transportation of certain articles between its ports by vessels of the United States, reciprocal privileges will be accorded to vessels of the nation, and the prohibition against the transportation of those articles between points in the U.S. will not apply to its vessels.

In accordance with the Act, the Customs Service has listed in § 4.93(b)(1) of the Customs Regulations (19 CFR 4.93(b)(1)) those nations found to extend reciprocal privileges to vessels of the United States for the transportation of empty cargo vans, empty lift vans, and empty shipping tanks. Those nations found to grant reciprocal privileges to vessels of the United States for the transportation of equipment for use with cargo vans, lift vans, and shipping tanks; empty barges specifically designed for carriage aboard a vessel; empty instruments of international traffic; and certain stevedoring equipment and material, are listed in § 4.93(b)(2) of the Customs Regulations (19 CFR 4.93(b)(2)).

By letter dated May 29, 1991, from the Embassy of Luxembourg, the Department of State advised that Luxembourg places no restrictions on the transportation of the articles listed in the Act by vessels of the United States between ports in Luxembourg.

The authority to amend this section of the Customs Regulations has been delegated to the Chief, Regulations and Disclosure Law Branch.

Finding

On the basis of the information received from the Department of State, Luxembourg places no restrictions on the transportation of the articles specified in section 27 of the Merchant Marine Act of 1920, as amended (46 U.S.C. App. 883), by vessels of the United States. Therefore, appropriate reciprocal privileges are accorded to vessels of Luxembourg registry as of January 1, 1991.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because this amendment merely implements a statutory requirement and involves a matter in which the public is not particularly interested, pursuant to 5 U.S.C. 553(b)(3)(B), notice and public procedure thereon are unnecessary. Further, for the same reasons, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d)(1).

Inapplicability of the Regulatory Flexibility Act

This document is not subject to the provisions of the Regulatory Flexibility Act 5 U.S.C. 601 *et. seq.* That Act does not apply to any regulation such as this for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551, *et. seq.*) or any other statute.

Executive Order 12291

This amendment does not meet the criteria for a major rule as defined in E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Joseph W. Clark, Regulations and Disclosure Law Branch, U.S. Customs Service; however, personnel from other offices of the Customs Service participated in its development.

List of Subjects in 19 CFR Part 4

Cargo vessels, Coastwise trade, Customs duties and inspection, Maritime carriers, Vessels.

Amendment to the Customs Regulations

To reflect the reciprocal privileges granted to vessels registered in Luxembourg, part 4, Customs Regulations (19 CFR part 4), is amended as follows:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The authority for part 4 continues to read in part as follows:

Authority 5 U.S.C. 301, 19 U.S.C. 66, 1624, 46 U.S.C. App. 3; * * *

* * * * *

Section 4.93 also issued under 19 U.S.C. 1322(a), 46 U.S.C. App. 883; * * *

§ 4.93 [Amended]

2. Sections 4.93(b) (1) and (2) are amended by adding "Luxembourg" alphabetically in the lists of countries under those paragraphs.

Dated: April 9, 1992.

Kathryn C. Peterson,

Chief, Regulations and Disclosure Law Branch.

[FR Doc. 92-8589 Filed 4-14-92; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

26 CFR Part 1

[T.D. 8410]

RIN 1545-AM20

Allocation and Apportionment of Interest Expense

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations relating to the allocation and apportionment of interest expense for purposes of computing taxable income from sources within and without the United States. The final regulations require that, in certain circumstances, third party interest expense of an affiliated group of corporations be allocated directly to foreign source income. These final regulations implement section 864(e) of the Internal Revenue Code of 1986.

EFFECTIVE DATE: These regulations are effective for and apply to taxable years beginning after December 31, 1991. However, at the choice of the taxpayer, these regulations may be applied to taxable years beginning after December 31, 1987.

FOR FURTHER INFORMATION CONTACT: Judith Cavell of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:CORP:T:R (INTL-0952-86) (202-566-6442, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Proposed regulations which would have implemented section 864(e) of the Internal Revenue Code of 1986 were published in the **Federal Register** at 52 FR 34580 on September 11, 1987. Those proposed regulations were withdrawn and replaced by temporary regulations and a notice of proposed rulemaking by cross-reference to temporary regulations published on September 14, 1988, in the **Federal Register** at 53 FR 35525 and 53 FR 35467, respectively.

On March 12, 1991, the **Federal Register** published proposed regulation § 1.861-10(e) withdrawing and replacing the earlier regulation § 1.861-10(e) proposed by cross-reference, but not withdrawing and replacing the corresponding temporary regulation § 1.861-10T(e). Written comments responding to this latest notice were received, and a public hearing was held on June 21, 1991. The Treasury Department hereby issues final regulation § 1.861-10(e), which incorporates, where appropriate, comments concerning the proposed regulations.

Explanation of Provisions

A. Summary of Regulation

Section 1.861-10(e) provides generally that a U.S. affiliated group ("U.S. group") which has both excess loans to related controlled foreign corporations ("excess related group indebtedness") and excess borrowing by the U.S. group from unrelated parties ("excess U.S. shareholder indebtedness") in the same taxable year must allocate directly to foreign source income an amount of interest expense equal to the amount of interest income received by the U.S. group with respect to excess related group indebtedness (or, if smaller, an amount of related group indebtedness equal to the amount of excess of U.S. shareholder indebtedness).

Section 1.861–10(e) employs a three-step process. In Step One, a U.S. group determines the amount of excess related group indebtedness (if any) for the current year by comparing its actual related group indebtedness for the year to the amount of allowable related group indebtedness for the year. The amount of allowable related group indebtedness is determined by multiplying the aggregate asset value of all related controlled foreign corporations (the "related CFC group") by the foreign base period ratio for the year. The foreign base period ratio for any taxable year is the average of the ratios of related group indebtedness to related CFC group assets for each of the five immediately preceding years.

In Step Two, the U.S. group determines the amount of excess of U.S. shareholder indebtedness (if any) for the current year by comparing its actual U.S. shareholder indebtedness for the year to the amount of allowable U.S. shareholder indebtedness for the year. The amount of allowable U.S. shareholder indebtedness is determined by multiplying the aggregate asset value of the U.S. group by the U.S. base period ratio for the year. The U.S. base period ratio for any taxable year is the average of the ratios of U.S. shareholder indebtedness to U.S. group assets for each of the five immediately preceding years.

In Step Three, the U.S. group compares the Step One amount of excess related group indebtedness and the Step Two amount of excess U.S. shareholder indebtedness. The amount of "allocable related group indebtedness" is the smaller of the two amounts. Interest expense, in an amount equal to the amount of interest income received by the U.S. group on allocable related group indebtedness, must be allocated directly to foreign source income of the U.S. group. This interest expense is allocated to separate limitation categories for purposes of section 904(d) in proportion to the amounts of related group indebtedness held by the U.S. group in each category. Several safe harbor rules and other special rules are provided. In addition, § 1.861–10(e)(9) provides rules for the application of § 1.861–10(e) by start-up companies and in the context of corporate acquisitions, dispositions and section 355 distributions.

B. Significant Comments and Revisions

Under § 1.861–10 (e)(2)(v)(A) and (e)(3)(v)(A), the foreign and U.S. base periods for any taxable year consist of the five immediately preceding taxable years. Under § 1.861–10 (e)(2)(v)(B) and (e)(3)(v)(B), U.S. group may choose, as its initial base years, the five years consisting of the 1982 taxable year through the 1986 taxable year. Under § 1.861–10 (e)(2)(v)(C) and (e)(3)(v)(C), a taxpayer that chooses to apply § 1.861–10(e) only with respect to taxable years beginning after December 31, 1991 and that does not choose the initial base years described in § 1.861–10 (e)(2)(v)(B) and (e)(3)(v)(B) may not include the taxable year immediately preceding the first effective taxable year within any base period. Section 1.861–10 (e)(2)(v)(D) and (e)(3)(v)(D) clarify that the same initial base years must be chosen for the foreign base period ratio and the U.S. base period ratio, and § 1.861–10 (e)(2)(iv) and (e)(3)(iv) have been revised to clarify that the 110 percent limitations imposed by those sections do not apply with respect to each of the five initial base years.

Several commenters suggested that the foreign and U.S. base period ratios be calculated on a "weighted average" basis. Under this method, the sum of the amounts of related group indebtedness or U.S. shareholder indebtedness for each of the five base years would be divided by the sum of the aggregate values of related CFC group assets or U.S. group assets, respectively, for each of the five base years. This method would effectively give greater weight to years in which asset values are relatively large. The suggested method might thus be viewed as beneficial for some taxpayers with growing domestic and foreign operations, since it would give greater weight to more recent years. However, it could also penalize some taxpayers whose domestic or foreign operations are decreasing in size by giving less weight to more recent years. The method of § 1.861–10 (e)(2)(iv) and (e)(3)(iv) gives equal weight to each base year and thus results in a more accurate approximation of the average level of each indebtedness-to-asset ratio during the base period.

Several commenters suggested that direct allocation of interest expense be required only when a taxpayer's actual amounts of related group indebtedness and U.S. shareholder indebtedness vary from its amounts of allowable related group indebtedness and allowable U.S. shareholder indebtedness, respectively, by a specified percentage (*e.g.*, by 10 percent). The commenters noted in particular that exchange rate fluctuation may cause uncontrollable fluctuations in either or both of the two indebtedness-to-asset ratios. This suggestion was not adopted. The comparison of current years amounts of related group and U.S. shareholder indebtedness to allowable amounts computed on the basis of average historical indebtedness-to-asset ratios (rather than absolute amounts for a prior year) is intended to accommodate year-to-year changes in the relevant indebtedness amounts for other than tax reasons. In addition, the translation rules provided in § 1.861–10(e)(8)(i) should prevent any fluctuation in either inidebtedness-to-asset ratio that is due solely to exchange rate fluctuations, and the provisions of § 1.861–10(e)(9) should accommodate fluctuations caused by significant corporate events.

Section 1.861–10(e)(2)(iv) provides that, for purposes of computing the foreign base period ratio for any taxable year, the ratio of related group indebtedness to related CFC group assets for any base year may not exceed 110 percent of the foreign base period ratio for that base year. Section 1.861–10(e)(3)(iv) provides a corresponding limitation with respect to the U.S. base period ratio. Several commenters stated that limitations of 110 percent place taxpayers with initially low foreign and U.S. base period ratios at a disadvantage, relative to taxpayers with initially high base period ratios. These commenters argued that a higher percentage limitation would reduce this disadvantage and better accommodate non-abusive transactions. This suggestion has not been adopted, because the Service believes that a 110 percent limitation provides sufficient flexibility for gradual adjustments in the foreign and U.S. base period ratios and that the rules of § 1.861–10 (e)(9) sufficiently accommodate significant corporate events. To reduce the potential for disadvantage of taxpayers with initially low base period ratios, § 1.861–10 (e)(2)(iv) and (e)(3)(iv) have been amended to provide that the 110 percent limitation does not apply with respect to any base period year for which the relevant indebtedness-to-asset ratio does not exceed 0.10.

A number of commenters suggested that, for purposes of computing the foreign base period ratio, the ratio of related group indebtedness to related

CFC group assets taken into account for any base year be no less than 90 percent of the foreign base period ratio for that base year. A corresponding limitation was suggested with respect to the U.S. base period ratio. The commenters argued that these additional limitations were necessary to counterbalance the restrictive effect of the 110 percent limitations imposed by § 1.861-10 (e)(2)(iv) and (e)(3)(iv). This suggestion was not adopted. The 110 percent limitations of § 1.861-10 (e)(2)(iv) and (e)(3)(iv) are necessary to prevent avoidance of § 1.861-10 (e). As anti-avoidance rules, they provide no rationale for the inclusion of reciprocal rules beneficial to the taxpayer. In addition, the Service believes that the suggested 90% limitation would have effectively preserved any relative advantage now enjoyed by taxpayers with initially high foreign and U.S. base period ratios.

