Internal Revenue
bulletin

Bulletin No. 2001–50
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HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

Rev. Rul. 2001–61, page 573.
Employer identification numbers. This ruling provides guidance on the retention of an entity's employer identification number upon changing under section 301.7701–3 of the regulations from a partnership to a disregarded entity or from a disregarded entity to a partnership.

Rev. Rul. 2001–58, page 570.
Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 1274, 1288, and other sections of the Code, tables set forth the rates for December 2001.

T.D. 8967, page 568
Final regulations under section 141 of the Code amend exceptions for tax-exempt bonds. Generally, interest on bonds issued by state and local governments is excluded from gross income. However, this exclusion does not apply to non-qualified private activity bonds. A bond may be a non-qualified private activity bond if a nongovernmental person has special legal entitlements to use the financed property under an arrangement with the issuer. The regulations contain special exceptions for arrangements of 30, 90, and 180 days, and these final regulations amend those exceptions to permit arrangements of 50, 100, and 200 days, respectively.

Notice 2001–79, page 576.
Rent holidays for commercial aircraft leases. In the case of certain aircraft leases entered into or modified between September 11, 2001, and June 28, 2002, certain rent holidays will be disregarded in applying the uneven rent test of section 1.467–3(c)(4) of the regulations.

EMPLOYEE PLANS

Announcement 2001–120, page 583.
Saver's credit; employee plans and individual retirement arrangements. This announcement repeats in Spanish the notice to employees portion of Announcement 2001–106 (2001–44 I.R.B. 416), which pertains to the Saver's Credit described in section 25B of the Code and the eligibility for this new nonrefundable credit.

EXEMPT ORGANIZATIONS

Notice 2001–78, page 576.
This document provides guidance to charities regarding payments made by reason of the death, injury, or wounding of an individual incurred as a result of the September 11, 2001, terrorist attacks against the United States.

EXCISE TAX

Notice 2001–77, page 576.
This notice relates to deposits of air transportation excise taxes by eligible air carriers under section 6302 of the Code.

TAX CONVENTIONS

Announcement 2001–119, page 575.
Luxembourg Treaty election. The mutual agreement between the United States and Luxembourg on the interpretation of the transition rules in the income tax treaty that entered into force on December 20, 2000, is set forth.

(Continued on the next page)

Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

ADMINISTRATIVE

Rev. Proc. 2001–57, page 577.
This procedure provides guidance to a publicly offered regulated investment company (RIC) that contributes substantially all its assets to an investment partnership in a master-feeder structure. A RIC meeting the requirements of this procedure is treated as if it directly invested in the assets held by the partnership for purposes of qualifying as a RIC, for purposes of the payment of exempt-interest dividends, and for purposes of the passthrough of the foreign tax credit.

Rev. Proc. 2001–58, page 579.
This procedure provides guidance with respect to the failure-to-deposit penalty provisions of section 6656 of the Code. The procedure also describes how the Service will credit Federal tax deposits to determine whether a failure-to-deposit penalty should apply to deposit periods beginning after December 31, 2001. Rev. Procs. 90–58 and 91–52 obsoleted.

Announcement 2001–121, page 584.
This document withdraws proposed regulations (REG–106186–98, 2000–23 I.R.B. 1226) relating to certain corporate reorganizations involving disregarded entities.

The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying the tax law with integrity and fairness to all.

Introduction

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

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

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

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

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

Part II.—Treaties and Tax Legislation.

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

Part III.—Administrative, Procedural, and Miscellaneous.

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

Part IV.—Items of General Interest.

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

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

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

Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2001. See Rev. Rul. 2001–58, page 570.

Section 141.—Private Activity Bond; Qualified Bond

26 CFR 1.141–3: Definition of private business use.

T.D. 8967

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Definition of Private Business Use

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document amends the final regulations on the definition of private business use applicable to tax-exempt bonds issued by State and local governments. The amendments provide that certain arrangements do not result in private business use if the term of the use does not exceed 50, 100 or 200 days, as applicable.

DATES: *Effective Date:* These regulations are effective November 20, 2001.

Applicability Date: For dates of applicability, see § 1.141–15.

FOR FURTHER INFORMATION CONTACT: Michael P. Brewer at (202) 622–3980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 103(a) of the Internal Revenue Code (Code) provides that, generally, interest on any State or local bond is not included in gross income. However, this exclusion does not apply to any private activity bond that is not a qualified bond.

Under section 141, a bond is a private activity bond if it is issued as part of an issue that meets either the private business use test and the private security or payment test, or the private loan financing test.

The private business use test is met if more than 10 percent of the proceeds of an issue are to be used for any private business use. Section 141(b)(6)(A) defines the term *private business use* as use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit. For this purpose, use as a member of the general public is not taken into account.

Section 1.141–3 provides guidance regarding the private business use test. Generally, the private business use test is met only if a nongovernmental person has special legal entitlements to use the financed property under an arrangement with the issuer. The existing regulations provide the following three special rules for use by nongovernmental persons under short-term arrangements:

1. Section 1.141–3(c)(3) states that an arrangement is not treated as general public use if the term of the use under the arrangement, including all renewal options, is greater than 180 days.

2. Section 1.141–3(d)(3)(i) provides that certain arrangements are not private business use if the term of the use under the arrangement, including all renewal options, is not longer than 90 days.

3. Section 1.141–3(d)(3)(ii) provides that certain arrangements are not private business use if the term of the use under the arrangement, including all renewal options, is not longer than 30 days.

Section 1.141–3(f) contains examples that illustrate these special rules.

Explanation of Provisions

Comments have been received requesting that the regulations provide for additional flexibility in structuring short-term arrangements with nongovernmental persons. For example, commentators have requested that the 180–day, 90–day, and 30–day rules of § 1.141–3 be changed to accommodate six-month, three-month, and one-month arrangements, respectively (*i.e.*, arrangements with terms of use based on months that exceed 30 days). This Treasury decision adopts this suggested modification by amending § 1.141–3(c)(3), (d)(3) and (f) to change all references to 180 days, 90 days, and 30 days to 200 days, 100 days, and 50 days, respectively.

Effective Dates

The changes made by this Treasury decision apply to any bond sold on or after November 20, 2001. The changes made by this Treasury decision may be applied by issuers to any bond outstanding on November 20, 2001, to which § 1.141–3 applies.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because no notice of proposed rulemaking is required, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this final regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these final regulations are Bruce M. Serchuk and Michael P. Brewer, Office of Chief Counsel (TE/GE), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

Part 1—INCOME TAXES

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

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

§ 1.141–3 [Amended]

Par. 2. In the list below, for each paragraph indicated in the left column, remove the words indicated in the middle column from wherever they appear in the paragraph, and add the words indicated in the right column:

Paragraph	Remove	Add
1.141–3(c)(3), first sentence of introductory text	180 days	200 days
1.141–3(d)(3)(i)(A)	90 days	100 days
1.141–3(d)(3)(ii)(A)	30 days	50 days
1.141–3(f) *Example 10,* penultimate sentence	180 days	200 days
1.141–3(f) *Example 12,* third sentence (twice)	180 days	200 days
1.141–3(f) *Example 13,* fifth sentence	180 days	200 days
1.141–3(f) *Example 15,* fourth sentence	90 days	100 days
1.141–3(f) *Example 16(i),* last sentence	30 days	50 days

Par. 3. Section 1.141–15 is amended as follows:

1. Paragraph (b) is redesignated (b)(1).

2. A paragraph heading for newly designated paragraph (b)(1) is added.

3. Paragraph (b)(2) is added.

The additions read as follows:

§ 1.141–15 Effective dates.

* * * * *

(b) *Effective Dates*—(1) *In general.*

* * *

(2) *Certain short-term arrangements.* The provisions of § 1.141–3 that refer to arrangements for 200 days, 100 days, or 50 days apply to any bond sold on or after November 20, 2001, and may be applied to any bond outstanding on November 20, 2001, to which § 1.141–3 applies.

