claimed in determining Y's taxable income (10 percent of $5). Accordingly, the Commissions Y receives from X are $18.50, i.e., Y's costs ($8, see line (2)(b)(iii) of example (1)) plus Y's profit ($10.50).

(2) If export promotion expenses are not claimed in determining taxable income of Y under the combined taxable income method, the taxable income of Y would be increased to $12.50 and commissions payable to Y would be increased to $20.50, computed as follows:

(3) Maximum combined taxable income (determined under paragraph (b)(2) of this section):	
(a) Y's gross receipts from export sales	$85.00
(b) Less:	
(i) Direct materials	40.00
(ii) Direct labor	20.00
(iii) Total deductions	60.00
(c) Maximum combined taxable income	25.00
(4) Overall profit percentage limitation (line (2)(c))	25.00

Since maximum combined taxable income under line (3)(c) ($25) is less than the overall profit percentage under line (4) ($25.50), combined taxable income under marginal costing is limited to $25. Since under the franchise agreement Y is to earn the maximum commission permitted under the intercompany pricing rules of section 994, combined taxable income on the transactions is $25. Accordingly, no costs (other than for direct material and direct labor) will be attributed to export sales. Under the combined taxable income method of § 1.994–1(c)(3), Y will have taxable income attributable to the sales of $12.50, i.e., ½ of combined taxable income (½ of $25). Accordingly, the commissions Y receives from X are $20.50, i.e., Y's costs ($8, see line (2)(b)(iii) of example (1)) plus Y's profit ($12.50).

Example (3). (1) Assume the same facts as in example (1), except that gross receipts from export sales are only $85, gross receipts from all sales remain at $400, and Y has costs of $40 consisting of Y's export promotion expenses of $35 and costs of $5 other than for direct material, direct labor, or export promotion expenses. For purposes of applying the combined taxable income method, X and Y may compute their combined taxable income attributable to the product line of export property under the marginal costing rules as follows:

(1) Maximum combined taxable income (determined under paragraph (b)(2) of this section):	
(a) Y's gross receipts from export sales	$85.00
(b) Less:	
(i) Direct materials	40.00
(ii) Direct labor	20.00
(iii) Y's export promotion expenses claimed in determining Y's taxable income	35.00
(iv) Total deductions	95.00
(c) Maximum combined taxable income (loss)	(10.00)
(2) Overall profit percentage limitation (as determined in example (2))	25.50

Since maximum combined taxable income under line (1)(c) (which is a loss of $10) is less than the overall profit percentage limitation under line (2)(c) ($25.50), combined taxable income under marginal costing is a loss of $10 and under the combined taxable income method of § 1.994–1(c)(3), Y will have no taxable income or loss attributable to the sales. Accordingly, the commissions Y receives from X are $40, i.e., Y's costs ($40).

(2) If export promotion expenses are not claimed in determining Y's taxable income under the combined taxable income method, the taxable income of Y would be increased to $12.50 and commissions payable to Y would be increased to $52.50 computed as follows:

(3) Maximum combined tablable income (determined under paragraph (b)(2) of this section) (line (3)(c) of example (2))	$25.00
(4) Overall profit percentage limitation (as determined in example (2))	25.50

The results would be the same as in part (2) of example (2), except that the commissions Y receives from X are $52.50, i.e., Y's costs ($40) plus Y's profit ($12.50).

[FR Doc.72-21750 Filed 12-19-72;8:45 am]

[26 CFR Parts 1, 31]

INCOME AND EMPLOYMENT TAXES

Definitions of "United States," "Possession of the United States," and "Foreign Country"

On March 2, 1971, notice of proposed rule making was published in the FEDERAL REGISTER in regard to regulations under sections 638, 1402, 1441, and 3401 of the Internal Revenue Code of 1954, relating to continental shelf areas, to conform such regulations to amendments made by section 505 of the Tax Reform Act of 1969 (83 Stat. 634). Notice is hereby given that the proposed regulations, as set forth in the notice of proposed rule making, are hereby withdrawn.

Further notice is hereby given that, in lieu of the proposed rules which are so withdrawn, the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing (preferably six copies) to the Commissioner of the Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, by January 19, 1973. Any written comments or suggestions not specifically designated as confidential in accordance with 26 CFR 601.601(b) may be inspected by any person upon written request. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner by January 19, 1973. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER, unless the person or persons who have requested a hearing withdraw their request for a hearing before notice of the hearing has been filed with the Office of the Federal Register. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68 Stat. 917; 26 U.S.C. 7805).

[SEAL] JOHNNIE M. WALTERS,
Commissioner of Internal Revenue.

On March 2, 1971, there was published in the FEDERAL REGISTER (36 F.R. 3899) a notice of proposed rule making with respect to amendment of the Income Tax Regulations (26 CFR Part 1) and the Employment Tax Regulations (26 CFR Part 31) to conform such regulations to the amendments made by section 505 of the Tax Reform Act of 1969 (83 Stat. 634). The proposed regulations set forth in the appendix to the notice of proposed rule making are hereby withdrawn, and the following rules are hereby prescribed in lieu of the rules which are so withdrawn. The appendix to the abovementioned notice of proposed rule making is amended to read as follows:

PARAGRAPH 1. The following new sections are added immediately after § 1.632–1.

