

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.

SPECIAL ANNOUNCEMENT

Announcement 2011-69, page 691.

This Twenty-Fourth Institution on Current Issues in International Taxation, jointly sponsored by the Internal Revenue Service and the George Washington University Law School, will be held on December 15 and 16, 2011, at the J.W. Marriott Hotel in Washington, D.C.

EMPLOYEE PLANS

Notice 2011-85, page 605.

This notice announces that the Treasury Department and the Service intend to amend the final regulations under section 411(b)(5) of the Code, which sets forth special rules for statutory hybrid plans (as defined in regulations section 1.411(a)(13)-1(d)), to postpone the effective/applicability date of those provisions of section 1.411(b)(5)-1(d) that apply to plan years beginning on or after January 1, 2012. Section 1.411(b)(5)-1(d) sets forth rules under section 411(b)(5)(B)(i) relating to interest crediting rates under a cash balance or other statutory hybrid plan. Notices 2010-77 and 2010-90 modified.

Rev. Proc. 2011-49, page 608.

This procedure sets forth the procedures of the Service for issuing opinion and advisory letters regarding the acceptability under sections 401 and 403(a) of the Code of the form of pre-approved plans (that is, master and prototype (M&P) and volume submitter (VS) plans). The second six-year remedial amendment cycle for pre-approved defined contribution plans began on February 1, 2011 and ends on January 31, 2017. The Service is accepting opinion and advisory letter applications for pre-approved defined contribution plans for the second six-year remedial amendment cycle. Rev. Proc. 2005-16

modified and superseded. Rev. Procs. 2011-6 and 2011-8 modified.

ADMINISTRATIVE

Rev. Proc. 2011-50, page 628.

This procedure provides specifications for filing Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding, Electronically*. This procedure will be reproduced as the current revision of Publication 1187. Rev. Proc. 2010-33 superseded.

Rev. Proc. 2011-51, page 669.

This procedure contains revisions to Publication 1239, *Specifications for Filing Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips, Electronically*. Rev. Proc. 2010-37 superseded.

Actions Relating to Court Decisions is on the page following the Introduction.

Announcement of Declaratory Judgment Proceedings Under Section 7428 begins on page 691.

Finding Lists begin on page ii.

Index for July through October begins on page iv.



The IRS Mission

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

force the law with integrity and fairness to all.

Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

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

Part II.—Treaties and Tax Legislation.

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

Part III.—Administrative, Procedural, and Miscellaneous.

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

Part IV.—Items of General Interest.

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

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

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Actions Relating to Decisions of the Tax Court

It is the policy of the Internal Revenue Service to announce at an early date whether it will follow the holdings in certain cases. An Action on Decision is the document making such an announcement. An Action on Decision will be issued at the discretion of the Service only on unappealed issues decided adverse to the government. Generally, an Action on Decision is issued where its guidance would be helpful to Service personnel working with the same or similar issues. Unlike a Treasury Regulation or a Revenue Ruling, an Action on Decision is not an affirmative statement of Service position. It is not intended to serve as public guidance and may not be cited as precedent.

Actions on Decisions shall be relied upon within the Service only as conclusions applying the law to the facts in the particular case at the time the Action on Decision was issued. Caution should be exercised in extending the recommendation of the Action on Decision to similar cases where the facts are different. Moreover, the recommendation in the Action on Decision may be superseded by new legislation, regulations, rulings, cases, or Actions on Decisions.

Prior to 1991, the Service published acquiescence or nonacquiescence only in certain regular Tax Court opinions. The Service has expanded its acquiescence program to include other civil tax cases where guidance is determined to be helpful. Accordingly, the Service now may acquiesce or nonacquiesce in the holdings of memorandum Tax Court opinions, as well as those of the United States District Courts, Claims Court, and Circuit Courts of Appeal. Regardless of the court deciding the case, the recommendation of any Action on Decision will be published in the Internal Revenue Bulletin.

The recommendation in every Action on Decision will be summarized as acquiescence, acquiescence in result only, or nonacquiescence. Both “acquiescence” and “acquiescence in result only” mean that the Service accepts the holding of the court in a case and that the Service will follow it in disposing of cases with the same controlling facts. However, “acquiescence” indicates neither approval nor disapproval of the reasons assigned by the court for its conclusions; whereas, “acquiescence in result only” indicates disagreement or concern with some or all

of those reasons. “Nonacquiescence” signifies that, although no further review was sought, the Service does not agree with the holding of the court and, generally, will not follow the decision in disposing of cases involving other taxpayers. In reference to an opinion of a circuit court of appeals, a “nonacquiescence” indicates that the Service will not follow the holding on a nationwide basis. However, the Service will recognize the precedential impact of the opinion on cases arising within the venue of the deciding circuit.

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

The Commissioner does NOT ACQUIESCE in the following decision:

Keller v. Commissioner,¹
556 F.3d 1056 (9th Cir. 2009),
rev'g T.C. Memo 2006-131

¹ Nonacquiescence relating to the court of appeals' decision that when a deduction is disallowed in total, an associated penalty for overvaluing an asset is precluded.

Part III. Administrative, Procedural, and Miscellaneous

Postponement of Effective/Applicability Date of § 1.411(b)(5)–1(d)(1)(iii), (d)(1)(vi), and (d)(6)(i) of the Income Tax Regulations Relating to Interest Crediting Rates in Hybrid Pension Plans; Extension of Plan Amendment Deadline for § 411(a)(13) (other than § 411(a)(13)(A)) and § 411(b)(5); Special Timing Rule for Providing Section 204(h) Notice of Certain Amendments Changing the Interest Crediting Rate in Hybrid Pension Plans

Notice 2011–85

I. Purpose

This notice announces that the Treasury Department and the Internal Revenue Service intend to amend the final regulations under § 411(b)(5) of the Internal Revenue Code (Code), which sets forth special rules for statutory hybrid plans (as defined in § 1.411(a)(13)–1(d) of the Income Tax Regulations), to postpone the effective/applicability date of those provisions of § 1.411(b)(5)–1(d) that apply to plan years beginning on or after January 1, 2012. Section 1.411(b)(5)–1(d) sets forth rules under § 411(b)(5)(B)(i) relating to interest crediting rates under a cash balance or other statutory hybrid plan.

This notice also extends the deadline for adopting an interim or discretionary plan amendment under § 411(a)(13) (other than § 411(a)(13)(A)) and § 411(b)(5). In addition, this notice provides that the previously announced limited relief from the requirements of § 411(d)(6) for certain amendments made to comply with § 411(b)(5) is expected to apply to amendments made before the postponed effective date. The Service's review of an application for a determination letter submitted to the Service between February 1, 2011, and January 31, 2012, will not consider the final regulations under § 411(a)(13) (other than with respect to § 411(a)(13)(A))

and § 411(b)(5) unless the plan has been amended to satisfy those regulations.

Finally, in Announcement 2009–82, 2009–48 I.R.B. 720, the Treasury Department and the Service announced their intent to provide a special timing rule for providing section 204(h) notice (as defined in § 54.4980F–1, A–4(a) of the Excise Tax Regulations) for certain amendments to change the interest crediting rate under a statutory hybrid plan. The special timing rule only applies to amendments that were adopted after November 10, 2009, and on or before the last day of the first plan year that begins on or after January 1, 2009. This notice formally provides the special timing rule described in Announcement 2009–82.

II. Background

A. Sections 411(b)(5)(B)(i) and 411(d)(6)

Section 411(b)(5)(B)(i) provides that a statutory hybrid plan is treated as failing to satisfy the requirements of § 411(b)(1)(H), relating to continued accrual beyond normal retirement age, if the terms of the plan provide any interest credit (or an equivalent amount) for any plan year at a rate that is in excess of a market rate of return. Section 411(b)(5)(B)(i), which was added by section 701(b)(1) of the Pension Protection Act of 2006 (PPA '06), Pub. L. 109–280, is generally effective for plan years beginning after December 31, 2007.

Section 411(d)(6) provides generally that a plan does not satisfy § 401(a) if an amendment to the plan decreases a participant's accrued benefit. For this purpose, a plan amendment that has the effect of eliminating or reducing an early retirement benefit or a retirement-type subsidy or eliminating an optional form of benefit with respect to benefits attributable to service before the amendment is treated as reducing accrued benefits.

Section 1.411(d)–4, A–2(b)(2)(i), of the Income Tax Regulations provides that a plan may be amended to eliminate or reduce a section 411(d)(6) protected benefit, within the meaning of § 1.411(d)–4, A–1, if the following three requirements are met: the amendment constitutes timely compliance with a change in law affecting plan qualification; there is an exercise of

§ 7805(b) relief by the Commissioner; and the elimination or reduction of the section 411(d)(6) protected benefit is made only to the extent necessary to enable the plan to continue to satisfy the requirements for qualified plans.

Final and proposed regulations (2010 final and proposed hybrid plan regulations) under § 411(a)(13) and § 411(b)(5) were published in the **Federal Register** on October 19, 2010 (75 F.R. 64123 and 75 F.R. 64197). The 2010 final and proposed hybrid plan regulations provide guidance as to the market rate of return requirement under § 411(b)(5)(B)(i). Furthermore, section IV.C of the preamble to the 2010 proposed hybrid plan regulations provides that, after the 2010 proposed hybrid plan regulations are issued as final regulations, it is expected that the relief from the requirements of § 411(d)(6) will be granted pursuant to § 1.411(d)–4, A–2(b)(2)(i), for a plan amendment that eliminates or reduces a section 411(d)(6) protected benefit, provided that the amendment is adopted before those final regulations apply to the plan, and the elimination or reduction is made only to the extent necessary to enable the plan to meet the requirements of § 411(b)(5).

The 2010 final hybrid plan regulations generally apply to plan years beginning on or after January 1, 2011. However, § 1.411(b)(5)–1(d)(1)(iii), (d)(1)(vi), and (d)(6)(i) of those regulations apply to plan years beginning on or after January 1, 2012, which is also when the 2010 proposed hybrid plan regulations are proposed to be effective. Section 1.411(b)(5)–1(d)(1)(iii), (d)(1)(vi), and (d)(6)(i) provide that the regulations set forth the exclusive list of interest crediting rates and combinations of rates that satisfy the requirements of § 411(b)(5)(B)(i). The 2010 proposed hybrid plan regulations would amend § 1.411(b)(5)–1(d), in part by describing additional interest crediting rates that satisfy the requirements of § 411(b)(5)(B)(i).

B. Section 1107 of PPA '06

Section 1107 of PPA '06 provides that a plan amendment made pursuant to PPA '06 or regulations thereunder does not

have to be adopted until a specified date (the “section 1107 date”) that is the last day of the first plan year that begins on or after January 1, 2009 (or January 1, 2011, in the case of a governmental plan as defined in § 414(d)), provided that certain conditions are satisfied. Section 1107 of PPA '06 also provides that, except as provided by the Secretary, a plan will not fail to satisfy the anti-cutback requirements of § 411(d)(6) as a result of amendments made pursuant to PPA '06 or regulations thereunder that are adopted by the plan's section 1107 date, provided that the same conditions are satisfied. Generally, the conditions under section 1107 are satisfied if:

(1) the plan amendment is pursuant to a provision of PPA '06 or regulations thereunder;

(2) the plan amendment is adopted no later than the plan's section 1107 date; and

(3) the plan is operated as if the plan amendment were in effect during the period beginning on the effective date of the amendment and ending on the plan's section 1107 date or, if earlier, the date the amendment is adopted.

A plan is not treated as failing to be operated in accordance with its terms during the period described in (3), provided that the conditions in (1) through (3) are met.

C. Section 401(b)

Section 401(b) provides a period during which a plan may be amended retroactively to comply with the Code's qualification requirements. Section 1.401(b)-1 and Rev. Proc. 2007-44, 2007-2 C.B. 54, describe disqualifying provisions that may be amended retroactively and the remedial amendment period during which retroactive amendments may be adopted. Section 1.401(b)-1(f) gives the Commissioner the discretion to extend the remedial amendment period. Section 401(b) does not relieve a plan from the requirement to satisfy § 411(d)(6) with respect to an amendment.

Section 5.05 of Rev. Proc. 2007-44 provides that, when there are statutory or regulatory changes to the plan qualification requirements that will impact provisions of the written plan document, the adoption of an interim amendment will generally be required by the later of the end of the plan year in which the change is first effective or the due date of the employer's

tax return for the tax year that includes the date the change is first effective. Section 5.07(2) of Rev. Proc. 2007-44 provides an exception from the general deadline for adopting interim amendments. This section provides that the deadline for adopting an interim amendment pursuant to a provision of PPA '06 or regulations thereunder is the plan's section 1107 date. This is also the deadline for adopting a discretionary amendment (within the meaning of section 5.05(2) of Rev. Proc. 2007-44) pursuant to a provision of PPA '06 or regulations thereunder.

Notice 2009-97, 2009-52 I.R.B. 972, extends the deadline for adopting an interim or discretionary plan amendment under certain sections of the Code that were added or amended by PPA '06, including § 411(a)(13) (other than § 411(a)(13)(A)) and § 411(b)(5) to the last day of the first plan year that begins on or after January 1, 2010.

Notice 2010-77, 2010-51 I.R.B. 851, further extends the deadline for adopting an interim or discretionary plan amendment under § 411(a)(13) (other than § 411(a)(13)(A)) and § 411(b)(5) to the last day of the first plan year that begins on or after January 1, 2011. Notice 2010-77 also provides that, when the 2010 proposed hybrid plan regulations are finalized, it is expected that relief from the requirements of § 411(d)(6) will be granted for a plan amendment that eliminates or reduces a section 411(d)(6) protected benefit, provided that the amendment is adopted by the last day of the first plan year that begins on or after January 1, 2011, and the elimination or reduction is made only to the extent necessary to enable the plan to meet the requirements of § 411(b)(5).

Notice 2010-90, 2010-52 I.R.B. 909, which contains the 2010 Cumulative List of Changes in Plan Qualification Requirements (2010 Cumulative List) described in section 4 of Rev. Proc. 2007-44, provides that the Service will consider the 2010 final hybrid plan regulations in issuing a determination letter in the case of a statutory hybrid plan that is submitted to the Service between February 1, 2011, and January 31, 2012.

D. Section 4980F

Section 4980F imposes an excise tax when a plan administrator fails to provide

timely notice of a plan amendment that provides for a significant reduction in the rate of future benefit accrual (a “section 204(h) amendment”). Section 204(h) of the Employee Retirement Income Security Act (ERISA) contains parallel rules to § 4980F of the Code. Section 204(h) notice is notice that complies with § 4980F(e) of the Code and section 204(h)(1) of ERISA.

Final regulations under § 4980F of the Code were published in the **Federal Register** on November 24, 2009, 74 F.R. 61270. The regulations under § 4980F also apply for purposes of section 204(h) of ERISA, pursuant to section 101(a) of Reorganization Plan No. 4 of 1978, 29 U.S.C. 1001nt. Section 54.4980F-1, A-9(a), provides that section 204(h) notice must generally be provided at least 45 days before the effective date of the section 204(h) amendment. Under § 54.4980F-1, A-9(g), a section 204(h) amendment that is permitted to reduce section 411(d)(6) protected benefits, including an amendment that is permitted to be retroactively effective under section 1107 of PPA '06, is effective on the first date on which the plan is operated as if the amendment were in effect. Section 54.4980F-1, A-9(g)(4), authorizes the Commissioner to provide special timing rules under § 4980F, in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin, that the Commissioner determines to be necessary or appropriate regarding section 204(h) notice required for a section 204(h) amendment that applies to benefits accrued before the applicable amendment date but that does not violate § 411(d)(6).

III. Postponement of Effective/Applicability Date of § 1.411(b)(5)-1(d)(1)(iii), (d)(1)(vi), and (d)(6)(i)

The 2010 proposed hybrid plan regulations, when finalized, will apply for plan years that begin on or after a date to be specified in those regulations that is not earlier than January 1, 2013. In addition, the Treasury Department and the Service intend to amend the 2010 final hybrid plan regulations to postpone the effective/applicability date of § 1.411(b)(5)-1(d)(1)(iii), (d)(1)(vi), and (d)(6)(i) to match the applicability date that will apply to the proposed regulations when they are finalized. The

provisions of § 1.411(b)(5)–1(f)(2)(iii) regarding reliance before the regulatory effective date will continue to apply until § 1.411(b)(5)–1(d)(1)(iii), (d)(1)(vi), and (d)(6)(i) become effective. Until the 2010 final hybrid plan regulations are amended, plan sponsors may rely on this notice with respect to the postponement of the effective/applicability date of § 1.411(b)(5)–1(d)(1)(iii), (d)(1)(vi), and (d)(6)(i).

IV. Extension of Deadline for Adopting Amendments Under § 411(a)(13) (other than § 411(a)(13)(A)) and § 411(b)(5)

The anticipated § 411(d)(6) relief discussed in section IV.C of the preamble to the 2010 proposed hybrid plan regulations is expected to apply to eligible plan amendments adopted before those regulations, once finalized, apply to a plan. Consistent with the expected duration of § 411(d)(6) relief, the deadline for adopting an interim or discretionary plan amendment under § 411(a)(13) (other than § 411(a)(13)(A)) and § 411(b)(5) is extended to the last day of the first plan year preceding the plan year for which the 2010 proposed hybrid plan regulations, once finalized, apply to the plan. A plan must continue to satisfy the operational compliance requirements of section 1107 of PPA '06 as a condition of the extension of the deadline for adopting plan amendments provided by this notice.

As a result of the extension of time to amend for § 411(a)(13) (other than § 411(a)(13)(A)) and § 411(b)(5), the Service's review of an application for a determination letter submitted to the Service between February 1, 2011 and January 31, 2012, will not consider the 2010 final hybrid plan regulations (other than with respect to § 411(a)(13)(A)) unless the plan has been amended to satisfy those regulations. For this purpose, the Service will only consider those provisions of the regulations that are effective for plan years that begin on or after January 1, 2011.

V. Section 411(d)(6) Relief for Amendments Under § 411(b)(5)

When the 2010 proposed hybrid plan regulations are finalized, it is expected that relief from the requirements of § 411(d)(6) will be granted for a plan amendment that eliminates or reduces a section 411(d)(6) protected benefit, provided that the amendment is adopted by the last day of the first plan year preceding the plan year for which the 2010 proposed hybrid plan regulations, once finalized, apply to the plan, and the elimination or reduction is made only to the extent necessary to enable the plan to meet the requirements of § 411(b)(5).

VI. Special Timing Rule

This section VI provides a special timing rule for providing section 204(h) notice of a plan amendment that (1) changes an interest crediting rate under a statutory hybrid plan, (2) was adopted after November 10, 2009 (the date of issuance of Announcement 2009–82), and on or before the plan's section 1107 date, and (3) became effective not later than the first day of the first plan year that began on or after January 1, 2010. Pursuant to § 54.4980F–1, A–9(g)(4), section 204(h) notice with respect to such an amendment was permitted to be provided as late as 30 days after the date the amendment was effective. For this purpose, a plan amendment that changes an interest crediting rate under a statutory hybrid plan is effective on the first date on which the plan operationally implements the change or, if earlier, on the stated effective date of the amendment. This rule applies not only to the portion of the amendment that changes the plan's interest crediting rate, but also to any other change made by the amendment that may be necessary or appropriate in light of the change in the plan's interest crediting rate (such as any reduction in future principal credits under the plan).

Under this special rule, while the adoption date must have been after

November 10, 2009, and on or before the last day of the first plan year beginning on or after January 1, 2009, the date by which section 204(h) notice was required to be provided relates to the date the amendment was effective. Thus, for example, if an amendment changing the interest crediting rate with respect to future interest credits under a plan with a plan year beginning on October 1, 2009, and ending on September 30, 2010 (the plan's section 1107 date), was adopted on September 5, 2010, and became effective on September 30, 2010 (the plan's section 1107 date), section 204(h) notice of the amendment was permitted to be provided as late as October 30, 2010. However, if the plan had operationally implemented the change in interest crediting rate on a date earlier than September 30, 2010, then the special rule in this section VI would only apply to permit section 204(h) notice to have been provided as late as 30 days after that earlier date.

Because the special rule in this section VI only applies to an amendment that was adopted on or before the last day of the first plan year beginning on or after January 1, 2009, the special rule does not apply in the case of a plan amendment described in section IV that is adopted within the plan's remedial amendment period but after the plan's section 1107 date.

VII. Effect on Other Documents

Notices 2010–77 and 2010–90 are modified.

Drafting Information

The principal author of this notice is James P. Flannery of the Employee Plans, Tax Exempt and Government Entities Division. Questions regarding this notice may be sent via e-mail to retirementplanquestions@irs.gov.

Rev. Proc. 2011-49

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SECTION 1. PURPOSE

.01 Revenue Procedure 2005–16, 2005–1 C.B. 674, sets forth the procedures of the Internal Revenue Service (Service) for issuing opinion and advisory letters regarding the acceptability under §§ 401 and 403(a) of the Internal Revenue Code (the “Code”) of the form of pre-approved plans (that is, master and prototype (M&P) and volume submitter (VS) plans). This revenue procedure modifies and supersedes Rev. Proc. 2005–16. Section 3 describes the changes to Rev. Proc. 2005–16 in this revenue procedure.

.02 The second six-year remedial amendment cycle for pre-approved defined contribution plans began on February 1, 2011 and ends on January 31, 2017. This revenue procedure provides that as of February 1, 2011, the Service began accepting opinion and advisory letter applications for pre-approved defined contribution plans for the second six-year remedial amendment cycle. The 12-month applicable on-cycle submission period for non-mass submitter sponsors and practitioners, word-for-word identical adopters, and M&P minor modifier placeholder applications will end on January 31, 2012. Section 18.02(1) of Rev. Proc. 2007–44, 2007–2 C.B. 54, provides that the 9-month applicable on-cycle submission period for sponsors and practitioners maintaining defined contribution mass submitter plans will end on October 31, 2011. Section 23 of this revenue procedure extends the submission deadline to submit applications for opinion and advisory letters for sponsors and practitioners maintaining defined contribution mass submitter plans from October 31, 2011 to January 31, 2012. The 2010 Cumulative List of Changes in Plan Qualification Requirements, Notice 2010–90, 2010–2 C.B. 909 (2010 Cumulative List), is to be used by plan sponsors and practitioners submitting determination, opinion or advisory letter applications for plans during these periods. The Service will announce the deadline for timely adoption

by employers when the review of the pre-approved documents is close to being completed. Applications for opinion and advisory letters for pre-approved defined benefit plans will be accepted beginning February 1, 2013.¹ It is expected that the procedures for applying for opinion and advisory letters will be updated from time to time.

SECTION 2. BACKGROUND

.01 The procedures of the Service on the issuance of opinion and advisory letters regarding the acceptability of the form of pre-approved plans are set forth in Rev. Proc. 2005–16, as modified. This revenue procedure modifies and supersedes Rev. Proc. 2005–16.

.02 Revenue Procedure 2011–6, 2011–1 I.R.B. 195, sets forth the general procedures of the Service on the issuance of employee plans determination letters including determination letters for M&P and VS plans.

.03 Revenue Procedure 2007–44, (as modified by Rev. Proc. 2008–56, 2008–2 C.B. 826; Rev. Proc. 2009–36, 2009–2 C.B. 304; Notice 2009–97, 2009–2 C.B. 972; and Notice 2010–48, 2010–27 I.R.B. 9), describes a system of cyclical remedial amendment periods under the Code. Under this system, every individually designed plan qualified under § 401(a) or 403(a) has a regular, five-year remedial amendment cycle, staggered and spread over five-year periods, so that different categories of plans have different cycles. The effect of this system is that plan sponsors may apply for new determination letters generally only once every five years in order to continue to have a letter on which to rely. In addition, under this system every pre-approved plan generally has a regular, six-year remedial amendment cycle. Every pre-approved plan must be submitted to the Service for a new opinion or advisory letter every six years, during the applicable on-cycle submission period at the beginning of the plan’s six-year cycle. Pre-approved defined contribution

plans have a different six-year cycle than pre-approved defined benefit plans.

.04 Sponsors and practitioners of pre-approved defined contribution plans submitted their opinion and advisory letter applications to the Service from February 17, 2005 to January 31, 2006. The Service’s review took into account the requirements of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) and other items identified in Notice 2004–84, 2004–2 C.B. 1030 (2004 Cumulative List). Adopting employers of these pre-approved plans generally had until April 30, 2010, to adopt the plans and to apply for a determination letter.² Sponsors and practitioners of pre-approved defined benefit plans submitted their applications to the Service from February 1, 2007 to January 31, 2008. The Service’s review took into account the requirements of EGTRRA and other items identified in Notice 2007–3, 2007–1 C.B. 255 (2006 Cumulative List). Adopting employers of these pre-approved plans have until April 30, 2012 to adopt the plans and to apply for a determination letter.

.05 The 2010 Cumulative List consists of statutory, regulatory, and guidance changes to plan qualification requirements that will be considered by the Service in its review of the pre-approved defined contribution plans submitted during the applicable on-cycle submission period for the second six-year cycle, as well as single employer individually designed Cycle A plans. All items from the 2004 Cumulative List have been deleted from the 2010 Cumulative List. Section 23 of this revenue procedure provides further details on the scope of the 2010 Cumulative List.

SECTION 3. CHANGES TO REVENUE PROCEDURE 2005–16

In addition to minor revisions and clarifying language, the following changes have been made to Rev. Proc. 2005–16:

.01 The revenue procedure updates the purpose and background sections to summarize the second six-year remedial

¹ Applications for determination letters for Cycle A individually designed plans are accepted from February 1, 2011 to January 31, 2012.

² This deadline was extended by Notice 2010–48 for plans affected by certain federally declared disasters. In addition, certain plans such as Cycle E plans, Cycle D plans with a plan year ending on or after February 1, 2010, and governmental plans filing in Cycle E had a deadline of January 31, 2011, as explained in the Service’s Summer 2010 Retirement News for Employers.

amendment cycle for pre-approved defined contribution and defined benefit plans, and provides that as of February 1, 2011, the Service began accepting applications for pre-approved defined contribution plans. (sections 1 and 2)

.02 The revenue procedure makes the following changes to the M&P pre-approved plan program:

(1) The definition of M&P mass submitter is clarified to provide that a mass submitter may be counted as one of the 30 unaffiliated sponsors required for purposes of determining whether this sponsorship requirement is met without needing to submit a separate opinion letter application (Form 4461-B) on behalf of that mass submitter. The mass submitter may also be counted as a sponsor under the special rule for mass submitters that received a favorable opinion letter (submitting applications on behalf of 10 sponsors) under the Tax Reform Act of 1986, Public Law 99-514 (100 Stat. 2481) (TRA '86). (section 4.08)

(2) The National Sponsor category is deleted. (section 4)

(3) The effect of employer amendments on pre-approved plan status is clarified. (sections 5.01 and 5.02)

(4) The list of areas not covered by opinion letters is expanded to include: hybrid plans; plans with section 401(h) accounts; and plans under section 414(x). (section 6.03)

(5) The revenue procedure provides that opinion letters will now be issued for multiple employer plans, by deleting this category from the list of areas not covered by opinion letters. (section 6.03)

(6) The procedures for requesting opinion letters are revised to refer to the applicable Form 4461, Form 4461-A, Form 4461-B, and Form 8717 (and to specify what to include until these forms are revised), and to require that the sponsor's certification regarding interim amendments be submitted as part of the application. (sections 7.02 & 12.01)

(7) The description of the six-year remedial amendment cycle and other amendment requirements are updated to conform to the interim amendment requirements (including deleting former section 8.03 regarding a special one-year rule to amend following the issuance of a revenue ruling or other guidance). (section 8)

(8) Provisions are added to clarify that a pre-approved M&P plan becomes an individually designed plan if a request for an opinion letter is withdrawn, unless the employer adopts another pre-approved plan. (section 9.01)

(9) Provisions are added to clarify that an M&P mass submitter amending its plan should submit a restated plan during the applicable on-cycle submission period for the next six-year cycle, rather than submitting the amendments between submission periods and to state that the M&P mass submitter must provide copies of the amendments to sponsors who have adopted the plan. (section 12.04)

.03 The revenue procedure makes the following changes to the VS pre-approved plan program:

(1) Language is added to clarify that each adoption agreement counts as one specimen plan for purposes of the 30-employer requirement (or 10, if applicable). (section 13.05)

(2) The revenue procedure is clarified to provide that a VS mass submitter may be counted as one of the 30 unaffiliated sponsors for purposes of determining whether this sponsorship requirement is met without needing to submit a separate advisory letter application (Form 4461-B) on behalf of that mass submitter. (section 13.06)

(3) The provisions required for VS plans with an adoption agreement format are specified. (section 14.05)

(4) The revenue procedure removes the rule under which a VS practitioner's authority to amend on behalf of an adopting employer is conditioned on the plan being covered by a favorable determination letter (if the employer is required to obtain a determination letter in order to have reliance), and clarifies other provisions with respect to the practitioner's authority to amend on behalf of an adopting employer. (sections 15.03 and 15.05)

(5) The revenue procedure is clarified to provide that the responsibilities of a VS practitioner apply to VS practitioners generally, not just those practitioners authorized to adopt plan amendments on behalf of employers. (section 15.04)

(6) The list of areas not covered by advisory letters is expanded to include: hybrid plans; plans with section 401(h) accounts; and plans under section 414(x). (section 16)

(7) The procedures for requesting advisory letters for VS plans are revised to refer to the applicable Form 4461, Form 4461-A, Form 4461-B, and Form 8717 (and to specify what to include until these forms are revised) and to require that the practitioner's and mass submitter's certification regarding interim amendments be submitted as part of the application (sections 17 and 18)

(8) The procedures for requesting advisory letters for VS plans are revised to clarify when separate specimen plans and applications are required for different categories of plans and to specify that a governmental plan (*i.e.*, a plan described in § 414(d)) is one of the categories of plans that requires a separate specimen plan. (section 17)

.04 The revenue procedure makes the following changes applicable to all pre-approved plans:

(1) The revenue procedure is modified to: (a) clarify the types of employer modifications and amendments to a plan that will not cause the plan to fail to be identical to an approved M&P or VS plan; (b) provide that an employer or sponsor may adopt interim or discretionary amendments for which the remedial amendment cycle ends later than the remedial amendment cycle to which the opinion or advisory letter applies; (c) provide that an employer may adopt model or sample amendments that the Service has indicated will not cause the plan to be treated as an individually designed plan; and (d) delete provisions under Rev. Proc. 2005-16 that provided that the employer could modify or amend the plan to correct typographical errors and/or cross references. (section 19.03)

(2) The address to which applications for opinion and advisory letters should be submitted is updated. (section 20)

(3) The revenue procedure is modified to clarify the circumstances under which an opinion or advisory letter is nontransferable to another entity. (section 20.09)

(4) The revenue procedure is modified to clarify that plans must be amended to comply with statutory and regulatory changes pursuant to Rev. Proc. 2007-44 and to clarify that the amendments do not change the applicable on-cycle submission period for the six-year cycle during which sponsors or practitioners must request opinion or advisory letters. The

revenue procedure further provides that interim amendments adopted by a pre-approved sponsor or practitioner on behalf of adopting employers must be provided to the adopting employers, and the date of the adoption must be provided with the amendments. It also states that the Service may in its discretion request copies of interim amendments that the sponsor or practitioner has adopted on behalf of all adopting employers. (section 21.01)

(5) Rules for submitting word-for-word identical plans and off-cycle filings have been clarified and updated. (section 21.03)

(6) Reasons for which an advisory or opinion letter may be revoked are clarified. (section 22)

(7) The revenue procedure describes the applicable on-cycle submission period for the second six-year cycle and extends the deadline to submit applications for opinion and advisory letters for sponsors and practitioners maintaining defined contribution mass submitter plans from October 31, 2011 to January 31, 2012. It also updates the description of the remedial amendment period, and provides guidance for the next cycle. (sections 23 and 24)

PART I — M&P PLANS

SECTION 4. DEFINITIONS

.01 Master Plan — A “master plan” is a plan (including a plan covering self-employed individuals) that is made available by a sponsor for adoption by employers and for which a single funding medium (for example, a trust or custodial account) is established, as part of the plan, for the joint use of all adopting employers. A master plan consists of a basic plan document, an adoption agreement, and, unless included in the basic plan document, a trust or custodial account document.

