earliest of:

- The date the first letter of proposed deficiency is sent that allows you an opportunity to request administrative review in the IRS Office of Appeals,
- The date you receive notice of the IRS Office of Appeals' decision, or
- The date of the notice of deficiency.

Net worth requirements. An individual taxpayer may be able to recover litigation or administrative costs when certain requirements are met:

- For individual and estate taxpayers — your net worth must not exceed $2 million as of the filing date of your petition for review. For this purpose, individuals filing a joint return shall be treated as separate individuals.
- For charities and certain cooperatives — you must not have more than 500 employees as of the filing date of your petition for review.
- For all other taxpayers — your net worth must not exceed $7 million, and you must not have more than 500 employees as of the filing date of your petition for review.

Qualified offer rule. You can also receive reasonable costs and fees and be treated as a prevailing party in a civil action or proceeding when:

1) You make a ***qualified offer*** to the IRS to settle your case,
2) The IRS does not accept that offer, and
3) The tax liability (not including interest) later determined by the court is equal to or less than the amount of your qualified offer.

You must also meet the net worth requirements, discussed earlier, to get the benefit of the qualified offer rule.

Qualified offer. This is a written offer made by you during the ***qualified offer period.*** It must specify:

- The amount of your liability (not including interest), and
- That it is a qualified offer when made.

It must also remain open until the earliest of:

- The date the offer is rejected,
- The date the trial begins, or
- 90 days from the date of the offer.

Qualified offer period. This is the period beginning with the date the first letter of proposed deficiency that allows you to request review by the IRS Office of Appeals is mailed by the IRS to you and ending on the date 30 days before the date your case is first set for trial.

Attorney fees. For the calendar year 2000, the basic rate for attorney fees is $140 per hour and can be higher in certain circumstances. Those circumstances include the difficulty of the issues in the case and the local availability of tax expertise. The basic rate will be subject to a cost-of-living adjustment each year.

Attorney fees include the fees paid by a taxpayer for the services of anyone who is authorized to practice before the Tax Court or before the IRS. In addition, attorney fees can be awarded in civil actions for unauthorized inspection or disclosure of a taxpayer's return or return information.

Fees can be awarded in excess of the actual amount charged if:

- The taxpayer is represented for no fee, or for a nominal fee, as a pro bono service, and
- The award is paid to the taxpayer's representative or to the representative's employer.

Jurisdiction for determination of employment status. The Tax Court can review IRS ***employment status determinations*** (for example, whether individuals hired by a taxpayer are in fact employees of that taxpayer or independent contractors). Tax Court review can take place only if, in connection with an audit of any person, there is an actual controversy involving a determination by the IRS as part of an examination that:

1) One or more individuals performing services for that person are employees of that person, or
2) That person is not entitled to relief under ***section 530(a)*** of the Revenue Act of 1978 (discussed later).

Further:

- A Tax Court petition to review these determinations can be filed only by the person for whom the services are performed,

- If the taxpayer receives an IRS determination notice by certified or registered mail, the request for Tax Court review must be filed within 90 days of the date of mailing of that notice,
- If during the Tax Court proceeding, the taxpayer begins to treat as an employee an individual whose employment status is at issue, the Tax Court will not consider that change in its decision,
- Assessment and collection of tax is suspended while the Tax Court review is taking place,
- There can be a ***de novo*** review by the Tax Court (a review which does not consider IRS administrative findings), and
- At the taxpayer's request and with the Tax Court's agreement, small tax case procedures (discussed later) are available to simplify the case resolution process when the amount at issue is $50,000 or less for each calendar quarter involved.

Section 530(a) of the Revenue Act of 1978. Briefly, this section relieves an employer of certain employment tax responsibilities for individuals treated as independent contractors and not as employees. It also provides relief to taxpayers under audit or involved in administrative or judicial proceedings.

Tax Court review of request for relief from joint and several liability on a joint return. As discussed later, under *Relief from joint and several liability on a joint return,* you can request relief from liability for tax you owe, plus related penalties and interest, that you believe should be paid by your spouse (or former spouse). You also can petition (ask) the Tax Court to review your request for innocent spouse relief or your election to allocate liability if:

- The IRS sends you a determination notice denying, in whole or in part, your request for or election of relief, or
- You have not received a determination notice from the IRS within 6 months from the date you file Form 8857.

You must petition the Tax Court to review your request during the 90-day period that begins on the date the IRS mails you a determination notice. See Publication 971 for more information.

Tax Court

You can take your case to the United States Tax Court if you disagree with the IRS over:

- Income tax,
- Estate tax,
- Gift tax, or
- Certain excise taxes of private foundations, public charities, qualified pension and other retirement plans, or real estate investment trusts.

For information on Tax Court review of an IRS refusal to abate interest, see *Failure to abate interest may be reviewable by Tax Court,* earlier.

To take your case to the Tax Court, the IRS must first send you a notice of deficiency. Then, you can only appeal your case if you file a petition within 90 days from the date this notice is mailed to you (150 days if it is addressed to you outside the United States).

The notice will show the 90th (and 150th) day by which you must file your petition with the Tax Court.

Note. If you consent, the IRS can withdraw any notice of deficiency. Once withdrawn, the limits on credits, refunds, and assessments concerning the notice are void, and you and the IRS have the rights and obligations that you had before the notice was issued. The suspension of any time limitation while the notice of deficiency was issued will not change when the notice is withdrawn.

After the notice is withdrawn, you cannot file a petition with the Tax Court based on the notice. Also, the IRS can later issue a notice of deficiency in a greater or lesser amount than the amount in the withdrawn deficiency.

Generally, the Tax Court hears cases before any tax has been assessed and paid; however, you can pay the tax after the notice of deficiency has been issued and still petition the Tax Court for review. If you do not file your petition on time, the proposed tax will be assessed, a bill will be sent, and you will not be able to take your case to the Tax Court. Under the law, you must pay the tax within 10 days. After 10 days, the tax is subject to immediate collection. This collection can proceed even if you think that the amount is excessive. Publication 594 explains IRS collection procedures.

If you filed your petition on time, the Court will schedule your case for trial at a location convenient to you. You can represent yourself before the Tax Court or you can be represented by anyone admitted to practice before that Court.

Small tax case procedure. If the amount in your case is $50,000 or less for any one tax year or period, the Tax Court has a simple alternative to solve your case. At your request and if the Tax Court approves, your case can be handled under the small tax case procedure. In this procedure, you can present your case to the Tax Court for a decision that is final and that you cannot appeal. You can get more information regarding the small tax case procedure and other Tax Court matters from the United States Tax Court, 400 Second Street, N.W., Washington, DC 20217.

Motion to request redetermination of interest. In certain cases, you can file a motion asking the Tax Court to redetermine the amount of interest on either an underpayment or an overpayment. You can do this only in a situation that meets all of the following requirements.

1) The IRS has assessed a deficiency that was determined by the Tax Court.

2) The assessment included interest.

3) You have paid the entire amount of the deficiency plus the interest claimed by the IRS.

4) The Tax Court has found that you made an overpayment.

You must file the motion within one year after the decision of the Tax Court becomes final.

District Court and Court of Federal Claims

Generally, the District Court and the Court of Federal Claims hear tax cases only after you have paid the tax and filed a claim for a credit or refund. As explained later under *Claims for Refund,* you can file a claim with the IRS for a credit or refund if you think that the tax you paid is incorrect or excessive. If your claim is totally or partially disallowed by the IRS, you should receive a notice of claim disallowance. If the IRS does not act on your claim within 6 months from the date you filed it, you can then file suit for a refund. You must file suit for a credit or refund no later than 2 years after the IRS informs you that your claim has been rejected.

You can file suit for a credit or refund in your United States District Court or in the United States Court of Federal Claims. However, you cannot appeal to the United States Court of Federal Claims if your claim is for credit or refund of a penalty that relates to promoting an abusive tax shelter or to aiding and abetting the understatement of tax liability on someone else's return.

For information about procedures for filing suit in either court, contact the Clerk of your District Court or of the United States Court of Federal Claims.

Refund or Credit of Overpayments Before Final Determination

Any court with proper jurisdiction, including the Tax Court, can order the IRS to refund any part of a tax deficiency that the IRS collects from you during a period when the IRS is not permitted to assess, or to levy or engage in any court proceeding to collect that tax deficiency. In addition, the court can order a refund of any part of a tax deficiency that is not at issue in your appeal to the court. The court can order these refunds before its decision on the case is final.

Generally, the IRS is not permitted to take action on a tax deficiency during:

1) The 90-day (or 150-day if outside the United States) period that you have to petition a notice of deficiency to the Tax Court, or

2) The period that the case is under appeal.

Claims for Refund

Once you have paid your tax, you usually have the right to file a claim for a credit or refund if you believe the tax is too much. You can claim a credit or refund by filing Form 1040X.

File your claim by mailing it to the Internal Revenue service center where you filed your original return. File a separate form for each year or period involved. Include an explanation of each item of income, deduction, or credit on which you are basing your claim.

Corporations should file Form 1120X, *Amended U.S. Corporation Income Tax Return,* or other form appropriate to the type of credit or refund claimed.

Requesting a copy of your tax return. You can obtain a copy of the actual return you filed with the IRS for an earlier year. Use Form 4506 to make your request. You will be charged a fee, which you must pay when you submit Form 4506.

You may also use Form 4506 to request free copies of a tax return transcript, verification of nonfiling, or Form(s) W–2 information. The transcript will give you the following information:

- Type of return filed,
- Marital status,
- Tax shown on return,
- Adjusted gross income,
- Taxable income,
- Self-employment tax, and
- Number of exemptions.

Requesting a copy of your tax account information. You can also obtain a free copy of the tax account information for your individual income tax return. Tax account information lists certain items from your return and includes any later changes made by you or the IRS. To get your tax account information, call or write to your local Internal Revenue Service office.

Time for Filing a Claim for Refund

Generally, you must file a claim for a credit or refund within 3 years from the date you filed your original return or 2 years from the date you paid the tax, whichever is later. If you do not file a claim within this period, you may no longer be entitled to a credit or a refund.

If the due date to file a return or a claim for a credit or refund is a Saturday, Sunday, or legal holiday, it is filed on time if it is filed on the next business day. Returns you filed before the due date are considered filed on the due date. This is true even when the due date is a Saturday, Sunday, or legal holiday.

Nonfilers can get refund of overpayments paid within 3-year period. The Tax Court can consider taxes paid during the 3-year period preceding the date of a notice of deficiency for determining any refund due to a nonfiler. This means that if you do not file your return, and you receive a notice of deficiency in the third

year after the due date (with extensions) of your return and file suit with the Tax Court to contest the notice of deficiency, you may be able to receive a refund of excessive amounts paid within the 3-year period preceding the date of the notice of deficiency.

Claim for refund by estates electing the installment method of payment. The executor does not need to wait until all the installment payments have been made before filing a suit for refund with a Federal District Court or the U.S. Court of Federal Claims, for an estate:

- That consists largely of an interest in a closely-held business, and
- That elected to make tax payments through the installment method.

However, all the following must be true before a suit can be filed.

- All installment payments due on or before the date the suit is filed have been made.
- No accelerated installment payments have been made.
- No Tax Court case is pending with respect to any estate tax liability.
- The time for petitioning the Tax Court has passed if a notice of deficiency was issued to the estate regarding its liability for estate tax.
- No proceeding is pending for a declaratory judgment by the Tax Court on whether the estate is eligible to pay tax in installments.

In addition, the executor must:

- Not include any previously litigated issues in the current suit for refund, and
- Not discontinue making installment payments, timely, while the court considers the suit for refund.

TIP *If in its final decision on the suit for refund the court redetermines the estate's tax liability, the IRS must refund any part of the estate tax amount that is disallowed. This includes any part of the disallowed amount previously collected by the IRS.*

Limit on Amount of Refund

If you file your claim within 3 years after filing your return, the credit or refund cannot be more than the part of the tax paid within the 3 years (plus any extension of time for filing your return) before you filed the claim.

Example 1. You made estimated tax payments of $1,000 and got an automatic extension of time to August 16, 1999, to file your 1998 income tax return. When you filed your return on that date, you paid an additional $200 tax. Three years later, on August 16, 2002, you file an amended return and claim a refund of $700. Because you filed within the 3 years plus the 4-month extension period, you could get a refund of $700.

Example 2. The situation is the same as in Example 1, except that you filed your return on October 31, 1999, 2½ months after the extension period ended. You paid an additional $200 on that date. Three years later, on October 26, 2002, you file an amended return and claim a refund of $700. Although you filed your claim within 3 years from the date you filed your original return, the refund is limited to $200. The estimated tax of $1,000 was paid before the 3 years plus the 4-month extension period.

Claim filed after the 3-year period. If you file a claim after the 3-year period, but within 2 years from the time you paid the tax, the credit or refund cannot be more than the tax you paid within the 2 years immediately before you filed the claim.

Example. You filed your 1998 tax return on April 15, 1999. You paid $500 in tax. On November 3, 2000, after an examination of your 1998 return, you had to pay $200 in additional tax. On May 2, 2001, you file a claim for a refund of $300. Your refund will be limited to the $200 you paid during the 2 years immediately before you filed your claim.

Exceptions

The limits on your claim for refund can be affected by the type of item that forms the basis of your claim.

Special refunds. If you file a claim for refund based on one of the items listed below, the limits discussed earlier under *Time for Filing a Claim for Refund* may not apply. These special items are:

- A bad debt,
- A worthless security,
- A payment or accrual of foreign tax,
- A net operating loss carryback, and
- A carryback of certain tax credits.

The limits discussed earlier also may not apply if you have signed an agreement to extend the period of assessment of tax.

Periods of financial disability. The period of limitations on credits and refunds (3 years from the time you file your return or 2 years from the time you paid your tax) can be suspended during periods when you, an individual taxpayer, cannot manage your financial affairs because of physical or mental impairment that is medically determinable and either:

- Has lasted or can be expected to last continuously for at least 12 months, or
- Can be expected to result in death.

CAUTION *The period for filing a claim for refund will not be suspended for any time that someone else, such as your spouse or guardian, was authorized to act for you in financial matters.*

To claim that you were financially disabled, the following statements are to be submitted with the claim for credit or refund of tax:

1) A written statement signed by a physician, qualified to make the determination, that sets forth:
   a) The name and a brief description of your physical or mental impairment,
   b) The physician's medical opinion that your physical or mental impairment prevented you from managing your financial affairs,
   c) The physician's medical opinion that your physical or mental impairment resulted in or can be expected to result in death, or that it has lasted (or can be expected to last) for a continuous period of not less than 12 months, and
   d) To the best of the physician's knowledge, the specific time period during which you were prevented by such physical or mental impairment from managing your financial affairs, and
2) A written statement by you or the person signing the claim for credit or refund that no person, including your spouse, was authorized to act on your behalf in financial matters during the period described in paragraph (1)(d) of this section. Alternatively, if a person was authorized to act on your behalf in financial matters during any part of the period described in paragraph (1)(d), the beginning and ending dates of the period of time the person was so authorized.

The period of limitations will not be suspended on any claim for refund that (without regard to this provision) was barred as of July 22, 1998.

Processing Claims for Refund

Claims are usually processed shortly after they are filed. Your claim may be denied, accepted as filed, or it may be examined. If a claim is examined, the procedures are almost the same as in the examination of a tax return.

However, if you are filing a claim for credit or refund based only on contested income tax or on estate tax or gift tax issues considered in previously examined returns and you do not want to appeal within the IRS, you should request in writing that the claim be immediately rejected. A notice of claim disallowance will then be promptly sent to you. You have 2 years from the date of mailing of the notice of disallowance to file a refund suit in the United States District Court or in the United States Court of Federal Claims.

Explanation of Any Claim for Refund Disallowance

The IRS must explain to you the specific reasons why your claim for refund is disallowed or partially disallowed. Claims for refund are disallowed based on a preliminary review or on further examination. Some of the reasons your claim may be disallowed include the following.

- It was filed late.
- It was based solely on the unconstitutionality of the revenue acts.
- It was waived as part of a settlement.
- It covered a tax year or issues which were part of a closing agreement or an offer in compromise.
- It was related to a return closed by a final court order.

If your claim is disallowed for these, or any other reason, the IRS must send you an explanation.

Reduced Refund

Your refund may be reduced by an additional tax liability. Also, your refund may be reduced by amounts you owe for past-due child support, debts you owe to another federal agency, or past-due legally enforceable state income tax obligations. You will be notified if this happens. For those reductions, you cannot use the appeal and refund procedures discussed in this publication, but you may be able to take action against the other agency.

Offset of past-due state income tax obligations against overpayments. Federal tax overpayments can be used to offset past-due, legally enforceable state income tax obligations. For the offset procedure to apply, your federal income tax return must show an address in the state that requests the offset. In addition, the state must first:

- Notify you by certified mail with return receipt that the state plans to ask for an offset against your federal income tax overpayment,
- Give you at least 60 days to show that some or all of the state income tax is not past due or not legally enforceable,
- Consider any evidence from you in determining that income tax is past due and legally enforceable,
- Satisfy any other requirements to ensure that there is a valid past-due, legally enforceable state income tax obligation, and
- Show that all reasonable efforts to obtain payment have been made before requesting the offset.

Past-due, legally enforceable state income tax obligation. This is an obligation (debt):

1) Established by a court decision or administrative hearing and no longer subject to judicial review, or
2) That is assessed, uncollected, can no longer be redetermined, and is less than 10 years overdue.

Offset priorities. The amounts owed by you must be offset against your overpayments in the following order.

1) Federal income tax owed.
2) Past-due child support.

3) Past-due, legally enforceable debt owed to a federal agency.

4) Past-due, legally enforceable state income tax debt.

5) Future federal income tax liability.

Note. If more than one state agency requests an offset for separate debts, the offsets apply against your overpayment in the order in which the debts accrued. In addition, state income tax includes any local income tax administered by the chief tax administration agency of a state.

Note. The Tax Court cannot decide the validity or merits of the credits or offsets (for example, collection of delinquent child support or student loan payments) made that reduce or eliminate a refund to which you were otherwise entitled.

Injured spouse exception. When a joint return is filed and only one spouse owes past-due child and spousal support or a federal debt, the other spouse can be considered an ***injured spouse.*** An injured spouse can get a refund for his or her share of the overpayment that would otherwise be used to pay the past-due amount.

To be considered an injured spouse, you must have:

1) Filed a joint return,

2) Received income (such as wages, interest, etc.),

3) Made tax payments (such as federal income tax withheld from wages or estimated tax payments) or claimed a refundable credit (such as the earned income credit), and

4) Reported the income and tax payments on the joint return.

If you are an injured spouse, you can obtain your portion of the joint refund by completing Form 8379. Follow the instructions on the form.

Relief from joint and several liability on a joint return. Generally, joint and several liability applies to all joint returns. This means that both you and your spouse (or former spouse) are liable for any tax shown on a joint return plus any understatement of tax that may become due later. This is true even if a divorce decree states that a former spouse will be responsible for any amounts due on previously filed joint returns.

In some cases, a spouse will be relieved of the tax, interest, and penalties on a joint tax return. Three types of relief are available.

- Innocent spouse relief.
- Separation of liability.
- Equitable relief.

Form 8857. Each kind of relief is different and has different requirements. You must file Form 8857 to request relief. See the instructions for Form 8857 and Publication 971 for more information on these kinds of relief and who may qualify for them.

How To Get Tax Help

You can get help with unresolved tax issues, order free publications and forms, ask tax questions, and get more information from the IRS in several ways. By selecting the method that is best for you, you will have quick and easy access to tax help.

Contacting your Taxpayer Advocate. If you have attempted to deal with an IRS problem unsuccessfully, you should contact your Taxpayer Advocate.

The Taxpayer Advocate represents your interests and concerns within the IRS by protecting your rights and resolving problems that have not been fixed through normal channels. While Taxpayer Advocates cannot change the tax law or make a technical tax decision, they can clear up problems that resulted from previous contacts and ensure that your case is given a complete and impartial review.

To contact your Taxpayer Advocate:

- Call the Taxpayer Advocate at **1–877–777–4778.**
- Call the IRS at **1–800–829–1040.**
- Call, write, or fax the Taxpayer Advocate office in your area.
- Call **1–800–829–4059** if you are a TTY/TDD user.

For more information, see Publication 1546, *The Taxpayer Advocate Service of the IRS.*

Free tax services. To find out what services are available, get Publication 910, *Guide to Free Tax Services.* It contains a list of free tax publications and an index of tax topics. It also describes other free tax information services, including tax education and assistance programs and a list of TeleTax topics.

Personal computer. With your personal computer and modem, you can access the IRS on the Internet at **www.irs.gov**. While visiting our web site, you can select:

- *Frequently Asked Tax Questions* (located under *Taxpayer Help & Ed)* to find answers to questions you may have.
- *Forms & Pubs* to download forms and publications or search for forms and publications by topic or keyword.
- *Fill-in Forms* (located under *Forms & Pubs)* to enter information while the form is displayed and then print the completed form.
- *Tax Info For You* to view Internal Revenue Bulletins published in the last few years.
- *Tax Regs in English* to search regulations and the Internal Revenue Code (under *United States Code (USC)).*
- *Digital Dispatch* and *IRS Local News Net* (both located under *Tax Info For Business)* to receive our electronic newsletters on hot tax issues and news.

- *Small Business Corner* (located under *Tax Info For Business)* to get information on starting and operating a small business.

You can also reach us with your computer using File Transfer Protocol at **ftp.irs.gov**.

TaxFax Service. Using the phone attached to your fax machine, you can receive forms and instructions by calling **703–368–9694.** Follow the directions from the prompts. When you order forms, enter the catalog number for the form you need. The items you request will be faxed to you.

Phone. Many services are available by phone.

- *Ordering forms, instructions, and publications.* Call **1–800–829–3676** to order current and prior year forms, instructions, and publications.
- *Asking tax questions.* Call the IRS with your tax questions at **1–800–829–1040.**
- *TTY/TDD equipment.* If you have access to TTY/TDD equipment, call **1–800–829–4059** to ask tax questions or to order forms and publications.
- *TeleTax topics.* Call **1–800–829–4477** to listen to pre-recorded messages covering various tax topics.

Evaluating the quality of our telephone services. To ensure that IRS representatives give accurate, courteous, and professional answers, we evaluate the quality of our telephone services in several ways.

- A second IRS representative sometimes monitors live telephone calls. That person only evaluates the IRS assistor and does not keep a record of any taxpayer's name or tax identification number.
- We sometimes record telephone calls to evaluate IRS assistors objectively. We hold these recordings no longer than one week and use them only to measure the quality of assistance.
- We value our customers' opinions. Throughout this year, we will be surveying our customers for their opinions on our service.

Walk-in. You can walk in to many post offices, libraries, and IRS offices to pick up certain forms, instructions, and publications. Also, some libraries and IRS offices have:

- An extensive collection of products available to print from a CD-ROM or photocopy from reproducible proofs.
- The Internal Revenue Code, regulations, Internal Revenue Bulletins, and Cumulative Bulletins available for research purposes.

Mail. You can send your order for forms, instructions, and publications to the Distribution Center nearest to you and receive a response within 10 workdays after your request is received. Find the address that applies to your part of the country.

- **Western part of U.S.:**
  Western Area Distribution Center
  Rancho Cordova, CA 95743–0001
- **Central part of U.S.:**
  Central Area Distribution Center
  P.O. Box 8903
  Bloomington, IL 61702–8903
- **Eastern part of U.S. and foreign addresses:**
  Eastern Area Distribution Center
  P.O. Box 85074
  Richmond, VA 23261–5074

CD-ROM. You can order IRS Publication 1796, *Federal Tax Products on CD-ROM,* and obtain:

- Current tax forms, instructions, and publications.
- Prior-year tax forms, instructions, and publications.
- Popular tax forms which may be filled in electronically, printed out for submission, and saved for recordkeeping.
- Internal Revenue Bulletins.

The CD-ROM can be purchased from National Technical Information Service (NTIS) by calling **1–877–233–6767** or on the Internet at **www.irs.gov/cdorders.** The first release is available in mid-December and the final release is available in late January.

IRS Publication 3207, *The Business Resource Guide,* is an interactive CD-ROM that contains information important to small businesses. It is available in mid-February. You can get one free copy by calling **1–800–829–3676.**

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■

88 T.C. 492
88 T.C. No. 23, Tax Ct. Rep. (CCH) 43,746
(Cite as: 88 T.C. 492)
United States Tax Court

VICTOR I. MINAHAN, ET AL., [FN1] Petitioners

FN1 Pursuant to section 7430(d), the Court has determine that the cases of the following petitioners could have been joined or consolidated and so these cases shall be treated as one civil proceeding for purposes of applying section 7430: Marilee Minahan, docket No. 3147-85; Estate of Mary M. Walter, Deceased, The Marine Trust Company, N.A., Personal Representative, docket No. 3148-85; Estate of John B. Torinus, Deceased, The Kellogg Citizens National Bank, and Louise B. Torinus, Co-Personal Representatives, docket No. 3203-85; Roger C. Minahan, docket No. 3204-85; and Louise B. Torinus, docket No. 3205-85.
Unless indicated otherwise, all section references are to sections of the Internal Revenue Code of 1954 as in effect for the period in issue.

v.
COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 3146-85
Docket Nos. 3147-85, 3148-85, 3203-85, 3204-85, 3205-85.
Filed March 5, 1987.

Petitioners executed similar stock purchase agreements with separate trusts, each established for the primary benefit of an offspring of a petitioner. Pursuant to these agreements, petitioners sold unregistered common stock of a publicly traded corporation to each trust at a value equal to the stock exchange value as of the date of agreement. Each trust rendered an interest- bearing promissory note as partial payment. Respondent began an audit to determine whether the agreements reflected fair market value. Petitioners refused to extend the statute of limitations on assessment. Respondent determined deficiencies in petitioners' Federal gift taxes. Later, respondent conceded all disputed issues. Petitioners filed motions for litigation costs pursuant to sec. 7430, I.R.C. 1954, and Rule 231, Tax Court Rules of Practice & Procedure.

HELD: (1) Petitioners are entitled to an award of reasonable litigation costs.

(2) Paragraphs (b)(1)(i)(B) and (f)(2)(i) of sec. 301.7430- 1, Proc. & Admin. Regs., are invalid insofar as they provide that a taxpayer's failure to extend the statute of limitations is to be taken into account in determining whether the taxpayer has exhausted administrative remedies under sec. 7430(b), I.R.C. 1954.

*492 Thomas J. Phillips and Roger C. Minahan, for the petitioners.

Sheldon M. Kay and Nelson Shafer, for the respondent.

OPINION

CHABOT, JUDGE:

Respondent determined deficiencies in Federal gift tax against petitioners for the calendar quarter *493 ended September 30, 1981, in the following amounts:

Docket No.	Petitioner	Deficiency
3146-85	Victor I. Minahan	$882,737.74
3147-85	Marilee Minahan	882,737.93
3148-85	Estate of Mary M. Walter, deceased, the Marine Trust Co., N.A., personal representative	1,796,800.32
3203-85	Estate of John B. Torinus, deceased, the Kellogg Citizens National Bank and Louise B. Torinus, co-personal representatives	592,747.86
3204-85	Roger C. Minahan	549,888.83
3205-85	Louise B. Torinus	589,725.25

The cases were called from the calendar for trial on March 17, 1986, at which time respondent submitted on behalf of the parties a stipulated decision in each case. Pursuant to these stipulated decisions, the parties agreed that no deficiencies in Federal gift tax are due from, or overpayments due to, petitioners for the calendar quarter ended September 30, 1981. Petitioners thereafter moved this Court to award litigation costs pursuant to section 7430 and Rule 231. [FN2]

FN2 Unless indicated otherwise, all Rule references are to the Tax Court Rules of Practice & Procedure.

The issues for decision are as follows: [FN3]

FN3 The Court has severed, for determination in a separate opinion, the issue of whether a petitioner who is a member of the law firm representing petitioners is entitled to be awarded attorneys' fees as part of an award of litigation costs.

(1) Whether petitioners have satisfied the definition of a prevailing party within the meaning of section 7430(c)(2); and
(2) Whether petitioners have exhausted administrative remedies available within the Internal Revenue Service within the meaning of section 7430(b)(2).

BACKGROUND

When the petitions were filed in the instant cases, petitioners resided in Wisconsin. On October 5, 1981, pursuant to similar stock purchase agreements dated September 28, 1981, petitioners sold shares of unregistered Post Corporation (hereinafter sometimes referred to as 'Post') common stock to trusts established for the primary benefit of an offspring of each petitioner. Petitioners valued the *494 unregistered Post common stock at $22.25 per share, a purchase price equal to the closing price of Post shares on the American Stock Exchange on September 28, 1981. Each trust rendered partial payment in cash and partial payment by an interest-bearing promissory note. Respondent's valuation in the notices of deficiency was prepared by respondent's National Office. Respondent's appraisal discounted the value of the promissory notes and aggregated all 357,124 shares sold by petitioners pursuant to the stock purchase agreements as a control block of Post common stock. As of September 28, 1981, the following petitioners [FN4] were corporate officers of Post:

FN4 Mary M. Walter died before the start of this civil proceeding; her estate is the petitioner in docket No. 3148-85. John B. Torinus, who filed the petition in docket No. 3203-85, died on October 12, 1985; his estate was then substituted as petitioner in this docket.

Victor I. Minahan - President
Mary M. Walter - Vice President
John B. Torinus - Vice President
Roger C. Minahan - Secretary

Respondent began the audit at the administrative level on or about February 9, 1984. A telephone conference was held between respondent's examiner and petitioners' counsel on August 1, 1984. On August 31, 1984, respondent asked petitioners to execute a consent to extend the period for assessment until December 31, 1985. The period for assessment, as prescribed in section 6501(a), would otherwise expire on November 15, 1984. On October 5, 1984, petitioners refused to consent to extend this period. Respondent did not issue preliminary notices of proposed deficiency (so-called '30-day letters'). Respondent issued notices of deficiency to all the petitioners on November 15, 1984, the last day prescribed in section 6501(a). On December 14, 1984, petitioners asked for a written statement of valuation as provided by section 7517. [FN5] Respondent failed to comply within the 45-day period prescribed by section 7517(a). Respondent did provide a valuation statement on October 10, 1985. Petitioners filed their petitions in this Court on February 11, 1985. Petitioners participated in Appeals *495 office conferences while the instant cases were in docketed status.

FN5 We note that the value determined or proposed and set forth in such a statement is not binding on respondent. Sec. 7517(c).

Petitioner Roger C. Minahan (hereinafter sometimes referred to as 'attorney Minahan'), petitioners' counsel of record, is a senior stockholder and president of the law firm of Minahan &

Peterson, S.C. (hereinafter sometimes referred to as 'the law firm'). Petitioners engaged the law firm to represent them regarding the determinations in the notices of deficiency. The agreement between petitioners and the law firm was such that the law firm submitted monthly bills for actual time spent, determined at the law firm's prevailing rates. The law firm spent a total of 386 attorney hours on behalf of petitioners, using the services of eight attorneys. Attorney Minahan spent a total of 102 3/4 hours on behalf of petitioners, billed at the law firm's prevailing rate for his service, $150.00 per hour. Monthly statements reflected time spent on all six dockets. Each petitioner agreed to pay the proportion of the total monthly bill by which the number of that petitioner's shares of Post common stock sold bore to the total number of shares of Post common stock sold by petitioners under the similar purchase agreements in issue. All fees and disbursements reflected in the monthly statements and submitted pursuant to Rule 231(d) have been paid by petitioners in the amounts indicated in table 1.

TABLE 1

Petitioner	Expert appraisal fees and disbursements [FN6]	Attorney's fees and interest	Proportionate
Victor I. Minahan, docket No. 3146-85	$3,360	$14,484.40	33.6%
Marilee Minahan, docket No. 3147-85	(included above with docket No. 3146-85)		
Estate of Mary M. Walter, docket No. 3148-85	2,940	16,173.84	29.4%
Estate of John B. Torinus, docket No. 3203-85	2,520	13,863.29	25.2%
Louise B. Torinus, docket No. 3205-85	(included above with docket No. 3203-85)		

FN6 These amounts include the Court costs, which consist of the $60 filing fee for each docket.

FN7 The affidavit accompanying petitioners' motion avers that 'The aggregate amount of legal fees and disbursements (other than appraisal fees) incurred were $45,013.08.' However, petitioners' motion and the statements attached to the affidavit show fees aggregating $55,013.08, and our finding is in accord with the motion and the statements.

Petitioner	Expert appraisal fees and disbursements	Attorneys' fees interest	Proportionate
Roger C. Minahan docket No. 3204-85	$1,180	$6,491.55	11.8%
	10,000	55,013.08 [FN7]	100.0%

FN7 The affidavit accompanying petitioners' motion avers that 'The aggregate

amount of legal fees and disbursements (other than appraisal fees) incurred were $45,013.08.' However, petitioners' motion and the statements attached to the affidavit show fees aggregating $55,013.08, and our finding is in accord with the motion and the statements.

*496 Of the $55,013.08 attorneys' fees and disbursements, $2,550 was billed to petitioners on October 16, 1984, and $8,348.15 was billed to petitioners on February 8, 1985; all of these two bills are for services and disbursements before the petitions were filed in the instant cases. Of the $55,013.08 total, $2,225 was billed to petitioners on March 7, 1985; about half is for services before the petitions were filed in the instant cases.

Of the total 386 attorney hours spent by the law firm on the instant cases, 70 attorney hours were spent after the last billing that was taken into account in determining the $55,013.08 attorney fees and disbursements. At the law firm's prevailing rate for the services of its attorneys, these 70 attorney hours would produce about $9,000 in billings.

ANALYSIS

The Congress has provided for the awarding of litigation costs to taxpayers in certain circumstances. Under section 7430 [FN8] (as applicable to the instant cases), in order to be *497 entitled to an award of litigation costs, the taxpayer must--

FN8 Section 7430 provides, in pertinent part, as follows:
SEC. 7430. AWARDING OF COURT COSTS AND CERTAIN FEES.
(a) In General.--In the case of any civil proceeding which is--
(1) brought by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty under this title, and (2) brought in a court of the United States (including the Tax Court and the United States Claims Court),
the prevailing party may be awarded a judgment (payable in the case of the Tax Court in the same manner as such an award by a district court) for reasonable litigation costs incurred in such proceeding.
(b) Limitations.--
(1) Maximum dollar amount.--The amount of reasonable litigation costs which may be awarded under subsection (a) with respect to any prevailing party in any civil proceeding shall not exceed $25,000.
(2) Requirement that administrative remedies be exhausted.--A judgment for reasonable litigation costs shall not be awarded under subsection (a) unless the court determines that the prevailing party has exhausted the administrative remedies available to such party within the Internal Revenue Service.
* * *
(c) Definitions.--For purposes of this section--
* * *

(2) Prevailing party.--
(A) In general.--The term 'prevailing party' means any party to any proceeding described in subsection (a) (other than the United States or any creditor of the taxpayer involved) which-- (i) establishes that the position of the United States in the civil proceeding was unreasonable, and
(ii)(I) has substantially prevailed with respect to the amount in controversy, or
(II) has substantially prevailed with respect to the most significant issue or set of issues presented.
(B) Determination as to prevailing party.--Any determination under subparagraph (A) as to whether a party is a prevailing party shall be made--
(i) by the court, or-
(ii) by agreement of the parties.
(3) Civil actions.--The term 'civil proceeding' includes a civil action.
(d) Multiple actions.--For purposes of this section, in the case of--
(1) multiple actions which could have been joined or consolidated, or
(2) a case or cases involving a return or returns of the same taxpayer (including joint returns of married individuals) which could have been joined in a single proceeding in the same court, such actions or cases shall be treated as one civil proceeding regardless of whether such joinder or consolidation actually occurs, unless the court in which such action is brought determines, in its discretion, that it would be inappropriate to treat such actions or cases as joined or consolidated for purposes of this section. [The subsequent amendments of this provision by section 1551 of the Tax Reform Act of 1986, Pub. L. 99-514, 100 Stat. 2085, 2752--except the amendment to section 7430(a) made by section 1551(f) of the Tax Reform Act of 1986 (relating to payment of awarded litigation costs)--apply only to civil actions or proceedings commenced after December 31, 1985 (sec. 1551(h)(1) of the Tax Reform Act of 1986), and so do not affect the instant cases.]

(1) substantially prevail in the litigation (sec. 7430(c)(2)(A)(ii));
(2) establish that respondent's position is unreasonable (sec. 7430(c)(2)(A)(i)); and
(3) have exhausted the administrative remedies available to that taxpayer in the Internal Revenue Service (sec. 7430(b)(2)).

These requirements are in the conjunctive; i.e., petitioners must overcome EACH of these hurdle in order to succeed as to litigation costs.

We consider these hurdles seriatim.

I. PREVAILING IN THE LITIGATION

Respondent determined deficiencies aggregating about $5.3 million. The parties settled the instant cases for an aggregate of zero. We conclude, and respondent agrees, that *498 petitioners have substantially prevailed in the instant cases, thus satisfying the requirements of section 7430(c)(2)(A)(ii).

II. REASONABLENESS OF RESPONDENT'S POSITION

The next focus of our inquiry is whether the position of the United States in the instant cases was unreasonable within the meaning of section 7430(c)(2)(A)(i). The statute imposes on petitioners the burden of establishing such unreasonableness. This Court and the Courts of Appeals of several circuits have previously determined that any award of costs under section 7430 is to be based on a determination of the reasonableness of respondent's position from the date the petition was filed. Ewing and Thomas, P.A. v. Heye, 803 F.2d 613 (CAl1 1986); Baker v. Commissioner, 787 F.2d 637 (CADC 1986), affg. on this issue 83 T.C. 822, 827 (1984); Wasie v. Commissioner, 86 T.C. 962, 967 (1986). Other courts have held that fees and costs and the measure of the reasonableness of respondent's position extends to the administrative level. Powell v. Commissioner, 791 F.2d 385 (CA5 1986), revg. a Memorandum Opinion of this Court; [FN9] Kaufman v. Egger, 758 F.2d 1 (CAl 1985). The Court of Appeals for the Seventh Circuit, to which the instant cases are appealable, has not ruled as to whether the prepetition factors are relevant to the determination of whether respondent's position is reasonable. The fact that respondent ultimately is unsuccessful at litigation or concedes the case is not necessarily determinative that his position was unreasonable. Wasie v. Commissioner, 86 T.C. at 969, and cases cited therein.

FN9 T.C. Memo. 1985-27.

Respondent asserts that his position in the instant cases was not unreasonable because valuation is a factual question and the determinations in the notices of deficiency were based on expert opinion. Respondent merely states that reliance upon expert appraisal in valuation cases is reasonable. Respondent cites no authority for the legal position upon which the valuation was made. Respondent aggregated and valued as a control block of common stock all 357, 124 shares of unregistered Post common stock sold by petitioners to separate trusts each of which was established for the primary benefit of an offspring.

*499 Petitioners assert that respondent has disregarded the regulations and case authorities in the determination that the value of the unregistered Post common stock sold to the separate trusts under the agreements at issue embodied a control premium by virtue of aggregation. Section 25.2512-2(e), Gift Tax Regs.; Propstra v. United States, 680 F.2d 1248 (CA9 1982); Estate of Bright v. United States, 658 F.2d 999 (CA5 1981); Estate of Andrews v. Commissioner, 79 T.C. 938 (1982). In Estate of Bright, the Court of Appeals for the Fifth Circuit held, en banc, that the estate's stock was to be valued as though held by a hypothetical seller who is related to no one. Estate of Bright v. United States, 658 F.2d at 1007. In Estate of Andrews, we stated that 'For purposes of valuation, one should construct a hypothetical sale from a hypothetical willing seller to a similarly hypothetical willing buyer ', without regard to the fact 'that the stock will most probably be sold to a particular party or type of person.' Estate of Andrews v. Commissioner, 79 T.C. at 955, 956. Respondent's determination of a control premium by virtue of aggregation assumes that trustees of the separate trusts would sell or otherwise hold their interests together with sufficient others so as to exercise control of Post. As stated in Propstra, the use of an objective standard without aggregation avoids the uncertainties that would otherwise be inherent if valuation methods attempted to account for the likelihood that estates, legatees, or heirs would

sell their interests together with others who hold interests in the property, and avoids an examination of anticipated behavior of those holding such interests. Propstra v. United States, 680 F.2d at 1252. It has been noted that the Congress has explicitly directed that family attribution or unity of ownership principles be applied in certain aspects of Federal taxation, and in the absence of legislative directives, judicial forums should not extend such principles beyond those areas specifically designated by Congress. Furthermore, the subjective inquiry into feelings, attitudes, and anticipated behavior might well be boundless. Propstra v. United States, 680 F.2d at 1252; Estate of Andrews v. Commissioner, 79 T.C. at 955.

*500 We conclude that petitioners have established that respondent's litigation position was unreasonable. Petitioners filed their petitions in this Court on February 11, 1985. Respondent filed his answers on April 5, 1985. Petitioners participated in Appeals office conferences while the case was in docketed status. On December 24, 1985, the Court served on the parties notices of trial scheduled for March 17, 1986. Respondent agreed to concede the cases on February 17, 1986. In our view respondent simply capitulated rather than litigate the valuation theory upon which the notices of deficiency are founded. Respondent has not cited any legal authority or presented any argument to indicate that his valuation was reasonable. Respondent's assertion that the litigation position was reasonable solely because valuation is a factual inquiry and that the valuation herein was based on an expert appraisal is woefully inadequate to establish that his position is reasonable. In the context of the instant cases, petitioners have carried their burden (see Frisch v. Commissioner, 87 T.C. 838 (1986)) of establishing that respondent's legal position was unreasonable within the meaning of section 7430(c)(2)(A)(i).

In so holding, we emphasize that we find respondent's position unreasonable only because, by espousing a family attribution approach, he seeks to repudiate a well-established line of cases of long and reputable ancestry, going back as far as 1940. This line of cases is catalogued in the en banc opinion of the Court of Appeals for the Fifth Circuit in Estate of Bright v. United States, 658 F.2d at 1002-1003, and is repeated in footnote 19 of our opinion in Estate of Andrews v. Commissioner, 79 T.C. at 954 (discounts applied for lack of control and marketability even though decedent and his siblings held all stock in several corporations). As we pointed out there, respondent's litigating position on this issue was announced in Rev. Rul. 81-253, 1981-2 C.B. 187. In response, we said in Estate of Andrews that 'We see no reason to depart from such established precedent but follow the Fifth Circuit's well- reasoned and thoroughly researched [Estate of Bright] opinion.' 79 T.C. at 956. In the instant cases, respondent persists in the face of Estate of Andrews and its progenitors; in these cases, the persistence is unreasonable.

*501 We note that we are not required, in the instant cases, to confront the question of when an attempt to create a conflict among the circuits might or might not be enough to save respondent from a charge of unreasonableness. See, e.g. Keasler v. United States, 766 F.2d 1227, 1234-1238 (CA8 1985). We can leave that question to another day because, in respondent's memorandum in the instant cases there is not even a hint that he is attempting to create a conflict among the circuits; there is only a contention that 'In valuation cases, it is certainly reasonable for respondent to rely on an expert's appraisal'. Where the valuation element in dispute is essentially a point of

law that respondent has lost for more than 40 years, respondent may not extricate himself from a holding of unreasonableness merely because his valuation expert is also unreasonable. See Frisch v. Commissioner, supra.

III. EXHAUSTION OF ADMINISTRATIVE REMEDIES

Respondent asserts that petitioners failed to exhaust administrative remedies available within the Internal Revenue Service as required by section 7430(b)(2). Respondent relies on section 301.7430-1(b)(1), Proc. & Admin. Regs. [FN10], and section 301.7430- 1(f), Proc. & Admin. Regs. [FN11] Respondent *502 asserts that petitioners failed to exhaust administrative remedies available within the Internal Revenue Service in that petitioners did not participate in an Appeals office conference before filing their petitions in the Tax Court, and in that petitioners refused to agree under section 6501(c)(4) to extend the time for an assessment of tax so as to provide the Appeals office with reasonable time to consider the matter. Respondent further asserts that the exceptions to the requirement that a party pursue administrative remedies, in section 301.7430-1 (f), Proc. & Admin. Regs., where a party did not receive a 30-day letter before the notice of deficiency was issued, do not apply because the failure to receive the 30-day letter was due to petitioners' refusal to consent to extend the period for assessment. Sec. 301.7430-1(f)(2)(i), Proc. & Admin. Regs.

FN10
Section 301.7430-1. Exhaustion of Administrative Remedies.--* * *
(b) TAX, PENALTY AND ADDITION TO TAX--(1) IN GENERAL. A party has not exhausted its administrative remedies available within the Internal Revenue Service with respect to any tax matter for which an Appeals office conference is available under sections 601.105 and 601.106 of the Statement of Procedural Rules (26 CFR Part 601) * * * unless--
(i) The party, prior to filing a petition in the Tax Court or a civil action for refund in a court of the United States--
(A) Participates, either in person or through a qualified representative * * * in an Appeals office conference; and
(B) Agrees under section 6501(c)(4) to extend the time for an assessment of tax if necessary to provide the Appeals office with a reasonable time period to consider the tax matter; or
(ii) If no Appeals office conference is granted, the party, prior to the issuance of a statutory notice of deficiency in the case of a petition in the Tax Court or the issuance of a statutory notice of disallowance in the case of a civil action for refund in a court of the United States--
(A) Requests an Appeals office conference * * *;
(B) Files a written protest if a written protest is required to obtain an Appeals office conference; and (C) Agrees under section 6501(c)(4) to extend the time for an assessment of tax if necessary to provide the Appeals office with a reasonable time period to consider the tax matter.

FN11
Section 301.7430-1. Exhaustion of Administrative Remedies.--* * *
(f) EXCEPTION TO REQUIREMENT THAT PARTY PURSUE ADMINISTRATIVE

REMEDIES. A party's administrative remedies within the Internal Revenue Service are considered exhausted for purposes of section 7430 if--
(1) The Internal Revenue Service notifies the party in writing that the pursuit of administrative remedies in accordance with paragraphs (b), (c), and (d) is unnecessary.
(2) In the case of a petition in the Tax Court--
(i) The party did not receive a preliminary notice of proposed deficiency (30-day letter) prior to the issuance of the statutory notice of deficiency and the failure to receive such notice was not due to actions of the party (such as a refusal to sign an extension of time for assessment * * *); and
(ii) The party does not refuse to participate in an Appeals office conference while the case is in docketed status.

Petitioners assert that section 6501 provides them with a statutory right to receive notice of any assessment of tax within the prescribed 3-year period and that the refusal to extend the statute of limitations does not constitute a failure to exhaust administrative remedies so as to preclude an award of litigation costs under section 7430(b)(2). Petitioners further assert that the exemption in section 301.7430-1(f)(2)(i), Proc. & Admin. Regs., does apply because petitioners' failure to receive 30-day letters was not due to their actions but, rather, due to respondent's nonaction at the administrative level.

We agree with petitioners' conclusion.

Although the parties direct us to respondent's procedural and administrative regulations, we believe that the focus of our attention should be, at least initially, the statute that the Congress wrote.

In section 7430(b)(2), [FN12] the Congress provided as follows:

FN12 As a result of section 1551(a) of the Tax Reform Act of 1986, the same language appears as section 7430(b)(1), effective in general for proceedings commenced after December 31, 1985. See sec. 1551(h)(1) of the Tax Reform Act of 1986.

*503 (2) Requirement that administrative remedies be exhausted.--A judgment for reasonable litigation costs shall not be awarded under subsection (a) unless the court determines that the prevailing party has exhausted the administrative remedies available to such party within the Internal Revenue Service.

In the instant cases, respondent claims petitioners failed to exhaust their administrative remedies in that (1) they failed to participate in an Appeals office conference and (2) they refused to extend the time for assessment of tax.

Firstly, the controlling statute does not speak in terms of administrative remedies in the abstract,

but rather focusses on 'the administrative remedies available to SUCH PARTY [the prevailing party] within the Internal Revenue Service.' (Emphasis added.) Respondent did not make an Appeals office conference available to petitioners. Consequently, an Appeals office conference was not an administrative remedy available to THESE petitioners within the Internal Revenue Service. Consequently, an Appeals office conference was not an administrative remedy that these petitioners failed to exhaust.

Secondly, an extension of time for assessment is not an administrative remedy at all; consequently it is not an administrative remedy that these petitioners failed to exhaust.

Respondent does not assert that petitioners failed to respond promptly and sufficiently to any request for information or discussion. The record does not reveal any such failure on the part of any petitioner. Respondent does not assert, and the record does not reveal, any other administrative remedy which petitioners failed to exhaust.

We conclude that petitioners have carried their burden of proving that they exhausted the administrative remedies available to them within the Internal Revenue Service.

Since respondent relies entirely on his regulations in this matter, we examine those regulations to which he directs us.

In our unanimous opinion in Durbin Paper Stock Co. v. Commissioner, 80 T.C. 252, 256-257 (1983), we set down the following standards for examining the validity of respondent's regulations:

*504 The Commissioner has broad authority to promulgate all needful regulations. Sec. 7805(a); United States v. Correll, 389 U.S. 299, 306-307 (1967). It is well settled that Treasury regulations 'must be sustained unless unreasonable and plainly inconsistent with the revenue statutes. ' Commissioner v. South Texas Lumber Co., 333 U.S. 496, 501 (1948); accord Commissioner v. Portland Cement Co. of Utah, 450 U.S. 156, 169 (1981). Because they constitute contemporaneous constructions by those charged with administration of these statutes, they 'should not be overruled except for weighty reasons.' Bingler v. Johnson, 394 U.S. 741, 750 (1969); Commissioner v. South Texas Lumber Co., supra at 501.

It is equally clear, however, that, although regulations are entitled to considerable weight, 'respondent may not usurp the authority of Congress by adding restrictions to a statute which are not there.' Estate of Boeshore v. Commissioner, 78 T.C. 523, 527 (1982). See United States v. Marvett, 325 F.2d 28, 30 (5th Cir. 1963); Coady v. Commissioner, 33 T.C. 771, 779 (1960), affd. 289 F.2d 490 (6th Cir. 1961). A regulation is not a reasonable statutory interpretation unless it harmonizes with the plain language of the statute, its origins, and its purpose. United States v. Vogel Fertilizer Co., 455 U.S. 16 (1982); National Muffler Dealers Ass'n v. United States, 440 U. S. 472, 477 (1979).

A regulation which is in conflict with the statute is invalid to that extent. Citizen's National Bank of Waco v. United States, 417 F.2d 675, 679 (5th Cir. 1969); Arrow Fastener Co. v. Commissioner, 76 T.C. 423, 430 (1981). Where the provisions of the statute are unambiguous and

its directive specific, there is no power to amend it by regulation. Koshland v. Helvering, 298 U. S. 441, 447 (1936); Arrow Fastener Co. v. Commissioner, supra. [FN5]

FN5 The regulation in issue is an 'interpretative' regulation issued under general authority vested in respondent under sec. 7805 and is to be accorded less weight than 'legislative' regulations issued pursuant to a specific congressional delegation of law-making authority. Estate of Boeshore v. Commissioner, 78 T.C. 523, 527 n.5 (1982).

In the instant cases, the legislative history presents us with another consideration. In the description of the reasons for enacting section 7430 in the Tax Equity and Fiscal Responsibility Act of 1982, the first reason given is as follows:
Fee awards in such tax cases [i.e., 'when the United States has acted unreasonably in pursuing the case'] will deter abusive actions or overreaching by the Internal Revenue Service and will enable individual taxpayers to vindicate their rights regardless of their economic circumstances. [H. Rept. 97-404 (1981), p. 11; Staff of the Joint Committee on Taxation, General Explanation of the Revenue Provisions of the Tax Equity and Fiscal Responsibility Act of 1982, p. 445.]

*505 When the regulation interpreting a statute is written by the very agency whose 'abusive actions or overreaching' were intended to be deterred by that statute, we must be especially vigilant to insure that the regulation 'harmonizes with the plain language of the statute, its origins, and its purpose.' Durbin Paper Stock Co. v. Commissioner, 80 T.C. at 257.

In the instant cases, respondent relies on paragraphs (b)(1)(i)(B) and (f)(2)(i) of section 301.7430-1, Proc. & Admin. Regs.

Paragraph (b)(1)(i)(B) REQUIRES a taxpayer 'to extend the time for an assessment of tax if necessary to provide the Appeals office with a reasonable time period to consider the tax matter'. The sanction for a taxpayer who refuses to grant the waiver is loss of litigation costs--even though the taxpayer substantially prevails in the litigation and the taxpayer establishes that respondent's position was unreasonable.

Paragraph (f)(2)(i) REQUIRES a taxpayer 'to sign an extension of time for assessment', that is necessary in order to permit respondent to issue a 30-day letter, which might lead to an Appeals office conference. Note that paragraph (f)(2)(i) does not include any reasonableness limitation. Here, too, the sanction for failure to comply is loss of litigation costs--even though the taxpayer substantially prevails in the litigation and the taxpayer establishes that respondent's position was unreasonable.

There is no statutory authority to impose a condition of extending the period of limitations on assessment in order to qualify for litigation costs. The statute of limitations, section 6501 and its many subsections, is an elaborate and complex set of rules applicable to numerous situations.

[FN13] When the Congress has seen fit to amend section 6501, it has done so explicitly and meticulously. [FN14] The importance of *506 the statute of limitations is demonstrated by the fact that it is one of the few areas of the tax law where the burden of proof is imposed on respondent. (E.g., Stratton v. Commissioner, 54 T.C. 255, 289 (1970), and cases there cited.) It is not treated lightly by the courts. The clear language of paragraphs (b)(1)(i)(B) and (f)(2)(i) forces consent to extend the period of limitations by a taxpayer who contemplates claiming litigation costs where respondent's position is unreasonable. This gives radical control of the statute of limitations to respondent.

FN13 Other statutes of limitations appear elsewhere in the statute. For example, special partnership limitations had been contained in section 6501(g), then modified and redesignated section 6501(o), and then substantially revised by the Tax Treatment of Partnership Items Act of 1982 (title IV of the Tax Equity and Fiscal Responsibility Act of 1982) and placed in section 6229. Also, a special statute of limitations appears in section 183(d)(4), in the case of elections made under section 183(d)(1).

FN14 The Congress amended section 6501 in 1958 (Pub. Laws 85-859 and 866), 1959 (Pub. L. 86-69), 1960 (Pub. L. 86-780), 1962 (Pub. Laws 87-794, 834, and 858), 1964 (Pub. Laws 88-272 and 571), 1965 (Pub. L. 89-44), 1966 (Pub. Laws 89-721 and 809), 1967 (Pub. L. 90- 225), 1969 (Pub. L. 91-172), 1970 (Pub. L. 91-614), 1971 (Pub. L. 92- 178), 1974 (Pub. L. 93-406), 1976 (Pub. L. 94-455), 1977 (Pub. L. 95- 30), 1978 (Pub. Laws 95-227, 600, and 628), 1980 (Pub. Laws 96- 222 and 223), 1982 (Pub. L. 97-248), 1984 (Pub. L. 98-369), and 1986 (Pub. L. 99-514, The Tax Reform Act of 1986).

In granting taxpayers the right to collect litigation costs, the Congress did not suggest that taxpayers should be required to consent to extend the period of limitations. The Congress could have, but did not, amend section 6501. Nothing in the legislative history of section 7430 suggests that the Congress intended to alter the provisions of section 6501, and the Congress did not provide for extensions of time in section 7430.

The Congress previously expressed itself on the statute of limitations when respondent attempted to alter the application of section 6501 in the provisions involving hobby losses. Section 183(e) was added to the Code in 1971 to provide an election to the taxpayer to postpone a determination as to whether the taxpayer could benefit from a presumption that an activity was conducted for profit if the activity produced gross income for 2 of 5 years (2 of 7 years for horses). The Senate Finance Committee, which originated the provision, expressed an intent that a taxpayer who made such an election should be required to waive the statute of limitations for that 5-year (or 7-year) period and a reasonable time thereafter. The purpose was to prevent the running of the period of limitations for any year in that period. S. Rept. 92-437 (1971), p. 74; Staff of the Joint Committee on Internal Revenue Taxation, General Explanation of the Revenue Act of 1971, p. 72. The Treasury Department issued temporary regulations which required the taxpayer making such an election to waive the period of limitations for all years within the 5-year (or 7-year) *507 presumption period and for 18 months after the last year in the presumption period. The

temporary regulations further provided that the waiver applied not only to the potential section 183 issue but to ALL potential issues on the tax returns.

This provision was included in the temporary regulations because respondent is precluded from mailing more than one notice of deficiency to a taxpayer for a given taxable year. If respondent examined a year for a nonsection 183 issue and mailed a statutory notice and later determined that the hobby loss provisions applied for that year, then respondent would be forbidden to mail a second notice of deficiency. The Congress amended the Code by adding section 183(e)(4) which changes the period of limitations on assessment and permits mailing a second notice of deficiency. In so doing, the Congress emphasized the importance of the statute of limitations as a right of the taxpayer, as follows:
[The Congress] believes that a taxpayer should be able to take full advantage of a statutory presumption which was intended for his benefit, without unnecessarily extending the statute of limitations for items on his return which are unrelated to deductions which might be disallowed under section 183. [[S. Rept. 94-938, (1976), pp. 67-68, 1976-3 C.B. (Vol. 3) 49, 105- 106; H. Rept. 94-658 (1975), p. 128, 1976-3 C.B. (Vol. 2) 695, 820; Staff of the Joint Committee on Taxation, General Explanation of the Tax Reform Act of 1976, p. 61, 1976-3 C.B. (Vol. 2) 1, 72-73.]

In that situation, the legislative history of the 1971 Act specifically suggested a waiver of the statute of limitations as a requirement for making elections under section 183(e). The Treasury Department's temporary regulation appears to have been no more extensive than it had to be, considering the state of the law at that time. Nevertheless, the Congress determined that required waivers should not be so broad and overrode the temporary regulation to provide by statute a far more limited waiver.

The situation we face in the instant cases is that respondent's regulations seek to coerce waivers broadly and without any authority in either the statute or the legislative history. The history of the 1976 Act indicates a congressional policy that such waivers should not be coerced except to the extent that the Congress has specifically authorized.

*508 We conclude that paragraphs (b)(1)(i)(B) and (f)(2)(i) of section 301.7430-1, Proc. & Admin. Regs., are invalid insofar as they provide that a taxpayer's failure to extend the statute of limitations is to be taken into account in determining whether the taxpayer has exhausted administrative remedies under section 7430(b).

In reaching our conclusion, we have taken into account the Congress' admonition that the condition of section 7430(b)(2) that taxpayers exhaust the administrative remedies available within the Internal Revenue Service is 'intended to preserve the role that the administrative appeals process plays in the resolution of tax disputes by requiring taxpayers to pursue such remedies prior to litigation.' H. Rept. 97-404, at 13. The House Report further states that a taxpayer who actively participates in and discloses all relevant information during the administrative stages of the case will be considered to have exhausted the administrative remedies

available within the Internal Revenue Service. Failure to so participate and disclose all relevant information may be sufficient grounds to determine that such taxpayer has not exhausted administrative remedies and, therefore, is ineligible for an award of litigation costs. H. Rept. 97-404, at 13.

Accordingly, we note that we do not disturb the provisions in the regulations that require a taxpayer to participate in an Appeals office conference if that administrative remedy is made available to that taxpayer within the Internal Revenue Service. We note also, that requests for information at the audit level may properly be viewed as administrative remedies in that they may result in the parties reaching informed agreements which avoid the necessity of litigation. We note, finally, that a taxpayer's failure to respond in a full and timely manner to requests for information may constitute a failure to exhaust administrative remedies made available to that taxpayer within the Internal Revenue Service.

We hold for petitioners on this issue.

Appropriate orders will be issued.

Reviewed by the Court.

*509 STERRETT, NIMS, PARKER, WHITAKER, KORNER, CLAPP, SWIFT, JACOBS,

SIMPSON and COHEN, JJ., concur in the result only.

GERBER and WILLIAMS, JJ., did not participate in the consideration of this opinion.

SIMPSON, J., concurring: I accept the conclusions of the majority that the petitioners have exhausted their administrative remedies in this case and that the regulations are invalid insofar as they appear to require a taxpayer to consent to an extension of the statute of limitations in all cases in order to be entitled to recover litigation costs. However, I respectfully suggest that the majority goes too far. Suppose that the Commissioner's agents commence a timely examination of a taxpayer's return, but the complexity or the multitude of legal or factual issues make it impossible to complete the examination within the 3-year period. In such circumstances, there is insufficient time to issue a 30-day letter and to provide the taxpayer with an opportunity for an appeals hearing before the running of the statute. In such circumstances, I believe that it would be reasonable for the Commissioner to request the taxpayer to consent to an extension and that if the taxpayer refuses, we should hold that he has failed to exhaust his administrative remedies. In my opinion, the statute should be construed to include a test of reasonableness; that is, when the circumstances reveal that there was a reasonable need for the Commissioner to request an extension, the failure to grant one will constitute a failure to exhaust administrative remedies.

STERRETT, COHEN, and SWIFT, JJ., agree with this concurring opinion.

HAMBLEN, J., concurring and dissenting: I respectfully dissent from the portion of the majority opinion which invalidates section 301.7430- 1(b)(1)(i)(B) and section *510 301.7430-1(f)(2)(i), Proc. & Admin. Regs., insofar as such regulations provide that a taxpayer's failure to extend the statute of limitations is relevant to our determination as to whether a taxpayer has exhausted administrative remedies available within the Internal Revenue Service as required by section 7430 (b)(2). Courts should defer to interpretive regulations if the regulations are 'found to 'implement the congressional mandate in some reasonable manner." National Muffler Dealers Assn. v. United States, 440 U.S. 472, 476 (1979). As recently suggested, '[i]t follows from this principle of deference to Treasury regulations that the existence of an interpretive regulation should be decisive in a case in which an interpretive regulation is appropriate and in which reasonable arguments can be made both for a literal interpretation and for a nonliteral contextual interpretation' of the statutory provisions of the Internal Revenue Code. Zelenak, 'Thinking About Nonliteral Interpretations of the Internal Revenue Code,' 64 N.C.L. Rev. 623, 673-674 (1986). 'The choice among reasonable interpretations is for the Commissioner, not the courts.' National Muffler Dealers Assn. v. United States, supra at 488. And we have appropriately announced that we prefer to interpret regulations 'so as to uphold their validity.' Graves v. Commissioner, 88 T.C. ____ (Jan. 7, 1987), slip opinion pp. 8-9, and cases cited.

I submit that it is not proper for this Court to strike down interpretative regulations such as these which can be applied without regard to whether the consequences benefit the government or the taxpayer but which carry out the purpose, indeed the mandate, of the legislation before us. In this respect, I note the majority's reliance on 'our unanimous opinion in Durbin Paper Stock Co. v. Commissioner, 80 T.C. 252, 256-257 (1983),' as the absolute canon of judicial statutory construction in this case. See majority slip op. at 19. However, as I read the quoted section from Durbin Paper Stock Co. in the majority opinion, it merely confirms that rules of statutory construction may be applied to obtain the objective or result intended. In this respect, I cite National Muffler Dealers Assn. v. United States, supra, to reach what I believe is the correct standard. It seems, perhaps, that such precepts, like passages from the *511 Bible, can be cited to support diverse propositions or platforms, and it has been observed that such rules are mutually contradictory and may be considered neither generally accepted nor consistently applied by American courts. Zelenak, supra at 630-633. 'There are no talismanic words that can avoid the process of judgment.' Universal Camera Corp. v. Labor Bd., 340 U.S. 474, 489 (1951). As the courts of old held, rather pragmatically it seems to me, a statute which provides that a prisoner who escapes commits a felony 'does not extend to a prisoner who breaks out when the prison is on fire--'for he is not to be hanged because he would not stay to be burnt." Zelenak, supra at 632, quoting United States v. Kirby, 74 U.S. (7 Wall.) 482, 487 (1868). I fear that here the majority condemns innocent regulations because they will not submit them to the test of reasonableness.

In the instant case, I would reach the same result as the majority without the inappropriate and unnecessary invalidation of the pertinent regulation. My view is that respondent's regulations are reasonable and capable of application in a manner consistent with the intent of Congress as evidenced within the statute and gleaned from the legislative history. Consequently, the

invalidation of paragraphs (b)(1)(i)(B) and (f)(2)(i) of section 301.7430-1, Proc. & Admin. Regs., is neither appropriate nor necessary. In the context of the entitlement to an award of litigation costs, the majority opinion does a great disservice to the entire administrative process of the Internal Revenue Service and obscures a clear Congressional preference that cases be resolved in the administrative process rather than the legal forum.

I would determine that petitioners exhausted administrative remedies made available within the Internal Revenue Service for purposes of section 7430(b)(2) notwithstanding the refusal to extend the period for assessment. I submit that respondent's interpretive regulation, in general, establishes 'the circumstances in which the Internal Revenue Service NORMALLY WILL CONSIDER such administrative remedies exhausted.' Sec. 301.7430-1(a), Proc. & Admin. Regs. [[Emphasis added.] In this context, respondent's regulation sets forth the standard that a party's entitlement to an *512 award of litigation costs is dependent upon such party's agreement 'to extend the time for an assessment of tax IF NECESSARY TO PROVIDE THE APPEALS OFFICE WITH A REASONABLE TIME PERIOD TO CONSIDER THE TAX MATTER.' Sec. 301.7430-1(b)(1)(i)(B), Proc. & Admin. Regs. [[Emphasis added.]

The statute in question and its legislative history are silent as to whether Congress specifically intended that the exhaustion of administrative remedies requirement embody a reasonable extension of the period for assessment. I believe that section 301.7430- 1(b)(1)(i)(B), Proc. & Admin. Regs., sets forth a reasonableness standard regarding any request to extend the period for assessment under section 6501(c)(4). I perceive a distinction between the entitlement to an award of litigation costs pursuant to section 7430 and the statute of limitations period prescription within section 6501. An award pursuant to section 7430 is not a fundamental entitlement accorded each taxpayer. Consequently, the scope of section 7430 is necessarily restrictive. In this respect, the exhaustion of administrative remedies requirement is unique to section 7430. I would view respondent's request in light of the particular facts and circumstances to determine whether such request was necessary to provide the Appeals office with a reasonable time period to consider the tax matter. An additional factor within respondent's regulation is whether the time period requested within the consent to extend the period for assessment was reasonable in light of the particular facts and circumstances.

In the instant case, the record establishes that respondent's request was not necessary to provide the Appeals office a reasonable period for review. Respondent's request was due to dilatory administrative attention in the procurement of the valuation. This fact necessitated additional time to complete the examination. Furthermore, as stated in the majority opinion, the legal theory espoused by respondent to aggregate the transfers of Post common stock for purposes of gift tax valuation had been the subject of previous judicial inquiry. See majority slip op. at 11-13. Here, I would determine that petitioners' refusal to extend the period for assessment was reasonable as respondent's request to extend the period for assessment was not NECESSARY to *513 provide for Appeals office review but motivated by a desire to extend the examination stage of review.

In sum, my view is that the analysis as to whether a taxpayer is entitled to an award of litigation

costs should employ a double-edged inquiry concerning the prevailing party standard of section 7430(c)(2) and the exhaustion of administrative remedies requirement of section 7430(b)(2). Whether a request by respondent that a party extend the period for assessment is necessary to provide the Appeals office a reasonable period of time to consider the tax matter should be determined from the facts and circumstances of the request. The intent of the exhaustion of administrative remedies request is to impose a limitation to an award of litigation costs upon the taxpayer. The Court should focus upon which party, if any, disabled the stipulation and settlement process at the administrative level. I believe that the request to extend the period for assessment should be a relevant factor in our determination of the exhaustion of administrative remedies requirement. The majority negates any role of the consent to extend the period for assessment and erodes the effectiveness of the administrative appeals process. In this context, I note that Congress enacted section 7430 to 'deter abusive actions or overreaching by the Internal Revenue Service.' H. Rept. No. 97-404, at 11, 97th Cong., lst Sess. (1981), and that respondent's regulations are necessarily written by the very party that Congress intended to deter. Nonetheless, the intent of Congress is equally clear that the condition of section 7430(b)(2) is 'intended to preserve the role that the administrative appeals process plays in the resolution of tax disputes by requiring taxpayers to pursue such remedies prior to litigation.' H. Rept. No. 97-404, supra, at 13. The request to extend the period for assessment is not by definition tantamount to the abuse or overreaching by the Internal Revenue Service which Congress intended to deter, otherwise there would be no purpose for the consent provision. Sec. 6501(c)(4). The consent to extend the period for assessment may play a vital role in the resolution of complicated tax matters at the administrative level such as the numerous tax shelter cases currently awaiting our disposition. The majority ignores the second aspect of the *514 bifurcated Congressional intent of section 7430, namely the desire to preserve the administrative appeals process. I believe this has ominous overtones and may precipitate unfavorable results both within and beyond the award of litigation costs.

It is fundamental that this Court should consider Congressional empathy regarding the staggering number of petitions comprising our current inventory. Congressional efforts to assist in the management of our caseload are evidenced by the enactment of recent provisions. See secs. 6621 (d), 6659, 6661, 6673. Section 7430 should be read and examined correlatively with these penalty provisions if we are to construe and apply correctly the Congressional purpose inherent in their concurrent enactment. See Note, 'Section 7430 and the Award of Litigation Costs: A Reasonable Position,' 39 Tax Law. 769, 772 (1986). In connection with the enactment of section 6621(d), the Conference Committee stated that:
The conferees believe that, with this amendment, the Congress has given the Tax Court sufficient tools to manage its docket, and that the responsibility for effectively managing that docket and reducing the backlog now lies with the Tax Court. * * * [H. Rept. 98-861 (Conf.) (1984), 1984-3 C.B. (Vol. 2) 1, 239.]

My stated view is that the request to extend the period for assessment should be a relevant consideration in the context of the exhaustion of administrative remedies requirement. The majority opinion obviates any role which the request to extend the period for assessment could

have played to resolve tax matters at the administrative level. As stated, Congress has endeavored to allay the problems confronting this Court in the effective management of its caseload. Considering the totality of the legislative enactments above referred to, and the majority's rejection of a facts and circumstances test which I believe is inherent in the majority- obviated regulations, I am apprehensive that we are ignoring a charge endowed by the confidence of Congress in our deliberations, for:
It is fair to say that in all this Congress expressed a mood. And it expressed its mood not merely by oratory but by legislation. As legislation that mood must be respected, even though it can only serve as a standard for judgment and not as a body of rigid rules assuring *515 sameness of application. Enforcement of such broad standards implies subtlety of mind and solidity of judgment. But it is not for us to question that Congress may assume such qualities in the federal judiciary. [Universal Camera Corp. v. Labor Bd., 340 U.S. 474, 487 (1951).]

In the context of the exhaustion of administrative remedies requirement, the majority ignores Congressional preference for settlement of tax matters at the administrative level. I find troublesome the prospect that a taxpayer may now opt for the preliminary notice of deficiency and file a protest with the appellate section, but if a consent to extend the period for assessment is necessary to provide for Appeals office review, the taxpayer may compel the issuance of the statutory notice of deficiency. We must now determine that such a taxpayer has complied with the exhaustion of administrative remedies requirement. The elimination of the consent request to extend the period for assessment in context of an award of litigation costs emasculates the vitality of the exhaustion of administrative remedies requirement and designates an unwarranted advantage to the taxpayer in the intended balance of section 7430 between the prevailing party standard and the exhaustion of administrative remedies requirement. The majority has adopted a facile, albeit appealing, determination to invalidate respondent's regulations. Nonetheless, it remains inescapable that the Court must delve into the administrative proceedings to determine whether a taxpayer has exhausted administrative remedies as mandated by section 7430(b)(2) without regard to any reasonable request to extend the period for assessment necessary to provide an Appeals office review. I am confident that our determination disrupts the counterpoise intended by Congress with the enactment of section 7430(b)(2) and consider the following statement of Justice Frankfurter in Universal Camera Corp. v. Labor Bd., 340 U.S. at 488- 489, to be pertinent in that context: 'A formula for judicial review of administrative action may afford grounds for certitude but cannot assure certainty of application. Some scope for judicial discretion in applying the formula can be avoided only by falsifying the actual process of judging or by using the formula as an instrument of futile casuistry.'

*516 I am concerned that in voiding these regulations we have forsaken judicial discretion for the sake of pure judicial casuistry.

END OF DOCUMENT

§ 7491. Burden of proof

(a) Burden shifts where taxpayer produces credible evidence

(1) General rule

If, in any court proceeding, a taxpayer introduces credible evidence with respect to any factual issue relevant to ascertaining the liability of the taxpayer for any tax imposed by subtitle A or B, the Secretary shall have the burden of proof with respect to such issue.

(2) Limitations

Paragraph (1) shall apply with respect to an issue only if—

(A) the taxpayer has complied with the requirements under this title to substantiate any item;

(B) the taxpayer has maintained all records required under this title and has cooperated with reasonable requests by the Secretary for witnesses, information, documents, meetings, and interviews; and

(C) in the case of a partnership, corporation, or trust, the taxpayer is described in section 7430 (c)(4)(A)(ii).

Subparagraph (C) shall not apply to any qualified revocable trust (as defined in section 645 (b)(1)) with respect to liability for tax for any taxable year ending after the date of the decedent's death and before the applicable date (as defined in section 645 (b)(2)).

(3) Coordination

Paragraph (1) shall not apply to any issue if any other provision of this title provides for a specific burden of proof with respect to such issue.

(b) Use of statistical information on unrelated taxpayers

In the case of an individual taxpayer, the Secretary shall have the burden of proof in any court proceeding with respect to any item of income which was reconstructed by the Secretary solely through the use of statistical information on unrelated taxpayers.

(c) Penalties

Notwithstanding any other provision of this title, the Secretary shall have the burden of production in any court proceeding with respect to the liability of any individual for any penalty, addition to tax, or additional amount imposed by this title.

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Public Law 105–206
105th Congress

An Act

To amend the Internal Revenue Code of 1986 to restructure and reform the Internal Revenue Service, and for other purposes.

July 22, 1998
[H.R. 2676]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Internal Revenue Service Restructuring and Reform Act of 1998.
26 USC 1 note.

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE; WAIVER OF ESTIMATED TAX PENALTIES; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Internal Revenue Service Restructuring and Reform Act of 1998".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

26 USC 6654 note.

(c) WAIVER OF ESTIMATED TAX PENALTIES.—No addition to tax shall be made under section 6654 or 6655 of the Internal Revenue Code of 1986 with respect to any underpayment of an installment required to be paid on or before the 30th day after the date of the enactment of this Act to the extent such underpayment was created or increased by any provision of this Act.

(d) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; amendment of 1986 Code; waiver of estimated tax penalties; table of contents.

TITLE I—REORGANIZATION OF STRUCTURE AND MANAGEMENT OF THE INTERNAL REVENUE SERVICE

Subtitle A—Reorganization of the Internal Revenue Service

Sec. 1001. Reorganization of the Internal Revenue Service.
Sec. 1002. Internal Revenue Service mission to focus on taxpayers' needs.

Subtitle B—Executive Branch Governance and Senior Management

Sec. 1101. Internal Revenue Service Oversight Board.
Sec. 1102. Commissioner of Internal Revenue; other officials.
Sec. 1103. Treasury Inspector General for Tax Administration.
Sec. 1104. Other personnel.
Sec. 1105. Prohibition on executive branch influence over taxpayer audits and other investigations.

Subtitle C—Personnel Flexibilities

Sec. 1201. Improvements in personnel flexibilities.
Sec. 1202. Voluntary separation incentive payments.
Sec. 1203. Termination of employment for misconduct.
Sec. 1204. Basis for evaluation of Internal Revenue Service employees.
Sec. 1205. Employee training program.

TITLE II—ELECTRONIC FILING

Sec. 2001. Electronic filing of tax and information returns.

Sec. 2002. Due date for certain information returns.
Sec. 2003. Paperless electronic filing.
Sec. 2004. Return-free tax system.
Sec. 2005. Access to account information.

TITLE III—TAXPAYER PROTECTION AND RIGHTS

Sec. 3000. Short title.

Subtitle A—Burden of Proof

Sec. 3001. Burden of proof.

Subtitle B—Proceedings by Taxpayers

Sec. 3101. Expansion of authority to award costs and certain fees.
Sec. 3102. Civil damages for collection actions.
Sec. 3103. Increase in size of cases permitted on small case calendar.
Sec. 3104. Actions for refund with respect to certain estates which have elected the installment method of payment.
Sec. 3105. Administrative appeal of adverse Internal Revenue Service determination of tax-exempt status of bond issue.
Sec. 3106. Civil action for release of erroneous lien.

Subtitle C—Relief for Innocent Spouses and for Taxpayers Unable To Manage Their Financial Affairs Due to Disabilities

Sec. 3201. Relief from joint and several liability on joint return.
Sec. 3202. Suspension of statute of limitations on filing refund claims during periods of disability.

Subtitle D—Provisions Relating to Interest and Penalties

Sec. 3301. Elimination of interest rate differential on overlapping periods of interest on tax overpayments and underpayments.
Sec. 3302. Increase in overpayment rate payable to taxpayers other than corporations.
Sec. 3303. Mitigation of penalty on individual's failure to pay for months during period of installment agreement.
Sec. 3304. Mitigation of failure to deposit penalty.
Sec. 3305. Suspension of interest and certain penalties where Secretary fails to contact individual taxpayer.
Sec. 3306. Procedural requirements for imposition of penalties and additions to tax.
Sec. 3307. Personal delivery of notice of penalty under section 6672.
Sec. 3308. Notice of interest charges.
Sec. 3309. Abatement of interest on underpayments by taxpayers in Presidentially declared disaster areas.

Subtitle E—Protections for Taxpayers Subject to Audit or Collection Activities

PART I—DUE PROCESS

Sec. 3401. Due process in Internal Revenue Service collection actions.

PART II—EXAMINATION ACTIVITIES

Sec. 3411. Confidentiality privileges relating to taxpayer communications.
Sec. 3412. Limitation on financial status audit techniques.
Sec. 3413. Software trade secrets protection.
Sec. 3414. Threat of audit prohibited to coerce tip reporting alternative commitment agreements.
Sec. 3415. Taxpayers allowed motion to quash all third-party summonses.
Sec. 3416. Service of summonses to third-party recordkeepers permitted by mail.
Sec. 3417. Notice of Internal Revenue Service contact of third parties.

PART III—COLLECTION ACTIVITIES

SUBPART A—APPROVAL PROCESS

Sec. 3421. Approval process for liens, levies, and seizures.

SUBPART B—LIENS AND LEVIES

Sec. 3431. Modifications to certain levy exemption amounts.
Sec. 3432. Release of levy upon agreement that amount is uncollectible.
Sec. 3433. Levy prohibited during pendency of refund proceedings.
Sec. 3434. Approval required for jeopardy and termination assessments and jeopardy levies.
Sec. 3435. Increase in amount of certain property on which lien not valid.

Sec. 3436. Waiver of early withdrawal tax for Internal Revenue Service levies on employer-sponsored retirement plans or IRAs.

SUBPART C—SEIZURES

Sec. 3441. Prohibition of sales of seized property at less than minimum bid.
Sec. 3442. Accounting of sales of seized property.
Sec. 3443. Uniform asset disposal mechanism.
Sec. 3444. Codification of Internal Revenue Service administrative procedures for seizure of taxpayer's property.
Sec. 3445. Procedures for seizure of residences and businesses.

PART IV—PROVISIONS RELATING TO EXAMINATION AND COLLECTION ACTIVITIES

Sec. 3461. Procedures relating to extensions of statute of limitations by agreement.
Sec. 3462. Offers-in-compromise.
Sec. 3463. Notice of deficiency to specify deadlines for filing Tax Court petition.
Sec. 3464. Refund or credit of overpayments before final determination.
Sec. 3465. Internal Revenue Service procedures relating to appeals of examinations and collections.
Sec. 3466. Application of certain fair debt collection procedures.
Sec. 3467. Guaranteed availability of installment agreements.
Sec. 3468. Prohibition on requests to taxpayers to give up rights to bring actions.

Subtitle F—Disclosures to Taxpayers

Sec. 3501. Explanation of joint and several liability.
Sec. 3502. Explanation of taxpayers' rights in interviews with the Internal Revenue Service.
Sec. 3503. Disclosure of criteria for examination selection.
Sec. 3504. Explanations of appeals and collection process.
Sec. 3505. Explanation of reason for refund disallowance.
Sec. 3506. Statements regarding installment agreements.
Sec. 3507. Notification of change in tax matters partner.
Sec. 3508. Disclosure to taxpayers.
Sec. 3509. Disclosure of Chief Counsel advice.

Subtitle G—Low-Income Taxpayer Clinics

Sec. 3601. Low-income taxpayer clinics.

Subtitle H—Other Matters

Sec. 3701. Cataloging complaints.
Sec. 3702. Archive of records of Internal Revenue Service.
Sec. 3703. Payment of taxes.
Sec. 3704. Clarification of authority of Secretary relating to the making of elections.
Sec. 3705. Internal Revenue Service employee contacts.
Sec. 3706. Use of pseudonyms by Internal Revenue Service employees.
Sec. 3707. Illegal tax protester designation.
Sec. 3708. Provision of confidential information to Congress by whistleblowers.
Sec. 3709. Listing of local Internal Revenue Service telephone numbers and addresses.
Sec. 3710. Identification of return preparers.
Sec. 3711. Offset of past-due, legally enforceable State income tax obligations against overpayments.
Sec. 3712. Reporting requirements in connection with education tax credit.

Subtitle I—Studies

Sec. 3801. Administration of penalties and interest.
Sec. 3802. Confidentiality of tax return information.
Sec. 3803. Study of noncompliance with internal revenue laws by taxpayers.
Sec. 3804. Study of payments made for detection of underpayments and fraud.

TITLE IV—CONGRESSIONAL ACCOUNTABILITY FOR THE INTERNAL REVENUE SERVICE

Subtitle A—Oversight

Sec. 4001. Expansion of duties of the Joint Committee on Taxation.
Sec. 4002. Coordinated oversight reports.

Subtitle B—Century Date Change

Sec. 4011. Century date change.

Subtitle C—Tax Law Complexity

Sec. 4021. Role of the Internal Revenue Service.

Sec. 4022. Tax law complexity analysis.

TITLE V—ADDITIONAL PROVISIONS

Sec. 5001. Lower capital gains rates to apply to property held more than 1 year.
Sec. 5002. Clarification of exclusion of meals for certain employees.
Sec. 5003. Clarification of designation of normal trade relations.

TITLE VI—TECHNICAL CORRECTIONS

Sec. 6001. Short title; coordination with other titles.
Sec. 6002. Definitions.
Sec. 6003. Amendments related to title I of 1997 Act.
Sec. 6004. Amendments related to title II of 1997 Act.
Sec. 6005. Amendments related to title III of 1997 Act.
Sec. 6006. Amendment related to title IV of 1997 Act.
Sec. 6007. Amendments related to title V of 1997 Act.
Sec. 6008. Amendments related to title VII of 1997 Act.
Sec. 6009. Amendments related to title IX of 1997 Act.
Sec. 6010. Amendments related to title X of 1997 Act.
Sec. 6011. Amendments related to title XI of 1997 Act.
Sec. 6012. Amendments related to title XII of 1997 Act.
Sec. 6013. Amendments related to title XIII of 1997 Act.
Sec. 6014. Amendments related to title XIV of 1997 Act.
Sec. 6015. Amendments related to title XV of 1997 Act.
Sec. 6016. Amendments related to title XVI of 1997 Act.
Sec. 6017. Amendment related to Transportation Equity Act for the 21st Century.
Sec. 6018. Amendments related to Small Business Job Protection Act of 1996.
Sec. 6019. Amendments related to Taxpayer Bill of Rights 2.
Sec. 6020. Amendment related to Omnibus Budget Reconciliation Act of 1993.
Sec. 6021. Amendment related to Revenue Reconciliation Act of 1990.
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TITLE VII—REVENUE PROVISIONS

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Sec. 7002. Termination of exception for certain real estate investment trusts from the treatment of stapled entities.
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TITLE VIII—IDENTIFICATION OF LIMITED TAX BENEFITS SUBJECT TO LINE ITEM VETO

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Sec. 9006. Elimination of duplicate provisions.
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Sec. 9008. High priority projects technical corrections.
Sec. 9009. Federal Transit Administration programs.
Sec. 9010. Motor carrier safety technical correction.
Sec. 9011. Restorations to research title.
Sec. 9012. Automobile safety and information.
Sec. 9013. Technical corrections regarding subtitle A of title VIII.
Sec. 9014. Corrections to veterans subtitle.
Sec. 9015. Technical corrections regarding title IX.
Sec. 9016. Effective date.

TITLE I—REORGANIZATION OF STRUCTURE AND MANAGEMENT OF THE INTERNAL REVENUE SERVICE

Subtitle A—Reorganization of the Internal Revenue Service

SEC. 1001. REORGANIZATION OF THE INTERNAL REVENUE SERVICE.

26 USC 7801 note.

(a) IN GENERAL.—The Commissioner of Internal Revenue shall develop and implement a plan to reorganize the Internal Revenue Service. The plan shall—

(1) supersede any organization or reorganization of the Internal Revenue Service based on any statute or reorganization plan applicable on the effective date of this section;

(2) eliminate or substantially modify the existing organization of the Internal Revenue Service which is based on a national, regional, and district structure;

(3) establish organizational units serving particular groups of taxpayers with similar needs; and

(4) ensure an independent appeals function within the Internal Revenue Service, including the prohibition in the plan of ex parte communications between appeals officers and other Internal Revenue Service employees to the extent that such communications appear to compromise the independence of the appeals officers.

(b) SAVINGS PROVISIONS.—

(1) PRESERVATION OF SPECIFIC TAX RIGHTS AND REMEDIES.—Nothing in the plan developed and implemented under subsection (a) shall be considered to impair any right or remedy, including trial by jury, to recover any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority, or any sum alleged to have been excessive or in any manner wrongfully collected under the internal revenue laws. For the purpose of any action to recover any such tax, penalty, or sum, all statutes, rules, and regulations referring to the collector of internal revenue, the principal officer for the internal revenue district, or the Secretary, shall be deemed to refer to the officer whose act or acts referred to in the preceding sentence gave rise to such action. The venue of any such action shall be the same as under existing law.

(2) CONTINUING EFFECT OF LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, agreements, grants, contracts, certificates, licenses, registrations, privileges, and other administrative actions—

(A) which have been issued, made, granted, or allowed to become effective by the President, any Federal agency or official thereof, or by a court of competent jurisdiction, in the performance of any function transferred or affected by the reorganization of the Internal Revenue Service or any other administrative unit of the Department of the Treasury under this section; and

(B) which are in effect at the time this section takes effect, or were final before the effective date of this section

and are to become effective on or after the effective date of this section,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Secretary of the Treasury, the Commissioner of Internal Revenue, or other authorized official, a court of competent jurisdiction, or by operation of law.

(3) PROCEEDINGS NOT AFFECTED.—The provisions of this section shall not affect any proceedings, including notices of proposed rulemaking, or any application for any license, permit, certificate, or financial assistance pending before the Department of the Treasury (or any administrative unit of the Department, including the Internal Revenue Service) at the time this section takes effect, with respect to functions transferred or affected by the reorganization under this section but such proceedings and applications shall continue. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this section had not been enacted, and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this paragraph shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(4) SUITS NOT AFFECTED.—The provisions of this section shall not affect suits commenced before the effective date of this section, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this section had not been enacted.

(5) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of the Treasury (or any administrative unit of the Department, including the Internal Revenue Service), or by or against any individual in the official capacity of such individual as an officer of the Department of the Treasury, shall abate by reason of the enactment of this section.

(6) ADMINISTRATIVE ACTIONS RELATING TO PROMULGATION OF REGULATIONS.—Any administrative action relating to the preparation or promulgation of a regulation by the Department of the Treasury (or any administrative unit of the Department, including the Internal Revenue Service) relating to a function transferred or affected by the reorganization under this section may be continued by the Department of the Treasury through any appropriate administrative unit of the Department, including the Internal Revenue Service with the same effect as if this section had not been enacted.

(c) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act.

26 USC 7801 note.

SEC. 1002. INTERNAL REVENUE SERVICE MISSION TO FOCUS ON TAXPAYERS' NEEDS.

The Internal Revenue Service shall review and restate its mission to place a greater emphasis on serving the public and meeting taxpayers' needs.

Subtitle B—Executive Branch Governance and Senior Management

SEC. 1101. INTERNAL REVENUE SERVICE OVERSIGHT BOARD.

(a) IN GENERAL.—Section 7802 (relating to the Commissioner of Internal Revenue) is amended to read as follows:

"SEC. 7802. INTERNAL REVENUE SERVICE OVERSIGHT BOARD.

"(a) ESTABLISHMENT.—There is established within the Department of the Treasury the Internal Revenue Service Oversight Board (hereafter in this subchapter referred to as the 'Oversight Board').

"(b) MEMBERSHIP.—

"(1) COMPOSITION.—The Oversight Board shall be composed of nine members, as follows: President.

"(A) six members shall be individuals who are not otherwise Federal officers or employees and who are appointed by the President, by and with the advice and consent of the Senate.

"(B) one member shall be the Secretary of the Treasury or, if the Secretary so designates, the Deputy Secretary of the Treasury.

"(C) one member shall be the Commissioner of Internal Revenue.

"(D) one member shall be an individual who is a full-time Federal employee or a representative of employees and who is appointed by the President, by and with the advice and consent of the Senate.

"(2) QUALIFICATIONS AND TERMS.—

"(A) QUALIFICATIONS.—Members of the Oversight Board described in paragraph (1)(A) shall be appointed without regard to political affiliation and solely on the basis of their professional experience and expertise in one or more of the following areas:

"(i) Management of large service organizations.

"(ii) Customer service.

"(iii) Federal tax laws, including tax administration and compliance.

"(iv) Information technology.

"(v) Organization development.

"(vi) The needs and concerns of taxpayers.

"(vii) The needs and concerns of small businesses.

In the aggregate, the members of the Oversight Board described in paragraph (1)(A) should collectively bring to bear expertise in all of the areas described in the preceding sentence.

"(B) TERMS.—Each member who is described in subparagraph (A) or (D) of paragraph (1) shall be appointed for a term of 5 years, except that of the members first appointed under paragraph (1)(A)—

"(i) two members shall be appointed for a term of 3 years,

"(ii) two members shall be appointed for a term of 4 years; and

"(iii) two members shall be appointed for a term of 5 years.

"(C) REAPPOINTMENT.—An individual who is described in subparagraph (A) or (D) of paragraph (1) may be appointed to no more than two 5-year terms on the Oversight Board.

"(D) VACANCY.—Any vacancy on the Oversight Board shall be filled in the same manner as the original appointment. Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed for the remainder of that term.

"(3) ETHICAL CONSIDERATIONS.—

"(A) FINANCIAL DISCLOSURE.—During the entire period that an individual appointed under subparagraph (A) or (D) of paragraph (1) is a member of the Oversight Board, such individual shall be treated as serving as an officer or employee referred to in section 101(f) of the Ethics in Government Act of 1978 for purposes of title I of such Act, except that section 101(d) of such Act shall apply without regard to the number of days of service in the position.

"(B) RESTRICTIONS ON POST-EMPLOYMENT.—For purposes of section 207(c) of title 18, United States Code, an individual appointed under subparagraph (A) or (D) of paragraph (1) shall be treated as an employee referred to in section 207(c)(2)(A)(i) of such title during the entire period the individual is a member of the Board, except that subsections (c)(2)(B) and (f) of section 207 of such title shall not apply.

"(C) MEMBERS WHO ARE SPECIAL GOVERNMENT EMPLOYEES.—If an individual appointed under subparagraph (A) or (D) of paragraph (1) is a special Government employee, the following additional rules apply for purposes of chapter 11 of title 18, United States Code:

"(i) RESTRICTION ON REPRESENTATION.—In addition to any restriction under section 205(c) of title 18, United States Code, except as provided in subsections (d) through (i) of section 205 of such title, such individual (except in the proper discharge of official duties) shall not, with or without compensation, represent anyone to or before any officer or employee of—

"(I) the Oversight Board or the Internal Revenue Service on any matter;

"(II) the Department of the Treasury on any matter involving the internal revenue laws or involving the management or operations of the Internal Revenue Service; or

"(III) the Department of Justice with respect to litigation involving a matter described in subclause (I) or (II).

"(ii) COMPENSATION FOR SERVICES PROVIDED BY ANOTHER.—For purposes of section 203 of such title—

"(I) such individual shall not be subject to the restrictions of subsection (a)(1) thereof for sharing in compensation earned by another for representations on matters covered by such section, and

"(II) a person shall not be subject to the restrictions of subsection (a)(2) thereof for sharing such compensation with such individual.

"(D) WAIVER.—The President may, only at the time the President nominates the member of the Oversight Board described in paragraph (1)(D), waive for the term of the member any appropriate provision of chapter 11 of title 18, United States Code, to the extent such waiver is necessary to allow such member to participate in the decisions of the Board while continuing to serve as a full-time Federal employee or a representative of employees. Any such waiver shall not be effective unless a written intent of waiver to exempt such member (and actual waiver language) is submitted to the Senate with the nomination of such member.

"(4) QUORUM.—Five members of the Oversight Board shall constitute a quorum. A majority of members present and voting shall be required for the Oversight Board to take action.

"(5) REMOVAL.—

"(A) IN GENERAL.—Any member of the Oversight Board appointed under subparagraph (A) or (D) of paragraph (1) may be removed at the will of the President.

"(B) SECRETARY AND COMMISSIONER.—An individual described in subparagraph (B) or (C) of paragraph (1) shall be removed upon termination of service in the office described in such subparagraph.

"(6) CLAIMS.—

"(A) IN GENERAL.—Members of the Oversight Board who are described in subparagraph (A) or (D) of paragraph (1) shall have no personal liability under Federal law with respect to any claim arising out of or resulting from an act or omission by such member within the scope of service as a member.

"(B) EFFECT ON OTHER LAW.—This paragraph shall not be construed—

"(i) to affect any other immunities and protections that may be available to such member under applicable law with respect to such transactions;

"(ii) to affect any other right or remedy against the United States under applicable law; or

"(iii) to limit or alter in any way the immunities that are available under applicable law for Federal officers and employees.

"(c) GENERAL RESPONSIBILITIES.—

"(1) OVERSIGHT.—

"(A) IN GENERAL.—The Oversight Board shall oversee the Internal Revenue Service in its administration, management, conduct, direction, and supervision of the execution and application of the internal revenue laws or related statutes and tax conventions to which the United States is a party.

"(B) MISSION OF IRS.—As part of its oversight functions described in subparagraph (A), the Oversight Board shall ensure that the organization and operation of the Internal Revenue Service allows it to carry out its mission.

"(C) CONFIDENTIALITY.—The Oversight Board shall ensure that appropriate confidentiality is maintained in the exercise of its duties.

"(2) EXCEPTIONS.—The Oversight Board shall have no responsibilities or authority with respect to—

"(A) the development and formulation of Federal tax policy relating to existing or proposed internal revenue laws, related statutes, and tax conventions,

"(B) specific law enforcement activities of the Internal Revenue Service, including specific compliance activities such as examinations, collection activities, and criminal investigations,

"(C) specific procurement activities of the Internal Revenue Service, or

"(D) except as provided in subsection (d)(3), specific personnel actions.

"(d) SPECIFIC RESPONSIBILITIES.—The Oversight Board shall have the following specific responsibilities:

"(1) STRATEGIC PLANS.—To review and approve strategic plans of the Internal Revenue Service, including the establishment of—

"(A) mission and objectives, and standards of performance relative to either, and

"(B) annual and long-range strategic plans.

"(2) OPERATIONAL PLANS.—To review the operational functions of the Internal Revenue Service, including—

"(A) plans for modernization of the tax system,

"(B) plans for outsourcing or managed competition, and

"(C) plans for training and education.

"(3) MANAGEMENT.—To—

"(A) recommend to the President candidates for appointment as the Commissioner of Internal Revenue and recommend to the President the removal of the Commissioner;

"(B) review the Commissioner's selection, evaluation, and compensation of Internal Revenue Service senior executives who have program management responsibility over significant functions of the Internal Revenue Service; and

"(C) review and approve the Commissioner's plans for any major reorganization of the Internal Revenue Service.

"(4) BUDGET.—To—

"(A) review and approve the budget request of the Internal Revenue Service prepared by the Commissioner;

"(B) submit such budget request to the Secretary of the Treasury; and

"(C) ensure that the budget request supports the annual and long-range strategic plans.

"(5) TAXPAYER PROTECTION.—To ensure the proper treatment of taxpayers by the employees of the Internal Revenue Service.

The Secretary shall submit the budget request referred to in paragraph (4)(B) for any fiscal year to the President who shall submit such request, without revision, to Congress together with the President's annual budget request for the Internal Revenue Service for such fiscal year.

"(e) BOARD PERSONNEL MATTERS.—

"(1) COMPENSATION OF MEMBERS.—

"(A) IN GENERAL.—Each member of the Oversight Board who—

"(i) is described in subsection (b)(1)(A); or

"(ii) is described in subsection (b)(1)(D) and is not otherwise a Federal officer or employee,

shall be compensated at a rate of $30,000 per year. All other members shall serve without compensation for such service.

"(B) CHAIRPERSON.—In lieu of the amount specified in subparagraph (A), the Chairperson of the Oversight Board shall be compensated at a rate of $50,000 per year.

"(2) TRAVEL EXPENSES.—

"(A) IN GENERAL.—The members of the Oversight Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, to attend meetings of the Oversight Board and, with the advance approval of the Chairperson of the Oversight Board, while otherwise away from their homes or regular places of business for purposes of duties as a member of the Oversight Board.

"(B) REPORT.—The Oversight Board shall include in its annual report under subsection (f)(3)(A) information with respect to the travel expenses allowed for members of the Oversight Board under this paragraph.

"(3) STAFF.—

"(A) IN GENERAL.—The Chairperson of the Oversight Board may appoint and terminate any personnel that may be necessary to enable the Board to perform its duties.

"(B) DETAIL OF GOVERNMENT EMPLOYEES.—Upon request of the Chairperson of the Oversight Board, a Federal agency shall detail a Federal Government employee to the Oversight Board without reimbursement. Such detail shall be without interruption or loss of civil service status or privilege.

"(4) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairperson of the Oversight Board may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

"(f) ADMINISTRATIVE MATTERS.—

"(1) CHAIR.—

"(A) TERM.—The members of the Oversight Board shall elect for a 2-year term a chairperson from among the members appointed under subsection (b)(1)(A).

"(B) POWERS.—Except as otherwise provided by a majority vote of the Oversight Board, the powers of the Chairperson shall include—

"(i) establishing committees;

"(ii) setting meeting places and times;

"(iii) establishing meeting agendas; and

"(iv) developing rules for the conduct of business.

"(2) MEETINGS.—The Oversight Board shall meet at least quarterly and at such other times as the Chairperson determines appropriate.

"(3) REPORTS.—

"(A) ANNUAL.—The Oversight Board shall each year report with respect to the conduct of its responsibilities under this title to the President, the Committees on Ways and Means, Government Reform and Oversight, and Appropriations of the House of Representatives and the Committees on Finance, Governmental Affairs, and Appropriations of the Senate.

"(B) ADDITIONAL REPORT.—Upon a determination by the Oversight Board under subsection (c)(1)(B) that the organization and operation of the Internal Revenue Service are not allowing it to carry out its mission, the Oversight Board shall report such determination to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.".

(b) RESTRICTION ON DISCLOSURE OF RETURN INFORMATION TO OVERSIGHT BOARD MEMBERS.—Section 6103(h) (relating to disclosure to certain Federal officers and employees for purposes of tax administration, etc.) is amended by adding at the end the following new paragraph:

"(5) INTERNAL REVENUE SERVICE OVERSIGHT BOARD.—

"(A) IN GENERAL.—Notwithstanding paragraph (1), and except as provided in subparagraph (B), no return or return information may be disclosed to any member of the Oversight Board described in subparagraph (A) or (D) of section 7802(b)(1) or to any employee or detailee of such Board by reason of their service with the Board. Any request for information not permitted to be disclosed under the preceding sentence, and any contact relating to a specific taxpayer, made by any such individual to an officer or employee of the Internal Revenue Service shall be reported by such officer or employee to the Secretary, the Treasury Inspector General for Tax Administration, and the Joint Committee on Taxation.

"(B) EXCEPTION FOR REPORTS TO THE BOARD.—If—

"(i) the Commissioner or the Treasury Inspector General for Tax Administration prepares any report or other matter for the Oversight Board in order to assist the Board in carrying out its duties; and

"(ii) the Commissioner or such Inspector General determines it is necessary to include any return or return information in such report or other matter to enable the Board to carry out such duties,

such return or return information (other than information regarding taxpayer identity) may be disclosed to members, employees, or detailees of the Board solely for the purpose of carrying out such duties.".

(c) CONFORMING AMENDMENTS.—

(1) Section 4946(c) (relating to definitions and special rules for chapter 42) is amended by striking "or" at the end of paragraph (5), by striking the period at the end of paragraph (6) and inserting ", or", and by adding at the end the following new paragraph:

"(7) a member of the Internal Revenue Service Oversight Board.".

(2) The table of sections for subchapter A of chapter 80 is amended by striking the item relating to section 7802 and inserting the following new item:

"Sec. 7802. Internal Revenue Service Oversight Board.".

(d) EFFECTIVE DATE.— 26 USC 7802 note.

(1) IN GENERAL.—The amendments made by this section shall take effect on the date of the enactment of this Act.

(2) INITIAL NOMINATIONS TO INTERNAL REVENUE SERVICE OVERSIGHT BOARD.—The President shall submit the initial nominations under section 7802 of the Internal Revenue Code of 1986, as added by this section, to the Senate not later than 6 months after the date of the enactment of this Act. President. Deadline.

(3) EFFECT ON ACTIONS PRIOR TO APPOINTMENT OF OVERSIGHT BOARD.—Nothing in this section shall be construed to invalidate the actions and authority of the Internal Revenue Service prior to the appointment of the members of the Internal Revenue Service Oversight Board.

SEC. 1102. COMMISSIONER OF INTERNAL REVENUE; OTHER OFFICIALS.

(a) IN GENERAL.—Section 7803 (relating to other personnel) is amended to read as follows:

"SEC. 7803. COMMISSIONER OF INTERNAL REVENUE; OTHER OFFICIALS.

"(a) COMMISSIONER OF INTERNAL REVENUE.—

"(1) APPOINTMENT.—

"(A) IN GENERAL.—There shall be in the Department of the Treasury a Commissioner of Internal Revenue who shall be appointed by the President, by and with the advice and consent of the Senate, to a 5-year term. Such appointment shall be made from individuals who, among other qualifications, have a demonstrated ability in management. President.

"(B) VACANCY.—Any individual appointed to fill a vacancy in the position of Commissioner occurring before the expiration of the term for which such individual's predecessor was appointed shall be appointed only for the remainder of that term.

"(C) REMOVAL.—The Commissioner may be removed at the will of the President.

"(D) REAPPOINTMENT.—The Commissioner may be appointed to more than one 5-year term.

"(2) DUTIES.—The Commissioner shall have such duties and powers as the Secretary may prescribe, including the power to—

"(A) administer, manage, conduct, direct, and supervise the execution and application of the internal revenue laws or related statutes and tax conventions to which the United States is a party; and

"(B) recommend to the President a candidate for appointment as Chief Counsel for the Internal Revenue Service when a vacancy occurs, and recommend to the President the removal of such Chief Counsel.

If the Secretary determines not to delegate a power specified in subparagraph (A) or (B), such determination may not take effect until 30 days after the Secretary notifies the Committees on Ways and Means, Government Reform and Oversight, and Appropriations of the House of Representatives and the

Committees on Finance, Governmental Affairs, and Appropriations of the Senate.

"(3) CONSULTATION WITH BOARD.—The Commissioner shall consult with the Oversight Board on all matters set forth in paragraphs (2) and (3) (other than paragraph (3)(A)) of section 7802(d).

President.

"(b) CHIEF COUNSEL FOR THE INTERNAL REVENUE SERVICE.—

"(1) APPOINTMENT.—There shall be in the Department of the Treasury a Chief Counsel for the Internal Revenue Service who shall be appointed by the President, by and with the consent of the Senate.

"(2) DUTIES.—The Chief Counsel shall be the chief law officer for the Internal Revenue Service and shall perform such duties as may be prescribed by the Secretary, including the duty—

"(A) to be legal advisor to the Commissioner and the Commissioner's officers and employees;

"(B) to furnish legal opinions for the preparation and review of rulings and memoranda of technical advice;

"(C) to prepare, review, and assist in the preparation of proposed legislation, treaties, regulations, and Executive orders relating to laws which affect the Internal Revenue Service;

"(D) to represent the Commissioner in cases before the Tax Court; and

"(E) to determine which civil actions should be litigated under the laws relating to the Internal Revenue Service and prepare recommendations for the Department of Justice regarding the commencement of such actions.

If the Secretary determines not to delegate a power specified in subparagraph (A), (B), (C), (D), or (E), such determination may not take effect until 30 days after the Secretary notifies the Committees on Ways and Means, Government Reform and Oversight, and Appropriations of the House of Representatives and the Committees on Finance, Governmental Affairs, and Appropriations of the Senate.

"(3) PERSONS TO WHOM CHIEF COUNSEL REPORTS.—The Chief Counsel shall report directly to the Commissioner of Internal Revenue, except that—

"(A) the Chief Counsel shall report to both the Commissioner and the General Counsel for the Department of the Treasury with respect to—

"(i) legal advice or interpretation of the tax law not relating solely to tax policy;

"(ii) tax litigation; and

"(B) the Chief Counsel shall report to the General Counsel with respect to legal advice or interpretation of the tax law relating solely to tax policy.

If there is any disagreement between the Commissioner and the General Counsel with respect to any matter jointly referred to them under subparagraph (A), such matter shall be submitted to the Secretary or Deputy Secretary for resolution.

"(4) CHIEF COUNSEL PERSONNEL.—All personnel in the Office of Chief Counsel shall report to the Chief Counsel.

"(c) OFFICE OF THE TAXPAYER ADVOCATE.—

"(1) ESTABLISHMENT.—

"(A) IN GENERAL.—There is established in the Internal Revenue Service an office to be known as the 'Office of the Taxpayer Advocate'.

"(B) NATIONAL TAXPAYER ADVOCATE.—

"(i) IN GENERAL.—The Office of the Taxpayer Advocate shall be under the supervision and direction of an official to be known as the 'National Taxpayer Advocate'. The National Taxpayer Advocate shall report directly to the Commissioner of Internal Revenue and shall be entitled to compensation at the same rate as the highest rate of basic pay established for the Senior Executive Service under section 5382 of title 5, United States Code, or, if the Secretary of the Treasury so determines, at a rate fixed under section 9503 of such title.

"(ii) APPOINTMENT.—The National Taxpayer Advocate shall be appointed by the Secretary of the Treasury after consultation with the Commissioner of Internal Revenue and the Oversight Board and without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service or the Senior Executive Service.

"(iii) QUALIFICATIONS.—An individual appointed under clause (ii) shall have—

"(I) a background in customer service as well as tax law; and

"(II) experience in representing individual taxpayers.

"(iv) RESTRICTION ON EMPLOYMENT.—An individual may be appointed as the National Taxpayer Advocate only if such individual was not an officer or employee of the Internal Revenue Service during the 2-year period ending with such appointment and such individual agrees not to accept any employment with the Internal Revenue Service for at least 5 years after ceasing to be the National Taxpayer Advocate. Service as an officer or employee of the Office of the Taxpayer Advocate shall not be taken into account in applying this clause.

"(2) FUNCTIONS OF OFFICE.—

"(A) IN GENERAL.—It shall be the function of the Office of the Taxpayer Advocate to—

"(i) assist taxpayers in resolving problems with the Internal Revenue Service;

"(ii) identify areas in which taxpayers have problems in dealings with the Internal Revenue Service;

"(iii) to the extent possible, propose changes in the administrative practices of the Internal Revenue Service to mitigate problems identified under clause (ii); and

"(iv) identify potential legislative changes which may be appropriate to mitigate such problems.

"(B) ANNUAL REPORTS.—

"(i) OBJECTIVES.—Not later than June 30 of each calendar year, the National Taxpayer Advocate shall report to the Committee on Ways and Means of the House of Representatives and the Committee on

Deadline.

Finance of the Senate on the objectives of the Office of the Taxpayer Advocate for the fiscal year beginning in such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information.

Deadline.

"(ii) ACTIVITIES.—Not later than December 31 of each calendar year, the National Taxpayer Advocate shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the activities of the Office of the Taxpayer Advocate during the fiscal year ending during such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and shall—

"(I) identify the initiatives the Office of the Taxpayer Advocate has taken on improving taxpayer services and Internal Revenue Service responsiveness;

"(II) contain recommendations received from individuals with the authority to issue Taxpayer Assistance Orders under section 7811;

"(III) contain a summary of at least 20 of the most serious problems encountered by taxpayers, including a description of the nature of such problems;

"(IV) contain an inventory of the items described in subclauses (I), (II), and (III) for which action has been taken and the result of such action;

"(V) contain an inventory of the items described in subclauses (I), (II), and (III) for which action remains to be completed and the period during which each item has remained on such inventory;

"(VI) contain an inventory of the items described in subclauses (I), (II), and (III) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and identify any Internal Revenue Service official who is responsible for such inaction;

"(VII) identify any Taxpayer Assistance Order which was not honored by the Internal Revenue Service in a timely manner, as specified under section 7811(b);

"(VIII) contain recommendations for such administrative and legislative action as may be appropriate to resolve problems encountered by taxpayers;

"(IX) identify areas of the tax law that impose significant compliance burdens on taxpayers or the Internal Revenue Service, including specific recommendations for remedying these problems;

"(X) identify the 10 most litigated issues for each category of taxpayers, including recommendations for mitigating such disputes; and

"(XI) include such other information as the National Taxpayer Advocate may deem advisable.

"(iii) REPORT TO BE SUBMITTED DIRECTLY.—Each report required under this subparagraph shall be provided directly to the committees described in clause (i) without any prior review or comment from the Commissioner, the Secretary of the Treasury, the Oversight Board, any other officer or employee of the Department of the Treasury, or the Office of Management and Budget.

"(iv) COORDINATION WITH REPORT OF TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION.—To the extent that information required to be reported under clause (ii) is also required to be reported under paragraph (1) or (2) of subsection (d) by the Treasury Inspector General for Tax Administration, the National Taxpayer Advocate shall not contain such information in the report submitted under such clause.

"(C) OTHER RESPONSIBILITIES.—The National Taxpayer Advocate shall—

"(i) monitor the coverage and geographic allocation of local offices of taxpayer advocates;

"(ii) develop guidance to be distributed to all Internal Revenue Service officers and employees outlining the criteria for referral of taxpayer inquiries to local offices of taxpayer advocates;

"(iii) ensure that the local telephone number for each local office of the taxpayer advocate is published and available to taxpayers served by the office; and

"(iv) in conjunction with the Commissioner, develop career paths for local taxpayer advocates choosing to make a career in the Office of the Taxpayer Advocate.

"(D) PERSONNEL ACTIONS.—

"(i) IN GENERAL.—The National Taxpayer Advocate shall have the responsibility and authority to—

"(I) appoint local taxpayer advocates and make available at least 1 such advocate for each State; and

"(II) evaluate and take personnel actions (including dismissal) with respect to any employee of any local office of a taxpayer advocate described in subclause (I).

"(ii) CONSULTATION.—The National Taxpayer Advocate may consult with the appropriate supervisory personnel of the Internal Revenue Service in carrying out the National Taxpayer Advocate's responsibilities under this subparagraph.

"(3) RESPONSIBILITIES OF COMMISSIONER.—The Commissioner shall establish procedures requiring a formal response to all recommendations submitted to the Commissioner by the National Taxpayer Advocate within 3 months after submission to the Commissioner. Procedures.

