

HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

T.D. 9504, page 670.

Final regulations under section 6045 of the Code provide rules for stockbrokers regarding changes in the law that require them to report for certain sales the adjusted basis of the stock being sold and whether any gain or loss with respect to the sale is long-term or short-term. Final regulations under section 1012 of the Code address changes in the law that alter how investors compute basis when averaging the basis of shares acquired at different prices and that expand the ability of investors to compute basis by averaging. Final regulations under sections 6045A, 6045B, 6721, and 6722 of the Code address new reporting requirements imposed on issuers of securities for corporate actions that affect the securities basis and on brokers (including custodians and issuers of securities) for transfers of securities. Rev. Rul. 67-436 obsoleted. Rev. Proc. 2008-52 modified.

Rev. Proc. 2010-42, page 715.

Specifications are set forth for the private printing of red-ink and black-and-white paper substitutes for the 2010 revisions of Form W-2, *Wage and Tax Statement*, and Form W-3, *Transmittal of Wage and Tax Statements*. Rev. Proc. 2008-33 superseded.

Rev. Proc. 2010-43, page 738.

Specifications are set forth for the private printing of red-ink and black-and-white paper substitutes for the February 2009 revision of Form W-2c, *Corrected Wage and Tax Statement*, and the April 2010 revision of Form W-3c, *Transmittal of Corrected Wage and Tax Statements*. Rev. Proc. 2009-48 superseded.

Announcement 2010-88, page 753.

This announcement extends from December 31, 2010, to June 30, 2011, the deadline to issue tribal economic development bonds (TEDBs) pursuant to the volume cap allocated by the IRS in the first allocation tranche to Indian tribal government under Notice 2009-51, 2009-28 I.R.B. 128. This announcement also provides for an additional 6 month extension to December 31, 2011, for such issuers to issue TEDBs, upon issuer's written request submitted to, and approved by, the IRS.

EMPLOYEE PLANS

Notice 2010-76, page 712.

Weighted average interest rate update; corporate bond indices; 30-year Treasury securities; segment rates. This notice contains updates for the corporate bond weighted average interest rate for plan years beginning in November 2010; the 24-month average segment rates; the funding transitional segment rates applicable for November 2010; and the minimum present value transitional rates for October 2010.

EMPLOYMENT TAX

Rev. Proc. 2010-42, page 715.

Specifications are set forth for the private printing of red-ink and black-and-white paper substitutes for the 2010 revisions of Form W-2, *Wage and Tax Statement*, and Form W-3, *Transmittal of Wage and Tax Statements*. Rev. Proc. 2008-33 superseded.

(Continued on the next page)



Rev. Proc. 2010-43, page 738.

Specifications are set forth for the private printing of red-ink and black-and-white paper substitutes for the February 2009 revision of Form W-2c, *Corrected Wage and Tax Statement*, and the April 2010 revision of Form W-3c, *Transmittal of Corrected Wage and Tax Statements*. Rev. Proc. 2009-48 superseded.

ADMINISTRATIVE

T.D. 9503, page 706.

Final regulations under 26 CFR 300 establishes a user fee to apply for or renew a preparer tax identification number.

T.D. 9504, page 670.

Final regulations under section 6045 of the Code provide rules for stockbrokers regarding changes in the law that require them to report for certain sales the adjusted basis of the stock being sold and whether any gain or loss with respect to the sale is long-term or short-term. Final regulations under section 1012 of the Code address changes in the law that alter how investors compute basis when averaging the basis of shares acquired at different prices and that expand the ability of investors to compute basis by averaging. Final regulations under sections 6045A, 6045B, 6721, and 6722 of the Code address new reporting requirements imposed on issuers of securities for corporate actions that affect the securities basis and on brokers (including custodians and issuers of securities) for transfers of securities. Rev. Rul. 67-436 obsoleted. Rev. Proc. 2008-52 modified.

The IRS Mission

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

force the law with integrity and fairness to all.

Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

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

Part II.—Treaties and Tax Legislation.

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

Part III.—Administrative, Procedural, and Miscellaneous.

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

Part IV.—Items of General Interest.

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

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

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

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

Actions Relating to Decisions of the Tax Court

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 is the document making such an announcement. An Action on Decision will be issued at the discretion of the Service only on unappealed issues decided adverse to the government. Generally, an Action on Decision is issued where its 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.

Actions on Decisions shall be relied upon within the Service only as conclusions 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.

Prior to 1991, the Service published acquiescence or nonacquiescence only in certain regular Tax Court opinions. The Service has expanded its acquiescence program to include other civil tax cases where guidance is determined to be helpful. Accordingly, the Service now may acquiesce or nonacquiesce 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.

The recommendation in every Action on Decision will be summarized as acquiescence, 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. However, “acquiescence” indicates neither approval nor disapproval of the reasons assigned by the court for its conclusions; whereas, “acquiescence in result only” indicates disagreement or concern with some or all

of those reasons. “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.

The Actions on Decisions published in the weekly Internal Revenue Bulletin are consolidated semiannually and appear in the first Bulletin for July and the Cumulative Bulletin for the first half of the year. A semiannual consolidation also appears in the first Bulletin for the following January and in the Cumulative Bulletin for the last half of the year.

The Commissioner acquiesces in the following decision:

**Shoukri Osman Saleh Abdel-Fattah
v. Commissioner,¹**
134 T.C. No. 10 (April 27, 2010)

¹ Acquiesces in the holding that the State Department certification required under IRC § 893(b) is not a prerequisite for the tax exemption provided for in I.R.C. § 893(a).

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

Section 1012.—Basis of Property—Cost

26 CFR 1.1012-1: *Basis of property.*

Rules are provided for determining the basis of stock, including computing basis by averaging the basis of shares acquired at different prices. See T.D. 9504, page 670.

Section 6045.—Returns of Brokers

26 CFR 1.6045-1: *Returns of information of brokers and barter exchanges.*

T.D. 9504

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1, 31, 301, and 602

Basis Reporting by Securities Brokers and Basis Determination for Stock

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations on broker reporting of sales of securities and on the basis of securities. These final regulations reflect amendments under the Energy Improvement and Extension Act of 2008 that require brokers to report a customer's adjusted basis in sold securities and classify gain or loss as long-term or short-term, and that allow taxpayers to compute the basis of certain stock by averaging. The regulations affect brokers and custodians that make sales or transfer securities on behalf of customers, issuers of securities, and taxpayers that purchase or sell securities. The regulations also reflect amendments that provide brokers and others until February 15 to furnish certain information statements to customers.

DATES: *Effective Date:* These regulations are effective on October 18, 2010.

Applicability Date: For dates of applicability, see §§1.1012-1(c)(10), 1.1012-1(e)(12), 1.6045A-1(d), and 1.6045B-1(g).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations under sections 408, 6039, 6042, 6044, 6045, 6045A, 6045B, 6049, 6051, 6721, and 6722, Stephen Schaeffer of the Office of Associate Chief Counsel (Procedure and Administration) at (202) 622-4910; concerning the regulations under section 1012, Edward C. Schwartz of the Office of Associate Chief Counsel (Income Tax and Accounting) at (202) 622-4960 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations related to the furnishing of information in connection with the transfer of securities has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-2186. The collection of information in these final regulations in §§1.6045-1(c)(3)(xi)(C) and 1.6045A-1 is required to comply with the provisions of section 403 of the Energy Improvement and Extension Act of 2008, Division B of Public Law 110-343 (122 Stat. 3765, 3854 (2008)).

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

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law.

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1), the Regulations on Employment Tax and Collection of

Income Tax at the Source (26 CFR part 31), and the Regulations on Procedure and Administration (26 CFR part 301).

On December 17, 2009, the Treasury Department and the IRS published in the **Federal Register** (74 FR 67010) proposed regulations (REG-101896-09, 2010-5 I.R.B. 347) relating to information reporting by brokers, transferors, and issuers of securities under sections 6045, 6045A, and 6045B of the Internal Revenue Code (Code), and the computation of basis under section 1012. Written and electronic comments responding to the notice of proposed rulemaking were received, and a public hearing was held on February 17, 2010.

After considering the comments, the proposed regulations are adopted as amended by this Treasury decision. The comments and revisions are discussed in the preamble.

Summary of Comments and Explanation of Revisions

1. *Effective Date*

Commentators requested a delay in the effective date of the reporting requirements to allow adequate time to administratively implement the rules. The final regulations do not adopt this request as inconsistent with the statutorily mandated effective dates. However, in order to promote industry readiness to comply with the reporting requirements beginning in 2011, a separate notice is being issued with these final regulations to provide transitional relief from the transfer reporting requirements under section 6045A (discussed in more detail later in this preamble). See Notice 2010-67. The notice provides that the IRS will not assert penalties under section 6722 for a failure to furnish a transfer statement for any transfer of stock in 2011 that is not incidental to the stock's purchase or sale. Further, a receiving broker may treat this stock as a noncovered security. See §601.601(d)(2). Additionally, the IRS will continue to work closely with stakeholders to ensure the smooth implementation of the provisions in these regulations, including the mitigation of

penalties in the early stages of implementation for all but particularly egregious cases.

2. Basis Determination—Average Basis Method

a. Definition of Dividend Reinvestment Plan

i. Acquisition of Stock

Consistent with section 1012(d)(4)(B), the proposed regulations provided that stock is acquired in connection with a dividend reinvestment plan (DRP) if the stock is acquired under the DRP or if the dividends paid on the stock are subject to the DRP. A commentator stated that DRP classification under the proposed regulations is highly factual and brokers will have difficulty determining if stock is in a DRP. The commentator recommended that the final regulations provide that a broker should be required to treat stock as DRP stock only if the broker receives documentation that a plan is a DRP and knows or has reason to know that the stock is subject to the plan. The final regulations do not adopt this recommendation as unduly restrictive.

ii. Dividend Reinvestment

Section 1012(d)(4)(A) defines a *dividend reinvestment plan* as an arrangement under which dividends are reinvested in identical stock. The proposed regulations provided that a plan qualifies as a DRP if the written plan documents require that at least 10 percent of every dividend paid on any share of stock is reinvested in identical stock.

Several commentators recommended eliminating the 10 percent rule because it will require many existing plans to amend their plan documents at considerable expense. The commentators suggested that a plan should qualify as a DRP if the plan documents merely allow the reinvestment of dividends.

The final regulations do not adopt this comment, which is inconsistent with the legislative intent that basis averaging is appropriate when dividends actually are reinvested. If a stock pays dividends, a plan should be required to reinvest a minimum percentage of dividends to qualify as a

DRP. Ten percent is a reasonable minimum percentage.

iii. Definition of Dividend

The proposed regulations did not define the term dividend. Commentators recommended that the final regulations define dividend broadly to include any distribution on stock, including ordinary dividends, capital gains distributions, non-taxable returns of capital, and cash in lieu of fractional shares.

The final regulations do not define dividend. They provide that only dividends within the meaning of section 316 are subject to the 10 percent reinvestment requirement. The final regulations also clarify that a DRP may average the basis of stock acquired by reinvesting distributions that are not dividends under section 316.

b. Definition of Regulated Investment Company

The proposed regulations did not address the definition of a regulated investment company (RIC). Under §1.1012-1(e)(5)(ii), a unit investment trust (UIT) is treated as a RIC for basis averaging purposes only if the UIT meets certain requirements. A commentator suggested that the regulations should delete this provision and allow all UITs that elect to be treated as RICs to use the average basis method.

The proposed regulations did not address this issue. Therefore, the final regulations do not adopt this suggestion. The treatment of UITs as RICs for purposes of allowing basis averaging may be considered for future guidance.

c. Definition of Identical Stock

The proposed regulations provided that stock is identical if it has the same Committee on Uniform Security Identification Procedures (CUSIP) number, except that stock in a DRP is not identical to stock not in a DRP. The proposed regulations also provided that stock acquired in connection with a DRP includes transfers of identical stock into a DRP. A commentator noted that, if stock in a DRP is not identical to stock not in a DRP, then a taxpayer could not transfer identical stock into a DRP.

To address this comment, the final regulations delete from the definition of iden-

tical stock the rule that stock in a DRP is not identical to stock not in a DRP. Because this rule served to limit the average basis method to stock in a DRP, the final regulations provide that, for purposes of computing the average basis of identical stock, stock in a DRP is not identical to stock with the same CUSIP number that is not in a DRP.

d. Time and Manner of Making the Average Basis Method Election

i. Requirement for Affirmative Election

A commentator requested clarification on whether a taxpayer is treated as electing the average basis method if the taxpayer fails to affirmatively elect a basis determination method and the average basis method is the broker's default method. In response to this comment, the final regulations clarify that a taxpayer's failure to notify a broker that the taxpayer elects a basis determination method is not an election of a method. Thus, a taxpayer that fails to affirmatively elect the average basis method has not made an election that the taxpayer may revoke. If the average basis method is the broker's default method, the taxpayer may change from that method prospectively.

ii. Scope of Average Basis Method Election

The proposed regulations required a taxpayer to elect the average basis method separately for each account holding stock that is a covered security for which the method is permissible. A commentator suggested that the final regulations permit one average basis method election to encompass all eligible accounts with a custodian or agent, as well as future accounts with that custodian or agent. The final regulations adopt this comment. The final regulations also clarify that the average basis method election must identify each account and the stock in the account to which the election applies.

iii. Written Average Basis Method Election

The proposed regulations provided that a taxpayer must notify a custodian or agent of the average basis method election in writing. A commentator stated that this

requirement should be eliminated because it is difficult to implement and confusing to taxpayers who use the average basis method for RIC stock acquired before 2012. The commentator opined that the writing requirement will prevent brokers from using the average basis method as their default method.

The final regulations do not adopt this comment. The writing requirement ensures that both taxpayers and brokers have a record of the fact and scope of the election. The requirement applies to a taxpayer's election to use average basis and does not prevent a broker from selecting average basis as a default method.

Commentators requested that the final regulations clarify that a taxpayer may make a written average basis election electronically. The final regulations adopt this comment.

iv. Transition Rule From Double-Category Method

The proposed regulations provided a transition rule effective on the publication date of the final regulations for stock for which a taxpayer uses the double-category method of determining average basis. A commentator requested that the final regulations delay the effective date of the transition rule to allow time for programming and accounting system changes. The final regulations adopt this comment and provide an April 1, 2011, effective date for the transition rule.

e. Change in Method of Accounting

The proposed regulations stated that a change in basis determination method is a change in method of accounting requiring the consent of the Commissioner. A commentator opined that a change to or from the average basis method is not a change in method of accounting that requires the consent of the Commissioner. Another commentator requested that a change to or from the average basis method be allowed without the Commissioner's consent or that the process be simplified. The commentator suggested that the final regulations require taxpayers to notify their custodians or agents of the change.

The final regulations provide rules governing the time and manner of electing or

changing from the average basis method, determining the basis of stock following a change between the average basis method and a cost basis method, and identifying stock sold. The regulations permit taxpayers to elect or change from the average basis method at any time during a taxable year and to choose a method to identify stock sold on a sale-by-sale basis. These rules do not involve the elements of consistency and regularity inherent in methods of tax accounting, which generally apply on the basis of a taxable year. Therefore, the final regulations provide that a basis determination method for stock is not a method of accounting and a change in a method of determining basis for stock is not a change in method of accounting to which sections 446 and 481 apply.

f. Account by Account Rules

The proposed regulations provided that DRP or RIC stock acquired before January 1, 2012, is treated as held in a separate account from DRP or RIC stock acquired on or after that date. The proposed regulations also provided that covered and noncovered securities are treated as held in separate accounts.

The purpose of the separate account rule is to ensure that covered securities and noncovered securities are treated as held in separate accounts. DRP and RIC stock acquired before January 1, 2012, are noncovered securities. Therefore, the two separate account rules are duplicative. The final regulations eliminate the separate account rule for DRP and RIC stock based on the date the stock is acquired and retain the separate account rule for covered and noncovered securities because this rule is more precise.

g. Single-Account Election

i. Identity of Account Ownership

A commentator requested clarification on whether a single-account election may apply to an account owned by a taxpayer singly and an account a taxpayer owns jointly with another party. In response to this comment, the final regulations clarify that a single-account election applies only to accounts with the same ownership.

ii. Effect on the Single-Account Election of Revoking or Changing From the Average Basis Method

The proposed regulations provided that a RIC, DRP, or broker may make an irrevocable election to treat as held in a single account identical RIC stock or DRP stock held or treated as held in separate accounts for which the taxpayer has elected to use the average basis method. The proposed regulations also allowed a taxpayer to revoke an average basis method election by the earlier of one year from the date of the election or the first disposition of the stock. The basis of stock to which a revocation applies is its basis before averaging. After the revocation period expires, a taxpayer may change from the average basis method to another method prospectively. The basis of stock to which a change applies is the basis immediately before the change.

Commentators asked how a taxpayer's revocation of or change from the average basis method affects a single-account election. In response to this comment, the final regulations provide that a taxpayer's revocation of an average basis method election for a particular stock voids the single-account election for that stock. Thus, taxpayers and brokers must retain pre-election basis information for averaged shares for as long as the taxpayer may revoke the average basis method election. Stock that becomes a covered security only as a result of a single-account election no longer is a covered security after the single-account election is voided.

After a taxpayer changes from, rather than revokes, the average basis method, the shares that were treated as held in a single account before the change continue to be covered securities and treated as held in a single account, and the basis of each share of stock remains the same as the basis immediately before the change.

iii. Accurate Basis Information Requirement

Under the proposed regulations, a RIC, DRP, or broker may make a single-account election only for stock for which it has accurate basis information, which is information that the RIC, DRP, or broker neither knows nor has reason to know is inaccurate.

Commentators suggested eliminating the accuracy requirement for the single-account election because it is subjective and increases uncertainty. A commentator noted that the accuracy requirement may deter RICs from making a single-account election because of uncertainty over whether basis determination practices in earlier years satisfy the standard. A commentator suggested permitting the use of any data that has been maintained to determine the basis of noncovered stock included in the single-account election. A commentator recommended that brokers be permitted to use taxpayer-provided information to determine the basis of noncovered stock in making the single-account election. A commentator requested penalty relief if a broker lacks actual knowledge that information is inaccurate.

The final regulations retain the accuracy requirement and the “neither knows nor has reason to know” standard as striking an appropriate balance between the need for accuracy and flexibility. The “neither knows nor has reason to know” test is consistent with existing standards familiar to brokers for demonstrating reasonable cause for penalty relief under section 6724.

3. Other Basis Determination Issues

a. Use of Agent To Select Basis Determination Method

Commentators suggested that the final regulations explicitly allow a taxpayer’s agent, such as an asset manager, investment advisor, or introducing broker, to select a basis determination method for a taxpayer. The final regulations do not adopt this comment. However, a taxpayer may authorize an agent to select a basis determination method under general agency principles.

b. Cost Basis of Multiple Lots Purchased on One Day

Commentators suggested that the final regulations allow brokers to average the basis of identical stock purchased or sold on the same day. In response to this comment, the final regulations provide that a taxpayer must determine the basis of identical stock by averaging the basis of each share if the stock is purchased at separate times on the same calendar day in execut-

ing a single trade order and the broker executing the trade provides a single confirmation that reports an aggregate total cost or an average cost per share. However, a taxpayer may determine the basis of the stock by the actual cost per share if the taxpayer notifies the broker in writing of this intent. The taxpayer must notify the broker by the earlier of the date of the sale of any of the stock for which the taxpayer received the confirmation or one year after the date of the confirmation. A broker may extend the one-year period but the taxpayer must notify the broker no later than the date of sale of any of the stock.

c. Identification of Securities Sold

i. Standing Orders

The proposed regulations stated that a standing order for the specific identification of stock is treated as an adequate identification. A commentator suggested that the final regulations clarify that brokers are not required to accept standing orders. The proposed regulations allowed standing orders to serve as an adequate identification but did not require taxpayers or brokers to use or accept them. Therefore, the final regulations do not adopt this comment.

ii. Confirmation of Sales

The proposed regulations retained the rule that brokers or other agents must supply written confirmation of a taxpayer’s specific identification following a sale or transfer. A commentator stated that the final regulations should eliminate this requirement and opined that the Form 1099-B, “*Proceeds From Broker and Barter Exchange Transactions*,” provides a sufficient confirmation of the transaction. Alternatively, the commentator suggested eliminating the confirmation requirement if the stock was identified by standing order. Another commentator suggested that a periodic customer account statement should qualify as a written confirmation.

The final regulations retain the requirement for written confirmation of all sales and transfers of specifically identified stock as a reasonable safeguard that specific identification orders are properly executed. However, in response to these comments, the final regulations provide

that account statements or other documents a broker or agent periodically provides to a taxpayer may serve as written confirmation if provided to the taxpayer within a reasonable time after the sale or transfer.

iii. Application of FIFO Rule Account by Account

The proposed regulations provided that if a taxpayer sells or transfers stock and does not adequately identify the stock sold or transferred, the shares of stock deemed sold or transferred are the earliest acquired shares (FIFO rule). A commentator suggested that the final regulations clarify that the FIFO rule applies on an account by account basis.

The account by account rule in section 1012(c)(1) relates to stock eligible for the average basis method. This rule overrides the earlier requirement that taxpayers must apply the average basis method across accounts and does not mandate similar treatment for cost basis stock. Incorporating an account by account requirement into the FIFO rule creates unnecessary complexity. Therefore, the final regulations do not adopt this comment.

4. Returns of Brokers

a. Form and Manner of Broker Reporting Requirements

The proposed regulations provided that brokers must report on Form 1099-B adjusted basis and whether any gain or loss is long-term or short-term for a covered security. A commentator suggested that the final regulations allow long-term and short-term sales to be reported on the same return to improve reconciliation between the broker’s Form 1099-B and the customer’s Schedule D, “*Capital Gains and Losses*.” The final regulations do not adopt the suggestion. As noted by another commentator, brokers that use substitute statements may already segregate long-term sales from short-term sales on the same statement in the same manner as on Schedule D, which segregates long-term transactions from short-term transactions.

Consistent with the rule for aggregating the cost basis of multiple lots purchased on one day (discussed earlier in this preamble), the final regulations provide that a

broker must report the basis of purchased stock and the gross proceeds of sold stock by averaging the basis or proceeds of each share if the stock is purchased or sold at separate times on the same calendar day in executing a single trade order and the broker executing the trade provides a single confirmation to the taxpayer that reports an aggregate total price or an average price per share. However, the final regulations do not permit a broker to average the basis or proceeds of stock if the customer timely notifies the broker in writing of an intent to determine the basis or proceeds by the actual cost or proceeds per share. A notification of an intent to determine the basis by the actual cost per share is timely if made in accordance with §1.1012-1(c)(1)(ii). A notification of an intent to determine the proceeds by the actual proceeds per share is timely if the broker receives the notification by January 15 of the calendar year following the year of the sale. A broker may extend the January 15 deadline but not beyond the due date for filing Form 1099-B.

The proposed regulations moved the modifier “for cash” in the definition of sale to clarify that Form 1099-B reporting is required under section 6045 for a sale only when and to the extent cash proceeds are paid to the seller. Commentators suggested further clarifying that this limitation applied to all disposition events listed in the definition. The final regulations adopt this request.

Currently, sales of fractional shares of less than \$20 are exempted from broker reporting. Commentators recommended expanding this exception to sales of fractional shares of less than \$100. The final regulations do not adopt this request.

b. Identification of a Security as Stock

Under section 6045(g)(3)(C), the reporting requirements before 2013 apply only to stock. The proposed regulations provided that, for basis reporting purposes, any security an issuer classifies solely as stock is treated as stock. If an issuer has not classified the security, the security is not treated as stock unless the broker knows, or has reason to know, that the security reasonably is classified as stock under general tax principles.

Commentators suggested that issuers should be required to classify securities and that a security should be classified

as stock only if the issuer has classified it as stock. The final regulations do not adopt these suggestions. It is appropriate to require a broker to report basis if the broker knows the security is stock for Federal tax purposes even if the issuer has not classified the security.

Commentators suggested that the IRS create and maintain a list of every security classified as stock. The final regulations do not adopt this comment.

Commentators requested that brokers only treat securities as stock if they know that the security is reasonably classified as stock under general tax principles instead of when they have reason to know. The final regulations adopt this comment.

Commentators requested guidance addressing when an issuer fails to classify a security and brokers disagree whether the security is stock for Federal tax purposes. The final regulations clarify that a broker is not bound by another broker’s classification. As long as the issuer has not classified the security as stock, a broker is not required to treat a security as stock despite another broker’s classification unless the broker knows that the security is stock for Federal tax purposes.

The proposed regulations treated any share of stock in a corporation described in §301.7701-2(b) as stock for basis reporting purposes. Commentators asked whether interests in a real estate investment trust (REIT) or exchange-traded fund (ETF) are treated as stock under that definition. The final regulations clarify that any share of stock or any interest treated as stock in an entity organized as, or treated for Federal tax purposes as, a corporation (foreign or domestic) is stock for basis reporting purposes. Therefore, interests treated as stock in REITs and ETFs are treated as stock for basis reporting purposes if the issuers are taxable as corporations under the Code.

Commentators also asked whether a depositary receipt representing shares of stock in a foreign corporation (an ADR) is treated as stock. The final regulations clarify that an ADR is stock for basis reporting purposes.

c. Covered Securities

The proposed regulations defined covered security to include a specified security acquired through a sale transaction. Com-

mentators asked whether stock acquired through a stock split, the exercise of rights distributed by an issuer, the grant of restricted stock by an employer, and other scenarios constituted acquisitions through sale transactions. In response to these comments, the final regulations eliminate the sale-transaction rule and define covered security to include a specified security acquired for cash. Therefore, stock acquired through the exercise of rights distributed by an issuer is a covered security while restricted stock granted by an employer is not a covered security because the former is acquired for cash and the latter is not. The final regulations also treat a security acquired due to a stock dividend, stock split, reorganization, redemption, stock conversion, recapitalization, corporate division, or other similar action as if it were acquired for cash and, therefore, as a covered security if the basis of the new security is determined from the basis of a covered security.

The proposed regulations treated all stock acquired in 2011 as covered securities except RIC stock and DRP stock, which are not covered securities unless acquired in 2012 or later. Commentators suggested that stock acquired in 2011 no longer be a covered security if placed into a DRP. In response to this comment, the final regulations provide that stock acquired in 2011 no longer is a covered security if transferred to a DRP in 2011, but remains a covered security if transferred to a DRP after 2011.

The final regulations also clarify that a security acquired by a foreign person that §1.6045-1(g)(1)(i) exempts from Form 1099-B reporting at the time of acquisition is not a covered security even if the customer later loses this exemption, unless the broker knows or should have known (including by reason of information that the broker is required to collect under section 1471 or 1472) that the customer is not a foreign person when the security is acquired.

A commentator requested that a broker selling stock owned by a domestic partnership be exempted from basis reporting if the broker also prepared the customer’s Form 1065, “*U.S. Return of Partnership Income*,” because the partnership return also reports the basis of securities sold by the partnership. The final regulations do not adopt this request. The commen-

tator also requested that a broker selling stock owned by a foreign partnership be exempted from basis reporting when reporting the sale directly to U.S. partners under §1.6049-5(d)(3)(ii) because any cost basis information reported by the broker would be erroneous. The final regulations adopt this request.

d. Foreign Intermediaries

The proposed regulations included in the definition of broker non-U.S. payors and non-U.S. middlemen to the extent provided in a withholding agreement described in §1.1441-1(e)(5)(iii) between a qualified intermediary and the IRS. Commentators requested that the regulations instead exempt all foreign qualified intermediaries from basis reporting. In response to these comments, the final regulations do not adopt the proposed changes to the definition of broker. Thus, a qualified intermediary that is not a U.S. payor or U.S. middleman as described in §1.6049-5(c)(5) will not be treated as a broker with respect to sales effected at an office outside the United States. The Treasury Department and the IRS also note that the recently enacted provisions of chapter 4 of Subtitle A of the Code will impose certain information reporting requirements on foreign financial institutions that enter into an agreement with the IRS under section 1471(b). The Treasury Department and the IRS intend to issue future guidance coordinating the reporting requirements under section 6045 with the reporting requirements under section 1471. In addition, section 1471 allows a person who has entered into an agreement under section 1471(b) to elect to report certain information required under sections 6041, 6042, 6045, and 6049. The Treasury Department and IRS anticipate that, if a foreign financial institution that has entered into an agreement under section 1471(b) makes such an election, the agreement would specify the extent of such person's reporting obligations with respect to information required to be reported under section 6045.

Commentators requested that the regulations also exempt nonqualified intermediaries from basis reporting, even if the nonqualified intermediary is treated as a broker under §1.6045-1 (for example, where the nonqualified intermediary

effects the sale within the United States). The regulations do not adopt this request as contrary to the purposes of the statute.

e. Treatment of Foreign Securities

Commentators requested that a security issued by a non-U.S. issuer be excluded from the definition of a covered security. The commentators questioned whether foreign issuers will comply with section 6045B and report the U.S. tax consequences of their corporate actions. The final regulations do not adopt this comment because section 6045 does not distinguish between U.S. and non-U.S. issuers of securities. The regulations permit but do not require a broker to adjust basis for unreported corporate actions.

f. Determination of Basis and Whether Gain or Loss on the Sale Is Long-Term or Short-Term

The proposed regulations required brokers to adjust the reported basis to reflect information received on a transfer statement or issuer return (discussed in more detail later in this preamble) but otherwise do not require brokers to consider transactions, elections, or events occurring outside the account. Commentators asked whether brokers must apply certain Code provisions in determining reported basis.

i. Regulated Investment Companies and Real Estate Investment Trusts

Under sections 852(b)(4)(A) and 857(b)(8), a loss on the sale of RIC or REIT shares held 6 months or less is long-term to the extent of capital gain dividends (distributed and undistributed) on the shares. One commentator asked whether brokers are required to adjust the character of the loss for the effects of sections 852(b)(4)(A) or 857(b)(8). Under section 852(b)(4)(B), if a shareholder in a RIC sells shares at a loss and held the shares for six months or less, the loss is disallowed to the extent the shareholder received a tax-exempt dividend. One commentator asked whether brokers are required to adjust the amount of the loss for the effects of section 852(b)(4)(B). The final regulations clarify that adjustments under sections 852(b)(4)(A), 857(b)(8), and 852(b)(4)(B) are not required because the payment of tax-exempt dividends and

the existence of capital gain dividends (distributed and undistributed) may or may not occur in the same account as the sale. Further, requiring adjustments would also necessitate requiring brokers to include information on transfer statements about whether and when these types of dividends have been received or reported.

A commentator requested the IRS to exercise its authority under section 852(b)(4)(E) to shorten the holding period under section 852(b)(4) to 31 days. This request is outside the scope of the current project and may be considered for future guidance.

A commentator requested limiting the application of section 852(f), relating to load charges on the purchase of RIC stock, to reinvestments in securities with the same CUSIP consistent with proposed legislation that would limit section 852(f) to reinvestments by January 31st of the year following the disposition of the load-paying shares. The final regulations do not adopt this suggestion.

ii. Straddles and Hedging Transactions

Several commentators asked whether brokers are required to adjust their determination of holding period for securities in a single account if the securities are part of a hedging transaction, as defined in §1.1221-2(b), or a straddle, as defined in section 1092. They also asked whether the provisions of section 1233(b) must be applied to adjust the holding period or character of gain of a security when a customer has, in a single account, sold short some securities and holds or later acquires substantially identical securities. The fact patterns that fall under sections 1092 and 1233(b) and §1.1221-2(b) include situations when the CUSIPs of the positions may not be identical as well as situations when the CUSIPs of the positions are identical. Regardless, under the final regulations, brokers are not required to adjust the holding period or character of gain under sections 1092 and 1233(b) and §1.1221-2(b).

iii. Events Occurring Outside the Account

The proposed regulations required a broker to take into account in determining basis any corporate action reported by an issuer of the security. Commentators requested clarification on how to determine basis after a corporate action that results in

different treatment for minority shareholders than for a majority shareholder. The final regulations permit a broker to treat all customers after a corporate action as minority shareholders of the corporation unless the broker knows that the customer is a majority shareholder and the issuer reports the action's effect on the basis of majority shareholders.

The proposed regulations did not permit brokers to apply section 1259 (regarding constructive sales) and section 475 (regarding the mark-to-market method of accounting) when reporting adjusted basis and whether any gain or loss on the sale of a security is long-term or short-term. A commentator requested that reporting adjustments be permitted under these sections even if not required. The final regulations adopt this request. Another commentator asked whether brokers must apply section 1296 (regarding mark-to-market accounting for marketable stock in a passive foreign investment company). The final regulations provide that these adjustments are not required. A broker should inform customers of any non-required adjustments so that customers will not duplicate these adjustments.

iv. Basis Determination Method

The proposed regulations required brokers to report basis using the basis determination method a customer elects. Commentators requested that brokers be permitted to offer limited basis reporting methods even if this practice would force a customer that wanted a different method to move his or her account to a broker that offered reporting under that method. The final regulations do not adopt this request because section 1012 permits customers to report basis by a different permissible method than the default method selected by the broker and section 6045 requires brokers to follow instructions from customers regarding this selection.

v. Long-Term or Short-Term Gain or Loss

Section 1222 defines long-term or short-term gain or loss by reference to whether a taxpayer has held a capital asset for more than one year. A commentator noted that accounting standards may define a year in different ways and requested that the final regulations adopt a uniform definition of a year for reporting purposes,

such as 360 or 365 days. The final regulations do not adopt this comment. The rules for determining whether a taxpayer has held an asset for more than one year are well established. No good justification exists for adopting a different rule solely for broker reporting purposes.

vi. Commissions and Options Proceeds

The proposed regulations required brokers to adjust basis for commissions and transfer taxes incurred from a purchase and, if not subtracted from gross proceeds, commissions charged for a sale and transfer taxes incurred on a sale. Commentators requested that the final regulations expand the definition of gross proceeds to explicitly permit adjustments for transfer taxes incurred on sale. The final regulations incorporate this suggestion.

The proposed regulations did not alter the current rule under which some brokers report proceeds reduced by sales commissions and inform customers of this fact through a flag in Box 2 on Form 1099-B. Instead, in requiring brokers to account for sales commissions, the proposed regulations permitted brokers to either reduce the reported proceeds or increase the reported basis by the amount of the sales commissions. Commentators requested that all brokers be required to reduce the reported proceeds for commissions and transfer taxes from the sale. This suggestion is not adopted but may be considered in future guidance.

Commentators requested that brokers be permitted to adjust basis for option premiums when an option is exercised in purchasing or selling a security even though this reporting is not mandatory until 2013. The proposed regulations permitted this treatment, which is also permitted under the final regulations.

vii. Employee Compensation-Related Issues

Section 6045(h) requires certain basis reporting adjustments to account for income recognized on options granted or acquired beginning in 2013. Because the option reporting requirements do not take effect until 2013, the proposed regulations provided that, for stock acquired in 2011 and 2012 in connection with employee stock purchase plans and incentive stock options, brokers did not need to adjust

basis to account for the income recognized by the purchaser. Commentators suggested that this stock be excluded from basis reporting until 2013 because purchasers may improperly rely on the reported basis. The final regulations do not adopt this suggestion. Purchasers will be assisted by IRS forms and publications, including Form 3921, "*Exercise of an Incentive Stock Option Under Section 422(b)*" (in development), and Form 3922, "*Transfer of Stock Acquired Through an Employee Stock Purchase Plan Under Section 423(c)*" (in development), in determining basis for stock acquired in 2011 and 2012.

Commentators also requested that the final regulations not require basis reporting for stock acquired through an employee stock purchase plan because Form 3922 will report the exercise price per share and the fair market value of the stock on both the grant date and the exercise date. The final regulations do not adopt this comment because Form 3922 must be filed when a purchaser first transfers legal title to the stock, not necessarily when the purchaser sells the stock, and these events may occur many years apart. Further, Form 3922 will not identify which shares are sold and will not reflect stock splits or other corporate actions between the date of reporting on Form 3922 and the date of sale.

viii. Payments in a Foreign Currency

The proposed regulations provided that brokers receiving payments made in foreign currency should report the amounts paid by converting each payment to a U.S. dollar amount using a spot rate or spot rate convention determined at the time the broker receives the payment. Commentators expressed the concern that determining the spot rate on the payment receipt date treats all sales as if the customer had elected under section 988 to incorporate the amount of gain or loss on the currency into the gain or loss on the sale of the security. However, the section 988(d) election is only relevant in the context of certain hedges. In the non-hedging context, long-standing rules provide that investors must always compute gain or loss by determining adjusted basis using the spot rate as of the payment receipt date. See Rev. Rul. 54-105, 1954-1 C.B. 12. Even in the

hedging context, investors must compute gain or loss under these same rules unless they make the election under section 988. The final regulations therefore adopt the proposed rule. See §601.601(d)(2).

Commentators asked whether the payment receipt date is the date the broker receives payment from the customer or the settlement date of the purchase. The final regulations continue to treat the payment receipt date as the date the broker receives payment but clarify that, for securities traded on an established securities market, the payment receipt date is the settlement date of the purchase. See §1.988-2(a)(2)(iv). The final regulations also clarify that the same foreign currency reporting rules apply to transfer statements.

g. Customer Identification of Securities

The proposed regulations required brokers to report the sales of securities on a first-in, first-out basis within an account unless the customer notified the broker by means of making an adequate and timely identification of the securities to be sold. Commentators asked that, for reporting purposes, brokers be permitted to rely on customers' standing orders or instructions for the sale or transfer of shares of stock. The proposed rule by cross reference to §1.1012-1(c) already permitted standing orders to serve as an adequate identification for both sales and transfers of stock. Therefore, the final regulations adopt the proposed rule.

Commentators asked how to apply the first-in, first-out reporting rule when the broker does not know the acquisition date of some shares of the security within the account. The final regulations clarify that brokers must report the sale of any shares or units of a security in the account with unknown acquisition dates first. Customers are expected to report basis consistently with broker reporting.

h. Reporting of Wash Sales

Section 6045(g)(2)(B)(ii) requires that, except as otherwise provided by the Secretary, a broker must apply the wash sale rules of section 1091 when reporting the adjusted basis of a covered security if the purchase and sale transactions resulting in a wash sale occur in the same account and

are for identical securities (rather than substantially identical securities). A commentator objected to limiting broker reporting of wash sales to instances in which the purchase and sale transactions occur in the same account and are for identical securities. The final regulations retain these two statutory limitations but do not prohibit brokers from reporting wash sales across accounts or for substantially identical securities.

A commentator asked whether brokers must report wash sales when the purchase and sale transactions are initiated in different accounts but the purchased shares are later transferred into the account of the sold shares. The final regulations clarify that brokers need not report wash sales in these circumstances because the purchase and sale transactions do not occur in the same account.

Another commentator asked whether brokers must report wash sales when the purchase and sale transactions occur in the same account but the purchased security is transferred out of the account prior to the wash sale. The commentator opposed applying the wash sale reporting rules in this scenario because the rules would require a broker to adjust basis for a security no longer in the broker's custody. The final regulations clarify that brokers do not need to report a wash sale if the purchased security is transferred to another account before the wash sale.

Commentators asked whether brokers must report wash sales when stock is treated as held in a separate account under the basis method determination rules of §1.1012-1. The final regulations clarify that the account limitation for wash sale reporting applies to stock treated as held in separate accounts. Thus, a broker is not required to report a wash sale involving a covered security and a noncovered security unless a single-account election is in effect. Similarly, a broker is not required to report a wash sale involving stock in a DRP and identical stock that is not in a DRP.

Commentators requested exclusions from broker reporting of wash sales for *de minimis* amounts, sales of fractional shares, automatic dividend reinvestments, or compensation-related acquisitions. The final regulations do not adopt these proposals because, as other commentators noted, the substantive wash sale rules

under section 1091 do not exclude these items. Creating additional exclusions solely for broker reporting purposes would introduce further discrepancies between broker reporting and customer reporting of wash sales.

Commentators requested an exclusion from broker reporting of wash sales for customers that have made valid and timely mark-to-market accounting method elections under section 475 or, in the alternative, for customers that execute 10,000 trades in a single year. Other commentators stated that excluding these customers may be more burdensome than reporting wash sales for these accounts. The final regulations permit brokers to exclude from wash sales reporting a customer that has informed the broker in writing that the customer has made an election under section 475(f)(1). The exclusion only applies to the accounts identified by the customer as solely containing securities subject to the election. The final regulations also clarify that a taxpayer that is not a trader in securities within the meaning of section 475(f)(1) does not become a trader in securities, or create an inference that it is a trader in securities, by notifying a broker that it has made a valid and timely election under section 475(f)(1).

Commentators asked that Form 1099-B and the transfer statement indicate whether the holding period of a security has been adjusted to reflect a wash sale. The final regulations do not adopt this suggestion. The rules require the holding period reported on Form 1099-B and transfer statements to reflect any wash sale adjustments.

Commentators asked how the holding period rules such as section 1223(3) apply to wash sales. One commentator asked about the proper treatment of a wash sale when the sale and purchase transactions occur over a period of time and a corporate event occurs during that period that causes one pre-event share to not be economically equivalent to one post-event share. These and other comments requesting guidance on how the wash sale reporting rule applies to various types of activity within an account relate to the substantive rules under section 1091 and are outside the scope of these regulations.

i. Reporting of Short Sales

Beginning in 2011, section 6045(g)(5) requires gross proceeds and basis reporting for short sales for the year in which the short sale is closed rather than, as under the present law rule for gross proceeds reporting, the year in which the short sale is opened. The proposed regulations included a transition rule requiring brokers to report all short sales opened on or after January 1, 2010, for the year in which the short sale is closed. Commentators asked that this transition rule be modified to permit 2010 reporting of all short sales opened in 2010 even if the short sale remained open at the end of 2010. The final regulations adopt this request.

Commentators requested that, for short sales opened before 2011 and closed in 2011 or later years, the regulations permit brokers to report the short sale for both the year the short sale is opened and the year the short sale is closed. The final regulations do not adopt this suggestion because no penalty is imposed for filing a non-required return.

Reportable payments on securities sales under section 6045 are subject to backup withholding as provided in section 3406(b)(3)(C). When backup withholding applies to a short sale, current regulations at §31.3406(b)(3)–2(b)(4) require backup withholding when the short sale is opened but permit a broker to delay withholding until the short sale is closed if, at the time the short sale is opened, the broker expects that the amount of gain realized upon the closing of the short sale will be determinable from the broker's records. The proposed regulations required backup withholding only when the short sale was closed and the short sale became subject to reporting under section 6045(g)(5). Commentators asked that backup withholding on short sales continue to be permitted when the short sale is opened because the broker has cash proceeds from the sale on which to withhold. The final regulations adopt this comment and leave in place the current rule permitting a broker to perform backup withholding when the short sale is opened or closed. The proposed amendment to §31.3406(b)(3)–2(b)(4) is therefore not adopted.

As a result of retaining the current backup withholding rule, a broker may perform backup withholding in a year

before the short sale is closed. Current regulations at §31.6051–4 require the broker to report the withholding on a Form 1099-B for the year of the withholding in addition to reporting the sale for the year the short sale is closed. The final regulations amend §31.6051–4 to permit the IRS to determine whether to require gross proceeds to be reported only when the short sale is closed.

j. Reporting of Sales by S Corporations

Currently, no broker reporting on Form 1099-B is required for customers that are corporations, including S corporations. Section 6045(g)(4) requires brokers to begin Form 1099-B reporting for S corporations (other than a financial institution) for sales of covered securities acquired on or after January 1, 2012. The proposed regulations accordingly removed corporations for which an election under section 1362(a) is in effect from the list of exempt Form 1099-B recipients for sales of covered securities acquired beginning in 2012. Commentators requested that the regulations instead refer to the definition of S corporation at section 1361(a). The final regulations adopt this comment for all references to an S corporation.

Also, for sales of covered securities acquired beginning in 2012, the proposed regulations eliminated the so-called “eyeball test” allowing brokers to rely solely on the name of the customer to determine whether the customer is a corporation exempt from reporting. The proposed regulations retained the actual knowledge rule so that a broker does not need to obtain an exemption certificate for a customer that the broker knows is exempt. Commentators asked that the final regulations retain the eyeball test because brokers otherwise may be required to seek a certification from all corporate customers. The regulations do not adopt this comment because brokers generally cannot determine from a customer's name alone whether the customer is taxed as an S corporation or C corporation. The final regulations retain a limited eyeball test for insurance companies and foreign corporations, however, because insurance companies and foreign corporations are ineligible to be S corporations.