.02 Prototype Plan — A “prototype plan” is a plan (including a plan covering self-employed individuals) that is made available by a sponsor for adoption by employers and under which a separate funding medium is established for each adopting employer. A prototype plan consists of a basic plan document, an adoption agreement, and, unless the basic plan document incorporates a trust or custodial account agreement the provisions of which

are applicable to all adopting employers, a trust or custodial account document.

.03 Basic Plan Document — A “basic plan document” is the portion of a plan containing all of the non-elective provisions applicable to all adopting employers. No options (including blanks to be completed) may be provided in the basic plan document, except as provided in section 12.03(1) of this revenue procedure regarding flexible plans.

.04 Adoption Agreement — An “adoption agreement” is the portion of the plan containing the options that may be selected by an adopting employer.

.05 Trust or Custodial Account Document (Note: This definition does not apply if the basic plan document includes a trust or custodial account agreement the provisions of which apply to all adopting employers.) —

(1) A “trust or custodial account document” is the portion of an M&P plan that contains the trust agreement or custodial account agreement and includes provisions covering such matters as the powers and duties of trustees, investment authority, and the kinds of investments that may be made.

(2) Except as provided in section 5.09 and this section 4.05, all provisions of the trust or custodial account document must be applicable to all adopting employers of that trust, and no options (including blanks to be completed) may be provided in the trust or custodial account document.

(3) With respect to prototype plans, a sponsor or mass submitter may provide up to 10 separate trust or custodial account documents that are intended for use with any single basic plan document. Notwithstanding the preceding sentence, a sponsor or mass submitter may submit more than 10 separate trust or custodial account documents intended for use with any single basic plan document, provided that an additional user fee is submitted for each trust or custodial account document in excess of 10.

(4) As provided in section 5.09, a sponsor or M&P mass submitter may provide a trust or custodial account document, designated for use only by adopters of nonstandardized plans, that provides for blanks to be completed with respect to administrative provisions of the trust or custodial account agreement.

(5) Any trust or custodial account document (including one to be used by adopters of standardized plans) may provide for blanks to be completed that merely enable the adopting employer to specify the names of the plan, employer, trustee or custodian, plan administrator and other fiduciaries, the trust year, and the name of any pooled trust in which the plan’s trust will participate.

.06 Opinion Letter — An “opinion letter” is a written statement issued by the Service to a sponsor or M&P mass submitter as to the acceptability of the form of an M&P plan under § 401(a) or 403(a), and, in the case of a master plan, the acceptability of the master trust under § 501(a).

.07 Sponsor — A “sponsor” is any person that (1) has an established place of business in the United States where it is accessible during every business day and (2) represents to the Service that it has at least 30 employer-clients each of which is reasonably expected to adopt the sponsor’s basic plan document. The deadline for timely adoption will be announced by the Service in future guidance.

A sponsor may request opinion letters for any number of basic plan documents and adoption agreements provided the 30-employer requirement is met with respect to at least one basic plan document. The Service reserves the right at any time to request from the sponsor a list of the employers that have adopted or are expected to adopt the sponsor’s M&P plans, including the employers’ business addresses and employer identification numbers.

Notwithstanding the preceding two paragraphs, any person that has an established place of business in the United States where it is accessible during every business day may sponsor a plan as a word-for-word identical adopter or minor modifier adopter of a plan of an M&P mass submitter, regardless of the number of employers that are expected to adopt the plan.

By submitting an application for an opinion letter for an M&P plan under this revenue procedure (or by having an application filed on its behalf by an M&P mass submitter), a person represents to the Service that it is a sponsor, as defined in this section 4.07, and agrees to comply with any requirements imposed on sponsors by this revenue procedure. Failure to comply with these requirements may result in the

loss of eligibility to sponsor M&P plans and the revocation of opinion letters that have been issued to the sponsor.

.08 M&P Mass Submitter — An “M&P mass submitter” is any person that (1) has an established place of business in the United States where it is accessible during every business day and (2) submits opinion letter applications on behalf of at least 30 unaffiliated sponsors each of which is sponsoring, on a word-for-word identical basis, the same basic plan document. A flexible plan (as defined in section 12.03(1)) that is adopted by a sponsor will be considered a word-for-word identical plan. For purposes of determining whether 30 unaffiliated sponsors sponsor, on a word for word basis, the same basic plan document, the mass submitter is treated as an unaffiliated sponsor. For purposes of this definition, affiliation is determined under § 414(b) and (c). Additionally, the following will be considered to be affiliated: any law firm, accounting firm, consulting firm, etc., with its partners, members, associates, etc. An M&P mass submitter will be treated as an M&P mass submitter with respect to all of its M&P plans provided the 30 unaffiliated sponsor requirement is met with respect to at least one basic plan document.

Notwithstanding the preceding paragraph, any person that received a favorable TRA '86 opinion letter for a plan as an M&P mass submitter under Rev. Proc. 89-9, 1989-1 C.B. 780, will continue to be treated as an M&P mass submitter with respect to all of its M&P plans if it submits applications on behalf of at least 10 sponsors (regardless of affiliation), each of which is sponsoring the same basic plan document on a word-for-word identical basis. For purposes of determining whether 10 sponsors sponsor the same basic plan document on a word-for-word identical basis, the mass submitter is counted as one of the 10 sponsors.

.09 Standardized Plan — A “standardized plan” is an M&P plan that meets the following requirements:

(1) The provisions governing eligibility and participation are such that the plan by its terms benefits all employees described in section 5.13 (regardless of whether any employer is treated as operating separate lines of business under § 414(r)) except those that may be excluded under § 410(a)(1) or (b)(3). The adoption agree-

ment may provide options as to whether some or all of the employees described in § 410(a)(1) or (b)(3) are to be excluded, provided that the criteria for excluding employees described in § 410(a)(1) or (b)(3) apply uniformly to all employees. A standardized plan generally may not deny an accrual or allocation to an employee eligible to participate merely because the employee is not an active employee on the last day of the plan year or has failed to complete a specified number of hours of service during the year. However, the plan may deny an allocation or accrual to an employee who is eligible to participate if the employee terminates service during the plan year with not more than 500 hours of service and is not an active employee on the last day of the plan year.

(2) The eligibility requirements under the plan are not more favorable for highly compensated employees (as defined in § 414(q)) than for other employees.

(3) Under the plan, allocations, in the case of a defined contribution plan (other than any cash or deferred arrangement part of the plan), or benefits, in the case of a defined benefit plan, are determined on the basis of total compensation. For this purpose, total compensation means a definition of compensation that includes all compensation within the meaning of § 415(c)(3) and excludes all other compensation, or that otherwise satisfies § 414(s) under § 1.414(s)-1(c) of the Income Tax Regulations.

(4) Unless the plan is a target benefit plan or a § 401(k) and/or § 401(m) plan, the plan must, by its terms, satisfy one of the design-based safe harbors described in § 1.401(a)(4)-2(b)(2) (taking into account § 1.401(a)(4)-2(b)(4)) or in § 1.401(a)(4)-3(b)(3), (4), or (5) (taking into account § 1.401(a)(4)-3(b)(6)).

(5) All benefits, rights, and features under the plan (other than those, if any, that have been prospectively eliminated) are currently available to all employees benefiting under the plan.

(6) Any past service credit under the plan must meet the safe harbor in § 1.401(a)(4)-5(a)(3).

(7) Any hardship distribution must satisfy the safe harbor standards in the regulations under § 401(k).

A plan will not fail to satisfy the coverage requirement for standardized plans merely because the plan provides, either

as the result of an elective provision or by default in the absence of an election to the contrary, that individuals who become employees, within the meaning of section 5.13, as the result of a “§ 410(b)(6)(C) transaction” will be excluded from eligibility to participate in the plan during the period beginning on the date of the transaction and ending on a date that is not later than the last day of the first plan year beginning after the date of the transaction. A “§ 410(b)(6)(C) transaction” is an asset or stock acquisition, merger, or other similar transaction involving a change in the employer of the employees of a trade or business.

.10 Nonstandardized Plan — A “non-standardized plan” is an M&P plan that is not a standardized plan.

SECTION 5. PROVISIONS REQUIRED IN M&P PLANS

.01 Sponsor Amendments — M&P plans must provide a procedure for sponsor amendment, so that changes in the Code, regulations, revenue rulings, other statements published by the Service, or corrections of prior approved plans may be applied to all employers who have adopted the plan. Sponsors must make reasonable and diligent efforts to ensure that adopting employers of the sponsor’s M&P plan have actually received and are aware of all plan amendments and that such employers complete and sign new adoption agreements when necessary. See section 5.11. The provision for sponsor amendment must provide that, for purposes of reliance on the opinion letter, the sponsor will no longer have the authority to amend the plan on behalf of the adopting employer as of the date of the adoption of an employer amendment to the plan to incorporate a type of plan not allowable in the M&P program described in section 6.03 (e.g., the addition of an ESOP) or as of the date the Service notifies the sponsor that the plan is being treated as an individually designed plan pursuant to section 24.03. Failure to comply with this requirement may result in the loss of eligibility to sponsor M&P plans and the revocation of opinion letters that have been issued to the sponsor.

.02 Employer Amendments — An employer that amends any provision of an approved M&P plan including its adoption agreement (other than to change the choice

of options selected, if the plan permits or contemplates such a change) or an employer that chooses to discontinue participation in a plan as amended by its sponsor without substituting another approved M&P plan is considered to have adopted an individually designed plan. However, this rule does not apply in the case of amendments permitted under sections 5.06 and 5.09 and sample or model amendments published by the Service that specifically provide that their adoption by an adopter of an M&P plan will not cause such plan to be treated as individually designed. Additionally, a plan will not be treated as individually designed if a closing agreement under the Audit Closing Agreement Program or a compliance statement under the Voluntary Correction Program has been issued with respect to the employer's plan with regard to the amendment.³ Also see section 19.03 regarding the effect of employer amendments on an employer's ability to rely on an opinion letter, and section 24 with respect to applicable remedial amendment periods. An employer that amends an M&P plan because of a waiver of the minimum funding requirement under § 412(d) will also be considered to have an individually designed plan. The procedures stated in Rev. Proc. 2011-6 relating to the issuance of determination letters for individually designed plans will then apply to the plan as adopted by the employer.

.03 Compensation Requirements in Nonstandardized Plans — Each nonstandardized M&P plan must give the adopting employer the option to select total compensation as the compensation to be used in determining allocations or benefits. For this purpose, total compensation means a definition that includes all compensation within the meaning of § 415(c)(3) and excludes all other compensation or that otherwise satisfies § 414(s) under § 1.414(s)-1(c).

.04 Automatic or Optional Safe Harbor Provisions in Nonstandardized Plans — Each nonstandardized M&P plan must automatically or by option allow the adopting employer to satisfy one of the design-based safe harbors described in § 1.401(a)(4)-2(b)(2) or in § 1.401(a)(4)-3(b)(3), (4), and (5). A non-

standardized defined contribution plan or defined benefit plan is permitted to include allocation or benefit formulas that must be general tested under § 1.401(a)(4)-2(c) or 3(c) or cross-tested under § 1.401(a)(4)-8.

.05 Anti-Cutback Provisions — M&P plans must specifically provide for the protection provided under § 411(a)(10) and (d)(6), to the extent required, in the event that the employer amends the plan in any manner, such as by revising the options selected in the adoption agreement or by adopting a new M&P plan. An M&P sponsor may not amend its plan in a manner that could result in the elimination of a benefit to the extent the benefit is required to be protected under § 411(d)(6) with respect to the plan of any adopting employer, unless permitted to do so under §§ 1.401(a)-4 and 1.411(d)-4. In addition, an M&P plan that does not contain vesting rules for all years that are at least as favorable to participants as those provided in § 416(b), must specifically provide that any vesting that occurs while the plan is top-heavy will not be cut back if the plan ceases to be top-heavy.

.06 Adopting Employer Modification to Satisfy §§ 415 and 416 — M&P plans must provide that plan provisions may be amended by plan language completed by the employer in the adoption agreement where such overriding language is necessary to satisfy § 415 or 416 because of the required aggregation of multiple plans under these sections. Generally, a space should be provided in the adoption agreement with instructions for the employer to add such language as necessary to satisfy §§ 415 and 416. In addition, a space must be provided in the adoption agreement for the employer to specify the interest rate and mortality tables used for purposes of establishing the present value of accrued benefits in order to compute the top-heavy ratio under § 416. Such a space must be included in both defined contribution plans and defined benefit plans.

.07 Defined Contribution § 415 Aggregation — Plan language must be incorporated that aggregates all defined contribution M&P plans to satisfy § 415(c) and (f).

.08 Top-heavy Requirements — Each plan must either provide that all of the additional requirements applicable to top-heavy plans (described in § 416) apply

at all times or provide that such requirements apply automatically if the plan is top-heavy regardless of how the adoption agreement is completed. In any case where the latter option is chosen, all of the requirements for determining whether the plan is top-heavy must be included in the plan. (See Questions T-35 and T-36 of § 1.416-1.)

.09 Adopting Employer Modification of Trust or Custodial Account Document — An employer that adopts a nonstandardized M&P plan will not be considered to have an individually designed plan merely because the employer amends administrative provisions of the trust or custodial account document (such as provisions relating to investments and the duties of trustees), provided the amended provisions are not in conflict with any other provision of the plan and do not cause the plan to fail to qualify under § 401(a). For this purpose, an amendment includes modification of the language of the trust or custodial account document and the addition of overriding language.

An employer that adopts a standardized M&P plan may amend the trust or custodial account document, provided such amendment merely involves the specification of the names of the plan, employer, trustee or custodian, plan administrator and other fiduciaries, the trust year, or the name of any pooled trust in which the plan's trust will participate.

.10 Provisions Required in Adoption Agreements Regarding Reliance — The adoption agreement of every nonstandardized M&P plan must include, in close proximity to the signature blank, a statement that describes the limitations on employer reliance on an opinion letter without a determination letter and the circumstances under which an employer will have no reliance without a determination letter. See sections 19.02 and 19.03. Standardized plans must also include a similar statement in the adoption agreement that, under the circumstances described in section 19.01, the adopting employer may not rely on the opinion letter issued by the Service, but must apply for a determination letter to have reliance.

.11 Other Provisions Required in Adoption Agreements — Each M&P plan must

³ See Rev.Proc. 2008-50, 2008-2 C.B. 464, and Memorandum for Directors, EP Examinations and EP Rulings & Agreements, dated March 11, 2009, as posted http://www.irs.gov/pub/irs-tege/corrective_amendments.pdf.

contain a dated employer signature line. The employer must sign the adoption agreement when it first adopts the plan and must complete and sign a new adoption agreement if the plan has been restated. In addition, the employer must complete a new signature page if it modifies any prior elections or makes new elections in its adoption agreement. The signature requirement may be satisfied by an electronic signature that reliably authenticates and verifies the adoption of the adoption agreement, or restatement, amendment or modification thereof, by the employer. The adoption agreement must state that it is to be used with one and only one specific basic plan document. In addition, the adoption agreement must contain a cautionary statement to the effect that the failure to properly fill out the adoption agreement may result in failure of the plan to qualify under § 401(a) or 403(a). The adoption agreement must also contain a statement that provides that the sponsor will inform the adopting employer of any amendments made to the plan or of the discontinuance or abandonment of the plan.

.12 Sponsor Telephone Numbers — M&P plan adoption agreements must include the sponsor's name, address, and telephone number (or a space for the address and telephone number of the sponsor's authorized representative) for inquiries by adopting employers regarding the adoption of the plan, the meaning of plan provisions, or the effect of the opinion letter.

.13 Definition of Employee / § 414(b), (c), (m), (n), and (o) — Each M&P plan must include a definition of employee as any employee of the employer maintaining the plan or any other employer aggregated under § 414(b), (c), (m), or (o) and the regulations thereunder. The definition of employee shall also include any individual deemed under § 414(n) (or under regulations under § 414(o)) to be an employee of any employer described in the previous sentence.

.14 Definition of Service / § 414(b), (c), (m), (n), and (o) — Each M&P plan must specifically credit all service with any employer aggregated under § 414(b), (c), (m) or (o) and the regulations thereunder as service with the employer maintaining the

plan. In addition, in the case of an individual deemed under § 414(n) (or under regulations under § 414(o)) to be the employee of any employer described in the previous sentence, service with such employer must be credited to such individual.

SECTION 6. OPINION LETTERS — SCOPE

.01 General Limits on Opinion Letters — Opinion letters will be issued only to sponsors or M&P mass submitters. Opinion letters constitute determinations as to the qualification of the plans as adopted by particular employers only under the circumstances, and to the extent, described in section 19. In the case of prototype plans, opinion letters do not constitute rulings or determinations as to the exempt status of related trusts or custodial accounts.

.02 Nonapplicability of this Revenue Procedure to IRAs (including traditional IRAs, Roth IRAs, SEPS, and Simple IRAs) and section 403(b) Plans — Opinion letters will not be issued under this revenue procedure for prototype plans intended to meet the requirements for individual retirement arrangements under § 408 or for § 403(b) plans (see Rev. Proc. 87-50, 1987-2 C.B. 647; Rev. Proc. 97-29, 1997-1 C.B. 698; Rev. Proc. 98-59, 1998-2 C.B. 727; and Rev. Proc. 2010-48, 2010-50 I.R.B. 828).

.03 Areas Not Covered by Opinion Letters — Opinion letters will not be issued for:

- (1) Multiemployer plans;
- (2) Union plans (this does not preclude an M&P plan from covering employees of the employer who are included in a unit covered by a collective bargaining agreement or the adoption of an M&P plan pursuant to such agreement as a single-employer plan that covers only employees of the employer);
- (3) Stock bonus plans;
- (4) Employee stock ownership plans;
- (5) Pooled fund arrangements contemplated by Rev. Rul. 81-100, 1981-1 C.B. 326 (as modified by Rev. Rul. 2004-67, 2004-2 C.B. 28, and Rev. Rul. 2011-1, 2011-2 I.R.B. 251);
- (6) Applicable defined benefit plans within the meaning of § 411(a)(13)(C) (Hybrid Plans);

(7) Plans described in § 414(k) (relating to a defined benefit plan that provides a benefit derived from employer contributions that is based partly on the balance of the separate account of a participant);

(8) Target benefit plans, other than plans that, by their terms, satisfy each of the safe harbor requirements described in § 1.401(a)(4)-8(b)(3)(i), as well as the additional rules in § 1.401(a)(4)-8(b)(3)(ii) through (vii);

(9) Defined benefit plans that provide for employee contributions;

(10) Plans that would not satisfy the qualification requirements except as governmental plans as described in § 414(d);

(11) Church plans described in § 414(e) that have not made the election provided by § 410(d);

(12) Plans under which the § 415 limitations are incorporated by reference;

(13) Plans that incorporate the ADP test under § 401(k)(3) or the ACP test under § 401(m)(2) by reference;

(14) Section 401(k) plans (standardized and nonstandardized) that provide for hardship distributions under circumstances other than those described in the safe harbor standards in the regulations under § 401(k);

(15) Fully-insured § 412(e)(3) plans, other than plans that, by their terms, satisfy the safe harbor in § 1.401(a)(4)-3(b)(5);

(16) Plans that fail to contain a provision reflecting the requirements of § 414(u) (see Rev. Proc. 96-49, 1996-2 C.B. 369);

(17) Plans that include so-called fail-safe provisions for § 401(a)(4) or the average benefit test under § 410(b);

(18) Plans that include blanks or fill-in provisions for the employer to complete, unless the provisions have parameters that preclude the employer from completing the provisions in a manner that could violate the qualification requirements;

(19) Plans designed to satisfy the provisions of § 105;

(20) Plans that include § 401(h) accounts;

(21) Eligible combined plans within the meaning of § 414(x)(2).

The Service may, in its discretion, decline to issue opinion letters for other types of plans not described in this section 6.03.

SECTION 7. OPINION LETTER APPLICATIONS — INSTRUCTIONS TO SPONSORS

.01 Employee Plans Rulings and Agreements Issues Opinion Letters — Employee Plans Rulings and Agreements will, upon the request of a sponsor, issue an opinion letter as to the acceptability of the form of the sponsor's M&P plan and any related trust or custodial account documents under §§ 401(a), 403(a), and 501(a).

.02 Procedure for Requesting Opinion Letters — A request for an opinion letter relating to an M&P plan must be submitted on the current version of Form 4461, *Application for Approval of Master or Prototype or Volume Submitter Defined Contribution Plans*, Form 4461-A, *Application for Approval of Master or Prototype or Volume Submitter Defined Benefit Plans*, or Form 4461-B, *Application for Approval of Master or Prototype or Volume Submitter Plans Mass Submitter Adopting Sponsor or Practitioner*, as appropriate. The Service intends to revise Forms 4461, 4461-A and 4461-B. Until the forms have been revised, a request for an opinion letter should be accompanied by the appropriate form with the following items, if applicable, completed:

(1) Form 4461 — Complete Part 1, items 1–9, and Attachment 1 which can be accessed at http://www.irs.gov/pub/irs-tege/form4461_attachment.pdf.

(2) Form 4461-B — Complete in its entirety.

(3) Form 4461-A (relates to DB plans) — Complete Part 1, and an attachment that the Service will provide at a future date.

These forms may be downloaded from the Internet at the following address: <http://www.irs.gov>. All information on the first page of the application must be typed. The request must be sent to the address in section 20 of this revenue procedure. The M&P request must be accompanied by the required user fee submitted with Form 8717, *User Fee for Employee Plan Determination, Opinion, and Advisory Letter Request*, and a signed certification that all necessary amendments required by the Service to retain the qualified status of the M&P sponsor's plan have been made and communicated to all adopting employers.⁴

See http://www.irs.gov/pub/irs-tege/cert_interim_amendments.pdf for certification.

.03 Expediting Review of Substantially Identical Plans — The Service reserves the right to review applications in any order that will expedite the processing of opinion letter applications, subject to section 21.03. To expedite the review of substantially identical plans that are not mass submitter plans, the Service encourages plan drafters and sponsors to include with each opinion letter application, where it is appropriate, a cover letter setting forth the following information:

(1) The name and file folder number (if available) of the plan that, for review purposes, the plan drafter designates as the “lead plan” (including the name and EIN of the sponsor);

(2) A list of all plans written by the plan drafter that are substantially identical to the lead plan (including the information described in (1) above);

(3) A description of each place where the plan for which the application is being submitted is not word-for-word identical to the language of the lead plan, including an explanation of the purpose and effect of each such difference; and

(4) A certification, made under penalty of perjury by the plan drafter, that the information described in (3) above is true and complete.

If the sponsor or plan drafter is aware that a lead plan or any substantially identical plan has been assigned for review to a specialist, the cover letter should also indicate the name of the specialist, if possible. To the extent feasible, lead plans and substantially identical plans should be submitted together. The Service will regard the information and certification described in (3) and (4) above as a material representation for purposes of issuing an opinion letter.

.04 Separate Applications Required for Different Categories of M&P Plans / Use of Same Basic Plan Document by Multiple Plans — An M&P plan shall not contain any combination of profit-sharing, money purchase (other than target benefit), target benefit, integrated (*i.e.*, provide for permitted disparity) defined benefit, or nonintegrated defined benefit plan features. How-

ever, separate defined contribution plans may have the same basic plan document and separate defined benefit plans may have the same basic plan document, but the provisions of the basic plan document must be identical for all plans using that document (that is, no elective or optional features). For example, a sponsor may submit four plans with respect to a given defined benefit basic plan document: integrated standardized and nonstandardized plans; and nonintegrated standardized and nonstandardized plans. A sponsor may also use one defined contribution basic plan document for a money purchase plan, a target benefit plan, and a profit-sharing plan. One basic plan document may not be used with respect to both defined benefit and defined contribution plans. A separate adoption agreement and completed application form must be submitted with respect to each defined benefit plan and each defined contribution plan. In the case of a simultaneous submission of plans using the same basic plan document, only one copy of the basic plan document should be provided. If the requests are not simultaneous, the sponsor must submit a copy of the basic plan document with each submission and include a cover letter identifying the original submission. The number of such basic plan document must remain the same as in the prior submission.

.05 Sample Language — A Listing of Required Modifications (LRM) containing sample language to be used in drafting M&P plans is available from Employee Plans Rulings and Agreements. Such language is not automatically required in M&P plans but should be used as a guide in drafting such plans. To expedite the review of their plans, sponsors are encouraged to use LRM language and to identify where such language is being used in their plan documents. LRMs may be downloaded from the Internet at the following address: <http://www.irs.gov/retirement/article/0,,id=97182,00.html>.

.06 Material Furnished to Adopting Employers — A sponsor must furnish each adopting employer with a copy of the approved plan, copies of any subsequent amendments, and the most recently issued opinion letter from the Service.

⁴ Form 8717, *User Fee for Employee Plan Determination, Opinion and Advisory Letter Request*, has not been updated to reflect new user fees. Until the form is updated, the current Form 8717 (rev. May 2009) should continue to be used. However, submissions must include the correct user fees as noted in Rev. Proc. 2011–8, 2011–1 I.R.B. 237, User fees for employee plans and exempt organizations, as modified by Announcement 2011–8, 2011–5 I.R.B. 446.

.07 Timing of Issuance of Opinion Letters — The Service intends to issue opinion letters to M&P mass submitters and sponsors (as well as advisory letters to VS mass submitters and practitioners) at approximately the same time within the applicable six-year cycle. In the interim, the Service will send an email to the applicable M&P or VS mass submitter, sponsor, or practitioner, if the Service determines that the plan appears to be in full compliance with the applicable qualification requirements, based on the submissions and the completed review. Notwithstanding the preceding sentence, this email only provides assurance that the Service believes the plan appears to meet the applicable qualification requirements under review as of the date of the email. This email correspondence is for the convenience of the applicable sponsor, practitioner, or mass submitter, but does not constitute an official opinion or advisory letter. Until issuance of the official opinion or advisory letter, no reliance exists. In addition, the Service reserves the right to require changes after the email is sent, in its sole discretion.

SECTION 8. APPROVED PLANS — MAINTENANCE OF APPROVED STATUS

.01 Cumulative List in Six-Year Cycle — Rev. Proc. 2007–44 provides that sponsors of pre-approved M&P plans must submit requests for opinion letters during the applicable on-cycle submission period for a six-year cycle in order to continue to rely on their opinion letters. Sponsors may apply for opinion letters at other times, but these filings will be “off-cycle” filings as described in section 21.03 of this revenue procedure. The Service will review the plans that have been submitted during the applicable on-cycle submission period for a six-year cycle taking into account the applicable Cumulative List that identifies changes in the qualification requirements of the Code as well as items of published guidance relating to the plan qualification requirements, such as regulations and revenue rulings. However, in order to be qualified, a plan must comply in operation with all relevant qualification requirements, not just those on the applicable Cumulative List.

.02 Subsequent Required Interim Amendments — Except as otherwise pro-

vided in future guidance, in the event of changes in qualification requirements resulting from future guidance, or other regulatory or statutory changes that were not taken into account in issuing the opinion letter, an approved M&P plan must be amended by the sponsor and, if necessary, the employer, to retain its approved status if any provisions therein fail to meet the requirements of law, regulations, or other issuances and guidelines affecting qualification. See section 5.01 of Rev. Proc. 2007–44 regarding the time by which such amendments must be adopted. Failure to so amend could result in the loss of a plan’s qualified status. However, this does not change the applicable on-cycle submission period for the six-year cycle when sponsors must request opinion letters, which will still occur only once every six years. Sponsors are required to make reasonable and diligent efforts to ensure that each employer that, to the best of the sponsor’s knowledge, continues to maintain the plan as an M&P plan amends its plan when necessary.

The plan must operationally comply with any changes in qualification requirements and the terms of the plan as ultimately amended to reflect the changes.

.03 Loss of Qualified Status — If a sponsor reasonably concludes that an employer’s M&P plan may no longer be a qualified plan and the sponsor does not or cannot submit a request to correct the qualification failure under the Employee Plans Compliance Resolution System (EPCRS), it is incumbent on the sponsor to notify the employer that the plan may no longer be qualified, advise the employer that adverse tax consequences may result from loss of the plan’s qualified status, and inform the employer about the availability of EPCRS. See Rev. Proc. 2008–50.

SECTION 9. WITHDRAWAL OF REQUESTS

.01 Notification and Effect — A sponsor may withdraw its request for an opinion letter at any time prior to the issuance of such letter by notifying EP Rulings and Agreements in writing of such withdrawal, at the address provided in section 20.01. The sponsor must also notify each employer who adopted the plan that the request has been withdrawn. The plan of such an employer will become an individ-

ually designed plan unless the employer adopts another pre-approved plan. See Rev. Proc. 2007–44.

.02 Service Retains Information — Even though a request is withdrawn, EP Rulings and Agreements will retain all correspondence and documents associated with that request and will not return them to the sponsor. EP Rulings and Agreements may furnish its views concerning the qualified status of the plan to EP Examinations, which has audit jurisdiction over the returns of any employers that have adopted the plan.

SECTION 10. ABANDONED PLANS

.01 Notification to the Service — A sponsor must notify EP Rulings and Agreements in writing if an approved M&P plan is no longer used by any employer and the sponsor no longer intends to offer the plan for adoption. Such written notification must be sent to the address in section 20 and must refer to the file folder number appearing on the latest opinion letter issued.

.02 Notification to Employers — A sponsor that intends to abandon an approved M&P plan that is in use by any adopting employer must inform each adopting employer that the form of the plan has been terminated, and that the employer’s plan will become an individually designed plan (unless the employer adopts another pre-approved plan). After so informing all adopting employers, the sponsor should notify EP Rulings and Agreements in accordance with subsection 10.01 above.

