

## TAX DEPOSITION QUESTIONS: 10. PRA, APA, and REGULATIONS

### 10. PRA - APA - REGULATIONS

#### Introduction

**Although explicitly mandated by the PRA, the IRS will not, *or can not*, cite its legal authority for Form 1040 and implicitly, the authority for the income tax itself.**

**Form 1040 has never been approved by the OMB (Office of Management and Budget) as the proper form to file an "Individual Income Tax Return."**

#### Findings and Conclusions

**With the assistance of the following series of questions, we will show that the laws of the U.S. government relating to administrative procedures, privacy, and paperwork reduction clearly point to the fact that the income tax is voluntary, and that there is no requirement to file tax returns. We will also show that:**

- **Per the PRA, all government Forms requiring information from the general public must have an OMB number, be referenced in the regulations and be approved by OMB.**
- **Form 1040 has never been approved as the proper form to file an individual "income tax return." In 1994, the reference to Form 1040 was DELETED from the table in the CFR that linked it to the income tax.**
- **Form 2555, "Foreign Earned Income" is the form specified in the regulations as the form to collect the information described in 26 CFR 1.1-1 (the income tax section).**

***Bottom Line:*** Even when required to comply with the laws of the U.S., the IRS refuses, *or can not*, cite its legal authority for Form 1040 and implicitly, the authority for the income tax itself.

#### Section Summary

 [Acrobat version of this section including questions and evidence](#) (large: 2.20 Mbytes)

#### Further Study On Our Website:

- [Penalty Protester](#) (OFFSITE LINK)
- [Why Penalties are Illegal for Anything But Federal Employees, Contractors, and Agents, Form #05.010](#) (OFFSITE LINK) -SEDM
- [Great IRS Hoax](#) book:
  - Section 5.5.7: 1040 and Especially 1040NR Tax Forms Violate the Privacy Act and Therefore Need Not Be Submitted
- [Paperwork Reduction Act \(PRA\)](#)

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10.1. Admit that the Paperwork Reduction Act, [44 U.S.C. § 3501](#), et seq., mandates that forms and regulations of federal agencies that require the provision of information must bear and display OMB control numbers. (WTP #192)

-  [Click here for 44 U.S.C. §3501](#) (WTP Exhibit 113)

10.2. Admit that 1 C.F.R. § 21.35 requires that OMB control numbers shall be placed parenthetically at the end of a regulation or displayed in a table or codified section. (WTP #193)

- [Click here for 1 C.F.R. § 21.35](#) (WTP Exhibit 114)


10.3. Admit that the following tax regulations contain OMB control numbers at the end of these regulations: (WTP #194)

- [26 C.F.R. §1.860-2](#) (WTP Exhibit 115)
- [26 C.F.R. §1.860-4](#) (WTP Exhibit 116)
- [26 C.F.R. §1.897-1](#) (WTP Exhibit 117)
- [26 C.F.R. §1.901-2](#) (WTP Exhibit 118)
- [26 C.F.R. §1.1445-7](#) (WTP Exhibit 119)
- [26 C.F.R. §1.6046-1](#) (WTP Exhibit 122)
- [26 C.F.R. §1.6151-1](#) (WTP Exhibit 124)
- [26 C.F.R. §1.6152-1](#) (WTP Exhibit 125)
- [26 C.F.R. §1.9200-2](#) (WTP Exhibit 126)
- [26 C.F.R. §31.3401\(a\)\(8\)\(A\)-1](#) (WTP Exhibit 127)
- [26 C.F.R. §31.3501\(a\)-1T](#) (WTP Exhibit 128)
- [26 C.F.R. §301.6324A-1](#) (WTP Exhibit 129)
- [26 C.F.R. §301.7477-1](#) (WTP Exhibit 130)

10.4. Admit that [26 U.S.C. § 6012](#) does not specify where tax returns are to be filed. (WTP #195)

-  [Click here for 26 U.S.C. §6012](#) (WTP Exhibit 020)

10.5. Admit that [26 U.S.C. § 6091](#) governs the matter of where tax returns are to be filed. (WTP #196)

- [Click here for 26 CFR. §1.860-2](#) (WTP Exhibit 115)
-  [Click here for 26 U.S.C. §6091](#) (WTP Exhibit 115)

10.6. Admit that by the plain language of [§6091](#), regulations must be promulgated to implement this statute. (WTP #197)

-  [Click here for 26 U.S.C. §6091](#) (WTP Exhibit 115)

10.7. Admit that in [5 U.S.C. § 551](#), a "rule" is defined as: (WTP #198)

*"(4) 'rule' means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency . . . ."*

-  [Click here for 5 U.S.C. §551](#)
- [Click here for 5 U.S.C. §551](#) (WTP Exhibit 133)

10.8. Admit that [5 U.S.C. §552](#) describes in particular detail various items which must be published by federal agencies in the Federal Register, as follows: (WTP #199)

*"(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public--*


*(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;*

*(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;*



*(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and content of all papers, reports, or examinations;*

*(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and*

*(E) each amendment, revision or repeal of the foregoing."*

-  [Click here for 5 U.S.C. §552](#)
- [Click here for 5 U.S.C. §552](#) (WTP Exhibit 003)

10.9. Admit that the Department of the Treasury as well as the IRS acknowledge the publication requirements of the [Administrative Procedure Act](#) in 31 C.F.R. § 1.3 and 26 C.F.R. § 601.702. (WTP #200)

-  [Click here for 31 CFR §1.3](#) (WTP Exhibit 134)
-  [Click here for 26 CFR §601.702](#) (WTP Exhibit 135)

10.10. Admit that the Commissioner of Internal Revenue promulgated the Treasury Regulation set out at 26 C.F.R. § 602.101 to collect and display the control numbers assigned to collections of information in Internal Revenue Service regulations by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. (WTP #201)

-  [Click here for 26 CFR §602.101](#) (WTP Exhibit 006)

10.11. Admit that the Internal Revenue Service intended that 26 C.F.R. § 602.101 comply with the requirements of OMB regulations implementing the Paperwork Reduction Act of 1980, for the display of control numbers assigned by OMB to collections of information in Internal Revenue Service regulations. (See 26 C.F.R. § 602.101.) (WTP #202)

-  [Click here for 26 CFR §602.101](#) (WTP Exhibit 006)

10.12. Admit that 26 C.F.R. § 602.101(c) displays a table (the "Table") which on the left side lists the CFR part or section where the information to be collected by the Internal Revenue Service is identified and described, and on the right side, lists the OMB control number assigned to the OMB-approved form to be used to collect the information so identified and described. (WTP #203)

-  [Click here for 26 CFR §602.101\(c\)](#) (WTP Exhibit 006)

10.13. Admit that the Table displayed at 26 C.F.R. § 602.101 in the 1994 version of the Code of Federal Regulations lists 1.1-1 as a CFR part or section that identifies and describes information to be collected by the Internal Revenue Service. (WTP #204)

- [Click here for 26 CFR §602.101 \(1994\)](#) (WTP Exhibit 136)

10.14. Admit that 26 C.F.R. § 1.1-1 relates to the income tax imposed on individuals by [26 U.S.C. § 1](#). (WTP #205)

- [Click here for 26 CFR §1.1](#) (WTP Exhibit 021)
- [Click here for 26 U.S.C. §1](#) (WTP Exhibit 002)

10.15. Admit that the OMB control number assigned to the form to be used to collect the information identified and described at 26 C.F.R. § 1.1-1 is 1545-0067. (WTP #206)

- [Click here for 26 CFR §602.101\(c\)](#) (WTP Exhibit 136)

10.16. Admit that the OMB control number 1545-0067 is assigned to the IRS Form 2555. (WTP #207)

-  [Click here for IRS Form 2555](#) (WTP Exhibit 137)

10.17. Admit that the IRS Form 2555 is titled "Foreign Earned Income". (WTP #208)

-  [Click here for IRS Form 2555](#) (WTP Exhibit 137)

10.18. Admit that the IRS Form 2555 is used to collect information regarding foreign earned income. (WTP #209)

-  [Click here for IRS Form 2555](#) (WTP Exhibit 136)

10.19. Admit that the OMB control number assigned to the IRS Form 1040 Individual Income Tax Return is 1545-0074. (WTP #210)

- [Click here for IRS Form 1040 U.S. Individual Income Tax Return](#) (WTP Exhibit 138)

10.20. Admit that the Table set out at 26 C.F.R. § 602.101 has never displayed the OMB control number 1545-0074 as being assigned to the collection of individual income tax information identified and described by 26 C.F.R. § 1.1-1. (WTP #211)

- [Click here for 26 CFR §602.101\(c\)](#) (WTP Exhibit 006) ver. 1
- [Click here for 26 CFR §602.101\(c\)](#) (WTP Exhibit 136) ver. 2
- [Click here for 26 CFR §602.101\(c\)](#) (WTP Exhibit 139) ver. 3

10.21. Admit that the OMB has not approved the IRS Form 1040 U.S. Individual Income Tax Return as the proper form on which to make the return of individual income tax information identified and described at 26 C.F.R. § 1.1-1. (WTP #212)

- [Click here for 26 CFR §602.101\(c\)](#) (WTP Exhibit 006) ver. 1
- [Click here for 26 CFR §602.101\(c\)](#) (WTP Exhibit 136) ver. 2
- [Click here for 26 CFR §602.101\(c\)](#) (WTP Exhibit 139) ver. 3

10.22. Admit that the Table displayed at 26 C.F.R. § 602.101 in the 1995 version of the Code of Federal Regulations does not list 1.1-1 as a CFR part or section that identifies and describes information to be collected by the Internal Revenue Service. (WTP #213)

- [Click here for 26 CFR §602.101\(c\)](#) (WTP Exhibit 139) ver. 3
- [Click here for 26 CFR §602.101\(c\)](#) (WTP Exhibit 006) ver. 1

10.23. Further admit that the Internal Revenue Service caused the entry for 1.1-1 to be deleted from 26 C.F.R. § 602.101, by publishing the deletion at 59 FR 27235, on May 26, 1994. (WTP #214)

- [Click here for 26 CFR §602.101](#) (WTP Exhibit 006)
- [Click here to see 59 FR 27235](#) (WTP Exhibit 140)

10.24. Further admit that the published deletion was accomplished under the supervision of Internal Revenue Service employee Cynthia E. Grigsby, Chief, Regulations Unit, Assistant Chief Counsel (Corporate). (WTP #215)

- [Click here for 26 CFR §602.101](#) (WTP Exhibit 006)
- [Click here to see 59 FR 27235](#) (WTP Exhibit 140)

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## SECTION 10-PRA AND APA AND REGULATIONS SUMMARY

The federal Paperwork Reduction Act (PRA) was enacted to force government agencies to document conclusively what forms the government requires the People to fill out and what legal authority establishes that requirement.

The Administrative Procedures Act requires that each government agency must then publish publicly those requirements and other informational tidbits about the agency in the Federal Register and inform the People of the legal basis for requiring the submission of information to the government.

In addition, the PRA law required that every federal form that demanded information from the public must have an OMB (Office of Management and Budget) control number associated with it and have it so identified both on the form and cross-referenced in the actual CFR regulations.

Although most government agencies complied readily with the Act, the IRS has had particular problems complying with this law.

This section of inquiry will examine some of the particulars and ask why a simple legal requirement such as the PRA is such a problem for the IRS.

The BIG question: Is the failure to specifically link Form 1040 to the income tax regulations a mere “oversight” or is it because the tax is not compulsory under the law for most Americans?

Is this why Form 1040 has never been “approved” by the OMB for the income tax?

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# PENALTY PROTESTOR!

January 8, 2007 - 11:16 am



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- Overview
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*"In the beginning of a change, the patriot is a scarce man; brave, hated, and scorned. When his cause succeeds however, the timid join him, for then it costs nothing to be a patriot."*

*Mark Twain*

[The change starts here...](#)

**U.S. SUPREME COURT DECISION**

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 [16] Page 40 See id., at 20 ("The Act allow[s] the public, by refusing to answer these [information collection requests], to help control "outlaw forms").

**Paperwork Reduction Act**  
**44USC Section 3512. Public protection**

(a) Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information that is subject to this subchapter if -

(1) the collection of information does not display a valid control number assigned by the Director in accordance with this subchapter; or

(2) the agency fails to inform the person who is to respond to the collection of information that such person is not required to respond to the collection of information unless it displays a valid control number.

(b) The protection provided by this section may be raised in the form of a complete defense, bar, or otherwise at any time during the agency administrative process or judicial action applicable thereto.

- APA/PRA Complaint
- Springer Gov 10th Circuit Brief
- Bivens Action
- Gov Springer Final Brief
- 10th APA Opening Brief
- APA Motion Dismiss by Gov
- PRA House Senate Joint Conference Report
- 2006 IRS Revenue Bulletin on 1980 PRA
- APA Complaint
- APA Complaint-Exhibit 1
- APA Complaint-Exhibit 2
- APA Complaint-Exhibits 10-13
- APA Complaint-Exhibit 14
- APA Preliminary Injunction
- APA LKS Declaration
- Letter from OMB
- APA Motion to Dismiss
- APA Prelim. Injunction Oppos
- APA Motion to Dismiss Brief
- APA Motion to Dismiss Response
- 10th Injunction Response
- APA Order
- Bivens Brief
- Bivens Opposition
- 1995 PRA Congressional Report Forms
- 1998 Form 1040 SF83
- 1986 Form 1040 SF83
- 1985 Form 1040 SF83
- 2005 Form 2555
- 2004 Form 2555
- 2006 Form 1040ES Instructions
- 2005 Form 1040 Instructions

 2004 Form 1040 Instructions

 1990-2005 Form 1040


 1990-2005 Form 1040A

 1990-2006 Form 1040ES

 1990-2005 Form 1040EZ


Cases and Reports

 IRS Admissions To Pond - Exempt  
Amt Not In Law *new!*

 2006 IRS Revenue Bulletin on 1980  
PRA

 Study on PRA of 1995 part I

 Study on PRA of 1995 part II

 US v. Smith

 US v. Hatch

 US v. Holden

 Collins-10th Circuit

 Dawes-10th Circuit

 Dole Supreme Court

 Hicks-9th Circuit

 Salberg-7th Circuit

 Wunder-6th Circuit

Robert Lawrence Case

 Paperwork Reduction Act House  
Senate Joint Conference Report

 Gov 7th Circuit Brief

 Declaration of IRS Agent

 Tax Return 1040 Form

 Opinion and Order

 Response to Motion

 Indictment

 Motion to Dismiss

 Reply to Reason to Dismiss

 Exhibits for Reason to Dismiss


Conference Call Audio Files


 Sat 6-24-06


 Sat 7-1-06

 Sat 7-8-06

 Sat 7-15-06

 Sat 9-30-06

 Sat 10-28-06 *new!*

 Sat 11-11-06 *new!*

 Florida 72206 Conf Tape2

 Florida 72206 Conf Tape3

 Florida 72206 Conf Tape4

 Florida 72206 Conf Tape5

 Florida 72206 Conf Tape6

Blackstock Trial

 6/19/06 Transcripts

 6/19/06 Motion and Trial



-  [6/20/06 Transcripts](#)
-  [6/21/06 Transcripts](#)
-  [6/22/06 Transcripts](#)
-  [Denial of Arrest Judgement](#)
-  [Govt Response to Defendent's Motion for Reconsideration of Denial of Arrest Judgement](#)
-  [Govt Response to Motion for Arrest](#)
-  [Motion for Reconsideration of Order Deny Arrest of Judgment](#)
-  [Motion for Motion of Arrest of Judgment and to Dismiss Indictment](#)
- Misc Government Briefs
  -  [Pond 10th Circuit Gov Brief](#)
  -  [Lawrence Gov 7th Circuit Brief](#)
  -  [Guthrie 9th Circuit Gov Brief](#)

## Sovereignty Education and Defense Ministry (SEDM) FORM INDEX

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- [4.3 Legal Forms](#)

















This page contains a listing of all the free forms available on our website that may prove useful in various situations relating to sovereignty and taxes. The forms are arranged either by form number or by their use, to make finding them easier. The forms are provided in Adobe Acrobat format and may be viewed by downloading and installing the latest FREE Adobe Acrobat Reader from the link below:

<http://www.adobe.com/products/acrobat/readstep2.html>

Most of our forms are also FILLABLE from within the Acrobat Reader as well! Simply click on the fill-in box provided for each field, fill in the data, and save your copy of the form as a completed template. Then you can reuse the completed form again in the future so as to save you time in responding to tax collection notices. This is a very handy feature.













### **1. SEQUENTIAL CATEGORIZED INDEX OF SEDM FORMS**

Section 5, the Memorandums of Law section, contains memorandums of law that you can attach to your pleadings and correspondence with opposing counsel during a legal dispute. Most of these memorandums of law end with a series of admissions relating to the subjects discussed in the memorandum, making them ideal for use as a discovery device during litigation as well.

| Form #  | Format   | Title  | Circumstances where used   | Related Resources/Information   | Date of Last Revision |
|---|--|--|--|---|-----------------------|
| <b>1. GENERAL</b>   |  |  |  |   |                       |
| <a href="#">01.001</a>  | PDF       | SEDM Articles of Mission   | Our Mission Statement  |   | 11/29/2005            |
| <a href="#">01.002</a>  | PDF       | SEDM Member Agreement  | Use this form to join the organization. You cannot use or view or obtain our materials without being a Member.   | <a href="#">Member Agreement</a>  | 11/11/2005            |
| <a href="#">01.003</a>  | PDF       | Fax Cover Sheet  | Use this sheet to record your questions for comments to SEDM and then fax it to us.  |   | 4/13/2005             |
| <a href="#">01.004</a>  | PDF       | Famous Quotes about Rights and Liberty                                     | Useful on any occasion   |   | 10/25/2005            |
| <a href="#">01.005</a>  | HTML   | Proof of Mailing   | Useful to provide proof of what you mailed and when. OFFSITE LINK  |   | 10/15/2005            |
| <b>2. AFFIDAVITS</b>  |  |  |  |   |                       |
| <a href="#">02.001</a>  | PDF       | Affidavit of Citizenship, Domicile, and Tax Status                         | Attach to an application for a financial account or job withholding form. Establishes and explains your status as a "national" and not a "citizen" under federal law.  | <ol style="list-style-type: none"> <li><a href="#">Why you are a "national" or a "state national" and not a "U.S. citizen"</a></li> <li><a href="#">Why "domicile" and income taxes are voluntary</a></li> </ol>    | 4/12/2006             |
| <a href="#">02.002</a>  | PDF       | Affidavit of Material Facts  | Use this enclosure with a state response letter to establish citizenship and taxpayer status in a narrative format. Includes check marks in front of each item so that it can be reused again and made into a "Notice of Default" against a tax collection agency.                   | <ol style="list-style-type: none"> <li><a href="#">Federal Response Letters</a></li> <li><a href="#">State Response Letters</a></li> </ol>  | 9/25/2005             |
| <a href="#">02.003</a>  | PDF       | Affidavit of Duress: Member Deposition                                     | Members may use this if government attempts to compel them to attend a deposition which might either incriminate them or the SEDM ministry.  |   | 10/13/2006            |
| <a href="#">02.004</a>  | PDF       | Affidavit of Corporate Denial  | Use this form to remove or destroy the jurisdiction of federal courts and the IRS to enforce any federal law against you.  | <ol style="list-style-type: none"> <li><a href="#">Federal Jurisdiction</a></li> <li><a href="#">Why your Government is Either A Thief or You Are a Federal Employee for Federal Income Tax Purposes</a></li> </ol> | 1/29/2006             |
| <b>3. DISCOVERY</b>   |  |  |  |   |                       |
| <a href="#">03.001</a>  | ZIP file  | Amplified Deposition Transcript  | Use this transcript as a way to provide an amplified deposition transcript if the opposing U.S. Attorney insists that you did not answer some of the questions at a previous deposition. Scan in the original transcript, convert to text, and past into chapter 4 of this document. |   | 2/20/2006             |
| <a href="#">03.002</a>  | HTML   | Handling and Getting a Due Process Hearing                                 | This article shows how to fill out IRS form 12153 to maximize your chances of getting an in-person due process hearing.  |   | NA                    |
| <a href="#">03.003</a>  | PDF       | Admissions relating to alleged liability                                   | Use this in your response to IRS notices as a way to establish what your liability is. Can be used in conjunction with Form 0001 above.  | <a href="#">Master File Decoder</a><br><a href="#">Correcting Erroneous IRS form W-2's</a>  | 9/30/2005             |
| <a href="#">03.004</a>  | PDF       | Deposition Agreement   | Use this agreement when the government is attempting to depose an SEDM member. It ensures a fair hearing and equal opportunity to ask questions or each other.   | <a href="#">Member Agreement</a> (requires use of this form)  | 4/12/2006             |
| <a href="#">03.005</a>  | PDF       | Deposition Handout   | Members may use this form to give to any government attorney or employee who has subpoenaed them to give oral testimony under <a href="#">Federal Rule of Civil Procedure Rule 30</a> in relation to their involvement in this Ministry.   | <a href="#">Federal Rule of Civil Procedure Rule 30</a> (OFFSITE LINK)  | 4/12/2006             |
| <a href="#">03.006</a>  | PDF     | SSA Form SSA-L996: Social Security Number Request for Extract or Photocopy | Use this form to obtain a copy of any Social Security records that the SSA is maintaining connected to your all caps name.   | <ol style="list-style-type: none"> <li><a href="#">Socialism: The new American Civil Religion</a></li> <li><a href="#">Social Security: Mark of the Beast</a> (OFFSITE LINK)</li> </ol>                             | 4/12/2006             |
| <a href="#">03.007</a>  | PDF     | Bureau of Public Debt FOIA   | Use this form to obtain records of public debt issued in the name of an SSN, TIN, or SS Card Number. This constitutes proof that your application to SSA makes you into surety for federal debt.   |   | 11/17/2006            |
| <a href="#">03.008</a>  | PDF     | IRS Due Process Meeting Handout  | Mail this form in advance of an IRS Audit or meeting and demand proof of authority on the record from the agent. Also bring it along with you to the due process meeting and demand that proof of jurisdiction be provided on the record using this form.                            | <a href="#">Nontaxpayer's Audit Defense Manual</a>  | 12/13/2006            |
| <b>4. TAX WITHHOLDING, COLLECTION, AND REPORTING</b> (Please read  <a href="#">Federal and State Tax Withholding Options for Private Employers</a> ) |  |  |  |   |                       |
| <a href="#">04.001</a>  | HTML   | IRS form W-8BEN  | Provide to financial institutions and private employers to stop withholding and reporting of earnings.   | <a href="#">About IRS form W-8BEN</a>   | 4/13/2005             |
| <a href="#">04.002</a>  | HTML   | IRS form 56  | Send this in to change your IRS status so that you aren't a fiduciary for an artificial entity or business   | <a href="#">About IRS form 56</a>   | 4/13/2005             |
| <a href="#">04.003</a>  | HTML   | IRS form 1098  | Send in a corrected version of this report to zero out erroneous reports of mortgage interest payments "effectively connected with a trade or business".   | <a href="#">Correcting Erroneous IRS form 1098's</a>  | 4/13/2005             |
| <a href="#">04.004</a>  | HTML   | IRS form 1099  | Send in a corrected version of this report to zero out erroneous reports of income "effectively connected with a trade or business".   | <a href="#">Correcting Erroneous IRS form 1099's</a>  | 4/13/2005             |
| <a href="#">04.005</a>  | HTML   | IRS form W-2   | Send in to correct erroneous W-2 reports sent in by private employs with whom you have a W-8 on file and/or did not authorize withholding.   | <a href="#">Correcting Erroneous IRS form W-2's</a>   | 4/13/2005             |

|                              |   |   |   |   |            |
|------------------------------|---|---|---|---|------------|
| <a href="#">04.006</a>       | PDF      | Demand for Verified Evidence of "Trade or Business" Activity: Information Return                | Use this form in the case where someone you work for or with is trying wants to fill out an Information Return against you, and you are not engaged in a "trade or business". This prevents you from having false or erroneous Information Returns filed against you by educating companies and financial institutions about their proper use.  | <a href="#">The "Trade or Business" Scam</a>  | 3/17/2006  |
| <a href="#">04.007</a>       | PDF    | Certification of Federally Privileged Status  | Use this form with your private employer to get certification that you are not a federal "employee" or privileged "public official"   | <a href="#">The "Trade or Business" Scam</a>  | 3/17/2006  |
| <a href="#">04.008</a>       | PDF    | Demand for Verified Evidence of "Trade or Business" Activity: Currency Transaction Report (CTR) | Use this form in the case where you are trying to withdraw \$10,000 or more from a financial institution in cash, and they want to fill out a Currency Transaction Report (CTR), Treasury form 8300, on the transaction. Typically, banks are not subject to federal legislative jurisdiction AND the CTR's can only be completed on those who are engaged in a "trade or business", which few Americans are. | <a href="#">The "Trade or Business" scam</a>  | 1/23/2006  |
| <a href="#">04.009</a>       | PDF    | Tax Withholding and Reporting: What the Law Says  | Present this form to private companies who you work for as a private employee, in order to educate them about what the law requires in the case of payroll withholding.   | 1. <a href="#">Federal and State Withholding Options for Private Employers</a> (OFFSITE LINK)<br>2. <a href="#">Federal Tax Withholding</a>   | 4/30/2006  |
| <a href="#">04.010</a>       | PDF    | IRS Form 1042   | Send in a corrected version of this report to zero out erroneous reports of gross income for those nonresident aliens who are not engaged in a " <a href="#">trade or business</a> ".   | <a href="#">Correcting Erroneous IRS form 1042's</a>  | 11/15/2006 |
| <a href="#">04.011</a>       | PDF    | IRS Form 1098 Lender Letter   | Send this form to lenders and mortgage companies who are wrongfully filing IRS form 1098's against you as a nonresident alien not engaged in a " <a href="#">trade or business</a> " to get them to stop filing the false reports so that you don't have to correct them later.   | <a href="#">Correcting Erroneous IRS form 1098's</a>  | 11/15/2006 |
| <b>5. MEMORANDUMS OF LAW</b> |   |   |   |   |            |
| <a href="#">05.001</a>       | PDF    | The Trade or Business Scam  | Attach to your letters and correspondence to explain why you have no reportable income  | 1. <a href="#">Demand for Verified Evidence of Trade or Business Activity: CTR</a><br>2. <a href="#">Demand for Verified Evidence of Trade or Business Activity: Information Return</a> | 9/4/2006   |
| <a href="#">05.002</a>       | PDF    | Why Domicile and Income Taxes are Voluntary   | Attach to your letters and correspondence to explain why you have no reportable income  | <a href="#">Sovereignty Forms and Instructions: Cites by Topic, "Domicile"</a> (OFFSITE LINK)   | 10/9/2005  |
| <a href="#">05.003</a>       | PDF    | Requirement for Consent   | Attach to your letters and correspondence to explain why you aren't obligated to follow the I.R.C. because it isn't "law" for you   | <a href="#">Declaration of Independence</a> (OFFSITE LINK)  | 9/6/2006   |
| <a href="#">05.004</a>       | PDF    | Political Jurisdiction  | Attach to legal pleadings in order to ensure that the court does not challenge or undermine your choice of citizenship or domicile. Establishes that any court which attempts to do this is involving itself in "political questions", which is a violation of the separation of powers doctrine.   |   | 9/25/2006  |
| <a href="#">05.005</a>       | PDF    | Federal Tax Withholding   | For use in those seeking new employment or who wish to terminate employment tax withholding. Use in conjunction with the <a href="#">Federal and State Tax Withholding Options for Private Employers</a> book. This is an abbreviated version of what appears in chapter 16 for management types who have little patience and a short attention span, which is most bosses.                                   | <a href="#">Federal and State Tax Withholding Options for Private Employers</a> (OFFSITE LINK)<br><a href="#">Income Tax Withholding and Reporting</a>                                  | 3/23/2006  |
| <a href="#">05.006</a>       | PDF  | Why you are a "national" or "state national" and not a "U.S. citizen"                           | For use in obtaining a passport, for job applications, and to attach to court pleadings in which you are declaring yourself to be a "national" and a "nonresident alien".   | <a href="#">Citizenship and Sovereignty Seminar</a><br><a href="#">Developing Evidence of Citizenship Seminar</a>   | 8/23/2006  |
| <a href="#">05.007</a>       | PDF  | Reasonable Belief About Tax Liability   | For use by those:<br>1. Establishing a reasonable belief about liability.<br>2. Corresponding with the IRS.<br>3. Being criminally prosecuted for failure to file or tax evasion.   | <a href="#">Great IRS Hoax</a><br><a href="#">Federal and State Tax Withholding Options for Private Employers</a> (OFFSITE LINK)  | 9/6/2006   |
| <a href="#">05.008</a>       | PDF  | Why Your Government is Either A Thief or You are a "Public Official" for Income Tax Purposes    | Use this as an attachment to prove why Subtitle A of the Internal Revenue Code, in context of employment withholding and earnings on a 1040, are connected mainly with federal employment.  |   | 3/23/2006  |
| <a href="#">05.009</a>       | PDF  | Legal Requirement to File Federal Income Tax Returns  | Use this as an attachment in response to a CP-518 IRS letter, or as part of a brief in response to criminal prosecution for "Willful Failure to File" under <a href="#">26 USC §7203</a> .  | <a href="#">Reasonable Belief About Tax Liability</a>   | 3/4/2006   |
| <a href="#">05.010</a>       | PDF  | Why Penalties are Illegal for Anything But Federal Employees, Contractors, and Agents           | Use this as an attachment in response to an IRS penalty collection notice to prove that you aren't responsible to pay the assessed penalty. Make sure you also follow the guidelines relating to SSNs in our article entitled " <a href="#">About SSNs/ TINs on Tax Correspondence</a> "  | <a href="#">26 U.S.C. §6671(b)</a> (OFFSITE LINK)<br><a href="#">Sovereignty Forms and Instructions, Cites by Topic, "Bill of Attainder"</a> (OFFSITE LINK)                             | 1/26/2006  |
| <a href="#">05.011</a>       | PDF  | Why Assessments and Substitute for Returns are Illegal Under the I.R.C. Against Natural Persons | Use this as an attachment in response to an IRS or state "Notice of Proposed Assessment" or 90-day letter to show that the proposed assessment is illegal. Make sure you also attach IRS form 4852's and corrected 1099's to zero out illegal reports of taxable income using the links provided at the beginning of the memorandum.  | <a href="#">Sovereignty Forms and Instructions, Cites by Topic, "assessments"</a> (OFFSITE LINK)  | 1/8/2006   |

|                        |   |   |  |   |            |
|------------------------|---|---|--|---|------------|
| <a href="#">05.012</a> | PDF      | About SSNs and TINs on Government Forms and Correspondence                                      | Use this form whenever you are filling out paperwork that asks for an SSN and the recipient won't accept the paperwork because you said "None" on the SSN block. The questions at the end will stop all such frivolous challenges by recipients of the forms you submit, if they have even half a brain. | <a href="#">Wrong Party Notice</a><br><a href="#">About IRS form W-8BEN</a>   | 3/4/2006   |
| <a href="#">05.013</a> | PDF    | Who are "taxpayers" and who Needs a "Taxpayer Identification Number"?                           | Attach this to financial account applications, job applications, etc. Shows why you don't need SSNs or TINs on government correspondence.  | <a href="#">"Taxpayer" v. "Nontaxpayer", Which One are You?</a> (OFFSITE LINK)  | 10/9/2005  |
| <a href="#">05.014</a> | PDF    | The Meaning of the Words "includes" and "including"   | Rebuttal to the most popular IRS lie and deception. Attach to response letters or legal pleading.  | 1. <a href="#">Rebutted Version of IRS The Truth About Frivolous Tax Arguments</a><br>2. <a href="#">Statutory Interpretation: General Principles and Recent Trends</a> (OFFSITE LINK)          | 10/8/2006  |
| <a href="#">05.015</a> | PDF    | Commercial Speech   | Helpful to those facing injunctions.   | <a href="#">Freedom of Speech and Press: Exceptions to the First Amendment</a> (OFFSITE LINK)   | 7/24/2006  |
| <a href="#">05.016</a> | PDF    | Socialism: The New American Civil Religion  | Proves that government has become a false god and an idol in modern society in violation of the First Amendment.   | 1. <a href="#">Family Guardian: Communism and Socialism</a> (OFFSITE LINK)<br>2. <a href="#">Social Security: Mark of the Beast</a> (OFFSITE LINK)<br>3. <a href="#">The Law</a> (OFFSITE LINK) | 7/29/2006  |
| <a href="#">05.017</a> | PDF    | Presumption: Chief Weapon for Unlawfully Enlarging Federal Jurisdiction                         | Explains how federal agencies, courts, and the law profession unlawfully use "presumption" as a means to enlarge federal or government jurisdiction.   | <a href="#">Sovereignty Forms and Instructions, Cites by Topic, "presumption"</a> (OFFSITE LINK)  | 6/30/2006  |
| <a href="#">05.018</a> | PDF    | Federal Jurisdiction  | Explains choice of law in deciding federal jurisdiction in the context of federal income tax trials.   |   | 9/25/2006  |
| <a href="#">05.019</a> | PDF    | Court Sanctions, Contempts, and Defaults  | Describes circumstances under which court sanctions and contempt of court may lawfully be imposed in federal court.  | 1. <a href="#">Federal Rule of Civil Procedure Rule 11</a> (OFFSITE LINK)<br>2. <a href="#">Federal Rule of Civil Procedure Rule 37(b)</a> (OFFSITE LINK)                                       | 2/17/2006  |
| <a href="#">05.020</a> | PDF    | Nonresident Alien Position  | Describes and defends the Nonresident Alien Position that is the foundation of this website.   | <a href="#">About IRS Form W-8BEN</a>   | 10/26/2006 |
| <a href="#">05.021</a> | PDF    | Silence as a Weapon and a Defense in Legal Discovery  | Describes how to use your constitutional rights to prevent incriminating yourself or prejudicing your Constitutional rights. Also describes how to respond to such tactic.   | <a href="#">Federal Rule of Civil Procedure Rule 8(d)</a> (OFFSITE LINK)  | 7/17/2006  |
| <a href="#">05.022</a> | PDF    | Requirement for Reasonable Notice   | Describes the requirement for reasonable notice and how you can find out what laws you are required to obey based on how they are noticed by the government.   | <a href="#">Federal Register Act</a> (OFFSITE LINK)<br><a href="#">Administrative Procedures Act</a> (OFFSITE LINK)   | 8/15/2006  |
| <a href="#">05.023</a> | PDF    | Government Conspiracy to Destroy the Separation of Powers                                       | Describes historical efforts by the government to break down the separation of powers and destroy our God-given rights.  | <a href="#">Separation of Powers Doctrine</a>   | 9/5/2006   |
| <a href="#">05.024</a> | PDF    | Apostille of Documents  | Describes how to get your documents apostilled by the Secretary of State of your State for international use. This is useful for form 06.005 below.  | <a href="#">State legal resources</a> (OFFSITE LINK. find a state secretary of state)   | 8/18/2006  |
| <a href="#">05.025</a> | PDF    | Government Burden of Proof  | Describes the burden of proof imposed upon the government whenever enforcement actions are employed.   |   | 8/28/2006  |
| <a href="#">05.026</a> | PDF    | How the Government Defrauds You Out of Legitimate Deductions for the Market Value of Your Labor | Describes how to lawfully and legally deduct the entire market value of your labor from your earnings on a federal or state tax return.  | <a href="#">Is the Income Tax a Form of Slavery?</a> (OFFSITE LINK)   | 10/14/2006 |
| <a href="#">05.027</a> | PDF  | Meaning of the word "Frivolous"   | Describes the meaning of the word "frivolous", how it is abused by the government and legal profession, and how to prevent such abuses   |   | 10/3/2006  |
| <a href="#">05.028</a> | PDF  | Laws of the Bible   | Index and authorities on all the moral laws of the Bible, and how to apply them to the practical affairs of daily secular life.  | <a href="#">Holy Bible</a> (OFFSITE LINK)   | 10/13/2006 |
| <a href="#">05.029</a> | PDF  | Unlicensed Practice of Law  | Those wishing to lawfully help or assist others in the practice of law, including in arguing before courts of law, may attach this to Litigation Tool 3.003 in order to prove that they have authority to do so.   | <a href="#">Litigation Tool 3.003: Motion for Non-Bar Counsel</a>   | 12/14/2006 |
| <b>6. EMANCIPATION</b> |   |   |  |   |            |
| <a href="#">06.001</a> | PDF  | Why You Aren't Eligible for Social Security   | Use this form to apply for a driver's license without a Slave Surveillance Number. Most states require applications who are eligible for Social Security to provide a number. This pamphlet proves you aren't eligible and therefore don't need one.   | <a href="#">Social Security: Mark of the Beast</a> (OFFSITE LINK)   | 9/22/2005  |
| <a href="#">06.002</a> | PDF  | Resignation of Compelled Social Security Trustee  | Allows a person to legally and permanently quit Social Security. Used with permission from original author.  | 1. <a href="#">Social Security: Mark of the Beast</a> (OFFSITE LINK)<br>2. <a href="#">Socialism: The New American Civil Religion</a><br>3. <a href="#">About IRS form 56</a>                   | 9/24/2005  |
| <a href="#">06.003</a> | PDF  | Sovereignty Forms and Instructions Book   | Free forms and instructions which help you achieve and defend personal sovereignty and the sovereignty of God in the practical affairs of your life. Also available in online version. This is an OFFSITE resource and we are not responsible for the content.   | <a href="#">Online version of this book</a> (OFFSITE LINK)  | 2/21/2006  |
| <a href="#">06.004</a> | PDF  | Enumeration of Inalienable Rights   | Use this form to litigate in court to defend your rights. Gives you standing without the need to quote federal statutes that you are not subject to anyway as a nonresident alien.   | <a href="#">Constitution Annotated</a>  | 4/24/2006  |

|                            |  |  |   |  |           |
|----------------------------|--|--|---|--|-----------|
| <a href="#">06.005</a>     |     | Legal Notice of Change in Domicile/<br>Citizenship Records and Divorce from<br>the United States | This form completely divorces the government and changes your status to that of a "stateless person" and a "transient foreigner" not subject to civil court jurisdiction and a "nontaxpayer". After filing this form, you can also use it to rebut tax collection notices.          | 1. <a href="#">Why you are a "national" or a "state national" and not a "U.S. citizen"</a><br>2. <a href="#">Why Domicile and Income Taxes are Voluntary</a>   | 8/6/2006  |
| <b>7. RESPONSE LETTERS</b> |  |  |   |  |           |
| <b>7.1 GENERAL</b>         |  |  |   |  |           |
| <a href="#">07.011</a>     |   | Payment Delinquency and Copyright<br>Violation Notice  | Use this form to respond to state or federal tax collection notices. It can be used in connection with the <a href="#">Change of Address Attachment Affidavit</a> .   |  | 9/8/2005  |
| <a href="#">07.012</a>     |   | Wrong Party Notice   | Send this notice if the state or IRS collection notice you received was delivered to a person with an all caps name or with any kind of identifying number.   | <a href="#">About SSNs and TINs on Government Forms and Correspondence</a>   | 10/4/2005 |
| <a href="#">07.013</a>     |   | 1098 Interest: Request for Filing<br>Response  | Send this form attached to a letter in which you respond to a state or IRS notice requesting you to file based on their receipt of an IRS form 1098, which is the form used by mortgage companies to report receipt of payments on a mortgage.                                      | <a href="#">The "trade or business" scam</a>   | 1/20/2006 |
| <a href="#">07.014</a>     |   | Legal notice to cease and desist illegal<br>enforcement activities                               | Use this form to officially notify the government collection agency that they are engaging in unlawful activity, are personally liable, and may not impose any provision of law against you without first proving you are a "taxpayer" with other than information hearsay returns. |  | 8/1/2006  |
| <a href="#">07.015</a>     |   | Third Party Tax Debt Collector<br>Attachment   | Use this form as an attachment to any correspondence you send a private debt collector in connection with any tax collection activity they are undertaking against you.   |  | 11/1/2006 |
| <b>7.2 FEDERAL</b>         |  |  |   |  |           |
| <a href="#">07.021</a>     |   | Demand for Verified Evidence of Lawful<br>Federal Assessment                                     | Used in response to an IRS collection notice to request verified evidence validating the assessment connected to the amounts alleged to be owed.  | 1. <a href="#">Master File Decoder</a><br>2. <a href="#">Why Penalties are Illegal for Anything But Federal Employees, Contractors, and Agents</a>   | 4/12/2006 |
| <a href="#">07.022</a>     |   | Assessment Response: Federal   | Systematic way to respond to a federal penalty or tax assessment notice that is improper or illegal.  | 1. <a href="#">Why Assessments and Substitute for Returns are Illegal Under the I.R.C. Against Natural Persons</a><br>2. <a href="#">Why Penalties are Illegal for Anything But Federal Employees, Contractors, and Agents</a> | 7/28/2006 |
| <a href="#">07.023</a>     |   | Substitute for Federal Form 1040NR   | Use this to respond to an IRS demand for a return to be filed.  |  | 10/5/2006 |
| <b>7.3 STATE</b>           |  |  |   |  |           |
| <a href="#">07.031</a>     |   | Demand for Verified Evidence of Lawful<br>State Assessment                                       | Used in response to an State collection notice to request verified evidence validating the assessment connected to the amounts alleged to be owed.  | 1. <a href="#">Master File Decoder</a><br>2. <a href="#">Why Penalties are Illegal for Anything But Federal Employees, Contractors, and Agents</a>   | 4/12/2006 |
| <a href="#">07.032</a>     |   | Assessment Response: State   | Systematic way to respond to a state penalty or tax assessment notice that is improper or illegal.  | 1. <a href="#">Why Assessments and Substitute for Returns are Illegal Under the I.R.C. Against Natural Persons</a><br>2. <a href="#">Why Penalties are Illegal for Anything But Federal Employees, Contractors, and Agents</a> | 4/13/2006 |
| <a href="#">07.033</a>     |  | Substitute for State Nonresident Tax<br>Return   | Use this to respond to a state demand for a return to be filed.   |  | 8/11/2006 |

## 2. SITUATIONAL INDEX OF FORMS

Locate the situation you are in and then find forms relative to that specific situation in the subsections below. For further information pertinent to each situation, see:

- Our [Situational References Page](#) in the [Liberty University, item 5.1](#).
- [Subject Index](#) (OFFSITE LINK)- Family Guardian

### 2.1. Applying for a job and Dealing with Employers

About IRS form W-8BEN: [FORM 04.001](#) - this is the ONLY withholding form a nontaxpayer can use. The W-4 leads to BIG trouble and violation of law  
Affidavit of Citizenship, Domicile, and Tax Status: [FORM 02.001](#)  
[Demand for Verified Evidence of "Trade or Business" Activity: Information Return: FORM 04.006](#)- Use this form in the case where someone you work for or with may or definitely will file a fraudulent Information Return against you, and you are not engaged in a "trade or business". This prevents you from having false or erroneous Information Returns filed against you by educating companies and financial institutions about their proper use. Information Returns include

Federal Forms W-2, 1042-S, 1098, and 1099.

Federal Tax Withholding: [FORM 05.005](#)-brief pamphlet to hand to private employer to educate him about his withholding duties

[Federal and State Withholding Options for Private Employers](#)-lots of useful forms at the end of the document. Mainly for employees. Too long and may scare away private employers. Section 23.13, FORM 13 in that book is very useful to attach to your job application

[Letter to Government Employer Stopping Withholding](#) (OFFSITE LINK)

[Letter to Commercial Employer Stopping Withholding](#) (OFFSITE LINK)

[Payroll Withholding Attachment](#) (OFFSITE LINK)

[Substitute IRS Form W-8BEN](#) (OFFSITE LINK)

Who are "taxpayers" and who needs a "Taxpayer Identification Number": [FORM 05.013](#) - short pamphlet you can attach to a job application to prove that you don't need to deduct or withhold and aren't a "taxpayer"

## **2.2. Changing your Citizenship and Domicile with State and Federal Governments**

[Change of Address Form Attachment](#) (OFFSITE LINK)

[Legal Notice of Change in Domicile/Citizenship Records and Divorce from the United States](#) (OFFSITE LINK)

[Passport Amendment Request](#) (OFFSITE LINK)

[Voter Registration Attachment](#) (OFFSITE LINK)

## **2.3. General purpose**

[Attachment to Government Form that Asks for Social Security Number](#) (OFFSITE LINK)

Famous Quotes About Rights and Liberty: [FORM 01.003](#)

Proof of Mailing: [FORM 01.005](#) (OFFSITE LINK)

SEDM Fax Cover Sheet: [FORM 01.004](#)

SEDM Member Agreement: [FORM 01.001](#)

## **2.4. Litigation**

[SEDM Litigation Tools Page, Section 2](#)

## **2.5. Opening financial accounts or making investments without withholding or a number**

About SSNs/TINs on Government Forms and Correspondence: [FORM 05.012](#)- attach to account application to prove why you don't need a number

Affidavit of Citizenship, Domicile, and Tax Status: [FORM 02.001](#)

IRS Form W-8BEN: [FORM 04.001](#)

[IRA Rollover Attachment](#) (OFFSITE LINK)

[Letter to remove SSN and tax withholding from account](#) (OFFSITE LINK)

[Legal Address Inquiry Letter Response](#) (OFFSITE LINK)

[Substitute IRS Form W-9](#) (OFFSITE LINK)

Who are "taxpayers" and who needs a "Taxpayer Identification Number": [FORM 05.013](#)-attach to account application to prove why you don't need a number

## **2.6. Responding to federal and state collection notices**

[Federal letter and notice index](#) -index of all federal tax collection notices and letters and their responses

[State letter and notice index](#) - index of all state tax collection notices and letters and their responses

Admissions relating to alleged liability: [FORM 03.004](#)

Affidavit of Material Facts: [FORM 02.002](#)

Demand for Verified Evidence of Lawful Federal Assessment: [FORM 03.001](#)



Demand for Verified Evidence of Lawful State Assessment: [FORM 03.002](#)

IRS Form W-8BEN: [FORM 04.001](#)

IRS Form 4852: [FORM 04.002](#)

IRS Form 1098: [FORM 04.003](#)

IRS Form 1099: [FORM 04.004](#)

IRS Form 56: [FORM 04.004](#)

Legal Requirement to File Federal Income Tax Returns: [FORM 05.009](#)

[Test for Federal Tax Professionals](#) (OFFSITE LINK)

[Test for State Tax Professionals](#) (OFFSITE LINK)

The Meaning of the Words "includes" and "including": [FORM 05.014](#) - attach responses to prove the IRS is lying about the use of the word "includes" in determining the meaning of definitions within the I.R.C.

Who are "taxpayers" and who needs a "Taxpayer Identification Number": [FORM 05.013](#)-attach to account application to prove why you don't need a number

Why Penalties are Illegal for Anything But Federal Employees, Contractors, and Agents: [FORM 05.010](#)

Why Assessments and Substitute for Returns are Illegal Under the I.R.C. Against Natural Persons: [FORM 05.011](#)

[Writing Effective Response Letters](#)-SEDM article

Wrong Party Notice: [FORM 07.002](#) - use this form to explain why the TIN or SSN or the name on a collection notice are wrong. IRS cannot use any SSN, TIN, or all caps name to address you without assuming that you are a federal "employee"

## **2.7. Withdrawing cash from financial institutions**

Demand for Verified Evidence of "Trade or Business" Activity: CTR: [FORM 03.003](#) -use this if they try to violate the law by preparing a Currency Transaction Report for your withdrawal

## **2.8. Quitting Social Security and Functioning Without an SSN**

Resignation of Compelled Social Security Trustee: [FORM 06.002](#) - quit Social Security completely and get all your money back

Why You Aren't Eligible for Social Security: [FORM 06.001](#) -use this to get a state driver's license without a Social Security Number

Wrong Party Notice: [FORM 07.002](#) - use this form to explain why the TIN or SSN or the name on a collection notice are wrong. IRS cannot use any SSN, TIN, or all caps name to address you without assuming that you are a federal "employee"

## **3. ELECTRONIC FORMS COMPILATIONS**

1. [American Jurisprudence Pleading and Practice CD-ROM](#) (OFFSITE LINK)-Excellent!
2. [American Jurisprudence Legal Forms 2d CD](#) (OFFSITE LINK)-Excellent!
3. [Superforms](#)- tax forms

## **4. OTHER FORMS SITES**

NOTE: All of the links below are offsite links. We have no relationship with any of these parties.

### **4.1 General Forms**

1. [Sovereignty Forms and Instructions: Forms](#)- Family Guardian
2. [Common Law Venue: Forms Page](#)

### **4.2 Tax Forms**

1. [Federal Forms and Publications](#)- Family Guardian. Includes modified versions of most Federal Forms
2. [Internal Revenue Service: Forms and Publications](#)- WARNING: The forms from the IRS are designed to prejudice your rights and destroy your privacy. They ask for information that you aren't obligated by law to provide. You are much better off using the altered and "improved" versions of their forms posted on the Family Guardian website in link #2 above.
3. [State Tax Forms](#)
4. [State Income Taxes](#)
5. [1040.com](#)-tax forms

### 4.3 Legal Forms

1. [ContractStore](#)
2. [CourtTV Legal Forms](#)
3. [E-Z Legal forms](#)
4. [FindForms.com](#)
5. [Free Legal Forms](#) -Pre-Paid Legal Services
6. [HotDocs](#) -legal forms preparation software
7. [Law Forms USA](#)
8. [Law Guru](#) -legal forms archive
9. [Lectric Law Library: General Forms](#)
10. [Legal Forms On Demand](#)
11. [Legal Kits](#)
12. [LegalZoom](#)
13. [LexisOne Free Legal Forms](#) -requires HotDocs installed, in most cases
14. [U.S. Court Forms](#)
15. [U.S. Legal Forms](#)
16. [Versus Law U.S. Legal forms](#)

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



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[Back](#) [GO TO SOVEREIGNTY FORMS AND INSTRUCTIONS AREA](#)

*WATCH OUR FREE MOVIE ONLINE! [CLICK HERE!](#)*

### **["Who is John Galt?"](#)**

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

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

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



**"But Dad, the emperor is naked!"**

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

1. The book is written in part by our tens of thousands of readers and growing...***THAT'S YOU!*** We invite and frequently receive good new ideas and materials from legal researchers and ordinary people like YOU, and when we get them, we add them to the book after we research and verify them for ourselves to ensure their accuracy. Please keep your excellent ideas coming, because this is a team effort, guys!
2. *We use words right out of the government's own mouth, in most cases, as evidence of most assertions we make.* If the government calls the research and processes found in this book [frivolous](#), they would have to call the Supreme Court, the Statutes at Large, the Treasury Regulations (26 C.F.R.) and the U.S. Code frivolous, because everything derives from these sources.
3. Ever since the first version was published back in Nov. 2000, we have invited, and even *begged*, the government continually and repeatedly, both on our website and in our book and in correspondence with the IRS and the Senate Finance Committee ([click here to read our letter to Senator Grassley](#) under "Political Activism"), and in the [We The People Truth in Taxation Hearings](#) to provide a signed affidavit on government stationery along with supporting evidence that disproves *anything* in this book. We have even promised to post the government's rebuttal on our web site *unedited* because we are more interested in the truth than in our own agenda. Yet, some ***criminal public servants*** have consistently and steadfastly refused their legal duty under the [First Amendment Petition Clause](#) to answer our concerns and questions, thereby [hiding from the truth](#) and obstructing justice in violation of [18 U.S.C. Chapter 73](#). By their failure to answer they have defaulted and admitted to the complete truthfulness of this book pursuant to [Federal Rule of Civil Procedure 8\(d\)](#). If the "court of public opinion" really were a court, and if the public really were *fully educated* about the law as it is the purpose of this book to bring about, the IRS and our federal government would have been convicted long ago of the following crimes by their own treasonous words and actions thoroughly documented in this book ([click here for more details](#)):
  - o [Establishment of the U.S. government as a "religion"](#) in violation of [First Amendment](#) (see section 4.3.2 of this book and our article entitled: [Our Government has Become Idolatry and a False Religion](#))
  - o Obstruction of justice under [18 U.S.C. Chapter 73](#)
  - o Conspiracy against rights under [18 U.S.C. §241](#)
  - o Extortion under [18 U.S.C. §872](#).
  - o Wrongful actions of Revenue Officers under [26 U.S.C. §7214](#)
  - o Engaging in monetary transactions derived from unlawful activity under [18 U.S.C. §1957](#)
  - o Mailing threatening communications under [18 U.S.C. §876](#)
  - o False writings and fraud under [18 U.S.C. §1018](#)
  - o Taking of property without due process of law under [26 CFR §601.106\(f\)\(1\)](#)
  - o Fraud under [18 U.S.C. §1341](#)
  - o Continuing financial crimes enterprise (RICO) under [18 U.S.C. §225](#)
  - o Conflict of interest of federal judges under [28 U.S.C. §455](#)
  - o Treason under [Article III](#), Section 3, Clause 1 of the U.S. Constitution
  - o Breach of [fiduciary duty](#) in violation of 26 CFR 2635.101, Executive order order 12731, and Public Law 96-303
  - o Peonage and obstructing enforcement under [Thirteenth Amendment](#), [18 U.S.C. §1581](#) and [42 U.S.C. §1994](#)
  - o Bank robbery under [18 U.S.C. §2113](#) ( in the case of fraudulent notice of levies)
4. We keep the level of the writing to where a person of average intelligence and no legal background can understand and substantiate the claims we are making for himself.
5. We show you how and where to go to substantiate every claim we make and we encourage you to check the facts for yourself so you will believe what we say is absolutely accurate and truthful.
6. All inferences made are backed up by extensive legal research and justification, and therefore tend to be more convincing and authoritative and understandable than most other tax books. We assume up front that you will

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

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

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

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

**[TESTIMONIALS:](#)** [Click here to hear what people are saying about this book!](#)

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

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***You can easily and inexpensively make your own copy of the book at any Kinkos or printing store if you follow the instructions on its cover sheet or at the beginning of the [Table of Contents](#).***

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|                  | Preface and Table of Contents  | 129          | 966                  |  |  |
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| 4 | Know Your Citizenship Status and Rights!  | 376 | 4,424 |    |    |
| 5 | The Evidence: Why We Aren't Liable to File Returns or Pay Income Tax                      | 539 | 5,467 |    |    |
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The *Great IRS Hoax* book draws on works from several prominent sources and authors, such as:

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



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

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

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*Preface*

*Conventions Used Consistently Throughout This Book*

*Table of Contents*

*Table of Authorities*

*Cases*

*Statutes*

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- 3.13.1 Treasury Delegation of Authority Order 150-37: Always Question Authority!
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### **3.14 Supreme Court Cases Related To Income Taxes in the United States**

- 3.14.1 1818: U.S. v. Bevans (16 U.S. 336)
- 3.14.2 1883: Butchers' Union Co. v. Crescent City Co. (111 U.S. 746)
- 3.14.3 1894: Caha v. United States (152 U.S. 211)
- 3.14.4 1895: Pollack v. Farmer's Loan and Trust Company (157 U.S. 429, 158 U.S. 601)
- 3.14.5 1900: Knowlton v. Moore (178 U.S. 41)
- 3.14.6 1901: Downes v. Bidwell (182 U.S. 244)
- 3.14.7 1906: Hale v. Henkel (201 U.S. 43)
- 3.14.8 1911: Flint v. Stone Tracy Co. (220 U.S. 107)
- 3.14.9 1914: Weeks v. U.S. (232 U.S. 383)
- 3.14.10 1916: Brushaber vs. Union Pacific Railroad (240 U.S. 1)
- 3.14.11 1916: Stanton v. Baltic Mining (240 U.S. 103)
- 3.14.12 1918: Peck v. Lowe (247 U.S. 165 )
- 3.14.13 1920: Evens v. Gore (253 U.S. 245)
- 3.14.14 1920: Eisner v. Macomber (252 U.S. 189)
- 3.14.15 1922: Bailey v. Drexel Furniture Co. (259 U.S. 20)
- 3.14.16 1924: Cook v. Tait (265 U.S. 47)
- 3.14.17 1930: Lucas v. Earl (281 U.S. 111)
- 3.14.18 1935: Railroad Retirement Board v. Alton Railroad Company (295 U.S. 330)
- 3.14.19 1938: Hassett v. Welch (303 U.S. 303)
- 3.14.20 1945: Hooven & Allison Co. v. Evatt (324 U.S. 652)
- 3.14.21 1959: Flora v. U.S. (362 U.S. 145)
- 3.14.22 1960: U.S. v. Mersky (361 U.S. 431)
- 3.14.23 1961: James v. United States (366 US 213, p. 213, 6L Ed 2d 246)
- 3.14.24 1970: Brady v. U.S. (379 U.S. 742)
- 3.14.25 1974: California Bankers Association v. Shultz (416 U.S. 25)
- 3.14.26 1975: Garner v. U.S. (424 U.S. 648)
- 3.14.27 1976: Fisher v. United States (425 U.S. 391)
- 3.14.28 1978: Central Illinois Public Service Co. v. United States (435 U.S. 21)
- 3.14.29 1985: U.S. v. Doe (465 U.S. 605)
- 3.14.30 1991: Cheek v. United States (498 U.S. 192)
- 3.14.31 1992: United States v. Burke (504 U.S. 229, 119 L Ed 2d 34, 112 S Ct. 1867)
- 3.14.32 1995: U.S. v. Lopez (000 U.S. U10287)

### **3.15 Federal District and Circuit Court Cases**

- 3.15.1 Commercial League Assoc. v. The People, 90 Ill. 166
- 3.15.2 Jack Cole Co. vs. Alfred McFarland, Sup. Ct. Tenn 337 S.W. 2d 453
- 3.15.3 1916: Edwards v. Keith 231 F 110, 113
- 3.15.4 1925: Sims v. Ahrens, 271 SW 720
- 3.15.5 1937: Stapler v. U.S., 21 F. Supp. AT 739
- 3.15.6 1937: White Packing Co. v. Robertson, 89 F.2d 775, 779 the 4th Circuit Court
- 3.15.7 1939: Graves v. People of State of New York (306 S.Ct. 466)



- 3.15.8 1943: Helvering v. Edison Brothers' Stores, 8 Cir. 133 F2d 575
- 3.15.9 1946: Lauderdale Cemetary Assoc. v. Mathews, 345 PA 239, 47 A. 2d 277, 280
- 3.15.10 1947: McCutchin v. Commissioner of IRS, 159 F2d 472 5th Cir. 02/07/1947
- 3.15.11 1952: Anderson Oldsmobile , Inc. vs Hofferbert, 102 F. Supp. 902
- 3.15.12 1955: Oliver v. Halstead, 196 VA 992, 86 S.E. 2d 858
- 3.15.13 1958: Lyddon Co. vs. U.S., 158 Fed. Supp 951
- 3.15.14 1960: Commissioner of IRS v. Duberstein, 80 5. Ct. 1190
- 3.15.15 1962: Simmons v. United States, 303 F.2d 160
- 3.15.16 1969: Conner v. U.S. 303 F. Supp. 1187 Federal District Court, Houston
- 3.15.17 1986: U.S. v. Stahl, 792 F.2d 1438

### **3.16 IRS Publications**

### **3.17 Topical Legal Discussions**

- 3.17.1 Uncertainty of the Federal Tax Laws
- 3.17.2 Reasonable Cause
- 3.17.3 The Collective Entity Rule
- 3.17.4 Due Process
  - 3.17.4.1 What is Due Process of Law?
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- 3.17.5 There's No Duty To Convert Money Into Income
- 3.17.6 What's Income and Why Does It Matter?
- 3.17.7 The President's Role In Income Taxation
- 3.17.8 A Historical Perspective on Income Taxes

## **4. KNOW YOUR CITIZENSHIP STATUS AND RIGHTS!**

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### **4.2 Rights v. Privileges**

- 4.2.1 Rights Defined and Explained
- 4.2.2 What is the Difference Between a "Right" and a "Privilege"?
- 4.2.3 Fundamental Rights: Granted by God and Cannot be Regulated by the Government
- 4.2.4 The Two Classes of Rights: Civil and Political
- 4.2.5 Why we MUST know and assert our rights and can't depend on anyone to help us
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- 4.3.2 Biblical view of taxation and government
- 4.3.3 The purpose of government: Protection of the weak from harm and evil
- 4.3.4 Equal protection
- 4.3.5 How government and God compete to provide "protection"
- 4.3.6 Separation of powers doctrine
- 4.3.7 "Sovereign"="Foreign"="Alien"
- 4.3.8 The purpose of income taxes: government protection of the assets of the wealthy
- 4.3.9 Why all man-made law is religious in nature
- 4.3.10 The Unlimited Liability Universe
- 4.3.11 The result of following government's laws instead of God's laws is slavery, servitude, and captivity
- 4.3.12 Government-instituted slavery using "privileges"

- 4.3.13 Our Government has become idolatry and a false religion
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- 4.3.15 All Governments are Corporations
- 4.3.16 How public servants eliminate or hide the requirement for "consent" to become "Masters"
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  - 4.3.16.2 Misrepresenting the law in government publications
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  - 4.3.16.5 Making it difficult, inconvenient, or costly to obtain information about illegal government activities
  - 4.3.16.6 Ignoring correspondence and/or forcing all complaints through an unresponsive legal support staff that exasperates and terrorizes "customers"
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- 4.4.2 The Constitution as a Legal Contract
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- 4.5.15.2 Transition to Democracy
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- 4.5.15.5 Foreign Affairs and Democracy
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- 4.11.5.1 Types of citizenship under federal law
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- 4.11.5.6 Presumptions about "citizen of the United States" status
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- 4.11.7.1 Voting
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- 5.1.2 You Don't Pay "Taxes" to the IRS: You are instead subsidizing socialism
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- 5.1.4 Direct Taxes Defined
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- 5.1.6 What type of Tax Are You Paying the IRS--Direct or Indirect?
- 5.1.7 The Income Tax: Constitutional or Unconstitutional?
- 5.1.8 Taxable persons and objects within the I.R.C. Subtitle A
- 5.1.9 The "Dual" nature of the Internal Revenue Code
- 5.1.10 Brief History of Court Rulings Which Establish Income Taxes on Citizens outside the "federal zone" as "Direct Taxes"
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- 5.2.7 Oaths of Allegiance: Source of ALL government jurisdiction over people
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- 5.3.2 A "return" is NOT a piece of paper within the I.R.C., it's a kickback of a federal payment
- 5.3.3 Summary of Federal Income Tax Filing Status by Citizenship and Residency.
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- 5.3.7 What Are the Advantages and Consequences of Filing as a Nonresident Citizen?
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- 5.4.22 The federal courts can't sentence you to federal prison for Tax crimes if you are a "U.S. citizen" and the crime was committed outside the federal zone
- 5.4.23 You Don't Have to Provide a Social Security Number on Your Tax Return
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- 5.5.2 Why God says you can't file tax returns
- 5.5.3 You're Not a "U.S. citizen" If You File Form 1040, You're an "Alien"!
- 5.5.4 You're NOT the "individual" mentioned at the top of the 1040 form if you are a "U.S. citizen" Residing in the "United States"\*\*\*!
- 5.5.5 No Law Requires You to Keep Records
- 5.5.6 Federal courts have NO statutory authority to enforce criminal provisions of the Internal Revenue Code outside the federal zone
- 5.5.7 Objections to filing based on Rights
- 5.5.8 Do We Have to Sign the 1040 Form Under Penalty of Perjury?
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5.5.9.3 Analysis and Conclusions

5.5.10 If You Don't File, the IRS Can't File a Substitute for Return for You Under 26 U.S.C. §6020  
(b)

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5.6.2 Your income isn't taxable because it is "notes" and "obligations" of the U.S. government

5.6.3 Constitutional Constraints on Federal Taxing Power

5.6.4 Exempt Income

5.6.5 The Definition of "income" for the purposes of the Internal Revenue Code

5.6.6 Gross Income

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5.6.8 Employment Withholding Taxes are Gifts to the U.S. Government!