Redundant "safe harbor" language of proposed § 1.861-10 (e)(2)(vii)(B) and (e)(3)(vii) has been eliminated. In response to taxpayer comments, a new safe harbor has been added to § 1.861-10(e)(3)(vii) under which a U.S. group is considered to have no excess U.S. shareholder indebtedness in any taxable year in which its ratio of U.S. shareholder indebtedness to U.S. group assets does not exceed 0.10. This new safe harbor is intended to relieve taxpayers who, by virtue of having historically low U.S. base period ratios, may trigger the application of § 1.861-10(e) with minimal fluctuations in U.S. group borrowing. A suggestion that a higher safe harbor ratio be provided in § 1.861-10 (e)(2)(vii)(B) was not adopted.

A number of commenters argued that the foreign base period ratio used in determining excess related group indebtedness under § 1.861-10 (e)(2)(i) for any taxable year should be no less than 0.10 (the safe harbor ratio provided in § 1.861-10 (e)(2)(vii)(B)). It was suggested that this rule would avoid disparate treatment of taxpayers with foreign base period ratios slightly lower than 0.10 and taxpayers with foreign base period ratios slightly higher than 0.10. This suggestion assumes incorrectly, however, that the safe harbor of § 1.861-10 (e)(2)(vii)(B) is intended to provide all taxpayers with an exemption from direct allocation for related group indebtedness in an amount equal to 10 percent of the value of related CFC group assets. In fact, the safe harbor rule is intended only to relieve taxpayers with relatively low levels of related group indebtedness from the computational burdens of § 1.861-10 (e). The Service believes that revised § 1.861-10 (e)(2)(iv), under which the 110 percent limitation imposed by paragraph (e)(2)(iv) does not apply with respect to base years in which the ratio of related group indebtedness to related CFC group assets does not exceed 0.10, will mitigate any potential disparity in the treatment of taxpayers with foreign base period ratios slightly higher and slightly lower, respectively, than 0.10. The new safe harbor rule of § 1.861-10 (e)(3)(vii), and revised § 1.861-10 (e)(3)(iv), will operate in an analogous manner with respect to the ratio of U.S. shareholder indebtedness to U.S. group assets.

Several commenters recommended that the aggregate value of U.S. group assets used to compute allowable U.S. shareholder indebtedness under § 1.861-10(e)(3)(iii)(A) not be reduced by the amount of excess related group indebtedness for the year (as determined under Step One in § 1.861-10(e)(2)). This suggestion has not been adopted, because this reduction is necessary to effectuate a dollar-for-dollar matching of disproportionate U.S. shareholder indebtedness to excess related group indebtedness under § 1.861-10(e)(4).

In response to taxpayer comments, § 1.861-10(e)(6) has been revised to provide that the aggregate asset value of a related CFC for any taxable year may be determined by reference to the asset values reflected on a Form 5471 (or attachment thereto) filed for such taxable year. Form 5471 asset values must be used consistently, however, for all related CFCs and for all taxable years. In addition, Form 5471 asset values may be used only if the taxable year of each related CFC begins with, or no more than one month earlier than, the taxable year of the U.S. group. Beginning of year asset values, whether for a related CFC or for the U.S. group, are the same as the corresponding asset values as of the end of the immediately preceding year.

Several commenters suggested that a provision similar to the fixed stock writeoff method provided in proposed regulation § 1.163(j)-5(e) be added to § 1.861-10(e) to accommodate the acquisition of a related CFC or U.S. group member by means of a stock acquisition for which a section 338 election is not made. The commenters noted that a stock acquisition of this type can result in a substantial, non-abusive increase in the relevant indebtedness-to-asset ratio for a U.S. group that values assets by reference to tax book value (rather than fair market value). The suggested modification was not adopted. However, the Service intends to consider the proper treatment of such stock acquisitions in the context of forthcoming final regulations under section 864(e) relating to the allocation and apportionment of interest expense.

In response to taxpayer comments, § 1.861-10(e)(8)(i) has been added to provide that all amounts of related group indebtedness and U.S. shareholder indebtedness and all related CFC group and U.S. group asset values that are denominated in a currency other than U.S. dollars are to be translated into dollars at an average exchange rate for the current taxable year. This translation rule applies with respect to indebtedness amounts and asset values for each of the five base years, as well as to amounts and values for the current year, and thus will require taxpayers to redetermine base year indebtedness amounts and asset values on an annual basis. Use of a current year exchange rate to translate all non-dollar amounts should prevent the application of § 1.861-10(e) to any taxpayer solely by virtue of exchange rate fluctuations.

Although proposed § 1.861-10(e)(8)(i) has been deleted, the Service will apply, for purposes of § 1.861-10(e), the definition of "indebtedness" contained in § 1.861-13T(a)(3). The Service anticipates that final regulations forthcoming under section 864(e) will incorporate a definition of "indebtedness" similar to that of § 1.861-13T(a)(3) and applicable for all purposes of the regulations under section 864(e).

Section § 1.861-10(e)(8)(iii) has been added to clarify that indebtedness which qualifies for direct allocation of interest expense under § 1.861-10T (b) or (c) is excluded from related group indebtedness or U.S. shareholder indebtedness, and the value of any asset which is the subject of qualified non-recourse indebtedness under § 1.861-10T(b) or an integrated financial transaction under § 1.861-10T(c) is excluded from the aggregate asset value of the related CFC group or the U.S. group. Exempt assets (within the meaning of § 1.861-8T(d)) are included, however, in determining aggregate asset values under § 1.861-10(e)(8)(ii).

New § 1.861-10(e)(8)(iv) has been added to clarify that receivables arising between related CFCs (or between members of the U.S. group) do not constitute assets of the related CFC (or U.S. group member) holding such receivables.

The special reclassification rule of § 1.861-10(e)(8)(v) has been revised to apply in the context of multiple tiers of CFCs. Section 1.861-10(e)(8)(vi) clarifies that its special reclassification rule does not apply to CFC stock that gives rise to a CFC deduction for dividends paid under an integrated tax system.

Several commenters suggested that § 1.861-10(e)(9)(i) provide a higher presumed ratio of related group indebtedness to related CFC group assets for base years in which a U.S. group holds no related CFC stock. This suggestion has not been adopted.

Several commenters requested additional guidance under § 1.861-10(e)(9)(iii)(A) and (v)(A) as to the manner in which the values of assets acquired or divested near the end or beginning of a year should be weighted to avoid substantial distortions. These sections have been revised to clarify that the Service is concerned only with transactions occurring within three months of the end or beginning of a year. While the appropriate weighting method will vary, depending upon the facts of a particular situation, one method likely to produce reasonable results in many situations would be to prorate asset values acquired or divested within three months of the end or beginning of a year.

The separate group acquisition and disposition elections of proposed § 1.861-10(e)(9) (iv) and (vi) have been replaced with new elections under which taxpayers may recompute base period ratios as if acquired (or divested) corporations had (or had not) been members of the taxpayer's U.S. group or related CFC group at the beginning of the acquisition (or disposition) year and during base years prior to the acquisition (or disposition) year. The Service believes that these new elections will be less complex to apply and will provide greater relief.

Several commenters suggested that relief be provided in § 1.861-10(e)(9) for acquisitions and dispositions of substantial assets. This suggestion was not adopted, in view of the many options available to taxpayers in structuring asset transactions. As a result, specific relief provisions would be prohibitively complex to contruct and administer. In addition, because taxpayers have greater flexibility in structuring asset transactions, relief provisions are less necessary in this context than in the context of stock transactions.

Commenters on the alternative version of Step Two described in the preamble to the proposed regulations suggested that this alternative be available on an elective basis. This suggestion was not adopted.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C chapter 6) do not apply to these regulations, and therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the proposed regulations were submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Judith Cavell of the Office of the Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects in 26 CFR 1.861-1 Through 1.864-12

Income taxes, United States investments abroad.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX: TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by adding the following citation:

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

Section 1.861-10(e) also issued under 26 U.S.C. 863(a), 26 U.S.C. 864(e), 26 U.S.C. 865(i) and 26 U.S.C. 7701(f). * * *

Par. 2. Section 1.861-10 is added to read as follows:

§ 1.861-10 Special allocations of interest expense.

(a) through (d). [Reserved]

(e) *Treatment of certain related group indebtedness*—(1) *In general.* If, for any taxable year beginning after December 31, 1991, a U.S. shareholder (as defined in paragraph (e)(5)(i) of this section) has both—

(i) Excess related group indebtedness (as determined under Step One in paragraph (e)(2) of this section) and

(ii) Excess U.S. shareholder indebtedness (as determined under Step Two in paragraph (e)(3) of this section), the U.S. shareholder shall allocate, to its gross income in the various separate limitation categories described in section 904(d)(1), a portion of its interest expense paid or accrued to any obligee who is not a member of the affiliated group (as defined in § 1.861-11T(d)) of the U.S. shareholder ("third party interest expense"), excluding amounts allocated under paragraphs (b) and (c) of § 1.861-10T. The amount of third party interest expense so allocated shall equal the total amount of interest income derived by the U.S. shareholder during the year from related group indebtedness, multiplied by the ratio of the lesser of the foregoing two amounts of excess indebtedness for the year to related group indebtedness for the year. This amount of third party interest expense is allocated as described in Step Three in paragraph (e)(4) of this section.

(2) *Step One: Excess related group indebtedness.* (i) The excess related group indebtedness of a U.S. shareholder for the year equals the amount by which its related group indebtedness for the year exceeds its allowable related group indebtedness for the year.

(ii) The "related group indebtedness" of the U.S. shareholder is the average of the aggregate amounts at the beginning and end of the year of indebtedness owed to the U.S. shareholder by each controlled foreign corporation which is a related person (as defined in paragraph (e)(5)(ii) of this section) with respect to the U.S. shareholder.

(iii) The "allowable related group indebtedness" of a U.S. shareholder for the year equals—

(A) The average of the aggregate values at the beginning and end of the year of the assets (including stock holdings in and obligations of related persons, other than related controlled foreign corporations) of each related controlled foreign corporation, multiplied by

(B) The foreign base period ratio of the U.S. shareholder for the year.

(iv) The "foreign base period ratio" of the U.S. shareholder for the year is the average of the related group debt-to-asset ratios of the U.S. shareholder for each taxable year comprising the foreign base period for the current year (each a "base year"). For this purpose, however, the related group debt-to-asset ratio of the U.S. shareholder for any base year may not exceed 110 percent of the foreign base period ratio for that base year. This limitation shall not apply with respect to any of the five taxable years chosen as initial base years by the U.S. shareholder under paragraph (e)(2)(v) of this section or with respect to any base year for which the related group debt-to-asset ratio does not exceed 0.10.

(v)(A) The foreign base period for any current taxable year (except as described in paragraphs (e)(2)(v) (B) and

(C) of this section) shall consist of the five taxable years immediately preceding the current year.

(B) The U.S. shareholder may choose as foreign base periods for all of its first five taxable years for which this paragraph (e) is effective the following alternative base periods:

(*1*) For the first effective taxable year, the 1982, 1983, 1984, 1985 and 1986 taxable years;

(*2*) For the second effective taxable year, the 1983, 1984, 1985 and 1986 taxable years and the first effective taxable year;

(*3*) For the third effective taxable year, the 1984, 1985 and 1986 taxable years and the first and second effective taxable years;

(*4*) For the fourth effective taxable year, the 1985 and 1986 taxable years and the first, second and third effective taxable years; and

(*5*) For the fifth effective taxable year, the 1986 taxable year and the first, second, third and fourth effective taxable years.