"(4) OPERATION OF LOCAL OFFICES.—

"(A) IN GENERAL.—Each local taxpayer advocate—

"(i) shall report to the National Taxpayer Advocate or delegate thereof;

"(ii) may consult with the appropriate supervisory personnel of the Internal Revenue Service regarding

the daily operation of the local office of the taxpayer advocate;

Notification.

"(iii) shall, at the initial meeting with any taxpayer seeking the assistance of a local office of the taxpayer advocate, notify such taxpayer that the taxpayer advocate offices operate independently of any other Internal Revenue Service office and report directly to Congress through the National Taxpayer Advocate; and

"(iv) may, at the taxpayer advocate's discretion, not disclose to the Internal Revenue Service contact with, or information provided by, such taxpayer.

"(B) MAINTENANCE OF INDEPENDENT COMMUNICATIONS.—Each local office of the taxpayer advocate shall maintain a separate phone, facsimile, and other electronic communication access, and a separate post office address.

"(d) ADDITIONAL DUTIES OF THE TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION.—

"(1) ANNUAL REPORTING.—The Treasury Inspector General for Tax Administration shall include in one of the semiannual reports under section 5 of the Inspector General Act of 1978—

"(A) an evaluation of the compliance of the Internal Revenue Service with—

"(i) restrictions under section 1204 of the Internal Revenue Service Restructuring and Reform Act of 1998 on the use of enforcement statistics to evaluate Internal Revenue Service employees;

"(ii) restrictions under section 7521 on directly contacting taxpayers who have indicated that they prefer their representatives be contacted;

"(iii) required procedures under section 6320 upon the filing of a notice of a lien;

"(iv) required procedures under subchapter D of chapter 64 for seizure of property for collection of taxes, including required procedures under section 6330 regarding levies; and

"(v) restrictions under section 3707 of the Internal Revenue Service Restructuring and Reform Act of 1998 on designation of taxpayers;

"(B) a review and a certification of whether or not the Secretary is complying with the requirements of section 6103(e)(8) to disclose information to an individual filing a joint return on collection activity involving the other individual filing the return;

"(C) information regarding extensions of the statute of limitations for assessment and collection of tax under section 6501 and the provision of notice to taxpayers regarding requests for such extension;

"(D) an evaluation of the adequacy and security of the technology of the Internal Revenue Service;

"(E) any termination or mitigation under section 1203 of the Internal Revenue Service Restructuring and Reform Act of 1998;

"(F) information regarding improper denial of requests for information from the Internal Revenue Service identified under paragraph (3)(A); and

"(G) information regarding any administrative or civil actions with respect to violations of the fair debt collection provisions of section 6304, including—

"(i) a summary of such actions initiated since the date of the last report; and

"(ii) a summary of any judgments or awards granted as a result of such actions.

"(2) SEMIANNUAL REPORTS.—

"(A) IN GENERAL.—The Treasury Inspector General for Tax Administration shall include in each semiannual report under section 5 of the Inspector General Act of 1978—

"(i) the number of taxpayer complaints during the reporting period;

"(ii) the number of employee misconduct and taxpayer abuse allegations received by the Internal Revenue Service or the Inspector General during the period from taxpayers, Internal Revenue Service employees, and other sources;

"(iii) a summary of the status of such complaints and allegations; and

"(iv) a summary of the disposition of such complaints and allegations, including the outcome of any Department of Justice action and any monies paid as a settlement of such complaints and allegations.

"(B) Clauses (iii) and (iv) of subparagraph (A) shall only apply to complaints and allegations of serious employee misconduct. Applicability.

"(3) OTHER RESPONSIBILITIES.—The Treasury Inspector General for Tax Administration shall—

"(A) conduct periodic audits of a statistically valid sample of the total number of determinations made by the Internal Revenue Service to deny written requests to disclose information to taxpayers on the basis of section 6103 of this title or section 552(b)(7) of title 5, United States Code; and

"(B) establish and maintain a toll-free telephone number for taxpayers to use to confidentially register complaints of misconduct by Internal Revenue Service employees and incorporate the telephone number in the statement required by section 6227 of the Omnibus Taxpayer Bill of Rights (Internal Revenue Service Publication No. 1).". Communications and telecommunication.

(b) NOTICE OF RIGHT TO CONTACT OFFICE INCLUDED IN NOTICE OF DEFICIENCY.—Section 6212(a) (relating to notice of deficiency) is amended by adding at the end the following new sentence: "Such notice shall include a notice to the taxpayer of the taxpayer's right to contact a local office of the taxpayer advocate and the location and phone number of the appropriate office.".

(c) EXPANSION OF AUTHORITY TO ISSUE TAXPAYER ASSISTANCE ORDERS.—Section 7811(a) (relating to taxpayer assistance orders) is amended to read as follows:

"(a) AUTHORITY TO ISSUE.—

"(1) IN GENERAL.—Upon application filed by a taxpayer with the Office of the Taxpayer Advocate (in such form, manner, and at such time as the Secretary shall by regulations prescribe), the National Taxpayer Advocate may issue a Taxpayer Assistance Order if— Regulations.

"(A) the National Taxpayer Advocate determines the taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the Secretary; or

"(B) the taxpayer meets such other requirements as are set forth in regulations prescribed by the Secretary.

"(2) DETERMINATION OF HARDSHIP.—For purposes of paragraph (1), a significant hardship shall include—

"(A) an immediate threat of adverse action;

"(B) a delay of more than 30 days in resolving taxpayer account problems;

"(C) the incurring by the taxpayer of significant costs (including fees for professional representation) if relief is not granted; or

"(D) irreparable injury to, or a long-term adverse impact on, the taxpayer if relief is not granted.

"(3) STANDARD WHERE ADMINISTRATIVE GUIDANCE NOT FOLLOWED.—In cases where any Internal Revenue Service employee is not following applicable published administrative guidance (including the Internal Revenue Manual), the National Taxpayer Advocate shall construe the factors taken into account in determining whether to issue a taxpayer assistance order in the manner most favorable to the taxpayer.".

(d) CONFORMING AMENDMENTS RELATING TO NATIONAL TAXPAYER ADVOCATE.—

(1) The following provisions are each amended by striking "Taxpayer Advocate" each place it appears and inserting "National Taxpayer Advocate":

(A) Section 6323(j)(1)(D) (relating to withdrawal of notice in certain circumstances).

(B) Section 6343(d)(2)(D) (relating to return of property in certain cases).

(C) Section 7811(b)(2)(D) (relating to terms of a Taxpayer Assistance Order).

(D) Section 7811(c) (relating to authority to modify or rescind).

(E) Section 7811(d)(2) (relating to suspension of running of period of limitation).

(F) Section 7811(e) (relating to independent action of Taxpayer Advocate).

(G) Section 7811(f) (relating to Taxpayer Advocate).

(2) Section 7811(d)(1) (relating to suspension of running of period of limitation) is amended by striking "Taxpayer Advocate's" and inserting "National Taxpayer Advocate's".

(3) The headings of subsections (e) and (f) of section 7811 are each amended by striking "TAXPAYER ADVOCATE" and inserting "NATIONAL TAXPAYER ADVOCATE".

(e) ADDITIONAL CONFORMING AMENDMENTS.—

(1) The table of sections for subchapter A of chapter 80 is amended by striking the item relating to section 7803 and inserting the following new item:

"Sec. 7803. Commissioner of Internal Revenue; other officials.".

(2) Section 5109 of title 5, United States Code, is amended by striking subsection (b) and redesignating subsection (c) as subsection (b).

(3) Section 7611(f)(1) (relating to restrictions on church tax inquiries and examinations) is amended by striking "Assistant Commissioner for Employee Plans and Exempt Organizations of the Internal Revenue Service" and inserting "Secretary".

(f) EFFECTIVE DATE.— 26 USC 7803 note.

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) CHIEF COUNSEL.—Section 7803(b)(3) of the Internal Revenue Code of 1986, as added by this section, shall take effect on the date that is 90 days after the date of the enactment of this Act.

(3) NATIONAL TAXPAYER ADVOCATE.—Notwithstanding section 7803(c)(1)(B)(iv) of such Code, as added by this section, in appointing the first National Taxpayer Advocate after the date of the enactment of this Act, the Secretary of the Treasury—

(A) shall not appoint any individual who was an officer or employee of the Internal Revenue Service at any time during the 2-year period ending on the date of appointment; and

(B) need not consult with the Internal Revenue Service Oversight Board if the Oversight Board has not been appointed.

(4) CURRENT OFFICERS.—

(A) In the case of an individual serving as Commissioner of Internal Revenue on the date of the enactment of this Act who was appointed to such position before such date, the 5-year term required by section 7803(a)(1) of such Code, as added by this section, shall begin as of the date of such appointment.

(B) Clauses (ii), (iii), and (iv) of section 7803(c)(1)(B) of such Code, as added by this section, shall not apply to the individual serving as Taxpayer Advocate on the date of the enactment of this Act.

SEC. 1103. TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION.

(a) ESTABLISHMENT OF TWO INSPECTORS GENERAL IN THE DEPARTMENT OF THE TREASURY.—Section 2 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by striking the matter following paragraph (3) and inserting the following:

"there is established—

"(A) in each of such establishments an office of Inspector General, subject to subparagraph (B); and

"(B) in the establishment of the Department of the Treasury—

"(i) an Office of Inspector General of the Department of the Treasury; and

"(ii) an Office of Treasury Inspector General for Tax Administration.".

(b) AMENDMENTS TO SECTION 8D OF THE INSPECTOR GENERAL ACT OF 1978.—

(1) LIMITATION ON AUTHORITY OF INSPECTOR GENERAL.—Section 8D(a) of the Inspector General Act of 1978 (5 U.S.C.

App.) is amended by adding at the end the following new paragraph:

"(4) The Secretary of the Treasury may not exercise any power under paragraph (1) or (2) with respect to the Treasury Inspector General for Tax Administration.".

(2) DUTIES OF INSPECTOR GENERAL OF THE DEPARTMENT OF THE TREASURY; RELATIONSHIP TO THE TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION.—Section 8D(b) of such Act is amended— 5 USC app.

(A) by inserting "(1)" after "(b)"; and

(B) by adding at the end the following new paragraphs:

"(2) The Inspector General of the Department of the Treasury shall exercise all duties and responsibilities of an Inspector General for the Department of the Treasury other than the duties and responsibilities exercised by the Treasury Inspector General for Tax Administration.

Procedures. "(3) The Secretary of the Treasury shall establish procedures under which the Inspector General of the Department of the Treasury and the Treasury Inspector General for Tax Administration will—

"(A) determine how audits and investigations are allocated in cases of overlapping jurisdiction; and

"(B) provide for coordination, cooperation, and efficiency in the conduct of such audits and investigations.".

(3) ACCESS TO RETURNS AND RETURN INFORMATION.— 5 USC app. Section 8D(e) of such Act is amended—

(A) in paragraph (1), by striking "Inspector General" and inserting "Treasury Inspector General for Tax Administration";

(B) in paragraph (2), by striking all beginning with "(2)" through subparagraph (B);

(C)(i) by redesignating subparagraph (C) of paragraph (2) as paragraph (2) of such subsection; and

(ii) in such redesignated paragraph (2), by striking "Inspector General" and inserting "Treasury Inspector General for Tax Administration"; and

(D)(i) by redesignating subparagraph (D) of such paragraph as paragraph (3) of such subsection; and

(ii) in such redesignated paragraph (3), by striking "Inspector General" and inserting "Treasury Inspector General for Tax Administration".

(4) EFFECT ON CERTAIN FINAL DECISIONS OF THE SECRETARY.—Section 8D(f) of such Act is amended by striking "Inspector General" and inserting "Inspector General of the Department of the Treasury or the Treasury Inspector General for Tax Administration".

(5) REPEAL OF LIMITATION ON REPORTS TO THE ATTORNEY GENERAL.—Section 8D of such Act is amended by striking subsection (g).

(6) TRANSMISSION OF REPORTS.—Section 8D(h) of such Act is amended—

(A) by striking "(h)" and inserting "(g)(1)";

(B) by striking "and the Committees on Government Operations and Ways and Means of the House of Representatives" and inserting "and the Committees on Government Reform and Oversight and Ways and Means of the House of Representatives"; and

(C) by adding at the end the following new paragraph:

"(2) Any report made by the Treasury Inspector General for Tax Administration that is required to be transmitted by the Secretary of the Treasury to the appropriate committees or subcommittees of Congress under section 5(d) shall also be transmitted, within the 7-day period specified under such subsection, to the Internal Revenue Service Oversight Board and the Commissioner of Internal Revenue.".

(7) TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION.—Section 8D of the Act is amended by adding at the end the following new subsections: 5 USC app.

"(h) The Treasury Inspector General for Tax Administration shall exercise all duties and responsibilities of an Inspector General of an establishment with respect to the Department of the Treasury and the Secretary of the Treasury on all matters relating to the Internal Revenue Service. The Treasury Inspector General for Tax Administration shall have sole authority under this Act to conduct an audit or investigation of the Internal Revenue Service Oversight Board and the Chief Counsel for the Internal Revenue Service.

"(i) In addition to the requirements of the first sentence of section 3(a), the Treasury Inspector General for Tax Administration should have demonstrated ability to lead a large and complex organization.

"(j) An individual appointed to the position of Treasury Inspector General for Tax Administration, the Assistant Inspector General for Auditing of the Office of the Treasury Inspector General for Tax Administration under section 3(d)(1), the Assistant Inspector General for Investigations of the Office of the Treasury Inspector General for Tax Administration under section 3(d)(2), or any position of Deputy Inspector General of the Office of the Treasury Inspector General for Tax Administration may not be an employee of the Internal Revenue Service—

"(1) during the 2-year period preceding the date of appointment to such position; or

"(2) during the 5-year period following the date such individual ends service in such position.

"(k)(1) In addition to the duties and responsibilities exercised by an inspector general of an establishment, the Treasury Inspector General for Tax Administration—

"(A) shall have the duty to enforce criminal provisions under section 7608(b) of the Internal Revenue Code of 1986;

"(B) in addition to the functions authorized under section 7608(b)(2) of such Code, may carry firearms;

"(C) shall be responsible for protecting the Internal Revenue Service against external attempts to corrupt or threaten employees of the Internal Revenue Service, but shall not be responsible for the conducting of background checks and the providing of physical security; and

"(D) may designate any employee in the Office of the Treasury Inspector General for Tax Administration to enforce such laws and perform such functions referred to under subparagraphs (A), (B), and (C).

"(2)(A) In performing a law enforcement function under paragraph (1), the Treasury Inspector General for Tax Administration shall report any reasonable grounds to believe there has been a violation of Federal criminal law to the Attorney General at

an appropriate time as determined by the Treasury Inspector General for Tax Administration, notwithstanding section 4(d).

"(B) In the administration of section 5(d) and subsection (g)(2) of this section, the Secretary of the Treasury may transmit the required report with respect to the Treasury Inspector General for Tax Administration at an appropriate time as determined by the Secretary, if the problem, abuse, or deficiency relates to—

"(i) the performance of a law enforcement function under paragraph (1); and

"(ii) sensitive information concerning matters under subsection (a)(1)(A) through (F).

"(3) Nothing in this subsection shall be construed to affect the authority of any other person to carry out or enforce any provision specified in paragraph (1).

"(l)(1) The Commissioner of Internal Revenue or the Internal Revenue Service Oversight Board may request, in writing, the Treasury Inspector General for Tax Administration to conduct an audit or investigation relating to the Internal Revenue Service. If the Treasury Inspector General for Tax Administration determines not to conduct such audit or investigation, the Inspector General shall timely provide a written explanation for such determination to the person making the request.

Reports.

"(2)(A) Any final report of an audit conducted by the Treasury Inspector General for Tax Administration shall be timely submitted by the Inspector General to the Commissioner of Internal Revenue and the Internal Revenue Service Oversight Board.

Records.

"(B) The Treasury Inspector General for Tax Administration shall periodically submit to the Commissioner and Board a list of investigations for which a final report has been completed by the Inspector General and shall provide a copy of any such report upon request of the Commissioner or Board.

Applicability.

"(C) This paragraph applies regardless of whether the applicable audit or investigation is requested under paragraph (1).".

(c) TRANSFER OF FUNCTIONS.—

(1) IN GENERAL.—Section 9(a)(1) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended in subparagraph (L)—

(A) by inserting "(i)" after "(L)";

(B) by inserting "and" after the semicolon; and

(C) by adding at the end the following new clause:

Effective date.

"(ii) of the Treasury Inspector General for Tax Administration, effective 180 days after the date of the enactment of the Internal Revenue Service Restructuring and Reform Act of 1998, the Office of Chief Inspector of the Internal Revenue Service;".

Effective date.
5 USC app.

(2) TERMINATION OF OFFICE OF CHIEF INSPECTOR.—Effective upon the transfer of functions under the amendment made by paragraph (1), the Office of Chief Inspector of the Internal Revenue Service is terminated.

5 USC app.

(3) RETENTION OF CERTAIN INTERNAL AUDIT PERSONNEL.—In making the transfer under the amendment made by paragraph (1), the Commissioner of Internal Revenue shall designate and retain an appropriate number (not in excess of 300) of internal audit full-time equivalent employee positions necessary for management relating to the Internal Revenue Service.

Effective date.
5 USC app.

(4) ADDITIONAL PERSONNEL TRANSFERS.—Effective 180 days after the date of the enactment of this Act, the Secretary

of the Treasury shall transfer 21 full-time equivalent positions from the Office of the Inspector General of the Department of the Treasury to the Office of the Treasury Inspector General for Tax Administration.

(d) AUDITS AND REPORTS OF AGENCY FINANCIAL STATEMENTS.—Subject to section 3521(g) of title 31, United States Code— 31 USC 3521 note.

(1) the Inspector General of the Department of the Treasury shall, subject to paragraph (2)—

(A) audit each financial statement in accordance with section 3521(e) of such title; and

(B) prepare and submit each report required under section 3521(f) of such title; and

(2) the Treasury Inspector General for Tax Administration shall—

(A) audit that portion of each financial statement referred to under paragraph (1)(A) that relates to custodial and administrative accounts of the Internal Revenue Service; and

(B) prepare that portion of each report referred to under paragraph (1)(B) that relates to custodial and administrative accounts of the Internal Revenue Service.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) TRANSFER OF FUNCTIONS.—Section 8D(b) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by striking "and the internal audits and internal investigations performed by the Office of Assistant Commissioner (Inspection) of the Internal Revenue Service".

(2) AMENDMENTS RELATING TO REFERENCES TO THE INSPECTOR GENERAL OF THE DEPARTMENT OF THE TREASURY.—

(A) LIMITATION ON AUTHORITY.—Section 8D(a) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(i) in the first sentence of paragraph (1), by inserting "of the Department of the Treasury" after "Inspector General";

(ii) in paragraph (2), by inserting "of the Department of the Treasury" after "prohibit the Inspector General"; and

(iii) in paragraph (3)—

(I) in the first sentence, by inserting "of the Department of the Treasury" after "notify the Inspector General"; and

(II) in the second sentence, by inserting "of the Department of the Treasury" after "notice, the Inspector General".

(B) DUTIES.—Section 8D(b) of such Act is amended in the second sentence by inserting "of the Department of the Treasury" after "Inspector General".

(C) AUDITS AND INVESTIGATIONS.—Section 8D (c) and (d) of such Act are amended by inserting "of the Department of the Treasury" after "Inspector General" each place it appears.

(3) REFERENCES.—The second section 8G of the Inspector General Act of 1978 (relating to rule of construction of special provisions) is amended—

(A) by striking "SEC. 8G" and inserting "SEC. 8H";

(B) by striking "or 8E" and inserting "8E or 8F"; and

(C) by striking "section 8F(a)" and inserting "section 8G(a)".

(4) AMENDMENT TO INTERNAL REVENUE CODE OF 1986.—Section 7608(b)(1) is amended by striking "or of the Internal Security Division".

SEC. 1104. OTHER PERSONNEL.

(a) IN GENERAL.—Section 7804 (relating to the effect of reorganization plans) is amended to read as follows:

"SEC. 7804. OTHER PERSONNEL.

"(a) APPOINTMENT AND SUPERVISION.—Unless otherwise prescribed by the Secretary, the Commissioner of Internal Revenue is authorized to employ such number of persons as the Commissioner deems proper for the administration and enforcement of the internal revenue laws, and the Commissioner shall issue all necessary directions, instructions, orders, and rules applicable to such persons.

"(b) POSTS OF DUTY OF EMPLOYEES IN FIELD SERVICE OR TRAVELING.—Unless otherwise prescribed by the Secretary—

"(1) DESIGNATION OF POST OF DUTY.—The Commissioner shall determine and designate the posts of duty of all such persons engaged in field work or traveling on official business outside of the District of Columbia.

"(2) DETAIL OF PERSONNEL FROM FIELD SERVICE.—The Commissioner may order any such person engaged in field work to duty in the District of Columbia, for such periods as the Commissioner may prescribe, and to any designated post of duty outside the District of Columbia upon the completion of such duty.

"(c) DELINQUENT INTERNAL REVENUE OFFICERS AND EMPLOYEES.—If any officer or employee of the Treasury Department acting in connection with the internal revenue laws fails to account for and pay over any amount of money or property collected or received by him in connection with the internal revenue laws, the Secretary shall issue notice and demand to such officer or employee for payment of the amount which he failed to account for and pay over, and, upon failure to pay the amount demanded within the time specified in such notice, the amount so demanded shall be deemed imposed upon such officer or employee and assessed upon the date of such notice and demand, and the provisions of chapter 64 and all other provisions of law relating to the collection of assessed taxes shall be applicable in respect of such amount.".

(b) CONFORMING AMENDMENTS.—

(1) Subsection (b) of section 6344 is amended by striking "section 7803(d)" and inserting "section 7804(c)".

(2) The table of sections for subchapter A of chapter 80 is amended by striking the item relating to section 7804 and inserting the following new item:

"Sec. 7804. Other personnel.".

26 USC 7804 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 1105. PROHIBITION ON EXECUTIVE BRANCH INFLUENCE OVER TAXPAYER AUDITS AND OTHER INVESTIGATIONS.

(a) IN GENERAL.—Part I of subchapter A of chapter 75 (relating to crimes, other offenses, and forfeitures) is amended by adding after section 7216 the following new section:

"SEC. 7217. PROHIBITION ON EXECUTIVE BRANCH INFLUENCE OVER TAXPAYER AUDITS AND OTHER INVESTIGATIONS.

"(a) PROHIBITION.—It shall be unlawful for any applicable person to request, directly or indirectly, any officer or employee of the Internal Revenue Service to conduct or terminate an audit or other investigation of any particular taxpayer with respect to the tax liability of such taxpayer.

"(b) REPORTING REQUIREMENT.—Any officer or employee of the Internal Revenue Service receiving any request prohibited by subsection (a) shall report the receipt of such request to the Treasury Inspector General for Tax Administration.

"(c) EXCEPTIONS.—Subsection (a) shall not apply to any written request made—

"(1) to an applicable person by or on behalf of the taxpayer and forwarded by such applicable person to the Internal Revenue Service;

"(2) by an applicable person for disclosure of return or return information under section 6103 if such request is made in accordance with the requirements of such section; or

"(3) by the Secretary of the Treasury as a consequence of the implementation of a change in tax policy.

"(d) PENALTY.—Any person who willfully violates subsection (a) or fails to report under subsection (b) shall be punished upon conviction by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

"(e) APPLICABLE PERSON.—For purposes of this section, the term 'applicable person' means—

"(1) the President, the Vice President, any employee of the executive office of the President, and any employee of the executive office of the Vice President; and

"(2) any individual (other than the Attorney General of the United States) serving in a position specified in section 5312 of title 5, United States Code.".

(b) CLERICAL AMENDMENT.—The table of sections for part I of subchapter A of chapter 75 is amended by adding after the item relating to section 7216 the following new item:

"Sec. 7217. Prohibition on executive branch influence over taxpayer audits and other investigations.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to requests made after the date of the enactment of this Act. 26 USC 7217 note.

Subtitle C—Personnel Flexibilities

SEC. 1201. IMPROVEMENTS IN PERSONNEL FLEXIBILITIES.

(a) IN GENERAL.—Part III of title 5, United States Code, is amended by adding at the end the following new subpart:

"Subpart I—Miscellaneous

"CHAPTER 95—PERSONNEL FLEXIBILITIES RELATING TO THE INTERNAL REVENUE SERVICE

"Sec.
"9501. Internal Revenue Service personnel flexibilities.
"9502. Pay authority for critical positions.
"9503. Streamlined critical pay authority.
"9504. Recruitment, retention, relocation incentives, and relocation expenses.
"9505. Performance awards for senior executives.
"9506. Limited appointments to career reserved Senior Executive Service positions.
"9507. Streamlined demonstration project authority.
"9508. General workforce performance management system.
"9509. General workforce classification and pay.
"9510. General workforce staffing.

"§ 9501. Internal Revenue Service personnel flexibilities

"(a) Any flexibilities provided by sections 9502 through 9510 of this chapter shall be exercised in a manner consistent with—

"(1) chapter 23 (relating to merit system principles and prohibited personnel practices);

"(2) provisions relating to preference eligibles;

"(3) except as otherwise specifically provided, section 5307 (relating to the aggregate limitation on pay);

"(4) except as otherwise specifically provided, chapter 71 (relating to labor-management relations); and

"(5) subject to subsections (b) and (c) of section 1104, as though such authorities were delegated to the Secretary of the Treasury under section 1104(a)(2).

"(b) The Secretary of the Treasury shall provide the Office of Personnel Management with any information that Office requires in carrying out its responsibilities under this section.

"(c) Employees within a unit to which a labor organization is accorded exclusive recognition under chapter 71 shall not be subject to any flexibility provided by sections 9507 through 9510 of this chapter unless the exclusive representative and the Internal Revenue Service have entered into a written agreement which specifically provides for the exercise of that flexibility. Such written agreement may be imposed by the Federal Services Impasses Panel under section 7119.

"§ 9502. Pay authority for critical positions

"(a) When the Secretary of the Treasury seeks a grant of authority under section 5377 for critical pay for 1 or more positions at the Internal Revenue Service, the Office of Management and Budget may fix the rate of basic pay, notwithstanding sections 5377(d)(2) and 5307, at any rate up to the salary set in accordance with section 104 of title 3.

"(b) Notwithstanding section 5307, no allowance, differential, bonus, award, or similar cash payment may be paid to any employee receiving critical pay at a rate fixed under subsection (a), in any calendar year if, or to the extent that, the employee's total annual compensation will exceed the maximum amount of total annual compensation payable at the salary set in accordance with section 104 of title 3.

"§ 9503. Streamlined critical pay authority

"(a) Notwithstanding section 9502, and without regard to the provisions of this title governing appointments in the competitive

service or the Senior Executive Service and chapters 51 and 53 (relating to classification and pay rates), the Secretary of the Treasury may, for a period of 10 years after the date of enactment of this section, establish, fix the compensation of, and appoint individuals to, designated critical administrative, technical, and professional positions needed to carry out the functions of the Internal Revenue Service, if—

"(1) the positions—

"(A) require expertise of an extremely high level in an administrative, technical, or professional field; and

"(B) are critical to the Internal Revenue Service's successful accomplishment of an important mission;

"(2) exercise of the authority is necessary to recruit or retain an individual exceptionally well qualified for the position;

"(3) the number of such positions does not exceed 40 at any one time;

"(4) designation of such positions are approved by the Secretary of the Treasury;

"(5) the terms of such appointments are limited to no more than 4 years;

"(6) appointees to such positions were not Internal Revenue Service employees prior to June 1, 1998;

"(7) total annual compensation for any appointee to such positions does not exceed the highest total annual compensation payable at the rate determined under section 104 of title 3; and

"(8) all such positions are excluded from the collective bargaining unit.

"(b) Individuals appointed under this section shall not be considered to be employees for purposes of subchapter II of chapter 75.

"§ 9504. Recruitment, retention, relocation incentives, and relocation expenses

"(a) For a period of 10 years after the date of enactment of this section and subject to approval by the Office of Personnel Management, the Secretary of the Treasury may provide for variations from sections 5753 and 5754 governing payment of recruitment, relocation, and retention incentives.

"(b) For a period of 10 years after the date of enactment of this section, the Secretary of the Treasury may pay from appropriations made to the Internal Revenue Service allowable relocation expenses under section 5724a for employees transferred or reemployed and allowable travel and transportation expenses under section 5723 for new appointees, for any new appointee appointed to a position for which pay is fixed under section 9502 or 9503 after June 1, 1998.

"§ 9505. Performance awards for senior executives

"(a) For a period of 10 years after the date of enactment of this section, Internal Revenue Service senior executives who have program management responsibility over significant functions of the Internal Revenue Service may be paid a performance bonus without regard to the limitation in section 5384(b)(2) if the Secretary of the Treasury finds such award warranted based on the executive's performance.

"(b) In evaluating an executive's performance for purposes of an award under this section, the Secretary of the Treasury shall take into account the executive's contributions toward the successful accomplishment of goals and objectives established under the Government Performance and Results Act of 1993, division E of the Clinger-Cohen Act of 1996 (Public Law 104–106; 110 Stat. 679), Revenue Procedure 64–22 (as in effect on July 30, 1997), taxpayer service surveys, and other performance metrics or plans established in consultation with the Internal Revenue Service Oversight Board.

"(c) Any award in excess of 20 percent of an executive's rate of basic pay shall be approved by the Secretary of the Treasury.

"(d) Notwithstanding section 5384(b)(3), the Secretary of the Treasury shall determine the aggregate amount of performance awards available to be paid during any fiscal year under this section and section 5384 to career senior executives in the Internal Revenue Service. Such amount may not exceed an amount equal to 5 percent of the aggregate amount of basic pay paid to career senior executives in the Internal Revenue Service during the preceding fiscal year. The Internal Revenue Service shall not be included in the determination under section 5384(b)(3) of the aggregate amount of performance awards payable to career senior executives in the Department of the Treasury other than the Internal Revenue Service.

"(e) Notwithstanding section 5307, a performance bonus award may not be paid to an executive in a calendar year if, or to the extent that, the executive's total annual compensation will exceed the maximum amount of total annual compensation payable at the rate determined under section 104 of title 3.

"§ 9506. Limited appointments to career reserved Senior Executive Service positions

"(a) In the application of section 3132, a 'career reserved position' in the Internal Revenue Service means a position designated under section 3132(b) which may be filled only by—

"(1) a career appointee; or

"(2) a limited emergency appointee or a limited term appointee—

"(A) who, immediately upon entering the career reserved position, was serving under a career or career-conditional appointment outside the Senior Executive Service; or

"(B) whose limited emergency or limited term appointment is approved in advance by the Office of Personnel Management.

"(b)(1) The number of positions described under subsection (a) which are filled by an appointee as described under paragraph (2) of such subsection may not exceed 10 percent of the total number of Senior Executive Service positions in the Internal Revenue Service.

"(2) Notwithstanding section 3132—

"(A) the term of an appointee described under subsection (a)(2) may be for any period not to exceed 3 years; and

"(B) such an appointee may serve—

"(i) two such terms; or

"(ii) two such terms in addition to any unexpired term applicable at the time of appointment.

"§ 9507. Streamlined demonstration project authority

"(a) The exercise of any of the flexibilities under sections 9502 through 9510 shall not affect the authority of the Secretary of the Treasury to implement for the Internal Revenue Service a demonstration project subject to chapter 47, as provided in subsection (b).

"(b) In applying section 4703 to a demonstration project described in section 4701(a)(4) which involves the Internal Revenue Service—

"(1) section 4703(b)(1) shall be deemed to read as follows:

"'(1) develop a plan for such project which describes its purpose, the employees to be covered, the project itself, its anticipated outcomes, and the method of evaluating the project;';

"(2) section 4703(b)(3) shall not apply;

"(3) the 180-day notification period in section 4703(b)(4) shall be deemed to be a notification period of 30 days;

"(4) section 4703(b)(6) shall be deemed to read as follows:

"'(6) provides each House of Congress with the final version of the plan.';

"(5) section 4703(c)(1) shall be deemed to read as follows:

"'(1) subchapter V of chapter 63 or subpart G of part III of this title;';

"(6) the requirements of paragraphs (1)(A) and (2) of section 4703(d) shall not apply; and

"(7) notwithstanding section 4703(d)(1)(B), based on an evaluation as provided in section 4703(h), the Office of Personnel Management and the Secretary of the Treasury, except as otherwise provided by this subsection, may waive the termination date of a demonstration project under section 4703(d).

"(c) At least 90 days before waiving the termination date under subsection (b)(7), the Office of Personnel Management shall publish in the Federal Register a notice of its intention to waive the termination date and shall inform in writing both Houses of Congress of its intention.

Deadline.
Federal Register, publication.

"§ 9508. General workforce performance management system

"(a) In lieu of a performance appraisal system established under section 4302, the Secretary of the Treasury shall, within 1 year after the date of enactment of this section, establish for the Internal Revenue Service a performance management system that—

"(1) maintains individual accountability by—

"(A) establishing one or more retention standards for each employee related to the work of the employee and expressed in terms of individual performance, and communicating such retention standards to employees;

"(B) making periodic determinations of whether each employee meets or does not meet the employee's established retention standards; and

"(C) taking actions, in accordance with applicable laws and regulations, with respect to any employee whose performance does not meet established retention standards, including denying any increases in basic pay, promotions, and credit for performance under section 3502, and taking one or more of the following actions:

"(i) Reassignment.

"(ii) An action under chapter 43 or chapter 75 of this title.

"(iii) Any other appropriate action to resolve the performance problem; and

"(2) except as provided under section 1204 of the Internal Revenue Service Restructuring and Reform Act of 1998, strengthens the system's effectiveness by—

"(A) establishing goals or objectives for individual, group, or organizational performance (or any combination thereof), consistent with the Internal Revenue Service's performance planning procedures, including those established under the Government Performance and Results Act of 1993, division E of the Clinger-Cohen Act of 1996 (Public Law 104–106; 110 Stat. 679), Revenue Procedure 64–22 (as in effect on July 30, 1997), and taxpayer service surveys, and communicating such goals or objectives to employees;

"(B) using such goals and objectives to make performance distinctions among employees or groups of employees; and

"(C) using performance assessments as a basis for granting employee awards, adjusting an employee's rate of basic pay, and other appropriate personnel actions, in accordance with applicable laws and regulations.

"(b)(1) For purposes of subsection (a)(2), the term 'performance assessment' means a determination of whether or not retention standards established under subsection (a)(1)(A) are met, and any additional performance determination made on the basis of performance goals and objectives established under subsection (a)(2)(A).

"(2) For purposes of this title, the term 'unacceptable performance' with respect to an employee of the Internal Revenue Service covered by a performance management system established under this section means performance of the employee which fails to meet a retention standard established under this section.

"(c)(1) The Secretary of the Treasury may establish an awards program designed to provide incentives for and recognition of organizational, group, and individual achievements by providing for granting awards to employees who, as individuals or members of a group, contribute to meeting the performance goals and objectives established under this chapter by such means as a superior individual or group accomplishment, a documented productivity gain, or sustained superior performance.

"(2) A cash award under subchapter I of chapter 45 may be granted to an employee of the Internal Revenue Service without the need for any approval under section 4502(b).

"(d)(1) In applying sections 4303(b)(1)(A) and 7513(b)(1) to employees of the Internal Revenue Service, '30 days' may be deemed to be '15 days'.

"(2) Notwithstanding the second sentence of section 5335(c), an employee of the Internal Revenue Service shall not have a right to appeal the denial of a periodic step increase under section 5335 to the Merit Systems Protection Board.

"§ 9509. General workforce classification and pay

"(a) For purposes of this section, the term 'broad-banded system' means a system for grouping positions for pay, job evaluation, and other purposes that is different from the system established

under chapter 51 and subchapter III of chapter 53 as a result of combining grades and related ranges of rates of pay in one or more occupational series.

"(b)(1)(A) The Secretary of the Treasury may, subject to criteria to be prescribed by the Office of Personnel Management, establish one or more broad-banded systems covering all or any portion of the Internal Revenue Service workforce. Regulations.

"(B) With the approval of the Office of Personnel Management, a broad-banded system established under this section may either include or consist of positions that otherwise would be subject to subchapter IV of chapter 53 or section 5376.

"(2) The Office of Personnel Management may require the Secretary of the Treasury to submit information relating to broad-banded systems at the Internal Revenue Service.

"(3) Except as otherwise provided under this section, employees under a broad-banded system shall continue to be subject to the laws and regulations covering employees under the pay system that otherwise would apply to such employees.

"(4) The criteria to be prescribed by the Office of Personnel Management shall, at a minimum— Regulations.

"(A) ensure that the structure of any broad-banded system maintains the principle of equal pay for substantially equal work;

"(B) establish the minimum and maximum number of grades that may be combined into pay bands;

"(C) establish requirements for setting minimum and maximum rates of pay in a pay band;

"(D) establish requirements for adjusting the pay of an employee within a pay band;

"(E) establish requirements for setting the pay of a supervisory employee whose position is in a pay band or who supervises employees whose positions are in pay bands; and

"(F) establish requirements and methodologies for setting the pay of an employee upon conversion to a broad-banded system, initial appointment, change of position or type of appointment (including promotion, demotion, transfer, reassignment, reinstatement, placement in another pay band, or movement to a different geographic location), and movement between a broad-banded system and another pay system.

"(c) With the approval of the Office of Personnel Management and in accordance with a plan for implementation submitted by the Secretary of the Treasury, the Secretary may, with respect to Internal Revenue Service employees who are covered by a broad-banded system established under this section, provide for variations from the provisions of subchapter VI of chapter 53.

"§ 9510. General workforce staffing

"(a)(1) Except as otherwise provided by this section, an employee of the Internal Revenue Service may be selected for a permanent appointment in the competitive service in the Internal Revenue Service through internal competitive promotion procedures if—

"(A) the employee has completed, in the competitive service, 2 years of current continuous service under a term appointment or any combination of term appointments;

"(B) such term appointment or appointments were made under competitive procedures prescribed for permanent appointments;

"(C) the employee's performance under such term appointment or appointments met established retention standards, or, if not covered by a performance management system established under section 9508, was rated at the fully successful level or higher (or equivalent thereof); and

"(D) the vacancy announcement for the term appointment from which the conversion is made stated that there was a potential for subsequent conversion to a permanent appointment.

"(2) An appointment under this section may be made only to a position in the same line of work as a position to which the employee received a term appointment under competitive procedures.

"(b)(1) Notwithstanding subchapter I of chapter 33, the Secretary of the Treasury may establish category rating systems for evaluating applicants for Internal Revenue Service positions in the competitive service under which qualified candidates are divided into two or more quality categories on the basis of relative degrees of merit, rather than assigned individual numerical ratings.

"(2) Each applicant who meets the minimum qualification requirements for the position to be filled shall be assigned to an appropriate category based on an evaluation of the applicant's knowledge, skills, and abilities relative to those needed for successful performance in the position to be filled.

"(3) Within each quality category established under paragraph (1), preference eligibles shall be listed ahead of individuals who are not preference eligibles. For other than scientific and professional positions at or higher than GS–9 (or equivalent), preference eligibles who have a compensable service-connected disability of 10 percent or more, and who meet the minimum qualification standards, shall be listed in the highest quality category.

"(4) An appointing authority may select any applicant from the highest quality category or, if fewer than three candidates have been assigned to the highest quality category, from a merged category consisting of the highest and second highest quality categories.

"(5) Notwithstanding paragraph (4), the appointing authority may not pass over a preference eligible in the same or higher category from which selection is made unless the requirements of section 3317(b) or 3318(b), as applicable, are satisfied.

"(c) The Secretary of the Treasury may detail employees among the offices of the Internal Revenue Service without regard to the 120-day limitation in section 3341(b).

"(d) Notwithstanding any other provision of law, the Secretary of the Treasury may establish a probationary period under section 3321 of up to 3 years for Internal Revenue Service positions if the Secretary of the Treasury determines that the nature of the work is such that a shorter period is insufficient to demonstrate complete proficiency in the position.

"(e) Nothing in this section exempts the Secretary of the Treasury from—

"(1) any employment priority established under direction of the President for the placement of surplus or displaced employees; or

"(2) any obligation under a court order or decree relating to the employment practices of the Internal Revenue Service or the Department of the Treasury.".

(b) CLERICAL AMENDMENT.—The table of sections for part III of title 5, United States Code, is amended by adding at the end the following new items:

"Subpart I—Miscellaneous

"95. Personnel flexibilities relating to the Internal Revenue Service 9501".

SEC. 1202. VOLUNTARY SEPARATION INCENTIVE PAYMENTS. 5 USC 5597 note.

(a) DEFINITION.—In this section, the term "employee" means an employee (as defined by section 2105 of title 5, United States Code) who is employed by the Internal Revenue Service serving under an appointment without time limitation, and has been currently employed for a continuous period of at least 3 years, but does not include—

(1) a reemployed annuitant under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, or another retirement system;

(2) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under the applicable retirement system referred to in paragraph (1);

(3) an employee who is in receipt of a specific notice of involuntary separation for misconduct or unacceptable performance;

(4) an employee who, upon completing an additional period of service as referred to in section 3(b)(2)(B)(ii) of the Federal Workforce Restructuring Act of 1994 (5 U.S.C. 5597 note), would qualify for a voluntary separation incentive payment under section 3 of such Act;

(5) an employee who has previously received any voluntary separation incentive payment by the Federal Government under this section or any other authority and has not repaid such payment;

(6) an employee covered by statutory reemployment rights who is on transfer to another organization; or

(7) any employee who, during the 24-month period preceding the date of separation, has received a recruitment or relocation bonus under section 5753 of title 5, United States Code, or who, within the 12-month period preceding the date of separation, received a retention allowance under section 5754 of title 5, United States Code.

(b) AUTHORITY TO PROVIDE VOLUNTARY SEPARATION INCENTIVE PAYMENTS.—

(1) IN GENERAL.—The Commissioner of Internal Revenue may pay voluntary separation incentive payments under this section to any employee to the extent necessary to carry out the plan to reorganize the Internal Revenue Service under section 1001.

(2) AMOUNT AND TREATMENT OF PAYMENTS.—A voluntary separation incentive payment—

(A) shall be paid in a lump sum after the employee's separation;

(B) shall be paid from appropriations or funds available for the payment of the basic pay of the employees;

(C) shall be equal to the lesser of—

(i) an amount equal to the amount the employee would be entitled to receive under section 5595(c) of title 5, United States Code; or

(ii) an amount determined by an agency head not to exceed $25,000;

(D) may not be made except in the case of any qualifying employee who voluntarily separates (whether by retirement or resignation) before January 1, 2003;

(E) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit; and

(F) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595 of title 5, United States Code, based on any other separation.

(c) ADDITIONAL INTERNAL REVENUE SERVICE CONTRIBUTIONS TO THE RETIREMENT FUND.—

(1) IN GENERAL.—In addition to any other payments which it is required to make under subchapter III of chapter 83 of title 5, United States Code, the Internal Revenue Service shall remit to the Office of Personnel Management for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund an amount equal to 15 percent of the final basic pay of each employee who is covered under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, to whom a voluntary separation incentive has been paid under this section.

(2) DEFINITION.—In paragraph (1), the term "final basic pay", with respect to an employee, means the total amount of basic pay which would be payable for a year of service by such employee, computed using the employee's final rate of basic pay, and, if last serving on other than a full-time basis, with appropriate adjustment therefor.

(d) EFFECT OF SUBSEQUENT EMPLOYMENT WITH THE GOVERNMENT.—An individual who has received a voluntary separation incentive payment under this section and accepts any employment for compensation with the Government of the United States, or who works for any agency of the United States Government through a personal services contract, within 5 years after the date of the separation on which the payment is based shall be required to pay, prior to the individual's first day of employment, the entire amount of the incentive payment to the Internal Revenue Service.

(e) EFFECT ON INTERNAL REVENUE SERVICE EMPLOYMENT LEVELS.—

(1) INTENDED EFFECT.—Voluntary separations under this section are not intended to necessarily reduce the total number of full-time equivalent positions in the Internal Revenue Service.

(2) USE OF VOLUNTARY SEPARATIONS.—The Internal Revenue Service may redeploy or use the full-time equivalent positions vacated by voluntary separations under this section to make other positions available to more critical locations or more critical occupations.

26 USC 7804 note.

SEC. 1203. TERMINATION OF EMPLOYMENT FOR MISCONDUCT.

(a) IN GENERAL.—Subject to subsection (c), the Commissioner of Internal Revenue shall terminate the employment of any

employee of the Internal Revenue Service if there is a final administrative or judicial determination that such employee committed any act or omission described under subsection (b) in the performance of the employee's official duties. Such termination shall be a removal for cause on charges of misconduct.

(b) ACTS OR OMISSIONS.—The acts or omissions referred to under subsection (a) are—

(1) willful failure to obtain the required approval signatures on documents authorizing the seizure of a taxpayer's home, personal belongings, or business assets;

(2) providing a false statement under oath with respect to a material matter involving a taxpayer or taxpayer representative;

(3) with respect to a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service, the violation of—

(A) any right under the Constitution of the United States; or

(B) any civil right established under—

(i) title VI or VII of the Civil Rights Act of 1964;

(ii) title IX of the Education Amendments of 1972;

(iii) the Age Discrimination in Employment Act of 1967;

(iv) the Age Discrimination Act of 1975;

(v) section 501 or 504 of the Rehabilitation Act of 1973; or

(vi) title I of the Americans with Disabilities Act of 1990;

(4) falsifying or destroying documents to conceal mistakes made by any employee with respect to a matter involving a taxpayer or taxpayer representative;

(5) assault or battery on a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service, but only if there is a criminal conviction, or a final judgment by a court in a civil case, with respect to the assault or battery;

(6) violations of the Internal Revenue Code of 1986, Department of Treasury regulations, or policies of the Internal Revenue Service (including the Internal Revenue Manual) for the purpose of retaliating against, or harassing, a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service;

(7) willful misuse of the provisions of section 6103 of the Internal Revenue Code of 1986 for the purpose of concealing information from a congressional inquiry;

(8) willful failure to file any return of tax required under the Internal Revenue Code of 1986 on or before the date prescribed therefor (including any extensions), unless such failure is due to reasonable cause and not to willful neglect;

(9) willful understatement of Federal tax liability, unless such understatement is due to reasonable cause and not to willful neglect; and

(10) threatening to audit a taxpayer for the purpose of extracting personal gain or benefit.

(c) DETERMINATION OF COMMISSIONER.—

(1) IN GENERAL.—The Commissioner of Internal Revenue may take a personnel action other than termination for an act or omission under subsection (a).

(2) DISCRETION.—The exercise of authority under paragraph (1) shall be at the sole discretion of the Commissioner of Internal Revenue and may not be delegated to any other officer. The Commissioner of Internal Revenue, in his sole discretion, may establish a procedure which will be used to determine whether an individual should be referred to the Commissioner of Internal Revenue for a determination by the Commissioner under paragraph (1).

(3) NO APPEAL.—Any determination of the Commissioner of Internal Revenue under this subsection may not be appealed in any administrative or judicial proceeding.

(d) DEFINITION.—For purposes of the provisions described in clauses (i), (ii), and (iv) of subsection (b)(3)(B), references to a program or activity receiving Federal financial assistance or an education program or activity receiving Federal financial assistance shall include any program or activity conducted by the Internal Revenue Service for a taxpayer.

26 USC 7804 note.

SEC. 1204. BASIS FOR EVALUATION OF INTERNAL REVENUE SERVICE EMPLOYEES.

(a) IN GENERAL.—The Internal Revenue Service shall not use records of tax enforcement results—

(1) to evaluate employees; or

(2) to impose or suggest production quotas or goals with respect to such employees.

(b) TAXPAYER SERVICE.—The Internal Revenue Service shall use the fair and equitable treatment of taxpayers by employees as one of the standards for evaluating employee performance.

(c) CERTIFICATION.—Each appropriate supervisor shall certify quarterly by letter to the Commissioner of Internal Revenue whether or not tax enforcement results are being used in a manner prohibited by subsection (a).

(d) TECHNICAL AND CONFORMING AMENDMENT.—Section 6231 of the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100–647; 102 Stat. 3734) is repealed.

26 USC 7803 note. Applicability.

(e) EFFECTIVE DATE.—This section shall apply to evaluations conducted on or after the date of the enactment of this Act.

26 USC 7804.

SEC. 1205. EMPLOYEE TRAINING PROGRAM.

Deadline.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Commissioner of Internal Revenue shall implement an employee training program and shall submit an employee training plan to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(b) CONTENTS.—The plan submitted under subsection (a) shall—

(1) detail a comprehensive employee training program to ensure adequate customer service training;

(2) detail a schedule for training and the fiscal years during which the training will occur;

(3) detail the funding of the program and relevant information to demonstrate the priority and commitment of resources to the plan;

(4) review the organizational design of customer service;

(5) provide for the implementation of a performance development system; and

(6) provide for at least 16 hours of conflict management training during fiscal year 1999 for employees conducting collection activities.

TITLE II—ELECTRONIC FILING

SEC. 2001. ELECTRONIC FILING OF TAX AND INFORMATION RETURNS.

(a) IN GENERAL.—It is the policy of Congress that— 26 USC 6011 note.

(1) paperless filing should be the preferred and most convenient means of filing Federal tax and information returns;

(2) it should be the goal of the Internal Revenue Service to have at least 80 percent of all such returns filed electronically by the year 2007; and

(3) the Internal Revenue Service should cooperate with and encourage the private sector by encouraging competition to increase electronic filing of such returns.

(b) STRATEGIC PLAN.— 26 USC 6011 note. Deadline.

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of the Treasury or the Secretary's delegate (hereafter in this section referred to as the "Secretary") shall establish a plan to eliminate barriers, provide incentives, and use competitive market forces to increase electronic filing gradually over the next 10 years while maintaining processing times for paper returns at 40 days. To the extent practicable, such plan shall provide that all returns prepared electronically for taxable years beginning after 2001 shall be filed electronically.

(2) ELECTRONIC COMMERCE ADVISORY GROUP.—To ensure that the Secretary receives input from the private sector in the development and implementation of the plan required by paragraph (1), the Secretary shall convene an electronic commerce advisory group to include representatives from the small business community and from the tax practitioner, preparer, and computerized tax processor communities and other representatives from the electronic filing industry.

(c) PROMOTION OF ELECTRONIC FILING AND INCENTIVES.—Section 6011 is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f) PROMOTION OF ELECTRONIC FILING.—

"(1) IN GENERAL.—The Secretary is authorized to promote the benefits of and encourage the use of electronic tax administration programs, as they become available, through the use of mass communications and other means.

"(2) INCENTIVES.—The Secretary may implement procedures to provide for the payment of appropriate incentives for electronically filed returns.".

(d) ANNUAL REPORTS.—Not later than June 30 of each calendar year after 1998, the Chairperson of the Internal Revenue Service Oversight Board, the Secretary of the Treasury, and the Chairperson of the electronic commerce advisory group established under subsection (b)(2) shall report to the Committees on Ways and Means, Appropriations, Government Reform and Oversight, and Small Business of the House of Representatives and the Committees on Finance, Appropriations, Governmental Affairs, and Small Business of the Senate on— Deadline. 26 USC 6011 note.

(1) the progress of the Internal Revenue Service in meeting the goal of receiving electronically 80 percent of tax and information returns by 2007;

(2) the status of the plan required by subsection (b);

(3) the legislative changes necessary to assist the Internal Revenue Service in meeting such goal; and

(4) the effects on small businesses and the self-employed of electronically filing tax and information returns.

SEC. 2002. DUE DATE FOR CERTAIN INFORMATION RETURNS.

(a) INFORMATION RETURNS FILED ELECTRONICALLY.—Section 6071 (relating to time for filing returns and other documents) is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following new subsection:

"(b) ELECTRONICALLY FILED INFORMATION RETURNS.—Returns made under subparts B and C of part III of this subchapter which are filed electronically shall be filed on or before March 31 of the year following the calendar year to which such returns relate.".

(b) STUDY RELATING TO TIME FOR PROVIDING NOTICE TO RECIPIENTS.—

(1) IN GENERAL.—The Secretary of the Treasury shall conduct a study evaluating the effect of extending the deadline for providing statements to persons with respect to whom information is required to be furnished under subparts B and C of part III of subchapter A of chapter 61 of the Internal Revenue Code of 1986 (other than section 6051 of such Code) from January 31 to February 15 of the year in which the return to which the statement relates is required to be filed.

Deadline.

(2) REPORT.—Not later than June 30, 1999, the Secretary of the Treasury shall submit a report on the study under paragraph (1) to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

Applicability. 26 USC 6071 note.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to returns required to be filed after December 31, 1999.

SEC. 2003. PAPERLESS ELECTRONIC FILING.

(a) IN GENERAL.—Section 6061 (relating to signing of returns and other documents) is amended—

(1) by striking "Except as otherwise provided by" and inserting the following:

"(a) GENERAL RULE.—Except as otherwise provided by subsection (b) and"; and

(2) by adding at the end the following new subsection:

"(b) ELECTRONIC SIGNATURES.—

Procedures.

"(1) IN GENERAL.—The Secretary shall develop procedures for the acceptance of signatures in digital or other electronic form. Until such time as such procedures are in place, the Secretary may—

"(A) waive the requirement of a signature for; or

"(B) provide for alternative methods of signing or subscribing,

a particular type or class of return, declaration, statement, or other document required or permitted to be made or written under internal revenue laws and regulations.

"(2) TREATMENT OF ALTERNATIVE METHODS.—Notwithstanding any other provision of law, any return, declaration, statement, or other document filed and verified, signed, or subscribed under any method adopted under paragraph (1)(B) shall be treated for all purposes (both civil and criminal, including penalties for perjury) in the same manner as though signed or subscribed.

"(3) PUBLISHED GUIDANCE.—The Secretary shall publish guidance as appropriate to define and implement any waiver of the signature requirements or any method adopted under paragraph (1).".

(b) ACKNOWLEDGMENT OF ELECTRONIC FILING.—Section 7502(c) is amended to read as follows:

"(c) REGISTERED AND CERTIFIED MAILING; ELECTRONIC FILING.—

"(1) REGISTERED MAIL.—For purposes of this section, if any return, claim, statement, or other document, or payment, is sent by United States registered mail—

"(A) such registration shall be prima facie evidence that the return, claim, statement, or other document was delivered to the agency, officer, or office to which addressed; and

"(B) the date of registration shall be deemed the postmark date.

"(2) CERTIFIED MAIL; ELECTRONIC FILING.—The Secretary is authorized to provide by regulations the extent to which the provisions of paragraph (1) with respect to prima facie evidence of delivery and the postmark date shall apply to certified mail and electronic filing.". Regulations.

(c) ESTABLISHMENT OF PROCEDURES FOR OTHER INFORMATION.—In the case of taxable periods beginning after December 31, 1999, the Secretary of the Treasury or the Secretary's delegate shall, to the extent practicable, establish procedures to accept, in electronic form, any other information, statements, elections, or schedules, from taxpayers filing returns electronically, so that such taxpayers will not be required to file any paper. 26 USC 6011 note.

(d) INTERNET AVAILABILITY.—In the case of taxable periods beginning after December 31, 1998, the Secretary of the Treasury or the Secretary's delegate shall establish procedures for all tax forms, instructions, and publications created in the most recent 5-year period to be made available electronically on the Internet in a searchable database at approximately the same time such records are available to the public in paper form. In addition, in the case of taxable periods beginning after December 31, 1998, the Secretary of the Treasury or the Secretary's delegate shall, to the extent practicable, establish procedures for other taxpayer guidance to be made available electronically on the Internet in a searchable database at approximately the same time such guidance is available to the public in paper form. Procedures. 26 USC 7805 note.

(e) PROCEDURES FOR AUTHORIZING DISCLOSURE ELECTRONICALLY.—The Secretary shall establish procedures for any taxpayer to authorize, on an electronically filed return, the Secretary to disclose information under section 6103(c) of the Internal Revenue Code of 1986 to the preparer of the return. 26 USC 6103 note.

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act. 26 USC 6061 note.

26 USC 6012 note. Procedures.

SEC. 2004. RETURN-FREE TAX SYSTEM.

(a) IN GENERAL.—The Secretary of the Treasury or the Secretary's delegate shall develop procedures for the implementation of a return-free tax system under which appropriate individuals would be permitted to comply with the Internal Revenue Code of 1986 without making the return required under section 6012 of such Code for taxable years beginning after 2007.

Deadline.

(b) REPORT.—Not later than June 30 of each calendar year after 1999, the Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on—

(1) what additional resources the Internal Revenue Service would need to implement such a system;

(2) the changes to the Internal Revenue Code of 1986 that could enhance the use of such a system;

(3) the procedures developed pursuant to subsection (a); and

(4) the number and classes of taxpayers that would be permitted to use the procedures developed pursuant to subsection (a).

Deadlines. 26 USC 6103 note. Procedures.

SEC. 2005. ACCESS TO ACCOUNT INFORMATION.

(a) IN GENERAL.—Not later than December 31, 2006, the Secretary of the Treasury or the Secretary's delegate shall develop procedures under which a taxpayer filing returns electronically (and their designees under section 6103(c) of the Internal Revenue Code of 1986) would be able to review the taxpayer's account electronically, but only if all necessary safeguards to ensure the privacy of such account information are in place.

(b) REPORT.—Not later than December 31, 2003, the Secretary of the Treasury shall report on the progress the Secretary is making on the development of procedures under subsection (a) to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

Taxpayer Bill of Rights 3.

TITLE III—TAXPAYER PROTECTION AND RIGHTS

26 USC 1 note.

SEC. 3000. SHORT TITLE.

This title may be cited as the "Taxpayer Bill of Rights 3".

Subtitle A—Burden of Proof

SEC. 3001. BURDEN OF PROOF.

(a) IN GENERAL.—Chapter 76 (relating to judicial proceedings) is amended by adding at the end the following new subchapter:

"Subchapter E—Burden of Proof

"Sec. 7491. Burden of proof.

"SEC. 7491. BURDEN OF PROOF.

"(a) BURDEN SHIFTS WHERE TAXPAYER PRODUCES CREDIBLE EVIDENCE.—

"(1) GENERAL RULE.—If, in any court proceeding, a taxpayer introduces credible evidence with respect to any factual issue relevant to ascertaining the liability of the taxpayer for any tax imposed by subtitle A or B, the Secretary shall have the burden of proof with respect to such issue.

"(2) LIMITATIONS.—Paragraph (1) shall apply with respect to an issue only if— Applicability.

"(A) the taxpayer has complied with the requirements under this title to substantiate any item;

"(B) the taxpayer has maintained all records required under this title and has cooperated with reasonable requests by the Secretary for witnesses, information, documents, meetings, and interviews; and

"(C) in the case of a partnership, corporation, or trust, the taxpayer is described in section 7430(c)(4)(A)(ii).

"(3) COORDINATION.—Paragraph (1) shall not apply to any issue if any other provision of this title provides for a specific burden of proof with respect to such issue.

"(b) USE OF STATISTICAL INFORMATION ON UNRELATED TAXPAYERS.—In the case of an individual taxpayer, the Secretary shall have the burden of proof in any court proceeding with respect to any item of income which was reconstructed by the Secretary solely through the use of statistical information on unrelated taxpayers.

"(c) PENALTIES.—Notwithstanding any other provision of this title, the Secretary shall have the burden of production in any court proceeding with respect to the liability of any individual for any penalty, addition to tax, or additional amount imposed by this title.".

(b) CONFORMING AMENDMENT.—The table of subchapters for chapter 76 is amended by adding at the end the following new item:

"SUBCHAPTER E. Burden of proof.".

(c) EFFECTIVE DATE.— Applicability. 26 USC 7491 note.

(1) IN GENERAL.—The amendments made by this section shall apply to court proceedings arising in connection with examinations commencing after the date of the enactment of this Act.

(2) TAXABLE PERIODS OR EVENTS AFTER DATE OF ENACTMENT.—In any case in which there is no examination, such amendments shall apply to court proceedings arising in connection with taxable periods or events beginning or occurring after such date of enactment.

Subtitle B—Proceedings by Taxpayers

Courts.

SEC. 3101. EXPANSION OF AUTHORITY TO AWARD COSTS AND CERTAIN FEES.

(a) INCREASE IN ATTORNEY'S FEES.—

(1) INCREASE IN HOURLY AMOUNT.—Clause (iii) of section 7430(c)(1)(B) (relating to reasonable litigation costs) is amended by striking "$110" and inserting "$125".

(2) AWARD OF HIGHER ATTORNEY'S FEES BASED ON COMPLEXITY OF ISSUES.—Clause (iii) of section 7430(c)(1)(B) (relating to the award of costs and certain fees) is amended by inserting

"the difficulty of the issues presented in the case, or the local availability of tax expertise," before "justifies a higher rate".

(b) AWARD OF ADMINISTRATIVE COSTS INCURRED AFTER 30-DAY LETTER.—Paragraph (2) of section 7430(c) is amended by striking the last sentence and inserting the following new flush sentence:

"Such term shall only include costs incurred on or after whichever of the following is the earliest: (i) the date of the receipt by the taxpayer of the notice of the decision of the Internal Revenue Service Office of Appeals; (ii) the date of the notice of deficiency; or (iii) the date on which the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals is sent.".

(c) AWARD OF FEES FOR CERTAIN ADDITIONAL SERVICES.—Paragraph (3) of section 7430(c) is amended to read as follows:

"(3) ATTORNEYS FEES.—

"(A) IN GENERAL.—For purposes of paragraphs (1) and (2), fees for the services of an individual (whether or not an attorney) who is authorized to practice before the Tax Court or before the Internal Revenue Service shall be treated as fees for the services of an attorney.

"(B) PRO BONO SERVICES.—The court may award reasonable attorneys fees under subsection (a) in excess of the attorneys fees paid or incurred if such fees are less than the reasonable attorneys fees because an individual is representing the prevailing party for no fee or for a fee which (taking into account all the facts and circumstances) is no more than a nominal fee. This subparagraph shall apply only if such award is paid to such individual or such individual's employer.".

Applicability.

(d) DETERMINATION OF WHETHER POSITION OF UNITED STATES IS SUBSTANTIALLY JUSTIFIED.—Subparagraph (B) of section 7430(c)(4) is amended by redesignating clause (iii) as clause (iv) and by inserting after clause (ii) the following new clause:

"(iii) EFFECT OF LOSING ON SUBSTANTIALLY SIMILAR ISSUES.—In determining for purposes of clause (i) whether the position of the United States was substantially justified, the court shall take into account whether the United States has lost in courts of appeal for other circuits on substantially similar issues.".

(e) TAXPAYER TREATED AS PREVAILING IF JUDGMENT IS LESS THAN TAXPAYER'S OFFER.—

(1) IN GENERAL.—Section 7430(c)(4) (defining prevailing party) is amended by adding at the end the following new subparagraph:

"(E) SPECIAL RULES WHERE JUDGMENT LESS THAN TAXPAYER'S OFFER.—

"(i) IN GENERAL.—A party to a court proceeding meeting the requirements of subparagraph (A)(ii) shall be treated as the prevailing party if the liability of the taxpayer pursuant to the judgment in the proceeding (determined without regard to interest) is equal to or less than the liability of the taxpayer which would have been so determined if the United States had accepted a qualified offer of the party under subsection (g).

"(ii) EXCEPTIONS.—This subparagraph shall not apply to—

"(I) any judgment issued pursuant to a settlement; or

"(II) any proceeding in which the amount of tax liability is not in issue, including any declaratory judgment proceeding, any proceeding to enforce or quash any summons issued pursuant to this title, and any action to restrain disclosure under section 6110(f).

"(iii) SPECIAL RULES.—If this subparagraph applies to any court proceeding— Applicability.

"(I) the determination under clause (i) shall be made by reference to the last qualified offer made with respect to the tax liability at issue in the proceeding; and

"(II) reasonable administrative and litigation costs shall only include costs incurred on and after the date of such offer.

"(iv) COORDINATION.—This subparagraph shall not apply to a party which is a prevailing party under any other provision of this paragraph.".

(2) QUALIFIED OFFER.—Section 7430 is amended by adding at the end the following new subsection:

"(g) QUALIFIED OFFER.—For purposes of subsection (c)(4)—

"(1) IN GENERAL.—The term 'qualified offer' means a written offer which—

"(A) is made by the taxpayer to the United States during the qualified offer period;

"(B) specifies the offered amount of the taxpayer's liability (determined without regard to interest);

"(C) is designated at the time it is made as a qualified offer for purposes of this section; and

"(D) remains open during the period beginning on the date it is made and ending on the earliest of the date the offer is rejected, the date the trial begins, or the 90th day after the date the offer is made.

"(2) QUALIFIED OFFER PERIOD.—For purposes of this subsection, the term 'qualified offer period' means the period—

"(A) beginning on the date on which the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals is sent, and

"(B) ending on the date which is 30 days before the date the case is first set for trial.".

(f) AWARD OF ATTORNEYS FEES IN UNAUTHORIZED INSPECTION AND DISCLOSURE CASES.—Section 7431(c) (relating to damages) is amended by striking the period at the end of paragraph (2) and inserting ", plus", and by adding at the end the following new paragraph:

"(3) in the case of a plaintiff which is described in section 7430(c)(4)(A)(ii), reasonable attorneys fees, except that if the defendant is the United States, reasonable attorneys fees may be awarded only if the plaintiff is the prevailing party (as determined under section 7430(c)(4)).".

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to costs incurred (and, in the case of the amendment Applicability. 26 USC 7430 note.

made by subsection (c), services performed) more than 180 days after the date of the enactment of this Act.

SEC. 3102. CIVIL DAMAGES FOR COLLECTION ACTIONS.

(a) EXTENSION TO NEGLIGENCE ACTIONS.—

(1) IN GENERAL.—Section 7433 (relating to civil damages for certain unauthorized collection actions) is amended—

(A) in subsection (a), by inserting ", or by reason of negligence," after "recklessly or intentionally"; and

(B) in subsection (b)—

(i) in the matter preceding paragraph (1), by inserting "($100,000, in the case of negligence)" after "$1,000,000"; and

(ii) in paragraph (1), by inserting "or negligent" after "reckless or intentional".

(2) REQUIREMENT THAT ADMINISTRATIVE REMEDIES BE EXHAUSTED.—Paragraph (1) of section 7433(d) is amended to read as follows:

"(1) REQUIREMENT THAT ADMINISTRATIVE REMEDIES BE EXHAUSTED.—A judgment for damages shall not be awarded under subsection (b) unless the court determines that the plaintiff has exhausted the administrative remedies available to such plaintiff within the Internal Revenue Service.".

(b) DAMAGES ALLOWED IN CIVIL ACTIONS BY PERSONS OTHER THAN TAXPAYERS.—Section 7426 is amended by redesignating subsection (h) as subsection (i) and by adding after subsection (g) the following new subsection:

"(h) RECOVERY OF DAMAGES PERMITTED IN CERTAIN CASES.—

"(1) IN GENERAL.—Notwithstanding subsection (b), if, in any action brought under this section, there is a finding that any officer or employee of the Internal Revenue Service recklessly or intentionally, or by reason of negligence, disregarded any provision of this title the defendant shall be liable to the plaintiff in an amount equal to the lesser of $1,000,000 ($100,000 in the case of negligence) or the sum of—

"(A) actual, direct economic damages sustained by the plaintiff as a proximate result of the reckless or intentional or negligent disregard of any provision of this title by the officer or employee (reduced by any amount of such damages awarded under subsection (b)); and

"(B) the costs of the action.

Applicability.

"(2) REQUIREMENT THAT ADMINISTRATIVE REMEDIES BE EXHAUSTED; MITIGATION; PERIOD.—The rules of section 7433(d) shall apply for purposes of this subsection.

"(3) PAYMENT AUTHORITY.—Claims pursuant to this section shall be payable out of funds appropriated under section 1304 of title 31, United States Code.".

(c) CIVIL DAMAGES FOR IRS VIOLATIONS OF BANKRUPTCY PROCEDURES.—

(1) IN GENERAL.—Section 7433 (relating to civil damages for certain unauthorized collection actions) is amended by adding at the end the following new subsection:

"(e) ACTIONS FOR VIOLATIONS OF CERTAIN BANKRUPTCY PROCEDURES.—

"(1) IN GENERAL.—If, in connection with any collection of Federal tax with respect to a taxpayer, any officer or employee of the Internal Revenue Service willfully violates any provision

of section 362 (relating to automatic stay) or 524 (relating to effect of discharge) of title 11, United States Code (or any successor provision), or any regulation promulgated under such provision, such taxpayer may petition the bankruptcy court to recover damages against the United States.

"(2) REMEDY TO BE EXCLUSIVE.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), notwithstanding section 105 of such title 11, such petition shall be the exclusive remedy for recovering damages resulting from such actions.

"(B) CERTAIN OTHER ACTIONS PERMITTED.—Subparagraph (A) shall not apply to an action under section 362(h) of such title 11 for a violation of a stay provided by section 362 of such title; except that—

"(i) administrative and litigation costs in connection with such an action may only be awarded under section 7430; and

"(ii) administrative costs may be awarded only if incurred on or after the date that the bankruptcy petition is filed.".

(2) CONFORMING AMENDMENT.—Subsection (b) of section 7433 is amended by inserting "or petition filed under subsection (e)" after "subsection (a)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to actions of officers or employees of the Internal Revenue Service after the date of the enactment of this Act.

Applicability. 26 USC 7426 note.

SEC. 3103. INCREASE IN SIZE OF CASES PERMITTED ON SMALL CASE CALENDAR.

(a) IN GENERAL.—Section 7463 (relating to disputes involving $10,000 or less) is amended by striking "$10,000" each place it appears (including the section heading) and inserting "$50,000".

(b) CONFORMING AMENDMENTS.—

(1) Sections 7436(c)(1) and 7443A(b)(3) are each amended by striking "$10,000" and inserting "$50,000".

(2) The table of sections for part II of subchapter C of chapter 76 is amended by striking "$10,000" in the item relating to section 7463 and inserting "$50,000".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to proceedings commenced after the date of the enactment of this Act.

Applicability. 26 USC 7436 note.

SEC. 3104. ACTIONS FOR REFUND WITH RESPECT TO CERTAIN ESTATES WHICH HAVE ELECTED THE INSTALLMENT METHOD OF PAYMENT.

(a) IN GENERAL.—Section 7422 is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

"(j) SPECIAL RULE FOR ACTIONS WITH RESPECT TO ESTATES FOR WHICH AN ELECTION UNDER SECTION 6166 IS MADE.—

"(1) IN GENERAL.—The district courts of the United States and the United States Court of Federal Claims shall not fail to have jurisdiction over any action brought by the representative of an estate to which this subsection applies to determine the correct amount of the estate tax liability of such estate (or for any refund with respect thereto) solely because the full amount of such liability has not been paid by reason of an election under section 6166 with respect to such estate.

"(2) ESTATES TO WHICH SUBSECTION APPLIES.—This subsection shall apply to any estate if, as of the date the action is filed—

"(A) no portion of the installments payable under section 6166 have been accelerated;

"(B) all such installments the due date for which is on or before the date the action is filed have been paid;

"(C) there is no case pending in the Tax Court with respect to the tax imposed by section 2001 on the estate and, if a notice of deficiency under section 6212 with respect to such tax has been issued, the time for filing a petition with the Tax Court with respect to such notice has expired; and

"(D) no proceeding for declaratory judgment under section 7479 is pending.

"(3) PROHIBITION ON COLLECTION OF DISALLOWED LIABILITY.—If the court redetermines under paragraph (1) the estate tax liability of an estate, no part of such liability which is disallowed by a decision of such court which has become final may be collected by the Secretary, and amounts paid in excess of the installments determined by the court as currently due and payable shall be refunded.".

(b) EXTENSION OF TIME TO FILE REFUND SUIT.—Section 7479 (relating to declaratory judgments relating to eligibility of estate with respect to installment payments under section 6166) is amended by adding at the end the following new subsection:

"(c) EXTENSION OF TIME TO FILE REFUND SUIT.—The 2-year period in section 6532(a)(1) for filing suit for refund after disallowance of a claim shall be suspended during the 90-day period after the mailing of the notice referred to in subsection (b)(3) and, if a pleading has been filed with the Tax Court under this section, until the decision of the Tax Court has become final.".

Applicability. 26 USC 7422 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any claim for refund filed after the date of the enactment of this Act.

SEC. 3105. ADMINISTRATIVE APPEAL OF ADVERSE INTERNAL REVENUE SERVICE DETERMINATION OF TAX-EXEMPT STATUS OF BOND ISSUE.

The Internal Revenue Service shall amend its administrative procedures to provide that if, upon examination, the Internal Revenue Service proposes to an issuer that interest on previously issued obligations of such issuer is not excludable from gross income under section 103(a) of the Internal Revenue Code of 1986, the issuer of such obligations shall have an administrative appeal of right to a senior officer of the Internal Revenue Service Office of Appeals.

SEC. 3106. CIVIL ACTION FOR RELEASE OF ERRONEOUS LIEN.

(a) RIGHT OF SUBSTITUTION OF VALUE.—Subsection (b) of section 6325 (relating to release of lien or discharge of property) is amended by adding at the end the following new paragraph:

"(4) RIGHT OF SUBSTITUTION OF VALUE.—

"(A) IN GENERAL.—At the request of the owner of any property subject to any lien imposed by this chapter, the Secretary shall issue a certificate of discharge of such property if such owner—

"(i) deposits with the Secretary an amount of money equal to the value of the interest of the United

States (as determined by the Secretary) in the property; or

"(ii) furnishes a bond acceptable to the Secretary in a like amount.

"(B) REFUND OF DEPOSIT WITH INTEREST AND RELEASE OF BOND.—The Secretary shall refund the amount so deposited (and shall pay interest at the overpayment rate under section 6621), and shall release such bond, to the extent that the Secretary determines that—

"(i) the unsatisfied liability giving rise to the lien can be satisfied from a source other than such property; or

"(ii) the value of the interest of the United States in the property is less than the Secretary's prior determination of such value.

"(C) USE OF DEPOSIT, ETC., IF ACTION TO CONTEST LIEN NOT FILED.—If no action is filed under section 7426(a)(4) within the period prescribed therefor, the Secretary shall, within 60 days after the expiration of such period—

"(i) apply the amount deposited, or collect on such bond, to the extent necessary to satisfy the unsatisfied liability secured by the lien; and

"(ii) refund (with interest as described in subparagraph (B)) any portion of the amount deposited which is not used to satisfy such liability.

"(D) EXCEPTION.—Subparagraph (A) shall not apply if the owner of the property is the person whose unsatisfied liability gave rise to the lien.".

(b) CIVIL ACTION TO RELEASE ERRONEOUS LIEN.—

(1) IN GENERAL.—Subsection (a) of section 7426 (relating to civil actions by persons other than taxpayers) is amended by adding at the end the following new paragraph:

"(4) SUBSTITUTION OF VALUE.—If a certificate of discharge is issued to any person under section 6325(b)(4) with respect to any property, such person may, within 120 days after the day on which such certificate is issued, bring a civil action against the United States in a district court of the United States for a determination of whether the value of the interest of the United States (if any) in such property is less than the value determined by the Secretary. No other action may be brought by such person for such a determination.".

(2) FORM OF RELIEF.—

(A) IN GENERAL.—Subsection (b) of section 7426 is amended by adding at the end the following new paragraph:

"(5) SUBSTITUTION OF VALUE.—If the court determines that the Secretary's determination of the value of the interest of the United States in the property for purposes of section 6325(b)(4) exceeds the actual value of such interest, the court shall grant a judgment ordering a refund of the amount deposited, and a release of the bond, to the extent that the aggregate of the amounts thereof exceeds such value determined by the court.".

(B) INTEREST ALLOWED ON REFUND OF DEPOSIT.—Subsection (g) of section 7426 is amended by striking "and" at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting "; and", and by adding at the end the following new paragraph:

"(3) in the case of a judgment pursuant to subsection (b)(5) which orders a refund of any amount, from the date the Secretary received such amount to the date of payment of such judgment.".

(3) SUSPENSION OF RUNNING OF STATUTE OF LIMITATION.—Subsection (f) of section 6503 is amended to read as follows:

"(f) WRONGFUL SEIZURE OF OR LIEN ON PROPERTY OF THIRD PARTY.—

"(1) WRONGFUL SEIZURE.—The running of the period under section 6502 shall be suspended for a period equal to the period from the date property (including money) of a third party is wrongfully seized or received by the Secretary to the date the Secretary returns property pursuant to section 6343(b) or the date on which a judgment secured pursuant to section 7426 with respect to such property becomes final, and for 30 days thereafter. The running of such period shall be suspended under this paragraph only with respect to the amount of such assessment equal to the amount of money or the value of specific property returned.

"(2) WRONGFUL LIEN.—In the case of any assessment for which a lien was made on any property, the running of the period under section 6502 shall be suspended for a period equal to the period beginning on the date any person becomes entitled to a certificate under section 6325(b)(4) with respect to such property and ending on the date which is 30 days after the earlier of—

"(A) the earliest date on which the Secretary no longer holds any amount as a deposit or bond provided under section 6325(b)(4) by reason of such deposit or bond being used to satisfy the unpaid tax or being refunded or released; or

"(B) the date that the judgment secured under section 7426(b)(5) becomes final.

The running of such period shall be suspended under this paragraph only with respect to the amount of such assessment equal to the value of the interest of the United States in the property plus interest, penalties, additions to the tax, and additional amounts attributable thereto.".

26 USC 6325 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

Subtitle C—Relief for Innocent Spouses and for Taxpayers Unable To Manage Their Financial Affairs Due to Disabilities

SEC. 3201. RELIEF FROM JOINT AND SEVERAL LIABILITY ON JOINT RETURN.

(a) IN GENERAL.—Subpart B of part II of subchapter A of chapter 61 is amended by inserting after section 6014 the following new section:

"SEC. 6015. RELIEF FROM JOINT AND SEVERAL LIABILITY ON JOINT RETURN.

"(a) IN GENERAL.—Notwithstanding section 6013(d)(3)—

"(1) an individual who has made a joint return may elect to seek relief under the procedures prescribed under subsection (b); and

"(2) if such individual is eligible to elect the application of subsection (c), such individual may, in addition to any election under paragraph (1), elect to limit such individual's liability for any deficiency with respect to such joint return in the manner prescribed under subsection (c).

Any determination under this section shall be made without regard to community property laws.

"(b) PROCEDURES FOR RELIEF FROM LIABILITY APPLICABLE TO ALL JOINT FILERS.—

"(1) IN GENERAL.—Under procedures prescribed by the Secretary, if—

"(A) a joint return has been made for a taxable year;

"(B) on such return there is an understatement of tax attributable to erroneous items of one individual filing the joint return;

"(C) the other individual filing the joint return establishes that in signing the return he or she did not know, and had no reason to know, that there was such understatement;

"(D) taking into account all the facts and circumstances, it is inequitable to hold the other individual liable for the deficiency in tax for such taxable year attributable to such understatement; and

"(E) the other individual elects (in such form as the Secretary may prescribe) the benefits of this subsection not later than the date which is 2 years after the date the Secretary has begun collection activities with respect to the individual making the election, Deadline.

then the other individual shall be relieved of liability for tax (including interest, penalties, and other amounts) for such taxable year to the extent such liability is attributable to such understatement.

"(2) APPORTIONMENT OF RELIEF.—If an individual who, but for paragraph (1)(C), would be relieved of liability under paragraph (1), establishes that in signing the return such individual did not know, and had no reason to know, the extent of such understatement, then such individual shall be relieved of liability for tax (including interest, penalties, and other amounts) for such taxable year to the extent that such liability is attributable to the portion of such understatement of which such individual did not know and had no reason to know.

"(3) UNDERSTATEMENT.—For purposes of this subsection, the term 'understatement' has the meaning given to such term by section 6662(d)(2)(A).

"(c) PROCEDURES TO LIMIT LIABILITY FOR TAXPAYERS NO LONGER MARRIED OR TAXPAYERS LEGALLY SEPARATED OR NOT LIVING TOGETHER.—

"(1) IN GENERAL.—Except as provided in this subsection, if an individual who has made a joint return for any taxable year elects the application of this subsection, the individual's liability for any deficiency which is assessed with respect to the return shall not exceed the portion of such deficiency properly allocable to the individual under subsection (d).

"(2) BURDEN OF PROOF.—Except as provided in subparagraph (A)(ii) or (C) of paragraph (3), each individual who elects the application of this subsection shall have the burden of proof with respect to establishing the portion of any deficiency allocable to such individual.

"(3) ELECTION.—

"(A) INDIVIDUALS ELIGIBLE TO MAKE ELECTION.—

"(i) IN GENERAL.—An individual shall only be eligible to elect the application of this subsection if—

"(I) at the time such election is filed, such individual is no longer married to, or is legally separated from, the individual with whom such individual filed the joint return to which the election relates; or

"(II) such individual was not a member of the same household as the individual with whom such joint return was filed at any time during the 12-month period ending on the date such election is filed.

"(ii) CERTAIN TAXPAYERS INELIGIBLE TO ELECT.—If the Secretary demonstrates that assets were transferred between individuals filing a joint return as part of a fraudulent scheme by such individuals, an election under this subsection by either individual shall be invalid (and section 6013(d)(3) shall apply to the joint return).

Deadline.

"(B) TIME FOR ELECTION.—An election under this subsection for any taxable year shall be made not later than 2 years after the date on which the Secretary has begun collection activities with respect to the individual making the election.

"(C) ELECTION NOT VALID WITH RESPECT TO CERTAIN DEFICIENCIES.—If the Secretary demonstrates that an individual making an election under this subsection had actual knowledge, at the time such individual signed the return, of any item giving rise to a deficiency (or portion thereof) which is not allocable to such individual under subsection (d), such election shall not apply to such deficiency (or portion). This subparagraph shall not apply where the individual with actual knowledge establishes that such individual signed the return under duress.

"(4) LIABILITY INCREASED BY REASON OF TRANSFERS OF PROPERTY TO AVOID TAX.—

"(A) IN GENERAL.—Notwithstanding any other provision of this subsection, the portion of the deficiency for which the individual electing the application of this subsection is liable (without regard to this paragraph) shall be increased by the value of any disqualified asset transferred to the individual.

"(B) DISQUALIFIED ASSET.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'disqualified asset' means any property or right to property transferred to an individual making the election under this subsection with respect to a joint return by the other

purpose of the transfer was the avoidance of tax or payment of tax.

"(ii) PRESUMPTION.—

"(I) IN GENERAL.—For purposes of clause (i), except as provided in subclause (II), any transfer which is made after the date which is 1 year before the date on which the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals is sent shall be presumed to have as its principal purpose the avoidance of tax or payment of tax.

"(II) EXCEPTIONS.—Subclause (I) shall not apply to any transfer pursuant to a decree of divorce or separate maintenance or a written instrument incident to such a decree or to any transfer which an individual establishes did not have as its principal purpose the avoidance of tax or payment of tax.

"(d) ALLOCATION OF DEFICIENCY.—For purposes of subsection (c)—

"(1) IN GENERAL.—The portion of any deficiency on a joint return allocated to an individual shall be the amount which bears the same ratio to such deficiency as the net amount of items taken into account in computing the deficiency and allocable to the individual under paragraph (3) bears to the net amount of all items taken into account in computing the deficiency.

"(2) SEPARATE TREATMENT OF CERTAIN ITEMS.—If a deficiency (or portion thereof) is attributable to—

"(A) the disallowance of a credit; or

"(B) any tax (other than tax imposed by section 1 or 55) required to be included with the joint return;

and such item is allocated to one individual under paragraph (3), such deficiency (or portion) shall be allocated to such individual. Any such item shall not be taken into account under paragraph (1).

"(3) ALLOCATION OF ITEMS GIVING RISE TO THE DEFICIENCY.—For purposes of this subsection—

"(A) IN GENERAL.—Except as provided in paragraphs (4) and (5), any item giving rise to a deficiency on a joint return shall be allocated to individuals filing the return in the same manner as it would have been allocated if the individuals had filed separate returns for the taxable year.

"(B) EXCEPTION WHERE OTHER SPOUSE BENEFITS.— Regulations.
Under rules prescribed by the Secretary, an item otherwise allocable to an individual under subparagraph (A) shall be allocated to the other individual filing the joint return to the extent the item gave rise to a tax benefit on the joint return to the other individual.

"(C) EXCEPTION FOR FRAUD.—The Secretary may provide for an allocation of any item in a manner not prescribed by subparagraph (A) if the Secretary establishes that such allocation is appropriate due to fraud of one or both individuals.

"(4) LIMITATIONS ON SEPARATE RETURNS DISREGARDED.—If an item of deduction or credit is disallowed in its entirety solely because a separate return is filed, such disallowance shall be disregarded and the item shall be computed as if a joint return had been filed and then allocated between the spouses appropriately. A similar rule shall apply for purposes of section 86.

Applicability.

"(5) CHILD'S LIABILITY.—If the liability of a child of a taxpayer is included on a joint return, such liability shall be disregarded in computing the separate liability of either spouse and such liability shall be allocated appropriately between the spouses.

"(e) PETITION FOR REVIEW BY TAX COURT.—

"(1) IN GENERAL.—In the case of an individual who elects to have subsection (b) or (c) apply—

"(A) IN GENERAL.—The individual may petition the Tax Court (and the Tax Court shall have jurisdiction) to determine the appropriate relief available to the individual under this section if such petition is filed during the 90-day period beginning on the date on which the Secretary mails by certified or registered mail a notice to such individual of the Secretary's determination of relief available to the individual. Notwithstanding the preceding sentence, an individual may file such petition at any time after the date which is 6 months after the date such election is filed with the Secretary and before the close of such 90-day period.

"(B) RESTRICTIONS APPLICABLE TO COLLECTION OF ASSESSMENT.—

"(i) IN GENERAL.—Except as otherwise provided in section 6851 or 6861, no levy or proceeding in court shall be made, begun, or prosecuted against the individual making an election under subsection (b) or (c) for collection of any assessment to which such election relates until the expiration of the 90-day period described in subparagraph (A), or, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. Rules similar to the rules of section 7485 shall apply with respect to the collection of such assessment.

Applicability.

"(ii) AUTHORITY TO ENJOIN COLLECTION ACTIONS.—Notwithstanding the provisions of section 7421(a), the beginning of such levy or proceeding during the time the prohibition under clause (i) is in force may be enjoined by a proceeding in the proper court, including the Tax Court. The Tax Court shall have no jurisdiction under this subparagraph to enjoin any action or proceeding unless a timely petition has been filed under subparagraph (A) and then only in respect of the amount of the assessment to which the election under subsection (b) or (c) relates.

"(2) SUSPENSION OF RUNNING OF PERIOD OF LIMITATIONS.—The running of the period of limitations in section 6502 on the collection of the assessment to which the petition under paragraph (1)(A) relates shall be suspended for the period during which the Secretary is prohibited by paragraph (1)(B) from

collecting by levy or a proceeding in court and for 60 days thereafter.

"(3) APPLICABLE RULES.—

"(A) ALLOWANCE OF CREDIT OR REFUND.—Except as provided in subparagraph (B), notwithstanding any other law or rule of law (other than section 6512(b), 7121, or 7122), credit or refund shall be allowed or made to the extent attributable to the application of this section.

"(B) RES JUDICATA.—In the case of any election under subsection (b) or (c), if a decision of the Tax Court in any prior proceeding for the same taxable year has become final, such decision shall be conclusive except with respect to the qualification of the individual for relief which was not an issue in such proceeding. The exception contained in the preceding sentence shall not apply if the Tax Court determines that the individual participated meaningfully in such prior proceeding.

"(C) LIMITATION ON TAX COURT JURISDICTION.—If a suit for refund is begun by either individual filing the joint return pursuant to section 6532—

"(i) the Tax Court shall lose jurisdiction of the individual's action under this section to whatever extent jurisdiction is acquired by the district court or the United States Court of Federal Claims over the taxable years that are the subject of the suit for refund; and

"(ii) the court acquiring jurisdiction shall have jurisdiction over the petition filed under this subsection.

"(4) NOTICE TO OTHER SPOUSE.—The Tax Court shall establish rules which provide the individual filing a joint return but not making the election under subsection (b) or (c) with adequate notice and an opportunity to become a party to a proceeding under either such subsection. Regulations.

"(f) EQUITABLE RELIEF.—Under procedures prescribed by the Secretary, if—

"(1) taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either); and

"(2) relief is not available to such individual under subsection (b) or (c),

the Secretary may relieve such individual of such liability.

"(g) REGULATIONS.—The Secretary shall prescribe such regulations as are necessary to carry out the provisions of this section, including—

"(1) regulations providing methods for allocation of items other than the methods under subsection (d)(3); and

"(2) regulations providing the opportunity for an individual to have notice of, and an opportunity to participate in, any administrative proceeding with respect to an election made under subsection (b) or (c) by the other individual filing the joint return.".

(b) EQUITABLE RELIEF FOR INDIVIDUALS NOT FILING JOINT RETURN.—Section 66(c) (relating to spouse relieved of liability in certain other cases) is amended by adding at the end the following new sentence: "Under procedures prescribed by the Secretary, if, taking into account all the facts and circumstances, it is inequitable Procedures.

to hold the individual liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under the preceding sentence, the Secretary may relieve such individual of such liability.".

Deadline. 26 USC 6015 note.

(c) SEPARATE FORM FOR APPLYING FOR SPOUSAL RELIEF.—Not later than 180 days after the date of the enactment of this Act, the Secretary of the Treasury shall develop a separate form with instructions for use by taxpayers in applying for relief under section 6015(a) of the Internal Revenue Code of 1986, as added by this section.

26 USC 6013 note.

(d) SEPARATE NOTICE TO EACH FILER.—The Secretary of the Treasury shall, wherever practicable, send any notice relating to a joint return under section 6013 of the Internal Revenue Code of 1986 separately to each individual filing the joint return.

(e) CONFORMING AMENDMENTS.—

(1) Section 6013 is amended by striking subsection (e).

(2) Subparagraph (A) of section 6230(c)(5) is amended by striking "section 6013(e)" and inserting "section 6015".

(3) Section 7421(a) is amended by inserting "6015(d)," after "sections".

(f) CLERICAL AMENDMENT.—The table of sections for subpart B of part II of subchapter A of chapter 61 is amended by inserting after the item relating to section 6014 the following new item:

"Sec. 6015. Relief from joint and several liability on joint return.".

26 USC 6015 note. Applicability.

(g) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to any liability for tax arising after the date of the enactment of this Act and any liability for tax arising on or before such date but remaining unpaid as of such date.

(2) 2-YEAR PERIOD.—The 2-year period under subsection (b)(1)(E) or (c)(3)(B) of section 6015 of the Internal Revenue Code of 1986 shall not expire before the date which is 2 years after the date of the first collection activity after the date of the enactment of this Act.

SEC. 3202. SUSPENSION OF STATUTE OF LIMITATIONS ON FILING REFUND CLAIMS DURING PERIODS OF DISABILITY.

(a) IN GENERAL.—Section 6511 (relating to limitations on credit or refund) is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

"(h) RUNNING OF PERIODS OF LIMITATION SUSPENDED WHILE TAXPAYER IS UNABLE TO MANAGE FINANCIAL AFFAIRS DUE TO DISABILITY.—

"(1) IN GENERAL.—In the case of an individual, the running of the periods specified in subsections (a), (b), and (c) shall be suspended during any period of such individual's life that such individual is financially disabled.

"(2) FINANCIALLY DISABLED.—

"(A) IN GENERAL.—For purposes of paragraph (1), an individual is financially disabled if such individual is unable to manage his financial affairs by reason of a medically determinable physical or mental impairment of the individual which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. An individual shall not be considered to have such an impairment unless proof

of the existence thereof is furnished in such form and manner as the Secretary may require.

"(B) EXCEPTION WHERE INDIVIDUAL HAS GUARDIAN, ETC.—An individual shall not be treated as financially disabled during any period that such individual's spouse or any other person is authorized to act on behalf of such individual in financial matters.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to periods of disability before, on, or after the date of the enactment of this Act but shall not apply to any claim for credit or refund which (without regard to such amendment) is barred by the operation of any law or rule of law (including res judicata) as of the date of the enactment of this Act.

Applicability. 26 USC 6511 note.

Subtitle D—Provisions Relating to Interest and Penalties

SEC. 3301. ELIMINATION OF INTEREST RATE DIFFERENTIAL ON OVERLAPPING PERIODS OF INTEREST ON TAX OVERPAYMENTS AND UNDERPAYMENTS.

(a) IN GENERAL.—Section 6621 (relating to determination of rate of interest) is amended by adding at the end the following new subsection:

"(d) ELIMINATION OF INTEREST ON OVERLAPPING PERIODS OF TAX OVERPAYMENTS AND UNDERPAYMENTS.—To the extent that, for any period, interest is payable under subchapter A and allowable under subchapter B on equivalent underpayments and overpayments by the same taxpayer of tax imposed by this title, the net rate of interest under this section on such amounts shall be zero for such period.".

(b) CONFORMING AMENDMENT.—Subsection (f) of section 6601 (relating to satisfaction by credits) is amended by adding at the end the following new sentence: "The preceding sentence shall not apply to the extent that section 6621(d) applies.".

(c) EFFECTIVE DATES.—

Applicability. 26 USC 6601 note.

(1) IN GENERAL.—Except as provided under paragraph (2), the amendments made by this section shall apply to interest for periods beginning after the date of the enactment of this Act.

(2) SPECIAL RULE.—The amendments made by this section shall apply to interest for periods beginning before the date of the enactment of this Act if the taxpayer—

(A) reasonably identifies and establishes periods of such tax overpayments and underpayments for which the zero rate applies; and

(B) not later than December 31, 1999, requests the Secretary of the Treasury to apply section 6621(d) of the Internal Revenue Code of 1986, as added by subsection (a), to such periods.

Deadline.

SEC. 3302. INCREASE IN OVERPAYMENT RATE PAYABLE TO TAXPAYERS OTHER THAN CORPORATIONS.

(a) IN GENERAL.—Subparagraph (B) of section 6621(a)(1) (defining overpayment rate) is amended to read as follows:

"(B) 3 percentage points (2 percentage points in the case of a corporation).".

Applicability.
26 USC 6621
note.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to interest for the second and succeeding calendar quarters beginning after the date of the enactment of this Act.

SEC. 3303. MITIGATION OF PENALTY ON INDIVIDUAL'S FAILURE TO PAY FOR MONTHS DURING PERIOD OF INSTALLMENT AGREEMENT.

(a) IN GENERAL.—Section 6651 (relating to failure to file tax return or to pay tax) is amended by adding at the end the following new subsection:

"(h) LIMITATION ON PENALTY ON INDIVIDUAL'S FAILURE TO PAY FOR MONTHS DURING PERIOD OF INSTALLMENT AGREEMENT.—In the case of an individual who files a return of tax on or before the due date for the return (including extensions), paragraphs (2) and (3) of subsection (a) shall each be applied by substituting '0.25' for '0.5' each place it appears for purposes of determining the addition to tax for any month during which an installment agreement under section 6159 is in effect for the payment of such tax.".

Applicability.
26 USC 6651
note.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply for purposes of determining additions to the tax for months beginning after December 31, 1999.

SEC. 3304. MITIGATION OF FAILURE TO DEPOSIT PENALTY.

(a) TAXPAYER MAY DESIGNATE PERIODS TO WHICH DEPOSITS APPLY.—Section 6656 (relating to underpayment of deposits) is amended by adding at the end the following new subsection:

"(e) DESIGNATION OF PERIODS TO WHICH DEPOSITS APPLY.—

"(1) IN GENERAL.—A person may, with respect to any deposit of tax to be reported on such person's return for a specified tax period, designate the period or periods within such specified tax period to which the deposit is to be applied for purposes of this section.

"(2) TIME FOR MAKING DESIGNATION.—A person may make a designation under paragraph (1) only during the 90-day period beginning on the date of a notice that a penalty under subsection (a) has been imposed for the specified tax period to which the deposit relates.".

(b) EXPANSION OF EXEMPTION FOR FIRST-TIME DEPOSITS.—

(1) IN GENERAL.—Paragraph (2) of section 6656(c) (relating to exemption for first-time depositors of employment taxes) is amended to read as follows:

"(2) such failure—

"(A) occurs during the first quarter that such person was required to deposit any employment tax; or

"(B) if such person is required to change the frequency of deposits of any employment tax, relates to the first deposit to which such change applies, and".

(c) PERIODS APPLY TO CURRENT LIABILITIES UNLESS DESIGNATED OTHERWISE.—Paragraph (1) of section 6656(e) (as added by subsection (a) of this section) is amended to read as follows:

"(e) DESIGNATION OF PERIODS TO WHICH DEPOSITS APPLY.—

"(1) IN GENERAL.—A deposit made under this section shall be applied to the most recent period or periods within the specified tax period to which the deposit relates, unless the person making such deposit designates a different period or periods to which such deposit is to be applied.".

Applicability.
26 USC 6656
note.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to deposits required to be made after the 180th day after the date of the enactment of this Act.

(2) APPLICATION TO CURRENT LIABILITIES.—The amendment made by subsection (c) shall apply to deposits required to be made after December 31, 2001.

SEC. 3305. SUSPENSION OF INTEREST AND CERTAIN PENALTIES WHERE SECRETARY FAILS TO CONTACT INDIVIDUAL TAXPAYER.

(a) IN GENERAL.—Section 6404 (relating to abatements) is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) SUSPENSION OF INTEREST AND CERTAIN PENALTIES WHERE SECRETARY FAILS TO CONTACT TAXPAYER.—

"(1) SUSPENSION.—

"(A) IN GENERAL.—In the case of an individual who files a return of tax imposed by subtitle A for a taxable year on or before the due date for the return (including extensions), if the Secretary does not provide a notice to the taxpayer specifically stating the taxpayer's liability and the basis for the liability before the close of the 1-year period (18-month period in the case of taxable years beginning before January 1, 2004) beginning on the later of—

"(i) the date on which the return is filed; or

"(ii) the due date of the return without regard to extensions,

the Secretary shall suspend the imposition of any interest, penalty, addition to tax, or additional amount with respect to any failure relating to the return which is computed by reference to the period of time the failure continues to exist and which is properly allocable to the suspension period.

"(B) SEPARATE APPLICATION.—This paragraph shall be applied separately with respect to each item or adjustment.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

"(A) any penalty imposed by section 6651;

"(B) any interest, penalty, addition to tax, or additional amount in a case involving fraud;

"(C) any interest, penalty, addition to tax, or additional amount with respect to any tax liability shown on the return; or

"(D) any criminal penalty.

"(3) SUSPENSION PERIOD.—For purposes of this subsection, the term 'suspension period' means the period—

"(A) beginning on the day after the close of the 1-year period (18-month period in the case of taxable years beginning before January 1, 2004) under paragraph (1); and

"(B) ending on the date which is 21 days after the date on which notice described in paragraph (1)(A) is provided by the Secretary.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

Applicability.
26 USC 6404 note.

SEC. 3306. PROCEDURAL REQUIREMENTS FOR IMPOSITION OF PENALTIES AND ADDITIONS TO TAX.

(a) IN GENERAL.—Chapter 68 (relating to additions to the tax, additional amounts, and assessable penalties) is amended by adding at the end the following new subchapter:

"Subchapter C—Procedural Requirements

"Sec. 6751. Procedural requirements.

"SEC. 6751. PROCEDURAL REQUIREMENTS.

"(a) COMPUTATION OF PENALTY INCLUDED IN NOTICE.—The Secretary shall include with each notice of penalty under this title information with respect to the name of the penalty, the section of this title under which the penalty is imposed, and a computation of the penalty.

"(b) APPROVAL OF ASSESSMENT.—

"(1) IN GENERAL.—No penalty under this title shall be assessed unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination or such higher level official as the Secretary may designate.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

"(A) any addition to tax under section 6651, 6654, or 6655; or

"(B) any other penalty automatically calculated through electronic means.

"(c) PENALTIES.—For purposes of this section, the term 'penalty' includes any addition to tax or any additional amount.".

(b) CONFORMING AMENDMENT.—The table of subchapters for chapter 68 is amended by adding at the end the following new item:

"SUBCHAPTER C. Procedural requirements.".

Applicability. 26 USC 6751 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to notices issued, and penalties assessed, after December 31, 2000.

SEC. 3307. PERSONAL DELIVERY OF NOTICE OF PENALTY UNDER SECTION 6672.

(a) IN GENERAL.—Paragraph (1) of section 6672(b) (relating to failure to collect and pay over tax, or attempt to evade or defeat tax) is amended by inserting "or in person" after "section 6212(b)".

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 6672(b) is amended by inserting "(or, in the case of such a notice delivered in person, such delivery)" after "paragraph (1)".

(2) Paragraph (3) of section 6672(b) is amended by inserting "or delivered in person" after "mailed" each place it appears.

26 USC 6672 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 3308. NOTICE OF INTEREST CHARGES.

(a) IN GENERAL.—Chapter 67 (relating to interest) is amended by adding at the end the following new subchapter:

"Subchapter D—Notice requirements

"Sec. 6631. Notice requirements.

"SEC. 6631. NOTICE REQUIREMENTS.

"The Secretary shall include with each notice to an individual taxpayer which includes an amount of interest required to be paid by such taxpayer under this title information with respect to the section of this title under which the interest is imposed and a computation of the interest.".

(b) CONFORMING AMENDMENT.—The table of subchapters for chapter 67 is amended by adding at the end the following new item:

"SUBCHAPTER D. Notice requirements.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to notices issued after December 31, 2000.

Applicability. 26 USC 6631 note.

SEC. 3309. ABATEMENT OF INTEREST ON UNDERPAYMENTS BY TAXPAYERS IN PRESIDENTIALLY DECLARED DISASTER AREAS.

(a) IN GENERAL.—Section 6404 (relating to abatements), as amended by section 3305, is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

"(h) ABATEMENT OF INTEREST ON UNDERPAYMENTS BY TAXPAYERS IN PRESIDENTIALLY DECLARED DISASTER AREAS.—

"(1) IN GENERAL.—If the Secretary extends for any period the time for filing income tax returns under section 6081 and the time for paying income tax with respect to such returns under section 6161 for any taxpayer located in a Presidentially declared disaster area, the Secretary shall abate for such period the assessment of any interest prescribed under section 6601 on such income tax.

"(2) PRESIDENTIALLY DECLARED DISASTER AREA.—For purposes of paragraph (1), the term 'Presidentially declared disaster area' means, with respect to any taxpayer, any area which the President has determined warrants assistance by the Federal Government under the Disaster Relief and Emergency Assistance Act.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to disasters declared after December 31, 1997, with respect to taxable years beginning after December 31, 1997.

Applicability. 26 USC 6404 note.

(c) EMERGENCY DESIGNATION.—

26 USC 6404 note.

(1) For the purposes of section 252(e) of the Balanced Budget and Emergency Deficit Control Act, Congress designates the provisions of this section as an emergency requirement.

(2) The amendments made by subsections (a) and (b) of this section shall only take effect upon the transmittal by the President to the Congress of a message designating the provisions of subsections (a) and (b) as an emergency requirement pursuant to section 252(e) of the Balanced Budget and Emergency Deficit Control Act.

Subtitle E—Protections for Taxpayers Subject to Audit or Collection Activities

PART I—DUE PROCESS

SEC. 3401. DUE PROCESS IN INTERNAL REVENUE SERVICE COLLECTION ACTIONS.

(a) NOTICE AND OPPORTUNITY FOR HEARING UPON FILING OF NOTICE OF LIEN.—Subchapter C of chapter 64 (relating to lien for taxes) is amended by inserting before the table of sections the following:

"Part I. Due process for liens.
"Part II. Liens.

"PART I—DUE PROCESS FOR LIENS

"Sec. 6320. Notice and opportunity for hearing upon filing of notice of lien.

"SEC. 6320. NOTICE AND OPPORTUNITY FOR HEARING UPON FILING OF NOTICE OF LIEN.

"(a) REQUIREMENT OF NOTICE.—

"(1) IN GENERAL.—The Secretary shall notify in writing the person described in section 6321 of the filing of a notice of lien under section 6323.

"(2) TIME AND METHOD FOR NOTICE.—The notice required under paragraph (1) shall be—

"(A) given in person;

"(B) left at the dwelling or usual place of business of such person; or

"(C) sent by certified or registered mail to such person's last known address,

not more than 5 business days after the day of the filing of the notice of lien.

"(3) INFORMATION INCLUDED WITH NOTICE.—The notice required under paragraph (1) shall include in simple and nontechnical terms—

"(A) the amount of unpaid tax;

"(B) the right of the person to request a hearing during the 30-day period beginning on the day after the 5-day period described in paragraph (2);

"(C) the administrative appeals available to the taxpayer with respect to such lien and the procedures relating to such appeals; and

"(D) the provisions of this title and procedures relating to the release of liens on property.

"(b) RIGHT TO FAIR HEARING.—

"(1) IN GENERAL.—If the person requests a hearing under subsection (a)(3)(B), such hearing shall be held by the Internal Revenue Service Office of Appeals.

"(2) ONE HEARING PER PERIOD.—A person shall be entitled to only one hearing under this section with respect to the taxable period to which the unpaid tax specified in subsection (a)(3)(A) relates.

"(3) IMPARTIAL OFFICER.—The hearing under this subsection shall be conducted by an officer or employee who has

had no prior involvement with respect to the unpaid tax specified in subsection (a)(3)(A) before the first hearing under this section or section 6330. A taxpayer may waive the requirement of this paragraph.

"(4) COORDINATION WITH SECTION 6330.—To the extent practicable, a hearing under this section shall be held in conjunction with a hearing under section 6330.

"(c) CONDUCT OF HEARING; REVIEW; SUSPENSIONS.—For purposes of this section, subsections (c), (d) (other than paragraph (2)(B) thereof), and (e) of section 6330 shall apply. Applicability.

"PART II—LIENS".

(b) NOTICE AND OPPORTUNITY FOR HEARING BEFORE LEVY.—Subchapter D of chapter 64 (relating to seizure of property for collection of taxes) is amended by inserting before the table of sections the following:

"Part I. Due process for collections.
"Part II. Levy.

"PART I—DUE PROCESS FOR COLLECTIONS

"Sec. 6330. Notice and opportunity for hearing before levy.

"SEC. 6330. NOTICE AND OPPORTUNITY FOR HEARING BEFORE LEVY.

"(a) REQUIREMENT OF NOTICE BEFORE LEVY.—

"(1) IN GENERAL.—No levy may be made on any property or right to property of any person unless the Secretary has notified such person in writing of their right to a hearing under this section before such levy is made. Such notice shall be required only once for the taxable period to which the unpaid tax specified in paragraph (3)(A) relates.

"(2) TIME AND METHOD FOR NOTICE.—The notice required under paragraph (1) shall be—

"(A) given in person;

"(B) left at the dwelling or usual place of business of such person; or

"(C) sent by certified or registered mail, return receipt requested, to such person's last known address;

not less than 30 days before the day of the first levy with respect to the amount of the unpaid tax for the taxable period.

"(3) INFORMATION INCLUDED WITH NOTICE.—The notice required under paragraph (1) shall include in simple and nontechnical terms—

"(A) the amount of unpaid tax;

"(B) the right of the person to request a hearing during the 30-day period under paragraph (2); and

"(C) the proposed action by the Secretary and the rights of the person with respect to such action, including a brief statement which sets forth—

"(i) the provisions of this title relating to levy and sale of property;

"(ii) the procedures applicable to the levy and sale of property under this title;

"(iii) the administrative appeals available to the taxpayer with respect to such levy and sale and the procedures relating to such appeals;

"(iv) the alternatives available to taxpayers which could prevent levy on property (including installment agreements under section 6159); and

"(v) the provisions of this title and procedures relating to redemption of property and release of liens on property.

"(b) RIGHT TO FAIR HEARING.—

"(1) IN GENERAL.—If the person requests a hearing under subsection (a)(3)(B), such hearing shall be held by the Internal Revenue Service Office of Appeals.

"(2) ONE HEARING PER PERIOD.—A person shall be entitled to only one hearing under this section with respect to the taxable period to which the unpaid tax specified in subsection (a)(3)(A) relates.

"(3) IMPARTIAL OFFICER.—The hearing under this subsection shall be conducted by an officer or employee who has had no prior involvement with respect to the unpaid tax specified in subsection (a)(3)(A) before the first hearing under this section or section 6320. A taxpayer may waive the requirement of this paragraph.

"(c) MATTERS CONSIDERED AT HEARING.—In the case of any hearing conducted under this section—

"(1) REQUIREMENT OF INVESTIGATION.—The appeals officer shall at the hearing obtain verification from the Secretary that the requirements of any applicable law or administrative procedure have been met.

"(2) ISSUES AT HEARING.—

"(A) IN GENERAL.—The person may raise at the hearing any relevant issue relating to the unpaid tax or the proposed levy, including—

"(i) appropriate spousal defenses;

"(ii) challenges to the appropriateness of collection actions; and

"(iii) offers of collection alternatives, which may include the posting of a bond, the substitution of other assets, an installment agreement, or an offer-in-compromise.

"(B) UNDERLYING LIABILITY.—The person may also raise at the hearing challenges to the existence or amount of the underlying tax liability for any tax period if the person did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability.

"(3) BASIS FOR THE DETERMINATION.—The determination by an appeals officer under this subsection shall take into consideration—

"(A) the verification presented under paragraph (1);

"(B) the issues raised under paragraph (2); and

"(C) whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the person that any collection action be no more intrusive than necessary.

"(4) CERTAIN ISSUES PRECLUDED.—An issue may not be raised at the hearing if—

"(A) the issue was raised and considered at a previous hearing under section 6320 or in any other previous administrative or judicial proceeding; and

"(B) the person seeking to raise the issue participated meaningfully in such hearing or proceeding.

This paragraph shall not apply to any issue with respect to which subsection (d)(2)(B) applies.

"(d) PROCEEDING AFTER HEARING.—

"(1) JUDICIAL REVIEW OF DETERMINATION.—The person may, within 30 days of a determination under this section, appeal such determination—

"(A) to the Tax Court (and the Tax Court shall have jurisdiction to hear such matter); or

"(B) if the Tax Court does not have jurisdiction of the underlying tax liability, to a district court of the United States.

If a court determines that the appeal was to an incorrect court, a person shall have 30 days after the court determination to file such appeal with the correct court.

"(2) JURISDICTION RETAINED AT IRS OFFICE OF APPEALS.—The Internal Revenue Service Office of Appeals shall retain jurisdiction with respect to any determination made under this section, including subsequent hearings requested by the person who requested the original hearing on issues regarding—

"(A) collection actions taken or proposed with respect to such determination; and

"(B) after the person has exhausted all administrative remedies, a change in circumstances with respect to such person which affects such determination.

"(e) SUSPENSION OF COLLECTIONS AND STATUTE OF LIMITATIONS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), if a hearing is requested under subsection (a)(3)(B), the levy actions which are the subject of the requested hearing and the running of any period of limitations under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), or section 6532 (relating to other suits) shall be suspended for the period during which such hearing, and appeals therein, are pending. In no event shall any such period expire before the 90th day after the day on which there is a final determination in such hearing.

"(2) LEVY UPON APPEAL.—Paragraph (1) shall not apply to a levy action while an appeal is pending if the underlying tax liability is not at issue in the appeal and the court determines that the Secretary has shown good cause not to suspend the levy.

"(f) JEOPARDY AND STATE REFUND COLLECTION.—If—

"(1) the Secretary has made a finding under the last sentence of section 6331(a) that the collection of tax is in jeopardy; or

"(2) the Secretary has served a levy on a State to collect a Federal tax liability from a State tax refund,

this section shall not apply, except that the taxpayer shall be given the opportunity for the hearing described in this section within a reasonable period of time after the levy.

"PART II—LEVY".

(c) REVIEW BY SPECIAL TRIAL JUDGES ALLOWED.—

(1) IN GENERAL.—Section 7443(b) (relating to proceedings which may be assigned to special trial judges) is amended by striking "and" at the end of paragraph (3), by redesignating paragraph (4) as paragraph (5), and by inserting after paragraph (3) the following new paragraph:

"(4) any proceeding under section 6320 or 6330, and".