Commentators requested that the final regulations retain current rules that allow

brokers to determine that a customer is a foreign corporation by relying upon the name of the customer or upon a certification on a Form W–8 such as Form W–8BEN, “*Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding*.” These current rules were not retained in the proposed regulations. The final regulations adopt the suggestion to retain these current rules.

A commentator requested that brokers be permitted to rely on Form 8832, “*Entity Classification Election*,” to determine that a customer is a C corporation if the customer has elected on Form 8832 to be classified as an association taxable as a corporation. According to the commentator, reliance on Form 8832 is appropriate because the form's instructions provide that an entity that is separately filing an election to be classified as an S corporation need not file Form 8832. The final regulations do not adopt the suggestion because an S corporation may still file Form 8832 or may have filed Form 8832 before electing to be classified as an S corporation.

Commentators requested that accounts opened by S corporations before 2012 be excepted from reporting. The regulations do not adopt this request as contrary to the statute.

k. Reporting to Trust Interest Holders in a WHFIT

The proposed regulations provided that, with respect to a widely held fixed investment trust (WHFIT), the requirements of section 6045(g), to the extent applicable, are met by compliance with the WHFIT reporting rules in §1.671–5. One commentator noted that §1.671–5(d)(2)(ii)(H) requires that a trustee or middleman filing a Form 1099 for an interest in a WHFIT provide, in addition to the items listed in §1.671–5(d)(2)(ii), any other information required by the Form 1099. The commentator noted that this requirement could create confusion for reporting basis information to the extent the Form 1099-B is modified to require basis information. In response, the final regulations continue to provide that the requirements of section 6045(g) are met by compliance with the WHFIT rules. The IRS intends to address the commentator's concern in the instructions to the Form 1099-B.

1. Due Date for Payee Statements Furnished in a Consolidated Reporting Statement

Section 6045(b) extended the due date to furnish payee statements to customers from January 31 to February 15, effective for statements required to be furnished after December 31, 2008. Section 6045(b) also provides that this February 15 due date applies to any other statement required to be furnished on or before January 31 of the same year if furnished in a consolidated reporting statement with a statement required under section 6045.

The proposed regulations defined *consolidated reporting statement* as a grouping of statements that includes a required section 6045 statement and is furnished to the same customer or group of customers on the same date. The proposed regulations also permitted a broker to treat any customer as receiving a required section 6045 statement if the customer had an account for which section 6045 would require a statement if a sale occurred during the year. In response to a request from a commentator, the final regulations clarify that a customer may be treated as receiving a required section 6045 statement under this rule even if the customer's account holds only cash or shares of money market funds.

Commentators requested that the definition of consolidated reporting statement include all statements a broker sends to a customer, whether or not the broker includes a required section 6045 statement to that customer, if the broker includes a required section 6045 statement to one of its customers. Other commentators supported the rule in the proposed regulations requiring brokers to continue to furnish in January pension statements and other statements to customers that hold only nontaxable accounts. The final regulations do not adopt the suggestion to broaden the definition of consolidated reporting statement. The suggested definition is inconsistent with statutory intent to limit the extended due date to statements that are or can be provided with other required section 6045 reporting.

A commentator also requested that the rules for consolidated reporting by brokers refer to "reporting entities" instead of "brokers" because custodians for individual retirement accounts (IRAs) may not

stand ready to effect sales to be made by others and, therefore, may not be considered brokers under section 6045. The final regulations do not adopt this comment because an entity that is not considered a broker under section 6045 may not furnish a consolidated reporting statement.

5. Reporting Required in Connection With Transfers of Securities

a. Scope of Transfer Reporting

The proposed regulations identified brokers, persons acting as custodians of securities in the ordinary course of a trade or business, issuers of securities, and their agents as applicable persons required to furnish a transfer statement. Commentators asked whether agents of an issuer such as a transfer agent or administrator of an employee stock purchase plan are applicable persons. The final regulations clarify that agents of an issuer are applicable persons required to furnish transfer statements and provide additional examples to illustrate these agency arrangements.

A commentator requested that stock transfer agents that do not file Form 1099-B be excluded from transfer reporting. The final regulations do not adopt this comment as inconsistent with the statutory purpose of transfer reporting. A broker selling a transferred security is only able to report basis if informed of the basis. The regulations properly place the duty to furnish the transfer statement to the selling broker on the person transferring custody of the security.

Commentators requested an exclusion for transfers excepted from all section 6045 reporting (including gross proceeds reporting) at the time of the transfer. The final regulations adopt this suggestion. Commentators also requested exclusions for transfers to or from a nontaxable account. Sales of securities in nontaxable accounts are always excepted from all reporting under section 6045. The final regulations accordingly provide an exclusion for transfers to trustees and custodians of individual retirement plans. However, the exclusion does not apply to transfers from these accounts to a customer subject to reporting under section 6045(a).

Commentators requested that transfer statements for securities distributed from a nontaxable account to an owner or an

heir report the new owner's basis as the fair market value of the security as of the date of distribution or date of death, whichever applies. The final regulations do not adopt this comment because securities held in individual retirement plans generally are treated as noncovered securities. Transferrors of securities from nontaxable accounts need not report basis although they may choose to do so.

Commentators requested that all trustees or fiduciaries of a trust or estate be required to furnish transfer statements when assets are distributed to the beneficiaries or heirs. The final regulations do not adopt this suggestion. A trustee or fiduciary must furnish a transfer statement if the trustee is also the broker effecting the transfer. If a trustee merely distributes securities in a transfer effected by a separate broker, then the broker must furnish the transfer statement.

Commentators requested an exclusion for securities transferred in connection with a loan or under a repurchase agreement or securities collateral agreement because the lender's basis in the securities is not relevant to the borrower. The final regulations adopt this request only to the extent that the transferor lends or borrows securities as a principal (for example, when a customer opens or closes a short sale). When a transferor otherwise lends or borrows securities for a customer whose transfers are not otherwise exempt from transfer reporting, transfer statements will ensure that securities returned to the lender or collateral provider remain covered securities even if the securities are returned to a different account. Further, the broker for the borrower or secured party may not know that the securities it receives are exempted from reporting under the proposed exclusion and would be compelled to ask for a transfer statement if none were provided.

Commentators requested an exclusion for money market funds because brokers do not currently report their sales on Form 1099-B. The final regulations adopt this comment and also exempt money market funds from issuer reporting under section 6045B.

b. Information Furnished on a Transfer Statement

The proposed regulations required transfer statements to include information regarding the “beneficial owner” of securities. Commentators suggested that “beneficial owner” is not an appropriate term because securities are often transferred for accounts titled in the name of someone other than a beneficial owner, such as an agent of an undisclosed principal. Accordingly, the final regulations use the designation “customer” instead of “beneficial owner.”

Commentators asked whether separate transfer statements must be furnished to identify noncovered securities at the lot level. The final regulations clarify that the transfer statement need not identify noncovered securities at the lot level and that a single transfer statement may report the transfer of multiple noncovered securities.

Commentators requested that transfer statements exclude sensitive customer information due to privacy concerns. Commentators also suggested that transfer statements not include the security symbol and lot number of the transferred security or the date of any previous transfer statement for the same transfer. In response to these comments, the final regulations provide that a transfer statement need not include the taxpayer identification number, address, or phone number of the customer; the security symbol or lot number of the transferred security; or the date of any previous transfer statement. Although the transfer statement must include the customer’s name and account number, this information may be reported in coded format.

Commentators requested that transfer statements not include the transferor’s classification of the security (for example, as stock or debt) because the receiving broker might classify the security differently. The final regulations do not adopt this suggestion. The receiving broker need not accept the transferor’s classification unless it is the same as the issuer’s classification. Nonetheless, the transferor’s classification may clarify how the transferor computed adjustments to the security’s basis.

Commentators asked whether the parties to a transfer statement could agree to substitute a security identifier for the CUSIP. The final regulations clarify that

the parties may use codes to substitute for other information, including a security symbol or other identification number or scheme to substitute for the CUSIP.

Section 1012(c)(2)(B)(ii) provides that all stock for which a broker or fund has made a single-account election shall be treated as covered securities regardless of the date of the acquisition of the stock. Commentators asked whether pre-effective date stock for which a broker or fund has made the single-account election remains a covered security when transferred to another broker. Because stock subject to the single-account election must be treated as a covered security and reported as a covered security on the transfer statement, it remains a covered security after the transfer under section 6045(g)(3)(A)(ii), provided the receiving broker receives a transfer statement.

c. Reporting of Transfers of Gifted and Inherited Securities

Under the proposed regulations, gifted and inherited securities that were covered securities in the account of the donor or decedent remained covered securities when transferred to the recipient’s account and accompanied by a transfer statement. Commentators recommended that transfers of gifted and inherited securities be excluded from the transfer statement requirement because these transfers are outside the scope of the statute. Section 6045(g)(3)(A)(ii) provides that the term “covered security” includes all transferred securities that are covered securities in the account from which transferred, provided the receiving broker receives a transfer statement. Therefore, the final regulations do not adopt this recommendation.

The proposed regulations required that a transfer statement for gifted securities indicate that the transfer consists of gifted securities and state the adjusted basis of the securities in the hands of the donor (carryover basis) and the donor’s original acquisition date of the securities. The proposed regulations also required that the transfer statement report the date of the gift (if known when furnishing the statement) and the fair market value of the gift on that date (if known or readily ascertainable). The proposed regulations required that, upon the subsequent sale or other disposition of these securities, the selling broker apply

the relevant basis rules for gifts, such as rules disallowing loss on the sale of gifted securities to the extent of built-in loss at the time of the gift.

Commentators requested simplified conventions for reporting the basis of gifted securities. They asked that the rules require reporting of carryover basis without regard to rules disallowing loss to the extent of built-in loss at the time of the gift. They stated that gifts of depreciated securities were rare and did not justify the burden of obtaining the fair market value of the securities as of the date of the gift. They suggested instead that a subsequent sale be identified as a sale of gifted securities on Form 1099-B to alert the seller that the reported basis may not be correct. The final regulations do not adopt these suggestions. The burden on brokers to determine fair market value in applying the gift basis rules is not excessive. If fair market value as of the date of the gift is not readily ascertainable, a broker may substitute gross proceeds on a subsequent sale for this amount in determining the initial basis and the gain or loss on the subsequent sale.

Commentators also requested simplified conventions for reporting the basis of inherited securities. The proposed regulations required that basis be reported on the transfer statement in accordance with the instructions and valuations furnished by an authorized representative of the estate, which the transferor must request before reporting. Commentators asked that the rules require only reporting of basis equal to the fair market value of the security on the date of death and eliminate the requirement to request instructions from the estate representative. This suggestion was adopted. The final regulations provide that the transferor must report adjusted basis equal to the fair market value of the security on the date of death unless the broker receives different instructions from the estate representative. If the transferor neither knows nor can readily ascertain the fair market value of a security on the date of death, the final regulations provide that the transferor may treat the security as noncovered. If the transferor cannot identify which securities in a joint account have been transferred from the decedent, the final regulations require the transferor to treat each security in the account as if it were a noncovered security.

A commentator requested that the transfer statement for a subsequent transfer of an inherited security include the information necessary to apply section 1223(9), relating to the holding period of property acquired from a decedent that is sold or otherwise disposed of within one year after the decedent's death. This suggestion was adopted. The final regulations require transfer statements for both initial and subsequent transfers of an inherited security to indicate that the security is inherited.

d. Other Transfer Reporting Issues

The proposed regulations permitted combined transfer reporting of a security acquired on different dates or at different prices when the security's basis is determined using an average basis method and the security has been held for more than five years. Commentators requested that combined transfer reporting be permitted for averaged securities held for more than one year consistent with the two categories of capital gain (long term and short term). The final regulations do not adopt this comment. In 2011, absent a statutory change, lower income tax rates will apply to securities held more than five years.

Commentators asked how a broker determines if a transfer statement is complete. The final regulations clarify that a statement is complete if, in the view of the receiving broker, it provides sufficient information to report the sale of the transferred security as a covered security (or states that the security is a noncovered security). For example, if the transfer statement fails to specify whether the security is stock, the receiving broker may treat the transfer statement as complete if the receiving broker otherwise has sufficient information to report the sale of the security as a covered security (or the transfer statement states that the security is a noncovered security).

Commentators asked how transfer reporting applies to purchases and sales of securities involving multiple brokers or to a cash-on-delivery account. The final regulations clarify that, for a transfer in connection with a sale, a custodian or other transferor that transfers custody of a security to a broker in order to effect a sale must furnish a transfer statement only to the broker that effects the sale. However, no transfer statement is required if the trans-

feror itself either effects the sale or is required to report the sale on Form 1099-B. The final regulations also provide that, for a transfer in connection with a purchase, a broker that effects a purchase but does not receive custody of the purchased security must furnish a transfer statement to the broker that receives custody. However, no transfer statement is required if the broker effects a purchase solely at the instruction of the broker receiving custody.

The proposed regulations proposed to exclude "any person acting solely as a clearing organization with respect to the transfer" from the transfer reporting requirements. Commentators asked that the final regulations clarify what it means to act "solely as a clearing organization." The final regulations clarify that the exception applies to an organization that holds and transfers obligations among its members as a service to its members.

Commentators requested a requirement that all transfer statements for covered securities reflect the quantitative effect of any organizational actions on basis reported by issuers under section 6045B while the transferor holds custody instead of identifying which corporate action statements are reflected on the transfer statement. The final regulations adopt this comment.

Commentators requested a default rule requiring transferors to furnish the transfer statement electronically unless the parties agree to a different method. The final regulations do not adopt this suggestion. A consent requirement ensures that both parties have the ability to submit and receive transfer statements electronically.

6. Reporting by Issuers of Actions Affecting Basis of Securities

Under section 6045B, if an organizational action (such as a stock split or a merger or acquisition) by an issuer affects the basis of a specified security, the issuer must file a return with the IRS and furnish an information statement to each certificate holder or nominee reporting the quantitative effect on basis. The proposed regulations required the issuer to assign a sequential number determined separately by security for each organizational action reported. Several commentators requested that the final regulations delete the sequential number requirement. Another com-

mentator requested that the rules create a standardized number system.

The purpose of the sequential number requirement was to indicate which basis adjustments for organizational actions are reflected on the transfer statement. The final regulations require transfer statements to reflect all organizational actions that occur while the transferor holds custody. Therefore, the final regulations eliminate the sequential number requirement.

A commentator asked that a RIC be deemed to comply with issuer reporting of an organizational action if it follows existing industry procedures for transmitting information to brokers. The commentator asserted that reporting under section 6045B would be duplicative and unnecessary. The final regulations do not adopt this comment as inconsistent with the statutory reporting requirement.

A commentator asked whether a RIC or REIT must file an issuer return under section 6045B for undistributed capital gains reported under section 852(b)(3)(D) or 857(b)(3)(D) on Form 2438, "*Undistributed Capital Gain Tax Return*," and Form 2439, "*Notice to Shareholder of Undistributed Long-Term Capital Gains*." Because these forms report the information required under §1.6045B-1, the final regulations provide that an issuer that files and furnishes both forms is deemed to meet the requirements under section 6045B for undistributed capital gains affecting the basis of its stock reported on the forms. The final regulations also provide that RICs, REITs, and brokers holding custody of RIC and REIT stock must adjust basis in accordance with the information reported on the forms.

Commentators asked whether an ADR is subject to issuer reporting under section 6045B. Because an ADR is a specified security, a foreign corporation that takes an organizational action that affects the basis of an ADR that represents stock in the foreign corporation must file an issuer return. The final regulations clarify that an issuer may use an agent, including a depository, to satisfy the requirements of this section. Nonetheless, the issuer remains liable for penalty for any failure to comply unless, as under current law, the failure is due to reasonable cause and not willful neglect.

The proposed regulations permitted issuers to make reasonable assumptions about facts having a quantitative effect on

basis that could not be determined before the reporting due date and required corrected reporting within forty-five days of determining the necessary facts. A commentator asked to what extent an issuer is required to amend a return with additional facts that may affect taxability once the facts are known. The final regulations clarify that corrected reporting is required whenever an issuer determines additional facts that result in a different quantitative effect on basis from what the issuer previously reported.

Commentators requested that issuer reporting under section 6045B be coordinated with reporting under section 6043(c) for certain changes in corporate control and capital structure. One commentator requested relief from duplicate reporting of a corporate action under section 6043(c) when reporting the action under section 6045B. This request was not adopted. Reporting on Form 1099-CAP, "*Changes in Corporate Control and Capital Structure*," is specific to each shareholder and includes each shareholder's name and aggregate value of cash and other property received by each shareholder. Similarly, reporting on Form 8806, "*Information Return for Acquisition of Control or Substantial Change in Capital Structure*," while not shareholder-specific, includes information not required under section 6045B and permits the issuer to consent to IRS disclosure of some of the contents of the return.

Section 6045B(e) waives the requirements to file issuer returns and furnish issuer statements if the issuer makes the information about the organizational action publicly available in the form and manner determined by the Secretary. The proposed regulations provided that an issuer may publicly report by posting a statement with the required information in a readily accessible format in an area of its primary public Web site dedicated to this purpose by the same due date for reporting the organizational action to the IRS and keeps the form accessible to the public.

Some commentators objected to the public reporting method in the proposed regulations on the ground that it would be too burdensome for brokers to monitor issuer Web sites. Commentators suggested that the IRS permit issuers to consent to public disclosure by the IRS and that the IRS establish a central repository on its

Web site for posting information statements from issuers that wish to report publicly. Commentators also suggested that the IRS formally recognize a clearing facility to serve as a central repository. Other commentators suggested that the final regulations require issuers to send their public reports or copies of their returns to clearing organizations, which will disseminate the information to brokers, holders, and their nominees. Commentators also suggested that issuers should be required to furnish a copy of their public report or issuer return to any entity that requests it. Other commentators supported the public reporting method in the proposed regulations. The final regulations adopt the public reporting method in the proposed regulations and do not adopt any of the suggested changes.

Commentators requested that the regulations limit the time period for which issuers must keep the public report posted on their Web site. The final regulations limit the required period to 10 years.

7. Penalty Provisions

The proposed regulations generally required brokers to adjust basis of covered securities reported on Form 1099-B to reflect information from any transfer statement received as well as any issuer reporting through the date of sale. The proposed regulations provided that any failure to report correct information that arises solely from reliance on transfer statements and issuer reporting is deemed to be due to reasonable cause for purposes of penalties under sections 6721 and 6722. The proposed regulations permitted, but did not require, a broker to further adjust the reported basis for information not reflected on one of these sources, including any information the broker has about securities held by the same customer in other accounts with the broker. The proposed regulations further provided that a broker that takes into account additional information received from a customer or third party is deemed to have relied upon this information in good faith in accordance with current rules in §301.6724-1(c)(6) for purposes of penalty relief under sections 6721 and 6722 if the broker neither knows nor has reason to know that the information is incorrect.

Commentators expressed concern that a "know or reason to know" standard would require an excessive level of due diligence and asked that brokers be subject to penalties only if they have actual knowledge that the information is incorrect, the same standard for reliance on transfer statements and issuer statements. The final regulations do not adopt this suggestion. A "know or reason to know" standard is consistent with the existing standard for penalty relief and better ensures the integrity of the information reported on the return.

The proposed regulations provided that brokers and transferors must correct their Form 1099-B or transfer statement to account for late or corrected transfer statements or issuer reports. Commentators requested time limits on the correction requirement. This suggestion was adopted. The final regulations require corrected reporting only when brokers receive corrected information within 3 years after issuing a Form 1099-B or 18 months after issuing a transfer statement. Commentators also suggested that corrected Forms 1099-B or transfer statements not be required for *de minimis* changes or for closed accounts. The final regulations do not adopt this suggestion.

A commentator also asked about the interaction of the basis reporting rules with the requirements for tax return preparers under section 6694. The commentator expressed concern that a duly diligent preparer could be subject to penalties under section 6694 for preparing a return or claim for refund that reports (1) information that the preparer believes to be accurate after exercising due diligence but that differs from the information reported on Form 1099-B or (2) inaccurate information from Form 1099-B that the preparer does not know (or have reason to know) is incorrect.

In many cases, basis reported on Form 1099-B may not reflect the taxpayer's correct basis. For example, brokers need not adjust basis for wash sales unless the transactions that trigger the wash sale occur in the same account with respect to identical securities. Additionally, brokers are permitted, but not required, to report basis for noncovered securities. Taxpayers are expected to report the correct basis on Schedule D regardless of the amount reported on Form 1099-B. The IRS is currently revising Schedule D and the related instruc-

tions and publications to facilitate reconciliation.

With respect to tax return preparer penalties under section 6694, these regulations do not alter current rules governing preparer reliance on client information. Generally, §1.6694-1(e)(1) permits tax return preparers to rely in good faith upon information furnished by a client taxpayer or another party so long as the preparer does not ignore other information furnished to or actually known by the preparer and makes reasonable inquiries if the furnished information appears to be incorrect or incomplete. This same standard applies to information furnished on Form 1099-B.

Effective/ Applicability Dates

The regulations on broker basis reporting under section 6045(g) apply to: (1) Any share of stock or any interest treated as stock in an entity organized as, or treated for Federal tax purposes as, a corporation (foreign or domestic) acquired on or after January 1, 2011, other than RIC stock or DRP stock; and (2) any share of RIC stock or DRP stock acquired on or after January 1, 2012. The regulations regarding the timing for reporting short sales of securities under section 6045 apply to short sales opened on or after January 1, 2011.

These regulations regarding the determination of basis under section 1012 apply for taxable years beginning after October 18, 2010. However, the rules in §1.1012-1(e)(1)(i), in part, apply to stock acquired on or after January 1, 2011; the rules in §1.1012-1(e)(2) apply to stock acquired on or after January 1, 2012; the rules in §1.1012-1(e)(7)(iii) apply to stock acquired before and sold, exchanged, or disposed of on or after April 1, 2011; and the rules in §1.1012-1(e)(7)(i), in part, §1.1012-1(e)(9), in part, and in §1.1012-1(e)(10), in part, apply to sales, exchanges, or other dispositions of stock on or after January 1, 2012.

The regulations regarding transfer statement reporting under section 6045A apply to: (1) Transfers of stock other than RIC stock on or after January 1, 2011; and (2) transfers of RIC stock on or after January 1, 2012. The regulations regarding issuer reporting under section 6045B apply to: (1) Organizational actions affecting basis of stock in an entity organized as, or

treated for Federal tax purposes as, a corporation (foreign or domestic) other than RIC stock on or after January 1, 2011; and (2) organizational actions affecting basis of RIC stock on or after January 1, 2012.

Effect on Other Documents

As of October 18, 2010, Rev. Rul. 67-436, 1967-2 C.B. 266, is obsolete and Rev. Proc. 2008-52, 2008-2 C.B. 587, as modified, amplified, and clarified by Rev. Proc. 2009-39, 2009-38 I.R.B. 371, is modified by deleting Section 30 of the Appendix. See §601.601(d)(2).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Any effect on small entities by these regulations flows from section 403 of the Energy Improvement and Extension Act of 2008, Division B of Public Law 110-343 (122 Stat. 3765, 3854 (2008)) (the Act).

Section 403(a) of the Act requires that brokers reporting the sale of a covered security report the adjusted basis of the security and whether any gain or loss is long-term or short-term. It is anticipated that this statutory requirement will affect only financial services firms with annual receipts greater than \$7 million that, therefore, are not small entities. Further, the regulations under this section impose no reporting requirements not found in the Act.

Section 403(c) of the Act requires applicable persons to furnish a transfer statement in connection with the transfer of custody of a covered security. The regulations define applicable person to include brokers, professional custodians of securities, issuers of securities, and trustee and custodians of individual retirement plans. This definition effectuates the Act by giving the broker that receives the transfer

statement the information necessary to accurately report the sale of the security regardless of how the owner previously held its custody. The regulations limit the impact on small entities by limiting reporting to necessary entities and information.

Section 403(d) of the Act requires reporting by all issuers of specified securities regardless of size or whether the securities are publicly traded. The regulations limit the reporting burden by requiring only necessary information and by permitting issuers to report actions publicly instead of by furnishing a statement to each nominee or holder. The regulations therefore mitigate the statutory impact on small entities.

Therefore, because this regulation will not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these proposed regulations are Edward C. Schwartz, Amy J. Pfalzgraf, and William L. Candler, Office of Associate Chief Counsel (Income Tax and Accounting), and Stephen Schaeffer, Office of Associate Chief Counsel (Procedure and Administration). However, other personnel from the IRS and the Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 31, 301, and 602 are amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.6045A-1 also issued under 26 U.S.C. 6045A(a), (b), (c).

Section 1.6045B-1 also issued under 26 U.S.C. 6045B(a), (c), (e). * * *

Par. 2. Section 1.408-7 is amended by adding two new sentences at the end of paragraph (d)(2) to read as follows:

§1.408-7 Reports on distributions from individual retirement plans.

* * * * *

(d) * * *

(2) * * * However, for a distribution after December 31, 2008, the February 15 due date under section 6045 applies to the statement if the statement is furnished in a consolidated reporting statement under section 6045. See §§1.6045-1(k)(3), 1.6045-2(d)(2), 1.6045-3(e)(2), 1.6045-4(m)(3), and 1.6045-5(a)(3)(ii).

* * * * *

Par. 3. Section 1.1012-1 is amended by:

1. Revising paragraphs (c)(1), (c)(4), (c)(6), (c)(7)(ii), (c)(7)(iii) introductory text, and (c)(7)(iii)(a).

2. Adding new paragraphs (c)(8), (c)(9), (c)(10), and (c)(11).

3. Revising the heading of paragraphs (e) and (e)(5).

4. Revising paragraphs (e)(1), (e)(2), (e)(3), (e)(4), (e)(6), and (e)(7).

5. Adding new paragraphs (e)(8), (e)(9), (e)(10), (e)(11), and (e)(12).

The additions and revisions read as follows:

§1.1012-1 Basis of property.

* * * * *

(c) *Sale of stock*—(1) *In general.* (i) Except as provided in paragraph (e)(2) of this section (dealing with stock for which the average basis method is permitted), if a taxpayer sells or transfers shares of stock in a corporation that the taxpayer purchased or acquired on different dates or at different prices and the taxpayer does not adequately identify the lot from which the stock is sold or transferred, the stock sold or transferred is charged against the earliest lot the taxpayer purchased or acquired to determine the basis and holding period of the stock. If the earliest lot purchased or acquired is held in a stock certificate that represents multiple lots of stock, and the taxpayer does not adequately identify the lot from which the stock is sold or transferred, the stock sold or transferred is charged against the earliest lot included

in the certificate. See paragraphs (c)(2), (c)(3), and (c)(4) of this section for rules on what constitutes an adequate identification.

(ii) A taxpayer must determine the basis of identical stock (within the meaning of paragraph (e)(4) of this section) by averaging the cost of each share if the stock is purchased at separate times on the same calendar day in executing a single trade order and the broker executing the trade provides a single confirmation that reports an aggregate total cost or an average cost per share. However, the taxpayer may determine the basis of the stock by the actual cost per share if the taxpayer notifies the broker in writing of this intent. The taxpayer must notify the broker by the earlier of the date of the sale of any of the stock for which the taxpayer received the confirmation or one year after the date of the confirmation. A broker may extend the one-year period but the taxpayer must notify the broker no later than the date of sale of any of the stock.

* * * * *

(4) *Stock held by a trustee, executor, or administrator.* (i) A trustee or executor or administrator of an estate holding stock (not left in the custody of a broker) makes an adequate identification if the trustee, executor, or administrator—

(a) Specifies in writing in the books and records of the trust or estate the particular stock to be sold, transferred, or distributed;

(b) In the case of a distribution, furnishes the distributee with a written document identifying the particular stock distributed; and

(c) In the case of a sale or transfer through a broker or other agent, specifies to the broker or agent the particular stock to be sold or transferred, and within a reasonable time thereafter the broker or agent confirms the specification in a written document.

(ii) The stock the trust or estate identifies under paragraph (c)(4)(i) of this section is the stock treated as sold, transferred, or distributed, even if the trustee, executor, or administrator delivers stock certificates from a different lot.

* * * * *

(6) *Bonds.* Paragraphs (1) through (5), (8), and (9) of this section apply to the sale or transfer of bonds.

(7) * * *

(ii) In applying paragraph (c)(3)(i)(b) of this section to a sale or transfer of a book-entry security pursuant to a taxpayer's written instruction, a confirmation is made by furnishing to the taxpayer a written advice of transaction from the Reserve Bank or other person through whom the taxpayer sells or transfers the securities. The confirmation document must describe the securities and specify the date of the transaction and amount of securities sold or transferred.

(iii) For purposes of this paragraph (c)(7):

(a) The term *book-entry security* means a transferable Treasury bond, note, certificate of indebtedness, or bill issued under the Second Liberty Bond Act (31 U.S.C. 774(2)), as amended, or other security of the United States (as defined in paragraph (c)(7)(iii)(b) of this section) in the form of an entry made as prescribed in 31 CFR Part 306, or other comparable Federal regulations, on the records of a Reserve Bank.

* * * * *

(8) *Time for making identification.* For purposes of this paragraph (c), an adequate identification of stock is made at the time of sale, transfer, delivery, or distribution if the identification is made no later than the earlier of the settlement date or the time for settlement required by Rule 15c6-1 under the Securities Exchange Act of 1934, 17 CFR 240.15c6-1 (or its successor). A standing order or instruction for the specific identification of stock is treated as an adequate identification made at the time of sale, transfer, delivery, or distribution.

(9) *Method of writing.* (i) A written confirmation, record, document, instruction, notification, or advice includes a writing in electronic format.

(ii) A broker or agent may include the written confirmation required under this paragraph (c) in an account statement or other document the broker or agent periodically provides to the taxpayer if the broker or agent provides the statement or other document within a reasonable time after the sale or transfer.

(10) *Method for determining basis of stock.* A method of determining the basis of stock, including a method of identifying stock sold under this paragraph (c) and the average basis method described in paragraph (e) of this section, is not a method of accounting. Therefore, a change in a

method of determining the basis of stock is not a change in method of accounting to which sections 446 and 481 apply.

(11) *Effective/applicability date.* Paragraphs (c)(1), (c)(4), (c)(6), (c)(7)(ii), (c)(7)(iii)(a), (c)(8), (c)(9), and (c)(10) of this section apply for taxable years beginning after October 18, 2010.

* * * * *

(e) *Election to use average basis method*—(1) *In general.* Notwithstanding paragraph (c) of this section, and except as provided in paragraph (e)(8) of this section, a taxpayer may use the average basis method described in paragraph (e)(7) of this section to determine the cost or other basis of identical shares of stock if—

(i) The taxpayer leaves shares of stock in a regulated investment company (as defined in paragraph (e)(5) of this section) or shares of stock acquired after December 31, 2010, in connection with a dividend reinvestment plan (as defined in paragraph (e)(6) of this section) with a custodian or agent in an account maintained for the acquisition or redemption, sale, or other disposition of shares of the stock; and

(ii) The taxpayer acquires identical shares of stock at different prices or bases in the account.

(2) *Determination of method.* (i) If a taxpayer places shares of stock described in paragraph (e)(1)(i) of this section acquired on or after January 1, 2012, in the custody of a broker (as defined by section 6045(c)(1)), including by transfer from an account with another broker, the basis of the shares is determined in accordance with the broker's default method, unless the taxpayer notifies the broker that the taxpayer elects another permitted method. The taxpayer must report gain or loss using the method the taxpayer elects or, if the taxpayer fails to make an election, the broker's default method. See paragraphs (e)(9)(i) and (e)(9)(v), *Example 2*, of this section.

(ii) The provisions of this paragraph (e)(2) are illustrated by the following example:

Example. (i) In connection with a dividend reinvestment plan, Taxpayer B acquires 100 shares of G Company in 2012 and 100 shares of G Company in 2013, in an account B maintains with R Broker. B notifies R in writing that B elects to use the average basis method to compute the basis of the shares of G Company. In 2014, B transfers the shares of G Company to an account with S Broker. B does not notify S of the basis determination method B chooses to use

for the shares of G Company, and S's default method is first-in, first-out. In 2015, B purchases 200 shares of G Company in the account with S. In 2016, B instructs S to sell 150 shares of G Company.

(ii) Because B does not notify S of a basis determination method for the shares of G Company, under paragraph (e)(2)(i) of this section, the basis of the 150 shares of G Company S sells for B in 2016 must be determined under S's default method, first-in, first-out.

(3) *Shares of stock.* For purposes of this paragraph (e), securities issued by unit investment trusts described in paragraph (e)(5) of this section are treated as shares of stock and the term *share* or *shares* includes fractions of a share.

(4) *Identical stock.* For purposes of this paragraph (e), *identical shares of stock* means stock with the same Committee on Uniform Security Identification Procedures (CUSIP) number or other security identifier number as permitted in published guidance of general applicability, see §601.601(d)(2) of this chapter.

(5) *Regulated investment company.*
* * *

(6) *Dividend reinvestment plan*—(i) *In general.* For purposes of this paragraph (e), the term *dividend reinvestment plan* means any written plan, arrangement, or program under which at least 10 percent of every dividend (within the meaning of section 316) on any share of stock is reinvested in stock identical to the stock on which the dividend is paid. A plan is a dividend reinvestment plan if the plan documents require that at least 10 percent of any dividend paid is reinvested in identical stock even if the plan includes stock on which no dividends have ever been declared or paid or on which an issuer ceases paying dividends. A plan that holds one or more different stocks may permit a taxpayer to reinvest a different percentage of dividends in the stocks held. A dividend reinvestment plan may reinvest other distributions on stock, such as capital gain distributions, non-taxable returns of capital, and cash in lieu of fractional shares. The term dividend reinvestment plan includes both issuer administered dividend reinvestment plans and non-issuer administered dividend reinvestment plans.

(ii) *Acquisition of stock.* Stock is acquired in connection with a dividend reinvestment plan if the stock is acquired under that plan, arrangement, or program, or if the dividends and other distributions paid on the stock are subject to that plan, arrangement, or program. Shares of stock

acquired in connection with a dividend reinvestment plan include the initial purchase of stock in the dividend reinvestment plan, transfers of identical stock into the dividend reinvestment plan, additional periodic purchases of identical stock in the dividend reinvestment plan, and identical stock acquired through reinvestment of the dividends or other distributions paid on the stock held in the plan.

(iii) *Dividends and other distributions paid after reorganization.* For purposes of this paragraph (e)(6), dividends and other distributions declared or announced before or pending a corporate action (such as a merger, consolidation, acquisition, split-off, or spin-off) involving the issuer and subsequently paid and reinvested in shares of stock in the successor entity or entities are treated as reinvested in shares of stock identical to the shares of stock of the issuer.

(iv) *Withdrawal from or termination of plan.* If a taxpayer withdraws stock from a dividend reinvestment plan or the plan administrator terminates the dividend reinvestment plan, the shares of identical stock the taxpayer acquires after the withdrawal or termination are not acquired in connection with a dividend reinvestment plan. The taxpayer may not use the average basis method after the withdrawal or termination but may use any other permissible basis determination method. See paragraph (e)(7)(v) of this section for the basis of the shares after withdrawal or termination.

(7) *Computation of average basis*—(i) *In general.* Average basis is determined by averaging the basis of all shares of identical stock in an account regardless of holding period. However, for this purpose, shares of stock in a dividend reinvestment plan are not identical to shares of stock with the same CUSIP number that are not in a dividend reinvestment plan. The basis of each share of identical stock in the account is the aggregate basis of all shares of that stock in the account divided by the aggregate number of shares. Unless a single-account election is in effect, see paragraph (e)(11) of this section, a taxpayer may not average together the basis of identical stock held in separate accounts that the taxpayer sells, exchanges, or otherwise disposes of on or after January 1, 2012.

(ii) *Order of disposition of shares sold or transferred.* In the case of the sale or transfer of shares of stock to which the average basis method election applies, shares

sold or transferred are deemed to be the shares first acquired. Thus, the first shares sold or transferred are those with a holding period of more than 1 year (long-term shares) to the extent that the account contains long-term shares. If the number of shares sold or transferred exceeds the number of long-term shares in the account, the excess shares sold or transferred are deemed to be shares with a holding period of 1 year or less (short-term shares). Any gain or loss attributable to shares held for more than 1 year constitutes long-term gain or loss, and any gain or loss attributable to shares held for 1 year or less constitutes short-term gain or loss. For example, if a taxpayer sells 50 shares from an account containing 100 long-term shares and 100 short-term shares, the shares sold or transferred are all long-term shares. If, however, the account contains 40 long-term shares and 100 short-term shares, the taxpayer has sold 40 long-term shares and 10 short-term shares.

(iii) *Transition rule from double-category method.* This paragraph (e)(7)(iii) applies to stock for which a taxpayer uses the double-category method under

§1.1012-1(e)(3) (April 1, 2010), that the taxpayer acquired before April 1, 2011, and that the taxpayer sells, exchanges, or otherwise disposes of on or after that date. The taxpayer must calculate the average basis of this stock by averaging together all identical shares of stock in the account on April 1, 2011, regardless of holding period.

(iv) *Wash sales.* A taxpayer must apply section 1091 and the associated regulations (dealing with wash sales of substantially identical securities) in computing average basis regardless of whether the stock or security sold or otherwise disposed of and the stock acquired are in the same account or in different accounts.

(v) *Basis after change from average basis method.* Unless a taxpayer revokes an average basis method election under paragraph (e)(9)(iii) of this section, if a taxpayer changes from the average basis method to another basis determination method (including a change resulting from a withdrawal from or termination of a dividend reinvestment plan), the basis of each share of stock immediately after the change is the same as the basis

immediately before the change. See paragraph (e)(9)(iv) of this section for rules for changing from the average basis method.

(vi) The provisions of this paragraph (e)(7) are illustrated by the following examples:

Example 1. (i) In 2011, Taxpayer C acquires 100 shares of H Company and enrolls them in a dividend reinvestment plan administered by T Custodian. C elects to use the average basis method for the shares of H Company enrolled in the dividend reinvestment plan. T also acquires for C's account 50 shares of H Company and does not enroll these shares in the dividend reinvestment plan.

(ii) Under paragraph (e)(7)(i) of this section, the 50 shares of H Company not in the dividend reinvestment plan are not identical to the 100 shares of H Company enrolled in the dividend reinvestment plan, even if they have the same CUSIP number. Accordingly, under paragraphs (e)(1) and (e)(7)(i) of this section, C may not average the basis of the 50 shares of H Company with the basis of the 100 shares of H Company. Under paragraph (e)(1)(i) of this section, C may not use the average basis method for the 50 shares of H Company because the shares are not acquired in connection with a dividend reinvestment plan.

Example 2. (i) Taxpayer D enters into an agreement with W Custodian establishing an account for the periodic acquisition of shares of L Company, a regulated investment company. W acquires for D's account shares of L Company stock on the following dates and amounts:

Date	Number of shares	Cost
January 8, 2010	25	\$200
February 8, 2010	24	200
March 8, 2010	20	200
April 8, 2010	20	200

(ii) At D's direction, W sells 40 shares from the account on January 15, 2011, for \$10 per share or a total of \$400. D elects to use the average basis method for the shares of L Company. The average basis for the shares sold on January 15, 2011, is \$8.99 (total cost of shares, \$800, divided by the total number of shares, 89).

(iii) Under paragraph (e)(7)(ii) of this section, the shares sold are the shares first acquired. Thus, D realizes \$25.25 ($\1.01×25) long-term capital gain for the 25 shares acquired on January 8, 2010, and \$15.15 ($\1.01×15) short-term capital gain for 15 of the shares acquired on February 8, 2010.

Example 3. (i) The facts are the same as in *Example 2*, except that on February 8, 2011, D changes to the first-in, first-out basis determination method. W purchases 25 shares of L Company for D on March 8, 2011, at \$12 per share. D sells 40 shares on May 8, 2011, and 34 shares on July 8, 2012.

(ii) Because D uses the first-in, first-out method, the 40 shares sold on May 8, 2011 are 9 shares purchased on February 8, 2010, 20 shares purchased on March 8, 2010, and 11 shares purchased on April 8, 2010. Because, under paragraph (e)(7)(v) of this section, the basis of the shares D owns when D changes from the average basis method remains the same, the basis of the shares sold on May 8, 2011, is \$8.99

per share, not the original cost of \$8.33 per share for the shares purchased on February 8, 2010, or \$10 per share for the shares purchased on March 8, 2010, and April 8, 2010. The basis of the shares sold on July 8, 2012, is \$8.99 per share for 9 shares purchased on April 8, 2010, and \$12 per share for 25 shares purchased on March 8, 2011.

Example 4. (i) The facts are the same as in *Example 2*, except that D uses the first-in, first-out method for the 40 shares sold on January 15, 2011. W purchases 25 shares of L Company for D on March 8, 2011, at \$12 per share. D sells 40 shares on May 8, 2011, and elects the average basis method.

(ii) Because D uses the first-in, first-out method for the sale on January 15, 2011, the 40 shares sold are the 25 shares acquired on January 8, 2010, for \$200 (basis \$8 per share) and 15 of the 24 shares purchased on February 8, 2010, for \$200 (basis \$8.33 per share).

(iii) Under paragraph (e)(7)(i) of this section, under the average basis method, the basis of all of the shares of identical stock in D's account is averaged. Thus, the basis of each share D sells on May 8, 2011, after electing the average basis method, is \$10.47. This figure is the total cost of the shares in D's account (\$74.97 for the 9 shares acquired on February 8, 2010, \$200 for the 20 shares acquired on March 8, 2010, \$200 for the 20 shares acquired on

April 8, 2010, and \$300 for the 25 shares acquired on March 8, 2011) divided by 74, the total number of shares (\$774.97/74).

(8) *Limitation on use of average basis method for certain gift shares.* (i) Except as provided in paragraph (e)(8)(ii) of this section, a taxpayer may not use the average basis method for shares of stock a taxpayer acquires by gift after December 31, 1920, if the basis of the shares (adjusted for the period before the date of the gift as provided in section 1016) in the hands of the donor or the last preceding owner by whom the shares were not acquired by gift was greater than the fair market value of the shares at the time of the gift. This paragraph (e)(8)(i) does not apply to shares the taxpayer acquires as a result of a taxable dividend or capital gain distribution on the gift shares.

(ii) Notwithstanding paragraph (e)(8)(i) of this section, a taxpayer may use the average basis method if the taxpayer states

in writing that the taxpayer will treat the basis of the gift shares as the fair market value of the shares at the time the taxpayer acquires the shares. The taxpayer must provide this statement when the taxpayer makes the election under paragraph (e)(9) of this section or when transferring the shares to an account for which the taxpayer has made this election, whichever occurs later. The statement must be effective for any gift shares identical to the gift shares to which the average basis method election applies that the taxpayer acquires at any time and must remain in effect as long as the election remains in effect.

(iii) The provisions of this paragraph (e)(8) are illustrated by the following examples:

Example 1. (i) Taxpayer E owns an account for the periodic acquisition of shares of M Company, a regulated investment company. On April 15, 2010, E acquires identical shares of M Company by gift and transfers those shares into the account. These shares had an adjusted basis in the hands of the donor that was greater than the fair market value of the shares on that date. On June 15, 2010, E sells shares from the account and elects to use the average basis method.

(ii) Under paragraph (e)(8)(ii) of this section, E may elect to use the average basis method for shares sold or transferred from the account if E includes a statement with E's election that E will treat the basis of the gift shares in the account as the fair market value of the shares at the time E acquired them. *See* paragraph (e)(9)(ii) of this section.

Example 2. (i) The facts are the same as in *Example 1*, except E acquires the gift shares on April 15, 2012, transfers those shares into the account, and used the average basis method for sales of shares of M Company before acquiring the gift shares. E sells shares of M Company on June 15, 2012.

(ii) Under paragraph (e)(8)(ii) of this section, the basis of the gift shares may be averaged with the basis of the other shares of M Company in E's account if, when E transfers the gift shares to the account, E provides a statement to E's broker that E will treat the basis of the gift shares in the account as the fair market value of the shares at the time E acquired them. *See* paragraph (e)(9)(i) of this section.

(9) *Time and manner for making the average basis method election*—(i) *In general.* A taxpayer makes an election to use the average basis method for shares of stock described in paragraph (e)(1)(i) of this section that are covered securities (within the meaning of section 6045(g)(3))

by notifying the custodian or agent in writing by any reasonable means. For purposes of this paragraph (e), a writing may be in electronic format. A taxpayer has not made an election within the meaning of this section if the taxpayer fails to notify a broker of the taxpayer's basis determination method and basis is determined by the broker's default method under paragraph (e)(2) of this section. A taxpayer may make the average basis method election at any time, effective for sales or other dispositions of stock occurring after the taxpayer notifies the custodian or agent. The election must identify each account with that custodian or agent and each stock in that account to which the election applies. The election may specify that it applies to all accounts with a custodian or agent, including accounts the taxpayer later establishes with the custodian or agent. If the election applies to gift shares, the taxpayer must provide the statement required by paragraph (e)(8)(ii) of this section, if applicable, to the custodian or agent with the taxpayer's election.