(C) If, however, the U.S. shareholder does not choose, under paragraph (e)(10)(ii) of this section, to apply this paragraph (e) to one or more taxable years beginning before January 1, 1992, the U.S. shareholder may not include within any foreign base period the taxable year immediately preceding the first effective taxable year. Thus, for example, a U.S. shareholder for which the first effective taxable year is the taxable year beginning on October 1, 1992, may not include the taxable year beginning on October 1, 1991, in any foreign base period. Assuming that the U.S. shareholder does not elect the alternative base periods described in paragraph (e)(2)(v)(B) of this section, the initial foreign base period for the U.S. shareholder will consist of the taxable years beginning on October 1 of 1986, 1987, 1988, 1989, and 1990. The foreign base period for the U.S. shareholder for the following taxable year, beginning on October 1, 1993, will consist of the taxable years beginning on October 1 of 1987, 1988, 1989, 1990, and 1992.

(D) If the U.S. shareholder chooses the base periods described in paragraph (e)(2)(v)(B) of this section as foreign base periods, it must make a similar election under paragraph (e)(3)(v)(B) of this section with respect to its U.S. base periods.

(vi) The "related group debt-to-asset ratio" of a U.S. shareholder for a year is the ratio between—

(A) The related group indebtedness of the U.S. shareholder for the year (as determined under paragraph (e)(2)(ii) of this section); and

(B) The average of the aggregate values at the beginning and end of the year of the assets (including stock holdings in and obligations of related persons, other than related controlled foreign corporations) of each related controlled foreign corporation.

(vii) Notwithstanding paragraph (e)(2)(i) of this section, a U.S. shareholder is considered to have no excess related group indebtedness for the year if—

(A) Its related group indebtedness for the year does not exceed its allowable related group indebtedness for the immediately preceding year (as determined under paragraph (e)(2)(iii) of this section); or

(B) Its related group debt-to-asset ratio (as determined under paragraph (e)(2)(vi) of this section) for the year does not exceed 0.10.

(3) *Step Two: Excess U.S. shareholder indebtedness.* (i) The excess indebtedness of a U.S. shareholder for the year equals the amount by which its unaffiliated indebtedness for the year exceeds its allowable indebtedness for the year.

(ii) The "unaffiliated indebtedness of the U.S. shareholder is the average of the aggregate amounts at the beginning and end of the year of indebtedness owed by the U.S. shareholder to any obligee, other than a member of the affiliated group (as defined § 1.861-11T(d)) of the U.S shareholder.

(iii) The "allowable indebtedness" of a U.S. shareholder for the year equals—

(A) The average of the aggregate values at the beginning and end of the year of the assets of the U.S. shareholder (including stock holdings in and obligations of related controlled foreign corporations, but excluding stock holdings in the obligations of members of the affiliated group (as defined in § 1.861-11T(d)) of the U.S. shareholder), reduced by the amount of the excess related group indebtedness of the U.S. shareholder for the year (as determined under Step One in paragraph (e)(2) of this section), multiplied by

(B) The U.S. base period ratio of the U.S. shareholder for the year.

(iv) The "U.S. base period ratio" of the U.S. shareholder for the year is the average of the debt-to-asset ratios of the U.S. shareholder for each taxable year comprising the U.S. base period for the current year (each a "base year"). For this purpose, however, the debt-to-asset ratio of the U.S. shareholder for any base year may not exceed 110 percent of the U.S. base period ratio for that base year. This limitation shall not apply with respect to any of the five taxable years chosen as initial base years by the U.S. shareholder under paragraph (e)(3)(v) of this section or with respect to any base year for which of the debt-to-asset ratio does not exceed 0.10.

(v)(A) The U.S. base period for any current taxable year (except as described in paragraphs (e)(3)(v) (B) and (C) of this section) shall consist of the five taxable years immediately preceding the current year.

(B) The U.S. shareholder may choose as U.S. base periods for all of its first five taxable years for which this paragraph (e) is effective the following alternative base periods:

(*1*) For the first effective taxable year, the 1982, 1983, 1984, 1985 and 1986 taxable years;

(*2*) For the second effective taxable year, the 1983, 1984, 1985 and 1986 taxable years and the first effective taxable year;

(*3*) For the third effective taxable year, the 1984, 1985 and 1986 taxable years and the first and second effective taxable years;

(*4*) For the fourth effective taxable year, the 1985 and 1986 taxable years and the first, second and third effective taxable years; and

(*5*) For the fifth effective taxable year, the 1986 taxable year and the first, second, third and fourth effective taxable years.

(C) If, however, the U.S. shareholder does not choose, under paragraph (e)(10)(ii) of this section, to apply this paragraph (e) to one or more taxable years beginning before January 1, 1992, the U.S. shareholder may not include within any U.S. base period the taxable year immediately preceding the first effective taxable year. Thus, for example, a U.S. shareholder for which the first effective taxable year is the taxable year beginning on October 1, 1992, may not include the taxable year beginning on October 1, 1991, in any U.S. base period. Assuming that the U.S. shareholder does not elect the alternative base periods described in paragraph (e)(3)(v)(B) of this section, the initial U.S. base period for the U.S. shareholder will consist of the taxable years beginning on October 1, of 1986, 1987, 1988, 1989, and 1990. The U.S. base period for the U.S. shareholder for the following taxable year, beginning on October 1, 1993, will consist of the taxable years beginning on October 1, 1987, 1988, 1989, 1990, and 1992.

(D) If the U.S. shareholder chooses the base periods described in paragraph (e)(3)(v)(B) of this section as U.S. base periods, it must make a similar election under paragraph (e)(2)(v)(B) of this section with respect to its foreign base periods.

(vi) The "debt-to-asset ratio" of a U.S. shareholder for a year is the ratio between—

(A) The unaffiliated indebtedness of the U.S. shareholder for the year (as determined under paragraph (e)(3)(ii) of this section); and

(B) The average of the aggregate values at the beginning and end of the year of the assets of the U.S. shareholder. For this purpose, the assets of the U.S. shareholder include stock holdings in and obligations of related controlled foreign corporations but do not include stock holdings in and obligations of members of the affiliated group (as defined in § 1.861–11T(d)).

(vii) A U.S. shareholder is considered to have no excess indebtedness for the year if its debt-to-asset ratio (as determined under paragraph (e)(3)(vi) of this section) for the year does not exceed 0.10.

(4) *Step Three: Allocation of third party interest expense.* (i) A U.S. shareholder shall allocate to its gross income in the various separate limitation categories described in section 904(d)(1) a portion of its third party interest expense incurred during the year equal in amount to the interest income derived by the U.S. shareholder during the year from allocable related group indebtedness.

(ii) The "allocable related group indebtedness" of a U.S. shareholder for any year is an amount of related group indebtedness equal to the lesser of—

(A) The excess related group indebtedness of the U.S. shareholder for the year (determined under Step One in paragraph (e)(2) of this section); or

(B) The excess U.S. shareholder indebtedness for the year (determined under Step Two in paragraph (e)(3) of this section).

(iii) The amount of interest income derived by a U.S. shareholder from allocable related group indebtedness during the year equals the total amount of interest income derived by the U.S. shareholder during the year with respect to related group indebtedness, multiplied by the ratio of allocable related group indebtedness for the year to the aggregate amount of related group indebtedness for the year.

(iv) The portion of third party interest expense described in paragraph (e)(4)(i) of this section shall be allocated in proportion to the relative average amounts of related group indebtedness held by the U.S. shareholder in each separate limitation category during the year. The remaining portion of third party interest expense of the U.S. shareholder for the year shall be apportioned as provided in §§ 1.861–8T through 1.861–13T, excluding paragraph (e) of § 1.861–10T and this paragraph (e).

(v) The average amount of related group indebtedness held by the U.S. shareholder in each separate limitation category during the year equals the average of the aggregate amounts of such indebtedness in each separate limitation category at the beginning and end of the year. Solely for purposes of this paragraph (e)(4), each debt obligation of a related controlled foreign corporation held by the U.S. shareholder at the beginning or end of the year is attributed to separate limitation categories in the same manner as the stock of the obligor would be attributed under the rules of § 1.861–12T(c)(3), whether or not such stock is held directly by the U.S. shareholder.

(vi) The amount of third party interest expense of a U.S. shareholder allocated pursuant to this paragraph (e)(4) shall not exceed the total amount of the third party interest expense of the U.S. shareholder for the year (excluding any third party interest expense allocated under paragraphs (b) and (c) of § 1.861–10T).

(5) *Definitions.* For purposes of this paragraph (e), the following terms shall have the following meanings.

(i) *U.S. shareholder.* The term "U.S. shareholder" has the same meaning as the term "United States shareholder" when used in section 957, except that, in the case of a United States shareholder that is a member of an affiliated group (as defined in § 1.861–11T(d)), the entire affiliated group is considered to constitute a single U.S. shareholder.

(ii) *Related person.* For the definition of the term "related person", see § 1.861–8T(c)(2). A controlled foreign corporation is considered "related" to a U.S. shareholder if it is a related person with respect to the U.S. shareholder.

(6) *Determination of asset values.* A U.S. shareholder shall determine the values of the assets of each related controlled foreign corporation (for purposes of Step One in paragraph (e)(2) of this section) and the assets of the U.S. shareholder (for purposes of Step Two in paragraph (e)(3) of this section) for any year in accordance with the valuation method (tax book value of fair market value) elected for that year pursuant to § 1.861–9T(g). However, solely for purposes of this paragraph (e), a U.S. shareholder may instead choose to determine the values of the assets of all related controlled foreign corporations by reference to their values as reflected on Forms 5471 (the annual information return with respect to each related controlled foreign corporation), subject to the translation rules of paragraph (e)(8)(i) of this section. This method of valuation may be used only if the taxable years of each of the related controlled foreign corporations begin with, or no more than one month earlier than, the taxable year of the U.S. shareholder. Once chosen for a taxable year, this method of valuation must be used in each subsequent taxable year and may be changed only with the consent of the Commissioner.

(7) *Adjustments to asset value.* For purposes of apportioning remaining interest expense under § 1.861–9T, a U.S. shareholder shall reduce (but not below zero) the value of its assets for the year (as determined under § 1.861–9T (g) (3) or (h)) by an amount equal to the allocable related group indebtedness of the U.S. shareholder for the year (as determined under Step Three in paragraph (e)(4)(ii) of this section). This reduction is allocated among assets in each separate limitation category in proportion to the average amount of related group indebtedness held by the U.S. shareholder in each separate limitation category during the year (as determined under Step Three in paragraph (e)(4)(v) of this section).

(8) *Special rules*—(i) *Exchange rates.* All indebtedness amounts and asset values (including current year and base year amounts and values) denominated in a foreign currency shall be translated into U.S. dollars at the exchange rate for the current year. The exchange rate for the current year may be determined under any reasonable method (*e.g.*, average of month-end exchange rates for each month in the current year) if it is consistently applied to the current year and all base years. Once chosen for a taxable year, a method for determining an exchange rate must be used in each subsequent taxable year and will be treated as a method of accounting for purposes of section 446. A taxpayer may apply a different translation rule only with the prior consent of the Commissioner. In this regard, the Commissioner will be guided by the extent to which a different rule would reduce the comparability of dollar amounts of indebtedness and dollar asset values for the base years and the current year.

(ii) *Exempt assets.* Solely for purposes of this paragraph (e), any exempt assets otherwise excluded under section 864(e)(3) and § 1.861–8T(d) shall be included as assets of the U.S. shareholder or related controlled foreign corporation.

(iii) *Exclusion of certain directly allocated indebtedness and assets.* Qualified nonrecourse indebtedness (as defined in § 1.861–10T(b)(2)) and indebtedness incurred in connection with an integrated financial transaction (as defined in § 1.861-10T(c)(2)) shall be excluded from U.S. shareholder indebtedness and related group indebtedness. In addition, assets which are the subject of qualified nonrecourse indebtedness or integrated financial transactions shall be excluded from the assets of the U.S. shareholder and each related controlled foreign corporation.

(iv) *Exclusion of certain receivables.* Receivables between related controlled foreign corporations (or between members of the affiliated group constituting the U.S. shareholder) shall be excluded from the assets of the related controlled foreign corporation (or affiliated group member) holding such receivables. See also § 1.861-11T(e)(1).