CONTINENTAL SHELF AREAS

§ 1.638 Statutory provisions; continental shelf areas.

SEC. 638. *Continental Shelf areas.* For purposes of applying the provisions of this chapter (including sections 861(a)(3) and 862(a)(3) in the case of the performance of personal services) with respect to mines, oil and gas wells, and other natural deposits—

(1) The term "United States" when used in a geographical sense includes the seabed and subsoil of those submarine areas which are adjacent to the territorial waters of the United States and over which the United States has exclusive rights, in accordance with international law, with respect to the exploration and exploitation of natural resources; and

(2) The terms "foreign country" and "possession of the United States" when used in a geographical sense include the seabed and subsoil of those submarine areas which are adjacent to the territorial waters of the foreign country or such possession and over which the foreign country (or the United States in case of such possession) has exclusive rights, in accordance with international law, with respect to the exploration and exploitation of natural resources, but this paragraph shall apply in the case of a foreign country only if it exercises, directly or indirectly, taxing jurisdiction with respect to such exploration or exploitation.

No foreign country shall, by reason of the application of this section, be treated as a country contiguous to the United States.

[Sec. 638 as added by sec. 505(a), Tax Reform Act 1969 (83 Stat. 634)]

§ 1.638–1 Continental Shelf areas.

(a) *General rule.* For purposes of applying any provision of Chapter 1, 2, 3, or 24 (including section 861(a)(3), 862(a)(3), 1441, 3402, or other provisions dealing with the performance of personal services), with respect to mines, oil and gas wells, and other natural deposits—

(1) *United States and possession of the United States.* The terms "United States" and "possession of the United States" when used in a geographical sense include the seabed and subsoil of those submarine areas which are adjacent to the territorial waters of the United States or such possession and over which the United States has exclusive rights, in accordance with international law, with respect to the exploration and exploitation of natural resources. The terms "Continental Shelf of the United States" and "Continental Shelf of a possession of the United States," as used in this section, refer to the seabed and subsoil included, respectively, in the terms "United States" and "possession of the United States," as provided in the preceding sentence.

(2) *Foreign country.* The term "foreign country" when used in a geographical sense includes the seabed and subsoil of those submarine areas which are adjacent to the territorial waters of the foreign country and over which such foreign country has exclusive rights, in accordance with international law, with respect to the exploration and exploitation of natural resources, but this sentence applies only if such foreign country exercises, directly or indirectly, taxing jurisdiction with respect to such exploration or exploitation. The term "foreign continental shelf," as used in this section, refers to the seabed and subsoil described in the preceding sentence. A foreign country is not to be treated as a country contiguous to the United States by reason of the application of section 638 and this section.

(b) *Exercise of taxing jurisdiction.* For purposes of paragraph (a)(2) of this section, the exercise, directly or indirectly, of taxing jurisdiction with respect to the exploration or exploitation of natural resources is deemed to include (but is not limited to) those cases in which a foreign country—

(1) Imposes a tax upon assets, equipment, or other property connected with or income derived from such exploration or exploitation, or

(2) Requires natural resources referred to in paragraph (a)(2) of this section to be transported to points within its landward boundaries and then levies a tax upon such natural resources or upon the income derived from the sale thereof.

A foreign country which, for purposes of paragraph (a)(2) of this section, exercises taxing jurisdiction by the imposition of tax upon any person, property, or activity engaged in or related to the exploration or exploitation of mines, oil and gas wells, or other natural deposits in the seabed or subsoil referred to in paragraph (a)(2) of this section, or the income therefrom of any taxpayer, is deemed to exercise taxing jurisdiction over all such persons, property, and activities and over all income therefrom of all such taxpayers. A foreign country is deemed to be imposing tax upon a person, property, activity, or income described in the preceding sentence if such foreign country exempts such person, property, activity, or income from tax for a period not in excess of 10 years from the commencement of such exploration or exploitation. Except in the case of a foreign country which is deemed under the preceding sentence to impose tax by virtue of an exemption for a period not in excess of 10 years, a foreign country which exempts all persons, property, and activities engaged in or related to the exploration or exploitation of mines, oil and gas wells, or other natural deposits in the seabed or subsoil referred to in paragraph (a)(2) of this section, and the income therefrom, from taxation is deemed not to be exercising, directly or indirectly, taxing jurisdiction for purposes of paragraph (a)(2) of this section. For purposes of paragraph (a)(2) of this section, the exercise of taxing jurisdiction with respect to any type of tax constitutes the exercise of taxing jurisdiction with respect to all types of taxes. However, a royalty or other charge (whether payable in a lump sum or over a period of time or in amounts dependent upon the volume of production from such mines, oil and gas wells, or other natural deposits) for the right to explore or exploit mines, oil and gas wells, or other natural deposits does not constitute a tax.