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David A. Mader,
Assistant Deputy Commissioner of Internal Revenue.

Approved November 14, 2001.

Mark Weinberger,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on November 19, 2001, 8:45 a.m., and published in the issue of the Federal Register for November 20, 2001, 66 F.R. 58061)

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of December 2001. See Rev. Rul. 2001–58, page 570.

Section 382.—Limitation on Net Operating Loss Carryforwards and Certain Built-In Losses Following Ownership Change

The adjusted applicable federal long-term rate is set forth for the month of December 2001. See Rev. Rul. 2001–58, page 570.

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2001. See Rev. Rul. 2001–58, page 570.

Section 467.—Certain Payments for the Use of Property or Services

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2001. See Rev. Rul. 2001–58, on this page.

Section 468.—Special Rules for Mining and Solid Waste Reclamation and Closing Costs

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2001. See Rev. Rul. 2001–58, on this page.

Section 482.—Allocation of Income and Deductions Among Taxpayers

Federal short-term, mid-term, and long-term rates are set forth for the month of December 2001. See Rev. Rul. 2001–58, on this page.

Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2001. See Rev. Rul. 2001–58, on this page.

Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of December 2001. See Rev. Rul. 2001–58, on this page.

Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2001. See Rev. Rul. 2001–58, on this page.

Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2001. See Rev. Rul. 2001–58, on this page.

Section 1274.—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

(Also sections 42, 280G, 382, 412, 467, 468, 482, 483, 642, 807, 846, 1288, 7520, 7872.)

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 1274, 1288, and other sections of the Code, tables set forth the rates for December 2001.

Rev. Rul. 2001–58

This revenue ruling provides various prescribed rates for federal income tax purposes for December 2001 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(2) for buildings placed in service during the current month. Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520. Finally, Table 6 contains the 2002 interest rate for purposes of sections 846 and 807.

REV. RUL. 2001–58 TABLE 1

Applicable Federal Rates (AFR) for December 2001

Period for Compounding

	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-Term				
AFR	2.48%	2.46%	2.45%	2.45%
110% AFR	2.73%	2.71%	2.70%	2.69%
120% AFR	2.97%	2.95%	2.94%	2.93%
130% AFR	3.23%	3.20%	3.19%	3.18%
Mid-Term				
AFR	3.97%	3.93%	3.91%	3.90%
110% AFR	4.37%	4.32%	4.30%	4.28%
120% AFR	4.78%	4.72%	4.69%	4.67%
130% AFR	5.18%	5.11%	5.08%	5.06%
150% AFR	5.99%	5.90%	5.86%	5.83%
175% AFR	7.00%	6.88%	6.82%	6.78%
Long-Term				
AFR	5.05%	4.99%	4.96%	4.94%
110% AFR	5.57%	5.49%	5.45%	5.43%
120% AFR	6.08%	5.99%	5.95%	5.92%
130% AFR	6.60%	6.49%	6.44%	6.40%

REV. RUL. 2001–58 TABLE 2

Adjusted AFR for December 2001

Period for Compounding

	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-term adjusted AFR	2.30%	2.29%	2.28%	2.28%
Mid-term adjusted AFR	3.27%	3.24%	3.23%	3.22%
Long-term adjusted AFR	4.65%	4.60%	4.57%	4.56%

REV. RUL. 2001–58 TABLE 3

Rates Under Section 382 for December 2001

Adjusted federal long-term rate for the current month	4.65%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	4.74%

REV. RUL. 2001–58 TABLE 4

Appropriate Percentages Under Section 42(b)(2) for December 2001

Appropriate percentage for the 70% present value low-income housing credit	8.05%
Appropriate percentage for the 30% present value low-income housing credit	3.45%

REV. RUL. 2001–58 TABLE 5

Rate Under Section 7520 for December 2001

Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest	4.8%

REV. RUL. 2001–58 TABLE 6

Rate under Sections 846 and 807

Applicable rate of interest for 2002 for purposes of sections 846 and 807	5.71%

Section 1288.—Treatment of Original Issue Discounts on Tax-Exempt Obligations

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2001. See Rev. Rul. 2001–58, page 570.

Section 6109.—Identifying Numbers

26 CFR 301.6109–1: Identifying numbers. (Also § 301.7701–3.)

Employer Identification Numbers. This ruling provides guidance on the retention of an entity's employer identification number upon changing under § 301.7701–3 from a partnership to a disregarded entity or from a disregarded entity to a partnership.

Rev. Rul. 2001–61

ISSUES

(1) If an entity classified as a partnership becomes disregarded as an entity separate from its owner (disregarded entity) for federal tax purposes and if the disregarded entity chooses to calculate, report, and pay its employment tax obligations under its own name and employer identification number (EIN) pursuant to Notice 99–6 (1999–1 C.B. 321) does the disregarded entity retain the same EIN it used as a partnership?

(2) If an entity classified as a disregarded entity for federal tax purposes calculates, reports, and pays its employment tax obligations under its own name and EIN pursuant to Notice 99–6 and if the federal tax classification of that entity changes to a partnership, does the partnership retain the same EIN it used as a disregarded entity?

FACTS

In each of the following situations, the eligible entity (as defined in § 301.7701–3(a) of the Procedure and Administration Regulations) does not elect under § 301.7701–3(c) to be treated as an association for federal tax purposes at any time.

Situation 1. *X*, an eligible entity classified as a partnership, becomes a disregarded entity for federal tax purposes when the entity's ownership is reduced to one member. (See, for example, Rev. Rul. 99–6 (1999–1 C.B. 432.) *X* chooses to calculate, report, and pay its employment tax obligations under its own name and EIN pursuant to Notice 99–6.

Situation 2. *Y* is a disregarded entity for federal tax purposes. Pursuant to Notice 99–6, *Y* calculates, reports, and pays its employment tax obligations under its own name and EIN. *Y* becomes a partnership for federal tax purposes when the entity's ownership expands to include more than one member. (See, for example, Rev. Rul. 99–5 (1999–1 C.B. 434.)

LAW & ANALYSIS

Section 6109(a)(1) of the Internal Revenue Code provides that any person required to make a return, statement, or other document shall include in the return, statement, or other document the identifying number as may be prescribed for securing proper identification of the person.

Section 301.6109–1(h)(1) provides that any entity that has an EIN will retain that EIN if its federal tax classification changes under § 301.7701–3.

Section 301.6109–1(h)(2)(i) provides that except as otherwise provided in regulations or other guidance, a single owner entity that is disregarded as an entity separate from its owner under § 301.7701–3 must use its owner's taxpayer identification number (TIN) for federal tax purposes.

Section 301.6109–1(h)(2)(ii) provides that if a single owner entity's classification changes so that it is recognized as a separate entity for federal tax purposes, and that entity had an EIN, then the entity must use that EIN and not the TIN of the single owner. If the entity did not already have its own EIN, then the entity must acquire an EIN and not use the TIN of the single owner.

Section 301.7701–3(a) provides that a business entity that is not classified as a corporation under § 301.7701–2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) can elect its classification for federal tax purposes. An eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under § 301.7701–2(b)(2)) or a partnership, and an eligible entity with a single owner can elect to be classified as an association or to be disregarded as an entity separate from its owner.

Section 301.7701–3(f)(2) provides that an eligible entity classified as a partnership becomes a disregarded entity when the entity's membership is reduced to one member. A disregarded entity becomes classified as a partnership when the entity's membership is increased to more than one member.

Notice 99–6 provides that the Service generally will accept reporting and payment of employment taxes with respect to the employees of a disregarded entity if made in one of two ways: (1) calculation, reporting, and payment of all employment tax obligations with respect to employees of a disregarded entity by its owner (as though the employees of the disregarded entity are employed directly by the owner) and under the owner's name and TIN; or (2) separate calculation, reporting, and payment of all employment tax obligations by each state law entity with respect to its employees under its own name and TIN.