(ii) *Average basis method election for securities that are noncovered securities.* A taxpayer makes an election to use the average basis method for shares of stock described in paragraph (e)(1)(i) of this section that are noncovered securities (as described in §1.6045-1(a)(16)) on the taxpayer's income tax return for the first taxable year for which the election applies. A taxpayer may make the election on an amended return filed no later than the time prescribed (including extensions) for filing the original return for the taxable year for which the election applies. The taxpayer must indicate on the return that the taxpayer used the average basis method in reporting gain or loss on the sale or other disposition. A taxpayer must attach to the return the statement described in paragraph (e)(8)(ii) of this section, if applicable. A taxpayer making the election must maintain records necessary to substantiate the average basis reported.

(iii) *Revocation of election.* A taxpayer may revoke an election under paragraph

(e)(9)(i) of this section by the earlier of one year after the taxpayer makes the election or the date of the first sale, transfer, or disposition of that stock following the election. A custodian or agent may extend the one-year period but a taxpayer may not revoke an election after the first sale, transfer, or disposition of the stock. A revocation applies to all stock the taxpayer holds in an account that is identical to the shares of stock for which the taxpayer revokes the election. A revocation is effective when the taxpayer notifies, in writing by any reasonable means, the custodian or agent holding the stock to which the revocation applies. After revocation, the taxpayer's basis in the shares of stock to which the revocation applies is the basis before averaging.

(iv) *Change from average basis method.* A taxpayer may change basis determination methods from the average basis method to another method prospectively at any time. A change from the average basis method applies to all identical stock the taxpayer sells or otherwise disposes of before January 1, 2012, that was held in any account. A change from the average basis method applies on an account by account basis (within the meaning of paragraph (e)(10) of this section) to all identical stock the taxpayer sells or otherwise disposes of on or after January 1, 2012. The taxpayer must notify, in writing by any reasonable means, the custodian or agent holding the stock to which the change applies. Unless paragraph (e)(9)(iii) of this section applies, the basis of each share of stock to which the change applies remains the same as the basis immediately before the change. *See* paragraph (e)(7)(v) of this section.

(v) *Examples.* The provisions of this paragraph (e)(9) are illustrated by the following examples:

Example 1. (i) Taxpayer F enters into an agreement with W Custodian establishing an account for the periodic acquisition of shares of N Company, a regulated investment company. W acquires for F's account shares of N Company on the following dates and amounts:

Date	Number of shares	Cost
January 8, 2012	25	\$200
February 8, 2012	24	200
March 8, 2012	20	200

(ii) F notifies W that F elects, under paragraph (e)(9)(i) of this section, to use the average basis method for the shares of N Company. On May 8, 2012, under paragraph (e)(9)(iii) of this section, F notifies W that F revokes the average basis method election. On June 1, 2012, F sells 60 shares of N Company using the first-in, first-out basis determination method.

(iii) Under paragraph (e)(9)(iii) of this section, the basis of the N Company shares upon revocation, and for purposes of determining gain on the sale, is \$8.00 per share for each of the 25 shares purchased on January 8, 2012, \$8.34 per share for each of the 24 shares purchased on February 8, 2012, and \$10 per share for the remaining 11 shares purchased on March 8, 2012.

Example 2. (i) The facts are the same as in *Example 1*, except that F does not notify W that F elects a basis determination method. W's default basis determination method is the average basis method and W maintains an averaged basis for F's shares of N Company on W's books and records.

(ii) F has not elected the average basis method under paragraph (e)(9)(i) of this section. Therefore, F's notification to W on May 8, 2012, is not an effective revocation under paragraph (e)(9)(iii) of this section. F's attempted revocation is, instead, notification of a change from the average basis method under paragraph (e)(9)(iv) of this section. Accordingly, the basis of each share of stock F sells on June 1, 2012, is the basis immediately before the change, \$8.70 (total cost of shares, \$600, divided by the total number of shares, 69).

(10) *Application of average basis method account by account*—(i) *In general.* For sales, exchanges, or other dispositions on or after January 1, 2012, of stock described in paragraph (e)(1)(i) of this section, the average basis method applies on an account by account basis. A taxpayer may use the average basis method for stock in a regulated investment company or stock acquired in connection with a dividend reinvestment plan in one account but use a different basis determination method for identical stock in a different account. If a taxpayer uses the average basis method for a stock described in paragraph (e)(1)(i) of this section, the taxpayer must use the average basis method for all identical stock within that account. The taxpayer may use different basis determination methods for stock within an account that is not identical. Except as provided in paragraph (e)(10)(ii) of this section, a taxpayer must make separate elections to use the average basis method for stock held in separate accounts.

(ii) *Account rule for stock sold before 2012.* A taxpayer's election to use the average basis method for shares of stock described in paragraph (e)(1)(i) of this section that a taxpayer sells, exchanges, or otherwise disposes of before

January 1, 2012, applies to all identical shares of stock the taxpayer holds in any account.

(iii) *Separate account.* Unless the single-account election described in paragraph (e)(11)(i) of this section applies, stock described in paragraph (e)(1)(i) of this section that is a covered security (within the meaning of section 6045(g)(3)) is treated as held in a separate account from stock that is a noncovered security (as described in §1.6045-1(a)(16)), regardless of when acquired.

(iv) *Examples.* The provisions of this paragraph (e)(10) are illustrated by the following examples:

Example 1. (i) In 2012, Taxpayer G enters into an agreement with Y Broker establishing three accounts (G-1, G-2, and G-3) for the periodic acquisition of shares of P Company, a regulated investment company. Y makes periodic purchases of P Company for each of G's accounts. G elects to use the average basis method for account G-1. On July 1, 2013, G sells shares of P Company from account G-1.

(ii) G is not required to use the average basis method for the shares of P Company that G holds in accounts G-2 and G-3 because, under paragraph (e)(10)(i) of this section, the average basis method election applies to shares sold after 2011 on an account by account basis.

Example 2. The facts are the same as in *Example 1*, except that G also instructs Y to acquire shares of Q Company, a regulated investment company, for account G-1. Under paragraph (e)(10)(i) of this section, G may use any permissible basis determination method for the shares of Q Company because, under paragraph (e)(4) of this section, the shares of Q Company are not identical to the shares of P Company.

Example 3. (i) The facts are the same as in *Example 1*, except that G establishes the accounts in 2011 and Y sells shares of P Company from account G-1 on July 1, 2011.

(ii) For sales before 2012, under paragraph (e)(10)(ii) of this section, G's election applies to all accounts in which G holds identical stock. G must average together the basis of the shares in all accounts to determine the basis of the shares sold from account G-1.

Example 4. (i) In 2011, Taxpayer H acquires 80 shares of R Company and enrolls them in R Company's dividend reinvestment plan. In 2012, H acquires 50 shares of R Company in the dividend reinvestment plan. H elects to use the average basis method for the shares of R Company in the dividend reinvestment plan. R Company does not make the single-account election under paragraph (e)(11)(i) of this section.

(ii) Under section 6045(g)(3) and §1.6045-1(a)(16), the 80 shares acquired in 2011 are noncovered securities and the 50 shares acquired in 2012 are covered securities. Therefore, under paragraph (e)(10)(iii) of this section, the 80 shares are treated as held in a separate account from the 50 shares. H must make a separate average basis method election for each account and must average

the basis of the shares in each account separately from the shares in the other account.

Example 5. (i) B Broker maintains an account for Taxpayer J for the periodic acquisition of shares of S Company, a regulated investment company. In 2013, B purchases shares of S Company for J's account that are covered securities within the meaning of section 6045(g)(3). On April 15, 2014, J inherits shares of S Company that are noncovered securities and transfers the shares into the account with B.

(ii) Under paragraph (e)(10)(iii) of this section, J must treat the purchased shares and the inherited shares of S Company as held in separate accounts. J may elect to apply the average basis method to all the shares of S Company, but must make a separate election for each account, and must average the basis of the shares in each account separately from the shares in the other account.

Example 6. (i) In 2010, Taxpayer K purchases stock in T Company in an account with C Broker. In 2012, K purchases additional T Company stock and enrolls that stock in a dividend reinvestment plan maintained by C. K elects the average basis method for the T Company stock. In 2013, K transfers the T Company stock purchased in 2010 into the dividend reinvestment plan.

(ii) Under paragraphs (e)(1)(i) and (e)(6)(ii) of this section, the stock purchased in 2010 is not stock acquired after December 31, 2010, in connection with a dividend reinvestment plan before transfer into the dividend reinvestment plan. Therefore, the stock is not eligible for the average basis method at that time.

(iii) Once transferred into the dividend reinvestment plan in 2013, the stock K purchased in 2010 is acquired after December 31, 2010, in connection with a dividend reinvestment plan within the meaning of paragraph (e)(6)(ii) of this section and is eligible for the average basis method. Because stock purchased in 2010 is a noncovered security under §1.6045-1(a)(16), under paragraph (e)(10)(iii) of this section, the 2010 stock and the 2012 stock must be treated as held in separate accounts. Under paragraph (e)(7)(i) of this section, the basis of the 2010 shares may not be averaged with the basis of the 2012 shares.

Example 7. The facts are the same as in *Example 6*, except that K purchases the initial T Company stock in January 2011. Because this stock is a covered security under section 6045(g)(3) and §1.6045-1(a)(15)(iv)(A), the 2011 stock and the 2012 stock are not required under paragraph (e)(10)(iii) of this section to be treated as held in separate accounts. Under paragraph (e)(7)(i) of this section, the basis of the 2011 shares must be averaged with the basis of the 2012 shares.

Example 8. (i) The facts are the same as in *Example 7*, except that K purchases the additional T Company stock and enrolls in the dividend reinvestment plan in March 2011. In September 2011, K transfers the T Company stock purchased in January 2011 into the dividend reinvestment plan. K sells some of the T Company stock in 2012.

(ii) Under section 6045(g)(3) and §1.6045-1(a)(16), the stock K purchases in January 2011 is a covered security at the time of purchase but the stock K purchases and enrolls in the dividend reinvestment plan in March 2011 is a noncovered security. However, under §1.6045-1(a)(15)(iv)(A), the stock purchased in January 2011 becomes a noncovered security after it is transferred to the

dividend reinvestment plan. Because all the shares in the dividend reinvestment plan in September 2011 are noncovered securities, when K sells stock in 2012, the January 2011 stock and the March 2011 stock are not required under paragraph (e)(10)(iii) of this section to be treated as held in separate accounts. Under paragraph (e)(7)(i) of this section, the basis of the January 2011 shares must be averaged with the basis of the March 2011 shares.

(11) *Single-account election*—(i) *In general.* Paragraph (e)(10)(iii) of this section does not apply if a regulated investment company or dividend reinvestment plan elects to treat all identical shares of stock described in paragraph (e)(1)(i) of this section as held in a single account (single-account election). The single-account election applies only to stock for which a taxpayer elects to use the average basis method that is held in separate accounts or treated as held in separate accounts maintained for the taxpayer and only to accounts with the same ownership. If a broker (as defined by section 6045(c)(1)) holds the stock as a nominee, the broker, and not the regulated investment company or dividend reinvestment plan, makes the election. The single-account election is irrevocable, but is void if the taxpayer revokes the average basis election under paragraph (e)(9)(iii) of this section.

(ii) *Scope of election.* A company, plan, or broker may make a single-account election for one or more taxpayers for which it maintains an account, and for one or more stocks it holds for a taxpayer. The company, plan, or broker may make the election only for the shares of stock for which it has accurate basis information. A company, plan, or broker has accurate basis information if the company, plan, or broker neither knows nor has reason to know that the basis information is inaccurate. See also section 6724 and the associated regulations regarding standards for relief from information reporting penalties. Stock for which accurate basis information is unavailable may not be included in the single-account election and must be treated as held in a separate account.

(iii) *Effect of single-account election.* If a company, plan, or broker makes the single-account election, the basis of all identical shares of stock to which the election applies must be averaged together regardless of when the taxpayer acquires the shares, and all the shares are treated as covered securities. The single-account election applies to all identical stock a taxpayer later

acquires in the account that is a covered security (within the meaning of section 6045(g)(3)). A company, plan, or broker may make another single-account election if, for example, the broker later acquires accurate basis information for a stock, or a taxpayer acquires identical stock in the account that is a noncovered security (as described in §1.6045-1(a)(16)) for which the company, plan, or broker has accurate basis information.

(iv) *Time and manner for making the single-account election.* A company, plan, or broker makes the single-account election by clearly noting it on its books and records. The books and records must reflect the date of the election; the taxpayer's name, account number, and taxpayer identification number; the stock subject to the election; and the taxpayer's basis in the stock. The company, plan, or broker must provide copies of the books and records regarding the election to the taxpayer upon request. A company, plan, or broker may make the single-account election at any time.

(v) *Notification to taxpayer.* A company, plan, or broker making the single-account election must use reasonable means to notify the taxpayer of the election. Reasonable means include mailings, circulars, or electronic mail sent separately to the taxpayer or included with the taxpayer's account statement, or other means reasonably calculated to provide actual notice to the taxpayer. The notice must identify the securities subject to the election and advise the taxpayer that the securities will be treated as covered securities regardless of when acquired.

(vi) *Examples.* The provisions of this paragraph (e)(11) are illustrated by the following examples:

Example 1. (i) E Broker maintains Accounts A and B for Taxpayer M for the acquisition and disposition of shares of T Company, a regulated investment company. In 2011, E purchases 100 shares of T Company for M's Account A. E has accurate basis information for these shares. In 2012, E purchases 150 shares of T Company for M's Account A and 80 shares of T Company for M's Account B. M elects to use the average basis method for all shares of T Company. E makes a single-account election for M's T Company stock.

(ii) The shares of T Company in Accounts A and B are held in separate accounts. Under section 6045(g)(3) and §1.6045-1(a)(16), of the shares purchased in Account A, the 100 shares purchased in 2011 are noncovered securities and the 150 shares purchased in 2012 are covered securities. Under paragraph (e)(10)(iii) of this section, the 100 shares

are treated as held in a separate account from the 150 shares. Under paragraph (e)(11)(i) of this section, the single-account election applies to all 330 shares of T Company in Accounts A and B. Thus, under paragraph (e)(11)(iii) of this section, the basis of the 330 shares of stock is averaged together and all the shares are treated as covered securities.

Example 2. The facts are the same as in *Example 1*, except that M owns Account B jointly with Taxpayer N. E may make a single-account election for the 250 shares of stock in M's Account A. However, under paragraph (e)(11)(i) of this section, E may not make a single-account election for Accounts A and B because the accounts do not have the same ownership.

Example 3. (i) C Broker maintains an account for Taxpayer K for the acquisition and disposition of shares of T Company, a regulated investment company, and shares of V Company that K enrolls in C's dividend reinvestment plan. In 2011, C purchases for K's account 100 shares of T Company in multiple lots and 80 shares of V Company in multiple lots that are enrolled in the dividend reinvestment plan. C has accurate basis information for all 100 shares of T Company and 80 shares of V Company. In 2012, C acquires for K's account 150 shares of T Company and 160 shares of V Company that are enrolled in the dividend reinvestment plan. K elects to use the average basis method for all the shares of T Company and V Company.

(ii) Under paragraphs (e)(11)(i) and (ii) of this section, C may make a single-account election for the T Company stock or the V Company stock, or both. After making a single-account election for each stock, under paragraph (e)(11)(iii) of this section, the basis of all T Company stock is averaged together and the basis of all V Company stock is averaged together, regardless of when acquired, and all the shares of T Company and V Company are treated as covered securities.

Example 4. The facts are the same as in *Example 3*, except that K transfers the 100 shares of T Company acquired in 2011 from an account with another broker into K's account with C. C does not have accurate basis information for 30 of the 100 shares of T Company, which K had acquired in two lots. Under paragraph (e)(11)(ii) of this section, C may make the single-account election only for the 70 shares of T Company stock for which C has accurate basis information. C must treat the 30 shares of T Company for which C does not have accurate basis information as held in a separate account. K may use the average basis method for the 30 shares of T Company, but must make a separate average basis method election for these shares and must average the basis of these shares separately from the 70 shares subject to C's single-account election.

Example 5. The facts are the same as in *Example 3*, except that C has made the single-account election and in 2013 K acquires additional shares of T Company that are covered securities in K's account with C. Under paragraph (e)(11)(iii) of this section, these shares of T Company are subject to C's single-account election.

Example 6. The facts are the same as in *Example 3*, except that C has made the single-account election and in 2013 K inherits shares of T Company that are noncovered securities and transfers the shares into the account with C. C has accurate basis information for

these shares. Under paragraph (e)(11)(iii) of this section, C may make a second single-account election to include the inherited T Company shares.

Example 7. (i) Between 2002 and 2011, Taxpayer L acquires 1,500 shares of W Company, a regulated investment company, in an account with D Broker, for which L uses the average basis method, and sells 500 shares. On January 5, 2012, based on accurate basis information, the averaged basis of L's remaining 1,000 shares of W Company is \$24 per share. On January 5, 2012, L acquires 100 shares of W Company for \$28 per share and makes an average basis election for those shares under paragraph (e)(9)(i) of this section.

(ii) On February 1, 2012, D makes a single-account election that includes all 1,100 of L's shares in W Company. Thereafter, the basis of L's shares of W Company is \$24.36 per share $((\$24,000 + \$2,800) / 1,100)$. On September 12, 2012, under paragraph (e)(9)(iii) of this section, L revokes the average basis election for the 100 shares acquired on January 5, 2012.

(iii) Under paragraph (e)(11)(i) of this section, D's single-account election is void. Therefore, the basis of the 1,000 shares of W Company that L acquires before 2012 is \$24 per share and the basis of the 100 shares of W Company that L acquires in 2012 is \$28 per share.

(12) *Effective/applicability date.* Except as otherwise provided in paragraphs (e)(1), (e)(2), (e)(7), (e)(9), and (e)(10) of this section, this paragraph (e) applies for taxable years beginning after October 18, 2010.

* * * * *

Par. 4. Section 1.6039-2 is amended by adding two new sentences at the end of paragraph (c)(1) to read as follows:

§1.6039-2 Statements to persons with respect to whom information is reported.

* * * * *

(c) * * *

(1) * * * However, for a statement required to be furnished after December 31, 2008, the February 15 due date under section 6045 applies to the statement if the statement is furnished in a consolidated reporting statement under section 6045. See §§1.6045-1(k)(3), 1.6045-2(d)(2), 1.6045-3(e)(2), 1.6045-4(m)(3), and 1.6045-5(a)(3)(ii).

* * * * *

Par. 5. Section 1.6042-4 is amended by adding two new sentences at the end of paragraph (e)(1) to read as follows:

§1.6042-4 Statements to recipients of dividend payments.

* * * * *

(e) * * *

(1) * * * For a statement required to be furnished after December 31, 2008, the February 15 due date under section 6045 applies to the statement if the statement is furnished in a consolidated reporting statement under section 6045. See §§1.6045-1(k)(3), 1.6045-2(d)(2), 1.6045-3(e)(2), 1.6045-4(m)(3), and 1.6045-5(a)(3)(ii).

* * * * *

Par. 6. Section 1.6044-5 is amended by adding two new sentences at the end of paragraph (b) to read as follows:

§1.6044-5 Statements to recipients of patronage dividends.

* * * * *

(b) * * * For a statement required to be furnished after December 31, 2008, the February 15 due date under section 6045 applies to the statement if the statement is furnished in a consolidated reporting statement under section 6045. See §§1.6045-1(k)(3), 1.6045-2(d)(2), 1.6045-3(e)(2), 1.6045-4(m)(3), and 1.6045-5(a)(3)(ii).

* * * * *

Par. 7. Section 1.6045-1 is amended by:

1. Revising paragraph (a)(9) and adding paragraphs (a)(14), (a)(15), and (a)(16).

2. Adding *Examples 9, 10, and 11* to paragraph (b).

3. Revising paragraphs (c)(2), (c)(3)(i)(B)(I), and (c)(3)(i)(C).

4. Removing paragraph (c)(3)(xii) and redesignating paragraph (c)(3)(xi) as (c)(3)(xii) and adding a new paragraph (c)(3)(xi).

5. Adding *Examples 7, 8, and 9* to paragraph (c)(4).

6. Revising paragraphs (d)(1), (d)(2), and (d)(5).

7. Redesignating paragraphs (d)(6) and (d)(7) as (d)(8) and (d)(9) respectively and adding new paragraphs (d)(6) and (d)(7).

8. Revising newly designated paragraphs (d)(8) and (d)(9).

9. Revising paragraphs (e)(2)(i), (f)(2)(i), (k)(1), and (k)(2).

10. Redesignating paragraph (k)(3) as (k)(4) and adding a new paragraph (k)(3).

11. Removing paragraphs (p) and (q) and redesignating paragraph (r) as (p).

The additions and revisions read as follows:

§1.6045-1 Returns of information of brokers and barter exchanges.

(a) * * *

(9) The term *sale* means any disposition of securities, commodities, regulated futures contracts, or forward contracts, and includes redemptions of stock, retirements of indebtedness, and enterings into short sales, but only to the extent any of these actions are conducted for cash. In the case of a regulated futures contract or a forward contract, a sale is any closing transaction. When a closing transaction in a regulated futures contract involves making or taking delivery, the profit or loss on the contract is a sale and the delivery is a separate sale. When a closing transaction in a forward contract involves making or taking delivery, the delivery is a sale without separating the profit or loss on the contract from the profit or loss on the delivery, except that taking delivery for United States dollars is not a sale. Grants or purchases of options, exercises of call options, and enterings into contracts that require delivery of personal property or an interest therein are not sales. For purposes of this section only, a constructive sale under section 1259 and a mark to fair market value under sections 475 or 1296 are not sales.

* * * * *

(14) The term *specified security* means any share of stock (or any interest treated as stock, including, for example, an American Depositary Receipt) in an entity organized as, or treated for Federal tax purposes as, a corporation (foreign or domestic). Solely for purposes of this paragraph (a)(14), a security classified as stock by the issuer is treated as stock. If the issuer has not classified the security, the security is not treated as stock unless the broker knows that the security is reasonably classified as stock under general Federal tax principles.

(15) The term *covered security* means a specified security described in this paragraph (a)(15).

(i) *In general.* Except as provided in paragraph (a)(15)(iv) of this section, the following securities are covered securities:

(A) A specified security acquired for cash in an account on or after January 1, 2011, except stock for which the average basis method is available under §1.1012-1(e).

(B) Stock for which the average basis method is available under §1.1012-1(e) acquired for cash in an account on or after January 1, 2012.

(C) A specified security transferred to an account if the broker or other custodian of the account receives a transfer statement (as described in §1.6045A-1) reporting the security as a covered security.

(ii) *Acquired in an account.* For purposes of this paragraph (a)(15), a security is considered acquired in a customer's account at a broker or custodian if the security is acquired by the customer's broker or custodian or acquired by another broker and delivered to the customer's broker or custodian.

(iii) *Corporate actions and other events.* For purposes of this paragraph (a)(15), a security acquired due to a stock dividend, stock split, reorganization, redemption, stock conversion, recapitalization, corporate division, or other similar action is considered acquired for cash in an account.

(iv) *Exceptions.* Notwithstanding paragraph (a)(15)(i) of this section, the following securities are not covered securities:

(A) Stock acquired in 2011 that is transferred to a dividend reinvestment plan (as described in §1.1012-1(e)(6)) in 2011. However, a covered security acquired in 2011 that is transferred to a dividend reinvestment plan after 2011 remains a covered security.

(B) A security acquired through an event described in paragraph (a)(15)(iii) of this section if the basis of the acquired security is determined from the basis of a noncovered security.

(C) A security that is excepted at the time of its acquisition from reporting under paragraph (c)(3) or (g) of this section. However, a broker cannot treat a security as acquired by an exempt foreign person under paragraph (g)(1)(i) of this section at the time of acquisition if, at that time, the broker knows or should have known (including by reason of information that the

broker is required to collect under section 1471 or 1472) that the customer is not a foreign person.

(D) A security for which reporting under this section is required by §1.6049-5(d)(3)(ii) (certain securities owned by a foreign intermediary or flow-through entity).

(16) The term *noncovered security* means any security that is not a covered security.

(b) * * *

* * * * *

Example 9. E, an individual not otherwise exempt from reporting, maintains an account with S, a broker. On June 1, 2012, E instructs S to purchase stock that is a specified security for cash. S places an order to purchase the stock with T, another broker. E does not maintain an account with T. T executes the purchase. Custody of the purchased stock is transferred to E's account at S. Under paragraph (a)(15)(ii) of this section, the stock is considered acquired for cash in E's account at S. Because the stock is acquired on or after January 1, 2012, under paragraph (a)(15)(i) of this section, it is a covered security.

Example 10. F, an individual not otherwise exempt from reporting, is granted 100 shares of stock in F's employer by F's employer. Because F does not acquire the stock for cash or through a transfer to an account with a transfer statement (as described in §1.6045A-1), under paragraph (a)(15) of this section, the stock is not a covered security.

Example 11. G, an individual not otherwise exempt from reporting, owns 400 shares of stock in Q, a corporation, in an account with U, a broker. Of the 400 shares, 100 are covered securities and 300 are noncovered securities. Q takes a corporate action to split its stock in a 2-for-1 split. After the stock split, G owns 800 shares of stock. Because the adjusted basis of 600 of the 800 shares that G owns is determined from the basis of noncovered securities, under paragraphs (a)(15)(iii) and (a)(15)(iv)(B) of this section, these 600 shares are not covered securities and the remaining 200 shares are covered securities.

(c) * * *

(2) *Sales required to be reported.* Except as provided in paragraphs (c)(3), (c)(5), and (g) of this section, a broker is required to make a return of information for each sale by a customer of the broker if, in the ordinary course of a trade or business in which the broker stands ready to effect sales to be made by others, the broker effects the sale or closes the short position opened by the sale.

(3) * * *

(i) * * *

(B) * * *

(I) A corporation as defined in section 7701(a)(3), whether domestic or foreign, except that this exclusion does not apply to sales of covered securities acquired on or

after January 1, 2012, by an S corporation as defined in section 1361(a);

* * * * *

(C) *Exemption certificate—(1) In general.* Except as provided in paragraph (c)(3)(i)(C)(2) of this section, a broker may treat a person described in paragraph (c)(3)(i)(B) of this section as an exempt recipient based on a properly completed exemption certificate (as provided in §31.3406(h)-3 of this chapter); the broker's actual knowledge that the customer is a person described in paragraph (c)(3)(i)(B) of this section; or the applicable indicators described in §1.6049-4(c)(1)(ii)(A) through (M). A broker may require an exempt recipient to file a properly completed exemption certificate and may treat an exempt recipient that fails to do so as a recipient that is not exempt.

(2) *Limitation for corporate customers.* For sales of covered securities acquired on or after January 1, 2012, a broker may not treat a customer as an exempt recipient described in paragraph (c)(3)(i)(B)(I) of this section based on the indicators of corporate status described in §1.6049-4(c)(1)(ii)(A). However, for sales of all securities, a broker may treat a customer as an exempt recipient if one of the following applies:

(i) The name of the customer contains the term "insurance company," "indemnity company," "reinsurance company," or "assurance company."

(ii) The name of the customer indicates that it is an entity listed as a per se corporation under §301.7701-2(b)(8)(i) of this chapter.

(iii) The broker receives a properly completed exemption certificate (as provided in §31.3406(h)-3 of this chapter) that asserts that the customer is not an S corporation as defined in section 1361(a).

(iv) The broker receives a withholding certificate described in §1.1441-1(e)(2)(i) that includes a certification that the person whose name is on the certificate is a foreign corporation.

* * * * *

(xi) *Short sales—(A) In general.* A broker may not make a return of information under this section for a short sale of a security entered into on or after January 1, 2011, until the year a customer delivers a security to satisfy the short sale obligation.

The return must be made without regard to the constructive sale rule in section 1259 or to section 1233(h). In general, the broker must report on a single return the information required by paragraph (d)(2)(i) of this section for the short sale except that the broker must report the date the short sale was closed in lieu of the sale date. In applying paragraph (d)(2)(i) of this section, the broker must report the relevant information regarding the security sold to open the short sale and the adjusted basis of the security delivered to close the short sale and whether any gain or loss on the closing of the short sale is long-term or short-term (within the meaning of section 1222).

(B) *Short sale closed by delivery of a noncovered security.* A broker is not required to report adjusted basis and whether any gain or loss on the closing of the short sale is long-term or short-term if the short sale is closed by delivery of a noncovered security and the return so indicates. A broker that chooses to report this information is not subject to penalties under section 6721 or 6722 for failure to report this information correctly if the broker indicates on the return that the short sale was closed by delivery of a noncovered security.

(C) *Short sale obligation transferred to another account.* If a short sale obligation is satisfied by delivery of a security transferred into a customer's account accompanied by a transfer statement (as described in §1.6045A-1(b)(4)) indicating that the security was borrowed, the broker receiving custody of the security may not file a return of information under this section. The receiving broker must furnish a statement to the transferor that reports the amount of gross proceeds received from the short sale, the date of the sale, the quantity of shares or units sold, and the Committee on Uniform Security Identification Procedures (CUSIP) number of the sold security (if applicable) or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (see §601.601(d)(2) of this chapter). The statement to the transferor also must include the transfer date, the name and contact information of the receiving broker, the name and contact information of the transferor, and sufficient information to identify the customer. If the customer subsequently closes the short sale obligation in the transferor's account

with non-borrowed securities, the transferor must make the return of information required by this section. In that event, the transferor must take into account the information furnished under this paragraph (c)(3)(xi)(C) on the return unless the transferor knows that the information furnished under this paragraph is incorrect or incomplete. A failure to report correct information that arises solely from this reliance is deemed to be due to reasonable cause for purposes of penalties under sections 6721 and 6722. See §301.6724-1(a)(1) of this chapter.

* * * * *

(4) * * *

* * * * *

Example 7. On June 24, 2010, H, an individual who is not an exempt recipient, opens a short sale of stock in an account with M, a broker. Because the short sale is entered into before January 1, 2011, paragraph (c)(3)(xi) of this section does not apply. Under paragraphs (c)(2) and (j) of this section, M must make a return of information for the year of the sale regardless of when the short sale is closed.

Example 8. (i) On August 25, 2011, H opens a short sale of stock in an account with M, a broker. H closes the short sale with M on January 25, 2012, by purchasing stock of the same corporation in the account in which H opened the short sale and delivering the stock to satisfy H's short sale obligation. The stock H purchased is a covered security.

(ii) Because the short sale is entered into on or after January 1, 2011, under paragraphs (c)(2) and (c)(3)(xi) of this section, the broker closing the short sale must make a return of information reporting the sale for the year in which the short sale is closed. Thus, M is required to report the sale for 2012. M must report on a single return the relevant information for the sold stock, the adjusted basis of the purchased stock, and whether any gain or loss on the closing of the short sale is long-term or short-term (within the meaning of section 1222). Thus, M must report the information about the short sale opening and closing transactions on a single return for taxable year 2012.

Example 9. (i) Assume the same facts as in *Example 8* except that H also has an account with N, a broker, and satisfies the short sale obligation with M by borrowing stock of the same corporation from N and transferring custody of the borrowed stock from N to M. N indicates on the transfer statement that the transferred stock was borrowed in accordance with §1.6045A-1(b)(4).

(ii) Under paragraph (c)(3)(xi)(C) of this section, M may not file the return of information required under this section. M must furnish a statement to N that reports the gross proceeds from the short sale on August 25, 2011, the date of the sale, the quantity of shares sold, the CUSIP number or other security identifier number of the sold stock, the transfer date, the name and contact information of M and N, and information identifying H such as H's name and the account number from which H transferred the borrowed stock.

(iii) N must report the gross proceeds from the short sale, the date the short sale was closed, the adjusted basis of the stock acquired to close the short sale, and whether any gain or loss on the closing of the short sale is long-term or short-term (within the meaning of section 1222) on the return of information N is required to file under paragraph (c)(2) of this section when H closes the short sale in the account with N.

* * * * *

(d) * * * (1) *In general.* A broker that is required to make a return of information under paragraph (c) of this section during a reporting period is required to report for each filing group on a separate Form 1096, "Annual Summary and Transmittal of U.S. Information Returns," or any successor form, the information required by the form in the manner and number of copies required by the form.

(2) *Transactional reporting—(i) Required information.* Except as provided in paragraph (c)(5) of this section, for each sale for which a broker is required to make a return of information under this section, the broker must report on Form 1099-B, "Proceeds From Broker and Barter Exchange Transactions," or any successor form the name, address, and taxpayer identification number of the customer, the property sold, the CUSIP number of the security sold (if applicable) or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (see §601.601(d)(2) of this chapter), the adjusted basis of the security sold, whether any gain or loss with respect to the security sold is long-term or short-term (within the meaning of section 1222), the gross proceeds of the sale, the sale date, and other information required by the form in the manner and number of copies required by the form.

(ii) *Specific identification of securities.* Except as provided in §1.1012-1(e)(7)(ii), a broker must report a sale on or after January 1, 2011, of less than the entire position in an account of a specified security that was acquired on different dates or at different prices consistently with a customer's adequate and timely identification of the security to be sold. See §1.1012-1(c). If the customer does not provide an adequate and timely identification for the sale, the broker must first report the sale of any shares or units in the account for which the broker does not know the acquisition or purchase date

followed by the earliest shares or units purchased or acquired, whether covered securities or noncovered securities.

(iii) *Sales of noncovered securities.* A broker is not required to report adjusted basis and whether any gain or loss on the sale is long-term or short-term for the sale of a noncovered security if the return identifies the sale as a sale of a noncovered security. A broker that chooses to report this information for a noncovered security is not subject to penalties under section 6721 or 6722 for failure to report this information correctly if the return identifies the sale as a sale of a noncovered security. For purposes of this paragraph (d)(2)(iii), a broker must treat a security for which a broker makes the single-account election described in §1.1012-1(e)(11)(i) as a covered security.

(iv) *Information from other parties and other accounts—(A) Transfer and issuer statements.* When reporting a sale of a covered security, a broker must take into account all information, other than the classification of the security (such as stock), furnished on a transfer statement (as described in §1.6045A-1) and all information furnished or deemed furnished on an issuer statement (as described in §1.6045B-1), unless the statement is incomplete or the broker has actual knowledge that it is incorrect. A broker may treat a customer as a minority shareholder when taking the information on an issuer statement into account unless the broker knows that the customer is a majority shareholder and the issuer statement reports the action's effect on the basis of majority shareholders. A failure to report correct information that arises solely from reliance on information furnished on a transfer statement or issuer statement is deemed to be due to reasonable cause for purposes of penalties under sections 6721 and 6722. See §301.6724-1(a)(1) of this chapter.

(B) *Other information.* A broker is permitted, but not required, to take into account information about a covered security other than what is furnished on a transfer statement or issuer statement, including any information the broker has about securities held by the same customer in other accounts with the broker. For purposes of penalties under sections 6721 and 6722, a broker that takes into account information received from a cus-

tomers or third party other than information furnished on a transfer statement or issuer statement is deemed to have relied upon this information in good faith if the broker neither knows nor has reason to know that the information is incorrect. See §301.6724-1(c)(6) of this chapter.

(v) *Failure to receive a complete transfer statement.* A broker that has not received a complete transfer statement as required under §1.6045A-1(a)(3) for a transfer of a specified security must request a complete statement from the applicable person effecting the transfer unless, under §1.6045A-1(a), the transferor has no duty to furnish a transfer statement for the transfer. The broker is only required to make this request once. If the broker does not receive a complete transfer statement after requesting it, the broker may treat the security as a noncovered security upon its subsequent sale or transfer. A transfer statement for a covered security is complete if, in the view of the receiving broker, it provides sufficient information to comply with this section when reporting the sale of the security. A transfer statement for a noncovered security is complete if it indicates that the security is a noncovered security.

(vi) *Reporting by other parties after a sale—(A) Transfer statements.* If a broker receives a transfer statement indicating that a security is a covered security after the broker reports the sale of the security, the broker must file a corrected return within thirty days of receiving the statement unless the broker reported the required information on the original return consistently with the transfer statement.

(B) *Issuer statements.* If a broker receives or is deemed to receive an issuer statement after the broker reports the sale of a covered security, the broker must file a corrected return within thirty days of receiving the issuer statement unless the broker reported the required information on the original return consistently with the issuer statement.

(C) *Exception.* A broker is not required to file a corrected return under this paragraph (d)(2)(vi) if the broker receives the transfer statement or issuer statement more than three years after the broker filed the return.

(vii) *Examples.* The following examples illustrate the rules of this paragraph (d)(2):

Example 1. (i) On February 22, 2012, K sells 100 shares of stock of C, a corporation, at a loss in an account held with F, a broker. On March 15, 2012, K purchases 100 shares of C stock for cash in an account with G, a different broker. Because K acquires the stock purchased on March 15, 2012, for cash in an account after January 1, 2012, under paragraph (a)(15) of this section, the stock is a covered security. K asks G to increase K's adjusted basis in the stock to account for the application of the wash sale rules under section 1091 to the loss transaction in the account held with F.

(ii) Under paragraph (d)(2)(iv)(B) of this section, G is not required to take into account the information provided by K when subsequently reporting the adjusted basis and whether any gain or loss on the sale is long-term or short-term. If G chooses to take this information into account, under paragraph (d)(2)(iv)(B) of this section, G is deemed to have relied upon the information received from K in good faith for purposes of penalties under sections 6721 and 6722 if G neither knows nor has reason to know that the information provided by K is incorrect.

Example 2. (i) L purchases shares of stock of a single corporation in an account with F, a broker, on April 17, 1969, April 17, 2012, April 17, 2013, and April 17, 2014. In January 2015, L sells all the stock.

(ii) Under paragraph (d)(2)(i) of this section, F must separately report the gross proceeds and adjusted basis attributable to the stock purchased in 2014, for which the gain or loss on the sale is short-term, and the combined gross proceeds and adjusted basis attributable to the stock purchased in 2012 and 2013, for which the gain or loss on the sale is long-term. Under paragraph (d)(2)(iii) of this section, F must also separately report the gross proceeds attributable to the stock purchased in 1969 as the sale of noncovered securities in order to avoid treatment of this sale as the sale of covered securities.

* * * * *

(5) *Gross proceeds.* For purposes of this section, *gross proceeds* on a sale are the total amount paid to the customer or credited to the customer's account as a result of the sale reduced by the amount of any interest reported under paragraph (d)(3) of this section and increased by any amount not paid or credited by reason of repayment of margin loans. In the case of a closing transaction that results in a loss, gross proceeds are the amount debited from the customer's account. A broker may, but is not required to, reduce gross proceeds by the amount of commissions and transfer taxes, provided the treatment chosen is consistent with the books of the broker. For securities sold pursuant to the exercise of an option granted or acquired before January 1, 2013, a broker may, but is not required to, take the option premiums into account in determining the gross proceeds of the securities sold, provided the treatment chosen is consistent with the books of the broker. A broker must re-

port the gross proceeds of identical stock (within the meaning of §1.1012-1(e)(4)) by averaging the proceeds of each share if the stock is sold at separate times on the same calendar day in executing a single trade order and the broker executing the trade provides a single confirmation to the customer that reports an aggregate total price or an average price per share. However, a broker may not average the proceeds if the customer notifies the broker in writing of an intent to determine the proceeds of the stock by the actual proceeds per share and the broker receives the notification by January 15 of the calendar year following the year of the sale. A broker may extend the January 15 deadline but not beyond the due date for filing the return required under this section.

(6) *Adjusted basis*—(i) *In general.* For purposes of this section, the adjusted basis of a security is determined from the initial basis under paragraph (d)(6)(ii) of this section as of the date the security is acquired in an account, increased by the commissions and transfer taxes related to its sale to the extent not accounted for in gross proceeds as described in paragraph (d)(5) of this section. A broker is not required to consider transactions, elections, or events occurring outside the account except for an organizational action taken by an issuer during the period the broker holds custody of the security (not including the transfer settlement date if the security was transferred) reported on an issuer statement (as described in §1.6045B-1) furnished or deemed furnished to the broker.

(ii) *Initial basis*—(A) *Cost basis.* For a security acquired for cash, the initial basis is the total amount of cash paid by the customer or credited against the customer's account for the security, increased by the commissions and transfer taxes related to its acquisition. A broker may, but is not required to, take option premiums into account in determining the initial basis of securities purchased or acquired pursuant to the exercise of an option granted or acquired before January 1, 2013. A broker may, but is not required to, increase initial basis for income recognized upon the exercise of a compensatory option or the vesting or exercise of other equity-based compensation arrangements, granted or acquired before January 1, 2013. A broker must report the basis of identical stock (within the meaning of §1.1012-1(e)(4))

by averaging the basis of each share if the stock is purchased at separate times on the same calendar day in executing a single trade order and the broker executing the trade provides a single confirmation to the customer that reports an aggregate total price or an average price per share. However, a broker may not average the basis if the customer timely notifies the broker in writing of an intent to determine the basis of the stock by the actual cost per share in accordance with §1.1012-1(c)(1)(ii).

(B) *Transferred basis*—(1) *In general.* The initial basis of a security transferred to an account is generally the basis reported on the transfer statement (as described in §1.6045A-1).

(2) *Securities acquired by gift.* If a transfer statement indicates that the security is acquired as a gift, a broker must apply the relevant basis rules for property acquired by gift in determining the initial basis, but is not required to adjust basis for gift tax. A broker must treat the initial basis as equal to the gross proceeds from the sale determined under paragraph (d)(5) of this section if the relevant basis rules for property acquired by gift prevent recognizing both gain and loss, or if the relevant basis rules treat the initial basis of the security as its fair market value as of the date of the gift and the broker neither knows nor can readily ascertain this value. If the transfer statement did not report a date for the gift, the broker must treat the settlement date for the transfer as the date of the gift.

(iii) *Adjustments for wash sales*—(A) *In general.* A broker must apply the wash sale rules under section 1091 if both the sale and purchase transactions are of covered securities with the same CUSIP number or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (see §601.601(d)(2) of this chapter). When reporting the sale transaction that triggered the wash sale, the broker must report the amount of loss that is disallowed by section 1091 in addition to gross proceeds and adjusted basis. The broker must increase the adjusted basis of the purchased security by the amount of loss disallowed on the sale transaction.

(B) *Securities in different accounts.* A broker is not required to apply paragraph (d)(6)(iii)(A) of this section if the securi-

ties are purchased and sold from different accounts, if the purchased security is transferred to another account before the wash sale, or if the securities are treated as held in separate accounts under §1.1012-1(e). A security is not purchased in an account if it is purchased in another account and transferred into the account.

(C) *Effect of election under section 475(f)(1).* A broker is not required to apply paragraph (d)(6)(iii)(A) of this section to securities in an account if a customer has in writing both informed the broker that the customer has made a valid and timely election under section 475(f)(1) and identified the account as solely containing securities subject to the election. For purposes of this paragraph (d)(6)(iii)(C), a writing may be in electronic format. If a customer subsequently informs a broker that the election no longer applies to the customer or the account, the broker must prospectively apply paragraph (d)(6)(iii)(A) of this section but is not required to apply paragraph (d)(6)(iii)(A) of this section for the period covered by the customer's prior instruction to the broker. A taxpayer that is not a trader in securities within the meaning of section 475(f)(1) does not become a trader in securities, or create an inference that it is a trader in securities, by notifying a broker that it has made a valid and timely election under section 475(f)(1).

(D) *Reporting at or near the time of sale.* If a wash sale occurs after a broker has completed a return or statement reporting a sale of a covered security, the broker must redetermine adjusted basis under this paragraph (d)(6)(iii) and, if the return or statement included information inconsistent with this redetermination, correct the return or statement by the applicable original due date set forth in this section for the return or statement.

(iv) *Constructive sale and mark-to-market adjustments.* A broker is not required to apply section 1259 (regarding constructive sales), section 475 (regarding the mark-to-market method of accounting), or section 1296 (regarding the mark-to-market method of accounting for marketable stock in a passive foreign investment company) when reporting adjusted basis.

(v) *Average basis method adjustments.* For a covered security for which basis may be determined by the average basis

method, a broker must compute basis using the average basis method if a customer validly elects that method for the securities sold or, in the absence of any instruction from the customer, if the broker chooses that method as its default basis determination method. See §1.1012-1(e).