5.6.9 The Deficiency Notices the IRS Sends to Individuals are Actually Intended for Businesses!

5.6.10 The Irwin Schiff Position

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5.6.12 You don't have any taxable sources of income

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5.6.13.3 Synonyms for "trade or business"

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5.6.13.8 False IRS presumptions that must be rebutted

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5.6.13.10 The scam is the basis for all income reporting used to enforce income tax collection

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5.6.13.12 Other important implications of the scam

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5.6.14.2 Tax Liability and Responsibilities of Nonresident Aliens

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5.6.14.5.1 The deception that scares people away from claiming nonresident alien status

5.6.14.5.2 Tricks Congress Pulled to Undermine the Nonresident Alien Position

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#### 5.6.14.6 Rebutted Objections to the Nonresident Alien Position

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5.6.14.6 How To Correct Government Records to Reflect Your True Status as a Nonresident Alien

5.6.15 All compensation for your personal labor is deductible from "gross income" on your tax return

5.6.15.1 Why One's Own Labor is not an article of Commerce and cannot produce "profit" in the Context of oneself

5.6.15.2 Why Labor is Property

5.6.15.3 Why the Cost of Labor is Deductible from Gross Receipts in Computing Tax

5.6.16 IRS Has no Authority to Convert a Tax Class 5 "gift" into a Tax Class 2 liability

5.6.17 The "Constitutional Rights Position"

5.6.18 The Internal Revenue Code was Repealed in 1939 and we have no tax law

5.6.19 Use of the term "State" in Defining State Taxing Jurisdiction

5.6.20 Why you aren't an "exempt" individual

### 5.7 Flawed Tax Arguments to Avoid

5.7.1 Summary of Flawed Arguments

5.7.2 Rebutted Version of the IRS Pamphlet "The Truth About Frivolous Tax Arguments"

5.7.3 Rebutter Version of Congressional Research Service Report 97-59A entitled "Frequently Asked Questions Concerning the Federal Income Tax"

5.7.4 Rebutter Version of Dan Evans "Tax Resister FAQ"

5.7.5 The "861 Source" Position

5.7.5.1 Introduction and definitions

5.7.5.2 The Basics of the Law

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The purposes of this subchapter are to—

- (1)** minimize the paperwork burden for individuals, small businesses, educational and nonprofit institutions, Federal contractors, State, local and tribal governments, and other persons resulting from the collection of information by or for the Federal Government;
- (2)** ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government;
- (3)** coordinate, integrate, and to the extent practicable and appropriate, make uniform Federal information resources management policies and practices as a means to improve the productivity, efficiency, and effectiveness of Government programs, including the reduction of information collection burdens on the public and the improvement of service delivery to the public;
- (4)** improve the quality and use of Federal information to strengthen decisionmaking, accountability, and openness in Government and society;
- (5)** minimize the cost to the Federal Government of the creation, collection, maintenance, use, dissemination, and disposition of information;
- (6)** strengthen the partnership between the Federal Government and State, local, and tribal governments by minimizing the burden and maximizing the utility of information created, collected, maintained, used, disseminated, and retained by or for the Federal Government;
- (7)** provide for the dissemination of public information on a timely basis, on equitable terms, and in a manner that promotes the utility of the information to the public and makes effective use of information technology;

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**(8)** ensure that the creation, collection, maintenance, use, dissemination, and disposition of information by or for the Federal Government is consistent with applicable laws, including laws relating to—

- (A)** privacy and confidentiality, including section 552a of title 5;
- (B)** security of information, including section 11332 of title 40 <sup>[1]</sup>; and
- (C)** access to information, including section 552 of title 5;

**(9)** ensure the integrity, quality, and utility of the Federal statistical system;

**(10)** ensure that information technology is acquired, used, and managed to improve performance of agency missions, including the reduction of information collection burdens on the public; and

**(11)** improve the responsibility and accountability of the Office of Management and Budget and all other Federal agencies to Congress and to the public for implementing the information collection review process, information resources management, and related policies and guidelines established under this subchapter.

[1] See References in Text note below.

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**TITLE 44. PUBLIC PRINTING AND DOCUMENTS**

**CHAPTER 35--COORDINATION OF FEDERAL INFORMATION POLICY**

**SUBCHAPTER I--FEDERAL INFORMATION POLICY**

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## CREDIT(S)

### 2001 Electronic Update

(Added Pub.L. 104-13, § 2, May 22, 1995, 109 Stat. 163, and amended Pub.L. 106- 398, § 1 [Div. A, Title X, § 1064(b)], Oct. 30, 2000, 114 Stat. 1654, 1654-\_\_\_\_.)



## 26 C.F.R. § 1.860-2

### § 1.860-2 Requirements for deficiency dividends.

(a) In general--(1) Determination, etc. A qualified investment entity is allowed a deduction for a deficiency dividend only if there is a determination (as defined in section 860(e) and paragraph (b)(1) of this section) that results in an adjustment (as defined in section 860(d)(1) or (2)) for the taxable year for which the deficiency dividend is paid. An adjustment does not include an increase in the excess of (i) the taxpayer's interest income excludable from gross income under section 103(a) over (ii) its deductions disallowed under sections 265 and 171(a)(2).

(2) Payment date and claim. The deficiency dividend must be paid on, or within 90 days after, the date of the determination and before the filing of a claim under section 860(g) and paragraph (b)(2) of this section. This claim must be filed within 120 days after the date of the determination.

(3) Nature and amount of distribution. (i) The deficiency dividend must be a distribution of property (including money) that would have been properly taken into account in computing the dividends paid deduction under section 561 for the taxable year for which tax liability resulting from the determination exists if the property had been distributed during that year. Thus, if the distribution would have been a dividend under section 316(a) if it had been made during the taxable year for which the determination applies, and the distribution may qualify under sections 316(b)(3), 562(a), and 860(f)(1), even though the distributing corporation, trust, or association has no current or accumulated earnings and profits for the taxable year in which the distribution is actually made. The amount of the distribution is determined under section 301 as of the date of the distribution.

The amount of the deduction is subject to the applicable limitations under sections 562 and 860(f)(2). Thus, if the entity distributes to an individual shareholder property (other than money) which on the date of the distribution has a fair market value in excess of its adjusted basis in the hands of the entity, the amount of the deficiency dividend in the individual's hands for purposes of section 316(b)(3) is determined by using the property's fair market value on that date. Nevertheless, the amount of the deficiency dividend the entity may deduct is limited, under § 1.562-1(a), to the adjusted basis of the property and the amount taxable to the individual as a dividend is determined by reference to the current and accumulated earnings and profits for the year to which the determination applies.

(ii) The qualified investment entity does not have to distribute the full amount of the adjustment in order to pay a deficiency dividend. For example, assume that in 1983 a determination with respect to a calendar year regulated investment company results in an increase of \$100 in investment company taxable income (computed without the dividends paid deduction) for 1981 and no other change. The regulated investment company may choose to pay a deficiency dividend of \$100 or of any lesser amount and be allowed a dividends paid deduction for 1981 for the amount of that deficiency dividend.

(4) Status of distributor. The corporation, trust, or association that pays the deficiency dividend does not have to be a qualified investment entity at the time of payment.

(5) Certain definitions to apply. For purposes of sections 860(d) (defining adjustment) and (f)(2) (limitations) the definitions of the terms "investment company taxable income," "real estate investment trust taxable income," and "capital gains dividends" in sections 852(b)(2), 857(b)(2), 852(b)(3)(C), and 857(b)(3)(C) apply, as appropriate to the particular entity.

(b) Determination and claim for deduction--(1) Determination. For purposes of applying section 860(e), the following rules apply:

(i) The date of determination by a decision of the United States Tax Court, the date upon which a judgment of a court becomes final, and the date of determination by a closing agreement shall be determined under the rules in § 1.547-2(b)(1)(ii), (iii), and (iv).

(ii) A determination under section 860(e)(3) may be made by an agreement signed by the district director or another official to whom authority to sign the agreement is delegated, and by or on behalf of the taxpayer. The agreement shall set forth the amount, if any, of each adjustment described in subparagraphs (A), (B), and (C) of section 860(d)(1) or (2) (as appropriate) for the taxable year and the amount of the liability for any tax imposed by section 11(a), 56(a), 852(b)(1), 852(b)(3)(A), 857(b)(1), 857(b)(3)(A), or 1201(a) for the taxable year. The agreement shall also set forth the amount of the limitation (determined under section 860(f)(2)) on the amount of deficiency dividends that can qualify as capital gain dividends and ordinary dividends, respectively, for the taxable year. An agreement under this subdivision (ii) which is signed by the district director (or other delegate) shall be sent to the taxpayer at its last known address by either registered or certified mail. For further guidance regarding the definition of last known address, see § 301.6212-2 of this chapter. If registered mail is used, the date of registration is the date of determination. If certified mail is used, the date of the postmark on the sender's receipt is the date of determination. However, if a dividend is paid by the taxpayer before the registration or postmark date, but on or after the date the agreement is signed by the district director (or other delegate), the date of determination is the date of signing.

(2) Claim for deduction. A claim for deduction for a deficiency dividend shall be made, with the requisite declaration, on Form 976 and shall contain the following information and have the following attachments:

(i) The name, address, and taxpayer identification number of the corporation, trust, or association;

(ii) The amount of the deficiency and the taxable year or years involved;

(iii) The amount of the unpaid deficiency or, if the deficiency has been paid in whole or in part, the date of payment and the amount thereof;

(iv) A statement as to how the deficiency was established (i.e., by an agreement under section 860(e)(3), by a closing agreement under section 7121, or by a decision of the Tax Court or court judgment);

(v) Any date or other information with respect to the determination that is required by Form 976;

- (vi) The amount and date of payment of the dividend with respect to which the claim for the deduction for deficiency dividends is filed;
  - (vii) The amount claimed as a deduction for deficiency dividends;
  - (viii) If the amount claimed as a deduction for deficiency dividends includes any amount designated (or to be designated) as capital gain dividends, the amount of capital gain dividends for which a deficiency dividend deduction is claimed;
  - (ix) Any other information required by the claim form;
  - (x) A certified copy of the resolution of the trustees, directors, or other authority authorizing the payment of the dividend with respect to which the claim is filed; and
  - (xi) A copy of any court decision, judgment, agreement, or other document required by Form 976.
- (3) Filing claim. The claim, together with the accompanying documents, shall be filed with the district director, or director of the internal revenue service center, with whom the income tax return for the taxable year for which the determination applies was filed. In the event that the determination is an agreement with the district director (or other delegate) described in section 860(e)(3) and paragraph (b)(1)(ii) of this section, the claim may be filed with the district director with whom (or pursuant to whose delegation) the agreement was made.

The reporting requirements of this section were approved by the Office of Management and Budget under control number 1545-0045.

## 26 C.F.R. § 1.860-4

### § 1.860-4 Claim for credit or refund.

If the allowance of a deduction for a deficiency dividend results in an overpayment of tax, the taxpayer, in order to secure credit or refund of the overpayment, must file a claim on Form 1120X in addition to the claim for the deficiency dividend deduction required under section 860(g). The credit or refund will be allowed as if on the date of the determination (as defined in section 860(e)) two years remained before the expiration of the period of limitations on the filing of claim for refund for the taxable year to which the overpayment relates.

The reporting requirements of this section were approved by the Office of Management and Budget under control number 1545-0045.

## 26 C.F.R. § 1.897-1

### § 1.897-1 Taxation of foreign investment in United States real property interests, definition of terms.

(a) In general--(1) Purpose and scope of regulations. These regulations provide guidance with respect to the taxation of foreign investments in U.S. real property interests and related matters. This section defines various terms for purposes of sections 897, 1445, and 6039C and the regulations thereunder. Section 1.897-2 provides rules regarding the definition of, and consequences of, U.S. real property holding corporation status. Section 1.897-3 sets forth rules pursuant to which certain foreign corporations may elect under section 897(i) to be treated as domestic corporations for purposes of sections 897 and 6039C. Finally, § 1.897-4 provides rules concerning the similar election under section 897(k) for certain foreign corporations in the process of liquidation.

(2) Effective date. The regulations set forth in §§ 1.897-1 through 1.897-4 are effective for transactions occurring after June 18, 1980. However, with respect to all transactions occurring after June 18, 1980 and before January 30, 1985, taxpayers may at their option choose to apply the Temporary Regulations under section 897 (in their entirety). The Temporary Regulations are located at 26 CFR §§ 6a.897-1 through 6a.897-4 (Revised as of April 1, 1983), and were originally published in the Federal Register for September 21, 1982 (47 FR 41532) and amended by T.D. 7890, published in the Federal Register on April 28, 1983 (48 FR 19163).

(b) Real property--(1) In general. The term "real property" includes the following three categories of property: Land and unserved natural products of the land, improvements, and personal property associated with the use of real property. The three categories of real property are defined in subparagraphs (2), (3), and (4) of this paragraph (b). Local law definitions will not be controlling for purposes of determining the meaning of the term "real property" as it is used in sections 897, 1445, and 6039C and the regulations thereunder.

(2) Land and unserved natural products of the land. The term "real property" includes land, growing crops and timber, and mines, wells, and other natural deposits. Crops and timber cease to be real property at the time that they are served from the land. Ores, minerals, and other natural deposits cease to be real property when they are extracted from the ground. The storage of severed or extracted crops, timber, or minerals in or upon real property will not cause such property to be recharacterized as real property.

(3) Improvements--(i) In general. The term "real property" includes improvements on land. An improvement is a building, any other inherently permanent structure, or the structural components of either, as defined in subdivisions (ii) through (iv) of this paragraph (b)(3).

(ii) Building. The term "building" generally means any structure or edifice enclosing a space within its walls, and usually covered by a roof, the purpose of which is, for example, to provide shelter or housing or to provide working, office, parking, display, or sales space. The term includes, for example, structures such as apartment houses, factory and office buildings, warehouses, barns, garages, railway or bus stations, and stores. Any structure that is classified as a building for purposes of section 48(a)(1)(B) and § 1.48-1 shall be

treated as such for purposes of this section.

(iii) Inherently permanent structure--(A) In general. The term "inherently permanent structure" means any property not otherwise described in this paragraph (b)(3) that is affixed to real property and that will ordinarily remain affixed for an indefinite period of time. Property that is not classified as a building for purposes of section 48(a)(1)(B) and § 1.48-1 may nevertheless constitute an inherently permanent structure. For purposes of this section, affixation to real property may be accomplished by weight alone.

(B) Use of precedents under section 48. Any property not otherwise described in this paragraph (b)(3) that constitutes "other tangible property" under the principles of section 48(a)(1)(B) and § 1.48-1(c) and (d) shall be treated for purposes of this section as an inherently permanent structure. Thus, for example, the term includes swimming pools, paved parking areas and other pavements, special foundations for heavy equipment, wharves and docks, bridges, fences, inherently permanent advertising displays, inherently permanent outdoor lighting facilities, railroad tracks and signals, telephone poles, permanently installed telephone and television cables, broadcasting towers, oil derricks, oil and gas pipelines, oil and gas storage tanks, grain storage bins, and silos. However, property that is determined to be either property in the nature of machinery under § 1.48-1(c) or property which is essentially an item of machinery or equipment under § 1.48-1(e)(1)(i) shall not be treated as an inherently permanent structure.

(C) Absence of precedents under section 48. Where precedents developed under the principles of section 48 fail to provide adequate guidance with respect to the classification of particular property, the determination of whether such property constitutes an inherently permanent structure shall be made in view of all the facts and circumstances. In particular, the following factors must be taken into account:

- (1) The manner in which the property is affixed to real property;
- (2) Whether the property was designed to be easily removable or to remain in place indefinitely;
- (3) Whether the property has been moved since its initial installation;
- (4) Any circumstances that suggest the expected period of affixation (e.g., a lease that requires removal of the property upon its expiration);
- (5) The amount of damage that removal of the property would cause to the property itself or to the real property to which it is affixed; and
- (6) The extent of the effort that would be required to remove the property, in terms of time and expense.

(iv) Structural components of buildings and other inherently permanent structures. Structural components of buildings and other inherently permanent structures, as defined in § 1.48-1(e)(2), themselves constitute improvements. Structural components include walls, partitions, floors, ceilings, windows, doors, wiring, plumbing, central heating and central air conditioning systems, lighting fixtures, pipes, ducts, elevators, escalators, sprinkler systems, fire escapes and other components relating to the operation or maintenance of a

building. However, the term "structural components" does not include machinery the sole justification for the installation of which is the fact that such machinery is required to meet temperature or humidity requirements which are essential for the operation of other machinery or the processing of materials or foodstuffs. Machinery may meet the "sole justification" test provided by the preceding sentence even though it incidentally provides for the comfort of employees or serves to an insubstantial degree areas where such temperature or humidity requirements are not essential.

(4) Personal property associated with the use of the real property--(i) In general. The term "real property" includes movable walls, furnishings, and other personal property associated with the use of the real property. Personal property is associated with the use of real property only if it is described in one of the categories set forth in subdivisions (A) through (D) of this paragraph (b)(4)(i). "Personal property" for purposes of this section means any property that constitutes, "tangible personal property" under the principles of § 1.48-1(c), without regard to whether such property qualifies as section 38 property. Such property will be associated with the use of the real property only where both the personal property and the United States real property interest with which it is associated are held by the same person or by related persons within the meaning of § 1.897-1(i). For purposes of this paragraph (b)(4)(i), property is used "predominantly" in a named activity if it is devoted to that activity during at least half of the time in which it is in use during a calendar year.

(A) Property used in mining, farming, and forestry. Personal property is associated with the use of real property if it is predominantly used to exploit unsevered natural products in or upon the land. Such property includes mining equipment used to extract ores, minerals, and other natural deposits from the ground. It also includes any property used to cultivate the soil and harvest its products, such as farm machinery, draft animals, and equipment used in the growing and cutting of timber. However, personal property used to process or transport minerals, crops, or timber after they are severed from the land is not associated personal property.

(B) Property used in the improvement of real property. Personal property is associated with the use of real property if it is predominantly used to construct or otherwise carry out improvements to real property. Such property includes equipment used to alter the natural contours of the land, equipment used to clear and prepare raw land for construction, and equipment used to carry out the construction of improvements.

(C) Property used in the operation of a lodging facility. Personal property is associated with the use of real property if it is predominantly used in connection with the operation of a lodging facility. Property that is used in connection with the operation of a lodging facility includes property used in the living quarters of such facility, such as beds and other furniture, refrigerators, ranges and other equipment, as well as property used in the common areas of such facility, such as lobby furniture and laundry equipment. Such property constitutes personal property associated with the use of real property in the hands of the owner or operator of the facility, not of the tenant or guest. A lodging facility is an apartment house or apartment, hotel, motel, dormitory, residence, or any other facility (or part of a facility) predominantly used to provide, at a charge, living and/or sleeping accommodations, whether on daily, weekly, monthly, annual, or other basis. The term "lodging facility" does not include a personal residence occupied solely by its owner, or a facility used primarily as a means of transportation (such as an aircraft, vessel, or a railroad car) or used primarily to provide medical or convalescent services, even though sleeping accommodations are provided. Nor does the term include temporary living quarters provided by an employer due to the unavailability of lodgings within a



reasonable distance of a worksite (such as a mine or construction project). The term "lodging facility" does not include any portion of a facility that constitutes a nonlodging commercial facility and that is available to persons not using the lodging facility on the same basis that it is available to tenants of the lodging facility. Examples of nonlodging commercial facilities include restaurants, drug stores, and grocery stores located in a lodging facility.

(D) Property used in the rental of furnished office and other work space. Personal property is associated with the use of real property if it is predominantly used by a lessor to provide furnished office or other work space to lessees. Property that is so used includes office furniture and equipment included in the rental of furnished space. Such property constitutes personal property associated with the use of real property in the hands of the lessor, not of the lessee.

(ii) Dispositions of associated personal property--(A) In general. Personal property that has become associated with the use of a real property interest shall itself be treated as a real property interest upon its disposition, unless either:

(1) The personal property is disposed of more than one year before the disposition of any present right to use or occupy the real property with which it was associated (and subject to the provisions of subdivision (B) of this paragraph (b)(4)(ii));

(2) The personal property is disposed of more than one year after the disposition of all present rights to use or occupy the real property with which it was associated (and subject to the provisions of subdivision (C) of this paragraph (b)(4)(ii)); or

(3) The personal property and the real property with which it was associated are separately sold to persons that are related neither to the transferor nor to one another (and subject to the provisions of subdivision (D) of this paragraph (b)(4)(ii)).

(B) Personal property disposed of one year before realty. A transferor of personal property associated with the use of real property need not treat such property as a real property interest upon disposition if on the date of disposition the transferor does not expect or intend to dispose of the real property until more than one year later.

However, if the real property is in fact disposed of within the following year, the transferor must treat the personal property as having been a real property interest as of the date on which the personalty was disposed of. If the transferor had not previously filed an income tax return, a return must be filed and tax paid, together with any interest due thereon, by the later of the date on which a tax return or payment is actually due (with extensions), or the 60th day following the date of disposition. If the transferor had previously filed an income tax return, an amended return must be filed and tax paid, together with any interest due thereon, by the later of the dates specified above. Such a transferor may be liable to penalties for failure to file, for late payment of tax, or for understatement of liability, but only if the transferor knew or had reason to anticipate that the real property would be disposed of within one year of the disposition of the associated personal property.

(C) Personalty disposed of one year after realty. A disposition of real property shall be disregarded for purposes of subdivision (A)(2) of this paragraph (b)(4)(ii) if any right to use or occupy the real property is reacquired within the one-year period referred to in that subdivision. However, the disposition shall not be disregarded if such reacquisition is made in foreclosure of a mortgage or other security interest, in the exercise of a contractual remedy, or in the enforcement of a judgment. If, however, the reacquisition of the property is made pursuant to a plan the principal purpose of which is the avoidance of the provisions of section 897, 1445, or 6039C and the regulations thereunder, then the initial disposition shall be disregarded for purposes of subdivision (A)(2) of this paragraph (b)(4)(ii).

(D) Separate dispositions of personalty and realty. A transferor of personal property associated with the use of real property need not treat such property as a real property interest upon disposition if within 90 days before or after such disposition the transferor separately disposes of the real property interest to persons that are related neither to the transferor nor to the purchaser of the personal property. A transferor may rely upon this rule unless the transferor knows or has reason to know that the purchasers of the real property and the personal property--

(1) Are related persons; or

(2) Intend to reassociate the personal property with the use of the real property within one year of the date of disposition of the personal property.

(E) Status of property in hands of transferee. Personal property that has been associated with the use of real property and that is sold to an unrelated party will be treated as real property in the hands of the transferee only if the personal property becomes associated with the use of real property held or acquired by the transferee, in the manner described in paragraph (b)(4)(i) of this section.

(iii) Determination dates. The determination of whether personal property is personal property associated with the use of real property as defined in this paragraph (b)(4) is to be made on the date the personal property is disposed of and on each applicable determination date. See § 1.897-2(c).

(c) United States real property interest--(1) In general. The term "United States real property interest" means any interest, other than an interest solely as a creditor, in either:

(i) Real property located in the United States or the Virgin Islands, or

(ii) A domestic corporation unless it is established that the corporation was not a U.S. real property holding corporation within the period described in section 897(c)(1)(A)(ii).

In addition, for the limited purpose of determining whether any corporation is a U.S. real property holding corporation, the term "United States real property interest" means an interest, other than an interest solely as a creditor, in a foreign corporation unless it is established that the foreign corporation is not a U.S. real property holding corporation within the period prescribed in section 897(c)(1)(A)(ii). See § 1.897-2 for rules regarding the manner of establishing that a corporation is not a United States real property holding

corporation.

(2) Exceptions and special rules--(i) Domestically-controlled REIT. An interest in a domestically-controlled real estate investment trust (REIT) is not a U.S. real property interest. A domestically-controlled REIT is one in which less than 50 percent of the fair market value of the outstanding stock was directly or indirectly held by foreign persons during the five-year period ending on the applicable determination date (or the period since June 18, 1980, if shorter). For purposes of this determination the actual owners of stock, as determined under § 1.857-8, must be taken into account.

(ii) Corporation that has disposed of all U.S. real property interests. The term "United States real property interest" does not include an interest in a corporation which has disposed of all its U.S. real property interests in transactions in which the full amount of gain, if any, was recognized, as provided as section 897(c)(1)(B). See § 1.897-2(f) for rules regarding the requirements of section 897(c)(1)(B).

(iii) Publicly-traded corporations. If, at any time during the calendar year, any class of stock of a domestic corporation is regularly traded on an established securities market, an interest in such corporation shall be treated as a U.S. real property interest only in the case of:

(A) A regularly traded interest owned by a person who beneficially owned more than 5 percent of the total fair market value of that class of interests at any time during the five-year period ending either on the date of disposition of such interest or other applicable determination date (or the period since June 18, 1980, if shorter), or

(B) [Reserved]

Separate non-regularly traded interests that were acquired in transactions more than three years apart shall not be cumulated pursuant to this rule. In determining whether a shareholder holds 5 percent of a class of stock in a corporation (or any other interest of an equivalent fair market value), section 318(a) shall apply (except that sections 318(a)(2)(C) and (3)(C) are applied by substituting the phrase "5 percent" for "50 percent").

(iv) Publicly traded partnerships and trusts. If any class of interests in a partnership or trust is, within the meaning of § 1.897-1(m) and (n), regularly traded on an established securities market, then for purposes of sections 897(g) and 1445 and § 1.897-2(d) and (e) an interest in the entity shall not be treated as an interest in a partnership or trust. Instead, such an interest shall be subject to the rules applicable to interests in publicly traded corporations pursuant to paragraph (c)(2)(iii) of this section. Such interests can be real property interests in the hands of a person that holds a greater than 5 percent interest. Therefore, solely for purposes of determining whether greater than 5 percent interests in such an entity constitute U.S. real property interests the disposition of which is subject to tax, the entity is required to determine pursuant to the provisions of § 1.897-2 whether the assets it holds would cause it to be classified as a U.S. real property holding corporation if it were a corporation. The treatment of dispositions of U.S. real property interests by publicly traded partnerships and trusts is not affected by the rules of this paragraph (c)(2)(iv); by reason of the operation of section 897(a), foreign partners or beneficiaries are subject to tax upon their distributive share of any gain recognized upon such dispositions by the partnership or trust. The rules of this paragraph (c)(2)(iv) are illustrated by the following example.

Example. PTP is a partnership one class of interests in which is regularly traded on an established securities market. A is a nonresident alien individual who owns 1 percent of a class of limited partnership interests in PTP. B is a nonresident alien individual who owns 10 percent of the same class of limited partnership interests in PTP. On July 1, 1986, A and B sell their interests in PTP. Pursuant to the rules of this paragraph (c)(2)(iv), neither disposition is treated as the disposition of a partnership interest subject to the provisions of section 897(g). Instead, A and B are treated as having disposed of interests in a publicly traded corporation. Therefore, pursuant to the rule of paragraph (c)(2)(iii) of this section, A's disposition of a 1 percent interest has no consequences under section 897. However, B's disposition of a 10 percent interest will constitute the disposition of a U.S. real property interest subject to tax by reason of the operation of section 897 unless it is established pursuant to the rules of § 1.897-2 that the interest is not a U.S. real property interest.

(d) Interest other than an interest solely as a creditor--(1) In general. This paragraph defines an interest other than an interest solely as a creditor, with respect to real property, and with respect to corporations, partnerships, trusts, and estates. An interest solely as a creditor either in real property or in a domestic corporation does not constitute a United States real property interest. Similarly, where one corporation holds an interest solely as a creditor in a second corporation or in a partnership, trust, or estate, that interest will be disregarded for purposes of determining whether the first corporation is a U.S. real property holding corporation (except to the extent that such interest constitutes an asset used or held for use in a trade or business, in accordance with rules of § 1.897-1(f)). In addition, the disposition of an interest solely as a creditor in a partnership, trust, or estate is not subject to sections 897, 1445, and 6039C. Whether an interest is considered debt under any provisions of the Code is not determinative of whether it constitutes an interest solely as a creditor for purpose of sections 897, 1445, and 6039C and the regulations thereunder.

(2) Interests in real property other than solely as creditor--(i) In general. An interest in real property other than an interest solely as a creditor includes a fee ownership, co-ownership, or leasehold interest in real property, a time sharing interest in real property, and a life estate, remainder, or reversionary interest in such property. The term also includes any direct or indirect right to share in the appreciation in the value, or in the gross or net proceeds or profits generated by, the real property.

A loan to an individual or entity under the terms of which a holder of the indebtedness has any direct or indirect right to share in the appreciation in value of, or the gross or net proceeds or profits generated by, an interest in real property of the debtor or of a related person is, in its entirety, an interest in real property other than solely as a creditor. An interest in production payments described in section 636 does not generally constitute an interest in real property other than solely as a creditor. However, a right to production payments shall constitute an interest in real property other than solely as a creditor if it conveys a right to share in the appreciation in value of the mineral property. A production payment that is limited to a quantum of mineral (including a percentage of recoverable reserves produced) or a period of time will be considered to convey a right to share in the appreciation in value of the mineral property. The rules of this paragraph (d)(2)(i) are illustrated by the following example.

Example. A, a U.S. citizen, purchases a condominium unit located in the United States for \$500,000. A makes a \$100,000 down payment and borrows \$400,000 from B, a foreign person, to pay the balance of the purchase price. Under the terms of the loan, A is to pay B 13 percent annual interest each year for 10 years

and 35 percent of the appreciation in the fair market value of the condominium at the end of the 10-year period. Because B has a right to share in the appreciation in value of the condominium, B has an interest other than solely as a creditor in the condominium. B's entire interest in the obligation from A, therefore, is a United States real property interest.

(ii) Special rule--(A) Installment obligations. A right to installment or other deferred payments from the disposition of an interest in real property will constitute an interest solely as a creditor if the transferor elects not to have the installment method of section 453(a) apply, any gain or loss is recognized in the year of disposition, and all tax due is timely paid. See section 1445 and regulations thereunder for further guidance concerning the availability of installment sale treatment under section 453. If an agreement for the payment of tax with respect to an installment sale is entered into with the Internal Revenue Service pursuant to section 1445, that agreement may specify whether or not the installment obligation will constitute an interest solely as a creditor. If an installment obligation constitutes an interest other than solely as a creditor then the receipt of each payment shall be treated as the disposition of an interest in real property that is subject to section 897 (a) to the extent of any gain required to be taken into account pursuant to section 453.

If the original holder of an installment obligation that constitutes an interest other than solely as a creditor subsequently disposes of the obligation to an unrelated party and recognizes gain or loss pursuant to section 453B, the obligation will constitute an interest in real property solely as a creditor in the hands of the subsequent holder. However, if the obligation is disposed of to a related person and the full amount of gain realized upon the disposition of the real property has not been recognized upon such disposition of the installment obligation, then the obligation shall continue to be an interest in real property other than solely as a creditor in the hands of the subsequent holder subject to the rules of this paragraph (d)(2)(ii)(A).

In addition, if the obligation is disposed of to any person for a principal purpose of avoiding the provisions of sections 897, 1445, or 6039C, then the obligation shall continue to be an interest in real property other than solely as a creditor in the hands of the subsequent holder subject to the rules of this paragraph (d)(2)(ii)(A). However, rights to payments arising from dispositions that took place before June 19, 1980, shall in no event constitute interests in real property other than solely as a creditor, even if such payments are received after June 18, 1980. In addition, rights to payments arising from dispositions to unrelated parties that took place before January 1, 1985, and that were not subject to U.S. tax pursuant to the provisions of a U.S. income tax treaty, shall not constitute interests in real property other than solely as a creditor, even if such payments are received after December 31, 1984.

(B) Options. An option, a contract or a right of first refusal to acquire any interest in real property (other than an interest solely as a creditor) will itself constitute an interest in real property other than solely as a creditor.

(C) Security interests. A right to repossess or foreclose on real property under a mortgage, security agreement, financing statement, or other collateral instrument securing a debt will not be considered a reversionary interest in, or a right to share in the appreciation in value of or gross or net proceeds or profits generated by, an interest in real property. Thus, no such right of repossession or foreclosure will of itself cause an interest in real property which is otherwise an interest solely as a creditor to become an interest other than solely as a creditor. In addition, a person acting as mortgagee in possession shall not be considered to hold an interest in real property other than solely as a creditor, if the mortgagee's interest in the property

otherwise constitutes an interest solely as a creditor.

(D) Indexed interest rates. An interest will not constitute a right to share in the appreciation in the value of, or gross or net proceeds or profits generated by, real property solely because it bears a rate of interest that is tied to an index of any kind that is intended to reflect general inflation or deflation of prices and interest rates (e.g., the Consumer Price Index). However, where an interest in real property bears a rate of interest that is tied to an index the principal purpose of which is to reflect changes in real property values, the real property interest will be considered an indirect right to share in the appreciation in value of, or gross or net proceeds or profits generated by, real property. Such an indirect right constitutes an interest in real property other than solely as a creditor.

(E) Commissions. A right to payment of a commission, brokerage fee, or similar charge for professional services rendered in connection with the arrangement or financing of a purchase, sale, or lease of real property does not constitute a right to share in the appreciation in value of, or gross or net proceeds or profits of, real property solely because it is based upon a percentage of the purchase price or rent. Thus, a right to a commission earned by a real estate agent based on a percentage of the sales price does not constitute an interest in real property other than solely as a creditor.

However, a right to a commission, brokerage fee, or similar charge will constitute an interest other than solely as a creditor if the total amount of the payment is contingent upon appreciation, proceeds, or profits of the real property occurring or arising after the date of the transaction with respect to which the professional services were rendered. For example, a commission earned in connection with the purchase of a real property interest that is contingent upon the amount of gain ultimately realized by the purchaser will constitute an interest in real property other than solely as a creditor.

(F) Trustees' fees, etc. A right to payment of reasonable compensation for services rendered as a trustee, as an administrator of an estate, or in a similar capacity does not constitute a right to share in the appreciation in the value of, or gross or net proceeds or profits of, real property solely because the assets of the trust or estate include U.S. real property interests.

(3) Interest in an entity other than solely as a creditor--(i) In general. For purposes of sections 897, 1445, and 6039C, an interest in an entity other than an interest solely as a creditor is--

(A) Stock of a corporation;

(B) An interest in a partnership as a partner within the meaning of section 761(b) and the regulations thereunder;

(C) An interest in a trust or estate as a beneficiary within the meaning of section 643(c) and the regulations thereunder or an ownership interest in any portion of a trust as provided in section 671 through 679 and the regulations thereunder;

(D) An interest which is, in whole or in part, a direct or indirect right to share in the appreciation in value of

an interest in an entity described in subdivision (A), (B), or (C) of this paragraph (d)(3)(i) or a direct or indirect right to share in the appreciation in value of assets of, or gross or net proceeds or profits derived by, the entity; or

(E) A right (whether or not presently exercisable) directly or indirectly to acquire, by purchase, conversion, exchange, or in any other manner, an interest described in subdivision (A), (B), (C), or (D) of this paragraph (d)(3)(i).

(ii) Special rules--(A) Installment obligations. A right to installment or other deferred payments from the disposition of an interest in an entity will constitute an interest solely as a creditor if the transferor elects not to have the installment method of section 453(a) apply, any gain or loss is recognized in the year of disposition, and tax due is timely paid. See section 1445 and regulations thereunder for further guidance concerning the availability of installment sale treatment under section 453. If an agreement for the payment of tax with respect to an installment sale is entered into with the Internal Revenue Service pursuant to section 1445, that agreement may specify whether or not the installment obligation will constitute an interest solely as a creditor. If an installment obligation constitutes an interest other than solely as a creditor then the receipt of each payment shall be treated as the disposition of such an interest and shall be subject to section 897(a) to the extent that:

(1) It constitutes the disposition of a U.S. real property interest and

(2) Gain or loss is required to be taken into account pursuant to section 453. Such treatment shall apply to payments arising from dispositions of interests in a corporation any class of the stock of which is regularly traded on an established securities market, but only in the case of a disposition of any portion of an interest described in paragraph (c)(2)(iii)(A) or (B) of this section. If the original holder of an installment obligation that constitutes an interest other than solely as a creditor subsequently disposes of the obligation to an unrelated party and recognizes gain or loss pursuant to section 453B, the obligation will constitute an interest in the entity solely as a creditor in the hands of the subsequent holder. However, if the obligation is disposed of to a related person and the full amount of gain realized upon the disposition of the interest in the entity has not been recognized upon such disposition of the installment obligation, then the obligation shall continue to be an interest in the entity other than solely as a creditor in the hands of the subsequent holder subject to the rules of this paragraph (d)(3)(ii)(A). In addition, if the obligation is disposed of to any person for a principal purpose of avoiding the provisions of section 897, 1445, or 6039C, then the obligation shall continue to be an interest in the entity other than solely as a creditor in the hands of the subsequent holder subject to the rules of this paragraph (d)(3)(ii)(A). However, rights to payments arising from dispositions that took place before June 19, 1980, shall in no event constitute interests in an entity other than solely as a creditor, even if such payments are received after June 18, 1980. In addition, such treatment shall not apply to payments arising from dispositions to unrelated parties that took place before January 1, 1985, and that were not subject to U.S. tax pursuant to the provisions of a U.S. income tax treaty, regardless of when such payments are received.

(B) Contingent interests. The interests described in subdivision (D) of paragraph (d)(3)(i) of this section include any right to a payment from an entity the amount of which is contingent on the appreciation in value of an interest described in subdivision (A), (B), or (C) of paragraph (d)(3)(i) of this section or which is contingent on the appreciation in value of assets of, or the general gross or net proceeds or profits derived by,



such entity. The right to such a payment is itself an interest in the entity other than solely as a creditor, regardless of whether the holder of such right actually holds an interest in the entity described in subdivision (A), (B), or (C) of paragraph (d)(3)(i) of this section. For example, a stock appreciation right constitutes an interest in a corporation other than solely as a creditor even if the holder of such right actually holds no stock in the corporation. However, the interests described in subdivision (D) of paragraph (d)(3)(i) of this section do not include any right to a payment that is (1) exclusively contingent upon and exclusively paid out of revenues from sales of personal property (whether tangible or intangible) or from services, or (2) exclusively contingent upon the resolution of a claim asserted against the entity by a person related neither to the entity nor to the holder of the interest.

(C) Security interests. A right to repossess or foreclose on an interest in an entity under a mortgage, security agreement, financing statement, or other collateral instrument securing a debt will not of itself cause an interest in an entity which is otherwise an interest solely as a creditor to become an interest other than solely as a creditor.

(D) Royalties. The interests described in subdivision (D) of paragraph (d)(3)(i) of this section do not include rights to payments representing royalties, license fees, or similar charges for the use of patents, inventions, formulas, copyrights, literary, musical or artistic compositions, trademarks, trade names, franchises, licenses, or similar intangible property.

(E) Commissions. The interests described in subdivision (D) of paragraph (d)(3)(i) of this section do not include a right to a commission, brokerage fee or similar charge for professional services rendered in connection with the purchase or sale of an interest in an entity. However, a right to such a payment will constitute an interest other than solely as a creditor if the total amount of the payment is contingent upon appreciation in value of assets of, or proceeds or profits derived by, the entity after the date of the transaction with respect to which the payment was earned.

(F) Trustee's fees. The interests described in subdivision (D) of paragraph (d)(3)(i) of this section do not include a right to payment representing reasonable compensation for services rendered as a trustee, as an administrator of an estate, or in a similar capacity.

(4) Aggregation of interests. If a person holds both interests solely as a creditor and interests other than solely as a creditor in real property or in an entity, those interests will generally be treated as separate and distinct interests. However, such interests shall be aggregated and treated as interests other than solely as a creditor in their entirety if the interest solely as a creditor has been separated from, or acquired separately from, the interest other than solely as a creditor, for a principal purpose of avoiding the provisions of section 897, 1445, or 6039C by causing one or more of such interests to be an interest solely as a creditor. The existence of such a purpose will be determined with reference to all the facts and circumstances. Where an interest solely as a creditor has arm's-length interest and repayment terms it shall in no event be aggregated with and treated as an interest other than solely as a creditor. For purposes of this paragraph (d)(4), an interest rate that does not exceed 120 percent of the applicable Federal rate (as defined in section 1274(d)) shall be presumed to be an arm's-length interest rate. For purposes of applying the rules of this paragraph (d)(4), a person shall be treated as holding any interests held by a related person within the meaning of § 1.897-1(i).

(5) "Interest" means "interest other than solely as a creditor." Unless otherwise stated, the term "interest" as used with regard to real property or with regard to an entity hereafter in the regulations under sections 897, 1445, and 6039C, means an interest in such real property or entity other than an interest solely as a creditor.

(e) Proportionate share of assets held by an entity--(1) In general. A person that holds an interest in an entity is for certain purposes treated as holding a proportionate or pro rata share of the assets held by the entity. Such proportionate share must be calculated, in accordance with the rules of this paragraph, for the following purposes.

(i) In determining whether a corporation is a U.S. real property holding corporation--

(A) A person holding an interest in a partnership, trust, or estate is treated as holding a proportionate share of the assets held by the partnership, trust, or estate (see § 897-2(e)(2)), and

(B) A corporation that holds a controlling interest in a second corporation is treated as holding a proportionate share of the assets held by the second corporation (see § 1.897-2(e)(3)).

(ii) In determining reporting obligations that may be imposed under section 6039C, the holder of an interest in a partnership, trust, or estate is treated as owning a proportionate share of the U.S. real property interests held by the partnership, trust, or estate.

(2) Proportionate share of assets held by a corporation or partnership--(i) In general. A person's proportionate or pro rata share of assets held by a corporation or partnership is determined by multiplying--

(A) The person's percentage ownership interest in the entity, by

(B) The fair market value of the assets held by the entity (or the book value of such assets, in the case of a determination pursuant to § 1.897-2(b)(2)).

(ii) Percentage ownership interest. A person's percentage ownership interest in a corporation or partnership is the percentage equal to the ratio of (A) the sum of the liquidation values of all interests in the entity held by the person to (B) the sum of the liquidation values of all outstanding interest in the entity. The liquidation value of an interest in an entity is the amount of cash and the fair market value of any property that would be distributed with respect to such interest upon the liquidation of the entity after satisfaction of liabilities to persons having interests in the entity solely as creditors. With respect to an entity that has interests outstanding that grant a presently-exercisable option to acquire or right to convert into or otherwise acquire an interest in the entity other than solely as a creditor, the liquidation value of all interests in such entity shall be calculated as though such option or right had been exercised, giving effect both to the payment of any consideration required to exercise the option or right and to the issuance of the additional interest.

The fair market value of the assets of the entity, the amount of cash held by the entity, and the amount of liabilities to persons having interests solely as creditors if determined for this purpose on the date with respect

to which the percentage ownership interest is determined.

(iii) Examples. The rules of this paragraph (e)(2) are illustrated by the following examples.

Example 1. Corporation K's only assets are stock and securities with a fair market value as of the applicable determination date of \$20,000,000 K's assets are subject to liabilities of \$10,000,000. Among K's liabilities are a \$1,000,000 loan from L, under the terms of which L is entitled, upon payment of the loan principal, to a profit share equal to 10 percent of the excess of the fair market value of K's assets over \$18,000,000, but only if all other corporate liabilities have been paid. K has two classes of stock, common and preferred. PS1 and PS2 each own 100 of the 200 outstanding shares of preferred stock. CS1 and CS2 each own 500 of the 1,000 outstanding shares of common stock. Each preferred shareholder is entitled to \$10,000 per share of preferred stock upon liquidation, subject to payment of all corporate liabilities and to any amount owed to L, but before any common shareholder is paid. The liquidation value of L's interest in K, which constitutes an interest other than an interest solely as a creditor, is \$1,200 (\$1,000,000 principal of the loan to K plus \$200,000 (10 percent of the excess of \$20,000,000 over \$18,000,000)). The liquidation value of each of PS1's and PS2's blocks of preferred stock is \$1,000,000 (\$10,000 times 100 shares each). The liquidation value of each of CS1's and CS2's blocks of common stock is \$3,900,000 [ $\$20,000,000$  (the total fair market value of K's assets)-- $\$9,000,000$  (liabilities to creditors other than L)-- $\$1,200,000$  (L's liquidation value)-- $\$2,000,000$  (PS1's and PS2's liquidation value) times 50 percent (the percentage of common stock owned by each)]. The sum of the liquidation values of all of the outstanding interests in K (i.e., interests other than solely as a creditor) is \$11,000,000 [ $\$1,200,000$  (L's liquidation value) +  $\$2,000,000$  (PS1's and PS2's liquidation values) +  $\$7,800,000$  (CS1's and CS2's liquidation values)]. Each of CS1's and CS2's percentage ownership interests in K is 35.5 percent ( $\$3,900,000$  divided by  $\$11,000,000$ ). Each of PS1's and PS2's percentage ownership interests in K is 9 percent ( $\$1,000,000$  divided by  $\$11,000,000$ ). L's percentage ownership interest in K is 11 percent ( $\$1,200,000$  divided by  $\$11,000,000$ ).

Example 2. A, a U.S. person, and B, a foreign person are partners in a partnership the only asset of which is a parcel of undeveloped land located in the United States that was purchased by the partnership in 1980 for \$300,000. The partnership has no liabilities, and its capital is \$300,000. A's and B's interests in the capital of the partnership are 25 percent and 75 percent, respectively, and A and B each has a 50 percent profit interest in the partnership. The partnership agreement provides that upon liquidation any unrealized gain will be distributed in accordance with the partners' profit interest. In 1984 the partnership has no items of income or deduction, and the fair market value of its parcel of undeveloped land is \$500,000. In 1984 the percentage ownership interest of A in the partnership is 35 percent [the ratio of \$100,000 (the liquidation value of A's profit interest in 1984) plus \$75,000 (the liquidation value of A's 25 percent interest in the partnership's \$300,000 capital) to \$500,000 (the sum of the liquidation values of all outstanding interests in the partnership)]. The percentage ownership interest of B in the partnership in 1984 is 65 percent [the ratio of \$325,000 (B's \$100,000 profit interest plus his \$225,000 capital interest) to \$500,000].

(3) Proportionate share of assets held by trusts and estates--(i) In general. A person's proportionate or pro rata share of assets held by a trust or estate is determined by multiplying--

(A) The person's percentage ownership interest in the trust or estate, by

(B) The fair market value of the assets held by the trust or estate (or the book value of such assets, in the case of a determination pursuant to § 1.897- 2(b)(2)).

(ii) Percentage ownership interest--(A) General rule. A person's percentage ownership interest in a trust or an estate--is the percentage equal to the ratio of:

(1) The sum of the actuarial values of such person's interests in the cash and other assets held by the trust or estate after satisfaction of the liabilities of the trust or estate to persons holding interests in the trust or estate solely as creditors, to (2) the entire amount of such cash and other assets after satisfaction of liabilities to persons holding interests in the trust or estate solely as creditors. For purposes of calculating this ratio, the fair market value of the trust's or estate's assets, the amount of cash held by the trust or estate, and the amount of the liabilities to persons having interests solely as creditors is determined on the date with respect to which the percentage ownership interest is determined. With respect to a trust or estate that has interests outstanding that grant a presently-exercisable option to acquire or right to convert into or otherwise acquire an interest in the trust or estate other than solely as a creditor, the liquidation value of all interests in such entity shall be calculated as though such option or right had been exercised, giving effect both to the payment of any consideration required to exercise the option or right and to the issuance of the additional interest. With respect to a trust or estate that has interests outstanding that entitle any person to a distribution of U.S. real property interests upon liquidation that is disproportionate to such person's interest in the total assets of the trust or estate, such disproportionate right shall be disregarded in the calculation of the interest-holders' proportionate share of the U.S. real property interests held by the entity. For purposes of determining his own percentage ownership interest in a trust, a grantor or other person will be treated as owning any portion of the trust's cash and other assets which such person is treated as owning under sections 671 through 679.

(B) Discretionary trusts and estates. In determining percentage ownership interest in a trust or an estate, the sum of the definitely ascertainable actuarial values of interests in the cash and the other assets of the trust or estate held by persons in existence on the date with respect to which such determination is made must equal the amount in paragraph (e)(3)(ii)(A)(2) of this section. If the amount in paragraph (e)(3)(ii)(A)(2) of this section exceeds the sum of the definitely ascertainable actuarial values of the interests held by persons in existence on the determination date, the excess will be considered to be owned in total by each beneficiary who is in existence on such date, whose interest in the excess is not definitely ascertainable and who is potentially entitled to such excess. However, such excess shall not be considered to be owned in total by each beneficiary if the discretionary terms of the trust or estate were included for a principal purpose of avoiding the provisions of section 897, 1445, or 6039C by causing assets other than U.S. real property interests to be attributed in total to each beneficiary. The rules of this paragraph (e)(3) are illustrated by the following example.

Example. A, a U.S. person, established a trust on December 31, 1984, and contributed real property with a fair market value of \$10,000 to the trust. The terms of that trust provided that the trustee, a bank that is unrelated to A, at its discretion may retain trust income or may distribute it to X, a foreign person, or to the head of state of any country other than the United States. The remainder upon the death of X is to go in equal shares to such of Y and Z, both foreign persons, as survive X. On December 31, 1984, the total value of the trust's assets is \$10,000. On the same date, the actuarial values of the remainder interests of Y and Z in the corpus of the trust are definitely ascertainable. They are \$1,000 and \$500, respectively. Neither the income

interest of X nor of the head of state of any country other than the United States has a definitely ascertainable actuarial value on December 31, 1984. The interests of Y and Z in the income portion of the trust similarly have no definitely ascertainable actuarial values on such date since the income may be distributed rather than retained by the trust. Since the sum of the actuarial values of definitely ascertainable interests of persons in existence (\$1,500) is less than \$10,000, the difference (\$8,500) is treated as owned by each beneficiary who is in existence on December 31, 1984, and who is potentially entitled to such excess. Therefore, X, Y, Z, and the head of state of any country other than the United States are each considered as owning the entire \$8,500 income interest in the trust. On December 31, 1984, the total actuarial value of X's interest is \$8,500, and his percentage ownership interest is 85 percent. The total actuarial value of Y's interest in the trust is \$9,500 (\$1,000 plus \$8,500), and his percentage ownership interest is 95 percent. The total actuarial value of Z's interest is \$9,000 (\$500 plus \$8,500), and his percentage ownership interest is 90 percent. The actuarial value of the interest of the head of state of each country other than the United States is \$8,500, and his percentage ownership interest is 85 percent.

(4) Dates with respect to which percentage ownership interests are determined. The dates with respect to which percentage ownership interests are determined are the applicable determination dates outlined in § 1.897-2 or in regulations under section 6039C.

(f) Asset used or held for use in a trade or business--(1) In general. The term "asset used or held for use in a trade or business" means--

(i) Property, other than a U.S. real property interest, that is--

(A) Stock in trade of an entity or other property of a kind which would properly be included in the inventory of the entity if on hand at the close of the taxable year, or property held by the entity primarily for sale to customers in the ordinary course of its trade or business, or

(B) Depreciable property used or held for use in the trade or business, as described in section 1231(b)(1) but without regard to the holding period limitations of section 1231(b), or

(C) Livestock, including poultry, used or held for use in a trade or business for draft, breeding, dairy, or sporting purposes, and

(ii) Goodwill and going concern value, patents, inventions, formulas copyrights, literary, musical, or artistic compositions, trademarks, trade names, franchises, licenses, customer lists, and similar intangible property, but only to the extent that such property is used or held for use in the entity's trade or business and subject to the valuation rules of § 1.897- 1(o)(4), and

(iii) Cash, stock, securities, receivables of all kinds, options or contracts to acquire any of the foregoing, and options or contracts to acquire commodities, but only to the extent that such assets are used or held for use in the corporation's trade or business and do not constitute U.S. real property interests.

(2) Used or held for use in a trade or business. An asset is used or held for use in an entity's trade or business

if it is, under the principles of § 1.864-4(c)(2)--

- (i) Held for the principal purpose of promoting the present conduct of the trade or business,
- (ii) Acquired and held in the ordinary course of the trade or business, as, for example, in the case of an account or note receivable arising from that trade or business (including the performance of services), or
- (iii) Otherwise held in a direct relationship to the trade or business.

In determining whether an asset is held in a direct relationship to the trade or business, consideration shall be given to whether the asset is needed in that trade or business. An asset shall be considered to be needed in a trade or business only if the asset is held to meet the present needs of that trade or business and not its anticipated future needs. An asset shall be considered as needed in the trade or business if, for example, the asset is held to meet the operating expenses of that trade or business. Conversely, an asset shall be considered as not needed in the trade or business if, for example, the asset is held for the purpose of providing for future diversification into a new trade or business, future expansion of trade or business activities, future plant replacement, or future business contingencies. An asset that is held to meet reserve or capitalization requirements imposed by applicable law shall be presumed to be held in a direct relationship to the trade or business.

(3) Special rules concerning liquid assets--(i) Safe harbor amount. Assets described in paragraph (f)(1)(iii) of this section shall be presumed to be used or held for use in a trade or business, in an amount up to 5 percent of the fair market value of other assets used or held for use in the trade or business. However, the rule of this paragraph (f)(3)(i) shall not apply with respect to any assets described in paragraph (f)(1)(iii) of this section that are held or acquired for the principal purpose of avoiding the provisions of section 897 or 1445.