(c) *Scope.* (1) For purposes of applying this section, persons, property, or activities which are engaged in or related to the exploration or exploitation of mines, oil and gas wells, or other natural deposits need not be physically upon, connected, or attached to the seabed or subsoil referred to in subparagraph (1) or (2) of paragraph (a) of this section to be deemed to be within the United States, a possession of the United States, or a foreign country, as the case may be, to the extent provided in subparagraph (2) or (3) and subparagraph (4) of this paragraph.

(2) Persons, property, or activities which are not in a foreign country (determined without regard to section 638 or this section), and which are engaged in or related to the exploration or exploitation of mines, oil and gas wells, or other natural deposits of the seabed or subsoil referred to in paragraph (a)(1) of this section, are generally within the United States or a possession of the United States, as the case may be; unless such persons, property, or activities are solely involved in or constitute transportation to (or from) the site of exploration or exploitation from (or to) a foreign country, other than transportation on a regular basis from (or to) a base of operations.

(3) Persons, property, or activities which are not in the United States or in a third country (determined in each case without regard to section 638 or this section), and which are engaged in or related to the exploration or exploitation of mines, oil and gas wells, or other natural deposits of the seabed or subsoil of a foreign country referred to in paragraph (a)(2) of this section, are generally within such foreign country; unless such persons, property, or activities are solely involved in or constitute transportation to (or from) the site of exploration or exploitation from (or to) the United States or a possession of the United States or a third country, as the case may be, other than transportation on a regular basis from (or to) a base of operations.

(4) Persons, property, or activities are within the United States, a possession of the United States, or a foreign country, as the case may be, pursuant to this paragraph, only to the extent such persons, property, or activities are engaged in or related to the exploration or exploitation of mines, oil and gas wells, or other natural deposits.

(d) *Natural deposits.* For purposes of this section, the term "natural deposits" means nonliving resources to which section 611(a) applies. Such term does not include sedentary species (organisms which, at the harvestable stage, either are immovable on or under the seabed or are unable to move except in constant physical contact with the seabed or subsoil), fish or other animal or plant life.

(e) *Rights under international law.* Nothing in this section shall prejudice or affect the freedoms of the high seas and other rights under international law, or the exercise of such freedoms and rights by the United States or foreign countries.

(f) *Examples.* The application of the provisions of section 638 and this section may be illustrated by the following examples:

Example (1). A, a citizen of the United States employed as an engineer, is engaged in the exploitation of oil and is physically present on an offshore oil drilling platform operated by employees of L Corporation. Such platform is affixed to the foreign continental shelf of foreign country X. Assuming that foreign country X exercises taxing jurisdiction as provided in paragraph (b) of this section, A is to be treated as being employed in foreign country X with respect to compensation for his employment for purposes of chapters 1 and 24.

Example (2). The facts are the same as in example (1) except that B, a citizen of the United States engaged in the private practice of law, is physically present on such platform for the sole purpose of interviewing his client, A, whom he represents in a domestic relations matter. Since B is not engaged in activities related to the exploration or exploitation of natural deposits, he is not to be treated as being in foreign country X for purposes of chapters 1 and 2.

Example (3). The facts are the same as in example (1) except that C, a citizen of the United States engaged in the private practice of medicine, is physically present on such platform for the purpose of making routine physical examinations of L Corporation's employees who are engaged in the exploitation of oil on the platform. C is paid by L Corporation to give such examinations on the platform at regular intervals in order to determine whether the state of any employee's health is such that he should not continue work on the platform. The balance of C's medical practice is conducted at his office on the U.S. mainland. Since C is engaged in activities related to the exploitation of oil, he is treated as being in foreign country X under section 638 and this section while making physical examinations on L Corporation's platform, provided that foreign country X

exercises taxing jurisdiction as provided in paragraph (b) of this section. For purposes of chapters 1 and 2, amounts paid by L Corporation to C are treated as derived from sources within foreign country X.

Example (4). C, a nonresident alien individual employed as an engineer in a foreign country, designs equipment for use on oil drilling platforms affixed to the continental shelf of the United States and engaged in the exploitation of oil. Although C's activities in this respect are related to the exploitation of oil, C is not treated as being in the United States under section 638 and this section by reason of such activities.

Example (5). M Corporation, a domestic corporation, chartered a ship from N Corporation, also a domestic corporation, under a time charter under which N Corporation's personnel continued to navigate and manage the ship. M Corporation equipped the ship with special oil exploration equipment and furnished its personnel to operate the equipment. The ship then commenced to explore for oil in the foreign Continental Shelf of foreign country Y. Foreign country Y exercises taxing jurisdiction as provided in paragraph (b) of this section. The ship is treated as being within foreign country Y under section 638 and this section for the period it was engaged in the exploration for oil in such foreign Continental Shelf. Thus, the entire income derived during such period by N Corporation from the charter is income derived from sources within foreign country Y, since N Corporation had property and employees engaged in the exploration for oil in such foreign Continental Shelf.