(vi) *Regulated investment company and real estate investment trust adjustments.* A broker must adjust the basis of a covered security issued by a regulated investment company or real estate investment trust for the effects of undistributed capital gains reported to or by the broker under section 852(b)(3)(D) or section 857(b)(3)(D).

(vii) *Examples.* The following examples, in which all the securities are covered securities, illustrate the rules of this paragraph (d)(6):

Example 1. (i) On September 21, 2012, P purchases 100 shares of stock in an account with J, a broker. On December 14, 2012, P purchases 100 shares of stock with the same CUSIP number in the same account. On January 4, 2013, P sells the 100 shares purchased on September 21, 2012, at a loss.

(ii) Because the sale of stock on January 4, 2013, and the purchase of stock on December 14, 2012, are of covered securities with the same CUSIP number, under paragraph (d)(6)(iii)(A) of this section, J must report the amount of loss disallowed by section 1091 in addition to the gross proceeds of the sale and the adjusted basis of the September 21, 2012, stock.

(iii) P later sells the stock acquired on December 14, 2012. When reporting the sale of the stock, under paragraph (d)(6)(iii)(A) of this section, J must increase the adjusted basis of the stock acquired on December 14, 2012, by the amount of loss disallowed on the January 4, 2013, sale.

Example 2. Assume the same facts as in *Example 1* except that the December 14, 2012, purchase occurs in another account P maintains with J. Because the December 14, 2012, purchase does not occur in the same account as the sale of the September 21, 2012, stock, under paragraph (d)(6)(iii)(B) of this section, J is not required to apply the wash sale rules in reporting the sale of stock acquired on September 21, 2012, or December 14, 2012. Under paragraphs (d)(2)(iii) and (d)(2)(iv)(B) of this section, J may choose to apply the wash sale rules as if the transactions occurred in the same account. The result is the same whether P keeps the stock purchased on December 14, 2012, in the other account or transfers the stock into the account from which P sells the stock sold on January 4, 2013.

Example 3. (i) K, a regulated investment company, offers two funds for sale, Fund D and Fund E. On April 22, 2012, Q purchases shares of Fund D and pays a separate load charge. By paying the load charge, Q acquires a reinvestment right in shares of Fund E. On April 23, 2012, at the request of Q, Fund D redeems the shares. Q uses the proceeds to purchase shares of Fund E in a separate account. As a result of the reinvestment right, Q pays no load charge in purchasing the Fund E shares.

(ii) Under paragraph (d)(6)(i) of this section, when reporting adjusted basis of the Fund D and Fund E shares at the time of their redemption, K is not required to adjust basis for any deferral of the load charge under section 852(f), because the transactions concerning Fund D and Fund E occur in separate accounts. Under paragraph (d)(2)(iv)(B) of this section, K may choose to apply the provisions of section 852(f).

Example 4. R, an employee of C, a corporation, participates in C's stock option plan. On April 2, 2012, C grants R a nonstatutory option under the plan to buy 100 shares of stock. The option becomes substantially vested on April 2, 2013. On October 2, 2013, R exercises the option and purchases 100 shares. On December 2, 2013, R sells the 100 shares. Under paragraph (d)(6)(ii)(A) of this section, C is required to determine adjusted basis from the amount R pays under the terms of the option. Because C grants the option to R before January 1, 2013, under paragraph (d)(6)(ii)(A) of this section, C is not required to adjust basis for any amount R must include as wage income with respect to the October 2, 2013, stock purchase. The result is the same if C grants R a statutory option.

(7) *Long-term or short-term gain or loss—(i) In general.* In determining whether any gain or loss on the sale of a security is long-term or short-term within the meaning of section 1222 for purposes of this section, a broker must consider the information reported on a transfer statement (as described in §1.6045A-1) and apply the relevant rules for property acquired from a decedent or by gift. A broker is not required to consider transactions, elections, or events occurring outside the account except for an organizational action taken by an issuer during the period the broker holds custody of the security (not including the transfer settlement date if the security was transferred) reported on an issuer statement (as described in §1.6045B-1) furnished or deemed furnished to the broker.

(ii) *Adjustments for wash sales—(A) In general.* A broker must apply the wash sale rules under section 1091 if both the sale and purchase transactions are of covered securities with the same CUSIP number or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (see §601.601(d)(2) of this chapter).

(B) *Securities in different accounts.* A broker is not required to apply paragraph (d)(7)(ii)(A) of this section if the securities are purchased and sold from different accounts, if the purchased security is transferred to another account before the wash sale, or if the securities are treated as held

in separate accounts under §1.1012-1(e). A security is not purchased in an account if it is purchased in another account and transferred into the account.

(C) *Effect of election under section 475(f)(1).* A broker is not required to apply paragraph (d)(7)(ii)(A) of this section to securities in an account if a customer has in writing both informed the broker that the customer has made a valid and timely election under section 475(f)(1) and identified the account as solely containing securities subject to the election. For purposes of this paragraph (d)(7)(ii)(C), a writing may be in electronic format. If a customer subsequently informs a broker that the election no longer applies to the customer or the account, the broker must prospectively apply paragraph (d)(7)(ii)(A) of this section but is not required to apply paragraph (d)(7)(ii)(A) of this section for the period covered by the customer's prior instruction to the broker. A taxpayer that is not a trader in securities within the meaning of section 475(f)(1) does not become a trader in securities, or create an inference that it is a trader in securities, by notifying a broker that it has made a valid and timely election under section 475(f)(1).

(D) *Reporting at or near the time of sale.* If a wash sale occurs after a broker has completed a return or statement reporting a sale of a covered security, the broker must redetermine whether gain or loss on the sale is long-term or short-term under this paragraph (d)(7)(ii) and, if the return or statement included information inconsistent with this redetermination, correct the return or statement by the applicable original due date set forth in this section for the return or statement.

(iii) *Constructive sale and mark-to-market adjustments.* A broker is not required to apply section 1259 (regarding constructive sales), section 475 (regarding the mark-to-market method of accounting), or section 1296 (regarding the mark-to-market method of accounting for marketable stock in a passive foreign investment company) when determining whether any gain or loss on the sale of a security is long-term or short-term.

(iv) *Regulated investment company and real estate investment trust adjustments.* A broker is not required to apply sections 852(b)(4)(A) and 857(b)(8) (regarding effect of distributed and undistributed capital

gain dividends on a loss on sale of regulated investment company or real estate investment trust shares held six months or less) or section 852(b)(4)(B) (regarding loss disallowance on sale of regulated investment company shares held six months or less due to receipt of tax-exempt dividends) when determining whether any gain or loss on the sale of a security is long-term or short-term.

(v) *No adjustments for hedging transactions or offsetting positions.* A broker is not required to apply section 1092 (regarding straddles), section 1233(b)(2) (regarding effect of short sale on holding period of substantially identical property), or §1.1221-2(b) (regarding hedging transactions) when determining whether any gain or loss on the sale of a security is long-term or short-term.

(8) *Conversion into United States dollars of amounts paid or received in foreign currency—(i) Conversion rules.* (A) When a payment is made in a foreign currency, a broker must determine the U.S. dollar amount of the payment by converting the foreign currency into U.S. dollars on the date it receives, credits, or makes the payment, as applicable, at the spot rate (as defined in §1.988-1(d)(1)) or pursuant to a reasonable spot rate convention. When reporting the sale of a security traded on an established securities market, however, a broker must determine the U.S. dollar amounts at the spot rate or pursuant to a reasonable spot rate convention as of the settlement date of the purchase or sale, as applicable.

(B) A reasonable spot rate convention includes a month-end spot rate or a monthly average spot rate. A spot rate convention must be used consistently for all non-dollar amounts reported and from year to year. The convention may not be changed without the consent of the Commissioner or his or her delegate.

(ii) *Effect of identification under §1.988-5(a), (b), or (c) when the taxpayer effects a sale and a hedge through the same broker.* In lieu of the amounts reportable under paragraph (d)(8)(i) of this section, the gross proceeds and adjusted basis must each be the integrated amount computed under §1.988-5(a), (b) or (c) if—

(A) A taxpayer effects through a broker a sale or exchange of nonfunctional currency (as defined in §1.988-1(c)) and hedges all or a part of the sale as provided

in §1.988-5(a), (b) or (c) with the same broker; and

(B) The taxpayer complies with the requirements of §1.988-5(a), (b) or (c) and so notifies the broker prior to the end of the calendar year in which the sale occurs.

(iii) *Example.* The following example illustrates the rules of this paragraph (d)(8):

Example. (i) Z, an individual, is a U.S. citizen. On July 4, 2012, Z purchases stock of C, SA, a French corporation traded on an established securities market, in an account with Q, a broker. Q uses a daily spot rate for converting euro and U.S. dollars. Z pays €1,200 for the stock. On the settlement date for the purchase, the spot rate is €1 = \$1.30. On October 4, 2012, Z sells the stock for €1,000. On the settlement date for the sale, the spot rate is €1 = \$1.35. On October 5, 2012, Z purchases additional shares of C, SA, that cause the €200 loss on the stock sold on October 4, 2012, to be disallowed under section 1091.

(ii) Under paragraph (d)(8)(i)(A) of this section, Q must determine adjusted basis by converting the €1,200 paid on behalf of Z into U.S. dollars using the €1 = \$1.30 spot rate on the settlement date of the purchase. Q must convert the €1,000 gross proceeds into U.S. dollars using the €1 = \$1.35 spot rate on the settlement date for the sale. Thus, Q must report adjusted basis equal to \$1,560, gross proceeds equal to \$1,350, and \$210 in loss disallowed by section 1091.

(9) *Coordination with the reporting rules for widely held fixed investment trusts under §1.671-5.* Information required to be reported under section 6045(a) for a sale of a security in a widely held fixed investment trust (WHFIT) (as defined under §1.671-5) and the sale of an interest in a WHFIT must be reported as provided by this section unless the information is also required to be reported under §1.671-5. To the extent that this section requires additional information under section 6045(g), those requirements are deemed to be met through compliance with the rules in §1.671-5.

(e) * * *

(2) * * * (i) *In general.* Except as provided in paragraphs (e)(2)(ii) and (g) of this section, a barter exchange must make a return of information for exchanges of personal property or services through the barter exchange during the calendar year among its members or clients or between these persons and the barter exchange. For this purpose, property or services are exchanged through a barter exchange if payment for property or services is made by means of a credit on the books of the barter exchange or scrip issued by the barter exchange or if the barter exchange arranges a direct exchange of property

or services among its members or clients or exchanges property or services with a member or client.

* * * * *

(f) * * *

(2) * * * (i) *In general.* As to each exchange for which a barter exchange is required to make a return of information under this section, the barter exchange must show on Form 1099-B, “*Proceeds From Broker and Barter Exchange Transactions*,” or any successor form the name, address, and taxpayer identification number of each member or client providing property or services in the exchange, the property or services provided, the amount received by the member or client for the property or services, the date on which the exchange occurred, and other information required by the form in the manner and number of copies required by the form.

* * * * *

(k) * * * (1) *General requirements.* A broker or barter exchange making a return of information under this section must furnish to the person whose identifying number is (or is required to be) shown on the return a written statement showing the information required by paragraph (c)(5), (d), or (f) of this section and containing a legend stating that the information is being reported to the Internal Revenue Service. If the return of information is not made on magnetic media, this requirement may be satisfied by furnishing to the person a copy of all Forms 1099 or any successor form for the person filed with the Internal Revenue Service Center. A statement is considered to be furnished to a person to whom a statement is required to be made under this paragraph (k) if it is mailed to the person at the last address of the person known to the broker or barter exchange.

(2) *Time for furnishing statements.* A broker or barter exchange may furnish the statements required under this paragraph (k) yearly, quarterly, monthly, or on any other basis, without regard to the reporting period the broker or barter exchange elects; however, all statements required to be furnished under this paragraph (k) for a calendar year must be furnished on or before February 15 of the following calendar year.

(3) *Consolidated reporting.* (i) The term *consolidated reporting statement* means a grouping of statements the same

broker or barter exchange furnishes to the same customer or group of customers on the same date for the same reporting year that includes a statement required under this section. A consolidated reporting statement is limited to statements based on the same relationship of broker or barter exchange to customer as the statement required to be furnished under this section. For purposes of this paragraph (k)(3)(i), a broker may treat a shareholder of a broker as a customer of the broker and may treat a grouping of statements for a customer as including a statement required to be furnished under this section if the customer has an account with the broker for which a statement would be required to be furnished under this section if the customer purchased and sold stock in a corporation in the account during the year.

(ii) A consolidated reporting statement must be furnished on or before February 15 of the year following the calendar year reported. Any statement that otherwise must be furnished on or before January 31 must be furnished on or before February 15 if it is furnished in the consolidated reporting statement.

(iii) *Examples.* The following examples illustrate the rules of this paragraph (k)(3):

Example 1. D has a taxable account with B, a broker, consisting solely of stock in a single corporation. In 2010, D receives reportable dividends from this stock and sells the stock. Under this section and §1.6042-4, B must furnish a Form 1099-B, “*Proceeds From Broker and Barter Exchange Transactions*,” and Form 1099-DIV, “*Dividends and Distributions*,” to D in 2011 for the sale and the dividends. Under paragraph (k)(2) of this section, B is required to furnish the required statement under this section to D by February 15, 2011. B must furnish the statement reporting the dividends by the January 31, 2011, due date provided in §1.6042-4. However, under paragraph (k)(3)(ii) of this section, B must furnish the statement reporting the dividends by February 15, 2011, if furnished in a consolidated reporting statement as defined in paragraph (k)(3)(i) of this section.

Example 2. Assume the same facts as in *Example 1* except that D has invested solely in a money market fund for which sales are excepted from the reporting required under this section. B therefore is not required to issue a statement under this section if D sells an interest in the money market fund. Under paragraph (k)(3)(i) of this section, B may treat a grouping of statements for D as including a required statement under this section because D has an account for which a statement would be required under this section if D purchased and sold stock in a corporation in the account during the year. Therefore, under paragraph (k)(3)(ii) of this section, B must furnish the statement reporting the dividends by February 15, 2011.

Example 3. E has a nontaxable IRA account with B, a broker. This account is the only account E holds

with B. E sells stock in 2010 in this account. E also receives a cash distribution from the account in 2010. The cash distribution from the IRA is reportable on Form 1099-R, “*Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*,” under §1.408-7. Because the account is not taxable, sales in the account are not subject to reporting under this section. Therefore, because no statement is required under this section, under paragraph (k)(3) of this section, B may not furnish any statements to E in a consolidated reporting statement. B must furnish the Form 1099-R by the date required under §1.408-7.

Example 4. Assume the same facts as in *Example 3* except that E and F have a joint taxable account with B. Because sales in the joint taxable account are subject to reporting under this section, under paragraph (k)(3) of this section, B must furnish by February 15, 2011, all customer statements for 2010 that B otherwise must furnish jointly to E and F on or before January 31, 2011, if furnished on the same date in a consolidated reporting statement with the required statements under this section for any sales in the joint taxable account. However, B may not include any statement for E’s IRA account in the consolidated reporting statement furnished jointly to E and F because the statements are not furnished to the same customer or group of customers.

* * * * *

Par. 8. Section 1.6045-2 is amended by revising paragraph (d) to read as follows:

§1.6045-2 Furnishing statement required with respect to certain substitute payments.

* * * * *

(d) *Time for furnishing statements—(1) General requirements.* A broker must furnish the statements required by paragraph (a) of this section for each calendar year. The statements must be furnished after April 30th of the calendar year but in no case before the final substitute payment for the calendar year is made, and on or before February 15 of the following calendar year.

(2) *Consolidated reporting.* (i) The term *consolidated reporting statement* means a grouping of statements the same broker furnishes to the same customer or group of customers on the same date for the same reporting year that includes a statement required under this section. A consolidated reporting statement is limited to statements based on the same relationship of broker to customer as the statement required to be furnished under this section.

(ii) A consolidated reporting statement must be furnished on or before February 15 of the year following the calendar year reported. Any statement that otherwise must

be furnished on or before January 31 must be furnished on or before February 15 if it is furnished in the consolidated reporting statement.

* * * * *

Par. 9. Section 1.6045-3 is amended by revising paragraph (e) to read as follows:

§1.6045-3 Information reporting for an acquisition of control or a substantial change in capital structure.

* * * * *

(e) *Furnishing of forms to customers—(1) General requirements.* A broker must furnish Form 1099-B to the customer on or before February 15 of the year following the calendar year in which the customer receives stock, cash or other property.

(2) *Consolidated reporting.* (i) The term *consolidated reporting statement* means a grouping of statements the same broker furnishes to the same customer or group of customers on the same date for the same reporting year that includes a statement required under this section. A consolidated reporting statement is limited to statements based on the same relationship of broker to customer as the statement required to be furnished under this section.

(ii) A consolidated reporting statement must be furnished on or before February 15 of the year following the calendar year reported. Any statement that otherwise must be furnished on or before January 31 must be furnished on or before February 15 if it is furnished in the consolidated reporting statement.

* * * * *

Par. 10. Section 1.6045-4 is amended by revising paragraph (m)(2) and adding paragraph (m)(3) to read as follows:

§1.6045-4 Information reporting on real estate transactions with dates of closing on or after January 1, 1991.

* * * * *

(m) * * *

(2) *Time for furnishing statement.* The statement required under this paragraph (m) must be furnished to the transferor on or after the date of closing and on or before February 15 of the following calendar year.

(3) *Consolidated reporting.* (i) The term *consolidated reporting statement* means a grouping of statements the same reporting person furnishes to the same transferor or group of transferors on the same date for the same reporting year that includes a statement required under this section. A consolidated reporting statement is limited to statements based on the same relationship of reporting person to transferor as the statement required to be furnished under this section.

(ii) A consolidated reporting statement must be furnished on or before February 15 of the year following the calendar year reported. Any statement that otherwise must be furnished on or before January 31 must be furnished on or before February 15 if it is furnished in the consolidated reporting statement.

* * * * *

Par. 11. Section 1.6045-5 is amended by revising paragraph (a)(3) to read as follows:

§1.6045-5 Information reporting on payments to attorneys.

(a) * * *

(3) *Requirement to furnish statement—*(i) *General requirements.* A person required to file an information return under paragraph (a)(1) of this section must furnish to the attorney a written statement of the information required to be shown on the return. This requirement may be met by furnishing a copy of the return to the attorney. The written statement must be furnished to the attorney on or before February 15 of the year following the calendar year in which the payment was made.

(ii) *Consolidated reporting.* (A) The term *consolidated reporting statement* means a grouping of statements the same payor furnishes to the same payee or group of payees on the same date for the same reporting year that includes a statement required under this section. A consolidated reporting statement is limited to statements based on the same relationship of payor to payee as the statement required to be furnished under this section.

(B) A consolidated reporting statement must be furnished on or before February 15 of the year following the calendar year reported. Any statement that otherwise must be furnished on or before January 31 must be furnished on or before February 15 if it

is furnished in the consolidated reporting statement.

* * * * *

Par. 12. Section 1.6045A-1 is added to read as follows:

§1.6045A-1 Statements of information required in connection with transfers of securities.

(a) *Duty to furnish transfer statement—*(1) *In general—*(i) *Transfers between accounts.* Except as provided in paragraphs (a)(1)(ii) through (v) of this section, every applicable person (transferor) (as described in paragraph (a)(4) of this section) that transfers custody of a specified security to a broker (as described in paragraph (a)(5) of this section) must furnish to the receiving broker a transfer statement that includes the information described in paragraph (b) of this section with respect to the transferred security. Except as provided in paragraphs (b)(1)(vii) and (b)(3) of this section (relating to noncovered securities and certain securities for which basis is determined under an average basis method), a transferor must furnish a separate statement for each security and, if transferring custody of the same security acquired on different dates or at different prices, for each acquisition.

(ii) *Cash on delivery accounts and multiple broker arrangements—*(A) *Sales.* A custodian or other transferor that transfers custody of a security to a broker solely to effect a sale must furnish a transfer statement only to the broker that effects the sale. However, no transfer statement is required if the transferor itself either effects the sale or is required to report the sale of the security under §1.6045-1.

(B) *Purchases.* A broker that effects a purchase but does not receive custody of the security must furnish a transfer statement to the broker receiving custody. However, no transfer statement is required if the broker effects the purchase solely at the instruction of the broker receiving custody.

(iii) *Exempt recipients and exempt foreign payees.* A transferor is not required to furnish a transfer statement for a security that, after the transfer, is held for a customer that is an exempt recipient under §1.6045-1(c)(3)(i) or an exempt foreign person under §1.6045-1(g)(1)(i).

(iv) *Securities lending transactions — transferor as principal.* A transferor that lends or borrows securities as a principal is not required to furnish a transfer statement for a security that is transferred pursuant to such lending or borrowing arrangement (for example, when a customer opens or closes a short sale). This exception does not apply when a transferor transfers a security under a lending or borrowing arrangement of the customer. This exception also does not apply when a transferor transfers a previously borrowed security to another account of the same customer (for example, to satisfy an existing short sale obligation). See paragraph (b)(4) of this section.

(v) *Certain money market funds.* A transferor of stock in a regulated investment company described in §1.6045-1(c)(3)(vi) is not required to furnish a transfer statement.

(2) *Format of transfer statement.* The transfer statement must be furnished in writing unless both the transferor and the receiving broker agree to a different format or method before the transfer. If a transfer occurs between accounts at the same or affiliated entities, a transfer statement is deemed to have been furnished and received if the required information, including any required adjustments, is incorporated into the records for the recipient account.

(3) *Time for furnishing statement.* A transferor must furnish a transfer statement within fifteen days after the date of settlement for the transfer.

(4) *Applicable person effecting transfer.* *Applicable person* means any transferor who is a person described in §1.6045-1(a)(1), a person that acts as a custodian of securities in the ordinary course of a trade or business, an issuer of securities, a trustee or custodian of an individual retirement plan, or any agent of these persons. Applicable person does not include the beneficial owner of a security or any agent substituted for an undisclosed beneficial owner, any governmental unit or agency or instrumentality of a governmental unit holding escheated securities, or any organization that holds and transfers obligations among members of the organization as a service to its members.

(5) *Broker receiving custody.* Solely for purposes of this section, *broker* means any person described in §1.6045-1(a)(1), any

person that acts as a custodian of securities in the ordinary course of a trade or business, any issuer of securities, and any agent of these persons. Broker does not include the beneficial owner of a security or any agent substituted for an undisclosed beneficial owner, any governmental unit or agency or instrumentality of a governmental unit holding escheated securities, or any organization that holds and transfers obligations among members of the organization as a service to its members.

(6) *Other terms.* For purposes of this section, the terms sale, specified security, covered security, noncovered security, and customer have the same meaning as in §1.6045-1(a)(9), (a)(14), (a)(15), (a)(16), and (h)(1).

(7) *Examples.* The following examples illustrate the rules of this paragraph (a). Unless otherwise stated, in each example the customer is not treated as an exempt recipient under §1.6045-1(c)(3)(i) or an exempt foreign person under §1.6045-1(g)(1)(i). The examples are as follows:

Example 1. V, an entity treated as an exempt recipient under §1.6045-1(c)(3)(i), owns a security in an account with E, a broker. On February 1, 2012, V instructs E to transfer custody of the security to an account V maintains with F, another broker. Because E may treat V as an exempt recipient under §1.6045-1(c)(3)(i), under paragraph (a)(1)(iii) of this section, E is not required to furnish a transfer statement.

Example 2. W maintains an account with G, a custodial broker. On August 1, 2012, W instructs G to purchase a security. G places an order to purchase the security with H, a broker with which G has a clearing agreement. W does not maintain a direct account with H. H executes the purchase and has the security delivered to G. Under paragraph (a)(1)(ii)(B) of this section, H is not required to furnish a transfer statement because G received custody of the security and H purchased the security solely at the instruction of G.

Example 3. Assume the same facts as in *Example 2* except that W later instructs G to sell the security. G places an order with H to sell the security. H executes the sale. G delivers the security to settle the sale. G is required to report the sale of the security under §1.6045-1. Therefore, under paragraph (a)(1)(ii)(A) of this section, G is not required to furnish a transfer statement.

Example 4. (i) X maintains an account with J, an introducing broker. J contracts with K, a clearing broker, to allow K to execute trades on J's behalf under a clearing agreement. K uses L, a custodian of securities in the ordinary course of a trade or business, to hold custody of the securities of K's customers. K maintains a separate disclosed account for X as a clearing broker with custody at L. On May 1, 2012, X instructs J to purchase a security for X as the beneficial owner. J instructs K to purchase the security.

K effects the purchase and has the security delivered to L.

(ii) K is a broker and therefore is an applicable person that is a transferor within the meaning of paragraph (a)(4) of this section. L acts as a custodian of securities in the ordinary course of a trade or business and therefore is a broker within the meaning of paragraph (a)(5) of this section. Because K effects the purchase of the security but does not receive custody of the security, under paragraphs (a)(1)(i) and (a)(1)(ii)(B) of this section, K must furnish a transfer statement to L.

Example 5. (i) Assume the same facts as in *Example 4* except that X later instructs J to sell the security. J instructs K to sell the security. K sells the security. L transfers custody of the security to settle X's sale in accordance with its custody arrangement with K by delivering the security to the purchasing broker. K deposits the sale proceeds in X's account with K. K is required to report the sale of the security under §1.6045-1.

(ii) L acts as a custodian of securities in the ordinary course of a trade or business and therefore is an applicable person that is a transferor within the meaning of paragraph (a)(4) of this section. Because L transfers custody of the security to the purchaser's broker solely to effect the sale, under paragraphs (a)(1)(i) and (a)(1)(ii)(A) of this section, L must furnish a transfer statement to K.

(iii) If the terms of their custody arrangement so provide, K may furnish the transfer statement as L's agent and satisfy L's duty to furnish the transfer statement under paragraphs (a)(1)(i) and (a)(1)(ii)(A) of this section. Under paragraph (a)(2) of this section, K may satisfy this duty by maintaining the information required on the transfer statement, including all required adjustments, in its records for X's account.

Example 6. (i) Y, an investment advisor, wants to purchase shares of stock in C, a corporation, for several of Y's customers. Y establishes a delivery-on-payment account with M, a broker, and provides M a standing instruction to deliver stock purchased in the account to Y's account at N, a custodian of securities in the ordinary course of a trade or business. On November 1, 2012, Y enters into a cash-on-delivery transaction by instructing M to purchase shares of C stock. M executes the purchase and effects delivery of the C stock to N.

(ii) M is a broker and therefore is an applicable person that is a transferor within the meaning of paragraph (a)(4) of this section. N acts as a custodian of securities in the ordinary course of a trade or business and therefore is a broker within the meaning of paragraph (a)(5) of this section. Because M effects the purchase of the stock and N receives custody of the stock, under paragraphs (a)(1)(i) and (a)(1)(ii)(B) of this section, M must furnish a transfer statement to N.

Example 7. (i) Z owns shares of stock in C, a corporation, in an account with O, a broker. On February 1, 2013, Z instructs O to transfer the C stock to C so that ownership is held on the books of the issuer. C has an arrangement with D, a transfer agent, to keep records of ownership of the company's stock, how that stock is held, and how many shares each investor owns. O transfers the stock to D.

(ii) O is a broker and therefore is an applicable person that is a transferor within the meaning of paragraph (a)(4) of this section. D is an agent of C, the issuer of the stock, and therefore is a broker within

the meaning of paragraph (a)(5) of this section. Because O transfers custody of the stock to D, under paragraph (a)(1)(i) of this section, O must furnish a transfer statement to D.

Example 8. Assume the same facts as in *Example 7* except that Z later instructs D to transfer the stock to an account Z maintains with P, another broker. D transfers the stock to P. D is an agent of C, the issuer of the stock, and therefore is an applicable person that is a transferor within the meaning of paragraph (a)(4) of this section. Because P is a broker and D transfers custody of the stock to P, under paragraph (a)(1)(i) of this section, D must furnish a transfer statement to P.

(b) *Information required*—(1) *In general.* Each transfer statement must include the information described in this paragraph (b)(1).

(i) *Statement date.* The date the statement is furnished.

(ii) *Applicable person effecting transfer.* The name, address, and telephone number of the applicable person furnishing the statement.

(iii) *Broker receiving custody.* The name, address, and telephone number of the broker receiving custody of the security.

(iv) *Customers.* The name and account number of the customer or customers for the account from which the security is transferred and, if different, the name and account number of the customer or customers for the account to which the security is transferred.

(v) *Security identifiers.* The Committee on Uniform Security Identification Procedures (CUSIP) number of the security transferred (if applicable) or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (see §601.601(d)(2) of this chapter), quantity of shares or units, and classification of the security (such as stock).

(vi) *Transfer dates.* The date the transfer was initiated and the settlement date of the transfer (if known when furnishing the statement).

(vii) *Adjusted basis and acquisition date.* The total adjusted basis of the security, the original acquisition date of the security, and, if applicable, the holding period adjustment required by section 1091. The transferor must determine this information as provided under §1.6045-1(d) including reporting the adjusted basis of the security in U.S. dollars. If the basis of the transferred security is determined using an average basis method (as described in §1.1012-1(e)), the transferor

may report any securities acquired more than five years before the transfer on a single statement on which the original acquisition date is reported as “VARIOUS” if the other information reported on the statement applies to all of the securities.

(viii) *Examples.* The following examples illustrate the rules of this paragraph (b)(1):

Example 1. (i) In a single account with P, a broker, Q purchases three lots of 100 shares of stock each in C, a corporation, at different prices on April 2, 2012, July 2, 2012, and October 2, 2012. Q instructs P to enroll the shares of the C stock in P’s dividend reinvestment plan and to average the basis of the shares of the C stock. All of the C stock purchased by P has the same CUSIP number. On September 13, 2013, less than five years after the acquisition dates for all three lots, Q transfers all 300 shares of the C stock to an account with another broker.

(ii) Under paragraph (a)(1)(i) of this section, P must furnish three transfer statements. Under paragraph (b)(1) of this section, one statement must report the transfer of 100 shares with an original acquisition date of April 2, 2012, one statement must report the transfer of 100 shares with an original acquisition date of July 2, 2012, and one statement must report the transfer of 100 shares with an original acquisition date of October 2, 2012.

Example 2. Assume the same facts as in *Example 1* except that Q transfers the shares to the account with the other broker on September 13, 2017. For the 100 shares purchased on April 2, 2012, and the 100 shares purchased on July 2, 2012, under paragraph (b)(1)(vii) of this section, P may furnish a single transfer statement reporting the transfer of 200 shares with the original acquisition date as “VARIOUS” instead of furnishing two separate transfer statements.

Example 3. (i) Assume the same facts as in *Example 1* except that, on June 15, 2012, Q sells the 100 shares purchased on April 2, 2012, at a loss.

(ii) Under paragraph (a)(1)(i) of this section, P must furnish two transfer statements. Under paragraph (b)(1)(vii) of this section and §1.6045-1(d)(6)(iii) and (d)(7)(ii), P must determine the average basis for the 200 transferred shares and the date for computing whether any gain or loss with respect to the stock purchased on July 2, 2012, is long-term or short-term by applying the rules for broker reporting of wash sales to the stock purchased on July 2, 2012. Therefore, on both transfer statements, P must increase the average basis of the stock by the amount of loss disallowed under section 1091 on the sale of the 100 shares purchased on April 2, 2012. On the transfer statement reporting the transfer of the 100 shares purchased on July 2, 2012, P must adjust the holding period of the July 2, 2012, shares in accordance with section 1091.

Example 4. (i) R, an employee of C, a corporation, participates in C’s employee stock purchase program that satisfies the requirements of section 423. D administers the plan. R purchases stock in the plan at a 15 percent discount to the fair market value of the stock determined on the date of purchase. R purchases stock through the plan during 2012 until R terminates employment on October 15, 2012. R later instructs D to transfer the plan shares to S, a broker.

(ii) D is the agent of C, the issuer of the securities, and therefore is an applicable person within the meaning of paragraph (a)(4) of this section. Because S is a broker and D transfers custody of the stock to S, under paragraph (a)(1)(i) of this section, D must furnish a transfer statement to S.

(iii) Under paragraph (b)(1)(vii) of this section and §1.6045-1(d)(6)(ii)(A), D must report adjusted basis on the transfer statement based on the amount paid by R. Under paragraph (b)(1)(vii) of this section and §1.6045-1(d)(6)(ii)(A), D is permitted, but is not required, to increase the adjusted basis for the amount (if any) includible as wage income by R for R’s purchases of the stock.

(2) *Format of identification.* An applicable person furnishing a transfer statement and a broker receiving the transfer statement may agree to combine the information required in paragraph (b)(1) of this section in any format or to use a code in place of one or more required items. For example, a transferor and a receiving broker may agree to use a single code to represent the broker instead of the broker’s name, address, and telephone number, or may use a security symbol or other identification number or scheme instead of the security identifier required by paragraph (b)(1) of this section.

(3) *Transfers of noncovered securities.* The information described in paragraphs (b)(1)(vii), (b)(5), and (b)(6) of this section is not required for a transfer of a noncovered security if the transfer statement identifies the security as a noncovered security. A transferor that chooses to report nonrequired information is not subject to penalties under section 6722 for failure to report this information correctly if the transfer statement identifies the security as a noncovered security. A single transfer statement may report the transfer of multiple noncovered securities if the transfer statement clearly conveys, either specifically or generally, the information described in paragraph (b)(1)(v) of this section to identify each security. For purposes of this paragraph (b)(3), a transferor must treat a security for which a broker makes a single-account election described in §1.1012-1(e)(11)(i) as a covered security.

(4) *Transfers of borrowed securities.* The transfer statement must indicate that a transferred security is borrowed if the transferor knows that the security is transferred pursuant to a lending or borrowing arrangement. The transfer statement must not report an adjusted basis if the transferor knows that the transferred security is

lent or borrowed pursuant to a short sale. The receiving broker may be subject to special transfer reporting rules upon receipt of a borrowed security if the security is used to satisfy an existing short sale obligation. See §1.6045-1(c)(3)(xi)(C).

(5) *Transfers pursuant to an inheritance—(i) In general.* A transfer statement for a transfer of a security from a decedent or decedent’s estate must indicate that the security is inherited. The transfer statement must report the date of death as the original acquisition date and must report adjusted basis according to the instructions or valuations furnished by an authorized representative of the estate, including any required adjustments to basis for property acquired from a decedent. If a transferor has not received instructions or valuations from an authorized representative, the transferor must report basis as the fair market value of the security on the date of death. However, if the transferor neither knows nor can readily ascertain the fair market value of the security on the date of death at the time the transfer statement is prepared, the transfer statement must indicate that the transfer consists of an inherited security but may otherwise report the security as if it were a noncovered security. If the transferor cannot identify which securities in a joint account have been transferred from the decedent, the transferor must treat each security in the account as if it were a noncovered security but must not indicate that any security is an inherited security.

(ii) *Transfers of shares to satisfy a cash legacy.* If a security is transferred from a decedent or a decedent’s estate to satisfy a cash legacy, paragraph (b)(1) of this section applies and paragraph (b)(5)(i) of this section does not apply.

(iii) *Subsequent transfers of inherited securities.* A transfer statement must indicate that the transfer consists of an inherited security if a prior transfer statement reported the security as inherited.

(6) *Gift or deemed gift transfers—(i) In general.* A transfer statement for a security transferred to a different owner (other than a transfer that the transferor knows is pursuant to a lending or borrowing arrangement or is from a decedent or decedent’s estate) must indicate that the security is a gift and must report the date of the gift (if known when furnishing the statement) and the fair market value of the gift

on that date (if known or readily ascertainable at the time the transfer statement is prepared). The transfer statement must report the adjusted basis and original acquisition date of the security in the hands of the donor. However, if the transfer is between persons for whom gift-related basis adjustments are inapplicable or between accounts that share at least one common customer, the transferor must apply paragraph (b)(1) of this section as if the security were not a gift or deemed gift.

(ii) *Subsequent transfers of gifts by the same customer.* If a transferor transfers to a different account of the same customer a security that a prior transfer statement reported as a gifted security, the transferor must include on the transfer statement the information described in paragraph (b)(6)(i) of this section for the date of the gift to the customer. If the prior transfer statement did not report a date for the gift, the transferor must treat the settlement date for the prior transfer as the date of the gift.

(iii) *Examples.* The following examples illustrate the rules of this paragraph (b)(6):

Example 1. X instructs S, a broker, to give to Y stock in a publicly traded company that X holds in an account with S. The stock is a covered security. On X's instruction, S transfers custody of the stock to T, Y's broker. The transfer settles on August 15, 2013. Under paragraph (b)(6)(i) of this section, S must provide a transfer statement to T that identifies the securities as gifted securities and indicates X's adjusted basis and original acquisition date. If S knows the settlement date, the transfer statement must also indicate that the date of the gift was August 15, 2013, and, because S can readily ascertain the fair market value of the stock on August 15, 2013, the fair market value of the stock on that date.

Example 2. Assume the same facts as in *Example 1* except that, one year later, Y transfers the stock to an account in his name with U, another broker. Under paragraph (b)(6)(ii) of this section, T must provide a transfer statement to U that identifies the securities as gifted securities and indicates X's adjusted basis and original acquisition date of the stock. The transfer statement must also indicate the date of the gift, August 15, 2013, and the fair market value of the stock on that date either by reporting the value that S reported to T or, because T can readily ascertain the fair market value of the stock on August 15, 2013, by determining the fair market value of the stock on that date.

(7) *Specific identification of securities.* Except as provided in §1.1012-1(e)(7)(ii), a transfer statement must report a transfer of less than the entire position in an account of a security that was acquired on different dates or at different prices consistently with a customer's adequate

and timely identification of the security to be transferred. See §1.1012-1(c). If the customer does not provide an adequate and timely identification for the transfer, a transferor must first report the transfer of any shares or units in the account for which the transferor does not know the acquisition or purchase date followed by the earliest shares or units purchased or acquired, whether covered securities or noncovered securities.

(8) *Information from other parties and other accounts—(i) Transfer and issuer statements and transfers pursuant to an inheritance.* When reporting a transfer of a covered security, a transferor must take into account all information, other than the classification of the security (such as stock), furnished on a transfer statement, all information furnished or deemed furnished on an issuer statement (as described in §1.6045B-1), and all instructions and valuations furnished by an authorized representative of the estate of a decedent, unless the statement or instructions are incomplete or the broker has actual knowledge that they are incorrect. A transferor may treat a customer as a minority shareholder when taking the information on an issuer statement into account unless the transferor knows that the customer is a majority shareholder and the issuer statement reports the action's effect on the basis of majority shareholders. Any failure to report correct information that arises solely from reliance on information furnished on a transfer statement or issuer statement or by an authorized representative of the estate is deemed to be due to reasonable cause for purposes of penalties under section 6722. See §301.6724-1(a)(1) of this chapter.

(ii) *Other information.* A transferor is permitted, but not required, to take into account information about a covered security other than what is furnished on a transfer statement or issuer statement or by an authorized representative of the estate of a decedent, including any information the transferor has about securities held by the same customer in other accounts with the transferor. For purposes of penalties under section 6722, a transferor that takes into account information received from a customer or third party other than information furnished on a transfer statement or issuer statement or by an authorized representative of the estate of a decedent is deemed to

have relied upon this information in good faith if the transferor neither knows nor has reason to know that the information is incorrect. See §301.6724-1(c)(6) of this chapter.

(9) *Failure to receive a complete transfer statement.* A receiving broker that has not received a complete transfer statement as required under paragraph (a)(3) of this section for the transfer must request a complete statement from the transferor unless, under paragraph (a) of this section, the transferor has no duty to furnish a transfer statement for the transfer. The receiving broker is only required to make this request once. If the receiving broker does not receive a complete transfer statement after requesting it, the receiving broker may treat the security as a noncovered security upon its subsequent sale or transfer. A transfer statement for a covered security is complete if, in the view of the receiving broker, it provides sufficient information to comply with §1.6045-1 when reporting the sale of the security. A transfer statement for a noncovered security is complete if it indicates that the security is a noncovered security.

(c) *Reporting by other parties after a transfer—(1) In general.* A transferor that has furnished a transfer statement must furnish a corrected statement for a covered security within fifteen days of receiving a transfer statement, an issuer statement (as described in §1.6045B-1), or instructions or valuations from an authorized representative of an estate, that provides information under paragraph (b) of this section that was not reported on the initial transfer statement.

(2) *Exception.* A transferor is not required to furnish a corrected transfer statement for a covered security under this paragraph (c) if the transferor receives the transfer statement or issuer statement or receives the instructions or valuations from an authorized representative of an estate more than eighteen months after the transferor furnished the transfer statement.

(d) *Effective/applicability dates.* This section applies to transfers on or after January 1, 2011, of specified securities other than stock in a regulated investment company within the meaning of §1.1012-1(e)(5) and to transfers on or after January 1, 2012, of stock in a regulated investment company.

Par. 13. Section 1.6045B-1 is added to read as follows:

§1.6045B-1 Returns relating to actions affecting basis of securities.

(a) *In general*—(1) *Information required.* An issuer of a specified security (within the meaning of §1.6045-1(a)(14)) that takes an organizational action that affects the basis of the security must file an issuer return setting forth the following information and any other information specified in the return form and instructions:

(i) *Reporting issuer.* The name and taxpayer identification number of the reporting issuer.

(ii) *Security identifiers.* The identifiers of each security involved in the organizational action including, as applicable, the Committee on Uniform Security Identification Procedures (CUSIP) number or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (*see* §601.601(d)(2) of this chapter), classification of the security (such as stock), account number, serial number, and ticker symbol, as well as any descriptions about the class of security affected.

(iii) *Contact at reporting issuer.* The name, address, e-mail address, and telephone number of a contact person at the issuer.

(iv) *Information about action.* The type or nature of the organizational action including, as applicable, the date of the action or the date against which shareholders' ownership is measured for the action.

(v) *Effect of the action.* The quantitative effect of the organizational action on the basis of the security in the hands of a U.S. taxpayer as an adjustment per share or as a percentage of old basis, including a description of the calculation, the applicable Internal Revenue Code section and subsection upon which the tax treatment is based, the data supporting the calculation such as the market values of securities and valuation dates, any other information necessary to implement the adjustment including the reportable taxable year, and whether any resulting loss may be recognized.

(2) *Time for filing the return*—(i) *In general.* An issuer must file an issuer return with the IRS pursuant to the pre-

scribed form and instructions on or before the 45th day following the organizational action, or, if earlier, January 15 of the year following the calendar year of the organizational action. For purposes of this paragraph (a)(2), a redemption occurs on the last day a holder may redeem a security. The issuer may file the return before the organizational action if the quantitative effect on basis is determinable beforehand.

(ii) *Reasonable assumptions.* To report the quantitative effect on basis by the due date in paragraph (a)(2)(i) of this section, an issuer may make reasonable assumptions about facts that cannot be determined before the due date. An issuer must file a corrected return within forty-five days of determining facts that result in a different quantitative effect on basis from what the issuer previously reported. However, for purposes of this paragraph (a)(2)(ii), an issuer must treat a payment that may be a dividend consistently with its treatment of the payment under section 6042(b)(3) and §1.6042-3(c).

(3) *Exception for public reporting.* An issuer is not required to file a return with the IRS under this paragraph (a) if, by the due date described in paragraph (a)(2)(i) of this section, the issuer posts the return with the required information in a readily accessible format in an area of its primary public Web site dedicated to this purpose and keeps the return accessible for ten years to the public on its primary public Web site or the primary public Web site of any successor organization.

(4) *Exception when holders are exempt recipients.* No reporting is required under this paragraph (a) if the issuer reasonably determines that all of the holders of the security are exempt recipients under paragraph (b)(5) of this section.

(5) *Exception for certain money market funds.* No reporting is required under this paragraph (a) by a regulated investment company described in §1.6045-1(c)(3)(vi).

(b) *Statements to nominees and certificate holders*—(1) *In general.* An issuer required to file an information return under this section must furnish a written statement with the same information to each holder of record of the security or to the holder's nominee. This issuer statement must indicate that the information is being reported to the IRS. An issuer may satisfy

this requirement by furnishing a copy of the information return.

(2) *Time for furnishing statements.* An issuer must furnish each issuer statement on or before January 15 of the year following the calendar year of the organizational action. For purposes of this paragraph (b)(2), a redemption occurs on the last day a holder may redeem a security. An issuer may furnish the statement before the organizational action if the quantitative effect on basis is determinable beforehand. An issuer must furnish a statement that corresponds to a corrected return described in paragraph (a)(2)(ii) of this section by the later of the due date described in this paragraph (b)(2) or forty-five days after determining the facts that result in a different quantitative effect on basis from what the issuer previously reported on the return.