(v) *Classification of certain loans as related group indebtedness.* If—

(A) A U.S. shareholder owns stock in a related controlled foreign corporation which is a resident of a country that—

(*1*) Does not impose a withholding tax of 5 percent or more upon payments of dividends to a U.S. shareholder; and

(*2*) Does not, for the taxable year of the controlled foreign corporation, subject the income of the controlled foreign corporation to an income tax which is greater than that percentage specified under § 1.954-1T(d)(1)(i) of the maximum rate of tax specified under section 11 of the Code, and

(B) The controlled foreign corporation has outstanding a loan or loans to one or more other related controlled foreign corporations, or the controlled foreign corporation has made a direct or indirect capital contribution to one or more other related controlled foreign corporations which have outstanding a loan or loans to one or more other related controlled foreign corporations, then, to the extent of the aggregate amount of its capital contributions in taxable years beginning after December 31, 1986, to the related controlled foreign corporation that made such loans or additional contributions, the U.S. shareholder itself shall be treated as having made the loans decribed in paragraph (e)(8)(v)(B) of this section and, thus, such loan amounts shall be considered related group indebtedness. However, for purposes of paragraph (e)(4) of this section, interest income derived by the U.S. shareholder during the year from related group indebtedness shall not include any income derived with respect to the U.S. shareholder's ownership of stock in the related controlled foreign corporation that made such loans or additional contributions.

(vi) *Classification of certain stock as related person indebtedness.* In determining the amount of its related group indebtedness for any taxable year, a U.S. shareholder must treat as related group indebtedness its holding of stock in a related controlled foreign corporation if, during such taxable year, such related controlled foreign corporation claims a deduction for interest under foreign law for distributions on such stock. However, for purposes of paragraph (e)(4) of this section, interest income derived by the U.S. shareholder during the year from related group indebtedness shall not include any income derived with respect to the U.S. shareholder's ownership of stock in the related controlled foreign corporation.

(9) *Corporate events*—(i) *Initial acquisition of a controlled foreign corporation.* If the foreign base period of the U.S. shareholder for any year includes a base year in which the U.S. shareholder did not hold stock in any related controlled foreign corporation, then, in computing the foreign base period ratio, the related group debt-to-asset ratio of the U.S. shareholder for any such base year shall be deemed to be 0.10.

(ii) *Incorporation of U.S. shareholder*—(A) *Nonapplication.* This paragraph (e) does not apply to the first taxable year of the U.S. shareholder. However, this paragraph (e) does apply to all following years, including years in which later members of the affiliated group may be incorporated.

(B) *Foreign and U.S. base period ratios.* In computing the foreign and U.S. base period ratios, the foreign and U.S. base periods of the U.S. shareholder shall be considered to be only the period prior to the current year that the U.S. shareholder was in existence if this prior period is less than five taxable years.

(iii) *Acquisition of additional corporations.* (A) If a U.S. shareholder acquires (directly or indirectly) stock of a foreign or domestic corporation which, by reason of the acquisition, then becomes a related controlled foreign corporation or a member of the affiliated group, then in determining excess related group indebtedness or excess U.S. shareholder indebtedness, the indebtedness and assets of the acquired corporation shall be taken into account only at the end of the acquisition year and in following years. Thus, amounts of indebtedness and assets and the various debt-to-asset ratios of the U.S. shareholder existing at the beginning of the acquisition year or relating to preceding years are not recalculated to take account of indebtedness and assets of the acquired corporation existing as of dates before the end of the year. If, however, a major acquisition is made within the last three months of the year and a substantial distortion of values for the year would otherwise result, the taxpaper must take into account the average values of the acquired indebtedness and assets weighted to reflect the time such indebtedness is owed and such assets are held by the taxpayer during the year.

(B) In the case of a reverse acquisition subject to this paragraph (e)(9), the rules of § 1.1502-75(d)(3) apply in determining which corporations are the acquiring and acquired corporations. For this purpose, whether corporations are affiliated is determined under § 1.861-11T(d).

(C) If the stock of a U.S. shareholder is acquired by (and, by reason of such acquisition, the U.S. shareholder becomes affiliated with) a corporation described below, then such U.S. shareholder shall be considered to have acquired such corporation for purposes of the application of the rules of this paragraph (e). A corporation to which this paragraph (e)(9)(iii)(C) applies is—

(*1*) A corporation which is not affiliated with any other corporation (other than other similarly described corporation); and

(*2*) Substantially all of the assets of which consist of cash, securities and stock.

(iv) *Election to compute base period ratios by including acquired corporations.* A U.S. shareholder may choose, solely for purposes of paragraph (e)(9) (i) and (iii) of this section, to compute its foreign and U.S. base period ratios for the acquisition year and all subsequent years by taking into account the indebtedness and asset values of the acquired corporation or corporations (including related group indebtedness owed to a former U.S. shareholder) at the beginning of the acquisition year and in each of the five base years preceding the acquisition year. This election, if made for an acquisition, must be made for all other acquisitions occurring during the same taxable year or initiated in that year and concluded in the following year.

(v) *Dispositions.* If a U.S. shareholder disposes of stock of a foreign or domestic corporation which, by reason of the disposition, then ceases to be a related controlled foreign corporation or a member of the affiliated group (unless liquidated or merged into a related corporation), in determining excess related group indebtedness or excess U.S. shareholder indebtedness, the indebtedness and assets of the divested corporation shall be taken into account only at the beginning of the disposition year and for the relevant preceding years. Thus, amounts of indebtedness and assets and the various debt-to-asset ratios of the U.S. shareholder existing at the end of the year or relating to following years are not affected by indebtedness and assets of the divested corporation existing as of dates after the beginning of the year. If, however, a major disposition is made within the first three months of the year and a substantial distortion of values for the year would otherwise result, the taxpayer must take into account the average values of the divested indebtedness and assets weighted to reflect the time such indebtedness is owed and such assets are held by the taxpayer during the year.

(vi) *Election to compute base period ratios by excluding divested corporations.* A U.S. shareholder may choose, solely for purposes of paragraph (e) (9) (v) and (vii) of this section, to compute its foreign and U.S. base period ratios for the disposition year and all subsequent years without taking into account the indebtedness and asset values of the divested corporation or corporations at the beginning of the disposition year and in each of the five base years preceding the disposition year. This election, if made for a disposition, must be made for all other dispositions occurring during the same taxable year or initiated in that year and concluded in the following year.

(vii) *Section 355 transactions.* A U.S. corporation which becomes a separate U.S. shareholder as a result of a distribution of its stock to which section 355 applies shall be considered—

(A) As disposed of by the U.S. shareholder of the affiliated group of which the distributing corporation is a member, with this disposition subject to the rules of paragraphs (e) (9) (v) and (vi) of this section; and

(B) As having the same related group debt-to-asset ratio and debt-to-asset ratio as the distributing U.S. shareholder in each year preceding the year of distribution for purposes of applying this paragraph (e) to the year of distibution and subsequent years of the distributed corporation.

(10) *Effective date—(i) Taxable years beginning after December 31, 1991.* The provisions of this paragraph (e) apply to all taxable years beginning after December 31,1991.

(ii) *Taxable years beginning after December 31, 1987 and before January 1, 1992.* The provisions of § 1.861–10T (e) apply to taxable years beginning after December 31, 1987, and before January 1, 1992. The taxpayer may elect to apply the provisions of this paragraph (e) (in lieu of the provisions of § 1.861–10T (e)) for any taxable year beginning after December 31, 1987, but this paragraph (e) must then be applied to all subsequent taxable years.

(11) The following example illustrates the provisions of this paragraph (e):

Example. (i) *Facts.* X, a domestic corporation, elects to apply this paragraph (e) to its 1990 tax year. X has a calendar taxable year and apportions its interest expense on the basis of the tax book value of its assets. In 1990, X incurred deductible third-party interest expense of $24,960 on an average amount of indebtedness (determined on the basis of beginning-of-year and end-of-year amounts) of $249,600. X manufactures widgets, all of which are sold in the United States. X owns all of the stock of Y, a controlled foreign corporation that also has a calendar taxable year and is also engaged in the manufacture and sale of widgets. Y has no earnings and profits or deficit of earnings and profits attributable to taxable years prior to 1987. X's total assets and their average tax book values (determined on the basis of beginning-of-year and end-of-year tax book values) for 1990 are:

Asset	Average tax book value
Plant and equipment	$315,000
Corporate headquarters	60,000
Y stock	75,000
Y note	50,000
Total	500,000

Y had $25,000 of income before the deduction of any interest expense. Of this total, $5,000 is high withholding tax interest income. The remaining $20,000 is derived from widget sales, and constitutes foreign source general limitation income. Assume that Y has no deductions from gross income other than interest expense. During 1990, Y paid $5,000 of interest expense to X on the Y note and $10,000 of interest expense to third parties, giving Y total interest expense of $15,000. X elects pursuant to § 1.861–9T to apportion Y's interest expense under the gross income method prescribed in section 1.861–9T (j).

(ii) *Step 1:* Using a beginning and end of year average, X (the U.S. shareholder) held the following average amounts of indebtedness of Y and Y had the following average asset values:

	1985	1986–88	1989	1990
(A) Related group indebtedness	$11,000	24,000	26,000	50,000
(B) Average Value of Assets of Related CFC	100,000	200,000	200,000	250,000
(C) Related Group Debt-to-Asset Ratio	.11	.12	.13	.20

(*1*) X's "foreign base period ratio" for 1990, an average of its ratios of related group indebtedness to related group assets for 1985 through 1989, is:

$(.11+.12+.12+.12+.13)/5=.12$

(*2*) X's "allowable related group indebtedness" for 1990 is:

$\$250{,}000\times.12=\$30{,}000.$

(*2*) X's "excess related group indebtedness" for 1990 is:

$\$50{,}000-\times.12=\$30{,}000$

X's related group indebtedness of $50,000 for 1990 is greater than its allowable related group indebtedness of $24,000 fro 1989 (assuming a foreign base period ratio in 1989 of .12), and X's related group debt-to-asset ratio for 1990 is .20, which is greater than the ratio of .10 described in paragraph (e)(2)(vii)(B) of this section. Therefore, X's excess related group indebtedness for 1990 remains at 20,000.

(iii) *Step 2:* Using a beginning and end of year average, X has the following average amounts of U.S. and foreign indebtedness and average asset values:

	1985	1986	1987	1988	1989	1990
(1)	$231,400	225,000	225,000	225,000	220,800	249,600
(2)	445,000	450,000	450,000	450,000	460,000	480,000
(3)	.52	.50	.50	.50	.48	(a) .52

(1) U.S. and foreign indebtedness

(2) Average value of assets of U.S. shareholder

(3) Debt-to-Asset ratio of U.S. shareholder

(a) [500,000–20,000 (excess related group indebtedness determined in Step 1)]

X's "U.S. base period ratio" for 1990 is:

(.52+.50+.50+.50+.48)/5=.50

X's "allowable indebtedness" for 1990 is:

$480,000×.50=$240,000

X's "excess U.S. shareholder indebtedness" for 1990 is:

$249,000−$240,000=$9,600

X's debt-to-asset ratio for 1990 is .52, which is greater than the ratio of .10 described in paragraph (e)(3)(vii) of this section. Therefore, X's excess U.S. shareholder indebtedness for 1990 remains at $9,600.

(iv) *Step 3:* (a) Since X's excess U.S. shareholder indebtedness of $9,600 is less than its excess related group indebtedness of $20,000, X's allocable related group indebtedness for 1990 is $9,600. The amount of interest received by X during 1990 on allocable related group indebtedness is:

$5,000×$9,600/$50,000=$960

(b) Therefore, $969 of X's third party interest expense ($24,960) shall be allocated among various separate limitation categories in proportion to the relative average amounts of Y obligations held by X in each such category. The amount of Y obligations in each limitation category is determined in the same manner as the stock of Y would be attributed under the rules of § 1.861–12T(c)(3). Since Y's interest expense is apportioned under the gross income method prescribed in § 1.861–9T (j), the Y stock must be characterized under the gross income method described in § 1.861–12T(c)(3)(iii). Y's gross income net of interest expense is determined as follows:

Foreign source high withholding tax interest income—
=$5,000–[($15,000) multiplied by ($5,000)/($5,000+$20,000)]
=$2,000
and

Foreign source general limitation income—
=$20,000–[($15,000) multiplied by ($20,000)/($5,000+$20,000)]
=$8,000.