SECTION 11. RECORD KEEPING REQUIREMENTS

.01 Filing of Opinion Letter Application Constitutes Agreement to Comply with Record Keeping Requirements — By submitting an application for an opinion letter under this revenue procedure (or by having an application filed on its behalf by an M&P mass submitter), an M&P plan sponsor agrees, as provided in section 4.07, to comply with the requirements imposed on the sponsor by this revenue procedure, including the record keeping requirements of this section. Failure to comply with the requirements imposed on the sponsor by this revenue procedure may

result in the loss of eligibility to sponsor M&P plans and the revocation of opinion letters that have been issued to the sponsor.

.02 Maintenance and Availability of Records of Adopting Employers — An M&P plan sponsor must maintain, or have maintained on its behalf, for each of its plans, a record of the names, business addresses, and taxpayer identification numbers of all employers that have adopted the plan. However, a sponsor need not maintain records with respect to employers that, to the best of the sponsor's knowledge, ceased to maintain the plan as an M&P plan more than three years earlier. Upon written request, a sponsor must provide to the Service a list of such adopting employers that indicates, to the best of the sponsor's knowledge, which of such employers continue to maintain the plan as an M&P plan and which of such employers have ceased to maintain the plan as an M&P plan within the preceding three years.

SECTION 12. M&P MASS SUBMITTERS

.01 Opinion Letters Issued to M&P Mass Submitters —

(1) EP Rulings and Agreements will, upon request by an M&P mass submitter, issue an opinion letter as to the acceptability of the form of the mass submitter's M&P plan and any related trust or custodial account documents under §§ 401(a), 403(a), and 501(a). With respect to its plan, the M&P mass submitter must submit a completed Form 4461 or 4461-A, as applicable, to the address in section 20. The first page of the Form 4461 or 4461-A must be typed. The application must include a copy of the plan (adoption agreement and basic plan document) and any separate trust or custodial account documents. In the case of an initial submission of a basic plan document under this revenue procedure, the M&P mass submitter's application must also be accompanied by applications for opinion letters filed on behalf of the requisite number of identical adopters (as determined under section 4.08), unless the M&P mass submitter has already satisfied this requirement in connection with a previous application

under this revenue procedure involving another basic plan document. Any plan submitted by an M&P mass submitter must include language designating the M&P mass submitter as agent for the sponsor for purposes of making plan amendments (see section 12.02). The M&P request must be accompanied by the required user fee submitted with Form 8717, *User Fee for Employee Plan Determination, Opinion and Advisory Letter Request*, and a signed certification that all necessary amendments required by the Service to retain the qualified status of the M&P mass submitter's plan have been made and communicated to all adopting sponsors.⁵ See http://www.irs.gov/pub/irs-tege/cert_interim_amendments.pdf for certification.

(2) After satisfying the requirement as to the number of adopting sponsors, the M&P mass submitter may submit additional applications on behalf of other sponsors that wish to adopt a word-for-word identical plan or a plan that contains minor modifications from the mass submitter plan, as provided in section 12.03(2). In addition, the M&P mass submitter may then submit requests for opinion letters under this section 12.01 for its other plans, regardless of the number of identical adopters of such other plans.

(3) The Service intends to issue opinion letters to M&P mass submitters and sponsors (as well as advisory letters to VS mass submitters and practitioners) at approximately the same time within the applicable six-year cycle. In the interim, the Service will send an email to the applicable M&P or VS mass submitter, sponsor, or practitioner, if the Service determines that the plan appears to be in full compliance with the applicable qualification requirements based on the submissions and the completed review. Notwithstanding the preceding sentence, this email only provides assurance that the Service believes the plan appears to meet the applicable qualification requirements under review as of the date of the email. This email correspondence is for the convenience of the applicable sponsor, practitioner, or mass submitter, but does not constitute an official opinion or advisory letter. Until issuance of the official opinion or advisory letter, no reliance exists. The Service reserves the

right to require changes after the email is sent, in its sole discretion.

.02 Reduced Procedural Requirements for Sponsors That Use Mass Submitter Plans — A sponsor of an M&P plan of a mass submitter must obtain an opinion letter. For qualification, or where the sponsor's plan includes modifications, the M&P mass submitter must submit on behalf of the sponsor to EP Rulings and Agreements a completed Form 4461-B which contains a declaration by the M&P mass submitter under penalty of perjury that the sponsor has adopted an M&P plan that is word-for-word identical to a plan of the M&P mass submitter, or an M&P plan that is a minor modification of the mass submitter's plan. The Form 4461-B must be typed. If the sponsor is sponsoring a word-for-word identical plan (including a flexible plan), a copy of the plan need not be submitted. If the M&P mass submitter submits a plan with minor modifications, it must comply with the requirements of section 12.03(2). The application submitted on behalf of the sponsor must include the required user fee. Upon receipt of the request for an opinion letter, the Service will, as soon as administratively feasible, issue an opinion letter with respect to the sponsor's plan (provided that an opinion letter has been issued with respect to the M&P mass submitter's plan).

.03 Definitions — (1) Flexible Plan —

(a) In general — A "flexible plan" is a plan submitted by an M&P mass submitter that contains optional provisions (as defined in (b) below). Sponsors that adopt the flexible plan may include or delete any optional provision that is designated as such in the M&P mass submitter's plan, provided the inclusion or deletion of specific optional provisions conforms to the M&P mass submitter's written representation to the Service concerning the choices available to sponsors and the coordination of optional provisions. An M&P mass submitter must bracket and identify the optional provisions when submitting such plan to EP Rulings and Agreements and must also provide the Service a written representation describing the choices available to sponsors and the coordination of optional provisions. Thus, such a representation must indicate

⁵ See footnote 4 for interim user fee information under Rev. Proc. 2011-8, User fees for employee plans and exempt organizations, as modified by Announcement 2011-8, until Form 8717, *User Fee for Employee Plan Determination, Opinion and Advisory Letter Request*, is updated.

whether a sponsor's plan may contain only one of a certain group of optional provisions, may contain only a specific combination of provisions, or may exclude the provisions entirely. Similarly, if the inclusion (or deletion) of a specific optional provision in a sponsor's plan will automatically result in the inclusion (or deletion) of any other optional provision, this must be set forth in the M&P mass submitter's representation. A flexible plan may contain only optional provisions that meet the requirements of (b) below, and must be drafted so that the qualification of any sponsor's plan will not be affected by the inclusion or deletion of optional provisions. For example, if a sponsor's defined contribution plan contains an optional provision that allows a portion of a participant's account to be invested in life insurance, then under the terms of the sponsor's plan, the application of the proceeds must meet the requirements of §§ 401(a)(11) and 417. A flexible plan adopted by a sponsor that differs from the M&P mass submitter plan only because the sponsor has deleted certain optional provisions from its plan in conformance with the M&P mass submitter's representation described in this paragraph will be treated as a word-for-word identical plan to the M&P mass submitter plan. The Service encourages M&P mass submitters to limit the number of optional provisions described in (b)(i) and (ii) below, that they provide under a flexible plan to six investment provisions and six administrative provisions.

(b) **Optional Provisions** — A flexible plan may contain optional provisions that comply with the requirements set forth in this paragraph. The optional provisions may be arranged as separate optional articles or as separate optional provisions within a single article. A flexible plan may also contain optional provisions in the adoption agreement. For example, if an M&P mass submitter flexible plan basic plan document contains an optional provision that would allow for loans under a sponsor's M&P plan, the adoption agreement could also include an optional provision that would enable an adopting employer to elect whether loans will be available under the plan it adopts. If the sponsor does not wish to enable adopting employers to make loans available under their plans, both the basic plan document op-

tional provision and the adoption agreement optional provision would be deleted from the sponsor's M&P plan. Sponsors may include or delete optional provisions of M&P mass submitter plans, but once the sponsor has decided to include an optional provision, it must offer that provision to all adopting employers. Any optional provision that the Service determines does not meet the requirements of this section will have to be changed to a non-optional provision or deleted from the M&P mass submitter's plan. The following is an exclusive list of the allowable optional provisions that a flexible plan may contain:

(i) **Investment Provisions** — An M&P mass submitter may offer a variety of investment provisions in its plan for sponsors to include or delete from their version of the plan. However, the plan as adopted by the sponsor must provide some method for investing trust assets. Investment provisions are those provisions that describe the plan's methods of investing the trust or custodial funds, including provisions such as the availability of loans and investments in insurance contracts or other funding media, and self-directed investments. (Also see sections 4.05 and 5.09 regarding flexibility permitted in trust or custodial account documents.)

(ii) **Administrative Provisions** — An M&P mass submitter may offer a variety of administrative provisions in its plan for sponsors to include or delete from their version of the plan. However, the plan as adopted by the sponsor must describe how the plan will be administered. Administrative provisions are those provisions that describe the administration of the plan, including the powers, duties, and responsibilities of a plan's custodian, trustee, administrator, employer, and other fiduciaries. Administrative provisions include the allocation of responsibilities among fiduciaries, the resignation or replacement of fiduciaries, claims procedures under the plan, and record-keeping requirements. However, procedural provisions that are required for plan qualification are not administrative provisions under this section. For example, provisions that provide for the notice to participants required by § 417 and record-keeping required by regulations under § 401(k) and (m) are not administrative provisions for purposes of this revenue procedure, and may not be optional provisions.

(iii) **Cash or Deferred Arrangement** — An M&P mass submitter may include a self-contained cash or deferred arrangement (as defined in § 401(k)) for sponsors to include or delete.

(c) **Addition of Optional Provisions by the M&P Mass Submitter** — An M&P mass submitter may add additional optional provisions to its plan after a favorable opinion letter is issued. Generally, the addition of such optional provisions will not be treated as a plan amendment for purposes of this revenue procedure, Rev. Proc. 2011-6, and Rev. Proc. 2011-8, and sponsors and adopting employers will not be required to obtain new opinion and determination letters in order to preserve reliance. (However, the addition of a cash or deferred arrangement or any change to the language of the adoption agreement subsequent to the issuance of an opinion letter will be treated as a plan amendment to the M&P mass submitter's plan and the requirements of subsection .04 will then apply.) The M&P mass submitter must submit such additional optional provisions to the Service, along with a completed Form 4461 or 4461-A, as applicable, and a check or money order in the amount specified in section 6.04(6) of Rev. Proc. 2011-8. No opinion letter will be issued to the M&P mass submitter or any adopting sponsor with respect to the addition of these optional provisions. Instead, a letter will be issued to the M&P mass submitter notifying it that the addition of such optional provisions will not affect the status of favorable opinion and determination letters issued to sponsors and adopting employers.

(d) **Notification to Employer** — If an M&P mass submitter adds optional provisions, as described in the preceding paragraph, all adopting sponsors who wish to include the additional optional provisions must furnish each adopting employer with a copy of the plan that includes such additional provisions. If a sponsor decides to include or delete an optional provision after it initially adopted the plan, it must also furnish each adopting employer with a copy of the new plan. However, if such inclusion or deletion results in a change to the language of the adoption agreement, such change will be treated as a plan amendment and the sponsor and its adopting employers may not continue

to rely on previously issued opinion or determination letters.

(2) Minor Modifications —

(a) A “minor modification” is a minor change to an otherwise word-for-word identical plan of the M&P mass submitter that does not require an in-depth technical review. For example, a change from five-year 100% vesting to three-year 100% vesting is a minor modification. On the other hand, a change in the method of accrual of benefits in a defined benefit plan would not be considered a minor modification. A minor modification must be submitted by the M&P mass submitter on behalf of the sponsor that will adopt the modified plan. Subject to sections 12.05 and 21.03 and the provisions of this section, submissions with respect to minor modifications will be reviewed on an expedited basis and opinion letters will be issued to the sponsor as soon as possible.

(b) The Service reserves the right to determine if such changes are actually minor. If it is determined that the changes are extensive or require an in-depth technical review, the plan submitted under the next paragraph will not be entitled to expedited review and will otherwise be treated as a non-mass submitter plan. (In the event the plan is treated as a non-mass submitter plan, the Service will notify the M&P mass submitter in writing of its determination. Within 30 days following the date of such communication, either the M&P mass submitter may revise the plan so that the modifications are minor and resubmit the revised plan, or the sponsor may submit Form 4461 or 4461-A, whichever is applicable, and an additional user fee in an amount equal to the difference between a non-mass submitter plan application user fee and a minor modifier application user fee. If, after such 30 day period neither action has been taken, the application may be considered withdrawn.)

(c) The M&P mass submitter must initially submit the first page of the applicable Form 4461-B, as a placeholder. Such form must be typed. When the Service sends an email to the applicable sponsor with respect to the lead plan indicating that the Service has determined that the plan appears to be in full compliance with the applicable qualification requirements, as described in section 7.07 above, the M&P mass submitter must submit a copy of the M&P mass submitter’s plan with the mod-

ifications highlighted, as well as a statement indicating the location and effect of each change. The M&P mass submitter must certify under penalty of perjury that the plan of the sponsor, except for the delineated changes, is word-for-word identical to the plan for which the M&P mass submitter received a favorable opinion letter. If an M&P mass submitter fails to identify each modification, such failure will be considered a material misrepresentation, and an employer may not rely on any opinion or determination letter that may be issued with respect to the plan. If an M&P mass submitter repeatedly fails to identify such modifications, the Service may deny permission to that M&P mass submitter to submit additional modifications.

.04 Amendments of M&P Mass Submitter Plans — If an M&P mass submitter amends the plan, the mass submitter must provide copies of the amendment to sponsors who have adopted the plan. Any sponsor that does not wish to make the amendments made by an M&P mass submitter may switch to another M&P mass submitter or may submit an application for an opinion letter on its own behalf during the next applicable on-cycle submission period for pre-approved plans. An M&P mass submitter should not submit an application for an opinion letter with respect to plan amendments. The Service will not issue an opinion letter with respect to amendments made between the applicable on-cycle submission periods and the M&P mass submitter should submit a restated plan, including the amendments, during the next six-year cycle.

.05 Expeditious Processing Accorded M&P Mass Submitter Plans — Subject to section 21.03, all M&P mass submitter plans, including the adoption of approved M&P mass submitter plans by sponsors, will be accorded more expeditious processing than M&P plans submitted by non-mass submitters, to the extent administratively feasible.

PART II — VOLUME SUBMITTER PLANS

SECTION 13. DEFINITIONS

.01 Volume Submitter Plan — A “volume submitter plan” or “VS plan” refers to either a specimen plan of a VS practitioner

or a plan of a client of the VS practitioner that is substantially similar to the VS practitioner’s approved specimen plan.

.02 Specimen Plan — A “specimen plan” is a sample plan of a VS practitioner (rather than the actual plan of an employer). A specimen plan may be a single document that does not use an adoption agreement, or it may consist of a basic plan document and an adoption agreement, within the meaning of section 4.03 and section 4.04, respectively.

.03 Advisory Letter — An “advisory letter” is a written statement issued by the Service to a VS practitioner or VS mass submitter as to the acceptability of the form of a specimen plan and any related trust or custodial account documents under § 401(a) or 403(a).

.04 Trust or Custodial Account Document — A “trust or custodial account document” is the portion of a VS plan that contains the trust agreement or custodial account agreement and includes provisions covering such matters as the powers and duties of trustees, investment authority, and the kinds of investments that may be made.

.05 VS Practitioner — A “VS practitioner” is any person that (1) has an established place of business in the United States where it is accessible during every business day and (2) represents to the Service that it has at least 30 employer-clients each of which is reasonably expected to adopt a plan that is substantially similar to the VS practitioner’s specimen plan. Notwithstanding the preceding sentence, the required number of employer-clients reasonably expected to adopt a substantially similar money purchase pension specimen plan is reduced to 10 in the case of a VS practitioner that has specimen plans for two or more separate categories described in section 17.03, one of which is a money purchase pension plan. For example, if a VS practitioner has a money purchase pension specimen plan and no other types of plans, or if a VS practitioner has plans described in two or more categories, none of which is a money purchase pension plan, the employer-client requirement remains at 30. The deadline for timely adoption will be announced by the Service in future guidance.

A VS practitioner may submit any number of specimen plans for advisory letters provided the 30-employer requirement

(or 10, if applicable) is separately satisfied with respect to each specimen plan. For this purpose, where an adoption agreement format is used, each adoption agreement is treated as one specimen plan. The Service reserves the right at any time to request from the VS practitioner a list of the employers that have adopted or are expected to adopt the VS practitioner's specimen plans, including the employers' business addresses and employer identification numbers. Notwithstanding the preceding two sentences, any person that has an established place of business in the United States where it is accessible during every business day may sponsor a specimen plan as a word-for-word identical adopter of a specimen plan of a VS mass submitter, regardless of the number of employers that are expected to adopt the plan.

By submitting an application for an advisory letter for a specimen plan under this revenue procedure (or by having an application filed on its behalf by a VS mass submitter), a person represents to the Service that it is a VS practitioner, as defined in this section 13.05. If the VS practitioner's specimen plan permits the VS practitioner to amend the VS plan on behalf of adopting employers, as permitted by section 15, the VS practitioner also agrees to comply with any requirements imposed on sponsors of M&P plans by this procedure. Failure to comply with these requirements may result in the loss of eligibility to sponsor specimen plans and the revocation of advisory letters that have been issued to the VS practitioner.

.06 VS Mass Submitter — A "VS mass submitter" is any person that (1) has an established place of business in the United States where it is accessible during every business day and (2) submits advisory letter applications on behalf of at least 30 unaffiliated practitioners each of which is sponsoring, on a word-for-word identical basis, the same specimen plan. For purposes of determining whether 30 unaffiliated practitioners sponsor on a word-for-word basis the same specimen plan, the VS mass submitter is treated as one of the 30 unaffiliated practitioners. For purposes of this definition, affiliation is determined under § 414(b) and (c). Additionally, the following will be considered to be affiliated: any law firm, accounting firm, consulting firm, etc., with its partners, members, associates, etc. A VS mass submitter will be

treated as a VS mass submitter with respect to each specimen plan for which the 30 unaffiliated practitioner requirement is separately met.

SECTION 14. PROVISIONS REQUIRED IN EVERY VS PLAN

.01 Anti-Cutback Provisions — VS plans must specifically provide for the protection provided under § 411(a)(10) and (d)(6), to the extent required, in the event that the employer amends the plan in any manner. If a VS plan authorizes the VS practitioner to amend the plan on behalf of employers, the VS practitioner may not amend the plan in a manner that could result in the elimination of a benefit to the extent the benefit is required to be protected under § 411(d)(6) with respect to the plan of any adopting employer, unless permitted to do so under §§ 1.401(a)-4 and 1.411(d)-4. In addition, a VS plan that is not exempt from the top-heavy requirements and that does not contain vesting rules for all years that are at least as favorable to participants as those provided in § 416(b), must specifically provide that any vesting that occurs while the plan is top-heavy will not be cut back if the plan ceases to be top-heavy.

.02 Definition of Employee / § 414(b), (c), (m), (n), and (o) — Each VS plan must include a definition of employee as any employee of the employer maintaining the plan or any other employer aggregated under § 414(b), (c), (m), or (o) and the regulations thereunder. The definition of employee shall also include any individual deemed under § 414(n) (or under regulations under § 414(o)) to be an employee of any employer described in the previous sentence.

.03 Definition of Service / § 414(b), (c), (m), (n), and (o) — Each VS plan must specifically credit all service with any employer aggregated under § 414(b), (c), (m), or (o) and the regulations thereunder as service with the employer maintaining the plan. In addition, in the case of an individual deemed under § 414(n) (or under regulations under § 414(o)) to be the employee of any employer described in the previous sentence, service with such employer must be credited to such individual.

.04 Adopting Employer Modification of Trust or Custodial Account Document — An employer will not be considered to

have an individually designed plan merely because the employer amends administrative provisions of the trust or custodial account document (such as provisions relating to investments and the duties of trustees), provided the amended provisions are not in conflict with any other provision of the plan and do not cause the plan to fail to qualify under § 401(a). For this purpose, an amendment includes modification of the language of the trust or custodial account document and the addition of overriding language.

.05 Other Provisions Required in Adoption Agreements — Each VS plan must contain a dated employer signature line. The employer must sign the adoption agreement when it first adopts the plan and must complete and sign a new adoption agreement if the plan has been restated. In addition, the employer must complete a new signature page if it modifies any prior elections or makes new elections in its adoption agreement. The signature requirement may be satisfied by an electronic signature that reliably authenticates and verifies the adoption of the adoption agreement, or restatement, amendment or modification thereof, by the employer. The adoption agreement must state that it is to be used with one and only one specimen plan. In addition, the adoption agreement must contain a cautionary statement to the effect that the failure to properly fill out the adoption agreement may result in failure of the plan to qualify under § 401(a) or 403(a). If the VS practitioner has the authority to amend the plan on behalf of employers who have adopted the plan, as described under section 15.03 below, the adoption agreement must also contain a statement that provides that the practitioner will inform the adopting employer of any amendments made to the plan or of the discontinuance or abandonment of the plan.

.06 Practitioner Telephone Numbers — VS plan adoption agreements must include the VS practitioner's name, address, and telephone number (or a space for the address and telephone number of the practitioner's authorized representative) for inquiries by adopting employers regarding the adoption of the plan, the meaning of plan provisions, or the effect of the advisory letter.

**SECTION 15. APPROVED PLANS
— MAINTENANCE OF APPROVED
STATUS**

.01 Cumulative List in Six-Year Cycle — Rev. Proc 2007–44 provides that practitioners of pre-approved VS plans must submit requests for advisory letters during the applicable on-cycle submission period for a six-year cycle in order to continue to rely on their advisory letters. Practitioners may apply for advisory letters at other times, but these filings will be “off-cycle” filings, as described in section 21.03 of this revenue procedure. The Service will review the plans that have been submitted during the applicable on-cycle submission period for a six-year cycle taking into account the applicable Cumulative List that identifies changes in the qualification requirements of the Code as well as items of published guidance relating to the plan qualification requirements, such as regulations and revenue rulings. However, in order to be qualified, a plan must comply in operation with all relevant qualification requirements, not just those on the applicable Cumulative List.

.02 Subsequent Required Interim Amendments — Except as otherwise provided in future guidance, in the event of changes in qualification requirements resulting from future guidance, or other regulatory or statutory changes that were not taken into account in issuing the advisory letter, an approved VS plan must be amended by the practitioner and, if necessary, the employer, to retain its approved status if any provisions therein fail to meet the requirements of law, regulations, or other issuances and guidelines affecting qualification. See section 5.01 of Rev. Proc. 2007–44 regarding the time by which such amendments must be adopted. Failure to so amend could result in the loss of a plan’s qualified status. However, this does not change the applicable on-cycle submission period for the six-year cycle when practitioners must request advisory letters, which will still occur only once every six years. Practitioners are required to make reasonable and diligent efforts to ensure that each employer that, to the best of the practitioner’s knowledge, continues to maintain the plan as a VS plan amends its plan when necessary.

The plan must operationally comply with any changes in qualification re-

quirements and the terms of the plan as ultimately amended to reflect the changes.

.03 Option to Permit Practitioner Amendment — A VS practitioner may amend its specimen plan. Ordinarily the amendments will apply only to the plans of employers who adopt the plan after it has been amended and will not apply to plans of employers who adopted the plan prior to the amendment. However, a VS plan may, but is not required to, include a provision that authorizes the VS practitioner to amend the plan on behalf of employers who have previously adopted the plan, so that changes in the Code, regulations, revenue rulings, other statements published by the Service (including model and sample amendments that specifically provide that their adoption will not cause such plan to be individually designed), or corrections of prior approved plans may be applied to all employers who have adopted the plan. The provision for practitioner amendment must provide that, for purposes of reliance on the advisory letter, the practitioner will no longer have the authority to amend the plan on behalf of the adopting employer as of the date of the adoption of an employer amendment to the plan to incorporate a type of plan not allowable in the VS program described in section 16.03 (e.g., the addition of an ESOP) or as of the date the Service notifies the practitioner that the plan is being treated as an individually designed plan pursuant to section 24.03.

.04 Responsibilities of Practitioner — A VS practitioner must comply with the requirements in this section 15 as well as sections 7.06 and 9 through 11 that apply to M&P sponsors. Thus, the VS practitioner must maintain, or have maintained on its behalf, a record of the employers that have adopted the plan, and the VS practitioner must make reasonable and diligent efforts to ensure that adopting employers have actually received and are aware of all plan amendments and that such employers adopt new documents when necessary.

.05 Loss of Qualified Status — If a practitioner reasonably concludes that an employer’s VS plan may no longer be a qualified plan and the practitioner does not or cannot submit a request to correct the qualification failure under EPCRS, it is incumbent on the practitioner to notify the employer that the plan may no longer be qualified, advise the employer that adverse

tax consequences may result from loss of the plan’s qualified status, and inform the employer about the availability of EPCRS. See Rev. Proc. 2008–50.

**SECTION 16. ADVISORY LETTERS
— SCOPE**

.01 General Limits on Advisory Letters — Advisory letters will be issued only to VS practitioners or VS mass submitters. Advisory letters constitute determinations as to the qualification of the plans as adopted by particular employers only under the circumstances, and to the extent, described in section 19. Advisory letters do not constitute rulings or determinations as to the exempt status of related trusts or custodial accounts.

.02 Nonapplicability of this Revenue Procedure to section 403(b) Plans — Advisory letters will not be issued under this revenue procedure for plans intended to meet the requirements under § 403(b) (see Rev. Proc. 98–59).

.03 Areas Not Covered by Advisory Letters — Advisory letters will not be issued for:

- (1) Multiemployer plans;
- (2) Union plans (this does not preclude a VS plan from covering employees of the employer who are included in a unit covered by a collective bargaining agreement or the adoption of a VS plan pursuant to such agreement as a single-employer plan that covers only employees of the employer);
- (3) Stock bonus plans;
- (4) Employee stock ownership plans;
- (5) Pooled fund arrangements contemplated by Rev. Rul. 81–100 (as modified by Rev. Rul. 2004–67 and Rev. Rul. 2011–1);
- (6) Applicable defined benefit plans within the meaning of § 411(a)(13)(C) (Hybrid Plans);
- (7) Plans described in § 414(k) (relating to a defined benefit plan that provides a benefit derived from employer contributions that is based partly on the balance of the separate account of a participant);
- (8) Target benefit plans, other than plans which, by their terms, satisfy each of the safe harbor requirements described in § 1.401(a)(4)–8(b)(3)(i), as well as the additional rules in § 1.401(a)(4)–8(b)(3)(ii) through (vii);

(9) Church plans described in § 414(e) that have not made the election provided by § 410(d);

(10) Governmental plans that include so-called “DROP” provisions or similar provisions;

(11) Plans under which the § 415 limitations are incorporated by reference;

(12) Plans that incorporate the ADP test under § 401(k)(3) or the ACP test under § 401(m)(2) by reference;

(13) Section 401(k) plans that provide for hardship distributions under circumstances not described in the safe harbor standards in the regulations under § 401(k), unless these distributions are subject to nondiscriminatory and objective criteria contained in the plan;

(14) Fully-insured § 412(e)(3) plans, other than plans that, by their terms, satisfy the safe harbor in § 1.401(a)(4)–3(b)(5);

(15) Plans that fail to contain a provision reflecting the requirements of § 414(u) (see Rev. Proc. 96–49);

(16) Plans that include so-called fail-safe provisions for § 401(a)(4) or the average benefit test under § 410(b);

(17) Plans that include blanks or fill-in provisions for the employer to complete, unless the provisions have parameters that preclude the employer from completing the provisions in a manner that could violate the qualification requirements;

(18) Plans designed to satisfy the provisions of § 105;

(19) Plans that include § 401(h) accounts;

(20) Eligible combined plans within the meaning of § 414(x)(2).

The Service may, in its discretion, decline to issue advisory letters for other types of plans not described in this section 16.03.

SECTION 17. ADVISORY LETTERS — INSTRUCTIONS TO VS PRACTITIONERS

.01 Employee Plans Rulings and Agreements Issues Advisory Letters — Employee Plans Rulings and Agreements will, upon the request of a VS practitioner, issue an advisory letter as to the acceptability of the form of the VS practitioner’s specimen plan under § 401(a) or 403(a).

.02 Procedure for Requesting Advisory Letters — A request for an advisory letter relating to a specimen plan must be submitted on the current version of Form 4461, *Application for Approval of Master or Prototype or Volume Submitter Defined Contribution Plans*, Form 4461-A, *Application for Approval of Master or Prototype or Volume Submitter Defined Benefit Plans*, or Form 4461-B, *Application for Approval of Master or Prototype or Volume Submitter Plans Mass Submitter Adopting Sponsor or Practitioner*, as appropriate. The Service intends to revise Forms 4461, 4461-A, and 4461-B. Until the forms have been revised, a request for an advisory letter should be accompanied by the appropriate form with the following items, if applicable, completed:

(1) Form 4461 — Complete Part 1, items 1–9, and Attachment 1 which can be accessed at http://www.irs.gov/pub/irs-tege/form4461_attachment.pdf

(2) Form 4461-B — Complete in its entirety.

(3) Form 4461-A (relates to DB plans) — Complete Part 1 and an attachment that the Service will provide at a future date

These forms may be downloaded from the Internet at the following address: <http://www.irs.gov>. All information on the first page of the application must be typed. The request must be sent to the address in section 20. The VS request must be accompanied by the required user fee submitted with Form 8717, *User Fee for Employee Plan Determination, Opinion and Advisory Letter Request*, and a signed certification that all necessary amendments required by the Service to retain the qualified status of the VS practitioner’s specimen plan have been made and communicated to all adopting employers.⁶ See http://www.irs.gov/pub/irs-tege/cert_interim_amendments.pdf for certification.

.03 Separate Specimen Plans and Applications Required for Different Categories of Plans

(1) Specimen plans that consist of a basic plan document and adoption agreement. Except as provided in this section 17.03(1), the rules in section 7.04 (disregarding references therein to standardized and nonstandardized plans) apply to a specimen plan that consists of a basic plan

document and adoption agreement as if the specimen plan were an M&P plan. Thus, a single basic plan document may not be used in conjunction with both defined contribution specimen plans and defined benefit specimen plans. In addition, a defined contribution specimen plan may not include any combination of profit-sharing, money purchase (other than target benefit), and target benefit plan. Accordingly, separate adoption agreements are required for each of these types of defined contribution specimen plans. The separate defined contribution adoption agreements may be associated with the same defined contribution basic plan document, but the provisions of the basic plan document must be identical for all specimen plans using that document (that is, no elective or optional features). Likewise, multiple defined benefit adoption agreements may be associated with a single defined benefit basic plan document if the provisions of the basic plan document are identical for all specimen plans using that document (that is, no elective or optional features). Separate adoption agreements are not required for defined benefit specimen plans that are integrated (*i.e.*, provide for permitted disparity) and defined benefit specimen plans that are non-integrated. Instead, a single defined benefit adoption agreement may provide options for both integrated and non-integrated benefit formulas.