(3) *Recipients of statements.* An issuer must furnish a separate statement to each holder of record of the security as of the date of the organizational action and all subsequent holders of record up to the date the issuer furnishes the statement required under this section. If the issuer records the security on its books in the name of a nominee, the issuer must furnish the statement to the nominee in lieu of the holder. However, if the nominee is the issuer, an agent of the issuer, or a plan operated by the issuer, the issuer must furnish the statement to the holder.

(4) *Exception for public reporting.* An issuer is deemed to furnish an issuer statement under this paragraph (b) to all holders and nominees if the issuer satisfies the public reporting requirements of paragraph (a)(3) of this section.

(5) *Exempt recipients*—(i) *In general.* An issuer is not required to furnish an issuer statement to a holder or its nominee if the holder is an exempt recipient under §1.6045-1(c)(3)(i)(B), provided the issuer has actual knowledge that the holder is described in that section or has a properly completed exemption certificate from the holder asserting that the holder is an exempt recipient (as provided in §31.3406(h)-3 of this chapter). An issuer may treat a holder as an exempt recipient based on the applicable indicators described in §1.6049-4(c)(1)(ii)(A) through (M).

(ii) *Limitation for corporate holders.* For an organizational action occurring on or after January 1, 2012, an issuer

may treat a holder as an exempt recipient based on the indicator described in §1.6049-4(c)(1)(ii)(A) only if one of the following applies:

(A) The name of the holder contains the term “insurance company,” “indemnity company,” “reinsurance company,” or “assurance company.”

(B) The name of the holder indicates that it is an entity listed as a per se corporation under §301.7701-2(b)(8)(i) of this chapter.

(C) The issuer receives a properly completed exemption certificate (as provided in §31.3406(h)-3 of this chapter) that asserts that the holder is not an S corporation as defined in section 1361(a).

(D) The issuer receives a withholding certificate described in §1.1441-1(e)(2)(i) that includes a certification that the person whose name is on the certificate is a foreign corporation.

(iii) *Foreign holders.* An issuer may treat a holder as an exempt recipient if the issuer, prior to the transaction, associates the holder with documentation upon which the issuer may rely in order to treat payments to the holder as made to a foreign beneficial owner in accordance with §1.1441-1(e)(1)(ii) or as made to a foreign payee in accordance with §1.6049-5(d)(1) or presumed to be made to a foreign payee under §1.6049-5(d)(2) or (3). For purposes of this paragraph (b)(5)(iii), the provisions in §1.6049-5(c) (regarding rules applicable to documentation of foreign status and definition of U.S. payor and non-U.S. payor) apply. Rules similar to the rules of §1.1441-1 apply by substituting the terms “issuer” and “holder” in place of the terms “withholding agent” and “payee” and without regard to the limitation to amounts subject to withholding under chapter 3 of the Internal Revenue Code. Rules similar to the rules of §1.6049-5(d) apply by substituting the terms “issuer” and “holder” in place of the terms “payor” and “payee.”

(c) *Special rule for S corporations.* An S corporation (as defined in section 1361(a)) is deemed to satisfy the requirements of paragraphs (a) and (b) of this section for any organizational action affecting the basis of its stock if the corporation reports the effect of the organizational action on a timely filed Schedule K-1 (Form 1120S), “*Shareholder’s Share of Income, Deductions, Credits, etc.*,” for each share-

holder and timely furnishes copies of these schedules to all proper parties.

(d) *Special rule for certain regulated investment companies and real estate investment trusts.* A regulated investment company (RIC) that reports undistributed capital gains to shareholders under section 852(b)(3)(D) or a real estate investment trust (REIT) that reports undistributed capital gains to shareholders under section 857(b)(3)(D) is deemed to have satisfied the requirements of paragraphs (a) and (b) of this section for undistributed capital gains affecting the basis of its stock if the RIC or REIT timely files and furnishes the information returns required under section 852(b)(3)(D) or section 857(b)(3)(D) to all proper parties for the organizational action.

(e) *Acquiring and successor entities.* An acquiring or successor entity of an issuer that fails to satisfy the reporting obligations of paragraphs (a) or (b) of this section must satisfy these reporting obligations. If neither the issuer nor the acquiring or successor entity satisfies these reporting obligations, both parties are jointly and severally liable for any applicable penalties.

(f) *Penalties.* An issuer may use an agent to satisfy the requirements of this section for the issuer. Nonetheless, the issuer remains liable for penalty for any failure to comply unless it is shown that the failure is due to reasonable cause and not willful neglect. *See* sections 6721 through 6724.

(g) *Examples.* The following examples illustrate the rules of this section:

Example 1. (i) C, a corporation, distributes stock to shareholders on March 31, 2013.

(ii) Under paragraph (a)(2)(i) of this section, C must file an issuer return with the IRS on or before May 15, 2013 (45 days after the distribution date), reporting the quantitative effect of this distribution on the basis of C’s stock. Under paragraph (b)(2) of this section, C must furnish issuer statements to its nominees and certificate holders on or before January 15, 2014.

(iii) Alternatively, under paragraphs (a)(3) and (b)(4) of this section, C may post by May 15, 2013, and maintain for ten years, the return with the required information in a readily accessible format in an area of its primary public Web site dedicated to this purpose.

Example 2. (i) D, a corporation, makes a cash distribution to shareholders on December 10, 2013.

(ii) Under paragraphs (a)(2)(i) and (b)(2) of this section, D is required to file an issuer return with the IRS and furnish issuer statements to its nominees and certificate holders on or before January 15, 2014.

(iii) On January 15, 2014, D is unsure whether the distribution will exceed its earnings and profits for the fiscal year. For purposes of section 6042(b)(3) and §1.6042-3(c), D must treat the distribution as a dividend. Therefore, under paragraph (a)(2)(ii) of this section, D is not required to file an issuer return. If D later determines that dividend treatment was incorrect, D must file an issuer return reporting the correct quantitative effect on basis.

Example 3. E, a corporation, undertakes a stock split as of April 1, 2014. E furnishes issuer statements under paragraph (b) of this section on April 1, 2014, at which time the books and records of E show that 90 percent of its outstanding stock is owned by shareholders through a clearing organization as their nominee, 7 percent is owned by 5,000 individuals, and the remaining 3 percent is owned by a dividend reinvestment plan operated by E that has 1,000 members. Under paragraph (b)(3) of this section, E must furnish statements to the clearing organization, the 5,000 individuals, and the 1,000 members of the dividend reinvestment plan.

(h) *Effective/applicability dates.* This section applies to organizational actions occurring on or after January 1, 2011, that affect the basis of specified securities within the meaning of §1.6045-1(a)(14) other than stock in a regulated investment company within the meaning of §1.1012-1(e)(5) and to organizational actions occurring on or after January 1, 2012, that affect stock in a regulated investment company.

Par. 14. Section 1.6049-6 is amended by adding two new sentences to the end of paragraphs (c) and (e)(2) to read as follows:

§1.6049-6 Statements to recipients of interest payments and holders of obligations for attributed original issue discount.

* * * * *

(c) * * * However, for a statement required to be furnished after December 31, 2008, the February 15 due date under section 6045 applies to the statement if the statement is furnished in a consolidated reporting statement under section 6045. *See* §§1.6045-1(k)(3), 1.6045-2(d)(2), 1.6045-3(e)(2), 1.6045-4(m)(3), and 1.6045-5(a)(3)(ii).

* * * * *

(e) * * *

(2) * * * However, for a statement required to be furnished after December 31, 2008, the February 15 due date under section 6045 applies to the statement if the statement is

furnished in a consolidated reporting statement under section 6045. See §§1.6045-1(k)(3), 1.6045-2(d)(2), 1.6045-3(e)(2), 1.6045-4(m)(3), and 1.6045-5(a)(3)(ii).

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

Par. 15. The authority citation for part 31 continues to read in part as follows:

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

Par. 16. Section 31.6051-4 is amended by revising paragraph (c)(2) and adding two new sentences at the end of paragraph (d) to read as follows:

§31.6051-4 Statement required in case of backup withholding.

(c) *****

(2) Except as provided in the prescribed form or instructions, the amount subject to reporting under section 6041, 6041A(a), 6042, 6044, 6045, 6049, 6050A, 6050N, or 6050W whether or not the amount of the reportable payment is less than the amount for which an information return is required or, if tax is withheld under section 3406, the amount of the payment withheld upon;

(d) ***** However, for a statement required to be furnished after December 31, 2008, the February 15 due date under section 6045 applies to the statement if the statement reports tax withheld from a payment reportable under section 6045 or is furnished in a consolidated reporting statement under section 6045. See §§1.6045-1(k)(3), 1.6045-2(d)(2), 1.6045-3(e)(2), 1.6045-4(m)(3), and 1.6045-5(a)(3)(ii) of this chapter.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 17. The authority citation for part 301 continues to read in part as follows:

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

Par. 18. Section 301.6721-1 is amended by revising paragraphs (g)(2) and (g)(3) to read as follows:

§301.6721-1 Failure to file correct information returns.

(g) *****

(2) *Statements.* The statements subject to this section are the statements required by—

(i) Section 6041(a) or (b) (relating to certain information at source, generally reported on Form 1099-MISC, “Miscellaneous Income”; Form W-2, “Wage and Tax Statement”; Form W-2G, “Certain Gambling Winnings”; and Form 1099-INT, “Interest Income”);

(ii) Section 6042(a)(1) (relating to payments of dividends, generally reported on Form 1099-DIV, “Dividends and Distributions”);

(iii) Section 6044(a)(1) (relating to payments of patronage dividends, generally reported on Form 1099-PATR, “Taxable Distributions Received From Cooperatives”);

(iv) Section 6049(a) (relating to payments of interest, generally reported on Form 1099-INT or Form 1099-OID, “Original Issue Discount”);

(v) Section 6050A(a) (relating to reporting requirements of certain fishing boat operators, generally reported on Form 1099-MISC);

(vi) Section 6050N(a) (relating to payments of royalties, generally reported on Form 1099-MISC);

(vii) Section 6051(d) (relating to information returns with respect to income tax withheld, generally reported on Form W-2);

(viii) Section 6050R (relating to returns relating to certain purchases of fish, generally reported on Form 1099-MISC);

(ix) Section 110(d) (relating to qualified lessee construction allowances for short-term leases, generally reported by attaching a statement to an income tax return);

(x) Section 408(i) (relating to reports with respect to individual retirement accounts or annuities on Form 1099-R, “Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.”); or

(xi) Section 6047(d) (relating to reports by employers, plan administrators, etc., on Form 1099-R).

(3) *Returns.* The returns subject to this section are the returns required by—

(i) Section 6041A(a) or (b) (relating to returns of direct sellers, generally reported on Form 1099-MISC);

(ii) Section 6043A(a) (relating to returns relating to taxable mergers and acquisitions);

(iii) Section 6045(a) or (d) (relating to returns of brokers, generally reported on Form 1099-B, “Proceeds From Broker and Barter Exchange Transactions,” for broker transactions; Form 1099-S, “Proceeds From Real Estate Transactions,” for gross proceeds from the sale or exchange of real estate; and Form 1099-MISC for certain substitute payments and payments to attorneys);

(iv) Section 6045B(a) (relating to returns relating to actions affecting basis of specified securities);

(v) Section 6050H(a) or (h)(1) (relating to mortgage interest received in trade or business from individuals, generally reported on Form 1098, “Mortgage Interest Statement”);

(vi) Section 6050I(a) or (g)(1) (relating to cash received in trade or business, etc., generally reported on Form 8300, “Report of Cash Payments Over \$10,000 Received In a Trade or Business”);

(vii) Section 6050J(a) (relating to foreclosures and abandonments of security, generally reported on Form 1099-A, “Acquisition or Abandonment of Secured Property”);

(viii) Section 6050K(a) (relating to exchanges of certain partnership interests, generally reported on Form 8308, “Report of a Sale or Exchange of Certain Partnership Interests”);

(ix) Section 6050L(a) (relating to returns relating to certain dispositions of donated property, generally reported on Form 8282, “Donee Information Return”);

(x) Section 6050P (relating to returns relating to the cancellation of indebtedness by certain financial entities, generally reported on Form 1099-C, “Cancellation of Debt”);

(xi) Section 6050Q (relating to certain long-term care benefits, generally reported on Form 1099-LTC, “Long-Term Care and Accelerated Death Benefits”);

(xii) Section 6050S (relating to returns relating to payments for qualified tuition and related expenses, generally reported on Form 1098-E, “Student Loan Interest Statement,” or Form 1098-T, “Tuition Statement”);

(xiii) Section 6050T (relating to returns relating to credit for health insurance costs of eligible individuals, generally reported on Form 1099-H, “*Health Coverage Tax Credit (HCTC) Advance Payments*”);

(xiv) Section 6052(a) (relating to reporting payment of wages in the form of group-life insurance, generally reported on Form W-2);

(xv) Section 6050V (relating to returns relating to applicable insurance contracts in which certain exempt organizations hold interests, generally reported on Form 8921, “*Applicable Insurance Contract Information Return*”);

(xvi) Section 6053(c)(1) (relating to reporting with respect to certain tips, generally reported on Form 8027, “*Employer’s Annual Information Return of Tip Income and Allocated Tips*”);

(xvii) Section 1060(b) (relating to reporting requirements of transferors and transferees in certain asset acquisitions, generally reported on Form 8594, “*Asset Acquisition Statement*”), or section 1060(e) (relating to information required in the case of certain transfers of interests in entities (effective for acquisitions after October 9, 1990, except any acquisition pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such acquisition));

(xviii) Section 4101(d) (relating to information reporting with respect to fuel oils (effective for information returns required to be filed after November 30, 1990));

(xix) Section 338(h)(10)(C) (relating to information required to be furnished to the Secretary in case of elective recognition of gain or loss (effective for acquisitions after October 9, 1990, except any acquisition pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such acquisition));

(xx) Section 264(f)(5)(A)(iv) (relating to reporting with respect to certain life insurance and annuity contracts);

(xxi) Section 6050U (relating to charges or payments for qualified long-term care insurance contracts under combined arrangements, generally reported on Form 1099-R);

(xxii) Section 6039(a) (relating to returns required with respect to certain options); or

(xxiii) Section 6050W (relating to information returns with respect to payments

made in settlement of payment card and third party network transactions).

* * * * *

Par. 19. Section 301.6722-1 is amended by revising paragraph (d)(2) to read as follows:

§301.6722-1 *Failure to furnish correct payee statements.*

* * * * *

(d) * * *

(2) *Payee statement.* The term *payee statement* means any statement required to be furnished under—

(i) Section 6031(b) or (c), 6034A, or 6037(b) (relating to statements furnished by certain pass-thru entities, generally a Schedule K-1 (Form 1065), “*Partner’s Share of Income, Deductions, Credits, etc.*,” for section 6031(b) or (c), a copy of the Schedule K-1 (Form 1041), “*Beneficiary’s Share of Income, Deductions, Credits, etc.*,” for section 6034A, and a copy of Schedule K-1 (Form 1120S), “*Shareholder’s Share of Income, Deductions, Credits, etc.*,” for section 6037(b));

(ii) Section 6039(b) (relating to information required in connection with certain options);

(iii) Section 6041(d) (relating to information at source, generally the recipient copy of Form 1099-MISC, “*Miscellaneous Income*”; Form W-2, “*Wage and Tax Statement*”; Form 1099-INT, “*Interest Income*”; and the winner’s copies of Form W-2G, “*Certain Gambling Winnings*”);

(iv) Section 6041A(e) (relating to returns regarding payments of remuneration for services and direct sales, generally the recipient copy of Form 1099-MISC);

(v) Section 6042(c) (relating to returns regarding payments of dividends and corporate earnings and profits, generally the recipient copy of Form 1099-DIV, “*Dividends and Distributions*”);

(vi) Section 6043A(b) or (d) (relating to returns relating to taxable mergers and acquisitions);

(vii) Section 6044(e) (relating to returns regarding payments of patronage dividends, generally the recipient copy of Form 1099-PATR, “*Taxable Distributions Received From Cooperatives*”);

(viii) Section 6045(b) or (d) (relating to returns of brokers, generally the recipient copy of Form 1099-B, “*Proceeds From Broker and Barter Exchange*

Transactions,” for broker transactions; the transferor copy of Form 1099-S, “*Proceeds From Real Estate Transactions*,” for reporting proceeds from real estate transactions; and the recipient copy of Form 1099-MISC for certain substitute payments and payments to attorneys);

(ix) Section 6045A (relating to information required in connection with transfers of covered securities to brokers);

(x) Section 6045B(c) or (e) (relating to returns relating to actions affecting basis of specified securities);

(xi) Section 6049(c) (relating to returns regarding payments of interest, generally the recipient copy of Form 1099-INT or Form 1099-OID, “*Original Issue Discount*”);

(xii) Section 6050A(b) (relating to reporting requirements of certain fishing boat operators, generally the recipient copy of Form 1099-MISC);

(xiii) Section 6050H(d) or (h)(2) (relating to returns relating to mortgage interest received in trade or business from individuals, generally the payor copy of Form 1098, “*Mortgage Interest Statement*”);

(xiv) Section 6050I(e), (g)(4), or (g)(5) (relating to returns relating to cash received in trade or business, etc., generally a copy of Form 8300, “*Report of Cash Payments Over \$10,000 Received In a Trade or Business*”);

(xv) Section 6050J(e) (relating to returns relating to foreclosures and abandonments of security, generally the borrower copy of Form 1099-A, “*Acquisition or Abandonment of Secured Property*”);

(xvi) Section 6050K(b) (relating to returns relating to exchanges of certain partnership interests, generally a copy of Form 8308, “*Report of a Sale or Exchange of Certain Partnership Interests*”);

(xvii) Section 6050L(c) (relating to returns relating to certain dispositions of donated property, generally a copy of Form 8282, “*Donee Information Return*”);

(xviii) Section 6050N(b) (relating to returns regarding payments of royalties, generally the recipient copy of Form 1099-MISC);

(xix) Section 6050P(d) (relating to returns relating to the cancellation of indebtedness by certain financial entities, generally the recipient copy of Form 1099-C, “*Cancellation of Debt*”);

(xx) Section 6050Q(b) (relating to certain long-term care benefits, generally the

policyholder and insured copies of Form 1099-LTC, “*Long-Term Care and Accelerated Death Benefits*”);

(xxi) Section 6050R(c) (relating to returns relating to certain purchases of fish, generally the recipient copy of Form 1099-MISC);

(xxii) Section 6051 (relating to receipts for employees, generally the employee copy of Form W-2);

(xxiii) Section 6052(b) (relating to returns regarding payment of wages in the form of group-term life insurance, generally the employee copy of Form W-2);

(xxiv) Section 6053(b) or (c) (relating to reports of tips, generally the employee copy of Form W-2);

(xxv) Section 6048(b)(1)(B) (relating to foreign trust reporting requirements, generally copies of the owner and beneficiary statements of Form 3520-A, “*Annual Information Return of Foreign Trust With a U.S. Owner*”);

(xxvi) Section 408(i) (relating to reports with respect to individual retirement plans

on the recipient copies of Form 1099-R, “*Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*”);

(xxvii) Section 6047(d) (relating to reports by plan administrators on the recipient copies of Form 1099-R);

(xxviii) Section 6050S(d) (relating to returns relating to qualified tuition and related expenses, generally the borrower copy of Form 1098-E, “*Student Loan Interest Statement*,” or the student copy of Form 1098-T, “*Tuition Statement*”);

(xxix) Section 264(f)(5)(A)(iv) (relating to reporting with respect to certain life insurance and annuity contracts);

(xxx) Section 6050T (relating to returns relating to credit for health insurance costs of eligible individuals, generally the recipient copy of Form 1099-H, “*Health Coverage Tax Credit (HCTC) Advance Payments*”);

(xxxi) Section 6050U (relating to charges or payments for qualified long-term care insurance contracts under

combined arrangements, generally the recipient copy of Form 1099-R); or

(xxxii) Section 6050W (relating to information returns with respect to payments made in settlement of payment card and third party network transactions).

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 20. The authority citation for part 602 continues to read in part as follows:

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

Par. 21. In §602.101, paragraph (b) is amended by adding the following entries to the table in numerical order to read in part as follows:

§602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.6045-1(c)(3)(xi)(C)	1545-2186
1.6045A-1	1545-2186
* * * * *	

* * * * *

Steven T. Miller,
Deputy Commissioner for
Services and Enforcement.

Approved October 1, 2010.

Michael Mundaca,
Assistant Secretary of
the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on October 12, 2010, 4:15 p.m., and published in the issue of the Federal Register for October 18, 2010, 75 F.R. 64072)

Section 6109.—Identifying Numbers

26 CFR 301.0: *User fees; in general.*

T.D. 9503

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 300

User Fees Relating to Enrollment and Preparer Tax Identification Numbers

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains amendments to the regulations relating to

the imposition of certain user fees on certain tax practitioners. The final regulations establish a new user fee for individuals who apply for or renew a preparer tax identification number (PTIN). The final regulations affect individuals who apply for or renew a PTIN.

DATES: *Effective Date:* These regulations are effective on September 30, 2010.

Applicability Date: For dates of applicability see §§300.1(d), 300.2(d), 300.3(d), 300.4(d), 300.5(d), 300.6(d), 300.7(d), 300.8(d), and 300.9(d).

FOR FURTHER INFORMATION CONTACT: Concerning the final regulations, Emily M. Lesniak at (202) 622-4570; concerning cost methodology Eva J. Williams at (202) 435-5514 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations relating to the imposition of a user fee to apply for or renew a PTIN and the reorganization of the effective date provisions under §§300.0 through 300.8. Section 300.9 establishes a \$50 user fee to apply for or renew a PTIN. The Independent Offices Appropriations Act of 1952 (IOAA), which is codified at 31 U.S.C. 9701, authorizes agencies to prescribe regulations establishing user fees for services provided by the agency. Regulations prescribing user fees are subject to the policies of the President, which are currently set forth in the Office of Management and Budget Circular A-25 (the OMB Circular), 58 FR 38142 (July 15, 1993). The OMB Circular requires agencies seeking to impose user fees for providing special benefits to identifiable recipients to calculate the full cost of providing those benefits.

On September 30, 2010, the Treasury Department and the IRS published in the **Federal Register** final regulations under section 6109 (T.D. 9501, 2010-46 I.R.B. 651) that require tax return preparers who prepare all or substantially all of a tax return or claim for refund to use a PTIN as their identifying number. These regulations also provide that to be eligible to receive a PTIN, a tax return preparer must be an attorney, certified public accountant, enrolled agent, or registered tax return preparer.

On July 23, 2010, the Treasury Department and the IRS published in the **Federal Register** (75 FR 43110) a notice of proposed rulemaking (REG-139343-08, 2010-33 I.R.B. 256) proposing amendments to part 300 of title 26 of the Code of Federal Regulations. New §300.9 of these regulations proposed to establish a \$50 user fee to apply for or renew a PTIN. These regulations do not include any fees charged by the vendor, which vendor fee is now calculated to be \$14.25. Additionally, these regulations proposed to reorganize the effective date provisions of §§300.0 through 300.8. A public hearing regarding the proposed regulations was held on August 24, 2010. The IRS also received written public comments in response to the proposed regulations.

After careful consideration of all written public comments and statements made during the public hearing, the Treasury Department and the IRS have decided to adopt without modification the proposed regulations that establish a \$50 user fee to apply for or renew a PTIN, recovering the full cost to the IRS for administering the PTIN application and renewal program. The Treasury Department and the IRS also have decided to adopt without modification the proposed regulations reorganizing the effective date provisions under §§300.0 through 300.8.

Summary of Comments

Over 10,000 written comments were received in response to the notice of proposed rulemaking. The comments were considered and are available for public inspection upon request. The comments related to the \$50 user fee to apply for or renew a PTIN, the related PTIN regulations under section 6109, or the proposed amendments to regulations governing practice before the IRS under 31 CFR part 10 (Circular 230). No comments were received regarding the reorganization of the effective date provisions. Many of the comments are summarized in this preamble.

To the extent comments received with respect to the user fee regulation raise issues pertaining to the PTIN regulations under section 6109 or Circular 230, the Treasury Department and the IRS are considering and addressing those comments in connection with the relevant regulations. Accordingly, the summary of comments below addresses only those comments that seek modification or clarification of the user fee as set forth in the proposed regulations.

1. Tax Return Preparers Who Already Are Subject to Fees

The Treasury Department and the IRS received numerous comments stating that tax return preparers who are attorneys, certified public accountants, or enrolled agents already are required to maintain licenses and pay numerous fees associated with obtaining and maintaining their licenses. Some commentators also stated that regulation of currently unenrolled tax return preparers or imposing a user fee to

apply for or renew a PTIN for currently unenrolled tax return preparers was acceptable, but individuals who are regulated currently should not be required to obtain a PTIN or pay a user fee. Other similar comments requested that licensed tax consultants in Oregon be grandfathered into the new regulatory scheme and that individuals who currently have a PTIN be exempt from the requirements to apply for and renew a PTIN.

Having a PTIN is a special benefit that allows specified tax return preparers to prepare all or substantially all of a tax return or claim for refund for compensation. The OMB Circular encourages user fees for government-provided services that confer special benefits on identifiable recipients over and above those benefits received by the general public. A user fee must be set at an amount that allows the agency to recover the full cost of providing the special services unless the Office of Management and Budget grants an exception.

The same special benefit is conferred on all persons who obtain a PTIN, and the cost to the government is the same for providing PTINs to attorneys, certified public accountants, and enrolled agents as it is for providing PTINs to formerly unenrolled tax return preparers. Under the OMB Circular, absent special approval, the IRS must recover the full costs for providing the special benefits associated with a PTIN. The IRS cannot charge a user fee solely to tax return preparers who are not otherwise licensed as an attorney, certified public accountant, or enrolled agent. Although many comments sought exceptions to the user fee, one commentator encouraged the Treasury Department and the IRS to maintain a uniform user fee for obtaining a PTIN. Consequently, the Treasury Department and the IRS are adopting the proposed regulations and requiring all tax return preparers to pay a user fee to apply for or renew a PTIN.

2. Calculation of the User Fee

The Treasury Department and the IRS received a comment that the proposed regulations do not comply with the provisions of IOAA because a PTIN is not a service or thing of value to a tax return preparer. The commentator also stated that the proposed regulations do not comply with the general

policies for implementing user fees, as provided in the OMB Circular, because providing a PTIN to a tax return preparer benefits the general public by tracking incompetent and unscrupulous tax return preparers and that the IRS already meets a goal of the OMB Circular because it is already self-sustaining, as the IRS collects more taxes than it costs to run the agency.

The IOAA authorizes agencies to prescribe regulations that establish charges for services provided by the agency. The charges must be fair and must be based on the costs to the government, the value of the service to the recipient, the public policy or interest served, and other relevant facts. The IOAA provides that regulations implementing user fees are subject to policies prescribed by the President; these policies are currently set forth in the OMB Circular. The OMB Circular encourages user fees for government-provided services that confer benefits on identifiable recipients over and above those benefits received by the general public. Under the OMB Circular, an agency that seeks to impose a user fee for government-provided services must calculate the full cost of providing those services.

The user fee was determined to be consistent with the IOAA and the OMB Circular. A PTIN both confers a special benefit on an identifiable recipient and is a service or thing of value to a tax return preparer. A PTIN confers a special benefit because without a PTIN, a tax return preparer could not receive compensation for preparing all or substantially all of a federal tax return or claim for refund. Because only attorneys, certified public accountants, enrolled agents, and registered tax return preparers are eligible to obtain a PTIN, only a subset of the general public is entitled to a PTIN and the special benefit of receiving compensation for the preparation of a return that it confers. This analysis is consistent with the current practice of charging a user fee on individuals seeking to become enrolled agents. Being an enrolled agent confers special benefits; and, therefore, the IRS currently charges a user fee on applicants seeking those special benefits.

Further, while it is anticipated that requiring tax return preparers to obtain a PTIN will benefit tax administration generally, only the tax return preparer who receives the PTIN can take advantage of

the special benefit associated with having a PTIN. The OMB Circular provides that a government agency should recover the full cost of providing a special benefit when the general public receives a benefit as a necessary consequence of the government providing a special benefit to an identifiable recipient.

The OMB Circular also provides that one of the objectives of establishing a user fee is to “ensure that each service, sale, or use of Government goods or resources provided by an agency to specific recipients be self-sustaining.” As described above, the issuance of a PTIN provides a special benefit to the specific tax return preparer who receives the PTIN. The administration of the PTIN application and renewal program requires the use of IRS services, goods, and resources. For the PTIN application and renewal program to be self-sustaining, the IRS must charge a user fee to recover the costs of providing the special benefits associated with PTIN. The fact that the IRS collects tax revenue for use by the government as a whole does not affect the analysis of whether the PTIN application and renewal program is self-sustaining. Thus, the Treasury Department and the IRS are complying with the provisions of the IOAA and the OMB Circular by implementing a user fee to recover the costs associated with the issuance of PTINs.

3. *Renewing a PTIN*

Several commentators objected to renewing their PTIN on a yearly basis and requested longer renewal periods. At this time the Treasury Department and the IRS have determined that an annual renewal of a PTIN is the most effective procedure. The user fee to renew a PTIN is, however, part of the larger implementation of recommendations in Publication 4832, “*Return Preparer Review*,” which was published on January 4, 2010, to be effective for the 2011 Federal tax filing season (January-April 2011). These recommendations include revisions to Circular 230 implementing the registered tax return preparer program and revisions to the regulations under section 6109 requiring all tax return preparers to obtain and use a PTIN as their identifying number. As these programs are implemented, the IRS will continually monitor their administration and make appropriate adjustments to increase

effectiveness. Thus, in the future, the Treasury Department and the IRS will review the requirement to annually renew a PTIN and will make modifications, as appropriate.

4. *The Amount of the User Fee*

Many commentators objected to the amount of the user fee. Some stated that the user fee should be smaller or that tax return preparers who prepare a limited number of returns should pay a smaller user fee. Other commentators characterized the user fee as a tax or a revenue raiser.

As stated earlier in this preamble, under the OMB Circular, the IRS must recover the full cost of providing a PTIN. The full cost to the government to administer the PTIN application and renewal program was calculated to be \$50 per application or renewal. The user fee does not provide funds beyond the cost to process PTIN applications. Thus, the user fee to apply for or renew a PTIN does not provide additional revenue to the IRS that can be allocated to other programs. The PTIN user fee merely offsets costs the IRS incurs to provide the special benefits associated with having a PTIN.

The cost of processing PTIN applications is not affected by the number of tax returns that a tax return preparer prepares during a given tax season. For example, the cost to the IRS to process the PTIN applications of individuals who prepare over 500 tax returns per year, approximately 100 tax returns per year, or under 10 tax returns per year is the same. The IRS will perform the same tax compliance and suitability checks on these individuals and will provide these individuals with the same PTIN support services. The IRS must also maintain the same data in its PTIN database regarding these individuals and develop the same reconsideration process for these individuals in the event their PTIN applications are denied. Because the cost to the IRS is not dependent on the quantity of returns that an individual tax return preparer prepares, the final regulations adopt the \$50 user fee for all tax return preparers to apply for or renew a PTIN.

5. *Burden Imposed by the User Fee*

Some commentators stated that the \$50 user fee will be a burden on their busi-

nesses or that the cost to apply for or renew a PTIN will be passed on to clients. The IRS recognizes that some individuals who prepare a small number of tax returns may stop preparing tax returns or that the PTIN user fee may be passed on to clients. The IRS, however, believes that the implementation of the registered tax return preparer program and the requirement to use a PTIN as provided in the section 6109 regulations will benefit taxpayers and tax administration as a whole. The registered tax return preparer program will ensure that tax return preparers meet and maintain a minimum level of competency. The requirement to use a PTIN will provide the IRS an effective way to monitor tax return preparers and enforce the regulation of tax return preparers. The Treasury Department and the IRS believe that a user fee to apply for or renew a PTIN is necessary to recover the cost that the IRS will incur to implement and administer the PTIN application and renewal program.

Other commentators suggested that the user fee to apply for or renew a PTIN would cause some tax return preparers to revert to using their social security number when preparing tax returns rather than a PTIN, which would contravene the identity protection currently provided by PTINs. The regulations under section 6109, however, require tax return preparers to use a PTIN as their sole identifying number when preparing tax returns or claims for refund for compensation. Thus, tax return preparers are not allowed to use their social security numbers as an identifying number when preparing tax returns or claims for refund.

6. Use of a Third Party Vendor

Several commentators objected to providing identifying information to the third party vendor, and numerous commentators objected to paying a separate fee to the vendor.

The third party vendor is statutorily and contractually obligated to protect all personally identifiable information. The vendor is subject to the confidentiality and disclosure provisions of section 6103. The vendor also must comply with the provisions of the Federal Information Security Management Act; the E-Government Act of 2002; IRS Acquisitions Procedures; the Federal Acquisitions Regulations;

the Taxpayer Browsing Protection Act of 1997; and the Privacy Act of 1974, which is codified at 5 U.S.C. 552a, regarding all non-tax information. The vendor must comply with numerous policies of the Office of Management and Budget, including OMB Circular No. A-130, Security and Federal Automated Information Resources Appendix III; OMB Circular policy M-06-16, Protection of Sensitive Agency Information; OMB Circular Policy M-06-15, Safeguarding Personally Identifiable Information; and OMB Circular Policy M-06-19, Reporting Incidents Involving Personally Identifiable Information.

The vendor faces significant consequences for the unauthorized inspection or disclosure of confidential tax information. These consequences include, among others, that an officer or employee of the vendor may be subject to civil damages; civil or criminal sanctions, such as sanctions imposed by 18 U.S.C. 641 and 3571; or penalties as prescribed in sections 7213, 7213A, and 7431.

The vendor's fee, currently set at \$14.25, covers the costs incurred by the vendor to administer the application and renewal process. These costs are separate from the costs to the IRS for administering the PTIN application and renewal program, which are recovered in the \$50 user fee. The respective fees pay for different aspects of administering the PTIN program, each of which is essential to providing PTINs to tax return preparers. Additionally, under the vendor's contract with the IRS, the vendor's fee is reviewed and approved by the IRS.

After consideration of all of the public comments and statements made during the public hearing, the Treasury Department and the IRS have adopted the proposed regulations in full.

Effective/Applicability Date

The Administrative Procedure Act provides that substantive rules generally will not be effective until thirty days after the final regulations are published in the **Federal Register** (5 U.S.C. 553(d)). Final regulations may be effective prior to thirty days after publication if the publishing agency finds that there is good cause for an earlier effective date.

This regulation is part of the IRS' effort to implement the recommendations in the "*Return Preparer Review*." The review concluded that obtaining more complete and accurate information on individual tax return preparers and improved IRS oversight of tax return preparers and their preparation of tax returns and claims for refund is necessary for effective tax administration. The PTIN is the mechanism that allows the IRS to obtain more complete and accurate information on tax return preparers. Thus, the issuance of a PTIN is a threshold requirement to implementing the recommendations in the report.

This regulation must be effective significantly in advance of the beginning of the 2011 filing season to enable the IRS to charge a user fee to recover the cost of administering the program under which all individuals who prepare all or substantially all of a tax return or claim for refund of tax are required to obtain a PTIN for use during the 2011 Federal tax filing season. For all tax return preparers to receive a PTIN prior to the 2011 filing season, the IRS must begin registering preparers as quickly as possible. Thus, the Treasury Department and the IRS find that there is good cause for these regulations to be effective upon the publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

Special Analyses

It has been determined that these final regulations are a significant regulatory action as defined in Executive Order 12866.

It has been determined that a final regulatory flexibility analysis under 5 U.S.C. 604 is required for this final rule. The analysis is set forth under the heading, "Final Regulatory Flexibility Analysis."

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. The Chief Counsel for Advocacy did not submit comments on the notice of proposed rulemaking.

Final Regulatory Flexibility Analysis

When an agency either promulgates a final rule that follows a required notice

of proposed rulemaking or promulgates a final interpretative rule involving the internal revenue laws as described in 5 U.S.C. 603(a), the Regulatory Flexibility Act (5 U.S.C. chapter 6) requires the agency to “prepare a final regulatory flexibility analysis.” A final regulatory flexibility analysis must, pursuant to 5 U.S.C. 604(a), contain the five elements listed in this final regulatory flexibility analysis. For purposes of this final regulatory flexibility analysis, a small entity is defined as a small business, small nonprofit organization, or small governmental jurisdiction. 5 U.S.C. 601(3)-(6). The Treasury Department and the IRS conclude that the final regulations (together with other contemplated guidance provided for in these regulations) will impact a substantial number of small entities and the economic impact will be significant.

A statement of the need for, and the objectives of, the final rule.

The final regulations are necessary to recover the full cost to the IRS associated with administering the PTIN application and renewal program and providing the special benefits that are associated with obtaining a PTIN.

The Treasury Department and the IRS are implementing regulatory changes that increase the oversight of the tax return preparer industry. These regulatory changes are based upon findings and recommendations made by the IRS in the “Return Preparer Review.” Based upon findings in the review, all individuals who prepare all or substantially all of a tax return or claim for refund will be required to use a PTIN as their identifying number. Except as provided in any transitional period, only attorneys, certified public accountants, enrolled agents, or registered tax return preparers may apply for a PTIN. Thus, only attorneys, certified public accountants, enrolled agents, and registered tax return preparers will be eligible to prepare all or substantially all of a tax return or claim for refund. By limiting the individuals who may prepare all or substantially all of a tax return or claim for refund to individuals who have a PTIN, the IRS is providing a special benefit to the individuals who obtain a PTIN.

The objective of the final regulations is to recover the costs to the government that are associated with providing this spe-

cial benefit. The costs to the government include the development and maintenance of the IRS information technology system that interfaces with the vendor; the development and maintenance of internal applications; IRS customer service support activities, which include development and maintenance of an IRS website and call center staffing; and personnel, administrative, and management support needed to evaluate and address tax compliance issues, investigate and address conduct and suitability issues, and otherwise support and enforce the programs that require individuals to apply for or renew a PTIN.

Summaries of the significant issues raised in the public comments responding to the initial regulatory flexibility analysis and of the agency’s assessment of the issues, and a statement of any changes made to the rule as a result of the comments.

A summary of the comments is set forth elsewhere in this preamble, along with the Treasury Department’s and the IRS’ assessment of the issues raised in the comments.

A description and an estimate of the number of small entities to which the rule will apply or an explanation of why an estimate is not available.

The final regulations affect all individuals who want to become a registered tax return preparer under the new oversight rules in Circular 230. Only individuals, not businesses, can practice before the IRS or become a registered tax return preparer. Thus, the economic impact of these regulations on any small entity generally will be a result of applicants and registered tax return preparers owning a small business or a small entity employing applicants or registered tax return preparers.

The final regulations further affect all individual tax return preparers who are required to apply for or renew a PTIN. Only individuals, not businesses, can apply for or renew a PTIN. Thus, the economic impact of these regulations on any small entity generally will be a result of an individual tax return preparer who owns a small business and who is required to apply for or renew a PTIN, or a small business otherwise employing an individual tax return preparer who is required to apply for or re-

new a PTIN, to prepare all or substantially all of a tax return or claim for refund.

The appropriate NAICS codes for the registered tax return preparer program and PTINs are those that relate to tax preparation services (NAICS code 541213), other accounting services (NAICS code 541219), offices of lawyers (NAICS code 541110), and offices of certified public accountants (NAICS code 541211). Entities identified as tax preparation services and offices of lawyers are considered small under the Small Business Administration size standards (13 CFR 121.201) if their annual revenue is less than \$7 million. Entities identified as other accounting services and offices of certified public accountants are considered small under the Small Business Administration size standards if their annual revenue is less than \$8.5 million. The IRS estimates that approximately 70 to 80 percent of the individuals subject to these proposed regulations are tax return preparers operating as or employed by small entities.

A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities subject to the requirements and the type of professional skills necessary for preparation of a report or record.

No reporting or recordkeeping requirements are projected to be associated with the final regulation.

A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting any alternative adopted in the final rule and why other significant alternatives affecting the impact on small entities that the agency considered were rejected.

The Treasury Department and the IRS are not aware of any steps that could be taken to minimize the economic impact on small entities that would also be consistent with the objectives of these final regulations. These regulations do not impose any more requirements on small entities than are necessary to effectively administer the internal revenue laws. Further, the regulations do not subject small entities to any

requirements that are not also applicable to larger entities covered by the regulations.

The Treasury Department and the IRS have determined that there are no viable alternatives to the final regulations.

The IOAA authorizes the charging of user fees for agency services, subject to policies designated by the President. The OMB Circular implements presidential policies regarding user fees and encourages user fees when a government agency provides a special benefit to a member of the public. As Congress has not appropriated funds to the registered tax return preparer program or the PTIN application and renewal program, there are no viable alternatives to the imposition of user fees.

Drafting Information

The principal author of these final regulations is Emily M. Lesniak, Office of the Associate Chief Counsel (Procedure and Administration).

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 300 is amended as follows:

Paragraph 1. The authority citation for part 300 continues to read in part as follows:

Authority: 31 U.S.C. 9701.

Par. 2. Section 300.0 is amended by

1. Adding paragraph (b)(9).

2. Removing paragraph (c).

The addition reads as follows:

§300.0 User fees; in general.

* * * * *

(b) * * *

(9) Applying for a preparer tax identification number.

Par. 3. Section 300.1 is amended by adding paragraph (d) to read as follows:

§300.1 Installment agreement fee.

* * * * *

(d) *Effective/applicability date.* This section is applicable beginning March 16, 1995, except that the user fee for enter-

ing into installment agreements on or after January 1, 2007, is applicable January 1, 2007.

Par. 4. Section 300.2 is amended by adding paragraph (d) to read as follows:

§300.2 Restructuring or reinstatement of installment agreement fee.

* * * * *

(d) *Effective/applicability date.* This section is applicable beginning March 16, 1995, except that the user fee for restructuring or reinstatement of an installment agreement on or after January 1, 2007, is applicable January 1, 2007.

Par. 5. Section 300.3 is amended by adding paragraph (d) to read as follows:

§300.3 Offer to compromise fee.

* * * * *

(d) *Effective/applicability date.* This section is applicable beginning November 1, 2003.

Par. 6. Section 300.4 is amended by adding paragraph (d) to read as follows:

§300.4 Special enrollment examination fee.

* * * * *

(d) *Effective/applicability date.* This section is applicable beginning November 6, 2006.

Par. 7. Section 300.5 is amended by adding paragraph (d) to read as follows:

§300.5 Enrollment of enrolled agent fee.

* * * * *

(d) *Effective/applicability date.* This section is applicable beginning November 6, 2006.

Par. 8. Section 300.6 is amended by adding paragraph (d) to read as follows:

§300.6 Renewal of enrollment of enrolled agent fee.

* * * * *

(d) *Effective/applicability date.* This section is applicable beginning November 6, 2006.

Par. 9. Section 300.7 is amended by adding paragraph (d) to read as follows:

§300.7 Enrollment of enrolled actuary fee.

* * * * *

(d) *Effective/applicability date.* This section is applicable beginning January 22, 2008.

Par. 10. Section 300.8 is amended by adding paragraph (d) to read as follows:

§300.8 Renewal of enrollment of enrolled actuary fee.

* * * * *

(d) *Effective/applicability date.* This section is applicable beginning January 22, 2008.

Par. 11. Section 300.9 is added to read as follows:

§300.9 Fee for obtaining a preparer tax identification number.

(a) *Applicability.* This section applies to the application for and renewal of a preparer tax identification number pursuant to 26 CFR 1.6109-2(d).

(b) *Fee.* The fee to apply for or renew a preparer tax identification number is \$50 per year, which is the cost to the government for processing the application for a preparer tax identification number and does not include any fees charged by the vendor.

(c) *Person liable for the fee.* The individual liable for the application or renewal fee is the individual applying for and renewing a preparer tax identification number from the IRS.

(d) *Effective/applicability date.* This section is applicable beginning September 30, 2010.

Steven T. Miller,
Deputy Commissioner for
Services and Enforcement.

Approved August 24, 2010.

Michael Mundaca,
Assistant Secretary of
the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on September 28, 2010, 11:15 a.m., and published in the issue of the Federal Register for September 30, 2010, 75 F.R. 60316)

Part III. Administrative, Procedural, and Miscellaneous

Update for Weighted Average Interest Rates, Yield Curves, and Segment Rates

Notice 2010-76

This notice provides guidance as to the corporate bond weighted average interest rate and the permissible range of interest rates specified under § 412(b)(5)(B)(ii)(II) of the Internal Revenue Code as in effect for plan years beginning before 2008. It also provides guidance on the corporate bond monthly yield curve (and the corresponding spot segment rates), the 24-month average segment rates, and the funding transitional segment rates under § 430(h)(2). In addition, this notice provides guidance as to the interest rate on 30-year Treasury securities under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning before 2008, the 30-year Treasury weighted average rate under § 431(c)(6)(E)(ii)(I), and the min-

imum present value segment rates under § 417(e)(3)(D) as in effect for plan years beginning after 2007.