Example (6). The facts are the same as in example (5) except that C, a citizen of the United States, was employed by N Corporation as a cook and was physically present on the ship. C's sole duties consisted of cooking meals for personnel aboard such ship. In such case, as C's activities are related to the exploration for oil, C is to be treated as being in foreign country Y under section 638 and this section for the period he was aboard such ship while it was engaged in activities relating to the exploration for oil in the foreign Continental Shelf referred to in example (5). For purposes of chapters 1 and 24, C's compensation as a cook for such period is treated as derived from sources without the United States.

Example (7). Z Corporation, a foreign corporation, entered into a contract with Y Corporation, a United States corporation, to engage in exploratory oil drilling activities on a leasehold held by Y Corporation. Such leasehold was located in the Continental Shelf of the United States. Since Z Corporation is engaged in and has property and activities which are engaged in the exploration for oil, such property and activities are to be treated as being in the United States under section 638 and this section for the period such property and activities were engaged in or related to the exploration for oil in the Continental Shelf of the United States and were not in a foreign country. For purposes of chapters 1 and 3, amounts paid to Z Corporation pursuant to the contract are treated as derived from sources within the United States.

Example (8). M Corporation is a controlled foreign corporation (within the meaning of section 957(b)) for its entire taxable year beginning in 1972. During such taxable year, M Corporation issues a policy of insurance relating to fire damage to an offshore oil drilling platform, owned by N Corporation (a foreign corporation), which is attached to the Continental Shelf of the United States. The income attributable to the issuing of such policy would be taxed under subchapter L, chapter 1, subtitle A of the Code (as modified, for this purpose, by section 953(b) (1), (2), and (3)) if such income were the income of a domestic insurance corporation. Since N Corporation's oil drilling platform is located within the United States under section 638 and this section, M Corporation's income attributable to the issuing of the insurance in connection with such platform is income derived from the insurance of United States risks, within the meaning of section 953(a)(1)(A).

§ 1.638–2 Effective date.

The specific requirements and limitations of § 1.638–1 apply on and after December 30, 1969.

PAR. 2. Section 1.1402(a)–12 is amended to read as follows:

§ 1.1402(a)–12 Possession of the United States.

For purposes of the tax on self-employment income, the term "possession of the United States," as used in section 931 (relating to income from sources within possessions of the United States) and section 932 (relating to citizens of possessions of the United States) shall be deemed not to include the Virgin Islands, Guam, or American Samoa. The provisions of section 1402(a)(9) and of this section insofar as they involve nonapplication of sections 931 and 932 to Guam or American Samoa, shall apply only in the case of taxable years beginning after 1960. For definition of the term "United States" and for other geographical definitions relating to the Continental Shelf see section 638 and § 1.638–1.

PAR. 3. Section 1.1441 is amended by adding immediately after § 1.1441(e) the following new subsection.

§ 1.1441 Statutory provisions; withholding of tax on nonresident aliens.

SEC. 1441. *Withholding of tax on nonresident aliens.* * * *

(f) *Continental Shelf areas.* For sources of income derived from, or for services performed with respect to, the exploration or exploitation of natural resources on submarine areas adjacent to the territorial waters of the United States, see section 638.

[Sec. 1441 as amended by sec. 505(b), Tax Reform Act 1969 (83 Stat. 634)]

PAR. 4. Section 1.1441–5 is amended by revising paragraph (d) to read as follows:

§ 1.1441–5 Claiming to be a person not subject to withholding.

* * * * *

(d) *Definitions.* For determining whether an alien individual is a resident of the United States see § 1.871–2. For definition of the terms "foreign partnership" and "foreign corporation" see section 7701(a)(4) and (5) and § 301.7701–5 of this chapter. For definition of the term "United States" and for other geographical definitions relating to the Continental Shelf see section 638 and § 1.638–1.

PAR. 5. Section 31.3401(a)–1 is amended amended by inserting the following paragraph immediately after § 31.3401(a)–1(b):

§ 31.3401(a)–1 Wages.

* * * * *

(c) *Geographical definitions.* For definition of the term "United States" and for other geographical definitions relating to the Continental Shelf see section 638 and § 1.638–1 of this chapter.

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[FR Doc.72–21847 Filed 12–19–72;8:52 am]

[26 CFR Part 301]

PROCEDURE AND ADMINISTRATION

Disclosure or Use of Information by Preparers of Returns

Notice is hereby given that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing (preferably six copies) to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, by January 19, 1973. Any written comments or suggestions not specifically designated as confidential in accordance with 26 CFR 601.601(b) may be inspected by any person upon written request. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner by January 19, 1973. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER, unless the person or persons who have requested a hearing withdraw their request for a hearing before notice of the hearing has been filed with the Office of the Federal Register. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] JOHNNIE M. WALTERS,
Commissioner of Internal Revenue.

In order to conform the Procedure and Administration Regulations (26 CFR Part 301) to the amendment of the Internal Revenue Code of 1954 made by section 316 of the Revenue Act of 1971 (85 Stat. 529), relating to the disclosure or use of information by preparers of returns, such regulations are hereby amended by adding the following new sections after § 301.7215:

§ 301.7216 Statutory provisions; disclosure or use of information by preparers of returns.