(ii) Investment companies. Assets described in paragraph (f)(1)(iii) of this section shall be presumed to be used or held for use in an entity's trade or business if the principal business of the entity is trading or investing in such assets for its own account. An entity's principal business shall be presumed to be trading or investing in assets described in paragraph (f)(1)(iii) of this section if the fair market value of such assets held by the entity equals or exceeds 90 percent of the sum of the fair market values of the entity's U.S. real property interests, interests in real property located outside the United States, assets otherwise used or held for use in trade or business, and assets described in paragraph (f)(1)(iii) of this section.

(4) Examples. The application of this paragraph (f) may be illustrated by the following examples:

Example 1. M, a domestic corporation engaged in industrial manufacturing, is required to hold a large current cash balance for the purposes of purchasing materials and meeting its payroll. The amount of the cash balance so required varies because of the fluctuating seasonal nature of the corporation's business. In months when large cash balances are not required, the corporation invests the surplus amount in U.S. Treasury bills. Since both the cash and the Treasury bills are held to meet the present needs of the business, they are held in a direct relationship to that business, and, therefore, constitute assets used or held for use in the trade or business.

Example 2. R, a domestic corporation engaged in the manufacture of goods, engages a stock brokerage firm to manage securities which were purchased with funds from R's general surplus reserves. The funds invested in these securities are intended to provide for the future expansion of R into a new trade or business. Thus, the funds are not necessary for the present needs of the business; they are accordingly not held in a direct relationship to the business and do not constitute assets used or held for use in the trade or business.

Example 3. B, a federally chartered and regulated bank, is required by law to hold substantial reserves of cash, stock, and securities. Pursuant to the rule of paragraph (f)(2) of this section, such assets are presumed to be held in a direct relationship to B's business, and thus constitute assets used or held for use in the trade or business. In addition, B holds substantial loan receivables which are acquired and held in the ordinary course of its banking business. Pursuant to the rule of paragraph (f)(1)(iii) of this section, such receivables constitute assets used or held for use in the trade or business.

(g) Disposition. For purposes of sections 897, 1445, and 6039C, the term "disposition" means any transfer that would constitute a disposition by the transferor for any purpose of the Internal Revenue Code and regulations thereunder. The severance of crops or timber and the extraction of minerals do not alone constitute the disposition of a U.S. real property interest.

(h) Gain or loss. The amount of gain or loss arising from the disposition of the U.S. real property interest shall be determined as provided in section 1001(a) and (b). Such gain or loss shall be subject to the provisions of section 897(a) and (b), unless a nonrecognition provision is applicable pursuant to section 897(d) or (e) and regulations thereunder. Amounts otherwise treated for Federal income tax purposes as principal and interest payments on debt obligations of all kinds (including obligations that are interests other than solely as a creditor) do not give rise to gain or loss that is subject to section 897(a). However, principal payments on installment obligations described in §§ 1.897-1(d)(2)(ii)(A) and 1.897-1(d)(3)(ii)(A) do give rise to gain or loss that is subject to section 897(a), to the extent such gain or loss is required to be recognized pursuant to section 453. The rules of paragraphs (g) and (h) are illustrated by the following examples.

Example 1. Foreign individual C has an undivided fee interest in a parcel of real property located in the United States. The fair market value of C's interest is \$70,000, and C's basis in such interest is \$50,000. The only liability to which the real property is subject is the liability of \$65,000 secured by a mortgage in the same amount. C transfers his fee interest in the property subject to the mortgage by gift to D. C realizes \$15,000 of gain upon such transfer. As a transfer by gift constitutes a disposition for purposes of the Code, and as gain is realized upon that transfer, the gift is a disposition for purposes of sections 897, 1445, and 6039C and is subject to section 897(a) to the extent of the gain realized. However, section 897(a) would not be applicable to the transfer if the mortgage on the U.S. real property were equal to or less than C's \$50,000 basis, since the transfer then would not give rise to the realization of gain or loss under the Internal Revenue Code.

Example 2. Foreign corporation Y makes a loan of \$1 million to domestic individual Z, secured by a mortgage on residential real property purchased with the loan proceeds. The loan agreement provides that Y is entitled to receive fixed monthly payments from Z, constituting repayment of principal plus interest at a fixed rate. In addition, the agreement provides that Y is entitled to receive a percentage of the appreciation value of the real property as of the time that the loan is retired. The obligation in its entirety is considered

debt for Federal income tax purposes. However, because of Y's right to share in the appreciation in value of the real property, the debt obligation gives Y an interest in the real property other than solely as a creditor. Nevertheless, as principal and interest payments do not constitute gain under section 1001 and paragraph (h) of this section, and both the monthly and final payments received by Y are considered to consist solely of principal and interest for Federal income tax purposes, section 897(a) shall not apply to Y's receipt of such payments. However, Y's sale of the debt obligation to foreign corporation A would give rise to gain that is subject to section 897(a).

(i) Related person. For purposes of sections 897, 1445, and 6039C, persons are considered to be related if they are partners or partnerships described in section 707(b)(1) of the Code or if they are related within the meaning of section 267(b) and (c) of the Code (except that section 267(f) shall apply without regard to section 1563(b)(2)).

(j) Domestic corporation. The term "domestic corporation" has the same meaning as set forth in section 7701(a)(3) and (4) and § 301.7701-5. For purposes of sections 897 and 6039C, it also includes a foreign corporation with respect to which an election under section 897(i) and § 1.897-3 or section 897(k) and § 1.897-4 to be treated as domestic corporation is in effect.

(k) [Reserved]

(l) Foreign corporation. The term "foreign corporation" has the meaning ascribed to such term in section 7701(a)(3) and (5) and § 301.7701-5. For purposes of sections 897 and 6039C, however, the term does not include a foreign corporation with respect to which there is in effect an election under section 897(i) and § 1.897-3 or section 897(k) and § 1.897-4 to be treated as a domestic corporation.

(m) Established securities market. For purposes of sections 897, 1445, and 6039C, the term "established securities market" means--

(1) A national securities exchange which is registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f),

(2) A foreign national securities exchange which is officially recognized, sanctioned, or supervised by governmental authority, and

(3) Any over-the-counter market. An over-the-counter market is any market reflected by the existence of an interdealer quotation system. An interdealer quotation system is any system of general circulation to brokers and dealers which regularly disseminates quotations of stocks and securities by identified brokers or dealers, other than by quotation sheets which are prepared and distributed by a broker or dealer in the regular course of business and which contain only quotations of such broker or dealer.

(n) [Reserved]

(o) Fair market value--(1) In general. For purposes of sections 897, 1445, and 6039C only, the term "fair



market value" means the value of the property determined in accordance with the rules, contained in this paragraph (o). The definition of fair market value provided herein is not to be used in the calculation of gain or loss from the disposition of a U.S. real property interest pursuant to section 1001. An independent professional appraisal of the value of property must be submitted only if such an appraisal is specifically requested in connection with the negotiation of a security agreement pursuant to section 1445.

(2) Method of calculating fair market value--(i) In general. The fair market value of property is its gross value (as defined in paragraph (o)(2)(ii) of this section) reduced by the outstanding balance of any debts secured by the property which are described in paragraph (o)(2)(iii) of this section. See § 1.897-2(b) for the alternative use of book values in certain limited circumstances.

(ii) Gross value. Gross value is the price at which the property would change hands between an unrelated willing buyer and willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of all relevant facts. Generally, with respect to trade or business assets, going concern value should be used as it will provide the most accurate reflection of such a price. However, taxpayers may use other methods of valuation if they can establish that such method will provide a more accurate determination of gross value and if they consistently apply such method to all assets to be valued. See subdivisions (3) and (4) of this paragraph (o) for special rules with respect to the valuation of leases and of intangible assets.

(iii) Debts secured by the property. The gross value of property shall be reduced by the outstanding balance of debts that are:

(A) Secured by a mortgage or other security interest in the property that is valid and enforceable under the law of the jurisdiction in which the property is located, and

(B) Either (1) incurred to acquire the property (including long-term financing obtained in replacement of construction loans or other short-term debt within one year of the acquisition or completion of the property), or (2) otherwise incurred in direct connection with the property, such as property tax liens upon real property or debts incurred to maintain or improve property.

In addition, if any debt described in this paragraph (o)(2)(iii) is refinanced for a valid business purpose (such as obtaining a more favorable rate of interest), the principal amount of the replacement debt does not exceed the outstanding balance of the original debt, and the replacement debt is secured by the property, then the gross value of the property shall be reduced by the replacement debt. Obligations to related persons shall not be taken into account for purposes of this paragraph (o)(2)(iii) unless such obligations constitute interests solely as a creditor pursuant to the provisions of paragraph (d)(4) of this section and unless the related person has made similar loans to unrelated persons on similar terms and conditions.

(iv) Anti-abuse rule. The gross value of real property located outside the United States and of assets used or held for use in a trade or business shall be reduced by the outstanding balance of any debt that was entered into for the principal purpose of avoiding the provisions of section 897, 1445, or 6039C by enabling the corporation to acquire such assets. The existence of such a purpose shall be determined with reference to all the facts and circumstances. Debts that a particular corporation routinely enters into in the ordinary course of

its acquisition of assets used or held for use in its trade or business will not be considered to be entered into for the principal purpose of avoiding the provisions of section 897, 1445, or 6039C.

(3) Fair market value of leases and options. For purposes of sections 897, 1445, and 6039C, the fair market value of a leasehold interest in real property is the price at which the lease could be assigned or the property sublet, neither party to such transaction being under any compulsion to enter into the transaction and both having reasonable knowledge of all relevant facts. Thus, the value of a leasehold interest will generally consist of the present value, over the period of the lease remaining, of the difference between the rental provided for in the lease and the current rental value of the real property. A leasehold interest bearing restrictions on its assignment or sublease has a fair market value of zero, but only if those restrictions in practical effect preclude (rather than merely condition) the lessee's ability to transfer, at a gain, the benefits of a favorable lease. The normal commercial practice of lessors may be used to determine whether restrictions in a lease have the practical effect of precluding transfer at a gain. The fair market value of an option to purchase any property is, similarly, the price at which the option could be sold, consisting generally of the difference between the option price and the fair market value of the property, taking proper account of any restrictions upon the transfer of the option.

(4) Fair market value of intangible assets. For purposes of determining whether a corporation is a U.S. real property holding corporation, the fair market value of intangible assets described in § 1.897-1(f)(1)(ii) may be determined in accordance with the following rules.

(i) Purchase price. Intangible assets described in § 1.897-1(f)(1)(ii) that were acquired by purchase from a person not related to the purchaser within the meaning of § 1.897-1(i) may be valued at their purchase price. However, such purchase price must be adjusted to reflect any amortization required by generally accepted accounting principles applied in the United States. Intangible assets acquired by purchase shall include any amounts allocated to goodwill or going concern valued pursuant to section 338(b)(3) and regulations thereunder. Intangible assets acquired by purchase shall not include assets that were acquired indirectly through an acquisition of stock to which section 338 does not apply. Such assets must be valued pursuant to a method described in subdivision (ii) or (iii) of this paragraph (o)(4).

(ii) Book value. Intangible assets described in § 1.897-1(f)(1)(ii) (other than good will and going concern value) may be valued at the amount at which such assets are carried on the financial accounting records of the holder of such assets, provided that such amount is determined in accordance with generally accepted accounting principles applied in the United States. However, this method may not be used with respect to assets acquired by purchase from a related person within the meaning of § 1.897-1(i).

(iii) Other methods. Intangible assets described in § 1.897-1(f)(1)(ii) may be valued pursuant to any other reasonable method at an amount reflecting the price at which the asset would change hands between an unrelated willing buyer and willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of all relevant facts. However, a corporation that uses a method of valuation other than the purchase price or book value methods may be required to comply with the special notification requirements of § 1.897-2(h)(1)(iii)(A).

(p) Identifying number. The "identifying number" of an individual is the individual's United States social

security number. The "identifying number" of any other person is its United States employer identification number.

Approved by the Office of Management and Budget under control number 1545-0123.

26 C.F.R. § 1.901-2

§ 1.901-2 Income, war profits, or excess profits tax paid or accrued.

(a) Definition of income, war profits, or excess profits tax--(1) In general. Section 901 allows a credit for the amount of income, war profits or excess profits tax (referred to as "income tax" for purposes of this section and §§ 1.901-2A and 1.903-1) paid to any foreign country. Whether a foreign levy is an income tax is determined independently for each separate foreign levy. A foreign levy is an income tax if and only if--

(i) It is a tax; and

(ii) The predominant character of that tax is that of an income tax in the U.S. sense.

Except to the extent otherwise provided in paragraphs (a)(3)(ii) and (c) of this section, a tax either is or is not an income tax, in its entirety, for all persons subject to the tax. Paragraphs (a), (b) and (c) of this section define an income tax for purposes of section 901. Paragraph (d) of this section contains rules describing what constitutes a separate foreign levy. Paragraph (e) of this section contains rules for determining the amount of tax paid by a person. Paragraph (f) of this section contains rules for determining by whom foreign tax is paid. Paragraph (g) of this section contains definitions of the terms "paid by," "foreign country," and "foreign levy." Paragraph (h) of this section states the effective date of this section.

(2) Tax--(i) In general. A foreign levy is a tax if it requires a compulsory payment pursuant to the authority of a foreign country to levy taxes. A penalty, fine, interest, or similar obligation is not a tax, nor is a customs duty a tax. Whether a foreign levy requires a compulsory payment pursuant to a foreign country's authority to levy taxes is determined by principles of U.S. law and not by principles of law of the foreign country. Therefore, the assertion by a foreign country that a levy is pursuant to the foreign country's authority to levy taxes is not determinative that, under U.S. principles, it is pursuant thereto. Notwithstanding any assertion of a foreign country to the contrary, a foreign levy is not pursuant to a foreign country's authority to levy taxes, and thus is not a tax, to the extent a person subject to the levy receives (or will receive), directly or indirectly, a specific economic benefit (as defined in paragraph (a)(2)(ii)(B) of this section) from the foreign country in exchange for payment pursuant to the levy. Rather, to that extent, such levy requires a compulsory payment in exchange for such specific economic benefit. If, applying U.S. principles, a foreign levy requires a compulsory payment pursuant to the authority of a foreign country to levy taxes and also requires a compulsory payment in exchange for a specific economic benefit, the levy is considered to have two distinct elements: a tax and a requirement of compulsory payment in exchange for such specific economic benefit. In such a situation, these two distinct elements of the foreign levy (and the amount paid pursuant to each such element) must be separated. No credit is allowable for a payment pursuant to a foreign levy by a dual capacity taxpayer (as defined in paragraph (a)(2)(ii)(A) of this section) unless the person claiming such credit establishes the amount that is paid pursuant to the distinct element of the foreign levy that is a tax. See paragraph (a)(2)(ii) of this section and § 1.901-2A.

(ii) Dual capacity taxpayers--(A) In general. For purposes of this section and §§ 1.901-2A and 1.903-1, a person who is subject to a levy of a foreign state or of a possession of the United States or of a political

subdivision of such a state or possession and who also, directly or indirectly (within the meaning of paragraph (a)(2)(ii)(E) of this section) receives (or will receive) a specific economic benefit from the state or possession or from a political subdivision of such state or possession or from an agency or instrumentality of any of the foregoing is referred to as a "dual capacity taxpayer." Dual capacity taxpayers are subject to the special rules of § 1.901-2A.

(B) Specific economic benefit. For purposes of this section and §§ 1.901-2A and 1.903-1, the term "specific economic benefit" means an economic benefit that is not made available on substantially the same terms to substantially all persons who are subject to the income tax that is generally imposed by the foreign country, or, if there is no such generally imposed income tax, an economic benefit that is not made available on substantially the same terms to the population of the country in general. Thus, a concession to extract government-owned petroleum is a specific economic benefit, but the right to travel or to ship freight on a government-owned airline is not, because the latter, but not the former, is made generally available on substantially the same terms. An economic benefit includes property; a service; a fee or other payment; a right to use, acquire or extract resources, patents or other property that a foreign country owns or controls (within the meaning of paragraph (a)(2)(ii)(D) of this section); or a reduction or discharge of a contractual obligation. It does not include the right or privilege merely to engage in business generally or to engage in business in a particular form.

(C) Pension, unemployment, and disability fund payments. A foreign levy imposed on individuals to finance retirement, old-age, death, survivor, unemployment, illness, or disability benefits, or for some substantially similar purpose, is not a requirement of compulsory payment in exchange for a specific economic benefit, as long as the amounts required to be paid by the individuals subject to the levy are not computed on a basis reflecting the respective ages, life expectancies or similar characteristics of such individuals.

(D) Control of property. A foreign country controls property that it does not own if the country exhibits substantial indicia of ownership with respect to the property, for example, by both regulating the quantity of property that may be extracted and establishing the minimum price at which it may be disposed of.

(E) Indirect receipt of a benefit. A person is considered to receive a specific economic benefit indirectly if another person receives a specific economic benefit and that other person--

(1) Owns or controls, directly or indirectly, the first person or is owned or controlled, directly or indirectly, by the first person or by the same persons that own or control, directly or indirectly, the first person; or

(2) Engages in a transaction with the first person under terms and conditions such that the first person receives, directly or indirectly, all or part of the value of the specific economic benefit.

(3) Predominant character. The predominant character of a foreign tax is that of an income tax in the U.S. sense--

(i) If, within the meaning of paragraph (b)(1) of this section, the foreign tax is likely to reach net gain in the normal circumstances in which it applies,

(ii) But only to the extent that liability for the tax is not dependent, within the meaning of paragraph (c) of this section, by its terms or otherwise, on the availability of a credit for the tax against income tax liability to another country.

(b) Net gain--(1) In general. A foreign tax is likely to reach net gain in the normal circumstances in which it applies if and only if the tax, judged on the basis of its predominant character, satisfies each of the realization, gross receipts, and net income requirements set forth in paragraphs (b)(2), (b)(3) and (b)(4), respectively, of this section.

(2) Realization--(i) In general. A foreign tax satisfies the realization requirement if, judged on the basis of its predominant character, it is imposed--

(A) Upon or subsequent to the occurrence of events ("realization events") that would result in the realization of income under the income tax provisions of the Internal Revenue Code;

(B) Upon the occurrence of an event prior to a realization event ("a prerealization event") provided the consequence of such event is the recapture (in whole or part) of a tax deduction, tax credit or other tax allowance previously accorded to the taxpayer; or

(C) Upon the occurrence of a prerealization event, other than one described in paragraph (b)(2)(i)(B) of this section, but only if the foreign country does not, upon the occurrence of a later event (other than a distribution or a deemed distribution of the income), impose tax ("second tax") with respect to the income on which tax is imposed by reason of such prerealization event (or, if it does impose a second tax, a credit or other comparable relief is available against the liability of such a second tax for tax paid on the occurrence of the prerealization event) and--

(1) The imposition of the tax upon such prerealization event is based on the difference in the values of property at the beginning and end of a period; or

(2) The prerealization event is the physical transfer, processing, or export of readily marketable property (as defined in paragraph (b)(2)(iii) of this section).

A foreign tax that, judged on the basis of its predominant character, is imposed upon the occurrence of events described in this paragraph (b)(2)(i) satisfies the realization requirement even if it is also imposed in some situations upon the occurrence of events not described in this paragraph (b)(2)(i). For example, a foreign tax that, judged on the basis of its predominant character, is imposed upon the occurrence of events described in this paragraph (b)(2)(i) satisfies the realization requirement even though the base of that tax also includes imputed rental income from a personal residence used by the owner and receipt of stock dividends of a type described in section 305(a) of the Internal Revenue Code. As provided in paragraph (a)(1) of this section, a tax either is or is not an income tax, in its entirety, for all persons subject to the tax; therefore, a foreign tax described in the immediately preceding sentence satisfies the realization requirement even though some persons subject to the tax will on some occasions not be subject to the tax except with respect to such imputed rental income and such stock dividends. However, a foreign tax based only or predominantly on such

imputed rental income or only or predominantly on receipt of such stock dividends does not satisfy the realization requirement.

(ii) Certain deemed distributions. A foreign tax that does not satisfy the realization requirement under paragraph (b)(2)(i) of this section is nevertheless considered to meet the realization requirement if it is imposed with respect to a deemed distribution (e.g., by a corporation to a shareholder) of amounts that meet the realization requirement in the hands of the person that, under foreign law, is deemed to distribute such amount, but only if the foreign country does not, upon the occurrence of a later event (e.g., an actual distribution), impose tax ("second tax") with respect to the income on which tax was imposed by reason of such deemed distribution (or, if it does impose a second tax, a credit or other comparable relief is available against the liability for such a second tax for tax paid with respect to the deemed distribution).

(iii) Readily marketable property. Property is readily marketable if--

(A) It is stock in trade or other property of a kind that properly would be included in inventory if on hand at the close of the taxable year or if it is held primarily for sale to customers in the ordinary course of business, and

(B) It can be sold on the open market without further processing or it is exported from the foreign country.

(iv) Examples. The provisions of paragraph (b)(2) of this section may be illustrated by the following examples:

Example 1. Residents of country X are subject to a tax of 10 percent on the aggregate net appreciation in fair market value during the calendar year of all shares of stock held by them at the end of the year. In addition, all such residents are subject to a country X tax that qualifies as an income tax within the meaning of paragraph (a)(1) of this section. Included in the base of the income tax are gains and losses realized on the sale of stock, and the basis of stock for purposes of determining such gain or loss is its cost. The operation of the stock appreciation tax and the income tax as applied to sales of stock is exemplified as follows: A, a resident of country X, purchases stock in June, 1983 for 100u (units of country X currency) and sells it in May, 1985 for 160u. On December 31, 1983, the stock is worth 120u and on December 31, 1984, it is worth 155u. Pursuant to the stock appreciation tax, A pays 2u for 1983 (10 percent of (120u-100u)), 3.5u for 1984 (10 percent of (155u-120u)), and nothing in 1985 because no stock was held at the end of that year. For purposes of the income tax, A must include 60u (160u-100u) in his income for 1985, the year of sale. Pursuant to paragraph (b)(2)(i)(C) of this section, the stock appreciation tax does not satisfy the realization requirement because country X imposes a second tax upon the occurrence of a later event (i.e., the sale of stock) with respect to the income that was taxed by the stock appreciation tax and no credit or comparable relief is available against such second tax for the stock appreciation tax paid.

Example 2. The facts are the same as in example (1) except that if stock was held on the December 31 last preceding the date of its sale, the basis of such stock for purposes of computing gain or loss under the income tax is the value of the stock on such December 31. Thus, in 1985, A includes only 5u (160u- 155u) as income from the sale for purposes of the income tax. Because the income tax imposed upon the occurrence of a later event (the sale) does not impose a tax with respect to the income that was taxed by the stock appreciation tax,

the stock appreciation tax satisfies the realization requirement. The result would be the same if, instead of a basis adjustment to reflect taxation pursuant to the stock appreciation tax, the country X income tax allowed a credit (or other comparable relief) to take account of the stock appreciation tax. If a credit mechanism is used, see also paragraph (e)(4)(i) of this section.

Example 3. Country X imposes a tax on the realized net income of corporations that do business in country X. Country X also imposes a branch profits tax on corporations organized under the law of a country other than country X that do business in country X. The branch profits tax is imposed when realized net income is remitted or deemed to be remitted by branches in country X to home offices outside of country X. The branch profits tax is imposed subsequent to the occurrence of events that would result in realization of income (i.e., by corporations subject to such tax) under the income tax provisions of the Internal Revenue Code; thus, in accordance with paragraph (b)(2)(i)(A) of this section, the branch profits tax satisfies the realization requirement.

Example 4. Country X imposes a tax on the realized net income of corporations that do business in country X (the "country X corporate tax"). Country X also imposes a separate tax on shareholders of such corporations (the "country X shareholder tax"). The country X shareholder tax is imposed on the sum of the actual distributions received during the taxable year by such a shareholder from the corporation's realized net income for that year (i.e., income from past years is not taxed in a later year when it is actually distributed) plus the distributions deemed to be received by such a shareholder. Deemed distributions are defined as (A) a shareholder's pro rata share of the corporation's realized net income for the taxable year, less (B) such shareholder's pro rata share of the corporation's country X corporate tax for that year, less (C) actual distributions made by such corporation to such shareholder from such net income. A shareholder's receipt of actual distributions is a realization event within the meaning of paragraph (b)(2)(i)(A) of this section. The deemed distributions are not realization events, but they are described in paragraph (b)(2)(ii) of this section. Accordingly, the country X shareholder tax satisfies the realization requirement.

(3) Gross receipts--(i) In general. A foreign tax satisfies the gross receipts requirement if, judged on the basis of its predominant character, it is imposed on the basis of--

(A) Gross receipts; or

(B) Gross receipts computed under a method that is likely to produce an amount that is not greater than fair market value.

A foreign tax that, judged on the basis of its predominant character, is imposed on the basis of amounts described in this paragraph (b)(3)(i) satisfies the gross receipts requirement even if it is also imposed on the basis of some amounts not described in this paragraph (b)(3)(i).

(ii) Examples. The provisions of paragraph (b)(3)(i) of this section may be illustrated by the following examples:

Example 1. Country X imposes a "headquarters company tax" on country X corporations that serve as regional headquarters for affiliated nonresident corporations, and this tax is a separate tax within the meaning



of paragraph (d) of this section. A headquarters company for purposes of this tax is a corporation that performs administrative, management or coordination functions solely for nonresident affiliated entities. Due to the difficulty of determining on a case-by-case basis the arm's length gross receipts that headquarters companies would charge affiliates for such services, gross receipts of a headquarters company are deemed, for purposes of this tax, to equal 110 percent of the business expenses incurred by the headquarters company. It is established that this formula is likely to produce an amount that is not greater than the fair market value of arm's length gross receipts from such transactions with affiliates. Pursuant to paragraph (b)(3)(i)(B) of this section, the headquarters company tax satisfies the gross receipts requirement.

Example 2. The facts are the same as in Example (1), with the added fact that in the case of a particular taxpayer, A, the formula actually produces an amount that is substantially greater than the fair market value of arm's length gross receipts from transactions with affiliates. As provided in paragraph (a)(1) of this section, the headquarters company tax either is or is not an income tax, in its entirety, for all persons subject to the tax. Accordingly, the result is the same as in example (1) for all persons subject to the headquarters company tax, including A.

Example 3. Country X imposes a separate tax (within the meaning of paragraph (d) of this section) on income from the extraction of petroleum. Under that tax, gross receipts from extraction income are deemed to equal 105 percent of the fair market value of petroleum extracted. This computation is designed to produce an amount that is greater than the fair market value of actual gross receipts; therefore, the tax on extraction income is not likely to produce an amount that is not greater than fair market value. Accordingly, the tax on extraction income does not satisfy the gross receipts requirement. However, if the tax satisfies the criteria of § 1.903-1(a), it is a tax in lieu of an income tax.

(4) Net income--(i) In general. A foreign tax satisfies the net income requirement if, judged on the basis of its predominant character, the base of the tax is computed by reducing gross receipts (including gross receipts as computed under paragraph (b)(3)(i)(B) of this section) to permit--

(A) Recovery of the significant costs and expenses (including significant capital expenditures) attributable, under reasonable principles, to such gross receipts; or

(B) Recovery of such significant costs and expenses computed under a method that is likely to produce an amount that approximates, or is greater than, recovery of such significant costs and expenses.

A foreign tax law permits recovery of significant costs and expenses even if such costs and expenses are recovered at a different time than they would be if the Internal Revenue Code applied, unless the time of recovery is such that under the circumstances there is effectively a denial of such recovery. For example, unless the time of recovery is such that under the circumstances there is effectively a denial of such recovery, the net income requirement is satisfied where items deductible under the Internal Revenue Code are capitalized under the foreign tax system and recovered either on a recurring basis over time or upon the occurrence of some future event or where the recovery of items capitalized under the Internal Revenue Code occurs less rapidly under the foreign tax system. A foreign tax law that does not permit recovery of one or more significant costs or expenses, but that provides allowances that effectively compensate for nonrecovery of such significant costs or expenses, is considered to permit recovery of such costs or expenses. Principles

used in the foreign tax law to attribute costs and expenses to gross receipts may be reasonable even if they differ from principles that apply under the Internal Revenue Code (e.g., principles that apply under section 265, 465 or 861(b) of the Internal Revenue Code). A foreign tax whose base, judged on the basis of its predominant character, is computed by reducing gross receipts by items described in paragraph (b)(4)(i)(A) or (B) of this section satisfied the net income requirement even if gross receipts are not reduced by some such items. A foreign tax whose base is gross receipts or gross income does not satisfy the net income requirement except in the rare situation where that tax is almost certain to reach some net gain in the normal circumstances in which it applies because costs and expenses will almost never be so high as to offset gross receipts or gross income, respectively, and the rate of the tax is such that after the tax is paid persons subject to the tax are almost certain to have net gain. Thus, a tax on the gross receipts or gross income of businesses can satisfy the net income requirement only if businesses subject to the tax are almost certain never to incur a loss (after payment of the tax). In determining whether a foreign tax satisfied the net income requirement, it is immaterial whether gross receipts are reduced, in the base of the tax, by another tax, provided that other tax satisfies the realization, gross receipts and net income requirements.

(ii) Consolidation of profits and losses. In determining whether a foreign tax satisfies the net income requirement, one of the factors to be taken into account is whether, in computing the base of the tax, a loss incurred in one activity (e.g., a contract area in the case of oil and gas exploration) in a trade or business is allowed to offset profit earned by the same person in another activity (e.g., a separate contract area) in the same trade or business. If such an offset is allowed, it is immaterial whether the offset may be made in the taxable period in which the loss is incurred or only in a different taxable period, unless the period is such that under the circumstances there is effectively a denial of the ability to offset the loss against profit. In determining whether a foreign tax satisfies the net income requirement, it is immaterial that no such offset is allowed if a loss incurred in one such activity may be applied to offset profit earned in that activity in a different taxable period, unless the period is such that under the circumstances there is effectively a denial of the ability to offset such loss against profit. In determining whether a foreign tax satisfies the net income requirement, it is immaterial whether a person's profits and losses from one trade or business (e.g., oil and gas extraction) are allowed to offset its profits and losses from another trade or business (e.g., oil and gas refining and processing), or whether a person's business profits and losses and its passive investment profits and losses are allowed to offset each other in computing the base of the foreign tax. Moreover, it is immaterial whether foreign law permits or prohibits consolidation of profits and losses of related persons, unless foreign law requires separate entities to be used to carry on separate activities in the same trade or business. If foreign law requires that separate entities carry on such separate activities, the determination whether the net income requirement is satisfied is made by applying the same considerations as if such separate activities were carried on by a single entity.

(iii) Carryovers. In determining whether a foreign tax satisfies the net income requirement, it is immaterial, except as otherwise provided in paragraph (b)(4)(ii) of this section, whether losses incurred during one taxable period may be carried over to offset profits incurred in different taxable periods.

(iv) Examples. The provisions of this paragraph (b)(4) may be illustrated by the following examples:

Example 1. Country X imposes an income tax on corporations engaged in business in country X; however, that income tax is not applicable to banks. Country X also imposes a tax (the "bank tax") of 1 percent on the

gross amount of interest income derived by banks from branches in country X; no deductions are allowed. Banks doing business in country X incur very substantial costs and expenses (e.g., interest expense) attributable to their interest income. The bank tax neither provides for recovery of significant costs and expenses nor provides any allowance that significantly compensates for the lack of such recovery. Since such banks are not almost certain never to incur a loss on their interest income from branches in country X, the bank tax does not satisfy the net income requirement. However, if the tax on corporations is generally imposed, the bank tax satisfies the criteria of § 1.903-1(a) and therefore is a tax in lieu of an income tax.

Example 2. Country X law imposes an income tax on persons engaged in business in country X. The base of that tax is realized net income attributable under reasonable principles to such business. Under the tax law of country X, a bank is not considered to be engaged in business in country X unless it has a branch in country X and interest income earned by a bank from a loan to a resident of country X is not considered attributable to business conducted by the bank in country X unless a branch of the bank in country X performs certain significant enumerated activities, such as negotiating the loan. Country X also imposes a tax (the "bank tax") of 1 percent on the gross amount of interest income earned by banks from loans to residents of country X if such banks do not engage in business in country X or if such interest income is not considered attributable to business conducted in country X. For the same reasons as are set forth in example (1), the bank tax does not satisfy the net income requirement. However, if the tax on persons engaged in business in country X is generally imposed, the bank tax satisfies the criteria of § 1.903-1(a) and therefore is a tax in lieu of an income tax.

Example 3. A foreign tax is imposed at the rate of 40 percent on the amount of gross wages realized by an employee; no deductions are allowed. Thus, the tax law neither provides for recovery of costs and expenses nor provides any allowance that effectively compensates for the lack of such recovery. Because costs and expenses of employees attributable to wage income are almost always insignificant compared to the gross wages realized, such costs and expenses will almost always not be so high as to offset the gross wages and the rate of the tax is such that, under the circumstances, after the tax is paid, employees subject to the tax are almost certain to have net gain. Accordingly, the tax satisfies the net income requirement.

Example 4. Country X imposes a tax at the rate of 48 percent of the "taxable income" of nonresidents of country X who furnish specified types of services to customers who are residents of country X. "Taxable income" for purposes of the tax is defined as gross receipts received from residents of country X (regardless of whether the services to which the receipts relate are performed within or outside country X) less deductions that permit recovery of the significant costs and expenses (including significant capital expenditures) attributable under reasonable principles to such gross receipts. The country X tax satisfies the net income requirement.

Example 5. Each of country X and province Y (a political subdivision of country X) imposes a tax on corporations, called the "country X income tax" and the "province Y income tax," respectively. Each tax has an identical base, which is computed by reducing a corporation's gross receipts by deductions that, based on the predominant character of the tax, permit recovery of the significant costs and expenses (including significant capital expenditures) attributable under reasonable principles to such gross receipts. The country X income tax does not allow a deduction for the province Y income tax for which a taxpayer is liable, nor does the province Y income tax allow a deduction for the country X income tax for which a taxpayer is

liable. As provided in paragraph (d)(1) of this section, each of the country X income tax and the province Y income tax is a separate levy. Both of these levies satisfy the net income requirement; the fact that neither levy's base allows a deduction for the other levy is immaterial in reaching that determination.

(c) Soak-up taxes--(1) In general. Pursuant to paragraph (a)(3)(ii) of this section, the predominant character of a foreign tax that satisfies the requirement of paragraph (a)(3)(i) of this section is that of an income tax in the U.S. sense only to the extent that liability for the foreign tax is not dependent (by its terms or otherwise) on the availability of a credit for the tax against income tax liability to another country. Liability for foreign tax is dependent on the availability of a credit for the foreign tax against income tax liability to another country only if and to the extent that the foreign tax would not be imposed on the taxpayer but for the availability of such a credit. See also § 1.903-1(b)(2).

(2) Examples. The provisions of paragraph (c)(1) of this section may be illustrated by the following examples:

Example 1. Country X imposes a tax on the receipt of royalties from sources in country X by nonresidents of country X. The tax is 15 percent of the gross amount of such royalties unless the recipient is a resident of the United States or of country A, B, C, or D, in which case the tax is 20 percent of the gross amount of such royalties. Like the United States, each of countries A, B, C, and D allows its residents a credit against the income tax otherwise payable to it for income taxes paid to other countries. Because the 20 percent rate applies only to residents of countries which allow a credit for taxes paid to other countries and the 15 percent rate applies to residents of countries which do not allow such a credit, one-fourth of the country X tax would not be imposed on residents of the United States but for the availability of such a credit. Accordingly, one-fourth of the country X tax imposed on residents of the United States who receive royalties from sources in country X is dependent on the availability of a credit for the country X tax against income tax liability to another country.

Example 2. Country X imposes a tax on the realized net income derived by all nonresidents from carrying on a trade or business in country X. Although country X law does not prohibit other nonresidents from carrying on business in country X, United States persons are the only nonresidents of country X that carry on business in country X in 1984. The country X tax would be imposed in its entirety on a nonresident of country X irrespective of the availability of a credit for country X tax against income tax liability to another country. Accordingly, no portion of that tax is dependent on the availability of such a credit.

Example 3. Country X imposes tax on the realized net income of all corporations incorporated in country X. Country X allows a tax holiday to qualifying corporations incorporated in country X that are owned by nonresidents of country X, pursuant to which no country X tax is imposed on the net income of a qualifying corporation for the first ten years of its operations in country X. A corporation qualifies for the tax holiday if it meets certain minimum investment criteria and if the development office of country X certifies that in its opinion the operations of the corporation will be consistent with specified development goals of country X. The development office will not so certify to any corporation owned by persons resident in countries that allow a credit (such as that available under section 902 of the Internal Revenue Code) for country X tax paid by a corporation incorporated in country X. In practice, tax holidays are granted to a large number of corporations, but country X tax is imposed on a significant number of other corporations incorporated in

country X (e.g., those owned by country X persons and those which have had operations for more than 10 years) in addition to corporations denied a tax holiday because their shareholders qualify for a credit for the country X tax against income tax liability to another country. In the case of corporations denied a tax holiday because they have U.S. shareholders, no portion of the country X tax during the period of the denied 10-year tax holiday is dependent on the availability of a credit for the country X tax against income tax liability to another country.

Example 4. The facts are the same as in example (3), except that corporations owned by persons resident in countries that will allow a credit for country X tax at the time when dividends are distributed by the corporations are granted a provisional tax holiday. Under the provisional tax holiday, instead of relieving such a corporation from country X tax for 10 years, liability for such tax is deferred until the corporation distributes dividends. The result is the same as in example (3).

(d) Separate levies--(1) In general. For purposes of sections 901 and 903, whether a single levy or separate levies are imposed by a foreign country depends on U.S. principles and not on whether foreign law imposes the levy or levies in a single or separate statute. A levy imposed by one taxing authority (e.g., the national government of a foreign country) is always separate for purposes of sections 901 and 903 from a levy imposed by another taxing authority (e.g., a political subdivision of that foreign country). Levies are not separate merely because different rates apply to different taxpayers. For example, a foreign levy identical to the tax imposed on U.S. citizens and resident alien individuals by section 1 of the Internal Revenue Code is a single levy notwithstanding the levy has graduated rates and applies different rate schedules to unmarried individuals, married individuals who file separate returns and married individuals who file joint returns. In general, levies are not separate merely because some provisions determining the base of the levy apply, by their terms or in practice, to some, but not all, persons subject to the levy. For example, a foreign levy identical to the tax imposed by section 11 of the Internal Revenue Code is a single levy even though some provisions apply by their terms to some but not all corporations subject to the section 11 tax (e.g., section 465 is by its terms applicable to corporations described in sections 465(a)(1)(B) and 465(a)(1)(C), but not to other corporations), and even though some provisions apply in practice to some but not all corporations subject to the section 11 tax (e.g., section 611 does not, in practice, apply to any corporation that does not have a qualifying interest in the type of property described in section 611(a)). However, where the base of a levy is different in kind, and not merely in degree, for different classes of persons subject to the levy, the levy is considered for purposes of sections 901 and 903 to impose separate levies for such classes of persons. For example, regardless of whether they are contained in a single or separate foreign statute, a foreign levy identical to the tax imposed by section 871(b) of the Internal Revenue Code is a separate levy from a foreign levy identical to the tax imposed by section 1 of the Internal Revenue Code as it applies to persons other than those described in section 871(b), and foreign levies identical to the taxes imposed by sections 11, 541, 881, 882, 1491 and 3111 of the Internal Revenue Code are each separate levies, because the base of each of those levies differs in kind, and not merely in degree, from the base of each of the others. Accordingly, each such levy must be analyzed separately to determine whether it is an income tax within the meaning of paragraph (a) (1) of this section and whether it is a tax in lieu of an income tax within the meaning of paragraph (a) of § 1.903-1. Where foreign law imposes a levy that is the sum of two or more separately computed amounts, and each such amount is computed by reference to a separate base, separate levies are considered, for purposes of sections 901 and 903, to be imposed. A separate base may consist, for example, of a particular type of income or of an amount unrelated to income, e.g., wages paid. Amounts are not separately computed if they are computed separately merely for purposes of a preliminary computation and are then combined as a single

base. In the case of levies that apply to dual capacity taxpayers, see also § 1.901-2A(a).

(2) Contractual modifications. Notwithstanding paragraph (d)(1) of this section, if foreign law imposing a levy is modified for one or more persons subject to the levy by a contract entered into by such person or persons and the foreign country, then foreign law is considered for purposes of sections 901 and 903 to impose a separate levy for all persons to whom such contractual modification of the levy applies, as contrasted to the levy as applied to all persons to whom such contractual modification does not apply. In applying the provisions of paragraph (c) of this section to a tax as modified by such a contract, the provisions of § 1.903-1(b)(2) shall apply.

(3) Examples. The provisions of paragraph (d)(1) of this section may be illustrated by the following examples:

Example 1. A foreign statute imposes a levy on corporations equal to the sum of 15% of the corporation's realized net income plus 3% of its net worth. As the levy is the sum of two separately computed amounts, each of which is computed by reference to a separate base, each of the portion of the levy based on income and the portion of the levy based on net worth is considered, for purposes of sections 901 and 903, to be a separate levy.

Example 2. A foreign statute imposes a levy on nonresident alien individuals analogous to the taxes imposed by section 871 of the Internal Revenue Code. For the same reasons as set forth in example (1), each of the portion of the foreign levy analogous to the tax imposed by section 871(a) and the portion of the foreign levy analogous to the tax imposed by sections 871(b) and 1, is considered, for purposes of sections 901 and 903, to be a separate levy.

Example 3. A single foreign statute or separate foreign statutes impose a foreign levy that is the sum of the products of specified rates applied to specified bases, as follows:

| Base                                     | Rate (percent) |
|--|----------------|
| Net income from mining .....             | 45             |
| Net income from manufacturing .....      | 50             |
| Net income from technical services ..... | 50             |
| Net income from other services .....     | 45             |
| Net income from investments .....        | 15             |

All other net income ..... 50

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In computing each such base, deductible expenditures are allocated to the type of income they generate. If allocated deductible expenditures exceed the gross amount of a specified type of income, the excess may not be applied against income of a different specified type. Accordingly, the levy is the sum of several separately computed amounts, each of which is computed by reference to a separate base. Each of the levies on mining net income, manufacturing net income, technical services net income, other services net income, investment net income and other net income is, therefore, considered, for purposes of sections 901 and 903, to be a separate levy.

Example 4. The facts are the same as in example (3), except that excess deductible expenditures allocated to one type of income are applied against other types of income to which the same rate applies. The levies on mining net income and other services net income together are considered, for purposes of sections 901 and 903, to be a single levy since, despite a separate preliminary computation of the bases, by reason of the permitted application of excess allocated deductible expenditures, the bases are not separately computed. For the same reason, the levies on manufacturing net income, technical services net income and other net income together are considered, for purposes of sections 901 and 903, to be a single levy. The levy on investment net income is considered, for purposes of sections 901 and 903, to be a separate levy. These results are not dependent on whether the application of excess allocated deductible expenditures to a different type of income, as described above, is permitted in the same taxable period in which the expenditures are taken into account for purposes of the preliminary computation, or only in a different (e.g., later) taxable period.

Example 5. The facts are the same as in example (3), except that excess deductible expenditures allocated to any type of income other than investment income are applied against the other types of income (including investment income) according to a specified set of priorities of application. Excess deductible expenditures allocated to investment income are not applied against any other type of income. For the reason expressed in example (4), all of the levies are together considered, for purposes of sections 901 and 903, to be a single levy.

(e) Amount of income tax that is creditable--(1) In general. Credit is allowed under section 901 for the amount of income tax (within the meaning of paragraph (a)(1) of this section) that is paid to a foreign country by the taxpayer. The amount of income tax paid by the taxpayer is determined separately for each taxpayer.

(2) Refunds and credits--(i) In general. An amount is not tax paid to a foreign country to the extent that it is reasonably certain that the amount will be refunded, credited, rebated, abated, or forgiven. It is not reasonably certain that an amount will be refunded, credited, rebated, abated, or forgiven if the amount is not greater than a reasonable approximation of final tax liability to the foreign country.

(ii) Examples. The provisions of paragraph (e)(2)(i) of this section may be illustrated by the following examples:

Example 1. The internal law of country X imposes a 25 percent tax on the gross amount of interest from sources in country X that is received by a nonresident of country X. Country X law imposes the tax on the nonresident recipient and requires any resident of country X that pays such interest to a nonresident to withhold and pay over to country X 25 percent of such interest, which is applied to offset the recipient's liability for the 25 percent tax. A tax treaty between the United States and country X overrides internal law of country X and provides that country X may not tax interest received by a resident of the United States from a resident of country X at a rate in excess of 10 percent of the gross amount of such interest. A resident of the United States may claim the benefit of the treaty only by applying for a refund of the excess withheld amount (15 percent of the gross amount of interest income) after the end of the taxable year. A, a resident of the United States, receives a gross amount of 100u (units of country X currency) of interest income from a resident of country X, from sources in country X in the taxable year 1984, from which 25u of country X tax is withheld. A files a timely claim for refund of the 15u excess withheld amount, 15u of the amount withheld (25u- 10u) is reasonably certain to be refunded; therefore 15u is not considered an amount of tax paid to country X.

Example 2. A's initial income tax liability under country X law is 100u (units of country X currency). However, under country X law A's initial income tax liability is reduced in order to compute its final tax liability by an investment credit of 15u and a credit for charitable contributions of 5u. The amount of income tax paid by A is 80u.

Example 3. A computes his income tax liability in country X for the taxable year 1984 as 100u (units of country X currency), files a tax return on that basis, and pays 100u of tax. The day after A files that return, A files a claim for refund of 90u. The difference between the 100u of liability reflected in A's original return and the 10u of liability reflected in A's refund claim depends on whether a particular expenditure made by A is nondeductible or deductible, respectively. Based on an analysis of the country X tax law, A's country X tax advisors have advised A that it is not clear whether or not that expenditure is deductible. In view of the uncertainty as to the proper treatment of the item in question under country X tax law, no portion of the 100u paid by A is reasonably certain to be refunded. If A receives a refund, A must treat the refund as required by section 905(c) of the Internal Revenue Code.

Example 4. A levy of country X, which qualifies as an income tax within the meaning of paragraph (a)(1) of this section, provides that each person who makes payment to country X pursuant to the levy will receive a bond to be issued by country X with an amount payable at maturity equal to 10 percent of the amount paid pursuant to the levy. A pays 38,000u (units of country X currency) to country X and is entitled to receive a bond with an amount payable at maturity of 3800u. It is reasonably certain that a refund in the form of property (the bond) will be made. The amount of that refund is equal to the fair market value of the bond. Therefore, only the portion of the 38,000u payment in excess of the fair market value of the bond is an amount of tax paid.

(3) Subsidies--(i) General rule. An amount of foreign income tax is not an amount of income tax paid or accrued by a taxpayer to a foreign country to the extent that--

(A) The amount is used, directly or indirectly, by the foreign country imposing the tax to provide a subsidy by any means (including, but not limited to, a rebate, a refund, a credit, a deduction, a payment, a discharge



of an obligation, or any other method) to the taxpayer, to a related person (within the meaning of section 482), to any party to the transaction, or to any party to a related transaction; and

(B) The subsidy is determined, directly or indirectly, by reference to the amount of the tax or by reference to the base used to compute the amount of the tax.

(ii) Subsidy. The term "subsidy" includes any benefit conferred, directly or indirectly, by a foreign country to one of the parties enumerated in paragraph (e)(3)(i)(A) of this section. Substance and not form shall govern in determining whether a subsidy exists. The fact that the U.S. taxpayer may derive no demonstrable benefit from the subsidy is irrelevant in determining whether a subsidy exists.

(iii) Official exchange rate. A subsidy described in paragraph (e)(3)(i)(B) of this section does not include the actual use of an official foreign government exchange rate converting foreign currency into dollars where a free exchange rate also exists if--

(A) The economic benefit represented by the use of the official exchange rate is not targeted to or tied to transactions that give rise to a claim for a foreign tax credit;

(B) The economic benefit of the official exchange rate applies to a broad range of international transactions, in all cases based on the total payment to be made without regard to whether the payment is a return of principal, gross income, or net income, and without regard to whether it is subject to tax; and

(C) Any reduction in the overall cost of the transaction is merely coincidental to the broad structure and operation of the official exchange rate.

In regard to foreign taxes paid or accrued in taxable years beginning before January 1, 1987, to which the Mexican Exchange Control Decree, effective as of December 20, 1982, applies, see Rev. Rul. 84-143, 1984-2 C.B. 127.

(iv) Examples. The provisions of this paragraph (e)(3) may be illustrated by the following examples:

Example 1. (i) Country X imposes a 30 percent tax on nonresident lenders with respect to interest which the nonresident lenders receive from borrowers who are residents of Country X, and it is established that this tax is a tax in lieu of an income tax within the meaning of § 1.903-1(a). Country X provides the nonresident lenders with receipts upon their payment of the 30 percent tax. Country X remits to resident borrowers an incentive payment for engaging in foreign loans, which payment is an amount equal to 20 percent of the interest paid to nonresident lenders.

(ii) Because the incentive payment is based on the interest paid, it is determined by reference to the base used to compute the tax that is imposed on the nonresident lender. The incentive payment is considered a subsidy under this paragraph (e)(3) since it is provided to a party (the borrower) to the transaction and is based on the amount of tax that is imposed on the lender with respect to the transaction. Therefore, two-thirds (20 percent/30 percent) of the amount withheld by the resident borrower from interest payments to the

nonresidential lender is not an amount of income tax paid or accrued for purposes of section 901(b).

Example 2. (i) A U.S. bank lends money to a development bank in Country X. The development bank relends the money to companies resident in Country X. A withholding tax is imposed by Country X on the U.S. bank with respect to the interest that the development bank pays to the U.S. bank, and appropriate receipts are provided. On the date that the tax is withheld, fifty percent of the tax is credited by Country X to an account of the development bank. Country X requires the development bank to transfer the amount credited to the borrowing companies.

(ii) The amount successively credited to the account of the development bank and then to the account of the borrowing companies is determined by reference to the amount of the tax and the tax base. Since the amount credited to the borrowing companies is a subsidy provided to a party (the borrowing companies) to a related transaction and is based on the amount of tax and the tax base, it is not an amount paid or accrued as an income tax for purposes of section 901(b).

Example 3. (i) A U.S. bank lends dollars to a Country X borrower. Country X imposes a withholding tax on the lender with respect to the interest. The tax is to be paid in Country X currency, although the interest is payable in dollars. Country X has a dual exchange rate system, comprised of a controlled official exchange rate and a free exchange rate. Priority transactions such as exports of merchandise, imports of merchandise, and payments of principal and interest on foreign currency loans payable abroad to foreign lenders are governed by the official exchange rate which yields more dollars per unit of Country X currency than the free exchange rate. The Country X borrower remits the net amount of dollar interest due to the U.S. bank (interest due less withholding tax), pays the tax withheld in Country X currency to the Country X government, and provides to the U.S. bank a receipt for payment of the Country X taxes.

(ii) The use of the official exchange rate by the U.S. bank to determine foreign taxes with respect to interest is not a subsidy described in paragraph (e)(3)(i)(B) of this section. The official exchange rate is not targeted to or tied to transactions that give rise to a claim for a foreign tax credit. The use of the official exchange rate applies to the interest paid and to the principal paid. Any benefit derived by the U.S. bank through the use of the official exchange rate is merely coincidental to the broad structure and operation of the official exchange rate.

Example 4. (i) B, a U.S. corporation, is engaged in the production of oil and gas in Country X pursuant to a production sharing agreement between B, Country X, and the state petroleum authority of Country X. The agreement is approved and enacted into law by the Legislature of Country X. Both B and the petroleum authority are subject to the Country X income tax. Each entity files an annual income tax return and pays, to the tax authority of Country X, the amount of income tax due on its annual income. B is a dual capacity taxpayer as defined in § 1.901-2(a)(2)(ii)(A). Country X has agreed to return to the petroleum authority one-half of the income taxes paid by B by allowing it a credit in calculating its own tax liability to Country X.

(ii) The petroleum authority is a party to a transaction with B and the amount returned by Country X to the petroleum authority is determined by reference to the amount of the tax imposed on B. Therefore, the amount returned is a subsidy as described in this paragraph (e)(3) and one-half the tax imposed on B is not an amount of income tax paid or accrued.

Example 5. Assume the same facts as in Example 4, except that the state petroleum authority of Country X does not receive amounts from Country X related to tax paid by B. Instead, the authority of Country X receives a general appropriation from Country X which is not calculated with reference to the amount of tax paid by B. The general appropriation is therefore not a subsidy described in this paragraph (e)(3).

(v) Effective Date. This paragraph (e)(3) shall apply to foreign taxes paid or accrued in taxable years beginning after December 31, 1986.

(4) Multiple levies--(i) In general. If, under foreign law, a taxpayer's tentative liability for one levy (the "first levy") is or can be reduced by the amount of the taxpayer's liability for a different levy (the "second levy"), then the amount considered paid by the taxpayer to the foreign country pursuant to the second levy is an amount equal to its entire liability for that levy, and the remainder of the amount paid is considered paid pursuant to the first levy. This rule applies regardless of whether it is or is not likely that liability for one such levy will always exceed liability for the other such levy. For an example of the application of this rule, see example (5) of § 1.903-1(b)(3). If, under foreign law, the amount of a taxpayer's liability is the greater or lesser of amounts computed pursuant to two levies, then the entire amount paid to the foreign country by the taxpayer is considered paid pursuant to the levy that imposes such greater or lesser amount, respectively, and no amount is considered paid pursuant to such other levy.

(ii) Integrated tax systems. [Reserved]

(5) Noncompulsory amounts--(i) In general. An amount paid is not a compulsory payment, and thus is not an amount of tax paid, to the extent that the amount paid exceeds the amount of liability under foreign law for tax. An amount paid does not exceed the amount of such liability if the amount paid is determined by the taxpayer in a manner that is consistent with a reasonable interpretation and application of the substantive and procedural provisions of foreign law (including applicable tax treaties) in such a way as to reduce, over time, the taxpayer's reasonably expected liability under foreign law for tax, and if the taxpayer exhausts all effective and practical remedies, including invocation of competent authority procedures available under applicable tax treaties, to reduce, over time, the taxpayer's liability for foreign tax (including liability pursuant to a foreign tax audit adjustment). Where foreign tax law includes options or elections whereby a taxpayer's tax liability may be shifted, in whole or part, to a different year or years, the taxpayer's use or failure to use such options or elections does not result in a payment in excess of the taxpayer's liability for foreign tax. An interpretation or application of foreign law is not reasonable if there is actual notice or constructive notice (e. g., a published court decision) to the taxpayer that the interpretation or application is likely to be erroneous. In interpreting foreign tax law, a taxpayer may generally rely on advice obtained in good faith from competent foreign tax advisors to whom the taxpayer has disclosed the relevant facts. A remedy is effective and practical only if the cost thereof (including the risk of offsetting additional tax liability) is reasonable in light of the amount at issue and the likelihood of success. A settlement by a taxpayer of two or more issues will be evaluated on an overall basis, not on an issue-by-issue basis, in determining whether an amount is a compulsory amount. A taxpayer is not required to alter its form of doing business, its business conduct, or the form of any business transaction in order to reduce its liability under foreign law for tax.

(ii) Examples. The provisions of paragraph (e)(5)(i) of this section may be illustrated by the following

examples:

Example 1. A, a corporation organized and doing business solely in the United States, owns all of the stock of B, a corporation organized in country X. In 1984 A buys merchandise from unrelated persons for \$1,000,000, shortly thereafter resells that merchandise to B for \$600,000, and B later in 1984 resells the merchandise to unrelated persons for \$1,200,000. Under the country X income tax, which is an income tax within the meaning of paragraph (a)(1) of this section, all corporations organized in country X are subject to a tax equal to 3 percent of their net income. In computing its 1984 country X income tax liability B reports \$600,000 (\$1,200,000-\$600,000) of profit from the purchase and resale of the merchandise referred to above. The country X income tax law requires that transactions between related persons be reported at arm's length prices, and a reasonable interpretation of this requirement, as it has been applied in country X, would consider B's arm's length purchase price of the merchandise purchased from A to be \$1,050,000. When it computes its country X tax liability B is aware that \$600,000 is not an arm's length price (by country X standards). B's knowing use of a non-arm's length price (by country X standards) of \$600,000, instead of a price of \$1,050,000 (an arm's length price under country X's law), is not consistent with a reasonable interpretation and application of the law of country X, determined in such a way as to reduce over time B's reasonably expected liability for country X income tax. Accordingly, \$13,500 (3 percent of \$450,000 (\$1,050,000-\$600,000)), the amount of country X income tax paid by B to country X that is attributable to the purchase of the merchandise from B's parent at less than an arm's length price, is in excess of the amount of B's liability for country X tax, and thus is not an amount of tax.

Example 2. A, a corporation organized and doing business solely in the United States, owns all of the stock of B, a corporation organized in country X. Country X has in force an income tax treaty with the United States. The treaty provides that the profits of related persons shall be determined as if the persons were not related. A and B deal extensively with each other. A and B, with respect to a series of transactions involving both of them, treat A as having \$300,000 of income and B as having \$700,000 of income for purposes of A's United States income tax and B's country X income tax, respectively. B has no actual or constructive notice that its treatment of these transactions under country X law is likely to be erroneous. Subsequently, the Internal Revenue Service reallocates \$200,000 of this income from B to A under the authority of section 482 and the treaty. This reallocation constitutes actual notice to A and constructive notice to B that B's interpretation and application of country X's law and the tax treaty is likely to be erroneous. B does not exhaust all effective and practical remedies to obtain a refund of the amount of country X income tax paid by B to country X that is attributable to the reallocated \$200,000 of income. This amount is in excess of the amount of B's liability for country X tax and thus is not an amount of tax.

Example 3. The facts are the same as in example (2), except that B files a claim for refund (an administrative proceeding) of country X tax and A or B invokes the competent authority procedures of the treaty, the cost of which is reasonable in view of the amount at issue and the likelihood of success. Nevertheless, B does not obtain any refund of country X tax. The cost of pursuing any judicial remedy in country X would be unreasonable in light of the amount at issue and the likelihood of B's success, and B does not pursue any such remedy. The entire amount paid by B to country X is a compulsory payment and thus is an amount of tax paid by B.

Example 4. The facts are the same as in example (2), except that, when the Internal Revenue Service makes

the reallocation, the country X statute of limitations on refunds has expired; and neither the internal law of the country X nor the treaty authorizes the country X tax authorities to pay a refund that is barred by the statute of limitations. B does not file a claim for refund, and neither A nor B invokes the competent authority procedures of the treaty. Because the country X tax authorities would be barred by the statute of limitations from paying a refund, B has no effective and practicable remedies. The entire amount paid by B to country X is a compulsory payment and thus is an amount of tax paid by B.