(2) AUTHORITY TO MAKE DECISIONS.—Section 7443(c) (relating to authority to make court decisions) is amended by striking "or (3)" and inserting "(3), or (4)".

Applicability. 26 USC 6320 note.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to collection actions initiated after the date which is 180 days after the date of the enactment of this Act.

PART II—EXAMINATION ACTIVITIES

SEC. 3411. CONFIDENTIALITY PRIVILEGES RELATING TO TAXPAYER COMMUNICATIONS.

(a) IN GENERAL.—Chapter 77 (relating to miscellaneous provisions) is amended by adding at the end the following new section:

"SEC. 7525. CONFIDENTIALITY PRIVILEGES RELATING TO TAXPAYER COMMUNICATIONS.

"(a) UNIFORM APPLICATION TO TAXPAYER COMMUNICATIONS WITH FEDERALLY AUTHORIZED PRACTITIONERS.—

"(1) GENERAL RULE.—With respect to tax advice, the same common law protections of confidentiality which apply to a communication between a taxpayer and an attorney shall also apply to a communication between a taxpayer and any federally authorized tax practitioner to the extent the communication would be considered a privileged communication if it were between a taxpayer and an attorney.

"(2) LIMITATIONS.—Paragraph (1) may only be asserted in—

"(A) any noncriminal tax matter before the Internal Revenue Service; and

"(B) any noncriminal tax proceeding in Federal court brought by or against the United States.

"(3) DEFINITIONS.—For purposes of this subsection—

"(A) FEDERALLY AUTHORIZED TAX PRACTITIONER.—The term 'federally authorized tax practitioner' means any individual who is authorized under Federal law to practice before the Internal Revenue Service if such practice is subject to Federal regulation under section 330 of title 31, United States Code.

"(B) TAX ADVICE.—The term 'tax advice' means advice given by an individual with respect to a matter which is within the scope of the individual's authority to practice described in subparagraph (A).

"(b) SECTION NOT TO APPLY TO COMMUNICATIONS REGARDING CORPORATE TAX SHELTERS.—The privilege under subsection (a) shall not apply to any written communication between a federally authorized tax practitioner and a director, shareholder, officer, or employee, agent, or representative of a corporation in connection with the promotion of the direct or indirect participation of such corporation in any tax shelter (as defined in section 6662(d)(2)(C)(iii)).".

(b) CONFORMING AMENDMENT.—The table of sections for such chapter 77 is amended by adding at the end the following new item:

"Sec. 7525. Confidentiality privileges relating to taxpayer communications.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to communications made on or after the date of the enactment of this Act.

Applicability. 26 USC 7525 note.

SEC. 3412. LIMITATION ON FINANCIAL STATUS AUDIT TECHNIQUES.

Section 7602 (relating to examination of books and witnesses) is amended by adding at the end the following new subsection:

"(d) LIMITATION ON EXAMINATION ON UNREPORTED INCOME.—The Secretary shall not use financial status or economic reality examination techniques to determine the existence of unreported income of any taxpayer unless the Secretary has a reasonable indication that there is a likelihood of such unreported income.".

SEC. 3413. SOFTWARE TRADE SECRETS PROTECTION.

(a) IN GENERAL.—Subchapter A of chapter 78 (relating to examination and inspection) is amended by redesignating section 7612 as section 7613 and by inserting after 7611 the following new section:

"SEC. 7612. SPECIAL PROCEDURES FOR SUMMONSES FOR COMPUTER SOFTWARE.

"(a) GENERAL RULE.—For purposes of this title—

"(1) except as provided in subsection (b), no summons may be issued under this title, and the Secretary may not begin any action under section 7604 to enforce any summons to produce or analyze any tax-related computer software source code; and

"(2) any software and related materials which are provided to the Secretary under this title shall be subject to the safeguards under subsection (c).

"(b) CIRCUMSTANCES UNDER WHICH COMPUTER SOFTWARE SOURCE CODE MAY BE PROVIDED.—

"(1) IN GENERAL.—Subsection (a)(1) shall not apply to any portion, item, or component of tax-related computer software source code if—

"(A) the Secretary is unable to otherwise reasonably ascertain the correctness of any item on a return from—

"(i) the taxpayer's books, papers, records, or other data; or

"(ii) the computer software executable code (and any modifications thereof) to which such source code relates and any associated data which, when executed, produces the output to ascertain the correctness of the item;

"(B) the Secretary identifies with reasonable specificity the portion, item, or component of such source code needed to verify the correctness of such item on the return; and

"(C) the Secretary determines that the need for the portion, item, or component of such source code with respect to such item outweighs the risks of unauthorized disclosure of trade secrets.

"(2) EXCEPTIONS.—Subsection (a)(1) shall not apply to—

"(A) any inquiry into any offense connected with the administration or enforcement of the internal revenue laws;

"(B) any tax-related computer software source code acquired or developed by the taxpayer or a related person primarily for internal use by the taxpayer or such person rather than for commercial distribution;

"(C) any communications between the owner of the tax-related computer software source code and the taxpayer or related persons; or

"(D) any tax-related computer software source code which is required to be provided or made available pursuant to any other provision of this title.

"(3) COOPERATION REQUIRED.—For purposes of paragraph (1), the Secretary shall be treated as meeting the requirements of subparagraphs (A) and (B) of such paragraph if—

"(A) the Secretary determines that it is not feasible to determine the correctness of an item without access to the computer software executable code and associated data described in paragraph (1)(A)(ii);

"(B) the Secretary makes a formal request to the taxpayer for such code and data and to the owner of the computer software source code for such executable code; and

"(C) such code and data is not provided within 180 days of such request.

Courts.

"(4) RIGHT TO CONTEST SUMMONS.—In any proceeding brought under section 7604 to enforce a summons issued under the authority of this subsection, the court shall, at the request of any party, hold a hearing to determine whether the applicable requirements of this subsection have been met.

"(c) SAFEGUARDS TO ENSURE PROTECTION OF TRADE SECRETS AND OTHER CONFIDENTIAL INFORMATION.—

"(1) ENTRY OF PROTECTIVE ORDER.—In any court proceeding to enforce a summons for any portion of software, the court may receive evidence and issue any order necessary to prevent the disclosure of trade secrets or other confidential information with respect to such software, including requiring that any information be placed under seal to be opened only as directed by the court.

"(2) PROTECTION OF SOFTWARE.—Notwithstanding any other provision of this section, and in addition to any protections ordered pursuant to paragraph (1), in the case of software that comes into the possession or control of the Secretary in the course of any examination with respect to any taxpayer—

"(A) the software may be used only in connection with the examination of such taxpayer's return, any appeal by the taxpayer to the Internal Revenue Service Office of Appeals, any judicial proceeding (and any appeals therefrom), and any inquiry into any offense connected with the administration or enforcement of the internal revenue laws;

"(B) the Secretary shall provide, in advance, to the taxpayer and the owner of the software a written list of the names of all individuals who will analyze or otherwise have access to the software;

"(C) the software shall be maintained in a secure area or place, and, in the case of computer software source

code, shall not be removed from the owner's place of business unless the owner permits, or a court orders, such removal;

"(D) the software may not be copied except as necessary to perform such analysis, and the Secretary shall number all copies made and certify in writing that no other copies have been (or will be) made;

"(E) at the end of the period during which the software may be used under subparagraph (A)—

"(i) the software and all copies thereof shall be returned to the person from whom they were obtained and any copies thereof made under subparagraph (D) on the hard drive of a machine or other mass storage device shall be permanently deleted; and

"(ii) the Secretary shall obtain from any person who analyzes or otherwise had access to such software a written certification under penalty of perjury that all copies and related materials have been returned and that no copies were made of them;

"(F) the software may not be decompiled or disassembled;

"(G) the Secretary shall provide to the taxpayer and the owner of any interest in such software, as the case may be, a written agreement, between the Secretary and any person who is not an officer or employee of the United States and who will analyze or otherwise have access to such software, which provides that such person agrees not to—

"(i) disclose such software to any person other than persons to whom such information could be disclosed for tax administration purposes under section 6103; or

"(ii) participate for 2 years in the development of software which is intended for a similar purpose as the software examined; and

"(H) the software shall be treated as return information for purposes of section 6103.

For purposes of subparagraph (C), the owner shall make available any necessary equipment or materials for analysis of computer software source code required to be conducted on the owner's premises. The owner of any interest in the software shall be considered a party to any agreement described in subparagraph (G).

"(d) DEFINITIONS.—For purposes of this section—

"(1) SOFTWARE.—The term 'software' includes computer software source code and computer software executable code.

"(2) COMPUTER SOFTWARE SOURCE CODE.—The term 'computer software source code' means—

"(A) the code written by a programmer using a programming language which is comprehensible to appropriately trained persons and is not capable of directly being used to give instructions to a computer;

"(B) related programmers' notes, design documents, memoranda, and similar documentation; and

"(C) related customer communications.

"(3) COMPUTER SOFTWARE EXECUTABLE CODE.—The term 'computer software executable code' means—

"(A) any object code, machine code, or other code readable by a computer when loaded into its memory and used directly by such computer to execute instructions; and

"(B) any related user manuals.

"(4) OWNER.—The term 'owner' shall, with respect to any software, include the developer of the software.

"(5) RELATED PERSON.—A person shall be treated as related to another person if such persons are related persons under section 267 or 707(b).

"(6) TAX-RELATED COMPUTER SOFTWARE SOURCE CODE.—The term 'tax-related computer software source code' means the computer source code for any computer software program intended for accounting, tax return preparation or compliance, or tax planning.".

(b) UNAUTHORIZED DISCLOSURE OF SOFTWARE.—Section 7213 (relating to unauthorized disclosure of information) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) DISCLOSURE OF SOFTWARE.—Any person who willfully divulges or makes known software (as defined in section 7612(d)(1)) to any person in violation of section 7612 shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution.".

(c) APPLICATION OF SPECIAL PROCEDURES FOR THIRD-PARTY SUMMONSES.—Paragraph (2) of section 7603(b), as amended by section 3416(a), is amended by striking "and" at the end of subparagraph (H), by striking a period at the end of subparagraph (I) and inserting ", and", and by adding at the end the following new subparagraph:

"(J) any owner or developer of a computer software source code (as defined in section 7612(d)(2)).

Applicability.

Subparagraph (J) shall apply only with respect to a summons requiring the production of the source code referred to in subparagraph (J) or the program and data described in section 7612(b)(1)(A)(ii) to which such source code relates.".

(d) CONFORMING AMENDMENT.—The table of sections for subchapter A of chapter 78 is amended by striking the item relating to section 7612 and by inserting the following new item:

"Sec. 7612. Special procedures for summonses for computer software.
"Sec. 7613. Cross references.".

Applicability.
26 USC 7612 note.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to summonses issued, and software acquired, after the date of the enactment of this Act.

(2) SOFTWARE PROTECTION.—In the case of any software acquired on or before such date of enactment, the requirements of section 7612(a)(2) of the Internal Revenue Code of 1986 (as added by such amendments) shall apply after the 90th day after such date. The preceding sentence shall not apply to the requirement under section 7612(c)(2)(G)(ii) of such Code (as so added).

SEC. 3414. THREAT OF AUDIT PROHIBITED TO COERCE TIP REPORTING ALTERNATIVE COMMITMENT AGREEMENTS.

26 USC 6053 note.

The Secretary of the Treasury or the Secretary's delegate shall instruct employees of the Internal Revenue Service that they may not threaten to audit any taxpayer in an attempt to coerce the taxpayer into entering into a Tip Reporting Alternative Commitment Agreement.

SEC. 3415. TAXPAYERS ALLOWED MOTION TO QUASH ALL THIRD-PARTY SUMMONSES.

(a) IN GENERAL.—Paragraph (1) of section 7609(a) (relating to summonses to which section applies) is amended by striking so much of such paragraph as precedes "notice of the summons" and inserting the following:

"(1) IN GENERAL.—If any summons to which this section applies requires the giving of testimony on or relating to, the production of any portion of records made or kept on or relating to, or the production of any computer software source code (as defined in 7612(d)(2)) with respect to, any person (other than the person summoned) who is identified in the summons, then".

(b) COORDINATION WITH OTHER AUTHORITY.—Section 7609 (relating to special procedures for third-party summonses) is amended by adding at the end the following new subsection:

"(j) USE OF SUMMONS NOT REQUIRED.—Nothing in this section shall be construed to limit the Secretary's ability to obtain information, other than by summons, through formal or informal procedures authorized by sections 7601 and 7602.".

(c) CONFORMING AMENDMENTS.—

(1) Subsection (a) of section 7609 is amended by striking paragraphs (3) and (4), by redesignating paragraph (5) as paragraph (3), and by striking in paragraph (3) (as so redesignated) "subsection (c)(2)(B)" and inserting "subsection (c)(2)(D)".

(2) Subsection (c) of section 7609 is amended to read as follows:

"(c) SUMMONS TO WHICH SECTION APPLIES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), this section shall apply to any summons issued under paragraph (2) of section 7602(a) or under section 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7612.

"(2) EXCEPTIONS.—This section shall not apply to any summons—

"(A) served on the person with respect to whose liability the summons is issued, or any officer or employee of such person;

"(B) issued to determine whether or not records of the business transactions or affairs of an identified person have been made or kept;

"(C) issued solely to determine the identity of any person having a numbered account (or similar arrangement) with a bank or other institution described in section 7603(b)(2)(A);

"(D) issued in aid of the collection of—

"(i) an assessment made or judgment rendered against the person with respect to whose liability the summons is issued; or

"(ii) the liability at law or in equity of any transferee or fiduciary of any person referred to in clause (i);

"(E)(i) issued by a criminal investigator of the Internal Revenue Service in connection with the investigation of an offense connected with the administration or enforcement of the internal revenue laws; and

"(ii) served on any person who is not a third-party recordkeeper (as defined in section 7603(b)); or

"(F) described in subsection (f) or (g).

"(3) RECORDS.—For purposes of this section, the term 'records' includes books, papers, and other data.".

(3) Paragraph (2) of section 7609(e) is amended by striking "third-party recordkeeper's" and all that follows through "subsection (f)" and inserting "summoned party's response to the summons".

(4) Subsection (f) of section 7609 is amended—

(A) by striking "described in subsection (c)" and inserting "described in subsection (c)(1)"; and

(B) by inserting "or testimony" after "records" in paragraph (3).

(5) Subsection (g) of section 7609 is amended by striking "In the case of any summons described in subsection (c), the provisions of subsections (a)(1) and (b) shall not apply if" and inserting "A summons is described in this subsection if".

(6)(A) Subsection (i) of section 7609 is amended by striking "THIRD-PARTY RECORDKEEPER AND" in the subsection heading.

(B) Paragraph (1) of section 7609(i) is amended by striking "described in subsection (c), the third-party recordkeeper" and inserting "to which this section applies for the production of records, the summoned party".

(C) Paragraph (2) of section 7609(i) is amended—

(i) by striking "RECORDKEEPER" in the heading and inserting "SUMMONED PARTY"; and

(ii) by striking "the third-party recordkeeper" and inserting "the summoned party".

(D) Paragraph (3) of section 7609(i) is amended to read as follows:

"(3) PROTECTION FOR SUMMONED PARTY WHO DISCLOSES.—Any summoned party, or agent or employee thereof, making a disclosure of records or testimony pursuant to this section in good faith reliance on the certificate of the Secretary or an order of a court requiring production of records or the giving of such testimony shall not be liable to any customer or other person for such disclosure.".

Applicability. 26 USC 7609 note.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to summonses served after the date of the enactment of this Act.

SEC. 3416. SERVICE OF SUMMONSES TO THIRD-PARTY RECORDKEEPERS PERMITTED BY MAIL.

(a) IN GENERAL.—Section 7603 (relating to service of summons) is amended by striking "A summons issued" and inserting "(a) IN GENERAL.—A summons issued" and by adding at the end the following new subsection:

"(b) SERVICE BY MAIL TO THIRD-PARTY RECORDKEEPERS.—

"(1) IN GENERAL.—A summons referred to in subsection (a) for the production of books, papers, records, or other data by a third-party recordkeeper may also be served by certified or registered mail to the last known address of such recordkeeper.

"(2) THIRD-PARTY RECORDKEEPER.—For purposes of paragraph (1), the term 'third-party recordkeeper' means—

"(A) any mutual savings bank, cooperative bank, domestic building and loan association, or other savings institution chartered and supervised as a savings and loan or similar association under Federal or State law, any bank (as defined in section 581), or any credit union (within the meaning of section 501(c)(14)(A));

"(B) any consumer reporting agency (as defined under section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)));

"(C) any person extending credit through the use of credit cards or similar devices;

"(D) any broker (as defined in section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)));

"(E) any attorney;

"(F) any accountant;

"(G) any barter exchange (as defined in section 6045(c)(3));

"(H) any regulated investment company (as defined in section 851) and any agent of such regulated investment company when acting as an agent thereof, and

"(I) any enrolled agent.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to summonses served after the date of the enactment of this Act.

Applicability.
26 USC 7603 note.

SEC. 3417. NOTICE OF INTERNAL REVENUE SERVICE CONTACT OF THIRD PARTIES.

(a) IN GENERAL.—Section 7602 (relating to examination of books and witnesses), as amended by section 3412, is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

"(c) NOTICE OF CONTACT OF THIRD PARTIES.—

"(1) GENERAL NOTICE.—An officer or employee of the Internal Revenue Service may not contact any person other than the taxpayer with respect to the determination or collection of the tax liability of such taxpayer without providing reasonable notice in advance to the taxpayer that contacts with persons other than the taxpayer may be made.

"(2) NOTICE OF SPECIFIC CONTACTS.—The Secretary shall periodically provide to a taxpayer a record of persons contacted during such period by the Secretary with respect to the determination or collection of the tax liability of such taxpayer. Such record shall also be provided upon request of the taxpayer.

Records.

"(3) EXCEPTIONS.—This subsection shall not apply—

"(A) to any contact which the taxpayer has authorized;

"(B) if the Secretary determines for good cause shown that such notice would jeopardize collection of any tax or such notice may involve reprisal against any person; or

"(C) with respect to any pending criminal investigation.".

Applicability. 26 USC 7602 note.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to contacts made after the 180th day after the date of the enactment of this Act.

PART III—COLLECTION ACTIVITIES

Subpart A—Approval Process

26 USC 6301 note. Procedures.

SEC. 3421. APPROVAL PROCESS FOR LIENS, LEVIES, AND SEIZURES.

(a) IN GENERAL.—The Commissioner of Internal Revenue shall develop and implement procedures under which—

(1) a determination by an employee to file a notice of lien or levy with respect to, or to levy or seize, any property or right to property would, where appropriate, be required to be reviewed by a supervisor of the employee before the action was taken; and

(2) appropriate disciplinary action would be taken against the employee or supervisor where the procedures under paragraph (1) were not followed.

(b) REVIEW PROCESS.—The review process under subsection (a)(1) may include a certification that the employee has—

(1) reviewed the taxpayer's information;

(2) verified that a balance is due; and

(3) affirmed that the action proposed to be taken is appropriate given the taxpayer's circumstances, considering the amount due and the value of the property or right to property.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), this section shall take effect on the date of the enactment of this Act.

Applicability.

(2) AUTOMATED COLLECTION SYSTEM ACTIONS.—In the case of any action under an automated collection system, this section shall apply to actions initiated after December 31, 2000.

Subpart B—Liens and Levies

SEC. 3431. MODIFICATIONS TO CERTAIN LEVY EXEMPTION AMOUNTS.

(a) FUEL, ETC.—Section 6334(a)(2) (relating to fuel, provisions, furniture, and personal effects) is amended by striking "$2,500" and inserting "$6,250".

(b) BOOKS, ETC.—Section 6334(a)(3) (relating to books and tools of a trade, business, or profession) is amended by striking "$1,250" and inserting "$3,125".

(c) CONFORMING AMENDMENT.—Section 6334(g)(1) (relating to inflation adjustment) is amended—

(1) by striking "1997" and inserting "1999"; and

(2) by striking "1996" in subparagraph (B) and inserting "1998".

26 USC 6334 note.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect with respect to levies issued after the date of the enactment of this Act.

SEC. 3432. RELEASE OF LEVY UPON AGREEMENT THAT AMOUNT IS UNCOLLECTIBLE.

(a) IN GENERAL.—Section 6343 (relating to authority to release levy and return property) is amended by adding at the end the following new subsection:

"(e) RELEASE OF LEVY UPON AGREEMENT THAT AMOUNT IS NOT COLLECTIBLE.—In the case of a levy on the salary or wages payable to or received by the taxpayer, upon agreement with the taxpayer that the tax is not collectible, the Secretary shall release such levy as soon as practicable.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to levies imposed after December 31, 1999.

Applicability. 26 USC 6343 note.

SEC. 3433. LEVY PROHIBITED DURING PENDENCY OF REFUND PROCEEDINGS.

(a) IN GENERAL.—Section 6331 (relating to levy and distraint) is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

"(i) NO LEVY DURING PENDENCY OF PROCEEDINGS FOR REFUND OF DIVISIBLE TAX.—

"(1) IN GENERAL.—No levy may be made under subsection (a) on the property or rights to property of any person with respect to any unpaid divisible tax during the pendency of any proceeding brought by such person in a proper Federal trial court for the recovery of any portion of such divisible tax which was paid by such person if—

"(A) the decision in such proceeding would be res judicata with respect to such unpaid tax; or

"(B) such person would be collaterally estopped from contesting such unpaid tax by reason of such proceeding.

"(2) DIVISIBLE TAX.—For purposes of paragraph (1), the term 'divisible tax' means—

"(A) any tax imposed by subtitle C; and

"(B) the penalty imposed by section 6672 with respect to any such tax.

"(3) EXCEPTIONS.—

"(A) CERTAIN UNPAID TAXES.—This subsection shall not apply with respect to any unpaid tax if—

"(i) the taxpayer files a written notice with the Secretary which waives the restriction imposed by this subsection on levy with respect to such tax; or

"(ii) the Secretary finds that the collection of such tax is in jeopardy.

"(B) CERTAIN LEVIES.—This subsection shall not apply to—

"(i) any levy to carry out an offset under section 6402; and

"(ii) any levy which was first made before the date that the applicable proceeding under this subsection commenced.

"(4) LIMITATION ON COLLECTION ACTIVITY; AUTHORITY TO ENJOIN COLLECTION.—

"(A) LIMITATION ON COLLECTION.—No proceeding in court for the collection of any unpaid tax to which paragraph (1) applies shall be begun by the Secretary during the pendency of a proceeding under such paragraph. This subparagraph shall not apply to—

"(i) any counterclaim in a proceeding under such paragraph; or

"(ii) any proceeding relating to a proceeding under such paragraph.

"(B) AUTHORITY TO ENJOIN.—Notwithstanding section 7421(a), a levy or collection proceeding prohibited by this subsection may be enjoined (during the period such prohibition is in force) by the court in which the proceeding under paragraph (1) is brought.

"(5) SUSPENSION OF STATUTE OF LIMITATIONS ON COLLECTION.—The period of limitations under section 6502 shall be suspended for the period during which the Secretary is prohibited under this subsection from making a levy.

"(6) PENDENCY OF PROCEEDING.—For purposes of this subsection, a proceeding is pending beginning on the date such proceeding commences and ending on the date that a final order or judgment from which an appeal may be taken is entered in such proceeding.".

26 USC 6331 note.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to unpaid tax attributable to taxable periods beginning after December 31, 1998.

SEC. 3434. APPROVAL REQUIRED FOR JEOPARDY AND TERMINATION ASSESSMENTS AND JEOPARDY LEVIES.

(a) IN GENERAL.—Paragraph (1) of section 7429(a) (relating to review of jeopardy levy or assessment procedures) is amended to read as follows:

"(1) ADMINISTRATIVE REVIEW.—

"(A) PRIOR APPROVAL REQUIRED.—No assessment may be made under section 6851(a), 6852(a), 6861(a), or 6862, and no levy may be made under section 6331(a) less than 30 days after notice and demand for payment is made, unless the Chief Counsel for the Internal Revenue Service (or such Counsel's delegate) personally approves (in writing) such assessment or levy.

"(B) INFORMATION TO TAXPAYER.—Within 5 days after the day on which such an assessment or levy is made, the Secretary shall provide the taxpayer with a written statement of the information upon which the Secretary relied in making such assessment or levy.".

Applicability. 26 USC 7429 note.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxes assessed and levies made after the date of the enactment of this Act.

SEC. 3435. INCREASE IN AMOUNT OF CERTAIN PROPERTY ON WHICH LIEN NOT VALID.

(a) CERTAIN PROPERTY.—

(1) IN GENERAL.—Subsection (b) of section 6323 (relating to validity and priority against certain persons) is amended—

(A) by striking "$250" in paragraph (4) (relating to personal property purchased in casual sale) and inserting "$1,000"; and

(B) by striking "$1,000" in paragraph (7) (relating to residential property subject to a mechanic's lien for certain repairs and improvements) and inserting "$5,000".

(2) INFLATION ADJUSTMENT.—Subsection (i) of section 6323 (relating to special rules) is amended by adding at the end the following new paragraph:

"(4) COST-OF-LIVING ADJUSTMENT.—In the case of notices of liens imposed by section 6321 which are filed in any calendar year after 1998, each of the dollar amounts under paragraph (4) or (7) of subsection (b) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year, determined by substituting 'calendar year 1996' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $10, such amount shall be rounded to the nearest multiple of $10.".

(b) EXPANSION OF TREATMENT OF PASSBOOK LOANS.—Paragraph (10) of section 6323(b) is amended—

(1) by striking "PASSBOOK LOANS" in the heading and inserting "DEPOSIT-SECURED LOANS";

(2) by striking ", evidenced by a passbook,"; and

(3) by striking all that follows "secured by such account" and inserting a period.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act. 26 USC 6323 note.

SEC. 3436. WAIVER OF EARLY WITHDRAWAL TAX FOR INTERNAL REVENUE SERVICE LEVIES ON EMPLOYER-SPONSORED RETIREMENT PLANS OR IRAs.

(a) IN GENERAL.—Section 72(t)(2)(A) (relating to subsection not to apply to certain distributions) is amended by striking "or" at the end of clauses (iv) and (v), by striking the period at the end of clause (vi) and inserting ", or", and by adding at the end the following new clause:

"(vii) made on account of a levy under section 6331 on the qualified retirement plan.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after December 31, 1999. Applicability. 26 USC 72 note.

Subpart C—Seizures

SEC. 3441. PROHIBITION OF SALES OF SEIZED PROPERTY AT LESS THAN MINIMUM BID.

(a) IN GENERAL.—Section 6335(e)(1)(A)(i) (relating to determinations relating to minimum price) is amended by striking "a minimum price for which such property shall be sold" and inserting "a minimum price below which such property shall not be sold".

(b) REFERENCE TO PENALTY FOR VIOLATION.—Section 6335(e) is amended by adding at the end the following new paragraph:

"(4) CROSS REFERENCE.—

"For provision providing for civil damages for violation of paragraph (1)(A)(i), see section 7433.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales made after the date of the enactment of this Act. Applicability. 26 USC 6335 note.

SEC. 3442. ACCOUNTING OF SALES OF SEIZED PROPERTY.

(a) IN GENERAL.—Section 6340 (relating to records of sale) is amended—

(1) in subsection (a)—

(A) by striking "real"; and

(B) by inserting "or certificate of sale of personal property" after "deed"; and

(2) by adding at the end the following new subsection:

"(c) ACCOUNTING TO TAXPAYER.—The taxpayer with respect to whose liability the sale was conducted or who redeemed the property shall be furnished—

"(1) the record under subsection (a) (other than the names of the purchasers);

"(2) the amount from such sale applied to the taxpayer's liability; and

"(3) the remaining balance of such liability.".

Applicability. 26 USC 6340 note.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to seizures occurring after the date of the enactment of this Act.

26 USC 6335 note. Deadline.

SEC. 3443. UNIFORM ASSET DISPOSAL MECHANISM.

Not later than the date which is 2 years after the date of the enactment of this Act, the Secretary of the Treasury or the Secretary's delegate shall implement a uniform asset disposal mechanism for sales under section 6335 of the Internal Revenue Code of 1986. The mechanism should be designed to remove any participation in such sales by revenue officers of the Internal Revenue Service and should consider the use of outsourcing.

SEC. 3444. CODIFICATION OF INTERNAL REVENUE SERVICE ADMINISTRATIVE PROCEDURES FOR SEIZURE OF TAXPAYER'S PROPERTY.

(a) IN GENERAL.—Section 6331 (relating to levy and distraint), as amended by section 3433, is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

"(j) NO LEVY BEFORE INVESTIGATION OF STATUS OF PROPERTY.—

"(1) IN GENERAL.—For purposes of applying the provisions of this subchapter, no levy may be made on any property or right to property which is to be sold under section 6335 until a thorough investigation of the status of such property has been completed.

"(2) ELEMENTS IN INVESTIGATION.—For purposes of paragraph (1), an investigation of the status of any property shall include—

"(A) a verification of the taxpayer's liability;

"(B) the completion of an analysis under subsection (f);

"(C) the determination that the equity in such property is sufficient to yield net proceeds from the sale of such property to apply to such liability; and

"(D) a thorough consideration of alternative collection methods.".

26 USC 6331 note.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 3445. PROCEDURES FOR SEIZURE OF RESIDENCES AND BUSINESSES.

(a) IN GENERAL.—Section 6334(a)(13) (relating to property exempt from levy) is amended to read as follows:

"(13) RESIDENCES EXEMPT IN SMALL DEFICIENCY CASES AND PRINCIPAL RESIDENCES AND CERTAIN BUSINESS ASSETS EXEMPT IN ABSENCE OF CERTAIN APPROVAL OR JEOPARDY.—

"(A) RESIDENCES IN SMALL DEFICIENCY CASES.—If the amount of the levy does not exceed $5,000—

"(i) any real property used as a residence by the taxpayer; or

"(ii) any real property of the taxpayer (other than real property which is rented) used by any other individual as a residence.

"(B) PRINCIPAL RESIDENCES AND CERTAIN BUSINESS ASSETS.—Except to the extent provided in subsection (e)—

"(i) the principal residence of the taxpayer (within the meaning of section 121); and

"(ii) tangible personal property or real property (other than real property which is rented) used in the trade or business of an individual taxpayer.".

(b) LEVY ALLOWED IN CERTAIN CIRCUMSTANCES.—Section 6334(e) is amended to read as follows:

"(e) LEVY ALLOWED ON PRINCIPAL RESIDENCES AND CERTAIN BUSINESS ASSETS IN CERTAIN CIRCUMSTANCES.—

"(1) PRINCIPAL RESIDENCES.—

"(A) APPROVAL REQUIRED.—A principal residence shall not be exempt from levy if a judge or magistrate of a district court of the United States approves (in writing) the levy of such residence.

"(B) JURISDICTION.—The district courts of the United States shall have exclusive jurisdiction to approve a levy under subparagraph (A).

"(2) CERTAIN BUSINESS ASSETS.—Property (other than a principal residence) described in subsection (a)(13)(B) shall not be exempt from levy if—

"(A) a district director or assistant district director of the Internal Revenue Service personally approves (in writing) the levy of such property; or

"(B) the Secretary finds that the collection of tax is in jeopardy.

An official may not approve a levy under subparagraph (A) unless the official determines that the taxpayer's other assets subject to collection are insufficient to pay the amount due, together with expenses of the proceedings.".

(c) STATE FISH AND WILDLIFE PERMITS.— 26 USC 6334 note.

(1) IN GENERAL.—With respect to permits issued by a State and required under State law for the harvest of fish or wildlife in the trade or business of an individual taxpayer, the term "other assets" as used in section 6334(e)(2) of the Internal Revenue Code of 1986 shall include future income which may be derived by such taxpayer from the commercial sale of fish or wildlife under such permit.

(2) CONSTRUCTION.—Paragraph (1) shall not be construed to invalidate or in any way prejudice any assertion that the privilege embodied in permits described in paragraph (1) is not property or a right to property under the Internal Revenue Code of 1986.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act. 26 USC 6334 note.

PART IV—PROVISIONS RELATING TO EXAMINATION AND COLLECTION ACTIVITIES

SEC. 3461. PROCEDURES RELATING TO EXTENSIONS OF STATUTE OF LIMITATIONS BY AGREEMENT.

(a) AUTHORITY TO EXTEND 10-YEAR COLLECTION PERIOD AFTER ASSESSMENT.—Section 6502(a) (relating to length of period after collection) is amended—

(1) by striking paragraph (2) and inserting:

"(2) if—

"(A) there is an installment agreement between the taxpayer and the Secretary, prior to the date which is 90 days after the expiration of any period for collection agreed upon in writing by the Secretary and the taxpayer at the time the installment agreement was entered into; or

"(B) there is a release of levy under section 6343 after such 10-year period, prior to the expiration of any period for collection agreed upon in writing by the Secretary and the taxpayer before such release."; and

(2) by striking the first sentence in the matter following paragraph (2).

(b) NOTICE TO TAXPAYER OF RIGHT TO REFUSE OR LIMIT EXTENSION.—Paragraph (4) of section 6501(c) (relating to the period for limitations on assessment and collection) is amended—

(1) by striking "Where" and inserting the following:

"(A) IN GENERAL.—Where"; and

(2) by adding at the end the following new subparagraph:

"(B) NOTICE TO TAXPAYER OF RIGHT TO REFUSE OR LIMIT EXTENSION.—The Secretary shall notify the taxpayer of the taxpayer's right to refuse to extend the period of limitations, or to limit such extension to particular issues or to a particular period of time, on each occasion when the taxpayer is requested to provide such consent.".

26 USC 6501 note. Applicability.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to requests to extend the period of limitations made after December 31, 1999.

Expiration date.

(2) PRIOR REQUEST.—If, in any request to extend the period of limitations made on or before December 31, 1999, a taxpayer agreed to extend such period beyond the 10-year period referred to in section 6502(a) of the Internal Revenue Code of 1986, such extension shall expire on the latest of—

(A) the last day of such 10-year period;

(B) December 31, 2002; or

(C) in the case of an extension in connection with an installment agreement, the 90th day after the end of the period of such extension.

SEC. 3462. OFFERS-IN-COMPROMISE.

(a) STANDARDS FOR EVALUATION OF OFFERS-IN-COMPROMISE.—Section 7122 (relating to offers-in-compromise) is amended by adding at the end the following new subsection:

Guidelines.

"(c) STANDARDS FOR EVALUATION OF OFFERS.—

"(1) IN GENERAL.—The Secretary shall prescribe guidelines for officers and employees of the Internal Revenue Service

to determine whether an offer-in-compromise is adequate and should be accepted to resolve a dispute.

"(2) ALLOWANCES FOR BASIC LIVING EXPENSES.—

"(A) IN GENERAL.—In prescribing guidelines under paragraph (1), the Secretary shall develop and publish schedules of national and local allowances designed to provide that taxpayers entering into a compromise have an adequate means to provide for basic living expenses. Publication.

"(B) USE OF SCHEDULES.—The guidelines shall provide that officers and employees of the Internal Revenue Service shall determine, on the basis of the facts and circumstances of each taxpayer, whether the use of the schedules published under subparagraph (A) is appropriate and shall not use the schedules to the extent such use would result in the taxpayer not having adequate means to provide for basic living expenses.

"(3) SPECIAL RULES RELATING TO TREATMENT OF OFFERS.—The guidelines under paragraph (1) shall provide that—

"(A) an officer or employee of the Internal Revenue Service shall not reject an offer-in-compromise from a low-income taxpayer solely on the basis of the amount of the offer; and

"(B) in the case of an offer-in-compromise which relates only to issues of liability of the taxpayer—

"(i) such offer shall not be rejected solely because the Secretary is unable to locate the taxpayer's return or return information for verification of such liability; and

"(ii) the taxpayer shall not be required to provide a financial statement.".

(b) LEVY PROHIBITED WHILE OFFER-IN-COMPROMISE PENDING OR INSTALLMENT AGREEMENT PENDING OR IN EFFECT.—Section 6331 (relating to levy and distraint), as amended by sections 3433 and 3444, is amended by redesignating subsection (k) as subsection (l) and by inserting after subsection (j) the following new subsection:

"(k) NO LEVY WHILE CERTAIN OFFERS PENDING OR INSTALLMENT AGREEMENT PENDING OR IN EFFECT.—

"(1) OFFER-IN-COMPROMISE PENDING.—No levy may be made under subsection (a) on the property or rights to property of any person with respect to any unpaid tax—

"(A) during the period that an offer-in-compromise by such person under section 7122 of such unpaid tax is pending with the Secretary; and

"(B) if such offer is rejected by the Secretary, during the 30 days thereafter (and, if an appeal of such rejection is filed within such 30 days, during the period that such appeal is pending).

For purposes of subparagraph (A), an offer is pending beginning on the date the Secretary accepts such offer for processing.

"(2) INSTALLMENT AGREEMENTS.—No levy may be made under subsection (a) on the property or rights to property of any person with respect to any unpaid tax—

"(A) during the period that an offer by such person for an installment agreement under section 6159 for payment of such unpaid tax is pending with the Secretary;

"(B) if such offer is rejected by the Secretary, during the 30 days thereafter (and, if an appeal of such rejection

is filed within such 30 days, during the period that such appeal is pending);

"(C) during the period that such an installment agreement for payment of such unpaid tax is in effect; and

"(D) if such agreement is terminated by the Secretary, during the 30 days thereafter (and, if an appeal of such termination is filed within such 30 days, during the period that such appeal is pending).

"(3) CERTAIN RULES TO APPLY.—Rules similar to the rules of paragraphs (3), (4), and (5) of subsection (i) shall apply for purposes of this subsection.".

(c) REVIEW OF REJECTIONS OF OFFERS-IN-COMPROMISE AND INSTALLMENT AGREEMENTS.—

(1) IN GENERAL.—Section 7122 (relating to compromises), as amended by subsection (a), is amended by adding at the end the following new subsection:

Procedures.

"(d) ADMINISTRATIVE REVIEW.—The Secretary shall establish procedures—

"(1) for an independent administrative review of any rejection of a proposed offer-in-compromise or installment agreement made by a taxpayer under this section or section 6159 before such rejection is communicated to the taxpayer; and

"(2) which allow a taxpayer to appeal any rejection of such offer or agreement to the Internal Revenue Service Office of Appeals.".

(2) CONFORMING AMENDMENT.—Section 6159 (relating to installment agreements) is amended by adding at the end the following new subsection:

"(d) CROSS REFERENCE.—

"For rights to administrative review and appeal, see section 7122(d).".

26 USC 7122 note.

(d) PREPARATION OF STATEMENT RELATING TO OFFERS-IN-COMPROMISE.—The Secretary of the Treasury shall prepare a statement which sets forth in simple, nontechnical terms the rights of a taxpayer and the obligations of the Internal Revenue Service relating to offers-in-compromise. Such statement shall—

(1) advise taxpayers who have entered into a compromise of the advantages of promptly notifying the Internal Revenue Service of any change of address or marital status;

(2) provide notice to taxpayers that in the case of a compromise terminated due to the actions of one spouse or former spouse, the Internal Revenue Service will, upon application, reinstate such compromise with the spouse or former spouse who remains in compliance with such compromise; and

(3) provide notice to the taxpayer that the taxpayer may appeal the rejection of an offer-in-compromise to the Internal Revenue Service Office of Appeals.

Applicability. 26 USC 6331 note.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to proposed offers-in-compromise and installment agreements submitted after the date of the enactment of this Act.

(2) SUSPENSION OF COLLECTION BY LEVY.—The amendment made by subsection (b) shall apply to offers-in-compromise pending on or made after December 31, 1999.

SEC. 3463. NOTICE OF DEFICIENCY TO SPECIFY DEADLINES FOR FILING TAX COURT PETITION.

(a) IN GENERAL.—The Secretary of the Treasury or the Secretary's delegate shall include on each notice of deficiency under section 6212 of the Internal Revenue Code of 1986 the date determined by such Secretary (or delegate) as the last day on which the taxpayer may file a petition with the Tax Court. 26 USC 6212 note.

(b) LATER FILING DEADLINES SPECIFIED ON NOTICE OF DEFICIENCY TO BE BINDING.—Subsection (a) of section 6213 (relating to restrictions applicable to deficiencies; petition to Tax Court) is amended by adding at the end the following new sentence: "Any petition filed with the Tax Court on or before the last date specified for filing such petition by the Secretary in the notice of deficiency shall be treated as timely filed.".

(c) EFFECTIVE DATE.—Subsection (a) and the amendment made by subsection (b) shall apply to notices mailed after December 31, 1998. Applicability. 26 USC 6213 note.

SEC. 3464. REFUND OR CREDIT OF OVERPAYMENTS BEFORE FINAL DETERMINATION.

(a) TAX COURT PROCEEDINGS.—Subsection (a) of section 6213 is amended—

(1) by striking ", including the Tax Court." and inserting ", including the Tax Court, and a refund may be ordered by such court of any amount collected within the period during which the Secretary is prohibited from collecting by levy or through a proceeding in court under the provisions of this subsection."; and

(2) by striking "to enjoin any action or proceeding" and inserting "to enjoin any action or proceeding or order any refund".

(b) OTHER PROCEEDINGS.—Subsection (a) of section 6512 is amended by striking the period at the end of paragraph (4) and inserting ", and", and by inserting after paragraph (4) the following new paragraphs:

"(5) As to any amount collected within the period during which the Secretary is prohibited from making the assessment or from collecting by levy or through a proceeding in court under the provisions of section 6213(a); and

"(6) As to overpayments the Secretary is authorized to refund or credit pending appeal as provided in subsection (b).".

(c) REFUND OR CREDIT PENDING APPEAL.—Paragraph (1) of section 6512(b) is amended by adding at the end the following new sentence: "If a notice of appeal in respect of the decision of the Tax Court is filed under section 7483, the Secretary is authorized to refund or credit the overpayment determined by the Tax Court to the extent the overpayment is not contested on appeal.".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act. 26 USC 6213 note.

SEC. 3465. INTERNAL REVENUE SERVICE PROCEDURES RELATING TO APPEALS OF EXAMINATIONS AND COLLECTIONS.

(a) DISPUTE RESOLUTION PROCEDURES.—

(1) IN GENERAL.—Chapter 74 (relating to closing agreements and compromises) is amended by redesignating section

7123 as section 7124 and by inserting after section 7122 the following new section:

"SEC. 7123. APPEALS DISPUTE RESOLUTION PROCEDURES.

"(a) EARLY REFERRAL TO APPEALS PROCEDURES.—The Secretary shall prescribe procedures by which any taxpayer may request early referral of 1 or more unresolved issues from the examination or collection division to the Internal Revenue Service Office of Appeals.

"(b) ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.—

"(1) MEDIATION.—The Secretary shall prescribe procedures under which a taxpayer or the Internal Revenue Service Office of Appeals may request non-binding mediation on any issue unresolved at the conclusion of—

"(A) appeals procedures; or

"(B) unsuccessful attempts to enter into a closing agreement under section 7121 or a compromise under section 7122.

"(2) ARBITRATION.—The Secretary shall establish a pilot program under which a taxpayer and the Internal Revenue Service Office of Appeals may jointly request binding arbitration on any issue unresolved at the conclusion of—

"(A) appeals procedures; or

"(B) unsuccessful attempts to enter into a closing agreement under section 7121 or a compromise under section 7122.".

(2) CONFORMING AMENDMENT.—The table of sections for chapter 74 is amended by striking the item relating to section 7123 and inserting the following new items:

"Sec. 7123. Appeals dispute resolution procedures.
"Sec. 7124. Cross references.".

(b) APPEALS OFFICERS IN EACH STATE.—The Commissioner of Internal Revenue shall ensure that an appeals officer is regularly available within each State.

(c) APPEALS VIDEOCONFERENCING ALTERNATIVE FOR RURAL AREAS.—The Commissioner of Internal Revenue shall consider the use of the videoconferencing of appeals conferences between appeals officers and taxpayers seeking appeals in rural or remote areas.

SEC. 3466. APPLICATION OF CERTAIN FAIR DEBT COLLECTION PROCEDURES.

(a) IN GENERAL.—Subchapter A of chapter 64 (relating to collection) is amended by inserting after section 6303 the following new section:

"SEC. 6304. FAIR TAX COLLECTION PRACTICES.

"(a) COMMUNICATION WITH THE TAXPAYER.—Without the prior consent of the taxpayer given directly to the Secretary or the express permission of a court of competent jurisdiction, the Secretary may not communicate with a taxpayer in connection with the collection of any unpaid tax—

"(1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the taxpayer;

"(2) if the Secretary knows the taxpayer is represented by any person authorized to practice before the Internal Revenue Service with respect to such unpaid tax and has knowledge of, or can readily ascertain, such person's name and address,

unless such person fails to respond within a reasonable period of time to a communication from the Secretary or unless such person consents to direct communication with the taxpayer; or

"(3) at the taxpayer's place of employment if the Secretary knows or has reason to know that the taxpayer's employer prohibits the taxpayer from receiving such communication.

In the absence of knowledge of circumstances to the contrary, the Secretary shall assume that the convenient time for communicating with a taxpayer is after 8 a.m. and before 9 p.m., local time at the taxpayer's location.

"(b) PROHIBITION OF HARASSMENT AND ABUSE.—The Secretary may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of any unpaid tax. Without limiting the general application of the foregoing, the following conduct is a violation of this subsection:

"(1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.

"(2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.

"(3) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

"(4) Except as provided under rules similar to the rules in section 804 of the Fair Debt Collection Practices Act (15 U.S.C. 1692b), the placement of telephone calls without meaningful disclosure of the caller's identity.

"(c) CIVIL ACTION FOR VIOLATIONS OF SECTION.—

"For civil action for violations of this section, see section 7433.".

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 64 is amended by inserting after the item relating to section 6303 the following new item:

"Sec. 6304. Fair tax collection practices.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act. 26 USC 6304 note.

SEC. 3467. GUARANTEED AVAILABILITY OF INSTALLMENT AGREEMENTS.

(a) IN GENERAL.—Section 6159 (relating to agreements for payment of tax liability in installments) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) SECRETARY REQUIRED TO ENTER INTO INSTALLMENT AGREEMENTS IN CERTAIN CASES.—In the case of a liability for tax of an individual under subtitle A, the Secretary shall enter into an agreement to accept the payment of such tax in installments if, as of the date the individual offers to enter into the agreement—

"(1) the aggregate amount of such liability (determined without regard to interest, penalties, additions to the tax, and additional amounts) does not exceed $10,000;

"(2) the taxpayer (and, if such liability relates to a joint return, the taxpayer's spouse) has not, during any of the preceding 5 taxable years—

"(A) failed to file any return of tax imposed by subtitle A;

"(B) failed to pay any tax required to be shown on any such return; or

"(C) entered into an installment agreement under this section for payment of any tax imposed by subtitle A,

"(3) the Secretary determines that the taxpayer is financially unable to pay such liability in full when due (and the taxpayer submits such information as the Secretary may require to make such determination);

"(4) the agreement requires full payment of such liability within 3 years; and

"(5) the taxpayer agrees to comply with the provisions of this title for the period such agreement is in effect.".

26 USC 6159 note.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

26 USC 7421 note.

SEC. 3468. PROHIBITION ON REQUESTS TO TAXPAYERS TO GIVE UP RIGHTS TO BRING ACTIONS.

(a) PROHIBITION.—No officer or employee of the United States may request a taxpayer to waive the taxpayer's right to bring a civil action against the United States or any officer or employee of the United States for any action taken in connection with the internal revenue laws.

(b) EXCEPTIONS.—Subsection (a) shall not apply in any case where—

(1) a taxpayer waives the right described in subsection (a) knowingly and voluntarily; or

(2) the request by the officer or employee is made in person and the taxpayer's attorney or other federally authorized tax practitioner (within the meaning of section 7525(a)(3)(A) of the Internal Revenue Code of 1986) is present, or the request is made in writing to the taxpayer's attorney or other representative.

Subtitle F—Disclosures to Taxpayers

Procedures. 26 USC 7801 note. Deadline.

SEC. 3501. EXPLANATION OF JOINT AND SEVERAL LIABILITY.

(a) IN GENERAL.—The Secretary of the Treasury or the Secretary's delegate shall, as soon as practicable, but not later than 180 days after the date of the enactment of this Act, establish procedures to clearly alert married taxpayers of their joint and several liabilities on all appropriate publications and instructions.

(b) RIGHT TO LIMIT LIABILITY.—The procedures under subsection (a) shall include requirements that notice of an individual's right to relief under section 6015 of the Internal Revenue Code of 1986 shall be included in the statement required by section 6227 of the Omnibus Taxpayer Bill of Rights (Internal Revenue Service Publication No. 1) and in any collection-related notices.

26 USC 7801 note.

SEC. 3502. EXPLANATION OF TAXPAYERS' RIGHTS IN INTERVIEWS WITH THE INTERNAL REVENUE SERVICE.

Deadline.

The Secretary of the Treasury or the Secretary's delegate shall, as soon as practicable, but not later than 180 days after the date

of the enactment of this Act, revise the statement required by section 6227 of the Omnibus Taxpayer Bill of Rights (Internal Revenue Service Publication No. 1) to more clearly inform taxpayers of their rights—

(1) to be represented at interviews with the Internal Revenue Service by any person authorized to practice before the Internal Revenue Service; and

(2) to suspend an interview pursuant to section 7521(b)(2) of the Internal Revenue Code of 1986.

SEC. 3503. DISCLOSURE OF CRITERIA FOR EXAMINATION SELECTION.

26 USC 7801 note. Deadline.

(a) IN GENERAL.—The Secretary of the Treasury or the Secretary's delegate shall, as soon as practicable, but not later than 180 days after the date of the enactment of this Act, incorporate into the statement required by section 6227 of the Omnibus Taxpayer Bill of Rights (Internal Revenue Service Publication No. 1) a statement which sets forth in simple and nontechnical terms the criteria and procedures for selecting taxpayers for examination. Such statement shall not include any information the disclosure of which would be detrimental to law enforcement, but shall specify the general procedures used by the Internal Revenue Service, including whether taxpayers are selected for examination on the basis of information available in the media or on the basis of information provided to the Internal Revenue Service by informants.

(b) TRANSMISSION TO COMMITTEES OF CONGRESS.—The Secretary shall transmit drafts of the statement required under subsection (a) (or proposed revisions to any such statement) to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the same day.

SEC. 3504. EXPLANATIONS OF APPEALS AND COLLECTION PROCESS.

26 USC 6212 note. Deadline.

The Secretary of the Treasury or the Secretary's delegate shall, as soon as practicable, but not later than 180 days after the date of the enactment of this Act, include with any first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals an explanation of the entire process from examination through collection with respect to such proposed deficiency, including the assistance available to the taxpayer from the National Taxpayer Advocate at various points in the process.

SEC. 3505. EXPLANATION OF REASON FOR REFUND DISALLOWANCE.

(a) IN GENERAL.—Section 6402 (relating to authority to make credits or refunds) is amended by adding at the end the following new subsection:

"(j) EXPLANATION OF REASON FOR REFUND DISALLOWANCE.—In the case of a disallowance of a claim for refund, the Secretary shall provide the taxpayer with an explanation for such disallowance.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to disallowances after the 180th day after the date of the enactment of this Act.

Applicability. 26 USC 6402 note.

SEC. 3506. STATEMENTS REGARDING INSTALLMENT AGREEMENTS.

26 USC 6159 note. Deadline.

The Secretary of the Treasury or the Secretary's delegate shall, beginning not later than July 1, 2000, provide each taxpayer who has an installment agreement in effect under section 6159 of the Internal Revenue Code of 1986 an annual statement setting forth

the initial balance at the beginning of the year, the payments made during the year, and the remaining balance as of the end of the year.

SEC. 3507. NOTIFICATION OF CHANGE IN TAX MATTERS PARTNER.

Deadline.

(a) IN GENERAL.—Section 6231(a)(7) (defining tax matters partner) is amended by adding at the end the following new sentence: "The Secretary shall, within 30 days of selecting a tax matters partner under the preceding sentence, notify all partners required to receive notice under section 6223(a) of the name and address of the person selected.".

Applicability. 26 USC 6231 note.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to selections of tax matters partners made by the Secretary of the Treasury after the date of the enactment of this Act.

26 USC 7801 note.

SEC. 3508. DISCLOSURE TO TAXPAYERS.

The Secretary of the Treasury or the Secretary's delegate shall ensure that any instructions booklet accompanying an individual Federal income tax return form (including forms 1040, 1040A, 1040EZ, and any similar or successor forms) shall include, in clear language, in conspicuous print, and in a conspicuous place, a concise description of the conditions under which return information may be disclosed to any party outside the Internal Revenue Service, including disclosure to any State or agency, body, or commission (or legal representative) thereof.

SEC. 3509. DISCLOSURE OF CHIEF COUNSEL ADVICE.

(a) IN GENERAL.—Section 6110(b)(1) (defining written determination) is amended by striking "or technical advice memorandum" and inserting "technical advice memorandum, or Chief Counsel advice".

(b) CHIEF COUNSEL ADVICE.—Section 6110 (relating to public inspection of written determinations) is amended by redesignating subsections (i), (j), (k), and (l) as subsections (j), (k), (l), and (m), respectively, and by inserting after subsection (h) the following new subsection:

"(i) SPECIAL RULES FOR DISCLOSURE OF CHIEF COUNSEL ADVICE.—

"(1) CHIEF COUNSEL ADVICE DEFINED.—

"(A) IN GENERAL.—For purposes of this section, the term 'Chief Counsel advice' means written advice or instruction, under whatever name or designation, prepared by any national office component of the Office of Chief Counsel which—

"(i) is issued to field or service center employees of the Service or regional or district employees of the Office of Chief Counsel; and

"(ii) conveys—

"(I) any legal interpretation of a revenue provision;

"(II) any Internal Revenue Service or Office of Chief Counsel position or policy concerning a revenue provision; or

"(III) any legal interpretation of State law, foreign law, or other Federal law relating to the assessment or collection of any liability under a revenue provision.

"(B) REVENUE PROVISION DEFINED.—For purposes of subparagraph (A), the term 'revenue provision' means any existing or former internal revenue law, regulation, revenue ruling, revenue procedure, other published or unpublished guidance, or tax treaty, either in general or as applied to specific taxpayers or groups of specific taxpayers.

"(2) ADDITIONAL DOCUMENTS TREATED AS CHIEF COUNSEL ADVICE.—The Secretary may by regulation provide that this section shall apply to any advice or instruction prepared and issued by the Office of Chief Counsel which is not described in paragraph (1).

"(3) DELETIONS FOR CHIEF COUNSEL ADVICE.—In the case of Chief Counsel advice open to public inspection pursuant to this section—

"(A) paragraphs (2) through (7) of subsection (c) shall not apply, but

"(B) the Secretary may make deletions of material in accordance with subsections (b) and (c) of section 552 of title 5, United States Code, except that in applying subsection (b)(3) of such section, no statutory provision of this title shall be taken into account.

"(4) NOTICE OF INTENTION TO DISCLOSE.—

"(A) NONTAXPAYER-SPECIFIC CHIEF COUNSEL ADVICE.—In the case of Chief Counsel advice which is written without reference to a specific taxpayer or group of specific taxpayers—

"(i) subsection (f)(1) shall not apply; and

"(ii) the Secretary shall, within 60 days after the issuance of the Chief Counsel advice, complete any deletions described in subsection (c)(1) or paragraph (3) and make the Chief Counsel advice, as so edited, open for public inspection.

Deadline.

Public information.

"(B) TAXPAYER-SPECIFIC CHIEF COUNSEL ADVICE.—In the case of Chief Counsel advice which is written with respect to a specific taxpayer or group of specific taxpayers, the Secretary shall, within 60 days after the issuance of the Chief Counsel advice, mail the notice required by subsection (f)(1) to each such taxpayer. The notice shall include a copy of the Chief Counsel advice on which is indicated the information that the Secretary proposes to delete pursuant to subsection (c)(1). The Secretary may also delete from the copy of the text of the Chief Counsel advice any of the information described in paragraph (3), and shall delete the names, addresses, and other identifying details of taxpayers other than the person to whom the advice pertains, except that the Secretary shall not delete from the copy of the Chief Counsel advice that is furnished to the taxpayer any information of which that taxpayer was the source.".

Deadline.

(c) CONFORMING AMENDMENTS.—

(1) Section 6110(f)(1) is amended by striking "The Secretary" and inserting "Except as otherwise provided by subsection (i), the Secretary".

(2) Paragraphs (1)(B) and (2) of section 6110(j)(1), as redesignated by this section, are amended by striking "subsection (g)" each place it appears and inserting "subsection (g) or (i)(4)(B)".

(3) Section 6110(k)(1)(B), as so redesignated, is amended by striking "subsection (c)" and inserting "subsection (c)(1) or (i)(3)".

26 USC 6110 note. Applicability.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to any Chief Counsel advice issued more than 90 days after the date of the enactment of this Act.

Applicability.

(2) TRANSITION RULES.—The amendments made by this section shall apply to any Chief Counsel advice issued after December 31, 1985, and before the 91st day after the date of the enactment of this Act by the offices of the associate chief counsel for domestic, employee benefits and exempt organizations, and international, except that any such Chief Counsel advice shall be treated as made available on a timely basis if such advice is made available for public inspection not later than the following dates:

(A) One year after the date of the enactment of this Act, in the case of all litigation guideline memoranda, service center advice, tax litigation bulletins, criminal tax bulletins, and general litigation bulletins.

(B) Eighteen months after such date of enactment, in the case of field service advice and technical assistance to the field issued on or after January 1, 1994.

(C) Three years after such date of enactment, in the case of field service advice and technical assistance to the field issued on or after January 1, 1992, and before January 1, 1994.

(D) Six years after such date of enactment, in the case of any other Chief Counsel advice issued after December 31, 1985.

Public information.

(3) DOCUMENTS TREATED AS CHIEF COUNSEL ADVICE.—If the Secretary of the Treasury by regulation provides pursuant to section 6110(i)(2) of the Internal Revenue Code of 1986, as added by this section, that any additional advice or instruction issued by the Office of Chief Counsel shall be treated as Chief Counsel advice, such additional advice or instruction shall be made available for public inspection pursuant to section 6110 of such Code, as amended by this section, only in accordance with the effective date set forth in such regulation.

(4) CHIEF COUNSEL ADVICE TO BE AVAILABLE ELECTRONICALLY.—The Internal Revenue Service shall make any Chief Counsel advice issued more than 90 days after the date of the enactment of this Act and made available for public inspection pursuant to section 6110 of such Code, as amended by this section, also available by computer telecommunications within 1 year after issuance.

Subtitle G—Low-Income Taxpayer Clinics

SEC. 3601. LOW-INCOME TAXPAYER CLINICS.

(a) IN GENERAL.—Chapter 77 (relating to miscellaneous provisions), as amended by section 3411, is amended by adding at the end the following new section:

"SEC. 7526. LOW-INCOME TAXPAYER CLINICS.

"(a) IN GENERAL.—The Secretary may, subject to the availability of appropriated funds, make grants to provide matching funds for the development, expansion, or continuation of qualified low-income taxpayer clinics.

"(b) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED LOW-INCOME TAXPAYER CLINIC.—

"(A) IN GENERAL.—The term 'qualified low-income taxpayer clinic' means a clinic that—

"(i) does not charge more than a nominal fee for its services (except for reimbursement of actual costs incurred); and

"(ii)(I) represents low-income taxpayers in controversies with the Internal Revenue Service; or

"(II) operates programs to inform individuals for whom English is a second language about their rights and responsibilities under this title.

"(B) REPRESENTATION OF LOW-INCOME TAXPAYERS.—A clinic meets the requirements of subparagraph (A)(ii)(I) if—

"(i) at least 90 percent of the taxpayers represented by the clinic have incomes which do not exceed 250 percent of the poverty level, as determined in accordance with criteria established by the Director of the Office of Management and Budget; and

"(ii) the amount in controversy for any taxable year generally does not exceed the amount specified in section 7463.

"(2) CLINIC.—The term 'clinic' includes—

"(A) a clinical program at an accredited law, business, or accounting school in which students represent low-income taxpayers in controversies arising under this title; and

"(B) an organization described in section 501(c) and exempt from tax under section 501(a) which satisfies the requirements of paragraph (1) through representation of taxpayers or referral of taxpayers to qualified representatives.

"(3) QUALIFIED REPRESENTATIVE.—The term 'qualified representative' means any individual (whether or not an attorney) who is authorized to practice before the Internal Revenue Service or the applicable court.

"(c) SPECIAL RULES AND LIMITATIONS.—

"(1) AGGREGATE LIMITATION.—Unless otherwise provided by specific appropriation, the Secretary shall not allocate more than $6,000,000 per year (exclusive of costs of administering the program) to grants under this section.

"(2) LIMITATION ON ANNUAL GRANTS TO A CLINIC.—The aggregate amount of grants which may be made under this section to a clinic for a year shall not exceed $100,000.

"(3) MULTI-YEAR GRANTS.—Upon application of a qualified low-income taxpayer clinic, the Secretary is authorized to award a multi-year grant not to exceed 3 years.

"(4) CRITERIA FOR AWARDS.—In determining whether to make a grant under this section, the Secretary shall consider—

"(A) the numbers of taxpayers who will be served by the clinic, including the number of taxpayers in the geographical area for whom English is a second language;

"(B) the existence of other low-income taxpayer clinics serving the same population;

"(C) the quality of the program offered by the low-income taxpayer clinic, including the qualifications of its administrators and qualified representatives, and its record, if any, in providing service to low-income taxpayers; and

"(D) alternative funding sources available to the clinic, including amounts received from other grants and contributions, and the endowment and resources of the institution sponsoring the clinic.

"(5) REQUIREMENT OF MATCHING FUNDS.—A low-income taxpayer clinic must provide matching funds on a dollar-for-dollar basis for all grants provided under this section. Matching funds may include—

"(A) the salary (including fringe benefits) of individuals performing services for the clinic; and

"(B) the cost of equipment used in the clinic.

Indirect expenses, including general overhead of the institution sponsoring the clinic, shall not be counted as matching funds.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 77, as amended by section 3411, is amended by adding at the end the following new item:

"Sec. 7526. Low-income taxpayer clinics.".

26 USC 7526 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

Subtitle H—Other Matters

26 USC 7804 note.

SEC. 3701. CATALOGING COMPLAINTS.

In collecting data for the report required under section 1211 of the Taxpayer Bill of Rights 2 (Public Law 104–168), the Secretary of the Treasury or the Secretary's delegate shall, not later than January 1, 2000, maintain records of taxpayer complaints of misconduct by Internal Revenue Service employees on an individual employee basis.

SEC. 3702. ARCHIVE OF RECORDS OF INTERNAL REVENUE SERVICE.

(a) IN GENERAL.—Subsection (l) of section 6103 (relating to confidentiality and disclosure of returns and return information) is amended by adding at the end the following new paragraph:

"(17) DISCLOSURE TO NATIONAL ARCHIVES AND RECORDS ADMINISTRATION.—The Secretary shall, upon written request from the Archivist of the United States, disclose or authorize the disclosure of returns and return information to officers and employees of the National Archives and Records Administration for purposes of, and only to the extent necessary in, the appraisal of records for destruction or retention. No such officer or employee shall, except to the extent authorized by subsection (f), (i)(7), or (p), disclose any return or return information disclosed under the preceding sentence to any person other than to the Secretary, or to another officer or employee of the National Archives and Records Administration

whose official duties require such disclosure for purposes of such appraisal.".

(b) CONFORMING AMENDMENTS.—Section 6103(p) is amended—

(1) in paragraph (3)(A), by striking "or (16)" and inserting "(16), or (17)";

(2) in paragraph (4), by striking "or (14)" and inserting ", (14), or (17)" in the matter preceding subparagraph (A); and

(3) in paragraph (4)(F)(ii), by striking "or (15)" and inserting ", (15), or (17)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to requests made by the Archivist of the United States after the date of the enactment of this Act. Applicability. 26 USC 6103 note.

SEC. 3703. PAYMENT OF TAXES. Regulations. 26 USC 6311 note.

The Secretary of the Treasury or the Secretary's delegate shall establish such rules, regulations, and procedures as are necessary to allow payment of taxes by check or money order made payable to the United States Treasury.

SEC. 3704. CLARIFICATION OF AUTHORITY OF SECRETARY RELATING TO THE MAKING OF ELECTIONS.

Subsection (d) of section 7805 is amended by striking "by regulations or forms".

SEC. 3705. INTERNAL REVENUE SERVICE EMPLOYEE CONTACTS. 26 USC 7801 note.

(a) NOTICE.—The Secretary of the Treasury or the Secretary's delegate shall provide that—

(1) any manually generated correspondence received by a taxpayer from the Internal Revenue Service shall include in a prominent manner the name, telephone number, and unique identifying number of an Internal Revenue Service employee the taxpayer may contact with respect to the correspondence;

(2) any other correspondence or notice received by a taxpayer from the Internal Revenue Service shall include in a prominent manner a telephone number that the taxpayer may contact; and

(3) an Internal Revenue Service employee shall give a taxpayer during a telephone or personal contact the employee's name and unique identifying number.

(b) SINGLE CONTACT.—The Secretary of the Treasury or the Secretary's delegate shall develop a procedure under which, to the extent practicable and if advantageous to the taxpayer, one Internal Revenue Service employee shall be assigned to handle a taxpayer's matter until it is resolved. Procedures.

(c) TELEPHONE HELPLINE IN SPANISH.—The Secretary of the Treasury or the Secretary's delegate shall provide, in appropriate circumstances, that taxpayer questions on telephone helplines of the Internal Revenue Service are answered in Spanish.

(d) OTHER TELEPHONE HELPLINE OPTIONS.—The Secretary of the Treasury or the Secretary's delegate shall provide, in appropriate circumstances, on telephone helplines of the Internal Revenue Service an option for any taxpayer to talk to an Internal Revenue Service employee during normal business hours. The person shall direct phone questions of the taxpayer to other Internal Revenue Service personnel who can provide assistance to the taxpayer.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, this section shall take effect 60 days after the date of the enactment of this Act.

(2) SUBSECTION (c).—Subsection (c) shall take effect on January 1, 2000.

(3) SUBSECTION (d).—Subsection (d) shall take effect on January 1, 2000.

(4) UNIQUE IDENTIFYING NUMBER.—Any requirement under this section to provide a unique identifying number shall take effect 6 months after the date of the enactment of this Act.

26 USC 7804 note.

SEC. 3706. USE OF PSEUDONYMS BY INTERNAL REVENUE SERVICE EMPLOYEES.

(a) IN GENERAL.—Any employee of the Internal Revenue Service may use a pseudonym only if—

(1) adequate justification for the use of a pseudonym is provided by the employee, including protection of personal safety; and

(2) such use is approved by the employee's supervisor before the pseudonym is used.

Applicability.

(b) EFFECTIVE DATE.—Subsection (a) shall apply to requests made after the date of the enactment of this Act.

26 USC 6651 note.

SEC. 3707. ILLEGAL TAX PROTESTER DESIGNATION.

(a) PROHIBITION.—The officers and employees of the Internal Revenue Service—

(1) shall not designate taxpayers as illegal tax protesters (or any similar designation); and

(2) in the case of any such designation made on or before the date of the enactment of this Act—

(A) shall remove such designation from the individual master file; and

(B) shall disregard any such designation not located in the individual master file.

(b) DESIGNATION OF NONFILERS ALLOWED.—An officer or employee of the Internal Revenue Service may designate any appropriate taxpayer as a nonfiler, but shall remove such designation once the taxpayer has filed income tax returns for 2 consecutive taxable years and paid all taxes shown on such returns.

(c) EFFECTIVE DATE.—The provisions of this section shall take effect on the date of the enactment of this Act, except that the removal of any designation under subsection (a)(2)(A) shall not be required to begin before January 1, 1999.

SEC. 3708. PROVISION OF CONFIDENTIAL INFORMATION TO CONGRESS BY WHISTLEBLOWERS.

(a) IN GENERAL.—Section 6103(f) (relating to disclosure to committees of Congress) is amended by adding at the end the following new paragraph:

"(5) DISCLOSURE BY WHISTLEBLOWER.—Any person who otherwise has or had access to any return or return information under this section may disclose such return or return information to a committee referred to in paragraph (1) or any individual authorized to receive or inspect information under paragraph (4)(A) if such person believes such return or return information may relate to possible misconduct, maladministration, or taxpayer abuse.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act. 26 USC 6103 note.

SEC. 3709. LISTING OF LOCAL INTERNAL REVENUE SERVICE TELEPHONE NUMBERS AND ADDRESSES. 26 USC 7801 note.

The Secretary of the Treasury or the Secretary's delegate shall, as soon as practicable, provide that the local telephone numbers and addresses of Internal Revenue Service offices located in any particular area be listed in a telephone book for that area.

SEC. 3710. IDENTIFICATION OF RETURN PREPARERS.

(a) IN GENERAL.—The last sentence of section 6109(a) (relating to identifying numbers) is amended by striking "For purposes of this subsection" and inserting "For purposes of paragraphs (1), (2), and (3)".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act. 26 USC 6109 note.

SEC. 3711. OFFSET OF PAST-DUE, LEGALLY ENFORCEABLE STATE INCOME TAX OBLIGATIONS AGAINST OVERPAYMENTS.

(a) IN GENERAL.—Section 6402 (relating to authority to make credits or refunds), as amended by section 3505, is amended by redesignating subsections (e) through (j) as subsections (f) through (k), respectively, and by inserting after subsection (d) the following new subsection:

"(e) COLLECTION OF PAST-DUE, LEGALLY ENFORCEABLE STATE INCOME TAX OBLIGATIONS.—

"(1) IN GENERAL.—Upon receiving notice from any State that a named person owes a past-due, legally enforceable State income tax obligation to such State, the Secretary shall, under such conditions as may be prescribed by the Secretary— Notification.

"(A) reduce the amount of any overpayment payable to such person by the amount of such State income tax obligation;

"(B) pay the amount by which such overpayment is reduced under subparagraph (A) to such State and notify such State of such person's name, taxpayer identification number, address, and the amount collected; and

"(C) notify the person making such overpayment that the overpayment has been reduced by an amount necessary to satisfy a past-due, legally enforceable State income tax obligation.

If an offset is made pursuant to a joint return, the notice under subparagraph (B) shall include the names, taxpayer identification numbers, and addresses of each person filing such return.

"(2) OFFSET PERMITTED ONLY AGAINST RESIDENTS OF STATE SEEKING OFFSET.—Paragraph (1) shall apply to an overpayment by any person for a taxable year only if the address shown on the Federal return for such taxable year of the overpayment is an address within the State seeking the offset. Applicability.

"(3) PRIORITIES FOR OFFSET.—Any overpayment by a person shall be reduced pursuant to this subsection—

"(A) after such overpayment is reduced pursuant to—

"(i) subsection (a) with respect to any liability for any internal revenue tax on the part of the person who made the overpayment;

"(ii) subsection (c) with respect to past-due support; and

"(iii) subsection (d) with respect to any past-due, legally enforceable debt owed to a Federal agency; and

"(B) before such overpayment is credited to the future liability for any Federal internal revenue tax of such person pursuant to subsection (b).

If the Secretary receives notice from one or more agencies of the State of more than one debt subject to paragraph (1) that is owed by such person to such an agency, any overpayment by such person shall be applied against such debts in the order in which such debts accrued.

"(4) NOTICE; CONSIDERATION OF EVIDENCE.—No State may take action under this subsection until such State—

"(A) notifies by certified mail with return receipt the person owing the past-due State income tax liability that the State proposes to take action pursuant to this section;

"(B) gives such person at least 60 days to present evidence that all or part of such liability is not past-due or not legally enforceable;

"(C) considers any evidence presented by such person and determines that an amount of such debt is past-due and legally enforceable; and

"(D) satisfies such other conditions as the Secretary may prescribe to ensure that the determination made under subparagraph (C) is valid and that the State has made reasonable efforts to obtain payment of such State income tax obligation.

"(5) PAST-DUE, LEGALLY ENFORCEABLE STATE INCOME TAX OBLIGATION.—For purposes of this subsection, the term 'past-due, legally enforceable State income tax obligation' means a debt—

"(A)(i) which resulted from—

"(I) a judgment rendered by a court of competent jurisdiction which has determined an amount of State income tax to be due; or

"(II) a determination after an administrative hearing which has determined an amount of State income tax to be due; and

"(ii) which is no longer subject to judicial review; or

"(B) which resulted from a State income tax which has been assessed but not collected, the time for redetermination of which has expired, and which has not been delinquent for more than 10 years.

For purposes of this paragraph, the term 'State income tax' includes any local income tax administered by the chief tax administration agency of the State.

"(6) REGULATIONS.—The Secretary shall issue regulations prescribing the time and manner in which States must submit notices of past-due, legally enforceable State income tax obligations and the necessary information that must be contained in or accompany such notices. The regulations shall specify the types of State income taxes and the minimum amount of debt to which the reduction procedure established by paragraph (1) may be applied. The regulations may require States to pay a fee to reimburse the Secretary for the cost of applying such procedure. Any fee paid to the Secretary pursuant to

the preceding sentence shall be used to reimburse appropriations which bore all or part of the cost of applying such procedure.

"(7) ERRONEOUS PAYMENT TO STATE.—Any State receiving notice from the Secretary that an erroneous payment has been made to such State under paragraph (1) shall pay promptly to the Secretary, in accordance with such regulations as the Secretary may prescribe, an amount equal to the amount of such erroneous payment (without regard to whether any other amounts payable to such State under such paragraph have been paid to such State).".

(b) DISCLOSURE OF CERTAIN INFORMATION TO STATES REQUESTING REFUND OFFSETS FOR PAST-DUE, LEGALLY ENFORCEABLE STATE INCOME TAX OBLIGATIONS.—

(1) Paragraph (10) of section 6103(l) is amended by striking "(c) or (d)" each place it appears and inserting "(c), (d), or (e)".

(2) The heading for paragraph (10) is amended by striking "SECTION 6402 (c) OR 6402 (d)" AND INSERTING "SUBSECTION (c), (d), OR (e) OF SECTION 6402".

(c) CONFORMING AMENDMENTS.—

(1) Subsection (a) of section 6402 is amended by striking "(c) and (d)" and inserting "(c), (d), and (e)".

(2) Paragraph (2) of section 6402(d) is amended by striking "and before such overpayment" and inserting "and before such overpayment is reduced pursuant to subsection (e) and before such overpayment".

(3) Subsection (f) of section 6402, as redesignated by subsection (a), is amended—

(A) by striking "(c) or (d)" and inserting "(c), (d), or (e)"; and

(B) by striking "Federal agency" and inserting "Federal agency or State".

(4) Subsection (h) of section 6402, as redesignated by subsection (a), is amended by striking "subsection (c)" and inserting "subsection (c) or (e)".

(d) EFFECTIVE DATE.—The amendments made by this section (other than subsection (d)) shall apply to refunds payable under section 6402 of the Internal Revenue Code of 1986 after December 31, 1999.

Applicability. 26 USC 6103 note.

SEC. 3712. REPORTING REQUIREMENTS IN CONNECTION WITH EDUCATION TAX CREDIT.

(a) AMOUNTS TO BE REPORTED.—Subparagraph (C) of section 6050S(b)(2) is amended—

(1) by redesignating clauses (ii) and (iii) as clauses (iii) and (iv), respectively, and by inserting after clause (i) the following new clause:

"(ii) the amount of any grant received by such individual for payment of costs of attendance and processed by the person making such return during such calendar year,";

(2) in clause (iii) (as so redesignated), by inserting "by the person making such return" after "year"; and

(3) in clause (iv) (as so redesignated), by inserting "and" at the end.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 6050S(d) is amended by striking "aggregate".

(2) Subsection (e) of section 6050S is amended by inserting "(without regard to subsection (g)(2) thereof)" after "section 25A".

Applicability.
26 USC 6050S note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns required to be filed with respect to taxable years beginning after December 31, 1998.

Subtitle I—Studies

26 USC 6601 note.

SEC. 3801. ADMINISTRATION OF PENALTIES AND INTEREST.

The Joint Committee on Taxation and the Secretary of the Treasury shall each conduct a separate study—

(1) reviewing the administration and implementation by the Internal Revenue Service of the interest and penalty provisions of the Internal Revenue Code of 1986 (including the penalty reform provisions of the Omnibus Budget Reconciliation Act of 1989); and

(2) making any legislative and administrative recommendations the Committee or the Secretary deems appropriate to simplify penalty or interest administration and reduce taxpayer burden.

Deadline.

Such studies shall be submitted to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than 1 year after the date of the enactment of this Act.

26 USC 6103 note.

SEC. 3802. CONFIDENTIALITY OF TAX RETURN INFORMATION.

Reports.
Deadline.

The Joint Committee on Taxation and the Secretary of the Treasury shall each conduct a separate study of the scope and use of provisions regarding taxpayer confidentiality, and shall report the findings of such study, together with such recommendations as the Committee or the Secretary deems appropriate, to the Congress not later than 18 months after the date of the enactment of this Act. Such study shall examine—

(1) the present protections for taxpayer privacy;

(2) any need for third parties to use tax return information;

(3) whether greater levels of voluntary compliance may be achieved by allowing the public to know who is legally required to file tax returns, but does not file tax returns;

(4) the interrelationship of the taxpayer confidentiality provisions in the Internal Revenue Code of 1986 with such provisions in other Federal law, including section 552a of title 5, United States Code (commonly known as the "Freedom of Information Act");

(5) the impact on taxpayer privacy of the sharing of income tax return information for purposes of enforcement of State and local tax laws other than income tax laws, and including the impact on the taxpayer privacy intended to be protected at the Federal, State, and local levels under Public Law 105–35, the Taxpayer Browsing Protection Act of 1997; and

(6) whether the public interest would be served by greater disclosure of information relating to tax exempt organizations described in section 501 of the Internal Revenue Code of 1986.

SEC. 3803. STUDY OF NONCOMPLIANCE WITH INTERNAL REVENUE LAWS BY TAXPAYERS.

26 USC 7801 note.

Deadline.

Not later than 1 year after the date of the enactment of this Act, the Secretary of the Treasury and the Commissioner of Internal Revenue shall jointly conduct a study, in consultation with the Joint Committee on Taxation, of the noncompliance with internal revenue laws by taxpayers (including willful noncompliance and noncompliance due to tax law complexity or other factors) and report the findings of such study to Congress.

SEC. 3804. STUDY OF PAYMENTS MADE FOR DETECTION OF UNDERPAYMENTS AND FRAUD.

26 USC 7623 note.

Deadline. Reports.

Not later than 1 year after the date of the enactment of this Act, the Secretary of the Treasury shall conduct a study and report to Congress on the use of section 7623 of the Internal Revenue Code of 1986 including—

(1) an analysis of the present use of such section and the results of such use; and

(2) any legislative or administrative recommendations regarding the provisions of such section and its application.

TITLE IV—CONGRESSIONAL ACCOUNTABILITY FOR THE INTERNAL REVENUE SERVICE

Subtitle A—Oversight

SEC. 4001. EXPANSION OF DUTIES OF THE JOINT COMMITTEE ON TAXATION.

(a) IN GENERAL.—Section 8021 (relating to the powers of the Joint Committee on Taxation) is amended by adding at the end the following new subsections:

"(e) INVESTIGATIONS.—The Joint Committee shall review all requests (other than requests by the chairman or ranking member of a committee or subcommittee) for investigations of the Internal Revenue Service by the General Accounting Office, and approve such requests when appropriate, with a view towards eliminating overlapping investigations, ensuring that the General Accounting Office has the capacity to handle the investigation, and ensuring that investigations focus on areas of primary importance to tax administration.

"(f) RELATING TO JOINT REVIEWS.—

"(1) IN GENERAL.—The Chief of Staff, and the staff of the Joint Committee, shall provide such assistance as is required for joint reviews described in paragraph (2).

"(2) JOINT REVIEWS.—Before June 1 of each calendar year after 1998 and before 2004, there shall be a joint review of the strategic plans and budget for the Internal Revenue Service and such other matters as the Chairman of the Joint Committee deems appropriate. Such joint review shall be held at the call of the Chairman of the Joint Committee and shall include two members of the majority and one member of the minority from each of the Committees on Finance, Appropriations, and Governmental Affairs of the Senate, and the Committees on

Deadline.

Ways and Means, Appropriations, and Government Reform and Oversight of the House of Representatives.".

26 USC 8021 note. Applicability.

(b) EFFECTIVE DATES.—

(1) Subsection (e) of section 8021 of the Internal Revenue Code of 1986, as added by subsection (a) of this section, shall apply to requests made after the date of the enactment of this Act.

(2) Subsection (f) of such section shall take effect on the date of the enactment of this Act.

SEC. 4002. COORDINATED OVERSIGHT REPORTS.

(a) IN GENERAL.—Paragraph (3) of section 8022 (relating to the duties of the Joint Committee on Taxation) is amended to read as follows:

"(3) REPORTS.—

"(A) To report, from time to time, to the Committee on Finance and the Committee on Ways and Means, and, in its discretion, to the Senate or House of Representatives, or both, the results of its investigations, together with such recommendations as it may deem advisable.

"(B) Subject to amounts specifically appropriated to carry out this subparagraph, to report, at least once each Congress, to the Committee on Finance and the Committee on Ways and Means on the overall state of the Federal tax system, together with recommendations with respect to possible simplification proposals and other matters relating to the administration of the Federal tax system as it may deem advisable.

Deadline.

"(C) To report, for each calendar year after 1998 and before 2004, to the Committees on Finance, Appropriations, and Governmental Affairs of the Senate, and to the Committees on Ways and Means, Appropriations, and Government Reform and Oversight of the House of Representatives, with respect to—

"(i) strategic and business plans for the Internal Revenue Service;

"(ii) progress of the Internal Revenue Service in meeting its objectives;

"(iii) the budget for the Internal Revenue Service and whether it supports its objectives;

"(iv) progress of the Internal Revenue Service in improving taxpayer service and compliance;

"(v) progress of the Internal Revenue Service on technology modernization; and

"(vi) the annual filing season.".

26 USC 8022 note.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

Subtitle B—Century Date Change

SEC. 4011. CENTURY DATE CHANGE.

It is the sense of the Congress that—

(1) the Internal Revenue Service should place a high priority on resolving the century date change computing problems; and

(2) the Internal Revenue Service efforts to resolve the century date change computing problems should be funded fully to provide for certain resolution of such problems.

Subtitle C—Tax Law Complexity

SEC. 4021. ROLE OF THE INTERNAL REVENUE SERVICE.

It is the sense of the Congress that the Internal Revenue Service should provide Congress with an independent view of tax administration, and that during the legislative process, the tax writing committees of Congress should hear from front-line technical experts at the Internal Revenue Service with respect to the administrability of pending amendments to the Internal Revenue Code of 1986.

SEC. 4022. TAX LAW COMPLEXITY ANALYSIS.

(a) COMMISSIONER STUDY.— 26 USC 7801 note.

(1) IN GENERAL.—The Commissioner of Internal Revenue shall conduct each year after 1998 an analysis of the sources of complexity in administration of the Federal tax laws. Such analysis may include an analysis of—

(A) questions frequently asked by taxpayers with respect to return filing;

(B) common errors made by taxpayers in filling out their returns;

(C) areas of law which frequently result in disagreements between taxpayers and the Internal Revenue Service;

(D) major areas of law in which there is no (or incomplete) published guidance or in which the law is uncertain;

(E) areas in which revenue officers make frequent errors interpreting or applying the law;

(F) the impact of recent legislation on complexity; and

(G) forms supplied by the Internal Revenue Service, including the time it takes for taxpayers to complete and review forms, the number of taxpayers who use each form, and how recent legislation has affected the time it takes to complete and review forms.

(2) REPORT.—The Commissioner shall not later than March 1 of each year report the results of the analysis conducted under paragraph (1) for the preceding year to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate. The report shall include any recommendations— Deadline.

(A) for reducing the complexity of the administration of Federal tax laws; and

(B) for repeal or modification of any provision the Commissioner believes adds undue and unnecessary complexity to the administration of the Federal tax laws.

(b) ANALYSIS TO ACCOMPANY CERTAIN LEGISLATION.— 26 USC 8022 note.

(1) IN GENERAL.—The Joint Committee on Taxation, in consultation with the Internal Revenue Service and the Department of the Treasury, shall include a tax complexity analysis in each report for legislation, or provide such analysis to members of the committee reporting the legislation as soon as practicable after the report is filed, if—

(A) such legislation is reported by the Committee on Finance in the Senate, the Committee on Ways and Means of the House of Representatives, or any committee of conference; and

(B) such legislation includes a provision which would directly or indirectly amend the Internal Revenue Code of 1986 and which has widespread applicability to individuals or small businesses.

(2) TAX COMPLEXITY ANALYSIS.—For purposes of this subsection, the term "tax complexity analysis" means, with respect to any legislation, a report on the complexity and administrative difficulties of each provision described in paragraph (1)(B) which—

(A) includes—

(i) an estimate of the number of taxpayers affected by the provision; and

(ii) if applicable, the income level of taxpayers affected by the provision; and

(B) should include (if determinable)—

(i) the extent to which tax forms supplied by the Internal Revenue Service would require revision and whether any new forms would be required;

(ii) the extent to which taxpayers would be required to keep additional records;

(iii) the estimated cost to taxpayers to comply with the provision;

(iv) the extent to which enactment of the provision would require the Internal Revenue Service to develop or modify regulatory guidance;

(v) the extent to which the provision may result in disagreements between taxpayers and the Internal Revenue Service; and

(vi) any expected impact on the Internal Revenue Service from the provision (including the impact on internal training, revision of the Internal Revenue Manual, reprogramming of computers, and the extent to which the Internal Revenue Service would be required to divert or redirect resources in response to the provision).

(3) LEGISLATION SUBJECT TO POINT OF ORDER IN HOUSE OF REPRESENTATIVES.—

(A) LEGISLATION REPORTED BY COMMITTEE ON WAYS AND MEANS.—Clause 2(l) of rule XI of the Rules of the House of Representatives is amended by adding at the end the following new subparagraph:

"(8) The report of the Committee on Ways and Means on any bill or joint resolution containing any provision amending the Internal Revenue Code of 1986 shall include a Tax Complexity Analysis prepared by the Joint Committee on Taxation in accordance with section 4022(b) of the Internal Revenue Service Restructuring and Reform Act of 1998 unless the Committee on Ways and Means causes to have such Analysis printed in the Congressional Record prior to the consideration of the bill or joint resolution.".

(B) CONFERENCE REPORTS.—Rule XXVIII of the Rules of the House of Representatives is amended by adding at the end the following new clause:

"7. It shall not be in order to consider the report of a committee of conference which contains any provision amending the Internal Revenue Code of 1986 unless—

"(a) the accompanying joint explanatory statement contains a Tax Complexity Analysis prepared by the Joint Committee on Taxation in accordance with section 4022(b) of the Internal Revenue Service Restructuring and Reform Act of 1998; or

"(b) such Analysis is printed in the Congressional Record prior to the consideration of the report.".

(C) RULES OF HOUSE OF REPRESENTATIVES.—This paragraph is enacted by the House of Representatives—

(i) as an exercise of the rulemaking power of the House of Representatives, and as such it is deemed a part of the Rules of the House, and it supersedes other rules only to the extent that it is inconsistent therewith; and

(ii) with full recognition of the constitutional right of the House to change its rules at any time, in the same manner and to the same extent as in the case of any other rule of the House.

(4) EFFECTIVE DATE.—This subsection shall apply to legislation considered on and after January 1, 1999. Applicability.

TITLE V—ADDITIONAL PROVISIONS

SEC. 5001. LOWER CAPITAL GAINS RATES TO APPLY TO PROPERTY HELD MORE THAN 1 YEAR.

(a) GENERAL RULE.—

(1) Paragraph (5) of section 1(h) is amended to read as follows:

"(5) 28-PERCENT RATE GAIN.—For purposes of this subsection, the term '28-percent rate gain' means the excess (if any) of—

"(A) the sum of—

"(i) collectibles gain; and

"(ii) section 1202 gain, over

"(B) the sum of—

"(i) collectibles loss;

"(ii) the net short-term capital loss; and

"(iii) the amount of long-term capital loss carried under section 1212(b)(1)(B) to the taxable year.".

(2) Subparagraph (A) of section 1(h)(6) is amended by striking "18 months" and inserting "1 year".

(3) Clauses (i) and (ii) of section 1(h)(7)(A) are amended to read as follows:

"(i) the amount of long-term capital gain (not otherwise treated as ordinary income) which would be treated as ordinary income if section 1250(b)(1) included all depreciation and the applicable percentage under section 1250(a) were 100 percent, over

"(ii) the excess (if any) of—

"(I) the amount described in paragraph (5)(B); over

"(II) the amount described in paragraph (5)(A).".

(4) So much of paragraph (13) of section 1(h) as precedes subparagraph (C) is amended to read as follows:

"(13) SPECIAL RULES.—

"(A) DETERMINATION OF 28-PERCENT RATE GAIN.—In applying paragraph (5)—

"(i) the amount determined under subparagraph (A) of paragraph (5) shall include long-term capital gain (not otherwise described in such subparagraph)—

"(I) which is properly taken into account for the portion of the taxable year before May 7, 1997; or

"(II) from property held not more than 18 months which is properly taken into account for the portion of the taxable year after July 28, 1997, and before January 1, 1998;

"(ii) the amount determined under subparagraph (B) of paragraph (5) shall include long-term capital loss (not otherwise described in such subparagraph)—

"(I) which is properly taken into account for the portion of the taxable year before May 7, 1997; or

"(II) from property held not more than 18 months which is properly taken into account for the portion of the taxable year after July 28, 1997, and before January 1, 1998; and

Applicability.

"(iii) subparagraph (B) of paragraph (5) (as in effect immediately before the enactment of this clause) shall apply to amounts properly taken into account before January 1, 1998.

"(B) DETERMINATION OF UNRECAPTURED SECTION 1250 GAIN.—The amount determined under paragraph (7)(A) shall not include gain—

"(i) which is properly taken into account for the portion of the taxable year before May 7, 1997; or

"(ii) from property held not more than 18 months which is properly taken into account for the portion of the taxable year after July 28, 1997, and before January 1, 1998.".

(5) Paragraphs (11) and (12) of section 1223, and section 1235(a), are each amended by striking "18 months" each place it appears and inserting "1 year".

26 USC 1 note.

(b) EFFECTIVE DATES.—

Applicability.

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years ending after December 31, 1997.

(2) SUBSECTION (a)(5).—The amendments made by subsection (a)(5) shall take effect on January 1, 1998.

SEC. 5002. CLARIFICATION OF EXCLUSION OF MEALS FOR CERTAIN EMPLOYEES.

(a) IN GENERAL.—Subsection (b) of section 119 (relating to meals or lodging furnished for the convenience of the employer) is amended by adding at the end the following new paragraph:

"(4) MEALS FURNISHED TO EMPLOYEES ON BUSINESS PREMISES WHERE MEALS OF MOST EMPLOYEES ARE OTHERWISE EXCLUDABLE.—All meals furnished on the business premises of an employer to such employer's employees shall be treated

as furnished for the convenience of the employer if, without regard to this paragraph, more than half of the employees to whom such meals are furnished on such premises are furnished such meals for the convenience of the employer.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning before, on, or after the date of the enactment of this Act.

Applicability.
26 USC 119 note.

SEC. 5003. CLARIFICATION OF DESIGNATION OF NORMAL TRADE RELATIONS.

19 USC 2481 note.

(a) FINDINGS AND POLICY.—

(1) FINDINGS.—The Congress makes the following findings:

(A) Since the 18th century, the principle of nondiscrimination among countries with which the United States has trade relations, commonly referred to as "most-favored-nation" treatment, has been a cornerstone of United States trade policy.

(B) Although the principle remains firmly in place as a fundamental concept in United States trade relations, the term "most-favored-nation" is a misnomer which has led to public misunderstanding.

(C) It is neither the purpose nor the effect of the most-favored-nation principle to treat any country as "most favored". To the contrary, the principle reflects the intention to confer on a country the same trade benefits that are conferred on any other country, that is, the intention not to discriminate among trading partners.

(D) The term "normal trade relations" is a more accurate description of the principle of nondiscrimination as it applies to the tariffs applicable generally to imports from United States trading partners, that is, the general rates of duty set forth in column 1 of the Harmonized Tariff Schedule of the United States.

(2) POLICY.—It is the sense of the Congress that—

(A) the language used in United States laws, treaties, agreements, executive orders, directives, and regulations should more clearly and accurately reflect the underlying principles of United States trade policy; and

(B) accordingly, the term "normal trade relations" should, where appropriate, be substituted for the term "most-favored-nation".

(b) CHANGE IN TERMINOLOGY.—

(1) TRADE EXPANSION ACT OF 1962.—The heading for section 251 of the Trade Expansion Act of 1962 (19 U.S.C. 1881) is amended to read as follows: "**NORMAL TRADE RELATIONS**".

(2) TRADE ACT OF 1974.—(A) Section 402 of the Trade Act of 1974 (19 U.S.C. 2432) is amended by striking "(most-favored-nation treatment)" each place it appears and inserting "(normal trade relations)".

(B) Section 601(9) of the Trade Act of 1974 (19 U.S.C. 2481(9)) is amended by striking "most-favored-nation treatment" and inserting "trade treatment based on normal trade relations (known under international law as most-favored-nation treatment)".

(3) CFTA.—Section 302(a)(3)(C) of the United States Canada Free-Trade Agreement Implementation Act of 1988 (19 U.S.C. 2112 note) is amended by striking "the most-favored-

nation rate of duty" each place it appears and inserting "the general subcolumn of the column 1 rate of duty set forth in the Harmonized Tariff Schedule of the United States".

(4) NAFTA.—Section 202(n) of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3332(n)) is amended by striking "most-favored-nation".

(5) URUGUAY ROUND AGREEMENTS ACT.—Section 135(a)(2) of the Uruguay Round Agreements Act (19 U.S.C. 3555(a)(2)) is amended by striking "most-favored-nation" and inserting "normal trade relations".

(6) SEED ACT.—Section 2(c)(11) of the Support for East European Democracy (SEED) Act of 1989 (22 U.S.C. 5401(c)(11)) is amended—

(A) by striking "(commonly referred to as 'most favored nation status')"; and

(B) by striking "MOST FAVORED NATION TRADE STATUS" in the heading and inserting "NORMAL TRADE RELATIONS".

(7) UNITED STATES-HONG KONG POLICY ACT OF 1992.—Section 103(4) of the United States-Hong Kong Policy Act of 1992 (22 U.S.C. 5713(4)) is amended by striking "(commonly referred to as 'most-favored-nation status')".

19 USC 2481 note.

(c) SAVINGS PROVISIONS.—Nothing in this section shall affect the meaning of any provision of law, Executive order, Presidential proclamation, rule, regulation, delegation of authority, other document, or treaty or other international agreement of the United States relating to the principle of "most-favored-nation" (or "most favored nation") treatment. Any Executive order, Presidential proclamation, rule, regulation, delegation of authority, other document, or treaty or other international agreement of the United States that has been issued, made, granted, or allowed to become effective and that is in effect on the effective date of this Act, or was to become effective on or after the effective date of this Act, shall continue in effect according to its terms until modified, terminated, superseded, set aside, or revoked in accordance with law.

TITLE VI—TECHNICAL CORRECTIONS

Tax Technical Corrections Act of 1998.

SEC. 6001. SHORT TITLE; COORDINATION WITH OTHER TITLES.

26 USC 1 note.

(a) SHORT TITLE.—This title may be cited as the "Tax Technical Corrections Act of 1998".

26 USC 1 note.

(b) COORDINATION WITH OTHER TITLES.—For purposes of applying the amendments made by any title of this Act other than this title, the provisions of this title shall be treated as having been enacted immediately before the provisions of such other titles.

SEC. 6002. DEFINITIONS.

For purposes of this title—

(1) 1986 CODE.—The term "1986 Code" means the Internal Revenue Code of 1986.

(2) 1997 ACT.—The term "1997 Act" means the Taxpayer Relief Act of 1997.

SEC. 6003. AMENDMENTS RELATED TO TITLE I OF 1997 ACT.

(a) AMENDMENTS RELATED TO SECTION 101(a) OF 1997 ACT.—

(1) Subsection (d) of section 24 of the 1986 Code is amended—

(A) by striking paragraphs (3) and (4);

(B) by redesignating paragraph (5) as paragraph (3); and

(C) by striking paragraphs (1) and (2) and inserting the following new paragraphs:

"(1) IN GENERAL.—In the case of a taxpayer with three or more qualifying children for any taxable year, the aggregate credits allowed under subpart C shall be increased by the lesser of—

"(A) the credit which would be allowed under this section without regard to this subsection and the limitation under section 26(a); or

"(B) the amount by which the aggregate amount of credits allowed by this subpart (without regard to this subsection) would increase if the limitation imposed by section 26(a) were increased by the excess (if any) of—

"(i) the taxpayer's Social Security taxes for the taxable year, over

"(ii) the credit allowed under section 32 (determined without regard to subsection (n)) for the taxable year.

The amount of the credit allowed under this subsection shall not be treated as a credit allowed under this subpart and shall reduce the amount of credit otherwise allowable under subsection (a) without regard to section 26(a).

"(2) REDUCTION OF CREDIT TO TAXPAYER SUBJECT TO ALTERNATIVE MINIMUM TAX.—The credit determined under this subsection for the taxable year shall be reduced by the excess (if any) of—

"(A) the amount of tax imposed by section 55 (relating to alternative minimum tax) with respect to such taxpayer for such taxable year, over

"(B) the amount of the reduction under section 32(h) with respect to such taxpayer for such taxable year.".

(2) Paragraph (3) of section 24(d) of the 1986 Code (as redesignated by paragraph (1)) is amended by striking "paragraph (3)" and inserting "paragraph (1)".

(b) AMENDMENTS RELATED TO SECTION 101(b) OF 1997 ACT.—

(1) The subsection (m) of section 32 of the 1986 Code added by section 101(b) of the 1997 Act is amended to read as follows:

"(n) SUPPLEMENTAL CHILD CREDIT.—

"(1) IN GENERAL.—In the case of a taxpayer with respect to whom a credit is allowed under section 24(a) for the taxable year, the credit otherwise allowable under this section shall be increased by the lesser of—

"(A) the excess of—

"(i) the credits allowed under subpart A (determined after the application of section 26 and without regard to this subsection), over

"(ii) the credits which would be allowed under subpart A after the application of section 26, determined without regard to section 24 and this subsection; or

"(B) the excess of—

"(i) the sum of the credits allowed under this part (determined without regard to sections 31, 33, and 34 and this subsection), over

"(ii) the sum of the regular tax and the Social Security taxes (as defined in section 24(d)).

The credit determined under this subsection shall be allowed without regard to any other provision of this section, including subsection (d).

"(2) COORDINATION WITH OTHER CREDITS.—The amount of the credit under this subsection shall reduce the amount of the credits otherwise allowable under subpart A for the taxable year (determined after the application of section 26), but the amount of the credit under this subsection (and such reduction) shall not be taken into account in determining the amount of any other credit allowable under this part.".

SEC. 6004. AMENDMENTS RELATED TO TITLE II OF 1997 ACT.

(a) AMENDMENTS RELATED TO SECTION 201 OF 1997 ACT.—

(1) The item relating to section 25A in the table of sections for subpart A of part IV of subchapter A of chapter 1 of the 1986 Code is amended to read as follows:

"Sec. 25A. Hope and Lifetime Learning credits.".

(2) Subsection (a) of section 6050S of the 1986 Code is amended to read as follows:

"(a) IN GENERAL.—Any person—

"(1) which is an eligible educational institution—

"(A) which receives payments for qualified tuition and related expenses with respect to any individual for any calendar year; or

"(B) which makes reimbursements or refunds (or similar amounts) to any individual of qualified tuition and related expenses;

"(2) which is engaged in a trade or business of making payments to any individual under an insurance arrangement as reimbursements or refunds (or similar amounts) of qualified tuition and related expenses; or

"(3) except as provided in regulations, which is engaged in a trade or business and, in the course of which, receives from any individual interest aggregating $600 or more for any calendar year on one or more qualified education loans,

shall make the return described in subsection (b) with respect to the individual at such time as the Secretary may by regulations prescribe.".

26 USC 6724.

(3) Subparagraph (A) of section 201(c)(2) of the 1997 Act is amended to read as follows:

"(A) Subparagraph (B) of section 6724(d)(1) (relating to definitions) is amended by redesignating clauses (x) through (xv) as clauses (xi) through (xvi), respectively, and by inserting after clause (ix) the following new clause:

"'(x) section 6050S (relating to returns relating to payments for qualified tuition and related expenses),'".

(b) AMENDMENTS RELATED TO SECTION 202 OF 1997 ACT.—

(1) Paragraph (1) of section 221(e) of the 1986 Code is amended by inserting "by the taxpayer solely" after "incurred" the first place it appears.

(2) Subsection (d) of section 221 of the 1986 Code is amended by adding at the end the following new sentence: "Such 60 months shall be determined in the manner prescribed by the Secretary in the case of multiple loans which are refinanced by, or serviced as, a single loan and in the case of loans incurred before the date of the enactment of this section.".

(c) AMENDMENTS RELATED TO SECTION 211 OF 1997 ACT.—

(1) Paragraph (3) of section 135(c) of the 1986 Code is amended to read as follows:

"(3) ELIGIBLE EDUCATIONAL INSTITUTION.—The term 'eligible educational institution' has the meaning given such term by section 529(e)(5).".

(2) Subparagraph (A) of section 529(c)(3) of the 1986 Code is amended by striking "section 72(b)" and inserting "section 72".

(3) Paragraph (2) of section 529(e) of the 1986 Code is amended to read as follows:

"(2) MEMBER OF FAMILY.—The term 'member of the family' means, with respect to any designated beneficiary—

"(A) the spouse of such beneficiary;

"(B) an individual who bears a relationship to such beneficiary which is described in paragraphs (1) through (8) of section 152(a); and

"(C) the spouse of any individual described in subparagraph (B).".

(d) AMENDMENTS RELATED TO SECTION 213 OF 1997 ACT.—

(1) Section 530(b)(1) of the 1986 Code (defining education individual retirement account) is amended by inserting "an individual who is" before "the designated beneficiary" in the material preceding subparagraph (A).

(2)(A) Section 530(b)(1)(E) of the 1986 Code (defining education individual retirement account) is amended to read as follows:

"(E) Except as provided in subsection (d)(7), any balance to the credit of the designated beneficiary on the date on which the beneficiary attains age 30 shall be distributed within 30 days after such date to the beneficiary or, if the beneficiary dies before attaining age 30, shall be distributed within 30 days after the date of death of such beneficiary.".

(B) Paragraph (7) of section 530(d) of the 1986 Code is amended by inserting at the end the following new sentence: "In applying the preceding sentence, members of the family (as so defined) of the designated beneficiary shall be treated in the same manner as the spouse under such paragraph (8).".

(C) Subsection (d) of section 530 of the 1986 Code is amended by adding at the end the following new paragraph:

"(8) DEEMED DISTRIBUTION ON REQUIRED DISTRIBUTION DATE.—In any case in which a distribution is required under subsection (b)(1)(E), any balance to the credit of a designated beneficiary as of the close of the 30-day period referred to in such subsection for making such distribution shall be deemed distributed at the close of such period.".

(3)(A) Paragraph (1) of section 530(d) of the 1986 Code is amended by striking "section 72(b)" and inserting "section 72".

(B) Subsection (e) of section 72 of the 1986 Code is amended by inserting after paragraph (8) the following new paragraph:

Applicability.

"(9) EXTENSION OF PARAGRAPH (2)(B) TO QUALIFIED STATE TUITION PROGRAMS AND EDUCATIONAL INDIVIDUAL RETIREMENT ACCOUNTS.—Notwithstanding any other provision of this subsection, paragraph (2)(B) shall apply to amounts received under a qualified State tuition program (as defined in section 529(b)) or under an education individual retirement account (as defined in section 530(b)). The rule of paragraph (8)(B) shall apply for purposes of this paragraph.".

(4) Paragraph (2) of section 135(d) of the 1986 Code is amended to read as follows:

"(2) COORDINATION WITH OTHER HIGHER EDUCATION BENEFITS.—The amount of the qualified higher education expenses otherwise taken into account under subsection (a) with respect to the education of an individual shall be reduced (before the application of subsection (b)) by—

"(A) the amount of such expenses which are taken into account in determining the credit allowable to the taxpayer or any other person under section 25A with respect to such expenses; and

"(B) the amount of such expenses which are taken into account in determining the exclusion under section 530(d)(2).".

(5) Section 530(d)(2) of the 1986 Code (relating to distributions for qualified higher education expenses) is amended by adding at the end the following new subparagraph:

"(D) DISALLOWANCE OF EXCLUDED AMOUNTS AS CREDIT OR DEDUCTION.—No deduction or credit shall be allowed to the taxpayer under any other section of this chapter for any qualified education expenses to the extent taken into account in determining the amount of the exclusion under this paragraph.".

(6) Section 530(d)(4)(B) of the 1986 Code (relating to exceptions) is amended by striking "or" at the end of clause (ii), by striking the period at the end of clause (iii) and inserting "; or", and by adding at the end the following new clause:

"(iv) an amount which is includible in gross income solely because the taxpayer elected under paragraph (2)(C) to waive the application of paragraph (2) for the taxable year.".

(7) So much of section 530(d)(4)(C) of the 1986 Code as precedes clause (ii) thereof is amended to read as follows:

"(C) CONTRIBUTIONS RETURNED BEFORE DUE DATE OF RETURN.—Subparagraph (A) shall not apply to the distribution of any contribution made during a taxable year on behalf of the designated beneficiary if—

"(i) such distribution is made on or before the day prescribed by law (including extensions of time) for filing the beneficiary's return of tax for the taxable year or, if the beneficiary is not required to file such a return, the 15th day of the 4th month of the taxable year following the taxable year; and".

(8)(A) Paragraph (5) of section 530(d) of the 1986 Code is amended by striking the first sentence and inserting the following new sentence: "Paragraph (1) shall not apply to any

amount paid or distributed from an education individual retirement account to the extent that the amount received is paid, not later than the 60th day after the date of such payment or distribution, into another education individual retirement account for the benefit of the same beneficiary or a member of the family (within the meaning of section 529(e)(2)) of such beneficiary who has not attained age 30 as of such date.".

(B) Paragraph (6) of section 530(d) of the 1986 Code is amended by inserting before the period "and has not attained age 30 as of the date of such change".

(9) Subparagraph (C) of section 135(c)(2) of the 1986 Code is amended—

(A) by inserting "AND EDUCATION INDIVIDUAL RETIREMENT ACCOUNTS" in the heading after "PROGRAM"; and

(B) by striking "section 529(c)(3)(A)" and inserting "section 72".

(10)(A) Paragraph (1) of section 4973(e) of the 1986 Code is amended to read as follows:

"(1) IN GENERAL.—In the case of education individual retirement accounts maintained for the benefit of any one beneficiary, the term 'excess contributions' means the sum of—

"(A) the amount by which the amount contributed for the taxable year to such accounts exceeds $500 (or, if less, the sum of the maximum amounts permitted to be contributed under section 530(c) by the contributors to such accounts for such year);

"(B) if any amount is contributed (other than a contribution described in section 530(b)(2)(B)) during such year to a qualified State tuition program for the benefit of such beneficiary, any amount contributed to such accounts for such taxable year; and

"(C) the amount determined under this subsection for the preceding taxable year, reduced by the sum of—

"(i) the distributions out of the accounts for the taxable year (other than rollover distributions); and

"(ii) the excess (if any) of the maximum amount which may be contributed to the accounts for the taxable year over the amount contributed to the accounts for the taxable year.".

(B) Paragraph (2) of section 4973(e) of the 1986 Code is amended by striking subparagraph (B) and by redesignating subparagraph (C) as subparagraph (B).

(e) AMENDMENTS RELATED TO SECTION 224 OF 1997 ACT.—

(1) Clauses (vi) and (vii) of section 170(e)(6)(B) of the 1986 Code are each amended by striking "entity's" and inserting "donee's".

(2) Clause (iv) of section 170(e)(6)(B) of the 1986 Code is amended by striking "organization or entity" and inserting "donee".

(3) Subclause (I) of section 170(e)(6)(C)(ii) of the 1986 Code is amended by striking "an entity" and inserting "a donee".

(4) Section 170(e)(6)(F) of the 1986 Code (relating to termination) is amended by striking "1999" and inserting "2000".

(f) AMENDMENTS RELATED TO SECTION 225 OF 1997 ACT.—

(1) The last sentence of section 108(f)(2) of the 1986 Code is amended to read as follows:

"The term 'student loan' includes any loan made by an educational organization described in section 170(b)(1)(A)(ii) or by an organization exempt from tax under section 501(a) to refinance a loan to an individual to assist the individual in attending any such educational organization but only if the refinancing loan is pursuant to a program of the refinancing organization which is designed as described in subparagraph (D)(ii).".

(2) Section 108(f)(3) of the 1986 Code is amended by striking "(or by an organization described in paragraph (2)(E) from funds provided by an organization described in paragraph (2)(D))".

(g) AMENDMENTS RELATED TO SECTION 226 OF 1997 ACT.—

26 USC 1397D, 1397F.

(1) Section 226(a) of the 1997 Act is amended by striking "section 1397E" and inserting "section 1397D".

(2) Section 1397E(d)(4)(B) of the 1986 Code is amended by striking "local education agency as defined" and inserting "local educational agency as defined".

(3) Section 1397E is amended by adding at the end the following new subsection:

"(h) CREDIT TREATED AS ALLOWED UNDER PART IV OF SUBCHAPTER A.—For purposes of subtitle F, the credit allowed by this section shall be treated as a credit allowable under part IV of subchapter A of this chapter.".

(4) Subsection (g) of section 1397E of the 1986 Code is amended by inserting "(determined without regard to subsection (c))" after "section".

(5) Subparagraph (D) of section 42(j)(4) of the 1986 Code is amended by striking "subpart A, B, D, or G of this part" and inserting "this chapter".

(6) Paragraph (4) of section 49(b) of the 1986 Code is amended by striking "subpart A, B, D, or G" and inserting "this chapter".

(7) Subparagraph (C) of section 50(a)(5) of the 1986 Code is amended by striking "subpart A, B, D, or G" and inserting "this chapter".

SEC. 6005. AMENDMENTS RELATED TO TITLE III OF 1997 ACT.

(a) AMENDMENTS RELATED TO SECTION 301 OF 1997 ACT.—

(1) Section 219(g) of the 1986 Code is amended—

(A) by inserting "or the individual's spouse" after "individual" in paragraph (1); and

(B) by striking paragraph (7) and inserting:

"(7) SPECIAL RULE FOR SPOUSES WHO ARE NOT ACTIVE PARTICIPANTS.—If this subsection applies to an individual for any taxable year solely because their spouse is an active participant, then, in applying this subsection to the individual (but not their spouse)—

"(A) the applicable dollar amount under paragraph (3)(B)(i) shall be $150,000; and

"(B) the amount applicable under paragraph (2)(A)(ii) shall be $10,000.".

26 USC 219.

(2) Paragraph (2) of section 301(a) of the 1997 Act is amended by inserting "after '$10,000'" before the period.

(b) AMENDMENTS RELATED TO SECTION 302 OF 1997 ACT.—

(1) Section 408A(c)(3)(A) of the 1986 Code is amended by striking "shall be reduced" and inserting "shall not exceed

an amount equal to the amount determined under paragraph (2)(A) for such taxable year, reduced".

(2) Section 408A(c)(3) of the 1986 Code (relating to limits based on modified adjusted gross income) is amended—

(A) by inserting "or a married individual filing a separate return" after "joint return" in subparagraph (A)(ii),

(B) in subparagraph (B)—

(i) by inserting ", for the taxable year of the distribution to which such contribution relates" after "if"; and

(ii) by striking "for such taxable year" in clause (i), and

(C) by striking "and the deduction under section 219 shall be taken into account" in subparagraph (C)(i).