SEC. 7216. *Disclosure or use of information by preparers of returns*—(a) *General rule.* Any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns of the tax imposed by chapter 1, or declarations or amended declarations of estimated tax under

section 6015, or any person who for compensation prepares any such return or declaration for any other person, and who—

(1) Discloses any information furnished to him for, or in connection with, the preparation of any such return or declaration, or

(2) Uses any such information for any purpose other than to prepare, or assist in preparing, any such return or declaration,

shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution.

(b) *Exceptions*—(1) *Disclosure.* Subsection (a) shall not apply to a disclosure of information if such disclosure is made—

(A) Pursuant to any other provision of this title, or

(B) Pursuant to an order of a court.

(2) *Use.* Subsection (a) shall not apply to the use of information in the preparation of, or in connection with the preparation of, State and local tax returns and declarations of estimated tax of the person to whom the information relates.

(3) *Regulations.* Subsection (a) shall not apply to a disclosure or use of information which is permitted by regulations prescribed by the Secretary or his delegate under this section.

[Sec. 7216 as added by sec. 316, Rev. Act 1971 (85 Stat. 529)]

§ 301.7216–1 Penalty for disclosure or use of tax return information.

(a) *In general.* Section 7216(a) provides in effect that, except as provided in section 7216(b), any tax return preparer or tax return processor who on or after January 1, 1972, discloses or uses any tax return information other than for the specific purpose of preparing, assisting in preparing, or obtaining or providing services in connection with the preparation of, any tax return, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution. The exceptions provided by section 7216(b) are described in §§ 301.7216–2 and 301.7216–3.

(b) *Definitions.* For purposes of section 7216 and §§ 301.7216–1 through 301.7216–3—

(1) *Tax return.* The term "tax return" means any return (or amended return) of the income tax imposed by chapter 1 or 2 of the Code, or any declaration (or amended declaration) of estimated tax made under section 6015.

(2) *Tax return preparer.* The term "tax return preparer" means—

(i) Any person engaged in the business of preparing tax returns, or

(ii) Any person other than a tax return processor who is remunerated for preparing, or assisting in preparing, a tax return for any other person.

The term includes any person who in the course of his business holds himself out to taxpayers as a person who prepares tax returns, whether or not tax return preparation is his sole business activity and whether or not he charges a fee for such services; it also includes an individual who for remuneration and on a casual basis helps a relative, friend, or other acquaintance to prepare the latter's tax return. Any employee of a tax return preparer who as part of his employment performs services which assist his employer in the preparation of a tax return is treated as a tax return preparer. For example, a secretary to a tax return preparer who types or otherwise works on returns prepared by the preparer is a tax return preparer. In further illustration, assume that a bank, in anticipation of lending money to taxpayers for the payment of their tax, enters into an agreement to prepare their tax returns, that one employee of the bank solicits the necessary tax return information for the preparation of the return, and that another employee of the bank prepares the return on the basis of the information which is furnished. Under such circumstances both employees are tax return preparers.

(3) *Tax return processor.* The term "tax return processor" means any person engaged in the business of providing services in connection with the preparation of tax returns by a tax return preparer, as well as any employee of any such processor participating in such business. Thus, any employee of a tax return processor who as part of his employment performs services which assist his employer in the processing of a tax return is treated as a tax return processor. The term includes any person who in the course of his business holds himself out to taxpayers or tax return preparers as a person who provides services in connection with the preparation of tax returns, whether or not tax return processing is his sole business activity and whether or not he charges a fee for such services. A person is not a tax return processor merely because he leases office space to a tax return preparer or tax return processor, furnishes credit to a taxpayer whose tax return is prepared or serviced by a tax return preparer or processor, or otherwise performs some service which only incidentally relates to the preparation or processing of tax returns. For example, assume that an individual offering taxpayers a computerized tax preparation service contracts with a department store for the rental of space in the store, and that the store advertises that taxpayers who use the tax return preparation service may charge the cost of having their tax return prepared to their charge account with the department store. Under such circumstances, the department store is neither a tax return preparer nor a tax return processor.

(4) *Tax return information.* The term "tax return information" means any information, including but not limited to a taxpayer's name, address, and social security number, furnished for, or in connection with, the preparation of a tax return of any taxpayer and which is furnished (i) by the taxpayer to a tax return preparer or tax return processor, (ii) by a tax return preparer to a tax return processor, (iii) by a tax return processor to the tax return preparer, (iv) by one tax return processor to another tax return processor, or (v) by or to any employee of any such person acting in the ordinary course of his employment. Information furnished by a taxpayer includes information which is furnished on behalf of the taxpayer, such as information furnished by a guardian for a minor, by a duly authorized agent for his principal, by a fiduciary for an estate or trust, or by an officer, receiver, trustee in bankruptcy, or assignee for a corporation.

§ 301.7216–2 Disclosure or use without consent of taxpayer.

(a) *Disclosure pursuant to other provisions of Internal Revenue Code.* The provisions of section 7216(a) and § 301.7216–1 shall not apply to any disclosure of tax return information if such disclosure is made pursuant to any other provision of the Code or the regulations thereunder, such as a disclosure pursuant to section 7269 to an officer or employee of the Internal Revenue Service of information concerning the estate of a decedent or a disclosure pursuant to section 7602 to an officer or employee of the Internal Revenue Service of books, papers, records, or other data which may be relevant to the liability of any person for the income tax.