Example 5. A is a U.S. person doing business in the country X. In computing its income tax liability to the country X, A is permitted, at its election, to recover the cost of machinery used in its business either by deducting that cost in the year of acquisition or by depreciating that cost on the straight line method over a period of 2, 4, 6 or 10 years. A elects to depreciate machinery over 10 years. This election merely shifts A's tax liability to different years (compared to the timing of A's tax liability under a different depreciation period); it does not result in a payment in excess of the amount of A's liability for country X income tax in any year since the amount of country X tax paid by A is consistent with a reasonable interpretation of country X law in such a way as to reduce over time A's reasonably expected liability for country X tax. Because the standard of paragraph (e)(5)(i) of this section refers to A's reasonably expected liability, not its actual liability, events actually occurring in subsequent years (e.g., whether A has sufficient profit in such years so that such depreciation deductions actually reduce A's country X tax liability or whether country X tax rates change) are immaterial.

Example 6. The internal law of country X imposes a 25 percent tax on the gross amount of interest from sources in country X that is received by a nonresident of country X. Country X law imposes the tax on the nonresident recipient and requires any resident of country X that pays such interest to a nonresident to withhold and pay over to country X 25 percent of such interest, which is applied to offset the recipient's liability for the 25 percent tax. A tax treaty between the United States and country X overrides internal law of country X and provides that country X may not tax interest received by a resident of the United States from a resident of country X at a rate in excess of 10 percent of the gross amount of such interest. A resident of the United States may claim the benefit of the treaty only by applying for a refund of the excess withheld amount (15 percent of the gross amount of interest income) after the end of the taxable year. A, a resident of the United States, receives a gross amount of 100u (units of country X currency) of interest income from a resident of country X from sources in country X in the taxable year 1984, from which 25u of country X tax is withheld. A does not file a timely claim for refund. 15u of the amount withheld (25u-10u) is not a compulsory payment and hence is not an amount of tax.

(f) Taxpayer--(1) In general. The person by whom tax is considered paid for purposes of sections 901 and 903 is the person on whom foreign law imposes legal liability for such tax, even if another person (e.g., a withholding agent) remits such tax. For purposes of this section, § 1.901-2A and § 1.903- 1, the person on whom foreign law imposes such liability is referred to as the "taxpayer." A foreign tax of a type described in paragraph (a)(2)(ii)(C) of this section is considered to be imposed on the recipients of wages if such tax is deducted from such wages under provisions that are comparable to section 3102(a) and (b) of the Internal Revenue Code.

(2) Party undertaking tax obligation as part of transaction--(i) In general. Tax is considered paid by the taxpayer even if another party to a direct or indirect transaction with the taxpayer agrees, as a part of the

transaction, to assume the taxpayer's foreign tax liability. The rules of the foregoing sentence apply notwithstanding anything to the contrary in paragraph (e)(3) of this section. See § 1.901-2A for additional rules regarding dual capacity taxpayers.

(ii) Examples. The provisions of paragraphs (f)(1) and (f)(2)(i) of this section may be illustrated by the following examples:

Example 1. Under a loan agreement between A, a resident of country X, and B, a United States person, A agrees to pay B a certain amount of interest net of any tax that country X may impose on B with respect to its interest income. Country X imposes a 10 percent tax on the gross amount of interest income received by nonresidents of country X from sources in country X, and it is established that this tax is a tax in lieu of an income tax within the meaning of § 1.903-1(a). Under the law of country X this tax is imposed on the nonresident recipient, and any resident of country X that pays such interest to a nonresident is required to withhold and pay over to country X 10 percent of the amount of such interest, which is applied to offset the recipient's liability for the tax. Because legal liability for the tax is imposed on the recipient of such interest income, B is the taxpayer with respect to the country X tax imposed on B's interest income from B's loan to A. Accordingly, B's interest income for federal income tax purposes includes the amount of country X tax that is imposed on B with respect to such interest income and that is paid on B's behalf by A pursuant to the loan agreement, and, under paragraph (f)(2)(i) of this section, such tax is considered for purposes of section 903 to be paid by B.

Example 2. The facts are the same as in example (1), except that in collecting and receiving the interest B is acting as a nominee for, or agent of, C, who is a United States person. Because C (not B) is the beneficial owner of the interest, legal liability for the tax is imposed on C, not B (C's nominee or agent). Thus, C is the taxpayer with respect to the country X tax imposed on C's interest income from C's loan to A. Accordingly, C's interest income for federal income tax purposes includes the amount of country X tax that is imposed on C with respect to such interest income and that is paid on C's behalf by A pursuant to the loan agreement. Under paragraph (f)(2)(i) of this section, such tax is considered for purposes of section 903 to be paid by C. No such tax is considered paid by B.

Example 3. Country X imposes a tax called the "country X income tax." A, a United States person engaged in construction activities in country X, is subject to that tax. Country X has contracted with A for A to construct a naval base. A is a dual capacity taxpayer (as defined in paragraph (a)(2)(ii)(A) of this section) and, in accordance with paragraphs (a)(1) and (c)(1) of § 1.901-2A, A has established that the country X income tax as applied to dual capacity persons and the country X income tax as applied to persons other than dual capacity persons together constitute a single levy. A has also established that that levy is an income tax within the meaning of paragraph (a)(1) of this section. Pursuant to the terms of the contract, country X has agreed to assume any country X tax liability that A may incur with respect to A's income from the contract. For federal income tax purposes, A's income from the contract includes the amount of tax liability that is imposed by country X on A with respect to its income from the contract and that is assumed by country X; and for purposes of section 901 the amount of such tax liability assumed by country X is considered to be paid by A. By reason of paragraph (f)(2)(i) of this section, country X is not considered to provide a subsidy, within the meaning of paragraph (e)(3) of this section, to A.

(3) Taxes paid on combined income. If foreign income tax is imposed on the combined income of two or more related persons (for example, a husband and wife or a corporation and one or more of its subsidiaries) and they are jointly and severally liable for the income tax under foreign law, foreign law is considered to impose legal liability on each such person for the amount of the foreign income tax that is attributable to its portion of the base of the tax, regardless of which person actually pays the tax.

(g) Definitions. For purposes of this section and §§ 1.901-2A and 1.903-1, the following definitions apply:

(1) The term "paid" means "paid or accrued"; the term "payment" means "payment or accrual"; and the term "paid by" means "paid or accrued by or on behalf of."

(2) The term "foreign country" means any foreign state, any possession of the United States, and any political subdivision of any foreign state or of any possession of the United States. The term "possession of the United States" includes Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands and American Samoa.

(3) The term "foreign levy" means a levy imposed by a foreign country.

(h) Effective date--(1) In general. This section, § 1.901-2A, and § 1.903-1 apply to taxable years beginning after November 14, 1983. In addition, a person may elect to apply the provisions of this section, § 1.901-2A, and § 1.903-1 to earlier years. See paragraph (h)(2) of this section.

(2) Election to apply regulations to earlier years--(i) Scope of election. An election to apply the provisions of this section, § 1.901-2A, and § 1.903-1 to taxable years beginning on or before November 14, 1983, is made with respect to one or more foreign states and possessions of the United States with respect to a taxable year of the person making the election beginning on or before November 14, 1983. Such election requires all of the provisions of this section, § 1.901-2A, and § 1.903-1 to be applied to such taxable year and to all subsequent taxable years of the person making the election ("elected years"). If an election applies to a foreign state or to a possession of the United States ("election country"), it applies to all taxes of the election country and to all taxes of all political subdivisions of the election country. An election does not apply to foreign taxes carried forward to any elected year from any taxable year to which the election does not apply. Such election does apply to foreign taxes carried back or forward from any elected year to any taxable year.

(ii) Effect of election. An election to apply the regulations to earlier years has no effect on the limitations on assessment and collection or on the limitations on credit or refund (see Chapter 66 of the Internal Revenue Code).

(iii) Manner of making election. An election to apply the regulations to one or more earlier taxable years is made by attaching a statement to a return, amended return, or claim for refund for the earliest taxable year to which the election relates. Such statement shall state that the election is made and, unless the election is to apply to all foreign countries, the statement shall designate the election countries. In the absence of such a designation of the election countries, all foreign countries shall be election countries.

(iv) Time for making election. An election to apply the regulations to earlier taxable years must be made by

October 12, 1984, except that if a person who has deducted (instead of credited) foreign taxes in its United States income tax return for such an earlier taxable year validly makes an election to credit (instead of deduct) such taxes in a timely filed amended return for such earlier taxable year and such amended return is filed after such date, an election to apply the regulations to such earlier taxable year must be made in such amended return.

(v) Revocation of election. An election to apply the regulations to earlier taxable years may not be revoked.

(vi) Affiliated groups. A member of an affiliated group that files a consolidated United States income tax return may apply the regulations to earlier years only if an election to so apply them has been made by the common parent of such affiliated group on behalf of all members of the group.

Approved by the Office of Management and Budget under control number 1545-0746.



26 C.F.R. § 1.1445-7

§ 1.1445-7 Treatment of foreign corporation that has made an election under section 897(i) to be treated as a domestic corporation.

(a) In general. Pursuant to section 897(i) a foreign corporation may elect to be treated as a domestic corporation for purposes of sections 897 and 6039C. A foreign corporation that has made such an election shall also be treated as a domestic corporation for purposes of the withholding required under section 1445, in accordance with the provisions of this section.

(b) Withholding under section 1445(a)--(1) Dispositions by corporation. A foreign corporation that has made an election under section 897(i) may provide a transferee with a certification of non-foreign status in connection with the corporation's disposition of a U.S. real property interest. However, in accordance with the provisions of §§ 1.1445-2(b)(2)(ii) and 1.1445-5(b)(3)(ii)(C), such an electing foreign corporation must attach to such certification a copy of the acknowledgment of the election provided to the corporation by the Internal Revenue Service pursuant to § 1.897-3(d)(4) which states that the information required by § 1.897-3 has been determined to be complete.

(2) Dispositions of interests in corporation. Dispositions of interests in electing foreign corporations shall be subject to the withholding requirements of section 1445(a) and the rules of §§ 1.1445-1 through 1.1445-4. Therefore, if a foreign person disposes of an interest in such a corporation, and that interest is a U.S. real property interest under the provisions of section 897 and regulations thereunder, then the transferee is required to withhold under section 1445(a).

(c) Withholding under section 1445(e). Because a foreign corporation that has made an election under section 897(i) is treated as a domestic corporation for purposes of determining withholding obligations under section 1445, such a corporation is not subject to the requirement of section 1445(e)(2) that a foreign corporation withhold at the corporate capital gain rate from the gain recognized upon the distribution of a U.S. real property interest. Such a corporation is subject to the provisions of section 1445(e)(3). Thus, if interests in an electing corporation constitute U.S. real property interests, then the corporation is required to withhold with respect to the non-dividend distribution of any property to an interest-holder that is a foreign person. See § 1.1445-5(e). Dividend distributions (distributions that are described in section 301) shall be treated as provided in sections 897(f), 1441 and 1442. In addition, if interests in an electing foreign corporation do not constitute U.S. real property interests, then distributions by such corporation shall be treated as provided in sections 897(f) (if applicable), 1441 and 1442.

Approved by the Office of Management and Budget under control number 1545-0902.

26 C.F.R. § 1.6046-1

§ 1.6046-1 Returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock, on or after January 1, 1963.

(a) Officers or directors--(1) When liability arises on January 1, 1963. Each U.S. citizen or resident who is on January 1, 1963, an officer or director of a foreign corporation shall make a return on Form 959 showing the name, address, and identifying number of each U.S. person who, on January 1, 1963, owns 5 percent or more in value of the outstanding stock of such foreign corporation.

(2) When liability arises after January 1, 1963--(i) Requirement of return. Each U.S. citizen or resident who is at any time after January 1, 1963, an officer or director of a foreign corporation shall make a return on Form 959 setting forth the information described in subdivision (ii) of this subparagraph with respect to each U.S. person who, during the time such citizen or resident is such an officer or director:

(a) Acquires (whether in one or more transactions) outstanding stock of such corporation which has, or which when added to any such stock then owned by him (excluding any stock owned by him on January 1, 1963, if on that date he owned 5 percent or more in value of such stock) has, a value equal to 5 percent or more in value of the outstanding stock of such foreign corporation, or

(b) Acquires (whether in one or more transactions) an additional 5 percent or more in value of the outstanding stock of such foreign corporation.

(ii) Information required to be shown on return. The return required under subdivision (i) of this subparagraph shall contain the following information:

(a) Name, address, and identifying number of each shareholder with respect to whom the return is filed;

(b) A statement showing that the shareholder is either described in subdivision (i)(a) or (i)(b) of this subparagraph; and

(c) The date on which the shareholder became a person described in subdivision (i)(a) or (i)(b) of this subparagraph.

(3) Application of rules. The provisions of this paragraph may be illustrated by the following examples:

Example (1). A, a United States citizen, is, on January 1, 1963, a director of M, a foreign corporation. X, on January 1, 1963, is a United States person owning 5 percent in value of the outstanding stock of M Corporation. A must file a return under the provisions of subparagraph (1) of this paragraph.

Example (2). The facts are the same as in Example (1) except that X owns only 2 percent in value of the outstanding stock of M Corporation on January 1, 1963. On July 1, 1963, X acquires 2 percent in value of the outstanding stock of M Corporation and on September 1, 1963, he acquires an additional 2 percent in

value of such stock. The July 1, 1963, transaction does not give rise to liability to file a return; however, A must file a return as a result of the September 1, 1963, transaction because X's holdings now exceed 5 percent.

Example (3). The facts are the same as in Example (2) and, on September 15, 1963, X acquires an additional 4 percent in value of the outstanding stock of M Corporation (X's total holdings are now 10 percent). On November 1, 1963, X acquires an additional 2 percent in value of the outstanding stock of M Corporation. The September 15, 1963, transaction does not give rise to liability to file a return since X has not acquired 5 percent in value of the outstanding stock of M Corporation since A last became liable to file a return. However, A must file a return as a result of the November 1, 1963, transaction because X has not acquired an additional 5 percent in value of the outstanding stock of M Corporation.

Example (4). The facts are the same as in examples (2) and (3) and, in addition, B, a United States citizen, becomes an officer of M Corporation on October 1, 1963. B is not required to file a return either as a result of the facts set forth in Example (2) or as a result of the September 15, 1963, transaction described in Example (3). However, B is required to file a return as a result of the November 1, 1963, transaction described in Example (3) because X has acquired an additional 5 percent in value of the outstanding stock of M Corporation while B is an officer or director.

(b) Returns required of U.S. persons when liability to file arises on January 1, 1963. Each U.S. person who, on January 1, 1963, owns 5 percent or more in value of the outstanding stock of a foreign corporation, shall make a return on Form 959 with respect to such foreign corporation setting forth the following information:

(1) The name, address, and identifying number of the shareholder (or shareholders) filing the return, and the internal revenue district in which such shareholder filed his most recent United States income tax return;

(2) The name, business address, and employer identification number, if any, of the foreign corporation, the name of the country under the laws of which it is incorporated, and the name of the country in which is located its principal place of business;

(3) The date of organization and, if any, of each reorganization of the foreign corporation if such reorganization occurred on or after January 1, 1960, while the shareholder owned 5 percent or more in value of the outstanding stock of such corporation;

(4) The name and address of the foreign corporation's statutory or resident agent in the country of incorporation;

(5) The name, address, and identifying number of any branch office or agent of the foreign corporation located in the United States;

(6) If the foreign corporation has filed a United States income tax return, or participated in the filing of a consolidated return, for any of its last three calendar or fiscal years immediately preceding January 1, 1963, state each year for which a return was filed (including, in the case of a consolidated return, the name of the

corporation filing such return), the type of form used, the internal revenue office to which it was sent, and the amount of tax, if any, paid;

(7) The name and address of the person (or persons) having custody of the books of account and records of the foreign corporation, and the location of such books and records if different from such address;

(8) The names, addresses, and identifying numbers of all United States persons who are principal officers (for example, president, vice president, secretary, treasurer, and comptroller) or members of the board of directors of the foreign corporation as of January 1, 1963;

(9) A complete description of the principal business activities in which the foreign corporation is actually engaged and, if the foreign corporation is a member of a group constituting a chain of ownership with respect to each unit of which the shareholder owns 5 percent or more in value of the outstanding stock, a chart showing the foreign corporation's position in the chain of ownership and the percentages of ownership;

(10) The following information prepared in accordance with generally accepted accounting principles and in such detail as is customary for the corporation's accounting records:

(i) The corporation's profit and loss statement for the most recent complete annual accounting period; and

(ii) The corporation's balance sheet as of the end of the most recent complete annual accounting period;

(11) A statement showing as of January 1, 1963, the amount and type of any indebtedness of the foreign corporation:

(i) To any United States person owning 5 percent or more in value of its stock, or

(ii) To any other foreign corporation owning 5 percent or more in value of the outstanding stock of the foreign corporation with respect to which the return is filed provided that the shareholder filing the return owns 5 percent or more in value of the outstanding stock of such other foreign corporation,

together with the name, address, and identifying number, if any, of each such shareholder or entity;

(12) A statement, as of January 1, 1963, showing the name, address, and identifying number, if any, of each person who is, on January 1, 1963, a subscriber to the stock of the foreign corporation, and the number of shares subscribed to by each;

(13) A statement showing the number of shares of each class of stock of the foreign corporation owned by each shareholder filing the return and:

(i) If such stock was acquired after December 31, 1953, the dates of acquisition, the amounts paid or value given therefor, the method of acquisition, i.e., by original issue, purchase on open market, direct purchase, gift, inheritance, etc., and from whom acquired; or

(ii) If such stock was acquired before January 1, 1954, a statement that such stock was acquired before such date, and the value at which such stock is carried on the books of such shareholder;

(14) A statement showing as of January 1, 1963, the name, address, and identifying number of each United States person who owns 5 percent or more in value of the outstanding stock of the foreign corporation, the classes of stock held, the number of shares of each class held, including the name, address, and identifying number, if any, of each actual owner if such person is different from the shareholder of record and a statement of the nature and amount of the interests of each such actual owner; and

(15) The total number of shares of each class of outstanding stock of the foreign corporation (or other data indicating the shareholder's percentage of ownership).

(c) Returns required of U.S. persons when liability to file arises after January 1, 1963--(1) U.S. persons required to file. A return on Form 959, containing the information required by subparagraph (3) of this paragraph, shall be made by each U.S. person when at any time after January 1, 1963:

(i) Such person acquires (whether in one or more transactions) outstanding stock of such foreign corporation which has, or which when added to any such stock then owned by him (excluding any stock owned by him on January 1, 1963, if on that date he owned 5 percent or more in value of such stock) has, a value equal to 5 percent or more in value of the outstanding stock of such foreign corporation, or

(ii) Such person, having already acquired the interest referred to in paragraph (b) of this section or in subdivision (i) of this subparagraph--

(a) Acquires (whether in one or more transactions) an additional 5 percent or more in value of the outstanding stock of such foreign corporation,

(b) Owns 5 percent or more in value of the outstanding stock of such foreign corporation when such foreign corporation is reorganized (as defined in paragraph (f)), or

(c) Disposes of sufficient stock in such foreign corporation to reduce his interest to less than 5 percent in value of the outstanding stock of such foreign corporation.

The provisions of this subparagraph may be illustrated by the following examples:

Example (1). On January 15, 1963, A, a United States person, acquires 5 percent in value of the outstanding stock of M, a foreign corporation. A must file a return under the provisions of this subparagraph.

Example (2). On January 1, 1963, B, a United States person, owns 2 percent in value of the outstanding stock of M, a foreign corporation. B is not required to file a return under the provisions of this section because he does not own 5 percent or more in value of the outstanding stock of M Corporation. On February 1, 1963, B acquires an additional 3 percent in value of the outstanding stock of M Corporation. B must file a return

under the provisions of this subparagraph.

Example (3). On January 1, 1963, C, a United States person, owns 6 percent in value of the outstanding stock of M, a foreign corporation. C must file a return under the provisions of paragraph (b) of this section. On February 1, 1963, C acquires an additional 2 percent in value of the outstanding stock of M Corporation in a transaction not involving a reorganization. C is not required to file a return under the provisions of this subparagraph.

Example (4). The facts are the same as in Example (3) except that, in addition, on April 1, 1963, C acquires 2 percent in value of the outstanding stock of M Corporation in a transaction not involving a reorganization. (C's total holdings are now 10 percent.) C is not required to file a return under the provisions of this subparagraph because he has not acquired 5 percent or more in value of the outstanding stock of M Corporation since he last became liable to file a return. On May 1, 1963, C acquires 1 percent in value of the outstanding stock of M Corporation. C must file a return under the provisions of this subparagraph.

Example (5). On June 1, 1963, D, a United States person, owns 12 percent in value of the outstanding stock of M, a foreign corporation. Also, on June 1, 1963, M Corporation is reorganized and, as a result of such reorganization, D owns only 6 percent of the outstanding stock of such foreign corporation. D must file a return under the provisions of this subparagraph.

Example (6). The facts are the same as in Example (5) except that, in addition, on November 1, 1970, D donates 2 percent of the outstanding stock of M Corporation to a charity. Since D has disposed of sufficient stock to reduce his interest in M Corporation to less than 5 percent in value of the outstanding stock of such corporation, D must file a return under the provisions of this subparagraph.

(2) Shareholders who become U.S. persons. A return on Form 959, containing the information required by subparagraph (3) of this paragraph, shall be made by each person who at any time after January 1, 1963, becomes a U.S. person while owning 5 percent or more in value of the outstanding stock of such foreign corporation.

(3) Information required to be shown on return--(i) In general. The return on Form 959, required to be filed by persons described in subparagraph (1) or (2) of this paragraph, shall set forth the same information as is required by the provisions of paragraph (b) of this section except that where such provisions require information with respect to January 1, 1963, such information shall be furnished with respect to the date on which liability arises to file the return required under this paragraph.

(ii) Additional information. In addition to the information required under subdivision (i) of this subparagraph, the following information shall also be furnished in the return required under this paragraph:

(a) The date on or after January 1, 1963, if any, on which such shareholder (or shareholders) last filed a return under this section with respect to the corporation;

(b) If a return is filed by reason of becoming a United States person, the date the shareholder became a United

States person;

(c) If a return is filed by reason of the disposition of stock, the date and method of such disposition and the person to whom such disposition was made; and

(d) If a return is filed by reason of the organization or reorganization of the foreign corporation on or after January 1, 1963, the following information with respect to such organization or reorganization:

(1) A statement showing a detailed list of the classes and kinds of assets transferred to the foreign corporation including a description of the assets (such as a list of patents, copyrights, stock, securities, etc.), the fair market value of each asset transferred (and, if such asset is transferred by a United States person, its adjusted basis), the date of transfer, the name, address, and identifying number, if any, of the owner immediately prior to the transfer, and the consideration paid by the foreign corporation for such transfer;

(2) A statement showing the assets transferred and the notes or securities issued by the foreign corporation, the name, address, and identifying number, if any, of each person to whom such transfer or issue was made, and the consideration paid to the foreign corporation for such transfer or issue; and

(3) An analysis of the changes in the corporation's surplus accounts occurring on or after January 1, 1963.

(iii) Exclusion of information previously furnished. In any case where any identical item of information required to be filed under this paragraph by a shareholder with respect to a foreign corporation has previously been furnished by such shareholder in any return made in accordance with the provisions of this section, such shareholder may satisfy the requirements of this paragraph by filing Form 959, identifying such item of information, the date furnished, and stating that it is unchanged.

(d) Associations, etc. Returns are required to be filed in accordance with the provisions of this section with respect to any foreign association, foreign joint-stock company, or foreign insurance company, etc., which would be considered to be a corporation under § 301.7701-2 of this chapter (Regulations on Procedure and Administration). Persons who would qualify by the nature of their functions and ownership in such associations, etc., as officers, directors, or shareholders thereof will be treated as such for purposes of this section without regard to their designations under local law.

(e) Special provisions--(1) Return jointly made. Any two or more persons required under paragraph (a) of this section to make a return with respect to one or more shareholders of the same corporation, or under paragraph (b) or (c) of this section to make a return with respect to the same corporation, may in lieu of making several returns, jointly make one return.

(2) Separate return for each corporation. When returns are required with respect to more than one foreign corporation, a separate return must be made for each corporation.

(3) Use of power of attorney by officers or directors--(i) In general. Any two or more persons required under paragraph (a) of this section to make a return with respect to one or more shareholders of the same

corporation may, by means of one or more duly executed powers of attorney, constitute one of their number as attorney in fact for the purpose of making such returns or for the purpose of making a joint return under subparagraph (1) of this paragraph.

(ii) Nature of power of attorney. The power of attorney referred to in subdivision (i) of this subparagraph shall be limited to the making of returns required under paragraph (a) of this section and shall be limited to a single calendar year with respect to which such returns are required.

(iii) Manner of execution of power of attorney. The use of technical language in the preparation of the power of attorney referred to in subdivision (i) of this subparagraph is not necessary. Such power of attorney shall be signed by the individual United States citizen or resident required to file a return or returns under paragraph (a) of this section. Such power of attorney must be acknowledged before a notary public or, in lieu thereof, witnessed by two disinterested persons. The notarial seal must be affixed unless such seal is not required under the laws of the state or country wherein such power of attorney is executed.

(iv) Manner of execution of return under authority of power of attorney. A return made under authority of one or more powers of attorney referred to in subdivision (i) of this subparagraph shall be signed by the attorney in fact for each principal for which such attorney in fact is acting. A copy of such one or more powers of attorney shall be kept at a convenient and safe location accessible to internal revenue officers, and shall at all times be available for inspection by such officers.

(v) Effect on penalties. The fact that a return is made under authority of a power of attorney referred to in subdivision (i) of this subparagraph shall not affect the principal's liability for penalties provided for failure to file a return required under paragraph (a) of this section or for filing a false or fraudulent return.

(4) Persons excepted from filing returns--(i) Return required of officer or director under paragraph (a)(1). Notwithstanding paragraph (a)(1) of this section, any U.S. citizen or resident required to make a return under such paragraph with respect to shareholders of a foreign corporation, need not make such return if, on January 1, 1963, three or fewer U.S. persons own 95 percent or more in value of the outstanding stock of such foreign corporation and file a return or returns with respect to such corporation under paragraph (b) of this section.

(ii) Return required of officer or director under paragraph (a)(2). Notwithstanding paragraph (a)(2) of this section, any U.S. citizen or resident required to make a return under such paragraph with respect to a person acquiring stock of a foreign corporation in an acquisition described in subdivision (i)(a) or (b) of such paragraph need not make such return, if:

(a) As a result of such acquisition of stock of such foreign corporation, a U.S. person files a return as a shareholder under paragraph (c)(1) of this section, and

(b) Immediately after such acquisition of stock, three or fewer U.S. persons own 95 percent or more in value of the outstanding stock of such foreign corporation.



(iii) Return required by reason of attribution rules. Notwithstanding paragraph (b) or (c) of this section, any person required to make a return under such paragraph with respect to a foreign corporation need not make such return, if:

(a) Such person does not directly own an interest in the foreign corporation,

(b) Such person is required to furnish the information solely by reason of attribution of stock ownership from a U.S. person under paragraph (i) of this section, and

(c) The person from whom the stock ownership is attributed furnishes all of the information required under paragraph (b) or (c) of this section of the person to whom such stock ownership is attributed.

(iv) Return required of officer or director with respect to person described in subdivision (iii). Notwithstanding paragraph (a) of this section, any U.S. citizen or resident required to make a return under such paragraph with respect to a person exempted under subdivision (iii) of this subparagraph from making a return need not make a return with respect to such person.

(5) Persons excepted from furnishing items of information. Any person required to furnish any item of information under paragraph (b) or (c) of this section with respect to a foreign corporation, may, if such item of information is furnished by another person having an equal or greater stock interest (measured in terms of value of such stock) in such foreign corporation, satisfy such requirement by filing a statement with his return on Form 959 indicating that such liability has been satisfied and identifying the return in which such item of information was included.

(f) Meaning of terms. For purposes of this section:

(1) Acquisition. Stock in a foreign corporation shall be considered acquired when a person has an unqualified right to receive such stock even though such stock is not actually issued. For example, when under the law of a foreign country, all the necessary steps for incorporation are completed but stock in the corporation will not be issued within 30 days, every United States citizen or resident who is an officer or a director of such corporation, provided a United States person has an interest of 5 percent or more in such corporation, and every such United States person shall, within 90 days of the date of incorporation, file the returns required under section 6046 and this section. In the case of a reorganization, new stock may be acquired, depending on the type of reorganization, whether or not any stock certificates are surrendered or exchanged or the designation of such stock is altered.

(2) Reorganization. With respect to a foreign corporation, the term "reorganization" shall mean not only a transaction described in section 368(a)(1) and the regulations thereunder but also any other transaction or series of transactions which has the same effect.

(3) U.S. person. For purposes of section 6046 and this section the term "United States person" has the meaning assigned to it by section 7701(a)(30) of the Code, except that:

(i) With respect to a corporation organized under the laws of the Commonwealth of Puerto Rico, such term does not include an individual who is a bona fide resident of Puerto Rico, if a dividend received by such individual during the taxable year from such corporation would, for purposes of section 933(1), be treated as income derived from sources within Puerto Rico,

(ii) With respect to a corporation organized under the laws of the Virgin Islands, such term does not include an individual who is a bona fide resident of the Virgin Islands and whose income tax obligation under subtitle A (relating to income taxes) of the Code for the taxable year is satisfied pursuant to section 28(a) of the Revised Organic Act of the Virgin Islands, approved July 22, 1954 (48 U.S.C. 1642), by paying tax on income derived from all sources both within and outside the Virgin Islands into the treasury of the Virgin Islands, and

(iii) With respect to a corporation organized under the laws of any possession of the United States (other than Puerto Rico or the Virgin Islands), such term does not include an individual who is a bona fide resident of such possession and whose income derived from sources within any possession of the United States is not, by reason of section 931(a), includible in gross income under subtitle A (relating to income taxes) of the Code for the taxable year.

The provisions of paragraph (b), (c), or (d), respectively, of § 1.957-4 shall apply for purposes of determining whether an individual is excepted under subdivision (i), (ii), or (iii), respectively, of this subparagraph from being a U.S. person with respect to a corporation described in such subdivision.

(4) Applicable Form 959. The Form 959 which shall be used for purposes of this section is Form 959 (Rev. Jan. 1963) or such subsequent revision of such form as may be in use at the time the liability to file a return on Form 959 arises.

(5) Accounting period and taxable year. In the case of a specified foreign corporation (as defined in section 898), the taxable year of such corporation shall be treated as its annual accounting period.

(g) Method of reporting. All amounts furnished in returns prescribed under this section shall be expressed in United States currency with a statement of the exchange rates used. All statements required to be submitted on or with returns under this section shall be rendered in the English language. For taxable years ending after December 31, 1994, with respect to returns filed after December 31, 1995, all amounts furnished under paragraph (c) of this section shall be expressed in United States dollars computed and translated in conformity with United States generally accepted accounting principles. Amounts furnished under paragraph (c)(3)(i) of this section shall also be furnished in the foreign corporation's functional currency as required on the form. Information described in paragraphs (b)(10) and (c)(3) of this section shall be submitted in such form or manner as the form shall prescribe. If an individual who is a United States person required to make a return with respect to a foreign corporation under section 6046 is entitled under a treaty to be treated as a nonresident of the United States, and if the individual claims this treaty benefit, and if there are no other United States persons that are required to furnish information under section 6046 with respect to the foreign corporation, then the individual may satisfy the requirements of paragraphs (b)(10), (11) and (12), (c)(3)(ii) (d), and (g) of this section by filing the audited foreign financial statements of the foreign corporation with the individual's return required under section 6046.

(h) Actual ownership of stock. If any shareholder, referred to in this section, is not the actual owner of the stock of the foreign corporation, the information required under this section shall be furnished in the name of and by such actual owner. For example, in the case of stock held by a nominee, the information required under this section shall be furnished by the actual owner of such stock.

(i) Constructive ownership of stock--(1) In general. Stock owned directly or indirectly by or for a foreign corporation or a foreign partnership shall be considered as being owned proportionately by its shareholders or partners. Thus, any United States person who is a member of a nonresident foreign partnership which becomes a shareholder in a foreign corporation shall be considered to be a shareholder in such foreign corporation to the extent of his proportionate share in such partnership.

(2) Members of family. An individual shall be considered as owning the stock owned directly or indirectly by or for his brothers and sisters (whether by the whole or half blood), his spouse, his ancestors, and his lineal descendants. However, when stock is treated as owned by an individual under the rule provided in this subparagraph, it shall not be treated as owned by him for the purpose of again applying such rule in order to make another the constructive owner of such stock. The provisions of this subparagraph may be illustrated by the following example:

Example. H, W, and HF are United States citizens. W, wife of H, owns 20 percent of the value of the outstanding stock of X, a foreign corporation. X Corporation owns 90 percent of the value of the outstanding stock of Y Corporation, a foreign corporation. Y Corporation becomes the owner of 50 percent of the value of the outstanding stock of each of two newly organized foreign corporations, M and N. In applying the "members of family" rule, H is considered to own 20 percent of the value of the outstanding stock of X Corporation, and 18 percent of the value of the outstanding stock of Y Corporation, and 9 percent of M Corporation and N Corporation. However, HF, the father of H, is not considered to own stock of X, Y, M, or N since his son, H, is not treated as the owner of such stock for purposes of again applying the "members of family" rule.

(j) Time and place for filing return--(1) Time for filing. Any return required by section 6046 and this section shall be filed on or before the 90th day after the date on which a United States citizen, resident, or person becomes liable to file such return under any provision of section 6046(a) and of paragraph (a), (b), or (c) of this section. With respect to returns filed after September 3, 1982, such return shall be filed on or before such later date (if any) as may be authorized by the return form. The Director of the Internal Revenue Service Center where the return is required to be filed is authorized to grant reasonable extensions of time for filing returns under section 6046 and this section in accordance with the applicable provisions of section 6081(a) and § 1.6081-1.

(2) Place for filing. Returns required by section 6046 and this section shall be filed with the Internal Revenue Service Center designated in the instructions of the applicable form.

(k) Penalties. (1) For criminal penalties for failure to file a return and filing a false or fraudulent return, see sections 7203, 7206, and 7207.

(2) For civil penalty for failure to file return, or failure to show information required on a return, under this section, see section 6679.

Approved by the Office of Management and Budget under control number 1545-0794.

26 C.F.R. § 1.6151-1

§ 1.6151-1 Time and place for paying tax shown on returns.

(a) In general. Except as provided in section 6152 and paragraph (b) of this section, the tax shown on any income tax return shall, without assessment or notice and demand, be paid to the internal revenue officer with whom the return is filed at the time fixed for filing the return (determined without regard to any extension of time for filing the return). For provisions relating to the time for filing income tax returns, see section 6072 and §§ 1.6072-1 to 1.6072-4, inclusive. For provisions relating to the place for filing income tax returns, see section 6091 and §§ 1.6091-1 to 1.6091-4, inclusive.

(b)(1) Returns on which tax is not shown. If a taxpayer files a return and in accordance with section 6014 and the regulations thereunder, elects not to show the tax on the return, the amount of tax determined to be due shall be paid within 30 days after the date of mailing to the taxpayer a notice stating the amount payable and making demand upon the taxpayer therefor. However, if the notice is mailed to the taxpayer more than 30 days before the due date of the return, payment of the tax shall not be required prior to such due date.

(2) Where tax is shown on the return. In any case in which a taxpayer files a return on Form 1040A pursuant to paragraph (a)(7) of § 1.6012-1 and shows the amount of tax on the return, the unpaid balance of the tax shall, without assessment or notice and demand, be paid not later than the date fixed for filing the return.

(c) Date fixed for payment of tax. In any case in which a tax imposed by subtitle A of the Code is required to be paid on or before a certain date, or within a certain period, any reference in subtitle A or F of the Code to the date fixed for payment of such tax shall be deemed a reference to the last day fixed for such payment (determined without regard to any extension of time for paying the tax).

(d) Use of Government depositaries. (1) For provisions relating to the use of authorized financial institutions in depositing income and estimated income taxes of certain corporations, see § 1.6302-1.

(2) For provisions relating to the use of such financial institutions for the deposit of taxes required to be withheld under chapter 3 of the Code on nonresident aliens and foreign corporations and tax-free covenant bonds, see § 1.6302-2.

Approved by the Office of Management and Budget under control number 1545-0257.

26 C.F.R. § 1.6152-1

§ 1.6152-1 Installment payments.

(a) Privilege of corporation to elect to make installment payments--(1) Amount to be paid. In the case of any taxable year ending on or after December 31, 1954, a corporation subject to the taxes imposed by chapter 1 of the Code may elect, as provided in subparagraph (2) of this paragraph, to pay the unpaid amount of such tax for the taxable year in two equal installments instead of making a single payment. If such an election is made, the installments shall be paid as follows:

(i) Fifty percent on or before the date prescribed for the payment of the tax as a single payment, and

(ii) The remaining 50 percent on or before three months after the date prescribed for the payment of the first installment.

For provisions relating to installment payments of estimated income tax by corporations, see section 6154 and §§ 1.6154-1 to 1.6154-3, inclusive.

(2) Method of election. A corporation shall be considered to have made an election to pay its tax in installments if:

(i) It files its income tax return on or before the date prescribed therefor (determined without regard to any extension of time) and pays 50 percent of the unpaid amount of the tax at such time, or

(ii) It files an application on Form 7004 for an automatic extension of time to file its income tax return, as provided in § 1.6081-3, and pays 50 percent of the unpaid amount of the tax at such time. Except as provided in paragraph (c) of this section, the installment privilege is limited to the unpaid amount of tax as shown on the income tax return filed in accordance with the provisions of subdivision (i) of this subparagraph, or as shown on the Form 7004 filed in accordance with the provisions of this subdivision.

(3) Use of Government depositaries. For provisions relating to the use of Federal Reserve banks and authorized financial institutions in depositing the taxes see § 1.6302-1.

(b) Privilege of estates of decedents to make installment payments. With respect to the income tax imposed by chapter 1 of the Code upon estates of decedents, the fiduciary may elect to pay the tax in four equal installments instead of in a single payment. If the election is made, the tax shall be paid as follows:

(1) Twenty-five percent on or before the date prescribed for the payment of the tax as a single payment,

(2) Twenty-five percent on or before three months after the date prescribed for payment of the first installment,

(3) Twenty-five percent on or before six months after the date prescribed for payment of the first installment, and

(4) Twenty-five percent on or before nine months after the date prescribed for payment of the first installment.

(c) Proration of deficiency to installments. If an election has been made to pay the tax imposed by chapter 1 of the Code in installments, and a deficiency has been assessed, the deficiency shall be prorated equally to all the installments, whether paid or unpaid. Except as provided in section 6861, relating to jeopardy assessment, the part of the deficiency so prorated to any installment which is not yet due shall be collected at the same time as and as part of such installment. The part of the deficiency so prorated to any installment the date for payment of which has arrived shall be paid upon notice and demand from the district director.

(d) Acceleration of payment. If a taxpayer elects under the provisions of this section to pay the tax in installments, any installment may be paid prior to the date prescribed for its payment. If an installment is not paid in full on or before the date fixed for its payment the whole amount of the unpaid tax shall be paid upon notice and demand from the district director.

Approved by the Office of Management and Budget under control number 1545-0257.

26 C.F.R. § 1.9200-2

§ 1.9200-2 Manner of taking deduction.

(a) In general. The deduction provided by § 1.9200-1 shall be taken by multiplying the amount of the monthly deduction determined under § 1.9200-1(c)(2) for each motor carrier operating authority by the number of months in the taxable year for which the deduction is allowable, and entering the resulting amount at the appropriate place on the taxpayer's return for each year in which the deduction is properly claimed. Additionally, any taxpayer who has claimed the deduction provided by § 1.9200-1 must (unless it has already filed a statement containing the required information) attach a statement to the next income tax return of the taxpayer which has a filing due date on or after June 4, 1984. The statement shall provide, in addition to the taxpayer's name, address, and taxpayer identification number, the following information for each motor carrier operating authority for which a deduction was claimed:

(1) The taxable year of the taxpayer for which the deduction was first claimed;

(2) Whether the taxpayer's deduction was determined using the adjusted basis of the authority under section 1012 or an allocated stock basis under § 1.9200-1(e)(2); and

(3) If an allocation of stock basis has been made under § 1.9200-1(e)(2), the calculations made in determining the amount of basis to be allocated to the authority.

(b) Filing and amendment of returns. A taxpayer who has filed its return for the taxable year that includes July 1, 1980, claiming the deduction allowed under § 1.9200-1, may amend its return for such year in order to elect under § 1.9200-1(c)(1)(ii) to begin the 60-month period in the subsequent taxable year. A taxpayer eligible to take the deduction under § 1.9200-1 who has filed its returns for both the taxable year that includes July 1, 1980, and the following taxable year without claiming the deduction, may claim the deduction by filing amended returns or claims for refund for the taxable year in which the taxpayer elects to begin the 60-month period, and for subsequent taxable years. If a taxpayer first claims the deduction on an amended return under the preceding sentence, the statement required by paragraph (a) of this section must be attached to such amended return.

(c) Deduction taken for operating authority other than under § 1.9200-1. If a deduction other than the deduction allowed under § 1.9200-1 was taken in any taxable year for the reduction in value of a motor carrier operating authority caused by administrative or legislative actions to decrease restrictions on entry into the interstate motor carrier business, the taxpayer should file an amended return for such taxable year which computes taxable income without regard to such deduction.

Approved by the Office of Management and Budget under control number 1545-0767.





26 C.F.R. § 31.3401(a)(8)(A)-1

§ 31.3401(a)(8)(A)-1 Remuneration for services performed outside the United States by citizens of the United States.

(a) Remuneration excluded from gross income under section 911. (1)(i) Remuneration paid for services performed outside the United States for an employer (other than the United States or any agency thereof) by a citizen of the United States does not constitute wages and hence is not subject to withholding, if at the time of payment it is reasonable to believe that such remuneration will be excluded from gross income under the provisions of section 911. The reasonable belief contemplated by the statute may be based upon any evidence reasonably sufficient to induce such belief, even though such evidence may be insufficient upon closer examination by the district director or the courts finally to establish that the remuneration is excludable from gross income under the provisions of section 911. The reasonable belief shall be based upon the application of section 911 and the regulations thereunder in Part 1 of this chapter (Income Tax Regulations).

(ii) Remuneration paid by an employer to an employee constitutes wages, and hence is subject to withholding only to the extent that the remuneration is expected to exceed the aggregate amount which is excludable from the employee's gross income under section 911(a). For amounts paid after December 31, 1984, the determination of the amount subject to withholding shall be made by applying the excludable amount, on a pro rata basis, to each payment of remuneration to the employee. For this purpose, an employer is not required to ascertain information with respect to amounts received by his employee from any other source; but, if the employer has such information, he shall take it into account in determining whether the earned income of the employee is in excess of the applicable limitation. For purposes of section 911(d)(5) and § 1.911-2(c), relating to an employee who states to the authorities of a foreign country that he is not a resident of that country, the employer is not required to ascertain whether such a statement has been made; but if an employer knows that such a statement has been made, he shall presume that the employee is not a bona fide resident of that country, unless the employer also knows that the authorities of the foreign country have determined, notwithstanding the statement that the employee is a resident of that country. For purposes of section 911(d)(1) or § 1.911-2(a) relating to the definition of a qualified individual, the reasonable belief contemplated by the statute may be based on a presumption as set forth in subparagraph (2) or (3) of this paragraph. For purposes of sections 911(a)(2) and 911(c)(2) and § 1.911-4(b) and (d)(1), relating to the housing cost amount exclusion and the definition of housing expenses, the reasonable belief contemplated by the statute may be based on the presumption set forth in subparagraph (4) of this paragraph.

(2)(i) The employer may, in the absence of cause for a reasonable belief to the contrary, presume that an employee will maintain a tax home in a foreign country or countries and be a bona fide resident of a foreign country or countries, within the meaning of section 911(d)(1), for an uninterrupted period which includes each taxable year of the employee, or applicable portion thereof, in respect of which the employee properly executes and delivers to the employer a statement that the employee meets or will meet the requirement of § 1.911-2(a) relating to maintaining a tax home and a bona fide residence in a foreign country for the taxable year. This statement must set forth the facts alleged as the basis for this determination and contain a declaration by the employee that the statement is made under the penalties of perjury. Sample forms of acceptable statements may be obtained by writing to the Foreign Operations District, Internal Revenue

Service, Washington, D.C. 20225 (Form IO- 673).

(ii) If the employer was entitled to presume for the two consecutive taxable years immediately preceding an employee's current taxable year that such employee was a bona fide resident of a foreign country or countries for an uninterrupted period which includes such preceding taxable years, he may, if such employee is residing in a foreign country on the first day of such current taxable year, presume, in the absence of cause for a reasonable belief to the contrary, and without obtaining from the employee the statement prescribed in subdivision (i) of this subparagraph, that the employee will be a bona fide resident of a foreign country or countries in such current taxable year.

(3) The employer may, in the absence of cause for a reasonable belief to the contrary, presume that an employee will maintain a tax home in a foreign country or countries and be present in a foreign country or countries during at least 330 full days during any period of twelve consecutive months, within the meaning of section 911(d)(1), and that such period includes each taxable year of the employee, or applicable portion thereof, in respect of which the employee properly executes and delivers to the employer a statement that the employee meets or will meet the requirements of § 1.911-2(a) relating to maintaining a tax home and being physically present in a foreign country for the taxable year. This statement must set forth the facts alleged as the basis for this determination and contain a declaration by the employee that the statement is made under the penalties of perjury. Sample forms of acceptable statements may be obtained by writing to the Foreign Operations District, Internal Revenue Service, Washington, D.C. 20225 (Form IO-673).

(4) The employer may, in the absence of cause for a reasonable belief to the contrary, presume that an employee's housing cost amount will be the amount shown on a statement properly executed and delivered to the employer. This statement must set forth the employee's estimation of the following items: housing expenses (as defined in § 1.911-4(b)), the housing cost amount exclusion (as defined in § 1.911-4(d)(1)), and the qualifying period (as defined in § 1.911-2(a)). The statement must contain a declaration by the employee that it is made under the penalties of perjury. Sample forms of acceptable statements may be obtained by writing to the Foreign Operations District, Internal Revenue Service, Washington, D.C. 20225 (IO-673). The employer may not rely on a statement from an employee if the employer, based on his or her knowledge of housing costs in the vicinity of the employee's tax home (as defined in § 1.911-2(b)), believes the employee's housing expenses are lavish or extravagant under the circumstances.

(b) Remuneration subject to withholding of income tax under law of a foreign country or a possession of the United States. (1) Remuneration paid for services performed in a foreign country or in a possession of the United States for an employer (other than the United States or any agency thereof) by a citizen of the United States does not constitute wages and hence is not subject to withholding, if at the time of the payment of such remuneration the employer is required by the law of any foreign country or of any possession of the United States to withhold income tax upon such remuneration. This paragraph, insofar as it relates to remuneration paid for services performed in a possession of the United States, applies only with respect to remuneration paid on or after August 9, 1955.

(2) Remuneration is not exempt from withholding under this paragraph if the employer is not required by the law of a foreign country or of a possession of the United States to withhold income tax upon such remuneration. Mere agreements between the employer and the employee whereby the estimated income tax

of a foreign country or of a possession of the United States is withheld from the remuneration in anticipation of actual liability under the law of such country or possession will not suffice.

(3) The exemption from withholding provided by this paragraph does not apply by reason of withholding of income tax pursuant to the law of a territory of the United States, of a political subdivision of a possession of the United States, or of a political subdivision of a foreign state.

(4) For provisions relating to remuneration for services performed by a permanent resident of the Virgin Islands, see paragraph (b)(12) of § 31.3401(a)-1.

(c) Limitation on application of section. This section has no application to the remuneration paid to a citizen of the United States for services performed outside the United States as an employee of the United States or any agency thereof.

Approved by the Office of Management and Budget under control number 1545-0067.

## 26 C.F.R. § 31.3501(a)-1T

§ 31.3501(a)-1T Question and answer relating to the time employers must collect and pay the taxes on noncash fringe benefits (Temporary).

The following questions and answers relate to the time employers must collect and pay the taxes imposed by subtitle C on noncash fringe benefits:

Q-1: If a noncash fringe benefit constitutes "wages" under section 3121(a), 3306(b), or 3401(a), or constitutes "compensation" under section 3231(e), when must an employer collect and pay the taxes imposed by subtitle C?

A-1: For purposes of an employer's liability to collect and pay the taxes imposed by subtitle C, an employer may deem such fringe benefit to be paid at any time on or after the date on which it is provided, as long as such date is on or before the last day of the calendar quarter in which such benefit is provided. An employer may consider the benefit to be provided in two or more parts for purposes of the preceding sentence. For example, if a fringe benefit with a fair market value of \$1,000 is provided on January 1, 1985, the employer could deem \$500 paid on February 28, 1985 and \$500 paid on March 31, 1985.

With respect to noncash fringe benefits provided during the first calendar quarter of 1985, a special rule applies. Such benefits may be deemed paid at any time on or after the date on which they are provided as long as the date they are deemed paid is on or before the last day of the second calendar quarter of 1985.

In addition, for purposes of § 31.6302(c)-1(a)(1)(i), the term "tax" does not include the employer tax under section 3111 with respect to noncash fringe benefits which are deemed by the employer to be paid on the last day of any calendar quarter. For purposes of the first sentence of § 31.6302(c)-2(a)(1), the phrase "employer tax imposed after December 31, 1983, under section 3221 (a) and (b)" will not include any such employer tax with respect to noncash fringe benefits which are deemed by the employer to be paid on the last day of the quarter; provided that for purposes of deposits required under § 31.6302(c)-1(a)(1)(v), such first sentence applies to such noncash fringe benefits.

Notwithstanding anything in this section to the contrary, if an employer in fact withholds, the amount withheld is subject to the general deposit rules.

The manner in which and the time at which the employer withholds amounts from the wages of an employee to pay the taxes imposed under section 3101, 3201, and/or 3402 will generally be left to be determined by the employer and the employee. Any delay in withholding, however, does not affect the employer's obligation upon the filing of an employment tax return, to pay amounts which would be due under this subtitle if the employer had withheld, with respect to noncash fringe benefits, the amount which would have been required to be withheld if such noncash fringe benefits had been paid in cash on the date the benefits were deemed paid. However, if such amounts are not withheld from the wages of an employee within a reasonable period after payment of the taxes by the employer, payment by the employer may be deemed additional compensation of the employee.

Q-2: Are any fringe benefits excepted from the rules contained in Q/A-1 of this section?

A-2: Yes. The rules contained in Q/A-1 of this section do not apply to the transfer of personal property (both tangible and intangible) of a kind held for investment or to the transfer of real property. Accordingly, an employer is liable for the collection and payment of taxes imposed by this subtitle when such property is transferred. For example, stock transferred in connection with the performance of services is paid for purposes of this subtitle C, on the date the stock is transferred, i.e., on the date the stock vests pursuant to section 83 (absent a section 83(b) election).

Q-3: What is an example of the application of the rules contained in Q/A-1 of this section with respect to obligations under Chapters 21 and 24 of subtitle C?

A-3: All of employer A's employees received \$100 in cash as wages each week from A. In addition, during a calendar quarter, each such employee receives noncash fringe benefits, the fair market value of which is \$500. A deems all such noncash fringe benefits to be paid on the last day of the quarter. As of the end of the quarter, no amount has been withheld from the employee's wages with respect to such noncash fringe benefits, and A has "undeposited taxes" (within the meaning of § 31.6302(c)-1(a)(1)(i)) of more than \$3,000 attributable to amounts actually withheld under section 3102 or section 3402 or due under section 3111 with respect to cash wages of A's employees. The amount which A must deposit within 3 banking days after the end of the quarter will be determined without regard to the noncash fringe benefits deemed paid on the last day of the quarter.

During the month following the quarter, A withholds from its employees with respect to the noncash fringe benefits deemed paid on the last day of the quarter. As A withholds amounts, such amounts become "taxes" subject to § 31.6302(c)-1(a)(1)(i). If, as of the date of filing of the return for the period which includes the last day of the quarter, A has not deposited all amounts with respect to the quarter which are due under section 3111 or which would have been due had A withheld, under sections 3102 and 3402, with respect to noncash fringe benefits, the amount which would have been required to be withheld had such benefits been paid in cash, A shall pay the balance with its return. A must make such payment regardless of whether, at the time the return is filed, he has actually withheld all amounts which he would have been required to withhold had such benefits been paid in cash.

Q-4: If an employee is provided with a noncash fringe benefit and separates from service before the benefit is deemed paid by the employer, is the employer liable for the taxes imposed by subtitle C?

A-4: Yes. The employer's liability is unaffected by his ability to collect the tax from the former employer.

Q-5: If an entity other than the employer provides a noncash fringe benefit to an employee, is that entity considered the employer of such employee with respect to such noncash fringe benefit for any purposes of subtitle C?

A-5: The provision of noncash fringe benefits by an entity to an employee of another employer does not

make such entity the employer of such employee with respect to such noncash fringe benefit for any purpose of subtitle C, so long as such noncash fringe benefits are incidental to the provision of wages by the employer to such employee. For example, if two unrelated airlines, A and B, enter into a reciprocal agreement whereby the parents of employees of both airlines are entitled to free flights on both airlines, the fact that A is providing a noncash fringe benefit to the employees of B generally will not make A the employer of such employees for purposes of subtitle C.

Q-6: Do special rules apply to the provision of taxable noncash fringe benefits by a nonemployer under a reciprocal agreement with the employee's employer?

A-6: If the provision of taxable noncash fringe benefits meets the requirements of Q/A-5 of this section, the nonemployer provider of the benefits is not required to withhold. The employer must take the steps necessary to obtain the relevant information from the provider of the benefits in order to enable the employer to satisfy, in a timely manner, its obligations under subtitle C to collect and pay taxes with respect to the noncash fringe benefits provided by the nonemployer.

Q-7: For purposes of subtitle C, how is the fair market value of an employer- provided automobile or other road vehicle during any time period to be determined?

A-7: The value of the availability of an employer-provided automobile or other road vehicle must be determined under the rules provided in § 1.61-2T and § 1.132-1T. (For purposes of this section, the terms "automobile" and "road vehicle" have the meaning given those terms in Q/A-11 of § 1.61-2T). For example, assume that an employee adopts the special rule provided in § 1.61-2T and that the Annual Lease Value, as defined in § 1.61-2T, of an automobile or other road vehicle is \$2,100. The automobile is provided to employee A on January 1, 1985. As of March 31, A had driven the automobile or other road vehicles 1,000 personal miles and 3,000 miles in the course of his employer's business. For the quarter, A would have had wages of \$131.25 attributable to his personal use of the automobile or other road vehicle computed by subtracting a \$393.75 working condition fringe from \$525 (\$2,100 divided by 4). See section 132(d) and § 1.132-1T. During the second quarter of 1985, A drives the automobile or other road vehicle only 1,000 miles, all of which are personal. In order to calculate the value of the wages provided to A in the second quarter in the form of the availability of the employer-provided automobile or other road vehicle, first A's employer calculates the Annual Lease Value attributable to the first six months of 1985 which is \$1,050 (\$2,100 divided by 2). Second, A's employer calculates the working condition fringe exclusion which is \$630 (\$1,050 multiplied by a fraction the numerator of which is A's business mileage (3,000 miles) and the denominator of which is A's total mileage (5,000 miles)). The calculations result in a total inclusion of \$420 (\$1,050 - \$630). From the total inclusion of \$420, the wages provided in the first quarter, \$131.25, are subtracted, leaving \$288.75 as the wages includible in the second quarter attributable to the availability to A of the employer-provided automobile or other road vehicle.

Q-8: May an employer treat any part of the Annual Lease Value or Daily Lease Value (as defined in § 1.61-2T), or the fair market value if the special rule of § 1.61-2T is not or cannot be used, of an automobile or other road vehicle made available to an employee as includible in the employee's gross income without regard to whether the employee has used the automobile or other road vehicle in the employer's business?

A-8: No, except as otherwise provided in this Q/A-8, an employer may not include any amount in an employee's income with respect to an employer-provided automobile or other road vehicle unless such inclusion is based on:

(a) Records or a statement submitted by an employee that contain the business and total mileage for the period beginning on January 1, 1985, and ending on the last day of the employer's taxable year that began in 1984, or

(b) Records that satisfy the employer's "adequate contemporaneous record" requirement under section 274(d)(4) and the regulations thereunder for the employer's taxable years beginning after December 31, 1984.

For example, an employer who is subject to (b) of this Q/A-8 may rely on a statement submitted by the employee indicating for the period the number of miles driven by the employee in the employer's business and the total number of miles driven by the employee unless the employer knows or has reason to know the statement submitted is not based on "adequate contemporaneous records". (For purposes of this section, if a road vehicle is available to any person and such availability would be taxable to an employee, miles driven by that person will be considered miles driven by the employee).

Notwithstanding the preceding paragraph of this Q/A-8, an employer may include in an employee's income the value of the availability of an employer-provided road vehicle, calculated without regard to a working condition fringe exclusion based on business mileage if one of the conditions listed in § 1.274-6T(f)(1) is satisfied with respect to the relevant period.

In addition, the employer must, before including any amount in an employee's income with respect to an employer-provided road vehicle, take into account other working condition fringe exclusions, such as the security exclusion discussed in § 1.132-1T. If proper calculation of an exclusion requires information from the employee and the employee does not respond within a reasonable period of time to a request for that information or produces information which the employer knows or has reason to know is not accurate, the employer may disregard such exclusion in reporting the employee's gross income.

Q-8a: May an employer withhold amounts attributable to noncash fringe benefits on the basis of average wages as permitted under section 3402(h)(1)?

A-8a: In general, yes. In estimating wages under section 3402(h)(1)(A), however, the employer must take into account estimated business use of the benefit (such as an employer-provided road vehicle). In no event, however, may the amount reported by the employer as "wages" for any employee for any quarter be based on an estimation. However, the rules in Q/A-1 of this section regarding permissible delays in actual withholding apply.

Q-9: If an employee purchases any property or service from an employer at a discount and the discount is not excludable under section 132 and any applicable regulations thereunder, when is the noncash fringe benefit provided?



A-9: Such property or service is provided at the time that ownership is transferred, in the case of property, or the time service is rendered, in the case of services. This will be true regardless of when the employee pays for such property or service or the date payment is due or the rate of interest charged prior to payment. The time at which ownership of the property is transferred must be determined under general tax principles.

Q-10: What rules apply with respect to the treatment of the payment of any noncash fringe benefit as the payment of supplemental wages under section 3402?