(3)(A) Section 408A(d)(2) of the 1986 Code (defining qualified distribution) is amended by striking subparagraph (B) and inserting the following new subparagraph:

"(B) DISTRIBUTIONS WITHIN NONEXCLUSION PERIOD.—A payment or distribution from a Roth IRA shall not be treated as a qualified distribution under subparagraph (A) if such payment or distribution is made within the 5-taxable year period beginning with the first taxable year for which the individual made a contribution to a Roth IRA (or such individual's spouse made a contribution to a Roth IRA) established for such individual.".

(B) Section 408A(d)(2) of the 1986 Code is amended by adding at the end the following new subparagraph:

"(C) DISTRIBUTIONS OF EXCESS CONTRIBUTIONS AND EARNINGS.—The term 'qualified distribution' shall not include any distribution of any contribution described in section 408(d)(4) and any net income allocable to the contribution.".

(4) Section 408A(d)(3) of the 1986 Code (relating to rollovers from IRAs other than Roth IRAs) is amended—

(A) by striking clause (iii) of subparagraph (A) and inserting:

"(iii) unless the taxpayer elects not to have this clause apply for any taxable year, any amount required to be included in gross income for such taxable year by reason of this paragraph for any distribution before January 1, 1999, shall be so included ratably over the 4-taxable year period beginning with such taxable year.

Any election under clause (iii) for any distributions during a taxable year may not be changed after the due date for such taxable year."; and

(B) by adding at the end the following new subparagraph:

"(F) SPECIAL RULES FOR CONTRIBUTIONS TO WHICH 4-YEAR AVERAGING APPLIES.—In the case of a qualified rollover contribution to a Roth IRA of a distribution to which subparagraph (A)(iii) applied, the following rules shall apply:

"(i) ACCELERATION OF INCLUSION.—

"(I) IN GENERAL.—The amount required to be included in gross income for each of the first 3

taxable years in the 4-year period under subparagraph (A)(iii) shall be increased by the aggregate distributions from Roth IRAs for such taxable year which are allocable under paragraph (4) to the portion of such qualified rollover contribution required to be included in gross income under subparagraph (A)(i).

"(II) LIMITATION ON AGGREGATE AMOUNT INCLUDED.—The amount required to be included in gross income for any taxable year under subparagraph (A)(iii) shall not exceed the aggregate amount required to be included in gross income under subparagraph (A)(iii) for all taxable years in the 4-year period (without regard to subclause (I)) reduced by amounts included for all preceding taxable years.

"(ii) DEATH OF DISTRIBUTEE.—

"(I) IN GENERAL.—If the individual required to include amounts in gross income under such subparagraph dies before all of such amounts are included, all remaining amounts shall be included in gross income for the taxable year which includes the date of death.

"(II) SPECIAL RULE FOR SURVIVING SPOUSE.—If the spouse of the individual described in subclause (I) acquires the individual's entire interest in any Roth IRA to which such qualified rollover contribution is properly allocable, the spouse may elect to treat the remaining amounts described in subclause (I) as includible in the spouse's gross income in the taxable years of the spouse ending with or within the taxable years of such individual in which such amounts would otherwise have been includible. Any such election may not be made or changed after the due date for the spouse's taxable year which includes the date of death.

"(G) SPECIAL RULE FOR APPLYING SECTION 72.—

"(i) IN GENERAL.—If—

"(I) any portion of a distribution from a Roth IRA is properly allocable to a qualified rollover contribution described in this paragraph; and

"(II) such distribution is made within the 5-taxable year period beginning with the taxable year in which such contribution was made,

then section 72(t) shall be applied as if such portion were includible in gross income.

"(ii) LIMITATION.—Clause (i) shall apply only to the extent of the amount of the qualified rollover contribution includible in gross income under subparagraph (A)(i).".

(5)(A) Section 408A(d)(4) of the 1986 Code is amended to read as follows:

"(4) AGGREGATION AND ORDERING RULES.—

"(A) AGGREGATION RULES.—Section 408(d)(2) shall be applied separately with respect to Roth IRAs and other individual retirement plans.

"(B) ORDERING RULES.—For purposes of applying this section and section 72 to any distribution from a Roth IRA, such distribution shall be treated as made—

"(i) from contributions to the extent that the amount of such distribution, when added to all previous distributions from the Roth IRA, does not exceed the aggregate contributions to the Roth IRA; and

"(ii) from such contributions in the following order:

"(I) Contributions other than qualified rollover contributions to which paragraph (3) applies.

"(II) Qualified rollover contributions to which paragraph (3) applies on a first-in, first-out basis.

Any distribution allocated to a qualified rollover contribution under clause (ii)(II) shall be allocated first to the portion of such contribution required to be included in gross income.".

(B) Section 408A(d)(1) of the 1986 Code is amended to read as follows:

"(1) EXCLUSION.—Any qualified distribution from a Roth IRA shall not be includible in gross income.".

(6)(A) Section 408A(d) of the 1986 Code (relating to distribution rules) is amended by adding at the end the following new paragraph:

"(6) TAXPAYER MAY MAKE ADJUSTMENTS BEFORE DUE DATE.—

"(A) IN GENERAL.—Except as provided by the Secretary, if, on or before the due date for any taxable year, a taxpayer transfers in a trustee-to-trustee transfer any contribution to an individual retirement plan made during such taxable year from such plan to any other individual retirement plan, then, for purposes of this chapter, such contribution shall be treated as having been made to the transferee plan (and not the transferor plan).

"(B) SPECIAL RULES.—

"(i) TRANSFER OF EARNINGS.—Subparagraph (A) shall not apply to the transfer of any contribution unless such transfer is accompanied by any net income allocable to such contribution.

"(ii) NO DEDUCTION.—Subparagraph (A) shall apply to the transfer of any contribution only to the extent no deduction was allowed with respect to the contribution to the transferor plan.".

(B) Section 408A(d)(3) of the 1986 Code, as amended by this subsection, is amended by striking subparagraph (D) and by redesignating subparagraphs (E), (F), and (G) as subparagraphs (D), (E), and (F), respectively.

(7) Section 408A(d) of the 1986 Code, as amended by paragraph (6), is amended by adding at the end the following new paragraph:

"(7) DUE DATE.—For purposes of this subsection, the due date for any taxable year is the date prescribed by law (including extensions of time) for filing the taxpayer's return for such taxable year.".

(8)(A) Section 4973(f) of the 1986 Code is amended—

(i) by striking "such accounts" in paragraph (1)(A) and inserting "Roth IRAs"; and

(ii) by striking "to the accounts" in paragraph (2)(B) and inserting "by the individual to all individual retirement plans".

(B) Section 4973(b) of the 1986 Code is amended—

(i) by inserting "a contribution to a Roth IRA or" after "other than" in paragraph (1)(A); and

(ii) by inserting "(including the amount contributed to a Roth IRA)" after "annuities" in paragraph (2)(C).

26 USC 4973.

(C) Section 302(b) of the 1997 Act is amended by striking "Section 4973(b)" and inserting "Section 4973".

(9) Section 408A of the 1986 Code is amended by adding at the end the following new subsection:

"(f) INDIVIDUAL RETIREMENT PLAN.—For purposes of this section—

"(1) a simplified employee pension or a simple retirement account may not be designated as a Roth IRA; and

"(2) contributions to any such pension or account shall not be taken into account for purposes of subsection (c)(2)(B).".

(c) AMENDMENTS RELATED TO SECTION 303 OF 1997 ACT.—

(1) Section 72(t)(8)(E) of the 1986 Code is amended—

(A) by striking "120 days" and inserting "120th day"; and

(B) by striking "60 days" and inserting "60th day".

(2)(A) Section 402(c)(4) of the 1986 Code is amended by striking "and" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", and", by inserting at the end the following new subparagraph:

"(C) any hardship distribution described in section 401(k)(2)(B)(i)(IV).".

(B) Section 403(b)(8)(B) of the 1986 Code is amended by inserting "(including paragraph (4)(C) thereof)" after "section 402(c)".

Applicability.
26 USC 402 note.

(C) The amendments made by this paragraph shall apply to distributions after December 31, 1998.

(d) AMENDMENTS RELATED TO SECTION 311 OF 1997 ACT.—

(1) Subsection (h) of section 1 of the 1986 Code (relating to maximum capital gains rate) is amended to read as follows:

"(h) MAXIMUM CAPITAL GAINS RATE.—

"(1) IN GENERAL.—If a taxpayer has a net capital gain for any taxable year, the tax imposed by this section for such taxable year shall not exceed the sum of—

"(A) a tax computed at the rates and in the same manner as if this subsection had not been enacted on the greater of—

"(i) taxable income reduced by the net capital gain; or

"(ii) the lesser of—

"(I) the amount of taxable income taxed at a rate below 28 percent; or

"(II) taxable income reduced by the adjusted net capital gain;

"(B) 10 percent of so much of the adjusted net capital gain (or, if less, taxable income) as does not exceed the excess (if any) of—

"(i) the amount of taxable income which would (without regard to this paragraph) be taxed at a rate below 28 percent, over

"(ii) the taxable income reduced by the adjusted net capital gain;

"(C) 20 percent of the adjusted net capital gain (or, if less, taxable income) in excess of the amount on which a tax is determined under subparagraph (B);

"(D) 25 percent of the excess (if any) of—

"(i) the unrecaptured section 1250 gain (or, if less, the net capital gain), over

"(ii) the excess (if any) of—

"(I) the sum of the amount on which tax is determined under subparagraph (A) plus the net capital gain, over

"(II) taxable income; and

"(E) 28 percent of the amount of taxable income in excess of the sum of the amounts on which tax is determined under the preceding subparagraphs of this paragraph.

"(2) REDUCED CAPITAL GAIN RATES FOR QUALIFIED 5-YEAR GAIN.—

"(A) REDUCTION IN 10-PERCENT RATE.—In the case of any taxable year beginning after December 31, 2000, the rate under paragraph (1)(B) shall be 8 percent with respect to so much of the amount to which the 10-percent rate would otherwise apply as does not exceed qualified 5-year gain, and 10 percent with respect to the remainder of such amount.

"(B) REDUCTION IN 20-PERCENT RATE.—The rate under paragraph (1)(C) shall be 18 percent with respect to so much of the amount to which the 20-percent rate would otherwise apply as does not exceed the lesser of—

"(i) the excess of qualified 5-year gain over the amount of such gain taken into account under subparagraph (A) of this paragraph; or

"(ii) the amount of qualified 5-year gain (determined by taking into account only property the holding period for which begins after December 31, 2000),

and 20 percent with respect to the remainder of such amount. For purposes of determining under the preceding sentence whether the holding period of property begins after December 31, 2000, the holding period of property acquired pursuant to the exercise of an option (or other right or obligation to acquire property) shall include the period such option (or other right or obligation) was held.

"(3) NET CAPITAL GAIN TAKEN INTO ACCOUNT AS INVESTMENT INCOME.—For purposes of this subsection, the net capital gain for any taxable year shall be reduced (but not below zero) by the amount which the taxpayer takes into account as investment income under section 163(d)(4)(B)(iii).

"(4) ADJUSTED NET CAPITAL GAIN.—For purposes of this subsection, the term 'adjusted net capital gain' means net capital gain reduced (but not below zero) by the sum of—

"(A) unrecaptured section 1250 gain; and

"(B) 28-percent rate gain.

"(5) 28-PERCENT RATE GAIN.—For purposes of this subsection—

"(A) IN GENERAL.—The term '28-percent rate gain' means the excess (if any) of—

"(i) the sum of—

"(I) the aggregate long-term capital gain from property held for more than 1 year but not more than 18 months;

"(II) collectibles gain; and

"(III) section 1202 gain, over

"(ii) the sum of—

"(I) the aggregate long-term capital loss (not described in subclause (IV)) from property referred to in clause (i)(I);

"(II) collectibles loss;

"(III) the net short-term capital loss; and

"(IV) the amount of long-term capital loss carried under section 1212(b)(1)(B) to the taxable year.

Applicability.

"(B) SPECIAL RULES.—

"(i) SHORT SALE GAINS AND HOLDING PERIODS.—Rules similar to the rules of section 1233(b) shall apply where the substantially identical property has been held more than 1 year but not more than 18 months; except that, for purposes of such rules—

"(I) section 1233(b)(1) shall be applied by substituting '18 months' for '1 year' each place it appears; and

"(II) the holding period of such property shall be treated as being 1 year on the day before the earlier of the date of the closing of the short sale or the date such property is disposed of.

"(ii) LONG-TERM LOSSES.—Section 1233(d) shall be applied separately by substituting '18 months' for '1 year' each place it appears.

"(iii) OPTIONS.—A rule similar to the rule of section 1092(f) shall apply where the stock was held for more than 18 months.

"(iv) SECTION 1256 CONTRACTS.—Amounts treated as long-term capital gain or loss under section 1256(a)(3) shall be treated as attributable to property held for more than 18 months.

"(6) COLLECTIBLES GAIN AND LOSS.—For purposes of this subsection—

"(A) IN GENERAL.—The terms 'collectibles gain' and 'collectibles loss' mean gain or loss (respectively) from the sale or exchange of a collectible (as defined in section 408(m) without regard to paragraph (3) thereof) which is a capital asset held for more than 18 months but only to the extent such gain is taken into account in computing gross income and such loss is taken into account in computing taxable income.

"(B) PARTNERSHIPS, ETC.—For purposes of subparagraph (A), any gain from the sale of an interest in a partnership, S corporation, or trust which is attributable to unrealized appreciation in the value of collectibles shall be treated as gain from the sale or exchange of a collectible.

Rules similar to the rules of section 751 shall apply for purposes of the preceding sentence. Applicability.

"(7) UNRECAPTURED SECTION 1250 GAIN.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'unrecaptured section 1250 gain' means the excess (if any) of—

"(i) the amount of long-term capital gain (not otherwise treated as ordinary income) which would be treated as ordinary income if—

"(I) section 1250(b)(1) included all depreciation and the applicable percentage under section 1250(a) were 100 percent, and

"(II) only gain from property held for more than 18 months were taken into account, over

"(ii) the excess (if any) of—

"(I) the amount described in paragraph (5)(A)(ii), over

"(II) the amount described in paragraph (5)(A)(i).

"(B) LIMITATION WITH RESPECT TO SECTION 1231 PROPERTY.—The amount described in subparagraph (A)(i) from sales, exchanges, and conversions described in section 1231(a)(3)(A) for any taxable year shall not exceed the net section 1231 gain (as defined in section 1231(c)(3)) for such year.

"(8) SECTION 1202 GAIN.—For purposes of this subsection, the term 'section 1202 gain' means an amount equal to the gain excluded from gross income under section 1202(a).

"(9) QUALIFIED 5-YEAR GAIN.—For purposes of this subsection, the term 'qualified 5-year gain' means the aggregate long-term capital gain from property held for more than 5 years. The determination under the preceding sentence shall be made without regard to collectibles gain, gain described in paragraph (7)(A)(i), and section 1202 gain.

"(10) COORDINATION WITH RECAPTURE OF NET ORDINARY LOSSES UNDER SECTION 1231.—If any amount is treated as ordinary income under section 1231(c), such amount shall be allocated among the separate categories of net section 1231 gain (as defined in section 1231(c)(3)) in such manner as the Secretary may by forms or regulations prescribe.

"(11) REGULATIONS.—The Secretary may prescribe such regulations as are appropriate (including regulations requiring reporting) to apply this subsection in the case of sales and exchanges by pass-thru entities and of interests in such entities.

"(12) PASS-THRU ENTITY DEFINED.—For purposes of this subsection, the term 'pass-thru entity' means—

"(A) a regulated investment company;

"(B) a real estate investment trust;

"(C) an S corporation;

"(D) a partnership;

"(E) an estate or trust;

"(F) a common trust fund;

"(G) a foreign investment company which is described in section 1246(b)(1) and for which an election is in effect under section 1247; and

"(H) a qualified electing fund (as defined in section 1295).

"(13) SPECIAL RULES FOR PERIODS DURING 1997.—

"(A) DETERMINATION OF 28-PERCENT RATE GAIN.—In applying paragraph (5)—

"(i) the amount determined under subclause (I) of paragraph (5)(A)(i) shall include long-term capital gain (not otherwise described in paragraph (5)(A)(i)) which is properly taken into account for the portion of the taxable year before May 7, 1997;

"(ii) the amounts determined under subclause (I) of paragraph (5)(A)(ii) shall include long-term capital loss (not otherwise described in paragraph (5)(A)(ii)) which is properly taken into account for the portion of the taxable year before May 7, 1997; and

Applicability.

"(iii) clauses (i)(I) and (ii)(I) of paragraph (5)(A) shall be applied by not taking into account any gain and loss on property held for more than 1 year but not more than 18 months which is properly taken into account for the portion of the taxable year after May 6, 1997, and before July 29, 1997.

"(B) OTHER SPECIAL RULES.—

"(i) DETERMINATION OF UNRECAPTURED SECTION 1250 GAIN NOT TO INCLUDE PRE-MAY 7, 1997 GAIN.—The amount determined under paragraph (7)(A)(i) shall not include gain properly taken into account for the portion of the taxable year before May 7, 1997.

Applicability.

"(ii) OTHER TRANSITIONAL RULES FOR 18-MONTH HOLDING PERIOD.—Paragraphs (6)(A) and (7)(A)(i)(II) shall be applied by substituting '1 year' for '18 months' with respect to gain properly taken into account for the portion of the taxable year after May 6, 1997, and before July 29, 1997.

Applicability.

"(C) SPECIAL RULES FOR PASS-THRU ENTITIES.—In applying this paragraph with respect to any pass-thru entity, the determination of when gains and loss are properly taken into account shall be made at the entity level.".

(2) Paragraph (3) of section 55(b) of the 1986 Code is amended to read as follows:

"(3) MAXIMUM RATE OF TAX ON NET CAPITAL GAIN OF NON-CORPORATE TAXPAYERS.—The amount determined under the first sentence of paragraph (1)(A)(i) shall not exceed the sum of—

"(A) the amount determined under such first sentence computed at the rates and in the same manner as if this paragraph had not been enacted on the taxable excess reduced by the lesser of—

"(i) the net capital gain; or

"(ii) the sum of—

"(I) the adjusted net capital gain, plus

"(II) the unrecaptured section 1250 gain, plus

"(B) 10 percent of so much of the adjusted net capital gain (or, if less, taxable excess) as does not exceed the amount on which a tax is determined under section 1(h)(1)(B), plus

"(C) 20 percent of the adjusted net capital gain (or, if less, taxable excess) in excess of the amount on which tax is determined under subparagraph (B), plus

"(D) 25 percent of the amount of taxable excess in excess of the sum of the amounts on which tax is determined under the preceding subparagraphs of this paragraph.

In the case of taxable years beginning after December 31, 2000, rules similar to the rules of section 1(h)(2) shall apply for purposes of subparagraphs (B) and (C). Terms used in this paragraph which are also used in section 1(h) shall have the respective meanings given such terms by section 1(h) but computed with the adjustments under this part.". Applicability.

(3) Section 57(a)(7) of the 1986 Code is amended by adding at the end the following new sentence: "In the case of stock the holding period of which begins after December 31, 2000 (determined with the application of the last sentence of section 1(h)(2)(B)), the preceding sentence shall be applied by substituting '28 percent' for '42 percent'.". Applicability.

(4) Paragraphs (11) and (12) of section 1223, and section 1235(a), of the 1986 Code are each amended by striking "1 year" each place it appears and inserting "18 months".

(e) AMENDMENTS RELATED TO SECTION 312 OF 1997 ACT.—

(1) Paragraph (2) of section 121(b) of the 1986 Code is amended to read as follows:

"(2) SPECIAL RULES FOR JOINT RETURNS.—In the case of a husband and wife who make a joint return for the taxable year of the sale or exchange of the property—

"(A) $500,000 LIMITATION FOR CERTAIN JOINT RETURNS.—Paragraph (1) shall be applied by substituting '$500,000' for '$250,000' if— Applicability.

"(i) either spouse meets the ownership requirements of subsection (a) with respect to such property;

"(ii) both spouses meet the use requirements of subsection (a) with respect to such property; and

"(iii) neither spouse is ineligible for the benefits of subsection (a) with respect to such property by reason of paragraph (3).

"(B) OTHER JOINT RETURNS.—If such spouses do not meet the requirements of subparagraph (A), the limitation under paragraph (1) shall be the sum of the limitations under paragraph (1) to which each spouse would be entitled if such spouses had not been married. For purposes of the preceding sentence, each spouse shall be treated as owning the property during the period that either spouse owned the property.".

(2) Section 121(c)(1) of the 1986 Code is amended to read as follows:

"(1) IN GENERAL.—In the case of a sale or exchange to which this subsection applies, the ownership and use requirements of subsection (a), and subsection (b)(3), shall not apply; but the dollar limitation under paragraph (1) or (2) of subsection (b), whichever is applicable, shall be equal to—

"(A) the amount which bears the same ratio to such limitation (determined without regard to this paragraph) as

"(B)(i) the shorter of—

"(I) the aggregate periods, during the 5-year period ending on the date of such sale or exchange, such

property has been owned and used by the taxpayer as the taxpayer's principal residence; or

"(II) the period after the date of the most recent prior sale or exchange by the taxpayer to which subsection (a) applied and before the date of such sale or exchange, bears to

"(ii) 2 years.".

26 USC 121 note.

(3) Section 312(d)(2) of the 1997 Act (relating to sales before date of the enactment) is amended by inserting "on or" before "before" each place it appears in the text and heading.

(f) AMENDMENTS RELATED TO SECTION 313 OF 1997 ACT.—

(1) Subsection (a) of section 1045 of such Code is amended—

(A) by striking "an individual" and inserting "a taxpayer other than a corporation"; and

(B) by striking "such individual" and inserting "such taxpayer".

(2) Subsection (b) of section 1045 of the 1986 Code is amended by adding at the end the following new paragraph:

"(5) CERTAIN RULES TO APPLY.—Rules similar to the rules of subsections (f), (g), (h), (i), (j), and (k) of section 1202 shall apply.".

SEC. 6006. AMENDMENT RELATED TO TITLE IV OF 1997 ACT.

(a) AMENDMENT RELATED TO SECTION 401 OF 1997 ACT.—Paragraph (1) of section 55(e) of the 1986 Code is amended to read as follows:

"(1) IN GENERAL.—

"(A) $7,500,000 GROSS RECEIPTS TEST.—The tentative minimum tax of a corporation shall be zero for any taxable year if the corporation's average annual gross receipts for all 3-taxable-year periods ending before such taxable year does not exceed $7,500,000. For purposes of the preceding sentence, only taxable years beginning after December 31, 1993, shall be taken into account.

Applicability.

"(B) $5,000,000 GROSS RECEIPTS TEST FOR FIRST 3-YEAR PERIOD.—Subparagraph (A) shall be applied by substituting '$5,000,000' for '$7,500,000' for the first 3-taxable-year period (or portion thereof) of the corporation which is taken into account under subparagraph (A).

"(C) FIRST TAXABLE YEAR CORPORATION IN EXISTENCE.—If such taxable year is the first taxable year that such corporation is in existence, the tentative minimum tax of such corporation for such year shall be zero.

Applicability.

"(D) SPECIAL RULES.—For purposes of this paragraph, the rules of paragraphs (2) and (3) of section 448(c) shall apply.".

(b) AMENDMENT RELATED TO SECTION 402 OF 1997 ACT.—Subsection (c) of section 168 of the 1986 Code is amended—

(1) by striking paragraph (2), and

(2) by striking the portion of such subsection preceding the table in paragraph (1) and inserting the following:

"(c) APPLICABLE RECOVERY PERIOD.—For purposes of this section, the applicable recovery period shall be determined in accordance with the following table:".

SEC. 6007. AMENDMENTS RELATED TO TITLE V OF 1997 ACT.

(a) AMENDMENTS RELATED TO SECTION 501 OF 1997 ACT.—

(1) Subsection (c) of section 2631 of the 1986 Code is amended to read as follows:

"(c) INFLATION ADJUSTMENT.—

"(1) IN GENERAL.—In the case of any calendar year after 1998, the $1,000,000 amount contained in subsection (a) shall be increased by an amount equal to—

"(A) $1,000,000, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting 'calendar year 1997' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $10,000, such amount shall be rounded to the next lowest multiple of $10,000.

"(2) ALLOCATION OF INCREASE.—Any increase under paragraph (1) for any calendar year shall apply only to generation-skipping transfers made during or after such calendar year; except that no such increase for calendar years after the calendar year in which the transferor dies shall apply to transfers by such transferor.". Applicability.

(2) Subsection (f) of section 501 of the 1997 Act is amended by inserting "(other than the amendment made by subsection (d))" after "this section". 26 USC 2001 note.

(b) AMENDMENTS RELATED TO SECTION 502 OF 1997 ACT.—

(1)(A) Section 2033A of the 1986 Code is hereby moved to the end of part IV of subchapter A of chapter 11 of the 1986 Code and redesignated as section 2057.

(B) So much of such section 2057 (as so redesignated) as precedes subsection (b) thereof is amended to read as follows:

"SEC. 2057. FAMILY-OWNED BUSINESS INTERESTS.

"(a) GENERAL RULE.—

"(1) ALLOWANCE OF DEDUCTION.—For purposes of the tax imposed by section 2001, in the case of an estate of a decedent to which this section applies, the value of the taxable estate shall be determined by deducting from the value of the gross estate the adjusted value of the qualified family-owned business interests of the decedent which are described in subsection (b)(2).

"(2) MAXIMUM DEDUCTION.—The deduction allowed by this section shall not exceed $675,000.

"(3) COORDINATION WITH UNIFIED CREDIT.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), if this section applies to an estate, the applicable exclusion amount under section 2010 shall be $625,000.

"(B) INCREASE IN UNIFIED CREDIT IF DEDUCTION IS LESS THAN $675,000.—If the deduction allowed by this section is less than $675,000, the amount of the applicable exclusion amount under section 2010 shall be increased (but not above the amount which would apply to the estate without regard to this section) by the excess of $675,000 over the amount of the deduction allowed.".

(C) Subparagraph (A) of section 2057(b)(2) of the 1986 Code (as so redesignated) is amended by striking "(without regard to this section)".

(D) Subsection (c) of section 2057 of the 1986 Code (as so redesignated) is amended by striking "(determined without regard to this section)".

(E) The table of sections for part III of subchapter A of chapter 11 of the 1986 Code is amended by striking the item relating to section 2033A.

(F) The table of sections for part IV of such subchapter is amended by adding at the end the following new item:

"Sec. 2057. Family-owned business interests.".

(2) Section 2057(b)(3) of the 1986 Code (as so redesignated) is amended to read as follows:

"(3) INCLUDIBLE GIFTS OF INTERESTS.—The amount of the gifts of qualified family-owned business interests determined under this paragraph is the sum of—

"(A) the amount of such gifts from the decedent to members of the decedent's family taken into account under section 2001(b)(1)(B), plus

"(B) the amount of such gifts otherwise excluded under section 2503(b),

to the extent such interests are continuously held by members of such family (other than the decedent's spouse) between the date of the gift and the date of the decedent's death.".

(3)(A) Section 2057(e)(2)(C) of the 1986 Code (as so redesignated) is amended by striking "(as defined in section 543(a))" and inserting "(as defined in section 543(a) without regard to paragraph (2)(B) thereof) if such trade or business were a corporation".

(B) Clause (ii) of section 2057(e)(2)(D) of the 1986 Code (as so redesignated) is amended by striking "income of which is described in section 543(a) or" and inserting "personal holding company income (as defined in subparagraph (C)) or income described".

(C) Paragraph (2) of section 2057(e) of the 1986 Code (as so redesignated) is amended by adding at the end the following new flush sentence:

"In the case of a lease of property on a net cash basis by the decedent to a member of the decedent's family, income from such lease shall not be treated as personal holding company income for purposes of subparagraph (C), and such property shall not be treated as an asset described in subparagraph (D)(ii), if such income and property would not be so treated if the lessor had engaged directly in the activities engaged in by the lessee with respect to such property.".

(4) Paragraph (2) of section 2057(f) of the 1986 Code (as so redesignated) is amended—

(A) by striking "(as determined under rules similar to the rules of section 2032A(c)(2)(B))"; and

(B) by adding at the end the following new subparagraph:

"(C) ADJUSTED TAX DIFFERENCE.—For purposes of subparagraph (A)—

"(i) IN GENERAL.—The adjusted tax difference attributable to a qualified family-owned business interest is the amount which bears the same ratio to the adjusted tax difference with respect to the estate (determined under clause (ii)) as the value of such

interest bears to the value of all qualified family-owned business interests described in subsection (b)(2).

"(ii) ADJUSTED TAX DIFFERENCE WITH RESPECT TO THE ESTATE.—For purposes of clause (i), the term 'adjusted tax difference with respect to the estate' means the excess of what would have been the estate tax liability but for the election under this section over the estate tax liability. For purposes of this clause, the term 'estate tax liability' means the tax imposed by section 2001 reduced by the credits allowable against such tax.".

(5)(A) Paragraph (1) of section 2057(e) of the 1986 Code (as so redesignated) is amended by adding at the end the following new flush sentence:

"For purposes of the preceding sentence, a decedent shall be treated as engaged in a trade or business if any member of the decedent's family is engaged in such trade or business.".

(B) Subsection (f) of section 2057 of the 1986 Code (as so redesignated) is amended by adding at the end the following new paragraph:

"(3) USE IN TRADE OR BUSINESS BY FAMILY MEMBERS.—A qualified heir shall not be treated as disposing of an interest described in subsection (e)(1)(A) by reason of ceasing to be engaged in a trade or business so long as the property to which such interest relates is used in a trade or business by any member of such individual's family.".

(6) Paragraph (1) of section 2057(g) of the 1986 Code (as so redesignated) is amended by striking "or (M)".

(7) Paragraph (3) of section 2057(i) of the 1986 Code (as so redesignated) is amended by redesignating subparagraphs (L), (M), and (N) as subparagraphs (N), (O), and (P), respectively, and by inserting after subparagraph (K) the following new subparagraphs:

"(L) Section 2032A(g) (relating to application to interests in partnerships, corporations, and trusts).

"(M) Subsections (h) and (i) of section 2032A.".

(c) AMENDMENTS RELATED TO SECTION 503 OF THE 1997 ACT.—

(1) Clause (iii) of section 6166(b)(7)(A) of the 1986 Code is amended to read as follows:

"(iii) for purposes of applying section 6601(j), the 2-percent portion (as defined in such section) shall be treated as being zero.".

(2) Clause (iii) of section 6166(b)(8)(A) of the 1986 Code is amended to read as follows:

"(iii) 2-PERCENT INTEREST RATE NOT TO APPLY.—For purposes of applying section 6601(j), the 2-percent portion (as defined in such section) shall be treated as being zero.".

(d) AMENDMENT RELATED TO SECTION 505 OF THE 1997 ACT.—Paragraphs (1) and (2) of section 7479(a) of the 1986 Code are each amended by striking "an estate," and inserting "an estate (or with respect to any property included therein),".

(e) AMENDMENTS RELATED TO SECTION 506 OF THE 1997 ACT.—

(1) Paragraph (1) of section 506(e) of the 1997 Act is amended by striking "and (c)" and inserting ", (c), and (d)". 26 USC 2001 note.

(2)(A) Paragraph (9) of section 6501(c) of the 1986 Code is amended by striking the last sentence.

(B) Subsection (f) of section 2001 of the 1986 Code is amended to read as follows:

"(f) VALUATION OF GIFTS.—

"(1) IN GENERAL—If the time has expired under section 6501 within which a tax may be assessed under chapter 12 (or under corresponding provisions of prior laws) on—

"(A) the transfer of property by gift made during a preceding calendar period (as defined in section 2502(b)); or

"(B) an increase in taxable gifts required under section 2701(d),

the value thereof shall, for purposes of computing the tax under this chapter, be the value as finally determined for purposes of chapter 12.

"(2) FINAL DETERMINATION.—For purposes of paragraph (1), a value shall be treated as finally determined for purposes of chapter 12 if—

"(A) the value is shown on a return under such chapter and such value is not contested by the Secretary before the expiration of the time referred to in paragraph (1) with respect to such return;

"(B) in a case not described in subparagraph (A), the value is specified by the Secretary and such value is not timely contested by the taxpayer; or

"(C) the value is determined by a court or pursuant to a settlement agreement with the Secretary.".

(B) Subsection (c) of section 2504 of the 1986 Code is amended to read as follows:

"(c) VALUATION OF GIFTS.—If the time has expired under section 6501 within which a tax may be assessed under this chapter 12 (or under corresponding provisions of prior laws) on—

"(1) the transfer of property by gift made during a preceding calendar period (as defined in section 2502(b)); or

"(2) an increase in taxable gifts required under section 2701(d),

the value thereof shall, for purposes of computing the tax under this chapter, be the value as finally determined (within the meaning of section 2001(f)(2)) for purposes of this chapter.".

(f) AMENDMENTS RELATED TO SECTION 507 OF 1997 ACT.—

(1) Paragraph (3) of section 1(g) of the 1986 Code is amended by striking subparagraph (C) and by redesignating subparagraph (D) as subparagraph (C).

(2) Section 641 of the 1986 Code is amended by striking subsection (c) and by redesignating subsection (d) as subsection (c).

(3) Paragraph (4) of section 1361(e) of the 1986 Code is amended by striking "section 641(d)" and inserting "section 641(c)".

(4) Subparagraph (A) of section 6103(e)(1) of the 1986 Code is amended by striking clause (ii) and by redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively.

(g) AMENDMENTS RELATED TO SECTION 508 OF 1997 ACT.—

(1) Subsection (c) of section 2031 of the 1986 Code is amended by redesignating paragraph (9) as paragraph (10) and by inserting after paragraph (8) the following new paragraph:

"(9) TREATMENT OF EASEMENTS GRANTED AFTER DEATH.—In any case in which the qualified conservation easement is granted after the date of the decedent's death and on or before the due date (including extensions) for filing the return of tax imposed by section 2001, the deduction under section 2055(f) with respect to such easement shall be allowed to the estate but only if no charitable deduction is allowed under chapter 1 to any person with respect to the grant of such easement.".

(2) The first sentence of paragraph (6) of section 2031(c) of the 1986 Code is amended by striking all that follows "shall be made" and inserting "on or before the due date (including extensions) for filing the return of tax imposed by section 2001 and shall be made on such return.".

SEC. 6008. AMENDMENTS RELATED TO TITLE VII OF 1997 ACT.

(a) AMENDMENT RELATED TO SECTION 1400 OF 1986 CODE.—Section 1400(b)(2)(B) of the 1986 Code is amended by inserting "as determined on the basis of the 1990 census" after "percent".

(b) AMENDMENT RELATED TO SECTION 1400A OF 1986 CODE.—Subsection (a) of section 1400A of the 1986 Code is amended by inserting before the period "and section 1394(b)(3)(B)(iii) shall be applied without regard to the employee residency requirement".

(c) AMENDMENTS RELATED TO SECTION 1400B OF 1986 CODE.—

(1) Section 1400B(b) of the 1986 Code is amended by inserting after paragraph (4) the following new paragraph:

"(5) TREATMENT OF DC ZONE TERMINATION.—The termination of the designation of the DC Zone shall be disregarded for purposes of determining whether any property is a DC Zone asset.".

(2) Paragraph (6) of section 1400B(b) of the 1986 Code is amended by striking "(4)(A)(ii)" and inserting "(4)(A)(i) or (ii)".

(3) Section 1400B(c) of the 1986 Code is amended by striking "entity which is an".

(4) Section 1400B(d)(2) of the 1986 Code is amended by inserting "as determined on the basis of the 1990 census" after "percent".

(d) AMENDMENTS RELATED TO SECTION 1400C OF 1986 CODE.—

(1) Paragraph (1) of section 1400C(b) of the 1986 Code is amended by inserting "and subsection (d)" after "this subsection".

(2) Paragraph (1) of section 1400C(c) of the 1986 Code is amended to read as follows:

"(1) IN GENERAL.—The term 'first-time homebuyer' means any individual if such individual (and if married, such individual's spouse) had no present ownership interest in a principal residence in the District of Columbia during the 1-year period ending on the date of the purchase of the principal residence to which this section applies.".

(3) Subparagraph (B) of section 1400C(e)(2) of the 1986 Code is amended by inserting before the period "on the date the taxpayer first occupies such residence".

(4) Paragraph (3) of section 1400C(e) of the 1986 Code is amended by striking all that follows "principal residence" and inserting "on the date such residence is purchased.".

(5) Subsection (i) of section 1400C of the 1986 Code is amended to read as follows:

"(i) APPLICATION OF SECTION.—This section shall apply to property purchased after August 4, 1997, and before January 1, 2001.".

(6) Subsection (c) of section 23 of the 1986 Code is amended by inserting "and section 1400C" after "other than this section".

(7) Subparagraph (C) of section 25(e)(1) of the 1986 Code is amended by striking "section 23" and inserting "sections 23 and 1400C".

SEC. 6009. AMENDMENTS RELATED TO TITLE IX OF 1997 ACT.

(a) AMENDMENT RELATED TO SECTION 908 OF 1997 ACT.—Paragraph (6) of section 5041(b) of the 1986 Code is amended by inserting "which is a still wine" after "hard cider".

(b) AMENDMENT RELATED TO SECTION 964 OF 1997 ACT.—

(1) IN GENERAL.—Subparagraph (C) of section 7704(g)(3) of the 1986 Code is amended by striking the period at the end and inserting "and shall be paid by the partnership. Section 6655 shall be applied to such partnership with respect to such tax in the same manner as if the partnership were a corporation, such tax were imposed by section 11, and references in such section to taxable income were references to the gross income referred to in subparagraph (A).". Applicability.

(2) EFFECTIVE DATE.—The second sentence of section 7704(g)(3)(C) of the 1986 Code (as added by paragraph (1)) shall apply to taxable years beginning after the date of the enactment of this Act. Applicability. 26 USC 7704 note.

(c) AMENDMENT RELATED TO SECTION 971 OF 1997 ACT.—Clause (ii) of section 280F(a)(1)(C) is amended by striking "subparagraph (A)" and inserting "subparagraphs (A) and (B)".

(d) AMENDMENT RELATED TO SECTION 976 OF 1997 ACT.—Section 6103(d)(5) of the 1986 Code is amended by striking "section 967 of the Taxpayer Relief Act of 1997." and inserting "section 976 of the Taxpayer Relief Act of 1997. Subsections (a)(2) and (p)(4) and sections 7213 and 7213A shall not apply with respect to disclosures or inspections made pursuant to this paragraph.".

(e) AMENDMENT RELATED TO SECTION 977 OF 1997 ACT.—Paragraph (2) of section 977(e) of the 1997 Act is amended to read as follows: 26 USC 172 note.

"(2) NON-AMTRAK STATE.—The term 'non-Amtrak State' means any State which is not receiving intercity passenger rail service from the Corporation as of the date of the enactment of this Act.".

SEC. 6010. AMENDMENTS RELATED TO TITLE X OF 1997 ACT.

(a) AMENDMENTS RELATED TO SECTION 1001 OF 1997 ACT.—

(1) Paragraph (2) of section 1259(b) of the 1986 Code is amended—

(A) by striking "debt" each place it appears in clauses (i), (ii), and (iii) of subparagraph (A) and inserting "position";

(B) by striking "and" at the end of subparagraph (A); and

(C) by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

"(B) any hedge with respect to a position described in subparagraph (A), and".

(2) Section 1259(d)(1) of the 1986 Code is amended by inserting "(including cash)" after "property".

(3) Subparagraph (D) of section 475(f)(1) of the 1986 Code is amended by adding at the end the following new sentence: "Subsection (d)(3) shall not apply under the preceding sentence for purposes of applying sections 1402 and 7704.".

(4) Subparagraph (C) of section 1001(d)(3) of the 1997 Act is amended by striking "within the 30-day period beginning on" and inserting "before the close of the 30th day after". 26 USC 475 note.

(b) AMENDMENT RELATED TO SECTION 1011 OF 1997 ACT.—Paragraph (1) of section 1059(g) of the 1986 Code is amended by striking "and in the case of stock held by pass-thru entities" and inserting ", in the case of stock held by pass-thru entities, and in the case of consolidated groups".

(c) AMENDMENTS RELATED TO SECTION 1012 OF 1997 ACT.—

(1) Paragraph (1) of section 1012(d) of the 1997 Act is amended by striking "1997, pursuant" and inserting "1997; except that the amendment made by subsection (a) shall apply to such distributions only if pursuant". 26 USC 351 note.

(2) Subparagraph (A) of section 355(e)(3) of the 1986 Code is amended—

(A) by striking "shall not be treated as described in" and inserting "shall not be taken into account in applying"; and

(B) by striking clause (iv) and inserting the following new clause:

"(iv) The acquisition of stock in the distributing corporation or any controlled corporation to the extent that the percentage of stock owned directly or indirectly in such corporation by each person owning stock in such corporation immediately before the acquisition does not decrease.".

(3)(A) Subsection (c) of section 351 of the 1986 Code is amended to read as follows:

"(c) SPECIAL RULES WHERE DISTRIBUTION TO SHAREHOLDERS.—

"(1) IN GENERAL.—In determining control for purposes of this section, the fact that any corporate transferor distributes part or all of the stock in the corporation which it receives in the exchange to its shareholders shall not be taken into account.

"(2) SPECIAL RULE FOR SECTION 355.—If the requirements of section 355 (or so much of section 356 as relates to section 355) are met with respect to a distribution described in paragraph (1), then, solely for purposes of determining the tax treatment of the transfers of property to the controlled corporation by the distributing corporation, the fact that the shareholders of the distributing corporation dispose of part or all of the distributed stock shall not be taken into account in determining control for purposes of this section.".

(B) Clause (ii) of section 368(a)(2)(H) of the 1986 Code is amended to read as follows:

"(ii) in the case of a transaction with respect to which the requirements of section 355 (or so much of section 356 as relates to section 355) are met, the

fact that the shareholders of the distributing corporation dispose of part or all of the distributed stock shall not be taken into account.".

(d) AMENDMENTS RELATED TO SECTION 1013 OF 1997 ACT.—

(1) Paragraph (5) of section 304(b) of the 1986 Code is amended by striking subparagraph (B) and by redesignating subparagraph (C) as subparagraph (B).

(2) Subsection (b) of section 304 of the 1986 Code is amended by adding at the end the following new paragraph:

Regulations.

"(6) AVOIDANCE OF MULTIPLE INCLUSIONS, ETC.—In the case of any acquisition to which subsection (a) applies in which the acquiring corporation or the issuing corporation is a foreign corporation, the Secretary shall prescribe such regulations as are appropriate in order to eliminate a multiple inclusion of any item in income by reason of this subpart and to provide appropriate basis adjustments (including modifications to the application of sections 959 and 961).".

(e) AMENDMENTS RELATED TO SECTION 1014 OF 1997 ACT.—

(1) Paragraph (1) of section 351(g) of the 1986 Code is amended by adding "and" at the end of subparagraph (A) and by striking subparagraphs (B) and (C) and inserting the following new subparagraph:

"(B) if (and only if) the transferor receives stock other than nonqualified preferred stock—

"(i) subsection (b) shall apply to such transferor; and

"(ii) such nonqualified preferred stock shall be treated as other property for purposes of applying subsection (b).".

(2) Clause (ii) of section 354(a)(2)(C) of 1986 Code is amended by adding at the end the following new subclause:

"(III) EXTENSION OF STATUTE OF LIMITATIONS.—The statutory period for the assessment of any deficiency attributable to a corporation failing to be a family-owned corporation shall not expire before the expiration of 3 years after the date the Secretary is notified by the corporation (in such manner as the Secretary may prescribe) of such failure, and such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.".

(f) AMENDMENT RELATED TO SECTION 1024 OF 1997 ACT.—Section 6331(h)(1) of the 1986 Code is amended by striking "The effect of a levy" and inserting "If the Secretary approves a levy under this subsection, the effect of such levy".

(g) AMENDMENTS RELATED TO SECTION 1031 OF 1997 ACT.—

(1) Subsection (l) of section 4041 of the 1986 Code is amended by striking "subsection (e) or (f)" and inserting "subsection (f) or (g)".

(2) Subsection (b) of section 9502 of the 1986 Code is amended by moving the sentence added at the end of paragraph (1) to the end of such subsection.

(3) Subsection (c) of section 6421 of the 1986 Code is amended—

(A) by striking "(2)(A)" and inserting "(2)"; and

(B) by adding at the end the following sentence: "Subsection (a) shall not apply to gasoline to which this subsection applies.".

(h) AMENDMENTS RELATED TO SECTION 1032 OF 1997 ACT.—

(1) Section 1032(a) of the 1997 Act is amended by striking "Subsection (a) of section 4083" and inserting "Paragraph (1) of section 4083(a)". 26 USC 4083.

(2) Section 1032(e)(12)(A) of the 1997 Act shall be applied as if "gasoline, diesel fuel," were the material proposed to be stricken. 26 USC 7232.

(3) Paragraph (1) of section 4082(d) of the 1986 Code is amended to read as follows:

"(1) AVIATION-GRADE KEROSENE.—Subsection (a)(2) shall not apply to aviation-grade kerosene (as determined under regulations prescribed by the Secretary) which the Secretary determines is destined for use as a fuel in an aircraft.". Regulations.

(4) Paragraph (3) of section 4082(d) of the 1986 Code is amended by striking "a removal, entry, or sale of kerosene to" and inserting "kerosene received by".

(5) Paragraph (1) of section 4101(e) of the 1986 Code is amended by striking "dyed diesel fuel and kerosene" and inserting "such fuel in a dyed form".

(i) AMENDMENT RELATED TO SECTION 1034 OF 1997 ACT.—Paragraph (3) of section 4251(d) of the 1986 Code is amended by striking "other similar arrangement" and inserting "any other similar arrangement".

(j) AMENDMENTS RELATED TO SECTION 1041 OF 1997 ACT.—

(1) Subparagraph (A) of section 512(b)(13) of the 1986 Code is amended by inserting "or accrues" after "receives".

(2) Subclause (I) of section 512(b)(13)(B)(i) of the 1986 Code is amended by striking "(as defined in section 513A(a)(5)(A))".

(3) Paragraph (2) of section 1041(b) of the 1997 Act is amended to read as follows: 26 USC 512 note.

"(2) BINDING CONTRACTS.—The amendments made by this section shall not apply to any amount received or accrued during the first 2 taxable years beginning on or after the date of the enactment of this Act if such amount is received or accrued pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such amount is received or accrued. The preceding sentence shall not apply to any amount which would (but for the exercise of an option to accelerate payment of such amount) be received or accrued after such 2 taxable years.".

(k) AMENDMENTS RELATED TO SECTION 1053 OF 1997 ACT.—

(1) Section 853 of the 1986 Code is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) TREATMENT OF TAXES NOT ALLOWED AS A CREDIT UNDER SECTION 901(k).—This section shall not apply to any tax with respect to which the regulated investment company is not allowed a credit under section 901 by reason of section 901(k).".

(2) Subsection (c) of section 853 of the 1986 Code is amended by striking the last sentence.

(3) Subparagraph (A) of section 901(k)(4) of the 1986 Code is amended by striking "securities business" and inserting "business as a securities dealer".

(l) AMENDMENT RELATED TO SECTION 1055 OF 1997 ACT.—Section 6611(g)(1) of the 1986 Code is amended by striking "(e), and (h)" and inserting "and (e)".

(m) AMENDMENT RELATED TO SECTION 1061 OF 1997 ACT.—Subsection (c) of section 751 of the 1986 Code is amended by striking "731" each place it appears and inserting "731, 732,".

(n) AMENDMENT RELATED TO SECTION 1083 OF 1997 ACT.—
26 USC 39. Section 1083(a)(2) of the 1997 Act is amended—

(1) by striking "21" and inserting "20"; and

(2) by striking "22" and inserting "21".

(o) AMENDMENTS RELATED TO SECTION 1084 OF 1997 ACT.—

(1) Paragraph (3) of section 264(a) of the 1986 Code is amended by striking "subsection (c)" and inserting "subsection (d)".

(2) Paragraph (4) of section 264(a) of the 1986 Code is amended by striking "subsection (d)" and inserting "subsection (e)".

(3)(A) Paragraph (4) of section 264(f) of the 1986 Code is amended by adding at the end the following new subparagraph:

"(E) MASTER CONTRACTS.—If coverage for each insured under a master contract is treated as a separate contract for purposes of sections 817(h), 7702, and 7702A, coverage for each such insured shall be treated as a separate contract for purposes of subparagraph (A). For purposes of the preceding sentence, the term 'master contract' shall not include any group life insurance contract (as defined in section 848(e)(2)).".

(B) The second sentence of section 1084(d) of the 1997
26 USC 101 note. Act is amended by striking "but" and all that follows and inserting "except that, in the case of a master contract (within the meaning of section 264(f)(4)(E) of the Internal Revenue Code of 1986), the addition of covered lives shall be treated as a new contract only with respect to such additional covered lives.".

(4)(A) Clause (iv) of section 264(f)(5)(A) of the 1986 Code is amended by striking the second sentence.

(B) Subparagraph (B) of section 6724(d)(1) of the 1986 Code is amended by striking "or" at the end of clause (xv), by striking the period at the end of clause (xvi) and inserting "; or", and by adding at the end the following new clause:

"(xvii) section 264(f)(5)(A)(iv) (relating to reporting with respect to certain life insurance and annuity contracts).".

(C) Paragraph (2) of section 6724(d) of the 1986 Code is amended by striking "or" at the end of subparagraph (Y), by striking the period at the end of subparagraph (Z) and inserting "or", and by adding at the end the following new subparagraph:

"(AA) section 264(f)(5)(A)(iv) (relating to reporting with respect to certain life insurance and annuity contracts).".

(5) Subparagraph (A) of section 264(f)(8) of the 1986 Code is amended by striking "subsection (d)(5)(B)" and inserting "subsection (e)(5)(B)".

(p) AMENDMENTS RELATED TO SECTION 1085 OF 1997 ACT.—

(1) Paragraph (5) of section 32(c) of the 1986 Code is amended—

(A) by inserting before the period at the end of subparagraph (A) "and increased by the amounts described in subparagraph (C)";

(B) by adding "or" at the end of clause (iii) of subparagraph (B); and

(C) by striking all that follows subclause (II) of subparagraph (B)(iv) and inserting the following:

"(III) other trades or businesses.

For purposes of clause (iv), there shall not be taken into account items which are attributable to a trade or business which consists of the performance of services by the taxpayer as an employee.

"(C) CERTAIN AMOUNTS INCLUDED.—An amount is described in this subparagraph if it is—

"(i) interest received or accrued during the taxable year which is exempt from tax imposed by this chapter; or

"(ii) amounts received as a pension or annuity, and any distributions or payments received from an individual retirement plan, by the taxpayer during the taxable year to the extent not included in gross income.

Clause (ii) shall not include any amount which is not includible in gross income by reason of a trustee-to-trustee transfer or a rollover distribution.".

(2) Clause (v) of section 32(c)(2)(B) of the 1986 Code is amended by inserting "shall be taken into account" before ", but only".

(3) The text of paragraph (3) of section 1085(a) of the 1997 Act is amended to read as follows: "Paragraph (2) of section 6213(g) (relating to the definition of mathematical or clerical errors) is amended by striking "and" at the end of subparagraph (I), by striking the period at the end of subparagraph (J) and inserting ", and", and by inserting after subparagraph (J) the following new subparagraph: 26 USC 6213.

"(K) an omission of information required by section 32(k)(2) (relating to taxpayers making improper prior claims of earned income credit).".

(q) AMENDMENT RELATED TO SECTION 1088 OF 1997 ACT.—Section 1088(b)(2)(C) of the 1997 Act is amended by inserting "more than 1 year" before "after". 26 USC 453C note.

(r) AMENDMENT RELATED TO SECTION 1089 OF 1997 ACT.—Paragraphs (1)(C) and (2)(C) of section 664(d) of the 1986 Code are each amended by adding ", and" at the end.

SEC. 6011. AMENDMENTS RELATED TO TITLE XI OF 1997 ACT.

(a) AMENDMENT RELATED TO SECTION 1103 OF 1997 ACT.—Paragraph (3) of section 59(a) added by section 1103 of the 1997 Act is redesignated as paragraph (4).

(b) AMENDMENTS RELATED TO SECTION 1121 OF 1997 ACT.—

(1) Subsection (e) of section 1297 of the 1986 Code is amended by adding at the end the following new paragraph:

"(4) TREATMENT OF HOLDERS OF OPTIONS.—Paragraph (1) shall not apply to stock treated as owned by a person by reason of section 1298(a)(4) (relating to the treatment of a person that has an option to acquire stock as owning such stock) unless such person establishes that such stock is owned (within the meaning of section 958(a)) by a United States

shareholder (as defined in section 951(b)) who is not exempt from tax under this chapter.".

(2) Section 1298(a)(2)(B) of the 1986 Code is amended by adding at the end the following new sentence: "Section 1297(e) shall not apply in determining whether a corporation is a passive foreign investment company for purposes of this subparagraph.".

(c) AMENDMENTS RELATED TO SECTION 1122 OF 1997 ACT.—

(1) Section 672(f)(3)(B) of the 1986 Code is amended by striking "section 1296" and inserting "section 1297".

(2) Paragraph (1) of section 1291(d) of the 1986 Code is amended by adding at the end the following new sentence: "In the case of stock which is marked to market under section 475 or any other provision of this chapter, this section shall not apply, except that rules similar to the rules of section 1296(j) shall apply.".

(3) Subsection (d) of section 1296 of the 1986 Code is amended by adding at the end the following new sentence: "In the case of a regulated investment company which elected to mark to market the stock held by such company as of the last day of the taxable year preceding such company's first taxable year for which such company elects the application of this section, the amount referred to in paragraph (1) shall include amounts included in gross income under such mark to market with respect to such stock for prior taxable years.".

(d) AMENDMENT RELATED TO SECTION 1123 OF 1997 ACT.—Subsection (e) of section 1297 of the 1986 Code added by section 1123 of the 1997 Act is redesignated as subsection (f).

(e) AMENDMENTS RELATED TO SECTION 1131 OF 1997 ACT.—

(1) Section 991 of the 1986 Code is amended by striking "except for the tax imposed by chapter 5".

(2) Section 6013 of the 1986 Code is amended by striking "chapters 1 and 5" each place it appears in paragraphs (1)(A) and (5) of subsection (g) and in subsection (h)(1) and inserting "chapter 1".

(f) AMENDMENT RELATED TO SECTION 1142 OF 1997 ACT.—

(1) Paragraph (2) of section 6038(a) of the 1986 Code is amended by striking "by regulations".

(2) Paragraph (3) of section 6038(a) of the 1986 Code is amended by striking "such information" and all that follows through the period and inserting "the Secretary has prescribed the furnishing of such information on or before the first day of such annual accounting period.".

(3) Paragraph (4) of section 6038(e) of the 1986 Code is amended by striking "corporation" and inserting "foreign business entity" each place it appears.

(g) AMENDMENT RELATED TO SECTION 1144 OF 1997 ACT.—Paragraphs (1) and (2) of section 1144(c) of the 1997 Act are each amended by striking "6038B(b)" and inserting "6038B(c) (as redesignated by subsection (b))".

26 USC 6038B.

SEC. 6012. AMENDMENTS RELATED TO TITLE XII OF 1997 ACT.

(a) AMENDMENT RELATED TO SECTION 1204 OF 1997 ACT.—The last sentence of section 162(a) of the 1986 Code is amended by striking "investigate" and all that follows and inserting "investigate or prosecute, or provide support services for the investigation or prosecution of, a Federal crime.".

(b) AMENDMENTS RELATED TO SECTION 1205 OF 1997 ACT.—

(1) Section 6311(e)(1) of the 1986 Code is amended by striking "section 6103(k)(8)" and inserting "section 6103(k)(9)".

(2) Paragraph (8) of section 6103(k) of the 1986 Code (as added by section 1205(c)(1) of the 1997 Act) is redesignated as paragraph (9).

(3) Subsection (g) of section 7431 of the 1986 Code added by section 1205 of the 1997 Act is redesignated as subsection (h) and is amended by striking "(8)" in the heading and inserting "(9)".

(4) Section 1205(c)(3) of the 1997 Act shall be applied as if it read as follows: 26 USC 6103.

"(3) Section 6103(p)(3)(A), as amended by section 1026(b)(1)(A) of the 1997 Act, is amended by striking "or (8)" and inserting "(8), or (9)".

(5) Section 1213(b) of the 1997 Act is amended by striking "section 6724(d)(1)(A)" and inserting "section 6724(d)(1)". 26 USC 6724.

(c) AMENDMENT RELATED TO SECTION 1221 OF 1997 ACT.—Paragraph (2) of section 774(d) of the 1986 Code is amended by inserting before the period "or 857(b)(3)(D)".

(d) AMENDMENT RELATED TO SECTION 1223 OF 1997 ACT.—Subsection (c) of section 6724 of the 1986 Code is amended by inserting before the period "(more than 100 information returns in the case of a partnership having more than 100 partners)".

(e) AMENDMENT RELATED TO SECTION 1226 OF 1997 ACT.—Section 1226 of the 1997 Act is amended by striking "ending on or" and inserting "beginning". 26 USC 6011 note.

(f) AMENDMENT RELATED TO SECTION 1231 OF 1997 ACT.—Subsection (c) of section 6211 of the 1986 Code is amended—

(1) by striking "SUBCHAPTER C" in the heading and inserting "SUBCHAPTERS C AND D"; and

(2) by striking "subchapter C" in the text and inserting "subchapters C and D".

(g) AMENDMENT RELATED TO SECTION 1256 OF 1997 ACT.—Subparagraph (A) of section 857(d)(3) of the 1986 Code is amended by striking "earliest accumulated earnings and profits (other than earnings and profits to which subsection (a)(2)(A) applies)" and inserting "earliest earnings and profits accumulated in any taxable year to which the provisions of this part did not apply".

(h) AMENDMENT RELATED TO SECTION 1285 OF 1997 ACT.—Section 7430(b) of the 1986 Code is amended by redesignating paragraph (5) as paragraph (4).

SEC. 6013. AMENDMENTS RELATED TO TITLE XIII OF 1997 ACT.

(a) AMENDMENTS RELATED TO SECTION 1305 OF 1997 ACT.—

(1) Section 646 of the 1986 Code is redesignated as section 645.

(2) The item relating to section 646 in the table of sections for subpart A of part I of subchapter J of chapter 1 of the 1986 Code is amended by striking "Sec. 646" and inserting "Sec. 645".

(3) Paragraph (1) of section 2652(b) of the 1986 Code is amended by striking "section 646" and inserting "section 645".

(4)(A) Paragraph (1) of section 2652(b) of the 1986 Code is amended by striking the second sentence.

(B) Subsection (b) of section 2654 of the 1986 Code is amended by adding at the end the following new sentence:

"For purposes of this subsection, a trust shall be treated as part of an estate during any period that the trust is so treated under section 645.".

(b) AMENDMENTS RELATED TO SECTION 1309 OF 1997 ACT.—

(1) Subsection (b) of section 685 of the 1986 Code is amended by adding at the end the following new flush sentence: "A trust shall not fail to be treated as meeting the requirement of paragraph (6) by reason of the death of an individual but only during the 60-day period beginning on the date of such death.".

(2) Subsection (f) of section 685 of the 1986 Code is amended by inserting before the period at the end "and of trusts terminated during the year".

SEC. 6014. AMENDMENTS RELATED TO TITLE XIV OF 1997 ACT.

(a) AMENDMENTS RELATED TO SECTION 1421 OF 1997 ACT.—

(1) Paragraph (1) of section 5054(a) of the 1986 Code is amended—

(A) by inserting ", or imported into the United States and transferred to a brewery free of tax under section 5418," after "produced in the United States" in the text; and

(B) by inserting "; CERTAIN IMPORTED BEER" after "PRODUCED IN THE UNITED STATES" in the heading.

(2) Paragraph (2) of section 5054(a) of the 1986 Code is amended by inserting "and not transferred to a brewery free of tax under section 5418" after "United States".

(3) Section 5056 of the 1986 Code is amended by striking "produced in the United States" each place it appears and inserting "removed for consumption or sale".

(b) AMENDMENTS RELATED TO SECTION 1422 OF 1997 ACT.—

(1) Paragraph (2) of section 5043(a) of the 1986 Code is amended by inserting "which are not transferred to a bonded wine cellar free of tax under section 5364" after "foreign wines".

(2) Subsection (a) of section 5044 of the 1986 Code is amended by striking "produced in the United States" and inserting "removed from a bonded wine cellar".

(3) Section 5364 of the 1986 Code is amended by striking "Wine imported or brought into" and inserting "Natural wine (as defined in section 5381) imported or brought into".

(c) AMENDMENT RELATED TO SECTION 1434 OF 1997 ACT.—Paragraph (2) of section 4052(f) of the 1986 Code is amended by striking "this section" and inserting "such section".

(d) AMENDMENT RELATED TO SECTION 1436 OF 1997 ACT.—Paragraph (2) of section 4091(a) of the 1986 Code is amended by inserting "or on which tax has been credited or refunded" after "such paragraph".

(e) AMENDMENT RELATED TO SECTION 1453 OF 1997 ACT.—Subparagraph (D) of section 7430(c)(4) of the 1986 Code is amended by striking "subparagraph (A)(iii)" and inserting "subparagraph (A)(ii)".

SEC. 6015. AMENDMENTS RELATED TO TITLE XV OF 1997 ACT.

(a) AMENDMENT RELATED TO SECTION 1501 OF 1997 ACT.—Paragraph (8) of section 408(p) of the 1986 Code added by section 1501(b) of the 1997 Act is redesignated as paragraph (9).

(b) AMENDMENT RELATED TO SECTION 1505 OF 1997 ACT.—Section 1505(d)(2) of the 1997 Act is amended by striking "(b)(12)" and inserting "(b)(12)(A)(i)".

26 USC 401 note.

(c) AMENDMENTS RELATED TO SECTION 1529 OF 1997 ACT.—

(1) Section 1529(a) of the 1997 Act is amended to read as follows: 26 USC 1529.

"(a) GENERAL RULE.—Amounts to which this section applies which are received by an individual (or the survivors of the individual) as a result of hypertension or heart disease of the individual shall be excludable from gross income under section 104(a)(1) of the Internal Revenue Code of 1986.".

(2) Section 1529(b)(1)(B) of the 1997 Act is amended to read as follows:

"(B) under—

"(i) a State law (as amended on May 19, 1992) which irrebuttably presumed that heart disease and hypertension are work-related illnesses but only for employees hired before July 1, 1992; or

"(ii) any other statute, ordinance, labor agreement, or similar provision as a disability pension payment or in the nature of a disability pension payment attributable to employment as a police officer or fireman, but only if the individual is referred to in the State law described in clause (i); and".

(d) AMENDMENT RELATED TO SECTION 1530 OF 1997 ACT.—Subparagraph (C) of section 404(a)(9) of the 1986 Code (as added by section 1530 of the 1997 Act) is redesignated as subparagraph (D) and is amended by striking "A qualified" and inserting "QUALIFIED GRATUITOUS TRANSFERS.—A qualified".

(e) AMENDMENT RELATED TO SECTION 1531 OF 1997 ACT.—Subsection (f) of section 9811 of the 1986 Code (as added by section 1531 of the 1997 Act) is redesignated as subsection (e).

SEC. 6016. AMENDMENTS RELATED TO TITLE XVI OF 1997 ACT.

(a) AMENDMENTS RELATED TO SECTION 1601(d) OF 1997 ACT.—

(1) AMENDMENTS RELATED TO SECTION 1601(d)(1)—

(A) Section 408(p)(2)(D)(i) of the 1986 Code is amended by striking "or (B)" in the last sentence.

(B) Section 408(p) of the 1986 Code is amended by adding at the end the following new paragraph:

"(10) SPECIAL RULES FOR ACQUISITIONS, DISPOSITIONS, AND SIMILAR TRANSACTIONS.—

"(A) IN GENERAL.—An employer which fails to meet any applicable requirement by reason of an acquisition, disposition, or similar transaction shall not be treated as failing to meet such requirement during the transition period if—

"(i) the employer satisfies requirements similar to the requirements of section 410(b)(6)(C)(i)(II); and

"(ii) the qualified salary reduction arrangement maintained by the employer would satisfy the requirements of this subsection after the transaction if the employer which maintained the arrangement before the transaction had remained a separate employer.

"(B) APPLICABLE REQUIREMENT.—For purposes of this paragraph, the term 'applicable requirement' means—

"(i) the requirement under paragraph (2)(A)(i) that an employer be an eligible employer;

"(ii) the requirement under paragraph (2)(D) that an arrangement be the only plan of an employer; and

"(iii) the participation requirements under paragraph (4).

"(C) TRANSITION PERIOD.—For purposes of this paragraph, the term 'transition period' means the period beginning on the date of any transaction described in subparagraph (A) and ending on the last day of the second calendar year following the calendar year in which such transaction occurs.".

(C) Section 408(p)(2) of the 1986 Code is amended—

(i) by striking "the preceding sentence shall apply only in accordance with rules similar to the rules of section 410(b)(6)(C)(i)" in the last sentence of subparagraph (C)(i)(II) and inserting "the preceding sentence shall not apply"; and

(ii) by striking clause (iii) of subparagraph (D).

(2) AMENDMENT TO SECTION 1601 (d)(4).—Section 1601(d)(4)(A) of the 1997 Act is amended— 26 USC 403 note.

(A) by striking "Section 403(b)(11)" and inserting "Paragraphs (7)(A)(ii) and (11) of section 403(b)"; and

(B) by striking "403(b)(1)" in clause (ii) and inserting "403(b)(10)".

(b) AMENDMENT RELATED TO SECTION 1601(f)(4) OF 1997 ACT.—Subsection (d) of section 6427 of the 1986 Code is amended—

(1) by striking "HELICOPTERS" in the heading and inserting "OTHER AIRCRAFT USES"; and

(2) by inserting "or a fixed-wing aircraft" after "helicopter".

SEC. 6017. AMENDMENT RELATED TO TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY.

(a) IN GENERAL.—Subparagraph (B) of section 6427(i)(2) of the 1986 Code is amended to read as follows:

"(B) TIME FOR FILING CLAIM.—No claim filed under this paragraph shall be allowed unless filed during the first quarter following the last quarter included in the claim.".

26 USC 6427 note. (b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 9009 of the Transportation Equity Act for the 21st Century.

SEC. 6018. AMENDMENTS RELATED TO SMALL BUSINESS JOB PROTECTION ACT OF 1996.

(a) AMENDMENT RELATED TO SECTION 1116.—Subparagraph (C) of section 1116(b)(2) of the Small Business Job Protection Act of 1996 is amended by striking "chapter 68" and inserting "chapter 61". 110 Stat. 1764.

(b) AMENDMENT RELATED TO SECTION 1421.—Section 408(d)(7) of the 1986 Code is amended—

(1) by inserting "or 402(k)" after "section 402(h)" in subparagraph (B) thereof; and

(2) by inserting "OR SIMPLE RETIREMENT ACCOUNTS" after "PENSIONS" in the heading thereof.

(c) AMENDMENT RELATED TO SECTION 1431.—Subparagraph (E) of section 1431(c)(1) of the Small Business Job Protection Act of 1996 is amended to read as follows: 26 USC 414.

"(E) Section 414(q)(5), as redesignated by subparagraph (A), is amended by striking 'under paragraph (4) or the number of officers taken into account under paragraph (5)' ".

(d) AMENDMENT RELATED TO SECTION 1604.—Paragraph (3) of section 1604(b) of such Act is amended— 26 USC 167 note.

(1) by striking "such Code" and inserting "the Internal Revenue Code of 1986"; and

(2) by striking "such date of enactment" and inserting "the date of the enactment of this Act".

(e) AMENDMENT RELATED TO SECTION 1609.—Paragraph (1) of section 1609(h) of such Act is amended by striking "paragraph (3)(A)(i)" and inserting "paragraph (3)(A)". 26 USC 4091 note.

(f) AMENDMENTS RELATED TO SECTION 1807.—

(1) Subparagraph (A) of section 23(b)(2) of the 1986 Code (relating to income limitation on credit for adoption expenses) is amended by inserting "(determined without regard to subsection (c))" after "for any taxable year".

(2) Paragraph (3) of section 1807(c) of the Small Business Job Protection Act of 1996 is amended by striking "Clause (i)" and inserting "Clause (ii)". 26 USC 219.

(g) AMENDMENT RELATED TO SECTION 1903.—Subsection (b) of section 1903 of such Act shall be applied as if "or" in the material proposed to be stricken were capitalized. 26 USC 679.

(h) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the provisions of the Small Business Job Protection Act of 1996 to which they relate. 26 USC 23 note.

SEC. 6019. AMENDMENTS RELATED TO TAXPAYER BILL OF RIGHTS 2.

(a) IN GENERAL.—Subsection (b) of section 6104 of the 1986 Code is amended by adding at the end the following new sentence: "In the case of an organization described in section 501(d), this subsection shall not apply to copies referred to in section 6031(b) with respect to such organization.".

(b) PUBLIC INSPECTION.—Subparagraph (C) of section 6104(e)(1) of the 1986 Code is amended by adding at the end the following new sentence: "In the case of an organization described in section 501(d), subparagraph (A) shall not require the disclosure of the copies referred to in section 6031(b) with respect to such organization.".

(c) DISCLOSURE TO AUTHORIZED REPRESENTATIVES OF THE TAXPAYER.—Paragraph (6) of section 6103(e) of the 1986 Code is amended by striking "or (5)" and inserting "(5), (8), or (9)".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act. 26 USC 6103 note.

SEC. 6020. AMENDMENT RELATED TO OMNIBUS BUDGET RECONCILIATION ACT OF 1993.

(a) IN GENERAL.—Section 196(c) of the 1986 Code is amended by striking "and" at the end of paragraph (6), by striking the period at the end of paragraph (7), and insert ", and", and by adding at the end the following new paragraph:

"(8) the employer Social Security credit determined under section 45B(a).".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the amendments made by section 13443 of the Revenue Reconciliation Act of 1993. 26 USC 196 note.

SEC. 6021. AMENDMENT RELATED TO REVENUE RECONCILIATION ACT OF 1990.

(a) IDENTIFICATION REQUIREMENT FOR INDIVIDUALS ELIGIBLE FOR EARNED INCOME CREDIT.—Subparagraph (F) of section 32(c)(1)

of the 1986 Code is amended by striking "The term 'eligible individual' does not include any individual who does not include on the return of tax for the taxable year—" and inserting "No credit shall be allowed under this section to an eligible individual who does not include on the return of tax for the taxable year—".

(b) IDENTIFICATION REQUIREMENT FOR QUALIFYING CHILDREN UNDER EARNED INCOME CREDIT.—

(1) IN GENERAL.—Clause (i) of section 32(c)(3)(D) of the 1986 Code is amended to read as follows:

"(i) IN GENERAL.—A qualifying child shall not be taken into account under subsection (b) unless the taxpayer includes the name, age, and TIN of the qualifying child on the return of tax for the taxable year.".

(2) INDIVIDUALS WHO DO NOT INCLUDE TIN, ETC., OF ANY QUALIFYING CHILD.—Paragraph (1) of section 32(c) of the 1986 Code is amended by adding at the end the following new subparagraph:

"(G) INDIVIDUALS WHO DO NOT INCLUDE TIN, ETC., OF ANY QUALIFYING CHILD.—No credit shall be allowed under this section to any eligible individual who has one or more qualifying children if no qualifying child of such individual is taken into account under subsection (b) by reason of paragraph (3)(D).".

(3) CONFORMING AMENDMENT.—Subparagraph (A) of section 32(c)(3) is amended by inserting "and" at the end of clause (ii), by striking ", and" at the end of clause (iii) and inserting a period, and by striking clause (iv).

26 USC 32 note.

(c) EFFECTIVE DATES.—

(1) ELIGIBLE INDIVIDUALS.—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 451 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(2) QUALIFYING CHILDREN.—The amendments made by subsection (b) shall take effect as if included in the amendments made by section 11111 of Revenue Reconciliation Act of 1990.

SEC. 6022. AMENDMENT RELATED TO TAX REFORM ACT OF 1986.

(a) IN GENERAL.—Section 6401(b)(1) of the 1986 Code is amended by striking "and D" and inserting "D, and G".

26 USC 6401 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 701(b) of the Tax Reform Act of 1986.

SEC. 6023. MISCELLANEOUS CLERICAL AND DEADWOOD CHANGES.

(1) The heading for subparagraph (B) of section 45A(b)(1) of the 1986 Code is amended by striking "TARGETED JOBS CREDIT" and inserting "WORK OPPORTUNITY CREDIT".

(2) The subsection heading for section 59(b) of the 1986 Code is amended by striking "SECTION 936 CREDIT" and inserting "CREDITS UNDER SECTION 30A OR 936".

(3) Subsection (n) of section 72 of the 1986 Code is amended by inserting "(as in effect on the day before the date of the enactment of the Small Business Job Protection Act of 1996)" after "section 101(b)(2)(D)".

(4) Subparagraph (A) of section 72(t)(3) of the 1986 Code is amended by striking "(A)(v)," and inserting "(A)(v)".

(5) Clause (ii) of section 142(f)(3)(A) of the 1986 Code is amended by striking "1997, (" and inserting "1997 (".

(6) The last sentence of paragraph (3) of section 501(n) of the 1986 Code is amended by striking "subparagraph (C)(ii)" and inserting "subparagraph (E)(ii)".

(7) Subsection (o) of section 501 of the 1986 Code is amended by striking "section 1853(e)" and inserting "section 1855(d)".

(8) The heading for subclause (II) of section 512(b)(17)(B)(ii) of the 1986 Code is amended by striking "RULE" and inserting "RULE".

(9) Clause (ii) of section 543(d)(5)(A) of the 1986 Code is amended by striking "section 563(c)" and inserting "section 563(d)".

(10) Subparagraph (B) of section 871(f)(2) of the 1986 Code is amended by striking "(19 U.S.C. 2462)" and inserting "19 U.S.C. 2461 et seq.)".

(11) Paragraph (2) of section 1017(a) of the 1986 Code is amended by striking "(b)(2)(D)" and inserting "(b)(2)(E)".

(12) Subparagraph (D) of section 1250(d)(4) of the 1986 Code is amended by striking "the last sentence of section 1033(b)" and inserting "section 1033(b)(2)".

(13) Paragraph (5) of section 3121(a) of the 1986 Code is amended—

(A) by striking the semicolon at the end of subparagraph (F) and inserting a comma;

(B) by striking "or" at the end of subparagraph (G); and

(C) by striking the period at the end of subparagraph (I) and inserting a semicolon.

(14) Paragraph (19) of section 3401(a) of the 1986 Code is amended by inserting "for" before "any benefit provided to".

(15) Paragraph (21) of section 3401(a) of the 1986 Code is amended by inserting "for" before "any payment made".

(16) Sections 4092(b) and 6427(q)(2) of the 1986 Code are each amended by striking "section 4041(c)(4)" and inserting "section 4041(c)(2)".

(17) Sections 4221(c) and 4222(d) of the 1986 Code are each amended by striking "4053(a)(6)" and inserting "4053(6)".

(18)(A) The heading of section 4973 of the 1986 Code is amended to read as follows:

"SEC. 4973. TAX ON EXCESS CONTRIBUTIONS TO CERTAIN TAX-FAVORED ACCOUNTS AND ANNUITIES.".

(B) The item relating to section 4973 in the table of sections for chapter 43 of the 1986 Code is amended to read as follows:

"Sec. 4973. Tax on excess contributions to certain tax-favored accounts and annuities.".

(19) Section 4975 of the 1986 Code is amended—

(A) in subsection (c)(3) by striking "exempt for the tax" and inserting "exempt from the tax"; and

(B) in subsection (i) by striking "Secretary of Treasury" and inserting "Secretary of the Treasury".

(20) Paragraph (1) of section 6039(a) of the 1986 Code is amended by inserting "to any person" after "transfers".

(21) Subparagraph (A) of section 6050R(b)(2) of the 1986 Code is amended by striking the semicolon at the end thereof and inserting a comma.

(22) Subparagraph (A) of section 6103(h)(4) of the 1986 Code is amended by inserting "if" before "the taxpayer is a party to".

(23) Paragraph (5) of section 6416(b) of the 1986 Code is amended by striking "section 4216(e)(1)" each place it appears and inserting "section 4216(d)(1)".

(24)(A) Section 6421 of the 1986 Code is amended by redesignating subsections (j) and (k) as subsections (i) and (j), respectively.

(B) Subsection (b) of section 34 of the 1986 Code is amended by striking "section 6421(j)" and inserting "section 6421(i)".

(C) Subsections (a) and (b) of section 6421 of the 1986 Code are each amended by striking "subsection (j)" and inserting "subsection (i)".

(25) Paragraph (3) of section 6427(f) of the 1986 Code is amended by striking ", (e),".

(26)(A) Section 6427 of the 1986 Code, as amended by paragraph (16), is amended by redesignating subsections (n), (p), (q), and (r) as subsections (m), (n), (o), and (p), respectively.

(B) Paragraphs (1) and (2)(A) of section 6427(i) of the 1986 Code are each amended by striking "(q)" and inserting "(o)".

(27) Subsection (m) of section 6501 of the 1986 Code is amended by striking "election under" and all that follows through "(or any" and inserting "election under section 30(d)(4), 40(f), 43, 45B, 45C(d)(4), or 51(j) (or any".

(28) The paragraph heading of paragraph (2) of section 7702B(e) of the 1986 Code is amended by inserting "SECTION" after "APPLICATION OF".

(29) Paragraph (3) of section 7434(b) of the 1986 Code is amended by striking "attorneys fees" and inserting "attorneys' fees".

(30) Subparagraph (B) of section 7872(f)(2) of the 1986 Code is amended by striking "foregone" and inserting "forgone".

(31) Subsection (e) of section 9502 of the 1986 Code is amended to read as follows:

"(e) CERTAIN TAXES ON ALCOHOL MIXTURES TO REMAIN IN GENERAL FUND.—For purposes of this section, the amounts which would (but for this subsection) be required to be appropriated under subparagraphs (A), (C), and (D) of subsection (b)(1) shall be reduced by—

"(1) 0.6 cent per gallon in the case of taxes imposed on any mixture at least 10 percent of which is alcohol (as defined in section 4081(c)(3)) if any portion of such alcohol is ethanol; and

"(2) 0.67 cent per gallon in the case of fuel used in producing a mixture described in paragraph (1).".

Effective date.
26 USC 34 note.

(32) The amendments made by this section shall take effect on the date of the enactment of this Act.

26 USC 1 note.

SEC. 6024. EFFECTIVE DATE.

Except as otherwise provided in this title, the amendments made by this title shall take effect as if included in the provisions of the Taxpayer Relief Act of 1997 to which they relate.

TITLE VII—REVENUE PROVISIONS

SEC. 7001. CLARIFICATION OF DEDUCTION FOR DEFERRED COMPENSATION.

(a) IN GENERAL.—Section 404(a) (relating to deduction for contributions of an employer to an employee's trust or annuity plan and compensation under a deferred-payment plan) is amended by adding at the end the following new paragraph:

"(11) DETERMINATIONS RELATING TO DEFERRED COMPENSATION.—For purposes of determining under this section—

"(A) whether compensation of an employee is deferred compensation; and

"(B) when deferred compensation is paid,

no amount shall be treated as received by the employee, or paid, until it is actually received by the employee.".

(b) EFFECTIVE DATE.— 26 USC 404 note.

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to taxable years ending after the date of the enactment of this Act. Applicability.

(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer required by the amendment made by subsection (a) to change its method of accounting for its first taxable year ending after the date of the enactment of this Act—

(A) such change shall be treated as initiated by the taxpayer,

(B) such change shall be treated as made with the consent of the Secretary of the Treasury; and

(C) the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Revenue Code of 1986 shall be taken into account ratably over the 3-taxable year period beginning with such first taxable year.

SEC. 7002. TERMINATION OF EXCEPTION FOR CERTAIN REAL ESTATE INVESTMENT TRUSTS FROM THE TREATMENT OF STAPLED ENTITIES. 26 USC 269B note.

(a) IN GENERAL.—Notwithstanding paragraph (3) of section 136(c) of the Tax Reform Act of 1984 (relating to stapled stock; stapled entities), the REIT gross income provisions shall be applied by treating the activities and gross income of members of the stapled REIT group properly allocable to any nonqualified real property interest held by the exempt REIT or any stapled entity which is a member of such group (or treated under subsection (c) as held by such REIT or stapled entity) as the activities and gross income of the exempt REIT in the same manner as if the exempt REIT and such group were one entity. Applicability.

(b) NONQUALIFIED REAL PROPERTY INTEREST.—For purposes of this section—

(1) IN GENERAL.—The term "nonqualified real property interest" means, with respect to any exempt REIT, any interest in real property acquired after March 26, 1998, by the exempt REIT or any stapled entity.

(2) EXCEPTION FOR BINDING CONTRACTS, ETC.—Such term shall not include any interest in real property acquired after March 26, 1998, by the exempt REIT or any stapled entity if—

(A) the acquisition is pursuant to a written agreement (including a put option, buy-sell agreement, and an agreement relating to a third party default) which was binding on such date and at all times thereafter on such REIT or stapled entity; or

(B) the acquisition is described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission.

(3) IMPROVEMENTS AND LEASES.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term "nonqualified real property interest" shall not include—

(i) any improvement to land owned or leased by the exempt REIT or any member of the stapled REIT group; and

(ii) any repair to, or improvement of, any improvement owned or leased by the exempt REIT or any member of the stapled REIT group,

if such ownership or leasehold interest is a qualified real property interest.

(B) LEASES.—The term "nonqualified real property interest" shall not include—

(i) any lease of a qualified real property interest if such lease is not otherwise such an interest; or

(ii) any renewal of a lease which is a qualified real property interest,

but only if the rent on any lease referred to in clause (i) or any renewal referred to in clause (ii) does not exceed an arm's length rate.

(C) TERMINATION WHERE CHANGE IN USE.—

(i) IN GENERAL.—Subparagraph (A) shall not apply to any improvement placed in service after December 31, 1999, which is part of a change in the use of the property to which such improvement relates unless the cost of such improvement does not exceed 200 percent of—

(I) the cost of such property; or

(II) if such property is substituted basis property (as defined in section 7701(a)(42) of the Internal Revenue Code of 1986), the fair market value of the property at the time of acquisition.

(ii) BINDING CONTRACTS.—For purposes of clause (i), an improvement shall be treated as placed in service before January 1, 2000, if such improvement is placed in service before January 1, 2004, pursuant to a binding contract in effect on December 31, 1999, and at all times thereafter.

(4) EXCEPTION FOR PERMITTED TRANSFERS, ETC.—The term "nonqualified real property interest" shall not include any interest in real property acquired solely as a result of a direct or indirect contribution, distribution, or other transfer of such interest from the exempt REIT or any member of the stapled REIT group to such REIT or any such member, but only to the extent the aggregate of the interests of the exempt REIT and all stapled entities in such interest in real property (determined in accordance with subsection (c)(1)) is not increased by reason of the transfer.

(5) TREATMENT OF ENTITIES WHICH ARE NOT STAPLED, ETC. ON MARCH 26, 1998.—Notwithstanding any other provision of this section, all interests in real property held by an exempt REIT or any stapled entity with respect to such REIT (or treated under subsection (c) as held by such REIT or stapled entity) shall be treated as nonqualified real property interests unless—

(A) such stapled entity was a stapled entity with respect to such REIT as of March 26, 1998, and at all times thereafter; and

(B) as of March 26, 1998, and at all times thereafter, such REIT was a real estate investment trust.

(6) QUALIFIED REAL PROPERTY INTEREST.—The term "qualified real property interest" means any interest in real property other than a nonqualified real property interest.

(c) TREATMENT OF PROPERTY HELD BY 10-PERCENT SUBSIDIARIES.—For purposes of this section—

(1) IN GENERAL.—Any exempt REIT and any stapled entity shall be treated as holding their proportionate shares of each interest in real property held by any 10-percent subsidiary entity of the exempt REIT or stapled entity, as the case may be.

(2) PROPERTY HELD BY 10-PERCENT SUBSIDIARIES TREATED AS NONQUALIFIED.—

(A) IN GENERAL.—Except as provided in subparagraph (B), any interest in real property held by a 10-percent subsidiary entity of an exempt REIT or stapled entity shall be treated as a nonqualified real property interest.

(B) EXCEPTION FOR INTERESTS IN REAL PROPERTY HELD ON MARCH 26, 1998, ETC.—In the case of an entity which was a 10-percent subsidiary entity of an exempt REIT or stapled entity on March 26, 1998, and at all times thereafter, an interest in real property held by such subsidiary entity shall be treated as a qualified real property interest if such interest would be so treated if held or acquired directly by the exempt REIT or the stapled entity.

(3) REDUCTION IN QUALIFIED REAL PROPERTY INTERESTS IF INCREASE IN OWNERSHIP OF SUBSIDIARY.—If, after March 26, 1998, an exempt REIT or stapled entity increases its ownership interest in a subsidiary entity to which paragraph (2)(B) applies above its ownership interest in such subsidiary entity as of such date, the additional portion of each interest in real property which is treated as held by the exempt REIT or stapled entity by reason of such increased ownership shall be treated as a nonqualified real property interest.

(4) SPECIAL RULES FOR DETERMINING OWNERSHIP.—For purposes of this subsection—

(A) percentage ownership of an entity shall be determined in accordance with subsection (e)(4);

(B) interests in the entity which are acquired by an exempt REIT or a member of the stapled REIT group in any acquisition described in an agreement, announcement, or filing described in subsection (b)(2) shall be treated as acquired on March 26, 1998; and

(C) except as provided in guidance prescribed by the Secretary, any change in proportionate ownership which is attributable solely to fluctuations in the relative fair

market values of different classes of stock shall not be taken into account.

(5) TREATMENT OF 60-PERCENT PARTNERSHIPS.—

(A) IN GENERAL.—If, as of March 26, 1998—

(i) an exempt REIT or stapled entity held directly or indirectly at least 60 percent of the capital or profits interest in a partnership; and

(ii) 90 percent or more of the capital interests and 90 percent or more of the profits interests in such partnership (other than interests held directly or indirectly by the exempt REIT or stapled entity) are, or will be, redeemable or exchangeable for consideration the amount of which is determined by reference to the value of shares of stock in the exempt REIT or stapled entity (or both),

paragraph (3) shall not apply to such partnership, and such REIT or entity shall be treated for all purposes of this section as holding all of the capital and profits interests in such partnership.

(B) LIMITATION TO ONE PARTNERSHIP.—If, as of January 1, 1999, more than one partnership owned by any exempt REIT or stapled entity meets the requirements of subparagraph (A), only the largest such partnership on such date (determined by aggregate asset bases) shall be treated as meeting such requirements.

(C) MIRROR ENTITY.—For purposes of subparagraph (A), an interest in a partnership formed after March 26, 1998, shall be treated as held by an exempt REIT or stapled entity on March 26, 1998, if such partnership is formed to mirror the stapling of an exempt REIT and a stapled entity in connection with an acquisition agreed to or announced on or before March 26, 1998.

(d) TREATMENT OF PROPERTY SECURED BY MORTGAGE HELD BY EXEMPT REIT OR MEMBER OF STAPLED REIT GROUP.—

(1) IN GENERAL.—In the case of any nonqualified obligation held by an exempt REIT or any member of the stapled REIT group, the REIT gross income provisions shall be applied by treating the exempt REIT as having impermissible tenant service income equal to—

(A) the interest income from such obligation which is properly allocable to the property described in paragraph (2); and

(B) the income of any member of the stapled REIT group from services described in paragraph (2) with respect to such property.

If the income referred to in subparagraph (A) or (B) is of a 10-percent subsidiary entity, only the portion of such income which is properly allocable to the exempt REIT's or the stapled entity's interest in the subsidiary entity shall be taken into account.

(2) NONQUALIFIED OBLIGATION.—Except as otherwise provided in this subsection, the term "nonqualified obligation" means any obligation secured by a mortgage on an interest in real property if the income of any member of the stapled REIT group for services furnished with respect to such property

would be impermissible tenant service income were such property held by the exempt REIT and such services furnished by the exempt REIT.

(3) EXCEPTION FOR CERTAIN MARKET RATE OBLIGATIONS.—Such term shall not include any obligation—

(A) payments under which would be treated as interest if received by a REIT; and

(B) the rate of interest on which does not exceed an arm's length rate.

(4) EXCEPTION FOR EXISTING OBLIGATIONS.—Such term shall not include any obligation—

(A) which is secured on March 26, 1998, by an interest in real property; and

(B) which is held on such date by the exempt REIT or any entity which is a member of the stapled REIT group on such date and at all times thereafter,

but only so long as such obligation is secured by such interest, and the interest payable on such obligation is not changed to a rate which exceeds an arm's length rate unless such change is pursuant to the terms of the obligation in effect on March 26, 1998. The preceding sentence shall not cease to apply by reason of the refinancing of the obligation if (immediately after the refinancing) the principal amount of the obligation resulting from the refinancing does not exceed the principal amount of the refinanced obligation (immediately before the refinancing) and the interest payable on such refinanced obligation does not exceed an arm's length rate.

(5) TREATMENT OF ENTITIES WHICH ARE NOT STAPLED, ETC. ON MARCH 26, 1998.—A rule similar to the rule of subsection (b)(5) shall apply for purposes of this subsection. Applicability.

(6) INCREASE IN AMOUNT OF NONQUALIFIED OBLIGATIONS IF INCREASE IN OWNERSHIP OF SUBSIDIARY.—A rule similar to the rule of subsection (c)(3) shall apply for purposes of this subsection. Applicability.

(7) COORDINATION WITH SUBSECTION (a).—This subsection shall not apply to the portion of any interest in real property that the exempt REIT or stapled entity holds or is treated as holding under this section without regard to this subsection.

(e) DEFINITIONS.—For purposes of this section—

(1) REIT GROSS INCOME PROVISIONS.—The term "REIT gross income provisions" means—

(A) paragraphs (2), (3), and (6) of section 856(c) of the Internal Revenue Code of 1986; and

(B) section 857(b)(5) of such Code.

(2) EXEMPT REIT.—The term "exempt REIT" means a real estate investment trust to which section 269B of the Internal Revenue Code of 1986 does not apply by reason of paragraph (3) of section 136(c) of the Tax Reform Act of 1984.

(3) STAPLED REIT GROUP.—The term "stapled REIT group" means, with respect to an exempt REIT, the group consisting of—

(A) all entities which are stapled entities with respect to the exempt REIT; and

(B) all entities which are 10-percent subsidiary entities of the exempt REIT or any such stapled entity.

(4) 10-PERCENT SUBSIDIARY ENTITY.—

(A) IN GENERAL.—The term "10-percent subsidiary entity" means, with respect to any exempt REIT or stapled entity, any entity in which the exempt REIT or stapled entity (as the case may be) directly or indirectly holds at least a 10-percent interest.

(B) EXCEPTION FOR CERTAIN C CORPORATION SUBSIDIARIES OF REITS.—A corporation which would, but for this subparagraph, be treated as a 10-percent subsidiary of an exempt REIT shall not be so treated if such corporation is taxable under section 11 of the Internal Revenue Code of 1986.

(C) 10-PERCENT INTEREST.—The term "10-percent interest" means—

(i) in the case of an interest in a corporation, ownership of 10 percent (by vote or value) of the stock in such corporation;

(ii) in the case of an interest in a partnership, ownership of 10 percent of the capital or profits interest in the partnership; and

(iii) in any other case, ownership of 10 percent of the beneficial interests in the entity.

(5) OTHER DEFINITIONS.—Terms used in this section which are used in section 269B or section 856 of such Code shall have the respective meanings given such terms by such section.

(f) GUIDANCE.—The Secretary may prescribe such guidance as may be necessary or appropriate to carry out the purposes of this section, including guidance to prevent the avoidance of such purposes and to prevent the double counting of income.

Applicability.

(g) EFFECTIVE DATE.—This section shall apply to taxable years ending after March 26, 1998.

SEC. 7003. CERTAIN CUSTOMER RECEIVABLES INELIGIBLE FOR MARK TO MARKET TREATMENT.

(a) CERTAIN RECEIVABLES NOT ELIGIBLE FOR MARK TO MARKET.—Section 475(c) (relating to definitions) is amended by adding at the end the following new paragraph:

"(4) SPECIAL RULES FOR CERTAIN RECEIVABLES.—

"(A) IN GENERAL.—Paragraph (2)(C) shall not include any nonfinancial customer paper.

"(B) NONFINANCIAL CUSTOMER PAPER.—For purposes of subparagraph (A), the term 'nonfinancial customer paper' means any receivable which—

"(i) is a note, bond, debenture, or other evidence of indebtedness;

"(ii) arises out of the sale of nonfinancial goods or services by a person the principal activity of which is the selling or providing of nonfinancial goods or services; and

"(iii) is held by such person (or a person who bears a relationship to such person described in section 267(b) or 707(b)) at all times since issue.".

(b) REGULATIONS.—Section 475(g) is amended by striking "and" at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting ", and", and by adding at the end the following new paragraph:

"(3) to prevent the use by taxpayers of subsection (c)(4) to avoid the application of this section to a receivable that

is inventory in the hands of the taxpayer (or a person who bears a relationship to the taxpayer described in sections 267(b) of 707(b)).".

(c) EFFECTIVE DATE.— 26 USC 475 note. Applicability.

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer required by the amendments made by this section to change its method of accounting for its first taxable year ending after the date of the enactment of this Act—

(A) such change shall be treated as initiated by the taxpayer;

(B) such change shall be treated as made with the consent of the Secretary of the Treasury; and

(C) the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Revenue Code of 1986 shall be taken into account ratably over the 4-taxable-year period beginning with such first taxable year.

SEC. 7004. MODIFICATION OF AGI LIMIT FOR CONVERSIONS TO ROTH IRAs.

(a) IN GENERAL.—Section 408A(c)(3)(C)(i) (relating to limits based on modified adjusted gross income) is amended to read as follows:

"(i) adjusted gross income shall be determined in the same manner as under section 219(g)(3), except that—

"(I) any amount included in gross income under subsection (d)(3) shall not be taken into account; and

"(II) any amount included in gross income by reason of a required distribution under a provision described in paragraph (5) shall not be taken into account for purposes of subparagraph (B)(i).".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2004. Applicability. 26 USC 408A note.

TITLE VIII—IDENTIFICATION OF LIMITED TAX BENEFITS SUBJECT TO LINE ITEM VETO

SEC. 8001. IDENTIFICATION OF LIMITED TAX BENEFITS SUBJECT TO LINE ITEM VETO.

Section 1021(a)(3) of the Congressional Budget and Impoundment Control Act of 1974 shall only apply to—

(1) section 3105 (relating to administrative appeal of adverse IRS determination of tax-exempt status of bond issue); and

(2) section 3445(c) (relating to State fish and wildlife permits).

TEA 21 Restoration Act. Grants. Intergovernmental relations. Loans.

TITLE IX—TECHNICAL CORRECTIONS TO TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY

23 USC 101 note.

SEC. 9001. SHORT TITLE.

This title may be cited as the "TEA 21 Restoration Act".

SEC. 9002. AUTHORIZATION AND PROGRAM SUBTITLE.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 1101(a) of the Transportation Equity Act for the 21st Century is amended—

Ante, p. 111.

(1) in paragraph (13)—

(A) by striking "$1,025,695,000" and inserting "$1,029,583,500";

(B) by striking "$1,398,675,000" and inserting "$1,403,977,500";

(C) by striking "$1,678,410,000" the first place it appears and inserting "$1,684,773,000";

(D) by striking "$1,678,410,000" the second place it appears and inserting "$1,684,773,000";

(E) by striking "$1,771,655,000" the first place it appears and inserting "$1,778,371,500"; and

(F) by striking "$1,771,655,000" the second place it appears and inserting "$1,778,371,500"; and

(2) in paragraph (14)—

(A) by striking "1998" and inserting "1999"; and

(B) by inserting before "$5,000,000" the following: "$10,000,000 for fiscal year 1998 and".

(b) OBLIGATION LIMITATIONS.—

Ante, p. 115.

(1) GENERAL LIMITATION.—Section 1102(a) of such Act is amended—

(A) in paragraph (2) by striking "$25,431,000,000" and inserting "$25,511,000,000";

(B) in paragraph (3) by striking "$26,155,000,000" and inserting "$26,245,000,000";

(C) in paragraph (4) by striking "$26,651,000,000" and inserting "$26,761,000,000";

(D) in paragraph (5) by striking "$27,235,000,000" and inserting "$27,355,000,000"; and

(E) in paragraph (6) by striking "$27,681,000,000" and inserting "$27,811,000,000".

(2) TRANSPORTATION RESEARCH PROGRAMS.—Section 1102(e) of such Act is amended—

(A) by striking "3" and inserting "5";

(B) by striking "VI" and inserting "V"; and

(C) by inserting before the period at the end the following: "; except that obligation authority made available for such programs under such limitations shall remain available for a period of 3 fiscal years".

(3) REDISTRIBUTION OF CERTAIN AUTHORIZED FUNDS.—Section 1102(f) of such Act is amended by striking "(other than the program under section 160 of title 23, United States Code)".

Ante, p. 118.

(c) APPORTIONMENTS.—Section 1103 of such Act is amended—

(1) in subsection (l) by adding at the end the following:

"(5) Section 150 of such title, and the item relating to such section in the analysis for chapter 1 of such title, are repealed.";

(2) in subsection (n) by inserting "of title 23, United States Code" after "206"; and

(3) by adding at the end the following:

"(o) TECHNICAL ADJUSTMENTS.—Section 104 of title 23, United States Code, is amended—

"(1) in subsection (a)(1) (as amended by subsection (a) of this section) by striking 'under section 103';

"(2) in subsection (b) (as amended by subsection (b) of this section)—

"(A) in paragraph (1)(A) by striking '1999 through 2003' and inserting '1998 through 2002'; and

"(B) in paragraph (4)(B)(i) by striking 'on lanes on Interstate System' and all that follows through 'in each State' and inserting 'on Interstate System routes open to traffic in each State'; and

"(3) in subsection (e)(2) (as added by subsection (d)(6) of this section) by striking '104, 144, or 157' and inserting '104, 105, or 144'.".

(d) MINIMUM GUARANTEE.—Section 1104 of such Act is amended by adding at the end the following: *Ante*, p. 127.

"(c) TECHNICAL ADJUSTMENTS.—Section 105 of title 23, United States Code (as amended by subsection (a) of this section), is amended—

"(1) in subsection (a) by adding at the end the following: 'The minimum amount allocated to a State under this section for a fiscal year shall be $1,000,000.';

"(2) in subsection (c)(1) by striking '50 percent of';

"(3) in subsection (c)(1)(A) by inserting '(other than metropolitan planning, minimum guarantee, high priority projects, Appalachian development highway system, and recreational trails programs)' after 'subsection (a)';

"(4) in subsection (c)(1)(B) by striking 'all States' and inserting 'each State';

"(5) in subsection (c)(2)—

"(A) by striking 'apportion' and inserting 'administer'; and

"(B) by striking 'apportioned' and inserting 'administered'; and

"(6) in subsection (f)—

"(A) by inserting 'percentage' before 'return' each place it appears;

"(B) in paragraph (2) by striking 'for the preceding fiscal year was equal to or less than' and inserting 'in the table in subsection (b) was equal to'; and

"(C) in paragraph (3)—

"(i) by inserting 'proportionately' before 'adjust';

"(ii) by striking 'set forth'; and

"(iii) by striking 'do not exceed' and inserting 'is equal to'.".

(e) REVENUE ALIGNED BUDGET AUTHORITY.—Section 1105 of such Act is amended by adding at the end the following: *Ante*, p. 130.

"(c) TECHNICAL CORRECTIONS.—Section 110 of such title (as amended by subsection (a)) is amended—

"(1) by striking subsection (a) and inserting the following:

'(a) IN GENERAL.—

'(1) ALLOCATION.—On October 15 of fiscal year 2000 and each fiscal year thereafter, the Secretary shall allocate for such fiscal year an amount of funds equal to the amount determined pursuant to section 251(b)(1)(B)(ii)(I)(cc) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C 901(b)(2)(B)(ii)(I)(cc)) if the amount determined pursuant to such section for such fiscal year is greater than zero.

'(2) REDUCTION.—If the amount determined pursuant to section 251(b)(1)(B)(ii)(I)(cc) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C 901(b)(2)(B)(ii)(I)(cc)) for fiscal year 2000 or any fiscal year thereafter is less than zero, the Secretary on October 1 of the succeeding fiscal year shall reduce proportionately the amount of sums authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out each of the Federal-aid highway and highway safety construction programs (other than emergency relief) by an aggregate amount equal to the amount determined pursuant to such section.';

"(2) in subsections (b)(2) and (b)(4) by striking 'subsection (a)' and inserting 'subsection (a)(1)'; and

"(3) in subsection (c) by striking 'Maintenance program, the' and inserting 'and'.".

(f) INTERSTATE MAINTENANCE PROGRAM.—Section 1107 of such Act is amended by adding at the end the following:

Ante, p. 137.

"(d) TECHNICAL AMENDMENTS.—Section 119 of such title (as amended by subsection (a)) is amended—

"(1) in subsection (b)—

"(A) by striking '104(b)(5)(B)' and inserting '104(b)(4)'; and

"(B) by striking '104(b)(5)(A)' each place it appears and inserting '104(b)(5)(A) (as in effect on the date before the date of enactment of the Transportation Equity Act for the 21st Century)'; and

"(2) in subsection (c) by striking '104(b)(5)(B)' each place it appears and inserting '104(b)(4)'.".

(g) CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM.—Section 1110(d)(2) of such Act is amended—

Ante, p. 142.

(1) by striking "149(c)" and inserting "149(e)"; and

(2) by striking "that reduce" and inserting "reduce".

(h) HIGHWAY USE TAX EVASION PROJECTS.—Section 1114 of such Act is amended by adding at the end the following:

Ante, p. 152.

"(c) TECHNICAL ADJUSTMENTS.—Section 143 of title 23, United States Code (as amended by subsection (a) of this section), is amended—

"(1) in subsection (c)(1) by striking 'April 1' and inserting 'August 1';

"(2) in subsection (c)(3) by inserting 'PRIORITY' after 'FUNDING'; and

"(3) in subsection (c)(3) by inserting 'and prior to funding any other activity under this section,' after '2003,'.".

(i) FEDERAL LANDS HIGHWAYS PROGRAM.—Section 1115 of the Transportation Equity Act for the 21st Century is amended by adding at the end the following:

Ante, p. 154.

"(f) CONFORMING AMENDMENTS.—

"(1) FEDERAL SHARE.—Subsections (j) and (k) of section 120 of title 23, United States Code (as added by subsection

(a) of this section), are redesignated as subsections (k) and (l), respectively.

"(2) RESERVATION OF FUNDS.—Section 202(d)(4)(B) of such title (as added by subsection (b)(4) of this section) is amended by striking 'to, apply sodium acetate/formate de-icer to,' and inserting ', sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions'.

"(3) ELIMINATION OF DUPLICATIVE PROVISION.—Section 144(g) of such title is amended by striking paragraph (4).".

(j) WOODROW WILSON MEMORIAL BRIDGE CORRECTION.—Section 1116 of such Act is amended by adding at the end the following: *Ante*, p. 158.

"(e) TECHNICAL CORRECTION.—Sections 404(5) and 407(c)(2)(C)(iii) of such Act (as amended by subsections (a)(2) and (b)(2), respectively) are amended by striking 'the record of decision' each place it appears and inserting 'a record of decision'.".

(k) TECHNICAL CORRECTION.—Section 1117 of such Act is amended in subsections (a) and (b) by striking "section 102" each place it appears and inserting "section 1101(a)(6)". *Ante*, p. 160.

SEC. 9003. RESTORATIONS TO GENERAL PROVISIONS SUBTITLE.

(a) IN GENERAL.—Subtitle B of title I of the Transportation Equity Act for the 21st Century is amended by adding at the end the following: *Ante*, p. 164.

"SEC. 1224. NATIONAL HISTORIC COVERED BRIDGE PRESERVATION.

"(a) HISTORIC COVERED BRIDGE DEFINED.—In this section, the term 'historic covered bridge' means a covered bridge that is listed or eligible for listing on the National Register of Historic Places.

"(b) HISTORIC COVERED BRIDGE PRESERVATION.—Subject to the availability of appropriations under subsection (d), the Secretary shall—

"(1) collect and disseminate information concerning historic covered bridges;

"(2) foster educational programs relating to the history and construction techniques of historic covered bridges;

"(3) conduct research on the history of historic covered bridges; and

"(4) conduct research, and study techniques, on protecting historic covered bridges from rot, fire, natural disasters, or weight-related damage.

"(c) DIRECT FEDERAL ASSISTANCE.—

"(1) IN GENERAL.—Subject to the availability of appropriations, the Secretary shall make a grant to a State that submits an application to the Secretary that demonstrates a need for assistance in carrying out 1 or more historic covered bridge projects described in paragraph (2).

"(2) TYPES OF PROJECT.—A grant under paragraph (1) may be made for a project—

"(A) to rehabilitate or repair a historic covered bridge; and

"(B) to preserve a historic covered bridge, including through—

"(i) installation of a fire protection system, including a fireproofing or fire detection system and sprinklers;

"(ii) installation of a system to prevent vandalism and arson; or

"(iii) relocation of a bridge to a preservation site.

"(3) AUTHENTICITY.—A grant under paragraph (1) may be made for a project only if—

"(A) to the maximum extent practicable, the project—

"(i) is carried out in the most historically appropriate manner; and

"(ii) preserves the existing structure of the historic covered bridge; and

"(B) the project provides for the replacement of wooden components with wooden components, unless the use of wood is impracticable for safety reasons.

"(4) FEDERAL SHARE.—The Federal share of the cost of a project carried out with a grant under this subsection shall be 80 percent.

"(d) FUNDING.—There is authorized to be appropriated to carry out this section $10,000,000 for each of fiscal years 1999 through 2003. Such funds shall remain available until expended.

District of Columbia.

"SEC. 1225. SUBSTITUTE PROJECT.

"(a) APPROVAL OF PROJECT.—Notwithstanding any other provision of law, upon the request of the Mayor of the District of Columbia, the Secretary may approve substitute highway and transit projects under section 103(e)(4) of title 23, United States Code (as in effect on the day before the date of enactment of this Act), in lieu of construction of the Barney Circle Freeway project in the District of Columbia, as identified in the 1991 Interstate Cost Estimate.

"(b) ELIGIBILITY FOR FEDERAL ASSISTANCE.—Upon approval of any substitute project or projects under subsection (a)—

"(1) the cost of construction of the Barney Circle Freeway Modification project shall not be eligible for funds authorized under section 108(b) of the Federal-Aid Highway Act of 1956; and

"(2) substitute projects approved pursuant to this section shall be funded from interstate construction funds apportioned or allocated to the District of Columbia that are not expended and not subject to lapse on the date of enactment of this Act.

"(c) FEDERAL SHARE.—The Federal share payable on account of a project or activity approved under this section shall be 85 percent of the cost thereof; except that the exception set forth in section 120(b)(2) of title 23, United States Code, shall apply.

"(d) LIMITATION ON ELIGIBILITY.—Any substitute project approved pursuant to subsection (a) (for which the Secretary finds that sufficient Federal funds are available) must be under contract for construction, or construction must have commenced, before the last day of the 4-year period beginning on the date of enactment of this Act. If the substitute project is not under contract for construction, or construction has not commenced, by such last day, the Secretary shall withdraw approval of the substitute project.

"SEC. 1226. FISCAL, ADMINISTRATIVE, AND OTHER AMENDMENTS.

"(a) ADVANCED CONSTRUCTION.—Section 115 of title 23, United States Code, is amended—

"(1) in subsection (b)—

"(A) by moving the text of paragraph (1) (including subparagraphs (A) and (B)) 2 ems to the left;

"(B) by striking 'PROJECTS' and all that follows through 'When a State' and inserting 'PROJECTS.—When a State';

"(C) by striking paragraphs (2) and (3);

"(D) by striking '(A) prior' and inserting '(1) prior'; and

"(E) by striking '(B) the project' and inserting '(2) the project';

"(2) by striking subsection (c); and

"(3) by redesignating subsection (d) as subsection (c).

"(b) AVAILABILITY OF FUNDS.—Section 118 of such title is amended—

"(1) in the subsection heading of subsection (b) by striking '; DISCRETIONARY PROJECTS'; and

"(2) by striking subsection (e) and inserting the following:

'(e) EFFECT OF RELEASE OF FUNDS.—Any Federal-aid highway funds released by the final payment on a project, or by the modification of the project agreement, shall be credited to the same program funding category previously apportioned to the State and shall be immediately available for expenditure.'.".

"(c) ADVANCES TO STATES.—Section 124 of such title is amended—

"(1) by striking '(a)' the first place it appears; and

"(2) by striking subsection (b).

"(d) DIVERSION.—Section 126 of such title, and the item relating to such section in the analysis for chapter 1 of such title, are repealed.".

(b) CONFORMING AMENDMENT.—The table of contents contained in section 1(b) of such Act is amended by inserting after the item relating to section 1222 the following:

"Sec. 1223. Transportation assistance for Olympic cities.
"Sec. 1224. National historic covered bridge preservation.
"Sec. 1225. Substitute project.
"Sec. 1226. Fiscal, administrative, and other amendments.".

(c) METROPOLITAN PLANNING TECHNICAL ADJUSTMENT.—Section 1203 of such Act is amended by adding at the end the following: *Ante*, p. 170.

"(o) TECHNICAL ADJUSTMENT.—Section 134(h)(5)(A) of title 23, United States Code (as amended by subsection (h) of this section), is amended by striking 'for implementation'.".

(d) AMENDMENTS TO PRIOR SURFACE TRANSPORTATION LAWS.—Section 1211 of such Act is amended— *Ante*, p. 188.

(1) in subsection (i)(3)(E) by striking "subparagraph (D)" and inserting "subparagraph (C)";

(2) in subsection (i) by adding at the end the following:

"(4) TECHNICAL AMENDMENTS.—Section 1105(e)(5)(B)(i) of such Act (as amended by paragraph (3) of this subsection) is amended—

"(A) by striking 'subsection (c)(18)(B)(i)' and inserting 'subsection (c)(18)(D)(i)';

"(B) by striking 'subsection (c)(18)(B)(ii)' and inserting 'subsection (c)(18)(D)(ii)'; and

"(C) by adding at the end the following: 'The portion of the route referred to in subsection (c)(36) is designated as Interstate Route I–86.'.";

(3) by striking subsection (j);

(4) in subsection (k)—

(A) by striking "along" in paragraph (1) and inserting "from"; and

(B) by adding at the end the following:

"(4) TEXAS STATE HIGHWAY 99.—Texas State Highway 99 (also known as 'Grand Parkway') shall be considered as one option in the I–69 route studies performed by the Texas Department of Transportation for the designation of I–69 Bypass in Houston, Texas."; and

(5) by redesignating subsections (g) through (i) and (k) through (n) as subsections (f) through (h) and (i) through (l), respectively.

Ante, p. 193.

(e) MISCELLANEOUS.—Section 1212 of such Act is amended—

(1) in the second sentence of subsection (q)(1) by striking "advance curriculum" and inserting "advanced curriculum";

(2) in subsection (r)—

(A) by redesignating paragraph (2) as paragraph (3); and

(B) by inserting after paragraph (1) the following:

"(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out paragraph (1) $2,000,000 for fiscal year 1999 and $2,500,000 for fiscal year 2000.";

(3) in subsection (s)—

(A) by redesignating paragraph (2) as paragraph (3); and

(B) by inserting after paragraph (1) the following:

"(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out paragraph (1) $23,000,000 for fiscal year 1999.";

(4) in subsection (u)—

(A) by inserting "the Secretary shall approve, and" before "the Commonwealth";

(B) by inserting a comma after "with"; and

(C) by inserting "(as redefined by this Act)" after "80"; and

(5) by redesignating subsections (k) through (z) as subsections (e) through (t), respectively.