(c) Therefore, $192 [($960×$2,000/($2,000+$8,000)] of X's third party interest expense is allocated to foreign source high withholding tax interest income and $768 [$960×$8,000/($2,000+$8,000)] is allocated to foreign source general limitation income.

(v) As a result of these direct allocations, for purposes of apportioning X's remaining interest expense under § 1.861–9T, the value of X's assets generating foreign source general limitation income is reduced by the principal amount of indebtedness the interest on which is directly allocated to foreign source general limitation income ($7,680), and the value of X's assets generating foreign source high withholding tax interest income is reduced by the principal amount of indebtedness the interest on which is directly allocated to foreign source high withholding tax interest income ($1,920), determined as follows:

Reduction of X's assets generating foreign source general limitation income:

$$\text{X's allocable related group indebtedness} \times \frac{\text{Y's Foreign source general limitation income}}{\text{Y's Foreign source income}}$$

$$\$9,600 \times \$8,000/(\$8,000+\$2,000) = \$7,680$$

Reduction of X's assets generating foreign source high withholding tax interest income:

$$\text{X's allocable related group indebtedness} \times \frac{\text{Y's Foreign source high withholding tax interest income}}{\text{Y's Foreign source income}}$$

$$\$9,600 \times \$2,000/(\$8,000+\$2,000) = \$1,920$$

David G. Blattner,
Acting Commissioner of Internal Revenue.

Approved: January 24, 1992.

Kenneth W. Gideon,
Assistant Secretary of the Treasury.

[FR Doc. 92–8495 Filed 4–14–92; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[T.D. 8394]

RIN 1545–AO37

Proceeds of Bonds Used for Reimbursement; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations (T.D. 8394), which were published Thursday, January 30, 1992 (57 FR 3526). The regulations provide guidance as to when the allocation of bond proceeds to reimburse expenditures previously made by an issuer is treated as an expenditure of the bond proceeds.

EFFECTIVE DATE: The regulations and these corrections are effective for bonds issued after March 2, 1992.

FOR FURTHER INFORMATION CONTACT: William P. Cejudo (202) 566–3283 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections provide rules for allocating proceeds of "reimbursement bonds". Reimbursement bonds are bonds the proceeds of which are allocated to reimburse expenditures paid prior to the date of issue of the bonds.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (T.D. 8394), which were the subject of FR Doc. 92–2023, is corrected as follows:

§ 1.103.18 [Corrected]

Paragraph 1. On page 3530, column 3, the title for the Table of Contents *"§ 1.103.18 Proceeds of bonds used for reimbursement"* is corrected to read *"§ 1.103–18 Proceeds of bonds used for reimbursement".*

Par. 2. On page 3531, in § 1.103–18, column 1, the entry for § 1.103–18(k)(1) is corrected to read "General rules.".

Par. 3. On page 3531, in § 1.103–18, column 1, a new entry § 1.103–18(l)(3) is added to read as follows:

(l) * * *

(3) Transition rule for form of official intent.

Par. 4. On page 3531, column 2, in § 1.103–18, paragraph (c)(2)(B), line 2, the language "placed in service." is corrected to read "placed in service as defined in § 1.103–8(d)(5))".

Par. 5. On page 3531, column 2, in § 1.103–18, paragraph (d), line 2, the language *"activity bonds.* In the case of a" is corrected to read *"activity bonds.* Except for any bond to which paragraph (c) of this section applies, in the case of a".

Par. 6. On page 3531, column 3, in § 1.103–18, paragraph (f)(2), line 15, the language "expected to be issued for such purposes." is corrected to read "expected to be issued for such reimbursement purposes.".

Par. 7. On page 3532, column 1, in § 1.103–18, paragraph (f)(2)(ii), the last line of the paragraph is corrected to read "improvements.".

Par. 8. On page 3532, column 3, in § 1.103–18, paragraph (g)(3)(ii), line 24, the language "that cause the issuer to reach its" is corrected to read "that causes the issuer to reach its".

Par. 9. On page 3533, column 2, in § 1.103–18, paragraph (k)(2), line 2, paragraph (k)(2)(I), Operating rule, is correctly designated as paragraph (k)(2)(i), Operating rule.

Par. 10. On page 3533, column 3, in § 1.103–18, paragraph (k)(3)(iv), lines 1 and 2 are corrected to read "To reimburse any person for any expenditure or".

Par. 11. On page 3534, column 2, in § 1.103–18, paragraph (l)(2)(i), line 3, the language "before March 2, 1992", is corrected to read "before March 3, 1992".

Par. 12. On page 3534, column 2, in § 1.103–18, paragraph § 1.103–18(l)(3) is added to read as follows:

(l) * * *

(3) *Transition rule for form of official intent.* The requirement of paragraph (f)(1)(ii) of this section does not apply to any official intent declared before March 3, 1992.

* * * * *

§ 1.150–1 [Corrected]

Par. 13. On page 3534, column 3, in § 1.150–1, paragraph (g), lines 7 and 8, the language "installment sale obligation or similar obligation, to another entity (the obligor" is corrected to read "installment sale obligation, or similar obligation to another entity (the obligor".

Par. 14. On page 3534, column 3, the paragraph designated (h)(1), Effective date, is correctly designated as paragraph (i), Effective date.

Cynthia E. Grigsby,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92–8567 Filed 4–14–92; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Parts 31, 35a, 301, and 602

[T.D. 8409]

RIN 1545–0112

Backup Withholding Due to Notification of an Incorrect Name/TIN Combination

AGENCY: Internal Revenue Service.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 3406(a)(1)(B) of the Internal Revenue Code of 1986 (the Code) relating to the requirement to backup withhold on certain reportable payments made to a payee after notification that the payee has provided an incorrect name/taxpayer identification number combination (name/TIN combination). These regulations affect payors, brokers, and payees of certain reportable payments and provide guidance necessary to comply with the law.

DATES: The regulations are effective on September 1, 1990, and generally apply with respect to notices received on or after September 1, 1990.

FOR FURTHER INFORMATION CONTACT: Renay France of the Office of the Assistant Chief Counsel (Income Tax and Accounting), within the Office of the Chief Counsel, 1111 Constitution Avenue, NW., Washington, DC 20224, (202–377–7978, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1545–0112. The estimated average annual burden per respondent is approximately 30 minutes.

This estimate is an approximation of the average time expected to be necessary for a collection of information. It is based on such information as is available to the Internal Revenue Service. Individual respondents may require more or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

This document contains final regulations to be added to part 31 of title 26 the Code of Federal Regulations (CFR) under sections 3406(a)(1)(B) of the Code. This provision was added to the Code by section 104 of the Interest and Dividend Tax Compliance Act of 1983 (Pub. L. 98–67, 97 Stat. 369, 371).

Section 3406(a)(1)(B) of the Code requires payors to backup withhold when the Service or a broker notifies a payor that the payee has provided an incorrect name/TIN combination (hereinafter "B notice withholding"). On November 23, 1987, the Internal Revenue Service published in the Federal Register temporary regulations (26 CFR part 35a.3406–1, T.D. 8163, 52 FR 44861) providing rules for backup withholding under section 3406(a)(1)(B) (the "B notice rules"). Amendments to these temporary regulations were published in the Federal Register on April 11, 1989 (T.D. 8248, 54 FR 14341), September 27, 1990 (T.D. 8309, 55 FR 39399), and September 23, 1991 (T.D. 8365, 56 FR 47904).

On September 27, 1990, the Service published in the Federal Register proposed regulations (55 FR 39427) that reorganized and restated, in traditional regulation form, the backup withholding rules in the temporary regulations relating to all four triggers under section 3406. The proposed regulations incorporated the substance of the B notice rules in the temporary regulations. Amendments to the proposed regulations were published in the Federal Register on September 23, 1991 (56 FR 47929).

The Service received many comments concerning the proposed regulations, and a public hearing was held on March 4, 1991. The Service also received comments on the amendments to the proposed regulations published on September 23, 1991, and a public hearing on those amendments was held on November 19, 1991.

The final regulations in this document contain rules relating only to B notice withholding. These rules were extensively modified by the April 11, 1989, amendments to the temporary regulations. The Service will issue final regulations covering the remainder of the backup withholding rules. Those final regulations will address, among other matters, certain miscellaneous rules that were included in the April 11, 1989, amendments. In particular, the final regulations will continue to allow payees who have religious objections to providing and certifying their taxpayer identification number on Form W–9 to provide instead a signed copy of Form 4029 or Form 8812 containing the information required therein (§ 35a.9999–1, A–10). The Service received comments concerning changes made by the April 11, 1989, amendments that provide that (1) a payor may refund amounts withheld under section 3406(a)(1)(C) if the Service directs the payor to do so (§ 35a.9999–3, A–38), and (2) a trustee of a grantor trust with 10 or fewer grantors is not treated as a payor (§ 35a.9999–3, A–54). Although the Service is reconsidering what the appropriate rules in these two areas should be, any modifications in the final regulations will apply only on a prospective basis.

Explanation of Provisions

The final regulations in this document adopt, in substance, the B notice rules contained in the proposed regulations with the changes discussed below.

Fiduciary and Nominee Accounts

Several commentators requested that the final regulations make permanent the exception from B notice withholding for fiduciary and nominee accounts that was provided in the temporary regulations, but was proposed to expire upon issuance of final regulations. The Service adopted this exception because certain payors had indicated that they are likely to receive substantial numbers of B notices with respect to accounts maintained by fiduciaries or nominees even though the proper taxpayer identification number for the ultimate taxpayer had been provided. This could result, for example, because the Service's processing system reads only the first 80 characters of the registration on certain multi-name fiduciary or nominee accounts. The final regulations continue to exclude fiduciary and nominee accounts from B notice procedures and withholding. However, the Service will reconsider this issue in the future as it improves its systems.

Some commentators argued that the exception should be expanded to include accounts where the only name on the account registration is that of a trust or estate. The final regulations do not make this change because in these cases it is clear that the taxpayer identification number that should be used for information reporting purposes is the taxpayer identification number of the trust or estate (and not the taxpayer identification number of the beneficiaries). *See* the instructions to Form W-9.

The final regulations clarify that B notices are not required to be sent to payees of fiduciary and nominee accounts. In addition, under the final regulations, the receipt of a B notice on a fiduciary or nominee account does not count for purposes of the B notice rule where the payor receives B notices with respect to an account twice in three years (the "2/3 rule"). However, the receipt of a B notice with respect to these accounts continues to trigger certain solicitation requirements for purposes of the reasonable cause exception under section 6724. See § 301.6724-1(f)(3).

Payments Reportable on Form 1099-MISC

Several commentators argued that payments reportable on Form 1099-MISC, such as payments to independent service providers ("1099-MISC payments"), should be exempt from B notice witholding. The commentators indicated that payors of 1099-MISC payments often lack an ongoing, direct relationship with these payees and thus are not in a position to assure that correct name/TIN combinations are provided.

Commentators suggested that B notice withholding may be especially difficult to administer in the context of 1099-MISC payments to third-party payees under insurance policies or similar arrangements. For example, insurance companies usually maintain their business records on a policyholder basis, rather than on a payee basis. According to the commentators, significant problems thus may occur in coordinating B notice withholding with respect to payments made to the same payee under different policies.

The final regulations continue to subject accounts making 1099-MISC payments to B notice withholding. The Code specifically requires that backup withholding under section 3406(a)(1)(B) apply to these payments (unlike backup withholding under section 3406(a)(1) (C) or (D), which applies only to reportable interest and dividend payments). Moreover, underreporting of income attributable to these payments continues to be of serious concern to the Service.