A-10: An employer may treat the payment of any noncash fringe benefit as the payment of supplemental wages. Thus, if noncash fringe benefits are provided and tax has been withheld from the employee's regular wages, the employer may determine the tax to be withheld with respect to such noncash fringe benefits by using a flat percentage rate of 20 percent, without allowance for exemptions and without reference to any regular payment of wages. For example, assume that during a calendar quarter A receives from his employer a taxable noncash fringe benefit with a fair market value of \$1,000. If the requirements specified above are satisfied, A's employer may determine the tax to be withheld with respect to such benefit by using a flat percentage rate of 20 percent. The employer may also determine the tax to be withheld with respect to such benefit by use of the method described in § 31.3402(g)-1(a)(2).

Approved by the Office of Management and Budget under control numbers 1545-0074 and 1545-0907.

26 C.F.R. § 301.6324A-1

§ 301.6324A-1 Election of and agreement to special lien for estate tax deferred under section 6166 or 6166A.

(a) Election of lien. If payment of a portion of the estate tax is deferred under section 6166 or 6166A (as in effect prior to its repeal by Economic Recovery Tax Act of 1981), an executor of a decedent's estate who seeks to be discharged from personal liability may elect a lien in favor of the United States in lieu of the bonds required by sections 2204 and 6165. This election is made by applying to the Internal Revenue Service office where the estate tax return is filed at any time prior to payment of the full amount of estate tax and interest due. The application is to be a notice of election requesting the special lien provided by section 6324A and is to be accompanied by the agreement described in paragraph (b)(1) of this section.

(b) Agreement to lien--(1) In general. A lien under this section will not arise unless all parties having any interest in all property designated in the notice of election as property to which the lien is to attach sign an agreement in which they consent to the creation of the lien. (Property so designated need not be property included in the decedent's estate.) The agreement is to be attached to the notice in which the lien under section 6324A is elected. It must be in a form that is binding on all parties having any interest on the property and must contain the following:

(i) The decedent's name and taxpayer identification number as they appear on the estate tax return;

(ii) The amount of the lien;

(iii) The fair market value of the property to be subject to the lien as of the date of the decedent's death and the date of the election under this section;

(iv) The amount, as of the date of the decedent's death and the date of the election, of all encumbrances on the property, including mortgages and any lien under section 6324B;

(v) A clear description of the property which is to be subject to the lien, and in the case of property other than land, a statement of its estimated remaining useful life; and

(vi) Designation of an agent (including the agent's address) for the beneficiaries of the estate and the consenting parties to the lien for all dealings with the Internal Revenue Service on matters arising under section 6166 or 6166A (as in effect prior to its repeal by Economic Recovery Tax Act of 1981), or under section 6324A.

(2) Persons having an interest in designated property. An interest in property is any interest which as of the date of the election can be asserted under applicable local law so as to affect the disposition of any property designated in the agreement required under this section. Any person in being at the date of the election who has any such interest in the property, whether present or future, or vested or contingent, must enter into the agreement. Included among such persons are owners of remainder and executory interests, the holders of

general or special powers of appointment, beneficiaries of a gift over in default of exercise of any such power, co-tenants, joint tenants, and holders of other undivided interests when the decedent held a joint or undivided interest in the property, and trustees of trusts holding any interest in the property. An heir who has the power under local law to caveat (challenge) a will and thereby affect disposition of the property is not, however, considered to be a person with an interest in property under section 6324A solely by reason of that right. Likewise, creditors of an estate are not such persons solely by reason of their status as creditors.

(3) Consent on behalf of interested party. If any person required to enter into the agreement provided for by this paragraph either desires that an agent act for him or her or cannot legally bind himself or herself due to infancy or other incompetency, a representative authorized under local law to bind the interested party in an agreement of this nature is permitted to sign the agreement on his or her behalf.

(4) Duties of agent designated in agreement. The Internal Revenue Service will contact the agent designated in the agreement under paragraph (b)(1) on all matters relating to continued qualification of the estate under section 6166 or 6166A (as in effect prior to its repeal by Economic Recovery Tax Act of 1981) and on all matters relating to the special lien arising under section 6324A. It is the duty of the agent as attorney-in-fact for the parties with interests in the property subject to the lien under section 6324A to furnish the Service with any requested information and to notify the Service of any event giving rise to acceleration of the deferred amount of tax.

(c) Partial substitution of bond for lien. If the amount of unpaid estate tax plus interest exceeds the value (determined for purposes of section 6324A(b)(2)) of property listed in the agreement under paragraph (b) of this section, the Internal Revenue Service may condition the release from personal liability upon the executor's submitting an agreement listing additional property or furnishing an acceptable bond in the amount of such excess.

(d) Relation of sections 6324A and 2204. The lien under section 6324A is deemed to be a bond under section 2204 for purposes of determining an executor's release from personal liability. If an election has been made under section 6324A, the executor may not substitute a bond pursuant to section 2204 in lieu of that lien. If a bond has been supplied under section 2204, however, the executor may, by filing a proper notice of election and agreement, substitute a lien under section 6324A for any part or all of such bond.

(e) Relation of sections 6324A and 6324. If there is a lien under this section on any property with respect to an estate, that lien is in lieu of the lien provided by section 6324 on such property with respect to the same estate.

(f) Section 6324A lien to be in lieu of bond under section 6165. The lien under section 6324A is in lieu of any bond otherwise required under section 6165 with respect to tax to be paid in installments under section 6166 or section 6166A (as in effect prior to its repeal by Economic Recovery Tax Act of 1981).

(g) Special rule for estates for which elections under section 6324A are made on or before August 30, 1980. If a lien is elected under section 6324A on or before August 30, 1980, the original election may be revoked. To revoke an election, the executor must file a notice of revocation containing the decedent's name, date of death, and taxpayer identification number with the Internal Revenue Service office where the original estate

tax return for the decedent was filed. The notice must be filed on or before January 31, 1981 (or if earlier, the date on which the period of limitation for assessment expires).

Approved by the Office of Management and Budget under control number 1545-0754.

26 C.F.R. § 301.7477-1

§ 301.7477-1 Declaratory judgments relating to transfers of property from the United States.

(a) Petition--(1) General rule. A transferor or transferee of stock, securities of property transferred in an exchange described in section 367(a)(1) may petition the Tax Court for a declaratory judgment with respect to the exchange if--

(i) The pleading is timely filed; and

(ii) The exchange has begun before the pleading is filed.

(2) Pleading timely filed. The pleading is timely filed if it is filed before the 92d day after the day on which notice of the determination of the Commissioner is sent to the petitioner by certified or registered mail. In the absence of such notice, neither section 7477 nor this section imposes any time limit on the filing of the pleading.

(3) Beginning of exchange. An exchange generally shall be considered to begin upon the beginning of the first transfer of property pursuant to the plan under which the exchange is to be made. For rules determining the beginning of a transfer, see § 1.367(a)-1(c)(4).

A transfer shall not be considered to begin with a decision of a board of directors or similar action. A transfer shall be deemed to have begun even though it is made subject to a condition that, if there is a failure to obtain a determination that the exchange is not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes, the transaction will not be consummated and to the extent possible the assets transferred will be returned.

(b) Judgment--(1) General rule. The Tax Court may issue a declaratory judgment or decree within the scope described in section 7477(a)(2) if--

(i) There is a case of actual controversy, and

(ii) The petitioner has exhausted the administrative remedies available to it within the Internal Revenue Service,

with respect to a determination or a failure to make a determination.

(2) Exhaustion of administrative remedies. The petitioner shall be deemed to have exhausted the administrative remedies available to it within the Internal Revenue Service if--

(i) The petitioner has completed all applicable procedures published in regulations, the statement of procedural rules (26 CFR Part 601) or revenue procedures relating to the filing of a request for a ruling under

section 367(a)(1) and, if such a ruling has been issued, to the filing of a protest to such a ruling;

(ii) The petitioner has submitted prompt and complete responses to any requests by the Internal Revenue Service for further information; and

(iii) The Internal Revenue Service has had a reasonable time to act upon the request for the ruling, any protest thereto and any additional information submitted in response to any request made therefor by the Internal Revenue Service. If there has been a failure to make a determination, the Internal Revenue Service shall be deemed not to have had a reasonable time to act before the expiration of 270 days after the day on which petitioner properly filed the request for a ruling. In no event shall the Internal Revenue Service be deemed to have had a reasonable time to act if a failure to act has occurred because the petitioner did not proceed with due diligence or because the petitioner has not provided all available information or materials reasonably requested by the Internal Revenue Service.

(3) Effect of judgment. The declaratory judgment or decree of the Tax Court, when final under section 7481, shall be binding on the parties to the case for purposes of section 367(a)(1). However, if the facts of the exchange differ from those presented to the Court, the judgment shall be binding only to the extent appropriate under the legal doctrines of estoppel and stare decisis.

(c) Definitions--(1) Exchange described to section 367(a)(1). For purposes of this section, an "exchange described in section 367(a)(1)" is an exchange in connection with which the petitioner has filed a ruling request pursuant to section 367(a)(1) and the regulations thereunder without regard to whether or not section 332, 351, 354, 355, 356 or 361 applies to the exchange.

(2) Determination. For purposes of this section, a "determination" is the Commissioner's determination for purposes of section 367(a)(1), made in response to the petitioner's protest to a ruling issued under section 367(a)(1)--

(i) That an exchange described in section 367(a)(1) is in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes, or

(ii) Of the terms and conditions pursuant to which such an exchange will be determined not to be in pursuance of such a plan.

(d) Effective date. The provisions of this section shall apply with respect to pleadings filed after October 4, 1976, but only with respect to exchanges beginning after October 9, 1975.

Approved by the Office of Management and Budget under control number 1545-0719.





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## § 6012. Persons required to make returns of income

*How Current is This?*

### (a) General rule

Returns with respect to income taxes under subtitle A shall be made by the following:

#### (1)

**(A)** Every individual having for the taxable year gross income which equals or exceeds the exemption amount, except that a return shall not be required of an individual—

**(i)** who is not married (determined by applying section 7703), is not a surviving spouse (as defined in section 2 (a)), is not a head of a household (as defined in section 2 (b)), and for the taxable year has gross income of less than the sum of the exemption amount plus the basic standard deduction applicable to such an individual,

**(ii)** who is a head of a household (as so defined) and for the taxable year has gross income of less than the sum of the exemption amount plus the basic standard deduction applicable to such an individual,

**(iii)** who is a surviving spouse (as so defined) and for the taxable year has gross income of less than the sum of the exemption amount plus the basic standard deduction applicable to such an individual, or

**(iv)** who is entitled to make a joint return and whose gross income, when combined with the gross income of his spouse, is, for the taxable year, less than the sum of twice the exemption amount plus the basic standard deduction applicable to a joint

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return, but only if such individual and his spouse, at the close of the taxable year, had the same household as their home.

Clause (iv) shall not apply if for the taxable year such spouse makes a separate return or any other taxpayer is entitled to an exemption for such spouse under section 151 (c).

**(B)** The amount specified in clause (i), (ii), or (iii) of subparagraph (A) shall be increased by the amount of 1 additional standard deduction (within the meaning of section 63 (c)(3)) in the case of an individual entitled to such deduction by reason of section 63 (f)(1)(A) (relating to individuals age 65 or more), and the amount specified in clause (iv) of subparagraph (A) shall be increased by the amount of the additional standard deduction for each additional standard deduction to which the individual or his spouse is entitled by reason of section 63 (f)(1).

**(C)** The exception under subparagraph (A) shall not apply to any individual—

**(i)** who is described in section 63 (c)(5) and who has—

**(I)** income (other than earned income) in excess of the sum of the amount in effect under section 63 (c)(5)(A) plus the additional standard deduction (if any) to which the individual is entitled, or

**(II)** total gross income in excess of the standard deduction, or

**(ii)** for whom the standard deduction is zero under section 63 (c) (6).

**(D)** For purposes of this subsection—

**(i)** The terms "standard deduction", "basic standard deduction" and "additional standard deduction" have the respective meanings given such terms by section 63 (c).

**(ii)** The term "exemption amount" has the meaning given such term by section 151 (d). In the case of an individual described in section 151 (d)(2), the exemption amount shall be zero.

**(2)** Every corporation subject to taxation under subtitle A;

**(3)** Every estate the gross income of which for the taxable year is \$600 or more;

**(4)** Every trust having for the taxable year any taxable income, or having gross income of \$600 or over, regardless of the amount of taxable income;

**(5)** Every estate or trust of which any beneficiary is a nonresident alien;

**(6)** Every political organization (within the meaning of section 527 (e) (1)), and every fund treated under section 527 (g) as if it constituted a political organization, which has political organization taxable income (within the meaning of section 527 (c)(1)) for the taxable year; and <sup>[1]</sup>

**(7)** Every homeowners association (within the meaning of section 528 (c) (1)) which has homeowners association taxable income (within the meaning of section 528 (d)) for the taxable year.<sup>[1]</sup>

**(8)** Every individual who receives payments during the calendar year in which the taxable year begins under section 3507 (relating to advance

payment of earned income credit).[1]

**(9)** Every estate of an individual under chapter 7 or 11 of title 11 of the United States Code (relating to bankruptcy) the gross income of which for the taxable year is not less than the sum of the exemption amount plus the basic standard deduction under section 63 (c)(2)(D).[1], [2]

except that subject to such conditions, limitations, and exceptions and under such regulations as may be prescribed by the Secretary, nonresident alien individuals subject to the tax imposed by section 871 and foreign corporations subject to the tax imposed by section 881 may be exempted from the requirement of making returns under this section.

## **(b) Returns made by fiduciaries and receivers**

### **(1) Returns of decedents**

If an individual is deceased, the return of such individual required under subsection (a) shall be made by his executor, administrator, or other person charged with the property of such decedent.

### **(2) Persons under a disability**

If an individual is unable to make a return required under subsection (a), the return of such individual shall be made by a duly authorized agent, his committee, guardian, fiduciary or other person charged with the care of the person or property of such individual. The preceding sentence shall not apply in the case of a receiver appointed by authority of law in possession of only a part of the property of an individual.

### **(3) Receivers, trustees and assignees for corporations**

In a case where a receiver, trustee in a case under title 11 of the United States Code, or assignee, by order of a court of competent jurisdiction, by operation of law or otherwise, has possession of or holds title to all or substantially all the property or business of a corporation, whether or not such property or business is being operated, such receiver, trustee, or assignee shall make the return of income for such corporation in the same manner and form as corporations are required to make such returns.

### **(4) Returns of estates and trusts**

Returns of an estate, a trust, or an estate of an individual under chapter 7 or 11 of title 11 of the United States Code shall be made by the fiduciary thereof.

### **(5) Joint fiduciaries**

Under such regulations as the Secretary may prescribe, a return made by one of two or more joint fiduciaries shall be sufficient compliance with the requirements of this section. A return made pursuant to this paragraph shall contain a statement that the fiduciary has sufficient knowledge of the affairs of the person for whom the return is made to enable him to make the return, and that the return is, to the best of his knowledge and belief, true and correct.

### **(6) IRA share of partnership income**

In the case of a trust which is exempt from taxation under section 408 (e), for purposes of this section, the trust's distributive share of items of gross income and gain of any partnership to which subchapter C or D of chapter 63 applies shall be treated as equal to the trust's distributive share of the taxable income of such partnership.

**(c) Certain income earned abroad or from sale of residence**

For purposes of this section, gross income shall be computed without regard to the exclusion provided for in section 121 (relating to gain from sale of principal residence) and without regard to the exclusion provided for in section 911 (relating to citizens or residents of the United States living abroad).

**(d) Tax-exempt interest required to be shown on return**

Every person required to file a return under this section for the taxable year shall include on such return the amount of interest received or accrued during the taxable year which is exempt from the tax imposed by chapter 1.

**(e) Consolidated returns**

For provisions relating to consolidated returns by affiliated corporations, see chapter 6.

[1] So in original.

[2] See References in Text note below.

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## Sec. 6012. - Persons required to make returns of income

### (a) General rule

Returns with respect to income taxes under subtitle A shall be made by the following:

#### (1)

##### (A)

Every individual having for the taxable year gross income which equals or exceeds the exemption amount, except that a return shall not be required of an individual -

##### (i)

who is not married (determined by applying section 7703), is not a surviving spouse (as defined in section 2(a)), is not a head of a household (as defined in section 2(b)), and for the taxable year has gross income of less than the sum of the exemption amount plus the basic standard deduction applicable to such an individual,

##### (ii)

who is a head of a household (as so defined) and for the taxable year has gross income of less than the sum of the exemption amount plus the basic standard deduction applicable to such an individual,

##### (iii)

who is a surviving spouse (as so defined) and for the taxable year has gross income of less than the sum of the exemption amount plus the basic standard deduction applicable to such an

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individual, or

**(iv)**

who is entitled to make a joint return and whose gross income, when combined with the gross income of his spouse, is, for the taxable year, less than the sum of twice the exemption amount plus the basic standard deduction applicable to a joint return, but only if such individual and his spouse, at the close of the taxable year, had the same household as their home.

Clause (iv) shall not apply if for the taxable year such spouse makes a separate return or any other taxpayer is entitled to an exemption for such spouse under section 151(c).

**(B)**

The amount specified in clause (i), (ii), or (iii) of subparagraph (A) shall be increased by the amount of 1 additional standard deduction (within the meaning of section 63(c)(3)) in the case of an individual entitled to such deduction by reason of section 63(f)(1)(A) (relating to individuals age 65 or more), and the amount specified in clause (iv) of subparagraph (A) shall be increased by the amount of the additional standard deduction for each additional standard deduction to which the individual or his spouse is entitled by reason of section 63(f)(1).

**(C)**

The exception under subparagraph (A) shall not apply to any individual -

**(i)**

who is described in section 63(c)(5) and who has -

**(I)**

income (other than earned income) in excess of the sum of the amount in effect under section 63(c)(5)(A) plus the additional standard deduction (if any) to which the individual is entitled, or

**(II)**

total gross income in excess of the standard deduction, or

**(ii)**

for whom the standard deduction is zero under section 63(c)(6).

**(D)**

For purposes of this subsection -

**(i)**

The terms "standard deduction", "basic standard deduction" and "additional standard deduction" have the respective meanings given such terms by section 63(c).

**(ii)**

The term "exemption amount" has the meaning given such term by section 151(d). In the case of an individual described in section 151(d)(2), the exemption amount shall be zero.

**(2)**

Every corporation subject to taxation under subtitle A;

**(3)**

Every estate the gross income of which for the taxable year is \$600 or more;

**(4)**

Every trust having for the taxable year any taxable income, or having gross income of \$600 or over, regardless of the amount of taxable income;

**(5)**

Every estate or trust of which any beneficiary is a nonresident alien;

**(6)**

Every political organization (within the meaning of section 527(e)(1)), and every fund treated under section 527(g) as if it constituted a political organization, which has political organization taxable income (within the meaning of section 527(c)(1)) for the taxable year or which has gross receipts of \$25,000 or more for the taxable year (other than an organization to which section 527 applies solely by reason of subsection (f)(1) of such section); and 11 (FOOTNOTE 1) So in original.

**(7)**

Every homeowners association (within the meaning of section 528(c)(1)) which has homeowners association taxable income (within the meaning of section 528(d)) for the taxable year.

**(8)**

Every individual who receives payments during the calendar year in which the taxable year begins under section 3507 (relating to advance payment of earned income credit). (FOOTNOTE 1)

**(9)**

Every estate of an individual under chapter [7](#) or [11](#) of title [11](#) of the United States Code (relating to bankruptcy) the gross income of which for the taxable year is not less than the sum of the exemption amount plus the basic standard deduction under section 63(c)(2)(D). ~~111~~ except that subject to such conditions, limitations, and exceptions and under such regulations as may be prescribed by the Secretary, nonresident alien individuals subject to the tax imposed by section 871 and foreign corporations subject to the tax imposed by section 881 may be exempted from the requirement of making returns under this section.

**(b) Returns made by fiduciaries and receivers****(1) Returns of decedents**

If an individual is deceased, the return of such individual required under subsection (a) shall be made by his executor, administrator, or other person charged with the property of such decedent.

**(2) Persons under a disability**

If an individual is unable to make a return required under subsection (a), the return of such individual shall be made by a duly authorized agent, his committee, guardian, fiduciary or other person charged with the care of the person or property of such individual. The preceding sentence shall not apply in the case of a receiver appointed by authority of law in possession of only a part of the property of an individual.

**(3) Receivers, trustees and assignees for corporations**

In a case where a receiver, trustee in a case under title [11](#) of the United States Code, or assignee, by order of a court of competent jurisdiction, by operation of law

or otherwise, has possession of or holds title to all or substantially all the property or business of a corporation, whether or not such property or business is being operated, such receiver, trustee, or assignee shall make the return of income for such corporation in the same manner and form as corporations are required to make such returns.

**(4) Returns of estates and trusts**

Returns of an estate, a trust, or an estate of an individual under chapter [7](#) or [11](#) of title [11](#) of the United States Code shall be made by the fiduciary thereof.

**(5) Joint fiduciaries**

Under such regulations as the Secretary may prescribe, a return made by one of two or more joint fiduciaries shall be sufficient compliance with the requirements of this section. A return made pursuant to this paragraph shall contain a statement that the fiduciary has sufficient knowledge of the affairs of the person for whom the return is made to enable him to make the return, and that the return is, to the best of his knowledge and belief, true and correct.

**(6) IRA share of partnership income**

In the case of a trust which is exempt from taxation under section 408(e), for purposes of this section, the trust's distributive share of items of gross income and gain of any partnership to which subchapter C or D of chapter 63 applies shall be treated as equal to the trust's distributive share of the taxable income of such partnership.

**(c) Certain income earned abroad or from sale of residence**

For purposes of this section, gross income shall be computed without regard to the exclusion provided for in section 121 (relating to gain from sale of principal residence) and without regard to the exclusion provided for in section 911 (relating to citizens or residents of the United States living abroad).

**(d) Tax-exempt interest required to be shown on return**

Every person required to file a return under this section for the taxable year shall include on such return the amount of interest received or accrued during the taxable year which is exempt from the tax imposed by chapter 1.

**(e)**



Consolidated returns

For provisions relating to consolidated returns by affiliated corporations, see chapter 6

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**TITLE 26 > Subtitle F > CHAPTER 61 > Subchapter A > PART VII > § 6091**  
**§ 6091. Place for filing returns or other documents**

*How Current is This?***(a) General rule**

When not otherwise provided for by this title, the Secretary shall by regulations prescribe the place for the filing of any return, declaration, statement, or other document, or copies thereof, required by this title or by regulations.

**(b) Tax returns**

In the case of returns of tax required under authority of part II of this subchapter—

**(1) Persons other than corporations****(A) General rule**

Except as provided in subparagraph (B), a return (other than a corporation return) shall be made to the Secretary—

- (i)** in the internal revenue district in which is located the legal residence or principal place of business of the person making the return, or
- (ii)** at a service center serving the internal revenue district referred to in clause (i),

as the Secretary may by regulations designate.

**(B) Exception**

Returns of—

- (i)** persons who have no legal residence or principal place of business in any internal revenue district,

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(ii) citizens of the United States whose principal place of abode for the period with respect to which the return is filed is outside the United States,

(iii) persons who claim the benefits of section 911 (relating to citizens or residents of the United States living abroad), section 931 (relating to income from sources within Guam, American Samoa, or the Northern Mariana Islands), or section 933 (relating to income from sources within Puerto Rico),

(iv) nonresident alien persons, and

(v) persons with respect to whom an assessment was made under section 6851 (a) or 6852 (a) (relating to termination assessments) with respect to the taxable year,

shall be made at such place as the Secretary may by regulations designate.

## (2) Corporations

### (A) General rule

Except as provided in subparagraph (B), a return of a corporation shall be made to the Secretary—

(i) in the internal revenue district in which is located the principal place of business or principal office or agency of the corporation, or

(ii) at a service center serving the internal revenue district referred to in clause (i), as the Secretary may by regulations designate.

### (B) Exception

Returns of—

(i) corporations which have no principal place of business or principal office or agency in any internal revenue district,

(ii) corporations which claim the benefits of section 936 (relating to possession tax credit), and <sup>[1]</sup>

(iii) foreign corporations, and

(iv) corporations with respect to which an assessment was made under section 6851 (a) (relating to termination assessments) with respect to the taxable year,

shall be made at such place as the Secretary may by regulations designate.

## (3) Estate tax returns

### (A) General rule

Except as provided in subparagraph (B), returns of estate tax required under section 6018 shall be made to the Secretary—

(i) in the internal revenue district in which was the domicile of the decedent at the time of his death, or

(ii) at a service center serving the internal revenue district referred to in clause (i), as the Secretary may by regulations designate.

### (B) Exception

If the domicile of the decedent was not in an internal revenue district, or if he had no domicile, the estate tax return required under section 6018 shall be made at such place as the Secretary may by regulations designate.

#### **(4) Hand-carried returns**

Notwithstanding paragraph (1), (2), or (3), a return to which paragraph (1)(A), (2)(A), or (3)(A) would apply, but for this paragraph, which is made to the Secretary by handcarrying shall, under regulations prescribed by the Secretary, be made in the internal revenue district referred to in paragraph (1)(A)(i), (2)(A)(i), or (3)(A)(i), as the case may be.

#### **(5) Exceptional cases**

Notwithstanding paragraph (1), (2), (3), or (4) of this subsection, the Secretary may permit a return to be filed in any internal revenue district, and may require the return of any officer or employee of the Treasury Department to be filed in any internal revenue district selected by the Secretary.

#### **(6) Alcohol, tobacco, and firearms returns, etc.**

In the case of any return of tax imposed by section 4181 or subtitle E (relating to taxes on alcohol, tobacco, and firearms), subsection (a) shall apply (and this subsection shall not apply).

[1] So in original. Word "and" probably is superfluous.

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## Note 9

ried forward to tax year for which extension was sought, eliminating any tax liability for that year, and Internal Revenue Service (IRS) did not determine that debtor owed taxes for that year until after adjustments were made to re-

turn and to returns from other years from which net operating losses were anticipated. In re Craddock, D.Colo.1995, 184 B.R. 974, reversed 149 F.3d 1249.

## PART VII—PLACE FOR FILING RETURNS OR OTHER DOCUMENTS

→ § 6091. Place for filing returns or other documents

(a) **General rule.**—When not otherwise provided for by this title, the Secretary shall by regulations prescribe the place for the filing of any return, declaration, statement, or other document, or copies thereof, required by this title or by regulations.

(b) **Tax returns.**—In the case of returns of tax required under authority of part II of this subchapter—

(1) **Persons other than corporations.**—

(A) **General rule.**—Except as provided in subparagraph (B), a return (other than a corporation return) shall be made to the Secretary—

(i) in the internal revenue district in which is located the legal residence or principal place of business of the person making the return, or

(ii) at a service center serving the internal revenue district referred to in clause (i),

as the Secretary may by regulations designate.

(B) **Exception.**—Returns of—

(i) persons who have no legal residence or principal place of business in any internal revenue district,

(ii) citizens of the United States whose principal place of abode for the period with respect to which the return is filed is outside the United States,

(iii) persons who claim the benefits of section 911 (relating to citizens or residents of the United States living abroad), section 931 (relating to income from sources within Guam, American Samoa, or the Northern Mariana Islands), or section 933 (relating to income from sources within Puerto Rico),

(iv) nonresident alien persons, and

(v) persons with respect to whom an assessment was made under section 6851(a) or 6852(a) (relating to termination assessments) with respect to the taxable year,

shall be made at such place as the Secretary may by regulations designate.

(2) **Corporations.**—

(A) **General rule.**—Except as provided in subparagraph (B), a return of a corporation shall be made to the Secretary—

(i) in the internal revenue district in which is located the principal place of business or principal office or agency of the corporation, or

(ii) at a service center serving the internal revenue district referred to in clause (i),

as the Secretary may by regulations designate.

(B) **Exception.**—Returns of—

(i) corporations which have no principal place of business or principal office or agency in any internal revenue district,

(ii) corporations which claim the benefits of section 936 (relating to possession tax credit), and<sup>1</sup>

(iii) foreign corporations, and

(iv) corporations with respect to which an assessment was made under section 6851(a) (relating to termination assessments) with respect to the taxable year,

shall be made at such place as the Secretary may by regulations designate.

(3) **Estate tax returns.**—

(A) General rule.—Except as provided in subparagraph (B), returns of estate tax required under section 6018 shall be made to the Secretary—

(i) in the internal revenue district in which was the domicile of the decedent at the time of his death, or

(ii) at a service center serving the internal revenue district referred to in clause (i), as the Secretary may by regulations designate.

(B) Exception.—If the domicile of the decedent was not in an internal revenue district, or if he had no domicile, the estate tax return required under section 6018 shall be made at such place as the Secretary may by regulations designate.

(4) Hand-carried returns.—Notwithstanding paragraph (1), (2), or (3), a return to which paragraph (1)(A), (2)(A), or (3)(A) would apply, but for this paragraph, which is made to the Secretary by hand-carrying shall, under regulations prescribed by the Secretary, be made in the internal revenue district referred to in paragraph (1)(A)(i), (2)(A)(i), or (3)(A)(i), as the case may be.

(5) Exceptional cases.—Notwithstanding paragraph (1), (2), (3), or (4) of this subsection, the Secretary may permit a return to be filed in any internal revenue district, and may require the return of any officer or employee of the Treasury Department to be filed in any internal revenue district selected by the Secretary.

(6) Alcohol, tobacco, and firearms returns, etc.—In the case of any return of tax imposed by section 4181 or subtitle E (relating to taxes on alcohol, tobacco, and firearms), subsection (a) shall apply (and this subsection shall not apply).

(Aug. 16, 1954, c. 736, 68A Stat. 752; Nov. 2, 1966, Pub.L. 89-713, § 1(a), 80 Stat. 1107; Dec. 31, 1970, Pub.L. 91-614, Title I, § 101(i), 84 Stat. 1838; Oct. 4, 1976, Pub.L. 94-455, Title X, §§ 1051(h)(4), 1052(c)(6), 1053(d)(4), Title XII, § 1204(c)(3), Title XIX, § 1906(b)(13)(A), 90 Stat. 1647-1649, 1697, 1834; Nov. 8, 1978, Pub.L. 95-615, Title II, § 202(g)(5), formerly §§ 202(f)(5), 207(b), 92 Stat. 3100, 3108, renumbered Apr. 1, 1980, Pub.L. 96-222, Title I, § 108(a)(1)(A), 94 Stat. 223; Aug. 13, 1981, Pub.L. 97-34, Title I, §§ 111(b)(3), 112(b)(6), 95 Stat. 194, 195; Oct. 22, 1986, Pub.L. 99-514, Title XII, § 1272(d)(10), Title XVIII, § 1879(r)(1), 100 Stat. 2594, 2912; Dec. 22, 1987, Pub.L. 100-203, Title X, § 10713(b)(2)(A), 101 Stat. 1330-470; Dec. 19, 1989, Pub.L. 101-239, Title VII, § 7841(f), 103 Stat. 2429.)

<sup>1</sup> So in original. Word "and" is probably superfluous.

#### HISTORICAL AND STATUTORY NOTES

##### Revision Notes and Legislative Reports

1989 Act. House Report No. 101-247, House Conference Report No. 101-386, and Statement by President, see 1989 U.S. Code Cong. and Adm. News, p. 2017.

##### Amendments

1989 Amendment. Subsec. (b)(6). Pub.L. 101-239, § 7841(f), inserted reference to section 4181.

#### LIBRARY REFERENCES

##### Encyclopedias

Place for filing returns in general, see C.J.S. Internal Revenue § 1044.

33 Am Jur 2d, Federal Taxation (1995) ¶¶ 1708, 2653, 3104.

33 Am Jur 2d, Federal Taxation (1996) ¶¶ 1708, 2653, 3104.

33A Am Jur 2d, Federal Taxation (1996) ¶ 5954.

33A Am Jur 2d, Federal Taxation (1995) ¶ 5814.

34A Am Jur 2d, Federal Taxation (1995) ¶¶ 148,660, 148,661, 183,064, 183,065.

##### Texts and Treatises

Requirement that corporate income tax returns be filed where corporation has principal place of business, see Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction 2d § 3625.

1 Fed Proc L Ed, Access to District Courts § 1142.

20 Fed Proc L Ed, Internal Revenue § 48:1.

5 Soc Sec LP, Taxes § 70:26.

1 Employee Ben Comp Coord, Defined Benefit Pension Plans ¶ 2,305.

1 Employee Ben Comp Coord, Money Purchase Pension Plans ¶ 4,305.

2 Employee Ben Comp Coord, Profit Sharing Plans; Stock Bonus Plans; Thrift Plans ¶ 6,305.

2 Partnership & S Corp Coord, Partnerships ¶ 29,002.

3 Employee Ben Comp Coord, Individual Retirement Plans (IRAs) ¶ 14,273.

3 Employee Ben Comp Coord, Government, Church and Similar Plans ¶ 16,306.

3 Employee Ben Comp Coord, Employee Welfare Benefit Plans ¶ 18,256.

3 Employee Ben Comp Coord, Other Non-qualified Plans ¶ 20,252.

3 Estate Plan & Tax Coord. Gift Tax ¶¶ 48,518, 48,660, 48,661.

5 Estate Plan & Tax Coord, Estate Tax Returns ¶¶ 83,064, 83,065, 83,071.

23 Fed Tax Coord 2d ¶¶ S-6300-6323.

24 Fed Tax Coord 2d ¶¶ T-10,801, 10,802.

2 Partnership & S Corp Coord, S Corporations ¶ 38,005.

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## Sec. 6091. - Place for filing returns or other documents

### (a) General rule

When not otherwise provided for by this title, the Secretary shall by regulations prescribe the place for the filing of any return, declaration, statement, or other document, or copies thereof, required by this title or by regulations.

### (b) Tax returns

In the case of returns of tax required under authority of part II of this subchapter -

#### (1) Persons other than corporations

##### (A) General rule

Except as provided in subparagraph (B), a return (other than a corporation return) shall be made to the Secretary -

##### (i)

in the internal revenue district in which is located the legal residence or principal place of business of the person making the return, or

##### (ii)

at a service center serving the internal revenue district referred to in clause (i),

as the Secretary may by regulations designate.

##### (B) Exception

Returns of -

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**(i)**

persons who have no legal residence or principal place of business in any internal revenue district,

**(ii)**

citizens of the United States whose principal place of abode for the period with respect to which the return is filed is outside the United States,

**(iii)**

persons who claim the benefits of section 911 (relating to citizens or residents of the United States living abroad), section 931 (relating to income from sources within Guam, American Samoa, or the Northern Mariana Islands), or section 933 (relating to income from sources within Puerto Rico),

**(iv)**

nonresident alien persons, and

**(v)**

persons with respect to whom an assessment was made under section 6851(a) or 6852(a) (relating to termination assessments) with respect to the taxable year,

shall be made at such place as the Secretary may by regulations designate.

**(2) Corporations****(A) General rule**

Except as provided in subparagraph (B), a return of a corporation shall be made to the Secretary -

**(i)**

in the internal revenue district in which is located the principal place of business or principal office or agency of the corporation, or

**(ii)**

at a service center serving the internal revenue district referred to in clause (i), as the Secretary may by regulations designate.

**(B) Exception**



Returns of -

**(i)**

corporations which have no principal place of business or principal office or agency in any internal revenue district,

**(ii)**

corporations which claim the benefits of section 936 (relating to possession tax credit), and [11](#)

**(iii)**

foreign corporations, and

**(iv)**

corporations with respect to which an assessment was made under section 6851(a) (relating to termination assessments) with respect to the taxable year,

shall be made at such place as the Secretary may by regulations designate.

**(3) Estate tax returns**

**(A) General rule**

Except as provided in subparagraph (B), returns of estate tax required under section 6018 shall be made to the Secretary -

**(i)**

in the internal revenue district in which was the domicile of the decedent at the time of his death, or

**(ii)**

at a service center serving the internal revenue district referred to in clause (i), as the Secretary may by regulations designate.

**(B) Exception**

If the domicile of the decedent was not in an internal revenue district, or if he had no domicile, the estate tax return required under section 6018 shall be made at such place as the Secretary may by regulations designate.

**(4)** Hand-carried returns

Notwithstanding paragraph (1), (2), or (3), a return to which paragraph (1)(A), (2)(A), or (3)(A) would apply, but for this paragraph, which is made to the Secretary by handcarrying shall, under regulations prescribed by the Secretary, be made in the internal revenue district referred to in paragraph (1)(A)(i), (2)(A)(i), or (3)(A)(i), as the case may be.

**(5)** Exceptional cases

Notwithstanding paragraph (1), (2), (3), or (4) of this subsection, the Secretary may permit a return to be filed in any internal revenue district, and may require the return of any officer or employee of the Treasury Department to be filed in any internal revenue district selected by the Secretary.

**(6)** Alcohol, tobacco, and firearms returns, etc.

In the case of any return of tax imposed by section 4181 or subtitle E (relating to taxes on alcohol, tobacco, and firearms), subsection (a) shall apply (and this subsection shall not apply)

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[1] So in original. Word "and" probably is superfluous.



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**TITLE 5 > PART I > CHAPTER 5 > SUBCHAPTER II > § 551**[Prev](#) | [Next](#)**§ 551. Definitions***How Current is This?*

For the purpose of this subchapter—

**(1)** “agency” means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

- (A)** the Congress;
- (B)** the courts of the United States;
- (C)** the governments of the territories or possessions of the United States;
- (D)** the government of the District of Columbia;

or except as to the requirements of section 552 of this title—

- (E)** agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;
- (F)** courts martial and military commissions;
- (G)** military authority exercised in the field in time of war or in occupied territory; or
- (H)** functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; chapter 2 of title 41; subchapter II of chapter 471 of title 49; or sections 1884, 1891–1902, and former section 1641 (b)(2), of title 50, appendix;

**(2)** “person” includes an individual, partnership, corporation, association, or public or private organization other than an agency;

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- (3)** "party" includes a person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in an agency proceeding, and a person or agency admitted by an agency as a party for limited purposes;
- (4)** "rule" means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing;
- (5)** "rule making" means agency process for formulating, amending, or repealing a rule;
- (6)** "order" means the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but including licensing;
- (7)** "adjudication" means agency process for the formulation of an order;
- (8)** "license" includes the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission;
- (9)** "licensing" includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license;
- (10)** "sanction" includes the whole or a part of an agency—
- (A)** prohibition, requirement, limitation, or other condition affecting the freedom of a person;
  - (B)** withholding of relief;
  - (C)** imposition of penalty or fine;
  - (D)** destruction, taking, seizure, or withholding of property;
  - (E)** assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees;
  - (F)** requirement, revocation, or suspension of a license; or
  - (G)** taking other compulsory or restrictive action;
- (11)** "relief" includes the whole or a part of an agency—
- (A)** grant of money, assistance, license, authority, exemption, exception, privilege, or remedy;
  - (B)** recognition of a claim, right, immunity, privilege, exemption, or exception; or
  - (C)** taking of other action on the application or petition of, and beneficial to, a person;
- (12)** "agency proceeding" means an agency process as defined by paragraphs (5), (7), and (9) of this section;
- (13)** "agency action" includes the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act; and
- (14)** "ex parte communication" means an oral or written communication not

on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding covered by this subchapter.

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## Sec. 551. - Definitions

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the courts of the United States;

(C)

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(D)

the government of the District of Columbia;  
or except as to the requirements of section [552](#) of this title -

(E)

agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;

(F)

courts martial and military commissions;

(G)

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military authority exercised in the field in time of war or in occupied territory; or

**(H)**

functions conferred by sections [1738](#), [1739](#), [1743](#), and [1744](#) of title [12](#); chapter [2](#) of title [41](#); subchapter II of chapter [471](#) of title [49](#); or sections 1884, 1891-1902, and former section [1641](#)(b)(2), of title [50](#), appendix;

**(2)**

"person" includes an individual, partnership, corporation, association, or public or private organization other than an agency;

**(3)**

"party" includes a person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in an agency proceeding, and a person or agency admitted by an agency as a party for limited purposes;

**(4)**

"rule" means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing;

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**(A)**

prohibition, requirement, limitation, or other condition affecting the freedom of a person;

**(B)**

withholding of relief;

**(C)**

imposition of penalty or fine;

**(D)**

destruction, taking, seizure, or withholding of property;

**(E)**

assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees;

**(F)**

requirement, revocation, or suspension of a license; or

**(G)**

taking other compulsory or restrictive action;

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**(A)**



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**TITLE 5. GOVERNMENT ORGANIZATION AND EMPLOYEES**

**PART I--THE AGENCIES GENERALLY**

**CHAPTER 5--ADMINISTRATIVE PROCEDURE**

**SUBCHAPTER II--ADMINISTRATIVE PROCEDURE**

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§ 551. Definitions

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## CREDIT(S)

### 1996 Main Volume

(Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 381; Pub.L. 94-409, § 4(b), Sept. 13, 1976, 90 Stat. 1247; Pub.L. 103-272, § 5(a), July 5, 1994, 108 Stat. 1373.)

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[TITLE 5](#) > [PART I](#) > [CHAPTER 5](#) > [SUBCHAPTER II](#) > [§ 552](#)[Prev](#) | [Next](#)**§ 552. Public information; agency rules, opinions, orders, records, and proceedings***How Current is This?***(a)** Each agency shall make available to the public information as follows:**(1)** Each agency shall separately state and currently publish in the Federal Register for the guidance of the public—**(A)** descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;**(B)** statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;**(C)** rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;**(D)** substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and**(E)** each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

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**(2)** Each agency, in accordance with published rules, shall make available for public inspection and copying—

- (A)** final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;
- (B)** those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register;
- (C)** administrative staff manuals and instructions to staff that affect a member of the public;
- (D)** copies of all records, regardless of form or format, which have been released to any person under paragraph (3) and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; and
- (E)** a general index of the records referred to under subparagraph (D);

unless the materials are promptly published and copies offered for sale. For records created on or after November 1, 1996, within one year after such date, each agency shall make such records available, including by computer telecommunications or, if computer telecommunications means have not been established by the agency, by other electronic means. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, staff manual, instruction, or copies of records referred to in subparagraph (D). However, in each case the justification for the deletion shall be explained fully in writing, and the extent of such deletion shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by the exemption in subsection (b) under which the deletion is made. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication. Each agency shall make the index referred to in subparagraph (E) available by computer telecommunications by December 31, 1999. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if—

- (i)** it has been indexed and either made available or published as provided by this paragraph; or
- (ii)** the party has actual and timely notice of the terms thereof.

**(3)**

**(A)** Except with respect to the records made available under paragraphs (1) and (2) of this subsection, and except as provided in subparagraph (E), each agency, upon any request for records which

- (i)** reasonably describes such records and

**(ii)** is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

**(B)** In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format. Each agency shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section.

**(C)** In responding under this paragraph to a request for records, an agency shall make reasonable efforts to search for the records in electronic form or format, except when such efforts would significantly interfere with the operation of the agency's automated information system.

**(D)** For purposes of this paragraph, the term "search" means to review, manually or by automated means, agency records for the purpose of locating those records which are responsive to a request.

**(E)** An agency, or part of an agency, that is an element of the intelligence community (as that term is defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a (4))) shall not make any record available under this paragraph to—

**(i)** any government entity, other than a State, territory, commonwealth, or district of the United States, or any subdivision thereof; or

**(ii)** a representative of a government entity described in clause (i).

**(4)**

**(A)**

**(i)** In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

**(ii)** Such agency regulations shall provide that—

**(I)** fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

**(II)** fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

**(III)** for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

**(iii)** Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if

disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

**(iv)** Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section and for the purposes of withholding any portions exempt from disclosure under this section. Review costs may not include any costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section. No fee may be charged by any agency under this section—

**(I)** if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

**(II)** for any request described in clause (ii) (II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

**(v)** No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed \$250.

**(vi)** Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

**(vii)** In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo: Provided, That the court's review of the matter shall be limited to the record before the agency.

**(B)** On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action. In addition to any other matters to which a court accords substantial weight, a court shall accord substantial weight to an affidavit of an agency concerning the agency's determination as to technical feasibility under paragraph (2)(C) and subsection (b) and reproducibility under paragraph (3)(B).

**(C)** Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

**[(D) Repealed. Pub. L. 98-620, title IV, § 402(2), Nov. 8, 1984, 98 Stat. 3357.]**

**(E)** The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.



**(F)** Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.

**(G)** In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

**(5)** Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

**(6)**

**(A)** Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall—

**(i)** determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and

**(ii)** make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

**(B)**

**(i)** In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days, except as provided in clause (ii) of this subparagraph.

**(ii)** With respect to a request for which a written notice under clause (i) extends the time limits prescribed under clause (i) of subparagraph (A), the agency shall notify the person making the request if the request cannot be processed within the time limit specified in that clause and shall provide the person an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. Refusal by the person to reasonably modify the request or

arrange such an alternative time frame shall be considered as a factor in determining whether exceptional circumstances exist for purposes of subparagraph (C).

**(iii)** As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular requests—

**(I)** the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

**(II)** the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

**(III)** the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

**(iv)** Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for the aggregation of certain requests by the same requestor, or by a group of requestors acting in concert, if the agency reasonably believes that such requests actually constitute a single request, which would otherwise satisfy the unusual circumstances specified in this subparagraph, and the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated.

**(C)**

**(i)** Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

**(ii)** For purposes of this subparagraph, the term "exceptional circumstances" does not include a delay that results from a predictable agency workload of requests under this section, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests.

**(iii)** Refusal by a person to reasonably modify the scope of a request or arrange an alternative time frame for processing a request (or a modified request) under clause (ii) after being given an opportunity to do so by the agency to whom the person made the request shall be considered as a factor in determining whether exceptional circumstances exist for purposes of this subparagraph.

**(D)**

**(i)** Each agency may promulgate regulations, pursuant to notice

and receipt of public comment, providing for multitrack processing of requests for records based on the amount of work or time (or both) involved in processing requests.

**(ii)** Regulations under this subparagraph may provide a person making a request that does not qualify for the fastest multitrack processing an opportunity to limit the scope of the request in order to qualify for faster processing.

**(iii)** This subparagraph shall not be considered to affect the requirement under subparagraph (C) to exercise due diligence.

**(E)**

**(i)** Each agency shall promulgate regulations, pursuant to notice and receipt of public comment, providing for expedited processing of requests for records—

**(I)** in cases in which the person requesting the records demonstrates a compelling need; and

**(II)** in other cases determined by the agency.

**(ii)** Notwithstanding clause (i), regulations under this subparagraph must ensure—

**(I)** that a determination of whether to provide expedited processing shall be made, and notice of the determination shall be provided to the person making the request, within 10 days after the date of the request; and

**(II)** expeditious consideration of administrative appeals of such determinations of whether to provide expedited processing.

**(iii)** An agency shall process as soon as practicable any request for records to which the agency has granted expedited processing under this subparagraph. Agency action to deny or affirm denial of a request for expedited processing pursuant to this subparagraph, and failure by an agency to respond in a timely manner to such a request shall be subject to judicial review under paragraph (4), except that the judicial review shall be based on the record before the agency at the time of the determination.

**(iv)** A district court of the United States shall not have jurisdiction to review an agency denial of expedited processing of a request for records after the agency has provided a complete response to the request.

**(v)** For purposes of this subparagraph, the term “compelling need” means—

**(I)** that a failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

**(II)** with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

**(vi)** A demonstration of a compelling need by a person making a request for expedited processing shall be made by a statement certified by such person to be true and correct to the best of such person’s knowledge and belief.

**(F)** In denying a request for records, in whole or in part, an agency

shall make a reasonable effort to estimate the volume of any requested matter the provision of which is denied, and shall provide any such estimate to the person making the request, unless providing such estimate would harm an interest protected by the exemption in subsection (b) pursuant to which the denial is made.

**(b)** This section does not apply to matters that are—

**(1)**

**(A)** specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and

**(B)** are in fact properly classified pursuant to such Executive order;

**(2)** related solely to the internal personnel rules and practices of an agency;

**(3)** specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute

**(A)** requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

**(B)** establishes particular criteria for withholding or refers to particular types of matters to be withheld;

**(4)** trade secrets and commercial or financial information obtained from a person and privileged or confidential;

**(5)** inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

**(6)** personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

**(7)** records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information

**(A)** could reasonably be expected to interfere with enforcement proceedings,

**(B)** would deprive a person of a right to a fair trial or an impartial adjudication,

**(C)** could reasonably be expected to constitute an unwarranted invasion of personal privacy,

**(D)** could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,

**(E)** would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

**(F)** could reasonably be expected to endanger the life or physical safety of any individual;

**(8)** contained in or related to examination, operating, or condition reports

prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

**(9)** geological and geophysical information and data, including maps, concerning wells.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection. The amount of information deleted shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of the information deleted shall be indicated at the place in the record where such deletion is made.

**(c)**

**(1)** Whenever a request is made which involves access to records described in subsection (b)(7)(A) and—

**(A)** the investigation or proceeding involves a possible violation of criminal law; and

**(B)** there is reason to believe that

**(i)** the subject of the investigation or proceeding is not aware of its pendency, and

**(ii)** disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings,

the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

**(2)** Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

**(3)** Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.

**(d)** This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

**(e)**

**(1)** On or before February 1 of each year, each agency shall submit to the Attorney General of the United States a report which shall cover the preceding fiscal year and which shall include—

**(A)** the number of determinations made by the agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

**(B)**

**(i)** the number of appeals made by persons under subsection (a) (6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information; and

**(ii)** a complete list of all statutes that the agency relies upon to

authorize the agency to withhold information under subsection (b) (3), a description of whether a court has upheld the decision of the agency to withhold information under each such statute, and a concise description of the scope of any information withheld;

**(C)** the number of requests for records pending before the agency as of September 30 of the preceding year, and the median number of days that such requests had been pending before the agency as of that date;

**(D)** the number of requests for records received by the agency and the number of requests which the agency processed;

**(E)** the median number of days taken by the agency to process different types of requests;

**(F)** the total amount of fees collected by the agency for processing requests; and

**(G)** the number of full-time staff of the agency devoted to processing requests for records under this section, and the total amount expended by the agency for processing such requests.

**(2)** Each agency shall make each such report available to the public including by computer telecommunications, or if computer telecommunications means have not been established by the agency, by other electronic means.

**(3)** The Attorney General of the United States shall make each report which has been made available by electronic means available at a single electronic access point. The Attorney General of the United States shall notify the Chairman and ranking minority member of the Committee on Government Reform and Oversight of the House of Representatives and the Chairman and ranking minority member of the Committees on Governmental Affairs and the Judiciary of the Senate, no later than April 1 of the year in which each such report is issued, that such reports are available by electronic means.

**(4)** The Attorney General of the United States, in consultation with the Director of the Office of Management and Budget, shall develop reporting and performance guidelines in connection with reports required by this subsection by October 1, 1997, and may establish additional requirements for such reports as the Attorney General determines may be useful.

**(5)** The Attorney General of the United States shall submit an annual report on or before April 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subparagraphs (E), (F), and (G) of subsection (a)(4). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

**(f)** For purposes of this section, the term—

**(1)** "agency" as defined in section 551 (1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency; and

**(2)** "record" and any other term used in this section in reference to information includes any information that would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format.

**(g)** The head of each agency shall prepare and make publicly available upon request, reference material or a guide for requesting records or information from the agency, subject to the exemptions in subsection (b), including—

- (1)** an index of all major information systems of the agency;
- (2)** a description of major information and record locator systems maintained by the agency; and
- (3)** a handbook for obtaining various types and categories of public information from the agency pursuant to chapter 35 of title 44, and under this section.

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## Sec. 552. - Public information; agency rules, opinions, orders, records, and proceedings

(a)

Each agency shall make available to the public information as follows:

(1)

Each agency shall separately state and currently publish in the Federal Register for the guidance of the public -

(A)

descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B)

statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C)

rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D)

substantive rules of general applicability adopted as authorized by law, and statements of general policy

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or interpretations of general applicability formulated and adopted by the agency; and

**(E)**

each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

**(2)**

Each agency, in accordance with published rules, shall make available for public inspection and copying -

**(A)**

final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

**(B)**

those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register;

**(C)**

administrative staff manuals and instructions to staff that affect a member of the public;

**(D)**

copies of all records, regardless of form or format, which have been released to any person under paragraph (3) and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; and

**(E)**

a general index of the records referred to under subparagraph (D);

unless the materials are promptly published and copies offered for sale. For records created on or after November 1, 1996, within one year after such date, each agency shall make such records available, including by computer telecommunications or, if computer telecommunications means have not been established by the agency, by other electronic means. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, staff manual, instruction, or copies of records referred to in subparagraph (D). However, in each case the justification for the deletion shall be explained fully in writing, and the extent of such deletion shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by the exemption in subsection (b) under which the deletion is made. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication. Each agency shall make the index referred to in subparagraph (E) available by computer telecommunications by December 31, 1999. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if -

(i)

it has been indexed and either made available or published as provided by this paragraph; or

(ii)

the party has actual and timely notice of the terms thereof.

(3)

(A)

Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, upon any request for records which

**(i)**

reasonably describes such records and

**(ii)**

is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

**(B)**

In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format. Each agency shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section.

**(C)**

In responding under this paragraph to a request for records, an agency shall make reasonable efforts to search for the records in electronic form or format, except when such efforts would significantly interfere with the operation of the agency's automated information system.

**(D)**

For purposes of this paragraph, the term "search" means to review, manually or by automated means, agency records for the purpose of locating those records which are responsive to a request.

**(4)**

**(A)**

**(i)**

In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall

be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

**(ii)**

Such agency regulations shall provide that -

**(I)**

fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

**(II)**

fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

**(III)**

for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

**(iii)**

Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

**(iv)**

Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section and for the purposes of withholding any portions exempt from disclosure under this section. Review costs may not include any costs incurred in

resolving issues of law or policy that may be raised in the course of processing a request under this section. No fee may be charged by any agency under this section -

**(I)**

if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

**(II)**

for any request described in clause (ii) (II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

**(v)**

No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed \$250.

**(vi)**

Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

**(vii)**

In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo: Provided, That the court's review of the matter shall be limited to the record before the agency.

**(B)**

On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set

forth in subsection (b) of this section, and the burden is on the agency to sustain its action. In addition to any other matters to which a court accords substantial weight, a court shall accord substantial weight to an affidavit of an agency concerning the agency's determination as to technical feasibility under paragraph (2)(C) and subsection (b) and reproducibility under paragraph (3)(B).

**(C)**

Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

**(D)**

Repealed. [Pub. L. 98-620](#), title IV, Sec. 402(2), Nov. 8, 1984, 98 Stat. 3357.)

**(E)**

The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

**(F)**

Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.

**(G)**

In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

**(5)**

Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

**(6)****(A)**

Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall -

**(i)**

determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and

**(ii)**

make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

**(B)****(i)**

In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the unusual circumstances for such extension and the date on which a determination is expected to be

dispatched. No such notice shall specify a date that would result in an extension for more than ten working days, except as provided in clause (ii) of this subparagraph.

**(ii)**

With respect to a request for which a written notice under clause (i) extends the time limits prescribed under clause (i) of subparagraph (A), the agency shall notify the person making the request if the request cannot be processed within the time limit specified in that clause and shall provide the person an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. Refusal by the person to reasonably modify the request or arrange such an alternative time frame shall be considered as a factor in determining whether exceptional circumstances exist for purposes of subparagraph (C).

**(iii)**

As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular requests -

**(I)**

the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

**(II)**

the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

**(III)**

the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.



**(iv)**

Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for the aggregation of certain requests by the same requestor, or by a group of requestors acting in concert, if the agency reasonably believes that such requests actually constitute a single request, which would otherwise satisfy the unusual circumstances specified in this subparagraph, and the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated.

**(c)****(i)**

Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

**(ii)**

For purposes of this subparagraph, the term "exceptional circumstances" does not include a delay that results from a predictable agency workload of requests under this section, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests.

**(iii)**

Refusal by a person to reasonably modify the scope of a request or arrange an alternative time frame for processing a request (or a modified request) under clause (ii) after being given an opportunity to do so by the agency to whom the person made

the request shall be considered as a factor in determining whether exceptional circumstances exist for purposes of this subparagraph.

**(D)**

**(i)**

Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for multitrack processing of requests for records based on the amount of work or time (or both) involved in processing requests.

**(ii)**

Regulations under this subparagraph may provide a person making a request that does not qualify for the fastest multitrack processing an opportunity to limit the scope of the request in order to qualify for faster processing.

**(iii)**

This subparagraph shall not be considered to affect the requirement under subparagraph (C) to exercise due diligence.

**(E)**

**(i)**

Each agency shall promulgate regulations, pursuant to notice and receipt of public comment, providing for expedited processing of requests for records -

**(I)**

in cases in which the person requesting the records demonstrates a compelling need; and

**(II)**

in other cases determined by the agency.

**(ii)**

Notwithstanding clause (i), regulations under this subparagraph must ensure -

**(I)**

that a determination of whether to provide expedited processing shall be made, and notice

of the determination shall be provided to the person making the request, within 10 days after the date of the request; and

**(II)**

expeditious consideration of administrative appeals of such determinations of whether to provide expedited processing.

**(iii)**

An agency shall process as soon as practicable any request for records to which the agency has granted expedited processing under this subparagraph. Agency action to deny or affirm denial of a request for expedited processing pursuant to this subparagraph, and failure by an agency to respond in a timely manner to such a request shall be subject to judicial review under paragraph (4), except that the judicial review shall be based on the record before the agency at the time of the determination.

**(iv)**

A district court of the United States shall not have jurisdiction to review an agency denial of expedited processing of a request for records after the agency has provided a complete response to the request.

**(v)**

For purposes of this subparagraph, the term "compelling need" means -

**(I)**

that a failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

**(II)**

with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

**(vi)**

A demonstration of a compelling need by a person making a request for expedited processing shall be made by a statement certified by such person to be true and correct to the best of such person's knowledge and belief.

**(F)**

In denying a request for records, in whole or in part, an agency shall make a reasonable effort to estimate the volume of any requested matter the provision of which is denied, and shall provide any such estimate to the person making the request, unless providing such estimate would harm an interest protected by the exemption in subsection (b) pursuant to which the denial is made.

**(b)**

This section does not apply to matters that are -

**(1)**

**(A)**

specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and

**(B)**

are in fact properly classified pursuant to such Executive order;

**(2)**

related solely to the internal personnel rules and practices of an agency;

**(3)**

specifically exempted from disclosure by statute (other than section [552b](#) of this title), provided that such statute

**(A)**

requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

**(B)**

establishes particular criteria for withholding or refers to particular types of matters to be withheld;

**(4)**

trade secrets and commercial or financial information obtained from a person and privileged or confidential;

**(5)**

inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

**(6)**

personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

**(7)**

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information

**(A)**

could reasonably be expected to interfere with enforcement proceedings,

**(B)**

would deprive a person of a right to a fair trial or an impartial adjudication,

**(C)**

could reasonably be expected to constitute an unwarranted invasion of personal privacy,

**(D)**

could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,

**(E)**

would disclose techniques and procedures for law enforcement investigations or prosecutions, or would

disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

**(F)**

could reasonably be expected to endanger the life or physical safety of any individual;

**(8)**

contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

**(9)**

geological and geophysical information and data, including maps, concerning wells.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection. The amount of information deleted shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of the information deleted shall be indicated at the place in the record where such deletion is made.