CORPORATE BOND WEIGHTED AVERAGE INTEREST RATE

Sections 412(b)(5)(B)(ii) and 412(l)(7)(C)(i), as amended by the Pension Funding Equity Act of 2004 and by the Pension Protection Act of 2006 (PPA), provide that the interest rates used to calculate current liability and to determine the required contribution under § 412(l) for plan years beginning in 2004 through 2007 must be within a permissible range based on the weighted average of the rates of interest on amounts invested conservatively in long term investment grade corporate bonds during the 4-year period ending on the last day before the beginning of the plan year.

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

and the resulting permissible range of interest rates used to calculate current liability. That notice establishes that the corporate bond weighted average is based on the monthly composite corporate bond rate derived from designated corporate bond indices. The methodology for determining the monthly composite corporate bond rate as set forth in Notice 2004-34 continues to apply in determining that rate. See Notice 2006-75, 2006-2 C.B. 366.

The composite corporate bond rate for October 2010 is 5.20 percent. Pursuant to Notice 2004-34, the Service has determined this rate as the average of the monthly yields for the included corporate bond indices for that month.

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

For Plan Years Beginning in		Corporate Bond Weighted Average	Permissible Range	
Month	Year		90%	100%
November	2010	6.17	5.55	6.17

YIELD CURVE AND SEGMENT RATES

Generally for plan years beginning after 2007 (except for delayed effective dates for certain plans under sections 104, 105, and 106 of PPA), § 430 of the Code specifies the minimum funding requirements that apply to single employer plans pursuant to § 412. Section 430(h)(2) specifies the interest rates that must be used to determine a plan's target normal cost and funding target. Under this provision, present value is generally determined using three 24-month average interest rates

("segment rates"), each of which applies to cash flows during specified periods. However, an election may be made under § 430(h)(2)(D)(ii) to use the monthly yield curve in place of the segment rates. For plan years beginning in 2008 and 2009, a transitional rule under § 430(h)(2)(G) provides that the segment rates are blended with the corporate bond weighted average as specified above. An election may be made under § 430(h)(2)(G)(iv) to use the segment rates without applying the transitional rule.

Notice 2007-81, 2007-2 C.B. 899, provides guidelines for determining the

monthly corporate bond yield curve, the 24-month average corporate bond segment rates, and the funding transitional segment rates used to compute the target normal cost and the funding target. Pursuant to Notice 2007-81, the monthly corporate bond yield curve derived from October 2010 data is in Table I at the end of this notice. The spot first, second, and third segment rates for the month of October 2010 are, respectively, 1.56, 4.73, and 6.22. The three 24-month average corporate bond segment rates applicable for November 2010 under the election of § 430(h)(2)(G)(iv) are as follows:

First Segment	Second Segment	Third Segment
3.37	6.04	6.49

The transitional segment rates under § 430(h)(2)(G) applicable for November 2010, taking into account the corporate

bond weighted average of 6.17 stated above, are as follows:

For Plan Years Beginning in	First Segment	Second Segment	Third Segment
2009	4.30	6.08	6.38

The transitional rule of § 430(h)(2)(G) does not apply to plan years starting in 2010. Therefore, for a plan year starting in 2010 with a lookback month to November 2010, the funding segment rates are the three 24-month average corporate bond segment rates applicable for November 2010, listed above without blending for the transitional period.

30-YEAR TREASURY SECURITIES INTEREST RATES

Section 417(e)(3)(A)(ii)(II) (prior to amendment by PPA) defines the applicable interest rate, which must be used for purposes of determining the minimum present value of a participant's benefit under § 417(e)(1) and (2), as the annual rate of interest on 30-year Treasury se-

curities for the month before the date of distribution or such other time as the Secretary may by regulations prescribe. Section 1.417(e)-1(d)(3) of the Income Tax Regulations provides that the applicable interest rate for a month is the annual rate of interest on 30-year Treasury securities as specified by the Commissioner for that month in revenue rulings, notices or other guidance published in the Internal Revenue Bulletin.

The rate of interest on 30-year Treasury securities for October 2010 is 3.87 percent. The Service has determined this rate as the average of the daily determinations of yield on the 30-year Treasury bond maturing in August 2040.

Generally for plan years beginning after 2007, § 431 specifies the mini-

mum funding requirements that apply to multiemployer plans pursuant to § 412. Section 431(c)(6)(B) specifies a minimum amount for the full-funding limitation described in section 431(c)(6)(A), based on the plan's current liability. Section 431(c)(6)(E)(ii)(I) provides that the interest rate used to calculate current liability for this purpose must be no more than 5 percent above and no more than 10 percent below the weighted average of the rates of interest on 30-year Treasury securities during the four-year period ending on the last day before the beginning of the plan year. Notice 88-73, 1988-2 C.B. 383, provides guidelines for determining the weighted average interest rate. The following rates were determined for plan years beginning in the month shown below.

For Plan Years Beginning in		30-Year Treasury Weighted Average	Permissible Range		
<i>Month</i>	<i>Year</i>		90%	to	105%
November	2010	4.26	3.83		4.47

MINIMUM PRESENT VALUE SEGMENT RATES

Generally for plan years beginning after December 31, 2007, the applicable interest rates under § 417(e)(3)(D) are segment rates computed without regard to a

24-month average. For plan years beginning in 2008 through 2011, the applicable interest rates are the monthly spot segment rates blended with the applicable rate under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning in 2007. Notice 2007-81 provides guidelines for determin-

ing the minimum present value segment rates. Pursuant to that notice, the minimum present value transitional segment rates determined for October 2010, taking into account the October 2010 30-year Treasury rate of 3.87 stated above, are as follows:

For Plan Years Beginning in	First Segment	Second Segment	Third Segment
2009	2.95	4.21	4.81
2010	2.48	4.39	5.28
2011	2.02	4.56	5.75

DRAFTING INFORMATION

The principal author of this notice is Tony Montanaro of the Employee Plans,

Tax Exempt and Government Entities Division. Mr. Montanaro may be e-mailed at RetirementPlanQuestions@irs.gov.

Table I
Monthly Yield Curve for October 2010
Derived from October 2010 Data

<i>Maturity</i>	<i>Yield</i>	<i>Maturity</i>	<i>Yield</i>	<i>Maturity</i>	<i>Yield</i>	<i>Maturity</i>	<i>Yield</i>	<i>Maturity</i>	<i>Yield</i>
0.5	0.66	20.5	5.71	40.5	6.28	60.5	6.48	80.5	6.57
1.0	0.78	21.0	5.73	41.0	6.29	61.0	6.48	81.0	6.58
1.5	0.93	21.5	5.76	41.5	6.29	61.5	6.48	81.5	6.58
2.0	1.12	22.0	5.78	42.0	6.30	62.0	6.49	82.0	6.58
2.5	1.35	22.5	5.81	42.5	6.31	62.5	6.49	82.5	6.58
3.0	1.61	23.0	5.83	43.0	6.31	63.0	6.49	83.0	6.58
3.5	1.88	23.5	5.85	43.5	6.32	63.5	6.49	83.5	6.59
4.0	2.15	24.0	5.87	44.0	6.33	64.0	6.50	84.0	6.59
4.5	2.41	24.5	5.89	44.5	6.33	64.5	6.50	84.5	6.59
5.0	2.66	25.0	5.91	45.0	6.34	65.0	6.50	85.0	6.59
5.5	2.90	25.5	5.93	45.5	6.34	65.5	6.51	85.5	6.59
6.0	3.12	26.0	5.95	46.0	6.35	66.0	6.51	86.0	6.59
6.5	3.33	26.5	5.97	46.5	6.36	66.5	6.51	86.5	6.60
7.0	3.52	27.0	5.98	47.0	6.36	67.0	6.51	87.0	6.60
7.5	3.70	27.5	6.00	47.5	6.37	67.5	6.52	87.5	6.60
8.0	3.87	28.0	6.02	48.0	6.37	68.0	6.52	88.0	6.60
8.5	4.02	28.5	6.03	48.5	6.38	68.5	6.52	88.5	6.60
9.0	4.17	29.0	6.04	49.0	6.38	69.0	6.52	89.0	6.60
9.5	4.30	29.5	6.06	49.5	6.39	69.5	6.53	89.5	6.60
10.0	4.43	30.0	6.07	50.0	6.39	70.0	6.53	90.0	6.61
10.5	4.55	30.5	6.09	50.5	6.40	70.5	6.53	90.5	6.61
11.0	4.66	31.0	6.10	51.0	6.40	71.0	6.53	91.0	6.61
11.5	4.76	31.5	6.11	51.5	6.41	71.5	6.54	91.5	6.61
12.0	4.85	32.0	6.12	52.0	6.41	72.0	6.54	92.0	6.61
12.5	4.93	32.5	6.13	52.5	6.42	72.5	6.54	92.5	6.61
13.0	5.01	33.0	6.14	53.0	6.42	73.0	6.54	93.0	6.61
13.5	5.09	33.5	6.16	53.5	6.42	73.5	6.55	93.5	6.62
14.0	5.15	34.0	6.17	54.0	6.43	74.0	6.55	94.0	6.62
14.5	5.22	34.5	6.18	54.5	6.43	74.5	6.55	94.5	6.62
15.0	5.27	35.0	6.19	55.0	6.44	75.0	6.55	95.0	6.62
15.5	5.33	35.5	6.20	55.5	6.44	75.5	6.55	95.5	6.62
16.0	5.38	36.0	6.21	56.0	6.44	76.0	6.56	96.0	6.62
16.5	5.42	36.5	6.21	56.5	6.45	76.5	6.56	96.5	6.62
17.0	5.47	37.0	6.22	57.0	6.45	77.0	6.56	97.0	6.63
17.5	5.51	37.5	6.23	57.5	6.46	77.5	6.56	97.5	6.63
18.0	5.55	38.0	6.24	58.0	6.46	78.0	6.57	98.0	6.63
18.5	5.58	38.5	6.25	58.5	6.46	78.5	6.57	98.5	6.63
19.0	5.62	39.0	6.26	59.0	6.47	79.0	6.57	99.0	6.63
19.5	5.65	39.5	6.26	59.5	6.47	79.5	6.57	99.5	6.63
20.0	5.68	40.0	6.27	60.0	6.47	80.0	6.57	100.0	6.63

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

26 CFR 601.602: Tax forms and instructions.

(Also Part I, Sections 6041, 6051, 6071, 6081, 6091; 1.6041-1, 1.6041-2, 31.6051-1, 31.6051-2, 31.6071(a)-1, 31.6081(a)-1, 31.6091-1.)

Rev. Proc. 2010-42

TABLE OF CONTENTS

Part A. General

SECTION 1. PURPOSE	715
SECTION 2. WHAT'S NEW	717
SECTION 3. GENERAL RULES FOR PAPER FORMS W-2 AND W-3	717
SECTION 4. GENERAL RULES FOR FILING FORMS W-2 (COPY A) ELECTRONICALLY	719

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

SECTION 1A. SPECIFICATIONS FOR RED-INK SUBSTITUTE FORM W-2 (COPY A) AND FORM W-3 FILED WITH THE SSA.	719
SECTION 1B. SPECIFICATIONS FOR SUBSTITUTE BLACK-AND-WHITE COPY A AND W-3 FORMS FILED WITH THE SSA.	721
SECTION 2. REQUIREMENTS FOR SUBSTITUTE FORMS FURNISHED TO EMPLOYEES (COPIES B, C, AND 2 OF FORM W-2)	723
SECTION 3. ELECTRONIC DELIVERY OF FORM W-2 AND W-2C RECIPIENT STATEMENTS	725

Part C. Additional Instructions

SECTION 1. ADDITIONAL INSTRUCTIONS FOR FORM PRINTERS	726
SECTION 2. INSTRUCTIONS FOR EMPLOYERS	726
SECTION 3. OMB REQUIREMENTS FOR BOTH RED-INK AND BLACK-AND-WHITE COPY A AND W-3 SUBSTITUTE FORMS	726
SECTION 4. REPRODUCIBLE COPIES OF FORMS	727
SECTION 5. EFFECT ON OTHER DOCUMENTS	728

Part A. General

Section 1. Purpose

.01 The purpose of this revenue procedure is to state the requirements of the Internal Revenue Service (IRS) and the Social Security Administration (SSA) regarding the preparation and use of substitute forms for Form W-2, Wage and Tax Statement, and Form W-3, Transmittal of Wage and Tax Statements, for wages paid during the 2010 calendar year.

.02 For purposes of this revenue procedure, substitute Form W-2 (Copy A) and substitute Form W-3 are forms that are not printed by the IRS. Copy A or any other copies of a substitute Form W-2 or a substitute Form W-3 must conform to the specifications in this revenue procedure to be acceptable to the IRS and the SSA. No IRS office is authorized to allow deviations from this revenue procedure. Preparers should also refer to the separate 2010 Instructions for Forms W-2 and W-3 for details on how to complete these forms. See Part C, Section 4, for information on obtaining the official IRS forms and instructions. See Part B, Sections 2 and 3, for requirements for the copies of substitute forms furnished to employees.

.03 For purposes of this revenue procedure, the official IRS-printed red dropout ink Forms W-2 (Copy A) and W-3, and their exact substitutes, are referred to as “red-ink.” The SSA-approved black-and-white Forms W-2 (Copy A) and W-3 are referred to as “substitute black-and-white Copy A” and “substitute black-and-white W-3” forms.

Any questions about the red-ink Form W-2 (Copy A) and Form W-3 and the substitute employee statements should be emailed to Substituteforms@irs.gov. Please enter "Substitute Forms" on the subject line. Or send your questions to:

Internal Revenue Service
Attn: Substitute Forms Program
SE:W:CAR:MP:T:T:SP, IR 6526
1111 Constitution Ave., NW
Washington DC 20224

Any questions about the black-and-white Copy A and W-3 forms should be emailed to copy.a.forms@ssa.gov or sent to:

Social Security Administration
Data Operations Center
Attn: Substitute Black-and-White Copy A Forms, Room 348
1150 E. Mountain Drive
Wilkes-Barre PA 18702-7997

Also, see Sections 3.05 and 3.06 of Part A.

Note. You should receive a response from either the IRS or the SSA within 30 days.

.04 Some Forms W-2 that include logos, slogans, and advertisements (including advertisements for tax preparation software) may be confused with questionable Forms W-2. An employee may not recognize the importance of the employee copy for tax reporting purposes due to the use of logos, slogans, and advertisements. Thus, the IRS has determined that logos, slogans, and advertising on Forms W-3, Copy A of Forms W-2, or any employee copies reporting wages paid during the 2011 calendar year and thereafter will not be allowed, with the following exceptions:

- Forms may include the exact name of the employer or agent, primary trade name, trademark, service mark, or symbol of the employer or agent.
- Forms may include an embossment or watermark on the information return (and copies) that is a representation of the name, a primary trade name, trademark, service mark, or symbol of the employer or agent.
- Presentation may be in any typeface, font, stylized fashion, or print color normally used by the employer or agent, and used in a non-intrusive manner.
- These items must not materially interfere with the ability of the recipient to recognize, understand, and use the tax information on the employee copies.
- Corrected information on information returns and employee copies that was shown on Forms W-2 for amounts paid before January 1, 2011, is an exception.

The IRS e-file logo on the IRS official employee copies may be included, but it is not required, on any of the substitute form copies. The information return and employee copies must clearly identify the employer's name associated with its employer identification number.

Forms W-2 and W-3 are subject to annual review and possible change. The IRS has postponed the prohibition against including slogans, advertising, and logos on information returns and employee copies reporting wages paid during the 2010 calendar year that was announced in Rev. Proc. 2008-33 (the previous revision of Publication 1141). The prohibition is now in effect for reporting wages paid in 2011 and thereafter. Do not include logos, slogans, or advertising on any information returns or employee copies filed in 2011 or thereafter, except as provided above. This revenue procedure may be revised at a future date to state other requirements of the IRS and the SSA regarding the preparation and use of substitutes for Form W-2 and Form W-3 for wages paid during the 2011 calendar year. If you have comments about the prohibition against including slogans, advertising, and logos on information returns and employee copies, send or email your comments to: Internal Revenue Service, Attn: Substitute Forms Program, SE:W:CAR:MP:T:T:SP, IR 6526, 1111 Constitution Ave., NW, Washington, DC, 20224 or Substituteforms@irs.gov.

.05 The Internal Revenue Service/Information Returns Branch (IRS/IRB) maintains a centralized customer service call site to answer questions related to information returns (Forms W-2, W-3, W-2c, W-3c, 1099 series, 1096, etc.). You can reach the call site at 1-866-455-7438 (toll-free) or 304-263-8700 (not a toll-free number). The Telecommunication Device for the Deaf (TDD) number is 304-579-4827 (not a toll-free number). The hours of operation are Monday through Friday from 8:30 a.m. to 4:30 p.m. Eastern time. You may also send questions to the call site via the Internet at mccirp@irs.gov. IRS/IRB does not process information returns which are filed on paper forms. IRS/IRB does not process Forms W-2 (Copy A). Forms W-2 (Copy A) prepared on paper or electronically

must be filed with the SSA. IRS/IRB does, however, process waiver requests (Form 8508, Request for Waiver From Filing Information Returns Electronically) and extension of time to file requests (Form 8809, Application for Extension of Time To File Information Returns) for Forms W-2 (Copy A) and requests for an extension of time to furnish the employee copies of Form W-2. See Publication 1220, Specifications for Filing Forms 1097-BTC, 1098, 1099, 3921, 3922, 5498, 8935, and W-2G Electronically, for information on waivers and extensions of time.

.06 The following form instructions and publications provide more detailed filing procedures for certain information returns:

- 2010 Instructions for Forms W-2 and W-3,
- Instructions for Forms W-2c and W-3c (Rev. April 2010) , and
- Publication 1223, General Rules and Specifications for Substitute Forms W-2c and W-3c.

Section 2. What's New

.01 Logos, slogans, and advertising. Forms W-2 and W-3 are subject to annual review and possible change. The IRS has postponed the prohibition against including slogans, advertising, and logos on information returns and employee copies reporting wages paid during the 2010 calendar year that was announced in Rev. Proc. 2008-33 (the previous issue of Publication 1141). The prohibition is now in effect for reporting wages paid in 2011 and thereafter. Do not include logos, slogans or advertising on any information returns or employee copies filed in 2011 or thereafter, except as provided in Section 1.04. This revenue procedure may be revised to state other requirements of the IRS and the SSA regarding the preparation and use of substitute forms for Form W-2 and Form W-3 at a future date. If you have comments about the prohibition against including slogans, advertising, and logos on information returns and employee copies, send or email your comments to: Internal Revenue Service, Attn: Substitute Forms Program, SE:W:CAR:MP:T:T:SP, IR 6526, 1111 Constitution Ave., NW, Washington, DC, 20224, or Substituteforms@irs.gov.

.02 New box 12b on 2010 Form W-3. Because of the Hiring Incentives to Restore Employment (HIRE) Act, the total of new code CC is reported in new box 12b on the 2010 Form W-3. The total of deferred compensation amounts, previously reported in box 12, is now reported in new box 12a on Form W-3.

.03 Optional 2D barcoding for Forms W-2 and W-3. In response to feedback from the user community, the SSA (and the IRS) have added a barcoded version for the substitute Form W-2 and Form W-3 to the list of acceptable submission formats. This version is an optional alternative to the non-barcoded substitute Forms W-2 and W-3. Both versions are fully supported by the SSA. At this time, neither the IRS nor the SSA mandates the use of barcoded substitute forms. See new Section 1B.07 of Part B. Also, see Exhibits G and H for placement of the barcode.

Note. The data contained in the barcode must not differ from the data displayed on the form. The data in the barcode will be ignored and the data displayed on the form will be considered the submission.

.04 Substitute black-and-white forms name change. The Social Security Administration is changing the name “Laser Forms” to “Substitute black-and-white Copy A and W-3 forms.”

.05 SSA email address change. The Social Security Administration is changing the email address “laser.forms@ssa.gov” to “copy.a.forms@ssa.gov.” The address is changed throughout this document.

.06 SSA address change. The Attention line for the SSA Data Operations Center is now Substitute Black-and-White Copy A Forms, Room 348.

.07 New Part B, Section 3. We added a new Part B, Section 3, to provide guidelines for the electronic delivery of Form W-2 and W-2c recipient statements.

.08 Revised Part C, Section 4. Part C, Section 4, has been revised to reflect changes concerning IRS Publication 1796.

.09 Website reference change. The IRS website will now be referred to as irs.gov rather than www.irs.gov.

.10 Enterprise Computing Center name change. The Enterprise Computing Center – Martinsburg (ECC) is now referred to as The Internal Revenue Service/Information Returns Branch (IRS/IRB). Section 1.05, Part A, is updated.

.11 Editorial changes. We made editorial changes. Redundancies were eliminated as much as possible.

Section 3. General Rules for Paper Forms W-2 and W-3

.01 Employers not filing electronically must file paper Forms W-2 (Copy A) along with Form W-3 with the SSA by using either the official IRS form or a substitute form that exactly meets the specifications shown in Parts B and C of this revenue procedure.

Note. Substitute territorial forms (W-2AS, W-2GU, W-2VI) should also conform to the specifications as outlined in this revenue procedure. These forms require the form designation (“W-2AS,” “W-2GU,” “W-2VI”) on Copy A to be in black ink. If you are an employer in the Commonwealth of the Northern Mariana Islands, you must contact Department of Finance, Division of Revenue and Taxation, Commonwealth of the Northern Mariana Islands, P.O. Box 5234 CHRB, Saipan, MP 96950 or www.cnmidof.net to

get Form W-2CM and instructions for completing and filing the form. For information on Forms 499R-2/W-2PR, use this website: <http://www.hacienda.gobierno.pr>.

Employers who file with the SSA electronically or on paper may design their own statements to furnish to employees. These employee statements designed by employers must comply with the requirements shown in Parts B and C.

.02 Red-ink substitute forms that completely conform to the specifications contained in this revenue procedure may be privately printed without prior approval from the IRS or the SSA. Only the substitute black-and-white Copy A and W-3 forms need to be submitted to the SSA for approval, prior to their use (see Section 1B of Part B).

.03 As in the past, SSA-approved black-and-white Copy A and Form W-3 may be generated using a printer by following all guidelines and specifications (also see Section 1B of Part B). In general, regardless of the method of entering data, using black ink on Forms W-2 and W-3 provides better readability for processing by scanning equipment. Colors other than black are not easily read by the scanner and may result in delays or errors in the processing of Forms W-2 (Copy A) and W-3. The printing of the data should be centered within the boxes. The size of the variable data must be printed in a font no smaller than 10-point.

Note. With the exception of the identifying number, the year, the form number for Form W-3, and the corner register marks, the preprinted form layout for the red-ink Forms W-2 (Copy A) and W-3 must be in Flint J-6983 red OCR dropout ink or an exact match. (See Section 1A.03 of Part B.)

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

.05 Substitute red-ink forms should not be submitted to either the IRS or the SSA for specific approval. If you are uncertain of any specification and want clarification, do the following.

- (1) Submit a letter or email citing the specification to the appropriate address in Section 3.06 of Part A.
- (2) State your understanding of the specification.
- (3) Enclose an example (if appropriate) of how the form would appear if produced using your understanding.
- (4) Be sure to include your name, complete address, phone number, and if applicable, your email address with your correspondence.

.06 Any questions about the specifications, especially those for the red-ink Form W-2 (Copy A) and Form W-3, should be emailed to Substituteforms@irs.gov. Please enter "Substitute Forms" on the subject line. Or send your questions to:

Internal Revenue Service
Attn: Substitute Forms Program
SE:W:CAR:MP:T:T:SP, IR 6526
1111 Constitution Ave., NW
Washington DC 20224

Any questions about the substitute black-and-white Copy A and W-3 should be emailed to copy.a.forms@ssa.gov or sent to:

Social Security Administration
Data Operations Center
Attn: Substitute Black-and-White Copy A Forms, Room 348
1150 E. Mountain Drive
Wilkes-Barre PA 18702-7997

Note. You should receive a response within 30 days from either the IRS or the SSA.

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

.08 Separate instructions for Forms W-2 and W-3 are provided in the 2010 Instructions for Forms W-2 and W-3. Form W-3 should be used only to transmit paper Forms W-2 (Copy A). Form W-3 is a single sheet including only essential filing information. Be sure to make a copy of your completed Form W-3 for your records. Copies of the current year official IRS Forms W-2 and W-3, and the instructions for those forms, may be obtained from most IRS offices or by calling 1-800-829-3676. The IRS provides only cutsheet sets of Forms W-2 and cutsheets of Form W-3. The instructions and information copies of the forms may also be found at IRS.gov.

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

Section 4. General Rules for Filing Forms W-2 (Copy A) Electronically

.01 Employers must file Forms W-2 (Copy A) with the SSA electronically if they are required to file 250 or more for a calendar year unless the IRS grants a waiver. For details, get the 2010 Instructions for Forms W-2 and W-3. The SSA publication EFW2, Specifications for Filing Forms W-2 Electronically, contains specifications and procedures for electronic filing of Form W-2 information with the SSA. Employers are cautioned to obtain the most recent revision of EFW2 (and supplements) due to any subsequent changes in specifications and procedures.

.02 You may obtain a copy of the EFW2 by:

- Accessing the SSA website at:
www.socialsecurity.gov/employer/pub.htm.
- Writing to:

Social Security Administration
OCO, DES; Attn: Employer Reporting Services Center
300 North Greene Street
Baltimore MD 21290-0300
- Calling your local SSA Employer Services Liaison Officer (ESLO) (the ESLOs' phone numbers are available at:
www.socialsecurity.gov/employer/empcontacts.htm), or
- Calling the SSA's Employer Reporting Services staff, toll-free, at 1-800-772-6270.

.03 Electronic filers do not file a paper Form W-3. See the SSA publication EFW2 for guidance on transmitting Form W-2 (Copy A) information to SSA electronically.

.04 Employers filing fewer than 250 Forms W-2 are encouraged to electronically file Forms W-2 (Copy A) with the SSA. Doing so will enhance the timeliness and accuracy of forms processing.

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

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

Section 1A. Specifications for Red-Ink Substitute Form W-2 (Copy A) and Form W-3 Filed with the SSA

.01 The official IRS-printed red dropout ink Form W-2 (Copy A) and W-3 and their exact substitutes are referred to as red-ink in this revenue procedure. Employers may file substitute Forms W-2 (Copy A) and W-3 with the SSA. The substitute forms must be exact replicas of the official IRS forms with respect to layout and content because they will be read by scanner equipment.

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

• Acidity: Ph value, average, not less than.....	4.5
• Basis weight: 17 x 22 inch 500 cut sheets, pound.....	18-20
• Metric equivalent—gm./sq. meter (a tolerance of +5 pct. is allowed)	68-75
• Stiffness: Average, each direction, not less than—milligrams Cross direction	50
Machine direction	80
• Tearing strength: Average, each direction, not less than—grams	40
• Opacity: Average, not less than—percent	82
• Reflectivity: Average, not less than—percent	68

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

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

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

- Identifying number “22222” or “33333” at the top of the forms.
 - Tax year at the bottom of the forms.
 - The four (4) corner register marks on the forms.
 - The form identification number (“W-3”) at the bottom of Form W-3.
 - All the instructions below Form W-3 beginning with “Send this entire page....” line to the bottom of Form W-3.
- .04** The vertical and horizontal spacing for all federal payment and data boxes on Forms W-2 and W-3 must meet specifications. On Form W-3 and Form W-2 (Copy A), all the perimeter rules must be 1-point (0.014-inch), while all other rules must be one-half point (0.007-inch). Vertical rules must be parallel to the left edge of the form; horizontal rules parallel to the top edge.
- .05** The official red-ink Form W-3 and Form W-2 (Copy A) are 7.5 inches wide. Employers filing Forms W-2 (Copy A) with the SSA on paper must also file a Form W-3. Form W-3 must be the same width (7.5 inches) as the Form W-2. One Form W-3 is printed on a standard-size, 8.5 x 11-inch page. Two official Forms W-2 (Copy A) are contained on a single 8.5 x 11-inch page (exclusive of any snap-stubs).
- .06** The top, left, and right margins for the Form W-2 (Copy A) and Form W-3 are .5 inches (1/2 inch). All margins must be free of printing except for the words “DO NOT STAPLE” on red-ink Form W-3. The space between the two Forms W-2 (Copy A) is 1.33 inches.
- .07** The identifying numbers are “22222” for Form W-2 (Copies A (and 1)) and “33333” for Form W-3. No printing should appear anywhere near the identifying numbers.

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

.08 The depth of the individual scannable image on a page must be the same as that on the official IRS forms. The depth from the top line to the bottom line of an individual Form W-2 (Copy A) must be 4.17 inches and the depth from the top line to the bottom line of Form W-3 must be 4.67 inches. (See Exhibits A and B.)

.09 Continuous-pinfed Forms W-2 (Copy A) must be separated into 11-inch deep pages. The pinfed strips must be removed when Forms W-2 (Copy A) are filed with the SSA. The two Forms W-2 (Copy A) on the 11-inch page must not be separated (only the pages are to be separated (burst)). The words “Do Not Cut, Fold, or Staple Forms on This Page” must be printed twice between the two Forms W-2 (Copy A) in Flint red OCR dropout ink. All other copies (Copies 1, B, C, 2, and D) must be able to be distinguished and separated into individual forms.

.10 Box 12 of Form W-2 (Copy A) contains four entry boxes – 12a, 12b, 12c, and 12d. Do not make more than one entry per box. Enter your first code in box 12a (for example, enter Code D in box 12a, not 12d, if it is your first entry). If more than four items need to be reported in box 12, use a second Form W-2 to report the additional items (see “Multiple forms” in the 2010 Instructions for Forms W-2 and W-3). Do not report the same federal tax data to the SSA on more than one Form W-2 (Copy A). However, repeat the identifying information (employee’s name, address, and SSN; employer’s name, address, and EIN) on each additional form.

.11 The checkboxes in box 13 of Form W-2 (Copy A) must be .14 inches each; the space before the first checkbox is .20 inches; the spacing on each remaining side of the 3 checkboxes is .36 inches (see Exhibit A). The checkboxes in box b of Form W-3 must also be .14 inches (see Exhibit B for other dimensions in box b).

Note. More than 50% of an applicable checkbox must be covered by an “X.”

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

.13 The words "For Privacy Act and Paperwork Reduction Act Notice, see back of Copy D." must be printed in Flint red OCR dropout ink in the same location as on the official Form W-2 (Copy A). The words "For Privacy Act and Paperwork Reduction Act Notice, see back of Copy D of Form W-2." must be printed at the bottom of the page of Form W-3 in black ink.

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

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

.16 The back of substitute Form W-2 (Copy A) and Form W-3 must be free of all printing.

.17 All copies must be clearly legible. Fading must be minimized to assure legibility.

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

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

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

Section 1B. Specifications for Substitute Black-and-White Copy A and W-3 Forms Filed with the SSA

.01 The SSA-approved substitute black-and-white Forms W-2 (Copy A) and W-3 are referred to as substitute black-and-white Copy A and W-3. Specifications for the substitute black-and-white Copy A and W-3 are similar to the red-ink forms (Part B, Section 1A) except for the items that follow (see Exhibits E and F). Exhibits are samples only and must not be downloaded to meet tax obligations.

(1) Forms must be printed on 8.5 x 11-inch single-sheet paper only. There must be two Forms W-2 (Copy A) printed on a page. There must be no horizontal perforations between the two Forms W-2 (Copy A) on each page.

(2) All forms and data must be printed in nonreflective black ink only.

(3) The data and forms must be programmed to print simultaneously. Forms cannot be produced separately from wage data entries.

(4) The forms must not contain corner register marks.

(5) The forms must not contain any shaded areas, including those boxes that are entirely shaded on the red-ink forms.

(6) Identifying numbers on both Form W-2 ("22222") and Form W-3 ("33333") must be preprinted in 14-point Arial bold font or a close approximation.

(7) The form numbers ("W-2" and "W-3") must be in 18-point Arial font or a close approximation. The tax year (for example, "2010") on Forms W-2 (Copy A) and W-3 must be in 20-point Arial font or a close approximation.

(8) No part of the box titles or the data printed on the forms may touch any of the vertical or horizontal lines, nor should any of the data intermingle with the box titles. The data should be centered in the boxes.

(9) Do not print any information in the margins of the substitute black-and-white Copy A and W-3 forms (for example, do not print "DO NOT STAPLE" in the top margin of Form W-3).

(10) The word "Code" must not appear in box 12 on Form W-2 (Copy A).

(11) A 4-digit vendor code preceded by four zeros and a slash (for example, 0000/9876) must appear in 12-point Arial font, or a close approximation, under the tax year in place of the Cat. No. on Form W-2 (Copy A) and in the bottom right corner of the "For Official Use Only" box at the bottom of Form W-3. Do not display the form producer's EIN to the left of "Department of the Treasury." The vendor code will be used to identify the form producer.

(12) Do not print Catalog Numbers (Cat. No.) on either Form W-2 (Copy A) or Form W-3.

(13) Do not print the checkboxes in:

- Box (b) of Form W-3. The “X” should be programmed to be printed and centered directly below the applicable “Kind of Payer.”
- Box 13 of Form W-2 (Copy A). The “X” should be programmed to be printed and centered directly below the applicable box title.

(14) Do not print dollar signs. If there are no money amounts being reported, the entire field should be left blank.

(15) The space between the two Forms W-2 (Copy A) is 1.33 inches.

.02 You must submit samples of your substitute black-and-white Copy A and W-3 forms to the SSA. Only black-and-white substitute Forms W-2 (Copy A) and W-3 for tax year 2010 will be accepted for approval by the SSA. Questions regarding other red-ink forms (that is, red-ink Forms W-2c, W-3c, 1099 series, 1096, etc.) must be directed to the IRS only.

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

.04 To receive approval, you may first contact the SSA at copy.a.forms@ssa.gov to obtain a template and further instructions in PDF or Excel format. You may also send your 2010 sample substitute black-and-white Copy A and W-3 forms to:

Social Security Administration
Data Operations Center
Attn: Substitute Black-and-White Copy A Forms, Room 348
1150 E. Mountain Drive
Wilkes-Barre PA 18702-7997

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

.05 The 4-digit vendor code preceded by four zeros and a slash (0000/9876) must be preprinted on the sample substitute black-and-white Copy A and W-3 forms. Forms not containing a vendor code will be rejected and will not be submitted for testing or approval. If you have a valid vendor code provided to you through the National Association of Computerized Tax Processors, you should use that code. If you do not have a valid vendor code, contact the Social Security Administration at copy.a.forms@ssa.gov to obtain an SSA-issued code. (Additional information on vendor codes may be obtained from the SSA or the National Association of Computerized Tax Processors via email at president@nactp.org.)

Note. Vendor codes are only required by those companies producing the W-2 family of forms as part of a product for resale to be used by multiple employers and payroll professionals. Employers developing Forms W-2 or W-3 to be used only for their individual company do not require a vendor code.

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

.07 In response to feedback from the user community, the SSA (and the IRS) have added a 2-D barcoded version for the substitute Form W-2 and Form W-3 to the list of acceptable submission formats. This version is an optional alternative to the non-barcoded substitute Forms W-2 and W-3. Both versions are fully supported by the SSA. At this time, neither the IRS nor the SSA mandates the use of 2-D barcoded substitute forms.

Note. The data contained in the barcode must not differ from the data displayed on the form. The data in the barcode will be ignored and the data displayed on the form will be considered the submission.

To get the barcode information:

- See the SSA’s BSO website at <http://www.socialsecurity.gov/bsa>,
 - Get the pdf version of the specifications at copy.a.forms@ssa.gov,
 - Download the “TY 10 Substitute W3/W2 2-D Barcoding Standards” from <http://www.socialsecurity.gov/employer/subBar-CodeStd.pdf>
- Exhibits G and H show the placement for the 2-D barcodes for Forms W-2 and W-3.

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

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

.01 All employers (including those who file electronically) must furnish employees with at least two copies of Form W-2 (three or more for employees required to file a state, city, or local income tax return). The following rules are guidelines for preparing employee copies.

The dimensions of these copies (Copies B, C, and 2), but not Copy A, may differ from the dimensions of the official IRS form to allow space for reporting additional information, including additional entries such as withholding for health insurance, union dues, bonds, or charity in box 14. The limitation of a maximum of four items in box 12 of Form W-2 applies only to Copy A, which is filed with the SSA.

Note. Payee statements (Copies B, C, and 2 of Form W-2) may be furnished electronically if employees give their consent (as described in Treasury Regulations Section 31.6051-1(j)). See also Publication 15-A, Employer's Supplemental Tax Guide, and new Section 3 of Part B.

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

Note. The maximum and minimum size specifications in this document are for tax year 2010 only and may change in future years.

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

.04 The paper for all copies must be white and printed in black ink. The substitute Copy B, which employees are instructed to attach to their federal income tax returns, should be at least 9-pound paper (basis 17 x 22-500). Other copies furnished to employees should also be at least 9-pound paper (basis 17 x 22-500) unless a state, city, or local government provides other specifications.

.05 Employee copies of Form W-2 (Copies B, C, and 2), including those that are printed on a single sheet of paper, must be easily separated. The best method of separation is to provide perforations between the individual copies. Each copy should be easily distinguished whatever method of separation is used.

Note. Perforation does not apply to printouts of copies of Forms W-2 that are furnished electronically to employees (as described in Treasury Regulations Section 31.6051-1(j)). However, these employees should be cautioned to carefully separate the copies of Form W-2. See Publication 15-A, Employer's Supplemental Tax Guide, and new Section 3 of Part B for information on electronically furnishing Forms W-2 to employees.

.06 Interleaved carbon and chemical transfer paper employee copies must be clearly legible. Fading must be minimized to assure legibility.

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

.08 All substitute employee copies must contain boxes, box numbers, and box titles that match the official IRS Form W-2. Boxes that do not apply can be deleted. However, certain core boxes must be included. The placement, numbering, and size of this information is specified as follows:

- The items and box numbers that constitute the core data are:

Box 1 — Wages, tips, other compensation,

Box 2 — Federal income tax withheld,

Box 3 — Social security wages,

Box 4 — Social security tax withheld,

Box 5 — Medicare wages and tips, and

Box 6 — Medicare tax withheld.

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

- The core data boxes (1 through 6) must be placed in the upper right of the form. Substitute vertical-format copies may have the core data across the top of the form (see Exhibit D). Boxes or other information will definitely not be permitted to the right of the core data.
- The form title, number, or copy designation (B, C, or 2) may be at the top of the form. Also, a reversed or blocked-out area to accommodate a postal permit number or other postal considerations is allowed in the upper-right.
- Boxes 1 through 6 must each be a minimum of 1 1/8 inches wide x 1/4 inch deep.
- Other required boxes are:
 - a) Employee's social security number,
 - b) Employer identification number (EIN),
 - c) Employer's name, address, and ZIP code,
 - e) Employee's name, and
 - f) Employee's address and ZIP code.

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

Note. Box d ("Control number") is not required.

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

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

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

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

.11 The tax year (for example, 2010) must be clearly printed on all copies of substitute Form W-2. It is recommended (but not required) that this information be in the middle at the bottom of the Form W-2. The use of 24-pt. OCR-A font is recommended (but not required).

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

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

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

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

Local information is included in:

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

- Box 20 (Locality name)

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

.15 Employers may enter more than four codes in box 12 of substitute Copies B, C, and 2 (and 1 and D) of Form W-2, but each entry must use Codes A-CC (see the 2010 Instructions for Forms W-2 and W-3).

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

.17 Employers may use box 14 for any other information that they wish to give to their employees. Each item must be labeled. (See the instructions for box 14 in the 2010 Instructions for Forms W-2 and W-3.)

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

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

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

Note. An employer does not have to notify any employee who claimed exemption from withholding on Form W-4, Employee’s Withholding Allowance Certificate, for the calendar year.

Section 3. Electronic Delivery of Form W-2 and W-2c Recipient Statements

.01 If you are required to furnish a written statement (Copy B or an acceptable substitute) to a recipient, then you may furnish the statement electronically instead of on paper. This includes furnishing the statement to recipients of Forms W-2 and W-2c.

If you meet the requirements listed below, you are treated as furnishing the statement timely.

.02 The recipient must consent in the affirmative and not have withdrawn the consent before the statement is furnished. The consent by the recipient must be made electronically in a way that shows that he or she can access the statement in the electronic format in which it will be furnished.

You must notify the recipient of any hardware or software changes prior to furnishing the statement. A new consent to receive the statement electronically is required after the new hardware or software is put into service.

Prior to furnishing the statements electronically, you must provide the recipient a statement with the following Information prominently displayed:

- If the recipient does not consent to receive the statement electronically, a paper copy will be provided.
- The scope and duration of the consent. For example, whether the consent applies to every year the statement is furnished or only until January 31 immediately following the date of the consent.
- How to obtain a paper copy after giving consent.
- How to withdraw the consent. The consent may be withdrawn at any time by furnishing the withdrawal in writing (electronically or on paper) to the person whose name appears on the statement. Confirmation of the withdrawal also will be in writing (electronically or on paper).
- Notice of termination. The notice must state under what conditions the statements will no longer be furnished to the recipient.
- Procedures to update the recipient’s information.
- A description of the hardware and software required to access, print and retain a statement, and a date the statement will no longer be available on the website.

.03 Additionally, you must:

- Ensure the electronic format contains all the required information and complies with the guidelines in this document.
- If posting the statement on a website, post it for the recipient to access on or before the January 31 due date through October 15 of that year.
- Inform the recipient, in person, electronically or by mail, of the posting and how to access and print the statement.
For more information, see Regulations section 31.6051-1(j).

Part C. Additional Instructions

Section 1. Additional Instructions for Form Printers

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

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

Note. Electronic filers do not submit either red-ink or substitute black-and-white paper Form W-2 (Copy A) or Form W-3 to the SSA.

.03 Substitute forms (red-ink or substitute black-and-white Copy A or W-3) do not require a copy to be retained by employers (Copy D of Form W-2). However, employers must be prepared to verify or duplicate the information if it is requested by the IRS or the SSA. Paper filers who do not keep a Form W-2 (Copy D) should be able to generate a facsimile of Form W-2 (Copy A) in case of loss.

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

.05 You must provide instructions similar to those contained on the back of Copies B, C, and 2 of the official IRS Form W-2 to each employee. You may print them on the back of the substitute Copies B, C, and 2 or provide them to employees on a separate statement. You do not need to use the back of Copy 2. If you do not use Copy 2, you may include all the information that appears on the back of the official Copies B, C, and 2 on the back of your substitute Copies B and C only. As an example, you may use the “Note” on the back of the official Copy C as the dividing point between the text for your substitute Copies B and C. Do not print these instructions on the back of Copy 1. Any Forms W-2 (Copy A) and W-3 that are filed with the SSA must have no printing on the reverse side.

Section 2. Instructions for Employers

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

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

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

.03 Form W-2 (Copy A) requires decimal entries for wage data. Dollar signs should not be printed with money amounts on the Forms W-2 (Copy A) and W-3.

.04 The employer must provide a machine-scannable Form W-2 (Copy A). The employer must also provide employee copies (Copies B, C, and 2) that are legible and able to be photocopied (by the employee). Do not print any data in the top margin of the payee copies of the forms.

.05 Any printing in box d (Control number) on Form W-2 or box a on Form W-3 may not touch any vertical or horizontal lines and should be centered in the box.

.06 The filer’s employer identification number (EIN) must be entered in box b of Form W-2 and box e of Form W-3. The EIN entered on Form(s) W-2 (box b) and Form W-3 (box e) must be the same as on Forms 941, 943, 944, CT-1, Schedule H (Form 1040), or any other corresponding forms filed with the IRS. Be sure to use EIN format (00-0000000) rather than SSN format (000-00-0000).

.07 The employer’s name, address, and EIN may be preprinted.