Ante, p. 204.

(f) PUERTO RICO HIGHWAY PROGRAM.—Section 1214(r) of the Transportation Equity Act for the 21st Century is amended by adding at the end the following:

"(3) TREATMENT OF FUNDS.—Amounts made available to carry out this subsection for a fiscal year shall be administered as follows:

"(A) For purposes of this subsection, such amounts shall be treated as being apportioned to Puerto Rico under sections 104(b), 144, and 206 of title 23, United States Code, for each program funded under such sections in an amount determined by multiplying—

"(i) the aggregate of such amounts for the fiscal year; by

"(ii) the ratio that—

"(I) the amount of funds apportioned to Puerto Rico for each such program for fiscal year 1997; bears to

"(II) the total amount of funds apportioned to Puerto Rico for all such programs for fiscal year 1997.

"(B) The amounts treated as being apportioned to Puerto Rico under each section referred to in subparagraph (A) shall be deemed to be required to be apportioned to Puerto Rico under such section for purposes of the imposition of any penalty provisions in titles 23 and 49, United States Code.

"(C) Subject to subparagraph (B), nothing in this subsection shall be construed as affecting any allocation under section 105 of title 23, United States Code, and any apportionment under sections 104 and 144 of such title.".

(g) DESIGNATED TRANSPORTATION ENHANCEMENT ACTIVITIES.—Section 1215 of such Act— *Ante*, p. 209.

(1) is amended in each of subsections (d), (e), (f), and (g)—

(A) by redesignating paragraph (2) as paragraph (3); and

(B) by inserting after paragraph (1) the following:

"(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out paragraph (1) the amounts specified in such paragraph for the fiscal years specified in such paragraph."; and

(2) in subsection (d)(1) by inserting "on Route 50" after "measures".

(h) ELIGIBILITY.—Section 1217 of such Act is amended— *Ante*, p. 214.

(1) in subsection (d) by striking "104(b)(4)" and inserting "104(b)(5)(A)";

(2) in subsection (i) by striking "120(l)(1)" and inserting "120(j)(1)"; and

(3) in subsection (j) by adding at the end the following: "$3,000,000 of the amounts made available for item 164 of the table contained in section 1602 shall be made available on October 1, 1998, to the Pennsylvania Turnpike Commission to carry out this subsection.".

(i) MAGNETIC LEVITATION TRANSPORTATION TECHNOLOGY DEPLOYMENT PROGRAM.—Section 1218 of such Act is amended by adding at the end the following: *Ante*, p. 216.

"(c) TECHNICAL AMENDMENTS.—Section 322 of title 23, United States Code (as added by subsection (a) of this section), is amended—

"(1) in subsection (a)(3) by striking 'or under 50 miles per hour';

"(2) in subsection (d)—

"(A) in paragraph (1) by striking 'or low-speed'; and

"(B) in paragraph (2)—

"(i) in subparagraph (A) by striking '(h)(1)(A)' and inserting '(h)(1)'; and

"(ii) in subparagraph (B) by striking '(h)(4)' and inserting '(h)(3)';

"(3) in subsection (h)(1)(B)(i) by inserting '(other than subsection (i))' after 'this section'; and

"(4) by adding at the end the following:

'(i) LOW-SPEED PROJECT.—

'(1) IN GENERAL.—Notwithstanding any other provision of this section, of the funds made available by subsection (h)(1)(A) to carry out this section, $5,000,000 shall be made available

to the Secretary to make grants for the research and development of low-speed superconductivity magnetic levitation technology for public transportation purposes in urban areas to demonstrate energy efficiency, congestion mitigation, and safety benefits.

'(2) NONCONTRACT AUTHORITY AUTHORIZATION OF APPROPRIATIONS.—

'(A) IN GENERAL.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this subsection such sums as are necessary for each of fiscal years 2000 through 2003.

'(B) AVAILABILITY.—Notwithstanding section 118(a), funds made available under subparagraph (A)—

'(i) shall not be available in advance of an annual appropriation; and

'(ii) shall remain available until expended.'.".

(j) TRANSPORTATION ASSISTANCE FOR OLYMPIC CITIES.—Section 1223(f) of such Act is amended by inserting before the period at the end the following: "or Special Olympics International".

Ante, p. 224.

SEC. 9004. RESTORATIONS TO PROGRAM STREAMLINING AND FLEXIBILITY SUBTITLE.

(a) IN GENERAL.—Subtitle C of title I of the Transportation Equity Act for the 21st Century is amended by adding at the end the following:

Ante, p. 225.

"SEC. 1311. DISCRETIONARY GRANT SELECTION CRITERIA AND PROCESS.

"(a) ESTABLISHMENT OF CRITERIA.—The Secretary shall establish criteria for all discretionary programs funded from the Highway Trust Fund (other than the Mass Transit Account). To the extent practicable, such criteria shall conform to the Executive Order No. 12893 (relating to infrastructure investment).

"(b) SELECTION PROCESS.—

Publication.

"(1) LIMITATION ON ACCEPTANCE OF APPLICATIONS.—Before accepting applications for grants under any discretionary program for which funds are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) by this Act (including the amendments made by this Act), the Secretary shall publish the criteria established under subsection (a). Such publication shall identify all statutory criteria and any criteria established by regulation that will apply to the program.

Records.

"(2) EXPLANATION.—Not less often than quarterly, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a list of the projects selected under discretionary programs funded from the Highway Trust Fund (other than the Mass Transit Account) and an explanation of how the projects were selected based on the criteria established under subsection (a).

Applicability.

"(c) MINIMUM COVERED PROGRAMS.—At a minimum, the criteria established under subsection (a) and the selection process established by subsection (b) shall apply to the following programs:

"(1) The intelligent transportation system deployment program under title V.

"(2) The national corridor planning and development program.

"(3) The coordinated border infrastructure and safety program.

"(4) The construction of ferry boats and ferry terminal facilities.

"(5) The national scenic byways program.

"(6) The Interstate discretionary program.

"(7) The discretionary bridge program.".

(b) CONFORMING AMENDMENTS.—The table of contents contained in section 1(b) of such Act is amended— *Ante*, p. 107.

(1) by striking the following:

"Sec. 1309. Major investment study integration.".

and inserting the following:

"Sec. 1308. Major investment study integration.";

and

(2) by inserting after the item relating to section 1310 the following:

"Sec. 1311. Discretionary grant selection criteria and process.".

(c) REVIEW PROCESS.—Section 1309 of the Transportation Equity Act for the 21st Century is amended— *Ante*, p. 232.

(1) in subsection (a)(1) by inserting after "highway construction" the following: "and mass transit";

(2) in subsection (d) by inserting after "Code," the following: "or chapter 53 of title 49, United States Code,"; and

(3) in subsection (e)(1)—

(A) by inserting "or recipient" after "a State";

(B) by inserting after "provide funds" the following: "for a highway project"; and

(C) by inserting after "Code," the following: "or for a mass transit project made available under chapter 53 of title 49, United States Code,".

SEC. 9005. RESTORATIONS TO SAFETY SUBTITLE.

(a) IN GENERAL.—Subtitle D of title I of the Transportation Equity Act for the 21st Century is amended by adding at the end the following: *Ante*, p. 235.

"SEC. 1405. OPEN CONTAINER LAWS.

"(a) ESTABLISHMENT.—Chapter 1 of title 23, United States Code, is amended by inserting after section 153 the following:

'§ 154. Open container requirements

'(a) DEFINITIONS.—In this section, the following definitions apply:

'(1) ALCOHOLIC BEVERAGE.—The term "alcoholic beverage" has the meaning given the term in section 158(c).

'(2) MOTOR VEHICLE.—The term "motor vehicle" means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated exclusively on a rail or rails.

'(3) OPEN ALCOHOLIC BEVERAGE CONTAINER.—The term "open alcoholic beverage container" means any bottle, can, or other receptacle—

'(A) that contains any amount of alcoholic beverage; and

'(B)(i) that is open or has a broken seal; or

'(ii) the contents of which are partially removed.

Regulation.

'(4) PASSENGER AREA.—The term "passenger area" shall have the meaning given the term by the Secretary by regulation.

'(b) OPEN CONTAINER LAWS.—

'(1) IN GENERAL.—For the purposes of this section, each State shall have in effect a law that prohibits the possession of any open alcoholic beverage container, or the consumption of any alcoholic beverage, in the passenger area of any motor vehicle (including possession or consumption by the driver of the vehicle) located on a public highway, or the right-of-way of a public highway, in the State.

'(2) MOTOR VEHICLES DESIGNED TO TRANSPORT MANY PASSENGERS.—For the purposes of this section, if a State has in effect a law that makes unlawful the possession of any open alcoholic beverage container by the driver (but not by a passenger)—

'(A) in the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation; or

'(B) in the living quarters of a house coach or house trailer,

the State shall be deemed to have in effect a law described in this subsection with respect to such a motor vehicle for each fiscal year during which the law is in effect.

'(c) TRANSFER OF FUNDS.—

Effective dates.

'(1) FISCAL YEARS 2001 AND 2002.—On October 1, 2000, and October 1, 2001, if a State has not enacted or is not enforcing an open container law described in subsection (b), the Secretary shall transfer an amount equal to 1½ percent of the funds apportioned to the State on that date under each of paragraphs (1), (3), and (4) of section 104(b) to the apportionment of the State under section 402—

'(A) to be used for alcohol-impaired driving countermeasures; or

'(B) to be directed to State and local law enforcement agencies for enforcement of laws prohibiting driving while intoxicated or driving under the influence and other related laws (including regulations), including the purchase of equipment, the training of officers, and the use of additional personnel for specific alcohol-impaired driving countermeasures, dedicated to enforcement of the laws (including regulations).

Effective date.

'(2) FISCAL YEAR 2003 AND FISCAL YEARS THEREAFTER.—On October 1, 2002, and each October 1 thereafter, if a State has not enacted or is not enforcing an open container law described in subsection (b), the Secretary shall transfer an amount equal to 3 percent of the funds apportioned to the State on that date under each of paragraphs (1), (3), and (4) of section 104(b) to the apportionment of the State under section 402 to be used or directed as described in subparagraph (A) or (B) of paragraph (1).

'(3) USE FOR HAZARD ELIMINATION PROGRAM.—A State may elect to use all or a portion of the funds transferred under paragraph (1) or (2) for activities eligible under section 152.

'(4) FEDERAL SHARE.—The Federal share of the cost of a project carried out with funds transferred under paragraph (1) or (2), or used under paragraph (3), shall be 100 percent.

'(5) DERIVATION OF AMOUNT TO BE TRANSFERRED.—The amount to be transferred under paragraph (1) or (2) may be derived from one or more of the following:

'(A) The apportionment of the State under section 104(b)(1).

'(B) The apportionment of the State under section 104(b)(3).

'(C) The apportionment of the State under section 104(b)(4).

'(6) TRANSFER OF OBLIGATION AUTHORITY.—

'(A) IN GENERAL.—If the Secretary transfers under this subsection any funds to the apportionment of a State under section 402 for a fiscal year, the Secretary shall transfer an amount, determined under subparagraph (B), of obligation authority distributed for the fiscal year to the State for Federal-aid highways and highway safety construction programs for carrying out projects under section 402.

'(B) AMOUNT.—The amount of obligation authority referred to in subparagraph (A) shall be determined by multiplying—

'(i) the amount of funds transferred under subparagraph (A) to the apportionment of the State under section 402 for the fiscal year, by

'(ii) the ratio that—

'(I) the amount of obligation authority distributed for the fiscal year to the State for Federal-aid highways and highway safety construction programs, bears to

'(II) the total of the sums apportioned to the State for Federal-aid highways and highway safety construction programs (excluding sums not subject to any obligation limitation) for the fiscal year.

'(7) LIMITATION ON APPLICABILITY OF OBLIGATION LIMITATION.—Notwithstanding any other provision of law, no limitation on the total of obligations for highway safety programs under section 402 shall apply to funds transferred under this subsection to the apportionment of a State under such section.'.

"(b) CONFORMING AMENDMENT.—The analysis for chapter 1 of such title is amended by inserting after the item relating to section 153 the following:

'154. Open container requirements.'.

"SEC. 1406. MINIMUM PENALTIES FOR REPEAT OFFENDERS FOR DRIVING WHILE INTOXICATED OR DRIVING UNDER THE INFLUENCE.

"(a) IN GENERAL.—Chapter 1 of title 23, United States Code, is amended by adding at the end the following:

'§ 164. Minimum penalties for repeat offenders for driving while intoxicated or driving under the influence

'(a) DEFINITIONS.—In this section, the following definitions apply:

'(1) ALCOHOL CONCENTRATION.—The term "alcohol concentration" means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

'(2) DRIVING WHILE INTOXICATED; DRIVING UNDER THE INFLUENCE.—The terms "driving while intoxicated" and "driving under the influence" mean driving or being in actual physical control of a motor vehicle while having an alcohol concentration above the permitted limit as established by each State.

'(3) LICENSE SUSPENSION.—The term "license suspension" means the suspension of all driving privileges.

'(4) MOTOR VEHICLE.—The term "motor vehicle" means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated solely on a rail line or a commercial vehicle.

'(5) REPEAT INTOXICATED DRIVER LAW.—The term "repeat intoxicated driver law" means a State law that provides, as a minimum penalty, that an individual convicted of a second or subsequent offense for driving while intoxicated or driving under the influence after a previous conviction for that offense shall—

'(A) receive a driver's license suspension for not less than 1 year;

'(B) be subject to the impoundment or immobilization of each of the individual's motor vehicles or the installation of an ignition interlock system on each of the motor vehicles;

'(C) receive an assessment of the individual's degree of abuse of alcohol and treatment as appropriate; and

'(D) receive—

'(i) in the case of the second offense—

'(I) an assignment of not less than 30 days of community service; or

'(II) not less than 5 days of imprisonment; and

'(ii) in the case of the third or subsequent offense—

'(I) an assignment of not less than 60 days of community service; or

'(II) not less than 10 days of imprisonment.

'(b) TRANSFER OF FUNDS.—

Effective dates.

'(1) FISCAL YEARS 2001 AND 2002.—On October 1, 2000, and October 1, 2001, if a State has not enacted or is not enforcing a repeat intoxicated driver law, the Secretary shall transfer an amount equal to 1½ percent of the funds apportioned to the State on that date under each of paragraphs (1), (3), and (4) of section 104(b) to the apportionment of the State under section 402—

'(A) to be used for alcohol-impaired driving countermeasures; or

'(B) to be directed to State and local law enforcement agencies for enforcement of laws prohibiting driving while intoxicated or driving under the influence and other related laws (including regulations), including the purchase of equipment, the training of officers, and the use of additional personnel for specific alcohol-impaired driving countermeasures, dedicated to enforcement of the laws (including regulations).

'(2) FISCAL YEAR 2003 AND FISCAL YEARS THEREAFTER.— On October 1, 2002, and each October 1 thereafter, if a State has not enacted or is not enforcing a repeat intoxicated driver law, the Secretary shall transfer an amount equal to 3 percent of the funds apportioned to the State on that date under each of paragraphs (1), (3), and (4) of section 104(b) to the apportionment of the State under section 402 to be used or directed as described in subparagraph (A) or (B) of paragraph (1). Effective date.

'(3) USE FOR HAZARD ELIMINATION PROGRAM.—A State may elect to use all or a portion of the funds transferred under paragraph (1) or (2) for activities eligible under section 152.

'(4) FEDERAL SHARE.—The Federal share of the cost of a project carried out with funds transferred under paragraph (1) or (2), or used under paragraph (3), shall be 100 percent.

'(5) DERIVATION OF AMOUNT TO BE TRANSFERRED.—The amount to be transferred under paragraph (1) or (2) may be derived from one or more of the following:

'(A) The apportionment of the State under section 104(b)(1).

'(B) The apportionment of the State under section 104(b)(3).

'(C) The apportionment of the State under section 104(b)(4).

'(6) TRANSFER OF OBLIGATION AUTHORITY.—

'(A) IN GENERAL.—If the Secretary transfers under this subsection any funds to the apportionment of a State under section 402 for a fiscal year, the Secretary shall transfer an amount, determined under subparagraph (B), of obligation authority distributed for the fiscal year to the State for Federal-aid highways and highway safety construction programs for carrying out projects under section 402.

'(B) AMOUNT.—The amount of obligation authority referred to in subparagraph (A) shall be determined by multiplying—

'(i) the amount of funds transferred under subparagraph (A) to the apportionment of the State under section 402 for the fiscal year, by

'(ii) the ratio that—

'(I) the amount of obligation authority distributed for the fiscal year to the State for Federal-aid highways and highway safety construction programs, bears to

'(II) the total of the sums apportioned to the State for Federal-aid highways and highway safety construction programs (excluding sums not subject to any obligation limitation) for the fiscal year.

'(7) LIMITATION ON APPLICABILITY OF OBLIGATION LIMITATION.—Notwithstanding any other provision of law, no limitation on the total of obligations for highway safety programs under section 402 shall apply to funds transferred under this subsection to the apportionment of a State under such section.'.

"(b) CONFORMING AMENDMENT.—The analysis for chapter 1 of such title is amended by adding at the end the following:

'164. Minimum penalties for repeat offenders for driving while intoxicated or driving under the influence.'.".

(b) CONFORMING AMENDMENT.—The table of contents contained in section 1(b) of such Act is amended by inserting after the item relating to section 1403 the following:

Ante, p. 107.

"Sec. 1404. Safety incentives to prevent operation of motor vehicles by intoxicated persons.
"Sec. 1405. Open container laws.
"Sec. 1406. Minimum penalties for repeat offenders for driving while intoxicated or driving under the influence.".

(c) ROADSIDE SAFETY TECHNOLOGIES.—Section 1402(a)(2) of such Act is amended by striking "directive" and inserting "redirective".

Ante, p. 236.

SEC. 9006. ELIMINATION OF DUPLICATE PROVISIONS.

(a) SAN MATEO COUNTY, CALIFORNIA.—Section 1113 of the Transportation Equity Act for the 21st Century is amended—

Ante, p. 151.

(1) by striking subsection (c); and
(2) by redesignating subsection (d) as subsection (c).

(b) VALUE PRICING PILOT PROGRAM.—Section 1216(a) of such Act is amended by adding at the end the following:

Ante, p. 211.

"(8) CONFORMING AMENDMENTS.—
"(A) Section 1012(b)(6) of such Act (as amended by paragraph (5) of this subsection) is amended by striking '146(c)' and inserting '102(a)'.
"(B) Section 1012(b)(8) of such Act (as added by paragraph (7) of this subsection) is amended—
"(i) in subparagraph (C) by striking 'under this subsection' and inserting 'to carry out this subsection';
"(ii) in subparagraph (D)—
"(I) by striking 'under this paragraph' and inserting 'to carry out this subsection'; and
"(II) by striking 'by this paragraph' and inserting 'to carry out this subsection';
"(iii) by striking subparagraph (A); and
"(iv) by redesignating subparagraphs (B), (C), and (D) as subparagraphs (A), (B), and (C), respectively.".

(c) NATIONAL DEFENSE HIGHWAYS OUTSIDE THE UNITED STATES.—Section 1214(e) of such Act is amended to read as follows:

Ante, p. 204.

"(e) MINNESOTA TRANSPORTATION HISTORY NETWORK.—
"(1) IN GENERAL.—The Secretary shall award a grant to the Minnesota Historical Society for the establishment of the Minnesota Transportation History Network to include major exhibits, interpretive programs at national historic landmark sites, and outreach programs with county and local historical organizations.
"(2) COORDINATION.—In carrying out subsection (a), the Secretary shall coordinate with officials of the Minnesota Historical Society.
"(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) $1,000,000 for each of fiscal years 1998 through 2003 to carry out this subsection.
"(4) APPLICABILITY OF TITLE 23.—Funds authorized by this subsection shall be available for obligation in the same manner

as if such funds were apportioned under chapter 1 of title 23, United States Code; except that such funds shall remain available until expended.".

(d) ENTRANCE PAVING AT NINIGRET NATIONAL WILDLIFE REFUGE.—Section 1214(i) of such Act is amended by striking "$750,000" each place it appears and inserting "$75,000". *Ante*, p. 204.

SEC. 9007. HIGHWAY FINANCE.

(a) IN GENERAL.—Section 1503 of the Transportation Equity Act for the 21st Century is amended by adding at the end the following: *Ante*, p. 241.

"(c) TECHNICAL AMENDMENTS.—Section 188 of title 23, United States Code (as added by subsection (a) of this section), is amended—

"(1) in subsection (a)(2) by striking '1998' and inserting '1999'; and

"(2) in subsection (c)—

"(A) by striking '1998' and inserting '1999'; and

"(B) by striking the table and inserting the following:

'Fiscal year:	Maximum amount of credit:
1999	$1,600,000,000
2000	$1,800,000,000
2001	$2,200,000,000
2002	$2,400,000,000
2003	$2,600,000,000.'.".

(b) CONFORMING AMENDMENTS.—The table of contents contained in section 1(b) of the Transportation Equity Act for the 21st Century is amended— *Ante*, p. 107.

(1) in the item relating to section 1119 by striking "and safety"; and

(2) by striking the items relating to subtitle E of title I and inserting the following:

"Subtitle E—Finance

"CHAPTER 1—TRANSPORTATION INFRASTRUCTURE FINANCE AND INNOVATION

"Sec. 1501. Short title.
"Sec. 1502. Findings.
"Sec. 1503. Establishment of program.
"Sec. 1504. Duties of the Secretary.

"CHAPTER 2—STATE INFRASTRUCTURE BANK PILOT PROGRAM

"Sec. 1511. State infrastructure bank pilot program.".

SEC. 9008. HIGH PRIORITY PROJECTS TECHNICAL CORRECTIONS.

The table contained in section 1602 of the Transportation Equity Act for the 21st Century is amended— *Ante*, p. 256.

(1) in item 1 by striking "1.275" and inserting "1.7";
(2) in item 82 by striking "30.675" and inserting "32.4";
(3) in item 107 by striking "1.125" and inserting "1.44";
(4) in item 121 by striking "10.5" and inserting "5.0";
(5) in item 140 by inserting "-VFHS Center" after "Park";
(6) in item 151 by striking "5.666" and inserting "8.666";
(7) in item 164—

(A) by inserting ", and $3,000,000 for the period of fiscal years 1998 and 1999 shall be made available to carry out section 1217(j)" after "Pennsylvania"; and

(B) by striking "25" and inserting "24.78";

(8) by striking item 166 and inserting the following:

"166.	Michigan	Improve Tenth Street, Port Huron	1.8";

(9) by striking item 242 and inserting the following:

"242.	Minnesota	Construct Third Street North, CSAH 81, Waite Park and St. Cloud	1.0";

(10) by striking item 250 and inserting the following:

"250.	Indiana	Reconstruct Old Merridan Corridor from Pennsylvania Avenue to Gilford Road ...	1.35";

(11) in item 255 by striking "2.25" and inserting "3.0";
(12) in item 263 by striking "Upgrade Highway 99 between State Highway 70 and Lincoln Road, Sutter County" and inserting "Upgrade Highway 99, Sutter County";
(13) in item 288 by striking "3.75" and inserting "5.0";
(14) in item 290 by striking "3.5" and inserting "3.0";
(15) in item 345 by striking "8" and inserting "19.4";
(16) in item 418 by striking "2" and inserting "2.5";
(17) in item 421 by striking "11" and inserting "6";
(18) in item 508 by striking "1.8" and inserting "2.4";
(19) by striking item 525 and inserting the following:

"525.	Alaska	Construct Bradfield Canal Road	1";

(20) in item 540 by striking "1.5" and inserting "2.0";
(21) in item 576 by striking "0.52275" and inserting "0.69275";
(22) in item 588 by striking "2.5" and inserting "3.0";
(23) in item 591 by striking "10" and inserting "5";
(24) in item 635 by striking "1.875" and inserting "2.15";
(25) in item 669 by striking "3" and inserting "3.5";
(26) in item 702 by striking "10.5" and inserting "10";
(27) in item 746 by inserting ", and for the purchase of the Block House in Scott County, Virginia" after "Forest";
(28) in item 755 by striking "1.125" and inserting "1.5";
(29) in item 769 by striking "Construct new I–95 interchange with Highway 99W, Tehama County" and inserting "Construct new I–5 interchange with Highway 99W, Tehama County";
(30) in item 770 by striking "1.35" and inserting "1.0";
(31) in item 789 by striking "2.0625" and inserting "1.0";
(32) in item 803 by striking "Tomahark" and inserting "Tomahawk";
(33) in item 836 by striking "Construct" and all that follows through "for" and inserting "To the National Park Service for construction of the";
(34) in item 854 by striking "0.75" and inserting "1";
(35) in item 863 by striking "9" and inserting "4.75";
(36) in item 887 by striking "0.75" and inserting "3.21";
(37) in item 891 by striking "19.5" and inserting "25.0";
(38) in item 902 by striking "10.5" and inserting "14.0";
(39) by striking item 1065 and inserting the following:

"1065.	Texas	Construct a 4-lane divided highway on Artcraft Road from I–10 to Route 375 in El Paso	5";

(40) in item 1192 by striking "24.97725" and inserting "24.55725";

(41) in item 1200 by striking "Upgrade (all weather) on U.S. 2, U.S. 41, and M 35" and inserting "Upgrade (all weather) on Delta County's reroute of U.S. 2, U.S. 41, and M 35";

(42) in item 1245 by striking "3" and inserting "3.5";

(43) in item 1271 by striking "Spur" and all that follows through "U.S. 59" and inserting "rail-grade separations (Rosenberg Bypass) at U.S. 59(S)";

(44) in item 1278 by striking "28.18" and inserting "22.0";

(45) in item 1288 by inserting "30" after "U.S.";

(46) in item 1338 by striking "5.5" and inserting "3.5";

(47) in item 1383 by striking "0.525" and inserting "0.35";

(48) in item 1395 by striking "Construct" and all that follows through "Road" and inserting "Upgrade Route 219 between Meyersdale and Somerset";

(49) in item 1468 by striking "Reconstruct" and all that follows through "U.S. 23" and inserting "Conduct engineering and design and improve I–94 in Calhoun and Jackson Counties";

(50) in item 1474—

(A) by striking "in Euclid" and inserting "and London Road in Cleveland"; and

(B) by striking "3.75" and inserting "8.0";

(51) in item 1535 by striking "Stanford" and inserting "Stamford";

(52) in item 1538 by striking "and Winchester" and inserting ", Winchester, and Torrington";

(53) by striking item 1546 and inserting the following:

"1546.	Michigan	Construct Bridge-to-Bay bike path, St. Clair County	0.450";

(54) by striking item 1549 and inserting the following:

"1549.	New York	Center for Advanced Simulation and Technology at Dowling College	0.6";

(55) in item 1663 by striking "26.5" and inserting "27.5";

(56) in item 1703 by striking "I–80" and inserting "I–180";

(57) in item 1726 by striking "I–179" and inserting "I–79";

(58) by striking item 1770 and inserting the following:

"1770.	Virginia	Operate and conduct research on the 'Smart Road' in Blacksburg	6.025";

(59) in item 1810 by striking "Construct Rio Rancho Highway" and inserting "Northwest Albuquerque/Rio Rancho high priority roads";

(60) in item 1815 by striking "High" and all that follows through "projects" and inserting "Highway and bridge projects that Delaware provides for by law";

(61) in item 1844 by striking "Prepare" and inserting "Repair";

(62) by striking item 1850 and inserting the following:

"1850.	Missouri	Resurface and maintain roads located in Missouri State parks	5";

(63) in item 661 by striking "SR 800" and inserting "SR 78";

(64) in item 1704 by inserting ", Pittsburgh," after "Road";

(65) in item 1710 by inserting ", Bethlehem" after "site"; and

(66) in item 1626 by striking "1" and inserting "2".

SEC. 9009. FEDERAL TRANSIT ADMINISTRATION PROGRAMS.

(a) DEFINITIONS.—Section 3003 of the Federal Transit Act of 1998 is amended—

Ante, p. 338.

(1) by inserting "(a) IN GENERAL.—" before "Section 5302"; and

(2) by adding at the end the following:

"(b) CONFORMING AMENDMENTS.—Section 5302 (as amended by subsection (a) of this section) is amended in subsection (a)(1)(G)(i) by striking 'daycare and' and inserting 'daycare or'.".

(b) METROPOLITAN PLANNING.—Section 3004 of the Federal Transit Act of 1998 is amended—

Ante, p. 341.

(1) in subsection (b)—

(A) in paragraph (1) by striking subparagraph (A) and inserting the following:

"(A) by striking 'general local government representing' and inserting 'general purpose local government that together represent'; and";

(B) in paragraph (3) by striking "and" at the end;

(C) in paragraph (4) by striking subparagraph (A) and inserting the following:

"(A) by striking 'general local government representing' and inserting 'general purpose local government that together represent'; and";

(D) by redesignating paragraph (4) as paragraph (5); and

(E) by inserting after paragraph (3) the following:

"(4) in paragraph (4)(A) by striking '(3)' and inserting '(5)'; and";

(2) in subsection (d) by striking the closing quotation marks and the final period at the end and inserting the following:

"(5) COORDINATION.—If a project is located within the boundaries of more than one metropolitan planning organization, the metropolitan planning organizations shall coordinate plans regarding the project.

"(6) LAKE TAHOE REGION.—

"(A) DEFINITION.—In this paragraph, the term 'Lake Tahoe region' has the meaning given the term 'region' in subdivision (a) of article II of the Tahoe Regional Planning Compact, as set forth in the first section of Public Law 96–551 (94 Stat. 3234).

"(B) TRANSPORTATION PLANNING PROCESS.—The Secretary shall—

"(i) establish with the Federal land management agencies that have jurisdiction over land in the Lake Tahoe region a transportation planning process for the region; and

"(ii) coordinate the transportation planning process with the planning process required of State and local governments under this chapter and sections 134 and 135 of title 23, United States Code.

"(C) INTERSTATE COMPACT.— California. Nevada.

"(i) IN GENERAL.—Subject to clause (ii) and notwithstanding subsection (b), to carry out the transportation planning process required by this section, the consent of Congress is granted to the States of California and Nevada to designate a metropolitan planning organization for the Lake Tahoe region, by agreement between the Governors of the States of California and Nevada and units of general purpose local government that together represent at least 75 percent of the affected population (including the central city or cities (as defined by the Bureau of the Census)), or in accordance with procedures established by applicable State or local law.

"(ii) INVOLVEMENT OF FEDERAL LAND MANAGEMENT AGENCIES.—

"(I) REPRESENTATION.—The policy board of a metropolitan planning organization designated under clause (i) shall include a representative of each Federal land management agency that has jurisdiction over land in the Lake Tahoe region.

"(II) FUNDING.—In addition to funds made available to the metropolitan planning organization under other provisions of this chapter and under title 23, not more than 1 percent of the funds allocated under section 202 of title 23 may be used to carry out the transportation planning process for the Lake Tahoe region under this subparagraph.

"(D) ACTIVITIES.—Highway projects included in transportation plans developed under this paragraph—

"(i) shall be selected for funding in a manner that facilitates the participation of the Federal land management agencies that have jurisdiction over land in the Lake Tahoe region; and

"(ii) may, in accordance with chapter 2 of title 23, be funded using funds allocated under section 202 of title 23, United States Code."; and

(3) by adding at the end the following:

"(f) TECHNICAL ADJUSTMENTS.—Section 5303(f) is amended—

"(1) in paragraph (1) (as amended by subsection (e)(1) of this subsection)—

"(A) in subparagraph (C) by striking 'and' at the end;

"(B) in subparagraph (D) by striking the period at the end and inserting '; and'; and

"(C) by adding at the end the following:

'(E) the financial plan may include, for illustrative purposes, additional projects that would be included in the adopted long-range plan if reasonable additional resources beyond those identified in the financial plan were available, except that, for the purpose of developing the long-range plan, the metropolitan planning organization and the State shall cooperatively develop estimates of funds that will be available to support plan implementation.'; and

"(2) by adding at the end the following:

'(6) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—Notwithstanding paragraph (1)(E), a State or metropolitan planning organization shall not be required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (1)(B).'.".

(c) METROPOLITAN TRANSPORTATION IMPROVEMENT PROGRAM.—Section 3005 of the Federal Transit Act of 1998 is amended—

Ante, p. 345.

(1) in the section heading by inserting "**METROPOLITAN**" before "**TRANSPORTATION**"; and

(2) by adding at the end the following:

"(d) TECHNICAL ADJUSTMENTS.—Section 5304 is amended—

"(1) in subsection (a) (as amended by subsection (a) of this section)—

"(A) by striking 'In cooperation with' and inserting the following:

'(1) IN GENERAL.—In cooperation with'; and

"(B) by adding at the end the following:

'(2) FUNDING ESTIMATE.—For the purpose of developing the transportation improvement program, the metropolitan planning organization, public transit agency, and the State shall cooperatively develop estimates of funds that are reasonably expected to be available to support program implementation.';

"(2) in subsection (b)(2)—

"(A) in subparagraph (B) by striking 'and' at the end; and

"(B) in subparagraph (C) (as added by subsection (b) of this section) by striking 'strategies which may include' and inserting the following: 'strategies; and

'(D) may include'; and

"(3) in subsection (c) by striking paragraph (4) (as amended by subsection (c) of this section) and inserting the following:

'(4) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—

'(A) IN GENERAL.—Notwithstanding subsection (b)(2)(D), a State or metropolitan planning organization shall not be required to select any project from the illustrative list of additional projects included in the financial plan under subsection (b)(2)(D).

'(B) ACTION BY SECRETARY.—Action by the Secretary shall be required for a State or metropolitan planning organization to select any project from the illustrative list of additional projects included in the plan under subsection (b)(2) for inclusion in an approved transportation improvement plan.'.".

(d) TRANSPORTATION MANAGEMENT AREAS.—Section 3006(d) of the Federal Transit Act of 1998 is amended to read as follows:

Ante, p. 346.

"(d) PROJECT SELECTION.—Section 5305(d)(1) is amended to read as follows: '(1)(A) All federally funded projects carried out

within the boundaries of a transportation management area under title 23 (excluding projects carried out on the National Highway System and projects carried out under the bridge and interstate maintenance program) or under this chapter shall be selected from the approved transportation improvement program by the metropolitan planning organization designated for the area in consultation with the State and any affected public transit operator.

'(B) Projects carried out within the boundaries of a transportation management area on the National Highway System and projects carried out within such boundaries under the bridge program or the interstate maintenance program shall be selected from the approved transportation improvement program by the State in cooperation with the metropolitan planning organization designated for the area.'.".

(e) URBANIZED AREA FORMULA GRANTS.—Section 3007 of the Federal Transit Act of 1998 is amended by adding at the end the following: *Ante*, p. 347.

"(h) TECHNICAL ADJUSTMENTS.—

"(1) GENERAL AUTHORITY.—Section 5307(b) (as amended by subsection (c)(1)(B) of this section) is amended by adding at the end the following: 'The Secretary may make grants under this section from funds made available for fiscal year 1998 to finance the operating costs of equipment and facilities for use in mass transportation in an urbanized area with a population of at least 200,000.'.

"(2) REPORT.—Section 5307(k)(3) (as amended by subsection (f) of this section) is amended by inserting 'preceding' before 'fiscal year'.".

(f) CLEAN FUELS FORMULA GRANT PROGRAM.—Section 3008 of the Federal Transit Act of 1998 is amended by adding at the end the following: *Ante*, p. 348.

"(c) TECHNICAL ADJUSTMENTS.—Section 5308(e)(2) (as added by subsection (a) of this section) is amended by striking '$50,000,000' and inserting '35 percent'.".

(g) CAPITAL INVESTMENT GRANTS AND LOANS.—Section 3009 of the Federal Transit Act of 1998 is amended by adding at the end the following: *Ante*, p. 352.

"(k) TECHNICAL ADJUSTMENTS.—

"(1) CRITERIA.—Section 5309(e) (as amended by subsection (e) of this section) is amended—

"(A) in paragraph (3)(C) by striking 'urban' and inserting 'suburban';

"(B) in the second sentence of paragraph (6) by striking 'or not' and all that follows through ', based' and inserting 'or "not recommended", based'; and

"(C) in the last sentence of paragraph (6) by inserting 'of the' before 'criteria established'.

"(2) LETTERS OF INTENT AND FULL FUNDING GRANT AGREEMENTS.—Section 5309(g) (as amended by subsection (f) of this section) is amended in paragraph (4) by striking '5338(a)' and all that follows through '2003' and inserting '5338(b) of this title for new fixed guideway systems and extensions to existing fixed guideway systems and the amount appropriated under section 5338(h)(5) or an amount equivalent to the last 2 fiscal years of funding authorized under section 5338(b) for new fixed guideway systems and extensions to existing fixed guideway systems'.

"(3) ALLOCATING AMOUNTS.—Section 5309(m) (as amended by subsection (g) of this section) is amended—

"(A) in paragraph (1) by inserting '(b)' after '5338';

"(B) by striking paragraph (2) and inserting the following:

'(2) NEW FIXED GUIDEWAY GRANTS.—

'(A) LIMITATION ON AMOUNTS AVAILABLE FOR ACTIVITIES OTHER THAN FINAL DESIGN AND CONSTRUCTION.—Not more than 8 percent of the amounts made available in each fiscal year by paragraph (1)(B) shall be available for activities other than final design and construction.

'(B) FUNDING FOR FERRY BOAT SYSTEMS.—

'(i) AMOUNTS UNDER (1)(B).—Of the amounts made available under paragraph (1)(B), $10,400,000 shall be available in each of fiscal years 1999 through 2003 for capital projects in Alaska or Hawaii, for new fixed guideway systems and extensions to existing fixed guideway systems that are ferry boats or ferry terminal facilities, or that are approaches to ferry terminal facilities.

'(ii) AMOUNTS UNDER 5338(H)(5).—Of the amounts appropriated under section 5338(h)(5), $3,600,000 shall be available in each of fiscal years 1999 through 2003 for capital projects in Alaska or Hawaii, for new fixed guideway systems and extensions to existing fixed guideway systems that are ferry boats or ferry terminal facilities, or that are approaches to ferry terminal facilities.';

"(C) by redesignating paragraph (4) as paragraph (3)(C);

"(D) in paragraph (3) by adding at the end the following:

'(D) OTHER THAN URBANIZED AREAS.—Of amounts made available by paragraph (1)(C), not less than 5.5 percent shall be available in each fiscal year for other than urbanized areas.';

"(E) by striking paragraph (5); and

"(F) by inserting after paragraph (3) the following:

'(4) ELIGIBILITY FOR ASSISTANCE FOR MULTIPLE PROJECTS.—A person applying for or receiving assistance for a project described in subparagraph (A), (B), or (C) of paragraph (1) may receive assistance for a project described in any other of such subparagraphs.'.".

(h) REFERENCES TO FULL FUNDING GRANT AGREEMENTS.—Section 3009(h)(3) of the Federal Transit Act of 1998 is amended—

Ante, p. 352.

(1) by striking "and" at the end of subparagraph (A)(ii);

(2) by striking the period at the end of subparagraph (B) and inserting a semicolon; and

(3) by adding at the end the following:

"(C) in section 5328(a)(4) by striking 'section 5309(m)(2) of this title' and inserting '5309(o)(1)'; and

"(D) in section 5309(n)(2) by striking 'in a way' and inserting 'in a manner'.".

(i) DOLLAR VALUE OF MOBILITY IMPROVEMENTS.—Section 3010(b)(2) of the Federal Transit Act of 1998 is amended by striking "Secretary" and inserting "Comptroller General".

Ante, p. 357.

(j) INTELLIGENT TRANSPORTATION SYSTEM APPLICATIONS.—Section 3012 of the Federal Transit Act of 1998 is amended by moving paragraph (3) of subsection (a) to the end of subsection (b) and by redesignating such paragraph (3) as paragraph (4). *Ante*, p. 358.

(k) ADVANCED TECHNOLOGY PILOT PROJECT.—Section 3015 of the Federal Transit Act of 1998 is amended— *Ante*, p. 359.

(1) in subsection (c)(2) by adding at the end the following: "Financial assistance made available under this subsection and projects assisted with the assistance shall be subject to section 5333(a) of title 49, United States Code."; and

(2) by adding at the end the following:

"(d) TRAINING AND CURRICULUM DEVELOPMENT.—

"(1) IN GENERAL.—Any funds made available by section 5338(e)(2)(C)(iii) of title 49, United States Code, shall be available in equal amounts for transportation research, training, and curriculum development at institutions identified in subparagraphs (E) and (F) of section 5505(j)(3) of such title.

"(2) SPECIAL RULE.—If the institutions identified in paragraph (1) are selected pursuant to 5505(i)(3)(B) of such title in fiscal year 2002 or 2003, the funds made available to carry out this subsection shall be available to those institutions to carry out the activities required pursuant to section 5505(i)(3)(B) of such title for that fiscal year.".

(l) NATIONAL TRANSIT INSTITUTE.—Section 3017(a) of the Federal Transit Act of 1998 is amended to read as follows: *Ante*, p. 361.

"(a) IN GENERAL.—Section 5315 is amended—

"(1) in the section heading by striking '**mass transportation**' and inserting '**transit**';

"(2) in subsection (a)—

"(A) by striking 'mass transportation' in the first sentence and inserting 'transit';

"(B) in paragraph (5) by inserting 'and architectural design' before the semicolon at the end;

"(C) in paragraph (7) by striking 'carrying out' and inserting 'delivering';

"(D) in paragraph (11) by inserting ', construction management, insurance, and risk management' before the semicolon at the end;

"(E) in paragraph (13) by striking 'and' at the end;

"(F) in paragraph (14) by striking the period at the end and inserting a semicolon; and

"(G) by adding at the end the following:

'(15) innovative finance; and

'(16) workplace safety.'.".

(m) PILOT PROGRAM.—Section 3021(a) of the Federal Transit Act of 1998 is amended by inserting "single-State" before "pilot program". *Ante*, p. 363.

(n) ARCHITECTURAL, ENGINEERING, AND DESIGN CONTRACTS.—Section 3022 of the Federal Transit Act of 1998 is amended by adding at the end the following: *Ante*, p. 363.

"(b) CONFORMING AMENDMENT.—Section 5325(b) (as redesignated by subsection (a)(2) of this section) is amended—

"(1) by inserting 'or requirement' after 'A contract'; and

"(2) by inserting before the last sentence the following: 'When awarding such contracts, recipients of assistance under this chapter shall maximize efficiencies of administration by accepting nondisputed audits conducted by other governmental

agencies, as provided in subparagraphs (C) through (F) of section 112(b)(2) of title 23, United States Code.'.".

(o) CONFORMING AMENDMENT.—Section 3027 of the Federal Transit Act of 1998 is amended— *Ante*, p. 366.

(1) in subsection (c) by striking "600,000" each place it appears and inserting "900,000"; and

(2) by adding at the end the following:

"(d) CONFORMING AMENDMENT.—The item relating to section 5336 in the table of sections for chapter 53 is amended by striking 'block grants' and inserting 'formula grants'.".

(p) APPORTIONMENT FOR FIXED GUIDEWAY MODERNIZATION.— Section 3028 of the Federal Transit Act of 1998 is amended by adding at the end the following: *Ante*, p. 366.

"(c) CONFORMING AMENDMENTS.—Section 5337(a) (as amended by subsection (a) of this section) is amended—

"(1) in paragraph (2)(B) by striking '(e)' and inserting '(e)(1)';

"(2) in paragraph (3)(D)—

"(A) by striking '(ii)'; and

"(B) by striking '(e)' and inserting '(e)(1)';

"(3) in paragraph (4) by striking '(e)' and inserting '(e)(1)';

"(4) in paragraph (5)(A) by striking '(e)' and inserting '(e)(2)';

"(5) in paragraph (5)(B) by striking '(e)' and inserting '(e)(2)';

"(6) in paragraph (6) by striking '(e)' each place it appears and inserting '(e)(2)'; and

"(7) in paragraph (7) by striking '(e)' each place it appears and inserting '(e)(2)'.".

(q) AUTHORIZATIONS.—Section 3029 of the Federal Transit Act of 1998 is amended by adding at the end the following: *Ante*, p. 368.

"(c) TECHNICAL ADJUSTMENTS.—Section 5338 (as amended by subsection (a) of this section) is amended—

"(1) in subsection (c)(2)(A)(i) by striking '$43,200,000' and inserting '$42,200,000';

"(2) in subsection (c)(2)(A)(ii) by striking '$46,400,000' and inserting '$48,400,000';

"(3) in subsection (c)(2)(A)(iii) by striking '$51,200,000' and inserting '$50,200,000';

"(4) in subsection (c)(2)(A)(iv) by striking '$52,800,000' and inserting '$53,800,000';

"(5) in subsection (c)(2)(A)(v) by striking '$57,600,000' and inserting '$58,600,000';

"(6) in subsection (d)(2)(C)(iii) by inserting before the semicolon ', including not more than $1,000,000 shall be available to carry out section 5315(a)(16)';

"(7) in subsection (e)—

"(A) by striking '5317(b)' each place it appears and inserting '5505';

"(B) in paragraph (1) by striking 'There are' and inserting 'Subject to paragraph (2)(C), there are';

"(C) in paragraph (2)—

"(i) in subparagraph (A) by striking 'There shall' and inserting 'Subject to subparagraph (C), there shall';

"(ii) in subparagraph (B) by striking 'In addition' and inserting 'Subject to subparagraph (C), in addition'; and

"(iii) by adding at the end the following:

'(C) FUNDING OF CENTERS.—

'(i) Of the amounts made available under subparagraph (A) and paragraph (1) for each fiscal year—

'(I) $2,000,000 shall be available for the center identified in section 5505(j)(4)(A); and

'(II) $2,000,000 shall be available for the center identified in section 5505(j)(4)(F).

'(ii) For each of fiscal years 1998 through 2001, of the amounts made available under this paragraph and paragraph (1)—

'(I) $400,000 shall be available from amounts made available under subparagraph (A) of this paragraph and under paragraph (1) for each of the centers identified in subparagraphs (E) and (F) of section 5505(j)(3); and

'(II) $350,000 shall be available from amounts made available under subparagraph (B) of this paragraph and under paragraph (1) for each of the centers identified in subparagraphs (E) and (F) of section 5505(j)(3).

'(iii) Any amounts made available under this paragraph or paragraph (1) for any fiscal year that remain after distribution under clauses (i) and (ii), shall be available for the purposes identified in section 3015(d) of the Federal Transit Act of 1998.'; and

"(D) by adding at the end the following:

'(3) SPECIAL RULE.—Nothing in this subsection shall be construed to limit the transportation research conducted by the centers funded by this section.';

"(8) in subsection (g)(2) by striking '(c)(2)(B),' and all that follows through '(f)(2)(B),' and inserting '(c)(1), (c)(2)(B), (d)(1), (d)(2)(B), (e)(1), (e)(2)(B), (f)(1), (f)(2)(B),';

"(9) in subsection (h) by inserting 'under the Transportation Discretionary Spending Guarantee for the Mass Transit Category' after 'through (f)'; and

"(10) in subsection (h)(5) by striking subparagraphs (A) through (E) and inserting the following:

'(A) for fiscal year 1999 $400,000,000;

'(B) for fiscal year 2000 $410,000,000;

'(C) for fiscal year 2001 $420,000,000;

'(D) for fiscal year 2002 $430,000,000; and

'(E) for fiscal year 2003 $430,000,000;'.".

(r) PROJECTS FOR FIXED GUIDEWAY SYSTEMS.—Section 3030 of the Federal Transit Act of 1998 is amended— *Ante*, p. 373.

(1) in subsection (a)—

(A) in paragraph (8) by inserting "North-" before "South";

(B) in paragraph (42) by striking "Maryland" and inserting "Baltimore";

(C) in paragraph (103) by striking "busway" and inserting "Boulevard transitway";

(D) in paragraph (106) by inserting "CTA" before "Douglas";

(E) by striking paragraph (108) and inserting the following:

"(108) Greater Albuquerque Mass Transit Project."; and

(F) by adding at the end the following:

"(109) Hartford City Light Rail Connection to Central Business District.

"(110) Providence–Boston Commuter Rail.

"(111) New York–St. George's Ferry Intermodal Terminal.

"(112) New York–Midtown West Ferry Terminal.

"(113) Pinellas County–Mobility Initiative Project.

"(114) Atlanta–MARTA Extension (S. De Kalb-Lindbergh).";

(2) in subsection (b)—

(A) by striking paragraph (2) and inserting the following:

"(2) Sioux City–Light Rail.";

(B) by striking paragraph (40) and inserting the following:

"(40) Santa Fe–El Dorado Rail Link.";

(C) by striking paragraph (44) and inserting the following:

"(44) Albuquerque–High Capacity Corridor.";

(D) by striking paragraph (53) and inserting the following:

"(53) San Jacinto–Branch Line (Riverside County)."; and

(E) by adding at the end the following:

"(69) Chicago–Northwest Rail Transit Corridor.

"(70) Vermont–Burlington-Essex Commuter Rail."; and

(3) in subsection (c)—

(A) in paragraph (1)(A)—

(i) in the matter preceding clause (i) by inserting "(even if the project is not listed in subsection (a) or (b))" before the colon;

(ii) by striking clause (ii) and inserting the following:

"(ii) San Diego Mission Valley and Mid-Coast Corridor, $325,000,000.";

(iii) by striking clause (v) and inserting the following:

"(v) Hartford City Light Rail Connection to Central Business District, $33,000,000.";

(iv) by striking clause (xxiii) and inserting the following:

"(xxiii) Kansas City—I–35 Commuter Rail, $30,000,000.";

(v) in clause (xxxii) by striking "Whitehall Ferry Terminal" and inserting "Staten Island Ferry-Whitehall Intermodal Terminal";

(vi) by striking clause (xxxv) and inserting the following:

"(xxxv) New York–Midtown West Ferry Terminal, $16,300,000.";

(vii) in clause (xxxix) by striking "Allegheny County" and inserting "Pittsburgh";

(viii) by striking clause (xvi) and inserting the following:

"(xvi) Northeast Indianapolis Corridor, $10,000,000.";

(ix) by striking clause (xxix) and inserting the following:

"(xxix) Greater Albuquerque Mass Transit Project, $90,000,000.";

(x) by striking clause (xliii) and inserting the following:

"(xliii) Providence–Boston Commuter Rail, $10,000,000."; and

(xi) by striking clause (li) and inserting the following:

"(li) Dallas-Ft. Worth RAILTRAN (Phase-II), $12,000,000.";

(B) by striking the heading for subsection (c)(2) and inserting "ADDITIONAL AMOUNTS"; and

(C) in paragraph (3) by inserting after the first sentence the following: "The project shall also be exempted from all requirements relating to criteria for grants and loans for fixed guideway systems under section 5309(e) of such title and from regulations required under that section.".

(s) NEW JERSEY URBAN CORE PROJECT.—Section 3030(e) of the Federal Transit Act of 1998 is amended by adding at the end the following: *Ante*, p. 373.

"(4) TECHNICAL ADJUSTMENT.—Section 3031(d) of the Intermodal Surface Transportation Efficiency Act of 1991 (as amended by paragraph (3)(B) of this subsection) is amended—

"(A) by striking 'of the West Shore Line' and inserting 'or the West Shore Line'; and

"(B) by striking 'directly connected to' and all that follows through 'Newark International Airport' the first place it appears.".

(t) BALTIMORE-WASHINGTON TRANSPORTATION IMPROVEMENTS.—Section 3030 of the Federal Transit Act of 1998 is amended by adding at the end the following:

"(h) TECHNICAL ADJUSTMENT.—Section 3035(nn) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2134) (as amended by subsection (g)(1)(C) of this section) is amended by inserting after 'expenditure of' the following: 'section 5309 funds to the aggregate expenditure of'.".

(u) BUS PROJECTS.—Section 3031 of the Federal Transit Act of 1998 is amended— *Ante*, p. 381.

(1) in the table contained in subsection (a)—

(A) by striking item 64;

(B) in item 69 by striking "Rensslear" each place it appears and inserting "Rensselaer";

(C) in item 103 by striking "facilities and"; and

(D) by striking item 150;

(2) by striking the heading for subsection (b) and inserting "ADDITIONAL AMOUNTS";

(3) in subsection (b) by inserting after "2000" the first place it appears "with funds made available under section 5338(h)(6) of such title"; and

(4) in item 2 of the table contained in subsection (b) by striking "Rensslear" each place it appears and inserting "Rensselaer".

(v) CONTRACTING OUT STUDY.—Section 3032 of the Federal Transit Act of 1998 is amended— *Ante*, p. 385.

(1) in subsection (a) by striking "3" and inserting "6";

(2) in subsection (d) by striking "the Mass Transit Account of the Highway Trust Fund" and inserting "funds made available under section 5338(f)(2) of title 49, United States Code,";

(3) in subsection (d) by striking "1998" and inserting "1999"; and

(4) in subsection (e) by striking "subsection (c)" and inserting "subsection (d)".

(w) JOB ACCESS AND REVERSE COMMUTE GRANTS.—Section 3037 of the Federal Transit Act of 1998 is amended—

Ante, p. 387.

(1) in subsection (b)(4)(A)—

(A) by inserting "designated recipients under section 5307(a)(2) of title 49, United States Code," after "from among"; and

(B) by inserting a comma after "and agencies";

(2) in subsection (b)(4)(B)—

(A) by striking "at least" and inserting "less than";

(B) by inserting "designated recipients under section 5307(a)(2) of title 49, United States Code," after "from among"; and

(C) by inserting "and agencies," after "authorities";

(3) in subsection (f)(2)—

(A) by striking "(including bicycling)"; and

(B) by inserting "(including bicycling)" after "additional services";

(4) in subsection (h)(2)(B) by striking "403(a)(5)(C)(ii)" and inserting "403(a)(5)(C)(vi)";

(5) in the heading for subsection (l)(1)(C) by striking "FROM THE GENERAL FUND";

(6) in subsection (l)(1)(C) by inserting "under the Transportation Discretionary Spending Guarantee for the Mass Transit Category" after "(B)"; and

(7) in subsection (l)(3)(B) by striking "at least" and inserting "less than".

(x) RURAL TRANSPORTATION ACCESSIBILITY INCENTIVE PROGRAM.—Section 3038 of the Federal Transit Act of 1998 is amended—

Ante, p. 392.

(1) in subsection (a)(1)(A) by inserting before the semicolon "or connecting 1 or more rural communities with an urban area not in close proximity";

(2) in subsection (g)(1)—

(A) by inserting "over-the-road buses used substantially or exclusively in" after "operators of"; and

(B) by inserting at the end the following:

"Such sums shall remain available until expended."; and

(3) in subsection (g)(2)—

(A) by striking "each of"; and

(B) by adding at the end the following: "Such sums shall remain available until expended.".

(y) STUDY OF TRANSIT NEEDS IN NATIONAL PARKS AND RELATED PUBLIC LANDS.—Section 3039(b) of the Federal Transit Act of 1998 is amended—

Ante, p. 393.

(1) in paragraph (1) by striking "in order to carry" and inserting "assist in carrying"; and

(2) by adding at the end the following:

"(3) DEFINITION.—For purposes of this subsection, the term 'Federal land management agencies' means the National Park

Service, the United States Fish and Wildlife Service, and the Bureau of Land Management.".

(z) OBLIGATION CEILING.—Section 3040 of the Federal Transit Act of 1998 is amended— *Ante*, p. 394.

(1) by striking paragraph (2) and inserting the following:
"(2) $5,797,000,000 in fiscal year 2000;"; and

(2) in paragraph (4) by striking "$6,746,000,000" and inserting "$6,747,000,000".

SEC. 9010. MOTOR CARRIER SAFETY TECHNICAL CORRECTION.

Section 4011 of the Transportation Equity Act for the 21st Century is amended by adding at the end the following: *Ante*, p. 394.

"(h) TECHNICAL AMENDMENTS.—Section 31314 (as amended by subsection (g) of this section) is amended—

"(1) in subsections (a) and (b) by striking '(3), and (5)' each place it appears and inserting '(3), and (4)'; and

"(2) by striking subsection (d).".

SEC. 9011. RESTORATIONS TO RESEARCH TITLE.

(a) UNIVERSITY TRANSPORTATION RESEARCH FUNDING.—Section 5001(a)(7) of the Transportation Equity Act for the 21st Century is amended— *Ante*, p. 419.

(1) by striking "$31,150,000" each place it appears and inserting "$25,650,000";

(2) by striking "$32,750,000" each place it appears and inserting "$27,250,000"; and

(3) by striking "$32,000,000" each place it appears and inserting "$26,500,000".

(b) OBLIGATION CEILING.—Section 5002 of such Act is amended by striking "$403,150,000" and all that follows through "$468,000,000" and inserting "$397,650,000 for fiscal year 1998, $403,650,000 for fiscal year 1999, $422,450,000 for fiscal year 2000, $437,250,000 for fiscal year 2001, $447,500,000 for fiscal year 2002, and $462,500,000". *Ante*, p. 421.

(c) USE OF FUNDS FOR ITS.—Section 5210 of the Transportation Equity Act for the 21st Century is amended by adding at the end the following: *Ante*, p. 461.

"(d) USE OF INNOVATIVE FINANCING.—

"(1) IN GENERAL.—The Secretary may use up to 25 percent of the funds made available to carry out this subtitle to make available loans, lines of credit, and loan guarantees for projects that are eligible for assistance under this subtitle and that have significant intelligent transportation system elements.

"(2) CONSISTENCY WITH OTHER LAW.—Credit assistance described in paragraph (1) shall be made available in a manner consistent with the Transportation Infrastructure Finance and Innovation Act of 1998.".

(d) UNIVERSITY TRANSPORTATION RESEARCH.—Section 5110 of such Act is amended by adding at the end the following: *Ante*, p. 441.

"(d) TECHNICAL ADJUSTMENTS.—Section 5505 of title 49, United States Code (as added by subsection (a) of this section), is amended—

"(1) in subsection (g)(2) by striking 'section 5506,' and inserting 'section 508 of title 23, United States Code,';

"(2) in subsection (i)—

"(A) by inserting 'Subject to section 5338(e):' after '(i) NUMBER AND AMOUNT OF GRANTS.—'; and

"(B) by striking 'institutions' each place it appears and inserting 'institutions or groups of institutions'; and

"(3) in subsection (j)(4)(B) by striking 'on behalf of' and all that follows before the period and inserting 'on behalf of a consortium which may also include West Virginia University Institute of Technology, the College of West Virginia, and Bluefield State College'.".

Ante, p. 446. (e) TECHNICAL CORRECTIONS.—Section 5115 of such Act is amended—

(1) in subsection (a) by striking "Director" and inserting "Director of the Bureau of Transportation Statistics";

(2) in subsection (b) by striking "Bureau" and inserting "Bureau of Transportation Statistics,"; and

(3) in subsection (c) by striking "paragraph (1)" and inserting "subsection (a)".

Ante, p. 446. (f) CORRECTIONS TO CERTAIN OKLAHOMA PROJECTS.—Section 5116 of such Act is amended—

(1) in subsection (e)(2) by striking "$1,000,000 for fiscal year 1999, $1,000,000 for fiscal year 2000, and $500,000 for fiscal year 2001" and inserting "$1,000,000 for fiscal year 1999, $1,000,000 for fiscal year 2000, $1,000,000 for fiscal year 2001, and $500,000 for fiscal year 2002"; and

(2) in subsection (f)(2) by striking "$1,000,000 for fiscal year 1999, $1,000,000 for fiscal year 2000, $1,000,000 for fiscal year 2001, and $500,000 for fiscal year 2002" and inserting "$1,000,000 for fiscal year 1999, $1,000,000 for fiscal year 2000, and $500,000 for fiscal year 2001".

Ante, p. 448. (g) INTELLIGENT TRANSPORTATION INFRASTRUCTURE REFERENCE.—Section 5117(b)(3)(B)(ii) of such Act is amended by striking "local departments of transportation" and inserting "the Department of Transportation".

(h) FUNDAMENTAL PROPERTIES OF ASPHALTS AND MODIFIED ASPHALTS.—Section 5117(b)(5)(B) of such Act is amended—

(1) by striking "1999" and inserting "1998"; and

(2) by striking "$3,000,000 per fiscal year" and inserting "$1,000,000 for fiscal year 1998 and $3,000,000 for each of fiscal years 1999 through 2003".

SEC. 9012. AUTOMOBILE SAFETY AND INFORMATION.

Ante, p. 466. (a) REFERENCE.—Section 7104 of the Transportation Equity Act for the 21st Century is amended by adding at the end the following:

"(c) CONFORMING AMENDMENT.—Section 30105(a) of title 49, United States Code (as amended by subsection (a) of this section), is amended by inserting after 'Secretary' the following: 'for the National Highway Traffic Safety Administration'.".

Ante, p. 485. (b) CLEAN VESSEL ACT FUNDING.—Section 7403 of such Act is amended—

(1) by inserting "(a) IN GENERAL.—" before "Section 4(b)"; and

(2) by adding at the end the following:

"(b) TECHNICAL AMENDMENT.—Section 4(b)(3)(B) of the 1950 Act (as amended by subsection (a) of this section) is amended by striking '6404(d)' and inserting '7404(d)'.".

Ante, p. 486. (c) BOATING INFRASTRUCTURE.—Section 7404(b) of such Act is amended by striking "6402" and inserting "7402".

SEC. 9013. TECHNICAL CORRECTIONS REGARDING SUBTITLE A OF TITLE VIII.

(a) AMENDMENT TO OFFSETTING ADJUSTMENT FOR DISCRETIONARY SPENDING LIMIT.—Section 8101(b) of the Transportation Equity Act for the 21st Century is amended— *Ante*, p. 488.

(1) in paragraph (1) by striking "$25,173,000,000" and inserting "$25,144,000,000"; and

(2) in paragraph (2) by striking "$26,045,000,000" and inserting "$26,009,000,000".

(b) AMENDMENTS FOR HIGHWAY CATEGORY.—Section 8101 of the Transportation Equity Act for the 21st Century is amended by adding at the end the following:

"(f) TECHNICAL AMENDMENTS.—Section 250(c)(4)(C) of the Balanced Budget and Emergency Deficit Control Act of 1985 (as amended by subsection (c) of this Act) is amended—

"(1) by striking 'Century and' and inserting 'Century or';

"(2) by striking 'as amended by this section,' and inserting 'as amended by the Transportation Equity Act for the 21st Century,'; and

"(3) by adding at the end the following new flush sentence: 'Such term also refers to the Washington Metropolitan Transit Authority account (69–1128–0–1–401) only for fiscal year 1999 only for appropriations provided pursuant to authorizations contained in section 14 of Public Law 96–184 and Public Law 101–551.'.".

(c) TECHNICAL AMENDMENT.—Section 8102 of the Transportation Equity Act for the 21st Century is amended by inserting before the period at the end the following: "or from section 1102 of this Act". *Ante*, p. 492.

SEC. 9014. CORRECTIONS TO VETERANS SUBTITLE.

(a) TOBACCO-RELATED ILLNESSES IN VETERANS.—Section 8202 of the Transportation Equity Act for the 21st Century is amended to read as follows (and the amendments made by that section as originally enacted shall be treated for all purposes as not having been made): *Ante*, p. 492.

"SEC. 8202. TREATMENT OF TOBACCO-RELATED ILLNESSES OF VETERANS.

"(a) IN GENERAL.—(1) Chapter 11 of title 38, United States Code, is amended by inserting after section 1102 the following new section:

'§ 1103. Special provisions relating to claims based upon effects of tobacco products

'(a) Notwithstanding any other provision of law, a veteran's disability or death shall not be considered to have resulted from personal injury suffered or disease contracted in the line of duty in the active military, naval, or air service for purposes of this title on the basis that it resulted from injury or disease attributable to the use of tobacco products by the veteran during the veteran's service.

'(b) Nothing in subsection (a) shall be construed as precluding the establishment of service connection for disability or death from a disease or injury which is otherwise shown to have been incurred or aggravated in active military, naval, or air service or which became manifest to the requisite degree of disability during any

applicable presumptive period specified in section 1112 or 1116 of this title.'.

"(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1102 the following new item:

'1103. Special provisions relating to claims based upon effects of tobacco products.'.

Applicability.

"(b) EFFECTIVE DATE.—Section 1103 of title 38, United States Code, as added by subsection (a), shall apply with respect to claims received by the Secretary of Veterans Affairs after the date of the enactment of this Act.".

(b) GI BILL EDUCATIONAL ASSISTANCE FOR SURVIVORS AND DEPENDENTS OF VETERANS.—Subtitle B of title VIII of the Transportation Equity Act for the 21st Century is amended by adding at the end the following new section:

Ante, p. 492.

"SEC. 8210. TWENTY PERCENT INCREASE IN RATES OF SURVIVORS AND DEPENDENTS EDUCATIONAL ASSISTANCE.

"(a) SURVIVORS AND DEPENDENTS EDUCATIONAL ASSISTANCE.—Section 3532 of title 38, United States Code, is amended—

"(1) in subsection (a)(1)—

"(A) by striking out '$404' and inserting in lieu thereof '$485';

"(B) by striking out '$304' and inserting in lieu thereof '$365'; and

"(C) by striking out '$202' and inserting in lieu thereof '$242';

"(2) in subsection (a)(2), by striking out '$404' and inserting in lieu thereof '$485';

"(3) in subsection (b), by striking out '$404' and inserting in lieu thereof '$485'; and

"(4) in subsection (c)(2)—

"(A) by striking out '$327' and inserting in lieu thereof '$392';

"(B) by striking out '$245' and inserting in lieu thereof '$294'; and

"(C) by striking out '$163' and inserting in lieu thereof '$196'.

"(b) CORRESPONDENCE COURSE.—Section 3534(b) of such title is amended by striking out '$404' and inserting in lieu thereof '$485'.

"(c) SPECIAL RESTORATIVE TRAINING.—Section 3542(a) of such title is amended—

"(1) by striking out '$404' and inserting in lieu thereof '$485';

"(2) by striking out '$127' each place it appears and inserting in lieu thereof '$152'; and

"(3) by striking out '$13.46' and inserting in lieu thereof '$16.16'.

"(d) APPRENTICESHIP TRAINING.—Section 3687(b)(2) of such title is amended—

"(1) by striking out '$294' and inserting in lieu thereof '$353';

"(2) by striking out '$220' and inserting in lieu thereof '$264';

"(3) by striking out '$146' and inserting in lieu thereof '$175'; and

"(4) by striking out '$73' and inserting in lieu thereof '$88'.

"(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1998, and shall apply with respect to educational assistance allowances paid for months after September 1998.". Applicability.

SEC. 9015. TECHNICAL CORRECTIONS REGARDING TITLE IX.

(a) HIGHWAY TRUST FUND.—Subsection (f) of section 9002 of the Transportation Equity Act for the 21st Century is amended by adding at the end the following new paragraphs: *Ante*, p. 499.

"(4) The last sentence of section 9503(c)(1), as amended by subsection (d), is amended by striking 'the date of enactment of the Transportation Equity Act for the 21st Century' and inserting 'the date of the enactment of the TEA 21 Restoration Act'.

"(5) Paragraph (3) of section 9503(e), as amended by subsection (d), is amended by striking 'the date of enactment of the Transportation Equity Act for the 21st Century' and inserting 'the date of the enactment of the TEA 21 Restoration Act'.".

(b) BOAT SAFETY ACCOUNT AND SPORT FISH RESTORATION ACCOUNT.—Section 9005 of the Transportation Equity Act for the 21st Century is amended by adding at the end the following new subsection: *Ante*, p. 504.

"(f) CLERICAL AMENDMENTS.—

"(1) Subparagraph (A) of section 9504(b)(2), as amended by subsection (b)(1), is amended by striking 'the date of the enactment of the Transportation Equity Act for the 21st Century' and inserting 'the date of the enactment of the TEA 21 Restoration Act'.

"(2) Subparagraph (B) of section 9504(b)(2), as added by subsection (b)(3), is amended by striking 'such Act' and inserting 'the TEA 21 Restoration Act'.

"(3) Subparagraph (C) of section 9504(b)(2), as amended by subsection (b)(2) and redesignated by subsection (b)(3), is amended by striking 'the date of the enactment of the Transportation Equity Act for the 21st Century' and inserting 'the date of the enactment of the TEA 21 Restoration Act'.

"(4) Subsection (c) of section 9504, as amended by subsection (c)(2), is amended by striking 'the date of enactment of the Transportation Equity Act for the 21st Century' and inserting 'the date of the enactment of the TEA 21 Restoration Act'.".

23 USC 101 note.

SEC. 9016. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect simultaneously with the enactment of the Transportation Equity Act for the 21st Century. For purposes of all Federal laws, the amendments made by this title shall be treated as being included in the Transportation Equity Act for the 21st Century at the time of the enactment of such Act, and the provisions of such Act (including the amendments made by such Act) (as in effect on the day before the date of enactment of this Act) that are amended by this title shall be treated as not being enacted.

Approved July 22, 1998.

LEGISLATIVE HISTORY—H.R. 2676:

HOUSE REPORTS: Nos. 105–364, Pt. 1 (Comm. on Ways and Means) and 105–599 (Comm. of Conference).
SENATE REPORTS: No. 105–174 (Comm. on Finance).
CONGRESSIONAL RECORD:
Vol. 143 (1997): Nov. 5, considered and passed House.
Vol. 144 (1998): May 4–7, considered and passed Senate, amended.
June 25, House agreed to conference report.
July 7–9, Senate considered and agreed to conference report.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 34 (1998):
July 22, Presidential remarks.

○

§ 6501. Limitations on assessment and collection

(a) General rule

Except as otherwise provided in this section, the amount of any tax imposed by this title shall be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed) or, if the tax is payable by stamp, at any time after such tax became due and before the expiration of 3 years after the date on which any part of such tax was paid, and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period. For purposes of this chapter, the term "return" means the return required to be filed by the taxpayer (and does not include a return of any person from whom the taxpayer has received an item of income, gain, loss, deduction, or credit).

(b) Time return deemed filed

(1) Early return

For purposes of this section, a return of tax imposed by this title, except tax imposed by chapter 3, 21, or 24, filed before the last day prescribed by law or by regulations promulgated pursuant to law for the filing thereof, shall be considered as filed on such last day.

(2) Return of certain employment taxes and tax imposed by chapter 3

For purposes of this section, if a return of tax imposed by chapter 3, 21, or 24 for any period ending with or within a calendar year is filed before April 15 of the succeeding calendar year, such return shall be considered filed on April 15 of such calendar year.

(3) Return executed by Secretary

Notwithstanding the provisions of paragraph (2) of section 6020 (b), the execution of a return by the Secretary pursuant to the authority conferred by such section shall not start the running of the period of limitations on assessment and collection.

(4) Return of excise taxes

For purposes of this section, the filing of a return for a specified period on which an entry has been made with respect to a tax imposed under a provision of subtitle D (including a return on which an entry has been made showing no liability for such tax for such period) shall constitute the filing of a return of all amounts of such tax which, if properly paid, would be required to be reported on such return for such period.

(c) Exceptions

(1) False return

In the case of a false or fraudulent return with the intent to evade tax, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

(2) Willful attempt to evade tax

In case of a willful attempt in any manner to defeat or evade tax imposed by this title (other than tax imposed by subtitle A or B), the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(3) No return

In the case of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(4) Extension by agreement

(A) In general

Where, before the expiration of the time prescribed in this section for the assessment of any tax imposed by this title, except the estate tax provided in chapter 11, both the Secretary and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(B) Notice to taxpayer of right to refuse or limit extension

The Secretary shall notify the taxpayer of the taxpayer's right to refuse to extend the period of limitations, or to limit such extension to particular issues or to a particular period of time, on each occasion when the taxpayer is requested to provide such consent.

(5) Tax resulting from changes in certain income tax or estate tax credits

For special rules applicable in cases where the adjustment of certain taxes allowed as a credit against income taxes or estate taxes results in additional tax, see section 905 (c) (relating to the foreign tax credit for income tax purposes) and section 2016 (relating to taxes of foreign countries, States, etc., claimed as credit against estate taxes).

(6) Termination of private foundation status

In the case of a tax on termination of private foundation status under section 507, such tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(7) Special rule for certain amended returns

Where, within the 60-day period ending on the day on which the time prescribed in this section for the assessment of any tax imposed by subtitle A for any taxable year would otherwise expire, the Secretary receives a written document signed by the taxpayer showing that the taxpayer owes an additional amount of such tax for such taxable year, the period for the assessment of such additional amount shall not expire before the day 60 days after the day on which the Secretary receives such document.

(8) Failure to notify Secretary of certain foreign transfers

In the case of any information which is required to be reported to the Secretary under section 6038, 6038A, 6038B, 6046, 6046A, or 6048, the time for assessment of any tax imposed by this title with respect to any event or period to which such information relates shall not expire before the date which is 3 years after the date on which the Secretary is furnished the information required to be reported under such section.

(9) Gift tax on certain gifts not shown on return

If any gift of property the value of which (or any increase in taxable gifts required under section 2701 (d) which) is required to be shown on a return of tax imposed by chapter 12 (without regard to section 2503 (b)), and is not shown on such return, any tax imposed by chapter 12 on such gift may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time. The preceding sentence shall not apply to any item which is disclosed in such return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature of such item.

(10) Listed transactions

If a taxpayer fails to include on any return or statement for any taxable year any information with respect to a listed transaction (as defined in section 6707A (c)(2)) which is required under section 6011 to be included with such return or statement, the time for assessment of any tax imposed by this title with respect to such transaction shall not expire before the date which is 1 year after the earlier of—

(A) the date on which the Secretary is furnished the information so required, or

(B) the date that a material advisor (as defined in section 6111) meets the requirements of section 6112 with respect to a request by the Secretary under section 6112 (b) relating to such transaction with respect to such taxpayer.

(d) Request for prompt assessment

Except as otherwise provided in subsection (c), (e), or (f), in the case of any tax (other than the tax imposed by chapter 11 of subtitle B, relating to estate taxes) for which return is required in the case of a decedent, or by his estate during the period of administration, or by a corporation, the tax shall be assessed, and any proceeding in court without assessment for the collection of such tax shall be begun, within 18 months after written request

therefor (filed after the return is made and filed in such manner and such form as may be prescribed by regulations of the Secretary) by the executor, administrator, or other fiduciary representing the estate of such decedent, or by the corporation, but not after the expiration of 3 years after the return was filed. This subsection shall not apply in the case of a corporation unless —

(1)

(A) such written request notifies the Secretary that the corporation contemplates dissolution at or before the expiration of such 18-month period,

(B) the dissolution is in good faith begun before the expiration of such 18-month period, and

(C) the dissolution is completed;

(2)

(A) such written request notifies the Secretary that a dissolution has in good faith been begun, and

(B) the dissolution is completed; or

(3) a dissolution has been completed at the time such written request is made.

(e) Substantial omission of items

Except as otherwise provided in subsection (c)—

(1) Income taxes

In the case of any tax imposed by subtitle A—

(A) General rule

If the taxpayer omits from gross income an amount properly includible therein which is in excess of 25 percent of the amount of gross income stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return was filed. For purposes of this subparagraph—

(i) In the case of a trade or business, the term "gross income" means the total of the amounts received or accrued from the sale of goods or services (if such amounts are required to be shown on the return) prior to diminution by the cost of such sales or services; and

(ii) In determining the amount omitted from gross income, there shall not be taken into account any amount which is omitted from gross income stated in the return if such amount is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature and amount of such item.

(B) Constructive dividends

If the taxpayer omits from gross income an amount properly includible therein under section 951 (a), the tax may be assessed, or a proceeding in court for the collection of such tax may be done without assessing, at any time within 6 years after the return was filed.

(2) Estate and gift taxes

In the case of a return of estate tax under chapter 11 or a return of gift tax under chapter 12, if the taxpayer omits from the gross estate or from the total amount of the gifts made during the period for which the return was filed items includible in such gross estate or such total gifts, as the case may be, as exceed in amount 25 percent of the gross estate stated in the return or the total amount of gifts stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return was filed. In determining the items omitted from the gross estate or the total gifts, there shall not be taken into account any item which is omitted from the gross estate or from the total gifts stated in the return if such item is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature and amount of such item.

(3) Excise taxes

In the case of a return of a tax imposed under a provision of subtitle D, if the return omits an amount of such tax properly includible thereon which exceeds 25 percent of the amount of such tax reported thereon, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return is filed. In determining the amount of tax omitted on a return, there shall not be taken into account any amount of tax imposed by chapter 41, 42, 43, or 44 which is omitted from the return if the transaction giving rise to such tax is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the existence and nature of such item.

(f) Personal holding company tax

If a corporation which is a personal holding company for any taxable year fails to file with its return under chapter 1 for such year a schedule setting forth—

(1) the items of gross income and adjusted ordinary gross income, described in section 543, received by the corporation during such year, and

(2) the names and addresses of the individuals who owned, within the meaning of section 544 (relating to rules for determining stock ownership), at any time during the last half of such year more than 50 percent in value of the outstanding capital stock of the corporation,

the personal holding company tax for such year may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return for such year was filed.

(g) Certain income tax returns of corporations

(1) Trusts or partnerships

If a taxpayer determines in good faith that it is a trust or partnership and files a return as such under subtitle A, and if such taxpayer is thereafter held to be a corporation for the taxable year for which the return is filed, such return shall be deemed the return of the corporation for purposes of this section.

(2) Exempt organizations

If a taxpayer determines in good faith that it is an exempt organization and files a return as such under section 6033, and if such taxpayer is thereafter held to be a taxable organization for the taxable year for

which the return is filed, such return shall be deemed the return of the organization for purposes of this section.

(3) DISC

If a corporation determines in good faith that it is a DISC (as defined in section 992 (a)) and files a return as such under section 6011 (c)(2) and if such corporation is thereafter held to be a corporation which is not a DISC for the taxable year for which the return is filed, such return shall be deemed the return of a corporation which is not a DISC for purposes of this section.

(h) Net operating loss or capital loss carrybacks

In the case of a deficiency attributable to the application to the taxpayer of a net operating loss carryback or a capital loss carryback (including deficiencies which may be assessed pursuant to the provisions of section 6213 (b)(3)), such deficiency may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the net operating loss or net capital loss which results in such carryback may be assessed.

(i) Foreign tax carrybacks

In the case of a deficiency attributable to the application to the taxpayer of a carryback under section 904 (c) (relating to carryback and carryover of excess foreign taxes) or under section 907 (f) (relating to carryback and carryover of disallowed oil and gas extraction taxes), such deficiency may be assessed at any time before the expiration of one year after the expiration of the period within which a deficiency may be assessed for the taxable year of the excess taxes described in section 904 (c) or 907 (f) which result in such carryback.

(j) Certain credit carrybacks

(1) In general

In the case of a deficiency attributable to the application to the taxpayer of a credit carryback (including deficiencies which may be assessed pursuant to the provisions of section 6213 (b)(3)), such deficiency may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the unused credit which results in such carryback may be assessed, or with respect to any portion of a credit carryback from a taxable year attributable to a net operating loss carryback, capital loss carryback, or other credit carryback from a subsequent taxable year, at any time before the expiration of the period within which a deficiency for such subsequent taxable year may be assessed.

(2) Credit carryback defined

For purposes of this subsection, the term "credit carryback" has the meaning given such term by section 6511 (d)(4)(C).

(k) Tentative carryback adjustment assessment period

In a case where an amount has been applied, credited, or refunded under section 6411 (relating to tentative carryback and refund adjustments) by reason of a net operating loss carryback, a capital loss carryback, or a credit carryback (as defined in section 6511 (d)(4)(C)) to a prior taxable year, the period described in subsection (a) of this section for assessing a deficiency for such prior taxable year shall be extended to include the period described

in subsection (h) or (j), whichever is applicable; except that the amount which may be assessed solely by reason of this subsection shall not exceed the amount so applied, credited, or refunded under section 6411, reduced by any amount which may be assessed solely by reason of subsection (h) or (j), as the case may be.

(l) Special rule for chapter 42 and similar taxes

(1) In general

For purposes of any tax imposed by section 4912, by chapter 42 (other than section 4940), or by section 4975, the return referred to in this section shall be the return filed by the private foundation, plan, trust, or other organization (as the case may be) for the year in which the act (or failure to act) giving rise to liability for such tax occurred. For purposes of section 4940, such return is the return filed by the private foundation for the taxable year for which the tax is imposed.

(2) Certain contributions to section 501 (c)(3) organizations

In the case of a deficiency of tax of a private foundation making a contribution in the manner provided in section 4942 (g)(3) (relating to certain contributions to section 501 (c)(3) organizations) attributable to the failure of a section 501 (c)(3) organization to make the distribution prescribed by section 4942 (g)(3), such deficiency may be assessed at any time before the expiration of one year after the expiration of the period within which a deficiency may be assessed for the taxable year with respect to which the contribution was made.

(3) Certain set-asides described in section 4942 (g)(2)

In the case of a deficiency attributable to the failure of an amount set aside by a private foundation for a specific project to be treated as a qualifying distribution under the provisions of section 4942 (g)(2)(B)(ii), such deficiency may be assessed at any time before the expiration of 2 years after the expiration of the period within which a deficiency may be assessed for the taxable year to which the amount set aside relates.

(m) Deficiencies attributable to election of certain credits

The period for assessing a deficiency attributable to any election under section 30 (d)(4), 40 (f), 43, 45B, 45C (d)(4), or 51 (j) (or any revocation thereof) shall not expire before the date 1 year after the date on which the Secretary is notified of such election (or revocation).

(n) Cross references

(1) For period of limitations for assessment and collection in the case of a joint income return filed after separate returns have been filed, see section 6013 (b)(3) and (4).

(2) For extension of period in the case of partnership items (as defined in section 6231 (a)(3)), see section 6229.

(3) For declaratory judgment relating to treatment of items other than partnership items with respect to an oversheltered return, see section 6234.

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§ 6212. Notice of deficiency

(a) In general

If the Secretary determines that there is a deficiency in respect of any tax imposed by subtitles A or B or chapter 41, 42, 43, or 44 he is authorized to send notice of such deficiency to the taxpayer by certified mail or registered mail. Such notice shall include a notice to the taxpayer of the taxpayer's right to contact a local office of the taxpayer advocate and the location and phone number of the appropriate office.

(b) Address for notice of deficiency

(1) Income and gift taxes and certain excise taxes

In the absence of notice to the Secretary under section 6903 of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by subtitle A, chapter 12, chapter 41, chapter 42, chapter 43, or chapter 44 if mailed to the taxpayer at his last known address, shall be sufficient for purposes of subtitle A, chapter 12, chapter 41, chapter 42, chapter 43, chapter 44, and this chapter even if such taxpayer is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

(2) Joint income tax return

In the case of a joint income tax return filed by husband and wife, such notice of deficiency may be a single joint notice, except that if the Secretary has been notified by either spouse that separate residences have been established, then, in lieu of the single joint notice, a duplicate original of the joint notice shall be sent by certified mail or registered mail to each spouse at his last known address.

(3) Estate tax

In the absence of notice to the Secretary under section 6903 of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by chapter 11, if addressed in the name of the decedent or other person subject to liability and mailed to his last known address, shall be sufficient for purposes of chapter 11 and of this chapter.

(c) Further deficiency letters restricted

(1) General rule

If the Secretary has mailed to the taxpayer a notice of deficiency as provided in subsection (a), and the taxpayer files a petition with the Tax Court within the time prescribed in section 6213 (a), the Secretary shall have no right to determine any additional deficiency of income tax for the same taxable year, of gift tax for the same calendar year, of estate tax in respect of the taxable estate of the same decedent, of chapter 41 tax for the same taxable year, of chapter 43 tax for the same taxable year, of chapter 44 tax for the same taxable year, of section 4940 tax for the same taxable year, or of chapter 42 tax, (other than under section 4940) with respect to any act (or failure to act) to which such petition relates, except in the case of fraud, and except as provided in section 6214 (a) (relating to assertion of greater deficiencies before the Tax Court), in section 6213 (b)(1) (relating to mathematical or clerical errors), in section 6851 or 6852 (relating to termination assessments), or in section 6861 (c) (relating to the making of jeopardy assessments).

(2) Cross references

For assessment as a deficiency notwithstanding the prohibition of further deficiency letters, in the case of—

(A) Deficiency attributable to change of treatment with respect to itemized deductions, see section 63 (e)(3).

(B) Deficiency attributable to gain on involuntary conversion, see section 1033 (a)(2)(C) and (D).

(C) Deficiency attributable to activities not engaged in for profit, see section 183 (e)(4).

For provisions allowing determination of tax in title 11 cases, see section 505 (a) of title 11 of the United States Code.

(d) Authority to rescind notice of deficiency with taxpayer's consent

The Secretary may, with the consent of the taxpayer, rescind any notice of deficiency mailed to the taxpayer. Any notice so rescinded shall not be treated as a notice of deficiency for purposes of subsection (c)(1) (relating to further deficiency letters restricted), section 6213 (a) (relating to restrictions applicable to deficiencies; petition to Tax Court), and section 6512 (a) (relating to limitations in case of petition to Tax Court), and the taxpayer shall have no right to file a petition with the Tax Court based on such notice. Nothing in this subsection shall affect any suspension of the running of any period of limitations during any period during which the rescinded notice was outstanding.

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Sec. 6501. - Limitations on assessment and collection

(a) General rule

Except as otherwise provided in this section, the amount of any tax imposed by this title shall be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed) or, if the tax is payable by stamp, at any time after such tax became due and before the expiration of 3 years after the date on which any part of such tax was paid, and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period. For purposes of this chapter, the term "return" means the return required to be filed by the taxpayer (and does not include a return of any person from whom the taxpayer has received an item of income, gain, loss, deduction, or credit).

(b) Time return deemed filed

(1) Early return

For purposes of this section, a return of tax imposed by this title, except tax imposed by chapter 3, 21, or 24, filed before the last day prescribed by law or by regulations promulgated pursuant to law for the filing thereof, shall be considered as filed on such last day.

(2) Return of certain employment taxes and tax imposed by chapter 3

For purposes of this section, if a return of tax imposed by chapter 3, 21, or 24 for any period ending with or within a calendar year is filed before April 15 of the succeeding calendar

year, such return shall be considered filed on April 15 of such calendar year.

(3) Return executed by Secretary

Notwithstanding the provisions of paragraph (2) of section 6020 (b), the execution of a return by the Secretary pursuant to the authority conferred by such section shall not start the running of the period of limitations on assessment and collection.

(4) Return of excise taxes

For purposes of this section, the filing of a return for a specified period on which an entry has been made with respect to a tax imposed under a provision of subtitle D (including a return on which an entry has been made showing no liability for such tax for such period) shall constitute the filing of a return of all amounts of such tax which, if properly paid, would be required to be reported on such return for such period.

(c) Exceptions

(1) False return

In the case of a false or fraudulent return with the intent to evade tax, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

(2) Willful attempt to evade tax

In case of a willful attempt in any manner to defeat or evade tax imposed by this title (other than tax imposed by subtitle A or B), the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(3) No return

In the case of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(4) Extension by agreement

(A) In general

Where, before the expiration of the time prescribed in this section for the assessment of any tax imposed by this title, except the estate tax provided in chapter 11, both the Secretary and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(B) Notice to taxpayer of right to refuse or limit extension

The Secretary shall notify the taxpayer of the taxpayer's right to refuse to extend the period of limitations, or to limit such extension to particular issues or to a particular period of time, on each occasion when the taxpayer is requested to provide such consent.

(5) Tax resulting from changes in certain income tax or estate tax credits For special rules applicable in cases where the adjustment of

For special rules applicable in cases where the adjustment of certain taxes allowed as a credit against income taxes or estate taxes results in additional tax, see section 905(c) (relating to the foreign tax credit for income tax purposes) and section 2016 (relating to taxes of foreign countries, States, etc., claimed as credit against estate taxes).

(6) Termination of private foundation status

In the case of a tax on termination of private foundation status under section 507, such tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(7) Special rule for certain amended returns

Where, within the 60-day period ending on the day on which the time prescribed in this section for the assessment of any tax imposed by subtitle A for any taxable year would otherwise expire, the Secretary receives a written document signed by the taxpayer showing that the taxpayer owes an additional amount of such tax for such taxable year, the period for the assessment of such additional amount shall not expire before the day 60 days after the day on which the Secretary receives such document.

(8) Failure to notify Secretary of certain foreign transfers

In the case of any information which is required to be reported to the Secretary under section 6038, 6038A, 6038B, 6046, 6046A, or 6048, the time for assessment of any tax imposed by this title with respect to any event or period to which such information relates shall not expire before the date which is 3 years after the date on which the Secretary is furnished the information required to be reported under such section.

(9) Gift tax on certain gifts not shown on return

If any gift of property the value of which (or any increase in taxable gifts required under section 2701(d) which) is required to be shown on a return of tax imposed by chapter 12 (without regard to section 2503(b)), and is not shown on such return, any tax imposed by chapter 12 on such gift may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time. The preceding sentence shall not apply to any item which is disclosed in such return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature of such item.

(d) Request for prompt assessment

Except as otherwise provided in subsection (c), (e), or (f), in the case of any tax (other than the tax imposed by chapter 11 of subtitle B, relating to estate taxes) for which return is required in the case of a decedent, or by his estate during the period of administration, or by a corporation, the tax shall be assessed, and any proceeding in court without assessment for the collection of such tax shall be begun, within 18 months after written request therefor (filed after the return is made and filed

in such manner and such form as may be prescribed by regulations of the Secretary) by the executor, administrator, or other fiduciary representing the estate of such decedent, or by the corporation, but not after the expiration of 3 years after the return was filed. This subsection shall not apply in the case of a corporation unless -

(1)

(A)

such written request notifies the Secretary that the corporation contemplates dissolution at or before the expiration of such 18-month period,

(B)

the dissolution is in good faith begun before the expiration of such 18-month period, and

(C)

the dissolution is completed;

(2)

(A)

such written request notifies the Secretary that a dissolution has in good faith been begun, and

(B)

the dissolution is completed; or

(3)

a dissolution has been completed at the time such written request is made.

(e) Substantial omission of items

Except as otherwise provided in subsection (c) -

(1) Income taxes

In the case of any tax imposed by subtitle A -

(A) General rule

If the taxpayer omits from gross income an amount properly includible therein which is in excess of 25 percent of the amount of gross income stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return was filed. For purposes of this subparagraph -

(i)

In the case of a trade or business, the term "gross income" means the total of the amounts received or accrued from the sale of goods or services (if such amounts are required to be shown on the return) prior to diminution by the cost of such sales or services; and

(ii)

In determining the amount omitted from gross income, there shall not be taken into account any amount which is omitted from gross income stated in the return if such amount is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature and amount of such item.

(B) Constructive dividends

If the taxpayer omits from gross income an amount properly includible therein under section 551(b) (relating to the inclusion in the gross income of United States shareholders of their distributive shares of the undistributed foreign personal holding company income), the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return was filed.

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(2) Estate and gift taxes

In the case of a return of estate tax under chapter 11 or a return of gift tax under chapter 12, if the taxpayer omits from the gross estate or from the total amount of the gifts made during the period for which the return was filed items includible in such gross estate or such total gifts, as the case may be, as exceed in amount 25 percent of the gross estate stated in the return or the total amount of gifts stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return was filed. In determining the items omitted from the gross estate or the total gifts, there shall not be taken into account any item which is omitted from the gross estate or from the total gifts stated in the return if such item is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature and amount of such item.

(3) Excise taxes

In the case of a return of a tax imposed under a provision of subtitle D, if the return omits an amount of such tax properly includible thereon which exceeds 25 percent of the amount of such tax reported thereon, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return is filed. In determining the amount of tax omitted on a return, there shall not be taken into account any amount of tax imposed by chapter 41, 42, 43, or 44 which is omitted from the return if the transaction giving rise to such tax is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the existence and nature of such item.

(f) Personal holding company tax

If a corporation which is a personal holding company for any taxable year fails to file with its return under chapter 1 for such year a schedule setting forth -

(1)

the items of gross income and adjusted ordinary gross income, described in section 543, received by the corporation during such year, and

(2)

the names and addresses of the individuals who owned, within the meaning of section 544 (relating to rules for determining stock ownership), at any time during the last half of such year more than 50 percent in value of the outstanding capital stock of the corporation,

the personal holding company tax for such year may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return for such year was filed.

(g) Certain income tax returns of corporations

(1) Trusts or partnerships

If a taxpayer determines in good faith that it is a trust or partnership and files a return as such under subtitle A, and if such taxpayer is thereafter held to be a corporation for the taxable year for which the return is filed, such return shall be deemed the return of the corporation for purposes of this section.

(2) Exempt organizations

If a taxpayer determines in good faith that it is an exempt organization and files a return as such under section 6033, and if such taxpayer is thereafter held to be a taxable organization for the taxable year for which the return is filed, such return shall be deemed the return of the organization for purposes of this section.

(3) DISC

If a corporation determines in good faith that it is a DISC (as defined in section 992(a)) and files a return as such under section 6011(c)(2) and if such corporation is thereafter held to

be a corporation which is not a DISC for the taxable year for which the return is filed, such return shall be deemed the return of a corporation which is not a DISC for purposes of this section.

(h) Net operating loss or capital loss carrybacks

In the case of a deficiency attributable to the application to the taxpayer of a net operating loss carryback or a capital loss carryback (including deficiencies which may be assessed pursuant to the provisions of section 6213(b)(3)), such deficiency may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the net operating loss or net capital loss which results in such carryback may be assessed.

(i) Foreign tax carrybacks

In the case of a deficiency attributable to the application to the taxpayer of a carryback under section 904(c) (relating to carryback and carryover of excess foreign taxes) or under section 907(f) (relating to carryback and carryover of disallowed oil and gas extraction taxes), such deficiency may be assessed at any time before the expiration of one year after the expiration of the period within which a deficiency may be assessed for the taxable year of the excess taxes described in section 904(c) or 907(f) which result in such carryback.

(j) Certain credit carrybacks

(1) In general

In the case of a deficiency attributable to the application to the taxpayer of a credit carryback (including deficiencies which may be assessed pursuant to the provisions of section 6213(b)(3)), such deficiency may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the unused credit which results in such carryback may be assessed, or with respect to any portion of a credit carryback from a taxable year attributable to a net operating loss carryback, capital loss carryback, or other credit carryback from a subsequent taxable year, at any time before the expiration of

the period within which a deficiency for such subsequent taxable year may be assessed.

(2) Credit carryback defined

For purposes of this subsection, the term "credit carryback" has the meaning given such term by section 6511(d)(4)(C).

(k) Tentative carryback adjustment assessment period

In a case where an amount has been applied, credited, or refunded under section 6411 (relating to tentative carryback and refund adjustments) by reason of a net operating loss carryback, a capital loss carryback, or a credit carryback (as defined in section 6511(d)(4)(C)) to a prior taxable year, the period described in subsection (a) of this section for assessing a deficiency for such prior taxable year shall be extended to include the period described in subsection (h) or (j), whichever is applicable; except that the amount which may be assessed solely by reason of this subsection shall not exceed the amount so applied, credited, or refunded under section 6411, reduced by any amount which may be assessed solely by reason of subsection (h) or (j), as the case may be.

(l) Special rule for chapter 42 and similar taxes

(1) In general

For purposes of any tax imposed by section 4912, by chapter 42 (other than section 4940), or by section 4975, the return referred to in this section shall be the return filed by the private foundation, plan, trust, or other organization (as the case may be) for the year in which the act (or failure to act) giving rise to liability for such tax occurred. For purposes of section 4940, such return is the return filed by the private foundation for the taxable year for which the tax is imposed.

(2) Certain contributions to section 501(c)(3) organizations

In the case of a deficiency of tax of a private foundation making a contribution in the manner provided in section 4942(g)(3) (relating to certain contributions to section 501(c)(3)

organizations) attributable to the failure of a section 501(c)(3) organization to make the distribution prescribed by section 4942 (g)(3), such deficiency may be assessed at any time before the expiration of one year after the expiration of the period within which a deficiency may be assessed for the taxable year with respect to which the contribution was made.

(3) Certain set-asides described in section 4942(g)(2)

In the case of a deficiency attributable to the failure of an amount set aside by a private foundation for a specific project to be treated as a qualifying distribution under the provisions of section 4942(g)(2)(B)(ii), such deficiency may be assessed at any time before the expiration of 2 years after the expiration of the period within which a deficiency may be assessed for the taxable year to which the amount set aside relates.

(m) Deficiencies attributable to election of certain credits

The period for assessing a deficiency attributable to any election under section 30(d)(4), 40(f), 43, 45B, 45C(d)(4), or 51(j) (or any revocation thereof) shall not expire before the date 1 year after the date on which the Secretary is notified of such election (or revocation).

(n)

Cross references

(1)

For period of limitations for assessment and collection in the case of a joint income return filed after separate returns have been filed, see section 6013(b)(3) and (4).

(2)

For extension of period in the case of partnership items (as defined in section 6231(a)(3)), see section 6229.

(3)

For declaratory judgment relating to treatment of items other than partnership items with respect to an oversheltered return, see section 6234

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TITLE 26--INTERNAL REVENUE

CHAPTER I--INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY--(Continued)

PART 601--STATEMENT OF PROCEDURAL RULES--Table of Contents

Subpart A--General Procedural Rules

Sec. 601.**106** Appeals functions.

(a) General. (1)(i) There are provided in each region Appeals offices with office facilities within the region. Unless they otherwise specify, taxpayers living outside the United States use the facilities of the Washington, DC, Appeals Office of the the Mid-Atlantic Region. Subject to the limitations set forth in subparagraphs (2) and (3) of this paragraph, the Commissioner has delegated to certain officers of the Appeals offices authority to represent the regional commissioner in those matters set forth in subdivisions (ii) through (v) of this subparagraph. If a statutory notice of deficiency was issued by a district director or the Director, Foreign Operations District, the Appeals office may waive jurisdiction to the director who issued the statutory notice during the 90-day (or 150-day) period for filing a petition with the Tax Court, except where criminal prosecution has been recommended and not finally disposed of, or the statutory notice includes the ad valorem fraud penalty. After the filing of a petition in the Tax Court, the Appeals office will have exclusive settlement jurisdiction, subject to the provisions of subparagraph (2) of this paragraph, for a period of 4 months (but no later than the receipt of the trial calendar in regular cases and no later than 15 days before the calendar call in S cases), over cases docketed in the Tax Court. Subject to the exceptions and limitations set forth in subparagraph (2) of this paragraph, there is also vested in the Appeals offices authority to represent the regional commissioner in his/her exclusive authority to

settle (a) all cases docketed in the Tax Court and designated for trial at any place within the territory comprising the region, and (b) all docketed cases originating in the office of any district director situated within the region, or in which jurisdiction has been transferred to the region, which are designated for trial at Washington,
DC, unless the petitioner resides in, and his/her books and records are located or can be made available in, the region which includes Washington, DC.

(ii) Certain officers of the Appeals offices may represent the regional commissioner in his/her exclusive and final authority for the determination of--

(a) Federal income, profits, estate (including extensions for payment under section 6161(a)(2)), gift, generation-skipping transfer, or Chapter 41, 42, 43, or 44 tax liability (whether before or after the issuance of a statutory notice of deficiency);

(b) Employment or certain Federal excise tax liability; and

(c) Liability for additions to the tax, additional amounts, and assessable penalties provided under Chapter 68 of the Code,

in any case originating in the office of any district director situated in the region, or in any case in which jurisdiction has been transferred
to the region.

(iii) The taxpayer must request Appeals consideration.

(a) An oral request is sufficient to obtain Appeals consideration in
(1) all office interview or correspondence examination cases or (2) a field examination case if the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) is $2,500 or less for any taxable period. No written protest or brief statement of disputed issues is required.

(b) A brief written statement of disputed issues is required (a written protest is optional) to obtain Appeals consideration in a field examination case if the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) exceeds $2,500 but does not exceed $10,000 for any taxable period.

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(c) A written protest is required to obtain Appeals consideration in
a field examination case if the total amount of proposed additional tax

including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) exceeds $10,000 for any taxable period.

(d) A written protest is required to obtain Appeals consideration in all employee plan and exempt organization cases.

(e) A written protest is required to obtain Appeals consideration in all partnership and S corporation cases.

(iv) Sections 6659(a)(1) and 6671(a) provide that additions to the tax, additional amounts, penalties and liabilities (collectively referred to in this subdivision as ``penalties'') provided by Chapter 68 of the Code shall be paid upon notice and demand and shall be assessed and collected in the same manner as taxes. Certain Chapter 68 penalties may be appealed after assessment to the Appeals office. This post-assessment appeal procedure applies to all but the following Chapter 68 penalties:

(a) Penalties that are not subject to a reasonable cause or reasonable basis determination (examples are additions to the tax for failure to pay estimated income tax under sections 6654 and 6655);

(b) Penalties that are subject to the deficiency procedures of subchapter B of Chapter 63 of the Code (because the taxpayer has the right to appeal such penalties, such as those provided under section 6653 (a) and (b), prior to assessment):

(c) Penalties that are subject to an administratively granted preassessment appeal procedure such as that provided in Sec. 1.6694-2(a)(1) because taxpayers are able to protest such penalties prior to assessment;

(d) The penalty provided in section 6700 for promoting abusive tax shelters (because the penalty is subject to the procedural rules of section 6703 which provides for an extension of the period of collection of the penalty when a person pays not less than 15 percent of the amount of such penalty); and

(e) The 100 percent penalty provided under section 6672 (because the taxpayer has the opportunity to appeal this penalty prior to assessment).

The appeal may be made before or after payment, but shall be made before the filing of a claim for refund. Technical advice procedures are not applicable to an appeal made under this subdivision.

(v) The Appeals office considers cases involving the initial or

continuing recognition of tax exemption and foundation classification. See Sec. 601.201(n)(5) and (n)(6). The Appeals office also considers cases involving the initial or continuing determination of employee plan qualification under Subchapter D of Chapter 1 of the Code. See Sec. 601.201(o)(6). However, the jurisdiction of the Appeals office in these cases is limited as follows:

(a) In cases under the jurisdiction of a key district director (or the National Office) which involve an application for, or the revocation or modification of, the recognition of exemption or the determination of qualification, if the determination concerning exemption is made by a National Office ruling, or if National Office technical advice is furnished concerning exemption or qualification, the decision of the National Office is final. The organization/plan has no right of appeal to the Appeals office or any other avenue of administrative appeal. See Sec. 601.201(n)(i), (n)(6)(ii)(b), (n)(9)(viii)(a), (o)(2)(iii), and (o)(6)(i).

(b) In cases already under the jurisdiction of an Appeals office, if the proposed disposition by that office is contrary to a National Office ruling concerning exemption, or to a National Office technical advice concerning exemption or qualification, issued prior to the case, the proposed disposition will be submitted, through the Office of the Regional Director of Appeals, to the Assistant Commissioner (Employee Plans and Exempt Organizations) or, in section 521 cases, to the Assistant Commissioner (Technical). The decision of the Assistant Commissioner will be followed by the Appeals office. See Sec. 601.201(n)(5)(iii), (n)(6)(ii)(d), (n)(6)(iv), and (o)(6)(iii).

(2) The authority described in subparagraph (1) of this paragraph does not include the authority to:

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(i) Negotiate or make a settlement in any case docketed in the Tax Court if the notice of deficiency, liability or other determination was issued by Appeals officials;

(ii) Negotiate or make a settlement in any docketed case if the notice of deficiency, liability or other determination was issued after appeals consideration of all petitioned issues by the Employee Plans/ Exempt Organizations function;

(iii) Negotiate or make a settlement in any docketed case if the notice of deficiency, liability or final adverse determination letter was issued by a District Director and is based upon a National Office ruling or National Office technical advice in that case involving a

qualification of an employee plan or tax exemption and/or foundation status of an organization (but only to the extent the case involves such
issue);

(iv) Negotiate or make a settlement if the case was docketed under Code sections 6110, 7477, or 7478;

(v) Eliminate the ad valorem fraud penalty in any case in which the penalty was determined by the district office or service center office in connection with a tax year or period, or which is related to or affects such year or period, for which criminal prosecution against the taxpayer (or related taxpayer involving the same transaction) has been recommended to the Department of Justice for willful attempt to evade or
defeat tax, or for willful failure to file a return, except upon the recommendation or concurrence of Counsel; or

(vi) Act in any case in which a recommendation for criminal prosecution is pending, except with the concurrence of Counsel.

(3) The authority vested in Appeals does not extend to the determination of liability for any excise tax imposed by Subtitle E or by Subchapter D of chapter 78, to the extent it relates to Subtitle E.

(4) In cases under Appeals jurisdiction, the Appeals official has the authority to make and subscribe to a return under the provisions of section 6020 of the Code where taxpayer fails to make a required return.

(b) Initiation of proceedings before Appeals. In any case in which the district director has issued a preliminary or ``30-day letter'' and the taxpayer requests Appeals consideration and files a written protest when required (see paragraph (c)(1) of Secs. 601.103, (c)(1) and (c)(2) of 601.105 and 601.507) against the proposed determination of tax liability, except as to those taxes described in paragraph (a)(3) of this section, the taxpayer has the right (and will be so advised by the district director) of administrative appeal to the Appeals organization.
However, the appeal procedures do not extend to cases involving solely the failure or refusal to comply with the tax laws because of moral, religious, political, constitutional, conscientious, or similar grounds.
Organizations such as labor unions and trade associations which have been examined by the district director to determine the amounts expended
by the organization for purposes of lobbying, promotion or defeat of legislation, political campaigns, or propaganda related to those purposes are treated as ``taxpayers'' for the purpose of this right of administrative appeal. Thus, upon requesting appellate consideration and
filing a written protest, when required, to the district director's findings that a portion of member dues is to be disallowed as a deduction to each member because expended for such purposes, the

organization will be afforded full rights of administrative appeal to the Appeals activity similar to those rights afforded to taxpayers generally. After review of any required written protest by the district director, the case and its administrative record are referred to Appeals. Appeals may refuse to accept a protested nondocketed case where
preliminary review indicates it requires further consideration or development. No taxpayer is required to submit a case to Appeals for consideration. Appeal is at the option of the taxpayer. After the issuance by the district director of a statutory notice of deficiency, upon the taxpayer's request, Appeals may take up the case for settlement
and may grant the taxpayer a conference thereon.

(c) Nature of proceedings before Appeals. Proceedings before Appeals
are informal. Testimony under oath is not taken, although matters alleged as facts may be required to be submitted

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in the form of affidavits, or declared to be true under the penalties of
perjury. Taxpayers may represent themselves or designate a qualified representative to act for them. See Subpart E of this part for conference and practice requirements. At any conference granted by Appeals on a nondocketed case, the district director will be represented
if the Appeals official having settlement authority and the district director deem it advisable. At any such conference on a case involving the ad valorem fraud penalty for which criminal prosecution against the taxpayer (or a related taxpayer involving the same transaction) has been
recommended to the Department of Justice for willful attempt to evade or
defeat tax, or for willful failure to file a return, the District Counsel will be represented if he or she so desires.

(d) Disposition and settlement of cases before Appeals--(1) In general. During consideration of a case, the Appeals office should neither reopen an issue as to which the taxpayer and the office of the district director are in agreement nor raise a new issue, unless the ground for such action is a substantial one and the potential effect upon the tax liability is material. If the Appeals raises a new issue, the taxpayer or the taxpayer's representative should be so advised and offered an opportunity for discussion prior to the taking of any formal action, such as the issuance of a statutory notice of deficiency.

(2) Cases not docketed in the Tax Court. (i) If after consideration of the case by Appeals a satisfactory settlement of some or all the

issues is reached with the taxpayer, the taxpayer will be requested to sign Form 870-AD or other appropriate agreement form waiving restrictions on the assessment and collection of any deficiency and accepting any overassessment resulting under the agreed settlement. In addition, in partially unagreed cases, a statutory notice of deficiency will be prepared and issued in accordance with subdivision (ii) of this subparagraph with respect to the unagreed issue or issues.

(ii) If after consideration of the case by Appeals it is determined that there is a deficiency in income, profits, estate, gift tax, generation-skipping transfer, or Chapter 41, 42, 43, or 44 tax liability to which the taxpayer does not agree, a statutory notice of deficiency will be prepared and issued by Appeals. Officers of the Appeals office having authority for the administrative determination of tax liabilities referred to in paragraph (a) of this section are also authorized to prepare, sign on behalf of the Commissioner, and send to the taxpayer by registered or certified mail any statutory notice of deficiency prescribed in sections 6212 and 6861 of the Code, and in corresponding provisions of the Internal Revenue Code of 1939. Within 90 days, or 150 days if the notice is addressed to a person outside of the States of the Union and the District of Columbia, after such a statutory notice of deficiency is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day), the taxpayer may file a petition with the U.S. Tax Court for a redetermination of the deficiency. In addition, if a claim for refund is disallowed in full or in part by the Appelate Division and the taxpayer does not sign Form 2297, Appeals will prepare the statutory notice of claim disallowance and send it to the taxpayer by certified mail (or registered mail if the taxpayer is outside the United States), with a carbon copy to the taxpayer's representative by regular mail, if appropriate. In any other unagreed case, the case and its administrative file will be forwarded to the appropriate function with directions to take action with respect to the tax liability determined in Appeals. Administrative appeal procedures will apply to 100-percent penalty cases, except where an assessment is made because of Chief Counsel's request to support a third-party action in a pending refund suit. See Rev. Proc. 69-26.

(iii) Taxpayers desiring to further contest unagreed excise (other than those under Chapters 41 through 44 of the Code) and employment tax cases and 100-percent penalty cases must pay the additional tax (or portion thereof of divisible taxes) when assessed, file claim for refund within the applicable statutory period of limitations (ordinarily 3

years from time return was required to be filed or 2 years from payment,
whichever expires later), and upon disallowance of claim or after 6

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months from date claim was filed, file suit in U.S. District Court or U.S. Claims Court. Suits for refund of taxes paid are under the jurisdiction of the Department of Justice.

(3) Cases docketed in the Tax Court. (i) If the case under consideration in Appeals is docketed in the Tax Court and agreement is reached with the taxpayer with respect to the issues involved, the disposition of the case is effected by a stipulation of agreed deficiency or overpayment to be filed with the Tax Court and in conformity with which the Court will enter its order.

(ii) If the case under consideration in Appeals is docketed in the Tax Court and the issues remain unsettled after consideration and conference in Appeals, the case will be referred to the appropriate district counsel for the region for defense of the tax liability determined.

(iii) If the deficiency notice in a case docketed in the Tax Court was not issued by the Appeals office and no recommendation for criminal prosecution is pending, the case will be referred by the district counsel to the Appeals office for settlement as soon as it is at issue in the Tax Court. The settlement procedure shall be governed by the following rules:

(a) The Appeals office will have exclusive settlement jurisdiction for a period of 4 months over certain cases docketed in the Tax Court. The 4-month period will commence at the time Appeals receives the case from Counsel, which will be after the case is at issue. Appeals will arrange settlement conferences in such cases within 45 days of receipt of the case. In the event of a settlement, Appeals will prepare and forward to Counsel the necessary computations and any stipulation decisions secured. Counsel will prepare any needed settlement documents for execution by the parties and filing with the Tax Court. Appeals will
also have authority to settle less than all the issues in the case and to refer the unsettled issues to Counsel for disposition. In the event of a partial settlement, Appeals will inform Counsel of the agreement of
the petitioner(s) and Appeals may secure and forward to Counsel a stipulation covering the agreed issues. Counsel will, if necessary, prepare documents reflecting settlement of the agreed issues for execution by the parties and filing with the Tax Court at the appropriate time.

(b) At the end of the 4-month period, or before that time if Appeals

determines the case is not susceptible of settlement, the case will be returned to Counsel. Thereafter, Counsel will have exclusive authority to dispose of the case. If, at the end of the 4-month period, there is substantial likelihood that a settlement of the entire case can be effected in a reasonable period of time, Counsel may extend Appeals settlement jurisdiction for a period not to exceed 60 days, but not beyond the date of the receipt of a trial calendar upon which the case appears. Extensions beyond the 50-day period or after the event indicated will be granted only with the personal approval of regional counsel and will be made only in those cases in which the probability of
settlement of the case in its entirety by Appeals clearly outweighs the need to commence trial preparation.