In *Situation 1*, *X*'s change in federal tax classification from a partnership to a disregarded entity is a change described in § 301.7701–3(f)(2). Thus *X* is required to retain its EIN under § 301.6109–1(h)(1) if it chooses to calculate, report, and pay its employment tax obligations under its own name and EIN pursuant to Notice 99–6 upon its federal tax classification changing to a disregarded entity. For all federal tax purposes other than employment obligations or except as otherwise provided in regulations or other

guidance, *X* must use the TIN of its owner pursuant to § 301.6109–1(h)(2)(i).

In *Situation 2*, because *Y* calculates, reports, and pays its employment tax obligations under its own name and EIN prior to its federal tax classification changing from a disregarded entity to a partnership, § 301.6109–1(h)(2)(ii) requires that *Y* retain its EIN for use for all federal tax purposes as a partnership.

HOLDINGS

(1) If an entity classified as a partnership becomes a disregarded entity for federal tax purposes and if the disregarded entity chooses to calculate, report, and pay its employment tax obligations under its own name and EIN pursuant to Notice 99–6, the disregarded entity must retain the same EIN for employment tax purposes it used as a partnership. For all federal tax purposes other than employment obligations or except as otherwise provided in regulations or other guidance, a disregarded entity must use the TIN of its owner.

(2) If an entity classified as a disregarded entity for federal tax purposes calculates, reports, and pays its employment tax obligations under its own name and EIN pursuant to Notice 99–6 and if the federal tax classification of that entity changes to a partnership, the partnership must retain the same EIN it used as a disregarded entity.

DRAFTING INFORMATION

The principal author of this revenue ruling is Craig Gerson of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Craig Gerson at (202) 622–3050 (not a toll-free call).

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2001. See Rev. Rul. 2001–58, page 570.

Section 7872.—Treatment of Loans With Below-Market Interest Rates

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2001. See Rev. Rul. 2001–58, page 570.

Part II. Treaties and Tax Legislation

Subpart A.—Tax Conventions and Other Related Items

Luxembourg Treaty Election

Announcement 2001–119

Following is a copy of the News Release issued by the Director International (U.S. Competent Authority) on November 9, 2001 (IR–2001–108).

U.S., LUXEMBOURG AGREE ON INTERPRETATION OF TAX TREATY'S TRANSITION RULES

WASHINGTON—The competent authorities of the United States and Luxembourg have entered into a mutual agreement concerning the interpretation of the transition rules set forth in Article 30 (Entry Into Force) of the Convention Between the Government of the United States of America and the Government of the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, signed at Luxembourg on April 3, 1996, and entered into force on December 20, 2000 (the "Treaty" or "1996 Treaty").

Paragraph 2 of Article 30 provides that in the case of taxes withheld at source, the Treaty generally has effect for amounts paid or credited on or after the first day of January next following the date on which the Treaty enters into force, *i.e.*, for amounts paid or credited on or after January 1, 2001. In the case of taxes on other income and on capital ("other taxes"), paragraph 2 provides that the Treaty generally has effect for fiscal periods beginning on or after the first day of January next following the date on which the Treaty enters into force, *i.e.*, for fiscal periods beginning on or after January 1, 2001.

Paragraph 3 of Article 30 provides that where any greater relief from tax would have been afforded to a person entitled to the benefits of the Convention between the United States and Luxembourg with respect to taxes on income and property, signed in Washington on December 18, 1962 (the "1962 Treaty"), the 1962 Treaty shall, at the election of such person, continue to have effect in its entirety for the first assessment period or taxable year following the date on which the 1996 Treaty would otherwise have effect under the provisions of paragraph 2.

Paragraph 4 of Article 30 provides that the 1962 Treaty shall cease to have effect in respect of income and capital to which the 1996 Treaty applies in accordance with paragraphs 2 or 3 of Article 30.

Questions have arisen concerning the application of paragraphs 3 and 4 of Article 30 of the 1996 Treaty, regarding fiscal year taxpayers receiving income that is subject to tax withheld at source. In order to resolve potential ambiguities and to provide certainty to taxpayers, the United States and Luxembourg have agreed to the following application of the transition rules:

Calendar year taxpayers. If a calendar year taxpayer in existence on December 19, 2000, makes the election under paragraph 3 of Article 30 of the 1996 Treaty, the 1962 Treaty will continue to apply to the taxpayer through December 31, 2001, with respect to both taxes withheld at source and taxes on other income and on capital. The 1962 Treaty will cease to have effect with respect to the taxpayer beginning on January 1, 2002.

Fiscal year taxpayers. If a fiscal year taxpayer in existence on December 19, 2000, makes the election under paragraph 3 of Article 30 of the 1996 Treaty, the 1962 Treaty will continue to apply to the taxpayer with respect to both taxes withheld at source and taxes on other income and on capital through the last day of the taxpayer's first fiscal year beginning on or after January 1, 2001. The 1962 Treaty will cease to have effect with respect to the taxpayer beginning on the first day of the taxpayer's second fiscal year beginning on or after January 1, 2001. Thus, for example, if a taxpayer in existence on December 19, 2000, with a fiscal year that terminates on November 30, makes the election under paragraph 3 of Article 30 of the 1996 Treaty, the 1962 Treaty will continue to apply to the taxpayer with respect to both taxes withheld at source and taxes on other income and on capital through November 30, 2002, and the 1962 Treaty will cease to have effect with respect to the taxpayer beginning on December 1, 2002.

* * *

Taxpayers that did not exist prior to the date of entry into force of the 1996 Treaty, and taxpayers that were in existence but did not qualify for benefits under the 1962 Treaty, will not be entitled to claim the benefits of the 1962 Treaty under the grandfather rule of Article 30(3).

An election to apply the 1962 Treaty means that the 1962 Treaty, and not the 1996 Treaty, will apply in all respects to the electing taxpayer.

For further information in the United States, please contact Lynn Bartlett, IRS Large & Mid-Size Business, Office of the Director, International, Tax Treaty, ((202) 874–1550 (not a toll-free number)). For further information in Luxembourg, please contact Guy Heintz, Head of the Division international relations of the Administration of Direct Taxes, 40800–2204.

Part III. Administrative, Procedural, and Miscellaneous

Disaster Relief With Respect to Air Transportation Excise Taxes

Notice 2001–77

This notice provides additional tax relief under section 301(a) of the Air Transportation Safety and System Stabilization Act (the Act), Pub. L. No. 107–42, 115 Stat. 236, and informs taxpayers of a change that will be made to the regulations under § 6071 of the Internal Revenue Code.

Section 301(a) of the Act provides relief to eligible air carriers with respect to the deposit of taxes imposed by subchapter C of chapter 33 of the Code (the air transportation excise taxes). Under section 301(a) of the Act, any deposit of those taxes required to be made by an eligible air carrier after September 10, 2001, and before November 15, 2001, shall be treated for purposes of the Code as timely made if the deposit is made on or before November 15, 2001. Section 301(a) of the Act also provides that the Secretary of the Treasury may extend the November 15, 2001, date to January 15, 2002.

Section 6071 of the Code provides that the Secretary may prescribe the time for filing any return by regulations when that time is not prescribed in the Code. Section 40.6071(a)–2 of the Excise Tax Procedural Regulations, as in effect for calendar quarters beginning before October 1, 2001, provides that returns of the air transportation excise taxes for the third calendar quarter of 2001 are due by November 30, 2001. Under § 6151 of the Code, the tax shown or required to be shown on the return must be paid by the due date of the return.

Under the authority granted to the Secretary of the Treasury in section 301(a) of the Act, any deposit of air transportation excise taxes required to be made by an eligible air carrier after September 10, 2001, and before January 15, 2002, shall be treated for purposes of the Code as timely made if the deposit is made on or before January 15, 2002.