(b) *Disclosure pursuant to court order.* The provisions of section 7216(a) and § 301.7216–1 shall not apply to any disclosure of tax return information if such disclosure is made pursuant to the written order of any court of record, Federal, State, or local, clearly identifying the information to be disclosed.

(c) *Court proceedings and investigations.* A tax return preparer or a tax return processor may disclose tax return information: (1) To his attorney, or to an employee of the Internal Revenue Service, for use in connection with an investigation of such tax return preparer or tax return processor conducted by the Internal Revenue Service or (2) to his attorney, or to a presiding officer of a court, for use in connection with proceedings involving such tax return preparer or tax return processor before the court.

(d) *Attorneys.* A tax return preparer who is lawfully engaged in the practice of law may disclose or use the tax return information of a taxpayer who is a client for, or in connection with, the rendering of legal services, such as estate planning, preparation of trial briefs, etc., to such taxpayer.

(e) *Accountants.* A tax return preparer who is an accountant and prepares books of account, working papers, accounting statements or reports, or performs other services for a taxpayer may disclose or use the tax return information of such taxpayer for, or in connection with, the preparation of such books, papers, statements, or reports, or the performance of such other services.

(f) *Disclosure by tax return preparer to tax return processor.* A tax return preparer may disclose tax return information of a taxpayer to a tax return processor solely for the purpose of having the processor transfer that information to, and compute the tax liability on, a tax return of such taxpayer by means of electronic, mechanical, or other form of tax return processing service.

(g) *Disclosure by one employee to another employee.* An employee of a tax return preparer or of a tax return processor may, while acting in the ordinary course of his employment, transfer to another employee of the same tax return preparer or processor, for use in connection with the preparation of a tax return of a taxpayer, any tax return information which has been furnished by the taxpayer for, or in connection with, the preparation of such tax return.

(h) *Identical information obtained from other sources.* A tax return preparer or a tax return processor may disclose or use any information which is identical to any tax return information which has been furnishd to him if such identical information was obtained otherwise than in connection with the preparation or processing of a tax return.

(i) *Use of information in preparation of State returns.* The provisions of section 7216(a) and § 301.7216–1 shall not apply to the use by any tax return preparer or tax return processor of any tax return information in the preparation of, or in connection with the preparation of, any tax return or declaration of estimated tax required under the law of any State or political subdivision thereof, of the District of Columbia, or of any possession of the United States.

(j) *Retention of records.* A tax return preparer or tax return processor may retain tax return information of a taxpayer, including copies of tax returns or data processing tapes prepared on the basis of such tax return information, and may use such information in connection with the preparation of other tax returns of the taxpayer or in connection with an audit by the Internal Revenue Service of any tax return.

(k) *Lists for solicitation of tax return business.* Any tax return preparer or tax return processor may compile and maintain a separate list containing the names and addresses of taxpayers whose tax returns he has prepared or processed. This list may be used by the compiler solely to contact the taxpayers on the list for the purpose of offering future tax return preparation or processing services to such taxpayers. The compiler of the list may not transfer the taxpayer list, or any part thereof, to any other person unless such transfer takes place in conjunction with the sale or other disposition of the tax return preparation or tax return processing business of such compiler. A person who acquires a taxpayer list, or a part thereof, in conjunction with such a sale or other disposition shall be subject to the provisions of this paragraph with respect to such list as if he had been the compiler of such list.

§ 301.7216–3 Disclosure or use with consent of taxpayer.

(a) *Consent to use or disclosure*—(1) *Solicitation of other business.* A tax return preparer may request from the taxpayer the right to use the tax return information of the taxpayer in connection with the solicitation of any additional current business, whether or not such business is tax-oriented, which the tax return preparer provides and offers to the public. The request may not be made later than the time the taxpayer receives his completed tax return from the tax return preparer. If the request is granted, the tax return preparer may use such tax return information in the solicitation of such business provided he first obtains a written consent described in paragraph (b) of this section. If the request is not granted, no followup request may be made. This authorization to use tax return information of the taxpayer does not apply, however, for purposes of facilitating the solicitation of the taxpayer's use of any services or facilities furnished by a person other than the tax return preparer, unless such other person is in the same affiliated group (within the meaning of section 1504(a) with any corporation treated as an includible corporation) as the tax return preparer. Thus, for example, the authorization would not apply if the other person is a corporation which is owned or controlled directly or indirectly by the same interests which own or control the tax return preparer but which is not affiliated with the tax return preparer within the meaning of section 1504(a). Moreover, this authorization does not apply for purposes of facilitating the solicitation of additional business to be furnished at some indefinite time in the future, as, for example, the future sale of mutual fund shares or life insurance, or the furnishing of future credit card services. It is not necessary, however, that the additional business be furnished in the same locality in which the tax return information is furnished.