In addition, the same basic plan document may not be used for both nongovernmental specimen plans (*i.e.*, specimen plans that are not described in § 414(d)) and governmental specimen plans. However, separate governmental defined contribution specimen plans may have the same basic plan document and separate governmental defined benefit specimen plans may have the same basic plan document.

A separate application form is required to be submitted for each specimen plan, that is, for each basic plan document/adoption agreement combination (where the specimen plan consists of a basic plan document and adoption agreement). In the case of a simultaneous submission of plans using the same basic plan document, only one copy of the basic plan document should be provided. If the requests are not

⁶ See footnote 4 for interim user fee information under Rev. Proc. 2011–8, User fees for employee plans and exempt organizations, as modified by Announcement 2011–8, until Form 8717, *User Fee for Employee Plan Determination, Opinion and Advisory Letter Request*, is modified.

simultaneous, the sponsor must submit a copy of the basic plan document with each submission and include a cover letter identifying the original submission. The plan number of such basic plan document must remain the same as in the prior submission.

(2) Specimen plans that consist of a single document without an adoption agreement. A separate specimen plan and application is required for each of the following categories of specimen plans where the specimen plan consists of a single document without an adoption agreement: a profit-sharing plan (with or without a § 401(k) arrangement), a money purchase pension plan (other than a target benefit plan), a target benefit plan, and a defined benefit plan. In addition, a separate specimen plan and application is required for each of the categories of plans in the preceding sentence if the specimen plan is a governmental plan. Different categories may not be combined in a single specimen plan or application. Thus, for example, separate specimen plans and application forms must be submitted for a governmental defined benefit specimen plan that consists of a single document without an adoption agreement and a nongovernmental defined benefit specimen plan that consists of a single document without an adoption agreement.

.04 Sample Language — A Listing of Required Modifications (LRM) containing sample plan language is available from Employee Plans Rulings and Agreements. Although the sample language is designed for use in M&P plans, which use an adoption agreement format, VS practitioners should refer to the sample language as a guide in drafting VS plans. To expedite the review of their plans, VS practitioners are encouraged to use LRM language where appropriate and to identify where such language is being used in their plan documents. LRMs may be downloaded from the Internet at the following address: <http://www.irs.gov/retirement/article/0,,id=97182,00.html>.

.05 Timing of Issuance of Advisory Letters — The Service intends to issue advisory letters to practitioners and VS mass submitters (as well as opinion letters to M&P mass submitters and sponsors) at ap-

proximately the same time within the applicable six-year cycle. In the interim, the Service will send an email to the applicable M&P or VS mass submitter, sponsor, or practitioner if the Service determines that the plan appears to be in full compliance with the applicable qualification requirements, based on the submissions and the completed review. Notwithstanding the preceding sentence, this email only provides assurance that the Service believes the plan appears to meet the applicable qualification requirements under review as of the date of the email. This email correspondence is for the convenience of the applicable sponsor, practitioner, or mass submitter, but does not constitute an official opinion or advisory letter. Until issuance of the official opinion or advisory letter no reliance exists. The Service reserves the right to require changes after the email is sent, in its sole discretion.

SECTION 18. VS MASS SUBMITTERS

.01 Advisory Letters Issued to VS Mass Submitters — EP Rulings and Agreements will, upon request by a VS mass submitter, as defined in section 13.06, issue an advisory letter as to the acceptability of the form of the VS mass submitter's specimen plan under § 401(a) or 403(a). See section 20 for the address to file the application. The provisions of section 17.05 on the timing of the issuance of advisory letters and an interim email notification by the Service also apply under this section.

.02 As noted in section 17.02, a VS mass submitter's application must be submitted on the current version of Form 4461, *Application for Approval of Master or Prototype or Volume Submitter Defined Contribution Plans*, Form 4461-A, *Application for Approval of Master or Prototype or Volume Submitter Defined Benefit Plans*, or Form 4461-B, *Application for Approval of Master or Prototype or Volume Submitter Plans Mass Submitter Adopting Sponsor or Practitioner*, as appropriate. The Service intends to revise Forms 4461, 4461-A, and 4461-B. Until the forms have been revised, a request for an opinion letter should be accompanied by the appropriate form with the following items, if applicable, completed:

(1) Form 4461 — Complete Part 1, items 1–9, and Attachment 1 which can be accessed at http://www.irs.gov/pub/irs-tege/form4461_attachment.pdf

(2) Form 4461-B — Complete in its entirety.

(3) Form 4461-A (relates to DB plans) — Complete Part 1, and an attachment that the Service will provide at a future date.

These forms may be downloaded from the Internet at the following address: <http://www.irs.gov>. All information on the first page of the application must be typed. The request must be sent to the address in section 20. The VS request must be accompanied by the required user fee submitted with Form 8717, User Fee for Employee Plan Determination, Opinion, and Advisory Letter Request, and a signed certification that all necessary amendments required by the Service to retain the qualified status of the VS practitioner's specimen plan have been made and communicated to all adopting employers.⁷ See http://www.irs.gov/pub/irs-tege/cert_interim_amendments.pdf for certification.

PART III — ALL PRE-APPROVED PLANS

SECTION 19. EMPLOYER RELIANCE

.01 Standardized M&P Plans — An employer adopting a standardized M&P plan may rely on that plan's opinion letter, except as provided in (1) through (3) and section 19.03 below, if the sponsor of such plan or plans has a currently valid favorable opinion letter, the employer has followed the terms of the plan(s), and the coverage and contributions or benefits under the plan(s) are not more favorable for highly compensated employees (as defined in § 414(q)) than for other employees.

(1) An employer may not rely on an opinion letter for a standardized plan with respect to the requirements of §§ 415 and 416, without obtaining a determination letter, if the employer maintains at any time, or has maintained at any time, another plan, including a standardized plan, that was qualified or determined to be qualified covering some of the same participants. For this purpose, a plan that has been prop-

⁷ See footnote 4 for interim user fee information under Rev. Proc. 2011–8, User fees for employee plans and exempt organizations, as modified by Announcement 2011–8 until, Form 8717, User Fee for Employee Plan Determination, Opinion and Advisory Letter Request, is updated.

erly replaced by the adoption of a standardized plan is not considered another plan. For example, the plan that has been replaced and the standardized plan must be of the same type (e.g., both defined benefit plans) in order for the employer to be able to rely on the standardized plan with respect to the requirements of §§ 415 and 416 without obtaining a determination letter. In addition, an employer that adopts a standardized defined contribution plan will not be considered to have maintained another plan merely because the employer has maintained another defined contribution plan(s), provided such other plan(s) has been terminated prior to the effective date of the standardized plan and no annual additions have been credited to the account of any participant under such other plan(s) as of any date within a limitation year of the standardized plan.

(2) An employer that has adopted a standardized defined benefit plan may rely on an opinion letter with respect to the requirements of § 401(a)(26) only if the plan satisfies the requirements of § 401(a)(26) with respect to its prior benefit structure or is deemed to satisfy § 401(a)(26) under the regulations. However, an employer may request a determination letter if the employer wishes to have reliance as to whether the plan satisfies § 401(a)(26) with respect to its prior benefit structure.

(3) An employer that adopts a standardized plan may not rely on an opinion letter with respect to: (a) whether the timing of any amendment to the plan (or series of amendments) satisfies the nondiscrimination requirements of § 1.401(a)(4)–5(a), except with respect to plan amendments granting past service that meet the safe harbor described in § 1.401(a)(4)–5(a)(3) and are not part of a pattern of amendments that significantly discriminates in favor of highly compensated employees; or (b) whether the plan satisfies the effective availability requirement of § 1.401(a)(4)–4(c) with respect to any benefit, right, or feature. An employer that adopts a standardized plan as an amendment to a plan other than a standardized plan may not rely on an opinion letter with respect to whether a benefit, right, or feature that is prospectively eliminated satisfies the current availability requirements of § 1.401(a)(4)–4 of the regulations. Such an employer may request a determination letter if the employer wishes to have

reliance as to whether the prospectively eliminated benefit, right, or feature satisfies the current availability requirements.

.02 Nonstandardized M&P Plans and Volume Submitter Plans — An employer adopting a nonstandardized M&P or VS plan may rely on that plan's opinion or advisory letter as described in this section 19 if the employer's plan is identical to an approved M&P or specimen plan with a currently valid favorable opinion or advisory letter, the employer has not amended the plan other than to choose options provided under the approved plan or to make amendments as described in section 19.03(3), and the employer has followed the terms of the plan. These employers can forego filing Form 5307 and rely on the plan's favorable opinion or advisory letter with respect to the qualification requirements, except as provided in subparagraphs (1) through (4) and section 19.03 below.

(1) Except as provided in section 19.02(2), (3) and (4), adopting employers of nonstandardized M&P plans and VS plans may not rely on a favorable opinion or advisory letter with respect to the requirements of:

(a) § 401(a)(4), 401(a)(26), 401(l), 410(b), or 414(s); or

(b) if the employer maintains or has ever maintained another plan covering some of the same participants, § 415 or 416.

For this purpose, whether an employer maintains or has ever maintained another plan will be determined using principles consistent with section 19.01 above.

(2) Adopting employers of nonstandardized M&P plans and VS plans may rely on the opinion or advisory letter with respect to the requirements of §§ 410(b) and 401(a)(26) (other than the § 401(a)(26) requirements that apply to a prior benefit structure) if 100 percent of all nonexcludable employees benefit under the plan.

(3) Nonstandardized M&P plans must give adopting employers the option to elect a safe harbor allocation or benefit formula and a safe harbor compensation definition. Adopting employers of nonstandardized M&P plans that elect a safe harbor allocation or benefit formula and a safe harbor compensation definition may rely on an opinion letter with respect to the nondiscriminatory amounts requirement under § 401(a)(4). Adopting employers

of nonstandardized M&P plans that are § 401(k) and/or § 401(m) plans may rely on an opinion letter with respect to whether the form of the plan satisfies the actual deferral percentage test of § 401(k)(3) or the actual contribution percentage test of § 401(m)(2) if the employer elects to use a safe harbor definition of compensation in the test. Adopting employers of nonstandardized M&P plans described in § 401(k)(11) and/or § 401(m)(12) may rely on an opinion letter with respect to whether the form of the plan satisfies these requirements unless the plan provides for the safe harbor contribution to be made under another plan.

(4) A VS plan may give an adopting employer the ability to select an allocation formula for employer non-elective contributions that satisfies one of the design-based safe harbors in § 1.401(a)(4)–2(b)(2) or a benefit formula that satisfies one of the design-based safe harbors under § 1.401(a)(4)–3(b)(3), (4), or (5), and the ability to select a safe harbor compensation definition for such formula that satisfies § 1.414(s)–1(c). If the plan of the adopting employer allocates contributions or provides benefits using one of the designed based safe harbors in § 1.401(a)(4)–2(b)(2) or § 1.401(a)(4)–3(b)(3), (4), or (5), and the plan defines compensation using a definition that satisfies § 1.414(s)–1(c) then the adopting employer may rely on an advisory letter with respect to the nondiscriminatory amounts requirement under § 401(a)(4).

.03 Other Limitations and Conditions on Reliance — The following conditions and limitations apply with respect to both M&P and VS plans:

(1) An adopting employer can rely on a favorable opinion or advisory letter for a plan that amends or restates a plan of the employer only if the plan that is being amended or restated was qualified.

(2) An adopting employer has no reliance if the employer's adoption of the plan precedes the issuance of an opinion or advisory letter for the plan.

(3) An adopting employer can rely on an opinion or advisory letter only if the requirements of this section 19 are met, and the employer's plan is identical to an approved M&P or specimen plan with a currently valid favorable opinion or advisory letter; that is, the employer has not added

any terms to the approved M&P or VS plan and has not modified or deleted any terms of the plan other than choosing options permitted under the plan or, in the case of an M&P plan, amended the document as permitted under section 5.06 or 5.09 or, in the case of a VS plan, modified the document as permitted under sections 14 and 15. Thus, for example, in the case of a VS plan, the employer's plan must be identical to the approved specimen plan except as the result of the employer's selection among options that are permitted under the terms of the approved specimen plan and modifications permitted under sections 14 and 15.

For purposes of this section 19.03(3), a plan will not fail to be identical to an approved M&P or specimen plan if:

(a) the employer modifies or amends the plan to add or change a provision and/or to specify or change the effective date of a provision, provided the employer is permitted to make the modification or amendment under the terms of the approved M&P or specimen plan as well as under § 401(a) or 403(a), and, except for the effective date, the provision is identical to a provision in the approved plan;

(b) the employer, sponsor or practitioner adopts an interim or discretionary amendment in accordance with section 21 or Rev. Proc. 2007-44; or

(c) the employer adopts a model or sample amendment that the Service has indicated will not cause the plan to be treated as an individually designed plan.

For example, an employer is not required to restate its M&P or VS plan in order to change options under the plan or to specify different effective dates. Also see section 5.02, which limits an employer's ability to amend an M&P plan without causing the plan to be treated as an individually designed plan, and section 5.11, which requires the employer to complete a new signature page when the employer changes options in an M&P adoption agreement. An adopting employer cannot rely on an opinion or advisory letter if the adopting employer has modified the terms of the plan's approved trust in a manner that would cause the plan to fail to be qualified under § 401(a).

.04 Reliance Equivalent to Determination Letter — If an employer can rely on a favorable opinion or advisory letter pursuant to this section, the opinion or advisory

letter shall be equivalent to a favorable determination letter. For example, the favorable opinion or advisory letter shall be treated as a favorable determination letter for purposes of section 21 of Rev. Proc. 2011-6, regarding the effect of a determination letter, and section 5.01(4) of Rev. Proc. 2008-50, regarding the definition of "favorable letter" for purposes of EPCRS. Of course, the extent of the employer's reliance may be limited, as provided in this section.

SECTION 20. WHERE TO FILE AND OTHER RULES FOR APPLICATIONS AND LETTERS

.01 Opinion Letters — Applications for opinion letters, including applications filed by M&P mass submitters, should be sent to the attention of:

Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201
Attn: Pre-Approved Plans Coordinator
Room 5106

.02 Advisory Letters — Applications for advisory letters, including applications filed by VS mass submitters, should be sent to:

Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201
Attn: Pre-Approved Plans Coordinator
Room 5106

.03 For purposes of .01 and .02 above, a request shipped by Express Mail or a delivery service should be sent to the attention of the Pre-Approved Plans Coordinator, to:

Internal Revenue Service
550 Main Street
Cincinnati, OH 45202
Room 5106

.04 Effect of Failure to Disclose Material Fact or to Accurately Provide Information — The Service may determine, based on the application, the extent of review of the pre-approved plan. A failure to disclose a material fact or misrepresentation of a material fact in the application may adversely affect the reliance that would otherwise

be obtained through issuance by the Service of a favorable opinion or advisory letter. Similarly, failure to accurately provide any of the information called for on any form required by this revenue procedure may result in no reliance on the favorable opinion letter or advisory letter.

.05 Additional Information May Be Requested — The Service may, at its discretion, require any additional information that it deems necessary, including a demonstration of how the variables (options or alternatives) in the M&P or specimen plan interrelate to satisfy the qualification requirements of the Code. If a letter requesting changes to plan documents is sent to the sponsor or VS practitioner or an authorized representative, the changes must be received no later than 30 days from the date of the letter, and the response must include either a copy of the plan with the changes highlighted or, if the changes are not extensive, replacement pages. If the changes are not received within 30 days, the application may be considered withdrawn. An extension of the 30-day time limit will only be granted for good cause.

.06 Inadequate Submissions — The Service will return, without further action, plans that are not in substantial compliance with the qualification requirements of § 401(a) or 403(a) or plans that are so deficient that they cannot be reviewed in a reasonable amount of time. A plan may be considered not to be in substantial compliance if, for example, it omits or merely incorporates qualification requirements by reference to the applicable Code section. The Service will not consider these plans until after they are revised, and they will be treated as new requests as of the date they are resubmitted. No additional user fee will be charged if an inadequate submission is amended to be in substantial compliance and is resubmitted to the Service within 30 days following the date the sponsor or VS practitioner is notified of such inadequacy.

.07 Nonidentification of Questionable Issues May Cause Delay — If the plan document submitted as part of an opinion or advisory letter request contains a provision that gives rise to an issue for which contrary published authorities exist, failure to disclose and address significant contrary authorities, as required in section 6.12 of Rev. Proc 2011-6, 2011-1 I.R.B. 195, may

result in requests for additional information, which will delay action on the request.

.08 DOL Participant Loan Regulations not Addressed by Opinion or Advisory Letter — Pre-approved plans may adopt procedures to comply with the Department of Labor's (DOL) participant loan regulations under section 408(b)(1) of ERISA in the plan or in a separate document. The adoption of procedures outside of the plan document that are intended to comply with these regulations will not cause a pre-approved plan to be considered an individually designed plan. The Service will not review loan program procedures (whether in the plan or in a separate written document) to determine whether they comply with the requirements of the DOL regulations. Also, any opinion or advisory letter issued for a pre-approved plan will not consider whether loan program procedures may, in the operation of the plan, have an adverse effect on the qualified status of the plan. However, the loan program procedures under the plan may not be inconsistent with the qualification requirements of § 401(a) of the Code.

.09 Nontransferability of Opinion and Advisory Letters — An opinion or advisory letter issued to a sponsor or VS practitioner is not transferable to any other entity. In the case of a change in entity, a letter issued to a sponsor or VS practitioner may not be relied upon by a different entity. If a different entity assumes sponsorship of the plan, it must submit an application for a new letter. Such an application may be filed at the time of the assumption of sponsorship and the filing is not limited to the applicable on-cycle submission period. The application will be subject to a reduced user fee as provided in section 6.03(8) or 6.04(4) of Rev. Proc. 2011-8. The new letter will recognize the change in sponsorship and will not modify the scope of or change the reliance on the original letter. The Service may in appropriate circumstances request documentation of the assumption of sponsorship prior to issuing a letter to the new entity. Examples of a change in entity include, but are not limited to, a change in the employer identification number, the acquisition of a sponsor by another entity or the sale or transfer of the stock or assets of the sponsor to another entity.

SECTION 21. AMENDMENTS

.01 Opinion or Advisory Letters for Sponsor or VS Practitioner Amendments — A plan must be operated in accordance with the written plan document. When there are changes with respect to plan qualification requirements that will impact the provisions of the written plan document, the adoption of interim amendments will generally be required in accordance with the rules set forth in Rev. Proc. 2007-44. Interim amendments adopted by a pre-approved sponsor or practitioner on behalf of adopting employers must be provided to the adopting employers. The date on which each amendment is adopted by the M&P sponsor or VS practitioner must be provided with the amendment. The requirement to provide the date for each amendment is effective for amendments adopted by the sponsor or practitioner on or after the effective date of this revenue procedure. However, this does not change the applicable on-cycle submission period for the six-year cycle when sponsors or VS practitioners must request opinion or advisory letters, which will still only occur once every six years. The Service will entertain a request for an opinion or advisory letter as to the acceptability, for purposes of § 401(a) or 403(a), of the form of the plan as restated, during the applicable on-cycle submission period for the six-year cycle, as provided in section 8.01 and section 15.01. The sponsor or VS practitioner must, except as provided in section 12 or section 18, submit an application under the procedures in section 7 or section 17, together with a copy of the plan's certification regarding interim amendments, a cover letter summarizing the changes to the plan that are affected by such amendment(s), and a copy of the plan that is being restated. The Service retains the right to request and secure from the sponsor/practitioner in appropriate circumstances copies of all interim amendments reflected on the applicable Cumulative List that the sponsor/practitioner has adopted on behalf of its adopting employers.

.02 Loss of Qualified Status for Certain Amendments — A pre-approved plan will not lose its qualified status merely because amendments are made that cover any of the following:

(1) Amendments to conform a plan to the requirements of section 402(a) of Title I of the Employee Retirement Income Security Act of 1974 (ERISA), Pub. L. 93-406, 1974-3 C.B. 1, relating to named fiduciaries.

(2) Amendments to conform a plan to the requirements of section 503 of ERISA, relating to claims procedures.

(3) Amendments to conform the plan to the requirements of DOL Field Assistance Bulletin No. 2008-1, which provides guidance on the need for plans to specify the duties of trustees with respect to the responsibility for collection of delinquent contributions.

(4) Amendments that adjust the limitations under §§ 415, 402(g), 401(a)(17), and 414(q)(1)(B) of the Code to reflect annual cost-of-living increases, other than amendments that add automatic cost-of-living adjustment provisions to the plan.

(5) Amendments that reflect a change of a sponsor's or VS practitioner's name. The sponsor or VS practitioner must notify the Service, in writing, of the change in name and certify that it still meets the conditions for sponsorship described in section 4.07 or 13.05. (Also see section 20 regarding changes in employer identification numbers.)

.03 Off-Cycle Filing — An application for an opinion or advisory letter for a plan that is word-for-word identical to an approved mass submitter that has a current advisory or opinion letter will not be treated as off-cycle merely because it is submitted after the end of the applicable on-cycle submission period for the six-year cycle.

Any other application for an opinion or advisory letter that is submitted after the applicable on-cycle submission period for the six-year cycle will be treated as an off-cycle filing. If such an off-cycle application is submitted before the beginning of the two year period for employer adoption announced by the Service for an applicable six-year cycle, the application will not be reviewed until all on-cycle plans (including applications for determination letters for individually designed plans within their staggered five-year cycle) have been reviewed and processed. However, the Service may, in its discretion, determine whether the processing of off-cycle filings may be prioritized and accelerated under certain circumstances. Off-cycle applica-

tions that are submitted during or after the two-year period will not be accepted.

SECTION 22. REVOCATION

Revocation of Opinion or Advisory Letter by the Service — An opinion or advisory letter found to be in error or not in accord with the current views of the Service may be revoked. Also, see sections 4.07 and 13.05. Except in rare or unusual circumstances, such revocation will not be applied retroactively if the conditions set forth in sections 13 and 14 of Rev. Proc. 2011–4, 2011–1 I.R.B. 123, are met. For this purpose, opinion and advisory letters will be given the same effect as rulings. Revocation may be effected by a notice to the sponsor or VS practitioner to which the letter was originally issued, or by publication in the Internal Revenue Bulletin. The sponsor or VS practitioner should then notify each adopting employer of the revocation as soon as possible. The content of the notification to each adopting employer must explain how the revocation affects any reliance an adopting employer has on the applicable advisory or opinion letter and on any determination letter issued.

SECTION 23. SECOND ON-CYCLE SUBMISSION PERIOD (POST - EGTRRA) FOR PRE-APPROVED DC PLANS

The second on-cycle submission period (post-EGTRRA) began on February 1, 2011, and ends on January 31, 2012, for applications for opinion and advisory letters for defined contribution plans that take into account the changes identified on the 2010 Cumulative List. However, a plan must comply in operation with all relevant qualification requirements, not just those on the 2010 Cumulative List.

The Service is accepting opinion and advisory letter applications for pre-approved defined contribution plans during the second six-year remedial amendment cycle that began on February 1, 2011. As provided in section 18.02(1) of Rev. Proc. 2007–44, the on-cycle submission period for non-mass submitter sponsors and practitioners, word-for-word identical adopters, and M&P minor modifier placeholder applications will end on January 31, 2012. Section 18.02(1) of Rev. Proc. 2007–44

also provides that the 9-month submission period for mass submitter sponsors and practitioners will end on October 31, 2011. The deadline to submit applications for opinion and advisory letters for sponsors and practitioners maintaining defined contribution mass submitter plans is extended from October 31, 2011 to January 31, 2012. The 2010 Cumulative List is to be used by plan sponsors and practitioners submitting determination, opinion or advisory letter applications for plans during this period. However, if a plan has not been previously reviewed for items on earlier cumulative lists, the plan must still take those items into account. For example, pre-approved defined contribution plans have not yet been reviewed for items on the 2005 Cumulative List, so those items have been retained on the 2010 Cumulative List. The Service will announce the deadline for timely adoption by employers when the review of the pre-approved documents is close to being completed. Applications for opinion and advisory letters for pre-approved defined benefit plans will be accepted beginning February 1, 2013. It is expected that the procedures for applying for opinion and advisory letters will be updated from time to time.

SECTION 24. REMEDIAL AMENDMENT PERIOD

.01 Revenue Procedure 2007–44 contains the Service's procedures for issuing letters for pre-approved plans under a regular, six-year remedial amendment cycle and individually designed plans under a staggered five-year remedial amendment cycle. That revenue procedure extended a plan's EGTRRA remedial amendment period to the end of the plan's first applicable cycle. It explains the conditions under which an adopting employer who timely adopts a pre-approved plan will be treated as having adopted the plan within the employer's six-year remedial amendment cycle, and which Cumulative List will apply in the case of plans that become individually designed under the circumstances described in section 24.02.

.02 An employer that has adopted an M&P plan or a VS specimen plan may have modified the plan in such a way that the plan, as adopted by the employer, would not be considered an M&P plan or

a VS plan. The effect of employer amendments or the adoption of an individually designed plan on employers eligible for the six-year remedial amendment cycle is described in section 19 of Rev. Proc. 2007–44.

.03 In addition to the provisions described in section 19 of Rev. Proc. 2007–44, the Service may in its discretion determine that a plan is an individually designed plan that will not receive an extended remedial amendment cycle, due to the nature and extent of the amendments.

SECTION 25. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2005–16 is modified and superseded. Rev. Proc. 2011–6 and Rev. Proc. 2011–8 are modified.

SECTION 26. EFFECTIVE DATE

This revenue procedure is effective October 31, 2011.

SECTION 27. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1674.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this revenue procedure is in sections 5.11, 8.02, 11.02, 12, 14.05, 15.02, 18 and 24. This information is required to enable the Commissioner, Tax Exempt and Government Entities Division of the Internal Revenue Service to make determinations in connection with plan qualification. This information will be used to determine whether a plan is entitled to favorable tax treatment. The likely respondents are banks, insurance companies, other financial institutions, law, actuarial and consulting firms, employee benefit practitioners and employers.

The estimated total annual reporting and/or recordkeeping burden is 1,058,850 hours.

The estimated annual burden per respondent/recordkeeper varies from 1/2 to 2,000 hours, depending on individual circumstances, with an estimated average of 3.56 hours. The estimated number of respondents and/or recordkeepers is 297,750.

The estimated frequency of responses is occasional.

Books or records relating to a collection of information must be retained as long

as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. § 6103.

DRAFTING INFORMATION

The principal author of this revenue procedure is Kathleen Herrmann of the Employee Plans, Tax Exempt and

Government Entities Division. For further information concerning this revenue procedure, please contact the Employee Plans' taxpayer assistance telephone service at 1-877-829-5500 (a toll-free number) or email Ms. Herrmann at RetirementPlanQuestions@irs.gov.

Use this Revenue Procedure to prepare Tax Year 2011 and prior year information returns for submission to Internal Revenue Service (IRS) electronically.

This Revenue Procedure is not revised every year. Updates will be printed as needed in the Internal Revenue Bulletin. General Instructions for Form 1042-S are revised every year. Be sure to consult current instructions when preparing Form 1042-S.

Following is a list of related instructions and forms for filing Form 1042-S Electronically:

- **Current paper Instructions for Form 1042-S**
- **Form 4419 — Application for Filing Information Returns Electronically (FIRE)**
- **Form 8508 — Request for Waiver From Filing Information Returns Electronically**
- **Form 8809 — Application for Extension of Time To File Information Returns**
- **Publication 515 — Withholding of Tax on Nonresident Aliens and Foreign Entities (for general information and explanation of tax law associated with Form 1042-S)**
- **Publication 901 — U.S. Tax Treaties**

The Internal Revenue Service (IRS), Information Returns Branch (IRB) encourages filers to make copies of the blank forms in the back of this publication for future use. You can also download forms and publications from the IRS Web Site at [IRS.gov](http://irs.gov). These forms can also be obtained by calling 1-800-TAX-FORM (1-800-829-3676).

Caution to filers:

Please read this publication carefully. Persons or businesses required to file information returns electronically may be subject to penalties for failure to file or include correct information if the instructions in this Revenue Procedure are not followed.

IMPORTANT NOTES:

The IRS internet connection for filing information returns electronically is <http://fire.irs.gov>. The Filing Information Returns Electronically (FIRE) system will be down from 6 p.m. Eastern Time (ET) December 16, 2011, through January 3, 2012 for yearly updates. In addition, the FIRE system may be down every Wednesday from 2:00 a.m. to 5:00 a.m. ET for programming updates. The FIRE system will not be available for submissions during these times.

Form 4419, Application for Filing Information Returns Electronically (FIRE) is subject to review before the approval to transmit electronically is granted. IRS may require additional documentation. If a determination is made concerning the validity of the documents transmitted electronically, IRS has the authority to revoke the Transmitter Control Code (TCC) and terminate the release of the files.

The FIRE system does not provide fill-in forms for filing information returns.

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Part A. General

Revenue Procedures are generally revised annually to reflect legislative and form changes. Comments concerning this Revenue Procedure, or suggestions for making it more helpful, can be addressed to:

Internal Revenue Service
Attn: Information Returns Branch
230 Murall Drive Mail Stop 4360
Kearneysville, WV 25430

Sec. 1. Purpose

.01 The purpose of this Revenue Procedure is to provide the specifications for filing Form 1042-S with IRS/IRB electronically through the FIRE (Filing Information Returns Electronically) system. To connect to the FIRE system, point the browser to <http://fire.irs.gov>. The system is designed to support the electronic filing of information returns only. This Revenue Procedure must be used to prepare current and prior year information returns **filed beginning January 1, 2012, and received by IRS/IRB by December 31, 2012.**

.02 Generally, the box names on the paper Form 1042-S correspond with the fields used to file electronically; however, if discrepancies occur, the instructions in this Revenue Procedure govern when filing electronically.

.03 This Revenue Procedure supersedes Rev. Proc. 2010–33 published as Publication 1187, Specifications for Filing Form 1042-S, Foreign Person’s U.S. Source Income Subject to Withholding, Electronically.

.04 Refer to Part A, Sec.13, for definitions of terms used in this publication.

.05 Specifications for filing Forms W-2, Wage and Tax Statements, electronically are available from the Social Security Administration (SSA) **only**. Filers can call 1–800–SSA–6270 to obtain the telephone number of the SSA Employer Service Liaison Officer for their area.

.06 IRS/IRB does not process Forms W-2. Forms W-2 must be sent to SSA. IRS/IRB does, however, process waiver requests (Form 8508) and extension of time to file requests (Form 8809) for Forms W-2 and requests for an extension of time to provide the employee copies of Forms W-2.

.07 Every withholding agent (defined in Section 13) must file an information return on Form 1042-S to report amounts of U.S. sourced income that was paid during the preceding calendar year. See Publication 515 for additional guidance on what is considered U.S. sourced income. Form 1042-S must be filed even if there was no tax withheld because the income was exempt from tax under a U.S. tax treaty or the Code. This includes the exemption for income that is effectively connected with the conduct of a trade or business in the United States, or the tax withheld was released to the recipient. Amounts paid to bona fide residents of U.S. possessions and territories are not subject to reporting on Form 1042-S if the beneficial owner of the income is a U.S. citizen, national, or resident alien.