In addition, under the authority granted the Secretary in § 6071 of the Code, the Service and Treasury Department will issue regulations changing the due date of certain returns filed by eligible air carriers. Under these regulations, an eligible air carrier's Form 720, *Quarterly Federal Excise Tax Return*, for the third calendar quarter of 2001 will be due by January 15, 2002. Consequently, the time for paying the air transportation excise taxes shown or required to be shown on the return also will be deferred. Under § 6151 of the Code, an eligible air carrier will be required to pay such taxes for the third calendar quarter of 2001 by January 15, 2002.

Eligible air carriers that believe that they are entitled to relief under this notice should mark "Notice 2001–77" in red ink at the top of their return and other documents submitted to the IRS.

The principal author of this notice is Susan Athy of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, please contact Ms. Athy at (202) 622–3130 (not a toll-free call).

Disaster Relief Distributions by Charities to Victims of September 11, 2001, Terrorist Attacks

Notice 2001–78

Several charities have raised questions about the practical application of existing legal standards for distributing funds to victims of the September 11, 2001, terrorist attacks against the United States. The Internal Revenue Service recognizes the unique circumstances caused by this tragedy and wishes to alleviate concerns that might otherwise delay relief to victims.

Congress is considering clarifying legislation in this area. While Congress is considering legislation, the Service recognizes the need to provide interim guidance to charities regarding payments made by reason of the death, injury, or wounding of an individual incurred as a result of the September 11, 2001, terrorist attacks against the United States. Accordingly, the Service will treat such payments made by a charity to individuals and their families as related to the charity's exempt purpose provided that the payments are made in good faith using objective standards.

This administrative treatment will continue to apply to any payments made to such individuals before the earlier of final legislative action addressing these issues or December 31, 2002. The Service will consider what, if any, additional guidance is needed in this area.

Organizations that have questions concerning this notice may contact Marvin Friedlander at (202) 283–2300 (not a toll-free number).

Rent Holidays for Qualified Aircraft Leases

Notice 2001–79

PURPOSE

This notice provides tax relief under § 467 of the Internal Revenue Code for certain aircraft leases entered into or modified during the period beginning on September 11, 2001, and ending on June 28, 2002. On September 11, 2001, terrorists used commercial airliners to damage the Pentagon and to destroy the two World Trade Center towers and other buildings in the World Trade Center complex. They also caused the crash of a commercial airliner in Pennsylvania. In response to dislocations in the aviation industry resulting from these attacks, the Air Transportation Safety and System Stabilization Act (the Act), Pub. L. No. 107–42, established a loan guarantee program for air carriers. The purpose of the program is to assist air carriers who suffered losses due to the terrorist attacks and to whom credit is not otherwise reasonably available, in order to facilitate a safe, efficient, and viable commercial aviation system. Office of Management and Budget regulations implementing the loan guarantee program provide that applications to be included in the program must be received on or before June 28, 2002. The regulations specify a number of factors to be considered in evaluating applications, including whether the applicant's creditors have made concessions

that will improve the financial condition of the applicant in a manner that will enable the applicant to repay its Federally guaranteed loan and provide commercial air service on a financially sound basis after repayment.

The Internal Revenue Service has determined that it is appropriate, for the period beginning on September 11, 2001, and ending on June 28, 2002, to modify the manner in which the regulations under § 467 are applied so as not to inhibit the ability of lessors to provide favorable financing terms to air carriers.

BACKGROUND

Section 467(a) provides that in the case of a lessor or lessee under any § 467 rental agreement, there shall be taken into account for any taxable year the sum of (1) the amount of rent that accrues during such taxable year as determined under § 467(b), and (2) the interest for the year on unpaid amounts taken into account as rent or interest on rent for prior taxable years. Under § 467(b)(2), constant rental accrual applies in the case of any rental agreement that is a disqualified leaseback or long-term agreement. Section 467(b)(4) provides that an agreement is a leaseback if it is part of a leaseback transaction, or a long-term agreement if it is for a term in excess of 75 percent of the statutory recovery period for the property.

Section 1.467–3 of the Income Tax Regulations provides that a leaseback or long-term agreement will not be subject to constant rental accrual unless (1) a principal purpose for providing increasing or decreasing rents is the avoidance of tax and (2) the Commissioner determines that, because of the tax avoidance purpose, the agreement should be treated as a disqualified leaseback or long-term agreement. Under § 1.467–3(a), the Commissioner has the authority to determine, either on a case-by-case basis or in published guidance relating to a certain type or class of agreements, whether an agreement is disqualified and thus subject to constant rental accrual.

Under § 1.467–3(c)(4), tax avoidance will not be considered to be a principal purpose for providing increasing or decreasing rents if the annualized rents allocable to each calendar year of the rental agreement do not vary from the average annual rents over the entire lease term by more than 10 percent (the uneven rent test). If this test is met, the leaseback or long-term agreement will not be considered disqualified and will not be subject to constant rental accrual. In applying the uneven rent test, certain rent holiday periods are ignored.

GRANT OF RELIEF

In the case of a qualified aircraft lease that does not meet the uneven rent test and is entered into after September 10, 2001, and before June 29, 2002, the Commissioner, under the authority set forth in § 1.467–3(a), will not treat the agreement as a disqualified leaseback or long-term agreement if, disregarding one aviation stabilization rent holiday period and any rent allocated to such period, the agreement meets the test set forth in § 1.467–3(c)(4). For purposes of this notice—

A rental agreement is a qualified aircraft lease if the lessee is an air carrier (within the meaning of 49 U.S.C. § 40102(a)(2)) and at least 90 percent of the property subject to the agreement (determined on the basis of fair market value as of the agreement date) consists of aircraft (within the meaning of 49 U.S.C. § 40102(a)(6)) and replacement components; and

An aviation stabilization rent holiday period is a consecutive period that meets the following conditions: (1) the period does not exceed six months; (2) the period ends before January 1, 2003; and (3) annualized fixed rent during the period (determined by treating such period as a rental period for purposes of § 1.467–1(j)(3)) is less than the average rent allocated to all calendar years in the lease term (determined by taking into account the rent allocated to the rent holiday period).

If a substantial modification of a rental agreement occurs after September 10, 2001, and before June 29, 2002, and the post-modification agreement is a qualified aircraft lease, the relief granted in this notice applies to the post-modification agreement. For this purpose, a modification is treated as a substantial modification if the agreement (as in effect before its modification) meets the test set forth in § 1.467–3(c)(4) and the entire agreement (as modified) does not meet that test.

The relief granted in this notice does not affect whether an agreement (as in effect before its modification) is a disqualified leaseback or long-term agreement, and, if so, whether the carryover rule set forth in § 1.467–1(f)(4)(iii) applies.

The principal author of this notice is Forest Boone of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice, contact Mr. Boone at 202-622-4960 (not a toll-free call).

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26 CFR 601.201: Rulings and determination letters. (Also Part I, §§ 851(b)(3), 852(b)(5), 853(a); 1.851–2, 1.853–1)

Rev. Proc. 2001–57

SECTION 1. PURPOSE

This revenue procedure sets forth conditions under which a regulated investment company (RIC) that holds a partnership interest is treated for certain purposes as if it directly invested in the assets held by the partnership. This revenue procedure applies to an affected taxpayer for purposes of qualifying as a RIC under section 851(b)(3), for purposes of the payment of exempt-interest dividends under section 852(b)(5), and for purposes of the passthrough of the foreign tax credit under section 853.

SECTION 2. BACKGROUND

.01 The Internal Revenue Service responds to a large number of letter ruling requests from RICs that hold partnership interests in master-feeder structures. In order to save these taxpayers the time and expense involved in obtaining a ruling, the Service is issuing this revenue procedure.