**(c)****(1)**

Whenever a request is made which involves access to records described in subsection (b)(7)(A) and -

**(A)**

the investigation or proceeding involves a possible violation of criminal law; and

**(B)**

there is reason to believe that

**(i)**

the subject of the investigation or proceeding is not aware of its pendency, and

**(ii)**

disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

**(2)**

Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

**(3)**

Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.

**(d)**

This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

**(e)**

**(1)**

On or before February 1 of each year, each agency shall submit to the Attorney General of the United States a report which shall cover the preceding fiscal year and which shall include -

**(A)**

the number of determinations made by the agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

**(B)**

**(i)**

the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information; and

**(ii)**

a complete list of all statutes that the agency relies upon to authorize the agency to withhold information under subsection (b)(3), a description of whether a court has upheld the decision of the agency to withhold information under each such statute, and a concise description of the scope of any information withheld;

**(C)**

the number of requests for records pending before the agency as of September 30 of the preceding year, and the median number of days that such requests had been pending before the agency as of that date;

**(D)**

the number of requests for records received by the agency and the number of requests which the agency processed;

**(E)**

the median number of days taken by the agency to process different types of requests;

**(F)**

the total amount of fees collected by the agency for processing requests; and

**(G)**

the number of full-time staff of the agency devoted to processing requests for records under this section, and the total amount expended by the agency for processing such requests.

**(2)**

Each agency shall make each such report available to the public including by computer telecommunications, or if computer telecommunications means have not been established by the agency, by other electronic means.

**(3)**



The Attorney General of the United States shall make each report which has been made available by electronic means available at a single electronic access point. The Attorney General of the United States shall notify the Chairman and ranking minority member of the Committee on Government Reform and Oversight of the House of Representatives and the Chairman and ranking minority member of the Committees on Governmental Affairs and the Judiciary of the Senate, no later than April 1 of the year in which each such report is issued, that such reports are available by electronic means.

**(4)**

The Attorney General of the United States, in consultation with the Director of the Office of Management and Budget, shall develop reporting and performance guidelines in connection with reports required by this subsection by October 1, 1997, and may establish additional requirements for such reports as the Attorney General determines may be useful.

**(5)**

The Attorney General of the United States shall submit an annual report on or before April 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subparagraphs (E), (F), and (G) of subsection (a)(4). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

**(f)**

For purposes of this section, the term -

**(1)**

"agency" as defined in section [551](#)(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency; and

**(2)**

"record" and any other term used in this section in reference to information includes any information that

would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format.

**(g)**

The head of each agency shall prepare and make publicly available upon request, reference material or a guide for requesting records or information from the agency, subject to the exemptions in subsection (b), including -

**(1)**

an index of all major information systems of the agency;

**(2)**

a description of major information and record locator systems maintained by the agency; and

**(3)**

a handbook for obtaining various types and categories of public information from the agency pursuant to chapter [35](#) of title [44](#), and under this section

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**TITLE 5. GOVERNMENT ORGANIZATION AND EMPLOYEES**

**PART I--THE AGENCIES GENERALLY**

**CHAPTER 5--ADMINISTRATIVE PROCEDURE**

**SUBCHAPTER II--ADMINISTRATIVE PROCEDURE**

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Current through P.L. 107-11, approved 5-28-01

§ 552a. Records maintained on individuals

**(a) Definitions.**--For purposes of this section--

- (1)** the term "agency" means agency as defined in section 552(e) of this title;
- (2)** the term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;
- (3)** the term "maintain" includes maintain, collect, use, or disseminate;
- (4)** the term "record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;
- (5)** the term "system of records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

**(6)** the term "statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13;

**(7)** the term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected;

**(8)** the term "matching program"--

**(A)** means any computerized comparison of--

**(i)** two or more automated systems of records or a system of records with non-Federal records for the purpose of--

**(I)** establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs, or

**(II)** recouping payments or delinquent debts under such Federal benefit programs, or

**(ii)** two or more automated Federal personnel or payroll systems of records or a system of Federal personnel or payroll records with non-Federal records,

**(B)** but does not include--

**(i)** matches performed to produce aggregate statistical data without any personal identifiers;

**(ii)** matches performed to support any research or statistical project, the specific data of which may not be used to make decisions concerning the rights, benefits, or privileges of specific individuals;

**(iii)** matches performed, by an agency (or component thereof) which performs as its principal function any activity pertaining to the enforcement of criminal laws, subsequent to the initiation of a specific criminal or civil law enforcement investigation of a named person or persons for the purpose of gathering evidence against such person or persons;

**(iv)** matches of tax information (I) pursuant to section 6103(d) of the Internal Revenue Code of 1986, (II) for purposes of tax administration as defined in section 6103(b)(4) of such Code, (III) for the purpose of intercepting a tax refund due an individual under authority granted by section 404(e), 464, or 1137 of the Social Security Act; or (IV) for the purpose of intercepting a tax refund due an individual under any other tax refund intercept program authorized by statute which has been determined by the Director of the Office of Management and Budget to contain verification, notice, and hearing requirements that are substantially similar to the procedures in section 1137 of the Social Security Act;

**(v)** matches--

(I) using records predominantly relating to Federal personnel, that are performed for routine administrative purposes (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)); or

(II) conducted by an agency using only records from systems of records maintained by that agency;

if the purpose of the match is not to take any adverse financial, personnel, disciplinary, or other adverse action against Federal personnel [FN1]

(vi) matches performed for foreign counterintelligence purposes or to produce background checks for security clearances of Federal personnel or Federal contractor personnel;

(vii) matches performed incident to a levy described in section 6103(k)(8) of the Internal Revenue Code of 1986; or

(viii) matches performed pursuant to section 202(x)(3) or 1611(e)(1) of the Social Security Act (42 U.S.C. 402(x)(3), 1382(e)(1));

(9) the term "recipient agency" means any agency, or contractor thereof, receiving records contained in a system of records from a source agency for use in a matching program;

(10) the term "non-Federal agency" means any State or local government, or agency thereof, which receives records contained in a system of records from a source agency for use in a matching program;

(11) the term "source agency" means any agency which discloses records contained in a system of records to be used in a matching program, or any State or local government, or agency thereof, which discloses records to be used in a matching program;

(12) the term "Federal benefit program" means any program administered or funded by the Federal Government, or by any agent or State on behalf of the Federal Government, providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals; and

(13) the term "Federal personnel" means officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals [FN2] entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

**(b) Conditions of disclosure.**--No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be--

(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) required under section 552 of this title;

(3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;

(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(11) pursuant to the order of a court of competent jurisdiction; or

(12) to a consumer reporting agency in accordance with section 3711(e) of title 31.

**(c) Accounting of certain disclosures.**--Each agency, with respect to each system of records under its control, shall--

(1) except for disclosures made under subsections (b)(1) or (b)(2) of this section, keep an accurate accounting of--

(A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and

(B) the name and address of the person or agency to whom the disclosure is made;

(2) retain the accounting made under paragraph (1) of this subsection for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

(3) except for disclosures made under subsection (b)(7) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and

(4) inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

**(d) Access to records.**--Each agency that maintains a system of records shall--

(1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;

(2) permit the individual to request amendment of a record pertaining to him and--

(A) not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and

(B) promptly, either--

(i) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(ii) inform the individual of its refusal to amend the record in accordance with his request, the reason for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official;

(3) permit the individual who disagrees with the refusal of the agency to amend his record to request a review of such refusal, and not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and if, after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency, and notify the individual of the provisions for judicial review of the reviewing official's determination under subsection (g)(1)(A) of this section;

(4) in any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and provide copies of the statement and, if the agency deems it

appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

(5) nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

**(e) Agency requirements.**--Each agency that maintains a system of records shall--

(1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;

(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

(3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual--

(A) the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(B) the principal purpose or purposes for which the information is intended to be used;

(C) the routine uses which may be made of the information, as published pursuant to paragraph (4)(D) of this subsection; and

(D) the effects on him, if any, of not providing all or any part of the requested information;

(4) subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register upon establishment or revision a notice of the existence and character of the system of records, which notice shall include--

(A) the name and location of the system;

(B) the categories of individuals on whom records are maintained in the system;

(C) the categories of records maintained in the system;

(D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;

(E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;



- (F) the title and business address of the agency official who is responsible for the system of records;
- (G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;
- (H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and
- (I) the categories of sources of records in the system;
- (5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;
- (6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;
- (7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;
- (8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;
- (9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;
- (10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained;
- (11) at least 30 days prior to publication of information under paragraph (4)(D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency; and
- (12) if such agency is a recipient agency or a source agency in a matching program with a non-Federal agency, with respect to any establishment or revision of a matching program, at least 30 days prior to conducting such program, publish in the Federal Register notice of such establishment or revision.
- (f) Agency rules.**--In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553

of this title, which shall--

(1) establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;

(2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;

(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him;

(4) establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his rights under this section; and

(5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record.

The Office of the Federal Register shall biennially compile and publish the rules promulgated under this subsection and agency notices published under subsection (e)(4) of this section in a form available to the public at low cost.

**(g)(1) Civil remedies.**--Whenever any agency

(A) makes a determination under subsection (d)(3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;

(B) refuses to comply with an individual request under subsection (d)(1) of this section;

(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual,

the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

(2)(A) In any suit brought under the provisions of subsection (g)(1)(A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court

may direct. In such a case the court shall determine the matter de novo.

**(B)** The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

**(3)(A)** In any suit brought under the provisions of subsection (g)(1)(B) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

**(B)** The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

**(4)** In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of--

**(A)** actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of \$1,000; and

**(B)** the costs of the action together with reasonable attorney fees as determined by the court.

**(5)** An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action by reason of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

**(h) Rights of legal guardians.**--For the purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

**(i)(1) Criminal penalties.**--Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

**(2)** Any officer or employee of any agency who willfully maintains a system of records without meeting the

notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than \$5,000.

**(3)** Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000.

**(j) General exemptions.**--The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) if the system of records is--

**(1)** maintained by the Central Intelligence Agency; or

**(2)** maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

**(k) Specific exemptions.**--The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of this section if the system of records is--

**(1)** subject to the provisions of section 552(b)(1) of this title;

**(2)** investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section: Provided, however, That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

**(3)** maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18;

(4) required by statute to be maintained and used solely as statistical records;

(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

**(l)(1) Archival records.**--Each agency record which is accepted by the Archivist of the United States for storage, processing, and servicing in accordance with section 3103 of title 44 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record and shall be subject to the provisions of this section. The Archivist of the United States shall not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with the provisions of this section.

(2) Each agency record pertaining to an identifiable individual which was transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, prior to the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall not be subject to the provisions of this section, except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (e)(4)(A) through (G) of this section) shall be published in the Federal Register.

(3) Each agency record pertaining to an identifiable individual which is transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be exempt from the requirements of this section except subsections (e)(4)(A) through (G) and (e)(9) of this section.

**(m)(1) Government contractors.**--When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its

authority, cause the requirements of this section to be applied to such system. For purposes of subsection (i) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered to be an employee of an agency.

(2) A consumer reporting agency to which a record is disclosed under section 3711(e) of title 31 shall not be considered a contractor for the purposes of this section.

(n) **Mailing lists.**--An individual's name and address may not be sold or rented by an agency unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

(o) **Matching agreements.**--(1) No record which is contained in a system of records may be disclosed to a recipient agency or non-Federal agency for use in a computer matching program except pursuant to a written agreement between the source agency and the recipient agency or non-Federal agency specifying--

(A) the purpose and legal authority for conducting the program;

(B) the justification for the program and the anticipated results, including a specific estimate of any savings;

(C) a description of the records that will be matched, including each data element that will be used, the approximate number of records that will be matched, and the projected starting and completion dates of the matching program;

(D) procedures for providing individualized notice at the time of application, and notice periodically thereafter as directed by the Data Integrity Board of such agency (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)), to--

(i) applicants for and recipients of financial assistance or payments under Federal benefit programs, and

(ii) applicants for and holders of positions as Federal personnel,

that any information provided by such applicants, recipients, holders, and individuals may be subject to verification through matching programs;

(E) procedures for verifying information produced in such matching program as required by subsection (p);

(F) procedures for the retention and timely destruction of identifiable records created by a recipient agency or non-Federal agency in such matching program;

(G) procedures for ensuring the administrative, technical, and physical security of the records matched and the results of such programs;

(H) prohibitions on duplication and redisclosure of records provided by the source agency within or outside the recipient agency or the non-Federal agency, except where required by law or essential to the conduct of the matching program;

(I) procedures governing the use by a recipient agency or non-Federal agency of records provided in a matching program by a source agency, including procedures governing return of the records to the source agency or destruction of records used in such program;

(J) information on assessments that have been made on the accuracy of the records that will be used in such matching program; and

(K) that the Comptroller General may have access to all records of a recipient agency or a non-Federal agency that the Comptroller General deems necessary in order to monitor or verify compliance with the agreement.

(2)(A) A copy of each agreement entered into pursuant to paragraph (1) shall--

(i) be transmitted to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives; and

(ii) be available upon request to the public.

(B) No such agreement shall be effective until 30 days after the date on which such a copy is transmitted pursuant to subparagraph (A)(i).

(C) Such an agreement shall remain in effect only for such period, not to exceed 18 months, as the Data Integrity Board of the agency determines is appropriate in light of the purposes, and length of time necessary for the conduct, of the matching program.

(D) Within 3 months prior to the expiration of such an agreement pursuant to subparagraph (C), the Data Integrity Board of the agency may, without additional review, renew the matching agreement for a current, ongoing matching program for not more than one additional year if--

(i) such program will be conducted without any change; and

(ii) each party to the agreement certifies to the Board in writing that the program has been conducted in compliance with the agreement.

**(p) Verification and opportunity to contest findings.--**(1) In order to protect any individual whose records are used in a matching program, no recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to such individual, or take other adverse action against such individual, as a result of information produced by such matching program, until--

(A)(i) the agency has independently verified the information; or

(ii) the Data Integrity Board of the agency, or in the case of a non-Federal agency the Data Integrity Board of the source agency, determines in accordance with guidance issued by the Director of the Office of

Management and Budget that--

(I) the information is limited to identification and amount of benefits paid by the source agency under a Federal benefit program; and

(II) there is a high degree of confidence that the information provided to the recipient agency is accurate;

(B) the individual receives a notice from the agency containing a statement of its findings and informing the individual of the opportunity to contest such findings; and

(C)(i) the expiration of any time period established for the program by statute or regulation for the individual to respond to that notice; or

(ii) in the case of a program for which no such period is established, the end of the 30-day period beginning on the date on which notice under subparagraph (B) is mailed or otherwise provided to the individual.

(2) Independent verification referred to in paragraph (1) requires investigation and confirmation of specific information relating to an individual that is used as a basis for an adverse action against the individual, including where applicable investigation and confirmation of--

(A) the amount of any asset or income involved;

(B) whether such individual actually has or had access to such asset or income for such individual's own use; and

(C) the period or periods when the individual actually had such asset or income.

(3) Notwithstanding paragraph (1), an agency may take any appropriate action otherwise prohibited by such paragraph if the agency determines that the public health or public safety may be adversely affected or significantly threatened during any notice period required by such paragraph.

**(q) Sanctions.--(1)** Notwithstanding any other provision of law, no source agency may disclose any record which is contained in a system of records to a recipient agency or non-Federal agency for a matching program if such source agency has reason to believe that the requirements of subsection (p), or any matching agreement entered into pursuant to subsection (o), or both, are not being met by such recipient agency.

(2) No source agency may renew a matching agreement unless--

(A) the recipient agency or non-Federal agency has certified that it has complied with the provisions of that agreement; and

(B) the source agency has no reason to believe that the certification is inaccurate.

**(r) Report on new systems and matching programs.--**Each agency that proposes to establish or make a significant change in a system of records or a matching program shall provide adequate advance notice of any



such proposal (in duplicate) to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget in order to permit an evaluation of the probable or potential effect of such proposal on the privacy or other rights of individuals.

**(s) Biennial report.**--The President shall biennially submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report--

**(1)** describing the actions of the Director of the Office of Management and Budget pursuant to section 6 of the Privacy Act of 1974 during the preceding 2 years;

**(2)** describing the exercise of individual rights of access and amendment under this section during such years;

**(3)** identifying changes in or additions to systems of records;

**(4)** containing such other information concerning administration of this section as may be necessary or useful to the Congress in reviewing the effectiveness of this section in carrying out the purposes of the Privacy Act of 1974.

**(t)(1) Effect of other laws.**--No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section.

**(2)** No agency shall rely on any exemption in this section to withhold from an individual any record which is otherwise accessible to such individual under the provisions of section 552 of this title.

**(u) Data Integrity Boards.**--**(1)** Every agency conducting or participating in a matching program shall establish a Data Integrity Board to oversee and coordinate among the various components of such agency the agency's implementation of this section.

**(2)** Each Data Integrity Board shall consist of senior officials designated by the head of the agency, and shall include any senior official designated by the head of the agency as responsible for implementation of this section, and the inspector general of the agency, if any. The inspector general shall not serve as chairman of the Data Integrity Board.

**(3)** Each Data Integrity Board--

**(A)** shall review, approve, and maintain all written agreements for receipt or disclosure of agency records for matching programs to ensure compliance with subsection (o), and all relevant statutes, regulations, and guidelines;

**(B)** shall review all matching programs in which the agency has participated during the year, either as a source agency or recipient agency, determine compliance with applicable laws, regulations, guidelines, and agency agreements, and assess the costs and benefits of such programs;

**(C)** shall review all recurring matching programs in which the agency has participated during the year, either as a source agency or recipient agency, for continued justification for such disclosures;

**(D)** shall compile an annual report, which shall be submitted to the head of the agency and the Office of Management and Budget and made available to the public on request, describing the matching activities of the agency, including--

**(i)** matching programs in which the agency has participated as a source agency or recipient agency;

**(ii)** matching agreements proposed under subsection (o) that were disapproved by the Board;

**(iii)** any changes in membership or structure of the Board in the preceding year;

**(iv)** the reasons for any waiver of the requirement in paragraph (4) of this section for completion and submission of a cost-benefit analysis prior to the approval of a matching program;

**(v)** any violations of matching agreements that have been alleged or identified and any corrective action taken; and

**(vi)** any other information required by the Director of the Office of Management and Budget to be included in such report;

**(E)** shall serve as a clearinghouse for receiving and providing information on the accuracy, completeness, and reliability of records used in matching programs;

**(F)** shall provide interpretation and guidance to agency components and personnel on the requirements of this section for matching programs;

**(G)** shall review agency recordkeeping and disposal policies and practices for matching programs to assure compliance with this section; and

**(H)** may review and report on any agency matching activities that are not matching programs.

**(4)(A)** Except as provided in subparagraphs (B) and (C), a Data Integrity Board shall not approve any written agreement for a matching program unless the agency has completed and submitted to such Board a cost-benefit analysis of the proposed program and such analysis demonstrates that the program is likely to be cost effective. [FN3]

**(B)** The Board may waive the requirements of subparagraph (A) of this paragraph if it determines in writing, in accordance with guidelines prescribed by the Director of the Office of Management and Budget, that a cost-benefit analysis is not required.

**(C)** A cost-benefit analysis shall not be required under subparagraph (A) prior to the initial approval of a written agreement for a matching program that is specifically required by statute. Any subsequent written

agreement for such a program shall not be approved by the Data Integrity Board unless the agency has submitted a cost-benefit analysis of the program as conducted under the preceding approval of such agreement.

**(5)(A)** If a matching agreement is disapproved by a Data Integrity Board, any party to such agreement may appeal the disapproval to the Director of the Office of Management and Budget. Timely notice of the filing of such an appeal shall be provided by the Director of the Office of Management and Budget to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives.

**(B)** The Director of the Office of Management and Budget may approve a matching agreement notwithstanding the disapproval of a Data Integrity Board if the Director determines that--

**(i)** the matching program will be consistent with all applicable legal, regulatory, and policy requirements;

**(ii)** there is adequate evidence that the matching agreement will be cost- effective; and

**(iii)** the matching program is in the public interest.

**(C)** The decision of the Director to approve a matching agreement shall not take effect until 30 days after it is reported to committees described in subparagraph (A).

**(D)** If the Data Integrity Board and the Director of the Office of Management and Budget disapprove a matching program proposed by the inspector general of an agency, the inspector general may report the disapproval to the head of the agency and to the Congress.

**(6)** In the reports required by paragraphs (3)(D), agency matching activities that are not matching programs may be reported on an aggregate basis, if and to the extent necessary to protect ongoing law enforcement or counterintelligence investigations.

**[(7) Redesignated (6)]**

**(v) Office of Management and Budget responsibilities.**--The Director of the Office of Management and Budget shall--

**(1)** develop and, after notice and opportunity for public comment, prescribe guidelines and regulations for the use of agencies in implementing the provisions of this section; and

**(2)** provide continuing assistance to and oversight of the implementation of this section by agencies.

CREDIT(S)

1996 Main Volume

(Added Pub.L. 93-579, § 3, Dec. 31, 1974, 88 Stat. 1897, and amended Pub.L. 94- 183, § 2(2), Dec. 31, 1975,

89 Stat. 1057; Pub.L. 97-365, § 2, Oct. 25, 1982, 96 Stat. 1749; Pub.L. 97-375, Title II, § 201(a), (b), Dec. 21, 1982, 96 Stat. 1821; Pub.L. 97-452, § 2(a)(1), Jan. 12, 1983, 96 Stat. 2478; Pub.L. 98-477, § 2(c), Oct. 15, 1984, 98 Stat. 2211; Pub.L. 98-497, Title I, § 107(g), Oct. 19, 1984, 98 Stat. 2292; Pub.L. 100-503, §§ 2 to 6(a), 7, 8, Oct. 18, 1988, 102 Stat. 2507 to 2514; Pub.L. 101-508, Title VII, § 7201(b)(1), Nov. 5, 1990, 104 Stat. 1388-334; Pub.L. 103-66, Title XIII, § 13581(c), Aug. 10, 1993, 107 Stat. 611.)

### 2001 Electronic Update

(As amended Pub.L. 104-193, Title I, § 110(w), Aug. 22, 1996, 110 Stat. 2175; Pub.L. 104-226, § 1(b)(3), Oct. 2, 1996, 110 Stat. 3033; Pub.L. 104-316, Title I, § 115(g)(2)(B), Oct. 19, 1996, 110 Stat. 3835; Pub.L. 105-34, Title X, § 1026(b)(2), Aug. 5, 1997, 111 Stat. 925; Pub.L. 105-362, Title XIII, § 1301(d), Nov. 10, 1998, 112 Stat. 3293; Pub.L. 106-170, Title IV, § 402(a)(2),

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[Revised as of July 1, 2001]  
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TITLE 31--MONEY AND FINANCE: TREASURY

PART 1--DISCLOSURE OF RECORDS--Table of Contents

Subpart A--Freedom of Information Act

Sec. 1.3 Publication in the Federal Register.

(a) Requirement. Subject to the application of the exemptions and exclusions in 5 U.S.C. 552(b) and (c) and subject to the limitations provided in 5 U.S.C. 552(a)(1), each Treasury bureau shall, in conformance with 5 U.S.C. 552(a)(1), separately state, publish and maintain current in the Federal Register for the guidance of the public the following information with respect to that bureau:

(1) Descriptions of its central and field organization and the established places at which, the persons from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(2) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(3) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the bureau; and

(5) Each amendment, revision, or repeal of matters referred to in paragraphs (a)(1) through (4) of this section.

(b) The United States Government Manual. The functions of each bureau are summarized in the description of the Department and its bureaus in the

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United States Government Manual, which is issued annually by the Office of the Federal Register.



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**Sec. 601.702 Publication and public inspection.**

## (a) Publication in the Federal Register.

## (1) Requirement.

Subject to the application of the exemptions described in paragraph (b)(1) of Sec. 601.701 and subject to the limitations provided in subparagraph (2) of this paragraph, the Internal Revenue Service is required under 5 U.S.C. 552(a)(1) to separately state and currently publish in the Federal Register for the guidance of the public the following information:

(i) Descriptions of its central and field organization and the established places at which, the persons from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions, from the Service;

(ii) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures which are available;

(iii) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(iv) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Service; and

(v) Each amendment, revision, or repeal of matters referred to in subdivisions (i) through (iv) of this subparagraph. Pursuant to the foregoing requirements, the Commissioner publishes in the Federal Register from time to time a statement, which is not codified in this chapter, on the organization and functions of the Internal Revenue Service, and such amendments as are needed to keep the statement on a current basis. In addition, there are published in the Federal Register the rules set forth in this part (Statement of Procedural Rules), such as those in Subpart E of this part, relating to conference and practice requirements of the Internal Revenue Service; the regulations in Part 301 of this chapter (Procedure and Administration Regulations); and the various substantive regulations under the Internal Revenue Code of 1986, such as the regulations in Part 1 of this chapter (Income Tax Regulations), in Part 20 of this chapter (Estate Tax

Regulations) and, in Part 31 of this chapter (Employment Tax Regulations).

(2) Limitations - (i) Incorporation by reference in the Federal Register. Matter which is reasonably available to the class of persons affected thereby, whether in a private or public publication, will be deemed published in the Federal Register for purposes of subparagraph (1) of this paragraph when it is incorporated by reference therein with the approval of the Director of the Federal Register. The matter which is incorporated by reference must be set forth in the private or public publication substantially in its entirety and not merely summarized or printed as a synopsis. Matter, the location and scope of which are familiar to only a few persons having a special working knowledge of the activities of the Internal Revenue Service, may not be incorporated in the Federal Register by reference. Matter may be incorporated by reference in the Federal Register only pursuant to the provisions of 5 U.S.C. 552(a)(1) and 1 CFR Part 20.

(ii) Effect of failure to publish. Except to the extent that a person has actual and timely notice of the terms of any matter referred to in subparagraph (1) of this paragraph which is required to be published in the Federal Register, such person is not required in any manner to resort to, or be adversely affected by, such matter if it is not so published or is not incorporated by reference therein pursuant to subdivision (i) of this subparagraph. Thus, for example, any such matter which imposes an obligation and which is not so published or incorporated by reference will not adversely change or affect a person's rights.

(b) Public inspection and copying - (1) In general. Subject to the application of the exemptions described in paragraph (b)(1) of Sec. 601.701, the Internal Revenue Service is required under 5 U.S.C. 552(a)(2) to make available for public inspection and copying or, in the alternative, to promptly publish and offer for sale the following information:

(i) Final opinions, including concurring and dissenting opinions, and orders, if such opinions and orders are made in the adjudication of cases;

(ii) Those statements of policy and interpretations which have been adopted by the Internal Revenue Service but are not published in the Federal Register; and

(iii) Its administrative staff manuals and instructions to staff that affect a member of the public. The Internal Revenue Service is also required by 5 U.S.C. 552(a)(2) to maintain and make available for public inspection and copying current indexes identifying any matter described in (b)(1) (i) through (iii) of this paragraph which is issued, adopted, or promulgated after July 4, 1967, and which is required to be made available for public inspection or published. In addition, the Internal Revenue Service will also promptly

publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the Internal Revenue Service will nonetheless provide copies of such indexes on request at a cost not to exceed the direct cost of duplication. No matter described in (b)(1) (i) through (iii) of this paragraph which is required by this section to be made available for public inspection or published may be relied upon, used, or cited as precedent by the Internal Revenue Service against a party other than an agency unless such party has actual and timely notice of the terms of such matter or unless the matter has been indexed and either made available for inspection or published, as provided by this subparagraph. This subparagraph applies only to matters which have precedential significance. It does not apply, for example, to any ruling or advisory interpretation issued to a taxpayer on a particular transaction or set of facts which applies only to that transaction or set of facts. Rulings, determination letters, and technical advice memorandums are open to public inspection and copying pursuant to section 6110 of the Code and not pursuant to 5 U.S.C. 552. This subparagraph does not apply to matters which have been made available pursuant to paragraph (a) of this section.

(2) Deletion of identifying details. To prevent a clearly unwarranted invasion of personal privacy, the Internal Revenue Service will, in accordance with 5 U.S.C. 552(a)(2), delete identifying details contained in any matter described in subparagraphs (1) (i) through (iii) of this paragraph before making such matter available for inspection or publishing it. However, in every case where identifying details are so deleted, the justification for the deletion must be explained in writing. The written justification for deletion will be placed as a preamble to the document from which the identifying details have been deleted, except in the case of any matter which is published in the Internal Revenue Bulletin. An introductory statement will be placed in each Internal Revenue Bulletin providing that identifying details, including the names and addresses of persons involved, and information of a confidential nature are deleted to prevent unwarranted invasions of personal privacy and to comply with statutory provisions, such as section 6103 of the Internal Revenue Code.

(3) Public reading rooms - (i) In general. The National Office and each regional office of the Internal Revenue Service will provide a reading room or reading area where the matters described in paragraphs (b)(1) (i) through (iii) of this section which are required by such paragraph to be made available for public inspection or published, and the current indexes to such matters, will be made available to the public for inspection and copying. Indexes of such materials issued by offices other than the National Office will be maintained in the reading room

of the region of issuance as well as in the National Office reading room, but the material itself will be available only in the regional reading room. Copies of materials described in paragraph (b)(1) (i) through (iii) of this section which are controlled by officers in the National Office (see paragraph (g) of this section) will not be made available in regional office reading rooms. The reading rooms will contain other matters determined to be helpful for the guidance of the public, including a complete set of rules and regulations (except those pertaining to alcohol, tobacco, firearms, and explosives) contained in this title, any Internal Revenue matters which may be incorporated by reference in the Federal Register (but not a copy of the Federal Register so doing) pursuant to paragraph (a)(2)(i) of this section, a set of Cumulative Bulletins, and copies of various Internal Revenue Service publications, such as the description of forms or publications contained in Publication No. 676. Fees will be charged for copying materials in the reading rooms as provided in paragraph (f) of this section. The public will not be allowed to remove any record from a reading room.

(ii) Addresses of public reading rooms. The addresses of the reading rooms are as follows:

#### NATIONAL OFFICE

Mailing address: Freedom of Information Reading Room, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

Location: Same as mailing address.

#### NORTH ATLANTIC REGION

Mailing address: Freedom of Information Reading Room, Internal Revenue Service, 120 Church Street, 11th Floor, New York, NY 10007.

Location: Same as mailing address.

#### MID-ATLANTIC REGION

Mailing address: Freedom of Information Reading Room, Internal Revenue Service, 600 Arch Street, Philadelphia, PA 19105.

Location: Same as mailing address.

#### SOUTHEAST REGION

Mailing address: Freedom of Information Reading Room, Internal Revenue Service, 275 Peachtree

Street, NE., Room 342, Atlanta, GA 30043.

Location: Same as mailing address.

#### MIDWEST REGION

Mailing address: Freedom of Information Reading Room, Internal Revenue Service, 230 Dearborn Street, Room 1980, Chicago, IL 60604.

Location: Same as mailing address.

#### CENTRAL REGION

Mailing address: Freedom of Information Reading Room, Internal Revenue Service, 201 W. Fourth Street, Covington, KY 41019.

Location: Same as mailing address.

#### SOUTHWEST REGION

Mailing address: Freedom of Information Reading Room, Internal Revenue Service, 1100 Commerce Street, Room 11B15, Dallas, TX 75242.

Location: Same as mailing address.

#### WESTERN REGION

Mailing address: Freedom of Information Reading Room, Internal Revenue Service, 450 Golden Gate Avenue, Room 2307, San Francisco, CA 94102.

Location: Same as mailing address.

(iii) Copying facilities. The National Office and each regional office will provide facilities whereby a person may obtain copies of material located on the shelves of the reading rooms. (For schedule of fees for copying see paragraph (f)(5)(iii) of this section.)

(iv) Inability to use public reading rooms. If persons are unable or unwilling to visit a reading room in person but wish to inspect identifiable reading room material, they may request permission to inspect such material at any office of the Internal Revenue Service. To the extent that requested material is available for inspection at the reading rooms and is also readily available for inspection at the office where the request is made, such material will promptly be made available for inspection at such office to the person making the request for inspection and, where facilities are available, for copying

in accordance with the schedule of fees prescribed by subdivision (iii) of this subparagraph. Copies of the requested material may also be mailed to such person by such office upon request. If the requested reading room material is not readily available for inspection at the office where the request is made, then the request will be referred by such office to one of the reading rooms of the Internal Revenue Service.

(c) Specific requests for other records - (1) In general. Subject to the application of the exemptions described in paragraph (b)(1) of Sec. 601.701, the Internal Revenue Service will, in conformance with 5 U.S.C. 552(a)(3), make reasonably described records available to a person making a request for such records which conforms in every respect with the rules and procedures set forth in this subpart. This paragraph applies only to records in being which are in the possession or control of the Internal Revenue Service.

(2) Requests for records not in control of the Internal Revenue Service. (i) Where the request is for a record which is determined to be in the possession or under the control of a constituent unit of the Department of the Treasury other than the Internal Revenue Service the request for such record will immediately be transferred to the appropriate constituent unit and the requester notified to that effect. Such referral will not be deemed a denial of access within the meaning of these regulations. The constituent unit of the Department to which such referral is made will treat such request as a new request addressed to it and the time limits for response set forth in 31 CFR Part 1.5 (g), (h), and (i) (relating to disclosure of Treasury Department records) shall commence when the referral is received by the designated office or officer of the constituent unit. Where the request is for a record which is determined not to be in the possession or control of any constituent unit of the Department of the Treasury, the requester will be so advised and the request will be returned to the requester.

(ii) Where the record requested was created by another agency or Department of the Treasury constituent unit (i.e., in its control) and a copy thereof is in the possession of the Internal Revenue Service, the Internal Revenue Service official to whom the request is delivered shall refer the request to the agency or constituent unit which originated the record for direct reply to the requester. The requester shall be informed of such referral. This referral shall not be considered a denial of access within the meaning of these regulations. However, where the record is determined to be exempt from disclosure under 5 U.S.C. 552, the referral need not be made, but the Internal Revenue Service shall inform the originating agency or constituent unit of its determination. Where notifying the requester of its referral may cause a harm to the originating agency or constituent unit which would enable the originating agency or constituent unit to withhold the record under 5 U.S.C. 552, then such referral need not be made. In both

of these circumstances, the Internal Revenue Service official to whom the request is delivered shall process the request in accordance with the procedures set forth in this subpart.

(iii) When a request is received for a record created by the Internal Revenue Service (i.e., in its possession and control) that includes information originated by another agency or Department of the Treasury constituent unit, the record shall be referred to the originating agency or constituent unit for review, coordination, and concurrence. The Internal Revenue Service official to whom the request is delivered shall not issue its determination with respect to that record without prior consultation with the originating agency or constituent unit.

(3) Form of request. The initial request for records must -

(i) Be made in writing and signed by the person making the request,

(ii) State that it is made pursuant to the Freedom of Information Act, 5 U.S.C. 552, or regulations thereunder,

(iii) Be addressed to and mailed or hand delivered to the office of the Internal Revenue Service official who is responsible for the control of the records requested (see paragraph (g) of this section for the responsible officials and their addresses), regardless of where such records are maintained; if the person making the request does not know the official responsible for the control of the records being requested, the request should be addressed to and mailed or hand delivered to the office of the director of the Internal Revenue Service district office in the district where the requester resides.

(iv) Reasonably describe the records in accordance with subparagraph (4)(i) of this paragraph,

(v) In the case of a request for records the disclosure of which is limited by statute or regulations (as, for example, the Privacy Act (5 U.S.C. 552a), section 6103 of the Internal Revenue Code of 1986, or regulations thereunder), establish the identity and the right of the person making the request to the disclosure of the records in accordance with paragraph (c)(4)(ii) of this section,

(vi) Set forth the address where the person making the request desires to be notified of the determination as to whether the request will be granted,

(vii) State whether the requester wishes to inspect the records or desires to have a copy

made and furnished without first inspecting them,

(viii) State the firm agreement of the requester to pay the fees for search and duplication ultimately determined in accordance with paragraph (f) of this section, or request that such fees be reduced or waived and state the justification for such request, and

(ix) Identify the category of the requester and state how the records will be used, as required by paragraph (f)(3) of this section. Where the initial requests, rather than stating a firm agreement to pay the fees ultimately determined in accordance with paragraph (f) of this section, place an upper limit on the amount the requesters agree to pay, which upper limit is deemed likely to be lower than the fees estimated to ultimately be due, or where the requesters ask for an estimate of the fees to be charged, the requesters shall be promptly advised of the estimate of fees and asked to agree to pay such amount. Where the initial requests include a request for reduction or waiver of fees, the Internal Revenue Service officials responsible for the control of the requested records (or their delegates) will determine whether to grant the requests for reduction or waiver in accordance with paragraph (f) of this section and notify the requesters of their decisions and, if their decisions result in the requesters being liable for all or part of the fees normally due, ask the requesters to agree to pay the amounts so determined. The requirements of this subparagraph will not be deemed met until the requesters have explicitly agreed to pay the fees applicable to their requests for records, if any, or have made payment in advance of the fees estimated to be due. In addition, requesters are advised that only requests for records which fully comply with the requirements of this subparagraph can be processed in accordance with this section. Requesters will be promptly notified in writing of any requirements which have not been met or any additional requirements to be met. However, every effort will be made to comply with the requests as written.

(4) Reasonable description of records; identity and right of the requester. (i)(A) The request for records must describe the records in reasonably sufficient detail to enable the Internal Revenue Service employees who are familiar with the subject area of the request to locate the records without placing an unreasonable burden upon the Internal Revenue Service. While no specific formula for a reasonable description of a record can be established, the requirement will generally be satisfied if the requester gives the name, subject matter, location, and years at issue, of the requested records. If the request seeks records pertaining to pending litigation, the request should indicate the title of the case, the court in which the case was filed, and the nature of the case. However, it is suggested that the person making the request furnish any additional information which will more clearly identify the requested records. Where the requester does



not reasonably describe the records being sought, the requester shall be afforded an opportunity to refine the request. Such opportunity may, where desirable, involve a conference with knowledgeable Internal Revenue Service personnel. The reasonable description requirement will not be used by officers or employees of the Internal Revenue as a device for improperly withholding records from the public.

(B) The Internal Revenue Service will make every reasonable effort to comply fully with all requests for access to records subject only to any applicable exemption set forth in Sec. 601.701(b)(1). However, in any situation in which it is determined that a request for voluminous records would unduly burden and interfere with the operations of the Internal Revenue Service, the person making the request will be asked to be more specific and to narrow the request, and to agree on an orderly procedure for the production of the requested records, in order to satisfy the request without disproportionate adverse effects on Internal Revenue Service operations.

(ii) In the case of records containing information with respect to particular persons the disclosure of which is limited by statute or regulations, persons making requests shall establish their identity and right to access to such records. Persons requesting access to such records which pertain to themselves may establish their identity by -

(A) The presentation of a single document bearing a photograph (such as a passport or identification badge), or the presentation of two items of identification which do not bear a photograph but do bear both a name and signature (such as a driver's license or credit card), in the case of a request made in person,

(B) The submission of the requester's signature, address, and one other identifier (such as a photocopy of a driver's license) bearing the requester's signature, in the case of a request by mail, or

(C) The presentation in person or the submission by mail of a notarized statement swearing to or affirming such person's identity. Additional proof of persons' identity shall be required before the requests will be deemed to have met the requirement of paragraph (c)(3)(v) of this section if it is determined that additional proof is necessary to protect against unauthorized disclosure of information in a particular case. Persons who have identified themselves to the satisfaction of Internal Revenue Service officials pursuant to this subdivision shall

be deemed to have established their right to access records pertaining to themselves. Persons requesting records on behalf of or pertaining to another person must provide adequate proof of the legal relationship under which they assert the right to access the requested records before the requirement of paragraph (c)(3)(v) of this section will be deemed met. In the case of an attorney-in-fact, the requester shall furnish an original of a properly executed power of attorney together with one other identifier bearing the signature of the person executing such power of attorney. In the case of a corporation, if the requester has the authority to legally bind the corporation under applicable state law, such as its president or chief executive officer, then a written statement that the person making the request on behalf of the corporation, on corporate letterhead, shall be sufficient. If the requester is an officer or an employee of a corporation, then such person shall furnish a certification by one of the corporation's officers (other than the requester) that the person making the request on behalf of the corporation is properly authorized to make such request. If the requester is other than one of the above, then such person shall furnish a resolution by the corporation's board of directors providing that the person making the request on behalf of the corporation is properly authorized to make such a request. A person requesting access to records of a one-man corporation or a partnership shall provide a notarized statement that the requester is in fact an officer or official of the corporation or a member of the partnership.

(5) Date of receipt of request. Requests for records and any separate agreement to pay, final notification of waiver of fees, or letter transmitting prepayment shall be promptly stamped with the date of delivery to or dispatch by the office of the Internal Revenue Service officials responsible for the control of the records requested (or their delegates). The latest of such stamped dates will be deemed for purposes of this section to be the date of receipt of the request, provided that the requirements of paragraph (c)(3) (i) through (vii) of this paragraph have been satisfied, and, where applicable -

- (i) The requester has agreed in writing, by executing a separate contract or otherwise, to pay the fees for search, duplication, and review determined due in accordance with paragraph (f) of this section, or
- (ii) The fees have been waived in accordance with paragraph (f) of this section, or
- (iii) Payment in advance has been received from the requester. As soon as the date of

receipt has been established as provided above, the requester shall be informed and advised when a response may be expected within the time limits specified in paragraphs (c) (7) and (8) of this section, unless extended as provided in paragraph (9) of this section, and the title of the officer responsible for such response.

(6) Search for records requested. Upon the receipt of a request, search services will be performed by Internal Revenue Service personnel to identify and locate the requested records. Search time includes any and all time spent looking for material responsive to the request, including page-by-page or line-by-line identification of material within records. However, where duplication of an entire record would be less costly than a line-by-line identification, duplication should be substituted for this kind of search. With respect to records maintained in computerized form a search will include services functionally analogous to search for records which are maintained in a conventional form. However, the Internal Revenue Service is not required under 5 U.S.C. 552 to tabulate or compile information for the purpose of creating a record.

(7) Initial determination - (i) In general. The Director of the Office of Disclosure or his/her delegate shall have the authority to make initial determinations with respect to all requests for records of the Internal Revenue Service. With the exception of records which are controlled by the Assistant Commissioner (Inspection), the Director of the Internal Revenue Service Data Center, the Assistant Commissioner (International), or the Director of Practice, the Director of the Office of Disclosure or his/her delegate shall have the sole authority to make such determinations with respect to records controlled by the National Office. Except where the Director of the Office of Disclosure or his/her delegate has such sole authority, the initial determination as to whether to grant the request for records may be made either by the Director of the Office of Disclosure or by the Internal Revenue Service officials responsible for the control of the records requested or their delegates (see paragraph (g) of this section), including those officials mentioned in the preceding sentence. The initial determination will be made and notification thereof mailed within 10 days (excepting Saturdays, Sundays, and legal public holidays) after the date of receipt of the request, as determined in accordance with paragraph (c)(5) of this section or the requester otherwise agrees to an extension of the 10-day time limitation.

(ii) Granting of request. If it is determined that the request is to be granted, and if the person making the request desires a copy of the requested records, a statement of fees, if any, in accordance with paragraph (f) of this section, will be mailed to the requester, requesting such payment prior to release of the records determined to be available. Upon receipt of such fees, the Internal Revenue Service official responsible for the

control of the records (or his/her delegate) will promptly mail such copies to the requester, with any explanation of the deletions or withholdings, as applicable. However, if no fees are due, then a copy of the available records will be promptly mailed to the requester. In the case of a request for inspection the requester will be notified in writing of the determination, when and where the requested records may be inspected and of the fees involved in complying with the request. Any fees involved in complying with the request for inspection of records shall be submitted prior to making the records available for inspection. The records will promptly be made available for inspection, at the time and place stated, normally at the appropriate office where the records requested are controlled. However, if the person making the request has expressed a desire to inspect the records at another office of the Internal Revenue Service, every reasonable effort will be made to comply with the request. Records will be made available for inspection at such reasonable and proper times as not to interfere with their use by the Internal Revenue Service or to exclude other persons from making inspections. In addition, reasonable limitations may be placed on the number of records which may be inspected by a person on any given date. The person making the request will not be allowed to remove the records from the office where inspection is made. If, after making inspection, the person making the request desires copies of all or a portion of the requested records, copies will be furnished upon payment of the established fees prescribed by paragraph (f) of this section.

(iii) Denial of request. If it is determined that the request for records should be denied (whether in whole or in part or subject to conditions or exceptions), the person making the request will be so notified by mail. The letter of notification will specify the city or other location where the requested records are situated, contain a brief statement of the grounds for not granting the request in full, set forth the name and title or position of the official responsible for the denial, and advise the person making the request of the right to appeal to the Commissioner in accordance with paragraph (c)(8) of this section.

(iv) Inability to locate and evaluate within time limits. Where the records requested cannot be located and evaluated within the initial 10-day period or any extension thereof in accordance with paragraph (c)(9) of this section, the search for the records or evaluation will continue, but the requesters will be so notified, advised that they may consider such notification a denial of their requests for records, and provided with the address to which an administrative appeal may be delivered. However, the requesters may also be invited, in the alternative, to agree to a voluntary extension of time in which to locate and evaluate the records. Such voluntary extension of time will not constitute a

waiver of the requesters' right to appeal any denial of access ultimately made or their right to appeal in the event of failure to comply with the time extension granted.

(8) Administrative appeal. The requester may submit an administrative appeal to the Commissioner at any time within 35 days after the date of any notification described in paragraph (c)(7) (iii) or (iv) of this section or after receipt of an adverse determination of the requester's category described in paragraph (f)(3) of this section, or the date of the letter transmitting the last records released, whichever is later. The letter of appeal shall -

(i) Be made in writing and signed by the requester,

(ii) Be addressed and mailed to the Office of the Commissioner of Internal Revenue: to expedite delivery, requests made by mail should be addressed to - Freedom of Information Appeal, Commissioner of Internal Revenue,

c/o Ben Franklin Station, P.O. Box 929, Washington, DC 20044, or if hand delivered, delivery should be made to the Office of the Director, Disclosure Litigation Division, Chief Counsel, National Office of the Internal Revenue Service, 1111 Constitution Avenue, Washington, DC 20224.

(iii) Reasonably describe the records requested to which the appeal pertains in accordance with paragraph (c)(4)(i) of this paragraph,

(iv) Set forth the address where the appellant desires to be notified of the determination on appeal,

(v) Specify the date of the request, and the office to which the request was submitted and, where possible, enclose a copy of the initial request and the initial determination being appealed, and

(vi) Petition the Commissioner to grant the request for records and state any arguments in support thereof. Appeals will be promptly stamped with the date of their delivery to the Office of the Director, Disclosure Litigation Division, and the later of this stamped date or the stamped date of a document submitted subsequently which supplements the original appeal so that the appeal satisfies the requirements set forth in paragraphs (c)(8) (i) through (vi) of this section will be deemed by the Internal Revenue Service to be the date of their receipt for all purposes of this section. The Commissioner or his/her delegate will acknowledge receipt of the appeal and advise the requester of the date of receipt and when a response is due in accordance with this paragraph. If an appeal fails to satisfy any of such requirements the person making the request will be promptly advised in writing of the additional requirements to be met. The determination to affirm

the initial denial (in whole or in part) or to grant the request for records will be made and notification of the determination mailed within 20 days (exclusive of Saturdays, Sundays, and legal public holidays) after the date of receipt of the appeal unless extended pursuant to paragraph (c)(9)(i) of this section. If it is determined that the appeal from the initial denial is to be denied (in whole or in part), the requester will be notified in writing of the denial, the reasons therefor, of the name and title or position of the official responsible for the denial on appeal, and of the provisions of 5 U.S.C. 552(a)(4) for judicial review of that determination. If a determination cannot be made within the 20-day period (or extension thereof pursuant to paragraph (c)(9)(i) of this section or by grant of the requester) the requester shall be promptly notified in writing that the determination will be made as soon as practicable but that the requester is nonetheless entitled to commence an action in a district court as provided in paragraph (c)(11) of this section. However, the requester may also be invited, in the alternative, to agree to a voluntary extension of time in which to decide the appeal. Such voluntary extension shall not constitute a waiver of the right of the requester ultimately to commence an action in a United States district court.

(9) Time extensions - (i) 10-day extension. In unusual circumstances, the time limitations specified in paragraphs (7) and (8) of this section may be extended by written notice from the official charged with the duty of making the determination to the person making the request or appeal setting forth the reasons for such extension and the date on which the determination is expected to be dispatched. Any such extension or extensions of time provided by statute shall not cumulatively total more than 10 working days. If an extension pursuant to this subparagraph is invoked in connection with an initial determination any unused days of the extension may be invoked in connection with the determination on administrative appeal by written notice from the official who is to make the appellate determination to the requester. If no extension is sought for the initial determination, the 10-day extension may be added to the ordinary 20-day period for appellate review. As used in this paragraph, 'unusual circumstances' means, but only to the extent reasonably necessary to the proper processing of the particular request, the following:

(A) The need to search for and collect the requested records from field facilities or other establishments in buildings that are separate from that of the office processing the request,

(B) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request, or related requests, or

(C) The need for consultation, which will be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or with another constituent unit of the Department of the Treasury or among two or more components of the Internal Revenue Service (other than the Disclosure Litigation Division of the Office of the Chief Counsel or the Office of Disclosure) having substantial subject-matter interest therein. Consultations with personnel of the Department of Justice, acting in their capacity as legal counsel to the executive departments with respect to requests for records under 5 U.S.C. 552, do not constitute a basis for an extension under this paragraph (c)(9)(i)(C).

(ii) Extension by judicial review. If the Internal Revenue Service fails to comply with the time limitations specified in paragraph (c) (7) or (8) of this section and the person making the request initiates a suit in accordance with paragraph (c)(11) of this section, the court in which the suit was initiated may retain jurisdiction and allow the Internal Revenue Service additional time to review its records, provided that the Internal Revenue Service demonstrates (A) the existence of exceptional circumstances, and (B) the exercise of due diligence in responding to the request.

(10) Failure to comply. If the Internal Revenue Service fails to comply with the time limitations specified in paragraphs (c) (7), (8), or (9)(i) of this section, any persons making requests for records satisfying the requirements of subdivisions (i) through (ix) of paragraph (c)(3) of this section, shall be deemed to have exhausted their administrative remedies with respect to such requests. Accordingly, these persons may initiate suit in accordance with paragraph (c)(11) of this section.

(11) Judicial review. If a request for records is denied upon appeal pursuant to paragraph (c)(8) of this section, or if no determination is made within the 10-day or 20-day periods specified in paragraphs (c) (7) and (8) of this section, or the period of any extension pursuant to paragraph (c)(9)(i) of this section, or by grant of the requester, respectively, the person making the request may commence an action in a U.S. district court in the district in which the requester resides, in which the requester's principal place of business is located, in which the records are situated, or in the District of Columbia, pursuant to 5 U.S.C. 552(a)(4)(B). The statute authorizes an action only against the agency. With respect to records of the Internal Revenue Service, the agency is the Internal Revenue Service, not an officer or an employee thereof. Service of process in such an action shall be in accordance with the Federal Rules of Civil Procedure (28 U.S.C. App.) applicable to actions against an agency of the United States. Delivery of process upon the Internal Revenue Service must be directed to the Commissioner of

Internal Revenue, Attention: CC:GLS, 1111 Constitution Avenue, NW., Washington, DC 20224. The Internal Revenue Service will serve an answer or otherwise plead to any complaint made under this paragraph within 30 days after service upon it, unless the court otherwise directs for good cause shown. The district court will determine the matter de novo, and may examine the contents of the Internal Revenue Service records in question in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions described in paragraph (b)(1) of Sec. 601.701. The burden will be upon the Internal Revenue Service to sustain its action in not making the requested records available. The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred by the person making the request in any case in which the complainant has substantially prevailed.

(12) Preservation of records. All correspondence relating to the requests received by the Internal Revenue Service under this chapter, and all records processed pursuant to such requests, shall be preserved, until such time as the destruction of such correspondence and records is authorized pursuant to Title 44 of the United States Code. Under no circumstances shall records be destroyed while they are the subject of a pending request, appeal, or lawsuit under 5 U.S.C. 552.

(13) Proceeding against officer or employee. Under 5 U.S.C. 552(a)(4)(F), the Special Counsel is required, upon the issuance of a specified finding by a court, to initiate a proceeding to determine whether disciplinary action is warranted against an officer or employee of the Internal Revenue Service who was primarily responsible for a withholding of records. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the Special Counsel and the Secretary of the Treasury, and shall send copies of the findings and recommendations to the officer or employee or his/her representative. (See 5 CFR Part 294.1201-1207 (relating to disciplinary actions by the Special Counsel).)

(d) Rules for disclosure of certain specified matters - (1) Inspection of tax returns and return information. The inspection of returns and return information is governed by the provisions of the internal revenue laws and regulations thereunder promulgated by the Secretary of the Treasury. See section 6103 and the regulations thereunder. Written requests for this information shall be made in accordance with Rev. Proc. 66-3, as modified by Rev. Proc. 84-71, 1984-2 C.B. 735 and Rev. Proc. 85-56, 1985-2 C.B. 739.

(2) Record of seizure and sale of real estate. Subject to the rules on disclosure set forth in section 6103, Record 21, Part 2, 'Record of seizure and sale of real estate', is open for public



inspection in offices of district directors and copies are furnished upon application. However, Record 21 does not list real estate seized for forfeiture under the internal revenue laws (see IRC 7302).

(3) Information returns of certain tax-exempt organizations and certain trusts. Information furnished on Form 990, Form 1041-A, and on the annual report by private foundations pursuant to sections 6033, 6034, 6056 (as in effect before its repeal by Pub. L. 96-603), is open to public inspection. This information will be made available for public inspection in the Freedom of Information Reading Room, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, as well as in the office of any district director. Copies of these records may, upon written request, be obtained from these offices or from the office of any service center director. The applicability of this subparagraph is subject to the rules on disclosure set forth in section 6104(b) and Sec. 301.6104(b)-1.

(4) Applications of certain organizations for tax exemption. Subject to the rules on disclosure set forth in section 6104(a) and Sec. 301.6104 (a)-1, (a)-5, and (a)-6, applications and certain papers submitted in support of such applications, filed by organizations described in section 501 (c) or (d) and determined to be exempt from taxation under section 501(a), and any letter or other document issued by the Internal Revenue Service with respect to such applications, will be made available for public inspection, upon written request, in the Freedom of Information Reading Room, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, or the office of any district director.

(5) Applications with respect to certain deferred compensation plans and accounts. Applications and papers submitted in support of such applications, filed after September 2, 1974, with respect to the qualification of a pension, profit sharing, or stock bonus plan under section 401(a), 403(a), or 405(a), an individual retirement account described in section 408(a), an individual retirement annuity described in section 408(b), or with respect to the exemption from tax of an organization forming part of such a plan or account, and any documents issued by the Internal Revenue Service dealing with such qualification or exemption, are open to public inspection. Such material will be made available for public inspection in the Freedom of Information Reading Room, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, as well as in the office of any district director regardless of where the applications are filed. This subparagraph shall not apply with respect to plans having not more than 25 plan participants and its applicability is subject to the rules set forth in section 6104(a) and Sec. 301.6104 (a)-1 through (a)-6 of this chapter.

(6) Publication of statistics of income. Statistics with respect to the operation of the income tax

laws are published annually in accordance with section 6108 and Sec. 301.6108-1 of this chapter.

(7) Comments received in response to a notice of proposed rule making. Written comments received in response to a notice of proposed rule making may be inspected, upon written request, by any person upon compliance with the provisions of this paragraph. Comments which may be inspected are located in the Freedom of Information Reading Room, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. The request to inspect comments must be in writing and signed by the person making the request and should be addressed to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, DC 20224. Upon delivery of such a written request to the place where the comments are located during the regular business hours of that office, the person making the request may inspect those comments that are the subject of the request. Copies of comments may be made in the Freedom of Information Reading Room by the person making the request or may be requested, in writing, to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, DC 20224. The person making the request for copies should allow a reasonable time for processing the request. The provisions of paragraph (f)(5) of this section, relating to fees, shall apply with respect to requests made in accordance with this subparagraph.

(8) Accepted offers in compromise. A copy of the Abstract and Statement and the attached narrative report for each accepted offer in compromise with respect to any liability for a tax imposed by Title 26 will be made available for inspection and copying in the following locations:

- (i) Except for Exempt Organizations, in the district office (or the Office of the Assistant Commissioner (International)) having jurisdiction over the place in which the taxpayer resides and
- (ii) For Exempt Organizations, in the key district which has jurisdiction over the particular organization.

(9) Public inspection of written determinations. Certain rulings, determination letters, and technical advice memorandums are open to public inspection pursuant to section 6110 of the Code.

(e) Other disclosure procedures. For procedure to be followed by officers and employees of the Internal Revenue Service upon receipt of a request or demand for certain internal revenue records or information the disclosure procedure for which is not covered by this section, see Sec. 301.9000-1 of this chapter.

(f) Fees for services - (1) In general. The fees to be charged for search, duplication, and review services performed by the Internal Revenue Service, whether or not such services are performed pursuant to the Freedom of Information Act or the regulations thereunder, shall be determined and collected in accordance with the provisions of this paragraph. A fee shall not be charged for monitoring a requester's inspection of records which contains exempt matter. The Internal Revenue Service may recover the applicable fees even if there is ultimately no disclosure of records. Should services other than the services described in this paragraph be requested and rendered, appropriate fees will be established by the Commissioner or his/her delegate, and imposed and collected pursuant to 31 U.S.C. 483(a), subject, however, to the constraint imposed by 5 U.S.C. 552(a)(4)(A).