Caution: If filing Form 1042-S, Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, must also be filed. See Form 1042 for more information.

.08 The following Revenue Procedures and publications provide more detailed filing procedures for certain information returns:

- (a) Paper Instructions for Form 1042-S.
- (b) Publication 1179, General Rules and Specifications for Substitute Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, 8935, W-2G and 1042-S.
- (c) Publication 1239, Specifications for Filing Form 8027, Employer’s Annual Information Return of Tip Income and Allocated Tips, Electronically.
- (d) Publication 1220, Specifications for Filing Forms 1097, 1098, 1099, 3921, 3922, 5498, 8935, and W 2G, Electronically.
- (e) Publication 3609, Filing Information Returns Electronically (FIRE).

- (f) Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons.
- (g) *Publication 4810, Specifications for Filing Form 8955-SSA, Annual Registration Statement of Identifying Separated Participants With Deferred Vested Benefits, Electronically.*

Sec. 2. Nature of Changes—Current Year (Tax Year 2011)

Editorial changes have been made throughout this publication. Please read the entire publication carefully.

.01 Penalties associated with Information Return filing have increased significantly. Please see Part A, Sec. 12 for specific information.

.02 The FIRE system has a separate log on address for testing. See Part B, Sec. 3.

.03 The address and telephone number have changed for tax law questions concerning the requirements for withholding of tax on payments reported on Form 1042-S. See Part A, Sec.3.09, Note.

Sec. 3. Where To File and How to Contact the IRS, Information Returns Branch (IRB)

.01 All information returns filed electronically are processed at IRS/IRB. General inquiries concerning the filing of 1042-S Forms should be sent to the following address:

Internal Revenue Service
Information Returns Branch
Attn: 1042-S Reporting
230 Murall Drive Mail Stop 4360
Kearneysville, WV 25430

.02 All requests for an extension of time to file information returns with IRS/IRB or to the recipients, and requests for undue hardship waivers filed on Form 8508, are sent to the following address:

Internal Revenue Service
Information Returns Branch
Attn: Extension of Time Coordinator
240 Murall Drive Mail Stop 4360
Kearneysville, WV 25430

.03 The telephone numbers for electronic filing inquiries are:

Information Returns Branch

1-866-455-7438 or
Outside the U.S. 304-263-8700
e-mail at mccirp@irs.gov

304-579-4827 - TDD
(Telecommunication Device for the Deaf)

Fax Machine
Within the U.S. — 877-477-0572
Outside the U.S. — 304-579-4105

Electronic Filing — FIRE system
PRODUCTION URL— <http://fire.irs.gov>
TEST URL— <http://fire.test.irs.gov>

TO OBTAIN FORMS:
1-800-TAX-FORM (1-800-829-3676)

IRS.gov — Online Ordering for Information Returns and Employer Returns
<http://www.irs.gov/businesses/page/0,,id=23108,00.html>

.04 The current paper Instructions for Form 1042-S have been included in Publication 1187 for the convenience of filers. The Form 1042-T is used only to transmit Copy A of paper Forms 1042-S. **When filing paper returns, follow the mailing instructions on Form 1042-T and submit the paper returns to the IRS Ogden Service Center, P.O. Box 409101, Ogden, UT 84409.**

.05 Make requests for paper Forms 1042-S by calling the IRS at **1-800-TAX-FORM (1-800-829-3676)** or via the IRS website at **IRS.gov**.

.06 Questions pertaining to electronic filing of Forms W 2 must be directed to the Social Security Administration (SSA). Filers can call 1-800-772-6270 to obtain the telephone number of the SSA Employer Service Liaison Officer for their area.

.07 Filers should not contact IRS/IRB if they have received a penalty notice and need additional information or are requesting an abatement of the penalty. A penalty notice contains an IRS representative's name and/or telephone number for contact purposes; or, the filer may be instructed to respond in writing to the address provided. IRS/IRB does not issue penalty notices and does not have the authority to abate penalties. For penalty information, refer to the Penalty section of the paper Instructions for Form 1042-S.

.08 A taxpayer or authorized representative may request a copy of a tax return, including Form W-2 filed with a return, by submitting Form 4506, Request for Copy of Tax Return, to IRS. This form may be obtained by calling **1-800-TAX-FORM (1-800-829-3676)**. For any questions regarding this form, call 267-941-1000. This is not a toll-free number.

.09 Electronic Products and Services Support, Information Returns Branch (IRB), answers electronic, paper filing, and tax law questions from the payer community relating to the correct preparation and filing of information returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 8935, 5498, 8027, and W-2G). IRB also answers questions relating to the electronic filing of Forms 1042-S and 8955-SSA. Call 1-866-455-7438 or 304-263-8700 for specific information about electronic filing of Forms 1042-S, 8027, and 8955-SSA. Inquiries pertaining to backup withholding and reasonable cause requirements due to missing and incorrect taxpayer identification numbers are also addressed by IRB. Assistance is available year-round to payers, transmitters, and employers, Monday through Friday, 8:30 a.m. to 4:30 p.m. Eastern Time, by calling **1-866-455-7438** or via e-mail at mccirp@irs.gov. When sending e-mails concerning specific file information, include the company name and the electronic filename or Transmitter Control Code. Please **do not** submit TINs or attachments, because electronic mail is not secure and the information may be compromised. The Telecommunications Device for the Deaf (**TDD**) toll number is **304-579-4827**. Call as soon as questions arise to avoid the busy filing seasons at the end of January, February, and March. Recipients of information returns (payees) should continue to contact 1-800-829-1040 with any questions on how to report the information returns data on their tax returns.

Note: IRB assistors do not answer tax law questions concerning the requirements for withholding of tax on payments of U.S. source income to foreign persons under Chapter 3 of the IR Code. If such assistance is needed, call 267-941-1000 (not a toll-free number) or write to: Internal Revenue Service, International Accounts, Philadelphia, PA 19255-0725.

.10 Form 4419, Application for Filing Information Returns Electronically (FIRE), Form 8809, Application for Extension of Time to File Information Returns, and Form 8508, Request for Waiver From Filing Information Returns Electronically, may be faxed to IRS/IRB at **1-877-477-0572** or **304-579-4105**.

Sec. 4. Filing and Retention Requirements

.01 Section 6011(e)(2)(A) of the Internal Revenue Code and the regulations thereunder provide that any person, including a corporation, partnership, individual, estate, and trust, who is required to file 250 or more information returns must file such returns electronically. Withholding agents who meet the threshold of 250 or more Forms 1042-S are required to submit the information electronically.

Note: Even though filers may submit up to 249 information returns on paper, IRS/IRB encourages filers to transmit those information returns electronically.

.02 These requirements apply separately to both originals and amended records filed electronically.

.03 All filing requirements that follow apply individually to each reporting entity as defined by its separate Taxpayer Identification Number (TIN), [Social Security Number (SSN), Employer Identification Number (EIN), Individual Taxpayer Identification Number (ITIN), or Qualified Intermediary Employer Identification Number (QI-EIN), Withholding Foreign Partnership Employer Identification Number (WP-EIN), Withholding Foreign Trust Employer Identification Number (WT-EIN)]. For example, if a corporation with several branches or locations uses the same EIN, the corporation must aggregate the total volume of returns to be filed for that EIN and apply the filing requirements to each type of return accordingly.

.04 The above requirements do not apply if the filer establishes undue hardship (see Part D, Sec. 5).

.05 Current and prior year data must be submitted in separate electronic transmissions. Each tax year must be a separate electronic file.

.06 Filers who have prepared their information returns in advance of the due date should submit this information to IRS/IRB no earlier than January 1 of the year the return is due.

.07 Do not report duplicate information. If a filer submits returns electronically, identical paper documents must not be filed. Duplicate filing may result in penalty notices being sent to recipients.

.08 Withholding agents should retain a copy of the information returns filed with IRS/IRB or have the ability to reconstruct the data for at least three years from the due date of the returns.

Sec. 5. Vendor List — Publication 1582

.01 IRS/IRB prepares a list of vendors who support electronic filing. Publication 1582, Information Returns Vendor List, contains the names of service bureaus that will produce or submit files for electronic filing. It also contains the names of vendors who provide software packages for payers who wish to produce electronic files on their own computer systems. This list is compiled as a courtesy and in no way implies IRS/IRB approval or endorsement.

.02 If filers engage a service bureau to prepare files on their behalf, the filers must not also report this data, as it will create a duplicate filing situation which may cause penalty notices to be generated.

.03 Publication 1582 is updated periodically. The most recent revision is available on the IRS website at IRS.gov. For an additional list of software providers, log on to IRS.gov and go to the [Approved IRS e-file for Business Providers](#) link.

.04 A vendor, who offers a software package, or has the capability to electronically file information returns for customers, and who would like to be included in Publication 1582 must submit a letter or e-mail to IRS/IRB. The request should include:

- (a) Company name
- (b) Address (include city, state, and ZIP code)
- (c) Telephone and FAX number (include area code)
- (d) E-mail address
- (e) Contact person
- (f) Website
- (g) Type(s) of service provided (e.g., service bureau and/or software)
- (h) Method of filing (only electronic filing is acceptable)
- (i) Type(s) of return(s)

Sec. 6. Form 4419, Application for Filing Information Returns Electronically (FIRE)

.01 Transmitters are required to submit Form 4419, Application for Filing Information Returns Electronically (FIRE), to request authorization to file information returns with IRS/IRB. A single Form 4419 may be filed. IRS/IRB encourages transmitters who file for multiple withholding agents or qualified intermediaries to submit one application and to use the assigned Transmitter Control Code (TCC) for all. Form 4419 is subject to review before the approval to transmit electronically is granted. IRS may require additional documentation. If a determination is made concerning the validity of the documents transmitted electronically, IRS has the authority to revoke the Transmitter Control Code (TCC) and terminate the release of files.

Note: An additional Form 4419 is required for filing Forms 1097, 1098, 1099, 3921, 3922, 5498, 8935, and W-2G. Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips, and Form 8955-SSA, Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits, also require separate Forms 4419. See the back of Form 4419 for detailed instructions.

.02 Electronically filed returns may not be submitted to IRS/IRB until the application has been approved. Please read the instructions on the back of Form 4419 carefully. A Form 4419 is included in Publication 1187 for the filer's use. This form may be photocopied. Additional forms may be obtained by calling **1-800-TAX-FORM (1-800-829-3676)**. The form is also available at IRS.gov.

.03 Upon approval, a five-character alpha/numeric Transmitter Control Code (TCC) beginning with the digits **"22"** will be assigned and included in an approval letter. The TCC **must** be coded in the Transmitter "T" Record. If a transmitter uses more than one TCC to file, each TCC must be reported on a separate electronic transmission. Please make sure that electronic files are submitted using the correct TCC.

.04 If any of the information (name, TIN or address) on Form 4419 changes, please notify IRS/IRB in writing by fax or mail so the IRS/IRB database can be updated. The transmitter should include the TCC in all correspondence.

.05 Form 4419 may be submitted anytime during the year; however, it must be submitted to IRS/IRB at least 30 days before the due date of the return(s) for current year processing. This will allow IRS/IRB the minimum amount of time necessary to process and respond to applications. Form 4419 may be faxed to IRS/IRB at 877-477-0572 or 304-579-4105 (not toll-free). In the event that computer equipment or software is not compatible with IRS/IRB, a waiver may be requested to file returns on paper documents.

.06 IRS/IRB encourages a transmitter who files for multiple withholding agents to submit one application and to use the assigned TCC for all withholding agents.

.07 If a withholding agent's files are prepared by a service bureau, it may not be necessary for the withholding agent to submit an application to obtain a TCC. Some service bureaus will produce files, code their own TCC on the file, and send it to IRS/IRB for the withholding agent. Other service bureaus will prepare electronic files for the withholding agent to submit directly to IRS/IRB. These service bureaus may require the withholding agent to obtain a TCC to be coded in the Transmitter "T" Record. Withholding agents should contact their service bureaus for further information.

.08 Once a transmitter is approved to file electronically, it is not necessary to reapply each year **unless**:

- (a) The withholding agent has discontinued filing electronically for two consecutive years; the withholding agent's TCC may have been reassigned by IRS/IRB. Withholding agents who are aware that the TCC assigned will no longer be used are requested to notify IRS/IRB so these numbers may be reassigned;
- (b) The withholding agent's electronic files were transmitted in the past by a service bureau using the service bureau's TCC, but now the withholding agent has computer equipment compatible with that of IRS/IRB and wishes to prepare his or her own files. The withholding agent must request a TCC by filing Form 4419.

.09 One Form 4419 may be submitted per TIN. Multiple TCCs will only be issued to withholding agents with multiple TINs. Only one TCC will be issued per TIN unless the filer has checked the application for the following forms in addition to the Form 1042-S: Forms 1097, 1098, 1099, 3921, 3922, 5498, W-2G, 8935, 8955-SSA and/or 8027. A separate TCC will be assigned for these forms.

.10 Approval to file does not imply endorsement by IRS/IRB of any computer software or of the quality of tax preparation services provided by a service bureau or software vendor.

Sec.7. Due Dates

.01 The due dates for filing paper returns with IRS also applies to electronic filing of Form 1042-S. Filing of these returns is on a calendar year basis.

.02 Form 1042-S filed electronically must be submitted to IRS/IRB on or before March 15.

.03 If any due date falls on a Saturday, Sunday, or legal holiday, the return or statement is considered timely if filed or furnished on the next day that is not a Saturday, Sunday, or legal holiday.

.04 Statements to recipients must be postmarked on or before March 15.

Sec. 8. Validation of Information Returns at IRS Service Center

.01 The accuracy of data reported on Form 1042-S is reviewed and validated at the IRS Service Center. All fields indicated as "Required" in the record layouts in Part C **must** contain **valid information**. If the Service identifies an error, filers will be notified and required to provide correct information.

.02 **Know your recipient!** See Notice 2006-35, 2006-14 I.R.B. 708 for know-your-customer rules.

.03 The tax rate entered must be a valid tax rate based on the Internal Revenue Code or on a valid treaty article. The valid treaty rate is based on the recipient's country of residence for tax purposes. The rate selected must be justified by the appropriate treaty. A valid Tax Rate Table is located in the Instructions for Form 1042-S.

.04 The Gross Income amount field must reflect pretax income. The Gross Income amount is the total income paid before any deduction of tax at source.

.05 If a qualified intermediary, withholding foreign partnership, or withholding foreign trust is acting as such, either as a withholding agent or as a recipient, the TIN reported must be a QI-EIN, WP-EIN, or WT-EIN and must begin with "98." See the definition of a QI in Part A, Sec 13 or in the paper Instructions for Form 1042-S.

.06 Country Codes used must be valid codes taken from the Country Code Table. Generally, the use of "OC" or "UC" will generate an error condition. If a recipient is claiming treaty benefits, the Country Code can never be "OC" or "UC".

.07 If a recipient is an "UNKNOWN RECIPIENT" or "WITHHOLDING RATE POOL," no address should be present. These are the only two situations where a street address is not required.

.08 A U.S. TIN for a recipient is now generally required, particularly for most treaty benefits. The exceptions are very limited and are listed in Publication 515 and the current paper Instructions for Form 1042-S. Use recipient U.S. TIN type indicator 4 when a U.S. TIN is required but was not provided. Reduced tax rates are not applicable when using the TIN type 4 indicator.

.09 Apply the following formulas to determine U.S. Federal Tax Withheld (field positions 359-370 of the "Q" Record). Applying the formulas will determine what the correct amount of withholding should be. If a different amount was withheld, enter the amount that was actually withheld. The U.S. Federal Tax Withheld amount must be added to Withholding by Other Agents (field positions 371-382) and the total of the two fields will be reflected in the Total Withholding Credit (field positions 383-394). Also, ensure the appropriate indicator is used in position 761 (U.S. Federal Tax Withheld Indicator). All field positions described below are in the "Q" Record.

Income Codes (15 – 20)

Gross Income (6-17)

– Withholding Allowance (18-29)

= Net Income (30-41)

X Tax Rate (42-45)

= U.S. Federal Tax Withheld (359-370)

All Other Income Codes

Gross Income (6-17)

X Tax Rate (42-45)

= U.S. Federal Tax Withheld (359-370)

.10 The following is how to correctly report an Unknown Recipient. All entries are in the Recipient “Q” Record.

- (a) Tax Rate (positions 42–45) must be 3000.
- (b) Exemption Code (positions 46–47) is 00.
- (c) Recipient Code (positions 92–93) is 20.
- (d) Recipient’s Name Line-1 (positions 94–133) must have “UNKNOWN” or “UNKNOWN RECIPIENT.”
- (e) Recipient’s Name Line-2 (positions 134–173) must be blank.
- (f) Recipient’s address (positions 214–337) must be blank.
- (g) Recipient’s Country Code (positions 338–339) is UC.

.11 When making a payment to an international organization (e.g., United Nations) or a tax-exempt organization under IRC 501(a), use Country Code “OC.” Use “UC” only when there is an “UNKNOWN RECIPIENT.”

.12 When using Exemption Code 4, the Recipient Country of Residence Code for Tax Purposes MUST be a VALID treaty country (e.g. if the recipient is a tax resident of Northern Ireland use United Kingdom). *Do not use Exemption Code 4 unless the exemption of tax is based on a treaty claim. If the tax treaty reduces the tax rate but does not exempt the payment, enter 00 or blanks for the exemption code as indicated in the Q Record instructions for positions 46–47.*

.13 Generally, payments under Income Codes 06 and 08 are not exempt from withholding, however, certain exceptions apply. See the current paper Instructions for Form 1042-S.

.14 If income is from gambling winnings (Income Code 28) or is not specified (Income Code 50), the tax rate must generally be 30%. This type of income is only exempt from withholding at source if the exemption is based on a tax treaty. These treaties are listed in Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities.

.15 If Income Code 20 (Earnings as an Artist or Athlete) is used, the Recipient Code must be 09. Do not use Recipient Code 01 (Individual), 02 (Corporation), or 03 (Partnership). Generally, the tax rate cannot be reduced even if a treaty may apply.

.16 When paying scholarship and fellowship grants (Income Code 15), the Recipient’s Country of Residence for Tax Purposes must be identified and cannot be “OC” or “UC.” Grants that are exempt under Code Section 117 are not required to be reported on Form 1042-S.

Note: Grants that are exempt under IR Code 117 include only the amounts provided for tuition, fees, books, and supplies to a qualified student. Amounts provided for room and board can only be exempted under a tax treaty and must be reported on Form 1042-S whether exempt from tax or not.

.17 If a student is receiving compensation (Income Code 19), or a teacher, or a researcher is receiving compensation (Income Code 18), all or part of which is exempted from tax under a tax treaty, the Country of Residence for Tax Purposes must be identified and cannot be “OC” or “UC.”

Sec. 9. Amended Returns

.01 If a Form 1042-S was filed with the IRS and the filer later discovered an error in the filing, an amended Form 1042-S must be filed as soon as possible.

Note: If any information amended on Form(s) 1042-S changes the information previously reported on Form 1042, the filer must also correct the Form 1042 by filing an amended return.

.02 The electronic filing requirement for information returns of 250 or more applies separately to both original and amended returns.

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If a withholding agent has 100 Forms 1042-S to be amended, they can be filed on paper because they fall under the 250 threshold. However, if the withholding agent has 300 Forms 1042-S to be amended, they must be filed electronically because they exceed the 250 threshold. If for some reason a withholding agent cannot file the 300 amended returns electronically, to avoid penalties, a request for a waiver must be submitted before filing on paper. If a waiver is approved for original documents, any amended returns for the same type of return will be covered under that waiver.

.03 Amended returns should be filed **as soon as possible**. Amended returns filed after August 1 may be subject to the maximum penalty of \$100 per return. Amended returns filed by August 1 may be subject to a lesser penalty. For information on penalties, refer to the Penalty section of the current paper Instructions for Form 1042-S. However, if a withholding agent discovers errors after August 1, the withholding agent is still required to file amended returns or be subject to a penalty for intentional disregard of the filing requirements. If a record is incorrect, all fields on that record must be completed with the correct information. Submit amended returns only for the returns filed in error. Do not submit the entire file. Furnish amended statements to recipients as soon as possible.

Note: Do not include original returns and amended returns in the same electronic file.

.04 If filers discover that certain information returns were omitted on their original file, they must not code these documents as amended returns. The file must be coded and submitted as an original file.

.05 Prior year data, original and amended, must be filed according to the requirements of this Revenue Procedure. If submitting prior year amended returns, use the record format for the current year and submit in a separate transmission. Use the actual year designation of the amended return in Field Positions 2–5 of the “T” Record. A separate electronic transmission must be made for each tax year.

.06 In general, filers should submit amended returns for returns filed within the last 3 calendar years.

.07 All paper returns, whether original or amended, must be filed with IRS, Ogden Service Center, P.O. Box 409101, Ogden, UT 84409.

.08 The “Q” Record provides a 20-position field (positions 72–91) for the recipient’s account number assigned by the withholding agent. This number should be included on the initial return and on the amended return. This is especially important when more than one information return of the same type is reported for a recipient. The account number is used by IRS to determine which information return is being amended. It is vital that each information return reported for a recipient have a unique account number. **Do not enter a TIN in this field.**

.09 The record sequence for filing amended returns is the same as for original returns.

.10 Following is a chart showing the steps to take when amending Form 1042-S:

Guidelines for Filing Amended Returns Electronically

One transaction is required to make the following corrections properly.

Error Made on the Original Return	How To File the Amended Return
<p><u>ERROR TYPE 1</u></p> <p>1. Original return was filed with one or more of the following errors:</p> <p>(a) Incorrect money amount (b) Incorrect codes and/or check boxes (c) Incorrect address (d) Form 1042-S submitted in error – should not have been submitted</p> <p>Note 1: If a Form 1042-S was submitted in error, all fields must be exactly the same as the original record except all money amounts must be zeros.</p>	<p><u>CORRECTION</u></p> <p>A. Prepare a new file. The first record on the file will be the Transmitter “T” Record.</p> <p>B. Make a separate “W” Record for each withholding agent being reported with a Return Type Indicator of “1” (1 = Amended) in field position 2. Enter a “G” (Amended Return Indicator) in position 810.</p> <p>C. The Recipient “Q” Records must show the correct record information with a Return Type Indicator of “1” for amended in field position 2. (See Note 1.) Enter a “G” (Amended Return Indicator) in position 810.</p> <p>D. Prepare a separate Reconciliation “C” Record for each withholding agent (“W” Record) being reported summarizing the preceding amended “Q” Records.</p> <p>E. The last record on the file will be the End of Transmission “F” Record.</p>

File layout one step corrections

Transmitter “T” Record	Amended coded Withholding Agent “W” Record	Amended coded Recipient “Q” Record	Amended coded Recipient “Q” Record	Reconciliation “C” Record	End of Transmission “F” Record
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Guidelines for Filing Amended Returns Electronically

Two (2) separate transactions (files) are required to make the following corrections properly. Follow the guidelines for both Transactions 1 and 2. DO NOT use the two step correction process to correct money amounts.

Error Made on the Original Return

How To File the Amended Return

ERROR TYPE 2

CORRECTION

1. Original "Q" Records were filed with one or more of the following errors:
- (a) No Recipient TIN (SSN, EIN, ITIN, QI-EIN)
 - (b) Incorrect Recipient TIN
 - (c) Incorrect Recipient name
 - (d) Incorrect Recipient name and address

Transaction 1: Identify incorrect returns.

Note 2: The Record Sequence Number will be different since this is a counter number and is unique to each file.

- A. Prepare a new file. The first record on the file will be the Transmitter "T" Record.
- B. Make a separate "W" Record for each withholding agent being reported. The information in the "W" Record will be **exactly** the same as it was in the original submission except for the Return Type Indicator of "1" (1 = Amended) in field position 2 and the Amended Return Indicator in position 810 must be a "G". (See Note 2.)
- C. The Recipient "Q" Records must contain **exactly the same** information as submitted previously, **except**, insert the Amended Return Indicator Code of "1" in Field Position 2 of the "Q" Records, and enter "0" (zeros) in all payment amounts. Enter the Return Type Indicator of "1" in position 2 and the Amended Return Indicator of "G" in position 810 of all "Q" Records. (See Note 2.)
- D. Prepare a separate Reconciliation "C" Record for each withholding agent being reported summarizing the preceding "Q" Records.
- E. Continue with Transaction 2 to complete the correction.

***See Note 3**

Note 3: Step 1 and Step 2 can be included in the same electronic file. If separate files for Step 1 and Step 2 are submitted, each file must have a complete set of "T, W, Q, C and F" records.

Transaction 2: Report the correct information.

- A. Make a separate "W" Record for each withholding agent being reported. The Return Type Indicator must be "1" in position 2. The Amended Indicator of "C" must be entered in position 810.
 - B. The Recipient "Q" Records must show the correct information. The Return Type Indicator in position 2 must be "1" and the Amended Return Indicator must be "C".
 - C. Prepare a separate Reconciliation "C" Record for each withholding agent being reported summarizing the preceding "Q" Records.
 - D. The last record on the file will be the End of Transmission "F" Record.
-

STEP 1 FILE

Transmitter “T” Record	Amended coded Withholding Agent “W” Record	Amended coded Recipient “Q” Record	Amended coded Recipient “Q” Record	Amended coded Recipient “Q” Record	Reconciliation “C” Record
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STEP 2 FILE

Amended coded Withholding Agent “W” Record	Amended coded Recipient “Q” Record	Amended coded Recipient “Q” Record	Amended coded Recipient “Q” Record	Reconciliation “C” Record	End of Transmission “F” Record
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.11 When correcting the Withholding Agent “W” Record, follow the two step correction process. When the “W” Record is being corrected, **every** Recipient “Q” Record reported under that incorrect “W” Record must be amended by zero filling all of the amount fields as described in Error Type 2, Transaction 1.

.12 For information on when an amended Form 1042 is required, refer to the Instructions for Form 1042.

Sec. 10. Taxpayer Identification Number (TIN)

.01 Section 6109 of the Internal Revenue Code establishes the general requirements under which a person is required to furnish a U. S. TIN to the person obligated to file the information return.

.02 The Withholding Agent must provide its EIN, QI-EIN, WP-EIN or WT-EIN as appropriate, in the “W” Record and “T” Record, if the Withholding Agent is also the transmitter.

.03 A recipient U. S. TIN (SSN, ITIN, EIN, QI-EIN, WP-EIN, WT-EIN) must be provided on every “Q” Record when:

- (a) The tax rate is less than 30% (See the Instructions for Form 1042-S for exceptions.)
- (b) The income is effectively connected with the conduct of a trade or business in the United States
- (c) A recipient claims tax treaty benefits (generally)
- (d) The recipient is a Qualified Intermediary
- (e) An NRA individual is claiming exemption from withholding on independent personal services
- (f) Other situations may apply, see Publication 515

.04 In the event the recipient does not have a U.S. TIN, the withholding agent should advise the recipient to take the necessary steps to apply for one.

.05 The recipient’s U.S. TIN and name combination are used to associate information returns reported to IRS/IRB with corresponding information on the recipient’s tax return. It is imperative that **correct** U.S. Taxpayer Identification Numbers (TINs) for recipients be provided to IRS/IRB. **Do not enter hyphens or alpha characters.** Entering all zeros, ones, twos, etc., will have the effect of an incorrect TIN.

.06 The withholding agent and recipient names with associated TINs should be consistent with the names and TINs used on other tax returns.

Note: A withholding agent must have a valid EIN, QI-EIN, WP-EIN, and/or WT-EIN. It is no longer valid for a withholding agent to use SSNs and ITINs.

Sec. 11. Effect on Paper Returns and Statements to Recipients

.01 Electronic reporting of Form 1042-S eliminates the need to submit paper documents to the IRS. **CAUTION: Do not send Copy A of the paper forms to the IRS for any forms filed electronically.** This may result in duplicate filing.

.02 Withholding agents are responsible for providing statements to the recipients as outlined in the current paper Instructions for Form 1042-S. Refer to those instructions for filing Form 1042-S on paper with the IRS and furnishing statements to recipients.

.03 Statements to recipients should be clear and legible. If the official IRS form is not used, the filer must adhere to the specifications and guidelines in Publication 1179, General Rules and Specifications for Substitute Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, 8935, 8955-SSA, W-2G and 1042-S.

.04 The address for filing paper Forms 1042-S and Form 1042 is: Ogden Service Center, P.O. Box 409101, Ogden, UT 84409. Do NOT send paper Forms 1042-S or 1042 to IRS/IRB.

Sec. 12. Penalties Associated With Information Returns

.01 The following penalties generally apply to the person required to file information returns. The penalties apply to electronic filers as well as to paper filers.

.02 **Failure To File Correct Information Returns by the Due Date (Section 6721).** If you fail to file a correct information return by the due date and you cannot show reasonable cause, you may be subject to a penalty. The penalty applies if, you fail to file timely, if you fail to include all information required to be shown on a return, or if you include incorrect information on a return. The penalty also applies if you file on paper when you were required to file electronically, you report an incorrect TIN or fail to report a TIN, or you fail to file paper forms that are machine readable.

The amount of the penalty is based on when you file the correct information return. The penalty is:

- **\$30 per information return if you correctly file within 30 days of the due date of the return (See Part A, Sec. 7.02); maximum penalty \$250,000 per year (\$75,000 for small businesses).**
- **\$60 per information return if you correctly file more than 30 days after the due date but by August 1; maximum penalty \$500,000 per year (\$200,000 for small businesses).**
- **\$100 per information return if you correctly file after August 1 or you do not file required information returns; maximum penalty \$1.5 million per year (\$500,000 for small businesses).**

.03 A late filing penalty may be assessed for a replacement file which is not transmitted by the required date. See Part B, Sec. 4.05, for more information on replacement files.

.04 **Intentional disregard of filing requirements.** If failure to file a correct information return is due to intentional disregard of the filing or correct information requirements, the penalty is at least \$250 per information return with no maximum penalty.

.05 **Failure To Furnish Correct Payee Statements (Section 6722).** For information regarding penalties which may apply for a failure to furnish correct payee statements, see the Instructions for Form 1042-S.