Section 3. OMB Requirements for Both Red-Ink and Black-and-White Copy A and W-3 Substitute Forms

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

- The Office of Management and Budget (OMB) approves all IRS tax forms that are subject to the Act.
- Each IRS form contains (in or near the upper right corner) the OMB approval number, if assigned. (The official OMB numbers may be found on the official IRS printed forms and are also shown on the forms in Exhibits A, B, C, E, and F.)
- Each IRS form (or its instructions) states:
 - (1) Why the IRS needs the information,
 - (2) How it will be used, and
 - (3) Whether or not the information is required to be furnished to the IRS.
- .02 This information must be provided to any users of official or substitute IRS forms or instructions.
- .03 The OMB requirements for substitute IRS Form W-2 (Copy A) and Form W-3 are the following.
- Any substitute form or substitute statement to a recipient must show the OMB number as it appears on the official IRS form.
- The OMB number (1545-0008) must appear exactly as shown on the official IRS form.
- For any copy of Form W-2 other than Copy A, the OMB number must use one of the following formats:
 - (1) OMB No. 1545-0008 (preferred) or
 - (2) OMB # 1545-0008 (acceptable).
- .04 Any substitute Form W-2 (Copy A only) must state “For Privacy Act and Paperwork Reduction Act Notice, see back of Copy D.” Any substitute Form W-3 must state “For Privacy Act and Paperwork Reduction Act Notice, see back of Copy D of Form W-2.” If no instructions are provided to users of your forms, you must furnish them with the exact text of the Privacy Act and Paperwork Reduction Act Notice.

Section 4. Reproducible Copies of Forms

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

- Accessing IRS.gov.
- Ordering IRS Tax Products on DVD (Publication 1796).
Only contact the IRS, not the SSA, for forms.

Note. Many IRS forms are provided at IRS.gov and on the IRS Tax Products on DVD. But copies of Form W-2 (Copy A) and Form W-3 cannot be used for filing with the SSA when obtained by these methods because the forms do not meet the specific printing specifications as described in this publication. Copies of Forms W-2 and W-3 obtained from these sources are for information purposes only.

.02 The DVD contains approximately 2,800 tax forms and publications for small businesses, return preparers, and others who frequently need current or prior year tax products. Most current tax forms on the DVD may be filled in electronically, then printed out for submission and saved for recordkeeping. Other products on the DVD include the Internal Revenue Bulletins, Tax Supplements, and Internet resources and links for the tax professional.

For system requirements, contact the National Technical Information Service (NTIS) at <http://www.ntis.gov>. Prices are subject to change. The cost of the DVD if purchased from NTIS via IRS.gov at www.irs.gov/formspubs/article/0,,id=108660,00.html is \$30 (with no handling fee). If purchased using the following methods, the cost for each DVD is \$30 (plus a \$6 handling fee). These methods are:

- By phone – 1-877-CDFORMS (1-877-233-6767) (For IRS DVD purchase only),
- By fax – 703-605-6900 (For IRS DVD purchase only),

- By mail – to:
National Technical Information Service
5301 Shawnee Road
Alexandria, VA 22312

Section 5. Effect on Other Documents

.01 Revenue Procedure 2008-33, 2008-28 I.R.B. 93, dated July 14, 2008 (reprinted as Publication 1141, Revised 7-2008), is superseded.

List of Exhibits

Exhibit A — Form W-2 (Copy A) (Red-Ink) 2010

Exhibit B — Form W-3 (Red-Ink) 2010

Exhibit C — Form W-2 (Copy B) 2010

Exhibit D — Form W-2 Alternative Employee Copies (Illustrating Horizontal and Vertical Formats)

Exhibit E — Form W-2 (Copy A) (Substitute Black-and-White) 2010

Exhibit F — Form W-3 (Substitute Black-and-White) 2010

Exhibit G — Form W-2 (Copy A) (Substitute Black-and-White) 2010 (To Show 2-D Barcode Placement)

Exhibit H — Form W-3 (Substitute Black-and-White) 2010 (To Show 2-D Barcode Placement)

**Exhibit
A
Form
W-2
(Copy A)
(Red-Ink)
2010**

22222		a Employee's social security number		For Official Use Only OMB No. 1545-0008	
b Employer identification number (EIN)		1 Wages, tips, other compensation		2 Federal income tax withheld	
c Employer's name, address, and ZIP code		3 Social security wages		4 Social security tax withheld	
		5 Medicare wages and tips		6 Medicare tax withheld	
		7 Social security tips		8 Allocated tips	
d Control number		9 Advance EIC payment		10 Dependent care benefits	
e Employee's first name and initial		Last name		Suff.	
		11 Nonqualified plans		12a See instructions for box 12	
		13 Statutory employee		12b	
		Retirement plan		12c	
		Third-party sick pay		12d	
		14 Other			
f Employee's address and ZIP code		15 State Employer's state ID number		16 State wages, tips, etc.	
		17 State income tax		18 Local wages, tips, etc.	
		19 Local income tax		20 Locality name	

W-2 Wage and Tax Statement 2010
 Form Copy A For Social Security Administration — Send this entire page with Form W-3 to the Social Security Administration; photocopies are **not** acceptable.
 Department of the Treasury—Internal Revenue Service
 For Privacy Act and Paperwork Reduction Act Notice, see back of Copy D.

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

22222		a Employee's social security number		For Official Use Only OMB No. 1545-0008	
b Employer identification number (EIN)		1 Wages, tips, other compensation		2 Federal income tax withheld	
c Employer's name, address, and ZIP code		3 Social security wages		4 Social security tax withheld	
		5 Medicare wages and tips		6 Medicare tax withheld	
		7 Social security tips		8 Allocated tips	
d Control number		9 Advance EIC payment		10 Dependent care benefits	
e Employee's first name and initial		Last name		Suff.	
		11 Nonqualified plans		12a See instructions for box 12	
		13 Statutory employee		12b	
		Retirement plan		12c	
		Third-party sick pay		12d	
		14 Other			
f Employee's address and ZIP code		15 State Employer's state ID number		16 State wages, tips, etc.	
		17 State income tax		18 Local wages, tips, etc.	
		19 Local income tax		20 Locality name	

W-2 Wage and Tax Statement 2010
 Form Copy A For Social Security Administration — Send this entire page with Form W-3 to the Social Security Administration; photocopies are **not** acceptable.
 Department of the Treasury—Internal Revenue Service
 For Privacy Act and Paperwork Reduction Act Notice, see back of Copy D.

**Exhibit
B
Form
W-3
(Red-Ink)
2010**

DO NOT STAPLE

33333 a Control number <small>8.5" 1.65" 5.0"</small>		For Official Use Only <small>OMB No. 1545-0008</small>	
b Kind of Payer <div style="display: flex; justify-content: space-around;"> <div> <input type="checkbox"/> 941 Military <input type="checkbox"/> CT-1 <input type="checkbox"/> 943 Hshld. emp. <input type="checkbox"/> 944 Medicare govt. emp. <input type="checkbox"/> Third-party sick pay </div> </div>		1 Wages, tips, other compensation 2 Federal income tax withheld 3 Social security wages 4 Social security tax withheld 5 Medicare wages and tips 6 Medicare tax withheld 7 Social security tips 8 Allocated tips 9 Advance EIC payments 10 Dependent care benefits 11 Nonqualified plans 12a Deferred compensation 12b HIRE exempt wages and tips <small>333"</small>	
c Total number of Forms W-2 <small>1.6"</small>		d Establishment number <small>1.6"</small>	
e Employer identification number (EIN) <small>3.2"</small>		f Employer's name <small>7.5"</small>	
g Employer's address and ZIP code h Other EIN used this year		13 For third-party sick pay use only <small>4.67"</small>	
i State <small>6"</small>		14 Income tax withheld by payer of third-party sick pay	
Employer's state ID number <small>2.6"</small>		15 State wages, tips, etc. 16 State income tax 17 State income tax 18 Local wages, tips, etc. 19 Local income tax	
Contact person Email address		Telephone number Fax number <small>6.67"</small>	

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

Signature _____ Title _____ Date _____

Form W-3 Transmittal of Wage and Tax Statements 2010

Department of the Treasury
Internal Revenue Service

Send this entire page with the entire Copy A page of Form(s) W-2 to the Social Security Administration.
Do not send any payment (cash, checks, money orders, etc.) with Forms W-2 and W-3.

Reminder

Separate instructions. See the 2010 Instructions for Forms W-2 and W-3 for information on completing this form.

Purpose of Form

A Form W-3 Transmittal is completed only when paper Copy A of Form(s) W-2, Wage and Tax Statement, are being filed. Do not file Form W-3 alone. Do not file Form W-3 for Form(s) W-2 that were submitted electronically to the Social Security Administration (see below). All paper forms **must** comply with IRS standards and be machine readable. Photocopies are **not** acceptable. Use a Form W-3 even if only one paper Form W-2 is being filed. Make sure both the Form W-3 and Form(s) W-2 show the correct tax year and Employer Identification Number (EIN). Make a copy of this form and keep it with Copy D (For Employer) of Form(s) W-2 for your records.

Electronic Filing

The Social Security Administration (SSA) strongly suggests employers report Form W-3 and W-2 Copy A electronically instead of on paper. SSA provides two free options on its Business Services Online (BSO) website:

- **W-2 Online.** Use fill-in forms to create, save, print, and submit up to 20 Forms W-2 to SSA.

- **File Upload.** Upload wage files to SSA that you have created using payroll or tax software that formats the files according to SSA's *Specifications for Filing Form W-2 Electronically (EFV2)*.

For more information, go to www.socialsecurity.gov/employer and select "First Time Filers" or "Returning Filers" under "BEFORE YOU FILE."

When To File

Mail any paper Forms W-2 under cover of this Form W-3 Transmittal by February 28, 2011. Electronic fill-in forms or uploads are filed through SSA's Business Services Online (BSO) Internet site and will be on time if submitted by March 31, 2011.

Where To File Paper Forms


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

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

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

For Privacy Act and Paperwork Reduction Act Notice, see the back of Copy D of Form W-2.

**Exhibit
C
Form
W-2
(Copy B)
2010**

a Employee's social security number		Safe, accurate, FAST! Use		 Visit the IRS website at www.irs.gov/efile	
b Employer identification number (EIN)		1 Wages, tips, other compensation		2 Federal income tax withheld	
c Employer's name, address, and ZIP code		3 Social security wages		4 Social security tax withheld	
		5 Medicare wages and tips		6 Medicare tax withheld	
		7 Social security tips		8 Allocated tips	
d Control number		9 Advance EIC payment		10 Dependent care benefits	
e Employee's first name and initial Last name Surr.		11 Nonqualified plans		12a See instructions for box 12	
		13 Statutory employee Supplemental plan Third-party sick pay <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		12b	
		14 Other		12c	
				12d	
f Employee's address and ZIP code					
15 State Employer's state ID number		16 State wages, tips, etc.		17 State income tax	
				18 Local wages, tips, etc.	
				19 Local income tax	
				20 Locality name	

Form **W-2** Wage and Tax Statement **2010**
Copy B—To Be Filed With Employee's FEDERAL Tax Return.
 This information is being furnished to the Internal Revenue Service.

Department of the Treasury—Internal Revenue Service

Exhibit D Form W-2 Alternative Employee Copies

(Illustrating
Horizontal
and Vertical
Formats)

Form W-2 Wage and Tax Statement

a Employee's social security number			1 Wages, tips, other compensation		2 Federal income tax withheld	
b Employer identification number (EIN)			3 Social security wages		4 Social security tax withheld	
c Employer's name, address, and Zip code			5 Medicare wages and tips		6 Medicare tax withheld	
e Employee's name						
f Employee's address and ZIP code						
15 State Employer's state ID number		16 State wages, tips, etc.	17 State income tax	18 Local wages, tips, etc.	19 Local income tax	20 Locality name

Copy C For EMPLOYEE'S RECORDS.

2010

Department of the Treasury—Internal Revenue Service



Horizontal Format

Note: Exhibit D provides examples of employee copies of Form W-2 only. For examples of Copy A, see Exhibit A or Exhibit E. For the specifications of Copy A, which must be filed with the SSA, see Part B, sections 1A and 1B.

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

1 Wages, tips, other compensation		2 Federal income tax withheld	
3 Social security wages		4 Social security tax withheld	
5 Medicare wages and tips		6 Medicare tax withheld	
Employee's social security number			
Employer identification number (EIN)			
Employer's name, address, and Zip code			
Employee's name			
Employee's address and ZIP code			
15 State Employer's state ID number		18 Local wages, tips, etc.	
16 State wages, tips, etc.		19 Local income tax	
17 State income tax		20 Locality name	

Copy B To Be Filed With Employee's FEDERAL Tax Return.

Form W-2
Wage and Tax
Statement

2010



Department of the Treasury—
Internal Revenue Service

Vertical Format

**Exhibit
E
Form
W-2
(Copy A)**

(Substitute
Black-and-White)

2010

This form may be
subject to
change.

22222		Void <input type="checkbox"/>	a Employee's social security number		For Official Use Only ▶ OMB No. 1545-0008	
b Employer identification number (EIN)			1 Wages, tips, other compensation		2 Federal income tax withheld	
c Employer's name, address, and ZIP code			3 Social security wages		4 Social security tax withheld	
4.17"			5 Medicare wages and tips		6 Medicare tax withheld	
			7 Social security tips		8 Allocated tips	
d Control number			9 Advance EIC payment		10 Dependent care benefits	
e Employee's first name and initial		Last name	Suff.	11 Nonqualified plans		12a See instructions for box 12
1.9"		1.9"	3"	13 Statutory employee Retirement plan Third-party sick pay		12b
7.5"				14 Other		12c
						12d
f Employee's address and ZIP code						
15 State	Employer's state ID number	16 State wages, tips, etc.	17 State income tax	18 Local wages, tips, etc.	19 Local income tax	20 Locality name
4"	1.8"	1.2"	1.1"	1.2"	1.1"	.7"

W-2 Wage and Tax Statement **2010** Department of the Treasury—Internal Revenue Service
Form Copy A For Social Security Administration — Send this entire page with
 Form W-3 to the Social Security Administration; photocopies are **not** acceptable. **0000 / 9876 11"**
Do Not Cut, Fold, or Staple Forms on This Page

22222		Void <input type="checkbox"/>	a Employee's social security number		For Official Use Only ▶ OMB No. 1545-0008	
b Employer identification number (EIN)			1 Wages, tips, other compensation		2 Federal income tax withheld	
c Employer's name, address, and ZIP code			3 Social security wages		4 Social security tax withheld	
			5 Medicare wages and tips		6 Medicare tax withheld	
			7 Social security tips		8 Allocated tips	
d Control number			9 Advance EIC payment		10 Dependent care benefits	
e Employee's first name and initial		Last name	Suff.	11 Nonqualified plans		12a See instructions for box 12
				13 Statutory employee Retirement plan Third-party sick pay		12b
				14 Other		12c
						12d
f Employee's address and ZIP code						
15 State	Employer's state ID number	16 State wages, tips, etc.	17 State income tax	18 Local wages, tips, etc.	19 Local income tax	20 Locality name

W-2 Wage and Tax Statement **2010** Department of the Treasury—Internal Revenue Service
Form Copy A For Social Security Administration — Send this entire page with
 Form W-3 to the Social Security Administration; photocopies are **not** acceptable. **0000 / 9876**

Exhibit F
Form W-3
(Substitute Black-and-White)
2010
This form may be subject to change.

33333 a Control number 1.65"		For Official Use Only OMB No. 1545-0008 5.0"	
b Kind of Payer 941 Military 943 944 CT-1 Hshld. emp. Medicare govt. emp. Third-party sick pay 3.2"	1 Wages, tips, other compensation 2 Federal income tax withheld 3 Social security wages 4 Social security tax withheld 5 Medicare wages and tips 6 Medicare tax withheld 7 Social security tips 8 Allocated tips 9 Advance EIC payments 10 Dependent care benefits 11 Nonqualified plans 12a Deferred compensation 13 For third-party sick pay use only 12b HIRE exempt wages and tips 14 Income tax withheld by payer of third-party sick pay 15 State Employer's state ID number 16 State wages, tips, etc. 17 State income tax 18 Local wages, tips, etc. 19 Local income tax Contact person Telephone number For Official Use Only Email address Fax number		5"
c Total number of Forms W-2 1.6"		d Establishment number 1.6"	
e Employer identification number (EIN) 3.2"		2.15" 2.15"	
f Employer's name 7.5"		4.67"	
g Employer's address and ZIP code h Other EIN used this year		0000/9876	

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

Signature Title Date

Form **W-3 Transmittal of Wage and Tax Statements** **2010** Department of the Treasury Internal Revenue Service

Send this entire page with the entire Copy A page of Form(s) W-2 to the Social Security Administration.
Do not send any payment (cash, checks, money orders, etc.) with Forms W-2 and W-3.

Reminder

Separate instructions. See the 2010 Instructions for Forms W-2 and W-3 for information on completing this form.

Purpose of Form

A Form W-3 Transmittal is completed only when paper Copy A of Form(s) W-2, Wage and Tax Statement, are being filed. Do not file Form W-3 alone. Do not file Form W-3 for Form(s) W-2 that were submitted electronically to the Social Security Administration (see below). All paper forms **must** comply with IRS standards and be machine readable. Photocopies are **not** acceptable. Use a Form W-3 even if only one paper Form W-2 is being filed. Make sure both the Form W-3 and Form(s) W-2 show the correct tax year and Employer Identification Number (EIN). Make a copy of this form and keep it with Copy D (For Employer) of Form(s) W-2 for your records.

Electronic Filing

The Social Security Administration (SSA) strongly suggests employers report Form W-3 and W-2 Copy A electronically instead of on paper. SSA provides two free options on its Business Services Online (BSO) website.

• **W-2 Online.** Use fill-in forms to create, save, print, and submit up to 20 Forms W-2 to SSA.

• **File Upload.** Upload wage files to SSA that you have created using payroll or tax software that formats the files according to SSA's *Specifications for Filing Form W-2 Electronically (EFW2)*.

For more information, go to www.socialsecurity.gov/employer and select "First Time Filers" or "Returning Filers" under "BEFORE YOU FILE."

When To File

Mail any paper Forms W-2 under cover of this Form W-3 Transmittal by February 28, 2011. Electronic fill-in forms or uploads are filed through SSA's Business Services Online (BSO) Internet site and will be on time if submitted by March 31, 2011.

Where To File Paper Forms

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

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

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

For Privacy Act and Paperwork Reduction Act Notice, see the back of Copy D of Form W-2.

**Exhibit
G
Form
W-2****2010**(To Show 2-D
Barcode
Placement)For Official Use Only ▶
OMB No. 1545-0008**2010****Form W-2 Wage & Tax Statement**Department of the Treasury—Internal Revenue Service **0000/9876**

22222 Void <input type="checkbox"/> a Employee's social security number		Reserved for 2D Barcode			
b Employer identification number (EIN)	c Control Number			1 Wages, tips, other compensation	2 Federal income tax withheld
d Employer's name, address, and ZIP code				3 Social security wages	4 Social security tax withheld
				5 Medicare wages and tips	6 Medicare tax withheld
		7 Social security tips	8 Allocated tips		
Copy A For Social Security Administration - Send this entire page with Form W-3 to the Social Security Administration; photocopies are not acceptable. For Privacy Act and Paperwork Reduction Act Notice, see back of Copy D.		9 Advance EIC payment	10 Dependent care benefits		
		11 Nonqualified plans	12a See instructions for box 12		
		13 Statutory employee Retirement plan Third-party sick pay	12b		
e Employee's first name and initial Last name Suff.		14	12c		
f Employee's address and ZIP code			12d		
15 State Employer's state ID number	16 State wages, tips, etc.	17 State income tax	18 Local wages, tips, etc.	19 Local income tax	20 Locality name

Do Not Cut, Fold, or Staple Forms on This Page — Substitute Black-and-White Form W-2For Official Use Only ▶
OMB No. 1545-0008**2010****Form W-2 Wage & Tax Statement**Department of the Treasury—Internal Revenue Service **0000/9876**

22222 Void <input type="checkbox"/> a Employee's social security number		Reserved for 2D Barcode			
b Employer identification number (EIN)	c Control Number			1 Wages, tips, other compensation	
d Employer's name, address, and ZIP code				3 Social security wages	4 Social security tax withheld
				5 Medicare wages and tips	6 Medicare tax withheld
		7 Social security tips	8 Allocated tips		
Copy A For Social Security Administration - Send this entire page with Form W-3 to the Social Security Administration; photocopies are not acceptable. For Privacy Act and Paperwork Reduction Act Notice, see back of Copy D.		9 Advance EIC payment	10 Dependent care benefits		
		11 Nonqualified plans	12a See instructions for box 12		
		13 Statutory employee Retirement plan Third-party sick pay	12b		
e Employee's first name and initial Last name Suff.		14	12c		
f Employee's address and ZIP code			12d		
15 State Employer's state ID number	16 State wages, tips, etc.	17 State income tax	18 Local wages, tips, etc.	19 Local income tax	20 Locality name

Exhibit H Form W-3

(To Show 2-D
Barcode
Placement)

33333		a Control number		For Official Use Only ▶ OMB No. 1545-0008	
b Kind of Payer	941 Military	943	944	1 Wages, tips, other compensation	2 Federal income tax withheld
	CT-1	Hshld. emp.	Medicare govt. emp.	3 Social security wages	4 Social security tax withheld
c Total number of Forms W-2		d Establishment number		5 Medicare wages and tips	6 Medicare tax withheld
e Employer identification number (EIN)				7 Social security tips	8 Allocated tips
f Employer's name				9 Advance EIC payments	10 Dependent care benefits
g Employer's address and ZIP code				11 Nonqualified plans	12a Deferred compensation
				13 For third-party sick pay use only	12b HIRE exempt wages and tips
				14 Income tax withheld by payer of third-party sick pay	
h Other EIN used this year					
15 State	Employer's state ID number			16 State wages, tips, etc.	17 State income tax
				18 Local wages, tips, etc.	19 Local income tax
Contact person				Telephone number	For Official Use Only
Email address				Fax number	
0000/9876					

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

Signature ▶

Title ▶

Date ▶

Form **W-3 Transmittal of Wage and Tax Statements** 2010

Department of the Treasury
Internal Revenue Service

Send this entire page with the entire Copy A page of Form(s) W-2 to the Social Security Administration.

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

Reminder

Separate instructions. See the 2010 Instructions for Forms W-2 and W-3 for information on completing this form.

Purpose of Form

A Form W-3 Transmittal is completed only when paper Copy A of Form(s) W-2, Wage and Tax Statement, are being filed. Do not file Form W-3 alone. Do not file Form W-3 for Form(s) W-2 that were submitted electronically to the Social Security Administration (see below). All paper forms **must** comply with IRS standards and be machine readable. Photocopies are **not** acceptable. Use a Form W-3 even if only one paper Form W-2 is being filed. Make sure both the Form W-3 and Form(s) W-2 show the correct tax year and Employer Identification Number (EIN). Make a copy of this form and keep it with Copy D (For Employer) of Form(s) W-2 for your records.

Electronic Filing

The Social Security Administration (SSA) strongly suggests employers report Form W-3 and W-2 Copy A electronically instead of on paper. SSA provides two free options on its Business Services Online (BSO) website:

- **W-2 Online.** Use fill-in forms to create, save, print, and submit up to 20 Forms W-2 to SSA.
- **File Upload.** Upload wage files to SSA that you have created using payroll or tax software that formats the files according to SSA's *Specifications for Filing Form W-2 Electronically (EFW2)*.

For Privacy Act and Paperwork Reduction Act Notice, see the back of Copy D of Form W-2.

Reserved for
2D Barcode

For more information, go to www.socialsecurity.gov/employer and select "First Time Filers" or "Returning Filers" under "BEFORE YOU FILE."

When To File

Mail any paper Forms W-2 under cover of this Form W-3 Transmittal by February 28, 2011. Electronic fill-in forms or uploads are filed through SSA's Business Services Online (BSO) Internet site and will be on time if submitted by March 31, 2011.

Where To File Paper Forms

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

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

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

Substitute Black-and-White Form W3 (Revised 2010)

Note. This revenue procedure will be reproduced as the next revision of IRS Publication 1223, General Rules and Specifications for Substitute Forms W-2c and W-3c.

Special Note About A New Revision of Publication 1223. Because Form W-3c is being revised for release in early 2011 due to recent legislative changes, the Form W-3c revision in this revenue procedure (Publication 1223, November 2010 Revision) will be obsolete at that time. Because employers are going to need to use the early 2011 revision of Form W-3c as soon as it is released and to prevent employers and print vendors from over-ordering or over-printing a quantity of forms, Publication 1223 will also be revised again in early 2011.

Rev. Proc. 2010-43

TABLE OF CONTENTS

SECTION 1 - PURPOSE	738
SECTION 2 - WHAT'S NEW	739
SECTION 3 - FILING FORMS W-2C AND W-3C ELECTRONICALLY	740
SECTION 4 - SPECIFICATIONS FOR RED-INK SUBSTITUTE FORMS W-2C (COPY A) AND W-3C FILED WITH THE SSA	740
SECTION 5 - SPECIFICATIONS FOR SUBSTITUTE BLACK-AND-WHITE COPY A AND W-3C FORMS FILED WITH THE SSA	743
SECTION 6 - REQUIREMENTS FOR SUBSTITUTE PRIVATELY-PRINTED FORMS W-2C (COPIES B, C, AND 2) FURNISHED TO EMPLOYEES.....	744
SECTION 7 - ELECTRONIC DELIVERY OF FORM W-2 AND W-2C RECIPIENT STATEMENTS	745
SECTION 8 - INSTRUCTIONS FOR EMPLOYERS	746
SECTION 9 - OMB REQUIREMENTS FOR BOTH RED-INK AND BLACK-AND-WHITE COPY A AND W-3C SUBSTITUTE FORMS	747
SECTION 10 - REPRODUCIBLE COPIES OF FORMS	747
SECTION 11 - EFFECT ON OTHER DOCUMENTS.....	748
SECTION 12 - EXHIBITS.....	748

Section 1 - Purpose

.01 The purpose of this revenue procedure is to state the requirements of the Internal Revenue Service (IRS) and the Social Security Administration (SSA) regarding the preparation and use of substitute forms for Form W-2c, Corrected Wage and Tax Statement, and Form W-3c, Transmittal of Corrected Wage and Tax Statements.

.02 The official IRS Form W-2c is a six-part form and the official IRS Form W-3c is a one-part form. Red-ink substitute forms that completely conform to the specifications contained in this document may be privately-printed without the prior approval of the IRS or the SSA. Only the substitute black-and-white Copy A of Form W-2c and substitute black-and-white Form W-3c need to be submitted to the SSA for approval.

Note. Both paper substitute forms filed with the SSA, and those furnished to employees, that do not totally conform to these specifications are not acceptable. Forms W-2c (Copy A) and Forms W-3c that do not conform may be returned. In addition, penalties may be assessed by the IRS.

.03 Substitute red-ink forms should not be submitted to either the IRS or the SSA for specific approval. If you are uncertain of any specification and want clarification, do the following.

- (1) Submit a letter to the appropriate address below citing the specification.
- (2) State your understanding of the specification.

(3) Enclose an example (if appropriate) of how the form would appear if produced using your understanding.

(4) Be sure to include your name, complete address, phone number, and, if applicable, your email address with your correspondence.

.04 Any questions about the specifications, especially those for the red-ink Form W-2c (Copy A) and Form W-3c, should be emailed to substituteforms@irs.gov. Please enter “Substitute Forms” on the subject line. Or send your questions to:

Internal Revenue Service
Attn: Substitute Forms Program
SE:W:CAR:MP:T:T:SP, IR 6526
1111 Constitution Ave., NW
Washington DC 20224

Any questions about the substitute black-and-white Copy A and W-3c should be emailed to copy.a.forms@ssa.gov or sent to:

Social Security Administration
Data Operations Center
Attn: Substitute Black-and-White Copy A Forms, Room 348
1150 E. Mountain Drive
Wilkes-Barre PA 18702-7997

Note. You should receive a response from either the IRS or the SSA within 30 days.

.05 The Internal Revenue Service/Information Returns Branch (IRS/IRB) maintains a centralized customer service call site to answer questions related to information returns (Forms W-2, W-3, W-2c, W-3c, 1099 series, 1096, etc.). You can reach the call site at 1-866-455-7438 (toll-free) or 304-263-8700 (not a toll-free number). The Telecommunication Device for the Deaf (TDD) number is 304-579-4827 (not a toll-free number). The hours of operation are Monday through Friday from 8:30 a.m. to 4:30 p.m. Eastern time. You may also send questions to the call site via the Internet at mccirp@irs.gov. IRS/IRB does not process information returns which are filed on paper forms.

.06 The following form instructions and publications provide more detailed filing procedures for certain information returns.

- Instructions for Forms W-2 and W-3.
- Instructions for Forms W-2c and W-3c (Rev. April 2010).
- Publication 1141, General Rules and Specifications for Substitute Forms W-2 and W-3.

Section 2 - What's New

.01 We are revising this revenue procedure, which will be reproduced as Publication 1223, General Rules and Specifications for Substitute Forms W-2c and W-3c, because Form W-3c was revised in April 2010. Publication 1223 will only be available online at IRS.gov. Some changes have been made to Form W-3c since it was previously revised in February 2009. The changes include the following.

- Because of the Hiring Incentives to Restore Employment (HIRE) Act, the corrected total of new code CC amounts is reported in new box 12b on Form W-3c. The corrected total of deferred compensation amounts, previously reported in box 12, is now reported in new box 12a on Form W-3c.
- Parentheses defining the “Telephone number” and the “Fax number” were deleted from Form W-3c.

.02 The following changes have been made to Publication 1223 since the last revision (December 2009). The major changes include the following.

- **Substitute forms name change.** The Social Security Administration is changing the name “Laser Forms” to “Substitute black-and-white Copy A and W-3c forms.”
- **SSA email address change.** The Social Security Administration is changing the email address “laser.forms@ssa.gov” to “copy.a.forms@ssa.gov.” The address is changed throughout this document.
- **SSA address change.** The Attention line for the SSA Data Operations Center is now “Substitute Black-and-White Copy A Forms, Room 348.”

- **Website reference change.** The IRS website will now be referred to as IRS.gov rather than www.irs.gov.
- **Enterprise Computing Center name change.** The Enterprise Computing Center – Martinsburg (ECC) is now referred to as The Internal Revenue Service/Information Returns Branch (IRS/IRB).
- **New Section 7.** We added a new Section 7 to provide guidelines for the electronic delivery of Form W-2 and W-2c recipient statements.
- **Revised Section 10.** Section 10 has been revised to reflect changes concerning IRS Publication 1796.
- **Editorial changes.** We made editorial changes. Redundancies were eliminated as much as possible.

Section 3 - Filing Forms W-2c and W-3c Electronically

.01 Employers must file electronically with the SSA if they file 250 or more Forms W-2c (Copy A) during a calendar year unless the IRS granted you a waiver. For details, see the Instructions for Forms W-2c and W-3c. SSA publication 42-014, Specifications for Filing Forms W-2c Electronically (EFW2C), contains specifications and procedures for filing Forms W-2c. Employers are cautioned to obtain the most recent revision of EFW2C (and supplements) due to any subsequent changes in specifications and procedures.

Note. For purposes of the electronic filing requirement, only Forms W-2c for the immediate prior year are taken into account.

.02 You may obtain a copy of the EFW2C by:

- Accessing the SSA website at www.socialsecurity.gov/employer/pub.htm.
- Writing to:

Social Security Administration
OCO, DES; Attn: Employer Reporting Services Center
300 North Greene Street
Baltimore MD 21290-0300
- Calling your local SSA Employer Services Liaison Officer (ESLO). Their phone numbers are available at www.socialsecurity.gov/employer/empcontacts.htm.
- Calling the SSA's Employer Reporting Services Branch at 1-800-772-6270.

.03 Electronic filers do not file a paper Form W-3c. See the SSA publication EFW2C for guidance on transmitting Form W-2c (Copy A) information to the SSA electronically.

.04 Employers filing fewer than 250 Forms W-2c are encouraged to file electronically with the SSA. Doing so will enhance the timeliness and accuracy of forms processing.

.05 Employers who do not comply with the electronic filing requirements for Form W-2c (Copy A) and who are not granted a waiver by the IRS may be subject to penalties. Employers who file Form W-2c information with the SSA electronically must not send the same data to the SSA on paper Forms W-2c (Copy A). Any duplicate reporting may subject filers to unnecessary contacts by the SSA or the IRS.

Section 4 - Specifications for Red-Ink Substitute Forms W-2c (Copy A) and W-3c Filed With the SSA

.01 The official IRS-printed red dropout ink Form W-2c (Copy A) and W-3c and their exact substitutes are referred to as red-ink in this revenue procedure. Employers may file substitute Forms W-2c (Copy A) and W-3c with the SSA. The substitute forms must be exact replicas of the official IRS forms with respect to layout and content because they will be read by scanner equipment.

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

Acidity: Ph value, average, not less than	4.5
Basis weight: 17 x 22 inch 500 cut sheets, pound	18-20
Metric equivalent—gm./sq. meter (a tolerance of +5 pct. is allowed)	68-75

Stiffness: Average, each direction, not less than—milligrams	50
Cross direction	80
Machine direction	
Tearing strength: Average, each direction, not less than—grams	40
Opacity: Average, not less than—percent	82
Reflectivity: Average, not less than—percent	68
Thickness: Average—inch	0.0038
Metric equivalent—mm. (a tolerance of +0.0005 inch (0.0127 mm) is allowed) Paper cannot vary more than 0.0004 inch (0.0102 mm) from one edge to the other	0.097
Porosity: Average, not less than—seconds	10
Finish (smoothness): Average, each side—seconds	20-55
(for information only) the Sheffield equivalent—units	170-d200
Dirt: Average, each side, not to exceed—parts per million	8

Color and paper quality for Copy A of Form W-2c (cut sheets and continuous pin-fed forms) and Form W-3c, as specified by JCP Code 0-25 dated November 29, 1978, must be white 100% bleached chemical wood, optical character recognition (OCR) bond. The contractor must initiate or have a quality control program to ensure OCR ink density.

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

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

- Identifying number “44444” or “55555” at the top of the forms.
- The four (4) corner register marks on the forms.
- The form identification number (“W-3c”) at the bottom of Form W-3c.
- All the instructions below Form W-3c beginning with “Purpose of Form” line to the bottom of Form W-3c.

.04 The vertical and horizontal spacing on Forms W-2c and W-3c must meet specifications. See Exhibits A and B.

- On Form W-3c and Form W-2c (Copy A), all the perimeter rules must be 1-point (0.014-inch), while all other rules must be one-half point (0.007-inch). Vertical rules must be parallel to the left edge of the form; horizontal rules parallel to the top edge.
- The left and top margins on Form W-2c (Copy A) and Form W-3c must be .5 inches. The width of a substitute Form W-2c (Copy A) or W-3c must be 7.5 inches. See Exhibits A and B.
- Each column on Form W-2c (Copy A) and Form W-3c must measure 1.9 inches in width.

.05 The official red-ink Form W-3c and Form W-2c (Copy A) are 7.5 inches wide. Employers filing Forms W-2c (Copy A) with the SSA on paper must also file a Form W-3c. Form W-3c must be the same width (7.5 inches) as the Form W-2c. One Form W-2c or Form W-3c is contained on a standard-size, 8.5 x 11-inch page.

.06 The top, left, and right margins for the Form W-2c (Copy A) and Form W-3c are .5 inches (1/2 inch). All margins must be free of printing except for the words “DO NOT CUT, FOLD, OR STAPLE THIS FORM” on red-ink Form W-2c (Copy A) or “DO NOT CUT, FOLD, OR STAPLE” on red-ink Form W-3c.

.07 The identifying numbers are “44444” for Form W-2c and “55555” for Form W-3c. No printing should appear anywhere near the identifying numbers.

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

.08 Continuous pin-fed Forms W-2c (Copy A) must be separated into 11-inch deep pages. The pin-fed strips must be removed when Forms W-2c (Copy A) are filed with the SSA.

.09 Box 12 of Form W-2c (Copy A) contains four entry boxes – 12a, 12b, 12c, and 12d. Do not make more than one entry per box. Enter your first code in box 12a (for example, enter Code D in box 12a, not 12d, if it is your first entry). If more than four items need to be reported in box 12, use a second Form W-2c to report the additional items. Do not report the same federal tax data to the SSA on

more than one Form W-2c (Copy A). However, repeat the identifying information (employee's name, address, and SSN; employer's name, address, and EIN) on each additional form.

.10 The checkboxes in box 13 of Form W-2c (Copy A) must be .14 inches each; the space before the first checkbox is .20 inches; the spacing on each remaining side of the three checkboxes is .36 inches. The checkboxes in box c of Form W-3c must also be .14 inches.

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

.11 All substitute Forms W-2c (Copy A) and W-3c in the red-ink format must have the form number and form title printed on the bottom face of each form using type identical or a close approximation to that of the official IRS form. The red-ink substitute must have the form producer's (not the form filer's) EIN entered in red in place of the Cat. No. (directly to the left of "Department of the Treasury" for Form W-2c (Copy A) and at the bottom for Form W-3c).

.12 The words "For Privacy Act and Paperwork Reduction Act Notice, see separate instructions." must be printed on all Forms W-2c (Copy A) and Forms W-3c.

.13 The Office of Management and Budget (OMB) Number must be printed on substitute Forms W-3c and W-2c (on each ply) in the same location as on the official IRS forms.

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

.15 The appropriate SSA addresses must be printed on the front of Form W-3c below the body of the form (see Exhibit B).

If you use the U.S. Postal Service, the address is:

Social Security Administration
Data Operations Center
P.O. Box 3333
Wilkes-Barre PA 18767-3333.

If you use a carrier other than the U.S. Postal Service, the address is:

Social Security Administration
Data Operations Center
Attn: W-2c Process
1150 E. Mountain Drive
Wilkes-Barre PA 18702-7997.

.16 The back of substitute Form W-2c (Copy A) and Form W-3c must be free of all printing.

.17 All copies must be clearly legible. Fading must be minimized to ensure legibility.

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

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

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

.20 The sequence for assembling the copies of Form W-2c is as follows.

- Copy A — For Social Security Administration
- Copy 1 — State, City, or Local Tax Department
- Copy B — To Be Filed with Employee's FEDERAL Tax Return
- Copy C — For EMPLOYEE's RECORDS
- Copy 2 — To Be Filed with Employee's State, City, or Local Income Tax Return
- Copy D — For Employer

Section 5 - Specifications for Substitute Black-and-White Copy A and W-3c Forms Filed With the SSA

.01 The SSA-approved substitute black-and-white Forms W-2c (Copy A) and W-3c are referred to as substitute black-and-white Copy A and W-3c . Specifications for the substitute black-and-white Copy A and W-3c are similar to the red-ink forms (Section 4) except for the items that follow (see Exhibits C and D). You may contact the SSA via email at copy.a.forms@ssa.gov for more information.

Note. Exhibits are samples only and must not be downloaded to meet tax obligations.

(1) Forms must be printed on 8.5 x 11-inch single-sheet paper only. There must be one Form W-2c (Copy A) or W-3c printed on a page.

(2) All forms and data must be printed in nonreflective black ink only.

(3) The data and forms must be programmed to print simultaneously. Forms cannot be produced separately from wage data entries.

(4) The forms must not contain corner register marks.

(5) The forms must not contain any shaded areas, including those boxes that are entirely shaded, on the red-ink forms.

(6) Identifying numbers on both Form W-2c (“44444”) and Form W-3c (“55555”) must be preprinted in 14-point Arial bold font or a close approximation.

(7) The form numbers (“W-2c” and “W-3c”) must be in 18-point Arial font or a close approximation.

(8) No part of the box titles or the data printed on the forms may touch any of the vertical or horizontal lines, nor should any of the data intermingle with the box titles. The data should be centered in the boxes.

(9) Do not print any information in the margins of the black-and-white forms (for example, do not print “DO NOT CUT, FOLD, OR STAPLE” in the top margin of Form W-3c).

(10) The word “Code” must not appear in box 12 on Form W-2c (Copy A).

(11) A 4-digit vendor code (not filer code) preceded by four zeros and a slash (for example, 0000/9876) must appear in 12-point Arial font, or a close approximation, in place of the Cat. No. to the left of “Department of the Treasury” on Form W-2c (Copy A) and in the bottom right corner of Form W-3c.

Note. Do not display the form producer’s EIN. The vendor code will be used to identify the form producer.

(12) Do not print Catalog Numbers (Cat. No.) on either Form W-2c (Copy A) or Form W-3c.

(13) Do not print the checkboxes in:

- Box c or the “Yes/No” area above the signature area of Form W-3c. The “X” should be programmed to be printed and centered directly below the applicable “Kind of Payer” in box c. The “X”s for the “Yes/No” area above the signature area should be programmed to be printed before “Yes” or “No.”
- Box e or Box 13 of Form W-2c (Copy A). The “X” should be programmed to be printed and centered in the same location as the checkbox in Box e or directly below the applicable box title in Box 13.

(14) Do not print dollar signs. If there are no money amounts being reported, the entire field should be left blank.

.02 The dimensions for the substitute black-and-white Copy A and W-3c are as follows. See Exhibits C and D.

(1) The left and top margins on Form W-2c (Copy A) and Form W-3c must measure $\frac{1}{2}$ (0.5) inch.

(2) The distance from the top line of Form W-3c to the bottom line of the form must measure $7\frac{1}{6}$ (7.17) inches.

(3) The distance from the top line of Form W-2c (Copy A) to the bottom line of the form must measure $9\frac{1}{3}$ (9.33) inches.

(4) Each box on Form W-2c (Copy A) and Form W-3c must measure $\frac{1}{3}$ (.33) inch in height.

- (5) Box b on Form W-3c must measure $\frac{5}{8}$ (.625) inch in height.
- (6) Box a on Form W-2c (Copy A) must measure $1\frac{1}{3}$ (1.33) inches in height and box 14 must measure $\frac{5}{8}$ (0.625) inch in height.
- (7) Each column on Form W-2c (Copy A) and Form W-3c must measure $1\frac{9}{10}$ (1.9) inches in width.
- (8) The "Explain decreases here" box and the "Signature" box on Form W-3c must measure $\frac{1}{2}$ (0.5) inches in height.

.03 You must submit samples of your black-and-white substitute forms to the SSA. Only black-and-white substitute Copy A and W-3c will be accepted for approval by the SSA. Questions regarding other forms (that is, red-ink Forms W-2, W-2c, W-3, W-3c, 1099 series, 1096, etc.) must be directed to the IRS. Also see IRS Publications 1141 and 1179.

.04 You will be required to send one set of blank and one set of dummy-data substitute black-and-white Copy A and W-3c for approval. Do not use live taxpayer information. Sample data entries should be filled in to the maximum length for each box entry, preferably using numeric data or alpha data, depending upon the type required to be entered. Include in your submission the name, telephone number, fax number, and email address of a contact person who can answer questions regarding your sample forms.

.05 To receive approval, you may first contact the SSA at copy.a.forms@ssa.gov to obtain a template and further instructions in PDF or Excel format. You may also send your sample substitute black-and-white forms to:

Social Security Administration
Data Operations Center
Attn: Substitute Black-and-White Copy A Forms, Room 348
1150 E. Mountain Drive
Wilkes-Barre PA 18702-7997

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

.06 The 4-digit vendor code preceded by four zeros and a slash (0000/9876) must be preprinted on the sample black-and-white substitute forms. Forms not containing a vendor code will be rejected and will not be submitted for testing or approval. If you have a valid vendor code provided to you through the National Association of Computerized Tax Processors, you should use that code. If you do not have a valid vendor code, contact the Social Security Administration at copy.a.forms@ssa.gov to obtain an SSA-issued code. (Additional information on vendor codes may be obtained from the SSA or the National Association of Computerized Tax Processors via email at president@nactp.org.)

Note. Vendor codes are only required by those companies producing the W-2 family of forms as part of a product for resale to be used by multiple employers and payroll professionals. Employers developing Forms W-2c or W-3c to be used only for their individual company do not require a vendor code.

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

Section 6 - Requirements for Substitute Privately-Printed Forms W-2c (Copies B, C, and 2) Furnished to Employees

.01 All employers (including those who file electronically) must furnish employees with at least two copies of Form W-2c (three or more for employees required to file a state, city, or local income tax return). Employee copies do not require approval as long as these requirements are followed.

Note. Although substitute Copy 1 of Form W-2c can be printed in black instead of the red dropout ink, it should conform as closely as possible to Copy A of the official IRS form in content, format, and layout in order to satisfy state and local reporting requirements.

.02 Some Forms W-2c that include logos, slogans, and advertisements (including advertisements for tax preparation software) may be confused with questionable Forms W-2c. An employee may not recognize the importance of the employee copy for tax reporting purposes due to the use of logos, slogans, and advertisements. Thus, the IRS has determined that logos, slogans, and advertising on Forms W-3c, Copy A of Forms W-2c, or any employee copies reporting wages paid during the 2011 calendar year and thereafter will not be allowed, with the following exceptions:

- Forms may include the exact name of the employer or agent, primary trade name, trademark, service mark, or symbol of the employer or agent.
- Forms may include an embossment or watermark on the information return (and copies) that is a representation of the name, a primary trade name, trademark, service mark, or symbol of the employer or agent.