.02 In a typical master-feeder structure, a domestic corporation (Feeder Fund) invests substantially all its assets in an investment partnership (Master Partnership). Some Feeder Funds may invest in more than one Master Partnership. A Feeder Fund is registered as an open-end management investment company under the Investment Company Act of 1940 (the

1940 Act), 15 U.S.C. 80a–1 *et seq.*, and elects to be treated as a RIC under subchapter M, part I, of the Code. A Master Partnership is registered as a management company under the 1940 Act.

.03. For purposes of determining its required distribution under § 4982(a) of the Code, a Feeder Fund accounts for its share of items of income, gain, loss, and deduction of the Master Partnership as they are taken into account by the Master Partnership. *See* Rev. Rul. 94–40 (1994–1 C.B. 274) modified by Rev. Rul. 94–40A (1994–1 C.B. 276) (requiring a RIC to include its share of partnership income on a current basis in calculating the required distribution to avoid excise tax liability under § 4982(a)(1) of the Code). *See also* Rev. Proc. 94–71 (1994–2 C.B. 810) (defining circumstances in which a RIC may apply the income inclusion timing rule of § 706 rather than the current inclusion rule of Rev. Rul. 94–40).

.04 A Feeder Fund commonly requests that the Internal Revenue Service rule that it will be deemed to own a proportionate share of each asset of the Master Partnership for purposes of determining whether it satisfies the requirements of §§ 851(b)(3), 852(b)(5), and 853 of the Code.

.05 Section 851(b) provides that certain requirements must be satisfied in order for a domestic corporation to be taxed as a RIC under subchapter M, part I, of the Code.

.06 Section 851(b)(2) provides that, in order to qualify as a RIC, at least 90 percent of a corporation's gross income must be derived from dividends, interest, payments with respect to securities loans (as defined in § 512(a)(5)), gains from the sale or other disposition of stocks, securities, foreign currencies, or other income derived with respect to its business of investing in such stocks, securities, or currencies.

.07 Section 851(b)(3)(A) requires that, in order for a corporation to qualify as a RIC, at the close of each quarter of the taxable year, at least 50 percent of the value of the corporation's total assets must be represented by cash and cash items (including receivables), Government securities, securities of other RICs, and other securities generally limited in respect of any one issuer to an amount not greater in value than 5 percent of the value of the total assets of the corporation and to not more than 10 percent of the outstanding voting securities of such issuer.

.08 Section 851(b)(3)(B) provides that, in order for a corporation to qualify as a RIC, not more than 25 percent of the corporation's total assets may be invested in the securities (other than Government securities and the securities of other RICs) of any one issuer, or of two or more issuers that the corporation controls and which are determined, under regulations, to be engaged in the same or similar trades or businesses or related trades or businesses.

.09 Section 852(b)(5) provides that, if at least 50 percent of the value (as defined in § 851(c)(4)) of a RIC's total assets at the close of each calendar quarter consists of obligations described in § 103(a), the RIC is eligible to pay exempt-interest dividends, which are treated by the RIC's shareholders as interest excludable from gross income pursuant to § 103(a).

.10 Section 853(a) provides that, if more than 50 percent of the value (as defined in § 851(c)(4)) of a RIC's total assets at the close of the taxable year consists of stock or securities in foreign corporations and if the RIC meets the requirements of § 852(a) for the taxable year, then, for purposes of determining a shareholder's foreign tax credit under § 901, the RIC may elect to treat its shareholders as if they had paid certain foreign taxes paid by the RIC.

.11 A RIC's allocable share of items of income, gain, loss, deduction, and credit of a partnership in which it holds an interest is determined under subchapter K of the Code. Section 702(a) provides that a partner, in determining his income tax, shall take into account separately his distributive share of such items as are set forth in that section. Section 702(b) provides that the character of items stated in § 702(a) that are included in a partner's distributive share shall be determined as if such items were realized directly from the source from which they were realized by the partnership, or incurred in the same manner as incurred by the partnership. Section 702(c) provides that, where it is necessary to determine the gross income of a partner, such amount shall include that partner's distributive share of the gross income of the partnership. A partner's distributive share of income, gain, loss, deduction, or credit is determined in accordance with the rules set forth in section 704.

.12 The flush language of § 851(b) states that income derived from a partnership or trust shall be treated as satisfying the 90 percent requirement of § 851(b)(2) only to the extent that such income is attributable to items of income of the partnership or trust which would be described in § 851(b)(2) if earned directly by the RIC. The legislative history of that sentence indicates that it was intended to clarify the general rule used to characterize items of income, gain, loss, deduction, or credit includable in a partner's distributive share, as applied to RICs that are partners. It therefore explains the relationship of § 702 to the 90 percent test under § 851(b)(2). *See* S. Rep. No. 445, 100th Cong., 2d Sess. 93 (1988).

SECTION 3. SCOPE

This revenue procedure applies to a domestic corporation that meets the following requirements:

.01 It is registered as an open-end management investment company under the 1940 Act and elects to be treated as a RIC under subchapter M, part I, of the Code.

.02 It is a publicly offered RIC as defined in § 67(c)(2)(B) of the Code and § 1.67–2T(g)(3)(iii) of the regulations.

.03 It invests substantially all its assets in one or more Master Partnerships that are registered as management companies under the 1940 Act.

.04 Except as required by § 1.704–3 of the regulations, its allocable share of each item of the Master Partnership's income, gain, loss, deduction, and credit is proportionate to its percentage of ownership of the capital interests in the Master Partnership.

SECTION 4. PROCEDURE

For purposes of qualifying as a RIC under section 851(b)(3), for purposes of the payment of exempt-interest dividends under section 852(b)(5), and for purposes of the passthrough of the foreign tax credit under section 853, a domestic corporation meeting the requirements of Section 3 of this procedure is treated as if it

directly invested in the assets held by the Master Partnership in which it invests. For these purposes, its interest in Master Partnership assets is determined in accordance with its percentage of ownership of the capital interests in the Master Partnership.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective for asset determinations that are made as of dates after December 10, 2001.

DRAFTING INFORMATION

The principal author of this revenue procedure is Susan Thompson Baker of the Office of the Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure, contact her at (202) 622–3940 (not a toll-free call).

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26 CFR 601.104: Collection functions.
(Also Part I, sections 6302, 6656; 31.6302–1, 1.6302–2, 31.6302–2, 40.6302(c)–1, 40.6302(c)–2, 31.6302(c)–3, 40.6302(c)–3, 40.6302(c)–4)

Rev. Proc. 2001–58

SECTION 1. PURPOSE

This revenue procedure provides guidance with respect to the failure-to-deposit penalty provisions of section 6656 of the Internal Revenue Code (Code), as amended by section 3304(c) of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105–206, 112 Stat. 742 (1998) (RRA). This revenue procedure describes how the Service will credit Federal tax deposits to determine whether a failure-to-deposit penalty under section 6656 should apply to deposit periods beginning after December 31, 2001. This revenue procedure applies only with respect to situations in which deposits have not been made in sufficient amounts to satisfy the cumulative deposit obligations as of at least one deposit due date.

SECTION 2. BACKGROUND

.01 Section 6656 of the Code provides that in the case of any failure by any person to deposit (as required by the Code or regulations) on the date prescribed any amount of tax in a government depository, there will be imposed upon such person a penalty equal to the applicable percentage of the amount of the underpayment, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The applicable percentage ranges from 2 to 15 percent depending upon the lateness of the deposit.

.02 Rev. Proc. 90–58 (1990–2 C.B. 642) effective for deposit periods beginning after March 31, 1991, provided that the Service will apply deposits for a specified tax period in a date-made order against deposit liabilities in a due-date order. Thus, the Service applies a deposit first to satisfy the oldest past due deposit liability within the specified tax period. The Service applies other credits to the taxpayer's account, such as overpayments from previous tax periods, in a similar fashion. Rev. Proc. 91–52 (1991–2 C.B 781) clarified and amplified the provisions relating to the application of other credits to taxpayer accounts.