(c) During the period of Appeals jurisdiction, Appeals will make available such files and information as may be necessary for Counsel to take any action required by the Court or which is in the best interests of the Government. When a case is referred by Counsel to Appeals, Counsel may indicate areas of needed factual development or areas of possible technical uncertainties. In referring a case to Counsel, Appeals will furnish its summary of the facts and the pertinent legal authorities.

(d) The Appeals office may specify that proposed Counsel settlements
be referred back to Appeals for its views. Appeals may protest the proposed Counsel settlements. If Counsel disagrees with Appeals, the Regional Counsel will determine the disposition of the cases.

(e) If an offer is received at or about the time of trial in a case designated by the Appeals office for settlement consultation, Counsel will endeavor to have the case placed on a motions calendar to permit consultation with and review by Appeals in accordance with the foregoing
procedures.

(f) For issues in docketed and nondocketed cases pending with Appeals

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which are related to issues in docketed cases over which Counsel has jurisdiction, no settlement offer will be accepted by either Appeals or Counsel unless both agree that the offer is acceptable. The protest procedure will be available to Appeals and regional counsel will have authority to resolve the issue with respect to both the Appeals and Counsel cases. If settlement of the docketed case requires approval by regional counsel or Chief Counsel, the final decision with respect to the issues under the jurisdiction of both Appeals and Counsel will be made by regional counsel or Chief Counsel. See Rev. Proc. 79-59.

(g) Cases classified as ``Small Tax'' cases by the Tax Court are

given expeditious consideration because such cases are not included on a
Trial Status Request. These cases are considered by the Court as ready for placing on a trial calendar as soon as the answer has been filed and
are given priority by the Court for trial over other docketed cases. These cases are designated by the Court as small tax cases upon request of petitioners and will include letter ``S'' as part of the docket number.

(e) Transfer and centralization of cases. (1) An Appeals office is authorized to transfer settlement jurisdiction in a non-docketed case or
in an excise or employment tax case to another region, if the taxpayer resides in and the taxpayer's books and records are located (or can be made available) in such other region. Otherwise, transfer to another region requires the approval of the Director of the Appeals Division.

(2) An Appeals office is authorized to transfer settlement jurisdiction in a docketed case to another region if the location for the hearing by the Tax Court has been set in such other region, except that if the place of hearing is Washington, DC, settlement jurisdiction shall not be transferred to the region in which Washington, DC, is located unless the petitioner resides in and the petitioner's books and records are located (or can be made available) in that region. Otherwise, transfer to another region requires the approval of the Director of the Appeals Division. Likewise, the Chief Counsel has corresponding authority to transfer the jurisdiction, authority, and duties of the regional counsel for any region to the regional counsel of
another region within which the case has been designated for trial before the Tax Court.

(3) Should a regional commissioner determine that it would better serve the interests of the Government, he or she may, by order in writing, withdraw any case not docketed before the Tax Court from the jurisdiction of the Appeals office, and provide for its disposition under his or her personal direction.

(f) Conference and practice requirements. Practice and conference procedure before Appeals is governed by Treasury Department Circular 230
as amended (31 CFR Part 10), and the requirements of Subpart E of this part. In addition to such rules but not in modification of them, the following rules are also applicable to practice before Appeals:

(1) Rule I. An exaction by the U.S. Government, which is not based upon law, statutory or otherwise, is a taking of property without due process of law, in violation of the Fifth Amendment to the U.S. Constitution. Accordingly, an Appeals representative in his or her conclusions of fact or application of the law, shall hew to the law and the recognized standards of legal construction. It shall be his or her

duty to determine the correct amount of the tax, with strict impartiality as between the taxpayer and the Government, and without favoritism or discrimination as between taxpayers.

(2) Rule II. Appeals will ordinarily give serious consideration to an offer to settle a tax controversy on a basis which fairly reflects the relative merits of the opposing views in light of the hazards which would exist if the case were litigated. However, no settlement will be made based upon nuisance value of the case to either party. If the taxpayer makes an unacceptable proposal of settlement under circumstances indicating a good faith attempt to reach an agred disposition of the case on a basis fair both to the Government and the taxpayer, the Appeals official generally should give an evaluation of the case in such a manner as to enable the taxpayer to ascertain the kind of settlement that would be recommended

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for acceptance. Appeals may defer action on or decline to settle some cases or issues (for example, issues on which action has been suspended nationwide) in order to achieve greater uniformity and enhance overall voluntary compliance with the tax laws.

(3) Rule III. Where the Appeals officer recommends acceptance of the
taxpayer's proposal of settlement, or, in the absence of a proposal, recommends action favorable to the taxpayer, and said recommendation is disapproved in whole or in part by a reviewing officer in Appeals the taxpayer shall be so advised and upon written request shall be accorded a conference with such reviewing officer. The Appeals office may disregard this rule where the interest of the Government would be injured by delay, as for example, in a case involving the imminent expiration of the period of limitations or the dissipation of assets.

(4) Rule IV. Where the Appeals official having settlement authority and the district director deem it advisable, the district director may be represented at any Appeals conferences on a nondocketed case. This rule is also applicable to the Director, Foreign Operations District in the event his or her office issued the preliminary or ``30-day letter''.

(5) Rule V. In order to bring an unagreed income, profits, estate, gift, or Chapter 41, 42, 43, or 44 tax case in prestatutory notice status, an employment or excise tax case, a penalty case, an Employee Plans and Exempt Organization case, a termination of taxable year assessment case, a jeopardy assessment case, or an offer in compromise before the Appeals office, the taxpayer or the taxpayer's representative
should first request Appeals consideration and, when required, file with
the district office (including the Foreign Operations District) or service center a written protest setting forth specifically the reasons

for the refusal to accept the findings. If the protest includes a statement of facts upon which the taxpayer relies, such statement should be declared, to be true under the penalties of perjury. The protest and any new facts, law, or arguments presented therewith will be reviewed by the receiving office for the purpose of deciding whether further development or action is required prior to referring the case to Appeals. Where Appeals has an issue under consideration it may, with the concurrence of the taxpayer, assume jurisdiction in a related case, after the office having original jurisdiction has completed any necessary action. The Director, Appeals Division, may authorize the regional Appeals office to accept jurisdiction (after any necessary action by office having original jurisdiction) in specified classes of cases without written protests provided written or oral requests for Appeals consideration are submitted by or for each taxpayer.

(6) Rule VI. A taxpayer cannot withhold evidence from the district director of internal revenue and expect to introduce it for the first time before Appeals, at a conference in nondocketed status, without being subject to having the case returned to the district director for reconsideration. Where newly discovered evidence is submitted for the first time to Appeals, in a case pending in nondocketed status, that office, in the reasonable exercise of its discretion, may transmit same to the district director for his or her consideration and comment.

(7) Rule VII. Where the taxpayer has had the benefit of a conference before the Appeals office in the prestatutory notice status, or where the opportunity for such a conference was accorded but not availed of, there will be no conference granted before the Appeals office in the 90-day status after the mailing of the statutory notice of deficiency, in the absence of unusual circumstances.

(8) Rule VIII. In cases not docketed in the United States Tax Court on which a conference is being conducted by the Appeals office, the district counsel may be requested to attend and to give legal advice in the more difficult cases, or on matters of legal or litigating policy.

(9) Rule IX--Technical advice from the National Office--(i) Definition and nature of technical advice. (a) As used in this subparagraph, ``technical advice'' means advice or guidance as to the interpretation and proper application of internal revenue laws, related statutes, and regulations, to a specific set of

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facts, furnished by the National Office upon request of an Appeals office in connection with the processing and consideration of a nondocketed case. It is furnished as a means of assisting Service

personnel in closing cases and establishing and maintaining consistent holdings in the various regions. It does not include memorandum on matters of general technical application furnished to Appeals offices where the issues are not raised in connection with the consideration and handling of a specific taxpayer's case.

(b) The provisions of this subparagraph do not apply to a case under the jurisdiction of a district director or the Bureau of Alcohol, Tobacco, and Firearms, to Employee Plans, Exempt Organization, or certain penalty cases being considered by an Appeals office, or to any case previously considered by an Appeals office. The technical advice provisions applicable to cases under the jurisdiction of a district director, other than Employee Plans and Exempt Organization cases, are set forth in Sec. 601.105(b)(5). The technical advice provisions applicable to Employee Plans and Exempt Organization cases are set forth in Sec. 601.201(n)(9). Technical advice may not be requested with respect to a taxable period if a prior Appeals disposition of the same taxable period of the same taxpayer's case was based on mutual concessions (ordinarily with a form 870-AD, Offer of Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and of Acceptance of Overassessment). However, technical advice may be requested by a district director on issues previously considered in a prior Appeals disposition, not based on mutual concessions, of the same taxable periods of the same taxpayer with the concurrence of the Appeals office that had the case.

(c) The consideration or examination of the facts relating to a request for a determination letter is considered to be in connection with the consideration and handling of a taxpayer's case. Thus, an Appeals office may, under this subparagraph, request technical advice with respect to the consideration of a request for a determination letter. The technical advice provisions applicable to a request for a determination letter in Employee Plans and Exempt Organization cases are set forth in Sec. 601.201(n)(9).

(d) If an Appeals office is of the opinion that a ruling letter previously issued to a taxpayer should be modified or revoked and it requests the National Office to reconsider the ruling, the reference of the matter to the National Office is treated as a request for technical advice. The procedures specified in subdivision (iii) of this subparagraph should be followed in order that the National Office may consider the recommendation. Only the National Office can revoke a ruling letter. Before referral to the National Office, the Appeals office should inform the taxpayer of its opinion that the ruling letter should be revoked. The Appeals office, after development of the facts

and consideration of the taxpayer's arguments, will decide whether to recommend revocation of the ruling to the National Office. For procedures relating to a request for a ruling, see Sec. 601.201.

(e) The Assistant Commissioner (Technical), acting under a delegation of authority from the Commissioner of Internal Revenue, is exclusively responsible for providing technical advice in any issue involving the establishment of basic principles and rules for the uniform interpretation and application of tax laws in cases under this subparagraph. This authority has been largely redelegated to subordinate officials.

(ii) Areas in which technical advice may be requested. (a) Appeals offices may request technical advice on any technical or procedural question that develops during the processing and consideration of a case. These procedures are applicable as provided in subdivision (i) of this subparagraph.

(b) As provided in Sec. 601.105(b)(5) (ii)(b) and (iii)(a), requests for technical advice should be made at the earliest possible stage of the examination process. However, if identification of an issue on which technical advice is appropriate is not made until the case is in Appeals, a decision to request such advice (in nondocketed cases) should be made prior to or at the first conference.

(c) Subject to the provisions of (b) of this subdivision, Appeals Offices are

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encouraged to request technical advice on any technical or procedural question arising in connection with a case described in subdivision (i) of this subparagraph which cannot be resolved on the basis of law, regulations, or a clearly applicable revenue ruling or other precedent issued by the National Office.

(iii) Requesting technical advice. (a) It is the responsibility of the Appeals Office to determine whether technical advice is to be requested on any issue being considered. However, while the case is under the jurisdiction of the Appeals Office, a taxpayer or his/her representative may request that an issue be referred to the National Office for technical advice on the grounds that a lack of uniformity exists as to the disposition of the issue, or that the issue is so unusual or complex as to warrant consideration by the National Office. While taxpayers are encouraged to make written requests setting forth the facts, law, and argument with respect to the issue, and reason for requesting National Office advice, a taxpayer may make the request orally. If, after considering the taxpayer's request, the Appeals

Officer is of the opinion that the circumstances do not warrant referral of the case to the National Office, he/she will so advice the taxpayer. (See subdivision (iv) of this subparagraph for taxpayer's appeal rights where the Appeals Officer declines to request technical advice.)

(b) When technical advice is to be requested, whether or not upon the request of the taxpayer, the taxpayer will be so advised, except as noted in (j) of this subdivision. If the Appeals Office initiates the action, the taxpayer will be furnished a copy of the statement of the pertinent facts and the question or questions proposed for submission to the National Office. The request for advice should be so worded as to avoid possible misunderstanding, in the National Office, of the facts or of the specific point or points at issue.

(c) After receipt of the statement of facts and specific questions, the taxpayer will be given 10 calendar days in which to indicate in writing the extent, if any, to which he/she may not be in complete agreement. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Appeals Office. Every effort should be made to reach agreement as to the facts and specific points at issue.

If agreement cannot be reached, the taxpayer may submit, within 10 calendar days after receipt of notice from the Appeals Office, a statement of his/her understanding as to the specific point or points at issue which will be forwarded to the National Office with the request for advice. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Appeals Office.

(d) If the taxpayer initiates the action to request advice, and his/her statement of the facts and point or points at issue are not wholly acceptable to the Appeals Office, the taxpayer will be advised in writing as to the areas of disagreement. The taxpayer will be given 10 calendar days after receipt of the written notice to reply to such notice. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Appeals Office. If agreement cannot be reached, both the statements of the taxpayer and the Appeals Office will be forwarded to the National Office.

(e) (1) In the case of requests for technical advice, the taxpayer must also submit, within the 10-day period referred to in (c) and (d) of this subdivision, whichever is applicable (relating to agreement by the taxpayer with the statement of facts and points submitted in connection with the request for technical advice), the statement described in (f) of this subdivision of proposed deletions pursuant to section 6110(c) of the Code. If the statement is not submitted, the taxpayer will be

informed by the Appeals Office that the statement is required. If the Appeals Office does not receive the statement within 10 days after the taxpayer has been informed of the need for the statement, the Appeals Office may decline to submit the request for technical advice. If the Appeals Office decides to request technical advice in a case where the taxpayer has not submitted the statement of proposed deletions, the National Office will make those deletions which in the judgment of the Commissioner are required by section 6110(c) of the Code.

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(2) The requirements included in this subparagraph relating to the submission of statements and other material with respect to proposed deletions to be made from technical advice memoranda before public inspection is permitted to take place do not apply to requests for any document to which section 6104 of the Code applies.

(f) In order to assist the Internal Revenue Service in making the deletions required by section 6110(c) of the Code, from the text of technical advice memoranda which are open to public inspection pursuant to section 6110(a) of the Code, there must accompany requests for such technical advice either a statement of the deletions proposed by the taxpayer, or a statement that no information other than names, addresses, and taxpayer identifying numbers need be deleted. Such statements shall be made in a separate document. The statement of proposed deletions shall be accompanied by a copy of all statements of facts and supporting documents which are submitted to the National Office pursuant to (c) or (d) of this subdivision, on which shall be indicated, by the use of brackets, the material which the taxpayer indicates should be deleted pursuant to section 6110(c) of the Code. The
statement of proposed deletions shall indicate the statutory basis for each proposed deletion. The statement of proposed deletions shall not appear or be referred to anywhere in the request for technical advice. If the taxpayer decides to request additional deletions pursuant to section 6110(c) of the Code prior to the time the National Office replies to the request for technical advice, additional statements may be submitted.

(g) If the taxpayer has not already done so, he/she may submit a statement explaining his/her position on the issues, citing precedents which the taxpayer believes will bear on the case. This statement will be forwarded to the National Office with the request for advice. If it is received at a later date, it will be forwarded for association with the case file.

(h) At the time the taxpayer is informed that the matter is being referred to the National Office, he/she will also be informed of the right to a conference in the National Office in the event an adverse decision is indicated, and will be asked to indicate whether a

conference is desired.

(i) Generally, prior to replying to the request for technical advice, the National Office shall inform the taxpayer orally or in writing of the material likely to appear in the technical advice memorandum which the taxpayer proposed be deleted but which the Internal Revenue Service determined should not be deleted. If so informed, the taxpayer may submit within 10 days any further information, arguments, or other material in support of the position that such material be deleted. The Internal Revenue Service will attempt, if feasible, to resolve all disagreements with respect to proposed deletions prior to the time the National Office replies to the request for technical advice. However, in no event shall the taxpayer have the right to a conference with respect to resolution of any disagreements concerning material to be deleted from the text of the technical advice memorandum, but such matters may be considered at any conference otherwise scheduled with respect to the request.

(j) The provisions of (a) through (i) of this subdivision, relating to the referral of issues upon request of the taxpayer, advising taxpayers of the referral of issues, the submission of proposed deletions, and the granting of conferences in the National Office, are not applicable to technical advice memoranda described in section 6110 (g)(5)(A) of the Code, relating to cases involving criminal or civil fraud investigations and jeopardy or termination assessments. However, in such cases, the taxpayer shall be allowed to provide the statement of proposed deletions to the National Office upon the completion of all proceedings with respect to the investigations or assessments, but prior to the date on which the Commissioner mails the notice pursuant to section 6110 (f)(1) of the Code of intention to disclose the technical advice memorandum.

(k) Form 4463, Request for Technical Advice, should be used for transmitting requests for technical advice to the National Office.

(iv) Appeal by taxpayers of determinations not to seek technical advice. (a) If

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the taxpayer has requested referral of an issue before an Appeals Office to the National Office for technical advice, and after consideration of the request, the Appeals Officer is of the opinion that the circumstances do not warrant such referral, he/she will so advise the taxpayer.

(b) The taxpayer may appeal the decision of the Appeals Officer not to request technical advice by submitting to that official, within 10 calendar days after being advised of the decision, a statement of the facts, law, and arguments with respect to the issue, and the reasons why the taxpayer believes the matter should be referred to the National Office for advice. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Appeals Office.

(c) The Appeals Officer will submit the statement of the taxpayer to the chief, Appeals Office, accompanied by a statement of the officer's reasons why the issue should not be referred to the National Office. The Chief will determine, on the basis of the statements submitted, whether technical advice will be requested. If the Chief determines that technical advice is not warranted, that official will inform the taxpayer in writing that he/she proposes to deny the request. In the letter to the taxpayer the Chief will (except in unusual situations where such action would be prejudicial to the best interests of the Government) state specifically the reasons for the proposed denial. The taxpayer will be given 15 calendar days after receipt of the letter in which to notify the Chief whether the taxpayer agrees with the proposed denial. The taxpayer may not appeal the decision of the Chief, Appeals Office not to request technical advice from the National Office. However, if the taxpayer does not agree with the proposed denial, all data relating to the issue for which technical advice has been sought, including the taxpayer's written request and statements, will be submitted to the National Office, Attention: Director, Appeals Division, for review. After review in the National Office, the Appeals Office will be notified whether the proposed denial is approved or disapproved.

(d) While the matter is being reviewed in the National Office, the Appeals Office will suspend action on the issue (except where the delay would prejudice the Government's interests) until it is notified of the National Office decision. This notification will be made within 30 days after receipt of the data in the National Office. The review will be solely on the basis of the written record and no conference will be held in the National Office.

(v) Conference in the National Office. (a) If, after a study of the technical advice request, it appears that advice adverse to the taxpayer should be given and a conference has been requested, the taxpayer will be notified of the time and place of the conference. If conferences are being arranged with respect to more than one request for advice involving the same taxpayer, they will be so scheduled as to cause the

least inconvenience to the taxpayer. The conference will be arranged by telephone, if possible, and must be held within 21 calendar days after contact has been made. Extensions of time will be granted only if justified in writing by the taxpayer and approved by the appropriate Technical branch chief.

(b) A taxpayer is entitled, as a matter of right, to only one conference in the National Office unless one of the circumstances discussed in (c) of this subdivision exists. This conference will usually be held at the branch level in the appropriate division (Corporation Tax Division or Individual Tax Division) in the Office of the Assistant Commissioner (Technical), and will usually be attended by a person who has authority to act for the branch chief. In appropriate cases the Appeals Officer may also attend the conference to clarify the facts in the case. If more than one subject is discussed at the conference, the discussion constitutes a conference with respect to each
subject. At the request of the taxpayer or the taxpayer's representative, the conference may be held at an earlier stage in the consideration of the case than the Service would ordinarily designate. A
taxpayer has no ``right'' of appeal from an action of a branch to the director of a division or to any other National Office official.

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(c) In the process of review of a holding proposed by a branch, it may appear that the final answer will involve a reversal of the branch proposal with a result less favorable to the taxpayer. Or it may appear that an adverse holding proposed by a branch will be approved, but on a new or different issue or on different grounds than those on which the branch decided the case. Under either of these circumstances, the taxpayer or the taxpayer's representative will be invited to another conference. The provisions of this subparagraph limiting the number of conferences to which a taxpayer is entitled will not foreclose inviting a taxpayer to attend further conferences when, in the opinion of National Office personnel, such need arises. All additional conferences of this type discussed are held only at the invitation of the Service.

(d) It is the responsibility of the taxpayer to furnish to the National Office, within 21 calendar days after the conference, a written
record of any additional data, line of reasoning, precedents, etc., that
were proposed by the taxpayer and discussed at the conference but were not previously or adequately presented in writing. Extensions of time will be granted only if justified in writing by the taxpayer and approved by the appropriate Technical branch chief. Any additional material and a copy thereof should be addressed to and sent to the

National Office which will forward the copy to the appropriate Appeals Office. The Appeals Office will be requested to give the matter prompt attention, will verify the additional facts and data, and will comment on it to the extent deemed appropriate.

(e) A taxpayer or the taxpayer's representative desiring to obtain information as to the status of the case may do so by contacting the following offices with respect to matters in the areas of their responsibility:

Official	Telephone numbers, (Area Code 202)
Director, Corporation Tax Division	566-4504, 566-4505.
Director, Individual Tax Division	566-3767 or 566-3788.

(vi) Preparation of technical advice memorandum by the National Office. (a) Immediately upon receipt in the National Office, the technical employee to whom the case is assigned will analyze the file to
ascertain whether it meets the requirements of subdivision (iii) of this
subparagraph. If the case is not complete with respect to any requirement in subdivision (iii) (a) through (d) of this subparagraph, appropriate steps will be taken to complete the file. If any request for
technical advice does not comply with the requirements of subdivision (iii)(e) of this subparagraph, relating to the statement of proposed deletions, the National Office will make those deletions from the technical advice memorandum which in the judgment of the Commissioner are required by section 6110(c) of the Code.

(b) If the taxpayer has requested a conference in the National Office, the procedures in subdivision (v) of this subparagraph will be followed.

(c) Replies to requests for technical advice will be addressed to the Appeals office and will be drafted in two parts. Each part will identify the taxpayer by name, address, identification number, and year or years involved. The first part (hereafter called the ``technical advice memorandum'') will contain (1) a recitation of the pertinent facts having a bearing on the issue; (2) a discussion of the facts, precedents, and reasoning of the National Office; and (3) the conclusions of the National Office. The conclusions will give direct answers, whenever possible, to the specific questions of the Appeals office. The discussion of the issues will be in such detail that the Appeals office is apprised of the reasoning underlying the conclusion. There shall accompany the technical advice memorandum a notice,

pursuant
to section 6110(f)(1) of the Code, of intention to disclose the technical advice memorandum (including a copy of the version proposed to
be open to public inspection and notations of third party communications
pursuant to section 6110(d) of the Code) which the Appeals office shall forward to the taxpayer at such time that it furnishes a copy of the technical advice memorandum to the taxpayer pursuant to (e) of this subdivision and subdivision (vii)(b) of this subparagraph.

(d) The second part of the reply will consist of a transmittal memorandum.

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In the unusual cases it will serve as a vehicle for providing the Appeals office administrative information or other information which, under the nondisclosure statutes, or for other reasons, may not be discussed with the taxpayer.

(e) It is the general practice of the Service to furnish a copy of the technical advice memorandum to the taxpayer after it has been adopted by the Appeals office. However, in the case of technical advice memorandums described in section 6110(g)(5)(A) of the Code, relating to cases involving criminal or civil fraud investigations and jeopardy or termination assessments, a copy of the technical advice memorandum shall
not be furnished the taxpayer until all proceedings with respect to the investigations or assessments are completed.

(f) After receiving the notice pursuant to section 6110(f)(1) of the
Code of intention to disclose the technical advice memorandum, the taxpayer, if desiring to protest the disclosure of certain information in the memorandum, must, within 20 days after the notice is mailed, submit a written statement identifying those deletions not made by the Internal Revenue Service which the taxpayer believes should have been made. The taxpayer shall also submit a copy of the version of the technical advice memorandum proposed to be open to public inspection on which the taxpayer indicates, by the use of brackets, the deletions proposed by the taxpayer but which have not been made by the Internal Revenue Service. Generally, the Internal Revenue Service will not consider the deletion of any material which the taxpayer did not, prior to the time when the National Office sent its reply to the request for technical advice to the Appeals office, propose be deleted. The Internal
Revenue Service shall, within 20 days after receipt of the response by the taxpayer to the notice pursuant to section 6110(f)(1) of the Code, mail to the taxpayer its final administrative conclusion regarding the

deletions to be made.

(vii) Action on technical advice in Appeals offices. (a) Unless the Chief, Appeals Office, feels that the conclusions reached by the National Office in a technical advice memorandum should be reconsidered and promptly requests such reconsideration, the Appeals office will proceed to process the taxpayer's case taking into account the conclusions expressed in the technical advice memorandum. The effect of technical advice on the taxpayer's case is set forth in subdivision (viii) of this subparagraph.

(b) The Appeals office will furnish the taxpayer a copy of the technical advice memorandum described in subdivision (vi)(c) of this subparagraph and the notice pursuant to section 6110(f)(1) of the Code of intention to disclose the technical advice memorandum (including a copy of the version proposed to be open to public inspection and notations of third-party communications pursuant to section 6110(d) of the Code). The preceding sentence shall not apply to technical advice memorandums involving civil fraud or criminal investigations, or jeopardy or termination assessments, as described in subdivision (iii)(j) of this subparagraph (except to the extent provided in subdivision (vi)(e) of this subparagraph) or to documents to which section 6104 of the Code applies.

(c) In those cases in which the National Office advises the Appeals office that it should not furnish a copy of the technical advice memorandum to the taxpayer, the Appeals office will so inform the taxpayer if he/she requests a copy.

(viii) Effect of technical advice. (a) A technical advice memorandum
represents an expression of the views of the Service as to the application of law, regulations, and precedents to the facts of a specific case, and is issued primarily as a means of assisting Service officials in the closing of the case involved.

(b) Except in rare or unusual circumstances, a holding in a technical advice memorandum that is favorable to the taxpayer is applied
retroactively. Moreover, since technical advice, as described in subdivision (i) of this subparagraph, is issued only on closed transactions, a holding in a technical advice memorandum that is adverse
to the taxpayer is also applied retroactively unless the Assistant Commissioner or Deputy Assisitant Commissioner (Technical) exercises the
discretionary authority under section

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7805(b) of the Code to limit the retroactive effect of the holding. Likewise, a holding in a technical advice memorandum that modifies or

revokes a holding in a prior technical advice memorandum will also be applied retroactively, with one exception. If the new holding is less favorable to the taxpayer, it will generally not be applied to the period in which the taxpayer relied on the prior holding in situations involving continuing transactions of the type described in Sec. 601.201(l)(7) and Sec. 601.201(l)(8).

(c) The Appeals office is bound by technical advice favorable to the taxpayer. However, if the technical advice is unfavorable to the taxpayer, the Appeals office may settle the issue in the usual manner under existing authority. For the effect of technical advice in Employee Plans and Exempt Organization cases see Sec. 601.201(n)(9)(viii).

(d) In connection with section 446 of the Code, taxpayers may request permission from the Assistant Commissioner (Technical) to change a method of accounting and obtain a 10-year (or less) spread of the resulting adjustments. Such a request should be made prior to or at the first Appeals conference. The Appeals office has authority to allow a change and the resulting spread without referring the case to Technical.

(e) Technical advice memorandums often form the basis for revenue rulings. For the description of revenue rulings and the effect thereof, see Secs. 601.601(d)(2)(i)(a) and 601.601(d)(2)(v).

(f) An Appeals office may raise an issue in a taxable period, even though technical advice may have been asked for and furnished with regard to the same or a similar issue in any other taxable period.

(g) Limitation on the jurisdiction and function of Appeals--(1) Overpayment of more than $200,000. If Appeals determines that there is an overpayment of income, war profits, excess profits, estate, generation-skipping transfer, or gift tax, or any tax imposed by chapters 41 through 44, including penalties and interest, in excess of $200,000, such determination will be considered by the Joint Committee on Taxation, See Sec. 601.108

(2) Offers in compromise. For jurisdiction of Appeals with respect to offers in compromise of tax liabilities, see Sec. 601.203.

(3) Closing agreements. For jurisdiction of Appeals with respect to closing agreements under section 7121 of the Code relating to any internal revenue tax liability, see Sec. 601.202.

(h) Reopening closed cases not docketed in the Tax Court. (1) A case not docketed in the Tax Court and closed by Appeals on the basis of concessions made by both the Appeals and the taxpayer will not be reopened by action initiated by the Service unless the disposition involved fraud, malfeasance, concealment or misrepresentation of material fact, or an important mistake in mathematical calculations, and then only with the approval of the Regional Director of Appeals.

(2) Under certain unusual circumstances favorable to the taxpayer, such as retroactive legislation, a case not docketed in the Tax Court and closed by Appeals on the basis of concessions made by both Appeals and the taxpayer may be reopened upon written application from the taxpayer, and only with the approval of the Regional Director of Appeals. The processing of an application for a tentative carryback adjustment or of a claim for refund or credit for an overassessment (for
a year involved in the prior closing) attributable to a claimed deduction or credit for a carryback provided by law, and not included in
a previous Appeals determination, shall not be considered a reopening requiring approval. A subsequent assessment of an excessive tentative allowance shall likewise not be considered such a reopening. The Director of the Appeals Division may authorize, in advance, the reopening of similar classes of cases where legislative enactments or compelling administrative reasons require such advance approval.

(3) A case not docketed in the Tax Court and closed by Appeals on a basis not involving concessions made by both Appeals and the taxpayer will not be reopened by action initiated by the Service unless the disposition involved fraud, malfeasance, concealment or misrepresentation of material fact, an important mistake in mathematical

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calculation, or such other circumstance that indicates that failure to take such action would be a serious administrative omission, and then only with the approval of the Regional Director of Appeals.

(4) A case not docketed in the Tax Court and closed by the Appeals on a basis not involving concessions made by both Appeals and the taxpayer may be reopened by the taxpayer by any appropriate means, such as by the filing of a timely claim for refund.

(i) Special procedures for crude oil windfall profit tax cases. For special procedures relating to crude oil windfall profit tax cases, see Sec. 601.405.

((5 U.S.C. 301 and 552) 80 Stat. 379 and 383; sec. 7805 of the Internal Revenue Code of 1954, 68A Stat. 917 (26 U.S.C. 7805))

[32 FR 15990, Nov. 22, 1967]

Editorial Note: For Federal Register citations affecting Sec. 601.**106**, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

Sec. 6212. - Notice of deficiency

(a) In general

If the Secretary determines that there is a deficiency in respect of any tax imposed by subtitles A or B or chapter 41, 42, 43, or 44 he is authorized to send notice of such deficiency to the taxpayer by certified mail or registered mail. Such notice shall include a notice to the taxpayer of the taxpayer's right to contact a local office of the taxpayer advocate and the location and phone number of the appropriate office.

(b) Address for notice of deficiency

(1) Income and gift taxes and certain excise taxes

In the absence of notice to the Secretary under section 6903 of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by subtitle A, chapter 12, chapter 41, chapter 42, chapter 43, or chapter 44 if mailed to the taxpayer at his last known address, shall be sufficient for purposes of subtitle A, chapter 12, chapter 41, chapter 42, chapter 43, chapter 44, and this chapter even if such taxpayer is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

(2) Joint income tax return

In the case of a joint income tax return filed by husband and wife, such notice of deficiency may be a single joint notice, except that if the Secretary has been notified by either spouse that separate residences have been established, then, in lieu of the single joint notice, a duplicate original of the joint notice shall be sent by certified mail or registered mail to each spouse at his last known address.

(3) Estate tax

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In the absence of notice to the Secretary under section 6903 of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by chapter 11, if addressed in the name of the decedent or other person subject to liability and mailed to his last known address, shall be sufficient for purposes of chapter 11 and of this chapter.

(c) Further deficiency letters restricted

(1) General rule

If the Secretary has mailed to the taxpayer a notice of deficiency as provided in subsection (a), and the taxpayer files a petition with the Tax Court within the time prescribed in section 6213(a), the Secretary shall have no right to determine any additional deficiency of income tax for the same taxable year, of gift tax for the same calendar year, of estate tax in respect of the taxable estate of the same decedent, of chapter 41 tax for the same taxable year, of chapter 43 tax for the same taxable year, of chapter 44 tax for the same taxable year, of section 4940 tax for the same taxable year, or of chapter 42 tax, (other than under section 4940) with respect to any act (or failure to act) to which such petition relates, except in the case of fraud, and except as provided in section 6214(a) (relating to assertion of greater deficiencies before the Tax Court), in section 6213(b)(1) (relating to mathematical or clerical errors), in section 6851 or 6852 (relating to termination assessments), or in section 6861(c) (relating to the making of jeopardy assessments).

(2) Cross references For assessment as a deficiency notwithstanding the

For assessment as a deficiency notwithstanding the prohibition of further deficiency letters, in the case of -

(A)

Deficiency attributable to change of treatment with respect to itemized deductions, see section 63(e)(3).

(B)

Deficiency attributable to gain on involuntary conversion, see section 1033(a)(2)(C) and (D).

(C)

Deficiency attributable to activities not engaged in for profit, see section 183(e)(4).

For provisions allowing determination of tax in title 11 cases, see section 505(a) of title 11 of the United States Code.

(d) Authority to rescind notice of deficiency with taxpayer's consent

The Secretary may, with the consent of the taxpayer, rescind any notice of deficiency mailed to the taxpayer. Any notice so rescinded shall not be treated as a notice of deficiency for purposes of subsection (c)(1) (relating to further deficiency letters restricted), section 6213(a) (relating to restrictions applicable to deficiencies; petition to Tax Court), and section 6512(a) (relating to limitations in case of petition to Tax Court), and the taxpayer shall have no right to file a petition with the Tax Court based on such notice. Nothing in this subsection shall affect any suspension of the running of any period of limitations during any period during which the rescinded notice was outstanding

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§ 6211. Definition of a deficiency

(a) In general

For purposes of this title in the case of income, estate, and gift taxes imposed by subtitles A and B and excise taxes imposed by chapters 41, 42, 43, and 44 the term "deficiency" means the amount by which the tax imposed by subtitle A or B, or chapter 41, 42, 43, or 44 exceeds the excess of—

(1) the sum of

(A) the amount shown as the tax by the taxpayer upon his return, if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus

(B) the amounts previously assessed (or collected without assessment) as a deficiency, over—

(2) the amount of rebates, as defined in subsection (b)(2), made.

(b) Rules for application of subsection (a)

For purposes of this section—

(1) The tax imposed by subtitle A and the tax shown on the return shall both be determined without regard to payments on account of estimated tax, without regard to the credit under section 31, without regard to the credit under section 33, and without regard to any credits resulting from the collection of amounts assessed under section 6851 or 6852 (relating to termination assessments).

(2) The term "rebate" means so much of an abatement, credit, refund, or other repayment, as was made on the ground that the tax imposed by

subtitle A or B or chapter 41, 42, 43, or 44 was less than the excess of the amount specified in subsection (a)(1) over the rebates previously made.

(3) The computation by the Secretary, pursuant to section 6014, of the tax imposed by chapter 1 shall be considered as having been made by the taxpayer and the tax so computed considered as shown by the taxpayer upon his return.

(4) For purposes of subsection (a)—

(A) any excess of the sum of the credits allowable under sections 24 (d), 32, and 34 over the tax imposed by subtitle A (determined without regard to such credits), and

(B) any excess of the sum of such credits as shown by the taxpayer on his return over the amount shown as the tax by the taxpayer on such return (determined without regard to such credits),

shall be taken into account as negative amounts of tax.

(c) Coordination with subchapters C and D

In determining the amount of any deficiency for purposes of this subchapter, adjustments to partnership items shall be made only as provided in subchapters C and D.

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26 U.S.C.A. § 6211 I.R.C. § 6211

UNITED STATES CODE ANNOTATED

TITLE 26. INTERNAL REVENUE CODE

SUBTITLE F--PROCEDURE AND ADMINISTRATION

CHAPTER 63--ASSESSMENT

SUBCHAPTER B--DEFICIENCY PROCEDURES IN THE CASE OF INCOME, ESTATE, GIFT, AND

CERTAIN EXCISE TAXES

Current through P.L. 107-11, approved 5-28-01

§ 6211. Definition of a deficiency

(a) In general.--For purposes of this title in the case of income, estate, and gift taxes imposed by subtitles A and B and excise taxes imposed by chapters 41, 42, 43, and 44 the term "deficiency" means the amount by which the tax imposed by subtitle A or B, or chapter 41, 42, 43, or 44 exceeds the excess of--

(1) the sum of

(A) the amount shown as the tax by the taxpayer upon his return, if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus

(B) the amounts previously assessed (or collected without assessment) as a deficiency, over--

(2) the amount of rebates, as defined in subsection (b)(2), made.

(b) Rules for application of subsection (a).--For purposes of this section--

(1) The tax imposed by subtitle A and the tax shown on the return shall both be determined without regard to payments on account of estimated tax, without regard to the credit under section 31, without regard to the credit under section 33, and without regard to any credits resulting from the collection of amounts assessed under section 6851 or 6852 (relating to termination assessments).

(2) The term "rebate" means so much of an abatement, credit, refund, or other repayment, as was made on the ground that the tax imposed by subtitle A or B or chapter 41, 42, 43, or 44 was less than the excess of the amount specified in subsection (a)(1) over the rebates previously made.

(3) The computation by the Secretary, pursuant to section 6014, of the tax imposed by chapter 1 shall be considered as having been made by the taxpayer and the tax so computed considered as shown by the taxpayer upon his return.

(4) For purposes of subsection (a)--

(A) any excess of the sum of the credits allowable under sections 24(d), 32, and 34 over the tax imposed by subtitle A (determined without regard to such credits), and

(B) any excess of the sum of such credits as shown by the taxpayer on his return over the amount shown as the tax by the taxpayer on such return (determined without regard to such credits),

shall be taken into account as negative amounts of tax.

(c) Coordination with subchapters C and D.--In determining the amount of any deficiency for purposes of this subchapter, adjustments to partnership items shall be made only as provided in subchapters C and D.

CREDIT(S)

2001 Electronic Update

(Aug. 16, 1954, c. 736, 68A Stat. 770; June 21, 1965, Pub.L. 89-44, Title VIII, § 809(d)(5)(A), 79 Stat. 168; Mar. 15, 1966, Pub.L. 89-368, Title I, § 102(b)(4), 80 Stat. 64; Dec. 30, 1969, Pub.L. 91-172, Title I, § 101(f)(1), (j)(39), 83 Stat. 524, 530; Sept. 2, 1974, Pub.L. 93-406, Title II, § 1016(a)(9), 88 Stat. 929; Oct. 4, 1976, Pub.L. 94-455, Title XII, § 1204(c)(4), Title XIII, § 1307(d)(2)(E), (F)(i), Title XVI, § 1605(b)(4), Title XIX, § 1906(b)(13)(A), 90 Stat. 1698, 1728, 1754, 1834; Apr. 2, 1980, Pub.L. 96-223, Title I, § 101(f)(1)(A), (B), (2), (3), 94 Stat. 252; July 18, 1984, Pub.L. 98-369, Div. A, Title IV, § 474(r)(33), 98 Stat. 845; Dec. 22, 1987, Pub.L. 100-203, Title X, § 10713(b)(2)(B), 101 Stat. 1330-470; Aug. 23, 1988, Pub.L. 100-418, Title I, § 1941(b)(2)(B)(i), (ii), (C), (D), 102 Stat. 1323; Nov. 10, 1988, Pub.L. 100-647, Title I, § 1015(r)(2), 102 Stat. 3572; Aug. 5, 1997, Pub.L. 105-34, Title XII, § 1231(b), 111 Stat. 1023; July 22, 1998, Pub.L. 105-206, Title VI, § 6012(f), 112 Stat. 819; Dec. 21, 2000, Pub.L. 106- 554, § 1(a)(7) [Title III, § 314(a)], 114 Stat. 2763, 2763-___.)

<General Materials (GM) - References, Annotations, or Tables>

§ 6213. Restrictions applicable to deficiencies; petition to Tax Court

(a) Time for filing petition and restriction on assessment

Within 90 days, or 150 days if the notice is addressed to a person outside the United States, after the notice of deficiency authorized in section 6212 is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day), the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency. Except as otherwise provided in section 6851, 6852, or 6861 no assessment of a deficiency in respect of any tax imposed by subtitle A, or B, chapter 41, 42, 43, or 44 and no levy or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such 90-day or 150-day period, as the case may be, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. Notwithstanding the provisions of section 7421 (a), the making of such assessment or the beginning of such proceeding or levy during the time such prohibition is in force may be enjoined by a proceeding in the proper court, including the Tax Court, and a refund may be ordered by such court of any amount collected within the period during which the Secretary is prohibited from collecting by levy or through a proceeding in court under the provisions of this subsection. The Tax Court shall have no jurisdiction to enjoin any action or proceeding or order any refund under this subsection unless a timely petition for a redetermination of the deficiency has been filed and then only in respect of the deficiency that is the subject of such petition. Any petition filed with the Tax Court on or before the last date specified for filing such petition by the Secretary in the notice of deficiency shall be treated as timely filed.

(b) Exceptions to restrictions on assessment

(1) Assessments arising out of mathematical or clerical errors

If the taxpayer is notified that, on account of a mathematical or clerical error appearing on the return, an amount of tax in excess of that shown on the return is due, and that an assessment of the tax has been or will be made on the basis of what would have been the correct amount of tax but for the mathematical or clerical error, such notice shall not be considered as a notice of deficiency for the purposes of subsection (a) (prohibiting assessment and collection until notice of the deficiency has been mailed), or of section 6212 (c)(1) (restricting further deficiency letters), or of section 6512 (a) (prohibiting credits or refunds after petition to the Tax Court), and the taxpayer shall have no right to file a petition with the Tax Court based on such notice, nor shall such assessment or collection be prohibited by the provisions of subsection (a) of this section. Each notice under this paragraph shall set forth the error alleged and an explanation thereof.

(2) Abatement of assessment of mathematical or clerical errors

(A) Request for abatement

Notwithstanding section 6404 (b), a taxpayer may file with the Secretary within 60 days after notice is sent under paragraph (1) a request for an abatement of any assessment specified in such notice, and upon receipt of such request, the Secretary shall abate the assessment. Any reassessment of the tax with respect to which an abatement is made under this subparagraph shall be subject to the deficiency procedures prescribed by this subchapter.

(B) Stay of collection

In the case of any assessment referred to in paragraph (1), notwithstanding paragraph (1), no levy or proceeding in court for the collection of such assessment shall be made, begun, or prosecuted during the period in which such assessment may be abated under this paragraph.

(3) Assessments arising out of tentative carryback or refund adjustments

If the Secretary determines that the amount applied, credited, or refunded under section 6411 is in excess of the overassessment attributable to the carryback or the amount described in section 1341 (b)(1) with respect to which such amount was applied, credited, or refunded, he may assess without regard to the provisions of paragraph (2) the amount of the excess as a deficiency as if it were due to a mathematical or clerical error appearing on the return.

(4) Assessment of amount paid

Any amount paid as a tax or in respect of a tax may be assessed upon the receipt of such payment notwithstanding the provisions of subsection (a). In any case where such amount is paid after the mailing of a notice of deficiency under section 6212, such payment shall not deprive the Tax Court of jurisdiction over such deficiency determined under section 6211 without regard to such assessment.

(c) Failure to file petition

If the taxpayer does not file a petition with the Tax Court within the time prescribed in subsection (a), the deficiency, notice of which has been mailed to the taxpayer, shall be assessed, and shall be paid upon notice and demand from the Secretary.

(d) Waiver of restrictions

The taxpayer shall at any time (whether or not a notice of deficiency has been issued) have the right, by a signed notice in writing filed with the Secretary, to waive the restrictions provided in subsection (a) on the assessment and collection of the whole or any part of the deficiency.

(e) Suspension of filing period for certain excise taxes

The running of the time prescribed by subsection (a) for filing a petition in the Tax Court with respect to the taxes imposed by section 4941 (relating to taxes on self-dealing), 4942 (relating to taxes on failure to distribute income), 4943 (relating to taxes on excess business holdings), 4944 (relating to investments which jeopardize charitable purpose), 4945 (relating to taxes on taxable expenditures), 4951 (relating to taxes on self-dealing), or 4952 (relating to taxes on taxable expenditures), 4955 (relating to taxes on political expenditures), 4958 (relating to private excess benefit), 4971 (relating to excise taxes on failure to meet minimum funding standard), 4975 (relating to excise taxes on prohibited transactions) shall be suspended for any period during which the Secretary has extended the time allowed for making correction under section 4963 (e).

(f) Coordination with title 11

(1) Suspension of running of period for filing petition in title 11 cases

In any case under title 11 of the United States Code, the running of the time prescribed by subsection (a) for filing a petition in the Tax Court with respect to any deficiency shall be suspended for the period during which the debtor is prohibited by reason of such case from filing a petition in the Tax Court with respect to such deficiency, and for 60 days thereafter.

(2) Certain action not taken into account

For purposes of the second and third sentences of subsection (a), the filing of a proof of claim or request for payment (or the taking of any other action) in a case under title 11 of the United States Code shall not be treated as action prohibited by such second sentence.

(g) Definitions

For purposes of this section—

(1) Return

The term "return" includes any return, statement, schedule, or list, and any amendment or supplement thereto, filed with respect to any tax imposed by subtitle A or B, or chapter 41, 42, 43, or 44.

(2) Mathematical or clerical error

The term "mathematical or clerical error" means—

(A) an error in addition, subtraction, multiplication, or division shown on any return,

(B) an incorrect use of any table provided by the Internal Revenue Service with respect to any return if such incorrect use is apparent from the existence of other information on the return,

(C) an entry on a return of an item which is inconsistent with another entry of the same or another item on such return,

(D) an omission of information which is required to be supplied on the

return to substantiate an entry on the return,

(E) an entry on a return of a deduction or credit in an amount which exceeds a statutory limit imposed by subtitle A or B, or chapter 41, 42, 43, or 44, if such limit is expressed—

(i) as a specified monetary amount, or

(ii) as a percentage, ratio, or fraction,

and if the items entering into the application of such limit appear on such return,

(F) an omission of a correct taxpayer identification number required under section 32 (relating to the earned income credit) to be included on a return,

(G) an entry on a return claiming the credit under section 32 with respect to net earnings from self-employment described in section 32 (c)(2)(A) to the extent the tax imposed by section 1401 (relating to self-employment tax) on such net earnings has not been paid,

(H) an omission of a correct TIN required under section 21 (relating to expenses for household and dependent care services necessary for gainful employment) or section 151 (relating to allowance of deductions for personal exemptions),

(I) an omission of a correct TIN required under section 24 (e) (relating to child tax credit) to be included on a return,

(J) an omission of a correct TIN required under section 25A (g)(1) (relating to higher education tuition and related expenses) to be included on a return,

(K) an omission of information required by section 32 (k)(2) (relating to taxpayers making improper prior claims of earned income credit),

(L) the inclusion on a return of a TIN required to be included on the return under section 21, 24, or 32 if—

(i) such TIN is of an individual whose age affects the amount of the credit under such section, and

(ii) the computation of the credit on the return reflects the treatment of such individual as being of an age different from the individual's age based on such TIN, and

(M) the entry on the return claiming the credit under section 32 with respect to a child if, according to the Federal Case Registry of Child Support Orders established under section 453(h) of the Social Security Act, the taxpayer is a noncustodial parent of such child.

A taxpayer shall be treated as having omitted a correct TIN for purposes of the preceding sentence if information provided by the taxpayer on the return with respect to the individual whose TIN was provided differs from the information the Secretary obtains from the person issuing the TIN.

(h) Cross references

(1) For assessment as if a mathematical error on the return, in the case of erroneous claims for income tax prepayment credits, see section 6201 (a)(3).

(2) For assessments without regard to restrictions imposed by this section in the case of—

(A) Recovery of foreign income taxes, see section 905 (c).

(B) Recovery of foreign estate tax, see section 2016.

(3) For provisions relating to application of this subchapter in the case of certain partnership items, etc., see section 6230 (a).

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Sec. 6213. - Restrictions applicable to deficiencies; petition to Tax Court

(a) Time for filing petition and restriction on assessment

Within 90 days, or 150 days if the notice is addressed to a person outside the United States, after the notice of deficiency authorized in section 6212 is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day), the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency. Except as otherwise provided in section 6851, 6852, or 6861 no assessment of a deficiency in respect of any tax imposed by subtitle A, or B, chapter 41, 42, 43, or 44 and no levy or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such 90-day or 150-day period, as the case may be, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. Notwithstanding the provisions of section 7421 (a), the making of such assessment or the beginning of such proceeding or levy during the time such prohibition is in force may be enjoined by a proceeding in the proper court, including the Tax Court, and a refund may be ordered by such court of any amount collected within the period during which the Secretary is prohibited from collecting by levy or through a proceeding in court under the provisions of this subsection. The Tax Court shall have no jurisdiction to enjoin any action or proceeding or order any refund under this subsection unless a timely petition for a redetermination of the deficiency has been filed and then only in respect of the deficiency that is the subject of such petition. Any petition filed with the Tax Court on or before the last date specified for filing such petition by the Secretary in the notice of deficiency shall be treated as timely filed.

(b) Exceptions to restrictions on assessment

(1) Assessments arising out of mathematical or clerical

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If the taxpayer is notified that, on account of a mathematical or clerical error appearing on the return, an amount of tax in excess of that shown on the return is due, and that an assessment of the tax has been or will be made on the basis of what would have been the correct amount of tax but for the mathematical or clerical error, such notice shall not be considered as a notice of deficiency for the purposes of subsection (a) (prohibiting assessment and collection until notice of the deficiency has been mailed), or of section 6212(c)(1) (restricting further deficiency letters), or of section 6512(a) (prohibiting credits or refunds after petition to the Tax Court), and the taxpayer shall have no right to file a petition with the Tax Court based on such notice, nor shall such assessment or collection be prohibited by the provisions of subsection (a) of this section. Each notice under this paragraph shall set forth the error alleged and an explanation thereof.

(2) Abatement of assessment of mathematical or clerical errors

(A) Request for abatement

Notwithstanding section 6404(b), a taxpayer may file with the Secretary within 60 days after notice is sent under paragraph (1) a request for an abatement of any assessment specified in such notice, and upon receipt of such request, the Secretary shall abate the assessment. Any reassessment of the tax with respect to which an abatement is made under this subparagraph shall be subject to the deficiency procedures prescribed by this subchapter.

(B) Stay of collection

In the case of any assessment referred to in paragraph (1), notwithstanding paragraph (1), no levy or proceeding in court for the collection of such assessment shall be made, begun, or prosecuted during the period in which such assessment may be abated under this paragraph.

(3) Assessments arising out of tentative carryback or refund adjustments

If the Secretary determines that the amount applied, credited, or refunded under section 6411 is in excess of the overassessment attributable to the carryback or the amount described in section 1341(b)(1) with respect to which such amount was applied, credited, or refunded, he

may assess without regard to the provisions of paragraph (2) the amount of the excess as a deficiency as if it were due to a mathematical or clerical error appearing on the return.

(4) Assessment of amount paid

Any amount paid as a tax or in respect of a tax may be assessed upon the receipt of such payment notwithstanding the provisions of subsection (a). In any case where such amount is paid after the mailing of a notice of deficiency under section 6212, such payment shall not deprive the Tax Court of jurisdiction over such deficiency determined under section 6211 without regard to such assessment.

(c) Failure to file petition

If the taxpayer does not file a petition with the Tax Court within the time prescribed in subsection (a), the deficiency, notice of which has been mailed to the taxpayer, shall be assessed, and shall be paid upon notice and demand from the Secretary.

(d) Waiver of restrictions

The taxpayer shall at any time (whether or not a notice of deficiency has been issued) have the right, by a signed notice in writing filed with the Secretary, to waive the restrictions provided in subsection (a) on the assessment and collection of the whole or any part of the deficiency.

(e) Suspension of filing period for certain excise taxes

The running of the time prescribed by subsection (a) for filing a petition in the Tax Court with respect to the taxes imposed by section 4941 (relating to taxes on self-dealing), 4942 (relating to taxes on failure to distribute income), 4943 (relating to taxes on excess business holdings), 4944 (relating to investments which jeopardize charitable purpose), 4945 (relating to taxes on taxable expenditures), 4951 (relating to taxes on self-dealing), or 4952 (relating to taxes on taxable expenditures), 4955 (relating to taxes on political expenditures), 4958 (relating to private excess benefit), 4971 (relating to excise taxes on failure to meet minimum funding standard), 4975 (relating to excise taxes on prohibited transactions) shall be suspended for any period during which the Secretary has extended the time allowed for making correction under section 4963(e).

(f) Coordination with title 11

(1) Suspension of running of period for filing petition in title

11 cases

In any case under title 11 of the United States Code, the running of the time prescribed by subsection (a) for filing a petition in the Tax Court with respect to any deficiency shall be suspended for the period during which the debtor is prohibited by reason of such case from filing a petition in the Tax Court with respect to such deficiency, and for 60 days thereafter.

(2) Certain action not taken into account

For purposes of the second and third sentences of subsection (a), the filing of a proof of claim or request for payment (or the taking of any other action) in a case under title 11 of the United States Code shall not be treated as action prohibited by such second sentence.

(g) Definitions

For purposes of this section -

(1) Return

The term ''return'' includes any return, statement, schedule, or list, and any amendment or supplement thereto, filed with respect to any tax imposed by subtitle A or B, or chapter 41, 42, 43, or 44.

(2) Mathematical or clerical error

The term ''mathematical or clerical error'' means -

(A)

an error in addition, subtraction, multiplication, or division shown on any return,

(B)

an incorrect use of any table provided by the Internal Revenue Service with respect to any return if such incorrect use is apparent from the existence of other information on the return,

(C)

an entry on a return of an item which is inconsistent with another entry of the same or another item on such return,

(D)

an omission of information which is required to be

supplied on the return to substantiate an entry on the return,

(E)

an entry on a return of a deduction or credit in an amount which exceeds a statutory limit imposed by subtitle A or B, or chapter 41, 42, 43, or 44, if such limit is expressed -

(i)

as a specified monetary amount, or

(ii)

as a percentage, ratio, or fraction,

and if the items entering into the application of such limit appear on such return,

(F)

an omission of a correct taxpayer identification number required under section 32 (relating to the earned income credit) to be included on a return,

(G)

an entry on a return claiming the credit under section 32 with respect to net earnings from self-employment described in section 32(c)(2)(A) to the extent the tax imposed by section 1401 (relating to self-employment tax) on such net earnings has not been paid,

(H)

an omission of a correct TIN required under section 21 (relating to expenses for household and dependent care services necessary for gainful employment) or section 151 (relating to allowance of deductions for personal exemptions),

(I)

an omission of a correct TIN required under section 24(e) (relating to child tax credit) to be included on a return,

(J)

an omission of a correct TIN required under section 25A(g)(1) (relating to higher education tuition and related expenses) to be included on a return,

(K)

an omission of information required by section 32 (k)(2) (relating to taxpayers making improper prior claims of earned income credit), and

(L)

the inclusion on a return of a TIN required to be included on the return under section 21, 24, or 32 if -

(i)

such TIN is of an individual whose age affects the amount of the credit under such section, and

(ii)

the computation of the credit on the return reflects the treatment of such individual as being of an age different from the individual's age based on such TIN.

A taxpayer shall be treated as having omitted a correct TIN for purposes of the preceding sentence if information provided by the taxpayer on the return with respect to the individual whose TIN was provided differs from the information the Secretary obtains from the person issuing the TIN.

(h)

Cross references

(1)

For assessment as if a mathematical error on the return, in the case of erroneous claims for income tax prepayment credits, see section 6201(a)(3).

(2)

For assessments without regard to restrictions imposed by this section in the case of -

(A)

Recovery of foreign income taxes, see section 905 (c).

(B)

Recovery of foreign estate tax, see section 2016.

(3)

For provisions relating to application of this subchapter in the case of certain partnership items, etc., see section 6230(a)

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Internal Revenue Manual

Part 4
Examining Process

Chapter 10
Examination of Returns

Section 7
Issue Resolution

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4.10.7.1 (05-14-1999)
Overview

1. Examiners are responsible for determining the correct tax liability as prescribed by the Internal Revenue Code. It is imperative that examiners can identify the applicable law, correctly interpret its meaning in light of congressional intent, and, in a fair and impartial manner, correctly apply the law based on the facts and circumstances of the case.

2. This chapter addresses five areas:
   A. Researching tax law, 7.2,
   B. Evaluating evidence, 7.3,
   C. Arriving at conclusions, 7.4,
   D. Proposing adjustments to taxpayers and/or representatives, 7.5,
   E. Shift in Burden of Proof, 7.6.

4.10.7.2 (05-14-1999)
Researching Tax Law

1. Conclusions reached by examiners must reflect correct application of the law, regulations, court cases, revenue rulings, etc. Examiners must correctly determine the meaning of statutory provisions and not adopt strained interpretation.
2. The Federal tax system is constantly changing. Examiners must keep well informed of the ever-growing body of tax authorities and advances in the management and storage of information.
3. In the words of Supreme Court Justice Jackson, "No other branch of the law touches human activities at so many points. It can never be made simple." Income tax law is too complex for examiners to immediately perceive its ramifications and provisions in all examinations.
4. This section focuses on researching Federal tax law, evaluating the significance of various authorities, and supporting conclusions reached with appropriate citations. The profiles of various tax authorities in this chapter are intended to help examiners become familiar with the most common, but by no means all, sources or available research techniques.

4.10.7.2.1 (05-14-1999)
Internal Revenue Code

1. The Internal Revenue Code of 1986 is the primary source of Federal tax law. It imposes income, estate, gift, employment, miscellaneous excise taxes, and provisions controlling the administration of Federal taxation. The Code is found at Title 26 of the United States Code (U.S.C.). The United States Code consists of fifty titles.
2. For ease of use, the Code is divided into different units: subtitles, chapters, subchapters, parts, and sections. Listed below are the Code sections which fall within the eleven subtitles of the current Code.

Subtitle	Contents	Code Sections
A	Income Taxes	1-1563
B	Estate and Gift Taxes	2001-2704
C	Employment Taxes	3101-3510
D	Miscellaneous Excise Taxes	4041-5000
E	Alcohol, Tobacco, and Certain Other Excise Taxes	5001-5881
F	Procedure and Administration	6001-7873
G	The Joint Committee on Taxation	8001-8023
H	Financing of Presidential Election Campaigns	9001-9042
I	Trust Fund Code	9500-9602

J	Coal Industry Health Benefits	9701-9722
K	Group Health Plan Portability, Access, and Renewability Requirements	9801-9806

- Sections are usually arranged in numerical order. This sometimes leads to the need to show a Code section number followed by a capital letter not in parentheses. An example is Code §280A. This designation is used because subsequent legislation created additional Code sections in Part IX, requiring the addition of new Code sections after section 280. Since section 281 already existed, new sections were added by creating sections 280A, 280B, 280C, etc.

4.10.7.2.1.1 (05-14-1999)
Authority of the Internal Revenue Code

1. The Internal Revenue Code is generally binding on all courts of law. The courts give great importance to the literal language of the Code but the language does not solve every tax controversy. Courts also consider the history of a particular code section, its relationship to other code sections, committee reports (7.2.2) below, Treasury Regulations (7.2.3) below, and Internal Revenue Service administrative policies.

4.10.7.2.1.2 (05-14-1999)
Citing the Internal Revenue Code

1. It is often necessary to cite Internal Revenue Code sections in reports and to taxpayers in support of a position on an issue. For convenience, the Internal Revenue Code is abbreviated IRC and the symbols § or §§ are often used in place of section and sections respectively.
2. When making reference to a Code section, usually no reference is made to the title, subtitle, chapter, subchapter, or part. Code sections are divided into subsections, paragraphs, subparagraphs, and clauses. For example, IRC § 170(b)(1)(A)(i) is subdivided as follows:
   A. IRC § 170; Code section, Arabic numbers
   B. Subsection (b); lower case letter in parentheses
   C. Paragraph (1); Arabic number in parentheses
   D. Subparagraph (A) ; capital letter in parentheses
   E. Clause (i); lower case Roman numerals in parentheses

4.10.7.2.1.3 (05-14-1999)
Prior Tax Law

1. The Code is continually changing. It is important that examiners determine the law applicable to the year under examination. To do so, determine whether the applicable law has been modified, and if so, the date on which the changes became effective. Many publishers provide this information in small print immediately following the current Code section.

4.10.7.2.2 (05-14-1999)
Committee Reports

1. Federal income tax legislation originates in the House of Representatives. Hearings are held by the House Ways and Means Committee. When a bill is introduced in the House, a Committee Report is published which often states the reason the bill is being proposed. This reasoning establishes the legislative intent behind the finalized law.
2. After the bill clears the House, it is considered by the Senate. The Senate Finance Committee holds hearings and prepares a report explaining any changes made to the

House bill. A Conference Committee later resolves any differences between the House and Senate versions of the bill and issues its own report.

3. When the bill passes both the House and Senate, it is sent to the President to be signed. Once signed, the bill becomes law and a new or amended section of the Code is enacted. Committee Reports are useful tools in determining Congressional intent behind certain tax laws and helping examiners apply the law properly.

4.10.7.2.2.1 (05-14-1999)
Publication of Committee Reports

1. Committee Reports are published in full in the Congressional Record and in part in the Internal Revenue Bulletin and Cumulative Bulletin . Selected reports are found in many commercial tax services.

4.10.7.2.2.2 (05-14-1999)
Citing Committee Reports

1. Committee Reports are identified by a number representing the session of Congress and a sequence number. For example, the Tax Reform Act of 1986 was enacted by Public Law 99-514. House, Senate, and Conference reports accompanying that legislation are cited as follows:
   A. House Report 99-426, 1986-3 C.B. Vol. 2
   B. Senate Report 99-313, 1986-3 C.B. Vol. 3
   C. Conference Report 99-841, 1986-3 C.B. Vol. 4
2. The reports are published in the Cumulative Bulletin (IRM 4.10.7.2.4). In each citation, "99" refers to the 99th Congress. Some publishers refer to the reports collectively as "Committee Reports, P.L. 99-514."

4.10.7.2.3 (05-14-1999)
Code of Federal Regulations

1. The Code of Federal Regulations (CFR) is a codification of the general and permanent rules published in the Federal Register (F.R.) by the Executive departments and agencies of the Federal Government. It is divided into fifty titles which represent broad areas subject to Federal regulation. Each title is divided into chapters usually bearing the name of the issuing agency. Each chapter is subdivided into parts covering specific regulatory areas. Title 26 comprises the Internal Revenue Regulations and is cited 26 CFR.

4.10.7.2.3.1 (05-14-1999)
Income Tax Regulations

1. The Federal Income Tax Regulations (Regs.) are the official Treasury Department interpretation of the Internal Revenue Code and follow the numbering sequence of Internal Revenue Code sections.

4.10.7.2.3.2 (05-14-1999)
Types of Regulations

1. Legislative and interpretative regulations are issued by the Secretary of the Treasury. If the code states "The Secretary shall provide such regulations . . ." , then the regulations issued are legislative. Interpretative regulations are issued under the general authority of IRC section 7805(a) , which allows regulations to be written when the Secretary determines they are needed to clarify a Code section.
2. The courts consider the merit of both interpretative and legislative regulations.

However, more weight is given to legislative regulations than to interpretative regulations.

4.10.7.2.3.3 (05-14-1999)
Classes of Regulations

1. Regulations are written by the Legislative and Regulations Division or Tax Exempt and Government Entities Office of Associate Chief Counsel (Technical), Internal Revenue Service, and are approved by the Department of the Treasury. There are three classes of regulations: proposed, temporary, and final.
   A. Proposed Regulations – Proposed regulations provide guidance concerning Treasury's interpretation of a Code section, but do not have authoritative weight. The public is given an opportunity to comment on proposed regulations and public hearings may be held if sufficient written requests are received. Since proposed regulations have no authoritative weight, taxpayers and examiners are not bound by them. Proposed regulations become binding when adopted by a Treasury Decision and they become final regulations.
   B. Temporary Regulations – Temporary regulations are often issued soon after a major change to provide guidance for the public and Internal Revenue Service employees with respect to procedural and computational matters. Unlike proposed regulations, temporary regulations are authoritative and have the same weight as final regulations. Public hearings are not held on temporary regulations.
   C. Final Regulations – Final regulations are issued after public comments on proposed regulations are evaluated. They supersede both temporary and proposed regulations. A final regulation is effective the day it is published in the Federal Register as a Treasury Decision, unless otherwise stated.

4.10.7.2.3.4 (05-14-1999)
Authority of the Regulations

1. The Service is bound by the regulations. The courts are not.
2. If both temporary and proposed regulations have been issued on the same Code section and the text of both are similar, examiners' positions should be based on the temporary regulations because it can be cited as an authority for proposing an adjustment.
3. When no temporary or final regulations have been issued, examiners may use a proposed regulation to support a position. Indicate that the proposed regulation has no authoritative weight, but is the best interpretation of the Code section available.

4.10.7.2.3.5 (05-14-1999)
Publication of the Regulations

1. Regulations are printed in the following publications:
   A. Federal Register
   B. Code of Federal Regulations (CFR)
   C. Under the heading "Treasury Decisions" (T.D.) in the Internal Revenue Bulletins (I.R.B.) and the Cumulative Bulletin (C.B.)
   D. Tax services of commercial publishers, such as CCH Incorporated and Research Institute of America.

4.10.7.2.3.6 (05-14-1999)
Citing the Regulations

1. The citation for a regulation contains three basic organizational units:
   A. The part number,
   B. The Code section number, and
   C. The regulation section number.
2. Treasury Regulation § 1.61-9(c) is illustrated below:

Figure 4.10.7-2

   A. The first division is the CFR part number and indicates the subject of the regulation. The part number appears before the decimal point in a citation. In the citation Treas. Req. § 1.61-9(c), the number 1 refers to Part 1 of the CFR, which is income tax. If the regulation were on employment taxes, the number 31 would precede the decimal point.
   B. The numbers immediately after the decimal point refer to the Code section to which the regulations apply. In the citation Treas. Reg. § 1.61-9(c), the number 61 refers to IRC § 61. The regulations are sequenced by Code section numbers. For example, Treas. Reg. § 31.6051 comes before § 31.6052 but after § 301.6047.
   C. The section number of the regulation is separated from the Code section by a hyphen. Again, using the citation Treas. Reg. § 1.61-9(c), the number 9 is the regulation section number and (c) is the subsection.
3. References to regulations sections do not correspond to Code sections.

4.10.7.2.3.7 (05-14-1999)
Outdated Regulations

1. Regulations may only apply to a particular time period. This fact is sometimes reflected by the publisher in the paragraph heading. Regulations do not always reflect recent changes in the law and may not be applicable to years following a change in the law. Look for disclaimers and cautions regarding time frames.

4.10.7.2.3.8 (05-14-1999)
Financial Record-Keeping Regulations

1. Financial Recordkeeping Regulations are issued by the Treasury Department under authority of the Federal Deposit Insurance Act, 12 U.S.C. 1829b, §§ 1951-1959, and the Currency and Foreign Transactions Reporting Act, 31 U.S.C. §§ 103.11-103.53. The regulations specify the financial reports and records to be kept and/or filed by those engaged in domestic and foreign currency transactions.

4.10.7.2.4 (05-14-1999)
Internal Revenue Bulletin

1. The Internal Revenue Bulletin (I.R.B.) is the authoritative instrument of the Commissioner of Internal Revenue for announcing official IRS rulings and procedures and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published on a weekly basis by the Government Printing Office.
2. 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.

4.10.7.2.4.1 (05-14-1999)
Miscellaneous Documents

1. In addition to Revenue Rulings and Revenue Procedures, a number of miscellaneous documents having application to tax law interpretation and Documents administration are published in the Bulletin .
   A. Announcements – Announcements are public pronouncements on matters of general interest, such as effective dates of temporary regulations, clarification of rulings and form instructions. They are issued when guidance of a substantive or procedural nature is needed quickly. Announcements can be relied on to the same extent as Revenue Rulings and Revenue Procedures when they include specific language to that effect. Announcements are not included in the bound Cumulative Bulletin . They are identified by a two digit number representing the year and a sequence number, for example, Announcement 96-124, 1996-49 I.R.B. 22. This announcement is found in Internal Revenue Bulletin No. 1996-49, issued December 2, 1996, at page 22.
   B. Notices – Notices are public announcements issued by the Internal Revenue Service. Notices appear in the Internal Revenue Bulletin and are included in the bound Cumulative Bulletin . Notices are identified by a two digit number representing the year and a sequence number. For example, Notice 95-67 is cited as Notice 95-67, 1995-52 I.R.B. 35 or Notice 95-67, 1995-2 C.B. 343. (The Cumulative Bulletin is the more permanent bound volume and citing the Cumulative Bulletin is more appropriate after its publication.)
   C. Delegation Orders – Commissioner Delegation Orders (Del. Order) formally delegate authority to perform certain tasks or make certain decisions to specified Service employees. Agreements made by Service employees under these orders are binding on taxpayers and the Internal Revenue Service. Delegation Orders are identified by a number, sometimes followed by a revision date. Delegation Orders appear in the Internal Revenue Bulletin and are included in the Cumulative Bulletin . For example, Delegation Order No. 245 is cited as Del. Order 245, 1995-22 I.R.B. 5 or Del. Order 245, 1995-1 C.B. 288. (The Cumulative Bulletin is the more permanent bound volume and citing the Cumulative Bulletin is more appropriate after its publication.)

4.10.7.2.4.2 (05-14-1999)
Citing the Internal Revenue Bulletin

1. Items appearing in the Internal Revenue Bulletin that have not appeared in the Cumulative Bulletin should be cited to the weekly Bulletin as follows, Rev. Rul. 96-55, 1996-49 I.R.B. 4. Internal Revenue Bulletin No. 1996-49 was issued December 2, 1996. Revenue Ruling 96-55 is found at page 4.

4.10.7.2.5 (05-14-1999)
Cumulative Bulletin

1. The Cumulative Bulletin (C.B.) is a consolidation of items of a permanent nature published in the weekly Internal Revenue Bulletin . The Cumulative Bulletin is issued on a semiannual basis. The Bulletin is numbered 1 to 5, inclusive (April 1919 to

December 31, 1921); and I-1 and I-2 to XV-1 and XV-2, inclusive (January 1, 1922, to December 31, 1936) . Each Cumulative Bulletin number thereafter bears the particular year covered, for example, 1963-1 (January 1 to June 30, 1963).

2. The Cumulative Bulletin is divided into four parts:
   A. Part I, 1986 Code: This part is divided into two subparts based on provisions of the Internal Revenue Code of 1986. Arrangement is sequential according to Code and regulations sections. The Code section is shown at the top of each page.
   B. Part II, Treaties and Tax Legislation: This part is divided into two subparts as follows: (1) Subpart A, Tax Conventions, and (2) Subpart B, Legislation and Related Committee Reports.
   C. Part III, Administrative, Procedural, and Miscellaneous: To the extent practical, pertinent cross references to these subjects are contained in the other parts and subparts.
   D. Part IV, Notice of Proposed Rule Making: The preambles and text of Proposed Regulations that were published in the Federal Register during this six month period are printed in this section. Included in this section is a list of persons disbarred or suspended from practice before the Internal Revenue Service.

4.10.7.2.5.1 (05-14-1999)
Citing the Cumulative Bulletin

1. The title of Cumulative Bulletins issued before 1937 does not reflect the year of issuance. A citation to the Bulletin must include the year in parentheses at the end of the citation, as follows: S.S.T. 31, XV-2 C.B. 400 (1936).
2. After 1936, a citation to the Bulletin is as follows: Rev. Proc. 71-4, 1971-1 C.B. 662. Revenue Procedure 71-4 is found at page 662, volume one of the 1971 Cumulative Bulletins (January - June, 1971).
3. To call attention to a certain page of a document, such as the Bulletin , show first the page on which the document begins followed by the page to which attention is directed. Thus, the citation Rev. Rul. 63-107, 1963-1 C.B. 71, 74, directs the reader's attention to page 74 of Rev. Rul. 63-107 found in volume 63-1 of the Cumulative Bulletin , starting on page 71.

4.10.7.2.6 (05-14-1999)
Revenue Rulings and Procedures

1. Revenue Rulings (Rev. Rul.) represent the conclusions of the Service on the application of the law to specific facts stated in the ruling. In rulings based on positions taken in private letter 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.
2. A revenue procedure (Rev. Proc.) is issued to assist taxpayers in complying with procedural issues that deal with tax return preparation and compliance.
3. The purpose of rulings and procedures is to promote uniform application of the tax laws. Internal Revenue Service employees must follow rulings and procedures. Taxpayers may rely on them or appeal their position to the Tax Court or other Federal courts.
4. Revenue Rulings and Revenue Procedures that have an effect on previous rulings use the following defined terms to describe the effect:
   A. 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 original fact situation.

B. 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, confusion. It is not used where a position in a prior ruling is being changed.

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

D. Modified is used where the substance of a previously published position is being changed.

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

F. 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.

G. 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 desirable 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 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.

H. Supplemented is used in situations in which a list, such as a list of the name 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.

I. Suspended is used in rare situations to show that the previously published ruling 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.

4.10.7.2.6.1 (05-14-1999)
Authority of Rulings and Procedures

1. Rulings do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. In applying published rulings, the effects of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered. Caution is urged against reaching the same conclusion in other cases, unless the facts and circumstances are substantially the same.

4.10.7.2.6.2 (05-14-1999)
Publication of Rulings and Procedures

1. Revenue Rulings and Procedures are published by the Internal Revenue Service in the Internal Revenue Bulletin .

4.10.7.2.6.3 (05-14-1999)
Citing Rulings and Procedures

1. Locating a ruling or procedure requires the following information from the citation:
   A. The year the ruling or procedure was issued,
   B. The ruling or procedure number,
   C. The volume number of the I.R.B. or C.B.,
   D. The page number of the Ruling or Procedure.
2. Rev. Rul. 76-12, 1976-2 C.B. 88, is illustrated below:

Figure 4.10.7-3

4.10.7.2.7 (05-14-1999)
Bulletin Index-Digest System

1. The Bulletin Index-Digest System provides a way to quickly research Revenue Rulings, Revenue Procedures, Public Laws, Treasury Decisions, and other matters of a permanent nature published since 1952 in the Internal Revenue Bulletin or Cumulative Bulletin . The Index-Digest is published by the Government Printing Office. It is a comprehensive, up-to-date research tool and consists of four Services:
   A. Service No. 1, Income tax (Publication 641);
   B. Service No. 2, Estate and Gift Tax (Publication 642);
   C. Service No. 3, Employment Tax (Publication 643);
   D. Service No. 4, Excise Taxes (Publication 644);
2. Each Service consists of a basic volume and cumulative supplements that provide (1) finding lists of items published in the Bulletin , (2) digests of Revenue Rulings, Revenue Procedures, and other published items, and (3) indexes of Public Laws, Treasury Decisions, and Tax Conventions.

4.10.7.2.8 (05-14-1999)
IRS Publications

1. IRS Publications, issued by the Headquarters Office, explain the law in plain language for taxpayers and their advisors. They typically highlight changes in the law, provide examples illustrating Service positions, and include worksheets. Publications are nonbinding on the Service and do not necessarily cover all positions for a given issue. While a good source of general information, publications should not be cited to sustain a position.

4.10.7.2.9 (05-14-1999)
Court Decisions and Case Law

1. Congress legislates tax law, the Internal Revenue Service interprets and enforces the law, and the judiciary branch of government determines whether the Service's interpretation is correct. This provides for yet another source of guidance as to the meaning of tax laws (court decisions) sometimes referred to as case law.
2. This section focuses on the Federal courts (and their predecessors) that interpret Federal tax law, and the role of case law in tax research and decision making. This section includes the following subsections:

7.2.9.1 – U.S. Board of Tax Appeals
7.2.9.2 – Tax Court of the United States
7.2.9.3 – U.S. District Court and U.S. Court of Federal Claims
7.2.9.4 – Courts of Appeals
7.2.9.5 – U.S. Court of Appeals for the Federal Circuit
7.2.9.6 – Supreme Court
7.2.9.7 – Citators: Researching Case History
7.2.9.8 – Importance of Court Decisions

4.10.7.2.9.1 (05-14-1999)
U.S. Board of Tax Appeals

1. Until superseded by the U.S. Tax Court in 1942, the Board of Tax Appeals (B.T.A.) offered taxpayers a prepayment forum for disputing deficiencies assessed by the Service. The Board had jurisdiction over income, excess profits, and estate and gift taxes.
2. Although these decisions are old, many retain precedential value because they address issues of continuing significance or state principles that are still valid. However, a B.T.A. decision may be based upon an authority that is obsolete and all references to the Code are to a pre-1954 Code. Therefore, caution must be exercised in citing B.T.A. decisions.
3. Board of Tax Appeals Decisions are cited as follows: Simons Brick Co. v. Commissioner is cited 14 B.T.A. 878 where "14" is the volume number, "B.T.A." is the publication title, and "878" is the page number. These decisions are available from commercial publishers.

4.10.7.2.9.2 (05-14-1999)
Tax Court of the United States

1. When taxpayers disagree with a determination and the case is not settled through the Appeals process, taxpayers may petition the United States Tax Court for a judicial determination of tax liability before paying the tax. Tax Court offers taxpayers a forum for disputing deficiencies asserted by the Service under income, estate and gift tax, and certain (not all) employment tax and excise tax provisions.

4.10.7.2.9.2.1 (05-14-1999)
Small Tax Case Procedures

1. Tax Court cases involving not more than $50,000 for any one year may be handled under the "small tax case procedures" . These procedures were authorized in order to expeditiously and informally handle litigation for cases involving small sums of money. When taxpayers choose this route to appeal a decision, they are barred from making an appeal to a higher court. Decisions reached by the Tax Court under the small case procedures are not published and have no precedential value.

4.10.7.2.9.2.2 (05-14-1999)
Regular Opinions

1. Tax Court regular opinions are decisions of the Court that involve more than mere factual determinations or applications of well established legal principles. They generally involve new decisions on points of law that set precedents. Regular opinions

are published in Reports of the United States Tax Court by the Government Printing Office. Commercial publishers also print these decisions.

4.10.7.2.9.2.3 (05-14-1999)
Memorandum Decisions

1. Memorandum decisions primarily involve factual determinations and the application of well-established legal rules. Memorandum decisions do not warrant publication in bound volumes in the opinion of the Court. They are published in pamphlets by the Government and in bound volumes by commercial publishers.

4.10.7.2.9.2.4 (05-14-1999)
Citing Tax Court Decisions

1. In citing a regular decision of the United States Tax Court, examiners should name the case, refer to the number of the volume in which it is published, and the page in the volume on which the ruling begins. For example: Richard A. Sutter , 21 T.C. 170.
2. Examiners should be careful not to cite a Tax Court case in which the decision was against the Government unless that decision has been acquiesced by the Commissioner (see 7.2.9.8.1(4)). If the decision was against the Commissioner and acquiescence followed, the decision must be noted as "Acq" . A decision against the Government which has been nonacquiesced in should be noted as "Nonacq" .
3. Memorandum decisions are usually cited with reference to one or both of two commercial publications. For example: R.L. Taylor v. Commissioner may be cited as follows:
    A. CCH, Incorporated: Taylor, R.L. 40 T.C.M. 1206 1980-376 Dec. 37,228(M)
    B. Research Institute of America: Taylor, R.L. 1980 T.C. Memo 80376
4. Some of the information is the same in each citation, such as the case name and decision number (1980-376 and 80376, respectively). However, reference to where the decision is found is different and the CCH citation includes a CCH decision number, Dec. 37,228(M).
5. The term "v. Commissioner" is not used in citing United States Tax Court cases.

4.10.7.2.9.3 (05-14-1999)
U.S. District Court and U.S. Court of Federal Claims

1. Generally, the United States District Court and the United States Court of Federal Claims hear tax cases after the taxpayer has paid the tax and filed a claim for refund or credit. If the claim is denied by the Service, the taxpayer may petition either the District Court or the Court of Federal Claims. District Court decisions may be appealed to the Courts of Appeals for the appropriate circuit. The Supreme Court of the United States may, at its discretion, review decisions of a Court of Appeals or the Court of Federal Claims.

4.10.7.2.9.3.1 (05-14-1999)
District Courts

1. United States District Courts are the primary Federal courts of original jurisdiction and are located across the United States and its possessions. This is the only court where taxpayers can request a jury trial.
2. Decisions of District Courts are published by commercial publishing houses. Examples are:
    A. CCH Incorporated: United States Tax Cases (cited USTC)

B. Research Institute of America: American Federal Tax Report (cited AFTR)
C. West publishing Company: Federal Reports (cited F. 2d)

(NOTE: West Publishing Company publishes all decisions; CCH and Research Institute publish only Federal tax decisions.)

3. Citing District Court decisions is demonstrated below for the case of Ruby Smith Stahl v. United States .
   A. CCH Incorporated: 69-1 USTC 9179
   B. Research Institute: 23 AFTR 2d 69-563
   C. West Publishing: 294 F. Supp 243 (D.D.C. 1969)
4. If a case has been decided but not yet cited to an unofficial reporter, cite as follows: Gifford Corp. v. United States , Civil No. 73-1250 (D. Mass., Jan. 10, 1973).
5. If a case has not been decided, cite as follows: Cowden Mfg. Co. v. United States , Docket No. 2227 (E.D. Ky. , filed April 17, 1972).

4.10.7.2.9.3.2 (05-14-1999)
U.S. Court of Federal Claims

1. The United States Claims Court, subsequently renamed United States Court of Federal Claims, is located in Washington, D.C., and was established on October 1, 1982. It is authorized to sit nationwide. Prior to October 1, 1982, taxpayers could petition the United States Court of Claims. When researching tax issues, examiners will find cases from both courts.
2. Decisions of the Claims Court are published by commercial publishers:
   A. CCH Incorporated: United States Tax Cases (cited USTC)
   B. Research Institute of America: American Federal Tax Report (cited AFTR)
   C. West Publishing Company: Federal Reports, Second Series (cited F. 2d) and beginning October 1982, Claims Court Reporter (cited Cl. Ct.)
3. Citing United States Court of Claims is demonstrated below for the case of Uptown Club of Manhattan, Inc. v. United States .
   A. CCH Incorporated: 49-1 USTC 9261
   B. Research Institute: 37 AFTR 1316
   C. West Publishing: 83 F. Supp. 823 (Ct. Cl. 1949)
4. Citing a Claims Court decision is demonstrated below for the case of Recchie v. United States .
   A. CCH Incorporated: 83-1 USTC 9312
   B. Research Institute: 51 AFTR 2d 83-1010
   C. West Publishing: 1 Cl. Ct. 726

4.10.7.2.9.4 (05-14-1999)
Court of Appeals

1. Either the taxpayer or the Government may appeal decisions of the Tax Court and District Courts to the regional Circuit Court of Appeals. There are twelve courts of appeals for eleven circuits and the District of Columbia.
2. District Courts must follow the decision of the Court of Appeals for the circuit in which they are located. For example, the District Court in the Eastern District of Missouri must follow the decision of the Eight Circuit. If the Eighth Circuit has not rendered a decision on the particular issue involved, then the District Court may make its own decision or follow the decision of another circuit which has rendered a decision on the issue.
3. Since one circuit court is not bound by the decision of another circuit, it is important to

find a case from the circuit that will hear the case when citing a case supporting the position taken on an issue. If a decision on a particular issue has not been rendered in the examiner's circuit, cite a supporting decision rendered in another circuit.

4. Decisions of the Court of Appeals and U.S. Court of Appeals for the Federal Circuit are published by commercial publishers in the following volumes:
   A. CCH Incorporated: United States Tax Cases (cited USTC)
   B. Research Institute of America: American Federal Tax Report (cited AFTR)
   C. West Publishing Company: Federal Reports, Second Series (cited F. 2d)
5. Citing United States Courts of Appeals decisions:
   A. Example: In the case of Graham v. Commissioner , the citation is 6 F.2d 878 (4th Cir. 1964).
   B. If a case has not been reported in Federal Reports , cite an unofficial reporter, as follows: Marwais Steel Co. v. Commissioner , 17 AFTR 2d 11 (9th Cir. 1965), or Marwais Steel Co. v. Commissioner , 66-1 USTC 85, 126 (9TH Cir. 1965).

4.10.7.2.9.5 (05-14-1999)
U.S. Court of Appeals for the Federal Court

1. Before October 1, 1982, taxpayers appealed Court of Claims Decisions directly to the Supreme Court. A new appellate court, the United States for the Court of Appeals for the Federal Circuit, was established. Taxpayers who disagree with a decision of the United States Court of Federal Claims must make their appeal to the Court of Appeals for the Federal Circuit.
2. Exhibit 4.2.7-1 shows the jurisdiction of the circuits of the Court of Appeals.

4.10.7.2.9.6 (05-14-1999)
Supreme Court

1. Decisions of the U.S. Courts of Appeal and the U.S. Court of Appeals for the Federal Circuit Court may be appealed to the United States Supreme Court. The Supreme Court of the United States is the highest court of the land. No one has a right to be heard by the Court; the Supreme Court only accepts cases which it views as having national importance. Only a limited number of tax cases are heard.
2. Appeal to the Supreme Court of the United States is by Writ of Certiorari . If the Court accepts the petition, it will grant the writ, cited cert. granted . If the petition is denied, the case is cited cert. denied .
3. Supreme Court decisions are published by the Internal Revenue Service in the Internal Revenue Bulletin and Cumulative Bulletin . Commercial publishers as well as the Government Printing Office print the Court's decisions:
   A. CCH Incorporated: United States Tax Cases (cited USTC)
   B. Research Institute of America: American Federal Tax Report (cited AFTR)
   C. West Publishing Company: Supreme Court Reporter (cited S. Ct.)
   D. United States Law Week (cited U.S.L.W).
   E. Government Printing Office: United States Reports (cited U.S.)
4. Citing Supreme Court cases is demonstrated below for the case of Commissioner v. Neil Sullivan :
   A. CCH Incorporated: 58-1 USTC 9368
   B. Research Institute of America: 1 AFTR 2d 1158
   C. West Publishing Company: 78 5. Ct. 512
   D. United States Reports : 356 U.S. 27 (1958)

E. Cumulative Bulletin : 1958-1 C.B. 506

4.10.7.2.9.7 (05-14-1999)
Citators: Researching Case History

1. Knowledge of the judicial history of a tax case is important and research of case law is not complete until the history of a case is reviewed in a citator. For example, examiners should consider whether a case is current, whether there are other cases on the same point of law that should be considered, or whether a ruling is still valid. A citator lists court decisions alphabetically by case name and shows where the full text of the decisions may be found. The citator traces the case history from its original entry into the court system through the Supreme Court, if appealed.
2. Decisions reached in a lower court are sometimes reversed in the Appellate or Supreme Court. When this happens, the lower case decision has no legal sanction and should not be cited as an authority. A citator will show whether a higher court reversed, affirmed, modified, or otherwise disposed of a lower court decision.
3. Revenue Rulings and Procedures may be revoked, modified, amplified, etc. A citator findings list will indicate whether or not this is the case.
4. A citator will also direct examiners to subsequent cases or rulings that deal with the same legal principle in the setting of other Code sections or fact patterns. It lists everything that has been said about a case, ruling, or procedure.
5. Citators are published by commercial publishers of tax services such as CCH Incorporated and Research Institute of America. While formats differ, commercial citators provide basically the same information.

4.10.7.2.9.7.1 (05-14-1999)
Citator Examples

1. The following examples are taken from the Main Citator Table of CCH Incorporated's Standard Federal Tax Reporter on compact disc.
2. Example 1: Case Citator
   A. **Batman, Ray L.** ANNOTATED AT . . . 96 FED 2250.66; 8586.0358; 8706.075; 8706.11; 11, 025.3801; 13, 709.2261; 25,424 .95
   B. **SCt** – Cert. denied, 342 US 877; 72 SCt 167
   C. **CA-5** – (aff'g TC), 51-1 USTC P9305; 189 F2d 107
   D. Miller, CA-10, 61-1 USTC 9156, 285 F2d 843
      Finley, CA-10, 58-1 USTC 9517, 255 F2d 128
      Batman, CA-5, 57-1 USTC 9247, 239 F2d 283
      Christopher, CA-5, 55-1 USTC 9504, 223 F2d 124
      West, CA-5, 54-2 USTC 9480, 214 F2d 300
      Wofford, CA-5, 53-2 USTC 9637, 207 F2d 749
      Mauritz, CA-5, 53-2 USTC 9495, 206 F2d 135
      Tomlinson, CA-5, 52-2 USTC 9543, 199 F2d 674
      Seabrook, CA-5, 52-1 USTC 9294, 196 F2d 322
      Culbertson, Sr., CA-5, 52-1 USTC 9233, 194 F2d 581
      Alexander, CA-5, 52-1 USTC 9232, 194 F2d 921
      Tilden, Inc., CA-5, 51-2 USTC 9501, 192 F2d 704
      Britt Est., CA-5, 51-2 USTC 9414, 190 F2d 946
      Scott, DC – Ark, 53-1 USTC 9166, 110 FSupp 165
      Lewis, TC, Dec. 20,733, 23 TC 538
      West, TC, Dec. 19,435, 19 TC 808

Tomlinson, TC, Dec. 18,513(M), 10 TCM 828
E. **TC** – Dec. 17,553(M); 9 TCM 210

3. Explanations of the above citations are as follows:
   A. Case name (Batman, Ray L.) and paragraph references to CCH Federal Standard Tax Reporter.
   B. Batman was appealed to the Supreme Court; however, certiorari was denied.
   C. Fifth Circuit Court of Appeals heard Batman and affirmed the Tax Court Decision.
   D. These cases deal with the same legal principle or fact pattern and cite Batman .
   E. Tax Court heard Batman and case was appealed to Fifth Circuit Court of Appeals.
4. Example 2: Rulings Finding List
   A. **Rev. Proc. 75-25, 1975-1 CB 720** ANNOTATED AT ...96 FED 8471.90; 29,663.90 1975 CCH 6595
   B. **Amplified by:** Rev. Proc. 78-25
   C. **Cited in:** Jones, Dec. 49,862(M), 67 TCM 2997, TC Memo. 1994-230 Notice 91-4 T.D. 8408 Haynsworth, TC, Dec. 34,581, 68 TC 703 Rev. Rul. 76-247
   D. **Obsoleted by:** Rev. Proc. 92-29
   E. **Superseding:** Mim. 4027
   F. Example 2 is self-explanatory.

4.10.7.2.9.8 (05-14-1999)
Importance of Court Decisions

1. Decisions made at various levels of the court system are considered to be interpretations of tax laws and may be used by either examiners or taxpayers to support a position.
2. Certain court cases lend more weight to a position than others. A case decided by the U.S. Supreme Court becomes the law of the land and takes precedence over decisions of lower courts. The Internal Revenue Service must follow Supreme Court decisions. For examiners, Supreme Court decisions have the same weight as the Code.
3. Decisions made by lower courts, such as Tax Court, District Courts, or Claims Court, are binding on the Service only for the particular taxpayer and the years litigated. Adverse decisions of lower courts do not require the Service to alter its position for other taxpayers.

4.10.7.2.9.8.1 (05-14-1999)
Action on Decision

1. It is the policy of the Internal Revenue Service to announce at an early date whether it will follow the holdings in certain cases. An Action on Decision (A.O.D.) is the document making such an announcement. An Action on Decision is issued at the discretion of the Service only on unappealed issues, decided adverse to the government. Generally, an Action on Decision is issued where guidance would be helpful to Service personnel working with the same or similar issues. Unlike a Treasury Regulation or a Revenue Ruling, an Action on Decision is not an affirmative statement of Service position. It is not intended to serve as public guidance and may not be cited as precedent.
2. An Action on Decision may be relied upon within the Service only as the conclusion, applying the law to the facts in the particular case at the time the Action on Decision was issued. Caution should be exercised in extending the recommendation of the

Action on Decision to similar cases where the facts are different. Moreover, the recommendation in the Action on Decision may be superseded by new legislation, regulations, rulings, cases, or Actions on Decisions.

3. Prior to 1991, the Service published acquiescence or nonacquiescence only in certain regular Tax Court opinions. The Service expanded its acquiescence program to include other civil tax cases where guidance is determined to be helpful. Accordingly, the Service may acquiesce or nonacquiese in the holdings of memorandum Tax Court opinions, as well as those of the United States District Courts, Claims Court, and Circuit Courts of Appeal. Regardless of the court deciding the case, the recommendation of any Action on Decision will be published in the Internal Revenue Bulletin .
4. The recommendation in every Action on Decision is summarized as acquiescence, in result only, or nonacquiescence. Both "acquiescence" and "acquiescence in result only" mean that the Service accepts the holding of the court in a case and that the Service will follow it in disposing of cases with the same controlling facts. The following differences are noted:
   A. "Acquiescence" indicates neither approval nor disapproval of the reasons assigned by the court for its conclusions.
   B. "Acquiescence in result only" indicates disagreement or concern with some or all of those reasons.
   C. Nonacquiescence signifies that, although no further review was sought, the Service does not agree with the holding of the court and generally, will not follow the decision in disposing of cases involving other taxpayers. In reference to an opinion of a circuit court of appeals, a nonacquiescence indicates that the Service will not follow the holding on a nationwide basis. However, the Service will recognize the precedential impact of the opinion on cases arising within the venue of the deciding circuit.

4.10.7.2.9.8.2 (05-14-1999)
Publication of Action On Decisions

1. Action on Decisions are published in the weekly Internal Revenue Bulletin and consolidated semiannually. The consolidation appears in the first Bulletin for July and in the Cumulative Bulletin for the first half of the year. The annual consolidation appears in the first Bulletin for the following January and in the Cumulative Bulletin for the last half of the year.

4.10.7.2.9.8.3 (05-14-1999)
Citing Actions on Decisions

1. If the Commissioner has published an acquiescence, acquiescence in result only, or nonacquiescence in a Tax Court or Board of Tax Appeals decision, it must be included in the citation, as in the following examples:
   A. Merle P. Brooks , 36 T.C. 1128 (1961), acq., 1962-2 C.B. 4.
   B. Rodney Horton , 13 T.C. 143 (1949), acq. in result, 1959-2 C.B. 5.
   C. Forest Lawn Memorial Park Ass'n. , 45 B.T.A. 1091 (1941), nonacq. 1960 -2 C.B.

4.10.7.2.10 (05-14-1999)
Private Letter Rulings and Technical Advice Memorandums

1. A Private Letter Ruling (PLR) represents the conclusion of the Service for an individual

taxpayer. The application of a private letter ruling should therefore be confined to the specific case for which it was issued, unless the issue involved was specifically covered by statute, regulations, ruling, opinion, or decision published in the Internal Revenue Bulletin .

2. Technical Advice Memorandums (TAM) are requested by IRS area offices after a return has been filed, often in conjunction with an ongoing examination. TAMs are binding on the Service in relation to the taxpayer who is the subject of the ruling.
3. A private letter ruling to a taxpayer or a technical advice memorandum to an area director, which relates to a particular case, should not be applied or relied upon as a precedent in the disposition of other cases. However, they provide insight with regard to the Service's position on the law and serve as a guide.
4. Existing private letter rulings and memorandums (including Confidential Unpublished Rulings (C.U.R.), Advisory Memorandums (A.M.), and General Counsel Memorandums (G.C.M.)) may not be used as precedents in the disposition of other cases but may be used as a guide with other research material in formulating a area office position on an issue.
5. Whenever an area office finds that a C.U.R., A.M., or G.C.M. represents the sole precedent or guide for determining the disposition of an issue and cannot to its own satisfaction find justification in the Code, regulations, or published rulings to support the indicated position, technical advice should be requested from the Headquarters Office.
6. Technical advice should be requested where taxpayers or their representatives take the position that the basis for the proposed action is not supported by statute, regulations, or published positions of the Service. If it is believed that the position of the Service should be published, the request for technical advice will contain a statement to that effect. Instructions for requesting technical advice from the Headquarters Office are contained in the second revenue procedure issued each year. Questions regarding the procedures should be addressed to the functional contacts listed in the revenue procedure.

4.10.7.2.10.1 (05-14-1999)
Publication of PLRs and TAMs

1. Letter rulings and technical advice memorandums are available from commercial publishers.

4.10.7.2.10.2 (05-14-1999)
Citing PLRs and TAMs

1. Letter rulings and technical advice memorandums are cited PLR or TAM, respectively, followed by a seven digit number. For example, PLR 8210019 or TAM 9643001. The first two digits indicate the year the ruling was published, for example, 1982 and 1996, respectively.

4.10.7.2.11 (05-14-1999)
General Counsel Memorandums

1. General Counsel Memorandums (GCM) are legal memorandums from the Office of Chief Counsel prepared in connection with the review of certain proposed rulings (Rev. Ruls., PLRs, TCMs) . They contains legal analyses of substantive issues and can be helpful in understanding the reasoning behind a particular ruling and the Service's response to similar issues in the future.

4.10.7.2.12 (05-14-1999)

Technical Memorandums

1. Technical Memorandums (TM) function as transmittal documents for Treasury Decisions or Notices of Proposed Rule Making (NPRMs) . They generally summarize or explain proposed or adopted regulations, provide background information, state the issues involved, and identify any controversial legal or policy questions. Technical Memorandums are helpful in tracing the history and rationale behind a regulation or regulation proposal.

4.10.7.2.13 (05-14-1999)
Engineering Citator

1. The Engineering Citator, Document 5262, contains annotations (short summaries of cases and rulings) and citations of precedents and published tax law developments pertinent to administering Internal Revenue Code provisions involving engineering matters.
2. Copies of the Citator and supplements are distributed to Service personnel most concerned with engineering issues.

4.10.7.2.14 (05-14-1999)
Other Research Sources

1. A wide range of tax literature is available to Service personnel. Monthly publications such as The Journal of Taxation , Taxation for Accountants , and Taxation for Lawyers , published by Warren, Gorham & Lamont, include articles pertaining to Federal tax matters.
2. Numerous books presenting detailed analyses of tax laws and issues are available and provide excellent sources of information. One of the better known is Federal Income Taxation of Corporations and Shareholders by Bittker and Eustice, published by Warren, Gorham & Lamont, which has been cited by the Supreme Court.
3. A number of tax services are available from commercial publishers that provide explanations and annotations on a variety of tax issues. Well known examples include CCH Incorporated's Standard Federal Tax Reporter , Bureau of National Affairs' Tax Management Portfolios , and Research Institute of America's American Federal Tax Reports .
4. Although these services may not be available in office libraries, they may be available through other library systems, i.e., public libraries or universities.

4.10.7.2.15 (05-14-1999)
Electronic Tax Research

1. Electronic tax research using computers, compact discs, and on-line tax services is also available. Information can be accessed quickly and all references to a given topic, obtained by searching, by specific words or word groups. Most of the documents discussed above are available from commercial vendors on compact disc or online.

4.10.7.2.15.1 (05-14-1999)
LEXIS

1. One example of research available to employees is LEXIS-NEXIS. "LEXIS" is a commercial vendor who supplies electronic access to data bases that contain extensive libraries from which legal research material can be retrieved in full text through research terminals.
2. Research terminals can retrieve, read, and make a copy of the complete text or any

portion of a document such as a Tax Court decision or Revenue Ruling. Most terminal responses are received in a matter of seconds.
3. Information is retrieved by means of a search request. A search request consists of two elements–the search terms and the search logic. Search terms are words or phrases. Search logic is the manner in which the terms are treated in relation to one another. A LEXIS desk reference explains the mechanics and logic formulation of search requests. All words, except about 100 common ones, are searchable in any document in the libraries.
4. Employees who receive LEXIS or other electronic research training receive User-ID cards with personal identification numbers enabling them to use the service. (User ID cards may also be obtained for employees who have not had formal LEXIS training.)
5. Employees should consult their local Electronic Research coordinator for additional details concerning use of LEXIS and other research services in their area.

4.10.7.2.15.2 (05-14-1999)
NEXIS

1. "NEXIS" provides access to electronic data bases that includes many of the major newspapers, magazines, news wires, and reference works. This service is normally available through LEXIS terminals. NEXIS is not generally available. Examiners should consult their area coordinator for further information.

4.10.7.2.15.3 (05-14-1999)
Compliance Automated Research Tools System (CARTS)

1. A national information system, Corporate Automated Research Tools System (CARTS), is available to Service employees. The system can be accessed from the Information Systems (IS) Support Bulletin System (BBS) . CARTS contains tools such as the Internal Revenue Manual, Market Segment Specialization Program (MSSP) Guides, Examining Officer's Guide (EOG) and technical newsletters/alerts. It utilizes Textware search software. Access to CARTS can be obtained through local management.

4.10.7.2.15.4 (05-14-1999)
Examination Specialization Bulletin Board

1. The Examinationt Specialization (ES) is an area program in which compliance is addressed on a market segment basis. ES facilitates the development of examiner expertise and includes national audit technique guides for various market segments.
2. The Headquarters Office ES staff maintains the national ES bulletin board. The bulletin board has sections containing summaries of ES projects nationwide, audit technique guide user notes, audit technique guides, and ISP information. Examiners should contact the area ES Coordinator if direct access to the bulletin board is not available.
3. The ES bulletin board also includes a forum that can be used to seek advice on an issue or share a solution. The forum is like E-Mail except messages can be viewed by all users.

4.10.7.2.15.5 (05-14-1999)
Industry Specialization Program

1. The Industry Specialization Program (ISP) is a national program with a national coordinator for each represented industry.
2. ISP includes industries such as Aerospace, Construction/Real Estate, Health, and

Petroleum and issue specialities such as Changes in Methods of Accounting, Passive Activity Losses, and Uniform Capitalization (Section 263A) . Complete listings can be obtained from the Area Industry Specialization Technical Coordinators (AISTC).

3. The ISP specialists also publish coordinated issue papers and/or quarterly digests on their industry or issue. These papers/digests can be helpful in identifying and developing issues.

4.10.7.3 (05-14-1999)
Evaluating Evidence

1. Examiners gather facts to correctly determine a taxpayer's tax liability. This determination must be made on the basis of all available facts, including facts supporting the taxpayer's position. For this reason, examiners should determine all the facts supporting both sides of an issue.
2. Examiners should pursue an examination to a point where a reasonable determination of the correct tax liability can be made. In the daily application of this responsibility, examiners must deal with problems of evidence and its evaluation. The following discussion is presented as a series of definitions and explanations to assist examiners in determining the nature and sustaining value of various types of evidence.

4.10.7.3.1 (05-14-1999)
Evidence Defined

1. Evidence is something which tends to prove a fact or point in question. Evidence is distinguished from proof, in that proof is the result or effect of evidence.

4.10.7.3.2 (05-14-1999)
Oral Testimony

1. The Internal Revenue Code requires all taxpayers to keep adequate records. There are times, due to unusual circumstances, when records do not exist. In such cases, oral testimony may be the only evidence available. Therefore, oral statements made by taxpayers to examiners represent direct evidence which must be thoroughly considered. Although self-serving, uncontradicted statements which are not improbable or unreasonable should not be disregarded. The degree of reliability placed on a taxpayer's oral statements must be based on the credibility of the taxpayer and surrounding circumstantial evidence (7.3.10 below) . The following general guidelines should also be considered:
    A. Oral evidence should not be used in lieu of available documentary evidence.
    B. If the issue involves specific recordkeeping required by law and regulations (e.g., IRC 274), then oral evidence (testimony) alone cannot be substituted for necessary written documentation.
    C. Oral testimony need not be accepted without further inquiry. If in doubt, attempts should be made to verify the facts from other sources of evidence.
2. A summary of a conversation or statement made by a taxpayer or witness should be prepared as documentation of the oral testimony and the taxpayer (or third party) should be requested to sign the document. It should always be signed by the examiner or examiners party to the interview. If the taxpayer or third party does not sign the documentation, then it is considered a report of the interview. This summary document should always contain:
    A. Date, time and place of contact,
    B. Name of the parties present, and

C. Description of what transpired.

3. Sometimes a more formal written statement is needed when documentation is not available and oral testimony will significantly affect the outcome of the case. In these cases examiners should assume that the case may eventually be resolved through litigation and should use formal written statements such as affidavits to record taxpayer or third party statements. An affidavit is an attested statement and has great validity when properly prepared and voluntarily given. Affidavits should be completed using Form 2311. Affidavits may be used:
   A. When other documentary evidence is unavailable,
   B. When the examiner wants the taxpayer's statements to become part of the case file,
   C. To help accumulate complete and accurate information.
   D. To record the testimony of a witness,and
   E. To prevent a taxpayer from changing testimony.
4. If oral testimony is accepted or where oral testimony is not allowed, the workpapers should reflect a full development of the facts, oral statements, corroborating evidence and conclusions, including an explanation of the factors supporting the conclusion. "Per oral testimony" or "as reasonable" are insufficient unless the amounts are both de minimis and reasonable.

4.10.7.3.3 (05-14-1999)
First Hand Knowledge

1. One of the basic rules of evidence is that witnesses (either taxpayers or third parties) can testify only about facts of which they have first hand knowledge. In other words, witnesses must be able to say the facts to which they testify are true.

4.10.7.3.4 (05-14-1999)
Expert Testimony

1. Some issues are so difficult that the ordinary person needs assistance from someone more familiar with the subject to understand and resolve the matter at hand. An expert opinion is made by someone with the education and experience to qualify as an expert. Thus, expert testimony is needed.
   NOTE:
   An examiner is not compelled to accept expert testimony; expert testimony can be challenged.

4.10.7.3.5 (05-14-1999)
Hearsay

1. Hearsay is what a witness says another person was heard to say. It is a secondary source of information and generally the reliability and trustworthiness of the evidence rests upon the veracity and reliability of a person giving testimony.
2. A common example of hearsay evidence is testimony of taxpayers' representatives. It should therefore be recorded in the workpapers by examiners. Hearsay often leads to primary sources of information.

4.10.7.3.6 (05-14-1999)
Admission Against Interest

1. A statement that is harmful to the person making the statement is considered an "admission against interest" . When an admission is made voluntarily and with

deliberation, it represents substantial evidence that the fact admitted is probably true.

2.

EXAMPLE:

If someone tells a friend that they shoot par golf, the friend may be skeptical. But if they said that they have trouble breaking 100, the friend might be inclined to believe them because it would be more likely.

4.10.7.3.7 (05-14-1999)
Opinions

1. An opinion is a belief not based on absolute certainty, or a judgment or evaluation of what seems to be true. Opinions are statements of personal feelings.
2. An opinion is not conclusive evidence of a fact. But opinions may be the only evidence available. Before accepting an opinion as evidence, make every effort to obtain other documentary evidence.
3. Opinions emphasize connotative meaning, that is, how someone feels about something; how they value it.
4. Opinions cannot be proven or verified. The only criterion for testing an opinion is whether it is acceptable or not, believed or not believed.
5. There are three primary types of opinions:
   A. Unqualified Opinion : An unqualified opinion is made by someone who is only guessing. The individual has neither the education or work experience to make an intelligent estimate.
   B. Biased Opinion : A biased opinion is made by someone whose relationship with the taxpayer influences the opinion. Suspect bias when a valuation or opinion is rendered by a family member or someone receiving a substantial benefit from the taxpayer.
   C. Expert Opinion : An expert opinion is made by someone with the education and experience to qualify as an expert, but biases, for example, family or employment relationships, should be considered. Any doubt about the validity of an expert's opinion should be resolved by seeking a second expert's opinion.

4.10.7.3.8 (05-14-1999)
Observations

1. Observations are statements, judgements, or inferences of fact based on something observed. It is the act of recognizing and noting a fact or occurrence.

4.10.7.3.9 (05-14-1999)
Documentary Evidence

1. Documents are another form of evidence. Documentary evidence is generally regarded as having great probative (providing proof or evidence) value. Writings made contemporaneously with the happening of an event generally reflect the actual facts and show what was in the minds of the parties to the event.
2. While documentary evidence has great value, it should not be relied on to the exclusion of other facts. Facts can also be established by oral testimony and there will be occasions when courts will give greater weight to oral testimony than to conflicting documentary evidence.

4.10.7.3.10 (05-14-1999)
Circumstantial Evidence

1. Circumstantial evidence is evidence from which more than one logical conclusion can be reached. To be useful, both the credibility of the evidence and the reasonableness of the conclusion should be evaluated.

4.10.7.3.11 (05-14-1999)
Best Evidence

1. The best evidence rule requires that, when possible, original evidence be used. Therefore, examiners should always ask to the see original documents when there is reason to believe such documents are available.

4.10.7.3.12 (05-14-1999)
Secondary Evidence

1. Secondary evidence is used when original evidence is unavailable. Examples of acceptable secondary evidence are copies of original documents made by an examiner. In the absence of original documents, copies made by the examiner become the best evidence available.

4.10.7.3.13 (05-14-1999)
Inferences

1. The fact in dispute can, in some cases, be proved by showing other facts from which the fact can be inferred. In other words, as a matter of logic, an inference can be made from facts to decide a disputed fact.
2. An inference is a logical conclusion based on facts. Things beyond the range of what can be observed are inferences.

4.10.7.4 (05-14-1999)
Arriving At Conclusions

1. After all the facts have been gathered through taxpayer interviews; examination of the books, records and supporting documents; interviews with third parties; and, having researched questionable items, the examiner has all the information to be considered in resolving the issues. At this point the examiner will use his/her professional judgement in considering all the information to arrive at a conclusion.
2. Examiners are expected to arrive at a definite conclusion by a balanced and impartial evaluation of all of the evidence. Examiners are given the authority to recommend the proper disposition of all identified issues, as well as any issues raised by the taxpayer.
3. Examiners will employ independent and objective judgment in reaching conclusions on issues being examined and in all aspects of their duties and will decide all matters on their merits, free from bias and conflicts of interest. Fairness will be demonstrated by:
   A. Making decisions impartially and objectively based on consistent application of procedural and the applicable tax law,
   B. Treating individuals equitably,
   C. Being open-minded and willing to seek out and consider all relevant information, including opposing perspectives,
   D. Voluntarily correcting mistakes and improprieties made by themselves or someone else in the Service and refusing to take unfair advantage of mistakes or ignorance of citizens, and
   E. Employing open, equitable, and impartial processes for gathering and evaluating information necessary to decisions.
4. Examiners will use their professional judgment in evaluating all evidence to reach a

conclusion. Examiners seldom have all of the information they would like to have to definitively resolve an issue. Examiners, therefore, must decide when they have enough, or substantially enough, information to make a proper determination for all issues under consideration. The sooner this point is reached, the more timely the case can be completed and the less burden will be placed on the taxpayer.

5. IRC 274(d) specifies recordkeeping rules that are required in certain situations. Treasury Regulations 1.274-5(c)(2)(v) states that it is permissible to allow a deduction without complete documentation if the taxpayer can show he or she has "substantially complied" with the adequate recordkeeping requirements. The examiner will use his/her skill and judgement in developing the surrounding evidence when less than the required documentation is available, so that the taxpayer is treated fairly, but does not profit from failure to keep records.
6. To determine if the taxpayer has "substantially complied," the following factors should be considered:
   A. Number and type of expenditures involved,
   B. Elements of documentation missing,
   C. Reason(s) the why deduction was not properly substantiated,
   D. Availability of other information to substantiate the expenditure
   E. Materiality of unsubstantiated items, and
   F. Relative tax significance of the items.

§ 6322. Period of lien

How Current is This?

Unless another date is specifically fixed by law, the lien imposed by section 6321 shall arise at the time the assessment is made and shall continue until the liability for the amount so assessed (or a judgment against the taxpayer arising out of such liability) is satisfied or becomes unenforceable by reason of lapse of time.