(2) *Permissible disclosures to third parties.* If a tax return preparer who is lawfully engaged in the practice of law or accounting has obtained from a taxpayer who is a client a consent described in paragraph (b) of this section, he may disclose the tax return information of such taxpayer to such third persons as the taxpayer may direct.

(3) *Use of information in connection with another person's return.* A tax return preparer may not use any tax return information, which has been furnished by one taxpayer, in preparing the tax return of another taxpayer who in some way has entered into, or is involved in, a tax-related transaction with the first taxpayer, as, for example, in the case of alimony payments for which a deduction is allowed to a husband under section 215 or in the case of income and deductions allocated between taxpayers under section 482, unless the tax return preparer has obtained from the first taxpayer a written consent described in paragraph (b) of this section.

(b) *Form of consent.* A separate written consent, signed by the taxpayer or his authorized personal representative, must be obtained for each separate use or disclosure authorized in paragraph (a)(1), (2), or (3) of this section and shall contain—

(1) The name of the tax return preparer,

(2) The name of the taxpayer,

(3) The specific purpose for which the consent is being signed,

(4) The date on which such consent is signed,

(5) A statement that the tax return information may not be used by the tax return preparer for any purpose other than that stated in the consent, and

(6) A statement by the taxpayer that he consents to the use of such information for the specific purpose described in subparagraph (3) of this paragraph.

(c) *Illustrations.* The application of this section may be illustrated by the following examples:

Example (1). In order to stimulate the making of loans, a bank advertises that it is in the business of preparing tax returns. A taxpayer goes to the bank to have his tax return prepared. After the return has been completed by the bank, the employee of the bank who obtained the tax return information from the taxpayer explains that the taxpayer owes an additional $400 in taxes and that the bank's loan department may be able to offer the taxpayer a loan to pay the tax due. If the taxpayer decides to accept the opportunity offered to apply for a loan, the bank must first have the taxpayer execute a written consent described in paragraph (b) of this section for the bank to use any of such information which is required in determining whether to make the tax loan.

Example (2). A firm of certified public accountants with offices in various States offers various professional services to its clients in addition to its regular auditing and accounting services, such as related tax services, estate planning, financial counseling, and management services. Each of these additional services is under the supervision of a partner who is responsible for the proper handling of that service. One of the clients whose accounts are regularly audited by the firm also has the firm prepare its income tax returns from the available tax return information, as supplemented by additional information given by the client. If the accounting firm desires to make this tax return information available to its partner in charge of management services in order to facilitate the solicitation of management business from the client, it may do so if the partner responsible for the preparation of the income tax returns first obtains from the client a written consent described in paragraph (b) of this section.

Example (3). The facts are the same as in example (2) except that the accounting firm is requested by a bank to furnish it certain credit information on the taxpayer based upon the tax return information furnished by him to the accounting firm. The accounting firm may furnish the tax return information to the bank for purposes of establishing the taxpayer's financial or credit status, if it first obtains from the taxpayer a written consent described in paragraph (b) of this section.

Example (4). An individual who sells life insurance and shares in a mutual fund is also in the business of preparing tax returns. A taxpayer who has gone to the individual to have his tax return prepared is requested, at the time he picks up his completed tax return, to give his consent to the individual's use of his tax return information in connection with such individual's solicitation of the taxpayer's purchasing a life insurance policy and shares in the mutual fund. Before the individual may use such tax return information as a basis for soliciting such additional business from the taxpayer, the taxpayer must execute separate written consents under paragraph (b) of this

section, one authorizing the use of such information as a basis for soliciting the sale of the mutual fund shares and a second authorizing the use of such information as a basis for soliciting the sale of the life insurance.

Example (5). The facts are the same as in example (4) except that the individual does not sell life insurance but does sell shares in several mutual funds. If the request is for the purpose of using the tax return information as a basis for soliciting the sale at one time of shares in mutual funds A and B, only one written consent under paragraph (b) of this section is required of the taxpayer. If, however, the request is for the purpose of using the tax return information as a basis for soliciting the sale of shares in fund A at one time, and the sale of shares in fund B at a later time, two written consents under such paragraph are required of the taxpayer.

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[43 CFR Parts 4110, 4120, 4710]

WILD FREE-ROAMING HORSE AND BURRO MANAGEMENT

Protection, Management, Control, and Reservation of Forage

The purpose of this amendment is to provide regulations to implement the Act of December 15, 1971 (16 U.S.C. 1331–1340), which requires the Secretary of the Interior to protect, manage, and control wild free-roaming horses and burros on public lands managed by the Bureau of Land Management.

The proposal would add a new Group 4700, Wild Free-Roaming Horse and Burro Management, to the regulations. It would also amend 43 CFR Subparts 4115 and 4121 to provide specifically for a reservation of forage required by wild free-roaming horses and burros on public lands.

In accordance with the Department's policy on public participation in rule making (36 F.R. 8336), interested parties may submit written comments, suggestions, or objections with respect to the draft rules to the Director (210), Bureau of Land Management, Washington, D.C. 20240 until February 5, 1973. Copies of comments, suggestions, or objections made pursuant to this notice will be available for public inspection in the Office of Information, Bureau of Land Management, Room 5643, Interior Building, Washington, D.C., during regular business hours (7:45 a.m.–4:15 p.m.).