.03 Under Rev. Proc. 90–58, the oldest deposit liability in the specified tax period is satisfied first, thus preventing the penalty rate on that liability from escalating. If, however, a depositor inadvertently missed a single deposit early in a specified tax period, multiple cascading penalties could result as payments that would otherwise be sufficient to satisfy current liabilities were applied to satisfy earlier shortfalls.

.04 Notice 98–14 (1998–1 C.B. 585) provided interim procedures that depositors may use to request abatement of the failure-to-deposit penalty imposed by section 6656 when the order in which the Service applies deposits against deposit liabilities, as set forth in Rev. Proc. 90–58, produces multiple failure-to-deposit penalties as a result of a single failure to deposit. Under that Notice, depositors that wish to request relief are instructed to call the toll-free number shown on the penalty notice. Notice 98–14 applies to return periods beginning after December 31, 1997.

.05 Section 3304(a) of RRA added subsection (e) to section 6656 of the Code, which permits a depositor receiving a penalty notice (with respect to any deposit of tax made for a specific tax return period) to designate, during the 90–day period beginning on the date of the penalty notice, the deposit period or periods within the specified tax period to which a deposit of tax shall apply. Section 3304(d)(1) of RRA provides that section 6656(e) is effective for Federal tax deposits required to be made after January 18, 1999 (180 days after the July 22, 1998, enactment of RRA).

.06 Rev. Proc. 99–10 (1999–1 C.B. 272) provided procedures for implementing section 6656(e) of the Code as added by RRA section 3304(a). In particular, Rev. Proc. 99–10 provided guidance on how a depositor may designate the application of its Federal tax deposits for a specified tax period to minimize the failure-to-deposit penalty under section 6656 with respect to deposits required to be made after January 18, 1999.

.07 Section 6656(e)(1) of the Code (as added by section 3304(a) of RRA) was amended by section 3304(c) of RRA to provide that a deposit shall be applied to the most recent period or periods within the specified tax period to which the deposit relates, unless the person making such deposit designates a different period or periods to which such deposit is to be applied. Section 3304(d)(2) of RRA provides that this amendment is effective for Federal tax deposits required to be made after December 31, 2001.

SECTION 3. SCOPE

This procedure will apply with respect to all taxes required to be deposited under section 6302 of the Code and underlying regulations that are reported on the following Internal Revenue Service forms:

Form 720, *Quarterly Federal Excise Tax Return*

Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*

Form 941, *Employer's Quarterly Federal Tax Return*

Form 943, *Employer's Annual Tax Return for Agricultural Employees*

Form 945, *Annual Return of Withheld Federal Income Tax*

Form CT-1, *Employer's Annual Railroad Retirement Tax Return*

Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*

SECTION 4. APPLICATION

.01 Except as otherwise provided in this revenue procedure, the Service will apply Federal tax deposits for deposit periods beginning after December 31, 2001, to the most recently ended deposit period or periods within the specified tax period to which the deposit relates and will apply any excess to deposit periods ending on or after the date of the deposit in period-ending-date order. The application of deposits to the most recently ended deposit period will, in some cases, prevent the cascading of penalties where a depositor either fails to make deposits or makes late deposits.

.02 Any depositor to whom the Service mails a penalty notice for a specified tax period beginning after December 31, 2001, may, within 90 days of the date of the penalty notice, contact the Service and designate the deposit period, or periods, within such specified tax period to which the deposit(s) of, or credit(s) against, the tax for the tax period are to be applied. The depositor may either call the toll-free number shown on the penalty notice or write (including a revised schedule of deposits) to the Accounts Management Unit at the address of the IRS's Account Management site shown on the penalty notice. The Service will adjust the penalty amount to reflect the revised schedule of deposits and notify the taxpayer of the adjustment in writing.

.03 Under certain circumstances, employers may deposit employment taxes under the "safe harbor" rule of section 31.6302–1(f) of the Employment Taxes and Collection of Income Tax at the Source Regulations. Under circumstances in which this rule applies, the Service considers a depositor to have satisfied its deposit obligations even if there is a shortfall in the amount of taxes required to be deposited for a deposit period. For purposes of this revenue procedure, a shortfall will be treated as a liability for a deposit period (the make-up period) ending immediately before the shortfall make-up date and after the end of any other deposit period ending before the shortfall make-up date. Thus, if a shortfall make-up date falls on the same date a deposit is due for another deposit period, the Service will apply a deposit made on the shortfall make-up date to the shortfall liability first. Any excess will then be applied to deposit periods other than the make-up period beginning with the most recently ended of such other periods. If a deposit is made before the shortfall make-up date but after the end of a deposit period for which the deposit obligation has not been satisfied, the Service will apply the deposit to the liability for that deposit period first before applying any excess to the shortfall. Similar rules apply with regard to withheld income taxes by agents withholding from nonresident aliens and foreign corporations under section 1.6302–2(a)(1)(ii) of the Income Tax Regulations. Under sections 40.6302(c)–1, 40.6302(c)–2, 40.6302(c)–3, and 40.6302(c)–4 of the Excise Tax Procedural Regulations, depositors of excise taxes reportable on Form 720 also are eligible to use certain safe harbor rules. Because the safe harbor underdeposits are satisfied by later payments, rather than later deposits, no special rule regarding the application of deposits is needed with respect to satisfaction of the safe harbor underdeposits. The rule for employment taxes is illustrated in section 5.04 of this revenue procedure.

.04 Under section 31.6302–1(c)(3) of the regulations, a depositor that has accumulated $100,000 or more of employment taxes must deposit those taxes by the close of the next banking day. For purposes of applying the rules of this revenue procedure, the deposit required by section 31.6302–1(c)(3) is treated as a liability for a deposit period ending on the day in which the depositor accumulates in excess of $100,000 in employment taxes.

SECTION 5. EXAMPLES

.01 *Example 1—Elimination of Cascading Penalty for Insufficient Timely Deposit.*

The following employment tax example illustrates how the Service will apply deposits to the most recently ended deposit period. This ordering rule is similarly applicable to deposits under section 6302 of railroad retirement taxes, FUTA taxes, excise taxes, and income tax withheld from nonresident aliens and foreign corporations.

For the second calendar quarter of 2002, A, a semi-weekly employment tax depositor within the meaning of section 31.6302–1 of the regulations, accumulates the following employment tax deposit liabilities for its bi-weekly pay dates, and makes the following deposits on the deposit due dates:

Deposit Due Date	Required Deposit	Actual Deposit
04/17/02	$ 8,000	$ 6,000
05/01/02	$ 6,000	$ 6,000
05/15/02	$ 5,000	$ 5,000
05/30/02	$ 7,000	$ 7,000
06/12/02	$ 8,000	$ 7,000
06/26/02	$ 9,000	$ 9,000

During July 2002, A completes its Form 941 for the second quarter and discovers the April 17, 2002, and June 12, 2002, underdeposits. On July 31, 2002, the due date for the Form 941, A files the Form 941 and deposits $3,000. The Service applies the deposits actually made to the most recently ended deposit periods. The Service then mails a notice to A dated October 21, 2002, advising that A is subject to the failure-to-deposit penalty in the amount of $300. The penalty is calculated as follows:

Deposit Due Date	Underdeposits	Days Late	Penalty Rate	Penalty Amount
04/17/02	$ 2,000	105	10%	$ 200
05/01/02	$ 0	0	N/A	$ 0
05/15/02	$ 0	0	N/A	$ 0
05/30/02	$ 0	0	N/A	$ 0
06/12/02	$ 1,000	49	10%	$ 100
06/26/02	$ 0	0	N/A	$ 0
TOTAL				$ 300

A would have 90 days from October 21, 2002, in which to call the toll-free number on the notice, or write the Accounts Management Unit at the appropriate IRS Service Center, and designate the deposit period, or periods, within the specified tax period to which the deposits are to be applied. In this case, however, the manner in which the Service applied the deposits avoids cascading penalties and minimizes the failure-to-deposit penalty for the quarter.