Sec. 13. Definition of Terms

Element	Description
Amended Return	An amended return is an information return submitted by the transmitter to amend an information return that was previously submitted to and processed by IRS/IRB, but contained erroneous information.
Beneficial Owner	The beneficial owner of income is, generally, the person who is required under U.S. tax principles to include the income in gross income on a tax return. For additional information and special conditions see Definitions in the current paper Instructions for Form 1042-S.
Employer Identification Number (EIN)	A nine-digit number assigned by IRS for federal tax reporting purposes.
Electronic Filing	Submission of information returns electronically via the Internet. See Part B of this publication for specific information on electronic filing.
File	For purposes of this Revenue Procedure, a file consists of one Transmitter "T" Record at the beginning of the file, a Withholding Agent "W" Record, followed by the Recipient "Q" Record (s), a Reconciliation "C" Record summarizing the number of preceding "Q" Records and total of preceding money fields. Follow with any additional "W", "Q", and "C" Record sequences as needed. The last record on the file is the End of Transmission "F" Record. Nothing should be reported after the End of Transmission "F" Record.
Filer	Person (may be withholding agent and/or transmitter) submitting information returns to IRS.
Filing Year	The calendar year in which the information returns are being submitted to IRS.
Flow-Through Entity	A flow-through entity is a foreign partnership (other than a withholding foreign partnership) or a foreign simple or grantor trust (other than a withholding foreign trust). For any payments for which a reduced rate withholding under an income tax treaty is claimed, any entity is considered to be a flow-through entity if it is considered to be fiscally transparent under IRC Section 894 with respect to the payment by an interest holder's jurisdiction.

Element	Description
Foreign Person	A foreign person includes a nonresident alien individual, a foreign corporation, a foreign partnership, a foreign trust, a foreign estate, and any other person who is not a U.S. person. The term also includes a foreign branch or office of a U.S. financial institution or U.S. clearing organization, if the foreign branch is a Qualified Intermediary. Generally, a payment to a U.S. branch of a foreign institution is a payment to a foreign person.
Gross Income	Gross income includes income from all sources, except certain items expressly excluded by statute. Gross income is the starting point for computing adjusted gross income and taxable income.
Individual Taxpayer Identification Number (ITIN)	A nine-digit number issued by IRS to individuals who are required to have a U.S. taxpayer identification number for tax purposes but are not eligible to obtain a Social Security Number (SSN). An ITIN may be used for tax purposes only.
Information Return	The vehicle for withholding agents to submit required tax information about a recipient to IRS. For this Revenue Procedure, it is information about a foreign person's U.S. source income subject to withholding, and the information return is Form 1042-S.
Intermediary	An intermediary is a person who acts as a custodian, broker, nominee, or otherwise as an agent for another person, regardless of whether that other person is the beneficial owner of the amount paid, a flow-through entity, or another intermediary.
Nonqualified Intermediary (NQI)	A Nonqualified Intermediary is a foreign intermediary who is not a U.S. person and is not a Qualified Intermediary.
Payer	A payer is the person for whom the withholding agent acts as a paying agent pursuant to an agreement whereby the withholding agent agrees to withhold and report a payment.
Presumption Rules	The presumption rules are those rules prescribed under Chapter 3 and Chapter 61 of the Internal Revenue Code that a withholding agent must follow to determine the status of a beneficial owner as a U.S. or foreign person when it cannot reliably associate a payment with valid documentation.
Pro-Rata Basis Reporting	If the withholding agent has agreed that an NQI may provide information allocating a payment to its account holders under the provisions of Regulations section 1.1441-1(e) (3) (iv) (D), and the NQI fails to allocate payment in a withholding rate pool to the specific recipients in the pool, the withholding agent must file a Form 1042-S for each recipient on a pro-rata basis.
Qualified Intermediary (QI)	A Qualified Intermediary is a foreign intermediary who is a party to a withholding agreement with the IRS, in which it agrees to comply with the relevant terms of Chapters 3 and 61 of the Internal Revenue Code and is in a country with approved know-your-customer rules. See Notice 2006-35.
Qualified Intermediary Employer Identification	A nine-digit number assigned by IRS to a QI for Federal tax reporting purposes. A QI-EIN is only to be used when a QI is acting as a qualified intermediary.
Recipient	Person (nonresident alien individual, fiduciary, foreign partnership, foreign corporation, Qualified Intermediary, Withholding Rate Pool, or other foreign entity) who receives payments from a withholding agent as a beneficial owner or as a qualified intermediary acting on behalf of a beneficial owner. A non-qualified intermediary cannot be a recipient.
Replacement File	A replacement file is an information return file sent by the filer at the request of IRS/IRB because of certain errors encountered while processing the filer's original submission.
Service Bureau	Person or organization with whom the withholding agent has a contract to prepare and/or submit information return files to IRS/IRB. A parent company submitting data for a subsidiary is not considered a service bureau.
Social Security Number (SSN)	A nine-digit number assigned by the Social Security Administration to an individual for wage and tax reporting purposes.
Special Character	Any character that is not a numeric, an alpha, or a blank. The only special characters that are acceptable within an electronic file are ampersand (&), hyphen (-), comma (,), apostrophe ('), forward slash (/), pound sign (#), period (.), and the percent (%).
Taxpayer Identification Number (TIN)	Refers to either an Employer Identification Number (EIN), Social Security Number (SSN), Individual Taxpayer Identification Number (ITIN), or a Qualified Intermediary Employer Identification Number (QI-EIN).

Element	Description
Tax Year	The year in which payments were made by a withholding agent to a recipient.
Transmitter	Refers to the person or organization submitting file(s) electronically. The transmitter may be the payer, agent of the payer, or withholding agent.
Transmitter Control Code (TCC)	A five-character alpha/numeric number assigned by IRS/IRB to the transmitter prior to filing electronically. An application Form 4419 must be filed with IRS/IRB to receive this number. This number is inserted in the Transmitter "T" Record (field positions 190–194) of the file and must be present before the file can be processed. Transmitter Control Codes assigned to 1042-S filers will always begin with "22".
Unknown Recipient	For this Revenue Procedure, an unknown recipient is a recipient for whom no documentation has been received by a withholding agent or intermediary or for which documentation received cannot be reliably associated. This includes incomplete documentation. An unknown recipient is always subject to withholding at the maximum applicable rate. No reduction of or exemption from tax may be applied under any circumstances.
Vendor	Vendors include service bureaus that produce information return files for withholding agents. Vendors also include companies that provide software for those who wish to produce their own electronic files.
Withholding Agent	Any person, U.S. or foreign, who has control, receipt, or custody of an amount subject to withholding or who can disburse or make payments of an amount subject to withholding. The withholding agent may be an individual, corporation, partnership, trust, association, or any other entity. The term withholding agent also includes, but is not limited to, a qualified intermediary, a nonqualified intermediary, a withholding foreign partnership, a withholding foreign trust, a flow-through entity, a U.S. branch of a foreign insurance company or foreign bank that is treated as a U. S. person, and an authorized foreign agent. A person may be a withholding agent under U.S. law even if there is no requirement to withhold from a payment or even if another person has already withheld the required amount from a payment.
Withholding Foreign Partnership (WP) or Withholding Foreign Trust (WT)	A foreign partnership or trust that has entered into a withholding or Withholding Foreign Trust agreement with the IRS in which it agrees to assume primary withholding responsibility for all payments that are made to it for its partners, beneficiaries, or owners.

Sec. 14. State Abbreviations

.01 The following state and U.S. territory abbreviations must be used when developing the state code portion of address fields. This table provides state and territory abbreviations.

State	Code	State	Code	State	Code
Alabama	AL	Kansas	KS	No. Mariana Islands	MP
Alaska	AK	Kentucky	KY	Ohio	OH
American Samoa	AS	Louisiana	LA	Oklahoma	OK
Arizona	AZ	Maine	ME	Oregon	OR
Arkansas	AR	Maryland	MD	Pennsylvania	PA
California	CA	Massachusetts	MA	Puerto Rico	PR
Colorado	CO	Michigan	MI	Rhode Island	RI
Connecticut	CT	Minnesota	MN	South Carolina	SC
Delaware	DE	Mississippi	MS	South Dakota	SD
District of Columbia	DC	Missouri	MO	Tennessee	TN
Federated States of Micronesia	FM	Montana	MT	Texas	TX
Florida	FL	Nebraska	NE	Utah	UT
Georgia	GA	Nevada	NV	Vermont	VT
Guam	GU	New Hampshire	NH	Virginia	VA
Hawaii	HI	New Jersey	NJ	(U.S.) Virgin Islands	VI
Idaho	ID	New Mexico	NM	Washington	WA
Illinois	IL	New York	NY	West Virginia	WV
Indiana	IN	North Carolina	NC	Wisconsin	WI
Iowa	IA	North Dakota	ND	Wyoming	WY

.02 When reporting APO/FPO addresses, use the following format:

EXAMPLE:

Recipient Name PVT Willard J. Doe
Mailing Address Company F, PSC Box 100
167 Infantry REGT
Recipient City APO (or FPO)
Recipient State AE, AA, or AP*
Recipient ZIP Code 098010100

*AE is the designation for ZIP codes beginning with 090-098, AA for ZIP code 340, and AP for ZIP codes 962-966.

Part B. Electronic Filing Specifications

Note: The FIRE system does not provide fill-in forms, except for Form 8809, Application for Extension of Time to File Information Returns. Filers must program files according to the Record Layout Specifications contained in this publication. For a list of software providers, log on to IRS.gov and go to the Approved IRS e-file for Business Providers link. Also, see Part A, Sec. 5 .03.

Note 2: The FIRE system may be down every Wednesday from 2:00 a.m. to 5:00 a.m. ET for programming updates and for two weeks at the end of the year for yearly updates. The FIRE system will not be available for submissions during these times.

Sec. 1. General

.01 Electronic filing of Form 1042-S (originals, amended and replacement files) is a reporting method for filers submitting 250 or more Forms 1042-S. Payers who are under the filing threshold requirement are encouraged to file electronically.

.02 All electronic filing of information returns are received at IRS/IRB via the FIRE (Filing Information Returns Electronically) system. To connect to the FIRE system, point the browser to <http://fire.irs.gov>. The system is designed to support the electronic filing of information returns only.

.03 For files submitted through the FIRE system, it is the responsibility of the filer to check the status of the file within five business days to verify the results of the transmission. Information about the errors including the number of errors, a description, and the first

occurrence will be provided on the FIRE system.. If additional information is needed to understand the errors, the filer can call 1-866-455-7438 or outside the U.S. at 304-263-8700.

.04 The electronic filing of information returns is not affiliated with any other IRS electronic filing programs. Filers must obtain separate approval to participate in each program. Only inquiries concerning electronic filing of information returns should be directed to IRS/IRB.

.05 Files submitted to IRS/IRB electronically must be in standard ASCII code. See Part C, Record Format Specifications and Record Layouts, for the proper record format. Do not send paper forms with the same information as electronically submitted files. This may create duplicate reporting resulting in penalty notices.

.06 Form 8809, Application for Extension of Time to File Information Returns, is available as a fill-in form via the FIRE system. Filers that do not already have a User ID and password should refer to Section 7. At the Main Menu, click "Extension of Time Request" and then click "Fill-in Extension Form." This option is only used to request an automatic 30-day extension and must be completed by the due date of the return for each payer requesting an extension. Print the approval page for your records. Refer to Part D for additional details.

Sec. 2. Electronic Filing Approval Procedure

.01 Filers must obtain a Transmitter Control Code (TCC) assigned prior to submitting files electronically. Refer to Part A, Sec. 6, for information on how to obtain a TCC.

.02 Once a TCC is obtained, electronic filers assign their own user ID, password, and PIN (Personal Identification Number). See Part B, Sec. 5, for more information on the PIN.

.03 If a filer is submitting files for more than one TCC, it is not necessary to create a separate User ID and password for each TCC.

.04 For all passwords, it is the user's responsibility to remember the password and not allow the password to be compromised. Passwords are user created at first logon and must consist of eight alpha/numeric characters containing at least one uppercase, one lowercase, and one numeric. *The FIRE system requires users to change passwords every 90 days or at the first logon attempt after that time period.* Users can change passwords at any time from the Main Menu. *The previous 24 passwords cannot be used.* Filers who forget the password or PIN can call **1-866-455-7438 or outside the U.S. at 304-263-8700** for assistance.

Sec. 3. Test Files

.01 Filers are not required to submit a test file; however, the submission of a test file is encouraged for all new electronic filers to test hardware and software. If filers wish to submit an electronic test file for Tax Year 2011 (returns to be filed in 2012), it must be submitted to IRS/IRB no earlier than **November 1, 2011**, and no later than **February 15, 2012**.

.02 IRS/IRB strongly encourages all electronic filers to submit a test. *To connect to the FIRE Test System, point the browser to <http://fire.test.irs.gov>.*

The test file must consist of a sample of each type of record:

- (a) Transmitter "T" Record
- (b) Withholding Agent "W" Record
- (c) Multiple Recipient "Q" Records (**at least 11 recommended**)
- (d) Reconciliation "C" Record
- (e) End of Transmission "F" Record

.03 Use the Test Indicator "**TEST**" (upper case) in Field Positions 195-198 of the "T" Record to show this is a test file.

.04 IRS/IRB will check the file to ensure it meets the specifications of this Revenue Procedure. For current filers, sending a test file will provide the opportunity to ensure the software reflects all required programming changes. Filers are reminded that not all validity, consistency, or math error tests will be conducted.

.05 Filers who encounter problems while transmitting the electronic test file can contact IRS/IRB at **1-866-455-7438 or outside the U.S. at 304-263-8700** for assistance.

.06 Within five days after a file has been submitted, filers will be notified via e-mail as to the acceptability of the file if a valid e-mail address was provided on the "Verify Your Filing Information" screen. If using e-mail filtering software, configure the software to accept e-mail from fire@irs.gov and irs.e-helpmail@irs.gov. *If the file is bad or an e-mail has not been received within five days, the filer must return to <http://fire.test.irs.gov> to determine what errors are in the file by clicking on CHECK FILE STATUS.*

Sec. 4. Electronic Submissions

.01 Electronically filed information may be submitted to IRS/IRB 24 hours a day, seven days a week. Technical assistance is available Monday through Friday between 8:30 a.m. and 4:30 p.m. Eastern Time by calling **1-866-455-7438 or outside the U.S. at 304-263-8700**.

.02 **The FIRE system will be down from December 16, 2011 through January 3, 2012.** This allows IRS/IRB to make yearly updates to reflect current year changes. In addition, the FIRE system may be down every Wednesday from 2:00 a.m. to 5:00 a.m. ET for programming updates. The FIRE system will not be available for submissions during these times.

.03 A file may not exceed 899,999 records. When sending files larger than 10,000 records electronically, data compression is encouraged. WinZip and PKZip are the only acceptable compression packages. IRS/IRB cannot accept self-extracting zip files or compressed files containing multiple files. The time required to transmit information returns electronically will vary depending on the type of connection to the internet and if data compression is used. **The time required to transmit a file can be reduced by as much as 95 percent by using compression.** *Transmitters that experience problems transmitting files with a scripting process should contact IRS/IRB at 1-866-455-7438 or 304-263-8700 for assistance.*

.04 Transmitters may create files using self assigned filename(s). Files submitted electronically will be assigned a new unique filename by the FIRE system. The filename assigned by the FIRE system will consist of submission type (TEST, ORIG [original], AMEN [amended return], and REPL [replacement]), the filer's TCC, and a four-digit sequence number. The sequence number will be incremental for every file sent. For example, if this is the first original file for the calendar year and the TCC is 22000, the IRS assigned filename would be ORIG.22000.0001. **Record the filename.** This information will be needed by IRS/IRB to identify the file, if assistance is required.

.05 If a file submitted timely is bad, the filer will have up to 60 days from the day the file was transmitted to transmit an acceptable replacement file. If an acceptable replacement file is not received within 60 days, the payer could be subject to late filing penalties. This only applies to files originally submitted electronically.

.06 The following definitions have been provided to help distinguish between an amended return and a replacement:

- An **amended return** is an information return submitted by the transmitter to correct an information return that was previously submitted to and processed by IRS/IRB, but contained erroneous information. (See Note.)

Note: Amended returns should only be submitted for records that have been submitted incorrectly, not the entire file.

- A **replacement** is an information return file sent by the filer because the CHECK FILE STATUS option on the FIRE system indicated the original/amended file was bad. After the necessary changes have been made, the file must be transmitted through the FIRE system. (See Note.)

Note: Filers should never transmit anything to IRS/IRB as a "Replacement" file unless the CHECK FILE STATUS option on the FIRE system indicates the file is bad.

.07 The TCC in the Transmitter "T" Record must be the TCC used to transmit the file; otherwise, the file will be considered an error

Sec. 5. PIN Requirements

.01 The user will be prompted to create a PIN consisting of ten numeric characters when establishing an initial User ID name and password.

.02 The PIN is required each time an ORIGINAL, AMENDED, or REPLACEMENT file is sent electronically and is permission to release the file. It is not needed for a TEST file. An authorized agent/transmitter may enter their PIN; however, the Withholding Agent is responsible for the accuracy of the returns. The payer will be liable for penalties for failure to comply with filing requirements. If there is a problem with a PIN, filers should call **1-866-455-7438 or outside the U.S. at 304-263-8700 for assistance.**

.03 If the file is good, it is released for mainline processing after ten calendar days from receipt. Contact IRB at **1-866-455-7438 or outside the U.S. at 304-263-8700** within this ten-day period if there is a reason the file should not be released for further processing. If the file is bad, follow normal replacement procedures.

Sec. 6. Electronic Filing Specifications

.01 The FIRE system is designed exclusively for the filing of Forms 1042-S, 1097, 1098, 1099, 3921, 3922, 5498, 8027, 8935-SSA and W-2G.

.02 A transmitter must have a TCC (see Part A, Sec. 6) before a file can be transmitted.

.03 Within five days of the electronic transmission, a filer will be notified by e-mail as to the acceptability of the file, if a valid e-mail address was provided on the "Verify Your Filing Information" screen. If using e-mail filtering software, configure the software to accept e-mail from fire@irs.gov and irs.e-helpmail@irs.gov. If the file is bad, the filer must return to <http://fire.irs.gov> (or <http://fire.test.irs.gov> if a test file) to determine what errors are in the file by clicking on "CHECK FILE STATUS."

Sec. 7. Connecting to the FIRE System

.01 Have the TCC and TIN available before connecting.

.02 Turn off pop-up blocking software before transmitting files.

.03 Make sure the browser supports the security standards listed below.

.04 Set the browser to receive "cookies." Cookies are used to preserve the User ID status.

.05 Point the browser to <http://fire.irs.gov> to connect to the FIRE system or <http://fire.test.irs.gov> to connect to the FIRE test system (Nov. 1 through Feb.15).

.06 FIRE Internet Security Technical Standards are:

HTTP 1.1 Specification (<http://www.w3.org/Protocols/rfc2616/rfc2616.txt>)

SSL 3.0 or TLS 1.0. SSL and TLS are implemented using SHA and RSA 1024 bits during the asymmetric handshake.

SSL 3.0 Specifications

TLS 1.0 Specifications

The filer can use one of the following encryption algorithms, listed in order of priority, using SSL or TLS:

AES 256-bit (FIPS-197)

AES 128-bit (FIPS-197)

TDES 168-bit (FIPS-46-3)

First time connection to the FIRE System (If there has been a previous logon, skip to Subsequent Connections to the FIRE System..)

Click **“Create New Account”**

Fill out the registration form and click **“Submit”**

Create **User ID**

Create and verify password (The password is user created and must be eight alpha/numeric characters, containing at least one uppercase, one lowercase, one numeric, and cannot contain the User ID. *The FIRE system requires passwords to be changed every 90 days or at the first logon attempt after 90 days. The previous 24 passwords cannot be used.*)

Click **“Create”**

If the message **“Account Created”** is received, click **“OK”**

Create and verify the ten-digit self-assigned PIN (Personal Identification Number).

Click **“Submit”**

If the message **“Your PIN has been successfully created!”** is received, click **“OK”**

Read the bulletin(s) and/or **“Click here to continue”**

Subsequent connections to The FIRE System

Click **“Log On”**

Enter the **User ID**

Enter the **Password** (The password is case sensitive.)

Read the bulletin(s) and/or **“Click here to continue”**

Uploading a file to the FIRE System

At Menu Options:

Click **“Send Information Returns”**

Enter the **TCC**

Enter the **TIN**

Click **“Submit”**

The system will then display the company name, address, city, state, ZIP code, telephone number, contact, and e-mail address. This information will be used to e-mail the transmitter regarding the transmission. Update as appropriate and/or click **“Accept.”**

Note: Please provide an accurate e-mail address for the correct person to receive the e-mail and to avoid having the e-mail returned to IRB as undeliverable. If SPAM filtering software is being used, configure it to allow an e-mail from fire@irs.gov and irs.e-helpmail@irs.gov.

Click one of the following:

Original File

Replacement File

Amended File

Uploading a file to the FIRE System

Test File (This option will only be available from November 1 through February 15 at <http://fire.test.irs.gov>.)

Enter the ten-digit PIN (If sending a test file, there is no prompt for this.)

Click **“Submit”**

Click **“Browse”** to locate the file and open it

Click **“Upload”**

When the upload is complete, the screen will display the total bytes received and the IRS assigned filename for the file. ***IF THIS INFORMATION IS NOT DISPLAYED ON THE SCREEN, IRS/IRB MAY NOT HAVE RECEIVED THE FILE.*** To verify, go to the “CHECK FILE STATUS” option on the Main Menu. If the filename is displayed, the count is equal to “0,” and the results indicate “not yet processed,” IRB received the file. **If the filename is not displayed, send the file again.**

If there are more files to upload for that TCC:

Click **“File Another?”** otherwise,

Click **“Main Menu”**

It is the filer’s responsibility to check the acceptability of submitted files. If an e-mail is not received within five business days or an e-mail is received and it indicates the file is bad, log back into the FIRE system and click on CHECK FILE STATUS to view the results of the file.

Checking the FILE STATUS

If the correct e-mail address was provided on the “Verify Your Filing Information” screen when the file was sent, an e-mail will be sent regarding the FILE STATUS. If the results in the e-mail indicate “Good, not Released” and the “Count of Payees” is correct, the filer is finished with this file. If the e-mail indicates any other results, follow the instructions below.

At the Main Menu:

Click **“Check File Status”**

Enter the **TCC**

Enter the **TIN**

Click **“Search”**

If the “Results” indicate:

“Good, Not Released” — If the “Count of Payees” is correct, the filer is finished with this file. The file will automatically be released after ten calendar days unless the filer contacts IRB within this timeframe..

“Good, Released” — The file has been released to our mainline processing.

“Bad” — The file has errors. Click on the filename to view the error message(s). Fix the errors, and resubmit the file timely as a **“replacement.”**

“Not yet processed” — The file has been received, but results are not available. Please check back in a few days.

When finished, click **“Log Out”**

Click **“Close Web Browser”**

Sec. 8. Common Submission Problems and Questions

.01 Publication 1187 is a Revenue Procedure used to provide the electronic filing specifications and format to filers of Forms 1042-S, it is **not** a tax law document. Therefore, this publication cannot provide for all possible reporting situations. For any given record entry, it is the responsibility of the filer to make sure the relevant tax law is applied to the record entry being made.

FORMAT ERRORS

1. Incorrect TIN indicator in the “W” Record.

Make sure the correct TIN Indicator is used. A U.S. withholding agent always has an EIN. Only a foreign withholding agent that has entered into a Qualified Intermediary agreement with the IRS can have a QI-EIN. If the withholding agent is a foreign company, then a foreign address must be entered in the withholding agent address fields.

2. Blank or invalid information in the Withholding Agent’s name and address fields.

The IRS error correction process requires that the “W” Record be checked for validity before the “Q” Record can be corrected. Please ensure that the withholding agent’s Name, EIN, Street Address, City, and State or Country is present along with the appropriate Postal or ZIP Code. The Withholding Agent’s Name Line-1 **must** contain the withholding agent’s name.

3. Missing Recipient TIN in the “Q” Record.

*A Recipient TIN **must** be present in order to allow a reduction or exemption from withholding at the 30% tax rate. The only major exceptions to this rule involve payments of portfolio interest, dividends, and certain royalty payments. If the recipient doesn’t have a TIN, one must be applied for and provided to the withholding agent before a reduction or exemption of withholding is allowed.*

4. Invalid recipient name and address information.

The recipient name entered in Recipient’s Name Line-1 must be the same name shown on the withholding certification document provided to and retained by the withholding agent. Recipient’s Street Line-1 should only show the official street address. Use Recipient’s Street Line-2 for additional internal distribution information such as mail stop numbers or attention information. Follow the instructions for entry of foreign postal codes, cities, and countries. Do not input all information in the City field. Use the appropriate fields and codes.

5. Incorrect use of Recipient Code 20 (Unknown Recipient).

This Recipient Code may be used only if no withholding certification document has been provided to and retained by the withholding agent, or the withholding certification document provided to and retained has been determined by the withholding agent to be incomplete or otherwise unreliable. If Recipient Code 20 is used, the Recipient Name Line-1 must contain the words “UNKNOWN” or “UNKNOWN RECIPIENT” and the other name and address fields must be blank.

6. Incorrect use of Recipient Code 20 and the Tax Rate and U. S. Tax Withheld fields.

If Recipient Code 20 is used, the Tax Rate and the U.S. Tax Withheld must always be 30%. Exemption Code 04 (treaty exemption) is **not allowed** when using Recipient Code 20.

7. Incorrect use of Country Codes in the “Q” Record.

There are three places in the “Q” Record where country information must be entered. Generally, the information entered in these three fields should be consistent. The country list in the Instructions for Form 1042-S is comprehensive. **Do not** use any code that is not on the list. Read the Instructions for Form 1042-S regarding the use of “OC” and “UC.” **Do not** use these two codes under any other circumstances than those specifically indicated in the Instructions for Form 1042-S.

8. Incorrect reporting of Tax Rates in the “Q” Record.

A valid Tax Rate Table is included in the Instructions for Form 1042-S. Please refer to the table and only use the tax rates listed. “Blended rates” are not allowed. If a tax rate for a given recipient changes during the year, two “Q” Records must be submitted.

9. Total amounts reported in the “C” Record do not equal the total amounts reported in the “Q” Records.

The total Gross Income and Total Withholding Credit reported in the “Q” Records must equal the Total Gross Income and Total Withholding Credit reported in the corresponding “C” Record.

FORMAT ERRORS

10. The following are other major errors associated with electronic filing:

- a. Invalid characters. The only valid characters are those characters listed in Note 3 at the beginning of the “T,” “W,” and “Q” Records.
 - b. “Q” Record Positions 383–394 (Total Withholding Credit) must equal the amounts in Positions 359–370 (U.S. Tax Withheld) and Positions 371–382 (Withholding by Other Agents).
 - c. “C” Record Positions 31–45 must reflect the aggregate of the preceding “Q” records positions 383–394 (Total Withholding Credit).
 - d. “Q” Record Positions 42–45 (Tax Rate) must reflect a valid tax rate.
 - e. “Q” Record Positions 46–47 (Exemption Code) must reflect a valid code and the exemption code must be compatible with the tax rate. For example, if a zero tax (0000) rate is entered in positions 42–45, the appropriate exemption code of 01-09 must be used in positions 46–47.
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NON-FORMAT ERRORS

1. SPAM filters are not set to receive e-mail from fire@irs.gov and irs.e-helpmail@irs.gov.

To receive e-mails concerning files, processing results, reminders and notices, set the SPAM filter to receive e-mail from fire@irs.gov and irs.e-helpmail@irs.gov.

2. Incorrect e-mail provided.

When the “Verify Your Filing Information” screen is displayed, make sure the correct e-mail address is listed. If not, please update with the correct e-mail address.

3. Transmitter does not check the FIRE system to determine why the file is bad.

Generally, the results of a file transfer are posted to the FIRE system within five business days. If the correct e-mail address was provided on the “Verify Your Filing Information” screen when the file was sent, an e-mail will be sent regarding the FILE STATUS. If the results in the e-mail indicate “Good” for test, or “Good, Not Released” for production and the “count of payees” is correct, the filer is finished with this file. If any other results are received, follow the instructions in the “Check File Status” option. If the file contains errors, get an online listing of the errors. If the file status is good, but the file should not be processed, contact IRS/IRB within ten calendar days from the transmission of the file.

4. Transmitter uses the TCC assigned for filing 1098, 1099, 5498 or W-2G Forms.

Filers must use the Form 1042-S TCC, which begins with “22,” to transmit Form 1042-S files. If the correct TCC is not used, it will automatically be considered an error.

5. Incorrect file is not replaced timely.

If a file is bad, fix the file, and resubmit timely as a replacement. An acceptable replacement file must be submitted within 60 days from the day the original file was transmitted.

6. Transmitter compresses several files into one.

Only compress one file at a time. For example, if there are ten uncompressed files to send, compress each file separately and send ten separate compressed files.

7. Transmitter sends a file and “CHECK FILE STATUS” indicates that the file is good, but the transmitter wants to send another file containing the same information.

Once a file has been transmitted, a replacement file cannot be sent unless “CHECK FILE STATUS” indicates the file is bad (five business days after the file was transmitted). If a file should not be processed, contact IRS/IRB at **1-866-455-7438** or **outside the U.S. at 304-263-8700** to see if this is a possibility.

NON-FORMAT ERRORS

8. Transmitter sends an original file that is good, and then sends an amended file for the entire file even though there are only a few changes.

The amended file, containing the proper coding, should only contain the records needing correction, not the entire file. Improper submission can result in duplicate reporting of payee information.

9. File is formatted as EBCDIC.

All files submitted electronically must be in standard ASCII code.

10. Transmitter has one TCC, but is filing for multiple companies. Which TIN should be used when logging into the FIRE system to send the file?

When sending the file electronically, enter the TIN of the company assigned to the TCC. The uploaded file should contain the TINs of the businesses that made payments that are subject to reporting on information returns. The payer TIN is the information that will be passed forward.

11. Transmitter sent the wrong file, what should be done?

Call IRS/IRB at 1-866-455-7438 or outside the U.S. at 304-263-8700. IRB may be able to stop the file before it has been processed.

Part C. Record Format Specifications and Record Layouts

Sec. 1. Transmitter "T" Record

.01 This record identifies the entity preparing and transmitting the file. The transmitter and the withholding agent may be the same, but they need not be. The "T" Record contains information which is critical if it is necessary for IRS/IRB to contact the filer.

.02 The first record of a file **MUST** be a Transmitter "T" Record. The "T" Record must appear on each electronic file; otherwise, a replacement file will be requested.

.03 The "T" Record is a fixed length of 820 positions.

.04 All alpha characters entered in the "T" Record must be upper case.

Note 1: For all fields marked "Required," the transmitter must provide the information described under Description and Remarks. If required fields are not completed in accordance with this Revenue Procedure, IRS will contact the filer to request a replacement file. For those fields not marked Required, a transmitter must allow for the field, but may be instructed to enter blanks or zeros in the indicated field position(s) and for the indicated length.

Note 2: A copy of the current paper Instructions for Form 1042-S is included at the end of this publication. These instructions must be used for the proper coding of each field in this record where applicable. The instructions are updated each year as required. Publication 1187 may not be revised every year. Be sure to use the most current Instructions for Form 1042-S when coding files.

Note 3: The only valid characters for electronic filing are alpha, numeric, blank, ampersand (&), hyphen (-), comma (,), apostrophe ('), forward slash (/), pound sign (#), period (.), and the percent (%). The percent [% (used as "in care of")] is valid in the first position only. Do not use special characters that are unique to a language other than English. Inclusion of any characters other than those identified as valid in the instructions will result in a "Bad File" status.