Draft rules are being published at this time as proposed rule making in order that the draft, together with public comments, suggestions, or objections that may result, can be considered by the National Advisory Board on Wild Free-Roaming Horses and Burros at its first meeting (to be announced). Copies of the draft rules are being sent to all members of the grazing district advisory boards established pursuant to section 18 of the Taylor Grazing Act (43 U.S.C. 315o–1) in furtherance of the objectives of that section.

Subchapter D, Chapter II, of Title 43 of the Code of Federal Regulations is amended as follows:

1. The first sentence of paragraph (d) of § 4115.2–1 of Subpart 4115 is revised to read as follows:

§ 4115.2–1 License and permit procedures; requirements and conditions.

* * * * *

(d) *Cancellation or reduction of licenses or permits; show cause; appeal to examiner.* Licenses or permits are subject to cancellation or reduction to the extent that they have been improperly issued, or to the extent that their continued effectiveness is adversely affected pursuant to any of the provisions of §§ 4111.1, 4115.2–1(e), 4115.2–1(k)(4), 4114.4–4, 4115.2–5(a)(6), 4712.1–3, or 4712.1–4 of this chapter.

* * * * *

2. Paragraph (a) of § 4121.2–1 of Subpart 4121 is revised to read as follows:

§ 4121.2–1 Minimum requirements, rating and classification of lease land.

(a) *Land Resource Consideration.* The authorized officer will determine the availability of public land for grazing leases and the amount of forage available for use by livestock in conjunction with considerations of forage reservations for watershed protection, wildlife, wild free-roaming horses and burros, and other multiple uses.

* * * * *

3. A new Group 4700 is added to Subchapter D to read as follows:

Group 4700—Wild Free-Roaming Horse and Burro Management

PART 4710—WILD FREE-ROAMING HORSE AND BURRO MANAGEMENT; GENERAL

Subpart 4710—Purpose; Objective; Authority; Definitions; Policy

Sec.
4710.0–1 Purpose.
4710.0–2 Objectives.
4710.0–3 Authority.
4710.0–5 Definitions.
4710.0–6 Policy.

Subpart 4711—Management Coordination

4711.1 Recommendations from the joint national advisory board on wild free-roaming horses and burros.
4711.2 State agencies.
4711.3 Cooperative agreements.

Subpart 4712—Management Considerations

4712.1 Management; General.
4712.1–1 Planning.
4712.1–2 Intensity of management.
4712.1–3 Habitat reservation and allocation.
4712.1–4 Closures to livestock grazing.
4712.2 Establishment of ranges.
4712.2–1 Designation.
4712.2–2 Criteria for designation.
4712.2–3 Management.
4712.3 Removal and relocation or disposal of animals.
4712.3–1 Method of capture.
4712.3–2 Relocation of animals.
4712.3–3 Disposal.
4712.3–4 Acts of mercy.
4712.3–5 Disposal of carcasses.
4712.4 Animals on private lands.
4712.4–1 Allowing animals on private lands.
4712.4–2 Active maintenance of animals on private lands.
4712.4–3 Removal of animals from private lands.

Subpart 4713—Claimed Animals

4713.1 Removal of claimed animals; procedures.

Subpart 4714—Enforcement Provisions

4714.1 Arrest.
4714.2 Penalties.
4714.3 Related prohibitions and penalties.
4714.3–1 The act of September 8, 1959.
4714.3–2 The act of September 18, 1971.

Subpart 4710—Purpose; Objective; Authority; Definitions; Policy

§ 4710.0–1 Purpose.

To implement the laws relating to wild free-roaming horses and burros on public lands.

§ 4710.0–2 Objective.

The objective of these regulations is to provide criteria and procedures for protecting, managing, and controlling wild free-roaming horses and burros as a recognized component of the public land environment.

§ 4710.0–3 Authority.

The Act of December 15, 1971 (16 U.S.C. 1331–1340), requires the protection, management, and control of wild free-roaming horses and burros on public lands.

§ 4710.0–5 Definitions.

(a) "Authorized Officer" means any employee of the Bureau of Land Management to whom has been delegated the authority to take actions under the regulations of this chapter.

(b) "Wild free-roaming horses and burros" means all unbranded and unclaimed horses and burros that have used or do use public lands as all or part of their habitat on or after December 15, 1971, including those animals given an identifying mark upon capture for live disposal by the authorized officer. Unbranded, claimed horses and burros where the claim is found to be erroneous are also considered as wild and free-roaming if they meet the criteria above. However, this definition shall not include any horse or burro introduced onto public lands on or after December 15, 1971, by accidental, negligent, or willful disregard of ownership.

(c) "Herd" means one or more stallions or jacks and their mares or jennies.

(d) "Public lands" means any lands administered by the Secretary of the Interior through the Bureau of Land Management.

(e) "Wild horse or burro range" means a designated area of land necessary to sustain a herd or herds of wild free-roaming horses or burros, and which is devoted principally but not necessarily exclusively to their welfare in keeping