.02 *Example 2—Cascading Penalty Under Section 6656(e).*

This example will show how the application of deposits to the most recently ended deposit period will not always eliminate cascading penalties. For the second calendar quarter of 2002, B, a monthly employment tax depositor within the meaning of section 31.6302–1 of the regulations, pays its employees on the first of every month. Instead of waiting until the 15th day of the following month to make its deposits, B normally makes deposits on the 25th (or next banking day thereafter) of each month in which the liability is incurred. B pays its employees on April 1, 2002. For some reason, B fails to make the deposit on April 25, 2002. For May, B pays its employees on May 1, 2002. On May 28, 2002 (the first banking day after Saturday, May 25, 2002), unaware of the underdeposit for April, B makes a deposit to cover its May liability. The Service applies this deposit to the most recently ended deposit period, which in this case is April 2002, instead of the May 2002 liability as intended by B. This cycle of deposits continues until the end of the quarter. Instead of having a failure-to-deposit penalty only for April, B will be subject to a penalty for every month in the quarter. B can, however, minimize cascading penalties and reduce the penalty amount by timely following the procedures in section 4.02 of this revenue procedure and designating May and June as the deposit periods to which the deposits are to be applied.

.03 *Example 3—Elimination of Cascading Penalty for Late Deposits.*

This example will show how the application of deposits to the most recently ended deposit period or periods will affect the calculation of the failure-to-deposit penalty in situations where the depositor is late in making some or all of its deposits. For the second calendar quarter of 2002, C, a semi-weekly employment tax depositor, pays its employees every Friday. C accumulates $10,000 in employment tax deposit liability for each of its weekly pay dates.

The table below shows the deposit period ending date and due date for C's deposits. It also shows the date of each deposit and the deposit period to which it is applied under section 6656(e) of the Code. The table shows how, under section 6656(e) and this revenue procedure, the Service applies C's deposits to the most recently ended deposit period. Accordingly, under section 6656(e), the Service applies C's deposit of April 22, 2002, and subsequent deposits through June 24, 2002, to deposit liabilities for periods which have ended, but for which the due dates have not occurred. Applying deposits in this manner, C's deposit liability for the period ending April 12, 2002, is not satisfied until C makes its deposit of June 26, 2002. Nonetheless, applying the deposits to the most recently ended deposit period avoids cascading penalties and minimizes the failure-to-deposit penalty for the quarter.

Deposit Period Ending Date	Due Date of Deposit	Date of Deposit that Service Applies to Deposit Period and Applicable Penalty under Section 6656(e)	
04/05/02	04/10/02	04/10/02	$ 0
04/12/02	04/17/02	06/26/02	$ 1,000
04/19/02	04/24/02	04/22/02	$ 0
04/26/02	05/01/02	04/29/02	$ 0
05/03/02	05/08/02	05/06/02	$ 0
05/10/02	05/15/02	05/13/02	$ 0
05/17/02	05/22/02	05/20/02	$ 0
05/24/02	05/30/02	05/27/02	$ 0
05/31/02	06/05/02	06/03/02	$ 0
06/07/02	06/12/02	06/10/02	$ 0
06/14/02	06/19/02	06/17/02	$ 0

Deposit Period Ending Date	Due Date of Deposit	Date of Deposit that Service Applies to Deposit Period and Applicable Penalty under Section 6656(e)	
06/21/02	06/26/02	06/24/02	$ 0
06/28/02	07/03/02	07/03/02	$ 0
TOTAL	PENALTY		$ 1,000

.04 *Example 4—Safe Harbor Deposits.*

(1) *Facts.* This example will show how the application of employment tax deposits to the most recently ended deposit period or periods will be accomplished in situations where the depositor is also making a deposit by the shortfall make-up date in order to qualify for the safe harbor in section 31.6302–1(f) of the regulations. For the second calendar quarter of 2002, D, a semi-weekly employment tax depositor, pays its employees every Friday. D accumulates $10,000 in employment tax deposit liability for each of its weekly pay dates. D makes timely deposits of employment taxes in the amount of $9,800 on April 10, 17, and 24, 2002. Under section 31.6302–1(f), D must make a deposit of $600 by the shortfall make-up date, May 15, 2002. D also must make a deposit of employment taxes for the deposit period May 8–10, 2002, on or before May 15, 2002.

(2) *Deposit made on shortfall make-up date.* D deposits $9,800 on May 1 and May 8, 2002, and $10,200 on May 15, 2002. The May 1 deposit is applied to the deposit period April 24–26, 2002, and the May 8 deposit is applied to the deposit period May 1–3, 2002. Because the May 15 deposit is made on the shortfall make-up date, under section 4.03 of this revenue procedure, the Service first applies $600 to the shortfall liability for April. Accordingly, D has satisfied section 31.6302–1(f) of the regulations for the three deposits in April and owes no penalty with respect to those deposits. The Service applies the remaining $9,600 to the deposit period ending May 10, 2002, leaving an underdeposit of $400. As this amount is greater than 2 percent of the deposit liability, D will not satisfy section 31.6302–1(f), and will be subject to the failure-to-deposit penalty. The amount of the penalty will depend on when D satisfies the underdeposit.

(3) *Deposit made prior to shortfall make-up date.* Instead of making the deposit on May 15, 2002, as in (2) above, D makes the $10,200 deposit on May 14, 2002. Because the deposit is made prior to the shortfall make-up date, under section 4.03 of this revenue procedure, the Service first applies $10,000 to the deposit liability for the deposit period ending May 10, 2002. This liability is fully satisfied. The Service applies the remaining $200 to satisfy the remainder of the deposit liability for the deposit period ending May 3, 2002. D will not satisfy section 31.6302–1(f) of the regulations for the three deposits in April, and will be subject to the failure-to-deposit penalty. The amount of the penalty will depend on when D satisfies the underdeposits.

(4) *Designation.* In either situation described in this example, D may timely contact the Service under the procedures in section 4.02 of this revenue procedure and designate the deposit periods (including the make-up period) to which the deposits are to be applied.

.05 *Example 5—Deposits Made Under the One-Day Rule.*

This example will show how the application of deposits to the most recently ended deposit period or periods will be accomplished in situations where the depositor becomes subject to the one-day rule of section 31.6302–1(c)(3) of the regulations. For the second calendar quarter of 2002, E, a semi-weekly employment tax depositor, makes a timely deposit of employment taxes on April 10, 2002, for the deposit period April 3, 2002, through April 5, 2002. On Monday, April 8, 2002, E accumulates $110,000 in employment taxes with respect to wages paid on that date. Under section 31.6302–1(c)(3), E deposits those taxes by the end of the next business day, April 9, 2002. Under this revenue procedure, the deposit required by section 31.6302–1(c)(3) is treated as a liability for a deposit period ending on the day in which E accumulates in excess of $100,000 in employment taxes. Accordingly, the Service applies E's deposit on April 9, 2002, to the one-day deposit liability for the deposit period ending April 8, 2002. E's deposit on April 10, 2002, is then applied to the liability for the deposit period ending April 5, 2002.

SECTION 6. EFFECT ON OTHER DOCUMENTS

.01 Rev. Proc. 99–10 is obsoleted with respect to federal tax deposit periods beginning after December 31, 2001. Rev. Proc. 99–10 continues to apply to deposits that are required to be made after January 18, 1999, and relate to deposit periods ending on and before December 31, 2001.

.02 Notice 98–14 continues to apply to deposits required to be made on or before January 18, 1999, with respect to return periods beginning after December 31, 1997.

.03 Rev. Proc. 90–58 and Rev. Proc. 91–52 are obsoleted.

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective for federal tax deposit periods beginning after December 31, 2001.