The Service, however, is considering ways in which the concerns of commentators described above with respect to reportable payments to third-party payees under an insurance policy or similar arrangement can be addressed without compromising the integrity of the B notice withholding program. Toward this end, the Service is seeking additional comments on possible approaches with respect to such payments.

Certain Exceptions Clarified

Some commentators requested that the final regulations clarify that a payor receiving a B notice is not required to notify the payee of an account (or to backup withhold with respect to an account) if the B notice relates to payments that were made to an exempt recipient or that were not, in fact, reportable payments. The final regulations make the requested clarification.

Additional Responsibilities of Payors That Are Also Brokers

Some commentators asked for clarification of the rules requiring a broker to notify a payor of a readily tradable instrument that the payee is subject to B notice withholding. The final regulations provide that the notification requirement applies if: (1) The broker (in its capacity as payor) receives a B notice for the payee and is required to identify the account as having the incorrect name/TIN combination, (2) the payee acquires through the account a readily tradable instrument with respect to which the broker is not the payor, and (3) the acquisition occurs on any date more than 30 business days after the date that the broker received the B notice (or on any earlier date if the broker so chooses). Under the final regulations, the notification requirement ends simultaneously with the broker's obligation to backup withhold on the account in its capacity as a payor. See also the rules for dormant accounts discussed below.

Identification of Accounts Subject to B Notice Withholding

The rules in the final regulations for identification of accounts subject to B notice withholding where the payor receives the B notice from the Service are essentially unchanged from the proposed and temporary regulations. Accordingly, if the B notice contains an account number or designation, the payor need only determine whether the account or accounts corresponding to that number or designation have the incorrect name/TIN combination. The final regulations clarify that, where the B notice does not contain an account number or designation, the payor satisfies its duty to exercise reasonable care in identifying accounts if the payor searches the computer or record system that it can reasonably associate with the information return that generated the B notice. The final regulations also provide that a payor of a readily tradable instrument that receives notice from a broker (rather than the Service) need not determine if other accounts of that payee have the incorrect name/TIN combination.

The proposed and temporary regulations provide, in effect, that B notice procedures and withholding do not apply if the error in the taxpayer identification number is caused by an error by the payor (for example, because the payor transposed numbers in the taxpayer identification number when incorporating it into its business records). A commentator questioned whether this rule applies when the name on the account registration is wrong for the same reason. The final regulations provide that B notice procedures and withholding do not apply if, due to an error of the payor, the name or taxpayer identification number on such account is not the name or taxpayer identification number that was provided to the payor by the payee.

Joint Accounts

A number of commentators raised concerns about the rules in the temporary and proposed regulations concerning the treatment of joint accounts. The temporary and proposed regulations require a payor to treat the first person listed on a joint account as the person subject to backup withholding. Commentators pointed out that this rule is inconsistent with the fact that a payor may use the name of another person on the account for information reporting purposes. Accordingly, the final regulations provide that with respect to a joint account the relevant name/TIN combination for B notice withholding purposes is the name/TIN combination used for information reporting purposes. (This rule is phased in to accommodate payors with systems keyed to the first person on the account.)

Commentators also suggested deletion of the requirement to continue backup withholding when the name/TIN combination on the B notice initially matches the first person listed on the account, but the order of names on the account is subsequently changed. The commentators explained that this rule is inconsistent with the rule allowing the payee to avoid B notice withholding by recertifying the existing name/TIN combination (subject to the 2/3 rule). The final regulations make the rule concerning a change in the order of names optional.

Requirements for the First B Notice to Payees

The final regulations continue to provide that the notice to payees must be provided within 15 days of the date that the payor is considered to receive the first B notice from the Service or a broker. The final regulations generally provide that rules governing the delivery of the notice to payees are to be provided by the Service in the Internal Revenue Bulletin. In connection with the issuance of the final regulations, therefore, the Service is issuing Rev. Proc. 92-32, 1992-17 I.R.B. (dated April 27, 1992).

In general, the rules for the first notice under Rev. Proc. 92-32 are the same as those in the temporary and proposed regulations, except for the following changes. First, Rev. Proc. 92-32 allows payors to follow the rules for a substitute notice provided in the temporary regulations (prior or subsequent to amendment by T.D. 8248, T.D. 8309, or T.D. 8365) only with respect to B notices received by payors prior to September 1, 1993. Second, under Rev. Proc. 92-32, a payor is required only to state in a substitute notice the date that the payor will begin backup withholding, rather than the dates that the payor received the B notice and is required to begin backup withholding under the Code. Third, Rev. Proc. 92-32 allows payors in a substitute notice not to give payees whose name has changed the option of providing both surnames (rather than contacting the Social Security Administration or the Service to correct the problem). Fourth, Rev. Proc. 92-32 allows payors to use envelopes marked either "Important Tax Document Enclosed" or "Important Tax Return Document Enclosed" and does not require them to enclose reply envelopes. Fifth, Rev. Proc. 92-32 allows payors to omit or revise material inapplicable (or add information to clarify material applicable) to the payee because of the status of the payee or a permitted practice of the payor.

Certification Required to Prevent Backup Withholding From Starting or to Stop It Once It Has Begun

As under the temporary and proposed regulations, a payee who receives a notice from a payor that the payee's name/TIN combination is incorrect is required to provide his name and taxpayer identification number and to certify, under penalties of perjury, that the taxpayer identification number is correct in order to prevent backup withholding from starting or to stop it once it has begun. One commentator asked whether a payee must also certify, under penalties of perjury, that the payee is not subject to backup withholding due to a notified payee underreporting under section 3406(a)(1)(C) of the Code. The final regulations clarify that a payee is not required to make that certification in order to prevent backup withholding under section 3406(a)(1)(B) from starting or to stop it once it has begun. The final regulations also provide that, effective for B notices received by payors after September 1, 1993, providing an awaiting-TIN certificate is not sufficient for these purposes.

Changes Related to the 2/3 Rule

The final regulations retain, with the changes discussed below, the 2/3 rule set forth in the temporary and proposed regulations (as modified by Notice 91-40, 1991-50 I.R.B. 11). Accordingly, the 2/3 rule generally applies to the receipt of two B notices with respect to the same account in any two calendar years during a rolling 3-year calendar period. For example, a B notice received in October 1992 is counted in determining whether the payor received two B notices with respect to the same payee for a 3-year-calendar period ending with 1992 and for another 3-year-calendar period ending with 1994.

The final regulations continue to provide that notice to payees must be provided within 15 days of the date that the payor is considered to receive the second B notice from the Service or a broker. The final regulations generally provide that rules governing the delivery of the notice to payees are to be provided by the Service in the Internal Revenue Bulletin. Rev. Proc. 92-32 supersedes Rev. Proc. 91-58, 1991-40 I.R.B. 119, and provides these rules.

In general, the rules under Rev. Proc. 92-32 are the same as under Rev. Proc. 91-58, with the following exceptions. First, Rev. Proc. 92-32 allows payors to follow the procedural rules provided in the temporary regulations (as amended by T.D. 8365) only with respect to B notices received by payors prior to September 1, 1993. Second, Rev. Proc. 92-32 requires a payor to instruct a payee to provide a copy of the notice from the payor to the Social Security Administration. This will allow the Social Security Administration to provide the account number back to the payor on Form SSA-7028. Third, under Rev. Proc. 92-32, certain rules described above for first notices (relating to the date when the payor will commence backup withholding; envelope markings; and omission, revision, or deletion of certain material) also apply to second notices. Fourth, Rev. Proc. 92-32 contains a sample second notice.

Notifying the Service of Corrected Name/TIN Combination

The final regulations clarify that there is a 30-day grace period with respect to the requirement that a payor use a corrected name/TIN combination on subsequent information returns.

Dormant Accounts

Some commentators questioned whether it is appropriate to require payors to track accounts subject to backup withholding even though no reportable payments have been made to the account for a long time. The final regulations provide that the requirement to backup withhold under the B notice rules (including the 2/3 rule) terminates no later than the close of the third calendar year ending after the date that the last reportable payment was made to the account (or, if later, the close of the third calendar year ending after the date the B notice was received).

Operational Issues

The Service received several comments raising operational issues relating to the Service's implementation of the B notice withholding. These include comments as to: (1) Whether B notices could be sent to a designated contact person, and (2) whether the Service could create and recognize an optional dummy number for payors whose computer system cannot process an information return with a missing taxpayer identification number. The final regulations do not address these operational issues. However, the Service is continuing to consider them and will notify payors of any change in its procedures.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Renay France of the Office of the Assistant Chief Counsel (Income Tax and Accounting), within the Office of the Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and the Treasury Department participated in developing these regulations on matters of both substance and style.

List of Subjects

26 CFR Part 31

Employment taxes, Fishing vessels, Gambling, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and Recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 35a

Employment taxes, Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR, parts 31, 35a, 301, and 602 are amended as follows:

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

Paragraph 1. The authority for part 31 is amended by adding the following citation:

Authority: * * * 26 U.S.C. 7805 * * * Sec. 31.3406(d)–5 also issued under 26 U.S.C. 3406(i). * * *

Par. 2. Section 31.3406–0 is added to subpart E to read as follows:

§ 31.3406–0 Outline of the backup withholding regulations.

This section lists the paragraphs contained in § 31.3406(d)–5.

§ 31.3406(d)–5 Backup withholding when the Service or a broker notifies the payor to withhold because the payee's taxpayer identification number is incorrect.

(a) Overview.
(b) Definitions and special rules.
(1) Definition of an incorrect name/TIN combination.
(2) Definition of account.
(3) Definition of business day.
(4) Certain exceptions.
(i) In general.
(ii) Definition of fiduciary or nominee account.
(c) Notice regarding an incorrect name/TIN combination.
(1) In general.
(2) Additional requirements for payors that are also brokers.
(i) In general.
(ii) Required information.
(iii) Termination of obligation to provide information.
(3) Payor identification of the account or accounts of the payee that have the incorrect taxpayer identification number.
(i) In general.
(ii) Reasonable care where no account number or designation is provided.
(iii) No identification if error is caused by payor.
(4) Special rule for joint accounts.
(i) In general.
(ii) Transitional rule.
(iii) Optional rule where names are switched.
(5) Date of receipt.
(d) Notice from payors of backup withholding due to an incorrect name/TIN combination.
(1) In general.
(2) Procedures.
(i) In general.
(ii) Two or more notices for an account in the same calendar year.
(e) Period during which backup withholding is required due to notification of an incorrect name/TIN combination.
(1) In general.
(2) Grace periods.
(i) Starting backup withholding.
(ii) Stopping backup withholding.
(3) Dormant accounts.
(f) Manner required for payee to furnish certified taxpayer identification number.
(g) Receipt of two notices within a 3-year period.
(1) In general.
(2) Notice to payee who has provided two incorrect name/TIN combinations within 3 calendar years.
(3) Period during which backup withholding is required due to a second notice of an incorrect name/TIN combination within 3 calendar years.
(i) In general.
(ii) Grace periods.
(iii) Dormant accounts.
(4) Receipt of two notices in one calendar year.
(5) Notification from the Social Security Administration (or the Internal Revenue Service) validating a name/TIN combination.
(h) Payors must use newly provided certified number.
(i) Effective date.
(j) Examples.

Par. 3. Section 31.3406(d)–5 is added to subpart E to read as follows:

§ 31.3406(d)–5 Backup withholding when the Service or a broker notifies the payor to withhold because the payee's taxpayer identification number is incorrect.