Record Name: Transmitter "T" Record

Field Position	Field Title	Length	Description and Remarks
1	Record Type	1	Required. Enter "T".
2-5	Tax Year	4	Required. Enter the year for which income and withholding are being reported.

Record Name: Transmitter "T" Record

Field Position	Field Title	Length	Description and Remarks
6-14	Transmitter's Taxpayer Identification Number (TIN)	9	Required. Enter the Taxpayer Identification Number of the Transmitter. This can be an Employer Identification Number (EIN), Qualified Intermediary Number (QI-EIN), Withholding Partnership (WP-EIN), or a Withholding Trust (WT-EIN). DO NOT ENTER blanks, hyphens or alpha characters.
15-54	Transmitter's Name	40	Required. Enter the name of the transmitter of the file. Abbreviate if necessary to fit the 40-character limit. Omit punctuation, if possible. Left-justify information and fill unused positions with blanks.

Note: Do not use special characters in names or addresses that are unique to a language other than English. For example: å = A, æ = A, ú = U, Ø = O, ñ = N, etc.

55-94	Transmitter's Address	40	Required. Enter the full mailing address of the transmitter. This includes the number, street, and apartment or suite number (P.O. Box can be used if mail is not delivered to street address). Abbreviate as needed to fit the 40-character limit. Omit punctuation, if possible. Left-justify information and fill unused positions with blanks.
95-114	City	20	Required. Enter the city or town (or other locality name) of the transmitter. If applicable, enter APO or FPO only. Left-justify information and fill unused positions with blanks.
115-116	State Code	2	Required if U.S. Transmitter. Enter only the valid U.S. Postal Service State Code. DO NOT spell out the state name. Refer to the State Code Table Part A, Sec.13. If this field is not utilized, enter blanks.
117-118	Province Code	2	Required if Foreign Country Code is "CA" (Canada). Enter only the two-alpha character Province Code as shown in the Province Code table. DO NOT spell out the Province Name. If the foreign country is other than Canada, enter blanks.

Province Code	Province
AB	Alberta
BC	British Columbia
MB	Manitoba
NB	New Brunswick
NL	Newfoundland & Labrador
NS	Nova Scotia
NT	Northwest Territories
NU	Nunavut
ON	Ontario
PE	Prince Edward Island
QC	Quebec
SK	Saskatchewan
YT	Yukon Territory

119-120	Country Code	2	Required if Foreign Transmitter. If the Country Code is present, the State Code field MUST be blank. Enter only the two-alpha Country Code from the Country Code table. DO NOT spell out the Country Name.
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Note: COUNTRY CODES: The list of country codes provided in the current paper Instructions for Form 1042-S includes all internationally recognized country codes and must be used to ensure the proper coding of the Country Code field. This list is updated each year as required. Do not enter U.S. in the Country Code field.

121-129	Postal or ZIP Code	9	Required. Enter up to nine numeric characters for all U.S. addresses (including territories, possessions, and APO/FPO). For foreign addresses enter the alpha/numeric foreign postal code, if applicable. Left-justify information and fill unused positions with blanks.
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Record Name: Transmitter "T" Record

Field Position	Field Title	Length	Description and Remarks
130-169	Contact Name	40	Required. Enter the name of the person to contact if any questions should arise with the transmission. Left-justify information and fill unused positions with blanks.
170-189	Contact Telephone Number	20	Required. Enter the contact person's telephone number, and extension, if applicable. If foreign, provide appropriate codes for international calls. Left-justify information and fill unused positions with blanks.
190-194	Transmitter Control Code (TCC)	5	Required. Enter the five-character alpha/numeric TCC assigned ONLY for Form 1042-S reporting. (The first two numbers will always be 22.) All alpha characters must be upper case.
195-198	Test Indicator	4	Required if this is a test file. Enter the word "TEST." Otherwise, enter blanks.
199	Prior Year Indicator	1	Required. Enter a "P" only if reporting prior year data; otherwise, enter blank. Do not enter a "P" for current year information.
200-810	Reserved	611	Enter blanks.
811-818	Record Sequence Number	8	Required. Enter the number of the record as it appears within the file. The record sequence number for the "T" Record will always be "1" (one), since it is the first record on the file and there can only be one "T" Record in a file. Each record, thereafter, must be incremental by one in ascending numerical sequence, i.e., 2, 3, 4, etc. Right-justify numbers with leading zeroes in the field. For example, the "T" Record sequence number would appear as "00000001" in the field, the first "W" Record would be "00000002," the first "Q" Record, "00000003," the second "Q" Record, "00000004," and so on until the final record of the file, the "F" Record.
819-820	Blank or Carriage Return Line Feed	2	Enter blanks or carriage return line feed (CR/LF) characters.

Transmitter "T" Record Layout

Record Type	Tax Year	Transmitter's TIN	Transmitter's Name	Transmitter's Address	City	State Code	Province Code
1	2-5	6-14	15-54	55-94	95-114	115-116	117-118

Country Code	Postal or ZIP Code	Contact Name	Contact Telephone Number	TCC	Test Indicator	Prior Year Indicator	Reserved	Record Sequence Number	Blank or Carriage Return Line Feed
119-120	121-129	130-169	170-189	190-194	195-198	199	200-810	811-818	819-820

Sec. 2. Withholding Agent "W" Record

- .01 The "W" Record identifies the Withholding Agent.
- .02 Enter a "W" Record after the initial "T" Record on the file, followed by the Recipient "Q" Records, and a Reconciliation "C" Record. Do **not** report for a withholding agent if there are no corresponding Recipient "Q" Records.
- .03 Several "W" Records for different Withholding Agents may appear on the same Transmitter's file.
- .04 Each "W" Record is a fixed length of 820 positions.
- .05 All alpha characters entered in the "W" Record must be uppercase.

Note 1: For all fields marked “Required,” the transmitter must provide the information described under Description and Remarks. If required fields are not completed in accordance with this Revenue Procedure, the file may not process correctly. For those fields not marked “Required,” a transmitter must allow for the field, but may be instructed to enter blanks or zeros in the indicated field position(s) and for the indicated length. All records have a fixed length of 820 positions.

Note 2: A copy of the current paper Instructions for Form 1042-S is included at the end of this publication. These instructions must be used for the proper coding of each field in this record, where applicable. The list of country codes in the instructions includes all recognized country codes and **MUST** be used for coding. The instructions are updated each year as required. Publication 1187 may not be revised every year. Be sure to use the most current Instructions for Form 1042-S when coding files.

Note 3: The only valid characters for electronic filing are alpha, numeric, blank, ampersand (&), hyphen (-), comma (,), apostrophe (’), forward slash (/), pound sign (#), period (.), and the percent (%). The percent [% (used as “in care of”)] is valid in the first position only. *Do not use special characters that are unique to a language other than English.. Inclusion of any characters other than those identified as valid in the instructions will result in a “Bad File” status.*

Record Name: Withholding Agent “W” Record

Field Position	Field Title	Length	Description and Remarks
1	Record Type	1	Required. Enter “W”.
2	Return Type Indicator	1	Required. Enter the one position value below to identify whether the record is Original or Amended. If submitting a replacement file, use the same indicator as the file being replaced (e.g., if replacing an amended file the indicator would be 1). Do not enter a blank or alpha character. Acceptable Values are: <ul style="list-style-type: none"> • 0 (Zero) = Original • 1 = Amended
3	Pro Rata Basis Reporting	1	Required. Enter the one position value below to identify if reporting on a Pro Rata Basis. Acceptable Values are: <ul style="list-style-type: none"> • 0 (Zero) = Not Pro Rata • 1 = Pro Rata Basis Reporting
4–12	Withholding Agent’s EIN	9	Required. Enter the nine-digit Employer Identification Number of the Withholding Agent. Do NOT enter blanks, hyphens or alpha characters. An EIN consisting of all the same digits (e.g., 111111111) is not acceptable. Do NOT enter the recipient’s TIN in this field.

Note: See the current paper Instructions for Form 1042-S to determine when a **Qualified Intermediary, Withholding Foreign Partnership, or Withholding Foreign Trust** must provide its **QI-EIN, WP-EIN or WT-EIN** in this field.

13	Withholding Agent’s EIN Indicator	1	Required. Enter the Withholding Agent’s EIN indicator from the following values: <ul style="list-style-type: none"> • 0 = EIN • 1 = QI-EIN, WP-EIN, WT-EIN • 2 = NQI-EIN
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Note: Use EIN indicator 1 only if the Withholding Agent’s EIN begins with “98” **AND** the Withholding Agent, Withholding Trust, or Withholding Partnership has entered into a withholding agreement with the IRS.

Record Name: Withholding Agent "W" Record

Field Position	Field Title	Length	Description and Remarks
14-53	Withholding Agent's Name Line-1	40	Required. Enter the Withholding Agent's Name as established when filing for the EIN or QI-EIN which appears in positions 4-12 of the "W" Record. Left-justify information and fill unused positions with blanks.
Note: Do not use special characters in names or addresses that are unique to a language other than English. For example: å = A, æ = A, ú = U, Ø = O, ñ = N, etc.			
54-93	Withholding Agent's Name Line-2	40	Enter supplementary withholding agent's name information; otherwise, enter blanks. Use this line for additional names (e.g., partners or joint owners), for trade names, stage names, aliases, or titles. Also use this line for "in care of" or "via." Left-justify the information and fill unused positions with blanks. See Note 3 at the beginning of the "W" Record.
94-133	Withholding Agent's Name Line-3	40	See the description for Withholding Agent's Name Line-2.
134-173	Withholding Agent's Street Line-1	40	Required. Enter the mailing address of the withholding agent. The street address should include the number, street, and apartment or suite number (or P.O. Box if mail is not delivered to a street address). Abbreviate as needed. Left-justify information and fill unused positions with blanks.
174-213	Withholding Agent's Street Line-2	40	Enter supplementary withholding agent street address information. Otherwise, enter blanks.
214-253	Withholding Agent's City	40	Required. Enter the city or town (or other locality name). Enter APO or FPO only if applicable. Do not enter a foreign postal code in the city field. Left-justify information and fill unused positions with blanks
254-255	Withholding Agent's State Code	2	Required if Withholding Agent has a U.S. address. Enter the valid U.S. Postal Service state code. If not using a U.S. state, territory, or APO/FPO identifiers, enter blanks. Do not use any of the two character Country Codes in the State Code Field.
Note: If the withholding agent has a U.S. address, leave the country code in positions 258-259 blank.			
256-257	Withholding Agent's Province Code	2	Required if Foreign Country Code is "CA" (Canada). Enter only the two-alpha character Province Code as shown in the Province Code Table. See the "T" record positions 117-118 for the Province Code Table. DO NOT spell out the Province Name. If the foreign country is other than Canada, enter blanks.
258-259	Withholding Agent's Country Code	2	Required if QI or NQI or other foreign withholding agent. Enter only the two-alpha Country Code from the Country Code Table. DO NOT spell out the Country Name.
Note: COUNTRY CODES: The list of country codes provided in the current paper Instructions for Form 1042-S includes all internationally recognized country codes and MUST be used to ensure the proper coding of the Country Code field. This list is updated each year as required. Do not enter U.S. in the Country Code field.			
260-268	Postal or ZIP Code	9	Required. Enter up to nine numeric characters for all U.S. addresses (including territories, possessions, and APO/FPO). For foreign addresses enter the alpha/numeric foreign postal code, if applicable. Left-justify information and fill unused positions with blanks.
269-272	Tax Year	4	Required. Enter the four-digit current tax year, unless a "P" was entered in the Prior Year Indicator Field of the "T" Record. All recipient "Q" Records must be a report of payments for one year only. Different tax years may not appear on the same file.

Record Name: Withholding Agent “W” Record

Field Position	Field Title	Length	Description and Remarks								
273–317	Withholding Agent Contact Name	45	Required. Enter the name of the person the IRS can contact if questions arise concerning this filing. Left-justify information and fill unused positions with blanks.								
318–362	Withholding Agent’s Department Title	45	Required. Enter the title of the contact person or the department that can answer inquiries concerning this filing. Left-justify information and fill unused positions with blanks.								
363–382	Contact Telephone Number and Extension	20	Required. Enter the telephone number of a person to contact regarding electronic files. Omit hyphens. If no extension is available, left-justify information and fill unused positions with blanks. If foreign, provide the appropriate code(s) for international calls.								
383	Final Return Indicator	1	<p>Required. Enter the one position value below to indicate whether Forms 1042-S will be filed in the future.</p> <ul style="list-style-type: none"> • 0 (Zero) = will be filing • 1 = will not be filing 								
384–809	Reserved	426	Enter blanks.								
810	Amended Return Indicator	1	<p>Required for amended returns only. Enter the appropriate code:</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; width: 30%;"><u>Code</u></th> <th style="text-align: left;"><u>Definition</u></th> </tr> </thead> <tbody> <tr> <td>G</td> <td>If this is a one-step transaction amended return or the first of a two-step transaction amended return</td> </tr> <tr> <td>C</td> <td>If this is the second transaction of a two-step transaction amended return</td> </tr> <tr> <td>Blank</td> <td>If this is not a return being submitted to amend information already processed by IRS</td> </tr> </tbody> </table>	<u>Code</u>	<u>Definition</u>	G	If this is a one-step transaction amended return or the first of a two-step transaction amended return	C	If this is the second transaction of a two-step transaction amended return	Blank	If this is not a return being submitted to amend information already processed by IRS
<u>Code</u>	<u>Definition</u>										
G	If this is a one-step transaction amended return or the first of a two-step transaction amended return										
C	If this is the second transaction of a two-step transaction amended return										
Blank	If this is not a return being submitted to amend information already processed by IRS										
811–818	Record Sequence Number	8	Required. Enter the number of the record as it appears within the file. The record sequence number for the “T” Record will always be “1” (one), since it is the first record on the file and there can be only one “T” Record in a file. Each record, thereafter, must be incremental by one in ascending numerical sequence, i.e., 2, 3, 4, etc. Right-justify numbers with leading zeros in the field. For example, the “T” Record sequence number would appear as “00000001” in the field, the first “W” Record would be “00000002,” the first “Q” Record, “00000003,” the second “Q” Record, “00000004,” and so on until the final record of the file, the “F” Record.								
819–820	Blank or Carriage Return Line Feed	2	Enter blanks or carriage return line feed (CR/LF) characters.								

Note: Amended C and G coded records must be reported using separate Payer “W” Records. Refer to Part A, Sec. 9, for specific instructions on how to file amended returns.

Non-coded records cannot be submitted in an Amended file.

Withholding Agent “W” Record Layout

Record Type	Return Type Indicator	Pro Rata Basis Reporting	Withholding Agent’s EIN	Withholding Agent’s EIN Indicator	Withholding Agent’s Name Line-1	Withholding Agent’s Name Line-2
1	2	3	4–12	13	14–53	54–93

Withholding Agent’s Name Line-3	Withholding Agent’s Street Line-1	Withholding Agent’s Street Line-2	Withholding Agent’s City	Withholding Agent’s State Code	Withholding Agent’s Province Code	Withholding Agent’s Country Code
94–133	134–173	174–213	214–253	254–255	256–257	258–259

Postal or ZIP Code	Tax Year	Withholding Agent Contact Name	Withholding Agent’s Department Title	Contact Telephone Number and Extension	Final Return Indicator
260–268	269–272	273–317	318–362	363–382	383

Reserved	Amended Return Indicator	Record Sequence Number	Blank or Carriage Return Line Feed
384–809	810	811–818	819–820

Sec. 3. Recipient “Q” Record

.01 The “Q” Record contains name and address information for the Recipient of Income, Non-Qualified Intermediary or Flow-Through Entity, Payer, and all data concerning the income paid and tax withheld that is required to be reported under U.S. law. Each Recipient “Q” Record is treated as if it were a separate Form 1042-S.

.02 The “Q” Record is restricted to one type of income, one type of exemption code, and one tax rate. Under certain circumstances, it may be necessary to submit more than one “Q” Record for the same recipient. Failure to provide multiple Recipient “Q” Records when necessary may generate math computation errors during processing. This will result in IRS contacting you for correct information.

.03 Following are some of the circumstances when more than one “Q” Record for a recipient would be required:

- (a) Different types of income. For example, Recipient X derived income from Capital Gains (Income Code 09) and Industrial Royalties (Income Code 10). A separate “Q” Record must be reported for each Income Code. Each “Q” Record must reflect the Gross Income Paid and any U.S. Federal Tax withheld by the withholding agent(s) pertaining to that Income Code.
- (b) Change in Country Code during the year. For example, the Withholding Agent received notification via Form W-8BEN that the recipient’s country of residence for tax purposes changed from country X to country Y. A separate “Q” Record must be reported for each Country Code providing Gross Income Paid, Tax Rate, any U.S. Federal Tax Withheld by the withholding agent(s), and Exemption Code, if any. The amounts reported must be based on each country.
- (c) Change in a country’s tax treaty rate during the year. For example, effective April 1, country X changes its tax treaty rate from ten percent to twenty percent. A separate “Q” Record must be reported for each of the tax rates. Provide the Gross Income Paid, Tax Rate, and any U.S. Federal Tax Withheld by the withholding agent(s) under each tax rate.

.04 All recipient “Q” Records for a particular Withholding Agent must be written after the corresponding Withholding Agent “W” Record, followed by a Reconciliation “C” Record, and before the “W” Record for another Withholding Agent begins.

.05 All alpha characters entered in the “Q” Record must be upper case.

.06 The “Q” Record is a fixed length of 820 positions.

.07 Report income and tax withheld in whole dollars only. Round up or down as appropriate. To round off amounts to the nearest whole dollar, drop amounts under 50 cents and increase amounts of 50 to 99 cents to the next whole dollar. If there are two or more amounts to add together, figure the amount to be reported by including cents when adding and only round off the total figure to be reported. **DO NOT** enter cents.

Note 1: For all fields marked “Required,” the transmitter must provide the information described under Description and Remarks. If required fields are not completed in accordance with this Revenue Procedure, the file will not process correctly. IRS will contact the filer to request a replacement file. For those fields not marked “Required,” a transmitter must allow for the field, but may be instructed to enter blanks or zeros in the indicated field position(s) and for the indicated length. All records have a fixed length of 820 positions.

Note 2: A copy of the paper Instructions for Form 1042-S is included at the end of this publication. These instructions must be used for the proper coding of each field in this record where applicable. The list of country codes in the instructions includes all recognized country codes and **MUST** be used for coding. The instructions are updated each year as required. Publication 1187 may not be revised every year. Be sure to use the most current paper Instructions for Form 1042-S for coding files.

Note 3: The only valid characters for electronic filing are alpha, numeric, blank, ampersand (&), hyphen (-), comma (,), apostrophe (’), forward slash (/), pound sign (#), period (.), and the percent (%). The percent [% (used as “in care of”)] is valid in the first position only. *Do not use special characters that are unique to a language other than English. Inclusion of any characters other than those identified as valid in the instructions will result in a “Bad File” status.*

Record Name: Recipient “Q” Record

Field Position	Field Title	Length	Description and Remarks
1	Record Type	1	Required. Enter “Q”.
2	Return Type Indicator	1	Required. Enter the one position value below to identify whether the record is Original or Amended. If submitting a replacement file, use the same indicator as the file being replaced (e.g., if replacing an amended file, the indicator would be 1). This must be the same value as in the “W” Record. Values are: <ul style="list-style-type: none"> • 0 (Zero) = Original • 1 = Amended
3	Pro Rata Basis Reporting	1	Required. Enter the one position value below to identify whether reporting on a Pro Rata Basis. This must be the same value as in the “W” Record. Values are: <ul style="list-style-type: none"> • 0 (Zero) = Not Pro Rata • 1 = Pro Rata Basis Reporting
4-5	Income Code	2	Required. Enter the two-position value EXACTLY as it appears from the income code table. The Income Code must accurately reflect the type of income paid. DO NOT enter blanks or 00 (zeros).

Note: Refer to the current paper Instructions for Form 1042-S for more information.

6-17	Gross Income	12	Required. Enter the gross income amount in whole dollars only, rounding to the nearest dollar (do not enter cents). For example, report \$600.75 as 000000000601. An income amount of zero cannot be shown. Only amended returns can report zero amounts. Numeric characters only, right-justify information and fill unused positions with zeros.
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Note: Do not report negative amounts in any amount field.

18-29	Withholding Allowance	12	Used with Income Codes 15 through 20 ONLY. Enter the withholding allowance amount in whole dollars only, rounding to the nearest dollar (do not enter cents). Numeric characters only, right-justify information and fill unused positions with zeros.
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Record Name: Recipient “Q” Record

Field Position	Field Title	Length	Description and Remarks
30–41	Net Income	12	Required if a Dollar Amount is Entered in the Withholding Allowance Field. Enter the net income in whole dollars only, rounding to the nearest dollar (do not enter cents). An amount other than zero must be shown. Numeric characters only, right-justify information and fill unused positions with zeros. If this field is not utilized, enter blanks.
42–45	Tax Rate	4	Required. Enter the correct Tax Rate applicable to the income in the gross income field or net income field, as appropriate. Enter the Tax Rate as a two-digit whole number and two-digit decimal (e.g., Enter 27.50 % as 2750, 15% as 1500 or 7% as 0700). See Note below.
Note: The correct Tax Rate must be entered, even if withholding was at a lesser rate. See the current paper Instructions for Form 1042-S.			
46–47	Exemption Code	2	<p>Required. Read Carefully.</p> <ul style="list-style-type: none"> • If the tax rate entered is 0%, enter the appropriate exemption code “01” through “10” from the current paper Instructions for Form 1042-S. • If the tax rate entered is 1% through 30%, enter “00”. • If the tax rate entered is greater than 30%, blank fill. DO NOT enter “00”. <p>See the current paper Instructions for Form 1042-S for circumstances under which Exemption Code “99” must be used.</p>
Note: If an incorrect amount of tax was withheld, report the amount that was actually withheld and use the correct tax rate in field positions 42–45.			
48–49	Recipient’s Country of Residence Code for Tax Purposes	2	Required. Enter the two-character Country Code for which the recipient is a resident for tax purposes and on which the tax treaty benefits are based, whether applying a tax treaty benefit to this payment or not. The rate of tax withheld is determined by this code.
Note: Do not enter U.S. in the Country Code field. Enter “OC” (other country) <u>only</u> when the country of residence does not appear on the list or the payment is made to an international organization. If making a payment to a QI or QI withholding rate pool, enter the country code of the QI.			
50–59	Reserved	10	Enter blanks
60–71	Amount Repaid	12	<p>This field should be completed only if:</p> <ul style="list-style-type: none"> • a recipient was repaid an amount that was over-withheld and the withholding agent is going to be reimbursed by reducing, by the amount of tax actually repaid, the amount of any deposit made for a payment period in the calendar year following the calendar year of withholding. Otherwise, enter <i>zeros</i>.
72–91	Recipient Account Number	20	Enter the account number assigned by the withholding agent to the recipient. Do not enter the recipient’s U.S. or foreign TIN. If an account number is NOT assigned, enter blanks. This field may contain numeric characters, alpha characters, blanks, or hyphens. Left-justify information and fill unused positions with blanks.

Record Name: Recipient “Q” Record

Field Position	Field Title	Length	Description and Remarks
92–93	Recipient Code	2	Required. Enter the appropriate Recipient Code. Refer to the list of appropriate codes in the current paper Instructions for Form 1042-S. No other codes or values are valid.
Note: If recipient code “20” is used, the Recipient’s Name Line-1 must be “UNKNOWN” or “UNKNOWN RECIPIENT” and the Recipient’s Name Lines 2 and 3 must be BLANK. The tax rate must be 30%.			
94–133	Recipient’s Name Line-1	40	Required. Provide the complete name of the recipient. If the recipient has a U.S. TIN, enter the name as established when applying for the TIN. If recipient code “20” is used, enter “UNKNOWN” or “UNKNOWN RECIPIENT.” Recipient’s Name Lines 2 and 3 must be blank. See the current paper Instructions for Form 1042-S for specific information about “UNKNOWN RECIPIENTS” and “WITHOLDING RATE POOLS.” See Note 3 at the beginning of the “Q” Record.
Note 1: A Non-Qualified Intermediary (NQI) can NEVER be entered as the recipient.			
Note 2: Do not use special characters in names or addresses that are unique to a language other than English. For example: å = A, æ = A, ũ = U, Ø = O, ñ = N, etc.			
134–173	Recipient’s Name Line-2	40	Enter supplementary recipient name information including titles; otherwise, enter blanks. Use this line for additional names (e.g., partners or joint owners), for trade names, stage names, aliases or titles. Also use this line for “in care of,” “Attn,” or “via”. See Note 3 at the beginning of the “Q” Record.
174–213	Recipient’s Name Line-3	40	See the description for Recipient’s Name Line-2.
214–253	Recipient’s Street Line-1	40	Required. Enter the mailing address of the recipient. The street address should include the number, street, apartment, or suite number (or P.O. Box if mail is not delivered to a street address). Abbreviate as needed. Left-justify information and fill unused positions with blanks. See Note 3 at the beginning of the “Q” Record.
254–293	Recipient’s Street Line-2	40	Enter supplementary recipient street address information. If a P.O. Box is used in addition to a street address, enter it here. Left-justify information and fill unused positions with blanks.
294–333	Recipient’s City	40	Required. Enter the city or town (or other locality name). Enter APO or FPO only, if applicable. Do not enter a foreign postal code in the city field. Left-justify information and fill unused positions with blanks.
334–335	Recipient’s State	2	Required if U.S. address. Enter the two-character State Code abbreviation. If no U.S. state, territory, or APO/FPO identifier is applicable, enter blanks. Do not use any of the two character Country Codes in the State Code Field.
Note: If the recipient has a U.S. address, leave the province code in positions 336–337 and country code in positions 338–339 blank.			
336–337	Recipient’s Province Code	2	Required if the Recipient Country Code in positions 338–339 is “CA.” Enter only the two-alpha character Province Code as shown in the Province Code Table. See “T” Record positions 117–118 for the Province Code Table. DO NOT spell out the Province Name. If the foreign country is other than Canada, enter blanks.

Record Name: Recipient "Q" Record

Field Position	Field Title	Length	Description and Remarks
338–339	Recipient's Country Code	2	Required if the recipient has a foreign address. Enter the two-character Country Code abbreviation. See the current paper Instructions for Form 1042-S for the appropriate codes.

Note 1: If the state code is entered in positions 334–335, leave this field blank.

Note 2: COUNTRY CODES: The list of country codes provided in the current paper Instructions for Form 1042-S includes all internationally recognized country codes and MUST be used to ensure the proper coding of the Country Code field. This list is updated each year as required. If making a payment to a QI, enter the country code of the QI.

Note 3: Enter "UC" (unknown country) only if the payment is to an unknown recipient.

340–348	Postal or ZIP Code	9	Required. Enter up to nine numeric characters for all U.S. addresses (including territories, possessions, and APO/FPO). For foreign addresses enter the alpha/numeric foreign postal code, if applicable. Left justify information and fill unused positions with blanks.
349–357	Recipient's U.S. TIN	9	Enter the recipient's nine-digit U.S. Taxpayer Identification Number (TIN). DO NOT enter hyphens, alpha characters, or TINS consisting of all the same digits (e.g. 111111111 or 999999999) as these are not valid TINs. If a TIN is not required under regulations, enter blanks.

Note: U.S. TINs are now required for most recipients. See the current paper Instructions for Form 1042-S.

358	Recipient's U.S. TIN Type	1	Required. Enter the recipient's U.S. TIN type indicator from the following values: <ul style="list-style-type: none">• 0 = No TIN required• 1 = SSN/ITIN• 2 = EIN• 3 = QI-EIN, WP-EIN, WT-EIN• 4 = TIN required but not provided
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Note: Use EIN indicator 3 only if the Withholding Agent's EIN begins with "98" AND the Withholding Agent, Withholding Trust, or Withholding Partnership has entered into a withholding agreement with the IRS.

359–370	U. S. Federal Tax Withheld	12	Required. Enter U.S. Federal tax withheld by you. Enter the amount in whole dollars, rounding to the nearest dollar (do not enter cents). For example, report \$600.25 as 00000000600. Numeric characters only, right-justify information and fill unused positions with zeros. If there was no withholding, enter all zeros.
371–382	Withholding By Other Agents	12	Required. For withholding agents reporting Form 1042-S information that has already been subject to withholding by another withholding agent, enter the amount withheld by the other agent. Enter the amount in whole dollars, rounding to the nearest dollar (do not enter cents). For example, report \$600.25 as 00000000600. Numeric characters only, right-justify information and fill unused positions with zeros. If there was no withholding, enter all zeros.

Note: If claiming a credit on Form 1042 (line 66) because of withholding by other agents, attach a copy of the Form 1042-S to support the credit. For additional guidance, please review the Instructions for Form 1042.

Record Name: Recipient “Q” Record

Field Position	Field Title	Length	Description and Remarks
383–394	Total Withholding Credit	12	Required. Enter the aggregate amount of U.S. Federal tax withheld by you and any other withholding agent. Enter the amount in whole dollars, rounding to the nearest dollar (do not enter cents). For example, report \$600.25 as 000000000600. Numeric characters only, right-justify the information and fill unused positions with zeros. If there was no withholding, enter all zeros.

Note: If the Total Withholding Credit, (aggregate amounts of U.S. Federal Tax Withheld and Withholding By Other Agents) was either under or over reported, see Field Position 761 of the “Q” Record.

395–400	Reserved	6	Enter blanks.
401–440	NQI/FLW-THR/PTP Name Line-1	40	Provide the complete name of the NQI/FLW-THR or PTP Entity. It is very important that the complete name of the NQI/FLW-THR or PTP entity be provided. Left-justify the information and fill unused positions with blanks. See Note 3 at the beginning of the “Q” Record.

Note 1: A nominee that is the withholding agent under Code Section 1446 must enter the Publicly Traded Partnership’s (PTP) name and other information in the NQI/FLW-THR fields; positions 401–666.

Note 2: All NQI/FLW-THR fields are REQUIRED if the NQI/FLW-THR entity is involved in the payment structure, EXCEPT FOR THE NQI/FLW-THR TIN.