(2) Waiver or reduction of fees. The fees authorized by this paragraph may be waived or reduced -

(i) At the discretion of any Internal Revenue Service official -

(A) Who is authorized to make the initial determination pursuant to paragraph (c)(7) of this section, in the case of a record which is not located for any reason, or

(B) Who determines any portion of the requested record to be exempt from disclosure; or

(ii) On a case-by-case basis in accordance with this subdivision by any Internal Revenue Service official who is authorized to make the initial determination pursuant to paragraph (c)(7) of this section, provided such waiver or reduction has been requested in writing. Fees will be waived or reduced by such official when it is determined that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Internal Revenue Service and is not primarily in the commercial interest of the requester. Such officials shall consider several factors, including, but not limited to, those set forth below, in determining requests for waiver or reduction of fees -

(A) Whether the subject of the releasable records concerns the agency's operations or activities;

(B) Whether the releasable records are likely to contribute to an understanding of the agency's operations or activities;

(C) Whether the releasable records are likely to contribute to the general

public's understanding of the agency's operations or activities (e.g., how will the requester convey the information to the general public);

(D) The significance of the contribution to the general public's understanding of the agency's operations or activities (e.g., is the information contained in the releasable records already available to the general public);

(E) The existence and magnitude of the requester's commercial interest, as that term is used in paragraph (f)(3)(i)(A) of this section, being furthered by the releasable records; and

(F) Whether the magnitude of the requester's commercial interest is sufficiently large in comparison to the general public's interest.

(iii) Requesters asking for reduction or waiver of fees must state the reasons why they believe disclosure meets the standards set forth in paragraph (f)(2)(ii) of this section.

(iv) Requesters who base their request for reduction or waiver of fees solely on the basis of their indigency will not be entitled to a reduction or waiver of fees.

(v) Normally, no charge will be made for providing records to Federal, state, or foreign governments, international governmental organizations, or local governmental agencies or offices thereof. The initial request for waiver or reduction of fees should be addressed to the official of the Internal Revenue Service to whose office the request for disclosure is delivered pursuant to paragraph (c)(3)(iii) of this section. Appeals from denials of requests for waiver or reduction of fees shall be decided by the Commissioner in accordance with the criteria set forth in subdivision (iii) of this subparagraph. Appeals shall be addressed in writing to the Office of the Commissioner within 35 days of the denial of the initial request for waiver or reduction and shall be decided promptly. See paragraph (c)(8) of this section for the appropriate address. Upon receipt of the determination on appeal to deny a request for waiver of fees, the requester may initiate an action in U.S. district court to review the request for waiver of fees. In such actions, the courts will consider the matter de novo, except that the court's review of the matter shall be limited to the record before the Internal Revenue Service official to whose office the request for waiver is delivered. Upon receipt of the determination on appeal to deny a request for reduction of fees, the requester may initiate an action in U.S. district court to review the request for reduction of fees. In such actions, the courts will consider the matter under the arbitrary and capricious

standard.

(3) Categories of requesters - (i) In general. A request for records under this section shall include an attestation, under penalty of perjury, as to the status of the requester solely for use by the Internal Revenue Service official to whose office the request is delivered in determining the appropriate fees to be assessed. Requesters shall attest that they fall into one of the categories set forth below -

(A) Commercial use requester. Any person who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(B) Media requester. Any person actively gathering news for an entity that is organized and operated to publish or broadcast news (i.e., information about current events or of current interest to the public) to the public. News media entities include, but are not limited to, television or radio stations broadcasting to the public at large, publishers of periodicals, to the extent they disseminate news, who make their periodicals available for purchase or subscription by the general public, and telecommunications. Free lance journalists shall be included as media requesters if they can demonstrate a solid basis for expecting publication through a qualifying news entity (e.g., publication contract, past publication record). Specialized periodicals, although catering to a narrower audience, may be considered media requesters so long as they are available to the public generally, via newsstand or subscription.

(C) Educational institution requester. Any person who, on behalf of a preschool, public or private elementary or secondary school, institution of undergraduate or graduate higher education, institution or professional or vocational education, which operates a program or programs of scholarly research, seeks records in furtherance of the institution's scholarly research and is not for a commercial use.

(D) Noncommercial scientific institution requester. Any person on behalf of an institution that is not operated on a commercial basis, that is operated solely for the purpose of conducting scientific research whose results are not intended to promote any particular product or industry.

(E) Other requester. Any requester who falls outside the above categories.

(ii) Allowable charges -

(A) Commercial use requesters. Records shall be provided for the cost of search, duplication, and review (including doing all that is necessary to excise and otherwise prepare records for release) of records. Commercial use requesters are not entitled to 2 hours of free search time or 100 pages of duplication.

(B) Media requesters. Records shall be provided for the cost of duplication alone, excluding fees for the first 100 pages.

(C) Educational institution requesters. Records shall be provided for the cost of duplication alone, excluding fees for the first 100 pages.

(D) Noncommercial scientific institution requesters. Records shall be provided for the cost of duplication alone, excluding fees for the first 100 pages.

(E) Other requesters. Requesters who do not fit into any of the above categories shall be charged fees that will cover the full direct cost of searching for and duplicating records, except that the first 2 hours of search time and first 100 pages of duplication shall be furnished without charge.

(4) Avoidance of unexpected fees. In order to protect requesters from unexpected fees, all requests for records shall state the agreement of the requesters to pay the fees determined in accordance with paragraph (f)(5) of this section or state the upper limit they are willing to pay to cover the costs of processing their requests. When the fees for processing requests are estimated by the Internal Revenue Service to exceed that limit, or when requesters have failed to state a limit and the costs are estimated to exceed \$250, and the Internal Revenue Service has not then determined to waive or reduce the fees, a notice shall be sent to the requesters. This notice shall -

- (i) Inform the requester of the estimated costs;
- (ii) Extend an offer to the requester to confer with agency personnel in an attempt to reformulate the request in a manner which will reduce the fees and still meet the needs of the requester;
- (iii) If the requester is not amenable to reformulation, which would reduce fees to under \$250, then advance payment shall be required; and
- (iv) Inform the requester that the time period, within which the Internal Revenue Service

is obliged to make a determination on the request, will not begin to run, pending a reformulation of the request or the receipt of advance payment from the requester, as appropriate.

(5) Fees for services. The fees for services performed by the Internal Revenue Service shall be imposed and collected as set forth in this paragraph. No fees shall be charged if the costs of routine collecting and processing the fees allowable under 5 U.S.C. 552(a)(4)(A) are likely to equal or exceed the amount of the fee.

(i) Search services. Fees charged for search services are as follows -

(A) Searches other than for computerized records - \$17.00 for each hour or fraction thereof for time spent by each clerical, professional, and supervisor in finding the records and information within the scope of the request.

(B) Searches for computerized records - Actual direct cost of the search. The fee for computer printouts will be actual costs.

(C) Searches requiring travel or transportation - Shipping charges to transport records from one location to another, or for the transportation of an employee to the site of requested records when it is necessary to locate rather than examine the records, shall be at the rate of the actual cost of such shipping or transportation.

(D) Other services and materials requested, pursuant to the Freedom of Information Act, which are not covered by this part are chargeable at the actual cost to the Internal Revenue Service.

(ii) Review services. (A) Review is the process of examining records in response to a commercial use requester, as that term is defined in paragraph (f)(3)(i)(A) of this section, upon initial consideration of the applicability of an exemption described in paragraph (b)(1) of Sec. 601.701 to the requested records, be it at the initial request or administrative appeal level, to determine whether any portion of any record responsive to the request is permitted to be withheld. Review includes doing all that is necessary to excise and otherwise prepare the records for release. Review does not include the time spent on resolving general legal or policy issues regarding the applicability of exemptions to the requested records.

(B) Fees charged for review services - \$21.00 for each hour or fraction thereof for time spent by each clerical, professional, and supervisor in reviewing the

records for disclosure.

(iii) Duplication other than for returns and related documents. Fees charged for duplication other than for returns and related documents are as follows - (A) \$.15 per copy of each page, up to 8 1/2 x 14 , made by photocopy or similar process.

(B) Photographs, films, and other materials - actual cost of duplication.

(C) Records may be released to a private contractor for copying and the requester will be charged for the actual cost of duplication charged by the private contractor, so long as the cost to the requester is not higher than if the Internal Revenue Service had duplicated the records itself.

(D) When other duplications not specifically identified above are requested and provided pursuant to the Freedom of Information Act their direct cost to the Internal Revenue Service shall be charged.

(iv) Charges for copies of returns and related documents. Charges for furnishing copies of returns and related documents are as follows:

(A) A charge of \$4.25 will be made for each request for a copy of a return or other related documents (other than Employee Plans and Exempt Organization returns). Payments are to be submitted in advance using IRS Form 4506, Request for Copy of Tax Form.

(B) A charge of \$1.00 for the first page and \$.15 for each subsequent page will be made for copies of Employee Plans and Exempt Organizations tax returns and related documents. Payments will be submitted subsequent to receipt of IRS Form 2860, Document Transmittal and Bill.

(6) Printed material. Certain relevant government publications which will be placed on the shelves of the reading rooms and similar public inspection facilities will not be sold at these locations. However, copies of pages of these publications may be duplicated on the premises and a fee for such services may be charged in accordance with paragraph (f)(5)(iii) of this section. A person desiring to purchase the complete publication, for example, an Internal Revenue Bulletin, should contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(7) Search and deletion services with respect to records open to public inspection pursuant to section 6110 of the Code. Fees charged for searching for and making deletions in records open



to public inspection pursuant to section 6110 of the Code only upon written request shall be at actual cost, as the Commissioner may from time to time establish.

(8) Form of payment. Payment shall be made by check or money order, payable to the order of the Treasury of the United States or the Internal Revenue Service.

(9) Advance payments. (i) If previous search, review, or duplication fees have not been paid in a timely fashion as defined in paragraph (f)(10) of this section by a person making a request for records, the Internal Revenue Service shall require that person to remit any outstanding balance plus interest as authorized in paragraph (f)(10) of this section, plus payment of estimated fees in advance before processing the request. The 'person making the request' for purposes of this paragraph is the person in whose name a request is made, except that if such person is making the request on behalf of another person whose identity is apparent on the face of the request (including attached documents), such other person is considered the 'person making the request.' The person who made the prior request to which fees are outstanding is identified in the same manner.

(ii) Where it is estimated or determined that allowable fees required to be paid by a requester are likely to exceed \$250, the requester will be required to make an advance payment of the entire fee before the Internal Revenue Service official to whom the request is delivered will begin to process the request.

(iii) When the Internal Revenue Service acts pursuant to paragraphs (f)(9) (i) or (ii) of this section, the administrative time limits prescribed in paragraphs (c)(7) and (8) of this section, plus permissible extensions of these time limits as prescribed in paragraph (c)(9)(i) of this section, will begin only after the Internal Revenue Service official to whom the request is delivered has received the fees described above.

(10) Interest. Interest shall be charged to requesters who fail to pay the fees in a timely fashion; that is, within 30 days following the day on which the statement of fees as set forth in paragraph (c)(7)(i) of this section was sent by the Internal Revenue Service official to whom the request was delivered. Interest accrues from the date the statement of fees was mailed to the requester. Interest will be at the rate prescribed in 31 U.S.C. 3717. Pursuant to the Debt Collection Act of 1982, Pub. L. 97-365, the Internal Revenue Service may take all steps authorize by the Debt Collection Act of 1982, including administrative offset, disclosure to consumer reporting agencies, and use of collection agencies, as otherwise authorized by law to encourage repayment.

(11) Aggregating requests. When the Internal Revenue Service official to whom a request is

delivered reasonably believes that a requester or group of requesters is attempting to break down a request into a series of requests for the purpose of evading the assessment of fees, the Internal Revenue Service shall aggregate such requests and charge accordingly, upon notification to the requester and/or requesters.

(g) Responsible officials and their addresses. For purposes of this section, the Internal Revenue Service officials responsible for the control of records are the following officials, in the case of records under their jurisdiction: The Assistant Commissioner (Inspection), Assistant Commissioner (International), the Director of Practice, Regional Commissioners, District Directors, Service Center Directors, and the Director of the Internal Revenue Service Data Center. In the case of records of the National Office not under the jurisdiction of one of the officials referred to in the preceding sentence (including records of the National Office of the Chief Counsel), the Director, Office of Disclosure is the responsible official. Records of a Regional Counsel's Office shall be deemed to be under the jurisdiction of the Regional Commissioner; records of a District Counsel's office shall be deemed to be under the jurisdiction of the District Director. The addresses of these officials are:

NATIONAL OFFICE Mailing Address Director, Office of Disclosure Internal Revenue Service FOIA Request P.O. Box 388 c/o Ben Franklin Station Washington, DC 20044 Walk-In Address 1111 Constitution Avenue NW. Washington, DC Mailing Address Assistant Commissioner (Inspection) Internal Revenue Service FOIA Request Attn: Disclosure Officer 1111 Constitution Avenue NW. Washington, DC 20224 Walk-in Address Same as mailing address Mailing Address Director, IRS Data Center Attn: Disclosure Officer Internal Revenue Service FOIA Request 1300 John C. Lodge Drive Detroit, Michigan 48226 Walk-in Address Same as mailing address Mailing Address Director of Practice Attn: Disclosure Officer Internal Revenue Service FOIA Request 1111 Constitution Avenue NW. Washington, DC 20224 Walk-in Address 1200 Pennsylvania Avenue NW. Ariel Rios Bldg. Room 1413 Washington, DC Mailing Address Assistant Commissioner (Intern't.) Attn: Disclosure Officer Internal Revenue Service FOIA Request 950 L(feet)Enfant Plaza Washington, DC 20024 Walk-In Address Same as mailing address

#### NORTH ATLANTIC REGION

REGIONAL OFFICE Mailing Address Regional Commissioner Internal Revenue Service FOIA Request Attn: Disclosure Officer 90 Church Street New York, New York 10007 Walk-in Address Same as mailing address

AUGUSTA DISTRICT Mailing Address Director, Augusta District Internal Revenue Service FOIA Request Attn: Disclosure Officer P.O. Box 787 Augusta, Maine 04330 Walk-in Address 68 Sewall Street Augusta, Maine

ALBANY DISTRICT Mailing Address Director, Albany District Internal Revenue Service FOIA Request Attn: Disclosure Officer Leo O'Brien Fed. Office Bldg. Clinton Ave. & N. Pearl St. Albany, New York 12207 Walk-in Address Same as mailing address

BROOKLYN DISTRICT Mailing Address Director, Brooklyn District Internal Revenue Service FOIA Request Attn: Disclosure Officer 35 Tillary Street Brooklyn, New York 11201 Walk-in Address Same as mailing address

BOSTON DISTRICT Mailing Address Director, Boston District Internal Revenue Service FOIA Request Attn: Disclosure Officer P.O. Box 9097 JFK Post Office Boston, Massachusetts 02203 Walk-in Address JFK Federal Building Boston, Massachusetts

BUFFALO DISTRICT Mailing Address Director, Buffalo District Internal Revenue Service FOIA Request Attn: Disclosure Officer P.O. Box 1040 Niagara Square Station Buffalo, New York 14201 Walk-in Address 111 West Huron Street Buffalo, New York

BURLINGTON DISTRICT Mailing Address Director, Burlington District Internal Revenue Service FOIA Request Attn: Disclosure Officer 11 Elmwood Avenue Burlington, Vermont 05401 Walk-in Address Same as mailing address

HARTFORD DISTRICT Mailing Address Director, Hartford District Internal Revenue Service FOIA Request Attn: Disclosure Officer 135 High Street Hartford, Connecticut 06103 Walk-in Address Same as mailing address

MANHATTAN DISTRICT Mailing Address Director, Manhattan District Internal Revenue Service FOIA Request Attn: Disclosure Officer 120 Church Street New York, New York 10007 Walk-in Address Same as mailing address

PORTSMOUTH DISTRICT Mailing Address Director, Portsmouth District Internal Revenue Service FOIA Request Attn: Disclosure Officer 80 Daniel Street Portsmouth, NH 03801 Walk-in Address Same as mailing address

PROVIDENCE DISTRICT Mailing Address Director, Providence District Internal Revenue Service FOIA Request Attn: Disclosure Officer 300 Westminster Mall Providence, RI 02903 Walk-in Address Same as mailing address

ANDOVER SERVICE CENTER Mailing Address Director, Andover Service Center Internal Revenue Service FOIA Request Attn: Disclosure Officer 310 Lowell Street Stop 218 Andover, Massachusetts 01812 Walk-in Address Same as mailing address

BROOKHAVEN SERVICE CENTER Mailing Address Director, Brookhaven Service Center Internal

Revenue Service FOIA Request Attn: Disclosure Officer P.O. Box 400, Stop 241 Brookhaven, New York 11719 Walk-in Address 1040 Waverly Avenue Holtsville, New York

MID-ATLANTIC REGION

REGIONAL OFFICE Mailing Address Regional Commissioner Internal Revenue Service FOIA Request Attn: Disclosure Officer P.O. Box 12010 Philadelphia, Pa. 19105 Walk-in Address 600 Arch Street, 7th Floor Philadelphia, Pennsylvania

NEWARK DISTRICT Mailing Address Director, Newark District Internal Revenue Service FOIA Request Attn: Disclosure Officer P.O. Box 270, Rm. 1535 Newark, New Jersey 07101 Walk-in Address 970 Broad Street Newark, New Jersey

BALTIMORE DISTRICT Mailing Address Director, Baltimore District Internal Revenue Service FOIA Request Attn: Disclosure Officer P.O. Box 1018 Baltimore, Maryland 21203 Walk-in Address 31 Hopkins Plaza Baltimore, Maryland

PHILADELPHIA DISTRICT Mailing Address Director, Philadelphia District Internal Revenue Service FOIA Request Attn: Disclosure Officer P.O. Box 12010 Philadelphia, Pa. 19105 Walk-in Address 600 Arch Street, 7th Floor Philadelphia, Pennsylvania

PITTSBURGH DISTRICT Mailing Address Director, Pittsburgh District Internal Revenue Service FOIA Request Attn: Disclosure Officer P.O. Box 2488 Pittsburgh, Pa. 15230 Walk-in Address 1000 Liberty Avenue Pittsburgh, Pennsylvania

RICHMOND DISTRICT Mailing Address Director, Richmond District Internal Revenue Service FOIA Request Attn: Disclosure Officer P.O. Box 10107 Richmond, Va. 23240 Walk-in Address 400 North Eighth Street Richmond, Virginia

WILMINGTON DISTRICT Mailing Address Director, Wilmington District Internal Revenue Service FOIA Request Attn: Disclosure Officer P.O. Box 2415 Wilmington, Delaware 19899 Walk-in Address 844 King Street, 2nd Floor Wilmington, Delaware

PHILADELPHIA SERVICE CENTER Mailing Address Director, Philadelphia Service Center Internal Revenue Service FOIA Request Attn: Disclosure Officer P.O. Box 245, Drop Point 590A Bensalem, Pennsylvania 19020 Walk-in Address 11601 Roosevelt Boulevard Bensalem, Pennsylvania

SOUTHEAST REGION

REGIONAL OFFICE Mailing Address Regional Commissioner Internal Revenue Service FOIA Request Attn: Disclosure Officer P.O. Box 926, Room 626 Atlanta, Georgia 30370 Walk-in Address

275 Peachtree Street, NE., Atlanta, Georgia

ATLANTA DISTRICT Mailing Address Director, Atlanta District Internal Revenue Service FOIA Request Attn: Disclosure Officer P.O. Box 1037, Room 554 Atlanta, Georgia 30370 Walk-in Address 275 Peachtree Street, NE., Atlanta, Georgia

BIRMINGHAM DISTRICT Mailing Address Director, Birmingham District Internal Revenue Service FOIA Request Attn: Disclosure Officer 500 22nd Street So., Rm. 312 Birmingham, Alabama 35233 Walk-in Address Same as mailing address

COLUMBIA DISTRICT Mailing Address Director, Columbia District Internal Revenue Service FOIA Request Attn: Disclosure Officer Fed. Office Bldg., Rm. 408 1835 Assembly Street Columbia, S.C. 29202 Walk-in Address Same as mailing address

FT. LAUDERDALE DISTRICT Director, Ft. Lauderdale District Internal Revenue Service FOIA Request Attn: Disclosure Officer 1 University Drive, Suite 220 Ft. Lauderdale, Florida 33324 Walk-in Address Same as mailing address

GREENSBORO DISTRICT Mailing Address Director, Greensboro District Internal Revenue Service FOIA Request Attn: Disclosure Officer 320 Federal Place, Room 240 Greensboro, NC 27401 Walk-in Address Same as mailing address

JACKSON DISTRICT Mailing Address Director, Jackson District Internal Revenue Service FOIA Request Attn: Disclosure Officer 100 W. Capitol Street Suite 504, Room 31 Jackson, Mississippi 39269 Walk-in Address Same as mailing address

JACKSONVILLE DISTRICT Mailing Address Director, Jacksonville District Internal Revenue Service FOIA Request Attn: Disclosure Officer P.O. Box 35045, Stop 40340 Jacksonville, Fla. 32202 Walk-in Address Same as mailing address

LITTLE ROCK DISTRICT Mailing Address Director, Little Rock District Internal Revenue Service FOIA Request Attn: Disclosure Officer P.O. Box 3778, Stop 3 Little Rock, Arkansas 72203 Walk-in Address 700 W. Capitol Avenue Room 1002 Little Rock, Arkansas

NASHVILLE DISTRICT Mailing Address Director, Nashville District Internal Revenue Service FOIA Request Attn: Disclosure Officer P.O. Box 1107, Room 375 Nashville, Tennessee 37202 Walk-in Address 801 Broadway, Room 375 Nashville, Tennessee

NEW ORLEANS DISTRICT Mailing Address Director, New Orleans District Internal Revenue Service FOIA Request Attn: Disclosure Officer 500 Camp Street Room 705, Stop 40 New Orleans,

La. 70130 Walk-in Address Same as Mailing address

ATLANTA SERVICE CENTER Mailing Address Director, Atlanta Service Center Internal Revenue Service FOIA Request Attn: Disclosure Officer 4800 Buford Highway Chamblee, Georgia 30006 Walk-in Address Same as mailing address

MEMPHIS SERVICE CENTER Mailing Address Director, Memphis Service Center Internal Revenue Service FOIA Request Attn: Disclosure Officer P.O. Box 30309, Stop 30 Memphis, Tennessee 38130 Walk-in Address 3131 Democrat Road, Room 30 Memphis, Tennessee

#### MIDWEST REGION

REGIONAL OFFICE Mailing Address Regional Commissioner Internal Revenue Service FOIA Request Attn: Disclosure Officer One N. Wacker Drive Chicago, Illinois 60606 Walk-in Address Same as mailing address

ABERDEEN DISTRICT Mailing Address Director, Aberdeen District Internal Revenue Service FOIA Request Attn: Disclosure Officer P.O. Box 370 Aberdeen, SD 57402 Walk-in Address 115 Fourth Avenue, SE Aberdeen, South Dakota

CHICAGO DISTRICT Mailing Address Director, Chicago District Internal Revenue Service FOIA Request Attn: Disclosure Officer 230 S. Dearbn St., Rm. 1980 Chicago, Illinois 60604 Walk-in Address Same as mailing address

DES MOINES DISTRICT Mailing Address Director, Des Moines District Internal Revenue Service FOIA Request Attn: Disclosure Officer P.O. Box 1337 Stop 15-1 Des Moines, Iowa 50305 Walk-in Address 210 Walnut Street Des Moines, Iowa

FARGO DISTRICT Mailing Address Director, Fargo District Internal Revenue Service FOIA Request Attn: Disclosure Officer P.O. Box 8 Fargo, North Dakota 58107 Walk-in Address 653 Second Avenue North Fargo, North Dakota

OMAHA DISTRICT Mailing Address Director, Omaha District Internal Revenue Service FOIA Request Attn: Disclosure Officer P.O. Box 1052, Downtown Sta. Omaha, Nebraska 68101 Walk-in Address 106 South 15th Street Omaha, Nebraska

MILWAUKEE DISTRICT Mailing Address Director, Milwaukee District Internal Revenue Service FOIA Request Attn: Disclosure Officer P.O. Box 495, Room 436 Milwaukee, Wisconsin 53201 Walk-in Address Federal Bldg. & Courthouse 517 E. Wisconsin Avenue Milwaukee, Wisconsin

HELENA DISTRICT Mailing Address Director, Helena District Internal Revenue Service FOIA

Request Attn: Disclosure Officer 301 S. Park Avenue, 2d Floor Helena, Montana 59626 Walk-in  
Address Same as mailing address

ST. LOUIS DISTRICT Mailing Address Director, St. Louis District Internal Revenue Service FOIA  
Request Attn: Disclosure Officer P.O. Box 1548 Room 935 St. Louis, Missouri 63188 Walk-in  
Address 1114 Market Street St. Louis, Missouri

ST. PAUL DISTRICT Mailing Address Director, St. Paul District Internal Revenue Service FOIA  
Request Attn: Disclosure Officer 316 N. Robert Street Stop 2 St. Paul, Minnesota 55101 Walk-in  
Address Same as mailing address

SPRINGFIELD DISTRICT Mailing Address Director, Springfield District Internal Revenue Service  
FOIA Request Attn: Disclosure Officer P.O. Box 19206 Springfield, Illinois 62705 Walk-in Address  
320 W. Washington Street Springfield, Illinois

KANSAS CITY SERVICE CENTER Mailing Address Director, Kansas City Service Center Internal  
Revenue Service FOIA Request Attn: Disclosure Officer P.O. Box 24551 Stop 7 Kansas City,  
Missouri 64131 Walk-in Address 2306 East Bannister Road Kansas City, Missouri

REGIONAL OFFICE Mailing Address Regional Commissioner Internal Revenue Service FOIA  
Request Attn: Disclosure Officer P.O. Box 1818 Cincinnati, Ohio 45201 Walk-In Address 550 Main  
Street Cincinnati, Ohio

CINCINNATI DISTRICT Mailing Address Director, Cincinnati District Internal Revenue Service  
FOIA Request Attn: Disclosure Officer P.O. Box 1818 Cincinnati, Ohio 45201 Walk-in Address 550  
Main Street Cincinnati, Ohio

#### CENTRAL REGION

CLEVELAND DISTRICT Mailing Address Director, Cleveland District Internal Revenue Service  
FOIA Request Attn: Disclosure Officer P.O. Box 99181 Cleveland, Ohio 44199 Walk-in Address  
1240 East 9th Street Cleveland, Ohio

DETROIT DISTRICT Mailing Address Director, Detroit District Internal Revenue Service FOIA  
Request Attn: Disclosure Officer P.O. Box 32500 Stop 11 Detroit, Michigan 48232 Walk-in Address  
Patrick McNamara Bldg. 477 Michigan Ave. Rm. 2483 Detroit, Michigan

INDIANAPOLIS DISTRICT Mailing Address Director, Indianapolis District Internal Revenue Service  
FOIA Request Attn: Disclosure Officer P.O. Box 44242 Stop 27 Indianapolis, Indiana 46244 Walk-in  
Address Federal Office Building 575 N. Pennsylvania Avenue Indianapolis, Indiana

LOUISVILLE DISTRICT Mailing Address Director, Louisville District Internal Revenue Service  
FOIA Request Attn: Disclosure Officer P.O. Box 1735, Stop 27 Louisville, Kentucky 40201 Walk-in  
Address Post Office Building Seventh & Broadway Louisville, Kentucky

PARKERSBURG DISTRICT Mailing Address Director, Parkersburg District Internal Revenue  
Service FOIA Request Attn: Disclosure Officer P.O. Box 1388 Parkersburg, W. Va. 26102 Walk-in  
Address 425 Juliana Street Parkersburg, West Virginia

CINCINNATI SERVICE CENTER Mailing Address Director, Cincinnati Service Center Internal  
Revenue Service FOIA Request Attn: Disclosure Officer P.O. Box 267 Stop 68 Covington, Kentucky  
41019 Walk-in Address 200 West Fourth Street Covington, Kentucky

#### SOUTHWEST REGION

REGIONAL OFFICE Mailing Address Regional Commissioner Internal Revenue Service FOIA  
Request Attn: Disclosure Officer 7839 Churchill Way LB-70 Dallas, Texas 75222 Walk-in Address  
Same as mailing address

DALLAS DISTRICT Mailing Address Director, Dallas District Internal Revenue Service FOIA  
Request Attn: Disclosure Officer 1100 Commerce St. Stop 7000 DAL Dallas, Texas 75242 Walk-in  
Address Same as mailing address

ALBUQUERQUE DISTRICT Mailing Address Director, Albuquerque District Internal Revenue  
Service FOIA Request Attn: Disclosure Officer P.O. Box 1967 Stop 7000 ALB Albuquerque, N.M.  
87103 Walk-in Address 517 Gold Avenue, S.W. Albuquerque, New Mexico

AUSTIN DISTRICT Mailing Address Director, Austin District Internal Revenue Service FOIA  
Request Attn: Disclosure Officer P.O. Box 1448 Stop 7000 AUS Austin, Texas 78767 Walk-in  
Address 300 E. 8th Street Stop 100D Austin, Texas

DENVER DISTRICT Mailing Address Director, Denver District Internal Revenue Service FOIA  
Request Attn: Disclosure Officer 1050 17th St. Stop 7000 DEN Denver, Colorado 80265 Walk-in  
Address Same as mailing address

HOUSTON DISTRICT Mailing Address Director, Houston District Internal Revenue Service FOIA  
Request Attn: Disclosure Officer 3223 Briarpark Stop 7000 H-BP Houston, Texas 77042 Walk-in  
Address Same as mailing address

CHEYENNE DISTRICT Mailing Address Director, Cheyenne District Internal Revenue Service FOIA  
Request Attn: Disclosure Officer 308 West 21 Street Stop 7000 CHE Cheyenne, Wyoming 82001



Walk-in Address Same as mailing address

PHOENIX DISTRICT Mailing Address Phoenix District Internal Revenue Service FOIA Request  
Attn: Disclosure Officer 2120 North Central Avenue Mail Stop 7000 PH Phoenix, Arizona 85004  
Walk-in Address Same as mailing address

OKLAHOMA CITY DISTRICT Mailing Address Director, Okla. City District Internal Revenue  
Service FOIA Request Attn: Disclosure Officer P.O. Box 66 Stop 7000 OKC Oklahoma City, OK  
73102 Walk-in Address 200 N.W. Fourth Street Oklahoma City, Oklahoma

AUSTIN SERVICE CENTER Mailing Address Director, Austin Service Center Internal Revenue  
Service FOIA Request Attn: Disclosure Officer P.O. Box 934 Stop 70000 AUSC Austin, Texas  
78767 Walk-in Address 3651 S. Interregional Hwy. Austin, Texas

SALT LAKE CITY DISTRICT Mailing Address Director, Salt Lake City District Internal Revenue  
Service FOIA Request Attn: Disclosure Officer 465 S. 400 East Street Mail Stop 70000 SLC Salt  
Lake City, Utah 84111 Walk-in Address Same as mailing address

WICHITA DISTRICT Mailing Address Director, Wichita District Internal Revenue Service FOIA  
Request Attn: Disclosure Officer 412 S. Main St. Stop 7000 WIC Wichita, Kansas 67202 Walk-in  
Address Same as mailing address

OGDEN SERVICE CENTER Mailing Address Director, Ogden Service, Ctr. Internal Revenue  
Service FOIA Request Attn: Disclosure Officer P.O. Box 9411 Stop 7000 OSC Ogden, Utah 84409

WESTERN REGION Walk-in Address 1160 West 1200 South Street Ogden, Utah

REGIONAL OFFICE Mailing Address Regional Commissioner Internal Revenue Service FOIA  
Request Attn: Disclosure Officer 450 Golden Gate Avenue Room 2301 Stop 2231 San Francisco, Ca.  
94102 Walk-in Address Same as mailing address

BOISE DISTRICT Mailing Address Director, Boise District Internal Revenue Service FOIA Request  
Attn: Disclosure Officer Box 041, Room 291 Boise, Idaho 83724 Walk-in Address Same as mailing  
address

ANCHORAGE DISTRICT Mailing Address Director, Anchorage District Internal Revenue Service  
FOIA Request Attn: Disclosure Officer P.O. Box 101500 Anchorage, Alaska 99510 Walk-in Address  
949 E. 36th Ave., Suite 101 Anchorage, Alaska

LAGUNA NIGUEL DISTRICT Mailing Address Director, Laguna Niguel District Internal Revenue  
Service FOIA Request Attn: Disclosure Officer P.O. Box C-8 Laguna Niguel, Ca. 92677 Walk-in

Address 24000 Via Avila Road Laguna Niguel, California

HONOLULU DISTRICT Mailing Address Director, Honolulu District Internal Revenue Service FOIA Request Attn: Disclosure Officer P.O. Box 50089 Honolulu, Hawaii 96850 Walk-in Address 300 Ala Moana Blvd. Federal Bldg. Rm. 2104 Honolulu, Hawaii

LOS ANGELES DISTRICT Mailing Address Director, Los Angeles District Internal Revenue Service FOIA Request Attn: Disclosure Officer P.O. Box 391 Room 5202 300 N. Los Angeles Street Los Angeles, Ca. 90012 Walk-in Address Same as mailing address

LAS VEGAS DISTRICT Mailing Address Director, Las Vegas District Internal Revenue Service FOIA Request Attn: Disclosure Officer P.O. Box 16045 Las Vegas, Nevada 89101 Walk-in Address 300 Las Vegas Blvd. South Las Vegas, Nevada

SACRAMENTO DISTRICT Mailing Address Director, Sacramento District Internal Revenue Service FOIA Request Attn: Disclosure Officer P.O. Box 2900 Stop 5201 Sacramento, Ca. 95812 Walk-in Address 2345 Fair Oaks Blvd. Sacramento, California

PORTLAND DISTRICT Mailing Address Director, Portland District Internal Revenue Service FOIA Request Attn: Disclosure Officer P.O. Box 3341 Portland, Oregon 97208 Walk-in Address 1220 S.W. Third Ave. Rm. 817 Portland Oregon

SAN FRANCISCO DISTRICT Mailing Address Director, San Francisco District Internal Revenue Service FOIA Request Attn: Disclosure Officer 450 Golden Gate Avenue Room 2301 Stop 2231 San Francisco, Ca. 94102 Walk-in Address Same as mailing address

SEATTLE DISTRICT Mailing Address Director, Seattle District Internal Revenue Service FOIA Request Attn: Disclosure Officer 915 Second Avenue Stop 625 Room 2056 Seattle, Washington 98174 Walk-in Address Same as mailing address

FRESNO SERVICE CENTER Mailing Address Director, Fresno Service Center Internal Revenue Service FOIA Request Attn: Disclosure Officer P.O. Box 24014 Stop 891 Fresno, California 93779 Walk-in Address 5045 E. Bulter Avenue Fresno, California

SAN JOSE DISTRICT Mailing Address Director, San Jose District Internal Revenue Service FOIA Request Attn: Disclosure Officer 55 S. Market Street, 9th Floor Stop 3246 San Jose, California 95113 Walk-in Address Same as mailing address

(h) Business information procedures - (1) In general. Business information provided to the Internal Revenue Service by a business submitter shall not be disclosed pursuant to a Freedom of

Information Act request except in accordance with this paragraph.

(2) Definition. Business information is any trade secret or other financial, commercial (including research) information.

(3) Notice to business submitters. The official having control over the requested records, which includes business information, shall provide a business submitter with prompt written notice of a request encompassing its business information whenever required in accordance with paragraph (h)(4) of this section. Such written notice shall either describe the exact nature of the business information requested or provide copies of the records or portions thereof containing the business information.

(4) When notice is required. (i) For business information submitted to the Internal Revenue Service prior to October 13, 1987, the official having control over the requested records shall provide a business submitter with notice of a request whenever -

(A) The business information is less than 10 years old;

(B) The business information was submitted to the Internal Revenue Service upon a commitment of confidentiality; or

(C) The Internal Revenue Service has reason to believe that disclosure of the information may result in commercial or financial injury to the business submitter.

(ii) For business information submitted to the Internal Revenue Service on or after October 13, 1987, the Internal Revenue Service shall provide a business submitter with notice of a request whenever -

(A) The business submitter has in good faith designated the information as commercially or financially sensitive information; or

(B) The official has reason to believe that disclosure of the information may result in commercial or financial injury to the business submitter.

Notice of a request for business information falling within paragraph (h)(4)(ii)(A) of this section shall be required for a period of not more than ten years after the date of submission unless the business submitter requests, and provides acceptable justification for, a specific notice period of greater duration. Whenever possible, the business submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the business that the information in question is, in fact, confidential commercial or financial information and has not been disclosed to the public.

(5) Opportunity to object to disclosure. Through the notice described in paragraph (h)(3) of this section, the official having control over the requested records shall afford a business submitter ten working days within which to provide the official with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information, with particular attention to why the information is claimed to be a trade secret or commercial or financial information that is privileged and confidential. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under 5 U.S.C. 552.

(6) Notice of intent to disclose. The Internal Revenue Service shall carefully consider a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever the official having control over the requested records decides to disclose business information over the objection of a business submitter, the official shall forward to the business submitter a written notice which shall include -

- (i) Statement of the reasons for which the business submitter's disclosure objections were not sustained;
- (ii) A description of the business information to be disclosed; and
- (iii) A specified disclosure date, which is ten working days after the notice of the final decision to release the requested records has been mailed to the submitter. A copy of the disclosure notice shall be forwarded to the requester at the same time.

(7) Judicial review. (i) The Internal Revenue Service's disposition of the request and the submitter's objections shall be subject to judicial review under paragraph (c)(11) of this section. A requester is not required to exhaust administrative remedies if a complaint has been filed under this subparagraph by a business submitter of the information contained in the requested records. Likewise, a business submitter is not required to exhaust administrative remedies if a complaint has been filed by the requester of these records.

(ii) Notice of FOIA lawsuit. Whenever a requester brings suit seeking to compel disclosure of business information covered by paragraph (h)(4) of this section, the official having control over the requested records shall promptly provide the business submitter with written notice thereof.

(iii) Exception to notice requirement. The notice requirements of this paragraph shall not apply if -

- (A) The official having control over the records determines that the business

information shall not be disclosed;

(B) The information lawfully has been published or otherwise made available to the public;

(C) Disclosure of the information is required by law (other than 5 U.S.C. 552);  
or

(D) The information was acquired in the course of a lawful investigation of a possible violation of the internal revenue laws and notice would interfere with ongoing law enforcement proceedings.

(8) Appeals. Procedures for administrative appeals from denials of requests for business information are to be processed in accordance with paragraph (c)(8) of this section.

[32 FR 15990, Nov. 22, 1967]

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## Subpart H--Tax Counseling for the Elderly

Code

**Sec. 602.101 OMB control numbers.**

## (a) Purpose.

This part collects and displays the control numbers assigned to collections of information in Internal Revenue Service regulations by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The Internal Revenue Service intends that this part comply with the requirements of Sec. 320.7(f), 1320.12, 1320.13, and 1320.14 of 5 CFR part 1320 (OMB regulations implementing the Paperwork Reduction Act), for the display of control numbers assigned by OMB to collections of information in Internal Revenue Service regulations. This part does not display control numbers assigned by the Office of Management and Budget to collections of information of the Bureau of Alcohol, Tobacco, and Firearms.

## (b) Display.

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| CFR part or section where<br>identified and described | Current OMB control number |
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| 1.404(a)-4  | 1545-0710 |
| 1.404(a)-12 | 1545-0710 |
| 1.404A-2    | 1545-0123 |
| 1.404A-6    | 1545-0123 |
| 1.408-2     | 1545-0390 |
| 1.408-5     | 1545-0747 |
| 1.408-6     | 1545-0203 |
|             | 1545-0390 |
| 1.408-7     | 1545-0119 |
| 1.408-8     | 1545-0203 |
| 1.408A-2    | 1545-1616 |
| 1.408A-4    | 1545-1616 |
| 1.408A-5    | 1545-1616 |
| 1.408A-7    | 1545-1616 |
| 1.410(a)-2  | 1545-0710 |
| 1.410(d)-1  | 1545-0710 |
| 1.411(a)-11 | 1545-1471 |
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| 1.411(d)-6  | 1545-1477 |



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| 1.412(b)-5    | 1545-0710 |
| 1.412(c)(1)-2 | 1545-0710 |
| 1.412(c)(2)-1 | 1545-0710 |
| 1.412(c)(3)-2 | 1545-0710 |
| 1.414(c)-5    | 1545-0797 |
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| 1.415-6       | 1545-0710 |
| 1.417(e)-1    | 1545-1471 |
| 1.441-1       | 1545-0123 |
| 1.441-2       | 1545-0123 |
| 1.441-3T      | 1545-0134 |
| 1.442-1       | 1545-0074 |
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| 1.442-2T      | 1545-0134 |
| 1.442-3T      | 1545-0134 |
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| 1.444-3T      | 1545-1036 |
| 1.445-6       | 1545-0123 |
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| 1.448-1       | 1545-0152 |

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| 1.448-1T | 1545-0152 |
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| 1.451    | 1545-0736 |
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| 1.453A-3 | 1545-0963 |
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| 1.455-2  | 1545-0152 |

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| 1.456-7          | 1545-0123 |
| 1.458-1          | 1545-0879 |
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| 1.466-3          | 1545-0152 |
| 1.466-4          | 1545-0152 |
| 1.468A-3         | 1545-1269 |
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| 1.468A-4         | 1545-0954 |
| 1.468A-4T        | 1545-0954 |

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| 1.468A-6T | 1545-0954 |
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| 1.468A-7T | 1545-0954 |
| 1.468A-8  | 1545-0954 |
| 1.468A-8T | 1545-0954 |
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| 1.472-8   | 1545-0028 |

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| 1.501(a)-1     | 1545-0056 |
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| 1.501(c)(9)-5  | 1545-0047 |
| 1.501(c)(17)-3 | 1545-0047 |
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| 1.505(c)-1T    | 1545-0916 |
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| 1.509(c)-1     | 1545-0052 |
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| 1.512(a)-4     | 1545-0047 |
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| 1.528-8 | 1545-0127 |
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| 1.545-3 | 1545-0123 |
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| 1.547-3 | 1545-0123 |
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| 1.552-4 | 1545-0099 |
| 1.552-5 | 1545-0099 |
| 1.556-2 | 1545-0704 |
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| 1.561-2 | 1545-0123 |
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| 1.586-2  | 1545-0123 |
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| 1.613A-6   | 1545-0099 |
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| 1.631-2    | 1545-0007 |
| 1.641(b)-2 | 1545-0092 |
| 1.642(c)-1 | 1545-0092 |
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|            | 1545-0074 |



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| 1.642(g)-1                      | 1545-0092 |
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| 1.663(b)-2                      | 1545-0092 |
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| 1.664-1(a)(7)                   | 1545-1536 |
| 1.664-2                         | 1545-0196 |
| 1.664-3                         | 1545-0196 |
| 1.664-4                         | 1545-0020 |
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| 1.665(a)-0A through 1.665(g)-2A | 1545-0192 |
| 1.666(d)-1A                     | 1545-0092 |
| 1.671-4                         | 1545-0092 |
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| 1.706-1                         | 1545-0099 |
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| 1.708-1                         | 1545-0099 |

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| 1.743-1  | 1545-0074 |
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| 1.811-2  | 1545-0128 |
| 1.811-8  | 1545-0126 |
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| 1.815-6  | 1545-0128 |
| 1.818-4  | 1545-0128 |

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| 1.822-6 | 1545-1027 |
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| 1.822-9 | 1545-1027 |
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| 1.826-6 | 1545-1027 |
| 1.831-3 | 1545-0123 |

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| 1.851-4  | 1545-0123 |
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| 1.856-9              | 1545-0123 |
| 1.857-8              | 1545-0123 |
| 1.857-9              | 1545-0074 |
| 1.858-1              | 1545-0123 |
| 1.859-2              | 1545-0045 |
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| 1.859-4              | 1545-0123 |
| 1.860-2              | 1545-0045 |
| 1.860-4              | 1545-0045 |
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| 1.860F-4             | 1545-1018 |
| 1.860F-4T            | 1545-0118 |
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| 1.861-2              | 1545-0089 |
| 1.861-3              | 1545-0089 |
| 1.861-8              | 1545-0126 |
| 1.861-8(e)(6)and (g) | 1545-1224 |
| 1.861-9              | 1545-0126 |
| 1.861-9T             | 1545-0121 |

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| 1.871-10 | 1545-0089 |
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| 1.892-4T | 1545-1053 |

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| 1.892-7T   | 1545-1053 |
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| 1.897-3    | 1545-0123 |
| 1.897-4    | 1545-0123 |
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| 1.897-6T   | 1545-0902 |
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| 1.902-1    | 1545-1458 |
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| 1.904-4    | 1545-0121 |
| 1.904-5    | 1545-0121 |
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| 1.904(f)-2 | 1545-0121 |

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| 1.904(f)-6  | 1545-0121 |
| 1.904(f)-7  | 1545-1127 |
| 1.904(f)-8  | 1545-1127 |
| 1.904(f)-9  | 1545-1127 |
| 1.904(f)-10 | 1545-1127 |
| 1.904(f)-11 | 1545-1127 |
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| 1.905-5T    | 1545-1056 |
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| 1.911-5     | 1545-0067 |



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| 1.924(d)-1T | 1545-0904 |
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| 1.925(b)-1T | 1545-0935 |
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| 1.927(a)-1T | 1545-0935 |
| 1.927(b)-1T | 1545-0935 |
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| 1.927(e)-1T | 1545-0935 |
| 1.927(e)-2T | 1545-0935 |
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| 1.935-1     | 1545-0074 |
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| 1.953-6T  | 1545-1142 |
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| 1.956-1   | 1545-0704 |

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|          | 1545-0938 |

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**PARTS 603-700 [RESERVED]**

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**PART 701 -- PRESIDENTIAL ELECTION CAMPAIGN FUND**

26 C.F.R. § 602.101

s 602.101 OMB Control Numbers.

**(a) Purpose.** This part collects and displays the control numbers assigned to collections of information in Internal Revenue Service regulations by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The Internal Revenue Service intends that this part (together with 26 CFR 601.9000) comply with the requirements of §§ 1320.7(f), 1320.12, 1320.13, and 1320.14 of 5 CFR Part 1320 (OMB regulations implementing the Paperwork Reduction Act), for the display of control numbers assigned by OMB to collections of information in Internal Revenue Service regulations. This part does not display control numbers assigned by the Office of Management and Budget to collections of information of the Bureau of Alcohol, Tobacco, and Firearms.

**(b) Cross-reference.** For display of control numbers assigned by the Office of Management and Budget to Internal Revenue Service collections of information in the Statement of Procedural Rules (26 CFR Part 601), see 26 CFR 601.9000.

**(c) Display.**

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CFR part or section where identified and described    Current OMB control No.

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## § 1. Tax imposed

*How Current is This?***(a) Married individuals filing joint returns and surviving spouses**

There is hereby imposed on the taxable income of—

(1) every married individual (as defined in section 7703) who makes a single return jointly with his spouse under section 6013, and

(2) every surviving spouse (as defined in section 2 (a)),

a tax determined in accordance with the following table:

| <b>If taxable income is:</b>          | <b>The tax is:</b>                                    |
|---------------------------------------|---|
| Not over \$36,900                     | 15% of taxable income.                                |
| Over \$36,900 but not over \$89,150   | \$5,535, plus 28% of the excess over \$36,900.        |
| Over \$89,150 but not over \$140,000  | \$20,165, plus 31% of the excess over \$89,150.       |
| Over \$140,000 but not over \$250,000 | \$35,928.50, plus 36% of the excess over \$140,000.   |
| Over \$250,000                        | \$75,528.50, plus 39.6% of the excess over \$250,000. |

**(b) Heads of households**

There is hereby imposed on the taxable income of every head of a household (as defined in section 2 (b)) a tax determined in accordance with the following table:

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| <b>If taxable income is:</b>          | <b>The tax is:</b>                                 |
|---------------------------------------|--|
| Not over \$29,600                     | 15% of taxable income.                             |
| Over \$29,600 but not over \$76,400   | \$4,440, plus 28% of the excess over \$29,600.     |
| Over \$76,400 but not over \$127,500  | \$17,544, plus 31% of the excess over \$76,400.    |
| Over \$127,500 but not over \$250,000 | \$33,385, plus 36% of the excess over \$127,500.   |
| Over \$250,000                        | \$77,485, plus 39.6% of the excess over \$250,000. |

**(c) Unmarried individuals (other than surviving spouses and heads of households)**

There is hereby imposed on the taxable income of every individual (other than a surviving spouse as defined in section 2 (a) or the head of a household as defined in section 2 (b)) who is not a married individual (as defined in section 7703) a tax determined in accordance with the following table:

| <b>If taxable income is:</b>          | <b>The tax is:</b>                                 |
|---------------------------------------|--|
| Not over \$22,100                     | 15% of taxable income.                             |
| Over \$22,100 but not over \$53,500   | \$3,315, plus 28% of the excess over \$22,100.     |
| Over \$53,500 but not over \$115,000  | \$12,107, plus 31% of the excess over \$53,500.    |
| Over \$115,000 but not over \$250,000 | \$31,172, plus 36% of the excess over \$115,000.   |
| Over \$250,000                        | \$79,772, plus 39.6% of the excess over \$250,000. |

**(d) Married individuals filing separate returns**

There is hereby imposed on the taxable income of every married individual (as defined in section 7703) who does not make a single return jointly with his spouse under section 6013, a tax determined in accordance with the following table:

| <b>If taxable income is:</b>         | <b>The tax is:</b>                                    |
|--------------------------------------|---|
| Not over \$18,450                    | 15% of taxable income.                                |
| Over \$18,450 but not over \$44,575  | \$2,767.50, plus 28% of the excess over \$18,450.     |
| Over \$44,575 but not over \$70,000  | \$10,082.50, plus 31% of the excess over \$44,575.    |
| Over \$70,000 but not over \$125,000 | \$17,964.25, plus 36% of the excess over \$70,000.    |
| Over \$125,000                       | \$37,764.25, plus 39.6% of the excess over \$125,000. |

**(e) Estates and trusts**

There is hereby imposed on the taxable income of—

- (1) every estate, and
- (2) every trust,

taxable under this subsection a tax determined in accordance with the following table:

| <b>If taxable income is:</b>      | <b>The tax is:</b>                              |
|-----------------------------------|---|
| Not over \$1,500                  | 15% of taxable income.                          |
| Over \$1,500 but not over \$3,500 | \$225, plus 28% of the excess over \$1,500.     |
| Over \$3,500 but not over \$5,500 | \$785, plus 31% of the excess over \$3,500.     |
| Over \$5,500 but not over \$7,500 | \$1,405, plus 36% of the excess over \$5,500.   |
| Over \$7,500                      | \$2,125, plus 39.6% of the excess over \$7,500. |

**(f) Phaseout of marriage penalty in 15-percent bracket; adjustments in tax tables so that inflation will not result in tax increases****(1) In general**

Not later than December 15 of 1993, and each subsequent calendar year, the Secretary shall prescribe tables which shall apply in lieu of the tables contained in subsections (a), (b), (c), (d), and (e) with respect to taxable years beginning in the succeeding calendar year.

**(2) Method of prescribing tables**

The table which under paragraph (1) is to apply in lieu of the table contained in subsection (a), (b), (c), (d), or (e), as the case may be, with respect to taxable years beginning in any calendar year shall be prescribed—

- (A) except as provided in paragraph (8), by increasing the minimum and maximum dollar amounts for each rate bracket for which a tax is imposed under such table by the cost-of-living adjustment for such calendar year,
- (B) by not changing the rate applicable to any rate bracket as adjusted under subparagraph (A), and
- (C) by adjusting the amounts setting forth the tax to the extent necessary to reflect the adjustments in the rate brackets.

**(3) Cost-of-living adjustment**

For purposes of paragraph (2), the cost-of-living adjustment for any calendar year is the percentage (if any) by which—

- (A) the CPI for the preceding calendar year, exceeds
- (B) the CPI for the calendar year 1992.

**(4) CPI for any calendar year**



For purposes of paragraph (3), the CPI for any calendar year is the average of the Consumer Price Index as of the close of the 12-month period ending on August 31 of such calendar year.

### **(5) Consumer Price Index**

For purposes of paragraph (4), the term "Consumer Price Index" means the last Consumer Price Index for all-urban consumers published by the Department of Labor. For purposes of the preceding sentence, the revision of the Consumer Price Index which is most consistent with the Consumer Price Index for calendar year 1986 shall be used.

### **(6) Rounding**

#### **(A) In general**

If any increase determined under paragraph (2)(A), section 63 (c) (4), section 68(b)(2) or section 151 (d)(4) is not a multiple of \$50, such increase shall be rounded to the next lowest multiple of \$50.

#### **(B) Table for married individuals filing separately**

In the case of a married individual filing a separate return, subparagraph (A) (other than with respect to sections 63 (c)(4) and 151 (d)(4)(A)) shall be applied by substituting "\$25" for "\$50" each place it appears.

### **(7) Special rule for certain brackets**

#### **(A) Calendar year 1994**

In prescribing the tables under paragraph (1) which apply with respect to taxable years beginning in calendar year 1994, the Secretary shall make no adjustment to the dollar amounts at which the 36 percent rate bracket begins or at which the 39.6 percent rate begins under any table contained in subsection (a), (b), (c), (d), or (e).

#### **(B) Later calendar years**

In prescribing tables under paragraph (1) which apply with respect to taxable years beginning in a calendar year after 1994, the cost-of-living adjustment used in making adjustments to the dollar amounts referred to in subparagraph (A) shall be determined under paragraph (3) by substituting "1993" for "1992".

### **(8) Elimination of marriage penalty in 15-percent bracket**

With respect to taxable years beginning after December 31, 2003, in prescribing the tables under paragraph (1)—

**(A)** the maximum taxable income in the 15-percent rate bracket in the table contained in subsection (a) (and the minimum taxable income in the next higher taxable income bracket in such table) shall be 200 percent of the maximum taxable income in the 15-percent rate bracket in the table contained in subsection (c) (after any other adjustment under this subsection), and

**(B)** the comparable taxable income amounts in the table contained in subsection (d) shall be 1/2 of the amounts determined under subparagraph (A).

### **(g) Certain unearned income of minor children taxed as if parent's income**

**(1) In general**

In the case of any child to whom this subsection applies, the tax imposed by this section shall be equal to the greater of—

- (A) the tax imposed by this section without regard to this subsection, or
- (B) the sum of—
  - (i) the tax which would be imposed by this section if the taxable income of such child for the taxable year were reduced by the net unearned income of such child, plus
  - (ii) such child's share of the allocable parental tax.

**(2) Child to whom subsection applies**

This subsection shall apply to any child for any taxable year if—

- (A) such child has not attained age 14 before the close of the taxable year, and
- (B) either parent of such child is alive at the close of the taxable year.

**(3) Allocable parental tax**

For purposes of this subsection—

**(A) In general**

The term "allocable parental tax" means the excess of—

- (i) the tax which would be imposed by this section on the parent's taxable income if such income included the net unearned income of all children of the parent to whom this subsection applies, over
- (ii) the tax imposed by this section on the parent without regard to this subsection.

For purposes of clause (i), net unearned income of all children of the parent shall not be taken into account in computing any exclusion, deduction, or credit of the parent.

**(B) Child's share**

A child's share of any allocable parental tax of a parent shall be equal to an amount which bears the same ratio to the total allocable parental tax as the child's net unearned income bears to the aggregate net unearned income of all children of such parent to whom this subsection applies.

**(C) Special rule where parent has different taxable year**

Except as provided in regulations, if the parent does not have the same taxable year as the child, the allocable parental tax shall be determined on the basis of the taxable year of the parent ending in the child's taxable year.

**(4) Net unearned income**

For purposes of this subsection—

**(A) In general**

The term "net unearned income" means the excess of—

- (i) the portion of the adjusted gross income for the taxable year which is not attributable to earned income (as defined in section

911 (d)(2)), over

(ii) the sum of—

(I) the amount in effect for the taxable year under section 63 (c)(5)(A) (relating to limitation on standard deduction in the case of certain dependents), plus

(II) the greater of the amount described in subclause (I) or, if the child itemizes his deductions for the taxable year, the amount of the itemized deductions allowed by this chapter for the taxable year which are directly connected with the production of the portion of adjusted gross income referred to in clause (i).

**(B) Limitation based on taxable income**

The amount of the net unearned income for any taxable year shall not exceed the individual's taxable income for such taxable year.

**(5) Special rules for determining parent to whom subsection applies**

For purposes of this subsection, the parent whose taxable income shall be taken into account shall be—

(A) in the case of parents who are not married (within the meaning of section 7703), the custodial parent (within the meaning of section 152 (e)) of the child, and

(B) in the case of married individuals filing separately, the individual with the greater taxable income.

**(6) Providing of parent's TIN**

The parent of any child to whom this subsection applies for any taxable year shall provide the TIN of such parent to such child and such child shall include such TIN on the child's return of tax imposed by this section for such taxable year.

**(7) Election to claim certain unearned income of child on parent's return**

**(A) In general**

If—

(i) any child to whom this subsection applies has gross income for the taxable year only from interest and dividends (including Alaska Permanent Fund dividends),

(ii) such gross income is more than the amount described in paragraph (4)(A)(ii)(I) and less than 10 times the amount so described,

(iii) no estimated tax payments for such year are made in the name and TIN of such child, and no amount has been deducted and withheld under section 3406, and

(iv) the parent of such child (as determined under paragraph (5)) elects the application of subparagraph (B),

such child shall be treated (other than for purposes of this paragraph) as having no gross income for such year and shall not be required to file a return under section 6012.

**(B) Income included on parent's return**

In the case of a parent making the election under this paragraph—

- (i) the gross income of each child to whom such election applies (to the extent the gross income of such child exceeds twice the amount described in paragraph (4)(A)(ii)(I)) shall be included in such parent's gross income for the taxable year,
- (ii) the tax imposed by this section for such year with respect to such parent shall be the amount equal to the sum of—
  - (I) the amount determined under this section after the application of clause (i), plus
  - (II) for each such child, 10 percent of the lesser of the amount described in paragraph (4)(A)(ii)(I) or the excess of the gross income of such child over the amount so described, and
- (iii) any interest which is an item of tax preference under section 57(a)(5) of the child shall be treated as an item of tax preference of such parent (and not of such child).

### (C) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph.

### (h) Maximum capital gains rate

#### (1) In general

If a taxpayer has a net capital gain for any taxable year, the tax imposed by this section for such taxable year shall not exceed the sum of—

- (A) a tax computed at the rates and in the same manner as if this subsection had not been enacted on the greater of—
  - (i) taxable income reduced by the net capital gain; or
  - (ii) the lesser of—
    - (I) the amount of taxable income taxed at a rate below 25 percent; or
    - (II) taxable income reduced by the adjusted net capital gain;
- (B) 5 percent (0 percent in the case of taxable years beginning after 2007) of so much of the adjusted net capital gain (or, if less, taxable income) as does not exceed the excess (if any) of—
  - (i) the amount of taxable income which would (without regard to this paragraph) be taxed at a rate below 25 percent, over
  - (ii) the taxable income reduced by the adjusted net capital gain;
- (C) 15 percent of the adjusted net capital gain (or, if less, taxable income) in excess of the amount on which a tax is determined under subparagraph (B);
- (D) 25 percent of the excess (if any) of—
  - (i) the unrecaptured section 1250 gain (or, if less, the net capital gain (determined without regard to paragraph (11))), over
  - (ii) the excess (if any) of—
    - (I) the sum of the amount on which tax is determined under subparagraph (A) plus the net capital gain, over

**(II)** taxable income; and

**(E)** 28 percent of the amount of taxable income in excess of the sum of the amounts on which tax is determined under the preceding subparagraphs of this paragraph.