(a) *Overview.* Backup withholding under section 3406(a)(1)(B) applies to any reportable payment made with respect to an account of a payee if the Internal Revenue Service or a broker notifies a payor under paragraph (c)(1) or (2) of this section that the payee's name and taxpayer identification number combination (name/TIN combination) is incorrect and the payor is required under paragraph (c)(3) of this section to identify that account as having the same name/TIN combination. After receiving a notice from the Internal Revenue Service or a broker under paragraph (c)(1) or (2) of this section and identifying an account as having the incorrect name/TIN combination under paragraph (c)(3) of this section, the payor must notify the payee in accordance with paragraph (d) of this section. In addition, under paragraph (e) of this section, the payor must backup withhold on all reportable payments made to such account after the close of the 30th business day after the date that the payor receives the notice and on or before the close of the 30th calendar day after the date that the payor receives from the payee the certification required under paragraph (f) of this section. Under paragraph (g) of this section, if a payor receives 2 notices from the Internal Revenue Service or broker within 3 calendar years with respect to a payee's account, the payor must notify the payee in accordance with paragraph (g)(2) (rather than paragraph (d)) of this section. In addition, the payor must backup withhold on all reportable payments made with respect to the account after the close of the 30th business day after the date that the payor receives the second notice and on or before the 30th calendar day after the date that the payor receives notification from the Social Security Administration (or the Internal Revenue Service) validating a name/TIN combination for the account. Paragraph (h) of this section requires a payor to use a corrected name/TIN combination on subsequent information returns.

(b) *Definitions and special rules.*—(1) *Definition of incorrect name/TIN combination.* An incorrect name/TIN combination is a combination of a name and taxpayer identification number provided on an information return with respect to which the Internal Revenue Service determines that the taxpayer identification number provided is not assigned under section 6109 to the name provided.

(2) *Definition of account.* The term "account" means any account, instrument, or other relationship with the payor.

(3) *Definition of business day.* The term "business day" means any day other than a Saturday, Sunday, or legal holiday (within the meaning of section 7503).

(4) *Certain exceptions*—(i) *In general.* This section does not apply with respect to any notice received under paragraph (c)(1) or (2) of this section with respect to payments that—

(A) Were made to a fiduciary or nominee account; or

(B) Were not reportable payments (for example, because the payments were made to an exempt recipient).

See § 301.6724–1(f)(3) of this chapter for certain solicitation rules applicable after receipt of a notice under paragraph (c)(1) or (2) of this section with respect to a fiduciary or nominee account.

(ii) *Definition of fiduciary or nominee account.* A fiduciary or nominee account is an account with respect to which at least one person named in the registration is identified as acting in the capacity as nominee or as administrator, conservator, custodian, receiver, tutor, curator, committee, executor, guardian, trustee, or other fiduciary capacity recognized under governing law.

(c) *Notice regarding an incorrect name/TIN combination*—(1) *In general.* If the Internal Revenue Service notifies a payor that a payee's name/TIN combination is incorrect and that the payor must commence backup withholding as required on reportable payments made with respect to accounts of the payee with the same name/TIN combination, the payor must—

(i) Identify under paragraph (c)(3) of this section any account or accounts of the payee having the same name/TIN combination;

(ii) Except as provided in paragraph (g) of this section, notify the payee and backup withhold on reportable payments made to the account or accounts under the rules of paragraphs (d), (e), and (f) of this section.

This paragraph (c)(1) also applies if the payor receives notice from a broker under paragraph (c)(2) of this section.

(2) *Additional requirements for payors that are also brokers*—(i) *In general.* A broker must notify the payor of an instrument of the information required under paragraph (c)(2)(ii) of this section, if—

(A) The broker (in its capacity as a payor) receives a notice from the Internal Revenue Service under paragraph (c)(1) of this section that a payee's name/TIN combination is incorrect and is required to identify an account of the payee pursuant to paragraph (c)(3) of this section as having the name/TIN combination;

(B) The payee acquires through the same account with the broker a readily tradable instrument with respect to which the broker is not the payor; and

(C) The acquisition of such instrument occurs after the close of the 30th business day after the date that the broker receives that notice (or on any earlier date that the broker chooses to begin applying this paragraph (c)(2)).

For purposes of this paragraph (c)(2)(i), with respect to notices under paragraph (c)(1) of this section received on or after September 1, 1992, an acquisition includes a transfer of an instrument out of street name into the name of the registered owner, *i.e.*, the payee.

(ii) *Required information.* The information required to be provided under this paragraph (c)(2)(ii) is:

(A) The fact that the broker was notified by the Internal Revenue Service that the payee furnished an incorrect name/TIN combination;

(B) The incorrect name/TIN combination; and

(C) The fact that the named payee is subject to backup withholding under section 3406(a)(1)(B).

The broker is required to provide this information to the payor of the instrument in connection with the transfer instructions for the acquisition.

(iii) *Termination of obligation to provide information.* The obligation of a broker to provide information to payors under this paragraph (c)(2) terminates simultaneously with the termination of the broker's obligation to backup withhold (in its capacity as payor) on reportable payments to the account.

(3) *Payor identification of the account or accounts of the payee that have the incorrect taxpayer identification number*—(i) *In general.* If an account number or designation is provided in the notice received under paragraph (c)(1) of this section, the payor need only identify any account or accounts corresponding to that number or designation that has the same name/TIN combination provided in the notice. If no account number or designation is provided in the notice received under paragraph (c)(1) of this section, the payor must identify, using reasonable care, all accounts of the payee having the same name/TIN combination provided in the notice. If a payor receives notice from a broker under paragraph (c)(2) of this section with respect to the acquisition of a readily tradable instrument, the payor is not required to identify any other account of the payee.

(ii) *Reasonable care where no account number or designation is provided.* A payor who satisfies the following two-part facts-and-circumstances test will be considered to have exercised reasonable care for purposes of this paragraph (c)(3).

(A) Part one of the test is satisfied if a payor searches for accounts of the payee on the computer or other recordkeeping system that the payor can reasonably associate with the information return that generated the notice under paragraph (c)(1) of this section. For example, a payor who maintains separate computer or recordkeeping systems for different product lines will have identified and used the appropriate system if the payor searches for accounts of the payee on the computer or recordkeeping system that contains the product line for the type of payments reported on the information return. A payor with the same product line on several nonintegrated computer or record systems will have identified and used the appropriate system if the payor searches for accounts of the payee on any computer or record system that the payor otherwise can reasonably associate with the information return.

(B) Part two of the test is satisfied if the payor inputs the name/TIN combination provided on the notice from the Internal Revenue Service under paragraph (c)(1) of this section into the system that is described in paragraph (c)(3)(ii)(A) of this section. If the system of a payor cannot utilize the name/TIN combination, the payor must input appropriate data or criteria, as determined by the capability of the payor's computer or recordkeeping system.

(iii) *No identification if error is caused by payor.* A payor may treat an account as not having the incorrect name/TIN combination if the error resulted because the name or taxpayer identification number on such account is not the name or taxpayer identification number that was provided to the payor. This may occur, for example, where a payor transposes numbers in the taxpayer identification number when incorporating it into the payor's business records.

(4) *Special rules for joint accounts*—(i) *In general.* In the case of a joint account, the relevant name/TIN combination for purposes of this section is the name/TIN combination used for information reporting purposes.

(ii) *Transitional rule.* With respect to notices received under paragraph (c) (1) or (2) of this section prior to September 1, 1993, a payor may treat the name/TIN combination of the first person on a joint account as the relevant name/TIN combination, unless that person is an exempt foreign person and the account registration includes names of persons who are not foreign persons.

(iii) *Optional rule where names are switched.* A payor may backup withhold under this section on reportable payments made to a joint account if the order of the names (or taxpayer identification numbers) on the account is merely changed subsequent to receipt of a notice under paragraph (c) (1) or (2) of this section, provided that the name of the person to which the incorrect name/TIN combination originally applies remains on the account.

(5) *Date of receipt.* For purposes of this section, the date set forth on the notice from the Internal Revenue Service or broker under paragraph (c) (1) or (2) of this section is considered to be the date of receipt of the notice by the payor. However, if the payor demonstrates to the satisfaction of the Internal Revenue Service that the date of actual receipt of the notice is later than the date on the notice, the actual date of receipt is controlling.

(d) *Notice from payors of backup withholding due to an incorrect name/TIN combination*—(1) *In general.* Except as provided in paragraph (g) of this section, if a payor receives notice under paragraph (c)(1) or (2) of this section and is required to identify an account as having the incorrect name/TIN combination under paragraph (c)(3) of this section, the payor must send a copy of the notice (or an acceptable substitute notice) to the payee of the account in accordance with the procedures of paragraph (d)(2) of this section.

(2) *Procedures*—(i) *In general.* The notice that a payor must send to a payee under paragraph (d)(1) of this section must comply with such procedural requirements as the Internal Revenue Service provides in the Internal Revenue Bulletin such as to form and manner of delivery. A payor must send the notice to the payee within 15 business days after the date that the payor receives the notice from the Internal Revenue Service or a broker under paragraph (c)(1) or (2) of this section.

(ii) *Two or more notices for an account in the same calendar year.* A payor who receives, under the same payor taxpayer identification number, two or more notices under paragraph (c)(1) or (2) of this section in a calendar year with respect to the same account of a payee need only send one notice to the payee under this section.

(e) *Period during which backup withholding is required due to notification of an incorrect name/TIN combination*—(1) *In general.* Except as provided in paragraph (g) of this section, if a payor receives a notice under paragraph (c)(1) or (2) of this section and is required to identify an account as having the same name/TIN combination under paragraph (c)(3) of this section, the payor must impose backup withholding on all reportable payments made with respect to the account after the close of the 30th business day after the date the payor receives that notice and on or before the close of the 30th calendar day after the day the payor receives from the payee the certification required under paragraph (f) of this section.

(2) *Grace periods*—(i) *Starting backup withholding.* A payor may, on an account-by-account basis or in general, choose to begin backup withholding under this paragraph (e) at any time during the 30-business-day period described in paragraph (e)(1) of this section.

(ii) *Stopping backup withholding.* A payor may, on an account-by-account basis or in general, choose to stop backup withholding under this paragraph (e) at any time within 30 calendar days after the payor receives from the payee the certification required under paragraph (f) of this section.

(3) *Dormant accounts.* The requirement that a payor backup withhold under this paragraph (e) on reportable payments made with respect to an account terminates no later than the close of the third calendar year ending after the later of—

(i) The date that the last reportable payment was made to that account; or

(ii) The date that the payor received the notice under paragraph (c)(1) or (2) of this section.

(f) *Manner required for payee to furnish certified taxpayer identification number.* (1) Except as provided in paragraph (g) of this section, in order to prevent backup withholding under paragraph (e) of this section from starting, or to stop it once it has begun, a payee with respect to whom the payor has been notified under paragraph (c)(1) or (2) that the payee's name/TIN combination is incorrect is required on Form W-9 (or an acceptable substitute form) to—

(i) Provide the payee's name and taxpayer identification number; and

(ii) Certify, under penalties of perjury, that the taxpayer identification number being provided is correct.

(2) The certification must be made even if the account is a pre-1984 account and even if the payment to the account is a reportable payment other than interest, dividends, patronage dividends, original issue discount, or proceeds of a sale of a security or commodity. In order to prevent backup withholding under paragraph (e) of this section from starting or to stop it once it has begun, a payee is not required to certify, under penalties of perjury, that the payee is not subject to backup withholding due to notified payee underreporting under section 3406(a)(1)(C). With respect to notices received under paragraph (c)(1) or (2) of this section on or after September 1, 1993, the requirements of this paragraph (f) are not satisfied if a payee provides only an awaiting TIN certification. As a result, a payor must not fail to begin backup withholding under paragraph (e) of this section solely because the payee provided an awaiting TIN certification, or stop it once it has begun solely because the payee provided an awaiting TIN certification.