Sec. 6322. - Period of lien

Unless another date is specifically fixed by law, the lien imposed by section 6321 shall arise at the time the assessment is made and shall continue until the liability for the amount so assessed (or a judgment against the taxpayer arising out of such liability) is satisfied or becomes unenforceable by reason of lapse of time

United States District Court, N.D. Illinois, Eastern Division.
Lawrence **BEALL**, Plaintiff,
v.
The **UNITED STATES** of America, and John Does, Defendants.
No. 89 C 6500.
Aug. 2, 1990.

MEMORANDUM OPINION AND ORDER

LINDBERG, District Judge.

*1 Defendant, the United States of America, has filed a document entitled "United States' Objection to Magistrate's Proposed Findings and Recommendations in Order of May 25, 1990 Granting Plaintiff's Motion to Compel Further Discovery." Defendant objects to the magistrate's order of May 25, 1990:

[G]ranting, in part, plaintiff's motion to compel further discovery, to the extent that the order requires the United States to further substantiate an assessment against the plaintiff for the tax years 1980 and 1981, in so far as the United States has already produced presumptive proof of a valid assessment.

Without leave of court, defendant has filed a memorandum in support of this objection. Although this court would be warranted in striking that memorandum, the procedurally erroneous filing will be overlooked and the court will at this time allow the filing of the memorandum.

The court will not overlook footnote 2 in the memorandum, which states:

The United States is compelled to bring this discovery problem to the Court's attention because attempted burdensome discovery against the government appears to be the latest tax protester tactic and it is therefore important that we ask the Internal Revenue Service to undertake such discovery only where it is actually appropriate.

There is no evidence offered for any of the factual matter asserted in this footnote, by way of affidavit or otherwise. It appears to find a place in the memorandum solely for the purpose of prejudicing the court against plaintiff. The court therefore, *sua sponte,* strikes footnote 2 from defendant's memorandum. The court notes that, as will be evident later in this opinion, a complaint that the United States is being harassed by burdensome discovery is peculiarly inappropriate in the context of the objection now before the court.

This court's review of the objection is limited to determining whether the magistrate's order has been shown to be "clearly erroneous or contrary to law." 28 USC § 636(b)(1)(A); FRCP 72(a). The order defendant objects to provides:

Mr. Beall's motion is granted in part as set forth in the remainder of this order. By June 21, 1990 the government shall answer interrogatories 2; 10 insofar as it calls for identification of documents required for recording an assessment against a taxpayer; 11 if the documents identified differ in any respect from those identified in 10; 13; 15; and 16. The government shall also identify any allegedly privileged documents and justify its claim of privilege in response to interrogatory 9 and request for production 3. The government shall produce any additional documents in its possession that are responsive to request for production 4 (certain documents are identified but I cannot determine from the answer whether all responsive documents are being produced); and documents responsive to request for production 6, 7, 8, and 9. I agree with the government that information and documents that deal with any period prior to the tax court judgment are irrelevant to this action. So far as I can determine, however, from both the statute and government counsel's statements in court, the government must still provide the taxpayer notice and otherwise make a valid assessment pursuant to 26 U.S.C. § 6203, and of course, follow proper notice requirements and any other requirements in executing on the assessment. Accordingly, some of the government's answers to interrogatories and requests for production of documents, in which plaintiff seeks information regarding the Section 6203 assessment, notice of that assessment and related information, to

which the government responded by citing to its answer to interrogatory 3, fail to either provide relevant information or to give an adequate justification for making an objection. It does appear that many of the interrogatories and requests for production overlap. To the extent that is true, the government need provide the information only once.

*2 Defendant argues that this order should "be clarified to limit or amended to hold that production of the Form 4340 (Certificate of Assessments and Payments) is fully responsive to the plaintiff's request to produce all documents utilized to create the assessments against the plaintiffs." The order could by no means be "clarified" to do this, because the language of the order simply will not permit such a construction. It also will not be amended to do this, because defendant has failed to show that the order is clearly erroneous or contrary to law.

Defendant's claim is that, because the Form 4340 by itself is enough to establish a prima facie case that an assessment has been properly made and because the Form 4340 is a self-authenticating document, see FRE 902(4), defendant should not be required to produce all of the documents utilized to create the Form 4340. Defendant's arguments are wholly frivolous and meritless.

The motion before the magistrate, which led to the order to which defendant objects, concerned discovery. Federal Rule of Civil Procedure 26 provides:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.... It is not ground for objection that the information will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

FRCP 26(b)(1). Defendant's arguments that plaintiff is entitled to only the Form 4340 is based upon rules concerning the admissibility of the Form 4340 and the sufficiency of the Form 4340 to establish prima facie its own contents.

The meritlessness of defendant's arguing based on the self-authenticating document rule that plaintiff is not entitled to discover the basis for the entries on the Form 4340 will first be established. In the preamble to FRE 902, which defendant says "specifies that certain types of documents are self- authenticating" but does not include in its quotation, it is stated:

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following....

FRE 902. This is all that the self-authenticating document rule means-- that for the documents to which it applies, it is unnecessary to present extrinsic evidence of authenticity in order to have them admitted into evidence. There is not the slightest hint that a self-authenticating document may not be shown by other evidence to be inaccurate, or even "unauthentic." Whether or not the pro se plaintiff inartfully stated the reason he is entitled to the discovery, FRE 902 provides no basis for giving Form 4340 such conclusive effect that it may not be impeached by other evidence. And if it may be impeached by other evidence, such other evidence or evidence likely to lead to such other evidence, including the documents on which the entries in the Form 4340 are ultimately based, is discoverable.

*3 Defendant has cited several cases, none of which stands for the proposition that the documents on which a Form 4340 is based are not admissible, let alone that they do not meet the broad standard of relevance applicable in discovery. See *United States v. Chila, 871 F.2d 1015 (11th Cir.1989)*; *United States v. Zolla, 724 F.2d 808 (9th Cir.1984)*; *United States v. Lorson Electric Company, Inc., 480 F.2d 554 (2d Cir.1973)*; *Psaty v. United States, 442 F.2d 1154 (3d Cir.1971)*; *United States v. Miller, 318 F.2d 637 (7th Cir.1963)*; *United States v. Sato,* 90-1 USTC ¶ 50,278 (N.D.Ill.1990); *United States v. Hart,* 63 AFTR2D 89-632, 89-1 USTC ¶ 9255 (C.D.Ill.1989); *United States v. Dixon, 672 F.Supp. 503 (M.D.Ala.1987)*; *Baily v. United States, 355 F.Supp. 325 (E.D.Pa.1973)*; *In re O'Leary,* 72-1 USTC ¶ 9287 (W.D.Wis.1972). Three of the cases cited by defendant are at the very least strongly suggestive that the basis for the entries on a Form 4340 is admissible. *United States v. Chila, 871 F.2d 1015, 1018 (11th Cir.1989)*, quoting *United States v. Dixon, 672 F.Supp. 503, 506 (M.D.Ala.1987)* ("[T]his Court accepts the document 'Certificate of Assessments and Payments' submitted by the government as presumptive proof of a valid assessment. Given that the defendant has produced *no* evidence to counter this presumption, the Court is satisfied that the government has established that the claimed tax liability was

properly assessed against the defendant."); *United States v. Zolla, 724 F.2d 808, 810 (9th Cir.1984)* ("[T]hese official certificates are highly probative, and are sufficient, in the absence of contrary evidence, to establish that the notices and assessments were properly made.") Two of the cases cited by defendant are more than strongly suggestive; they can only be construed as standing for the proposition that evidence of the basis for the entries on a Form 4340 is admissible.

In *Psaty,* the court said:

The machinery prescribed by Congress to determine the amount due the Government is the *assessment* of the administrative agency charged with its collection. Once the tax is assessed a rebuttable presumption arises.... We hold ... that when the Government offers in evidence the certification of the Commissioner's assessment ..., the presumption of correctness operates to place upon the taxpayer both the burden of going forward and the burden of persuasion.... Thus, the trial judge correctly held that the presumption placed upon this appellant the burden of going forward with the evidence and also the obligation to " * * * establish by the greater weight or by the preponderance of the evidence that the Commissioner's determination was erroneous * * * "

Psaty v. United States, 442 F.2d 1154, 1160 (3d Cir.1971) (citations omitted). In *Hart,* the court said:

The United States, in its motion for summary judgment and the supporting documents, asserts that it has established a prima facie case of liability against John Hart and that Defendant John Hart cannot meet the burden placed on him by law to show that the tax assessments at issue are incorrect and the correct amount of tax liability....

***4** The Government establishes its prima facie case of liability by introducing into evidence certified copies of the federal tax assessment.... The certificate of assessments and payments establishes the Government's prima facie case and places the burden of proof on the taxpayer. The certificated is self-authenticating under Fed.R.Evid. 902(4).

Once the Government has established its prima facie case of liability, the burden of proof is placed on the taxpayer to show that the assessment is incorrect and to show the correct amount of tax due....

The majority of courts to have considered the question have ruled that a taxpayer's uncorroborated testimony alone is insufficient to meet the taxpayer's burden of proof.... Defendant John Hart has introduced no evidence to suggest that the certificates of assessment are invalid. Furthermore, it appears that Defendant John Hart could not introduce any such evidence. In his response to Plaintiff's request for production of documents, Defendant asserts that any records he may have had that pertain to his financial status "have long been disposed of via the Litchfield landfill."

The Court finds as a matter of law that Defendant John Hart has failed to meet his burden of proof to show that the assessments involved herein are incorrect and has failed to show the correct amount of the taxes involved. Thus, summary judgment in favor of Plaintiff, the United States of America, will be allowed as to this issue.

United States v. Hart, 63 AFTR2D 89-632, 89-1 USTC ¶ 9255, 1989 WL 69882, *2, 1989 US Dist. LEXIS 13675, *4-6 (C.D.Ill.1989). It is interesting that defendant apparently believed, when it was the plaintiff in *Hart,* that evidence of the information underlying a Certificate of Assessments and Payments is discoverable when the assessment's correctness is challenged, since it sought discovery of such information from Hart.

More important, however, is that the cases cited by defendant, especially *Psaty* and *Hart,* stand for the propositions that (1) the certificate of assessment is only rebuttably presumed correct and (2) when challenging an assessment, the taxpayer has the burden of proving that the assessment is incorrect. Evidence about the information underlying the entries on the certificate of assessment is obviously relevant to the issue of whether the assessment is incorrect and is therefore plainly discoverable.

Defendant's position, that it need only produce the Form 4340 because that is sufficient to prove its prima facie case, is absurd and wholly without support in the authority defendant has cited. Indeed, the objection defendant has made to the magistrate's order coupled with defendant's earlier practice in this case of not appearing at hearings and having plaintiff deliver messages to the court indicate that if anyone is being harassed in this litigation it is plaintiff rather than defendant. The court suggests that defendant be more cautious and restrained about keeping its advocacy within permissible bounds. See FRCP 11.

*5 ORDERED: Defendant's objection to the magistrate's order of May 25, 1990, is overruled.
N.D.Ill.,1990.
Beall v. U.S.
END OF DOCUMENT

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. TIMOTHY LEE NIPPER, separately and as trustee for the Proprietor Property Trust; THOMAS EUGENE NIPPER, as trustee for the Proprietor Property Trust and as nominee of Timothy Lee Nipper, Defendants-Appellants, and MELLON MORTGAGE COMPANY, as mortgagee, Defendant.	No. 00-5057 (D.C. No. 98-CV-526-K) (N.D. Okla.)

ORDER AND JUDGMENT(*)

Before **BRORBY**, **KELLY**, and **LUCERO**, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Appellants challenge the district court's rulings in favor of the government, plaintiff below. The government brought suit in district court on income tax assessments against Timothy Nipper for tax years 1981 through 1986, seeking to set aside certain real property conveyances and foreclose on the property pursuant to pending tax liens. Timothy and Thomas Nipper each answered the suit individually, but no answer was filed on behalf of the Proprietor Property Trust. The district court granted default judgment against the trust, declaring its interest in the property foreclosed. The government also moved for summary judgment against the Nippers, but the Nippers failed to respond. After the district court granted summary judgment to the government, the Nippers filed a motion pursuant to Fed. R. Civ. P. 59 to vacate that ruling, arguing that the government had not provided sufficient evidentiary support for its tax assessments against Timothy Nipper under an unreported income exception. The district court denied the Rule 59 motion largely on the basis that the Nippers had failed to respond to the government's summary judgment motion, and without acknowledging the exception. This appeal followed.

We have jurisdiction over this appeal by virtue of 28 U.S.C. § 1291. The standards of review applicable here depend on the basis of the district court's ruling. Although the government argues that the district court deemed the matter confessed because the Nippers failed to respond to the government's motion for summary judgment, we disagree. While noting its apparent authority under its own local rules to enter the relief requested where a party fails to respond to a motion, the district court stated that it had "nevertheless conducted an independent inquiry," concluding that the government's motion for summary judgment "must be granted." Rec. Vol. I, doc. 33, at 2. We conclude this ruling was a grant of summary judgment on the merits, a decision which is reviewed de novo, applying the same standards as would the district court pursuant to Fed. R. Civ. P. 56(c). *See Bullington v. United Air Lines, Inc.*, 186 F.3d 1301, 1313 (10th Cir. 1999). The district court's denial of the Nippers' Rule 59 motion, however, is reviewed for an abuse of discretion. *See Adams v. Reliance Standard Life Ins. Co.*, 225 F.3d 1179, 1186 n.5 (10th Cir. 2000).

On appeal, the Nippers contend that, contrary to a recognized exception to the usual presumption of correctness afforded tax assessments, the government prevailed despite its failure to present the required minimal evidentiary foundation for the assessments.[(1)]

This evidentiary foundation "may consist of evidence linking the taxpayer with an income-producing activity such that it can be inferred that the taxpayer received income from the activity, or it may consist of evidence showing an ownership interest in assets possessed by the taxpayer." *Sundel v. Comm'r*, 75 T.C.M. (CCH) 1853, 1856 (1998) (citations omitted). Our review of the

evidence supporting the government's tax assessments convinces us that the Nippers are correct; the government has not met this minimal burden to satisfy the unreported income exception.

The totality of the evidence supporting the assessments against Timothy Nipper are statements which appear in two schedules attached to the Notice of Deficiency underlying the assessments. The first is: "Based on information gathered concerning Uptown Trash Service during 1985 and 1986, it has been determined that your 1985 self-employment income was $42,000. Using 1985 as the base year, income was calculated for all other years . . . ." Suppl. Rec. Vol. I, Ex. 9, Schedule B.(2) The second statement is: "Based on information gathered concerning Uptown Trash Service during 1985 and 1986, it has been determined that you had business expenses related to self-employment income. These expenses for 1985 were calculated to be $12,000. Using 1985 as a base year, expenses were calculated for all other years . . . ." *Id.*, Schedule C. No evidence supporting these statements was attached to the Notice of Deficiency or presented to the district court, either in connection with the government's motion for summary judgment or in response to the Nippers' Rule 59 motion.

On appeal, the government first contends that the assessments should be given the usual presumption of correctness based on the government's production of the Certificates of Assessment. This argument ignores the unreported income exception which has been recognized in this court, *see McMullin*, 948 F.2d at 1192. Without openly disavowing the exception, the government also argues that the Nippers "could not avoid the entry of judgment against them by merely resting on general denials of tax liability or the claim that the Commissioner's assessments were arbitrary." Appellee's Br. at 18. Again, this argument ignores the threshold burden placed on the government by this exception. Without the required minimal evidentiary foundation, the government's assessments "may not be supported even where the taxpayer is silent." *Erickson v. Comm'r*, 937 F.2d 1548, 1551 (10th Cir. 1991). We fail to see how the Nippers' failure to respond to the government's motion for summary judgment can excuse the government's initial burden in district court to come forward with evidence in support of its claim that Timothy Nipper received unreported income before a presumption of correctness is afforded its assessments.

The government seeks to distinguish the cases on which the Nippers rely so as to narrow or even eliminate the unreported income exception. It cites other authority in support of its contention that, once it has identified a "likely source for the income," the government's burden to come forward with a minimum evidentiary foundation has been established. *See* Appellee's Br. at 20 n.10. Those cases on which the government relies, however, are distinguishable, and do not establish either the inapplicability of the unreported income exception to this case or the government's satisfaction of the exception's standards. These cases involve more specific evidence in support of the tax assessments, a taxpayer's failure to raise the unreported income exception until appeal, and a failure to deny, even in general terms, the receipt of unreported income. The government here acknowledges Timothy Nipper's general denial of any involvement with Uptown Trash Service or receipt of income from it. *See id.* at 8.(3)

Unlike the information upon which other courts have concluded that the government satisfied the

required evidentiary foundation in unreported income cases, the information before the district court in this case fails to meet even that minimal standard. The statements in the Notice of Deficiency do not link Timothy Nipper with an income-producing activity or ownership of an asset which produced income.(4) They do not reveal or describe any supporting substantive evidence, nor is such evidence attached. They fail to demonstrate any rational basis for the imputation of unreported income to years before and after the alleged 1985 income and expense figures. *Cf. Senter v. Comm'r*, 70 T.C.M. (CCH) 54, 58 (1995) (holding failure to present predicate evidence supporting receipt of alleged unreported income required ruling that government's deficiency determination was arbitrary). Without specific evidence connecting Timothy Nipper to income or assets associated with Uptown Trash Service, the government is, in essence, forcing the taxpayer to prove a negative. *See Weimerskirch v. Comm'r*, 596 F.2d 358, 361 (9th Cir. 1979).

Although the district court did not have the benefit of briefing on the unreported income exception in its initial determination of the government's summary judgment motion, it is clear that the government was not entitled to "judgment as a matter of law" in light of the exception and the failure of the government to present the required minimal evidentiary foundation. Fed. R. Civ. P. 56(c); *Carmona v. Toledo*, 215 F.3d 124, 134 n.9 (1st Cir. 2000). The grant of summary judgment to the government was legal error requiring reversal. For those same reasons, we hold that the district court's subsequent denial of the Nippers' Rule 59 motion was an abuse of discretion, *see Phelps v. Hamilton*, 122 F.3d 1309, 1323 (10th Cir. 1997) (stating manifest legal error is a proper basis for Rule 59 relief), and we reject the government's implicit argument that the Nippers have waived their arguments about the unreported income exception because they failed to respond to the government's motion for summary judgment.

Accordingly, we remand this case to the district court for further proceedings, wherein the burden will be on the government to prove its tax assessments. *See Erickson*, 927 F.2d at 1550 ("Where it lacks a rational basis the presumption evaporates."); *cf. McHan v. Comm'r*, 71 T.C. M. (CCH) 1724, 1726 (1996) (noting, in similar case before the Tax Court that, on remand, the burden is on the government to come forward with evidence to support its tax deficiencies). We reject the Nippers' argument that, because the government has not satisfied the minimal evidentiary burden of the unreported income exception, they should be granted summary judgment. The Nippers have not demonstrated that they are entitled to judgment as a matter of law; they have established only that the presumption of correctness does not attach to the government's tax assessments.

In light of our remand of this case for further proceedings on the validity of the tax assessments, we decline to address the parties' arguments about the ownership of the property in question or the government's claim to foreclose on its liens. We do note, however, that the district court's grant of a default judgment against the Proprietor Trust and subsequent foreclosure against the trust were not appealed to this court.

The judgment of the United States District Court for the Northern District of Oklahoma is REVERSED and REMANDED for further proceedings consistent with this opinion.

Entered for the Court

Paul J. Kelly, Jr.

Circuit Judge

FOOTNOTES

Click footnote number to return to corresponding location in the text.

*. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

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1. This court has summarized the exception as follows:

In a suit brought by the government to collect taxes resulting from unreported income, the government generally establishes a prima facie case when it shows a timely assessment of the tax due, supported by a minimal evidentiary foundation, at which point a presumption of correctness arises. A presumption of correctness attaches to the Commissioner's assessment, once some substantive evidence is introduced demonstrating that the taxpayer received unreported income.

United States v. McMullin, 948 F.2d 1188, 1192 (10th Cir. 1991) (citation omitted).

2. This court has supplemented the original record on appeal with the government's motion for summary judgment and attached exhibits.

3. We do not address the government's arguments in support of its use of Consumer Price Index (CPI) statistics as a calculation tool. The Nippers did not challenge use of the CPI, only the basis for the alleged 1985 unreported income.

4. The government's averment in response to the Nippers' Rule 59 motion that the assessments were based on Timothy Nippers "ownership of Uptown Trash Service," Rec. Vol. I, doc. 38 at 6, and its later contention on appeal that Timothy received income from Uptown Trash Service, *see* Appellee's Br. at 14, are not supported by the statements in the Notice of Deficiency.

§ 6012. Persons required to make returns of income

(a) General rule

Returns with respect to income taxes under subtitle A shall be made by the following:

(1)

(A) Every individual having for the taxable year gross income which equals or exceeds the exemption amount, except that a return shall not be required of an individual—

(i) who is not married (determined by applying section 7703), is not a surviving spouse (as defined in section 2 (a)), is not a head of a household (as defined in section 2 (b)), and for the taxable year has gross income of less than the sum of the exemption amount plus the basic standard deduction applicable to such an individual,

(ii) who is a head of a household (as so defined) and for the taxable year has gross income of less than the sum of the exemption amount plus the basic standard deduction applicable to such an individual,

(iii) who is a surviving spouse (as so defined) and for the taxable year has gross income of less than the sum of the exemption amount plus the basic standard deduction applicable to such an individual, or

(iv) who is entitled to make a joint return and whose gross income, when combined with the gross income of his spouse, is, for the taxable year, less than the sum of twice the exemption amount plus the basic standard deduction applicable to a joint

return, but only if such individual and his spouse, at the close of the taxable year, had the same household as their home.

Clause (iv) shall not apply if for the taxable year such spouse makes a separate return or any other taxpayer is entitled to an exemption for such spouse under section 151 (c).

(B) The amount specified in clause (i), (ii), or (iii) of subparagraph (A) shall be increased by the amount of 1 additional standard deduction (within the meaning of section 63 (c)(3)) in the case of an individual entitled to such deduction by reason of section 63 (f)(1)(A) (relating to individuals age 65 or more), and the amount specified in clause (iv) of subparagraph (A) shall be increased by the amount of the additional standard deduction for each additional standard deduction to which the individual or his spouse is entitled by reason of section 63 (f)(1).

(C) The exception under subparagraph (A) shall not apply to any individual—

(i) who is described in section 63 (c)(5) and who has—

(I) income (other than earned income) in excess of the sum of the amount in effect under section 63 (c)(5)(A) plus the additional standard deduction (if any) to which the individual is entitled, or

(II) total gross income in excess of the standard deduction, or

(ii) for whom the standard deduction is zero under section 63 (c)(6).

(D) For purposes of this subsection—

(i) The terms "standard deduction", "basic standard deduction" and "additional standard deduction" have the respective meanings given such terms by section 63 (c).

(ii) The term "exemption amount" has the meaning given such term by section 151 (d). In the case of an individual described in section 151 (d)(2), the exemption amount shall be zero.

(2) Every corporation subject to taxation under subtitle A;

(3) Every estate the gross income of which for the taxable year is $600 or more;

(4) Every trust having for the taxable year any taxable income, or having gross income of $600 or over, regardless of the amount of taxable income;

(5) Every estate or trust of which any beneficiary is a nonresident alien;

(6) Every political organization (within the meaning of section 527 (e)(1)), and every fund treated under section 527 (g) as if it constituted a political organization, which has political organization taxable income (within the meaning of section 527 (c)(1)) for the taxable year; and [1]

(7) Every homeowners association (within the meaning of section 528 (c)(1)) which has homeowners association taxable income (within the meaning of section 528 (d)) for the taxable year.[1]

(8) Every individual who receives payments during the calendar year in which the taxable year begins under section 3507 (relating to advance

payment of earned income credit).[1]

(9) Every estate of an individual under chapter 7 or 11 of title 11 of the United States Code (relating to bankruptcy) the gross income of which for the taxable year is not less than the sum of the exemption amount plus the basic standard deduction under section 63 (c)(2)(D).[1], [2]

except that subject to such conditions, limitations, and exceptions and under such regulations as may be prescribed by the Secretary, nonresident alien individuals subject to the tax imposed by section 871 and foreign corporations subject to the tax imposed by section 881 may be exempted from the requirement of making returns under this section.

(b) Returns made by fiduciaries and receivers

(1) Returns of decedents

If an individual is deceased, the return of such individual required under subsection (a) shall be made by his executor, administrator, or other person charged with the property of such decedent.

(2) Persons under a disability

If an individual is unable to make a return required under subsection (a), the return of such individual shall be made by a duly authorized agent, his committee, guardian, fiduciary or other person charged with the care of the person or property of such individual. The preceding sentence shall not apply in the case of a receiver appointed by authority of law in possession of only a part of the property of an individual.

(3) Receivers, trustees and assignees for corporations

In a case where a receiver, trustee in a case under title 11 of the United States Code, or assignee, by order of a court of competent jurisdiction, by operation of law or otherwise, has possession of or holds title to all or substantially all the property or business of a corporation, whether or not such property or business is being operated, such receiver, trustee, or assignee shall make the return of income for such corporation in the same manner and form as corporations are required to make such returns.

(4) Returns of estates and trusts

Returns of an estate, a trust, or an estate of an individual under chapter 7 or 11 of title 11 of the United States Code shall be made by the fiduciary thereof.

(5) Joint fiduciaries

Under such regulations as the Secretary may prescribe, a return made by one of two or more joint fiduciaries shall be sufficient compliance with the requirements of this section. A return made pursuant to this paragraph shall contain a statement that the fiduciary has sufficient knowledge of the affairs of the person for whom the return is made to enable him to make the return, and that the return is, to the best of his knowledge and belief, true and correct.

(6) IRA share of partnership income

In the case of a trust which is exempt from taxation under section 408 (e), for purposes of this section, the trust's distributive share of items of gross income and gain of any partnership to which subchapter C or D of chapter 63 applies shall be treated as equal to the trust's distributive share of the taxable income of such partnership.

(c) Certain income earned abroad or from sale of residence

For purposes of this section, gross income shall be computed without regard to the exclusion provided for in section 121 (relating to gain from sale of principal residence) and without regard to the exclusion provided for in section 911 (relating to citizens or residents of the United States living abroad).

(d) Tax-exempt interest required to be shown on return

Every person required to file a return under this section for the taxable year shall include on such return the amount of interest received or accrued during the taxable year which is exempt from the tax imposed by chapter 1.

(e) Consolidated returns

For provisions relating to consolidated returns by affiliated corporations, see chapter 6.

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[1] So in original.

[2] See References in Text note below.

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Sec. 6012. - Persons required to make returns of income

(a) General rule

Returns with respect to income taxes under subtitle A shall be made by the following:

(1)

(A)

Every individual having for the taxable year gross income which equals or exceeds the exemption amount, except that a return shall not be required of an individual -

(i)

who is not married (determined by applying section 7703), is not a surviving spouse (as defined in section 2(a)), is not a head of a household (as defined in section 2(b)), and for the taxable year has gross income of less than the sum of the exemption amount plus the basic standard deduction applicable to such an individual,

(ii)

who is a head of a household (as so defined) and for the taxable year has gross income of less than the sum of the exemption amount plus the basic standard deduction applicable to such an individual,

(iii)

who is a surviving spouse (as so defined) and for the taxable year has gross income of less than the sum of the exemption amount plus the basic standard deduction applicable to such an

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individual, or

(iv)

who is entitled to make a joint return and whose gross income, when combined with the gross income of his spouse, is, for the taxable year, less than the sum of twice the exemption amount plus the basic standard deduction applicable to a joint return, but only if such individual and his spouse, at the close of the taxable year, had the same household as their home.

Clause (iv) shall not apply if for the taxable year such spouse makes a separate return or any other taxpayer is entitled to an exemption for such spouse under section 151(c).

(B)

The amount specified in clause (i), (ii), or (iii) of subparagraph (A) shall be increased by the amount of 1 additional standard deduction (within the meaning of section 63(c)(3)) in the case of an individual entitled to such deduction by reason of section 63(f)(1)(A) (relating to individuals age 65 or more), and the amount specified in clause (iv) of subparagraph (A) shall be increased by the amount of the additional standard deduction for each additional standard deduction to which the individual or his spouse is entitled by reason of section 63(f)(1).

(C)

The exception under subparagraph (A) shall not apply to any individual -

(i)

who is described in section 63(c)(5) and who has -

(I)

income (other than earned income) in excess of the sum of the amount in effect under section 63(c)(5)(A) plus the additional standard deduction (if any) to which the individual is entitled, or

(II)

total gross income in excess of the standard deduction, or

(ii)

for whom the standard deduction is zero under section 63(c)(6).

(D)

For purposes of this subsection -

(i)

The terms ''standard deduction'', ''basic standard deduction'' and ''additional standard deduction'' have the respective meanings given such terms by section 63(c).

(ii)

The term ''exemption amount'' has the meaning given such term by section 151(d). In the case of an individual described in section 151(d)(2), the exemption amount shall be zero.

(2)

Every corporation subject to taxation under subtitle A;

(3)

Every estate the gross income of which for the taxable year is $600 or more;

(4)

Every trust having for the taxable year any taxable income, or having gross income of $600 or over, regardless of the amount of taxable income;

(5)

Every estate or trust of which any beneficiary is a nonresident alien;

(6)

Every political organization (within the meaning of section 527(e)(1)), and every fund treated under section 527(g) as if it constituted a political organization, which has political organization taxable income (within the meaning of section 527(c)(1)) for the taxable year or which has gross receipts of $25,000 or more for the taxable year (other than an organization to which section 527 applies solely by reason of subsection (f)(1) of such section); and [1] (FOOTNOTE 1) So in original.

(7)

Every homeowners association (within the meaning of section 528(c)(1)) which has homeowners association taxable income (within the meaning of section 528(d)) for the taxable year.

(8)

Every individual who receives payments during the calendar year in which the taxable year begins under section 3507 (relating to advance payment of earned income credit). (FOOTNOTE 1)

(9)

Every estate of an individual under chapter 7 or 11 of title 11 of the United States Code (relating to bankruptcy) the gross income of which for the taxable year is not less than the sum of the exemption amount plus the basic standard deduction under section 63(c)(2)(D). [1] except that subject to such conditions, limitations, and exceptions and under such regulations as may be prescribed by the Secretary, nonresident alien individuals subject to the tax imposed by section 871 and foreign corporations subject to the tax imposed by section 881 may be exempted from the requirement of making returns under this section.

(b) Returns made by fiduciaries and receivers

(1) Returns of decedents

If an individual is deceased, the return of such individual required under subsection (a) shall be made by his executor, administrator, or other person charged with the property of such decedent.

(2) Persons under a disability

If an individual is unable to make a return required under subsection (a), the return of such individual shall be made by a duly authorized agent, his committee, guardian, fiduciary or other person charged with the care of the person or property of such individual. The preceding sentence shall not apply in the case of a receiver appointed by authority of law in possession of only a part of the property of an individual.

(3) Receivers, trustees and assignees for corporations

In a case where a receiver, trustee in a case under title 11 of the United States Code, or assignee, by order of a court of competent jurisdiction, by operation of law

or otherwise, has possession of or holds title to all or substantially all the property or business of a corporation, whether or not such property or business is being operated, such receiver, trustee, or assignee shall make the return of income for such corporation in the same manner and form as corporations are required to make such returns.

(4) Returns of estates and trusts

Returns of an estate, a trust, or an estate of an individual under chapter 7 or 11 of title 11 of the United States Code shall be made by the fiduciary thereof.

(5) Joint fiduciaries

Under such regulations as the Secretary may prescribe, a return made by one of two or more joint fiduciaries shall be sufficient compliance with the requirements of this section. A return made pursuant to this paragraph shall contain a statement that the fiduciary has sufficient knowledge of the affairs of the person for whom the return is made to enable him to make the return, and that the return is, to the best of his knowledge and belief, true and correct.

(6) IRA share of partnership income

In the case of a trust which is exempt from taxation under section 408(e), for purposes of this section, the trust's distributive share of items of gross income and gain of any partnership to which subchapter C or D of chapter 63 applies shall be treated as equal to the trust's distributive share of the taxable income of such partnership.

(c) Certain income earned abroad or from sale of residence

For purposes of this section, gross income shall be computed without regard to the exclusion provided for in section 121 (relating to gain from sale of principal residence) and without regard to the exclusion provided for in section 911 (relating to citizens or residents of the United States living abroad).

(d) Tax-exempt interest required to be shown on return

Every person required to file a return under this section for the taxable year shall include on such return the amount of interest received or accrued during the taxable year which is exempt from the tax imposed by chapter 1.

(e)

Consolidated returns

For provisions relating to consolidated returns by affiliated corporations, see chapter 6

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[1]

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26 U.S.C.A. § 6020 I.R.C. § 6020

UNITED STATES CODE ANNOTATED

TITLE 26. INTERNAL REVENUE CODE

SUBTITLE F--PROCEDURE AND ADMINISTRATION

CHAPTER 61--INFORMATION AND RETURNS

SUBCHAPTER A--RETURNS AND RECORDS

PART II--TAX RETURNS OR STATEMENTS

SUBPART D--MISCELLANEOUS PROVISIONS

Current through P.L. 107-11, approved 5-28-01

§ 6020. Returns prepared for or executed by Secretary

(a) Preparation of return by Secretary.--If any person shall fail to make a return required by this title or by regulations prescribed thereunder, but shall consent to disclose all information necessary for the preparation thereof, then, and in that case, the Secretary may prepare such return, which, being signed by such person, may be received by the Secretary as the return of such person.

(b) Execution of return by Secretary.--

(1) Authority of Secretary to execute return.--If any person fails to make any return required by any internal revenue law or regulation made thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.

(2) Status of returns.--Any return so made and subscribed by the Secretary shall be prima facie good and sufficient for all legal purposes.

CREDIT(S)

1989 Main Volume

(Aug. 16, 1954, c. 736, 68A Stat. 740; June 28, 1968, Pub.L. 90-364, Title I, § 103(e) (3), 82 Stat. 264; Oct. 4, 1976, Pub.L. 94-455, Title XIX, § 1906(b) (13) (A), 90 Stat. 1834; July 18, 1984, Pub.L. 98-369, Div. A, Title IV, § 412 (b)(4), 98 Stat. 792.)

§ 62. Adjusted gross income defined

(a) General rule

For purposes of this subtitle, the term "adjusted gross income" means, in the case of an individual, gross income minus the following deductions:

(1) Trade and business deductions

The deductions allowed by this chapter (other than by part VII of this subchapter) which are attributable to a trade or business carried on by the taxpayer, if such trade or business does not consist of the performance of services by the taxpayer as an employee.

(2) Certain trade and business deductions of employees

(A) Reimbursed expenses of employees

The deductions allowed by part VI (section 161 and following) which consist of expenses paid or incurred by the taxpayer, in connection with the performance by him of services as an employee, under a reimbursement or other expense allowance arrangement with his employer. The fact that the reimbursement may be provided by a third party shall not be determinative of whether or not the preceding sentence applies.

(B) Certain expenses of performing artists

The deductions allowed by section 162 which consist of expenses paid or incurred by a qualified performing artist in connection with the performances by him of services in the performing arts as an employee.

(C) Certain expenses of officials

The deductions allowed by section 162 which consist of expenses paid or incurred with respect to services performed by an official as an employee of a State or a political subdivision thereof in a position compensated in whole or in part on a fee basis.

(D) Certain expenses of elementary and secondary school teachers

In the case of taxable years beginning during 2002, 2003, 2004, or 2005, the deductions allowed by section 162 which consist of expenses, not in excess of $250, paid or incurred by an eligible educator in connection with books, supplies (other than nonathletic supplies for courses of instruction in health or physical education), computer equipment (including related software and services) and other equipment, and supplementary materials used by the eligible educator in the classroom.

(E) Certain expenses of members of reserve components of the Armed Forces of the United States

The deductions allowed by section 162 which consist of expenses, determined at a rate not in excess of the rates for travel expenses (including per diem in lieu of subsistence) authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, paid or incurred by the taxpayer in connection with the performance of services by such taxpayer as a member of a reserve component of the Armed Forces of the United States for any period during which such individual is more than 100 miles away from home in connection with such services.

(3) Losses from sale or exchange of property

The deductions allowed by part VI (sec. 161 and following) as losses from the sale or exchange of property.

(4) Deductions attributable to rents and royalties

The deductions allowed by part VI (sec. 161 and following), by section 212 (relating to expenses for production of income), and by section 611 (relating to depletion) which are attributable to property held for the production of rents or royalties.

(5) Certain deductions of life tenants and income beneficiaries of property

In the case of a life tenant of property, or an income beneficiary of property held in trust, or an heir, legatee, or devisee of an estate, the deduction for depreciation allowed by section 167 and the deduction allowed by section 611.

(6) Pension, profit-sharing, and annuity plans of self-employed individuals

In the case of an individual who is an employee within the meaning of section 401 (c)(1), the deduction allowed by section 404.

(7) Retirement savings

The deduction allowed by section 219 (relating to deduction of certain retirement savings).

[(8) Repealed. Pub. L. 104–188, title I, §●1401(b)(4), Aug. 20,

1996, 110 Stat. 1788]

(9) Penalties forfeited because of premature withdrawal of funds from time savings accounts or deposits

The deductions allowed by section 165 for losses incurred in any transaction entered into for profit, though not connected with a trade or business, to the extent that such losses include amounts forfeited to a bank, mutual savings bank, savings and loan association, building and loan association, cooperative bank or homestead association as a penalty for premature withdrawal of funds from a time savings account, certificate of deposit, or similar class of deposit.

(10) Alimony

The deduction allowed by section 215.

(11) Reforestation expenses

The deduction allowed by section 194.

(12) Certain required repayments of supplemental unemployment compensation benefits

The deduction allowed by section 165 for the repayment to a trust described in paragraph (9) or (17) of section 501(c) of supplemental unemployment compensation benefits received from such trust if such repayment is required because of the receipt of trade readjustment allowances under section 231 or 232 of the Trade Act of 1974 (19 U.S.C. 2291 and 2292).

(13) Jury duty pay remitted to employer

Any deduction allowable under this chapter by reason of an individual remitting any portion of any jury pay to such individual's employer in exchange for payment by the employer of compensation for the period such individual was performing jury duty. For purposes of the preceding sentence, the term "jury pay" means any payment received by the individual for the discharge of jury duty.

(14) Deduction for clean-fuel vehicles and certain refueling property

The deduction allowed by section 179A.

(15) Moving expenses

The deduction allowed by section 217.

(16) Archer MSAs

The deduction allowed by section 220.

(17) Interest on education loans

The deduction allowed by section 221.

(18) Higher education expenses

The deduction allowed by section 222.

(19) ●1 Costs involving discrimination suits, etc.

Any deduction allowable under this chapter for attorney fees and court costs paid by, or on behalf of, the taxpayer in connection with any action

involving a claim of unlawful discrimination (as defined in subsection (e)) or a claim of a violation of subchapter III of chapter 37 of title 31, United States Code [2] or a claim made under section 1862(b)(3)(A) of the Social Security Act (42 U.S.C. 1395y (b)(3)(A)). The preceding sentence shall not apply to any deduction in excess of the amount includible in the taxpayer's gross income for the taxable year on account of a judgment or settlement (whether by suit or agreement and whether as lump sum or periodic payments) resulting from such claim.

(19) ●1 Health savings accounts

The deduction allowed by section 223.

Nothing in this section shall permit the same item to be deducted more than once.

(b) Qualified performing artist

(1) In general

For purposes of subsection (a)(2)(B), the term "qualified performing artist" means, with respect to any taxable year, any individual if—

(A) such individual performed services in the performing arts as an employee during the taxable year for at least 2 employers,

(B) the aggregate amount allowable as a deduction under section 162 in connection with the performance of such services exceeds 10 percent of such individual's gross income attributable to the performance of such services, and

(C) the adjusted gross income of such individual for the taxable year (determined without regard to subsection (a)(2)(B)) does not exceed $16,000.

(2) Nominal employer not taken into account

An individual shall not be treated as performing services in the performing arts as an employee for any employer during any taxable year unless the amount received by such individual from such employer for the performance of such services during the taxable year equals or exceeds $200.

(3) Special rules for married couples

(A) In general

Except in the case of a husband and wife who lived apart at all times during the taxable year, if the taxpayer is married at the close of the taxable year, subsection (a)(2)(B) shall apply only if the taxpayer and his spouse file a joint return for the taxable year.

(B) Application of paragraph (1)

In the case of a joint return—

(i) paragraph (1) (other than subparagraph (C) thereof) shall be applied separately with respect to each spouse, but

(ii) paragraph (1)(C) shall be applied with respect to their combined adjusted gross income.

(C) Determination of marital status

For purposes of this subsection, marital status shall be determined under section 7703 (a).

(D) Joint return

For purposes of this subsection, the term "joint return" means the joint return of a husband and wife made under section 6013.

(c) Certain arrangements not treated as reimbursement arrangements

For purposes of subsection (a)(2)(A), an arrangement shall in no event be treated as a reimbursement or other expense allowance arrangement if—

(1) such arrangement does not require the employee to substantiate the expenses covered by the arrangement to the person providing the reimbursement, or

(2) such arrangement provides the employee the right to retain any amount in excess of the substantiated expenses covered under the arrangement.

The substantiation requirements of the preceding sentence shall not apply to any expense to the extent that substantiation is not required under section 274 (d) for such expense by reason of the regulations prescribed under the 2nd sentence thereof.

(d) Definition; special rules

(1) Eligible educator

(A) In general

For purposes of subsection (a)(2)(D), the term "eligible educator" means, with respect to any taxable year, an individual who is a kindergarten through grade 12 teacher, instructor, counselor, principal, or aide in a school for at least 900 hours during a school year.

(B) School

The term "school" means any school which provides elementary education or secondary education (kindergarten through grade 12), as determined under State law.

(2) Coordination with exclusions

A deduction shall be allowed under subsection (a)(2)(D) for expenses only to the extent the amount of such expenses exceeds the amount excludable under section 135, 529 (c)(1), or 530 (d)(2) for the taxable year.

(e) Unlawful discrimination defined

For purposes of subsection (a)(19), the term "unlawful discrimination" means an act that is unlawful under any of the following:

(1) Section 302 of the Civil Rights Act of 1991 (2 U.S.C. 1202).[3]

(2) Section 201, 202, 203, 204, 205, 206, or 207 of the Congressional Accountability Act of 1995 (2 U.S.C. 1311, 1312, 1313, 1314, 1315, 1316, or 1317).

(3) The National Labor Relations Act (29 U.S.C. 151 et seq.).

(4) The Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

(5) Section 4 or 15 of the Age Discrimination in Employment Act of 1967

(29 U.S.C. 623 or 633a).

(6) Section 501 or 504 of the Rehabilitation Act of 1973 (29 U.S.C. 791 or 794).

(7) Section 510 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1140).

(8) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.).

(9) The Employee Polygraph Protection Act of 1988 (29 U.S.C. 2001 et seq.).

(10) The Worker Adjustment and Retraining Notification Act (29 U.S.C. 2102 et seq.).

(11) Section 105 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2615).

(12) Chapter 43 of title 38, United States Code (relating to employment and reemployment rights of members of the uniformed services).

(13) Section 1977, 1979, or 1980 of the Revised Statutes (42 U.S.C. 1981, 1983, or 1985).

(14) Section 703, 704, or 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2, 2000e–3, or 2000e–16).

(15) Section 804, 805, 806, 808, or 818 of the Fair Housing Act (42 U.S. C. 3604, 3605, 3606, 3608, or 3617).

(16) Section 102, 202, 302, or 503 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112, 12132, 12182, or 12203).

(17) Any provision of Federal law (popularly known as whistleblower protection provisions) prohibiting the discharge of an employee, the discrimination against an employee, or any other form of retaliation or reprisal against an employee for asserting rights or taking other actions permitted under Federal law.

(18) Any provision of Federal, State, or local law, or common law claims permitted under Federal, State, or local law—

(i) providing for the enforcement of civil rights, or

(ii) regulating any aspect of the employment relationship, including claims for wages, compensation, or benefits, or prohibiting the discharge of an employee, the discrimination against an employee, or any other form of retaliation or reprisal against an employee for asserting rights or taking other actions permitted by law.

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[1] So in original. Two pars. (19) have been enacted.

[2] So in original. Probably should be followed by a comma.

[3] See References in Text note below.

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§ 63. Taxable income defined

(a) In general

Except as provided in subsection (b), for purposes of this subtitle, the term "taxable income" means gross income minus the deductions allowed by this chapter (other than the standard deduction).

(b) Individuals who do not itemize their deductions

In the case of an individual who does not elect to itemize his deductions for the taxable year, for purposes of this subtitle, the term "taxable income" means adjusted gross income, minus—

(1) the standard deduction, and

(2) the deduction for personal exemptions provided in section 151.

(c) Standard deduction

For purposes of this subtitle—

(1) In general

Except as otherwise provided in this subsection, the term "standard deduction" means the sum of—

(A) the basic standard deduction, and

(B) the additional standard deduction.

(2) Basic standard deduction

For purposes of paragraph (1), the basic standard deduction is—

(A) 200 percent of the dollar amount in effect under subparagraph

(C) for the taxable year in the case of—

(i) a joint return, or

(ii) a surviving spouse (as defined in section 2 (a)),

(B) $4,400 in the case of a head of household (as defined in section 2 (b)), or

(C) $3,000 in any other case.

(3) Additional standard deduction for aged and blind

For purposes of paragraph (1), the additional standard deduction is the sum of each additional amount to which the taxpayer is entitled under subsection (f).

(4) Adjustments for inflation

In the case of any taxable year beginning in a calendar year after 1988, each dollar amount contained in paragraph (2)(B), (2)(C), or (5) or subsection (f) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1 (f)(3) for the calendar year in which the taxable year begins, by substituting for "calendar year 1992" in subparagraph (B) thereof—

(i) "calendar year 1987" in the case of the dollar amounts contained in paragraph (2)(B), (2)(C), or (5)(A) or subsection (f), and

(ii) "calendar year 1997" in the case of the dollar amount contained in paragraph (5)(B).

(5) Limitation on basic standard deduction in the case of certain dependents

In the case of an individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, the basic standard deduction applicable to such individual for such individual's taxable year shall not exceed the greater of—

(A) $500, or

(B) the sum of $250 and such individual's earned income.

(6) Certain individuals, etc., not eligible for standard deduction

In the case of—

(A) a married individual filing a separate return where either spouse itemizes deductions,

(B) a nonresident alien individual,

(C) an individual making a return under section 443 (a)(1) for a period of less than 12 months on account of a change in his annual accounting period, or

(D) an estate or trust, common trust fund, or partnership,

the standard deduction shall be zero.

(d) Itemized deductions

For purposes of this subtitle, the term "itemized deductions" means the deductions allowable under this chapter other than—

(1) the deductions allowable in arriving at adjusted gross income, and

(2) the deduction for personal exemptions provided by section 151.

(e) Election to itemize

(1) In general

Unless an individual makes an election under this subsection for the taxable year, no itemized deduction shall be allowed for the taxable year. For purposes of this subtitle, the determination of whether a deduction is allowable under this chapter shall be made without regard to the preceding sentence.

(2) Time and manner of election

Any election under this subsection shall be made on the taxpayer's return, and the Secretary shall prescribe the manner of signifying such election on the return.

(3) Change of election

Under regulations prescribed by the Secretary, a change of election with respect to itemized deductions for any taxable year may be made after the filing of the return for such year. If the spouse of the taxpayer filed a separate return for any taxable year corresponding to the taxable year of the taxpayer, the change shall not be allowed unless, in accordance with such regulations—

(A) the spouse makes a change of election with respect to itemized deductions, for the taxable year covered in such separate return, consistent with the change of treatment sought by the taxpayer, and

(B) the taxpayer and his spouse consent in writing to the assessment (within such period as may be agreed on with the Secretary) of any deficiency, to the extent attributable to such change of election, even though at the time of the filing of such consent the assessment of such deficiency would otherwise be prevented by the operation of any law or rule of law.

This paragraph shall not apply if the tax liability of the taxpayer's spouse for the taxable year corresponding to the taxable year of the taxpayer has been compromised under section 7122.

(f) Aged or blind additional amounts

(1) Additional amounts for the aged

The taxpayer shall be entitled to an additional amount of $600—

(A) for himself if he has attained age 65 before the close of his taxable year, and

(B) for the spouse of the taxpayer if the spouse has attained age 65 before the close of the taxable year and an additional exemption is allowable to the taxpayer for such spouse under section 151 (b).

(2) Additional amount for blind

The taxpayer shall be entitled to an additional amount of $600—

(A) for himself if he is blind at the close of the taxable year, and

(B) for the spouse of the taxpayer if the spouse is blind as of the

close of the taxable year and an additional exemption is allowable to the taxpayer for such spouse under section 151 (b).

For purposes of subparagraph (B), if the spouse dies during the taxable year the determination of whether such spouse is blind shall be made as of the time of such death.

(3) Higher amount for certain unmarried individuals

In the case of an individual who is not married and is not a surviving spouse, paragraphs (1) and (2) shall be applied by substituting "$750" for "$600".

(4) Blindness defined

For purposes of this subsection, an individual is blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(g) Marital status

For purposes of this section, marital status shall be determined under section 7703.

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Sec. 62. - Adjusted gross income defined

(a) General rule

For purposes of this subtitle, the term ''adjusted gross income'' means, in the case of an individual, gross income minus the following deductions:

(1) Trade and business deductions

The deductions allowed by this chapter (other than by part VII of this subchapter) which are attributable to a trade or business carried on by the taxpayer, if such trade or business does not consist of the performance of services by the taxpayer as an employee.

(2) Certain trade and business deductions of employees

(A) Reimbursed expenses of employees

The deductions allowed by part VI (section 161 and following) which consist of expenses paid or incurred by the taxpayer, in connection with the performance by him of services as an employee, under a reimbursement or other expense allowance arrangement with his employer. The fact that the reimbursement may be provided by a third party shall not be determinative of whether or not the preceding sentence applies.

(B) Certain expenses of performing artists

The deductions allowed by section 162 which consist of expenses paid or incurred by a qualified performing artist in connection with the performances by him of services in the performing arts as an employee.

(C) Certain expenses of officials

The deductions allowed by section 162 which consist of expenses paid or incurred with respect to services performed by an official as an employee of a State or a political subdivision thereof in a position compensated in whole or in part on a fee basis.

(3) Losses from sale or exchange of property

The deductions allowed by part VI (sec. 161 and following) as losses from the sale or exchange of property.

(4) Deductions attributable to rents and royalties

The deductions allowed by part VI (sec. 161 and following), by section 212 (relating to expenses for production of income), and by section 611 (relating to depletion) which are attributable to property held for the production of rents or royalties.

(5) Certain deductions of life tenants and income beneficiaries of property

In the case of a life tenant of property, or an income beneficiary of property held in trust, or an heir, legatee, or devisee of an estate, the deduction for depreciation allowed by section 167 and the deduction allowed by section 611.

(6) Pension, profit-sharing, and annuity plans of self-employed individuals

In the case of an individual who is an employee within the meaning of section 401(c)(1), the deduction allowed by section 404.

(7) Retirement savings

The deduction allowed by section 219 (relating to deduction of certain retirement savings).

(8)

Repealed. Pub. L. 104-188, title I, Sec. 1401(b)(4), Aug. 20, 1996, 110 Stat. 1788)

(9) Penalties forfeited because of premature withdrawal of funds from time savings accounts or deposits

The deductions allowed by section 165 for losses incurred in any transaction entered into for profit, though not connected with a trade or business, to the extent that such losses include amounts forfeited to a bank, mutual savings bank, savings and loan association, building and

loan association, cooperative bank or homestead association as a penalty for premature withdrawal of funds from a time savings account, certificate of deposit, or similar class of deposit.

(10) Alimony

The deduction allowed by section 215.

(11) Reforestation expenses

The deduction allowed by section 194.

(12) Certain required repayments of supplemental unemployment compensation benefits

The deduction allowed by section 165 for the repayment to a trust described in paragraph (9) or (17) of section 501(c) of supplemental unemployment compensation benefits received from such trust if such repayment is required because of the receipt of trade readjustment allowances under section 231 or 232 of the Trade Act of 1974 (19 U.S.C. 2291 and 2292).

(13) Jury duty pay remitted to employer

Any deduction allowable under this chapter by reason of an individual remitting any portion of any jury pay to such individual's employer in exchange for payment by the employer of compensation for the period such individual was performing jury duty. For purposes of the preceding sentence, the term ''jury pay'' means any payment received by the individual for the discharge of jury duty.

(14) Deduction for clean-fuel vehicles and certain refueling property

The deduction allowed by section 179A.

(15) Moving expenses

The deduction allowed by section 217.

(16) Archer MSAs

The deduction allowed by section 220.

(17) Interest on education loans

The deduction allowed by section 221.

Nothing in this section shall permit the same item to be deducted more than once.

(b) Qualified performing artist

(1) In general

For purposes of subsection (a)(2)(B), the term ''qualified performing artist'' means, with respect to any taxable year, any individual if -

(A)

such individual performed services in the performing arts as an employee during the taxable year for at least 2 employers,

(B)

the aggregate amount allowable as a deduction under section 162 in connection with the performance of such services exceeds 10 percent of such individual's gross income attributable to the performance of such services, and

(C)

the adjusted gross income of such individual for the taxable year (determined without regard to subsection (a)(2)(B)) does not exceed $16,000.

(2) Nominal employer not taken into account

An individual shall not be treated as performing services in the performing arts as an employee for any employer during any taxable year unless the amount received by such individual from such employer for the performance of such services during the taxable year equals or exceeds $200.

(3) Special rules for married couples

(A) In general

Except in the case of a husband and wife who lived apart at all times during the taxable year, if the taxpayer is married at the close of the taxable year, subsection (a)(2)(B) shall apply only if the taxpayer and his spouse file a joint return for the taxable year.

(B) Application of paragraph (1)

In the case of a joint return -

(i)

paragraph (1) (other than subparagraph (C) thereof) shall be applied separately with respect to each spouse, but

(ii)

paragraph (1)(C) shall be applied with respect to their combined adjusted gross income.

(C) Determination of marital status

For purposes of this subsection, marital status shall be determined under section 7703(a).

(D) Joint return

For purposes of this subsection, the term ''joint return'' means the joint return of a husband and wife made under section 6013.

(c) Certain arrangements not treated as reimbursement arrangements

For purposes of subsection (a)(2)(A), an arrangement shall in no event be treated as a reimbursement or other expense allowance arrangement if -

(1)

such arrangement does not require the employee to substantiate the expenses covered by the arrangement to the person providing the reimbursement, or

(2)

such arrangement provides the employee the right to retain any amount in excess of the substantiated expenses covered under the arrangement.

The substantiation requirements of the preceding sentence shall not apply to any expense to the extent that substantiation is not required under section 274(d) for such expense by reason of the regulations prescribed under the 2nd sentence thereof

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Sec. 63. - Taxable income defined

(a) In general

Except as provided in subsection (b), for purposes of this subtitle, the term ''taxable income'' means gross income minus the deductions allowed by this chapter (other than the standard deduction).

(b) Individuals who do not itemize their deductions

In the case of an individual who does not elect to itemize his deductions for the taxable year, for purposes of this subtitle, the term ''taxable income'' means adjusted gross income, minus -

(1)

the standard deduction, and

(2)

the deduction for personal exemptions provided in section 151.

(c) Standard deduction

For purposes of this subtitle -

(1) In general

Except as otherwise provided in this subsection, the term ''standard deduction'' means the sum of -

(A)

the basic standard deduction, and

(B)

the additional standard deduction.

(2) Basic standard deduction

For purposes of paragraph (1), the basic standard deduction is -

(A)

$5,000 in the case of -

(i)

a joint return, or

(ii)

a surviving spouse (as defined in section 2(a)),

(B)

$4,400 in the case of a head of household (as defined in section 2(b)),

(C)

$3,000 in the case of an individual who is not married and who is not a surviving spouse or head of household, or

(D)

$2,500 in the case of a married individual filing a separate return.

(3) Additional standard deduction for aged and blind

For purposes of paragraph (1), the additional standard deduction is the sum of each additional amount to which the taxpayer is entitled under subsection (f).

(4) Adjustments for inflation

In the case of any taxable year beginning in a calendar year after 1988, each dollar amount contained in paragraph (2) or (5) or subsection (f) shall be increased by an amount equal to -

(A)

such dollar amount, multiplied by

(B)

the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting for ''calendar year

1992'' in subparagraph (B) thereof -

(i)

''calendar year 1987'' in the case of the dollar amounts contained in paragraph (2) or (5)(A) or subsection (f), and

(ii)

''calendar year 1997'' in the case of the dollar amount contained in paragraph (5)(B).

(5) Limitation on basic standard deduction in the case of certain dependents

In the case of an individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, the basic standard deduction applicable to such individual for such individual's taxable year shall not exceed the greater of -

(A)

$500, or

(B)

the sum of $250 and such individual's earned income.

(6) Certain individuals, etc., not eligible for standard deduction

In the case of -

(A)

a married individual filing a separate return where either spouse itemizes deductions,

(B)

a nonresident alien individual,

(C)

an individual making a return under section 443 (a)(1) for a period of less than 12 months on account of a change in his annual accounting period, or

(D)

an estate or trust, common trust fund, or partnership,

the standard deduction shall be zero.

(d) Itemized deductions

For purposes of this subtitle, the term ''itemized deductions'' means the deductions allowable under this chapter other than -

(1)

the deductions allowable in arriving at adjusted gross income, and

(2)

the deduction for personal exemptions provided by section 151.

(e) Election to itemize

(1) In general

Unless an individual makes an election under this subsection for the taxable year, no itemized deduction shall be allowed for the taxable year. For purposes of this subtitle, the determination of whether a deduction is allowable under this chapter shall be made without regard to the preceding sentence.

(2) Time and manner of election

Any election under this subsection shall be made on the taxpayer's return, and the Secretary shall prescribe the manner of signifying such election on the return.

(3) Change of election

Under regulations prescribed by the Secretary, a change of election with respect to itemized deductions for any taxable year may be made after the filing of the return for such year. If the spouse of the taxpayer filed a separate return for any taxable year corresponding to the taxable year of the taxpayer, the change shall not be allowed unless, in accordance with such regulations -

(A)

the spouse makes a change of election with respect to itemized deductions, for the taxable year covered in such separate return, consistent with the change of treatment sought by the taxpayer, and

(B)

the taxpayer and his spouse consent in writing to the assessment (within such period as may be agreed on with the Secretary) of any deficiency, to the extent attributable to such change of election, even though at the time of the filing of such consent the assessment of such deficiency would otherwise be prevented by the operation of any law or rule of law.

This paragraph shall not apply if the tax liability of the taxpayer's spouse for the taxable year corresponding to the taxable year of the taxpayer has been compromised under section 7122.

(f) Aged or blind additional amounts

(1) Additional amounts for the aged

The taxpayer shall be entitled to an additional amount of $600 -

(A)

for himself if he has attained age 65 before the close of his taxable year, and

(B)

for the spouse of the taxpayer if the spouse has attained age 65 before the close of the taxable year and an additional exemption is allowable to the taxpayer for such spouse under section 151(b).

(2) Additional amount for blind

The taxpayer shall be entitled to an additional amount of $600 -

(A)

for himself if he is blind at the close of the taxable year, and

(B)

for the spouse of the taxpayer if the spouse is blind as of the close of the taxable year and an additional exemption is allowable to the taxpayer for such spouse under section 151(b).

For purposes of subparagraph (B), if the spouse dies during the taxable year the determination of whether such spouse is blind shall be made as of the time of such

death.

(3) Higher amount for certain unmarried individuals

In the case of an individual who is not married and is not a surviving spouse, paragraphs (1) and (2) shall be applied by substituting ''$750'' for ''$600''.

(4) Blindness defined

For purposes of this subsection, an individual is blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(g) Marital status

For purposes of this section, marital status shall be determined under section 7703

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§ 6001. Notice or regulations requiring records, statements, and special returns

Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title. The only records which an employer shall be required to keep under this section in connection with charged tips shall be charge receipts, records necessary to comply with section 6053 (c), and copies of statements furnished by employees under section 6053 (a).

Sec. 6001. - Notice or regulations requiring records, statements, and special returns

Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title. The only records which an employer shall be required to keep under this section in connection with charged tips shall be charge receipts, records necessary to comply with section 6053(c), and copies of statements furnished by employees under section 6053(a)

Sec. 6011. - General requirement of return, statement, or list

(a) General rule

When required by regulations prescribed by the Secretary any person made liable for any tax imposed by this title, or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

(b) Identification of taxpayer

The Secretary is authorized to require such information with respect to persons subject to the taxes imposed by chapter 21 or chapter 24 as is necessary or helpful in securing proper identification of such persons.

(c) Returns, etc., of DISCS and former DISCS and FSC's and former FSC's

(1) Records and information

A DISC or former DISC or a FSC or former FSC shall for the taxable year -

(A)

furnish such information to persons who were shareholders at any time during such taxable year, and to the Secretary, and

(B)

keep such records, as may be required by regulations prescribed by the Secretary.

(2) Returns

A DISC shall file for the taxable year such returns as may be prescribed by the Secretary by forms or regulations.

(d) Authority to require information concerning section 912 allowances

The Secretary may by regulations require any individual who receives allowances which are excluded from gross income under section 912 for any taxable year to include on his return of the taxes imposed by subtitle A for such taxable year such information with respect to the amount and type of such allowances as the Secretary determines to be appropriate.

(e) Regulations requiring returns on magnetic media, etc.

(1) In general

The Secretary shall prescribe regulations providing standards for determining which returns must be filed on magnetic media or in other machine-readable form. The Secretary may not require returns of any tax imposed by subtitle A on individuals, estates, and trusts to be other than on paper forms supplied by the Secretary.

(2) Requirements of regulations

In prescribing regulations under paragraph (1), the Secretary -

(A)

shall not require any person to file returns on magnetic media unless such person is required to file at least 250 returns during the calendar year, and

(B)

shall take into account (among other relevant factors) the ability of the taxpayer to comply at reasonable cost with the requirements of such regulations.

Notwithstanding the preceding sentence, the Secretary shall require partnerships having more than 100 partners to file returns on magnetic media.

(f) Promotion of electronic filing

(1) In general

The Secretary is authorized to promote the benefits of and encourage the use of electronic tax administration

programs, as they become available, through the use of mass communications and other means.

(2) Incentives

The Secretary may implement procedures to provide for the payment of appropriate incentives for electronically filed returns.

(g)

Income, estate, and gift taxes

For requirement that returns of income, estate, and gift taxes be made whether or not there is tax liability, see subparts B and C

Sec. 6012. - Persons required to make returns of income

(a) General rule

Returns with respect to income taxes under subtitle A shall be made by the following:

(1)

(A)

Every individual having for the taxable year gross income which equals or exceeds the exemption amount, except that a return shall not be required of an individual -

(i)

who is not married (determined by applying section 7703), is not a surviving spouse (as defined in section 2(a)), is not a head of a household (as defined in section 2(b)), and for the taxable year has gross income of less than the sum of the exemption amount plus the basic standard deduction applicable to such an individual,

(ii)

who is a head of a household (as so defined) and for the taxable year has gross income of less than the sum of the exemption amount plus the basic standard deduction applicable to such an individual,

(iii)

who is a surviving spouse (as so defined) and for the taxable year has gross income of less than the sum of the exemption amount plus the basic standard deduction applicable to such an

individual, or

(iv)

who is entitled to make a joint return and whose gross income, when combined with the gross income of his spouse, is, for the taxable year, less than the sum of twice the exemption amount plus the basic standard deduction applicable to a joint return, but only if such individual and his spouse, at the close of the taxable year, had the same household as their home.

Clause (iv) shall not apply if for the taxable year such spouse makes a separate return or any other taxpayer is entitled to an exemption for such spouse under section 151(c).

(B)

The amount specified in clause (i), (ii), or (iii) of subparagraph (A) shall be increased by the amount of 1 additional standard deduction (within the meaning of section 63(c)(3)) in the case of an individual entitled to such deduction by reason of section 63(f)(1)(A) (relating to individuals age 65 or more), and the amount specified in clause (iv) of subparagraph (A) shall be increased by the amount of the additional standard deduction for each additional standard deduction to which the individual or his spouse is entitled by reason of section 63(f)(1).

(C)

The exception under subparagraph (A) shall not apply to any individual -

(i)

who is described in section 63(c)(5) and who has -

(I)

income (other than earned income) in excess of the sum of the amount in effect under section 63(c)(5)(A) plus the additional standard deduction (if any) to which the individual is entitled, or

(II)

total gross income in excess of the standard deduction, or

(ii)

for whom the standard deduction is zero under section 63(c)(6).

(D)

For purposes of this subsection -

(i)

The terms ''standard deduction'', ''basic standard deduction'' and ''additional standard deduction'' have the respective meanings given such terms by section 63(c).

(ii)

The term ''exemption amount'' has the meaning given such term by section 151(d). In the case of an individual described in section 151(d)(2), the exemption amount shall be zero.

(2)

Every corporation subject to taxation under subtitle A;

(3)

Every estate the gross income of which for the taxable year is $600 or more;

(4)

Every trust having for the taxable year any taxable income, or having gross income of $600 or over, regardless of the amount of taxable income;

(5)

Every estate or trust of which any beneficiary is a nonresident alien;

(6)

Every political organization (within the meaning of section 527(e)(1)), and every fund treated under section 527(g) as if it constituted a political organization, which has political organization taxable income (within the meaning of section 527(c)(1)) for the taxable year or which has gross receipts of $25,000 or more for the taxable year (other than an organization to which section 527 applies solely by reason of subsection (f)(1) of such section); and [1] (FOOTNOTE 1) So in original.

(7)

Every homeowners association (within the meaning of section 528(c)(1)) which has homeowners association taxable income (within the meaning of section 528(d)) for the taxable year.

(8)

Every individual who receives payments during the calendar year in which the taxable year begins under section 3507 (relating to advance payment of earned income credit). (FOOTNOTE 1)

(9)

Every estate of an individual under chapter 7 or 11 of title 11 of the United States Code (relating to bankruptcy) the gross income of which for the taxable year is not less than the sum of the exemption amount plus the basic standard deduction under section 63(c)(2)(D). [1] except that subject to such conditions, limitations, and exceptions and under such regulations as may be prescribed by the Secretary, nonresident alien individuals subject to the tax imposed by section 871 and foreign corporations subject to the tax imposed by section 881 may be exempted from the requirement of making returns under this section.

(b) Returns made by fiduciaries and receivers

(1) Returns of decedents

If an individual is deceased, the return of such individual required under subsection (a) shall be made by his executor, administrator, or other person charged with the property of such decedent.

(2) Persons under a disability

If an individual is unable to make a return required under subsection (a), the return of such individual shall be made by a duly authorized agent, his committee, guardian, fiduciary or other person charged with the care of the person or property of such individual. The preceding sentence shall not apply in the case of a receiver appointed by authority of law in possession of only a part of the property of an individual.

(3) Receivers, trustees and assignees for corporations

In a case where a receiver, trustee in a case under title 11 of the United States Code, or assignee, by order of a court of competent jurisdiction, by operation of law

or otherwise, has possession of or holds title to all or substantially all the property or business of a corporation, whether or not such property or business is being operated, such receiver, trustee, or assignee shall make the return of income for such corporation in the same manner and form as corporations are required to make such returns.

(4) Returns of estates and trusts

Returns of an estate, a trust, or an estate of an individual under chapter 7 or 11 of title 11 of the United States Code shall be made by the fiduciary thereof.

(5) Joint fiduciaries

Under such regulations as the Secretary may prescribe, a return made by one of two or more joint fiduciaries shall be sufficient compliance with the requirements of this section. A return made pursuant to this paragraph shall contain a statement that the fiduciary has sufficient knowledge of the affairs of the person for whom the return is made to enable him to make the return, and that the return is, to the best of his knowledge and belief, true and correct.

(6) IRA share of partnership income

In the case of a trust which is exempt from taxation under section 408(e), for purposes of this section, the trust's distributive share of items of gross income and gain of any partnership to which subchapter C or D of chapter 63 applies shall be treated as equal to the trust's distributive share of the taxable income of such partnership.

(c) Certain income earned abroad or from sale of residence

For purposes of this section, gross income shall be computed without regard to the exclusion provided for in section 121 (relating to gain from sale of principal residence) and without regard to the exclusion provided for in section 911 (relating to citizens or residents of the United States living abroad).

(d) Tax-exempt interest required to be shown on return

Every person required to file a return under this section for the taxable year shall include on such return the amount of interest received or accrued during the taxable year which is exempt from the tax imposed by chapter 1.

(e)

Consolidated returns

For provisions relating to consolidated returns by affiliated corporations, see chapter 6

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Sec. 6020. - Returns prepared for or executed by Secretary

(a) Preparation of return by Secretary

If any person shall fail to make a return required by this title or by regulations prescribed thereunder, but shall consent to disclose all information necessary for the preparation thereof, then, and in that case, the Secretary may prepare such return, which, being signed by such person, may be received by the Secretary as the return of such person.

(b) Execution of return by Secretary

(1) Authority of Secretary to execute return

If any person fails to make any return required by any internal revenue law or regulation made thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.

(2) Status of returns

Any return so made and subscribed by the Secretary shall be prima facie good and sufficient for all legal purposes

§ 6011. General requirement of return, statement, or list

How Current is This?

(a) General rule

When required by regulations prescribed by the Secretary any person made liable for any tax imposed by this title, or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

(b) Identification of taxpayer

The Secretary is authorized to require such information with respect to persons subject to the taxes imposed by chapter 21 or chapter 24 as is necessary or helpful in securing proper identification of such persons.

(c) Returns, etc., of DISCS and former DISCS and FSC's and former FSC's

(1) Records and information

A DISC or former DISC or a FSC or former FSC shall for the taxable year —

(A) furnish such information to persons who were shareholders at any time during such taxable year, and to the Secretary, and

(B) keep such records, as may be required by regulations prescribed by the Secretary.

(2) Returns

A DISC shall file for the taxable year such returns as may be prescribed

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by the Secretary by forms or regulations.

(d) Authority to require information concerning section 912 allowances

The Secretary may by regulations require any individual who receives allowances which are excluded from gross income under section 912 for any taxable year to include on his return of the taxes imposed by subtitle A for such taxable year such information with respect to the amount and type of such allowances as the Secretary determines to be appropriate.

(e) Regulations requiring returns on magnetic media, etc.

(1) In general

The Secretary shall prescribe regulations providing standards for determining which returns must be filed on magnetic media or in other machine-readable form. The Secretary may not require returns of any tax imposed by subtitle A on individuals, estates, and trusts to be other than on paper forms supplied by the Secretary.

(2) Requirements of regulations

In prescribing regulations under paragraph (1), the Secretary—

(A) shall not require any person to file returns on magnetic media unless such person is required to file at least 250 returns during the calendar year, and

(B) shall take into account (among other relevant factors) the ability of the taxpayer to comply at reasonable cost with the requirements of such regulations.

Notwithstanding the preceding sentence, the Secretary shall require partnerships having more than 100 partners to file returns on magnetic media.

(f) Promotion of electronic filing

(1) In general

The Secretary is authorized to promote the benefits of and encourage the use of electronic tax administration programs, as they become available, through the use of mass communications and other means.

(2) Incentives

The Secretary may implement procedures to provide for the payment of appropriate incentives for electronically filed returns.

(g) Income, estate, and gift taxes

For requirement that returns of income, estate, and gift taxes be made whether or not there is tax liability, see subparts B and C.

Sec. 6001. - Notice or regulations requiring records, statements, and special returns

Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title. The only records which an employer shall be required to keep under this section in connection with charged tips shall be charge receipts, records necessary to comply with section 6053(c), and copies of statements furnished by employees under section 6053(a)

Sec. 6011. - General requirement of return, statement, or list

(a) General rule

When required by regulations prescribed by the Secretary any person made liable for any tax imposed by this title, or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

(b) Identification of taxpayer

The Secretary is authorized to require such information with respect to persons subject to the taxes imposed by chapter 21 or chapter 24 as is necessary or helpful in securing proper identification of such persons.

(c) Returns, etc., of DISCS and former DISCS and FSC's and former FSC's

(1) Records and information

A DISC or former DISC or a FSC or former FSC shall for the taxable year -

(A)

furnish such information to persons who were shareholders at any time during such taxable year, and to the Secretary, and

(B)

keep such records, as may be required by regulations prescribed by the Secretary.

(2) Returns

A DISC shall file for the taxable year such returns as may be prescribed by the Secretary by forms or regulations.

(d) Authority to require information concerning section 912 allowances

The Secretary may by regulations require any individual who receives allowances which are excluded from gross income under section 912 for any taxable year to include on his return of the taxes imposed by subtitle A for such taxable year such information with respect to the amount and type of such allowances as the Secretary determines to be appropriate.

(e) Regulations requiring returns on magnetic media, etc.

(1) In general

The Secretary shall prescribe regulations providing standards for determining which returns must be filed on magnetic media or in other machine-readable form. The Secretary may not require returns of any tax imposed by subtitle A on individuals, estates, and trusts to be other than on paper forms supplied by the Secretary.

(2) Requirements of regulations

In prescribing regulations under paragraph (1), the Secretary -

(A)

shall not require any person to file returns on magnetic media unless such person is required to file at least 250 returns during the calendar year, and

(B)

shall take into account (among other relevant factors) the ability of the taxpayer to comply at reasonable cost with the requirements of such regulations.

Notwithstanding the preceding sentence, the Secretary shall require partnerships having more than 100 partners to file returns on magnetic media.

(f) Promotion of electronic filing

(1) In general

The Secretary is authorized to promote the benefits of and encourage the use of electronic tax administration

programs, as they become available, through the use of mass communications and other means.

(2) Incentives

The Secretary may implement procedures to provide for the payment of appropriate incentives for electronically filed returns.

(g)

Income, estate, and gift taxes

For requirement that returns of income, estate, and gift taxes be made whether or not there is tax liability, see subparts B and C

Blair v. CIR, T.C. Memo. 1989-454

United States Tax Court

CRAIG D. BLAIR, Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 12081-88.

Filed August 28, 1989.

MEMORANDUM FINDINGS OF FACT AND OPINION

GERBER, JUDGE:

This case is before the Court on respondent's motion to dismiss for lack of jurisdiction. Respondent contends that petitioner did not file a petition within 90 days. Petitioner counters that respondent failed to prove mailing of the notice of deficiency and/or that the notice was not mailed to petitioner's 'last known address.' Petitioner does not contend that a petition was timely filed.

FINDINGS OF FACT

The parties entered into a stipulation of facts, along with attached exhibits, all of which are incorporated by this reference. Petitioner, at the time his petition was filed, resided at 20041 Lorena Road, Castro Valley, California. On December 5, 1983, respondent, by means of certified mail, sent a notice of deficiency concerning petitioner's 1979 and 1980 taxable years to petitioner at 181 N. Harbor Drive, SL 102, Redondo Beach, California 90277. The petition in this case was received and filed on May 31, 1988, more than 1,600 days after the mailing of the notice of deficiency.

Between 1974 and 1988 petitioner has resided in several locations and on occasion maintained more than one mailing address. The following chart lists, without consideration of which is or was petitioner's 'last known address,' the various mailing addresses and residences of petitioner:

Date	Address	Source of Address
1974 to 11/77	P.O. Box 433A St. Paul Road	Petitioner's Testimony

Rt. 1

Clear Spring, MD

8/18/77 P.O. Box 1255 1976 State Tax Return

206 Robinwood Drive 1979 Form 1099

Hagerstown, MD

11/77 to 9124D Grayland Drive Petitioner's Testimony

10/80

Knoxville, TN

1978 P.O. Box 1269 Form W-2 (Employer)

Knoxville, TN

1978 and 1979 P.O. Box 87 1977 and 1978 State Tax Returns

Knoxville, TN

10/80 to 2/83 18952 Felbar Avenue Petitioner's Testimony

Torrance, CA State Computer

(Father's home) Extensions to file 1982 Federal return

1982 Federal return filed 4/84

1980, 1981 181 N. Harbor Drive Forms 1099 (Employer and Bank)

and 1982

Slip 102

Redondo Beach, CA Respondent's Computer

Schedule C, 1982 Federal Income Tax Return

2/83 to 2/84 415 Herrando Avenue Petitioner's Testimony

Apt. 221

Hermosa Beach, CA

2/84 to 8/85 1108 Camino Road Petitioner's Testimony

Apt. 506

Redondo Beach, CA

Petitioner purchased a 36-foot boat, with a bedroom or sleeping quarters, during 1979 and sold it in July 1984. The boat was docked at slip number 102 at 181 North Harbor Drive, Redondo Beach, California. The mailing address at the boat was 181 North Harbor Drive, Slip 102, Redondo Beach, California 90277. From January 1983 through about March or April 1983 the boat was out of water and thereafter moored at King Harbor. Petitioner sometimes used the boat as an office for business purposes. Although petitioner generally avoided using the 181 North Harbor Drive address for mail because of delivery problems, mail was received at that address. The 181 North Harbor Drive address had been provided to petitioner's bank and employer.

During 1979 and late into 1980, petitioner lived in Knoxville, Tennessee, and at various times utilized three different mailing addresses in Knoxville. Two of the addresses were Post Office boxes and one a street address. While in Knoxville, petitioner provided his employer and a bank with his 181 North Harbor Drive, Slip 102, Redondo Beach, California, address. Beginning late in 1980, petitioner moved to California and resided in various locations including his boat, his father's home, a friend's apartment, and various other locations in California which are not pertinent to the resolution of the issue in this case.

During the early part of 1983 petitioner's 1979 and 1980 taxable years were selected for examination as a result of respondent's nonfiler identification project at the Santa Ana, Orange County, California, office. Apparently based upon the Forms 1099 from petitioner's employer and bank, the 181 North Harbor Drive address was entered in respondent's computer as petitioner's address during the sixth week of 1983. An Information Returns Selection System Transcript for (petitioner's) Tax Year 1979, dated November 10, 1982, which is part of respondent's records, reflects a 1099-DIV from 'HAMILTON FUND PERIODIC INVESTMENT PLAN' and an address of 'BOX 1255 HAGERSTON MD 21740.' An Information Returns Selection System Transcript for (petitioner's) Tax Year 1980, dated September 21, 1982, which is part of respondent's records, reflects two 1099-INT's from 'WBDPC UNITED CALIFORNIA BANK' and one 1099-R from petitioner's employer, all three of which reflected the address '181 N HARBOR DR SLIP 102 REDONDO BEACH.' An Information Returns Selection System Transcript for (petitioner's) Tax Year 1981, dated March 18, 1983, which is part of respondent's records, reflects a 1099-R from petitioner's employer and the 181 North Harbor Drive address.

Generally, the procedures followed by respondent's employees in the Santa Ana nonfiler identification project

were as follows: (a) Once a 'nonfiler' was identified, they attempted to determine the individual's address. (b) The search for the address included comparison of account transcripts and Forms 1099 and W-2 for matching. The Internal Revenue Service nationwide computer system (ACTRA) was checked to obtain the latest system address. (c) If all data matched, correspondence concerning the examination was sent to the common address. (d) If the correspondence was returned undeliverable, then further inquiry was made concerning the taxpayer's current or proper address.

In this case an examination letter would have been sent to petitioner's 181 North Harbor Drive address and respondent's file did not contain an undelivered original, which indicates that the examination letter was not returned as 'undeliverable.' When a notice of deficiency is returned as 'undeliverable,' it is usually retained by stapling it to the inside of a taxpayer's file. In this case the notice of deficiency sent to petitioner was not stapled to or contained in respondent's file.

Petitioner filed a Federal income tax return for 1978, which respondent had destroyed prior to the examination under consideration. Petitioner did not file Federal income tax returns for 1979, 1980, or 1981. For 1979 and 1980 respondent prepared 'Dummy Returns' for petitioner reflecting the 181 North Harbor Drive address. On April 15, 1983, and July 29, 1983, petitioner and his wife, Janet M. Blair, executed and mailed applications (Forms 4868) to respondent to extend the time within which to file their 1982 joint Federal income tax return. Both applications for an extension reflected the 18952 Felbar Avenue, Torrance, California, address for petitioner and his wife. That address was petitioner's father's residence. Neither of the applications for extension contained any reference to or mention of a change of petitioner's address. Respondent, on December 5, 1983, mailed the notice of deficiency for petitioner's 1979 and 1980 taxable years to the 181 North Harbor Drive address. Thereafter on April 23, 1984, respondent's Fresno Service Center received petitioner's and his wife's 1982 joint Federal income tax return which, on the front page, reflected the 18952 Felbar Avenue address. A Schedule C, attached to petitioner's 1982 return, reflected self-employment business activity and listed the 181 North Harbor Drive address for the business.

The Postal Service Form 3877 used by respondent to mail and prove mailing of petitioner's notice of deficiency in this case reflects receipt by the Post Office for delivery on December 5, 1983, of the notice of deficiency. The form contains an irregularity in that there are no initials or signature in the box entitled 'POSTMASTER, PER (Name of receiving employee),' which usually contains written acknowledgment. The Post Office's Domestic Mail Manual requires endorsement on a bulk mailing form by the post office employee. The box adjoining the 'POSTMASTER, PER' box is entitled 'Total Number of Pieces Received at Post Office' and contains the following handwriting: 'LE 2.' The box containing 'LE 2' is preceded by a box entitled 'Total Number of Pieces Listed by Sender' and contains the following handwriting: 'T.D.B. 2.'

The 181 North Harbor Drive address was the only one in respondent's computer. When a taxpayer's address is updated in respondent's computer, the old address is removed from the computer system. An address in respondent's computer system is updated or changed: If a taxpayer files a later return with a different address; if a taxpayer specifically notifies respondent of a new address; or if information is received from the Postmaster of a new address for a taxpayer. Applications to extend the time within which to file a return are noted in respondent's computer system. The address shown on the applications for an extension were not recorded in respondent's computer. Respondent did not retain applications for extension.

OPINION

The specific question we must answer in the setting of this case is whether respondent exercised reasonable care and diligence in ascertaining, and mailing the notice of deficiency to, the correct (or last known) address. We must also address the basic question of whether respondent mailed a notice of deficiency to petitioner.

PROOF OF MAILING OF NOTICE OF DEFICIENCY

Petitioner argues that because the Form 3877, certified mailing list, was not endorsed in accord with the Domestic Postal Manual requirement, the Form 3877 does not establish that the notice of deficiency was mailed. As a reflection of its quality, we afford little time to petitioner's argument. The Form 3877 and the letter containing petitioner's notice of deficiency were accepted by the Post Office as plainly evidenced by the United States Post Office circular mark containing the name of the Post Office facility and date. See Traxler v. Commissioner, 63 T.C. 534, 536 (1975), modifying 61 T.C. 97 (1973). Further, the technicality cited by petitioner is nothing more than the postal employee's placement of his initials in the wrong box, rather than a failure to acknowledge receipt of the certified mail. It should be noted that the official Post Office stamp, which includes a date, appears on the Form 3877. Although some of the markings on the Form 3877 may not fully comport with United States Post Office internal requirements, it is clear from the face of the Form 3877 that the notice in question was accepted for delivery by the Post Office. Petitioner offers no precedents or support for his position, and we hold that the notice of deficiency was mailed to petitioner on December 5, 1983, at 181 N. Harbor Drive, SL 102, Redondo Beach, CA 90277. With this issue decided, we must consider whether respondent mailed the notice to petitioner's 'last known address' within the meaning of section 6212. [FN1]

'LAST KNOWN ADDRESS'

A taxpayer's 'last known address' is 'the last known permanent address or legal residence of the taxpayer, or the last known temporary address of a definite duration or period to which all communications during such period should be sent.' Weinroth v. Commissioner, 74 T.C. 430, 435 (1980); McCormick v. Commissioner, 55 T.C. 138, 141 (1970). Respondent has been permitted to treat the address on the return under examination as a taxpayer's last known address, absent 'clear and concise notification' of an address change. Alta Sierra Vista, Inc. v. Commissioner, 62 T.C. 367, 374 (1974), affd. without published opinion 538 F.2d 334 (9th Cir. 1976). When notified of a change of address, respondent must exercise reasonable care and diligence in determining the correct address for mailing of a notice of deficiency. Keeton v. Commissioner, 74 T.C. 377, 379 (1980); Alta Sierra Vista, Inc. v. Commissioner, supra at 374; O'Brien v. Commissioner, 62 T.C. 543, 550 (1974).

In a recent opinion we established and placed a new standard of care and diligence (from our prior opinions) upon respondent with respect to ascertaining a taxpayer's 'last known address' for purposes of section 6212. Abeles v. Commissioner, 91 T.C. 1019 (1988). As noted above, prior to Abeles, we held that the filing of a return more current than the one under examination does not constitute sufficient notification of change of address so as to change a taxpayer's 'last known address.' Weinroth v. Commissioner, supra at 436-437; Budlong v. Commissioner, 58 T.C. 850, 852-853 (1972). Our pre-Abeles holdings were premised on the understanding that respondent, due to computer limitations, was unable to search, under certain conditions, a

more current address than the one reflected on the return under examination. Abeles v. Commissioner, supra at 1032-1033. Later computer information reflecting more current addresses for taxpayers is now available to respondent's agents. Abeles v. Commissioner, supra at 1034-1035.

After considering the above background we held:

For purposes of determining whether a notice of deficiency has been properly mailed to the taxpayer's last known address, we now hold that a taxpayer's last known address is that address which appears on the taxpayer's most recently filed return, unless respondent has been given clear and concise notification of a different address. For these purposes, however, we hold that a taxpayer's 'most recently filed return' is that return which has been properly processed by an IRS service center such that the address appearing on such return was available to respondent's agent when that agent prepared to send a notice of deficiency in connection with an examination of a previously filed return. Further, we hold that the address from the more recently filed return is AVAILABLE to the agent issuing a notice of deficiency with respect to a previously filed return, if such address could be obtained by a computer generation of an IRS computer transcript using the taxpayer's TIN in the case of a separately filed return, or BOTH taxpayers' TINs in the case of a previously filed joint return.

In so holding, we are merely reiterating our position that what is of significance is what respondent knew at the time the statutory notice was issued (Alta Sierra Vista, Inc. v. Commissioner, supra), and attributing to respondent information which respondent knows, or should know, with respect to a taxpayer's last known address, through the use of its computer system. Fn. ref. omitted; Abeles v. Commissioner, supra at 1035.

Petitioner asks us to apply our Abeles opinion favorably to him. Initially, we note that the facts in his case vary in two significant respects from the facts in Abeles: (1) Petitioner here failed to file returns for the taxable years under examination and (2) petitioner's 1982 return (the first return filed for a year following those under examination) was not filed until after respondent mailed the notice of deficiency to petitioner. The only documents from which respondent could have obtained an address different from the 181 North Harbor Drive, Slip 102, Redondo Beach, California, address were the two applications for extension of time within which to file petitioner's 1982 return. These applications were sent to respondent and apparently returned to petitioner prior to respondent's issuance of the notice of deficiency for the years under examination. Respondent, however, did not record the address shown on an application for extension of time within which to file a return in his computer system. Such documents are usually returned to taxpayers and may be attached to the return which may eventually be filed.

Although this Court has adopted a rule which would, under appropriate circumstances, charge respondent with knowledge of a new address which is entered into the computer based upon a subsequently filed return, we cannot make that finding in this case. Here, petitioner did not file his 1982 return until after the mailing of the notice of deficiency. Additionally, we note that petitioner's 1982 return had the 18952 Felbar Avenue address on the face or front page, but had the 181 North Harbor Drive address on the Schedule C, presumably to reflect petitioner's business address. We also point out that it is difficult to develop sympathy for petitioner's position because of the confusion and uncertainty connected with his address(es). Not only was petitioner relatively transient, but his failure to file returns placed respondent in the difficult, if not impossible, position of seeking out petitioner's 'last known address.' By providing his employer and bank

(likely the only entities which would submit information about petitioner to respondent) with the 181 North Harbor Drive address and failing to file, petitioner has created the confusion that has led to the controversy in this case.

Finally, we consider petitioner's position that the addresses (18952 Felbar Avenue) on the Forms 4868 (applications to extend time within which to file) served as notification of a change of or new address. In a 1964 case we held that a letter received by respondent 43 days before issuance of a notice of deficiency, requesting an extension of time to file a return and specifically advising of a change of address put respondent on notice of a new 'last known address.' Walsh v. Commissioner, T.C. Memo. 1964-243. In a 1985 case we considered the effect that an application for extension of time within which to file without any specific reference to address change may have had upon taxpayer's 'last known address.' In the circumstances of that case it was held that it did not put respondent on notice of an address change. Tyler v. Commissioner, T.C. Memo. 1985-510. More recently, we also held that a Form 4868 application for an extension of time to file, which does not specifically indicate an address change, does not constitute notice to respondent of a change of address for purposes of determining taxpayer's 'last known address.' Lincoln v. Commissioner, T.C. Memo. 1988-93.

Our holding in Abeles does not change the holdings in any of the three memorandum opinions which directly or indirectly addressed the effect that a request or application for an extension of time within which to file might have upon the concept of 'last known address.' In Abeles we held that the --

last known address is that address which appears on the taxpayer's most recently filed return, unless respondent has been given clear and concise notification of a different address * * * and the address from the more recently filed return is AVAILABLE to the agent * * * if such address could be obtained by a computer generation of an IRS computer * * *. Abeles v. Commissioner, supra at 1035.

Because respondent did not record the addresses from the applications for extension of time to file in his records or computer, there would have been no way for respondent's agent who prepared or mailed the notice of deficiency to become aware of the address reflected on the application.

In a recent opinion, we made the factual determination that, under the facts of that case, Forms 4868 and 2688 did not constitute notification of a taxpayer's address. Monge v. Commissioner, 93 T.C., ___, (July 12, 1989) (slip opinion pp. 15-16). In this case, the applications for extension to file returns did not, by themselves, constitute clear and concise notification of a new address for purposes of the concept of 'last known address.'

Further, we hold that respondent exercised reasonable care and diligence in this case in attempting to ascertain petitioner's 'last known address.' See Keeton v. Commissioner, supra at 379; Alta Sierra Vista, Inc. v. Commissioner, supra at 374; O'Brien v. Commissioner, supra at 550.

To reflect the foregoing, respondent's motion to dismiss will be granted.

An appropriate order will be entered.

FN1 Section references are to the Internal Revenue Code of 1954, as amended and in effect at the time of the issuance of the notice of deficiency (December 5, 1983).

Phillips v. CIR, 86 T.C. 433

United States Tax Court

KENNETH L. PHILLIPS, Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 29091-83.

Filed March 24, 1986.

P, a United States citizen resident abroad, filed untimely Federal income tax returns for 1979, 1980 and 1981 claiming joint return status with is nonresident alien wife. On his 1979 return, P and his wife attached a statement signifying their election to have P's wife treated as a United States resident. P's returns stated P's and P's wife's correct address and were signed by P and his wife. P's returns were filed after the Commissioner had processed dummy returns that showed P's name, address and social security number and were otherwise blank and after the Commissioner, using 'married filing separately' rates, had issued a statutory notice of deficiency for each year before the Court. HELD, the Commissioner's dummy returns were not 'returns' within the meaning of section 6020(b); HELD, FURTHER, P and his wife substantially complied with the requirements of section 1.6013-6(a)(4), Income Tax Regs., and satisfied section 6013(g) so that their election to treat P's wife as a United States resident is effective for each of the taxable years at issue; HELD, FURTHER, P and his wife may make a joint return. The limitations of section 6013(b) apply only where a taxpayer has previously filed a return. Durovic v. Commissioner, 54 T.C. 1364 (1970), affd. on this issue 487 F.2d 36 (7th Cir. 1973), overruled on this point.

OPINION

WILLIAMS, Judge: [FN*]

FN* By order of the Chief, this case was reassigned to Judge Williams for decision and opinion.

The Commissioner determined deficiencies in petitioner's Federal income tax and additions to tax as follows:

Income tax year

Calendar deficiency Sec. 6651(a)(1) Sec. 6653(a)

1979	$7,539	$1,884.75	$376.95
1980	5,579	1,394.75	278.00
1981	585	146.25	29.25

After concessions by the parties, the sole issue for the Court to decide is whether section 6013(b) [FN1] applies to bar petitioner from making a joint return for each year at issue. If petitioner's Federal income tax liability is assessed under joint return rates, petitioner would not be liable for any deficiency or addition to tax.

The parties have submitted this case with the facts fully stipulated pursuant to Rule 122, Tax Court Rules of Practice and Procedure. Kenneth L. Phillips, the petitioner, was a United States citizen and a resident of Aberdeen, Scotland at the time of the filing of this petition.

Petitioner did not timely file Federal income tax returns for the years 1979, 1980 and 1981. The Commissioner's transcript of petitioner's account records the following: (1) for the year 1979, that the Commissioner filed a tax return on behalf of petitioner on November 10, 1982 which the Philadelphia Service Center processed on December 27, 1982 and that no tax was assessed; (2) for the year 1980, that the Commissioner filed a tax return on behalf of petitioner on November 18, 1982 which the Philadelphia Service Center processed on December 31, 1982 and that no tax was assessed; and (3) for the year 1981, that the Commissioner filed on petitioner's behalf a return on April 15, 1982 which the Philadelphia Service Center processed on December 13, 1982 and that no tax was assessed. The Commissioner's file contains a copy of a substitute for return prepared by the Commissioner for 1979 consisting of page 1 of a Form 1040 that shows only the petitioner's name, address and social security number (the 'dummy return'). Under the normal procedure for preparing such a return, no information would appear on page 2 of the Form 1040. The record does not have any other Forms 1040 prepared by the Commissioner.

On May 18, 1983, respondent issued a statutory notice of deficiency to petitioner for each year 1979, 1980 and 1981. On October 12, 1983, petitioner timely filed his petition with this Court. On the same date, petitioner filed Federal income tax returns for the years 1979, 1980 and 1981 (the 'returns ') which were not processed by respondent. Petitioner's taxable income for 1979, 1980 and 1981 was, respectively, $25,307.00, $61,892.00 and $30,653.00. Foreign tax credits are available to petitioner for the years 1980 and 1981 in the amount of $21,221.00 and $9,491.00, respectively.

Petitioner was married to Sarah Phillips, a nonresident alien, as of the close of each of the taxable years at issue. Petitioner and Sarah elected on the returns to treat Sarah as a resident of the United States pursuant to the terms of section 6013(g). [FN2] The couple also elected 'married filing joint return' status on each of the returns.

Respondent contends that the dummy returns prepared for petitioner are 'separate returns' within the meaning of section 6013(b)(1) and that, consequently, the provisions of either section 6013(b)(2)(B) or section 6013(b)(2)(C) apply to bar petitioner from making a joint return.

Petitioner argues that no returns have been filed by respondent on his behalf and that respondent cannot prohibit him from making a joint return. Petitioner contends that section 6013(a) on its face permits him to make a joint return unless the limitations of section 6013(b)(2) apply. Since in petitioner's view no return had been filed until he made his joint returns on October 12, 1983, he argues that the limitations of section 6013(b)(2) are not applicable.

We must, therefore, first determine whether the dummy returns prepared by respondent are 'returns' for purposes of section 6013. The Commissioner is authorized by section 6020(b) [FN3] to prepare a return on behalf of any taxpayer who fails to file a return. Section 6020(b) provides that such a return is 'prima facie good and sufficient for all legal purposes.'

In the present case respondent has presented a certified transcript of account as evidence that returns for petitioner were filed by respondent. This transcript of account lists document locator numbers (DLNs) purporting to identify the substitute returns prepared by respondent for petitioners for the years 1979, 1980 and 1981. The DLN code identifies the filing location, type of tax and document involved and the date the document was processed, among other things. The transcript of account states that Federal income tax Forms 1040 were filed as petitioner's returns by respondent at its Philadelphia Service Center for each of the years 1979, 1980 and 1981. These returns were processed, according to the transcript of account, on December 27, 1982, December 31, 1982, and December 13, 1982, respectively. None of the returns is in the record. Respondent nevertheless insists that this Court should find that the returns were filed on the basis of the transcript of account.

We are unable to conclude that respondent made returns pursuant to section 6020(b). The most reasonable inference from the record is that the forms that the transcript of account recorded as filed on petitioner's behalf were no more than dummy returns that, like the 1979 dummy return, consisted of a one-page Form 1040 that showed petitioner's name, address, and social security number and which were otherwise blank. [FN4] We cannot accord the status of a 'return' to a form filed simply to facilitate respondent's processing procedures. [FN5] See sections 301.6020-1(b)(1) and 301.6020-1(b)(2), Proced. & Admin. Regs.

Next, we must resolve whether a valid election under section 6013(g) was made to allow petitioner's wife, a nonresident alien, to be treated as a resident of the United States which is a prerequisite to the filing of a joint return. The applicable regulations require that a statement be attached to the joint return declaring that the election under section 6013(g) is being made, stating the names and addresses of each taxpayer, and bearing the signature of each. Section 1.6013-6(a)(4), Income Tax Regs. In the present case a typed statement is attached to petitioner's 1979 return declaring that the election is being made. A handwritten statement on the first page of Form 1040 of the return on which the relevant taxpayer identification and signatures are found, repeats this declaration. The face of the return shows petitioner's correct social security number and the correct address of petitioner and his wife. Both petitioner and his wife signed the return. This election substantially complies with respondent's regulation and, we believe, satisfies the requirements of the statute. The facts of the case and the intent of the taxpayers determine whether a valid joint return has been filed. See Heim v. Commissioner, 27 T.C. 270, 273 (1956), affd. 251 F.2d 44 (8th Cir. 1958) (returns signed only by the husband valid as joint return given the intent of taxpayers to file as such). The statement attached to the return and repeated on the return's first page establishes the intent of petitioner and his wife to file a joint

return and is a good faith attempt to comply with the form required by the regulations. The return provides respondent with all of the information required by his regulations. We therefore hold that the taxpayers here have satisfied the election requirements of section 6013(g).

Having decided that no returns were filed for 1979, 1980 or 1981 prior to October 12, 1983 when petitioner filed his returns for those years and that petitioner and his wife made a valid election pursuant to section 6013 (g) to have his wife treated as a resident of the United States, we must determine whether section 6013(b) bars petitioner from making a joint return with his wife for any of those years. With exceptions not pertinent, section 6013(a) permits a husband and wife to 'make a single return jointly of income taxes.' This language is unambiguous. When a husband and wife make their Federal income tax returns, they may make one return jointly. Petitioner and his wife made a single income tax return jointly. Respondent, however, points to section 6013(b) and our opinion in Durovic v. Commissioner, 54 T.C. 1364 (1970), affd. on this issue, 487 F.2d 36 (7th Cir. 1973), for support of his position that, despite the absence of any prior filing, petitioner is barred from making a joint return after respondent sends a notice of deficiency. Section 6013(b)(2)(C).

Two years after we decided Durovic, respondent announced in revenue ruling 72-539, 1972-2 C.B. 634, that the limitations of section 6013(b)(2) are restricted to occasions when taxpayers seek to file jo nt returns after previously filing separate returns. The ruling states as follows:

This limitation in section 6013(b)(2) of the Code deals specifically with an election to file a joint return after the filing of separate returns. The statute is silent concerning joint returns where no separate returns have been filed for the same taxable year. Therefore, even though the election to change from a separate return to a joint return is barred after the expiration of 3 years from the last date prescribed for filing a return, this does not preclude an election to file a joint return for the first time. Rev. Rul. 72-539, 1972-2 C.B. 634, 635.

In this ruling, respondent permitted a husband and wife who had failed to file income tax returns to file joint returns, despite the running of the three-year period of limitation for electing to change from separate return to joint return status of section 6013(b)(2)(B).

In revenue ruling 83-183, 1983-2 C.B. 220, respondent, while distinguishing revenue ruling 72-539, [FN6] reiterated that 'taxpayers who have filed NO returns may elect to file a joint return after the expiration of the three year period in section 6013(b)(2)(B)' (emphasis in original). Respondent announced in revenue ruling 83- 183 that he would not follow Glaze v. United States, 641 F.2d 339 (5th Cir. 1981). In Glaze the Fifth Circuit held that the limitations of section 6013(b)(2) applied only where a taxpayer had previously filed a return on which he claimed 'married filing separate' status. While we believe that that reading of section 6013 (b) is too narrow, we are nevertheless mindful of the Fifth Circuit's view that the continued vitality of Durovic is questionable. 641 F.2d at 344.

There is no principled distinction between the circumstances of the taxpayers in revenue ruling 72-539 and in petitioner's case. While petitioner filed his returns subsequent to respondent's issuance of the statutory notice of deficiency, the limitation of subparagraph (C) of section 6013(b)(2) operates on the same predicate as the limitation of subparagraph (B) which was the subject of the ruling, i.e., whether a return has been filed previously. Where, as here, no return was filed prior to the return on which joint return status is claimed, the limitations of paragraph 2 of subsection (b) of section 6013 are inapplicable. The legislative history of the

provision supports this reading of the statute.

The legislative history of the joint return provisions of the Internal Revenue Code of 1954 (the 'Code') dates back to the Revenue Act of 1918, Pub. L. No. 65-254, Section 223, 40 Stat. 1057, 1074, under which a married couple living together was permitted to file a joint return. In making a minor clarifying change to the statutory language in the Revenue Act of 1921, Congress reaffirmed 'the right of husband and wife in all cases to make a joint return and have the tax computed on the combined income.' H.R. Rep. No. 350, 67th Cong., 1st Sess. 13 (1921). The Congress intended the statute to apply to all who qualified. Nowhere in the legislative history of section 6013 is it suggested that the right to make a joint return where none has been previously filed is severed by the application of what is now section 6013(b)(2).

Until 1951, a taxpayer's selection of filing status was irrevocable. Whatever status a taxpayer chose in making his initial return could not be changed. Congress was concerned that ordinary taxpayers lacked sufficient familiarity with the tax laws to make a knowledgeable choice and risked paying excessive taxes as a result of choosing an inappropriate filing status. See S. Rep. No. 781, 82nd Cong., 1st Sess. (1951) at 48. Consequently, section 51(g) of the Internal Revenue Code of 1939 (the predecessor to section 6013(b)) was enacted to permit taxpayers a limited opportunity to file joint returns after having filed separate returns. The opportunity to change one's filing status was circumscribed by, among other things, the issuance of a statutory notice of deficiency. The legislative history, like the face of the statute, nowhere implies that these limitations were intended to apply beyond the scope of limiting taxpayers' opportunity to change their filing status from that claimed on an initial return.

We do not lightly overrule one of our prior decisions, particularly where the rule we are overruling has been upheld on appeal. The wisdom of acknowledging error in this case, however, is apparent from (1) the Commissioner's own disavowal of the rule, (2) the intent of Congress as expressed in the legislative history of section 6013 and (3) a plain reading of the statute. We, therefore, overrule the holding of Durovic v. Commissioner, supra, that the limitations imposed by section 6013(b)(2) apply where a taxpayer claims joint filing status on an initial, but untimely, joint return. [FN7] The clear language of the statute and its legislative history establish that section 6013(b) applies only where a taxpayer seeks to change his filing status after having previously filed a return.

Decision will be entered for petitioner.

REVIEWED BY THE COURT.

STERRETT, GOFFE, CHABOT, KORNER, SHIELDS, HAMBLEN, COHEN, CLAPP, SWIFT, JACOBS, and WRIGHT, JJ., agree with the majority opinion.

WILBUR, NIMS, and GERBER, JJ., did not participate in the consideration of this case.

SIMPSON, J., concurring: I agree with the conclusion of the majority, but I have somewhat different reasons for reaching that conclusion.

In my view, there were reasonable grounds for our holding in Durovic v. Commissioner, 54 T.C. 1364 (1970), affd. on this issue 487 F.2d 36 (7th Cir. 1973). Admittedly, the statute does not expressly deal with the situation where no returns have been filed previously. However, in Durovic, we were convinced that the taxpayers who had not originally filed returns should be in no preferred position because of their failure to file, and we were concerned about the administrative problems that might occur if taxpayers were allowed to file a joint return after the issuance of the notice of deficiency. Durovic v. Commissioner, 54 T.C. at 1402. Moreover, our conclusion was reviewed and approved by the Seventh Circuit. Durovic v. Commissioner, 487 F.2d at 41-42.

Where we have a reasonable decision that has been followed by this Court for a number of years and that has been approved by a Circuit Court, I would not lightly change our position. However, the Commissioner has chosen not to follow and apply our decision (Rev. Rul. 72-539, 1972-2 C.B. 634; see Rev Rul. 83-183, 1983-2 C.B. 220), and his failure to do so may result in a capricious application of the law. We assume that, ordinarily, the agents of the Commissioner would accept and file a joint return in the circumstances of this case. It would be unfortunate to deny the taxpayers an opportunity to do so simply because the agents and counsel who represented the Commissioner in this case chose not to follow his rule. Consequently, because of the Commissioner's failure to apply our holding in Durovic, and solely for that reason, I agree that we should no longer follow that holding.

STERRETT, GOFFE, and PARKER, JJ., agree with this concurring opinion.

PARR, J., concurring:

I agree that section 6013(b) does not apply to bar petitioner from making a joint return for each year at issue. However, I do not think it necessary to reach the issue of whether unsigned dummy returns are 'returns' under section 6020(b), in order to reach this result.

The dummy returns previously filed in this case were clearly not returns filed by an individual as required by the unambiguous language of section 6013(b)(1):

In general.--Except as provided in paragraph (2), if AN INDIVIDUAL has filed a separate return for a taxable year for which a joint return could have been made by him and his spouse under subsection (a) and the time prescribed by law for filing the return for such taxable year has expired, SUCH INDIVIDUAL AND HIS SPOUSE may nevertheless make a joint return for such taxable year. * * * (Emphasis supplied.)

The dummy returns were filed by respondent, not by an individual taxpayer. [FN1]

Since no individual has filed a separate return for a taxable year for which a joint return could have been made by him and his spouse prior to October 12, 1983, when petitioner and his wife filed joint returns, section 6013(b) and its limitations do not apply.

WHITAKER, J., agrees with this concurring opinion.

Footnotes:

FN1 Unless otherwise indicated, all section references are to the Internal Revenue Code of 1954, as amended and in effect during the years at issue. Section 6013 provides in pertinent part:

SEC. 6013. JOINT RETURNS OF INCOME TAX BY HUSBAND AND WIFE.

(a) Joint Returns.--A husband and wife may make a single return jointly of income taxes under subtitle A, even though one of the spouses has neither gross income nor deductions, except as provided below:

(1) no joint return shall be made if either the husband or wife at any time during the taxable year is a nonresident alien; * * *

(b) Joint Return After Filing Separate Return.--

(1) In general.--Except as provided in paragraph (2), if an individual has filed a separate return for a taxable year for which a joint return could have been made by him and his spouse under subsection (a) and the time prescribed by law for filing the return for such taxable year has expired, such individual and his spouse may nevertheless make a joint return for such taxable year. * * *

(2) Limitations for making of election.--The election provided for in paragraph (1) may not be made-- * * *

(B) after the expiration of 3 years from the last date prescribed by law for filing the return for such taxable year (determined without regard to any extension of time granted to either spouse); or

(C) After there has been mailed to either spouse, with respect to such taxable year, a notice of deficiency under section 6212, if the spouse, as to such notice, files a petition with the Tax Court within the time prescribed in section 6213; or * * *.

FN2 Section 6013(g) provides in pertinent part:

(g) Election to Treat Nonresident Alien Individual as Resident of the United States.--

(1) In general.--A nonresident alien individual with respect to whom this subsection is in effect for the taxable year shall be treated as a resident of the United States--

(A) for purposes of chapters 1 and 5 for all of such taxable year, and

(B) for purposes of chapter 24 (relating to wage withholding) for payments of wages made during such taxable year.

(2) Individuals with respect to whom this subsection is in effect.--This subsection shall be in effect with

respect to any individual who, at the close of the taxable year for which an election under this subsection was made, was a nonresident alien individual married to a citizen or resident of the United States, if both of them made such election to have the benefits of this subsection apply to them.

(3) Duration of election.--An election under this subsection shall apply to the taxable year for which made and to all subsequent taxable years until terminated under paragraph (4) or (5); except that any such election shall not apply for any taxable year if neither spouse is a citizen or resident of the United States at any time during such year.* * *

FN3 Section 6020(b) provides:

SEC. 6020(b). Execution of Return by Secretary.-- at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary is authorized--

(1) Authority of Secretary to Execute Return.--If any person fails to make any return (other than a declaration of estimated tax required under section 6015) required by any internal revenue law or regulation made thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.

(2) Status of Returns.--Any return so made and subscribed by the Secretary shall be prima facie good and sufficient for all legal purposes.

FN4 Respondent was unable to locate or retrieve any of the Forms 1040 prepared by him other than the 1979 dummy return.

FN5 Furthermore, according to the transcript of account, the Commissioner filed a return for the taxable year 1981 on April 15, 1982 -- the due date of the return -- which he is not authorized to do by section 6020(b) under any circumstances since one cannot be said to have failed to file a return prior to the expiration of the period for filing.

FN6 There is conspicuously absent from respondent's briefs any mention of these two rulings or how respondent reconciles his litigating position with his technical position.

FN7 We are not faced with a situation where the taxpayer has filed no return as of the date the case is submitted for decision. In such a case, no returns would be in the record, and, therefore, no joint filing status could be claimed. See, e.g., Thompson v. Commissioner, 78 T.C. 558 (1982); Howell v. Commissioner, T.C. Memo. 1981-631; Boyle v. Commissioner, T.C. Memo. 1975-307; contra, Tucker v. United States, 8 Cl. Ct. 55 (1985).

FN1 Neither were these returns prepared by respondent with petitioner's consent and signed by him, as provided in section 6020(a).

Schiff v. United States, 1989 WL 119410 (D.Conn.)

United States District Court, D. Connecticut.

Irwin A. SCHIFF

v.

UNITED STATES of America.

CIV. No. N-86-354 (WWE).

Sept. 6, 1989.

RULING ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

EGINTON, District Judge:

Plaintiff Irwin A. Schiff is no stranger to the federal courts, having litigated both the criminal and civil side of his liabilities for failure to pay income taxes, and having challenged the collection of liabilities assessed against him. In the present action against defendant United States of America (the "Government"), plaintiff seeks a refund of monies collected and applied in satisfaction of the liabilities assessed against him for the taxable years 1976-1978. Schiff challenges (1) the procedures followed by the Internal Revenue Service ("IRS") in determining that deficiencies existed and the subsequent assessment of those deficiencies; (2) the validity of the notice of the assessment and demand for payment; (3) the constitutionality of the income tax; (4) the seizure of his property after his failure to pay the assessment; and, (5) the determination that he fraudulently underpaid his income taxes with respect to the years 1976-78. Plaintiff has now moved for summary judgment. Defendant has responded to plaintiff's motion and has filed a cross-motion for summary judgment. For the following reasons, plaintiff's motion for summary judgment will be denied and defendant's motion for summary judgment will be granted.

Factual Summary

On or about April 15, 1977, plaintiff filed a form 1040 with the IRS. Rather than providing any information concerning income received or deductions claimed, plaintiff either stated "NONE" or referred to a statement typed onto the form 1041 which said, "*I do not understand this return or the laws that may apply to me.* This means I take specific objection under the 4th or 5th Amendments to the U.S. Constitution to the specific question." In addition, he referred the reader to certain attachments to the return.

After plaintiff filed neither a return nor a form 1040 for the taxable years 1977 and 1978, the IRS determined that a deficiency existed with respect to plaintiff's taxable years 1976-1978. A notice of this deficiency was sent to plaintiff by certified mail on December 2, 1982. Plaintiff did not thereafter file a petition with the Tax Court challenging the Commissioner's determination. Thus, after the expiration of the statutory period, the IRS assessed the amount of deficiency for each of the years 1976-1978. In addition to the deficiencies in

income taxes, the IRS assessed statutory interest, a failure to pay estimated tax penalty and a fraud penalty.