SECTION 8. DRAFTING INFORMATION

The principal author of this revenue procedure is Charles A. Hall of the Office of Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division). For further information regarding this revenue procedure, contact Charles A. Hall at (202) 622–4940 (not a toll-free call).

Part IV. Items of General Interest

Additional Notice Explaining the Saver's Tax Credit for Contributions by Individuals to Employer Retirement Plans and IRAs

Announcement 2001–120

This announcement provides a notice in Spanish that employers can use to inform Spanish-speaking employees of the new saver's credit available to eligible employees beginning next year. Previously, in Announcement 2001–106 (2001–44 I.R.B. 416) the Internal Revenue Service published a series of questions and answers concerning the saver's credit. That announcement also provided a notice to employees in English.

Employers are encouraged to tell their employees about the credit. Employers can inform employees in any way they choose, including use of the notice set out below.

Notificación para los empleados sobre el Crédito de Ahorro

En esta notificación se le explica cómo podría usted pagar menos impuestos contribuyendo a [insert name of employer's plan/inserte el nombre del plan proporcionado por el empleador o patrono] (en adelante denominado el "Plan") o a un plan de ahorro para la jubilación (en adelante denominado "IRA").

A partir del 2002, si usted hace contribuciones al Plan o a una cuenta IRA, podrá reclamar un crédito tributario llamado "crédito de ahorro". Este crédito podría reducir el impuesto federal sobre el ingreso que usted paga dólar por dólar. La cuantía del crédito que usted puede obtener se basará en las contribuciones que haga y en su tasa de crédito correspondiente. Esta tasa puede variar desde un mínimo del 10% hasta un máximo del 50%, dependiendo de su ingreso bruto ajustado, o sea, que cuanto más bajo sea su ingreso tanto más alta será su tasa de crédito. La tasa de crédito depende también de su estado civil para efectos de la declaración. Véase la tabla que aparece al final de esta notificación para calcular su tasa de crédito.

La contribución máxima que se puede hacer para el crédito para un individuo es de $2,000. Si usted es casado que presenta una declaración conjunta, la contribución máxima que usted y su cónyuge pueden hacer para el crédito es de $2,000 cada uno.

Usted puede obtener este crédito si reúne los requisitos siguientes:

- Ha cumplido los 18 años de edad.
- No es un estudiante a tiempo completo.
- No es reclamado como dependiente en la declaración de otro.
- Tiene un ingreso bruto ajustado (indicado en su declaración de impuesto para el año del crédito) que no excede de:

  $50,000, si es casado que presenta una declaración conjunta;
  $37,500 si es cabeza de familia con una persona calificada;
  $25,000 si es soltero o casado que presenta una declaración separada.

Ejemplo: Susana y Juan están casados y presentan una declaración conjunta del impuesto federal sobre el ingreso. Para el 2002, su ingreso bruto ajustado habría sido $34,000 si no hubieran hecho ninguna contribución para su jubilación. En el año 2002, Susana decidió hacer una contribución de $2,000 a su plan 401(k). Juan hizo una contribución deducible de $2,000 a una cuenta IRA para el año 2002. Debido a estas contribuciones su ingreso bruto ajustado para el 2002 será de $30,000. Si su impuesto federal sobre el ingreso hubiera sido $3,000 (después de aplicar cualquier otro crédito al que tuvieran derecho) sin haber hecho ninguna contribución para la jubilación, entonces su impuesto federal sobre el ingreso como resultado de haber hecho contribuciones a la jubilación por un total de $4,000 sería solamente de $400 después de aplicar el crédito de ahorro y otros beneficios tributarios aplicables a las contribuciones para la jubilación. Por lo tanto, al poner $4,000 para su jubilación, Susana y Juan han reducido también su impuesto en $2,600.

De la contribución anual que puede hacerse para el crédito habrá que deducir cualquier distribución tributable de un plan de jubilación o de una cuenta IRA que usted o su cónyuge reciba durante el año en que usted reclame el crédito, durante los 2 años precedentes o durante el período después de finalizar el año para el que usted reclame el crédito o antes del plazo establecido para presentar su declaración para ese año. Una distribución de una cuenta IRA Roth que no sea una reinversión se tendrá en cuenta para esta deducción, aunque la distribución no sea tributable. Después de estas deducciones, la contribución anual máxima que puede hacerse para el crédito por persona es de $2,000.

Ejemplo: El ingreso bruto ajustado de Marco para el 2002 es lo suficientemente bajo como para poder reclamar el crédito ese año y él difiere $3,000 de su paga para su plan 401(k) en el 2002. En el año 2001, Marco hizo un retiro por dificultades excepcionales de $400 de su plan patronal y en el 2002 hace un retiro de $800 de su cuenta IRA. El crédito de ahorro para el 2002 de Marco se basará en las contribuciones de $1,800 ($3,000 – $400 – $800).

La cantidad de su crédito de ahorro no cambiará la cantidad de sus créditos tributarios reembolsables. Un crédito tributario reembolsable, como el crédito por ingreso del trabajo o la cantidad reembolsable de su crédito tributario por hijos, es una cantidad que usted recibiría como un reembolso, aún en el caso de que no debiera ningún impuesto.

La cantidad de su crédito de ahorro en cualquier año no puede exceder de la cantidad del impuesto que de otro modo usted tendría que pagar (sin incluir cualquier otro crédito reembolsable o el crédito por gastos de adopción) en cualquier año. Si su impuesto debido se reduce a cero debido a otros créditos reembolsables, tales como el Crédito Hope, entonces usted no tendrá derecho al crédito de ahorro.

TASAS DE CRÉDITO

Si su estado civil para efectos de la declaración es "casado que presenta una declaración conjunta" y su ingreso bruto ajustado es:	Su tasa de crédito será:
$0–$30,000	50% de la contribución
$30,001–$32,500	20% de la contribución
$32,501–$50,000	10% de la contribución
Más de $50,000	Crédito no disponible
Si su estado civil para efectos de la declaración es "cabeza de familia" y su ingreso bruto ajustado es:	Su tasa de crédito será:
$0–$22,500	50% de la contribución
$22,501–$24,375	20% de la contribución
$24,376–$37,500	10% de la contribución
Más de $37,500	Crédito no disponible
Si su estado civil para efectos de la declaración es "soltero", "casado que presenta una declaración separada" o "viudo(a) calificado(a) y su ingreso bruto ajustado es:	Su tasa de crédito será:
$0–$15,000	50% de la contribución
$15,001–$16,250	20% de la contribución
$16,251–$25,000	10% de la contribución
Más de $25,000	Crédito no disponible

Withdrawal of Proposed Regulations Relating to Certain Corporate Reorganizations Involving Disregarded Entities

Announcement 2001–121

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws a notice of proposed rulemaking (REG–106186–98, 2000–23 I.R.B. 1226) relating to certain corporate reorganizations involving disregarded entities. The proposed regulations were published in the **Federal Register** on May 16, 2000. After consideration of the comments received, the IRS and Treasury have decided to withdraw the proposed regulations and issue new proposed regulations.

DATES: These proposed regulations are withdrawn November 15, 2001.

FOR FURTHER INFORMATION CONTACT: Reginald Mombrun (202) 622–7750 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On May 16, 2000, the IRS issued proposed regulations relating to certain corporate reorganizations involving disregarded entities (65 FR 31115). After consideration of comments received on the proposed regulations, the IRS and Treasury have decided to issue new proposed regulations on this matter. Accordingly, the proposed regulations published on May 16, 2000, are withdrawn.

Drafting Information

The principal author of this withdrawal announcement is Reginald Mombrun of the Office of the Associate Chief Counsel (Corporate).

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Withdrawal of Notices of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking published in the **Federal Register** on May 16, 2000 (65 FR 31115), is hereby withdrawn.

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on November 14, 2001, 8:45 a.m., and published in the issue of the Federal Register for November 15, 2001, 66 F.R. 57400)

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as"rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in law or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign Corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Intemal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statements of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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