(g) *Receipt of two notices within a 3-year period*—(1) *In general.* If a payor receives notification under paragraph (c)(1) or (2) of this section twice within 3 calendar years, and in each case the payor is required to identify the same account as having the incorrect name/TIN combination, the payor must—

(i) Disregard any future certifications (described in paragraph (f) of this section) furnished by the payee with respect to the account until the payor receives notice from the Social Security Administration (or the Internal Revenue Service) validating a name/TIN combination under paragraph (g)(5) of this section;

(ii) Send the notice described in paragraph (g)(2) of this section to the payee (and not the notice required under paragraph (d) of this section) within 15 business days after the date that the payor receives the second notice; and

(iii) Impose backup withholding on the account for the period described in paragraph (g)(3) of this section.

The payor must maintain sufficient records to determine whether the payor has received notices under paragraph (c) (1) or (2) of this section twice within 3 calendar years with respect to the same account.

(2) *Notice to payee who has provided two incorrect name/TIN combinations within 3 calendar years.* The notice to the payee required by paragraph (g)(1) of this section must comply with such procedural requirements as the Internal Revenue Service provides in the Internal Revenue Bulletin such as to form and manner of delivery.

(3) *Period during which backup withholding is required due to a second notice of an incorrect name/taxpayer identification combination within 3 calendar years*—(i) *In general.* If paragraph (g)(1) of this section applies, the payor must backup withhold on all reportable payments made with respect to the account of the payee after the close of the 30th business day after the date that the payor receives the second notice under paragraph (c) (1) or (2) of this section and on or before the close of the 30th calendar day after the date that the payor receives notice from the Social Security Administration (or the Internal Revenue Service) validating a name/TIN combination under paragraph (g)(5) of this section for the account. However, a payor may choose not to commence backup withholding under this paragraph (g) until January 1, 1992.

(ii) *Grace periods*—(A) *Starting backup withholding.* A payor may, on an account-by-account basis or in general, choose to begin backup withholding under this paragraph (g) at any time during the 30-business-day period described in paragraph (g)(3)(i) of this section.

(B) *Stopping backup withholding.* A payor may, on an account-by-account basis or in general, choose to stop backup withholding under this paragraph (g) at any time within 30 calendar days after the date the payor receives notice from the Social Security Administration (or the Internal Revenue Service) validating a name/TIN combination under paragraph (g)(5) of this section for the account.

(iii) *Dormant accounts.* The requirement that a payor backup withhold under this paragraph (g) on reportable payments made with respect to an account terminates no later than the close of the third calendar year ending after the later of—

(A) The date that the last reportable payment was made to that account; or

(B) The date that the payor received the second notice under paragraph (c) (1) or (2) of this section.

(4) *Receipt of two notices in one calendar year.* A payor must treat the receipt of two or more notices under paragraph (c) (1) or (2) of this section in a calendar year with respect to an account as the receipt of one notice for purposes of this paragraph (g). The preceding sentence applies only if the two or more notices are received under the same payor taxpayer identification number.

(5) *Notification from the Social Security Administration (or the Internal Revenue Service) validating a name/TIN combination.* The Social Security Administration (or the Internal Revenue Service) will notify a payor after it validates a name/TIN combination that the payee provides for an account to which paragraph (g)(1) of this section applies. Notification from the Social Security Administration (or the Internal Revenue Service) validating a name/TIN combination satisfies the requirements of this paragraph (g)(5) only if it complies with such procedural requirements as the Internal Revenue Service provides in the Internal Revenue Bulletin such as to form and manner of delivery. In order to obtain notification from the Social Security Administration (or the Internal Revenue Service) validating a name/TIN combination for an account, a payee who receives notice from a payor under paragraph (g)(2) of this section should follow such procedures as the Internal Revenue Service provides in the Internal Revenue Bulletin.

(h) *Payor must use newly provided certified number.* If a payor receives a certification under paragraph (f) of this section or a notification under paragraph (g)(5) of this section for an account, the payor must use the name/TIN combination provided on such certification or notification on information returns for the account for which the due date (without regard to extensions) is more than 30 calendar days after the date that the payor receives the certification or notification. A payor who uses that name/TIN combination on the first such information return satisfies the requirement of section 3406(h)(9) to provide this information to the Internal Revenue Service. If the payor is not required to file any information returns with respect to the account after the date that the payor receives the certification or notification, a payor is deemed to satisfy the requirements of section 3406(h)(9).

(i) *Effective date.* Except as otherwise provided in this section, the provisions of this section are effective with respect to notices received on or after September 1, 1990, under paragraph (c) (1) or (2) of this section.

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

Example 1. D opened an account with Bank O prior to 1984 and furnished a taxpayer identification number to O at the time he opened the account. O pays interest on the account at the end of each calendar month, and the account is a pre-1984 account. On October 1, 1990, the Internal Revenue Service notifies Bank O that the name/TIN combination provided by D is incorrect. O timely notifies D as required in paragraph (d)(1) of this section. O does not receive the certification required under paragraph (f) of this section from D. O is required to backup withhold 20 percent of all reportable payments made after November 14, 1990 (which is 30 business days after the date the Internal Revenue Service notified O). Therefore, O is not required to backup withhold on the reportable payment made on October 31, 1990, but is required to backup withhold on the reportable payment made on November 30, 1990. O is required to continue to backup withhold under section 3406(a)(1)(B) until O receives the certification required under paragraph (f) of this section from D (or, if earlier, until backup withholding terminates under paragraph (e)(3) of this section).

Example 2. Assume the same facts as in *Example 1* except that D furnishes a new taxpayer identification number to O on November 1, 1990, but does not certify, under penalties of perjury, that it is his correct taxpayer identification number as required under paragraph (f) of this section. Even though the account is a pre-1984 account, O is required to withhold 20 percent of all reportable payments made after November 14, 1990 (which is 30 business days after the date the Internal Revenue Service notified O), and before the date O receives the certification required under paragraph (f) of this section from D.

Example 3. Assume the same facts as in *Example 2* except that D provides O with the certification required under paragraph (f) of this section on November 10, 1990. D elects pursuant to paragraph (e)(2)(ii) of this section to treat the certification as received on November 20, 1990. Even though D did not provide the certification to O within 30 business days after the Internal Revenue Service notified O that D provided an incorrect taxpayer identification number, O is not required to backup withhold under section 3406(a)(1)(B) because O did not make any reportable payment to D after 30 business days after notification of an incorrect name/TIN combination and before O received D's certification under paragraph

(f) of this section (or, if earlier, until backup withholding terminates under paragraph (e)(3) of this section).

Example 4. Individual F has two post-1983 accounts with Bank R that pay reportable interest: a savings account and a money market account. The money market account was opened in 1986, and the savings account was opened on February 1, 1991. R treats each of these accounts as a separate account on its books and records for business purposes. On October 1, 1990, the Internal Revenue Service notified R pursuant to paragraph (c)(1) of this section that F furnished an incorrect name/TIN combination with respect to the money market account. R timely sends F the notice required under paragraph (d) of this section and receives the certification required under paragraph (f) of this section from F on November 1, 1990. On October 1, 1991, the Internal Revenue Service again notifies R that F furnished an incorrect name/TIN combination with respect to the money market account. Further, R determines from its business records that two notifications of an incorrect name/TIN combination have been received with respect to the money market account within 3 calendar years. R must send F the notice required under paragraph (g)(2) of this section and must commence backup withholding on reportable interest paid on the money market account pursuant to paragraph (g)(3) of this section after November 14, 1991, which is 30 business days after R received the second notice. R must continue to backup withhold under paragraph (g) of this section on the money market account until R receives notification from the Social Security Administration as described in paragraph (g)(5) of this section (or, if earlier, until backup withholding terminates under paragraph (g)(3)(iii) of this section). R is not required to backup withhold on the savings account unless and until it receives notice under paragraph (c) (1) or (2) of this section with respect to the savings account.

PART 35a—TEMPORARY EMPLOYMENT TAX REGULATIONS UNDER THE INTEREST AND DIVIDEND TAX COMPLIANCE ACT OF 1983

Par. 4. The authority citation for part 35a is amended in part by removing the language "§ 35a.3406–1 also issued under 26 U.S.C. 3406 (a), (b), (e), (g), (h), and (i); 26 U.S.C. 6109; 26 U.S.C. 6676; and 26 U.S.C. 6721;" to read as follows:

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

§ 35a.3406–1 [Amended]

Par. 5. Section 35a.3406–1 is removed.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 6. The authority citation for part 301 continues to read in part:

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

Par. 7. Section 301.6724–1 is amended as follows:

1. Paragraph (f)(1)(ii) is amended by removing the language "and § 35a.3406–1(c) and (f) of this chapter issued under the Interest and Dividend Tax Compliance Act of 1983".

2. Paragraph (f)(2) is revised to read as set forth below.

3. Paragraph (f)(3) is amended by removing the language "§ 35a.3406–1(a)(3)(x) of this chapter" and adding in lieu thereof "§ 31.3406(d)–5(b)(4)(i)(A) of this chapter".

4. Paragraph (g) is amended by adding the language "as in effect on December 31, 1989" after "§ 35a.9999–1 of this chapter *et seq.*".

5. Paragraph (h)(2)(i) is amended by adding the language "as in effect on December 31, 1989" after "§ 35a.9999–1 of this chapter".

Revised paragraph (f)(2) of § 301.6724–1 reads as follows:

§ 301.6724–1 Reasonable cause.

* * * * *

(f) * * *

(2) *Manner of making annual solicitation if notified pursuant to section 3406(a)(1)(B).* A filer that has been notified of an incorrect name/TIN combination pursuant to section 3406(a)(1)(B) (except filers to which § 31.3406(d)–5(b)(4)(i)(A) of this chapter applies) will satisfy the solicitation requirement of this paragraph (f) only if it makes a solicitation in the manner and within the time period required under § 31.3406(d)–5(d)(2) (i) or (g)(1)(ii) of this chapter, whichever applies. Section 31.3406(d)–5(d)(2) (i) and (g)(1)(ii) of this chapter generally requires that filer to notify a payee that the payee's account contains an incorrect taxpayer identification number within 15 business days after the date of the notice from the Internal Revenue Service or a broker.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. Section 602.101(c) is amended by removing the entry in the table for "35a.3406–1" and adding the entry—

"31.3406(d)–5 .... 1545–0112".

Shirley D. Peterson,

Commissioner of Internal Revenue.

Approved: March 25, 1992.

Fred T. Goldberg, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 92–8339 Filed 4–10–92; 1:34 pm]

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26 CFR Part 301

[T.D. 8413]

RIN 1545–AG95

Reduction of Tax Overpayments by Amount of Past-Due, Legally Enforceable Debt Owed to a Federal Agency

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 6402(d), which permits the Service to reduce the amount of any overpayment payable to a taxpayer by the amount of a past-due, legally enforceable debt owed to any Federal agency, and under section 6402(e), which limits the review of such reductions. Changes to the applicable law were made by the Deficit Reduction Act of 1984. The regulations affect taxpayers who owe such debts and Federal agencies to which such debts are owed.

EFFECTIVE DATE: These regulations are effective after April 15, 1992.

FOR FURTHER INFORMATION CONTACT: Rochelle L. Pickard of the Office of the Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:CORP:T) (202–566–3637, not a toll-free call).

SUPPLEMENTARY INFORMATION: This document contains final regulations amending the Procedure and Administration Regulations (26 CFR part 301), to provide rules under section 6402 (d) and (e) of the Internal Revenue Code of 1986 (the "Code"), relating to the authority to make credits or refunds.

Section 2653 of the Deficit Reduction Act of 1984 (Pub. L. 98–369, 98 Stat. 494, 1153) enacted section 3720A of subchapter II of chapter 37 of title 31, United States Code, relating to the reduction of a tax refund by the amount of a past-due, legally enforceable debt owed to a Federal agency, and amended section 6402 (d) and (e), relating to the authority to make credits and refunds, and section 6103, relating to confidentiality and disclosure of returns and information.

Section 2653 of the Deficit Reduction Act was amended by section 9402 of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203, 101 Stat. 1330–1, 1330–376) (extending effective date); section 701 of the Family Support Act of 1988 (Pub. L. 100–485, 102 Stat. 2343, 2425) (further extending effective date); section 5129 of the Omnibus Budget