Thereafter, the IRS proceeded to administratively collect the unpaid assessed liabilities. The IRS levied upon plaintiff's royalties from his book *How Anyone Can Stop Paying Income Taxes.* Plaintiff not only attempted to enjoin the collection of these liabilities, but also brought suit against Simon and Shuster for complying with the levy. Both actions were subsequently dismissed.

Discussion

To grant a motion for summary judgment, the court must determine that there are no genuine issues of material fact in dispute and that the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56 (c). A "material fact" is one whose resolution will affect the ultimate determination of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A factual dispute is "genuine" when "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* The party opposing summary judgment must provide a factual basis for its allegations and may not rely on mere speculation or conjecture as to the true nature of the facts. *Matsushita Electronics Ind. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). That both sides have filed motions for summary judgment does not require that the court grant judgment as a matter of law for one side or the other. *United States Brewers Ass'n v. Healy*, 669 F.Supp. 543, 548 (D.Conn.1987).

The Calculation of the Deficiency

In his motion for summary judgment, plaintiff first challenges the procedures used by the IRS in determining the existence of a deficiency.

Under the American system of "self-assessment," an individual is required to file an individual income tax return, disclosing to the IRS Commissioner his correct tax liability and the basis for arriving at that determination. *Commissioner v. Lane-Wells Co.* [44-1 USTC ¶ 9195], 321 U.S. 219, 223 (1944). Refusal to furnish the required information on the tax return "is the functional and legal equivalent of a self-assessment of 'zero' ". *Fuller v. United States* [86-1 USTC ¶ 9332], 786 F.2d 1437, 1439 (9th Cir.1986).

When an individual's tax liability is greater than the liability reported on the return, a deficiency exists. *Laing v. United States* [76-1 USTC ¶ 9164], 423 U.S. 161, 173-74 (1976). The determination of a deficiency triggers certain procedural rights on behalf of the taxpayer, including the requirement that a notice of deficiency issue, allowing the taxpayer 90 days in which to petition the Tax Court for a review of the determination. See Internal Revenue Code of 1954 ("Code"), 26 U.S.C. §§ 6212-13.

Plaintiff claims that since he did not file a return and the definition of a deficiency in 26 U.S.C. § 6212 contemplates the filing of a return, a deficiency could not be determined or assessed as it was in this case--as the difference between the tax shown by the taxpayer on the return and any greater liability later determined by the IRS.

The court finds plaintiff's argument misplaced. A taxpayer's failure to file a return does not bar the

determination of a deficiency. When "a taxpayer files no return, the deficiency can be determined as if a return was made showing the amount of tax to be zero." *Hartman v. Commissioner* [CCH Dec. 33,543], 65 T. C. 542, 546 (1975).

In order to reflect the amount of taxes owed by an individual as a deficiency, the IRS prepares a "dummy return," showing the taxpayer's name, address and social security number, and then recording "the amount shown as the tax by the taxpayer upon his return" as zero. 26 U.S.C. § 6211. This "dummy return" does not relieve the taxpayer of the obligation to file a proper return, but provides the administrative accounting procedure necessary to show the taxpayer's failure to file a return amounted to a self-assessment of zero. Thus, any tax found owing is in the nature of a deficiency. *Fuller,* 786 F.2d at 1439. By proceeding in this manner, the IRS grants all taxpayers the same procedural rights, even those taxpayers who fail or refuse to file returns.

In the instant case, the Government has submitted proof that the Examination Division of the IRS prepared "dummy returns" on or around November 9, 1982, for plaintiff's 1976-78 taxable years, which included his name, address and social security number. See Defendant's Exhibit 2 attached to defendant's statement of material facts ("Defendant's Exhibit 2"). The court notes here that plaintiff's argument that such returns must not only be prepared, but also subscribed by the Secretary pursuant to 26 U.S.C. § 6020(b) must be rejected. See *United States v. Harrison*, 1972-2 USTC ¶ 9573, *aff'd.* 486 F.2d 1397 (2d Cir.1972).

In light of the foregoing, plaintiff's argument that the IRS erred in determining a deficiency by preparing a "dummy return," and then issuing a statutory notice of deficiency must fail as a matter of law. The Notice of Deficiency submitted by defendant, see Defendant's Exhibit 3, sets forth in full the explanation and calculation of the deficiency, and its issuance gave plaintiff the right to petition the Tax Court and contest the Commissioner's determination prior to the payment of any taxes. Thus, plaintiff received the same procedural rights as those accorded to taxpayers who file proper returns and attempt to inform the IRS of their correct tax liability.

The Assessment of the Deficiency

Plaintiff next argues that the deficiency assessments were not properly proven to him pursuant to 26 U.S.C. §§ 6201-6203.

An assessment is the "ascertainment of the amount due and the formal entry of the amount on the books by the Secretary." *United States v. Dixieline Financial Co.* [79-1 USTC ¶ 9330], 594 F.2d 1311, 1312 (9th Cir.1979). An assessment is made when an assessment officer signs the summary record of assessment. This summary record, known as form 23C, along with any supporting information, shall "provide identification of the taxpayer, the character of the liability assessed, the taxable period, if applicable, and the amount of the assessment." Treas.Reg. § 301.6203-1. Upon request of the taxpayer, he shall be furnished a copy of the record of assessment. 26 U.S.C. § 6203. In the case of a deficiency, "[i]f the taxpayer does not file a petition with the Tax Court within ... [90 days from the date of issuance of the Notice of Deficiency], the deficiency ... shall be assessed, and shall be paid upon notice and demand from the Secretary." 26 U.S.C. § 6213(c).

Once an assessment has been made, the Government is entitled to pursue certain remedies, similar to those of a judgment creditor, in seeking satisfaction of the amount due. *Bull v. United States* [35-1 USTC ¶ 9346], 295 U.S. 247, 260 (1935) [The Court held that "[t]he assessment is given the force of a judgment and if the amount assessed is not paid when due, administrative officials may seize the debtors property to satisfy the debt"].

In the instant case, plaintiff did not avail himself of the option of petitioning the Tax Court for a redetermination of the Commissioner's decision that a deficiency existed with respect to the taxable years 1976-78. Thus, when more than 90 days expired from the date of the issuance of the Notice of Deficiency, the Government assessed the amount of deficiency in accordance with 26 U.S.C. §§ 6201 and 6213(c), as reflected on the Certificates of Assessments and Payments. See Defendant's Exhibits 4-6.

A Certificate of Assessments and Payments is presumptive proof of the validity of the assessment. *United States v. Dixon*, 849 F.2d 1478 (11th Cir.1988). In addition to proving the assessment, the Certificate satisfies the requirements of 26 U.S.C. § 6203, that the taxpayer be provided upon request with proof of the assessment. Accordingly, the court finds that the assessment of deficiencies with respect to plaintiff's 1976-78 taxable years were made in accordance with all statutory and regulatory requirements.

The Correctness of the Assessment

Plaintiff next argues that the tax assessments are incorrect.

A tax assessment is presumptively correct. *United States v. Janis* [76-2 USTC ¶ 16,229], 428 U.S. 433, 440 (1976). Once a Certificate of Assessment has been established, the taxpayer has the burden or going forward and the ultimate burden of persuasion. *United States v. Lease* [65-2 USTC ¶ 9478], 346 F.2d 696 (2d Cir.1965). This burden is not changed, as plaintiff contends, when an assessment is levied against a taxpayer who has failed to file a return.

In this case, plaintiff has failed to produce any evidence that the assessments made against him are incorrect. Plaintiff's conclusory denials and bald assertions that he could produce evidence at trial that the assessments are incorrect are insufficient, without more, to withstand the granting of defendant's summary judgment motion. Mere conclusory denials do not satisfy the dual burdens of proof and persuasion, and should be pierced upon a summary judgment motion. *United States v. Prince* [65-2 USTC ¶ 9552], 348 F.2d 746, 748 (2d Cir.1965).

In order to prevail, plaintiff must show not only that the Commissioner's determination was erroneous, but also his correct tax liability *Lewis v. Reynolds* [3 USTC ¶ 856], 284 U.S. 281, 283 (1932). Plaintiff has done neither in this case.

Plaintiff's argument that the assessment made against him for the year 1976 is barred by the statute of limitations must fail as a matter of law. Had plaintiff filed a proper tax return for 1976, then absent fraud, the statute of limitations for making an assessment is three years. 26 U.S.C. § 6501. However, since plaintiff did not file a proper return, the statute of limitations did not begin to run until the assessment was made in April 1983.

The Constitutionality of the Income Tax

The court now turns to plaintiff's contention that the imposition of an income tax on plaintiff is unconstitutional.

The authority given Congress to lay and collect tax, see U.S. Const., Art. 1 § 8, Cl. 1, as modified by the 16th Amendment, allows the imposition of an income tax without limitation. The 16th Amendment removed the limitation on Congress' authority to impose a direct tax only if proportioned among the States, stating that "Congress shall have the power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration." Courts have repeatedly upheld the constitutionality of the 16th Amendment. See, *e.g., Brushaber v. Union Pacific Railroad* [1 USTC ¶ 4], 240 U.S. 1, 17-19 (1916) [The Court upheld the validity of the 16th Amendment, finding that it eliminated the requirement that direct taxes, such as the income tax, on all income from whatever source derived, need no longer be apportioned].

As set forth in the pages attached to the statutory Notice of Deficiency, see Defendant's Exhibit 3, during each of the years from 1976-78, plaintiff received income in the amount of $52,200, $51,2268 and $121,219, respectively. Based on the foregoing, plaintiff's contention that this income cannot constitutionally be taxed must be rejected.

The Collection of the Assessment

Having determined that the assessments were proper and the imposition of an income tax on plaintiff was not unconstitutional as a matter of law, the court now turns to plaintiff's assertion that the assessment was improperly collected.

The Government has shown that plaintiff was sent notice of assessment and demand for payment through form 3552 Prompt Assessment Billing Assembly-- Statement of Tax Due on Federal Tax Return, as well as a subsequent Final Notice demanding payment. See Defendant's Exhibits 7-9. While plaintiff does not deny receiving these notices, he claims that the IRS should have used a different form to send the notice, either form 17 or 17A Statement of Tax Due.

The court finds that the form used by the IRS in the instant case provided plaintiff with all the information required for notice and demand by 26 U.S.C. § 6303 and Treas.Regs. § 301.6303. Accordingly, plaintiff's argument that the assessment was improper must fail as a matter of law.

The Imposition of Fraud Penalties

The court finally turns to plaintiff's argument that he is entitled to summary judgment on the issue of fraudulent underpayment of taxes.

26 U.S.C. § 6653(b), as in effect during 1976-78, imposes an addition to tax equal to 50 percent of the

underpayment if any part of the underpayment is due to fraud. See *O'Connor v. Commissioner* [69-2 USTC ¶ 9453], 412 F.2d 304, 310 (2d Cir.1969). The purpose of this fraud penalty "is to protect the revenue and reimburse the Government for the public funds which must be expended in the investigation and uncovering of tax evasion activities." *Kahr v. Commissioner* [69-2 USTC ¶ 9594], 414 F.2d 621, 626 (2d Cir.1969).

The Government bears the burden of proving fraud by clear and convincing evidence. *Prince v. United States*, 348 F.2d at 748. However, since "[t]ax evaders seldom leave tracks," *Webb v. Commissioner* [68-1 USTC ¶ 9341], 394 F.2d 366, 380 (5th Cir.1968), "fraud need not be established by direct evidence, but can be shown by surveying the taxpayer's entire course of conduct and drawing reasonable inferences therefrom." *Korecky v. Commissioner* [86-1 USTC ¶ 9232], 781 F.2d 1566, 1568 (11th Cir.1986).

In determining what constitutes fraud under 26 U.S.C. § 6653(b), courts have relied on several factors, including (1), the failure to file tax returns; (2) the failure to report income over a period of time; (3) failure to furnish the Government with access to his records; (4) failure to keep adequate books and records; and (5) the taxpayer's experience and knowledge. *Solomson v. C.I.R.* [84-1 USTC ¶ 9450], 732 F.2d 1459, 1461-62 (6th Cir.1984). While any one factor may not be conclusive on the fraud issue, the combination of several factors is persuasive evidence of fraud. *Schiff v. Commissioner* [CCH Dec. 41,174(M)], T.C. Memo. 1984-223, *aff'd.* [85-1 USTC ¶ 9108], 751 F.2d 116 (2d Cir.1984).

In the instant case, the court finds that there is persuasive evidence that plaintiff committed fraud. It is undisputed that absent enforced collection, plaintiff paid no taxes for the years 1976-1978, and failed to file returns disclosing either his income or tax liability. In addition, the evidence establishes that plaintiff is an intelligent person with a broad knowledge of tax law, as plaintiff has written books on the subject of income taxes and has appeared on television discussing the same.

The court finds plaintiff's attempts to exculpate himself from the fraud penalty based on the sincerity of his belief that he need not pay income taxes to be without merit. While a failure to pay because of a "misunderstanding of law" may not sustain the imposition of the fraud penalty, "disagreement with the law" provides no defense. *United States v. Schiff* [86-2 USTC ¶ 9684], 801 F.2d 108, 112 (2d Cir.1986). As the Court of Appeals for the Second Circuit noted, "[t]he distinction [between a misunderstanding and a disagreement] is necessary to the functioning of our tax system. Without it, any taxpayer could evade tax obligations simply by stubbornly refusing to admit error despite the receipt of any number of authoritative statements of the law." *Id.*

In a prior action involving plaintiff's liability for tax evasion and fraudulent underpayment of taxes, the Tax Court, after reviewing the evidence and considering plaintiff's arguments, concluded:

Petitioner is free to argue his theories to Congress but he cannot disregard the laws passed by Congress and upheld by the courts, fail to perform an affirmative duty imposed on him by those laws, and then expect to avoid the consequences of his avowedly freely exercised disobedience.

Schiff [CCH Dec. 41,174(M)], T.C. Memo. 1984-223.

For the same reasons stated by the Tax Court, and based on the evidence of fraud presented by the

Government in the instant case, the court will uphold the imposition of the fraud penalty on plaintiff with respect to the taxable years 1976-78.

Conclusion

For the foregoing reasons, the court finds that there are no genuine issues of material fact in dispute and that summary judgment should enter for defendant as a matter of law. Accordingly, defendant's motion for summary judgment is GRANTED and plaintiff's motion for summary judgment is DENIED. The clerk is directed to enter judgment in favor of defendant United States of America against plaintiff Irwin A. Schiff and to close this case. The parties cross- motions for sanctions are DENIED.

SO ORDERED.

Hopkins v. United States, 1985 WL 6373 (E.D.Va.))

United States District Court; E.D. Virginia,

Newport News Division.

George T. Hopkins, Denise E. Hopkins, Plaintiffs

v.

United States of America, Defendant.

Civil Action No. 84-167-NN

7/22/85

CLARKE, District Judge.

Order

This matter is before the Court on cross-motions of the parties for summary judgment. The Court has reviewed the briefs of the parties and the motions are now ripe for disposition.

In this action, the plaintiffs seek the abatement of a $500.00 civil penalty assessed against each plaintiff for filing a frivolous income tax return, pursuant to 26 U. S. C. § 6702. The plaintiffs also seek refunds of the 15% prepayment ($75.00) of the penalty they made pursuant to 26 U. S. C. § 6703(c)(1), plus interest, attorney's fees and costs.

The plaintiffs were assessed the penalty on the basis of their amended income tax returns for the years 1980 and 1982. On those returns, the plaintiffs reported as income from wages the amount listed on the W-2 Wage and Tax Statements furnished by their employers. The plaintiffs proceeded to report a large portion of their salaries as a "cost of labor" on Schedule C-1, and then deducted that amount from their gross income as a business expense. The result was that each plaintiff reported zero taxable income for 1980 and 1982 and represented to the Internal Revenue Service (IRS) that they owed no income tax for either year.

The IRS assessed a civil penalty of $500.00 against each of the plaintiffs, pursuant to 26 U. S. C. § 6702, for filing a frivolous income tax return. The plaintiffs paid $75.00 of the penalty for each of the years in question. The plaintiffs have filed this action in federal court for refund of the $150.00 on the grounds that the returns filed are not frivolous, that the act upon which the fines are based is unconstitutional, and that wages are not taxable income.

The United States has moved for summary judgment on the ground that there is no genuine issue of material

fact in this litigation. The plaintiffs have filed a response to the government's motion, as well as their own motion for summary judgment.

Section 6702 of the Internal Revenue Code (26 U. S. C. § 6702) provides in pertinent part that a penalty of $500.00 shall be assessed if (1) an individual files a return which contains information that on its face indicates that the self-assessment is substantially incorrect, and (2) that conduct is due to a frivolous position or a desire to delay or impede the administration of the income tax laws. This section was added to the Code as a part of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), and became effective on September 3, 1982. Pub. L. No. 97-248, Title III, § 326(a), 96 Stat. 617 (1982).

The legislative history of § 6702 indicates that Congress was concerned about the large increase in the number of illegal protest returns being filed. See S. Rep. No. 494, 97th Cong., 2d Sess. 277, *reprinted in* 1982 U. S. Code Cong. & Ad. News 781, 1023-24. In enacting this section, Congress sought to impose an immediately assessable penalty, in order to deter the filing of protest returns. *Id.* Under the previous laws, taxpayers who filed a protest return were subject to a penalty only if they also underpaid their tax. *Id.*

Constitutional Arguments

The plaintiffs challenge the constitutionality of TEFRA, of which § 6702 was a part, alleging that it was enacted in violation of the origination clause, Article I, § 7, cl. 1 of the Constitution. That clause states: "All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills."

This allegation is meritless. This court and many other courts have rejected similar challenges to the constitutionality of TEFRA. See *e.g., Scull v. United States* [84-2 USTC P 9529], 585 F. Supp. 956 (E. D. Va. 1984); *Stamp v. Commissioner* [84-1 USTC P 9259], No. 83-C-7437 (N. D. Ill. Jan. 30, 1984); *Kloes v. United States* [84-1 USTC P 9251], No. 83-C-814-S (W. D. Wis. Jan. 17, 1984); *Milazzo v. United States* [84-1 USTC P 9167], Civ. No. 83-1901-T (S. D. Cal. Jan. 16, 1984); *Bearden v. Commissioner* [84-1 USTC P 9264], 575 F. Supp. 1459, 1460-61 (D. Utah 1983); *Frent v. United States* [83-2 USTC P 9561], 571 F. Supp. 739, 742 (E. D. Mich. 1983). This Court addressed the identical argument in *Scull, supra,* and concluded that the argument is flawed because TEFRA did in fact originate in the House of Representatives.

The plaintiffs additionally claim that they were denied due process of law, evidently because they were not given a hearing on the validity of their Fifth Amendment claims before they were assessed the $500.00 penalty. The Constitution, however, does not require a hearing before the assessment and collection of the civil penalty imposed by Section 6702. The legislative history of the section clearly demonstrates a congressional intent to have the penalty immediately assessed. So long as the taxpayer has the right to sue for a refund after the assessment, there is no violation of due process. See *Bob Jones University v. Simon* [74-1 USTC P 9438], 416 U. S. 725, 746 (1974); *Franklet v. United States* [84-1 USTC P 9151], 578 F. Supp. 1552 (N. D. Cal. 1984); *Kidd v. Bradley,* 578 F. Supp. 275 (N. D. W. Va. 1984); *Milazzo v. United States* [84-1 USTC P 9167], 578 F. Supp. 248 (S. D. Cal. 1984); *Stamp v. Commissioner of Internal Revenue* [84-1 USTC P 9259], 579 F. Supp. 168 (N. D. Ill. 1984); *Bearden v. Commissioner of Internal Revenue* [84-1 USTC P 9264], 575 F. Supp. 1459 (Utah 1983); *Googe v. Secretary of the Treasury* [84-1 USTC P 9172], 577 F. Supp. 758 (E. D. Tenn. 1983).

The plaintiffs assert that the term "frivolous" is not defined in the Internal Revenue Code. The Court interprets this claim as an allegation that § 6702 violates the due process clause of the fifth and fourteenth amendments because it is void for vagueness.

All that is required by due process is that the prohibited conduct be described so that "the ordinary person exercising ordinary common sense can sufficiently understand and comply . . . ." *Civil Service Commission v. National Association of Letter Carriers*, 413 U. S. 548, 579 (1973).

The language of § 6702 comports with this standard. The term "frivolous" is one which the ordinary person understands to mean "having no basis in law or fact." Webster's Third New International Dictionary 913 (1971). Furthermore, Congress defined the term "frivolous" as meaning "clearly unallowable." S. Rep. No. 494, 97th Cong., 2d Sess. 278, *reprinted in* 1982 U. S. Code Cong. & Ad. News 781, 1024. The term "frivolous" in § 6702 is not unconstitutionally vague. See *Kloes v. United States* [84-1 USTC P 9251], No. 83-C-814-S (W. D. Wis. Jan. 17, 1984); *Franklet v. United States* [84-1 USTC P 9151], No. C-83-3938-WWS (N. D. Cal. Jan. 9, 1984).

The plaintiffs argue that § 6702 infringes upon their first amendment right to petition the government for redress of grievances. They allege that the assessment of the penalty amounts to a fine upon a taxpayer who is attempting to petition the government.

The assessment of a penalty for the violation of the internal revenue laws does not infringe upon the plaintiffs' first amendment rights. See *Milazzo v. United States* [84-1 USTC P 9167], Civ. No. 83-1901-T (S. D. Cal., Jan. 16, 1984); *Bearden v. Commissioner* [84-1 USTC P 9264], 575 F. Supp. 1459, 1461 (D. Utah 1983). It does not prevent taxpayers from seeking changes in the internal revenue laws through appropriate channels.

The other Constitutional arguments alluded to by the plaintiffs in their complaint have all been squarely addressed and rejected by this Court in *Scull v. United States* [84-2 USTC P 9529], 585 F. Supp. 956. The plaintiffs have failed to raise a single argument that differs in any way from arguments unsuccessfully raised by other tax protestors.

Application of § 6702 Penalty

In this case the plaintiffs have attempted to utilize a deduction that has been invoked by numerous tax protestors seeking to avoid payment of any federal income tax. They have requested an unfounded business expense of their entire salary or enough of it to render their tax "0." This deduction has never, to the knowledge of this Court, been upheld by any tribunal; and the assessment of the Section 6702 penalty has been upheld by this Court and others. *Cannon v. United States* [83-1 USTC P 9699], 52 A. F. T. R. 2d 83-6348 (E. D. Mich. 1982); *Keetar v. United States*, Civil Action No. 83-231-NN, Slip op. (E. D. Va., May 29, 1984); *Scull v. United States* [84-2 USTC P 9529], 585 F. Supp. 956 (E. D. Va. 1984); *Hosey v. United States*, Civil Action No. 84-111-NN, Slip op. (Feb. 8, 1985, E. D. Va.); *Gill v. Secretary* [85-1 USTC P 9188], Civil Action No. 84-0543-R, Slip op. (Dec. 18, 1984, E. D. Va.).

The § 6702 penalty may be assessed only if three requirements are met. First, the taxpayer must file what

purports to be a tax return. 26 U. S. C. § 6702(a)(1). The plaintiffs do not claim that this requirement has not been satisfied.

The second requirement is that the return must either fail to contain information which is sufficient to ascertain whether the self-assessment is correct, § 6702(a)(1)(A), or must contain information which on its face indicates that the self-assessment is substantially incorrect. § 6702(a)(1)(B). The Government asserts that the plaintiffs' returns meet the requirements of § 6702(a)(1)(B), in that they contain information which on its face indicates that the self-assessments are substantially incorrect. The plaintiffs reported zero taxable income for 1980 and 1982, despite the fact that their W-2 forms indicated income from wages earned during those years. A facial examination of the plaintiffs' returns indicates that their self- assessments are substantially incorrect. The Court concludes that § 6702(a)(1)(B) has been satisfied.

The third and final requirement for the assessment of the § 6702 penalty is that the position asserted by the taxpayer is frivolous, § 6702(a)(2)(A), or demonstrates a desire to impede or delay the administration of the income tax laws. § 6702(a)(2)(B). The Government alleges that the plaintiffs' returns satisfy the requirements of both subsections, although only one subsection must be satisfied in order to assess the penalty.

Taking a "clearly unallowable deduction" was specifically defined by Congress as frivolous within the meaning of Section 6702 (S. Rep. 970-494, Vol. 1, 97th Cong., 2d Sess. 278). Here the plaintiffs' claim that wages are not taxable as income within the "original intent" of the Sixteenth Amendment is plainly frivolous and has been repeatedly ruled so by courts having the occasion to address the issue. See *e.g., United States v. Moore* [79-2 USTC P 9676], 692 F. 2d 95, 97 (10th Cir. 1979); *Funk v. Commissioner* [82-2 USTC P 9555], 687 F. 2d 264, 265 (8th Cir. 1982) (per curiam); *Lonsdale v. Commissioner* [81-2 USTC P 9772], 661 F. 2d 71, 72 (5th Cir. 1981); *United States v. Buras* [81-1 USTC P 9126], 633 F. 2d 1356, 1361 (9th Cir. 1980); *Googe v. Secretary of the Treasury* [84-1 USTC P 9172], No. Nov. 3- 83-608 (E. D. Tenn., Dec. 30, 1983); *United States v. Shugarman* [84-2 USTC P 9871], 596 F. Supp. 186 (E. D. Va. 1984).

Accordingly, the Court FINDS that the assessment by the IRS of the penalty for a frivolous filing was justified in this instance.

The bulk of the remainder of the plaintiffs' response to the motion for summary judgment is their assertion that they are entitled to a jury trial. Although plaintiffs are normally entitled to a jury trial in tax return litigation, the function of the jury is to determine disputed issues of fact. The plaintiffs are entitled to a jury trial only as long as it appears from the pleadings that there is some issue of fact that may be tried by the jury. *Laskaris v. Thornburgh*, 733 F. 2d 260 (3d Cir. 1984). In this case, there is no disputed issue that may be determined by a jury; the Court rules as a matter of law that the plaintiffs' amended returns were frivolous.

The Section 6702 penalty was appropriately applied. The defendant's motion for summary judgment is GRANTED. This action for return of payment of the penalty is hereby DISMISSED and the plaintiffs are liable for the entire penalty.

Sanctions

The defendant has moved for the imposition of sanctions against the plaintiffs in the form of costs and attorneys fees for defending this meritless action. One of the arguments in support of sanctions is that the plaintiffs in this action filed an identical complaint to the complaint filed in *Ronald G. Gill v. United States, et al.* [85-1 USTC P 9188], C/A 84-0543, Slip op. (Dec. 18, 1984, E. D. Va.). The District Court in *Gill* summarily dismissed the complaint upon the motion of the United States. The defendant argues that plaintiffs' reliance on the form petition rejected in *Gill* demonstrates that the instant action was commenced without a good faith argument for the extension, modification, or reversal of existing law, and that such a complaint violates Rule 11 of the Federal Rules of Civil Procedure. The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

The plaintiffs responded to the motion of the defendant by pointing out that the *Gill* decision came down on December 18, 1984, the same date that they filed their complaint in this court. They argue that their complaint was filed in good faith.

The Court agrees with the United States that these plaintiffs were not acting in good faith in pursuing these obviously meritless contentions. Even if their complaint was filed before the decision in *Gill*, they certainly must have learned of the decision in that case long before they filed their opposition to this motion. Furthermore, an even cursory inquiry into the legislative history of Section 6702 or the case law surrounding each of their arguments would have revealed that their arguments have already been addressed and rejected by this Court in *Scull, supra,* and by the legislature and many other courts.

The defendant's motion for sanctions is GRANTED. The plaintiffs are ORDERED to pay costs and reasonable attorneys fees incurred by the United States in defending this action. The defendants are ORDERED to prepare affidavits in support of their request for attorneys fees within ten days of the date of this Order. The plaintiffs will have ten days after the filing of the defendant's affidavits to respond to the affidavits. It is further ORDERED that this action be, and it hereby is, DISMISSED.

The Clerk shall mail a copy of this Order to counsel for the plaintiffs and to the United States Attorney at Norfolk.

Nichols v. United States, 575 F.Supp. 320 (D.Minn. 1983)

United States District Court,

D. Minnesota.

Gregory T. NICHOLS, Plaintiff,

v.

UNITED STATES of America, Defendant.

James A. McGINLEY, Plaintiff,

v.

UNITED STATES of America, Defendant.

Nos. Civ. 4-83-564, Civ. 4-83-592.

Dec. 20, 1983.

MEMORANDUM AND ORDER

MacLAUGHLIN, District Judge.

These cases are before the Court on the defendant's motions for judgment on the pleadings. The plaintiffs seek a refund of $500 penalties that the Internal Revenue Service (IRS) imposed on them for filing allegedly frivolous income tax returns.

FACTS

The plaintiffs, Gregory Nichols and James McGinley, are both employed by a company called CPT Corporation in Minneapolis, Minnesota. The tax returns at issue were filed for the 1982 tax year. In each case, the plaintiff filed a Form 1040 and Schedule C profit and loss statement, a W-2 form, and a cover letter. The 1040 forms were unsigned and contained the words "For Information (Informal) Purposes Only/ Not a Return" in the signature space. Each form listed wages, tips, and salary as zero, even though the accompanying W-2 forms show that Nichols had $15,042 in wages and McGinley had $38,642. The word "Incorrect" was written across both W-2 forms with no explanation of what was incorrect about them. Both plaintiffs claimed a refund for the total amount withheld by the IRS, although McGinley's form contains a $500 arithmetic error in the IRS' favor. The cover letters, which were identical, refer vaguely to IRS fraud and propaganda and state that the author is submitting his tax forms for informational purposes in support of his request for a complete refund.

Upon receiving the documents, the IRS assessed a $500 penalty against each plaintiff pursuant to 26 U.S.C. § 6702, a recently enacted law designed to deter the filing of protest tax returns. Pursuant to the statute, each plaintiff tendered 15 percent of the penalty ($75) and demanded abatement of the penalty. The IRS disallowed the plaintiffs' demands and the plaintiffs filed separate suits.

DISCUSSION

The relevant statute is 26 U.S.C. § 6702 which provides as follows:

> Frivolous income tax return
>
> (a) Civil penalty.--If--
>
> (1) any individual files what purports to be a return of the tax imposed by subtitle A but which--
>
> (A) does not contain information on which the substantial correctness of the self-assessment may be judged, or
>
> (B) contains information that on its face indicates that the self-assessment is substantially incorrect; and
>
> (2) the conduct referred to in paragraph (1) is due to--
>
> (A) a position which is frivolous, or
>
> (B) a desire (which appears on the purported return) to delay or impede the administration of Federal income tax laws, then such individual shall pay a penalty of $500.
>
> (b) Penalty in addition to other penalties.--The penalty imposed by subsection (a) shall be in addition to any other penalty provided by law.

The issues before the Court are whether each plaintiff filed "what purports to be a [tax] return" and, if so, whether that return was frivolous. These are legal questions for the Court to decide. *See United States v. Grabinski,* 558 F.Supp. 1324, 1333 (D.Minn.1983), *citing United States v. Moore,* 627 F.2d 830, 834 (7th Cir.1980). The government bears the burden of proving that the penalties are justified. 26 U.S.C. § 6703.

The plaintiffs' main contention is that they are not liable under section 6702 because they did not file "what purports to be a tax return." The plaintiffs rely on the definition of "return" set forth in *United States v. Grabinski,* 558 F.Supp. 1324 (D.Minn.1983). In that case, which involved a criminal prosecution for failure to file a return under 26 U.S.C. § 7203, the court held that "a taxpayer who fails to provide all of the information required by the Internal Revenue Code (Title 26) or the regulations promulgated thereunder has not filed a return for purposes of § 7203." 558 F.Supp. at 1331. The plaintiffs maintain that, since they did

not provide all of the required information, by definition they did not file returns and cannot be held liable under section 6702. [FN1]

The obvious flaw in the plaintiffs' argument is that *Grabinski* defines "return" only for purposes of section 7203, a criminal statute, not for purposes of section 6702, which provides for an administratively imposed sanction for filing a frivolous tax return. Moreover, the conduct to which the plaintiffs admit--deliberately filing incomplete tax forms--is precisely the type of conduct that section 6702 was designed to punish and deter:

> The penalty will be immediately assessable against any individual filing a "return" in which many or all of the line items are not filled in except for references to spurious constitutional objections. Furthermore, the penalty is available against any individual filing a purported return in which insufficient information to calculate the tax is given ....

S.Rep. No. 494, 97th Cong., 2d Sess. 278, *reprinted in* 1982. U.S.Code Cong. & Ad.News 781, 1024. An interpretation of section 6702 that excludes liability for filing an incomplete tax return would be directly contrary to the clear intent of Congress.

The *Grabinski* definition of "return" does not apply to section 6702 for another reason as well. Section 6702 requires only that the documents filed *purport* to be a tax return, not that they actually be a tax return. In these cases, the documents filed purported to be tax returns. The plaintiffs used official tax forms. The cover letters stated that the plaintiffs were seeking "a full refund of all the taxes ... paid." One cannot obtain a refund without filing a return. 26 C.F.R. § 301.6402.3(a)(1) (1983). Since the plaintiffs' stated purpose was to obtain a refund, the documents submitted must be deemed to be purported tax returns for purposes of section 6702. It is true that the plaintiffs wrote on the forms that they were not returns, but this disclaimer has no effect in light of the plaintiffs' stated purpose to have the documents treated as returns. If such a disclaimer were sufficient to avoid liability under section 6702, tax protesters could flood the IRS with frivolous tax returns bearing similar disclaimers without penalty. Section 6702's purpose of deterring frivolous filings would be completely undermined.

Given that the plaintiffs filed purported tax returns, little discussion is required to establish the remaining elements of liability. Each tax return "on its face indicate[d] that the [taxpayer's] self-assessment [was] substantially incorrect." **Both returns listed wages, salaries, and tips as zero, yet the accompanying W-2 forms showed that the plaintiffs had received substantial wages. Neither plaintiff made any attempt to explain the discrepancy beyond writing the word "Incorrect" across the W-2 form. It is also clear that the plaintiffs' position that they owed no tax was frivolous**. The plaintiffs' claim that they are entitled to deduct their entire income as a "cost of labor" has been repeatedly rejected as "clearly frivolous." *E.g., Funk v. Commissioner*, 687 F.2d 264, 265 (8th Cir.1982) (per curiam). Likewise, the plaintiffs' position that they are entitled to a complete refund because they received no governmental privileges during the tax year is without merit. *United States v. Buras*, 633 F.2d 1356, 1361 (9th Cir.1980).

Accordingly, IT IS ORDERED that the defendant's motions for judgment on the pleadings are granted and the plaintiffs' complaints are dismissed with prejudice.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Footnote:

FN1. The plaintiffs seem to be arguing, in effect, that they should have been charged with failure to file a return instead of with filing a frivolous return. This is an unusual argument for them to make, considering that the penalty for failure to file is a maximum of one year imprisonment plus a fine of $25,000, as opposed to the $500 penalty assessable under section 6702.

Tornichio v. United States, 1998 WL 381304 (N.D.Ohio))

United States District Court, N.D. Ohio.

Joseph T. TORNICHIO, Plaintiff,

v.

UNITED STATES OF AMERICA, Defendant.

No. 5:97CV2794.

March 12, 1998.

MEMORANDUM OF OPINION

MANOS, J.

On November 3, 1997. Joseph T. Tornichio, plaintiff, filed this action *pro se* seeking the refund of money he paid to the Internal Revenue Service ("I.R.S."). In particular, he seeks refund of amounts assessed against him by the I.R.S. as penalties for filing frivolous income tax returns. On December 31, 1997, Defendant filed a Motion To Dismiss, to which Plaintiff responded. The motion expresses an intent to seek sanctions pursuant to Fed R. Civ. P. 11. On January 28, 1998, Defendant filed a Motion For Sanctions.

For the reasons stated below, Defendant's Motion To Dismiss is GRANTED. It's Motion For Sanctions is GRANTED.

I. *FACTS*

Plaintiff filed a 1994 federal income tax return indicating his employer had withheld a portion of his wages for the payment of his federal income taxes. Despite the fact he had wages, he claimed on the return he had no taxable income, and put the amount withheld on the lines for overpayment and refund. He provided an attachment alleging he owed no taxes essentially because: (1) nothing in the Internal Revenue Code ("Code") makes him "liable" for taxes, (2) the filing requirement violates his Fifth Amendment right against self-incrimination, and (3) "income" under the Code is limited to gains from corporate activities.

In response, the I.R.S. assessed him a $500.00 penalty (which totaled $519.72 including interest) pursuant to 26 U.S.C. § 6702 for filing a frivolous return. Plaintiff paid the penalty. He filed a similar return for his 1995 income, and again the I.R.S. assessed him a $500.00 penalty (which totaled $577.60 including interest). This time the I.R.S. removed the funds from his bank account via administrative levy pursuant to 26 U.S.C. § 6331. The levy created an overdraft for the account, resulting in a $45.00 charge from the bank.

Plaintiff seeks refund of the penalties and reimbursement of the overdraft charge. [FN1] Defendant characterizes this action as a patently frivolous "tax protester" suit.

II. *LAW*

Defendant has moved to dismiss because the Complaint fails to state a claim upon which relief can be granted. *See* Fed.R.Civ.P. 12(b)(6). In deciding a motion to dismiss, the allegations in the Complaint are taken as true and viewed in the light most favorable to Plaintiff. A complaint will not be dismissed "unless it appears beyond a reasonable doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Hiser v. City of Bowling Green,* 42 F.3d 382, 383 (6 th Cir.1994), *cert. denied*, 514 U.S. 1120, 115 S.Ct. 1984, 131 L.Ed.2d 871 (1995), *quoting, Conley v. Gibson,* 355 U.S. 41, 45-46, 78 S. Ct. 99, 102, 2 L.Ed.2d 80 (1957); *Dana Corp. v. Blue Cross & Blue Shield Mutual of Northern Ohio,* 900 F.2d 882, 885 (6 th Cir.1990). The complaint need only give fair notice as to the claim and the grounds upon which it rests. *In re DeLorean Motor Co.,* 991 F.2d 1236, 1240 (6 th Cir.1993).

Conclusory allegations, however, are not sufficient to state a claim. Rather, a complaint must set forth specific facts which, if proven, would warrant the relief sought. *Sisk v. Levings,* 868 F.2d 159, 161 (5 th Cir.1989). In addition, a court is not bound to accept as true a legal conclusion couched as a factual allegation. *Papasan v. Allain,* 478 U.S. 265, 286 106 S.Ct. 2932, 2944 (1986). A court likewise need not accept unwarranted factual inferences. *Morgan v. Church's Fried Chicken,* 829 F.2d 10, 12 (6 th Cir.1987). Although *pro se* Complaints are held to less stringent standards than those filed by lawyers, they still must meet the basic pleading essentials. *Wells v. Brown,* 891 F.2d 591, 594 (6 th Cir.1989).

The Code states a tax is "hereby *imposed* on the taxable income of every individual". 26 U.S.C. § 1. (emphasis added). "Taxable income" means gross income minus deductions permitted under the Code. 26 U. S.C. § 63(a). "Gross income" means "all income from whatever source derived, including (but not limited to) the following items: (1) Compensation for services ..." 26 U.S.C. § 61(a).

With certain exceptions not relevant here, the Code requires all individuals file a return indicating a self-assessment of tax. *See* 26 U.S.C. § 6012. A penalty of $500.00 shall be assessed against any individual who files "what purports to be a return" which, *inter alia,* contains information on its face indicating the self-assessment is substantially incorrect, and is due to a position which is frivolous. 26 U.S.C. § 6702(a). [FN2]

III. *ANALYSIS*

Plaintiff challenges the I.R.S's conclusion that his returns fall within the penalty provision of section 6702(a). He also challenges the use of administrative levy to obtain payment of the second penalty. His arguments lack merit.

A. *Assessment of the Penalties*

Plaintiff filed what he purports to be returns. The returns indicate he had wages withheld, but no taxable income. This contradiction "on its face indicates the self-assessment is substantially incorrect" *See* 26 U.S.C. § 6702(a)(1)(B). Thus, the issue is whether the error is due to "a position which is frivolous" *See* 26 U.S.C. § 6702(a)(2)(B). To deny his returns are frivolous, Plaintiff relies essentially on the same arguments he asserted in the attachments to his tax returns.

In *Sisemore v. United States*, 797 F.2d 268 (6 th Cir.1986), the Sixth Circuit upheld penalties in a case similar to this one. The plaintiffs amended a joint tax return to deny their wages and salary were taxable "income". They submitted a memorandum with the return in support of their position. The Court concluded the amended return on its face indicated the self-assessment was substantially incorrect. It also concluded their position that wages are not taxable is frivolous. Double costs and attorneys fees were assessed against them pursuant to Fed. R.App. P. 38 for filing a frivolous appeal. *Id.* at 270-71.

Plaintiff's arguments are no less frivolous here. [FN3] First, Plaintiff argues the Code does not impose a tax "liability". The plain language of the Code belies this, stating the tax is "imposed". *See* 26 U.S.C. § 1. He attempts to distinguish between "imposing" a tax and creating a "liability" for tax. The Court fails to see a difference. Individuals have an affirmative duty to pay taxes. *Gabelman v. Commissioner of Internal Revenue*, 86 F.3d 609, 611 (6 th Cir.1996).

Plaintiff next argues the filing of a return violates his Fifth Amendment right against self-incrimination. [FN4] He relies on *Garner v. United States*, 424 U.S. 649 (1976). There, the Court held one may invoke the Fifth Amendment as to tax returns that would incriminate one for specific non-tax crimes, provided the privilege was claimed on the return. It does *not* stand for the proposition that the Fifth Amendment provides general protection against filing tax returns. Indeed, the Court reiterated the long-standing principle that the Fifth Amendment is not a defense to filing a return at all. *Id.* at 650, *citing, United States v. Sullivan*, 274 U.S. 259, 47 S.Ct. 607, 71 L.Ed. 1037 (1927). In *Brennan v. Commissioner of Internal Revenue*, 752 F.2d 187, 189 (6 th Cir.1985), the Sixth Circuit held the blanket assertion of the Fifth Amendment privilege as to tax returns is a "frivolous position".

Plaintiff argues he is entitled to relief because the Code does not define income. The United States, however, is correct that "income" is afforded its every day usage as any gain derived from capital, labor, or both combined. *See United States v. Richards*, 723 F.2d 646, 648 (6 th Cir.1983). In addition, the Code explicitly defines "gross income", from which taxable income is computed, as including compensation for services, *i.e.*, wages. 26 U.S.C. § 61(a); *Charczuk v. Commissioner of Internal Revenue*, 771 F.2d 471, 473 (10 th Cir.1985); *Perkins v. Commissioner of Internal Revenue*, 746 F.2d 1187, 1188 (6 th Cir.1984).

Relatedly, Plaintiff argues "income" should be interpreted as limited to corporate activities, and not include wages. He relies on a series of Supreme Court cases rendered shortly after ratification of the Sixteenth Amendment, and which define the scope of corporate income. *None* of those cases, however, stands for the proposition that only corporate income is taxable. To the contrary, like *Richards, supra*, many of these cases state: "income may be defined as gain derived from capital, *from labor, or from both combined". See. e.g., Bowers v. Kerbaugh-Empire Co.*, 271 U.S. 170, 174, 46 S.Ct. 449, 70 L.Ed. 886 (1926); *Merchant's Loan & Trust Co. v. Smietanka*, 255 U.S. 509, 518, 41 S.Ct. 386, 65 L.Ed. 751 (1921); *Eisner v. Macomber*, 252 U.S. 189, 207, 40 S.Ct. 189, 64 L.Ed. 521 (1919); *Doyle v. Mitchell Bros. Co.*, 247 U.S. 179, 185, 38 S.Ct. 467, 62 L.Ed. 1054 (1918); *Stratton's Independence, Ltd. v. Howbert*, 231 U.S. 399, 415, 34 S.Ct. 136, 58 L.Ed. 285 (1913) (emphasis added). In particular, in *Southern Pacific Co. v. Lowe*, 247 U.S. 330, 333- 34, 38 S.Ct. 540, 62 L.Ed. 1142 (1918), the Supreme Court quoted the income statute at the time as imposing a tax on "every person residing in the United States ... upon the entire net income arising and accruing from all sources". Thus, the plain language of the authorities upon which Plaintiff relies belies his position.

Plaintiff next argues he should not be penalized because his filings constitute "returns" within the meaning of the Code. He relies on cases holding a return containing all zeroes is still a "return". His argument misses the point. He has not been penalized for failing to file returns, but for filing frivolous ones. Section 6702(a) penalizes a frivolous filing of "what purports to be a return". He admits he filed what he purports to be tax returns.

Courts have upheld penalties under section 6702(a) against returns in which the filer has improperly used zeroes or left lines blank. *See Fuller v. United States,* 786 F.2d 1437, 1438-39 (9 th Cir.1986). In *United States v. Kimball,* 896 F.2d 1218, 1220 (9 th Cir.1990), *relied on by Plaintiff,* the Court stated a return containing all asterisks "might well be frivolous under section 6702"; *vacated, United States v. Kimball,* 925 F.2d 359, (9 th Cir.1991) (also stating section 6702 applies to any document which purports to be a tax return).

B. *Administrative Levy*

Plaintiff also challenges the use of administrative levy to collect the second penalty. *See* 26 U.S.C. § 6331. Courts have repeatedly upheld the use of administrative levy. *See United States v. National Bank of Commerce,* 472 U.S. 713, 105 S.Ct. 2919, 86 L.Ed.2d 565 (1985); *Capuano v. United States,* 955 F.2d 1427, 1429 (11 th Cir.1992). In *Harrell v. United States,* 13 F.3d 232, 235-36 (7 th Cir.1993), the Court characterized a challenge to the levy process as "frivolous".

Even the authorities relied upon by Plaintiff clearly indicate his arguments are without merit. Had he followed the plain language of the cases and statutes he cited in the attachments to his tax returns, and again in his brief in opposition, he would have realized his returns were frivolous. Accordingly, his action is dismissed.

IV. *RULE 11 SANCTIONS*

Pursuant to Fed.R.Civ.P. 11, the United States moves for sanctions in the amount of reasonable attorneys' fees and costs Rule 11 provides, in part, presenting a pleading to the Court constitutes a certification that, to the best of one's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the claims are warranted by existing law, or a non-frivolous argument for the extension, modification, or the reversal of existing law or the establishment of new law. Fed.R.Civ.P. 11(b). The Court may impose an "appropriate sanction" against a party whose pleading does not comport with the certification. Fed.R.Civ.P. 11(c). The reasonableness inquiry constitutes a determination of whether the pleading was well founded. *Hartleip v. McNeilab, Inc.,* 83 F.3d 767, 778 (6 th Cir.1996), *citing,Business Guides, Inc. v. Chromatic Communications Enters., Inc.,* 498 U.S. 533, 553, 111 S.Ct. 922, 112 L.Ed.2d 1140 (1991).

The nature of Plaintiff's claims is summed up in the similar case of *Biermann v. Commissioner of Internal Revenue,* 769 F.2d 707 (11 th Cir.1985). The Court stated: "These arguments are patently frivolous, have been rejected by courts at all levels of the judiciary, and, therefore, warrant no further discussion." *Id* . at 708. The analysis above confirms the frivolousness of Plaintiff's Complaint. Defendant's request for sanctions is granted.

It is no excuse that Plaintiff is *pro se.* The plain language of *his own* authorities should have demonstrated to him his position has no merit. In addition, to the extent he believed himself to be correct when he filed the Complaint, Defendant's motion to dismiss clearly demonstrated his position is meritless. The motion to dismiss also warned him of the possibility of sanctions. Furthermore, pursuant to Fed.R.Civ.P. 11(c)(1), the motion for Rule 11 sanctions was filed more than 21 days after service to permit him to withdraw the Complaint. Despite the warnings, instead of withdrawing the Complaint, Plaintiff not only continued to pursue his claims, but even requested sanctions against the United States. [FN5]

Numerous courts have imposed sanctions for filing and appealing claims similar to those here. *See, e.g., Schoffner v. Commissioner of Internal Revenue,* 812 F.2d 292, 294 (6 th Cir.1987) (the Sixth Circuit has given notice that tax protester cases are sanctionable); *Sisemore v. United States,* 797 F.2d 268, 270-71 (6 th Cir.1986) (sanctions imposed for claiming wages are not "income"), *Stites v. Internal Revenue Service,* 793 F.2d 618 (5 th Cir.1986) (upholding Rule 11 sanctions); *Coleman v. Commissioner of Internal Revenue.* 791 F.2d 68, 72 (7 th Cir.1986) (courts "regularly impose sanctions" in tax protester cases); *Kelly v. United States,* 789 F.2d 94, 98 (1 st Cir.1986) ("courts have not hesitated to impose sanctions" in tax protester cases); *Charczuk v. Commissioner of Internal Revenue,* 771 F.2d 471, 475-76 (10 th Cir.1985) (sanctions imposed for claiming income tax was unconstitutional and "income" is not defined); *Hudson v. United States,* 766 F.2d 1288, 1292 (9 th Cir.1985) (sanctions imposed for claiming income tax is unconstitutional and asserting blanket Fifth Amendment privilege as to tax returns).

The only remaining issue is the amount of sanctions. Rule 11 provides for the imposition of an "appropriate sanction", which does not necessarily mean attorneys' fees and expenses. *See* Fed.R.Civ.P. 11(c); *Donaldson v. Clark,* 819 F.2d 1551, 1557 (11 th Cir.1987). The primary factor in determining the amount is deterrence. Other factors include compensation to the aggrieved party, mitigation of effort by the aggrieved party to avoid excessive expenses, and the sanctioned party's ability to pay. *Danvers v. Danvers,* 959 F.2d 601, 605 (6 th Cir.1992). The Court may also consider the cost to the judicial system in time and effort. *Rose v. Franchetti,* 979 F.2d 81, 86-87 (7 th Cir.1992).

The parties have not briefed what constitutes an "appropriate sanction". The United States has requested attorneys' fees and expenses as a sanction, but has not requested a specific amount or given reasons why such amount would be appropriate. Accordingly, the parties have five (5) days within which to provide an additional brief addressed solely to the amount of sanctions.

V. *CONCLUSION*

Defendant's Motion To Dismiss is GRANTED. Defendant's Motion For Sanctions pursuant to Fed.R.Civ.P. 11 is GRANTED. The parties have five (5) days within which to provide an additional brief addressed solely to the amount of sanctions.

IT IS SO ORDERED.

ORDER

Pursuant to the Memorandum of Opinion issued in the above-captioned case this date, Defendant's Motion To Dismiss is GRANTED. Defendant's Motion For Sanctions pursuant to Fed.R.Civ.P. 11 is GRANTED. The parties have five (5) days within which to provide an additional brief addressed solely to the amount of sanctions.

IT IS SO ORDERED.

On November 3, 1997, Joseph T. Tornichio, plaintiff, filed this action *pro se* seeking the refund of penalties assessed against him by the Internal Revenue Service ("I.R.S.") for filing frivolous income tax returns. On March 12, 1998, the Court granted Defendant's Motion To Dismiss and Motion For Sanctions pursuant to Fed. R.Civ.P. 11 The Court requested briefing solely as to what would be an appropriate sanction because this issue had not been adequately briefed by the parties.

In response, Defendant requested an award of $760.48, the purported amount of attorneys' fees and expenses incurred in this case. Plaintiff alleges any sanction would be inappropriate. Defendant's request is GRANTED.

The primary factor in determining the amount is deterrence. Other factors include compensation to the aggrieved party, mitigation of effort by the aggrieved party to avoid excessive expenses, and the sanctioned party's ability to pay. *Danvers v. Danvers,* 959 F.2d 601, 605 (6 th Cir.1992). The Court may also consider the cost to the judicial system in time and effort. *Rose v. Franchetti,* 979 F.2d 81, 86-87 (7 th Cir.1992).

Defendant requests an award of its attorneys' fees and expenses as a sanction. Plaintiff already has been penalized twice by the I.R .S. for filing frivolous returns, but persists in his claim that he does not owe taxes. Given this is his third penalty with respect to his tax returns, awarding the full amount of fees and expenses is justified as appropriate for deterring similar conduct in the future.

As to the factors of compensation and mitigation, the Court finds the amount requested is reasonable given the nature of the case. The amount requested is adequately supported by affidavit and is comparable to or less than sanctions awarded similar case. (*See, e.g.,* cases cited in Defendant's brief regarding the amount of sanctions.) Furthermore, in his brief Plaintiff does not allege any financial problems. Thus the Court finds the sanction would not impose excessive hardship upon Plaintiff.

Accordingly, pursuant to Fed.R.Civ.P. 11, Plaintiff is ORDERED to pay Defendant a sanction in the amount of $760.48.

IT IS SO ORDERED.

Footnotes:

FN1. He has filed a separate action seeking refund of the amounts withheld from his wages for years 1994, 1995, and 1996. That case is before Judge Patricia Gaughan.

FN2. 26 U.S.C. § 6702(a) states in its entirety:

If -(1) *any individual files what purports to be a return* of the tax imposed by subtitle A which -(A) does not contain information on which the substantial correctness of the self-assessment may be judged, *or (B) contains information that on its face indicates that the self-assessment is substantially incorrect;* and

(2) *the conduct referred to in paragraph (1) is due to -(A) a position which is frivolous,* or (B) a desire (which appears on the purported return) to delay or impede the administration of the Federal Income tax laws,

then such individual shall pay a penalty of $500.

(Emphasis added.)

FN3. The plaintiffs in *Sisemore* alleged wages constitute an equal exchange for labor, and thus are not "income". Mr. Tornichio does not make that specific argument here.

FN4. Plaintiff claims he is not asserting his right against self- incrimination, but rather his right not to be a witness against himself. The Court fails to see the difference.

FN5. Plaintiff's request for sanctions is DENIED.

Date of Download: Sep 14, 2001

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26 U.S.C.A. § 6065 I.R.C. § 6065

UNITED STATES CODE ANNOTATED

TITLE 26. INTERNAL REVENUE CODE

SUBTITLE F--PROCEDURE AND ADMINISTRATION

CHAPTER 61--INFORMATION AND RETURNS

SUBCHAPTER A--RETURNS AND RECORDS

PART IV--SIGNING AND VERIFYING OF RETURNS AND OTHER DOCUMENTS

Current through P.L. 107-11, approved 5-28-01

§ 6065. Verification of returns

Except as otherwise provided by the Secretary, any return, declaration, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under the penalties of perjury.

CREDIT(S)

1989 Main Volume

(Aug. 16, 1954, c. 736, 68A Stat. 749; Oct. 4, 1976, Pub.L. 94-455, Title XIX, § 1906(a) (6), (b) (13) (A), 90 Stat. 1824, 1834.)

<General Materials (GM) - References, Annotations, or Tables>

Doll v. CIR, 358 F.2d 713 (3rd Cir. 1966)

United States Court of Appeals Third Circuit.

Jacob A. DOLL and Esther Doll, Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

No. 15669.

Decided April 12, 1966.

Before SMITH and FREEDMAN, Circuit Judges, and MILLER, District Judge.

PER CURIAM.

This case is before the Court on a petition to review a decision of the Tax Court. The question before us is whether the Tax Court erred in its determination that an assessment of a tax deficiency for the taxable year 1954 was not barred by the statute of limitations. 26 U.S.C.A. 6501(a). We are of the opinion that the case is governed by Lucas v. Pilliod Lumber Co., 281 U.S. 245, 50 S.Ct. 297, 74 L.Ed. 829 (1930). It was therein held that the statute of limitations did not bar the assessment of a tax deficiency where, as in the instant case, the return failed to meet the requirements of the statute. The return filed by the petitioners in the case before us was not signed by either of them.

The judgment of the Tax Court will be affirmed on its opinion.

Elliott v. CIR, 113 T.C. 125

United States Tax Court.

Herbert C. ELLIOTT, Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

No. 733-96.

Aug. 10, 1999.

DAWSON, J.

This case was assigned to Special Trial Judge Carleton D. Powell pursuant to the provisions of section 7443A (b)(3) and Rules 180, 181, and 182. [FN1] The Court agrees with and adopts the opinion of the Special Trial Judge, which is set forth below.

OPINION OF THE SPECIAL TRIAL JUDGE

POWELL, Special Trial J.

Respondent determined a deficiency in petitioner's 1990 Federal income tax in the amount of $6,237 and an addition to tax under section 6651(a) in the amount of $647. By a separate notice of deficiency, respondent also determined deficiencies in petitioner's 1991 and 1992 Federal income taxes.

The parties stipulated that the substantive issues for all 3 years are identical and that the substantive issues for the tax year 1990 would be determined by the opinion rendered for the taxable years 1991 and 1992. The substantive issues for 1991 and 1992 were decided adversely to petitioner in *Elliott v. Commissioner*, T.C. Memo.1997-294, affd. per curiam without published opinion 149 F.3d 1187 (8th Cir.1998). The issues remaining for the 1990 taxable year are (1) whether respondent is barred by the statute of limitations from assessing the tax for 1990, and (2) whether petitioner is liable for the addition to tax under section 6651(a)(1) for 1990.

FINDINGS OF FACT

Petitioner resided in Kansas City, Missouri, at the time his petition was filed.

Petitioner requested and received an extension to file his 1990 Federal income tax return. On October 17, 1991, the Internal Revenue Service (IRS) received a Form 1040 submitted in petitioner's name. Petitioner did not sign the Form 1040. Rather it was signed "Herbert C. Elliott By: John H. Trader Under Power of Attorney" and submitted by Mr. Trader, petitioner's attorney. There was no Form 2848 (Power of Attorney and Declaration of Representative) or other power of attorney accompanying the Form 1040, and there is no

evidence that Mr. Trader or petitioner obtained the consent of the District Director for Mr. Trader to file the return as an agent for petitioner.

At the time Mr. Trader signed and submitted the Form 1040, he did not have a written power of attorney from petitioner to file a return for the taxable year 1990. On October 25, 1991, the IRS returned the Form 1040 to Mr. Trader and requested that he return the form with a copy of the power of attorney. Mr. Trader received the Form 1040 and the request. However, the Form 1040 and the letter request were put in a file and not returned to the IRS until July 1993.

On or about July 12, 1993, Mr. Trader resubmitted the Form 1040 and enclosed a Form 2848 power of attorney that was improperly filled out. Subsequently, Mr. Trader correctly filled out the Form 2848 and submitted it to the IRS on a date that is not contained in the record.

Respondent issued a notice of deficiency for petitioner's 1990 taxable year on October 10, 1995.

OPINION

1. *Statute of Limitations*

Petitioner contends that his Federal income tax return for 1990 was filed on October 17, 1991, when the Form 1040 was submitted by Mr. Trader, and respondent is therefore barred by the statute of limitations from asserting a deficiency for 1990. To the contrary, respondent contends that the Form 1040 submitted by Mr. Trader was not a valid return, and therefore the period for assessment is not barred.

Generally, an assessment of taxes must be made within "3 years after the return was filed (whether or not such return was filed on or after the date prescribed)". Sec. 6501(a). Section 6011(a) provides that "any person made liable for any tax * * * shall make a return * * * according to the forms and regulations prescribed by the Secretary." A return required to be filed "shall contain or be verified by a written declaration that it is made under the penalties of perjury." Sec. 6065; see also *Plunkett v. Commissioner,* 41 B. T.A. 700, 711 (1940), affd. 118 F.2d 644 (1st Cir.1941); *Wallace v. Commissioner,* T.C. Memo.1975-133. Section 6061 provides that "any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be signed in accordance with forms or regulations prescribed by the Secretary." The regulations promulgated under section 6061 require that "Each individual * * * shall sign the income tax return required to be made by him, except that the return may be signed for the taxpayer by an agent who is duly authorized in accordance with paragraph (a)(5) or (b) of section 1.6012-1 to make such return." Sec. 1.6061-1(a), Income Tax Regs. [FN2]

Section 1.6012-1(a)(5), Income Tax Regs., provides, inter alia, [FN3] that

> In addition, a return may be made by an agent if the taxpayer requests permission, in writing, of the district director * * * and * * * [the] district director determines that good cause exists for permitting the return to be so made. * * * Whenever a return is made by an agent it must be accompanied by a power of attorney (or copy thereof) authorizing him to represent his principal in making, executing, or filing the return. A Form 2848, when properly completed, is sufficient. * * *

Failure to satisfy the requirements for filing a return is fatal to the validity and the timeliness of the return. See *Plunkett v. Commissioner, supra.* As we noted in *Richardson v. Commissioner,* 72 T.C. 818, 823 (1979): "It is well established that the filing of an unsigned return form is not the filing of a return and does not start the running of the statute of limitations against respondent." See also *Lucas v. Pilliod Lumber Co.,* 281 U.S. 245, 249 (1930); *Hamilton v. Commissioner,* T.C. Memo.1954-118, affd. per curiam 232 F.2d 891 (6th Cir.1956).

The question here is whether the Form 1040 submitted by Mr. Trader in October 1991 constitutes a return. Petitioner did not sign the form and the execution of the form by Mr. Trader did not satisfy the signature requirements of the regulations for signing a return by an agent. In particular there was no power of attorney attached to the return as originally submitted. [FN4] The Form 1040 submitted in October 1991 by Mr. Trader did not constitute a signed return under section 1.6012-1(a)(5), Income Tax Regs.

Petitioner does not directly attack the validity of section 1.6012-1(a)(5), Income Tax Regs. Rather, petitioner relies upon *Miller v. Commissioner,* 237 F.2d 830 (5th Cir.1956), affg. in part, revg. in pertinent part and remanding T.C. Memo.1955-112, to support his position. In *Miller* the taxpayer submitted returns that he did not sign. For the 1943 year the taxpayer had his wife sign the return for him. See *id.* at 832. This was done at the taxpayer's direction and in front of his accountant. "All of the inscriptions were affixed by the taxpayer's wife, upon his oral authorization and direction, at the place on the return pointed out by the accountant who had prepared the return." *Id.*

The Court of Appeals for the Fifth Circuit held that

> Where, as here, a return complete in form, signed in the taxpayer's name by one purporting to have authority and who actually had such authority, was filed, we find no basis for holding that this was no such return as would commence the running of the statute of limitations. * * * [*Id.* at 837.]

In *Booher v. Commissioner,* 28 T.C. 817, 824-825 (1957), this Court adopted the reasoning of the Court of Appeals for the Fifth Circuit in *Miller v. Commissioner, supra,* and in *Lombardo v. Commissioner,* 99 T.C. 342, 358 (1992), affd. sub nom. *Davis v. Commissioner,* 68 F.3d 1129 (9th Cir.1995), we reiterated that position.

Booher arose under the 1939 Code provisions, and for reasons discussed, *infra,* we do not believe that it is controlling under the 1954 Code and subsequent enactments. *Lombardo* involved the situation where a taxpayer sought to disavow the filing of a return. The Court held that the taxpayer had "not carried his burden of showing that the filing of his return and affixing of his signature by * * * [an agent] was not authorized." *Lombardo v. Commissioner, supra* at 358. In making this determination, we relied on *United States v. Wynshaw,* 697 F.2d 85 (2d Cir.1983). In that case, the Court of Appeals for the Second Circuit applied the doctrine of estoppel to preclude the taxpayer from denying that she had executed the return. In *Lombardo* we also referred to both *Miller* and *Booher.* This reference, however, was not necessary to the rationale of our holding and was essentially dictum. In *Lombardo,* unlike the present case, the taxpayer's agent timely filed the return under authority duly granted by a power of attorney that was signed by the taxpayer and attached to the return.

Booher relies upon *Miller.* The holding in *Miller v. Commissioner,* 237 F.2d at 835, was predicated on the

view that there was no "specific authorization in the statute [under the 1939 Code] for the Commissioner to specify by regulations what constitutes a return." See *Miller v. Commissioner, supra* at 837 where the Court of Appeals noted that under the 1939 Code:

> The statutory grant of power to the Treasury to issue regulations does not touch upon the matter of the execution or making of the return, but covers only the extent and detail in which the items of gross income and the deductions and credits and "such other information for the purpose of carrying out the provisions of this chapter" are to be stated.

The court recognized, however, that such authority existed in section 6061 of the 1954 Code. See *id.* at 835 n.4. As we have previously pointed out, section 6061 specifically authorizes the Secretary to issue regulations governing the signing of a return. Thus, the statutory landscape that was crucial to the reasoning in *Miller* was altered by section 6061 of the 1954 Code.

We think the cases of *Miller, Booher,* and *Lombardo* are all factually distinguishable from the present case.

There still may be a question whether the provisions of section 1 .6012- 1(a)(5), Income Tax Regs., are valid. This is a legislative regulation and is entitled to greater deference than interpretive regulations. See *Peterson Marital Trust v. Commissioner,* 102 T.C. 790, 797 (1994), affd. 78 F.3d 795 (2d Cir.1996). We accord legislative regulations the highest level of judicial deference. See *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.,* 467 U.S. 837, 843-844 (1984); see also *Abmetovic v. INS,* 62 F.3d 48, 51 (2d Cir.1995).

Legislative regulations "can only be set aside by a court if they are arbitrary, capricious, or clearly contrary to the statute." *McKnight v. Commissioner,* 99 T.C. 180, 183 (1992) (citing *Morton v. Ruiz,* 415 U.S. 199 (1974)), affd. 7 F.3d 447 (5th Cir.1993). The regulation is not contrary to the language of any statute governing the filing of tax returns. Furthermore, respondent has a definite interest in the manner of the execution of tax returns. It affects, as here, the period of limitations. Furthermore, as noted *supra*, returns must be verified under penalties of perjury. See sec. 6065. Criminal liabilities are affixed to the jurat on tax returns. See, e.g., sec. 7206(1). The requirements of section 1.6012-1(a)(5), Income Tax Regs., ensure that both the civil and criminal liabilities are not circumvented. Under these circumstances we cannot say that the provisions of section 1.6012- 1(a) (5), Income Tax Regs., are arbitrary, capricious, or contrary to the statutory provisions, and we hold that the regulation is valid.

The execution of the Form 1040 by Mr. Trader in October 1991 did not comply with section 1.6012-1(a)(5), Income Tax Regs. Accordingly, the notice of deficiency was issued within the 3-year period, and respondent was not barred by the statute of limitations from issuing the notice of deficiency for petitioner's 1990 taxable year.

2. *Addition to Tax Under Section 6651(a)(1)*

Section 6651(a) imposes an addition to tax for failing to file a timely income tax return, unless such failure to file is due to reasonable cause and not due to willful neglect. The addition to tax is 5 percent of the amount required to be reported on the return for each month or fraction thereof during which such failure to file continues, not to exceed 25 percent in the aggregate. See sec. 6651(a)(1). The question whether failure to timely file is due to reasonable cause and not willful neglect is one of fact, on which petitioner bears the

burden of proof. See Rule 142(a); *United States v. Boyle*, 469 U.S. 241 (1985).

Petitioner's argument regarding the imposition of the section 6651(a)(1) addition to tax is contained in the following sentence: "In that petitioner's 1990 income tax return was timely filed, it follows that petitioner is not liable for this penalty." We have found that petitioner's return was not timely filed. Moreover, as *United States v. Boyle, supra*, makes clear, while a taxpayer may entrust the filing of a tax return to an agent, the taxpayer does so at his or her own risk. Respondent's determination of the addition to tax under section 6651 (a)(1) for 1990 is sustained.

Decision will be entered for respondent.

Footnotes:

FN1. Unless otherwise indicated, all section references are to the Internal Revenue Code in effect for the year in issue, and all Rule references are to the Tax Court Rules of Practice and Procedure.

FN2. Sec. 1.6012-1(b), Income Tax Regs., applies to returns of nonresident alien individuals and is not relevant here.

FN3. Sec. 1.6012-1(a)(5), Income Tax Regs., also sets forth the rules for making a return by an agent for persons under disabilities or out of the country for at least 60 days. Petitioner does not contend that either of these provisions applies.

FN4. We are not concerned here with whether the resubmission of the Form 1040 on July 12, 1993, constituted a valid return. The notice of deficiency was mailed on Oct. 10, 1995. The question then focuses on whether a return was filed prior to Oct. 10, 1992, 3 years prior to the mailing of the notice of deficiency. See sec. 6501(a).

Richardson v. CIR, 72 T.C. 818)

United States Tax Court

WILLIAM B. RICHARDSON, PETITIONER

v.

COMMISSIONER of INTERNAL REVENUE, RESPONDENT

Docket No. 8596-76.

Filed August 9, 1979.

WILBUR, Judge:

Respondent determined deficiencies in petitioner's Federal income tax and additions to tax as follows:

Year	Deficiency	Additions to tax Sec. 6651(a) [FN1]	Sec. 6653(a)
1971	$1,531.25	$229.88	$76.56
1972	1,948.86	286.34	97.44
1973	2,198.82	320.70	109.94
1974	2,340.21	336.73	117.01

Petitioner assails the deficiencies by arguing that the Government's alleged violation of the fiscal accounting requirement contained in article I, section 9, clause 7, of the U.S. Constitution has resulted in violations of his constitutional rights under the 4th, 5th, 9th, and 10th Amendments to the Constitution, thereby justifying his refusal to file tax returns or pay income taxes. Other issues raised for our decision are whether the documents filed by petitioner for taxable year 1971 constitute a return so that the statute of limitations contained in section 6501(a) precludes respondent from assessing and collecting a deficiency for that year; whether respondent properly calculated petitioner's tax liability for 1971 through 1974; and whether petitioner is liable for additions to tax under section 6651(a).

FINDINGS OF FACT

Some of the facts have been stipulated and are so found.

Petitioner William B. Richardson resided in Greensburg, Pa., at the time he filed his petition in this case.

During the taxable years 1971 through 1974, petitioner was married and was employed with the Office of the Public Defender, County of Westmoreland. He received wages and had Federal income taxes withheld therefrom for the years involved, as follows:

	1971	1972	1973	1974
Wages	$7,497.20	$9,356.01	$10,244.83	$10,686.62
Amounts withheld	611.72	803.52	916.03	993.31

Petitioner also had gross income of $485.28 per year in 1971, 1972, and 1973 from the rental of a farm he owned near Gate City, Va.

Petitioner did not file Federal income tax returns (Forms 1040) for taxable years 1972, 1973, or 1974. In April of 1972, petitioner mailed to respondent an unexecuted Form 1040 for the year 1971, which showed petitioner's name, address, and social security number, claimed dependency exemptions for petitioner's three children, and reported wages of $7,497.20. The Form 1040 referenced an attached letter which expressed petitioner's view that "The People's right to * * * an accounting of government appropriations, expenditures, and receipts (pursuant to U.S. Const. art. I, sec. 9, cl. 7) has been usurped by an elaborate scheme of budget manipulations, underhanded transfers between agencies and heads of appropriation, and downright fraudulent reporting on the part of the Treasury," and which stated that petitioner would not support "a system that downgrades me by devious means when I am a protagonist of undeniable constitutional precepts or a system that falsifies and complicates the only accounting system by which I could hope to check on the disbursement of tax revenue broadcast all over the world by unknown people representing unknown agencies with unlimited spending authority and no accountability." At the conclusion of the letter, petitioner demanded that respondent return the amounts withheld for the payment of income taxes from the wages petitioner had earned during 1971.

Under date of June 18, 1976, respondent sent petitioner a statutory notice of deficiency determining deficiencies and additions to tax as previously set forth. The statement attached to the notice of deficiency shows that respondent first determined petitioner's gross income for each 4 years at issue as comprised of wages, rent from a brick house located at Wise, Va., and rent from the Gate City, Va., farm, allowed a standard deduction and one personal exemption, and then calculated the deficiencies by applying the tax rates applicable to married taxpayers filing separate returns. The statement explains the additions to tax as being made under section 6651(a) for failure to file income tax returns for each year at issue and under section 6653 (a) because of a determination that part of the underpayment of tax for each year was due to negligence or intentional disregard of rules and regulations.

Petitioner has not contested the imposition of the addition to tax under section 6653(a).

OPINION

Petitioner maintains that he should not be required to file a return or pay any deficiency in tax because, both during the taxable years at issue and currently, the Government engaged in unconstitutional and criminal conduct. More specifically, petitioner argues that while the intelligence community, particularly the Central Intelligence Agency (CIA), may have authority under the Central Intelligence Agency Act of 1949, ch. 227, 63 Stat. 208, 50 U.S.C. sec. 403(a) et seq., to have their personnel and operational expenditures charged against the appropriations of other Government agencies, this authority becomes illegal and criminal because the Treasury accepts a transfer showing on its face an expenditure of the donor agency while the CIA is the true recipient of the funds. According to petitioner, these are "fraudulent" transfers which, when reflected in the Treasury's annual report, result in a violation of the "regular Statement and Account" clause of the Constitution, art. I, sec. 9, cl. 7. In view of this alleged constitutional violation, petitioner asserts that there is no enforceable tax authority and that not only need he not file tax returns nor pay taxes but he is also entitled to have his salary deductions returned to him.

The initial question is whether petitioner has standing to raise this constitutional question in defense of his failure to file tax returns or pay income taxes. [FN2] The United States Supreme Court has determined that petitioner has no standing as a taxpayer to raise directly the issue of the constitutionality of the Central Intelligence Agency Act of 1949. United States v. Richardson, 418 U.S. 166 (1974). In the case before us, petitioner does not directly assail the constitutionality of a particular statute but, rather, argues that the Government's fiscal disbursement and accounting system has deteriorated to such an extent that he is exonerated from paying taxes. In that regard, this case is similar to Egnal v. Commissioner, 65 T.C. 255 (1975), in which we recognized that where a demand is made directly upon a petitioner, in the form of a claim for taxes, he has standing in the narrow sense of being able to establish a "logical link" between his status as a taxpayer and the type of governmental action attacked. Flast v. Cohen, 392 U.S. 83, 102 (1968); Egnal v. Commissioner, supra at 257, and cases cited therein.

However, petitioner must also establish that he has standing in the broader sense of that term, described as the "second nexus" in Flast v. Cohen, supra at 102-103, as follows:

> Secondly, the taxpayer must establish a nexus between that status and the precise nature of the constitutional infringement alleged. Under this requirement, the taxpayer must show that the challenged enactment exceeds specific constitutional limitations imposed upon the exercise of the congressional taxing and spending power and not simply that the enactment is generally beyond the power delegated to Congress by Art. I, s 8.

Petitioner fails to meet this requirement. Petitioner has alleged that appropriated funds are being spent in violation of a "specific constitutional limitation imposed upon the * * * taxing and spending power," namely the Statement and Account clause. However, this clause appears to be a limitation on the power of the Executive Branch (see Cincinnati Soap Co. v. United States, 301 U.S. 308, 321 (1937)), and not a restriction on Congress in exercising its taxing and spending power. This conclusion is supported by the following statement of the United States Supreme Court:

Although we need not reach or decide precisely what is meant by "a regular Statement and Account," it is clear that Congress has plenary power to exact any reporting and accounting it considers appropriate in the public interest. It is therefore open to serious question whether the Framers of the Constitution ever imagined that general directives to the Congress or the Executive would be subject to enforcement by an individual citizen. While the available evidence is neither qualitatively nor quantitatively conclusive, historical analysis

of the genesis of cl. 7 suggests that it was intended to permit some degree of secrecy of governmental operations. The ultimate weapon of enforcement available to the Congress would, of course, be the "power of the purse." Independent of the statute here challenged by respondent, (petitioner in this case) Congress could grant standing to taxpayers or citizens, or both, limited, of course, by the "cases" and "controversies" provisions of Art. III.

> Not controlling, but surely not unimportant, are nearly two centuries of acceptance of a reading of cl. 7 as vesting in Congress plenary power to spell out the details of precisely when and with what specificity Executive agencies must report the expenditure of appropriated funds and to exempt certain secret activities from comprehensive public reporting. (United States v. Richardson, supra at 178 n. 11; citations omitted.)

Accordingly, petitioner's constitutional argument is not cognizable before this Court.

Petitioner claims that the assessment and collection of a deficiency in income tax for taxable year 1971 are barred by the statute of limitations under section 6501(a). [FN3] Respondent contends that petitioner failed to file a valid return for 1971 and therefore, the income tax deficiency for that year may be assessed at any time under section 6501(c)(3). [FN4] Respondent is clearly correct.

In April 1972, petitioner mailed to respondent an unexecuted Form 1040, described more fully in our findings of fact. It is well established that the filing of an unsigned return form is not the filing of a return and does not start the running of the statute of limitations against respondent. Reaves v. Commissioner, 31 T.C. 690 (1958), affd. 295 F.2d 336 (5th Cir. 1961); Vaira v. Commissioner, 52 T.C. 986 (1969), revd. on other grounds 444 F.2d 770 (3d Cir. 1971); Doll v. Commissioner, 358 F.2d 713 (3d Cir. 1966), affg. per curiam a Memorandum Opinion of this Court; Lucas v. Pilliod Lumber Co., 281 U.S. 245 (1930). Nor can the signature on the letter attached to the return be considered an imputed signature on the return itself. Cf. Vaira v. Commissioner, supra; Brafman v. United States, 384 F.2d 863, 868 (5th Cir. 1967).

We therefore conclude that the assessment against petitioner of any income tax deficiency for the taxable year 1971 was not barred by the statute of limitations contained in section 6501(a) on June 18, 1976, when respondent issued the notice of deficiency.

In his petition, petitioner contests the method by which respondent calculated petitioner's tax liability for taxable years 1971 through 1974. The parties have stipulated that respondent's calculation of petitioner's gross income properly included petitioner's wages for all 4 years and income from the rental of a farm for 1971, 1972, and 1973. The statutory notice of deficiency shows that respondent also included in petitioner's gross income for taxable year 1974 income allegedly received by petitioner from the rental of the farm during that year and included income allegedly received by petitioner from the rental of the brick house during 1971, 1972, 1973, and 1974 in petitioner's gross income for each of those taxable years.

During the trial, petitioner testified that he had sold the brick house during 1971 and had received no rental income from the house during any of the taxable years at issue. Petitioner also testified that he received no rent from the farm in 1974 and, in fact, had been forced to evict a tenant who had been occupying the premises unbeknownst to petitioner. We found petitioner to be an honest, forthright individual whose testimony was eminently credible. Accordingly, we find that petitioner did not receive income from the rental of the brick house during 1971, 1973 or 1974, or income from the rental of the farm during 1974.

Consequently, the only remaining issues relating to respondent's computation of the income tax deficiencies relate to whether petitioner was entitled to claim itemized deductions, whether he could properly claim dependency exemptions for all of his children, and whether he can now elect to file a joint return for any of the taxable years in issue.

In his petition, petitioner alleges that respondent erred in calculating the tax due by allowing only the standard deduction because "there may be other deductions available which would be more advantageous to the petitioner." At the trial, petitioner proffered no evidence of entitlement to any itemized deductions. [FN5] Accordingly, we view this issue as having been abandoned by petitioner.

Petitioner also claims entitlement to section 151(e) dependency exemptions as follows: three for 1971 and 1972 and two for 1973 and 1974. Petitioner testified at length about the claimed dependents, his children. This testimony shows that the oldest child, whom petitioner claims as a dependent for 1971 and 1972, attended college on the G.I. Bill of Rights during those years. He was 26 years old in 1971. The middle child was 22 years old in 1971 and attended school from 1971 through June 1974, when she went to work in India. The youngest child, who was 17 years old in 1971, attended school on a full-time basis during all 4 years in issue. Petitioner introduced no evidence as to the total expenses for support of the oldest child during 1971 or 1972 or for the middle child during 1974, nor what portion of those expenses petitioner paid. Accordingly, based on the evidence presented, we find that petitioner is only entitled to two dependency exemptions for each of the taxable years 1971, 1972, and 1973, and to one dependency exemption for taxable year 1974.

On the Form 1040 filed for taxable year 1971, petitioner claimed entitlement to four exemptions: one for himself and three for his children. At trial, petitioner appears to have claimed entitlement to an additional exemption for his spouse. It is not clear from the record whether petitioner is claiming the additional exemption under section 151(b) or because he believes he may still elect to file a joint return with his spouse. In either event, the additional exemption is not allowable.

Section 151(b), in general, allows a taxpayer to deduct an "additional exemption" for his spouse in a taxable year when the taxpayer and his spouse do not make a joint return, if the spouse has no gross income and is not the dependent of another taxpayer. Although petitioner meets the first requirement, i. e., he and his spouse did not file a joint return for any of the taxable years at issue, he has not established that his spouse had no gross income in 1971, 1972, 1973, or 1974. Therefore the deduction allowed under section 151(b) is not available to petitioner for any of those taxable years.

Furthermore, petitioner may not claim the additional exemption by virtue of now filing a joint return with his wife for 1971, 1972, 1973, or 1974. Section 6013(b) provides, in pertinent part, as follows:

> SEC. 6013(b). JOINT RETURN AFTER FILING SEPARATE RETURN.--
>
> (1) IN GENERAL. ---Except as provided in paragraph (2), if an individual has filed a separate return for a taxable year for which a joint return could have been made by him and his spouse under subsection (a) and the time prescribed by law for filing the return for such taxable year has expired, such individual and his spouse may nevertheless make a joint return for such taxable year. * * *
>
> (2) LIMITATIONS FOR MAKING OF ELECTION.--The election provided for in paragraph

> (1) may not be made--
>
> (C) after there has been mailed to either spouse, with respect to such taxable year, a notice of deficiency under section 6212, if the spouse, as to such notice, files a petition with the Tax Court within the time prescribed in section 6213 * * *

Petitioner comes squarely within this limitation and, therefore, is not entitled to now elect to file a joint income tax return.

Similarly, section 6013(b)(2)(C) is dispositive of petitioner's argument that respondent erred in applying the tax rates applicable to married taxpayers filing separate tax returns in lieu of the rates applicable to married taxpayers filing joint returns.

The final issue for our decision is whether respondent properly imposed the addition to tax under section 6651(a)(1). Section 6651(a)(1) [FN6] imposes an tax return on or before the prescribed date, unless the failure is due to reasonable cause and not due to willful neglect. For each month the return has not been filed, the additional tax is 5 percent of the amount of the tax required to be shown on such return, with a maximum additional tax of 25 percent of such amount.

Concerning taxable year 1971, petitioner contends that the imposition of the addition to the tax is improper because he did file a return for that year. This contention is without merit since the unsigned Form 1040 filed by petitioner for the taxable year 1971 does not constitute an income tax return.

Petitioner also asserts in his petition that his failure to file tax returns for any of the taxable years at issue was due to reasonable cause. The burden of proof is on petitioner to establish that reasonable cause existed for failing to file his returns when due. Bebb v. Commissioner, 36 T.C. 170 (1961). Although petitioner has not elaborated his assertion on brief, it is apparent that his failure to file tax returns was based on the good faith belief that the proper filing of returns and the payment of income taxes would foster and exacerbate the alleged unconstitutional activity of the Treasury Department. There is no question as to the sincerity of petitioner's belief. However, his failure to file tax returns cannot be considered as being due to reasonable cause within the meaning of section 6651(a) merely because he objects to the Treasury Department's oversight of Federal expenditures. Cf. Muste v. Commissioner, 36 T.C. 913 (1961); Hatfield v. Commissioner, 68 T.C. 895 (1977). Respondent properly imposed the section 6651(a) addition to tax for each year.

Decision will be entered under Rule 155.

Footnotes:

FN1. All section references are to the Internal Revenue Code of 1954, as amended and in effect during the years in issue, unless otherwise indicated.

FN2. A thorough discussion of the application of the standing concept to cases before the Tax Court is set forth in Anthony v. Commissioner, 66 T.C. 367 (1976).

FN3. SEC. 6501. LIMITATIONS ON ASSESSMENT AND COLLECTION.

(a) GENERAL RULE.--Except as otherwise provided in this section, the amount of any tax imposed by this title shall be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed) * * * and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period.

FN4. Sec. 6501(c) provides, in pertinent part:

SEC. 6501(c). EXCEPTIONS.--

(3) NO RETURN.--In the case of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

FN5. Petitioner did testify regarding expenses he incurred incident to the 1971 sale of the brick house. These selling expenses would have been properly treated for income tax purposes as an offset in computing the gain realized by petitioner on the sale (Chapin v. Commissioner, 12 T.C. 235, 238 (1949), affd. 180 F.2d 140 (8th Cir. 1950)); they are not independently deductible.

FN6. SEC. 6651. FAILURE TO FILE TAX RETURN OR TO PAY TAX.

(a) ADDITION TO THE TAX.--In case of failure--

(1) to file any return required under authority of subchapter A of chapter 61 (other than part III thereof), subchapter A of chapter 51 (relating to distilled spirits, wines, and beer), or of subchapter A of chapter 52 (relating to tobacco, cigars, cigarettes, and cigarette papers and tubes), or of subchapter A of chapter 53 (relating to machine guns and certain other firearms), on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return 5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate * * *

Green v. United States, 593 F.Supp. 1341 (N.D. Ind. 1984)

United States District Court,

N.D. Indiana,

Hammond Division.

Doren W. GREEN, Plaintiff,

v.

UNITED STATES of America, Defendant.

No. L 83-100.

Oct. 5, 1984.

MEMORANDUM AND ORDER

ALLEN SHARP, Chief Judge.

The plaintiff taxpayer filed a complaint for refund under 28 U.S.C. § 1340 and 26 U.S.C. § 7402(a) on September 13, 1983. The plaintiff filed motion for summary judgment on December 9, 1983 and a pretrial conference was held in open court on April 6, 1984. Defendant filed motion for summary judgment on February 22, 1984. Said motions are now ripe for ruling.

This case involves a $500 civil penalty assessed against the plaintiff in accordance with Section 6702 of the Internal Revenue Code of 1954 (26 U.S.C.), which was added to the Code by Section 326(a) of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub.Law No. 97-248. The plaintiff filed what purports to be a federal income tax return for the year 1982, on which he crossed out a portion of the printed jurat above his signature. The Internal Revenue Service determined that this purported tax return could not be processed and that it constituted a "frivolous" purported return within the meaning of Section 6702. Accordingly, the Section 6702 penalty was assessed. The plaintiff has paid at least 15 percent of the assessed penalty and is therefore entitled to challenge the assessment of the penalty in this Court pursuant to the provisions of Section 6703 of the Code, Appendix, *infra*. Jurisdiction is provided by 28 U.S.C. Section 1346(a)(1).

There is no dispute as to the facts here.

The plaintiff's purported 1982 federal income tax return consists of an IRS Form 1040 with various schedules, a W-2 wage statement, and two 1099 forms indicating interest and dividends paid to the plaintiff. A portion of the jurat above the plaintiff's signature on page 2 of the 1040 Form is crossed out. The crossed out portion states that the signature is provided "under penalties of perjury." The purported return could not be processed by the IRS because the plaintiff, by crossing out the portion of the printed jurat on the return

above his signature, failed to sign the return under penalties of perjury as required by law.

The IRS assessed a frivolous return penalty in the amount of $500 against the plaintiff under Code Section 6702. The plaintiff has paid the assessed penalty and filed a claim for refund, which the IRS denied. The plaintiff then filed this suit.

The complaint requests this Court to order a refund of the plaintiff's $500 penalty payment on the grounds that the plaintiff did not file a frivolous tax return within the meaning of Section 6702.

In an attempt to deter the filing of frivolous tax returns, Congress in 1982 added Section 6702 to the Internal Revenue Code of 1954, providing for a $500 penalty against persons who file such returns or purported returns. The legislative history of TEFRA reveals that Section 6702 is designed to deter taxpayers from filing returns or purported returns which contain insufficient information for determining the correctness of the taxpayer's self-assessment of tax, or which contain information which on its face indicates that the amount of tax shown on the return is substantially incorrect. See S.Rep. No. 494, 97th Cong., 2d Sess. 277, U.S. Code Cong. & Admin.News 1982, p. 781. Section 6702 provides:

> SEC. 6702. FRIVOLOUS INCOME TAX RETURN.
>
> (a) *Civil Penalty*.--If--
>
> (1) any individual files what purports to be a return of the tax imposed by subtitle A but which--
>
> (A) does not contain information on which the substantial correctness of the self-assessment may be judged, or
>
> (B) contains information that on its face indicates that the self-assessment is substantially incorrect; and
>
> (2) the conduct referred to in paragraph (1) is due to--
>
> (A) a position which is frivolous, or
>
> (B) a desire (which appears on the purported return) to delay or impede the administration of Federal income tax laws,
>
> then such individual shall pay a penalty of $500.
>
> (b) *Penalty in Addition to Other Penalties*.--The penalty imposed by subsection (a) shall be in addition to any other penalty provided by law.

The Senate Report, at pages 277-278, U.S.Code Cong. & Admin.News 1982, at page 1024, provides four examples of instances in which the Section 6702 penalty applies. First, the penalty may be assessed when a purported return appears to be an IRS Form 1040, but contains "altered or incorrect descriptions of line items

or other provisions." Second, the penalty applies with respect to a return or purported return in which "many or all of the line items are not filled in, except for spurious constitutional objections." Third, a return or purported return which contains insufficient information by which to calculate the tax, or contains inconsistent information, or otherwise reveals a frivolous position or a desire to impede the tax laws is subject to the penalty. Finally, the Section 6702 penalty can "be imposed against any individual filing a 'return' showing an incorrect tax due, or a reduced tax due, because of the individual's claim of a clearly unallowable deduction."

This case involves the type of purported tax returns discussed in the Senate Report's first and third examples quoted above. The plaintiff's purported 1982 return is a return which contains altered provisions, which contains insufficient information by which to judge the substantial correctness of the plaintiff's self-assessment, and which otherwise reveals a frivolous position and a desire to impede the administration of the tax laws.

By crossing out a portion of the jurat above his signature on the purported return, the plaintiff failed to certify that the entries on the form were correct. Without this certification, the IRS could not determine the substantial correctness of the self-assessment on the purported return and, indeed, could not even process the purported return. There is no doubt that a federal income tax return must be signed under penalties of perjury. Nor is there doubt that a taxpayer is prohibited from altering any portion of a jurat on a return. Sections 6061 and 6065 of the Code provide in pertinent part:

> SEC. 6061. SIGNING OF RETURNS AND OTHER DOCUMENTS.
>
> * * * any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be signed in accordance with forms or regulations prescribed by the Secretary.
>
> SEC. 6065. VERIFICATION OF RETURNS.
>
> * * * any return, declaration, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under the penalties of perjury.

A return not signed under penalties of perjury does not contain sufficient information by which to calculate the taxpayer's tax liability or by which to judge the substantial correctness of the self-assessment. Under the Internal Revenue Code, tax liability can only be calculated based upon properly verified information. Moreover, by altering the jurat in violation of Code Sections 6061 and 6065, the plaintiff asserted that a return does not have to be filed under penalties of perjury, a position which is legally frivolous. **An income tax return which is not signed under penalties of perjury is invalid and cannot be processed by the IRS.** *Cupp v. Commissioner,* 65 T.C. 68, 78-79 (1975); affirmed by unpublished order (10th Cir. January 20, 1978). *See also, Lucas v. Pilliod Lumber Co.,* 281 U.S. 245, 50 S.Ct. 297, 74 L.Ed. 829 (1930)

The plaintiff's purported 1982 income tax return fits within the Section 6702 definition of a frivolous income tax return. Thus the Section 6702 penalty was properly assessed against the plaintiff.

The plaintiff's motion for summary judgment is DENIED. The defendant's motion for summary judgment is

GRANTED. Costs assessed against plaintiff.

McNalley v. United States, 1985 WL 6365 (N.D.Ohio)

United States District Court, N.D. Ohio, Eastern Division.

Anne K. McNally, Plaintiff

v.

United States of America, Defendant.

Civil Action No. C84-2328

ALDRICH, District Judge.

Memorandum and Order

Anne K. McNally was assessed a $500 civil penalty under 26 U. S. C. § 6702 for filing what the Internal Revenue Service ("IRS") deemed to be a frivolous income tax return. In a complaint filed on July 25, 1984, she enlisted in the army of tax protesters who have challenged the penalty statute, which was added to the Internal Revenue Code of 1954 ("the Code") by § 326(a) of the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA"). In adjudicating prior actions, federal courts have rejected each objection McNally voices against the IRS and the statute. Finding their reasoning persuasive, this Court denies McNally's motion for partial summary judgment, grants summary judgment to the government, and dismisses the complaint. [FN1]

Jurisdiction rests on 28 U. S. C. §§ 1340 and 1346 and 26 U. S. C. § 6703.

I.

Fed. R. Civ. P. 56(c) governs summary judgment motions and provides:

> . . . The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. . . .

In reviewing summary judgment motions, this Court must view the evidence in the light most favorable to the nonmoving party to determine whether a genuine issue of material fact exists. *Adickes v. S. H. Kress & Co.*, 398 U. S. 144 (1970); *Hasan v. CleveTrust Realty Investors, Inc.*, 729 F. 2d 372 (6th Cir. 1984). "[T]he party seeking summary judgment must *conclusively* show that there exists no genuine issue of material fact and that the movant is entitled to judgment as a matter of law." *Bender v. Southland Corp.*, 749 F. 2d 1205, 1210 (6th Cir. 1984) (citing *Smith v. Hudson*, 600 F. 2d 60, 63 (6th Cir.), cert. dismissed, 444 U. S. 986 (1979) (emphasis in original).

II.

The facts set forth in the record are not disputed. Anne McNally is a taxpayer who for nearly two decades has supplemented her tax returns with written notes, letters, poems and newspaper clippings and frequently has crossed out the jurat before signing and dating the return. She has also penned a number of angry letters to IRS officials. For years, the IRS apparently processed her returns despite the striking of the jurat.

When she completed her IRS Form 1040A for tax year 1982, McNally made a number of handwritten alterations on the form. For example, she (a) scribbled out the entire section concerning donation of $1 to the Presidential Election Campaign Fund (and declined to contribute to the fund); (2) informed the IRS: "You owe me $26.00 from 1981. You didn't send me my refund. . . . Now you owe me only $1.00+ Please send it"; and (3) inquired of the IRS, "What % of income in taxes is Reagan's constituency actually paying?" Most significantly, she drew two wavy lines through the entirety of the jurat, which reads "I have read this return and any attachments filed with it. Under penalties of perjury, I declare that to the best of my knowledge and belief, the return and attachments are correct and complete." McNally then signed and dated the return. Approximately thirty-five days after her return was filed, McNally received a refund.

In a notice dated April 9, 1984, the IRS informed McNally that she had been "assessed a [$500] penalty under section 6702 of the Internal Revenue Code for filing a frivolous income tax return." McNally retained counsel, paid fifteen percent of the fine (a prerequisite for contesting the penalty), requested a hearing on the penalty, and gave to the IRS a list of reasons why her claim for a refund of the penalty should be allowed. The IRS regional office in Cincinnati, Ohio disallowed her claim without a hearing. Its director informed McNally that:

> . . . This penalty was asserted because you struck through the jurat (under penalty of perjury statement) on Form 1040A filed for the period ended December 31, 1982. An alteration to the jurat has the effect of converting the document from a valid return to a document insufficient to constitute a valid return.

The letter also informed McNally of her right to commence an action in federal court.

III.

The complaint and McNally's various memoranda on the pending motions contain a laundry list of statutory and constitutional challenges to the § 6702 penalty.

A. *"Frivolous Return" Under TEFRA.* Title 26 U. S. C. § 6702 provides:

> (a) *Civil Penalty.* -If-
>
> (1) any individual files what purports to be a return of the tax imposed by subtitle A but which-
>
> (A) does not contain information on which the substantial correctness of the self-assessment may be judged, or
>
> (B) contains information that on its face indicates that the self-assessment is substantially incorrect; and

> (2) the conduct referred to in paragraph (1) is due to-
>
> (A) a position which is frivolous, or
>
> (B) a desire (which appears on the purported return) to delay or impede the administration of Federal income tax laws, then such individual shall pay a penalty of $500.
>
> (b) *Penalty in Addition to Other Penalties.* -The penalty imposed by subsection (a) shall be in addition to any other penalty provided by law.

McNally contends first that returns such as hers were not the target of TEFRA, which was aimed at "tax protesters" -a group from which she claims to be excluded because she "did not assert a right not to pay tax, and she did not deliberately refuse to comply with the internal revenue statutes." Plaintiff's Memorandum in Support of Cross Motion for Partial Summary Judgment and in Opposition to Defendant's Motion to Dismiss or for Summary Judgment at 7.

The government's reply is that Congress painted with a broader brush. S. Rep. No. 494, 97th Cong., 2d Sess. 277, 277-78, reprinted in 1982 U. S. Code Cong. & Admin. News 781, 1024,

> . . . provides four examples of instances in which the Section 6702 penalty applies. First, the penalty may be assessed when a purported return appears to be an IRS Form 1040, but contains "altered or incorrect descriptions of line items or other provisions." Second, the penalty applies with respect to a return or purported return in which "many or all of the line items are not filled in, except for spurious constitutional objections." Third, a return or purported return which contains insufficient information by which to calculate the tax, or contains inconsistent information, or otherwise reveals a frivolous position or a desire to impede the tax laws is subject to the penalty. Finally, the Section 6702 penalty can "be imposed against any individual filing a 'return' showing an incorrect tax due, or a reduced tax due, because of the individual's claim of a clearly allowable deduction."

This case involves the type of purported tax returns discussed in the Senate Report's first and third examples quoted above. The plaintiff's purported 1982 return is a return which contains altered provisions, which contains insufficient information by which to judge the substantial correctness of the plaintiff's self-assessment, and which otherwise reveals a frivolous position and a desire to impede the administration of the tax laws.

Green v. United States [85-1 USTC P 9142], 593 F. Supp. 1341, 1343 (N. D. Ind. 1984); Memorandum of the Defendant in Support of Its Motion to Dismiss or for Summary Judgment at 4-5. This application of § 6702 to returns from which the jurat has been stricken is persuasive. McNally's attempt to distinguish her case from the examples cited in the Senate Report by suggesting that a return has been improperly "altered" only when "modified" but not when a crucial provision has been "struck" is totally unconvincing.

McNally then suggests that she could not have filed a frivolous tax return because she did not enunciate her reasons for striking the jurat, and thus provided no indication of possessing frivolous intent. A district court in this circuit has previously disposed of this argument:

> . . . § 6702 does not say anything about a taxpayer's state of mind. This is not a criminal statute requiring a criminal intent to make out a violation. Plaintiff's state of mind is irrelevant to an assessment of the penalty.

Cannon v. United States, 83-2 U. S. Tax Cas. (CCH) P 9699, at 88,501 (E. D. Mich. Nov. 9, 1983).

McNally's final contention concerning interpretation of § 6702 is that her return, even without a jurat, contains all the information necessary for determining the substantial correctness of her tax liability. This insubstantial contention ignores both the requirements of 26 U. S. C. §§ 6061 and 6065 [FN2] and the fundamental governmental policies those statutes implement. The court in *Johns v. United States,* 84-2 U. S. Tax Cas. (CCH) P 9899, at 85,750 (D. N. H. Dec. 12, 1984) observed:

> **It is clear that a return not signed under penalty of perjury is not a valid return and is accordingly not able to be processed.***Cupp v. Commissioner* [CCH Dec. 33,459], . . . 65 T. C. 68, 79 (1975) aff'd without opinion, 559 F. 2d 1207 (3rd Cir. 1977). . . .
>
> **Returns not signed in accordance with law and regulations are subject to penalty, and it does not matter that the IRS accepts unsigned returns and that tax is fully paid.** *Fowel v. Commissioner* [CCH Dec. 17,970(M)], T. C. M. [P-H] P50,281 (1950). **By failing to sign his 1982 Form 1040 the plaintiff submitted a frivolous return. Without his signature, the purported tax return was not certified and valid. The IRS was unable to calculate the taxpayer's liability or judge the substantial correctness because the return was not properly verified. Plaintiff's action delayed and impeded the administration of the tax laws. Plaintiffs purported income tax return for 1982 fits within Section 6702 definition of a frivolous claim. The assessment of the $500 penalty under Section 6702 was proper.**

See also *Green v. United States,* 593 F. Supp. at 1347; see generally *United States v. Moore,* 627 F. 2d 830, 834 (7th Cir. 1980), cert. denied, 450 U. S. 916 (1981); *Lucas v. Pilliod Lumber Co.* [2 USTC P 521], 281 U. S. 245 (1930). McNally's affidavit stating that she did not desire to interfere with tax collection or processing hardly rewrites governing law or renders her filing nonfrivolous.

B. *Other Statutory Claims.* The complaint asserts that assessment of § 6702 penalties "violates the Freedom of Information Act [("FOIA")] 5 U. S. C. § 552, and the Administrative Procedure Act, 5 U. S. C. § 706, because it is based upon unpublished agency guidelines." Elaborating on this argument in her brief, McNally claims that if the penalty was imposed under IRS regulations interpreting § 6702, such regulations should have been published, whereas a failure to draft and implement such regulations left individual IRS employees free to impose penalties based on unguided, unrestrained, and unexplained determinations. It is undisputed that no published regulations interpret § 6702.

Like its former colleague Judge Duncan, "the Court is somewhat at a loss to understand the nature of this argument. It would be absurd to suggest that absent the promulgation and publication of administrative guidelines interpreting a statute, such a statute is unenforceable. . . . The plaintiff [] [was] assessed a penalty directly pursuant to the language of the statute. No administrative guidelines were necessary prior to assessment of that penalty." *Hummon v. United States,* 84-1 USTC P 9494 at 84,264 (S. D. Ohio May 1, 1984). Nor does the absence of a published interpretive regulation demonstrate a violation of the Freedom of Information Act. "Publication of an administrative interpretation is not required when '(1) only a clarification

of existing laws or regulations is expressed; and (2) no significant impact upon any segment of the public results.' Both criteria are met here." *Franklet v. United States* [84-1 USTC P 9151], 578 F. Supp. 1552, 1558 (N. D. Cal. 1984) (citations omitted). Consistent with its view that McNally's conduct was a clear violation of the statute, this Court does not believe that internal guidelines directing IRS employees to assess a penalty against her are within the scope of § 552. In addition, as in *Fink v. United States*, 84-2 USTC P 9722 at 85,094 (D. N. H. July 10, 1984), the record is devoid of evidence that McNally has "complied with the regulations describing the application procedures for a FOIA request."

C. *Constitutional Claims.* The complaint voices the following constitutional law contentions: (1) that § 6702 "violates plaintiff's rights under the First Amendment . . . to freedom of speech, and the right to petition government for redress of grievances"; (2) that § 6702 "does not give notice of the conduct prohibited and has been applied here in an arbitrary and capricious manner, thus violating plaintiff's right to due process . . . "; (3) that IRS procedures "in assessing the penalty violated by plaintiff's rights to procedural fairness guaranteed by the Fifth Amendment"; and (4) that § 6702 "violated plaintiff's right to equal protection of the laws under the Fifth Amendment . . . by subjecting her to a penalty not imposed on other similarly situated individuals." These arguments have been consistently rejected by other courts. A sampling of their holdings follows.

1. *Freedom of Speech.* Judge Duncan's opinion in *Hummon* neatly summarizes the untenability of a First Amendment challenge to § 6702:

> The Court does not dispute the paramount importance of the First Amendment right to free speech and expression. However, the First Amendment's protection of speech is not absolute and not all forms of expressive conduct can be defended on First Amendment grounds. . . . Moreover, the government can enforce reasonable time, place and manner restrictions which "are content- neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication." . . .
>
> Even if the plaintiffs' conduct in this case is viewed as protected First Amendment activity, . . . this Court has little difficulty concluding that there is a compelling government interest which overrides any indirect effect this statute may have on First Amendment activity.
>
> The statute's legislative history, and indeed the entire history of the federal income tax system, demonstrate that the effective functioning of that system is impaired by the filing of frivolous tax returns such as the one at bar. . . .
>
> Since there is a compelling government interest in maintaining the integrity and effectiveness of the revenue system, . . . conduct which impairs the effectiveness of that system may be regulated. The statute in question is both content neutral and narrowly tailored to serve legitimate, compelling government objectives.

84-1 USTC at 84,264-65.

2. *Right to Petition for Redress of Grievance.* The government directs this Court's attention to *Milazzo v. United States* [84-1 USTC P 9167], 578 F. Supp. 248 (S. D. Cal. 1984). Addressing a suggestion similar to the one raised here, that court aptly stated:

> This argument is the height of silliness. Plaintiffs appeared before this tribunal for the very purpose of seeking redress for the fines imposed upon them. There is no sense in which their First Amendment rights have been abridged.

Id. at 253.

3. *Due Process.* McNally's due process claim challenges the supposed vagueness of the statutory prohibition against "frivolous" tax returns, the alleged lack of specificity of the original penalty notice issued by the IRS, and the IRS decision declining her request for a hearing.

Franklet v. United States discussed the vagueness issue in detail:

> Plaintiffs contend that the indeterminacy of the words "frivolous" and "selfassessment" renders § 6702 void for vagueness. The claim cannot be supported. All due process requires is a definition of the infraction "in terms that the ordinary person exercising ordinary common sense can sufficiently understand and comply with. . . ." *Civil Serv. Comm'n v. National Ass'n of Letter Carriers,* 413 U. S. 548, 579 . . . (1973). That standard is met here.
>
> With respect to the term "frivolous," its interpretation and application will in most cases be beyond dispute. In those cases, a taxpayer exercising the common sense of an ordinary person will know or have reason to know that the reductions he or she proposes are, as Congress defines the term, "clearly unallowable," see S. Rep. . . . at 278, reprinted in [1982] U. S. Code Cong. & Ad. News at 1024, or as the dictionary defines it, "hav[e] no basis in law or fact," *Webster's Third New International Dictionary* 913 (unabridged ed. 1971). "[T]he general class of offenses to which the statute is directed is plainly within its terms, [and it] will not be struck down as vague, even though marginal cases could be put where doubts might arise." *United States v. Harriss,* 347 U. S. 612, 618 . . . (1954).

578 F. Supp. at 1557. See also *Lutz v. United States* [84-2 USTC P 9735], 53 A. F. T. R. 2d P 84-368 at 84-519 (E.D. Mich. Dec. 6, 1983). As noted in Part III-A, *supra,* a return not signed under penalty of perjury is not a valid return, cannot be processed, and is clearly within the definition of "frivolous" under § 6702 and its legislative history. The vagueness challenge is without merit.

The constitutionality of IRS procedures in assessing § 6702 penalties has been affirmed in a number of opinions, including *Fink v. United States:*

> Plaintiffs suggest that they were entitled to more detailed explanation of the reason by way of notice as to why the penalty was to be applied to them. This argument overlooks the fact that the notices here furnished were consistent with the provisions of 26 U. S. C. § 6703, which mandates the procedure the IRS is to follow in the assessment of penalties and which provides that the procedures normally required in deficiency or penalty assessments are inapplicable to such penalties. As 26 U. S. C. § 6703 provides no requirements with respect to form or specificity of notice, and as the notice which plaintiffs here received recited the assessment of penalty, the taxable year for which it was assessed, and the statutory basis for such assessment, I find and rule that due process required no more. . . .

> Nor is there merit to the argument of plaintiffs that due process is wanting because of lack of hearing prior to penalty assessment. It has long been established that where only property rights are involved, the mere postponement of judicial inquiry does not deny due process if the opportunity given for ultimate judicial determination of liability is adequate. . . . There is no showing of irreparable harm here demonstrated by the paying of a nominal sum of money, and so long as plaintiffs have been afforded the opportunity, as here, to litigate in a judicial forum, they cannot complain of the lack of pre- assessment hearing. . . .

84-2 USTC at 85,093 (citations omitted).

4. *Equal Protection.* McNally contends that § 6702 "offends the Equal Protection Clause" by establishing "a classification of individuals based on their exercise of the fundamental right of free speech." This Court agrees with the *Fink* court that, notwithstanding plaintiff's unsuccessful attempt to invoke the First Amendment, § 6702 as an income tax statute should be analyzed under a "rational relationship" rather than a "strict scrutiny" test. See generally *Plyler v. Doe,* 457 U. S. 202 (1982); *San Antonio Independent School District v. Rodriguez,* 411 U. S. 1 (1973); *Dandridge v. Williams,* 397 U. S. 471 (1970). As *Fink* noted, "the congressional concerns which caused enactment of this legislation were amply detailed in the legislative history," 84-2 USTC at 85,094, and those concerns constitute multiple reasonable justifications for the categorization of unsworn tax returns as frivolous filings subject to a $500 penalty.

McNally's related contention is that she is a victim of selective prosecution. In light of *Wayte v. United States,* - U. S. -, 105 S. Ct. 1524 (1985), and *United States v. Schmucker,* - U. S. -, 105 S. Ct. 1860 (1985), vacating and remanding *Schmucker v. United States,* 721 F. 2d 1046 (6th Cir. 1983), this argument has become untenable.

IV.

McNally urges this Court to ignore the "spate of cases" which have rejected challenges to § 6702 penalty assessment, to "engage[] in a more detailed analysis of both the facts and the law," and to hold that a tax return filed without certification as to its accuracy is not frivolous. Plaintiff's Memorandum at 2. As indicated by its extensive citation of previous cases, this Court is neither impressed by McNally's arguments nor inclined to reinvent the wheel to articulate the same cogent points already made by a score of federal judges.

McNally's motion for partial summary judgment is denied. The government's motion for summary judgment is granted. The complaint is dismissed, with prejudice, at plaintiff's costs.

IT IS SO ORDERED.

Order

The court has filed its memorandum and order denying plaintiff's motion for partial summary judgment and granting defendant's motion for summary judgment. Therefore, pursuant to Rule 58, Federal Rules of Civil Procedure,

IT IS ORDERED that the complaint is hereby dismissed, with prejudice, at plaintiff's costs.

Footnotes:

FN1 The government's pleading is a motion to dismiss or for summary judgment. Because "matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56 . . ." Fed. R. Civ. P. 12.

FN2 Title 26 U. S. C. § 6061 provides:

Except as otherwise provided by sections 6062 and 6063, any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be signed in accordance with forms or regulations prescribed by the Secretary.

Title 26 U. S. C. § 6065 provides:

Except as otherwise provided by the Secretary, any return, declaration, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under the penalties of perjury.

Form	Title	Doc. Code	Tax Class
990EZ	Short Form—Return of Organization Exempt from Income Tax	09	4

(f) Federal Revenue Forms, 1000 Series.

Form	Title	Doc. Code	Tax Class
1040	U.S. Individual Income Tax Return (Other than Full Paid)	11,12,21,22	2
	(Full Paid)		2
1040A	U.S. Individual Income Tax Return Other than Full Paid	09	2
	Full Paid	10	2
1040C	U.S. Departing Alien Income Tax Return	61	2
1040ES	U.S. Declaration of Estimated Income Tax for Individuals	20	2
1040EZ	U.S. Individual Income Tax Return Other than Full Paid	07	2
	Full Paid	08	2
1040NR PSC only	U.S. Non-resident Alien Income Tax Return Non-effectively Connected Income	72	2
	Effectively Connected Income	73	2
1040PR PSC Only	U.S. Self Employment Tax Return Puerto Rico	27	2
1040SS PSC Only	U.S. Self Employment Tax Return, Virgin Islands, Guam, American Samoa (PSC only)	26	2
1040X	Amended U.S. Individual Income Tax Return	54	2
	With remittance or original return needed	11	2
1040SS NMI	U.S. Self Employment Tax Return, Northern Marianas Islands	26	2
1041	U.S. Fiduciary Income Tax Return (For estates and trusts)	44	2
1041	U.S. Fiduciary Income Tax Return Magnetic Tape (Currently not used)	36	2
1041A	Trust Accumulation of Charitable etc., Amounts	81	4
1041ES	Payment Voucher, Estimated Tax	17,19	2
1041–K1	Beneficiary's Share of Income, Credits, Deductions, Etc.	66	5
1041PF	(See Form 5227)		
1041S	U.S. Fiduciary Tax Return (Short Form)	46	2
1042	U.S. Annual Return of Income Tax to be Paid at Source	25	1
1042S	Income Subject to Withholding Under Chapter 3, IRC	66	6
1065	U.S. Partnership Return of Income	65	2
1065–K1	Partner's Share of Income, Credits, Deductions, Etc.	65	5
1066	U.S. Real Estate Mortgage Investment Conduit Income Tax Return	60	3, 6