**(2) Net capital gain taken into account as investment income**

For purposes of this subsection, the net capital gain for any taxable year shall be reduced (but not below zero) by the amount which the taxpayer takes into account as investment income under section 163 (d)(4)(B) (iii).

**(3) Adjusted net capital gain**

For purposes of this subsection, the term "adjusted net capital gain" means the sum of—

**(A)** net capital gain (determined without regard to paragraph (11)) reduced (but not below zero) by the sum of—

- (i)** unrecaptured section 1250 gain, and
- (ii)** 28-percent rate gain, plus

**(B)** qualified dividend income (as defined in paragraph (11)).

**(4) 28-percent rate gain**

For purposes of this subsection, the term "28-percent rate gain" means the excess (if any) of—

**(A)** the sum of—

- (i)** collectibles gain; and
- (ii)** section 1202 gain, over

**(B)** the sum of—

- (i)** collectibles loss;
- (ii)** the net short-term capital loss; and
- (iii)** the amount of long-term capital loss carried under section 1212 (b)(1)(B) to the taxable year.

**(5) Collectibles gain and loss**

For purposes of this subsection—

**(A) In general**

The terms "collectibles gain" and "collectibles loss" mean gain or loss (respectively) from the sale or exchange of a collectible (as defined in section 408 (m) without regard to paragraph (3) thereof) which is a capital asset held for more than 1 year but only to the extent such gain is taken into account in computing gross income and such loss is taken into account in computing taxable income.

**(B) Partnerships, etc.**

For purposes of subparagraph (A), any gain from the sale of an interest in a partnership, S corporation, or trust which is attributable to unrealized appreciation in the value of collectibles shall be treated as gain from the sale or exchange of a collectible. Rules similar to

the rules of section 751 shall apply for purposes of the preceding sentence.

#### **(6) Unrecaptured section 1250 gain**

For purposes of this subsection—

##### **(A) In general**

The term “unrecaptured section 1250 gain” means the excess (if any) of—

(i) the amount of long-term capital gain (not otherwise treated as ordinary income) which would be treated as ordinary income if section 1250 (b)(1) included all depreciation and the applicable percentage under section 1250 (a) were 100 percent, over

(ii) the excess (if any) of—

(I) the amount described in paragraph (4)(B); over

(II) the amount described in paragraph (4)(A).

##### **(B) Limitation with respect to section 1231 property**

The amount described in subparagraph (A)(i) from sales, exchanges, and conversions described in section 1231 (a)(3)(A) for any taxable year shall not exceed the net section 1231 gain (as defined in section 1231 (c)(3)) for such year.

#### **(7) Section 1202 gain**

For purposes of this subsection, the term “section 1202 gain” means the excess of—

(A) the gain which would be excluded from gross income under section 1202 but for the percentage limitation in section 1202 (a), over

(B) the gain excluded from gross income under section 1202.

#### **(8) Coordination with recapture of net ordinary losses under section 1231**

If any amount is treated as ordinary income under section 1231 (c), such amount shall be allocated among the separate categories of net section 1231 gain (as defined in section 1231 (c)(3)) in such manner as the Secretary may by forms or regulations prescribe.

#### **(9) Regulations**

The Secretary may prescribe such regulations as are appropriate (including regulations requiring reporting) to apply this subsection in the case of sales and exchanges by pass-thru entities and of interests in such entities.

#### **(10) Pass-thru entity defined**

For purposes of this subsection, the term “pass-thru entity” means—

(A) a regulated investment company;

(B) a real estate investment trust;

(C) an S corporation;

- (D) a partnership;
- (E) an estate or trust;
- (F) a common trust fund; and
- (G) a qualified electing fund (as defined in section 1295).

## (11) Dividends taxed as net capital gain

### (A) In general

For purposes of this subsection, the term "net capital gain" means net capital gain (determined without regard to this paragraph) increased by qualified dividend income.

### (B) Qualified dividend income

For purposes of this paragraph—

(i) In general The term "qualified dividend income" means dividends received during the taxable year from—

- (I) domestic corporations, and
- (II) qualified foreign corporations.

(ii) Certain dividends excluded Such term shall not include—

- (I) any dividend from a corporation which for the taxable year of the corporation in which the distribution is made, or the preceding taxable year, is a corporation exempt from tax under section 501 or 521,
- (II) any amount allowed as a deduction under section 591 (relating to deduction for dividends paid by mutual savings banks, etc.), and
- (III) any dividend described in section 404 (k).

(iii) Coordination with section 246 (c) Such term shall not include any dividend on any share of stock—

- (I) with respect to which the holding period requirements of section 246 (c) are not met (determined by substituting in section 246 (c) "60 days" for "45 days" each place it appears and by substituting "121-day period" for "91-day period"), or
- (II) to the extent that the taxpayer is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property.

### (C) Qualified foreign corporations

(i) In general Except as otherwise provided in this paragraph, the term "qualified foreign corporation" means any foreign corporation if—

- (I) such corporation is incorporated in a possession of the United States, or
- (II) such corporation is eligible for benefits of a comprehensive income tax treaty with the United States which the Secretary determines is satisfactory for purposes of this paragraph and which includes an exchange of information program.

(ii) Dividends on stock readily tradable on United States securities market A foreign corporation not otherwise treated as a qualified foreign corporation under clause (i) shall be so treated with

respect to any dividend paid by such corporation if the stock with respect to which such dividend is paid is readily tradable on an established securities market in the United States.

**(iii)** Exclusion of dividends of certain foreign corporations Such term shall not include any foreign corporation which for the taxable year of the corporation in which the dividend was paid, or the preceding taxable year, is a passive foreign investment company (as defined in section 1297).

**(iv)** Coordination with foreign tax credit limitation Rules similar to the rules of section 904 (b)(2)(B) shall apply with respect to the dividend rate differential under this paragraph.

## **(D) Special rules**

**(i)** Amounts taken into account as investment income Qualified dividend income shall not include any amount which the taxpayer takes into account as investment income under section 163 (d)(4) (B).

**(ii)** Extraordinary dividends If a taxpayer to whom this section applies receives, with respect to any share of stock, qualified dividend income from 1 or more dividends which are extraordinary dividends (within the meaning of section 1059 (c)), any loss on the sale or exchange of such share shall, to the extent of such dividends, be treated as long-term capital loss.

**(iii)** Treatment of dividends from regulated investment companies and real estate investment trusts A dividend received from a regulated investment company or a real estate investment trust shall be subject to the limitations prescribed in sections 854 and 857.

## **(i) Rate reductions after 2000**

### **(1) 10-percent rate bracket**

#### **(A) In general**

In the case of taxable years beginning after December 31, 2000—

**(i)** the rate of tax under subsections (a), (b), (c), and (d) on taxable income not over the initial bracket amount shall be 10 percent, and

**(ii)** the 15 percent rate of tax shall apply only to taxable income over the initial bracket amount but not over the maximum dollar amount for the 15-percent rate bracket.

#### **(B) Initial bracket amount**

For purposes of this paragraph, the initial bracket amount is—

**(i)** \$14,000 in the case of subsection (a),

**(ii)** \$10,000 in the case of subsection (b), and

**(iii)** 1/2 the amount applicable under clause (i) (after adjustment, if any, under subparagraph (C)) in the case of subsections (c) and (d).

#### **(C) Inflation adjustment**

In prescribing the tables under subsection (f) which apply with respect to taxable years beginning in calendar years after 2003—



(i) the cost-of-living adjustment shall be determined under subsection (f)(3) by substituting "2002" for "1992" in subparagraph (B) thereof, and

(ii) the adjustments under clause (i) shall not apply to the amount referred to in subparagraph (B)(iii).

If any amount after adjustment under the preceding sentence is not a multiple of \$50, such amount shall be rounded to the next lowest multiple of \$50.

**(D) Coordination with acceleration of 10 percent rate bracket benefit for 2001**

This paragraph shall not apply to any taxable year to which section 6428 applies.

**(2) Reductions in rates after June 30, 2001**

In the case of taxable years beginning in a calendar year after 2000, the corresponding percentage specified for such calendar year in the following table shall be substituted for the otherwise applicable tax rate in the tables under subsections (a), (b), (c), (d), and (e).

| <b>In the case of taxable years beginning during calendar year:</b> | <b>The corresponding percentages shall be substituted for the following percentages:</b> | <b>28%</b> | <b>31%</b> | <b>36%</b> | <b>39.6%</b> |
|---|--|------------|------------|------------|--------------|
| 2001  | 27.5%  | 30.5%      | 35.5%      | 39.1%      |              |
| 2002  | 27.0%  | 30.0%      | 35.0%      | 38.6%      |              |
| 2003 and thereafter   | 25.0%  | 28.0%      | 33.0%      | 35.0%      |              |

**(3) Adjustment of tables**

The Secretary shall adjust the tables prescribed under subsection (f) to carry out this subsection.

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CFR (Code of Federal Regulations)

26 CFR S 1.1-1

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26 C.F.R. § 1.1-1 Treas. Reg. § 1.1-1

**CODE OF FEDERAL REGULATIONS**

**TITLE 26--INTERNAL REVENUE**

**CHAPTER I--INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY**

**SUBCHAPTER A--INCOME TAX**

**PART 1--INCOME TAXES**

**NORMAL TAXES AND SURTAXES**

**DETERMINATION OF TAX LIABILITY**

**TAX ON INDIVIDUALS**

Current through December 4, 2001; 66 FR 63093

§ 1.1-1 Income tax on individuals.

(a) General rule. (1) Section 1 of the Code imposes an income tax on the income of every individual who is a citizen or resident of the United States and, to the extent provided by section 871(b) or 877(b), on the income of a nonresident alien individual. For optional tax in the case of taxpayers with adjusted gross income of less than \$10,000 (less than \$5,000 for taxable years beginning before January 1, 1970) see section 3. The tax imposed is upon taxable income (determined by subtracting the allowable deductions from gross income). The tax is determined in accordance with the table contained in section 1. See subparagraph (2) of this paragraph for reference guides to the appropriate table for taxable years beginning on or after January 1, 1964, and before January 1, 1965, taxable years beginning after December 31, 1964, and before January 1, 1971, and taxable years beginning after December 31, 1970. In certain cases credits are allowed against the amount of the tax. See part IV (section 31 and following), subchapter A, chapter 1 of the Code. In general, the tax is payable upon the basis of returns rendered by persons liable therefor (subchapter A (sections 6001

and following), chapter 61 of the Code) or at the source of the income by withholding. For the computation of tax in the case of a joint return of a husband and wife, or a return of a surviving spouse, for taxable years beginning before January 1, 1971, see section 2. The computation of tax in such a case for taxable years beginning after December 31, 1970, is determined in accordance with the table contained in section 1(a) as amended by the Tax Reform Act of 1969. For other rates of tax on individuals, see section 5(a). For the imposition of an additional tax for the calendar years 1968, 1969, and 1970, see section 51(a).

(2)(i) For taxable years beginning on or after January 1, 1964, the tax imposed upon a single individual, a head of a household, a married individual filing a separate return, and estates and trusts is the tax imposed by section 1 determined in accordance with the appropriate table contained in the following subsection of section 1:

-----  
Taxable years beginning  
after Dec. 31, 1970

Taxable years (references in this

Taxable years beginning after column are to the Code

beginning in 1964 but before as amended by the Tax

1964 1971 Reform Act of 1969)

-----  
Single

individual .... Sec. 1(a)(1) Sec. 1(a)(2) Sec. 1(c).

Head of a

household ..... Sec. 1(b)(1) Sec. 1(b)(2) Sec. 1(b).

Married

individual

filing a

separate

return ..... Sec. 1(a)(1)    Sec. 1(a)(2)            Sec. 1(d).

Estates and

trusts ..... Sec. 1(a)(1)    Sec. 1(a)(2)            Sec. 1(d).

-----  
  
(ii) For taxable years beginning after December 31, 1970, the tax imposed by section 1(d), as amended by the Tax Reform Act of 1969, shall apply to the income effectively connected with the conduct of a trade or business in the United States by a married alien individual who is a nonresident of the United States for all or part of the taxable year or by a foreign estate or trust. For such years the tax imposed by section 1(c), as amended by such Act, shall apply to the income effectively connected with the conduct of a trade or business in the United States by an unmarried alien individual (other than a surviving spouse) who is a nonresident of the United States for all or part of the taxable year. See paragraph (b)(2) of § 1.871-8.

(3) The income tax imposed by section 1 upon any amount of taxable income is computed by adding to the income tax for the bracket in which that amount falls in the appropriate table in section 1 the income tax upon the excess of that amount over the bottom of the bracket at the rate indicated in such table.

(4) The provisions of section 1 of the Code, as amended by the Tax Reform Act of 1969, and of this paragraph may be illustrated by the following examples:

Example (1). A, an unmarried individual, had taxable income for the calendar year 1964 of \$15,750. Accordingly, the tax upon such taxable income would be \$4,507.50, computed as follows from the table in section 1(a)(1):

|   |            |
|---|------------|
| Tax on \$14,000 (from table) .....                                | \$3,790.00 |
| Tax on \$1,750 (at 41 percent as determined from the table) ..... | 717.50     |
| -----   |            |
| Total tax on \$15,750 .....                                       | 4,507.50   |

Example (2). Assume the same facts as in example (1), except the figures are for the calendar year 1965.

The tax upon such taxable income would be \$4,232.50, computed as follows from the table in section 1(a)(2):

|   |            |
|---|------------|
| Tax on \$14,000 (from table) .....                                | \$3,550.00 |
| Tax on \$1,750 (at 39 percent as determined from the table) ..... | 682.50     |
| -----   |            |
| Total tax on \$15,750 .....                                       | 4,232.50   |

Example (3). Assume the same facts as in example (1), except the figures are for the calendar year 1971. The tax upon such taxable income would be \$3,752.50, computed as follows from the table in section 1(c), as amended:

|   |            |
|---|------------|
| Tax on \$14,000 (from table) .....                                | \$3,210.00 |
| Tax on \$1,750 (at 31 percent as determined from the table) ..... | 542.50     |
| -----   |            |
| Total tax on \$15,750 .....                                       | 3,752.50   |

(b) Citizens or residents of the United States liable to tax. In general, all citizens of the United States, wherever resident, and all resident alien individuals are liable to the income taxes imposed by the Code whether the income is received from sources within or without the United States. Pursuant to section 876, a nonresident alien individual who is a bona fide resident of Puerto Rico during the entire taxable year is, except as provided in section 933 with respect to Puerto Rican source income, subject to taxation in the same manner as a resident alien individual. As to tax on nonresident alien individuals, see sections 871 and 877.

(c) Who is a citizen. Every person born or naturalized in the United States and subject to its jurisdiction is a citizen. For other rules governing the acquisition of citizenship, see chapters 1 and 2 of title III of the Immigration and Nationality Act (8 U.S.C. 1401-1459). For rules governing loss of citizenship, see sections 349 to 357, inclusive, of such Act (8 U.S.C. 1481-1489), *Schneider v. Rusk*, (1964) 377 U.S. 163, and Rev. Rul. 70-506, C.B. 1970-2, 1. For rules pertaining to persons who are nationals but not citizens at birth, e.g., a person born in American Samoa, see section 308 of such Act (8 U.S.C. 1408). For special rules applicable to certain expatriates who have lost citizenship with a principal purpose of avoiding certain taxes, see section 877. A foreigner who has filed his declaration of intention of becoming a citizen but who has not yet been

admitted to citizenship by a final order of a naturalization court is an alien.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 7117, 36 FR 9396, May 25, 1971; T.D. 7332, 39 FR 44216, Dec. 23, 1974]

26 C. F. R. § 1.1-1

26 CFR § 1.1-1

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I.R.C. § 1

**UNITED STATES CODE ANNOTATED**

**TITLE 26. INTERNAL REVENUE CODE**

**SUBTITLE A--INCOME TAXES**

**CHAPTER 1--NORMAL TAXES AND SURTAXES**

**SUBCHAPTER A--DETERMINATION OF TAX LIABILITY**

**PART I--TAX ON INDIVIDUALS**

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Current through P.L. 107-11, approved 5-28-01

§ 1. Tax imposed

**(a) [FN1] Married individuals filing joint returns and surviving spouses.--There is hereby imposed on the taxable income of--**

**(1)** every married individual (as defined in section 7703) who makes a single return jointly with his spouse under section 6013, and

**(2)** every surviving spouse (as defined in section 2(a)), a tax determined in accordance with the following table:

If taxable income is:           The tax is:

Not over \$36,900 ..... 15% of taxable income.

Over \$36,900 but not over

\$89,150 ..... \$5,535, plus 28% of the excess over \$36,900.

Over \$89,150 but not over

\$140,000 ..... \$20,165, plus 31% of the excess over \$89,150.

Over \$140,000 but not over

\$250,000 ..... \$35,928.50, plus 36% of the excess over

\$140,000.

Over \$250,000 ..... \$75,528.50, plus 39.6% of the excess over

\$250,000.

**(b) [FN1] Heads of households.**--There is hereby imposed on the taxable income of every head of a household (as defined in section 2(b)) a tax determined in accordance with the following table:

If taxable income is:           The tax is:

Not over \$29,600 ..... 15% of taxable income.

Over \$29,600 but not over

\$76,400 ..... \$4,440, plus 28% of the excess over \$29,600.

Over \$76,400 but not over

\$127,500 ..... \$17,544, plus 31% of the excess over \$76,400.

Over \$127,500 but not over



\$250,000..... \$33,385, plus 36% of the excess over

\$127,500.

Over \$250,000 ..... \$77,485, plus 39.6% of the excess over

\$250,000.

**(c) [FN1] Unmarried individuals (other than surviving spouses and heads of households).--There is hereby imposed on the taxable income of every individual (other than a surviving spouse as defined in section 2(a) or the head of a household as defined in section 2(b)) who is not a married individual (as defined in section 7703) a tax determined in accordance with the following table:**

If taxable income is:            The tax is:

Not over \$22,100 ..... 15% of taxable income.

Over \$22,100 but not over

\$53,500 ..... \$3,315, plus 28% of the excess over \$22,100.

Over \$53,500 but not over

\$115,000 ..... \$12,107, plus 31% of the excess over \$53,500.

Over \$115,000 but not over

\$250,000 ..... \$31,172, plus 36% of the excess over \$115,000.

Over \$250,000 ..... \$79,772, plus 39.6% of the excess over

\$250,000.

**(d) [FN1] Married individuals filing separate returns.--There is hereby imposed on the taxable income of every married individual (as defined in section 7703) who does not make a single return jointly with his spouse under section 6013, a tax determined in accordance with the following table:**

If taxable income is:            The tax is:

Not over \$18,450 ..... 15% of taxable income.

Over \$18,450 but not over

\$44,575 ..... \$2,767.50, plus 28% of the excess over \$18,450.

Over \$44,575 but not over

\$70,000 ..... \$10,082.50, plus 31% of the excess over  
\$44,575.

Over \$70,000 but not over

\$125,000 ..... \$17,964.25, plus 36% of the excess over  
\$70,000.

Over \$125,000 ..... \$37,764.25, plus 39.6% of the excess over

\$125,000.

**(e) [FN1] Estates and trusts.**--There is hereby imposed on the taxable income of--

**(1)** every estate, and

**(2)** every trust,

taxable under this subsection a tax determined in accordance with the following table:

If taxable income is:            The tax is:

Not over \$1,500 ..... 15% of taxable income.

Over \$1,500 but not over \$3,500 . \$225, plus 28% of the excess over \$1,500.

Over \$3,500 but not over \$5,500 . \$785, plus 31% of the excess over \$3,500.

Over \$5,500 but not over \$7,500 . \$1,405, plus 36% of the excess over \$5,500.

Over \$7,500 ..... \$2,125, plus 39.6% of the excess over \$7,500.

**(f) Adjustments in tax tables so that inflation will not result in tax increases.--**

**(1) In general.--**Not later than December 15 of 1993, and each subsequent calendar year, the Secretary shall prescribe tables which shall apply in lieu of the tables contained in subsections (a), (b), (c), (d), and (e) with respect to taxable years beginning in the succeeding calendar year.

**(2) Method of prescribing tables.--**The table which under paragraph (1) is to apply in lieu of the table contained in subsection (a), (b), (c), (d), or (e), as the case may be, with respect to taxable years beginning in any calendar year shall be prescribed--

**(A)** by increasing the minimum and maximum dollar amounts for each rate bracket for which a tax is imposed under such table by the cost-of-living adjustment for such calendar year,

**(B)** by not changing the rate applicable to any rate bracket as adjusted under subparagraph (A), and

**(C)** by adjusting the amounts setting forth the tax to the extent necessary to reflect the adjustments in the rate brackets.

**(3) Cost-of-living adjustment.--**For purposes of paragraph (2), the cost-of- living adjustment for any calendar year is the percentage (if any) by which--

**(A)** the CPI for the preceding calendar year, exceeds

**(B)** the CPI for the calendar year 1992.

**(4) CPI for any calendar year.--**For purposes of paragraph (3), the CPI for any calendar year is the average of the Consumer Price Index as of the close of the 12-month period ending on August 31 of such calendar year.

**(5) Consumer price index.--**For purposes of paragraph (4), the term "Consumer Price Index" means the last Consumer Price Index for all-urban consumers published by the Department of Labor. For purposes of the preceding sentence, the revision of the Consumer Price Index which is most consistent with the Consumer Price Index for calendar year 1986 shall be used.

**(6) Rounding.--**

**(A) In general.**--If any increase determined under paragraph (2)(A), section 63(c)(4), section 68(b)(2) or section 151(d)(4) is not a multiple of \$50, such increase shall be rounded to the next lowest multiple of \$50.

**(B) Table for married individuals filing separately.**--In the case of a married individual filing a separate return, subparagraph (A) (other than with respect to subsection (c)(4) of section 63 (as it applies to subsections (c)(5)(A) and (f) of such section) and section 151(d)(4)(A)) shall be applied by substituting "\$25" for "\$50" each place it appears.

**(7) Special rule for certain brackets.--**

**(A) Calendar year 1994.**--In prescribing the tables under paragraph (1) which apply with respect to taxable years beginning in calendar year 1994, the Secretary shall make no adjustment to the dollar amounts at which the 36 percent rate bracket begins or at which the 39.6 percent rate begins under any table contained in subsection (a), (b), (c), (d), or (e).

**(B) Later calendar years.**--In prescribing tables under paragraph (1) which apply with respect to taxable years beginning in a calendar year after 1994, the cost-of-living adjustment used in making adjustments to the dollar amounts referred to in subparagraph (A) shall be determined under paragraph (3) by substituting "1993" for "1992".

**(g) Certain unearned income of minor children taxed as if parent's income.--**

**(1) In general.**--In the case of any child to whom this subsection applies, the tax imposed by this section shall be equal to the greater of--

**(A)** the tax imposed by this section without regard to this subsection, or

**(B)** the sum of--

**(i)** the tax which would be imposed by this section if the taxable income of such child for the taxable year were reduced by the net unearned income of such child, plus

**(ii)** such child's share of the allocable parental tax.

**(2) Child to whom subsection applies.**--This subsection shall apply to any child for any taxable year if--

**(A)** such child has not attained age 14 before the close of the taxable year, and

**(B)** either parent of such child is alive at the close of the taxable year.

**(3) Allocable parental tax.**--For purposes of this subsection--

**(A) In general.**--The term "allocable parental tax" means the excess of--

**(i)** the tax which would be imposed by this section on the parent's taxable income if such income included the net unearned income of all children of the parent to whom this subsection applies, over

**(ii)** the tax imposed by this section on the parent without regard to this subsection.

For purposes of clause (i), net unearned income of all children of the parent shall not be taken into account in computing any exclusion, deduction, or credit of the parent.

**(B) Child's share.**--A child's share of any allocable parental tax of a parent shall be equal to an amount which bears the same ratio to the total allocable parental tax as the child's net unearned income bears to the aggregate net unearned income of all children of such parent to whom this subsection applies.

**(C) Special rule where parent has different taxable year.**--Except as provided in regulations, if the parent does not have the same taxable year as the child, the allocable parental tax shall be determined on the basis of the taxable year of the parent ending in the child's taxable year.

**[(D) Redesignated (C)]**

**(4) Net unearned income.**--For purposes of this subsection--

**(A) In general.**--The term "net unearned income" means the excess of--

**(i)** the portion of the adjusted gross income for the taxable year which is not attributable to earned income (as defined in section 911(d)(2)), over

**(ii)** the sum of--

**(I)** the amount in effect for the taxable year under section 63(c)(5)(A) (relating to limitation on standard deduction in the case of certain dependents), plus

**(II)** the greater of the amount described in subclause (I) or, if the child itemizes his deductions for the taxable year, the amount of the itemized deductions allowed by this chapter for the taxable year which are directly connected with the production of the portion of adjusted gross income referred to in clause (i).

**(B) Limitation based on taxable income.**--The amount of the net unearned income for any taxable year shall not exceed the individual's taxable income for such taxable year.

**(5) Special rules for determining parent to whom subsection applies.**--For purposes of this subsection, the parent whose taxable income shall be taken into account shall be--

**(A)** in the case of parents who are not married (within the meaning of section 7703), the custodial parent (within the meaning of section 152(e)) of the child, and

**(B)** in the case of married individuals filing separately, the individual with the greater taxable income.

**(6) Providing of parent's TIN.--**The parent of any child to whom this subsection applies for any taxable year shall provide the TIN of such parent to such child and such child shall include such TIN on the child's return of tax imposed by this section for such taxable year.

**(7) Election to claim certain unearned income of child on parent's return.--**

**(A) In general.--**If--

**(i)** any child to whom this subsection applies has gross income for the taxable year only from interest and dividends (including Alaska Permanent Fund dividends),

**(ii)** such gross income is more than the amount described in paragraph (4)(A)(ii)(I) and less than 10 times the amount so described,

**(iii)** no estimated tax payments for such year are made in the name and TIN of such child, and no amount has been deducted and withheld under section 3406, and

**(iv)** the parent of such child (as determined under paragraph (5)) elects the application of subparagraph (B),

such child shall be treated (other than for purposes of this paragraph) as having no gross income for such year and shall not be required to file a return under section 6012.

**(B) Income included on parent's return.--**In the case of a parent making the election under this paragraph--

**(i)** the gross income of each child to whom such election applies (to the extent the gross income of such child exceeds twice the amount described in paragraph (4)(A)(ii)(I)) shall be included in such parent's gross income for the taxable year,

**(ii)** the tax imposed by this section for such year with respect to such parent shall be the amount equal to the sum of--

**(I)** the amount determined under this section after the application of clause (i), plus

**(II)** for each such child, 15 percent of the lesser of the amount described in paragraph (4)(A)(ii)(I) or the excess of the gross income of such child over the amount so described, and

**(iii)** any interest which is an item of tax preference under section 57(a)(5) of the child shall be treated as an item of tax preference of such parent (and not of such child).

**(C) Regulations.--**The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph.

**(h) Maximum capital gains rate.--**

**(1) In general.**--If a taxpayer has a net capital gain for any taxable year, the tax imposed by this section for such taxable year shall not exceed the sum of--

**(A)** a tax computed at the rates and in the same manner as if this subsection had not been enacted on the greater of--

**(i)** taxable income reduced by the net capital gain; or

**(ii)** the lesser of--

**(I)** the amount of taxable income taxed at a rate below 28 percent; or

**(II)** taxable income reduced by the adjusted net capital gain;

**(B)** 10 percent of so much of the adjusted net capital gain (or, if less, taxable income) as does not exceed the excess (if any) of--

**(i)** the amount of taxable income which would (without regard to this paragraph) be taxed at a rate below 28 percent, over

**(ii)** the taxable income reduced by the adjusted net capital gain;

**(C)** 20 percent of the adjusted net capital gain (or, if less, taxable income) in excess of the amount on which a tax is determined under subparagraph (B);

**(D)** 25 percent of the excess (if any) of--

**(i)** the unrecaptured section 1250 gain (or, if less, the net capital gain), over

**(ii)** the excess (if any) of--

**(I)** the sum of the amount on which tax is determined under subparagraph (A) plus the net capital gain, over

**(II)** taxable income; and

**(E)** 28 percent of the amount of taxable income in excess of the sum of the amounts on which tax is determined under the preceding subparagraphs of this paragraph.

**(2) Reduced capital gain rates for qualified 5-year gain.**--

**(A) Reduction in 10-percent rate.**--In the case of any taxable year beginning after December 31, 2000, the rate under paragraph (1)(B) shall be 8 percent with respect to so much of the amount to which the 10-

percent rate would otherwise apply as does not exceed qualified 5-year gain, and 10 percent with respect to the remainder of such amount.

**(B) Reduction in 20-percent rate.**--The rate under paragraph (1)(C) shall be 18 percent with respect to so much of the amount to which the 20-percent rate would otherwise apply as does not exceed the lesser of--

(i) the excess of qualified 5-year gain over the amount of such gain taken into account under subparagraph (A) of this paragraph; or

(ii) the amount of qualified 5-year gain (determined by taking into account only property the holding period for which begins after December 31, 2000),

and 20 percent with respect to the remainder of such amount. For purposes of determining under the preceding sentence whether the holding period of property begins after December 31, 2000, the holding period of property acquired pursuant to the exercise of an option (or other right or obligation to acquire property) shall include the period such option (or other right or obligation) was held.

**(3) Net capital gain taken into account as investment income.**--For purposes of this subsection, the net capital gain for any taxable year shall be reduced (but not below zero) by the amount which the taxpayer takes into account as investment income under section 163(d)(4)(B)(iii).

**(4) Adjusted net capital gain.**--For purposes of this subsection, the term "adjusted net capital gain" means net capital gain reduced (but not below zero) by the sum of--

(A) unrecaptured section 1250 gain; and

(B) 28-percent rate gain.

**(5) 28-percent rate gain.**--For purposes of this subsection, the term "28-percent rate gain" means the excess (if any) of--

(A) the sum of--

(i) collectibles gain; and

(ii) section 1202 gain, over

(B) the sum of--

(i) collectibles loss;

(ii) the net short-term capital loss; and

(iii) the amount of long-term capital loss carried under section 1212(b)(1)(B) to the taxable year.



**(6) Collectibles gain and loss.**--For purposes of this subsection.--

**(A) In general.**--The terms "collectibles gain" and "collectibles loss" mean gain or loss (respectively) from the sale or exchange of a collectible (as defined in section 408(m) without regard to paragraph (3) thereof) which is a capital asset held for more than 1 year but only to the extent such gain is taken into account in computing gross income and such loss is taken into account in computing taxable income.

**(B) Partnerships, etc.**--For purposes of subparagraph (A), any gain from the sale of an interest in a partnership, S corporation, or trust which is attributable to unrealized appreciation in the value of collectibles shall be treated as gain from the sale or exchange of a collectible. Rules similar to the rules of section 751 shall apply for purposes of the preceding sentence.

**(7) Unrecaptured section 1250 gain.**--For purposes of this subsection.--

**(A) In general.**--The term "unrecaptured section 1250 gain" means the excess (if any) of--

**(i)** the amount of long-term capital gain (not otherwise treated as ordinary income) which would be treated as ordinary income if section 1250(b)(1) included all depreciation and the applicable percentage under section 1250(a) were 100 percent, over

**(ii)** the excess (if any) of--

**(I)** the amount described in paragraph (5)(B); over

**(II)** the amount described in paragraph (5)(A).

**(B) Limitation with respect to section 1231 property.**--The amount described in subparagraph (A)(i) from sales, exchanges, and conversions described in section 1231(a)(3)(A) for any taxable year shall not exceed the net section 1231 gain (as defined in section 1231(c)(3)) for such year.

**(8) Section 1202 gain.**--For purposes of this subsection, the term "section 1202 gain" means the excess of--

**(A)** the gain which would be excluded from gross income under section 1202 but for the percentage limitation in section 1202(a), over

**(B)** the gain excluded from gross income under section 1202.

**(9) Qualified 5-year gain.**--For purposes of this subsection, the term "qualified 5-year gain" means the aggregate long-term capital gain from property held for more than 5 years. The determination under the preceding sentence shall be made without regard to collectibles gain, gain described in paragraph (7)(A)(i), and section 1202 gain.

**(10) Coordination with recapture of net ordinary losses under section 1231.**-- If any amount is treated as ordinary income under section 1231(c), such amount shall be allocated among the separate categories of net

section 1231 gain (as defined in section 1231(c)(3)) in such manner as the Secretary may by forms or regulations prescribe.

**(11) Regulations.**--The Secretary may prescribe such regulations as are appropriate (including regulations requiring reporting) to apply this subsection in the case of sales and exchanges by pass-thru entities and of interests in such entities.

**(12) Pass-thru entity defined.**--For purposes of this subsection, the term "pass-thru entity" means--

(A) a regulated investment company;

(B) a real estate investment trust;

(C) an S corporation;

(D) a partnership;

(E) an estate or trust;

(F) a common trust fund;

(G) a foreign investment company which is described in section 1246(b)(1) and for which an election is in effect under section 1247; and

(H) a qualified electing fund (as defined in section 1295).

**(13) Special rules.**--

**(A) Determination of 28-percent rate gain.**--In applying paragraph (5)--

(i) the amount determined under subparagraph (A) of paragraph (5) shall include long-term capital gain (not otherwise described in such subparagraph)--

(I) which is properly taken into account for the portion of the taxable year before May 7, 1997; or

(II) from property held not more than 18 months which is properly taken into account for the portion of the taxable year after July 28, 1997, and before January 1, 1998;

(ii) the amount determined under subparagraph (B) of paragraph (5) shall include long-term capital loss (not otherwise described in such subparagraph)--

(I) which is properly taken into account for the portion of the taxable year before May 7, 1997; or

(II) from property held not more than 18 months which is properly taken into account for the portion

of the taxable year after July 28, 1997, and before January 1, 1998; and

(iii) subparagraph (B) of paragraph (5) (as in effect immediately before the enactment of this clause) shall apply to amounts properly taken into account before January 1, 1998.

**(B) Determination of unrecaptured section 1250 gain.**--The amount determined under paragraph (7)(A) (i) shall not include gain--

(i) which is properly taken into account for the portion of the taxable year before May 7, 1997; or

(ii) from property held not more than 18 months which is properly taken into account for the portion of the taxable year after July 28, 1997, and before January 1, 1998.

**(C) Special rules for pass-thru entities.**--In applying this paragraph with respect to any pass-thru entity, the determination of when gains and loss are properly taken into account shall be made at the entity level.

**(D) Charitable remainder trusts.**--Subparagraphs (A) and (B)(ii) shall not apply to any capital gain distribution made by a trust described in section 664.

## CREDIT(S)

### 2001 Electronic Update

(Aug. 16, 1954, c. 736, 68A Stat. 5; Feb. 26, 1964, Pub.L. 88-272, Title I, § 111, 78 Stat. 19; Nov. 13, 1966, Pub.L. 89-809, Title I, § 103(a) (2), 80 Stat. 1550; Dec. 30, 1969, Pub.L. 91-172, Title VIII, § 803(a), 83 Stat. 678; May 23, 1977, Pub.L. 95-30, Title I, § 101(a), 91 Stat. 127; Nov. 11, 1978, Pub.L. 95-600, Title I, § 101(a), 92 Stat. 2767; Aug. 13, 1981, Pub.L. 97-34, Title I, §§ 101(a), 104(a), 95 Stat. 176, 188; Jan. 12, 1983, Pub.L. 97-448, Title I, § 101(a)(3), 96 Stat. 2366; Oct. 22, 1986, Pub.L. 99-514, Title I, § 101(a), Title III, § 302(a), Title XIV, § 1411(a), 100 Stat. 2096, 2216, 2714; Nov. 10, 1988, Pub.L. 100-647, Title I, §§ 1001(a)(3), 1014, (e)(1) to (3), 6, 7, Title VI, § 6006(a), 102 Stat. 3349, 3561, 3562, 3686; Dec. 19, 1989,

Foreign Earned Income

See separate instructions. Attach to Form 1040.

For Use by U.S. Citizens and Resident Aliens Only

Name shown on Form 1040

Your social security number

Part I General Information

- 1 Your foreign address (including country)
2 Your occupation
3 Employer's name
4a Employer's U.S. address
b Employer's foreign address
5 Employer is (check any that apply):
6a If, after 1981, you filed Form 2555 to claim either of the exclusions or Form 2555-EZ to claim the foreign earned income exclusion, enter the last year you filed the form.
6b If you did not file Form 2555 or 2555-EZ after 1981 to claim either of the exclusions, check here
6c Have you ever revoked either of the exclusions?
6d If you answered "Yes," enter the type of exclusion and the tax year for which the revocation was effective.
7 Of what country are you a citizen/national?
8a Did you maintain a separate foreign residence for your family because of adverse living conditions at your tax home?
8b If "Yes," enter city and country of the separate foreign residence. Also, enter the number of days during your tax year that you maintained a second household at that address.
9 List your tax home(s) during your tax year and date(s) established.

Next, complete either Part II or Part III. If an item does not apply, enter "NA." If you do not give the information asked for, any exclusion or deduction you claim may be disallowed.

Part II Taxpayers Qualifying Under Bona Fide Residence Test (See page 2 of the instructions.)

- 10 Date bona fide residence began and ended
11 Kind of living quarters in foreign country
12a Did any of your family live with you abroad during any part of the tax year?
12b If "Yes," who and for what period?
13a Have you submitted a statement to the authorities of the foreign country where you claim bona fide residence that you are not a resident of that country?
13b Are you required to pay income tax to the country where you claim bona fide residence?
14 If you were present in the United States or its possessions during the tax year, complete columns (a)-(d) below. Do not include the income from column (d) in Part IV, but report it on Form 1040.

Table with 8 columns: (a) Date arrived in U.S., (b) Date left U.S., (c) Number of days in U.S. on business, (d) Income earned in U.S. on business (attach computation). The table is currently empty.

- 15a List any contractual terms or other conditions relating to the length of your employment abroad.
b Enter the type of visa under which you entered the foreign country.
c Did your visa limit the length of your stay or employment in a foreign country? If "Yes," attach explanation
d Did you maintain a home in the United States while living abroad?
e If "Yes," enter address of your home, whether it was rented, the names of the occupants, and their relationship to you.

**Part III Taxpayers Qualifying Under Physical Presence Test** (See page 2 of the instructions.)

- 16 The physical presence test is based on the 12-month period from ► ..... through ► .....
- 17 Enter your principal country of employment during your tax year. ► .....
- 18 If you traveled abroad during the 12-month period entered on line 16, complete columns (a)–(f) below. Exclude travel between foreign countries that did not involve travel on or over international waters, or in or over the United States, for 24 hours or more. If you have no travel to report during the period, enter "Physically present in a foreign country or countries for the entire 12-month period." **Do not** include the income from column (f) below in Part IV, but report it on Form 1040.

| (a) Name of country (including U.S.) | (b) Date arrived | (c) Date left | (d) Full days present in country | (e) Number of days in U.S. on business | (f) Income earned in U.S. on business (attach computation) |
|--------------------------------------|------------------|---------------|----------------------------------|--|--|
|                                      |                  |               |                                  |  |  |
|                                      |                  |               |                                  |  |  |
|                                      |                  |               |                                  |  |  |

**Part IV All Taxpayers**

**Note:** Enter on lines 19 through 23 all income, including noncash income, you earned and actually or constructively received during your 2000 tax year for services you performed in a foreign country. If any of the foreign earned income received this tax year was earned in a prior tax year, or will be earned in a later tax year (such as a bonus), see the instructions. **Do not** include income from line 14, column (d), or line 18, column (f). Report amounts in U.S. dollars, using the exchange rates in effect when you actually or constructively received the income.

If you are a cash basis taxpayer, report on Form 1040 all income you received in 2000, no matter when you performed the service.

| 2000 Foreign Earned Income |   | Amount (in U.S. dollars) |  |
|----------------------------|---|--------------------------|--|
| 19                         | Total wages, salaries, bonuses, commissions, etc. . . . .   | 19                       |  |
| 20                         | Allowable share of income for personal services performed (see instructions):   |                          |  |
| a                          | In a business (including farming) or profession . . . . .   | 20a                      |  |
| b                          | In a partnership. List partnership's name and address and type of income. ► .....   | 20b                      |  |
| 21                         | Noncash income (market value of property or facilities furnished by employer—attach statement showing how it was determined):             |                          |  |
| a                          | Home (lodging) . . . . .  | 21a                      |  |
| b                          | Meals . . . . .   | 21b                      |  |
| c                          | Car . . . . .   | 21c                      |  |
| d                          | Other property or facilities. List type and amount. ► .....   | 21d                      |  |
| 22                         | Allowances, reimbursements, or expenses paid on your behalf for services you performed:   |                          |  |
| a                          | Cost of living and overseas differential . . . . .  | 22a                      |  |
| b                          | Family . . . . .  | 22b                      |  |
| c                          | Education . . . . .   | 22c                      |  |
| d                          | Home leave . . . . .  | 22d                      |  |
| e                          | Quarters. . . . .   | 22e                      |  |
| f                          | For any other purpose. List type and amount. ► .....  | 22f                      |  |
| g                          | Add lines 22a through 22f. . . . .  | 22g                      |  |
| 23                         | Other foreign earned income. List type and amount. ► .....  | 23                       |  |
| 24                         | Add lines 19 through 21d, line 22g, and line 23 . . . . .   | 24                       |  |
| 25                         | Total amount of meals and lodging included on line 24 that is excludable (see instructions) . . . . .                                     | 25                       |  |
| 26                         | Subtract line 25 from line 24. Enter the result here and on line 27 on page 3. This is your <b>2000 foreign earned income</b> . . . . . ► | 26                       |  |

**Part V All Taxpayers**

|    |  |    |  |  |
|----|--|----|--|--|
| 27 | Enter the amount from line 26 . . . . .                      | 27 |  |  |
|    | Are you claiming the housing exclusion or housing deduction? |    |  |  |
|    | <input type="checkbox"/> <b>Yes.</b> Complete Part VI.       |    |  |  |
|    | <input type="checkbox"/> <b>No.</b> Go to Part VII.          |    |  |  |

**Part VI Taxpayers Claiming the Housing Exclusion and/or Deduction**

|    |  |    |  |      |
|----|--|----|--|------|
| 28 | Qualified housing expenses for the tax year (see instructions) . . . . .   | 28 |  |      |
| 29 | Number of days in your qualifying period that fall within your 2000 tax year (see instructions) . . . . .  | 29 |  | days |
| 30 | Multiply \$27.79 by the number of days on line 29. If 366 is entered on line 29, enter \$10,171.00 here . . . . .  | 30 |  |      |
| 31 | Subtract line 30 from line 28. If the result is zero or less, do not complete the rest of this part or any of Part IX . . . . .                                | 31 |  |      |
| 32 | Enter employer-provided amounts (see instructions) . . . . .   | 32 |  |      |
| 33 | Divide line 32 by line 27. Enter the result as a decimal (rounded to at least three places), but do not enter more than "1.000" . . . . .                      | 33 |  | × .  |
| 34 | <b>Housing exclusion.</b> Multiply line 31 by line 33. Enter the result but do not enter more than the amount on line 32. Also, complete Part VIII . . . . . ▶ | 34 |  |      |

**Note:** *The housing deduction is figured in Part IX. If you choose to claim the foreign earned income exclusion, complete Parts VII and VIII before Part IX.*

**Part VII Taxpayers Claiming the Foreign Earned Income Exclusion**

|    |   |    |          |      |
|----|---|----|----------|------|
| 35 | Maximum foreign earned income exclusion . . . . .   | 35 | \$76,000 | 00   |
| 36 | <ul style="list-style-type: none"> <li>• If you completed Part VI, enter the number from line 29.</li> <li>• All others, enter the number of days in your qualifying period that fall within your 2000 tax year (see the instructions for line 29).</li> </ul>  | 36 |          | days |
| 37 | <ul style="list-style-type: none"> <li>• If line 36 and the number of days in your 2000 tax year (usually 366) are the same, enter "1.000."</li> <li>• Otherwise, divide line 36 by the number of days in your 2000 tax year and enter the result as a decimal (rounded to at least three places).</li> </ul> | 37 |          | × .  |
| 38 | Multiply line 35 by line 37 . . . . .   | 38 |          |      |
| 39 | Subtract line 34 from line 27 . . . . .   | 39 |          |      |
| 40 | <b>Foreign earned income exclusion.</b> Enter the <b>smaller</b> of line 38 or line 39. Also, complete Part VIII ▶  | 40 |          |      |

**Part VIII Taxpayers Claiming the Housing Exclusion, Foreign Earned Income Exclusion, or Both**

|    |  |    |  |  |
|----|--|----|--|--|
| 41 | Add lines 34 and 40 . . . . .  | 41 |  |  |
| 42 | Deductions allowed in figuring your adjusted gross income (Form 1040, line 33) that are allocable to the excluded income. See instructions and attach computation . . . . .  | 42 |  |  |
| 43 | Subtract line 42 from line 41. Enter the result here and in parentheses on <b>Form 1040, line 21.</b> Next to the amount enter "Form 2555." On Form 1040, subtract this amount from your income to arrive at total income on Form 1040, line 22. . . . . ▶ | 43 |  |  |

**Part IX Taxpayers Claiming the Housing Deduction—Complete this part only if (a) line 31 is more than line 34 and (b) line 27 is more than line 41.**

|    |  |    |  |  |
|----|--|----|--|--|
| 44 | Subtract line 34 from line 31 . . . . .  | 44 |  |  |
| 45 | Subtract line 41 from line 27 . . . . .  | 45 |  |  |
| 46 | Enter the <b>smaller</b> of line 44 or line 45 . . . . .   | 46 |  |  |
|    | <b>Note:</b> <i>If line 45 is more than line 46 and you could not deduct all of your 1999 housing deduction because of the 1999 limit, use the worksheet on page 4 of the instructions to figure the amount to enter on line 47. Otherwise, go to line 48.</i> |    |  |  |
| 47 | Housing deduction carryover from 1999 (from worksheet on page 4 of the instructions) . . . . .   | 47 |  |  |
| 48 | <b>Housing deduction.</b> Add lines 46 and 47. Enter the total here and on Form 1040 to the left of line 32. Next to the amount on Form 1040, enter "Form 2555." Add it to the total adjustments reported on that line . . . . . ▶                             | 48 |  |  |



Label

(See instructions on page 19.)

Use the IRS label. Otherwise, please print or type.

Presidential Election Campaign (See page 19.)

Label Here

For the year Jan. 1–Dec. 31, 2001, or other tax year beginning , 2001, ending , 20

OMB No. 1545-0074

Your first name and initial

Last name

Your social security number

If a joint return, spouse's first name and initial

Last name

Spouse's social security number

Home address (number and street). If you have a P.O. box, see page 19.

Apt. no.

City, town or post office, state, and ZIP code. If you have a foreign address, see page 19.

Important! You must enter your SSN(s) above.

Note. Checking "Yes" will not change your tax or reduce your refund.

Do you, or your spouse if filing a joint return, want \$3 to go to this fund?

You Spouse Yes No Yes No

Filing Status

Check only one box.

- 1 Single
2 Married filing joint return (even if only one had income)
3 Married filing separate return. Enter spouse's social security no. above and full name here.
4 Head of household (with qualifying person). (See page 19.) If the qualifying person is a child but not your dependent, enter this child's name here.
5 Qualifying widow(er) with dependent child (year spouse died ). (See page 19.)

Exemptions

If more than six dependents, see page 20.

- 6a Yourself. If your parent (or someone else) can claim you as a dependent on his or her tax return, do not check box 6a
b Spouse
c Dependents: (1) First name Last name (2) Dependent's social security number (3) Dependent's relationship to you (4) if qualifying child for child tax credit (see page 20)
d Total number of exemptions claimed

No. of boxes checked on 6a and 6b
No. of your children on 6c who:
• lived with you
• did not live with you due to divorce or separation (see page 20)
Dependents on 6c not entered above
Add numbers entered on lines above

Income

Attach Forms W-2 and W-2G here. Also attach Form(s) 1099-R if tax was withheld.

If you did not get a W-2, see page 21.

Enclose, but do not attach, any payment. Also, please use Form 1040-V.

Table with 22 rows for income items: 7 Wages, salaries, tips, etc. Attach Form(s) W-2; 8a Taxable interest; 8b Tax-exempt interest; 9 Ordinary dividends; 10 Taxable refunds, credits, or offsets of state and local income taxes; 11 Alimony received; 12 Business income or (loss); 13 Capital gain or (loss); 14 Other gains or (losses); 15a Total IRA distributions; 15b Taxable amount; 16a Total pensions and annuities; 16b Taxable amount; 17 Rental real estate, royalties, partnerships, S corporations, trusts, etc.; 18 Farm income or (loss); 19 Unemployment compensation; 20a Social security benefits; 20b Taxable amount; 21 Other income; 22 Add the amounts in the far right column for lines 7 through 21. This is your total income.

Adjusted Gross Income

Table with 11 rows for adjusted gross income items: 23 IRA deduction; 24 Student loan interest deduction; 25 Archer MSA deduction; 26 Moving expenses; 27 One-half of self-employment tax; 28 Self-employed health insurance deduction; 29 Self-employed SEP, SIMPLE, and qualified plans; 30 Penalty on early withdrawal of savings; 31a Alimony paid; 31b Recipient's SSN; 32 Add lines 23 through 31a; 33 Subtract line 32 from line 22. This is your adjusted gross income.

Tax and Credits

Standard Deduction for—
• People who checked any box on line 35a or 35b or who can be claimed as a dependent, see page 31.
• All others: Single, \$4,550; Head of household, \$6,650; Married filing jointly or Qualifying widow(er), \$7,600; Married filing separately, \$3,800

34 Amount from line 33 (adjusted gross income)
35a Check if: [ ] You were 65 or older, [ ] Blind; [ ] Spouse was 65 or older, [ ] Blind. Add the number of boxes checked above and enter the total here
b If you are married filing separately and your spouse itemizes deductions, or you were a dual-status alien, see page 31 and check here
36 Itemized deductions (from Schedule A) or your standard deduction (see left margin)
37 Subtract line 36 from line 34
38 If line 34 is \$99,725 or less, multiply \$2,900 by the total number of exemptions claimed on line 6d. If line 34 is over \$99,725, see the worksheet on page 32
39 Taxable income. Subtract line 38 from line 37. If line 38 is more than line 37, enter -0-
40 Tax (see page 33). Check if any tax is from a [ ] Form(s) 8814 b [ ] Form 4972
41 Alternative minimum tax (see page 34). Attach Form 6251
42 Add lines 40 and 41
43 Foreign tax credit. Attach Form 1116 if required
44 Credit for child and dependent care expenses. Attach Form 2441
45 Credit for the elderly or the disabled. Attach Schedule R
46 Education credits. Attach Form 8863
47 Rate reduction credit. See the worksheet on page 36
48 Child tax credit (see page 37)
49 Adoption credit. Attach Form 8839
50 Other credits from: a [ ] Form 3800 b [ ] Form 8396 c [ ] Form 8801 d [ ] Form (specify)
51 Add lines 43 through 50. These are your total credits
52 Subtract line 51 from line 42. If line 51 is more than line 42, enter -0-

Other Taxes

53 Self-employment tax. Attach Schedule SE
54 Social security and Medicare tax on tip income not reported to employer. Attach Form 4137
55 Tax on qualified plans, including IRAs, and other tax-favored accounts. Attach Form 5329 if required
56 Advance earned income credit payments from Form(s) W-2
57 Household employment taxes. Attach Schedule H
58 Add lines 52 through 57. This is your total tax

Payments

If you have a qualifying child, attach Schedule EIC.

59 Federal income tax withheld from Forms W-2 and 1099
60 2001 estimated tax payments and amount applied from 2000 return
61a Earned income credit (EIC)
b Nontaxable earned income
62 Excess social security and RRTA tax withheld (see page 51)
63 Additional child tax credit. Attach Form 8812
64 Amount paid with request for extension to file (see page 51)
65 Other payments. Check if from a [ ] Form 2439 b [ ] Form 4136
66 Add lines 59, 60, 61a, and 62 through 65. These are your total payments

Refund

Direct deposit? See page 51 and fill in 68b, 68c, and 68d.

67 If line 66 is more than line 58, subtract line 58 from line 66. This is the amount you overpaid
68a Amount of line 67 you want refunded to you
b Routing number
c Type: [ ] Checking [ ] Savings
d Account number
69 Amount of line 67 you want applied to your 2002 estimated tax

Amount You Owe

70 Amount you owe. Subtract line 66 from line 58. For details on how to pay, see page 52
71 Estimated tax penalty. Also include on line 70

Third Party Designee

Do you want to allow another person to discuss this return with the IRS (see page 53)? [ ] Yes. Complete the following. [ ] No
Designee's name Phone no. Personal identification number (PIN)

Sign Here

Joint return? See page 19. Keep a copy for your records.

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.
Your signature Date Your occupation Daytime phone number
Spouse's signature. If a joint return, both must sign. Date Spouse's occupation

Paid Preparer's Use Only

Preparer's signature Date Check if self-employed [ ] Preparer's SSN or PTIN
Firm's name (or yours if self-employed), address, and ZIP code EIN Phone no.



## 26 C.F.R. § 602.101

## § 602.101 OMB Control numbers.

(a) Purpose. This part collects and displays the control numbers assigned to collections of information in Internal Revenue Service regulations by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The Internal Revenue Service intends that this part comply with the requirements of §§ 1320.7(f), 1320.12, 1320.13, and 1320.14 of 5 CFR Part 1320 (OMB regulations implementing the Paperwork Reduction Act), for the display of control numbers assigned by OMB to collections of information in Internal Revenue Service regulations. This part does not display control numbers assigned by the Office of Management and Budget to collections of information of the Bureau of Alcohol, Tobacco, and Firearms.

## (b) Display.

-----

| CFR part or section where identified and described | Current OMB |
|--|-------------|
|  | control No. |

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1.1(h)-1(e) ..... 1545-1654

1.23-5 ..... 1545-0074

1.25-1T ..... 1545-0922

1545-0930

1.25-2T ..... 1545-0922

1545-0930

1.25-3T ..... 1545-0922

1545-0930

|                         |           |
|-------------------------|-----------|
| 1.25-4T .....           | 1545-0922 |
| 1.25-5T .....           | 1545-0922 |
| 1.25-6T .....           | 1545-0922 |
| 1.25-7T .....           | 1545-0922 |
| 1.25-8T .....           | 1545-0922 |
| 1.28-1 .....            | 1545-0619 |
| 1.31-2 .....            | 1545-0074 |
| 1.32-2 .....            | 1545-0074 |
| 1.32-3 .....            | 1545-1575 |
| 1.37-1 .....            | 1545-0074 |
| 1.37-3 .....            | 1545-0074 |
| 1.41-2 .....            | 1545-0619 |
| 1.41-3 .....            | 1545-0619 |
| 1.41-4A .....           | 1545-0074 |
| 1.41-4(b) and (c) ..... | 1545-0074 |
| 1.41-4(d) .....         | 1545-1625 |
| 1.41-8(b) .....         | 1545-1625 |
| 1.41-8(d) .....         | 1545-0732 |
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| 1.42-8 .....       | 1545-1102 |
| 1.42-10 .....      | 1545-1102 |
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| 1.46-5 .....       | 1545-0155 |
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## 26 C.F.R. § 602.101: OMB Control Numbers.

**(a) Purpose.** This part collects and displays the control numbers assigned to collections of information in Internal Revenue Service regulations by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The Internal Revenue Service intends that this part (together with 26 CFR 601.9000) comply with the requirements of §§ 1320.7(f), 1320.12, 1320.13, and 1320.14 of 5 CFR Part 1320 (OMB regulations implementing the Paperwork Reduction Act), for the display of control numbers assigned by OMB to collections of information in Internal Revenue Service regulations. This part does not display control numbers assigned by the Office of Management and Budget to collections of information of the Bureau of Alcohol, Tobacco, and Firearms.

**(b) Cross-reference.** For display of control numbers assigned by the Office of Management and Budget to Internal Revenue Service collections of information in the Statement of Procedural Rules (26 CFR Part 601), see 26 CFR 601.9000.

**(c) Display.**

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| CFR part or section where identified and described | Current OMB |
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control No.

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*The table entry linking 26 C.F.R. § 1.1-1 (the Income Tax)*

*and OMB #1545-0074 (Form 1040) is deleted during 1994 (note added)*

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Date of Download: Dec 26, 2001

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(Cite as: 59 FR 27235)

1994 WL 203416 (F.R.)

RULES and REGULATIONS

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 602

(TD 8335)

RIN 1545-AO88

OMB Control Numbers Under the Paperwork Reduction Act; Correction

Thursday, May 26, 1994

\*27235 AGENCY: Internal Revenue Service (IRS), Treasury.

**ACTION:** Correcting amendments.

**SUMMARY:** This document contains corrections to the technical amendments to § 602.101(c) published as TD 8335 on Monday, March 4, 1991 (56 FR 8912). This regulation collects and displays the control numbers assigned to regulations by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 and the Paperwork Reduction Reauthorization Act of 1986, which require that agencies display control numbers assigned by that Office to regulations that solicit or obtain information from the public.

**EFFECTIVE DATE:** March 4, 1991.

FOR FURTHER INFORMATION CONTACT: Carol Savage, (202) 622-8452 (not a toll-free number).

## SUPPLEMENTARY INFORMATION:

### Background

The technical amendments to §602.101(c) that are the subject of these corrections comply with the requirements of §§1320.7(f), 1320.12 and 1320.15 of 5 CFR part 1320 (OMB regulations implementing the Paperwork Reduction Act and amendments thereto by the Paperwork Reduction Reauthorization Act of 1986), for display of control numbers assigned by OMB to collections of information in Internal Revenue Service regulations.

### Need for Correction

As published, the technical amendments to TD 8335 contains errors which may prove to be misleading and are in need of clarification.

### List of Subjects in 26 CFR Part 602

Reporting and recordkeeping requirements.

Accordingly, 26 CFR part 602 is corrected as follows:

## PART 602--OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Paragraph 1. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

### §602.101 (Corrected)

Par. 2. The table under §602.101(c) is amended by removing the entry for "1.1-1" and amending the entry for "1.6012-1" by adding in numerical order under "Current OMB Control No." the number "1545-0067."

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

(FR Doc. 94-12563 Filed 5-25-94; 8:45 am)

BILLING CODE: 4830-01-P

59 FR 27235-01, 1994 WL 203416 (F.R.)

END OF DOCUMENT