- Presentation may be in any typeface, font, stylized fashion, or print color normally used by the employer or agent, and used in a non-intrusive manner.
- These items must not materially interfere with the ability of the recipient to recognize, understand, and use the tax information on the employee copies.
- Corrected information on information returns and employee copies that was shown on Forms W-2c for amounts paid before January 1, 2011, is an exception.

The IRS e-file logo on the IRS official employee copies may be included, but it is not required, on any of the substitute form copies. The information return and employee copies must clearly identify the employer's name associated with its employer identification number.

Forms W-2c and W-3c are subject to annual review and possible change. The IRS has postponed the prohibition against including slogans, advertising, and logos on information returns and employee copies reporting wages paid during the 2010 calendar year announced in Rev. Proc. 2008-33 (Publication 1141). The prohibition against including slogans, advertising, and logos on information returns and employee copies reporting wages paid during the 2011 calendar year, and thereafter, is being announced at this time to provide further advance notice. This revenue procedure may be revised at a future date to state other requirements of the IRS and the SSA regarding the preparation and use of substitute forms for Form W-2c and Form W-3c for wages paid during the 2011 calendar year. If you have comments about the prohibition against including slogans, advertising, and logos on information returns and employee copies, send or email your comments to: Internal Revenue Service, Attn: Substitute Forms Program, SE:W:CAR:MP:T:T:SP, IR 6526, 1111 Constitution Ave., NW, Washington, DC 20224 or Substituteforms@irs.gov.

.03 Chemical transfer paper for employee copies must be clearly legible, have the capability to be photocopied, and not fade to such a degree as to preclude legibility and the ability to photocopy.

.04 Chemical transfer paper for employee copies must be clearly legible, have the capability to be photocopied, and not fade to such a degree as to preclude legibility and the ability to photocopy.

.05 Type must be substantially identical in size and shape to that on the official form.

.06 Substitute forms for employees need to contain only the payment boxes and captions that are applicable. These boxes, box numbers, and box titles must, when applicable, match the IRS-printed form. In all cases, the employee name, address, and SSN, as well as the employer name, address, and EIN, must be present.

.07 The dimensions of the boxes on these copies (Copies B, C, and 2), but not Copy A, may be adjusted to allow space for conveying additional information. This may permit the employer to eliminate other statements or notices that would otherwise be furnished to employees.

.08 The maximum allowable dimensions for employee copies of Form W-2c are no more than 11 inches deep by 8.5 inches wide. The minimum allowable dimensions for employee copies of Form W-2c are 2.67 inches deep by 4.25 inches wide.

Note. These maximum and minimum size specifications are subject to future change.

.09 Either horizontal or vertical format is permitted for substitute employee copies of Forms W-2c. That is, the width of the form may be either greater or less than the depth of the form.

.10 All copies of Form W-2c must clearly and prominently display the form number and the form title together in one area of the form. It is recommended (but not required) that this be located on the bottom left of Form W-2c. The reference to the "Department of the Treasury – Internal Revenue Service" must be on all copies of Form W-2c. It is recommended (but not required) that this be located on the bottom right of Form W-2c.

.11 If the substitute Forms W-2c are not labeled as to the disposition of the copies, then written notification must be provided to each employee as specified below.

- The first copy of Form W-2c (Copy B) is filed with the employee's federal tax return.
- The second copy of Form W-2c (Copy C) is for the employee's records.
- If applicable, the third copy (Copy 2) of Form W-2c is filed with the employee's state, city, or local income tax return. If the substitute Forms W-2c are labeled, the forms must contain the applicable description as stated on the official form.
- .12** Instructions similar to those on the back of Form W-2c (Copy C) of the official form must be provided to each employee.

Section 7 - Electronic Delivery of Form W-2 and W-2c Recipient Statements

.01 If you are required to furnish a written statement (Copy B or an acceptable substitute) to a recipient, then you may furnish the statement electronically instead of on paper. This includes furnishing the statement to recipients of Forms W-2 and W-2c.

If you meet the requirements listed below, you are treated as furnishing the statement timely.

.02 The recipient must consent in the affirmative and not have withdrawn the consent before the statement is furnished. The consent by the recipient must be made electronically in a way that shows that he or she can access the statement in the electronic format in which it will be furnished.

You must notify the recipient of any hardware or software changes prior to furnishing the statement. A new consent to receive the statement electronically is required after the new hardware or software is put into service.

Prior to furnishing the statements electronically, you must provide the recipient a statement with the following information prominently displayed:

- If the recipient does not consent to receive the statement electronically, a paper copy will be provided.
- The scope and duration of the consent. For example, whether the consent applies to every year the statement is furnished or only until January 31 immediately following the date of the consent.
- How to obtain a paper copy after giving consent.
- How to withdraw the consent. The consent may be withdrawn at any time by furnishing the withdrawal in writing (electronically or on paper) to the person whose name appears on the statement. Confirmation of the withdrawal also will be in writing (electronically or on paper).
- Notice of termination. The notice must state under what conditions the statements will no longer be furnished to the recipient.
- Procedures to update the recipient's information.
- A description of the hardware and software required to access, print and retain a statement, and a date the statement will no longer be available on the website.

.03 Additionally, you must:

- Ensure the electronic format contains all the required information and complies with the guidelines in this document.
 - If posting the statement on a website, post it for the recipient to access on or before the January 31 due date through October 15 of that year.
 - Inform the recipient, in person, electronically or by mail, of the posting and how to access and print the statement.
- For more information, see Regulations section 31.6051-1(j).

Section 8 - Instructions for Employers

.01 Privately-printed substitute Forms W-2c are not required to contain a copy to be retained by employers (Copy D). However, employers must be prepared to verify or duplicate this information if the IRS or the SSA requests it. Paper filers who do not keep Copy D of Form W-2c should be able to generate a facsimile of Form W-2c (Copy A) in case of loss.

.02 If Copy D is provided for the employer, instructions contained on the back of Copy D of the official form must appear on the back of the substitute form. If Copy D is not provided, these instructions must be furnished to the employer on a separate statement.

.03 Only originals or compliant substitute copies of Forms W-2c (Copy A) and Forms W-3c may be filed with the SSA. Carbon copies and photocopies are unacceptable.

.04 Employers should type or machine print entries on plain paper forms whenever possible and provide good quality data entries by using a high quality type face, inserting data in the middle of blocks that are well separated from other printing and guidelines, and taking any other measures that will guarantee clear, sharp images.

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

.05 Because employers must file a machine-scannable Form W-2c, they should meet the following requirements.

- Use 12-point Courier (SSA-preferred) font for data entries.
 - Proportional-spaced fonts are unacceptable.
 - Refrain from printing any data in the top margin of the forms.
- .06** The employer must also furnish payee copies of Forms W-2c (Copies B, C, and 2) that are legible and capable of being photocopied (by the employee).
- .07** When Forms W-2c or W-3c are typed, black ink must be used with no script type, inverted font, italics, or dual-case alpha characters.

.08 Form W-2c (Copy A) requires decimal entries for wage data. Dollar signs should not be printed with money amounts on Forms W-2c (Copy A) and Form W-3c.

.09 The filer's employer identification number (EIN) must be entered in box (b) of Form W-2c and box (e) of Form W-3c.

.10 The employer's name, address, EIN, and state ID number may be preprinted.

Section 9 - OMB Requirements for Both Red-Ink and Black-and-White Copy A and W-3c Substitute Forms

.01 The Paperwork Reduction Act (the Act) of 1995 (Public Law 104-13) requires the following.

- The Office of Management and Budget (OMB) approves all IRS tax forms that are subject to the Act.
- Each IRS form contains the OMB approval number, if assigned. (The official OMB numbers may be found on the official IRS forms and are also shown on the forms in the exhibits.)
- Each IRS form (or its instructions) states:
 - (1) Why the IRS needs the information,
 - (2) How it will be used, and
 - (3) Whether or not the information is required to be furnished to the IRS.

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

.03 The OMB requirements for substitute IRS forms are the following.

- Any substitute form or substitute statement to a recipient must show the OMB number as it appears on the official IRS form.
- For Form W-3c and Form W-2c (Copy A), the OMB number (1545-0008) must appear exactly as shown on the official IRS form.
- For any copy of Form W-3c or Form W-2c, other than Copy A, the OMB number must use one of the following formats.
 - (1) OMB No. 1545-0008 (preferred) or
 - (2) OMB # 1545-0008 (acceptable).

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

Section 10 - Reproducible Copies of Forms

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

- Accessing IRS.gov.
- Ordering IRS Tax Products on DVD (Publication 1796).
Only contact the IRS, not the SSA, for forms.

Note. Many IRS forms are provided on IRS.gov and on the IRS Tax Products on DVD. But copies of Form W-2c (Copy A) and Form W-3c cannot be used for filing with the SSA when obtained by these methods because the forms do not meet the specific printing specifications as described in this publication. Copies of Forms W-2c and W-3c obtained from these sources are for information purposes only.

.02 The DVD contains approximately 2,800 tax forms and publications for small businesses, return preparers, and others who frequently need current or prior year tax products. Most current tax forms on the DVD may be filled in electronically, then printed out for submission and saved for recordkeeping. Other products on the DVD include the Internal Revenue Bulletins, Tax Supplements, and Internet resources and links for the tax professional.

For system requirements, contact the National Technical Information Service (NTIS) at <http://www.ntis.gov>. Prices are subject to change. The cost of the DVD if purchased from NTIS via IRS.gov at www.irs.gov/formspubs/article/0,,id=108660,00.html is \$30 (with no handling fee). If purchased using the following methods, the cost for each DVD is \$30 (plus a \$6 handling fee). These methods are:

- By phone – 1-877-CDFORMS (1-877-233-6767) (For IRS DVD purchase only),
- By fax – 703-605-6900 (For IRS DVD purchase only),
- By mail – to:
National Technical Information Service
5301 Shawnee Road
Alexandria VA 22312

Section 11 - Effect on Other Documents

.01 Revenue Procedure 2009-48, 2009-51 I.R.B. 864 (reprinted as Publication 1223, Rev. 12-2009), is superseded.

Section 12 - Exhibits

Exhibit A

<div style="display: flex; justify-content: space-between; align-items: center;"> <div style="text-align: center;"> <div style="width: 100%; height: 100%; border: 1px solid black; position: relative;"> <div style="position: absolute; top: -10px; left: 50%; transform: translateX(-50%);">7.5"</div> <div style="position: absolute; left: 50%; transform: translateX(-50%);">.5"</div> </div> </div> <div style="text-align: center;"> <div style="width: 100%; height: 100%; border: 1px solid black; position: relative;"> <div style="position: absolute; top: -10px; left: 50%; transform: translateX(-50%);">7.5"</div> <div style="position: absolute; left: 50%; transform: translateX(-50%);">.5"</div> </div> </div> </div>			
DO NOT CUT, FOLD, OR STAPLE THIS FORM			
<div style="display: flex; align-items: center;"> <div style="border: 1px solid black; padding: 2px; margin-right: 5px;">44444</div> <div> For Official Use Only ▶ OMB No. 1545-0008 </div> </div>		<div style="display: flex;"> <div style="flex: 1; padding: 5px;"> a Employer's name, address, and ZIP code </div> <div style="flex: 1; padding: 5px;"> c Tax year/Form corrected <div style="text-align: center;">/ W-2</div> </div> <div style="flex: 1; padding: 5px;"> d Employee's correct SSN </div> </div>	
b Employer's Federal EIN		e Corrected SSN and/or name (Check this box and complete boxes f and/or g if incorrect on form previously filed.) <input type="checkbox"/>	
		Complete boxes f and/or g only if incorrect on form previously filed ▶	
		f Employee's previously reported SSN	
g Employee's previously reported name		h Employee's first name and initial Last name Suff.	
Note: Only complete money fields that are being corrected (exception: for corrections involving MQGE, see the Instructions for Forms W-2c and W-3c, boxes 5 and 6).		i Employee's address and ZIP code	
<div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> Previously reported </div> <div style="width: 48%;"> Correct information </div> </div>		<div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> Previously reported </div> <div style="width: 48%;"> Correct information </div> </div>	
1 Wages, tips, other compensation		2 Federal income tax withheld	
3 Social security wages		4 Social security tax withheld	
5 Medicare wages and tips		6 Medicare tax withheld	
7 Social security tips		8 Allocated tips	
9 Advance EIC payment		10 Dependent care benefits	
11 Nonqualified plans		12a See instructions for box 12	
13 Statutory employee <input type="checkbox"/> Retirement plan <input type="checkbox"/> Third-party sick pay <input type="checkbox"/>		12b	
14 Other (see instructions)		12c	
12d		12d	
State Correction Information			
<div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> Previously reported </div> <div style="width: 48%;"> Correct information </div> </div>		<div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> Previously reported </div> <div style="width: 48%;"> Correct information </div> </div>	
15 State		15 State	
Employer's state ID number		Employer's state ID number	
16 State wages, tips, etc.		16 State wages, tips, etc.	
17 State income tax		17 State income tax	
Locality Correction Information			
<div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> Previously reported </div> <div style="width: 48%;"> Correct information </div> </div>		<div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> Previously reported </div> <div style="width: 48%;"> Correct information </div> </div>	
18 Local wages, tips, etc.		18 Local wages, tips, etc.	
19 Local income tax		19 Local income tax	
20 Locality name		20 Locality name	

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Form **W-2c** (Rev. 2-2009)

Corrected Wage and Tax Statement

Copy A—For Social Security Administration

Department of the Treasury
Internal Revenue Service

Exhibit B

<div style="display: flex; justify-content: space-between; align-items: center;"> .5" 7.5" </div> <p style="text-align: center; font-weight: bold; margin: 0;">DO NOT CUT, FOLD, OR STAPLE</p>			
55555	a Tax year/Form corrected / W-.....	For Official Use Only ▶ OMB No. 1545-0008	
b Employer's name, address, and ZIP code <div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div>		c Kind of Payer <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="text-align: center;"> 941/941-SS <input type="checkbox"/> CT-1 <input type="checkbox"/> </div> <div style="text-align: center;"> Military <input type="checkbox"/> Hshld. emp. <input type="checkbox"/> </div> <div style="text-align: center;"> 943 <input type="checkbox"/> Medicare govt. emp. <input type="checkbox"/> </div> <div style="text-align: center;"> 944/944-SS <input type="checkbox"/> Third-party sick pay <input type="checkbox"/> </div> </div>	
d Number of Forms W-2c	e Employer's Federal EIN	f Establishment number	g Employer's state ID number
Complete boxes h, i, or j only if incorrect on last form filed.	h Employer's incorrect Federal EIN	i Incorrect establishment number	j Employer's incorrect state ID number
Total of amounts previously reported as shown on enclosed Forms W-2c.	Total of corrected amounts as shown on enclosed Forms W-2c.	Total of amounts previously reported as shown on enclosed Forms W-2c.	Total of corrected amounts as shown on enclosed Forms W-2c.
1 Wages, tips, other compensation	1 Wages, tips, other compensation	2 Federal income tax withheld	2 Federal income tax withheld
3 Social security wages	3 Social security wages	4 Social security tax withheld	4 Social security tax withheld
5 Medicare wages and tips	5 Medicare wages and tips	6 Medicare tax withheld	6 Medicare tax withheld
7 Social security tips	7 Social security tips	8 Allocated tips	8 Allocated tips
9 Advance EIC payments	9 Advance EIC payments	10 Dependent care benefits	10 Dependent care benefits
11 Nonqualified plans	11 Nonqualified plans	12a Deferred compensation	12a Deferred compensation
14 Inc. tax W/H by 3rd party sick pay payer	14 Inc. tax W/H by 3rd party sick pay payer	12b HIRE exempt wages and tips	12b HIRE exempt wages and tips
16 State wages, tips, etc.	16 State wages, tips, etc.	17 State income tax	17 State income tax
18 Local wages, tips, etc.	18 Local wages, tips, etc.	19 Local income tax	19 Local income tax
Explain decreases here:			
Has an adjustment been made on an employment tax return filed with the Internal Revenue Service? <input type="checkbox"/> Yes <input type="checkbox"/> No			
If "Yes," give date the return was filed ▶			
Under penalties of perjury, I declare that I have examined this return, including accompanying documents, and, to the best of my knowledge and belief, it is true, correct, and complete.			
Signature ▶		Title ▶	
Contact person		Telephone number	Date ▶
Email address		Fax number	For Official Use Only

Form **W-3c** (Rev. 4-2010)

Transmittal of Corrected Wage and Tax Statements

Department of the Treasury
Internal Revenue Service

Purpose of Form

Use this form to transmit Copy A of **Form(s) W-2c**, Corrected Wage and Tax Statement (Rev. 2-2009). Make a copy of Form W-3c and keep it with Copy D (For Employer) of Forms W-2c for your records. File Form W-3c even if only one Form W-2c is being filed or if those Forms W-2c are being filed only to correct an employee's name and social security number (SSN), or the employer identification number (EIN). See the separate Instructions for Forms W-2c and W-3c for information on completing this form.

When To File

File this form and Copy A of Form(s) W-2c with the Social Security Administration as soon as possible after you discover an error on Forms W-2, W-2AS, W-2GU, W-2CM, W-2VI, or W-2c. Provide Copies B, C, and 2 of Form W-2c to your employees as soon as possible.

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Where To File

If you use the U.S. Postal Service, send Forms W-2c and W-3c to the following address:

Social Security Administration
Data Operations Center
P.O. Box 3333
Wilkes-Barre, PA 18767-3333

If you use a carrier other than the U.S. Postal Service, send Forms W-2c and W-3c to the following address:

Social Security Administration
Data Operations Center
Attn: W-2c Process
1150 E. Mountain Drive
Wilkes-Barre, PA 18702-7997

Exhibit C

<div style="display: flex; justify-content: space-between; align-items: center;"> 4 4 4 4 4 <div style="text-align: right;"> For Official Use Only ▶ OMB No. 1545-0008 </div> </div>			
a Employer's name, address, and ZIP code <div style="text-align: center;">1.3"</div>		c Tax year/Form corrected <div style="text-align: center;">/ W-2</div>	
b Employer's Federal EIN <div style="text-align: center;">9.3"</div>		d Employee's correct SSN 	
		e Corrected SSN and/or name (Check this box and complete boxes f and/or g if incorrect on form previously filed.) 	
		f Employee's previously reported SSN 	
g Employee's previously reported name 		h Employee's first name and initial Last name Suff. 	
Note: Only complete money fields that are being corrected (exception: for corrections involving MQGE, see the Instructions for Forms W-2c and W-3c, boxes 5 and 6). 		i Employee's address and ZIP code 	
State Correction Information			
Previously reported 1 Wages, tips, other compensation 		Correct information 1 Wages, tips, other compensation 	
3 Social security wages 		3 Social security wages 	
5 Medicare wages and tips 		5 Medicare wages and tips 	
7 Social security tips 		7 Social security tips 	
9 Advance EIC payment 		9 Advance EIC payment 	
11 Nonqualified plans 		11 Nonqualified plans 	
13 Statutory employee Retirement plan Third-party sick pay 		13 Statutory employee Retirement plan Third-party sick pay 	
14 Other (see instructions) 		14 Other (see instructions) 	
15 State 		15 State 	
16 State wages, tips, etc. 		16 State wages, tips, etc. 	
17 State income tax 		17 State income tax 	
Locality Correction Information			
Previously reported 18 Local wages, tips, etc. 		Correct information 18 Local wages, tips, etc. 	
19 Local income tax 		19 Local income tax 	
20 Locality name 		20 Locality name 	

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Form **W-2c** (Rev. 2-2009)

Corrected Wage and Tax Statement

0000/9876

Copy A—For Social Security Administration

Department of the Treasury
Internal Revenue Service

Exhibit D

55555		a Tax year/Form corrected / W-		For Official Use Only ▶ OMB No. 1545-0008	
b Employer's name, address, and ZIP code			c 941/941-SS Military 943 944/944-SS Kind of Payer ▶ CT-1 Hshld. emp. Medicare govt. emp. Third-party sick pay		
d Number of Forms W-2c	e Employer's Federal EIN	f Establishment number	g Employer's state ID number		
Complete boxes h, i, or j only if incorrect on last form filed.	h Employer's incorrect Federal EIN	i Incorrect establishment number	j Employer's incorrect state ID number		
Total of amounts previously reported as shown on enclosed Forms W-2c.	Total of corrected amounts as shown on enclosed Forms W-2c.	Total of amounts previously reported as shown on enclosed Forms W-2c.	Total of corrected amounts as shown on enclosed Forms W-2c.		
1 Wages, tips, other compensation	1 Wages, tips, other compensation	2 Federal income tax withheld	2 Federal income tax withheld		
3 Social security wages	3 Social security wages	4 Social security tax withheld	4 Social security tax withheld		
5 Medicare wages and tips	5 Medicare wages and tips	6 Medicare tax withheld	6 Medicare tax withheld		
7 Social security tips	7 Social security tips	8 Allocated tips	8 Allocated tips		
9 Advance EIC payments	9 Advance EIC payments	10 Dependent care benefits	10 Dependent care benefits		
11 Nonqualified plans	11 Nonqualified plans	12a Deferred compensation	12a Deferred compensation		
14 Inc. tax W/H by 3rd party sick pay payer	14 Inc. tax W/H by 3rd party sick pay payer	12b HIRE exempt wages and tips	12b HIRE exempt wages and tips		
16 State wages, tips, etc.	16 State wages, tips, etc.	17 State income tax	17 State income tax		
18 Local wages, tips, etc.	18 Local wages, tips, etc.	19 Local income tax	19 Local income tax		
Explain decreases here:					
Has an adjustment been made on an employment tax return filed with the Internal Revenue Service?		Yes No			
If "Yes," give date the return was filed ▶					
Under penalties of perjury, I declare that I have examined this return, including accompanying documents, and, to the best of my knowledge and belief, it is true, correct, and complete.					
Signature ▶		Title ▶		Date ▶	
Contact person		Telephone number		For Official Use Only	
Email address		Fax number		0000/9876	

Form **W-3c** (Rev. 4-2010)

Transmittal of Corrected Wage and Tax Statements

Department of the Treasury
Internal Revenue Service

Purpose of Form

Use this form to transmit Copy A of **Form(s) W-2c**, Corrected Wage and Tax Statement (Rev. 2-2009). Make a copy of Form W-3c and keep it with Copy D (For Employer) of Forms W-2c for your records. File Form W-3c even if only one Form W-2c is being filed or if those Forms W-2c are being filed only to correct an employee's name and social security number (SSN), or the employer identification number (EIN). See the separate Instructions for Forms W-2c and W-3c for information on completing this form.

When To File

File this form and Copy A of Form(s) W-2c with the Social Security Administration as soon as possible after you discover an error on Forms W-2, W-2AS, W-2GU, W-2CM, W-2VI, or W-2c. Provide Copies B, C, and 2 of Form W-2c to your employees as soon as possible.

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Where To File

If you use the U.S. Postal Service, send Forms W-2c and W-3c to the following address:

**Social Security Administration
Data Operations Center
P.O. Box 3333
Wilkes-Barre, PA 18767-3333**

If you use a carrier other than the U.S. Postal Service, send Forms W-2c and W-3c to the following address:

**Social Security Administration
Data Operations Center
Attn: W-2c Process
1150 E. Mountain Drive
Wilkes-Barre, PA 18702-7997**

Part IV. Items of General Interest

Tribal Economic Development Bonds — Extension of Deadline to Issue Bonds

Announcement 2010–88

SECTION 1. BACKGROUND

In Notice 2009–51, 2009–28 I.R.B. 128 (July 13, 2009), the Treasury Department and the IRS addressed administrative procedures for allocations of the \$2 billion national bond volume limitation authority (“volume cap”) to issue tribal economic development bonds (“Tribal Economic Development Bonds”) under § 7871(f) of the Internal Revenue Code (“Code”). On September 15, 2009, the IRS announced allocations in an aggregate amount of approximately \$1 billion of volume cap in the first tranche of allocation (the “First Allocation”) of authority to issue Tribal Economic Development Bonds. Section 7(f) of Notice 2009–51 provides that if bonds are not issued by December 31, 2010, for any or all of the allocation received by an Indian tribal government from the First Allocation, then such allocation is treated as forfeited.

SECTION 2. EXTENSION OF ADMINISTRATIVE DEADLINE TO ISSUE BONDS

.01 Except as otherwise provided in this Announcement, Indian tribal governments that received an allocation of volume cap from the First Allocation will receive an automatic extension of time of six months from December 31, 2010, to June 30, 2011, to issue Tribal Economic Development Bonds pursuant to those allocations. This extension does not apply to an Indian tribal government that has notified or will notify the IRS that it does not intend to use its allocation of volume cap from the First Allocation to issue Tribal Economic Development Bonds. In those cases, the allocation has been, or will be, forfeited as of the date of the notification. The extension described in this Announcement does not change that forfeiture.

.02 Additionally, Indian tribal governments that received an allocation of volume cap from the First Allocation may

submit a written request for an additional extension of time of six months from June 30, 2011, to December 31, 2011, to issue Tribal Economic Development Bonds pursuant to those allocations. Indian tribal governments must submit requests for additional extensions to the IRS by March 31, 2011. A request for an additional extension must include: (1) a copy of the allocation letter from the IRS for the allocation to which the request relates; and (2) statements from an official of the Indian tribal government duly authorized to execute legal documents on behalf of the Indian tribal government in making the request, made under penalty of perjury, including (a) a statement explaining the reason for the extension of time, (b) a statement that the Indian tribal government reasonably expects to issue Tribal Economic Development Bonds pursuant to such allocation on or before December 31, 2011, to finance the project described in the Indian tribal government’s original application (“Application”), and (c) a statement that such official has knowledge of the relevant facts and circumstances relating to the request and the Application, has examined the request and the Application, and that the information contained in the request and the Application is true, correct, and complete.

.03 A request for an additional extension must be submitted by hard copy in duplicate accompanied by a copy of the request in electronic format on compact disc sent by mail to the Internal Revenue Service (IRS), SE:T:GE:TEB:CPM, Attention: Mark Helfer, 1122 Town & Country Commons, Chesterfield, Missouri 63017.

.04 A request for an additional extension should not include an inquiry relating to deviations from information submitted in the Application under Section 8 of Notice 2009–51. Section 8 of Notice 2009–51 provides that an allocation of Tribal Economic Development Bond volume cap is valid notwithstanding insubstantial deviations from the information submitted in the Application. Section 8 of Notice 2009–51 also describes criteria applicable to determinations of whether a deviation with respect to the information submitted in the

Application is insubstantial, as well as procedures to apply for approval of specific insubstantial deviations.

.05 For requests submitted in compliance with the requirements described in this Announcement for additional extensions from June 30, 2011, to December 31, 2011, the IRS expects to confirm the extensions by May 31, 2011. Indian tribal governments that receive additional extensions will receive a total extension of one year from December 31, 2010, to December 31, 2011, to issue Tribal Economic Development Bonds pursuant to volume cap received in the First Allocation.

SECTION 3. FORFEITURE OF ALLOCATIONS

If bonds are not issued by June 30, 2011, for any or all of an allocation received by an Indian tribal government pursuant to the First Allocation with respect to which the Indian tribal government does not receive an additional extension as described in section 2.02 of this Announcement, then such allocation is treated as forfeited. If bonds are not issued by December 31, 2011, for any or all of an allocation received by an Indian tribal government pursuant to the First Allocation with respect to which the Indian tribal government receives such an additional extension, then such allocation is treated as forfeited. Any allocation amounts treated as forfeited may be available for allocation by the IRS as part of an allocation process to be announced by the IRS at some future date.

SECTION 4. EFFECT ON OTHER TIMING REQUIREMENTS

.01 In February, 2010, the IRS announced allocations in an aggregate amount of approximately \$1 billion of volume cap in the second tranche of allocation (the “Second Allocation”) of authority to issue Tribal Economic Development Bonds. Section 7(f) of Notice 2009–51 provides that if bonds are not issued by December 31, 2011, for any or all of the allocation received by an Indian tribal government pursuant to the Second Allocation, then such allocation is treated as forfeited. This Announcement

does not modify any provisions relating to the forfeiture of allocations of volume cap received by Indian tribal governments pursuant to the Second Allocation.

.02 Tribal Economic Development Bonds may be issued as build America bonds (“Build America Bonds”) if additional eligibility requirements for Build America Bonds are met. Section 54AA(d)(1)(B) of the Code requires Build America Bonds to be issued before Jan-

uary 1, 2011. This Announcement does not modify the statutory requirement that Build America Bonds be issued before January 1, 2011.

SECTION 5. DRAFTING INFORMATION

The principal author of this Announcement is Debbie Cho of the IRS Office of Tax Exempt Bonds. However, other

personnel from the IRS and Treasury Department participated in its development. For further information regarding this Announcement, contact Debbie Cho at (714) 347-9431 (not a toll-free call).

Definition of Terms

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

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

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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

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

Numerical Finding List¹

Bulletins 2010–27 through 2010–47

Announcements:

2010-43, 2010-27 I.R.B. 42
2010-44, 2010-28 I.R.B. 54
2010-45, 2010-29 I.R.B. 87
2010-46, 2010-29 I.R.B. 87
2010-47, 2010-30 I.R.B. 173
2010-48, 2010-32 I.R.B. 234
2010-49, 2010-34 I.R.B. 272
2010-50, 2010-33 I.R.B. 260
2010-51, 2010-33 I.R.B. 261
2010-52, 2010-36 I.R.B. 315
2010-53, 2010-36 I.R.B. 323
2010-54, 2010-38 I.R.B. 386
2010-55, 2010-37 I.R.B. 346
2010-56, 2010-39 I.R.B. 398
2010-57, 2010-38 I.R.B. 386
2010-58, 2010-38 I.R.B. 387
2010-59, 2010-39 I.R.B. 399
2010-60, 2010-40 I.R.B. 417
2010-61, 2010-40 I.R.B. 417
2010-62, 2010-40 I.R.B. 417
2010-63, 2010-40 I.R.B. 417
2010-64, 2010-40 I.R.B. 418
2010-65, 2010-40 I.R.B. 418
2010-66, 2010-40 I.R.B. 418
2010-67, 2010-40 I.R.B. 418
2010-68, 2010-40 I.R.B. 418
2010-69, 2010-40 I.R.B. 418
2010-70, 2010-40 I.R.B. 418
2010-71, 2010-40 I.R.B. 418
2010-72, 2010-40 I.R.B. 419
2010-73, 2010-40 I.R.B. 419
2010-74, 2010-40 I.R.B. 419
2010-75, 2010-41 I.R.B. 428
2010-76, 2010-41 I.R.B. 432
2010-77, 2010-41 I.R.B. 433
2010-78, 2010-41 I.R.B. 433
2010-79, 2010-42 I.R.B. 475
2010-80, 2010-45 I.R.B. 638
2010-81, 2010-45 I.R.B. 638
2010-82, 2010-42 I.R.B. 476
2010-84, 2010-44 I.R.B. 603
2010-85, 2010-44 I.R.B. 604
2010-86, 2010-44 I.R.B. 604
2010-87, 2010-43 I.R.B. 557
2010-88, 2010-47 I.R.B. 753
2010-89, 2010-46 I.R.B. 669

Notices:

2010-48, 2010-27 I.R.B. 9
2010-49, 2010-27 I.R.B. 10
2010-50, 2010-27 I.R.B. 12

Notices— Continued:

2010-51, 2010-29 I.R.B. 83
2010-52, 2010-30 I.R.B. 88
2010-53, 2010-31 I.R.B. 182
2010-54, 2010-40 I.R.B. 403
2010-55, 2010-33 I.R.B. 253
2010-56, 2010-33 I.R.B. 254
2010-57, 2010-34 I.R.B. 267
2010-58, 2010-37 I.R.B. 326
2010-59, 2010-39 I.R.B. 396
2010-60, 2010-37 I.R.B. 329
2010-61, 2010-40 I.R.B. 408
2010-62, 2010-40 I.R.B. 411
2010-63, 2010-41 I.R.B. 420
2010-64, 2010-41 I.R.B. 421
2010-65, 2010-41 I.R.B. 424
2010-66, 2010-42 I.R.B. 437
2010-67, 2010-43 I.R.B. 529
2010-68, 2010-44 I.R.B. 576
2010-69, 2010-44 I.R.B. 576
2010-70, 2010-44 I.R.B. 576
2010-72, 2010-46 I.R.B. 661
2010-73, 2010-46 I.R.B. 662
2010-74, 2010-46 I.R.B. 663
2010-76, 2010-47 I.R.B. 712

Proposed Regulations:

REG-138637-07, 2010-44 I.R.B. 581
REG-139343-08, 2010-33 I.R.B. 256
REG-119921-09, 2010-45 I.R.B. 626
REG-137486-09, 2010-46 I.R.B. 668
REG-142800-09, 2010-44 I.R.B. 580
REG-144762-09, 2010-45 I.R.B. 637
REG-151605-09, 2010-31 I.R.B. 184
REG-153340-09, 2010-42 I.R.B. 469
REG-112841-10, 2010-27 I.R.B. 41
REG-118412-10, 2010-29 I.R.B. 85
REG-119046-10, 2010-40 I.R.B. 415
REG-120391-10, 2010-35 I.R.B. 310
REG-120399-10, 2010-32 I.R.B. 239
REG-125592-10, 2010-43 I.R.B. 556

Revenue Procedures:

2010-25, 2010-27 I.R.B. 16
2010-26, 2010-30 I.R.B. 91
2010-27, 2010-31 I.R.B. 183
2010-28, 2010-34 I.R.B. 270
2010-29, 2010-35 I.R.B. 309
2010-30, 2010-36 I.R.B. 316
2010-31, 2010-40 I.R.B. 413
2010-32, 2010-36 I.R.B. 320
2010-33, 2010-38 I.R.B. 347
2010-34, 2010-41 I.R.B. 426
2010-35, 2010-42 I.R.B. 438
2010-36, 2010-42 I.R.B. 439
2010-37, 2010-42 I.R.B. 440

Revenue Procedures— Continued:

2010-38, 2010-43 I.R.B. 530
2010-39, 2010-42 I.R.B. 459
2010-40, 2010-46 I.R.B. 663
2010-42, 2010-47 I.R.B. 715
2010-43, 2010-47 I.R.B. 738

Revenue Rulings:

2010-18, 2010-27 I.R.B. 1
2010-19, 2010-31 I.R.B. 174
2010-20, 2010-36 I.R.B. 312
2010-21, 2010-39 I.R.B. 388
2010-22, 2010-39 I.R.B. 388
2010-23, 2010-39 I.R.B. 388
2010-24, 2010-40 I.R.B. 400
2010-25, 2010-44 I.R.B. 571
2010-26, 2010-44 I.R.B. 573
2010-27, 2010-45 I.R.B. 620

Tax Conventions:

2010-48, 2010-32 I.R.B. 234
2010-52, 2010-36 I.R.B. 315

Treasury Decisions:

9486, 2010-27 I.R.B. 3
9487, 2010-28 I.R.B. 48
9488, 2010-28 I.R.B. 51
9489, 2010-29 I.R.B. 55
9490, 2010-31 I.R.B. 176
9491, 2010-32 I.R.B. 186
9492, 2010-33 I.R.B. 242
9493, 2010-35 I.R.B. 273
9494, 2010-43 I.R.B. 500
9495, 2010-43 I.R.B. 477
9496, 2010-43 I.R.B. 484
9497, 2010-44 I.R.B. 558
9498, 2010-45 I.R.B. 605
9499, 2010-45 I.R.B. 622
9500, 2010-46 I.R.B. 649
9501, 2010-46 I.R.B. 651
9502, 2010-46 I.R.B. 641
9503, 2010-47 I.R.B. 706
9504, 2010-47 I.R.B. 670

¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2010–1 through 2010–26 is in Internal Revenue Bulletin 2010–26, dated June 28, 2010.

Finding List of Current Actions on Previously Published Items¹

Bulletins 2010–27 through 2010–47

Notices:

96-53

Modified by

Notice 2010-59, 2010-39 I.R.B. 396

2003-19

Revoked by

Notice 2010-53, 2010-31 I.R.B. 182

2004-2

Modified by

Notice 2010-59, 2010-39 I.R.B. 396

2004-50

Modified by

Notice 2010-59, 2010-39 I.R.B. 396

2005-90

Supplemented by

Notice 2010-65, 2010-41 I.R.B. 424

2006-69

Amplified by

Notice 2010-59, 2010-39 I.R.B. 396

2008-51

Modified by

Notice 2010-59, 2010-39 I.R.B. 396

2008-52

Modified by

Notice 2010-59, 2010-39 I.R.B. 396

2009-47

Obsoleted by

Rev. Proc. 2010-28, 2010-34 I.R.B. 270

2009-80

Corrected by

Ann. 2010-59, 2010-39 I.R.B. 399

2009-90

Superseded by

Notice 2010-54, 2010-40 I.R.B. 403

Proposed Regulations:

REG-115037-00

Withdrawn by

Ann. 2010-60, 2010-40 I.R.B. 417

REG-146893-02

Withdrawn by

Ann. 2010-60, 2010-40 I.R.B. 417

Revenue Procedures:

81-18

Obsoleted by

Rev. Proc. 2010-27, 2010-31 I.R.B. 183

Revenue Procedures— Continued:

2007-44

Modified by

Notice 2010-48, 2010-27 I.R.B. 9

2008-33

Superseded by

Rev. Proc. 2010-42, 2010-47 I.R.B. 715

2008-49

Superseded by

Rev. Proc. 2010-38, 2010-43 I.R.B. 530

2008-52

Modified by

T.D. 9504, 2010-47 I.R.B. 670

2009-18

Obsoleted in part by

Rev. Proc. 2010-25, 2010-27 I.R.B. 16

2009-30

Superseded by

Rev. Proc. 2010-26, 2010-30 I.R.B. 91

2009-35

Superseded by

Rev. Proc. 2010-33, 2010-38 I.R.B. 347

2009-46

Superseded by

Rev. Proc. 2010-37, 2010-42 I.R.B. 440

2009-47

Superseded by

Rev. Proc. 2010-39, 2010-42 I.R.B. 459

2009-48

Superseded by

Rev. Proc. 2010-43, 2010-47 I.R.B. 738

2009-50

Modified by

Rev. Proc. 2010-35, 2010-42 I.R.B. 438

2010-3

Modified by

Notice 2010-62, 2010-40 I.R.B. 411

Revenue Rulings:

2003-102

Obsoleted by

Rev. Rul. 2010-23, 2010-39 I.R.B. 388

67-436

Obsoleted by

T.D. 9504, 2010-47 I.R.B. 670

Treasury Decisions:

9487

Corrected by

Ann. 2010-50, 2010-33 I.R.B. 260

¹ A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2010–1 through 2010–26 is in Internal Revenue Bulletin 2010–26, dated June 28, 2010.



U.S. GOVERNMENT
PRINTING OFFICE
KEEPING AMERICA INFORMED

Order Processing Code:
3465

Easy Secure Internet:
bookstore.gpo.gov

Internal Revenue Cumulative Bulletins
Publications and Subscription Order Form

Toll Free: 866 512-1800
DC Area: 202 512-2800
Fax: 202 512-2250

Mail: Superintendent of Documents
P.O. Box 371954
Pittsburgh, PA 15250-7954

Publications

Qty.	Stock Number	Title	Price Each	Total Price
	048-004-02467-5	Cum. Bulletin 1999-3	20.40	
	048-004-02462-4	Cum. Bulletin 2001-2 (Jul-Dec)	24.00	
	048-004-02480-2	Cum. Bulletin 2001-3	71.00	
	048-004-02470-5	Cum. Bulletin 2002-2 (Jul-Dec)	28.80	
	048-004-02486-1	Cum. Bulletin 2002-3	54.00	
	048-004-02483-7	Cum. Bulletin 2004-2 (July-Dec)	54.00	
	048-004-02488-8	Cum. Bulletin 2005-2	56.00	
Total for Publications				

Subscriptions

Qty.	List ID	Title	Price Each	Total Price
	IRS	Internal Revenue Bulletin	\$247	
		Optional - Add \$50 to open Deposit Account		
Total for Subscriptions				
Total for Publications and Subscriptions				

NOTE: Price includes regular shipping and handling and is subject to change. International customers please add 40 percent.



Check method of payment:

- ☐ Check payable to Superintendent of Documents
- ☐ SOD Deposit Account -
- ☐ VISA ☐ MasterCard ☐ Discover/Novus ☐ American Express

(expiration date)

Thank you for your Order!

Authorizing signature

06/06

Company or personal name

(Please type or print)

Additional address/attention line

Street address

City, State, Zip Code

E-mail address

Daytime phone including area code

Purchase order number (optional)

Standing Order Service*

To automatically receive future editions of *Internal Revenue Cumulative Bulletins* without having to initiate a new purchase order, sign below for Standing Order Service.

Qty.	Standing Order	Title
	ZIRSC	Internal Revenue Cumulative Bulletins

Authorization

I hereby authorize the Superintendent of Documents to charge my account for Standing Order Service:

(enter account information at right)

☐ VISA ☐ MasterCard ☐ Discover/NOVUS ☐ American Express

☐ Superintendent of Documents (SOD) Deposit Account

Authorizing signature (Standing orders not valid unless signed.)

Please print or type your name.

Daytime phone number ()

SuDocs Deposit Account

A Deposit Account will enable you to use Standing Order Service to receive subsequent volumes quickly and automatically. For an initial deposit of \$50 you can establish your Superintendent of Documents Deposit Account.

☐ YES! Open a SOD Deposit Account for me so I can order future publications quickly and easily.
I am enclosing the \$50 initial deposit.

*Standing Order Service

Just sign the authorization above to charge selected items to your existing Deposit Account, VISA or MasterCard, Discover/NOVUS, or American Express account. Or open a Deposit Account with an initial deposit of \$50 or more. Your account will be charged only as each volume is issued and mailed. Sufficient money must be kept in your account to insure that items are shipped. Service begins with the next issue released of each item you select.

You will receive written acknowledgement for each item you choose to receive by Standing Order Service.

If you wish to cancel your Standing Order Service, please notify the Superintendent of Documents in writing (telephone cancellations are accepted, but must be followed up with a written cancellation within 10 days).

Important: Please include this completed order form with your payment.

INTERNAL REVENUE BULLETIN

The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletin is sold on a yearly subscription basis by the Superintendent of Documents. Current subscribers are notified by the Superintendent of Documents when their subscriptions must be renewed.

CUMULATIVE BULLETINS

The contents of this weekly Bulletin are consolidated semiannually into a permanent, indexed, Cumulative Bulletin. These are sold on a single copy basis and *are not* included as part of the subscription to the Internal Revenue Bulletin. Subscribers to the weekly Bulletin are notified when copies of the Cumulative Bulletin are available. Certain issues of Cumulative Bulletins are out of print and are not available. Persons desiring available Cumulative Bulletins, which are listed on the reverse, may purchase them from the Superintendent of Documents.

ACCESS THE INTERNAL REVENUE BULLETIN ON THE INTERNET

You may view the Internal Revenue Bulletin on the Internet at www.irs.gov. Select Businesses. Under Businesses Topics, select More Topics. Then select Internal Revenue Bulletins.

INTERNAL REVENUE BULLETINS ON CD-ROM

Internal Revenue Bulletins are available annually as part of Publication 1796 (Tax Products CD-ROM). The CD-ROM can be purchased from National Technical Information Service (NTIS) on the Internet at www.irs.gov/cdorders (discount for online orders) or by calling 1-877-233-6767. The first release is available in mid-December and the final release is available in late January.

HOW TO ORDER

Check the publications and/or subscription(s) desired on the reverse, complete the order blank, enclose the proper remittance, detach entire page, and mail to the Superintendent of Documents, P.O. Box 371954, Pittsburgh PA, 15250-7954. Please allow two to six weeks, plus mailing time, for delivery.

WE WELCOME COMMENTS ABOUT THE INTERNAL REVENUE BULLETIN

If you have comments concerning the format or production of the Internal Revenue Bulletin or suggestions for improving it, we would be pleased to hear from you. You can email us your suggestions or comments through the IRS Internet Home Page (www.irs.gov) or write to the IRS Bulletin Unit, SE:W:CAR:MP:T:T:SP, Washington, DC 20224.

Internal Revenue Service
Washington, DC 20224

Official Business
Penalty for Private Use, \$300