441–480	NQI/FLW-THR/PTP Name Line-2	40	Enter supplementary information; otherwise, enter blanks. Use this line for additional names (e.g., partners or joint owners), for trade names, stage names, aliases, or titles. Also use this line for “in care of” or “via”. See Note 3 at the beginning of the “Q” Record.
481–520	NQI/FLW-THR/PTP Name Line-3	40	See the description for NQI/FLW-THR/PTP Name Line-2 .
521–522	Reserved	2	Enter blanks.
523–562	NQI/FLW-THR/PTP Street Line-1	40	Enter the mailing address of the NQI/FLW-THR or PTP entity. The street address should include the number, street, apartment, or suite number (or P.O. Box if mail is not delivered to street address). Abbreviate as needed. Left-justify information and fill unused positions with blanks.
563–602	NQI/FLW-THR/PTP Street Line-2	40	Enter supplementary NQI/FLW-THR or PTP entity street address information; otherwise, enter blanks.
603–642	NQI/FLW-THR/PTP City	40	Enter the city or town (or other locality name). Left-justify information and fill unused positions with blanks.
643–644	NQI/FLW-THR/PTP State Code	2	Enter the two-alpha character state code (see table Part A, Sec. 13). If a state code or APO/FPO is not applicable, enter blanks.
645–646	NQI/FLW-THR/PTP Province Code	2	Enter the two-alpha character Province Code abbreviation, if applicable. See “T” Record positions 117–118.
647–648	NQI/FLW-THR/PTP Country Code	2	Enter the two-character Country Code abbreviation, where the NQI/FLW-THR or PTP is located. If the NQI/FLW-THR or PTP has a U.S. address, enter blanks.
649–657	NQI/FLW-THR/PTP Postal Code or ZIP Code	9	Enter the alpha/numeric foreign postal code or U.S. ZIP Code for all U.S. addresses including territories, possessions, and APO/FPO. Enter the code in the left most position and blank fill the remaining positions.

Record Name: Recipient “Q” Record

Field Position	Field Title	Length	Description and Remarks
658–666	NQI/FLW-THR/PTP U.S. TIN	9	Enter the NQI/FLW-THR or PTP nine-digit U.S. Taxpayer Identification Number (TIN), if any. Do NOT enter hyphens or alpha characters.
667–706	Payer’s Name	40	Enter the name of the Payer of Income if different from the Withholding Agent. Abbreviate as needed. If the Withholding Agent and Payer are the same, enter blanks.
707–715	Payer’s U.S. TIN	9	Enter the Payer’s U.S. Taxpayer Identification Number if there is an entry in the Payer Name Field; otherwise, enter blanks.
716–727	State Income Tax Withheld	12	If State Tax has been withheld, enter that amount in whole dollars (do not enter cents). Right-justify information and fill unused positions with zeros. If this field is not utilized, enter zeros.

Note: This amount is not included in the U.S. Federal Tax fields.

728–737	Payer’s State Tax Number	10	Enter the employer’s state I.D. number if assigned by the state. Left-justify information and fill unused positions with blanks.
738–739	Payer’s State Code	2	Enter the two-character State Code abbreviation.
740–760	Special Data Entries	21	This field may be used for the filer’s own purposes, (e.g., Do Not Mail). If this field is not utilized, enter blanks.
761	U.S. Federal Tax Withheld Indicator	1	<p>Required. Indicate if the U. S. Federal tax withheld was correct or incorrect using the following values:</p> <ul style="list-style-type: none"> • 0 = Correctly reported • 1 = Over withheld • 2 = Under withheld

Note : Please refer to Total withholding Credit positions 383–394.

762–783	Recipient’s Foreign Tax I.D. Number	22	Enter the recipient’s identifying number. Use only characters listed in Note 3. Left-justify information and fill unused positions with blanks.								
784–809	Reserved	26	Enter blanks.								
810	Amended Return Indicator	1	<p>Required for amended returns only. Enter the appropriate code:</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; border-bottom: 1px solid black;">Code</th> <th style="text-align: left; border-bottom: 1px solid black;">Definition</th> </tr> </thead> <tbody> <tr> <td>G</td> <td>If this is a one-step transaction amended return or the first of a two-step transaction amended return</td> </tr> <tr> <td>C</td> <td>If this is the second transaction of a two-step transaction amended return</td> </tr> <tr> <td>Blank</td> <td>If this is not a return being submitted to amend information already processed by IRS</td> </tr> </tbody> </table>	Code	Definition	G	If this is a one-step transaction amended return or the first of a two-step transaction amended return	C	If this is the second transaction of a two-step transaction amended return	Blank	If this is not a return being submitted to amend information already processed by IRS
Code	Definition										
G	If this is a one-step transaction amended return or the first of a two-step transaction amended return										
C	If this is the second transaction of a two-step transaction amended return										
Blank	If this is not a return being submitted to amend information already processed by IRS										

Note: Amended C and G coded records must be reported using separate Payer “W” Records. Refer to Part A, Sec. 9, for specific instructions on how to file amended returns. Non-coded records cannot be submitted in Amended files.

Record Name: Recipient "Q" Record

Field Position	Field Title	Length	Description and Remarks
811-818	Record Sequence Number	8	Required. Enter the number of the record as it appears within the file. The record sequence number for the "T" Record will always be "1" (one), since it is the first record on the file and there can only be one "T" Record in a file. Each record, thereafter, must be incremental by one in ascending numerical sequence, i.e., 2, 3, 4, etc. Right-justify numbers with leading zeros in the field. For example, the "T" Record sequence number would appear as "00000001" in the field, the first "W" Record would be "00000002," the first "Q" Record, "00000003," the second "Q" Record, "00000004," and so on until the final record of the file, the "F" Record.
819-820	Blank or Carriage Return Line Feed	2	Enter blanks or carriage return line feed (CR/LF) characters.

Recipient "Q" Record Layout

Record Type	Return Type Indicator	Pro Rata Basis Reporting	Income Code	Gross Income	Withholding Allowance	Net Income	Tax Rate	Exemption Code
1	2	3	4-5	6-17	18-29	30-41	42-45	46-47

Recipient's Country of Residence Code for Tax Purposes	Reserved	Amount Repaid	Recipient Account Number	Recipient Code	Recipient's Name Line-1	Recipient's Name Line-2	Recipient's Name Line-3
48-49	50-59	60-71	72-91	92-93	94-133	134-173	174-213

Recipient's Street Line-1	Recipient's Street Line-2	Recipient's City	Recipient's State	Recipient's Province Code	Recipient's Country Code	Postal or ZIP Code	Recipient's U.S. TIN
214-253	254-293	294-333	334-335	336-337	338-339	340-348	349-357

Recipient's U.S. TIN Type	U.S. Federal Tax Withheld	Withholding By Other Agents	Total Withholding Credit	Reserved	NQI/FLW-THR/PTP Name Line-1	NQI/FLW-THR/PTP Name Line-2	NQI/FLW-THR/PTP Name Line-3
358	359-370	371-382	383-394	395-400	401-440	441-480	481-520

Reserved	NQI/FLW-THR/PTP Street Line-1	NQI/FLW-THR/PTP Street Line-2	NQI/FLW-THR/PTP City	NQI/FLW-THR/PTP State Code	NQI/FLW-THR/PTP Province Code
521-522	523-562	563-602	603-642	643-644	645-646

NQI/FLW-THR/PTP Country Code	NQI/FLW-THR/PTP Postal Code or ZIP Code	NQI/FLW-THR/PTP U.S. TIN	Payer's Name	Payer's U.S. TIN	State Income Tax Withheld
647-648	649-657	658-666	667-706	707-715	716-727

Payer's State Tax Number	Payer's State Code	Special Data Entries	U.S. Tax Federal Withheld Indicator	Recipient's Foreign Tax I.D. Number
728-737	738-739	740-760	761	762-783

Reserved	Amended Return Indicator	Record Sequence Number	Blank or Carriage Return Line Feed
784-809	810	811-818	819-820

Sec. 4. Reconciliation "C" Record

.01 The "C" Record is a fixed record length of 820 positions and all positions listed are required. The "C" Record is a summary of the number of "Q" Records for each Withholding Agent, Gross Amount Paid, and Total Withholding Credit.

.02 This record will be written after the last "Q" Record filed for a given withholding agent. For each "W" Record and group of "Q" Records on the file, there must be a corresponding "C" Record.

.03 All alpha characters entered in the "C" Record must be upper case.

Record Name: Reconciliation "C" Record

Field Position	Field Title	Length	Description and Remarks
1	Record Type	1	Required. Enter "C".
2-9	Total "Q" Records	8	Required. Enter the total number of "Q" Records for this withholding agent. Do not enter all zeros. For example, 53 "Q" Records are entered as 00000053. See Part A, Sec. 4, Filing and Retention Requirements. Right-justify information and fill unused positions with zeros.
10-15	Blank	6	Enter blanks.
16-30	Total Gross Amount Paid	15	Required. Enter the total gross income amount in whole dollars (do not enter cents.) For example report \$600.00 as 00000000000600. An income amount other than zero must be shown. Right-justify information and fill unused positions with zeros.
31-45	Total Withholding Credit	15	Required. Enter the total aggregate amount of tax withheld by you and any other withholding agent. This is the aggregate total amount from the U.S. Federal Tax Withheld and Withholding By Other Agents fields. Enter the amount in whole dollars (do not enter cents.) For example report \$600.00 as 00000000000600. Right-justify information and fill unused positions with zeros.
46-810	Reserved	765	Enter blanks.

Record Name: Reconciliation "C" Record

Field Position	Field Title	Length	Description and Remarks
811-818	Record Sequence Number	8	Required. Enter the number of the record as it appears within the file. The record sequence number for the "T" Record will always be "1" (one), since it is the first record on the file and there can only be one "T" Record in a file. Each record, thereafter, must be incremental by one in ascending numerical sequence, i.e., 2, 3, 4, etc. Right-justify numbers with leading zeros in the field. For example, the "T" Record sequence number would appear as "00000001" in the field, the first "W" Record would be "00000002," the first "Q" Record, "00000003," the second "Q" Record, "00000004," and so on until the final record of the file, the "F" Record.
819-820	Blank or Carriage Return Line Feed	2	Enter blanks or carriage return line feed (CR/LF) characters.

Reconciliation "C" Record Layout

Record Type	Total "Q" Records	Blank	Total Gross Amount Paid	Total Withholding Credit	Reserved	Record Sequence Number	Blank or Carriage Return Line Feed
1	2-9	10-15	16-30	31-45	46-810	811-818	819-820

Sec. 5. End of Transmission "F" Record

.01 The "F" Record is a fixed record length of 820 positions and all positions listed are **required**. The "F" Record is a summary of the number of withholding agents in the entire file.

.02 This record will be written after the last "C" Record of the entire file. End the file with an End of Transmission "F" Record. No data will be read after the "F" Record. Only a "C" Record may precede the "F" Record.

.03 All alpha characters entered in the "F" Record must be upper case.

Record Name: End of Transmission "F" Record

Field Position	Field Title	Length	Description and Remarks
1	Record Type	1	Required. Enter "F".
2-4	Withholding Agent Count	3	Required. Enter the total number of withholding agents on this file. This count must be the same as the total number of "W" Records. Right-justify information and fill unused positions with zeros.
5-810	Reserved	806	Enter blanks.
811-818	Record Sequence Number	8	Required. Enter the number of the record as it appears within the file. The record sequence number for the "T" Record will always be "1" (one), since it is the first record on the file and there can only be one "T" Record in a file. Each record, thereafter, must be incremental by one in ascending numerical sequence, i.e., 2, 3, 4, etc. Right-justify numbers with leading zeros in the field. For example, the "T" Record sequence number would appear as "00000001" in the field, the first "W" Record would be "00000002," the first "Q" Record, "00000003," the second "Q" Record, "00000004," and so on until the final record of the file, the "F" Record.

Record Name: End of Transmission “F” Record

Field Position	Field Title	Length	Description and Remarks
819–820	Blank or Carriage Return Line Feed	2	Enter blanks or carriage return line feed (CR/LF) characters.

End of Transmission “F” Record

Record Type	Withholding Agent count	Reserved	Record Sequence Number	Blank or Carriage Return Line Feed
1	2–4	5–810	811–818	819–820

Part D. Extensions of Time and Waivers**Sec. 1. General — Extensions**

.01 Filers can get an automatic 30-day extension of time to file by completing Form 8809, Application for Extension of Time To File Information Returns. An extension of time to file may be requested for Forms 1042-S. If requesting extensions of time for more than one payer, the extension of time requests must be submitted online or with an electronic file through the FIRE system.

Note: IRS encourages the payer/transmitter community to utilize the online fill-in form in lieu of the paper Form 8809. A TCC is not required to use the online fill-in form option.

.02 The fill-in Form 8809 may be completed online via the FIRE system. (See Part B, Sec. 7, for instructions on connecting to the FIRE system.) At the Main Menu, click “Extension of Time Request” and then click “Fill-in Extension Form.” This option is only used to request an automatic 30-day extension. Extension requests completed online via the FIRE system receive an **instant response** if completed properly and timely. If requesting an additional extension of time, a paper Form 8809 must be submitted. Requests for an additional extension of time to file information returns are not automatically granted. Requests for additional time are granted only in cases of extreme hardship or catastrophic event. The IRS will send a letter of explanation approving or denying requests for an additional extension of time. (Refer to .11 of this Section.)

.03 A paper Form 8809 may be submitted to IRS/IRB at the address listed in .09 of this section. This form may be used to request an extension of time to file information returns submitted on paper. Use a separate Form 8809 for each method of filing information returns used, i.e. electronically or paper. A separate Form 8809 must be completed for each payer. Form 8809 may be computer-generated or photocopied. Be sure to use the most recently updated version and include all the pertinent information.

.04 To be considered, an extension request must be postmarked, transmitted, or completed online by the due date of the returns; otherwise, the request will be denied. (See Part A, Sec. 7, for due dates.) If requesting an extension of time to file several types of forms, use one Form 8809; however, Form 8809 or an extension file must be submitted no later than the earliest due date. For example, if requesting an extension of time to file both Forms 1099-MISC and 1042-S, submit Form 8809 on or before February 28.

.05 As soon as it is apparent that a 30-day extension of time to file is needed, an extension request should be submitted. IRS/IRB does not begin processing extension requests until January. It may take up to 30 days for IRS/IRB to respond to a paper extension request. **Extensions completed online via the FIRE system fill-in form option receive instant results.**

.06 Under certain circumstances, a request for an extension of time may be denied. When a denial letter is received, any additional or necessary information must be resubmitted within 20 days.

.07 Requesting extensions of time for multiple withholding agents may be done by completing the online fill-in forms via the FIRE system. A separate online Form 8809 must be completed for each withholding agent.

.08 Withholding Agents/transmitters requesting extensions of time for multiple filers are required to submit the extension requests online via the fill-in form or in a file electronically (see Sec. 3 for the record layout). If requesting an additional extension, a signed Form 8809 must be faxed to IRB the same day as the transmission. Be sure to include a signature and the reason an additional extension is needed.

.09 All requests for an extension of time filed on Form 8809 must be sent using the following address:

Internal Revenue Service
Information Returns Branch
Attn: Extension of Time Coordinator
240 Murall Drive, Mail Stop 4360
Kearneysville, WV 25430

Note: Due to the large volume of mail received by IRS/IRB and the time factor involved in processing Extension of Time (EOT) requests, it is imperative that the attention line be present on all envelopes or packages containing Form 8809.

.10 Requests for extensions of time to file postmarked by the United States Postal Service on or before the due date of the returns, and delivered by United States mail to IRS/IRB after the due date, are treated as timely under the “timely mailing as timely filing” rule. A similar rule applies to designated private delivery services (PDSs). Notice 97–26, 1997–17 I.R.B. 6, provides rules for determining the date that is treated as the postmark date. For items delivered by a non-designated Private Delivery Service (PDS), the actual date of receipt by IRS/IRB will be used as the filing date. For items delivered by a designated PDS, but through a type of service not designated in Notice 2004–83, 2004–52 I.R.B. 1030 the actual date of receipt by IRS/IRB will be used as the filing date. The timely mailing rule also applies to furnishing statements to recipients and participants.

.11 Transmitters requesting an extension of time via an electronic file will receive a denial letter, accompanied by a list of withholding agents/payers covered under that denial.

.12 If an additional extension of time is needed, a Form 8809 and/or extension file must be sent by the initial extended due date. Check line 7 on the form to indicate that an additional extension is being requested. An additional 30-day extension will be approved only in cases of extreme hardship or catastrophic event. **If requesting an additional 30-day extension of time, submit the information return files as soon as prepared. Do not wait for IRS/IRB to respond to your request.**

.13 If an extension request is approved, the approval notification should be kept on file. Do not send the approval notification or copy of the approval notification to IRS/IRB with the electronic file or to the service center where the paper returns are filed.

.14 Request an extension for the current tax year only.

.15 A signature is not required when requesting an automatic 30-day extension. If an additional 30-day extension is requested, Form 8809 must be signed. Failure to properly complete and sign Form 8809 may cause delays in processing the request or result in a denial. Carefully read and follow the instructions for Form 8809.

.16 Form 8809 may be obtained by calling 1–800–TAX–Form (1–800–829–3676). The form is also available at IRS.GOV.

Sec. 2. Specifications for Filing Extensions of Time Electronically

.01 The specifications in Sec. 3 include the required 200-byte record layout for requesting extensions of time submitted in an electronic file. The instructions for the information that is to be entered in the record are also included. **Filers are advised to read this section in its entirety to ensure proper filing.**

.02 If a filer does not have an IRS/IRB assigned Transmitter Control Code (TCC), Form 4419, Application for Filing Information Returns Electronically (FIRE), **must** be submitted to obtain a TCC. This number **must** be used to submit extension requests in an electronic file. (See Part A, Sec. 6.)

.03 If requesting an additional extension of time, a signed Form 8809 must be faxed to IRB the same day as the transmission. Be sure to include a signature and the reason an additional extension is needed.

.04 **Transmitters submitting an extension of time via an electronic file should not submit a list of payer names and TINs with Form 8809 since this information is included in the electronic file. However, Line 6 of Form 8809 must be completed. The online fill-in Form 8809 cannot be used in lieu of the paper Form 8809 for electronic files.**

.05 Do not submit tax year 2011 extension requests filed electronically before *January 4, 2012*.

Sec. 3. Record Layout – Extension of Time

.01 Positions 6 through 188 of the following record should contain information about the **payer/withholding agent** for whom the extension of time to file is being requested. Do not enter transmitter information in these fields. **Only one TCC may be present in a file.**

Record Layout for Extension of Time

Field Position	Field Title	Length	Description and Remarks
1–5	Transmitter Control Code	5	Required. Enter the five-character alpha/numeric Transmitter Control Code (TCC) issued by IRS. Only one TCC per file is acceptable.

Record Layout for Extension of Time

Field Position	Field Title	Length	Description and Remarks				
6-14	Payer TIN	9	Required. Enter the valid nine-digit EIN/SSN assigned to the payer/withholding agent. Do not enter blanks, hyphens, or alpha characters. All zeros, ones, twos, etc., will have the effect of an incorrect TIN. For foreign entities that are not required to have a TIN, this field may be blank; however, the Foreign Entity Indicator, position 187, must be set to "X."				
15-54	Payer Name	40	Required. Enter the name of the payer/withholding agent whose TIN appears in positions 6-14. Left-justify information and fill unused positions with blanks.				
55-94	Second Payer Name	40	Required. If additional space is needed, this field may be used to continue name line information (e.g., c/o First National Bank); otherwise, enter blanks.				
95-134	Payer Address	40	Required. Enter the payer's address. The street address should include the number, street, apartment, or suite number (or PO Box if mail is not delivered to a street address).				
135-174	Payer City	40	Required. Enter the payer's city, town, or post office.				
175-176	Payer State	2	Required. Enter the payer's valid U.S. Postal Service state abbreviation. (Refer to Part A, Sec. 13.)				
177-185	Payer ZIP Code	9	Required. Enter the payer's ZIP Code. If using a five-digit ZIP Code, left-justify information and fill unused positions with blanks.				
186	Document Indicator	1	Required. Enter the appropriate document code that indicates the form for which an extension of time is being requested. <table border="1"> <thead> <tr> <th><u>Code</u></th> <th><u>Document</u></th> </tr> </thead> <tbody> <tr> <td>4</td> <td>1042-S</td> </tr> </tbody> </table>	<u>Code</u>	<u>Document</u>	4	1042-S
<u>Code</u>	<u>Document</u>						
4	1042-S						
187	Foreign Entity Indicator	1	Enter "X" if the payer is a foreign entity.				
188	Recipient Request Indicator	1	Enter "X" if the extension request is to furnish statements to the recipients of the information returns.				
Note: A separate file is required for this type of extension request. A file must either contain all blanks or all Xs in this field.							
189-198	Blank	10	Enter blanks.				
199-200	Blank	2	Enter blanks or carriage return/line feed (CR/LF) Characters.				

Extension of Time Record Layout

Transmitter Control Code	Payer TIN	Payer Name	Second Payer Name	Payer Address	Payer City	Payer State
1-5	6-14	15-54	55-94	95-134	135-174	175-176

Payer ZIP Code	Document Indicator	Foreign Entity Indicator	Recipient Request Indicator	Blank	Blank or CR/LF
177-185	186	187	188	189-198	199-200

Sec. 4. Extension of Time for Recipient Copies of Information Returns

.01 Request an **extension of time to furnish the statements to recipients** of Form 1042-S by submitting a letter to IRS/IRB at the address listed in Part D, Sec. 1.09. The letter should contain the following information:

- (a) Withholding Agent's name
- (b) TIN
- (c) Address
- (d) Type of return
- (e) Specify that the extension request is to provide statements to recipients
- (f) Reason for the delay
- (g) Signature of withholding agent or duly authorized person.

.02 Requests for an extension of time to furnish statements to recipients of Form 1042-S are not automatically approved. If approved, an extension will allow a **maximum** of 30 additional days from the due date. The request must be postmarked by the date on which the statements are due to the recipients.

.03 Generally, only the withholding agent may sign the letter requesting the extension for recipient copies. A transmitter must have a contractual agreement with the withholding agents to submit extension requests on their behalf. This should be stated in the letter of request for recipient copy extensions.

.04 Requests for extensions of time to file recipient copies for more than ten (10) withholding agents are **required** to be submitted electronically. (See Sec. 3, for the record layout.) When requesting extensions of time for recipient copies, a signed letter must be faxed to IRB by the transmitter the same day as the transmission. Be sure to include the reason an extension for the recipient copies is needed.

.05 *Transmitters submitting an extension of time for recipient copies via an electronic file should not submit a list of payer names and TINs with the letter since this information is included in the electronic file.*

.05 **The online fill-in Form 8809 extension option cannot be used to request an extension to furnish statements to recipients.**

Sec. 5. Form 8508, Request for Waiver From Filing Information Returns Electronically

.01 If a withholding agent is required to file electronically but fails to do so and does not have an approved waiver on record, the withholding agent will be subject to a penalty of \$100 per return in excess of 250. (For penalty information, refer to the Penalty Section of the *2011 Instructions for Form 1042-S*.)

.02 If withholding agents are required to file original or amended returns electronically, but such filing would create an undue hardship, they may request a waiver from these filing requirements by submitting Form 8508, Request for Waiver from Filing Information Returns Electronically, to IRS/IRB. Form 8508 can be obtained on the IRS website at IRS.gov or by calling toll-free 1-800-829-3676 or International 304-263-8700.

.03 Although a withholding agent may submit as many as 249 amended returns on paper, IRS/IRB encourages electronic filing. Once the 250 threshold has been met, filers are required to submit any returns of 250 or more electronically. If a waiver for original documents is approved, any amended returns for the same type of returns will be covered under that waiver.

.04 Generally, only the withholding agent may sign Form 8508. A transmitter may sign if given power-of-attorney; however, a letter signed by the withholding agent stating this fact must be attached to Form 8508.

.05 A transmitter must submit a separate Form 8508 for each withholding agent. Do not submit a list of withholding agents.

.06 All information requested on Form 8508 must be provided to IRS/IRB for the request to be processed.

.07 The waiver, if approved, will provide exemption from the electronic filing requirement for the current tax year only. Withholding agents may not apply for a waiver for more than one tax year at a time.

.08 Form 8508 may be photocopied or computer-generated as long as it contains all the information requested on the original form.

.09 Filers are encouraged to submit Form 8508 to IRS/IRB at least 45 days before the due date of the returns. IRS/IRB does not process waiver requests until January. Waiver requests received prior to January are processed on a first come, first serve basis.

.10 All requests for a waiver should be sent using the following address:

Internal Revenue Service
Information Returns Branch
Attn: Extension of Time Coordinator
240 Murall Drive, Mail Stop 4360
Kearneysville, WV 25430

.11 Waivers are evaluated on a case by case basis and are approved or denied based on criteria set forth in the regulations under section 6011(e) of the Internal Revenue Code. The withholding agent must allow a minimum of 30 days for IRS/IRB to respond to a waiver request.

.12 If a waiver request is approved, keep the approval letter on file. **DO NOT** send a copy of the approved waiver to the Ogden service center.

.13 An approved waiver only applies to the requirement for filing information returns electronically. The withholding agent must still timely file information returns with the Ogden service center on the official IRS paper forms or an acceptable substitute form.

Specifications for Filing Form 8027, Employer’s Annual Information Return of Tip Income and Allocated Tips, Electronically

IMPORTANT NOTES:

IRS/IRB offers an Internet connection at <http://fire.irs.gov> for electronic filing of Form 8027. The Filing Information Returns Electronically (FIRE) system will be down from 6 p.m. Eastern Time (ET) December 16, 2011 through January 03, 2012 for yearly updates. In addition, the FIRE system may be down every Wednesday from 2:00 a.m. to 5:00 a.m. ET for programming updates. The FIRE system will not be available for submissions during these times.

Form 4419, Application for Filing Information Returns Electronically (FIRE), is subject to review before the approval to transmit electronically is granted. IRS may require additional documentation. If a determination is made concerning the validity of the documents transmitted electronically, IRS has the authority to revoke the Transmitter Control Code (TCC) and terminate the release of the files.

The FIRE system does not provide fill-in forms for information returns.

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Part A. General

Sec. 1. Purpose

.01 Form 8027 is used by large food or beverage establishments when the employer is required to make annual reports to the IRS on receipts from food or beverage operations and tips reported by employees.

Note: All employees receiving \$20.00 or more a month in tips must report 100 percent of their tips to their employer.

.02 The Internal Revenue Service, Information Returns Branch (IRS/IRB), is responsible for processing Forms 8027 submitted electronically. The purpose of this revenue procedure is to provide the specifications for filing Form 8027, Employer’s Annual Information Return of Tip Income and Allocated Tips, electronically. This revenue procedure is updated when legislative changes occur or reporting procedures are modified.

.03 This revenue procedure supersedes: Rev. Proc. 2010–37 published in Internal Revenue Bulletin 2010–42, dated October 18, 2010, Specifications for Filing Form 8027, Employer’s Annual Information Return of Tip Income and Allocated Tips, Electronically. This revenue procedure is effective for Forms 8027 due the last day of February, 2012 and any returns filed thereafter.

Sec. 2. Nature of Changes

.01 Penalties associated with Information Return filing have increased significantly. Please see Part A, Sec. 08 for specific information.

.02 Record layout Field Position 373 has been updated to a blank position due to the expiration of the Attributed Tip Income Program (ATIP).

.03 The Liable/Not Liable Indicator in Field Position 374 has been deleted. A blank is now required in that field.

Sec. 3. Where to File and How to Contact the IRS, Information Returns Branch (IRB)

.01 All correspondence concerning Forms 8027 processed at IRS/IRB should be sent to the following address:

Internal Revenue Service
Information Returns Branch
230 Murall Drive, Mail Stop 4360
Kearneysville, WV 25430

.02 forms and publications should be requested by calling **1-800-TAX-FORM (1-800-829-3676)**.

.03 Questions pertaining to electronic filing of Forms W 2 **must** be directed to the Social Security Administration (SSA). Filers can call 1-800-SSA-6270 to obtain the telephone number of the SSA Employer Services Liaison Officers for their area.

.04 A taxpayer or authorized representative may request a copy of a tax return or a Form W-2 filed with a return by submitting Form 4506, Request for Copy of Tax Return, to IRS. This form may be obtained by calling **1-800-TAX-FORM (1-800-829-3676)**.

.05 Electronic Products and Services Support, Information Returns Branch (IRB) answers electronic, paper filing, and tax law questions from the payer community relating to the correct preparation and filing of information returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, 8027, 8935, and W-2G). IRB also answers questions relating to the electronic filing of Forms 1042-S and

8955-SSA and to the tax law criteria and paper filing instructions for Forms W-2 and W-3. Inquiries dealing with backup withholding and reasonable cause requirements due to missing and incorrect taxpayer identification numbers are also addressed by IRB. Assistance is available year-round to payers, transmitters, and employers nationwide, Monday through Friday, 8:30 a.m. to 4:30 p.m. Eastern Time, by calling **1-866-455-7438** or via e-mail at mccirp@irs.gov. **SSNs or EINs must not be included in e-mails or attachments since this is not a secure line.** The Telecommunications Device for the Deaf (TDD) toll number is **304-579-4827**. Filers should call as soon as questions arise to avoid the busy filing season call volume at the end of January, February, and March. Recipients of information returns (payees) should continue to contact 1-800-829-1040 with any questions on how to report the information returns data on their tax returns.

.06 The telephone numbers and web addresses for questions about specifications for electronic submissions are:

Information Returns Branch

1-866-455-7438

Outside the U.S. 1-304-263-8700

e-mail at mccirp@irs.gov

304-579-4827 — TDD

(Telecommunication Device for the Deaf)

Fax Machine

Within the U.S. — 877-477-0572

Outside the U.S. — 304-579-4105

Electronic Filing – FIRE system

Test URL <http://fire.test.irs.gov>

Production URL <http://fire.irs.gov>

TO OBTAIN FORMS:

1-800-TAX-FORM (1-800-829-3676)

**[IRS.gov](http://www.irs.gov) — IRS website access to forms and
Online Ordering for Information Returns and Employer Returns
<http://www.irs.gov/businesses/page/0,,id=23108,00.html>**

Sec. 4. Filing Requirements and Due Dates

.01 Section 6011(e)(2)(A) of the Internal Revenue Code and the regulations thereunder provide that any person, including corporations, partnerships, individuals, estates, and trusts, required to file 250 or more information returns must file such returns electronically.

.02 The filing requirements apply separately to both original and corrected returns.

.03 The above requirements do not apply in cases of undue hardship (see Part A, Sec. 5).

.04 FILERS MUST NOT SUBMIT THE SAME INFORMATION ON PAPER FORMS THAT ARE SUBMITTED ELECTRONICALLY, SINCE THIS WILL RESULT IN DUPLICATE FILING. This does not mean that corrected documents should not be filed. If a return has been prepared and submitted improperly, a corrected return must be filed as soon as possible. Refer to Part A, Sec. 9, for requirements and instructions for filing corrected returns.

.05 When an allocation of tips is based on a good faith agreement, a copy of this agreement must be submitted within three business days after receiving acknowledgement that IRS has accepted the electronically filed Form 8027. Fax the agreement to 859-669-2256 or mail a copy of this agreement to Internal Revenue Service, Attn: ICO ERS Stop 36101, 201 West River Center Blvd., Covington, KY 41011. In the fax transmittal or cover letter, the filer must include the words “Form 8027 attachment(s)” and the following information: name of establishment, name of employer, EIN (Employer Identification Number), establishment number, TCC, and the tax year of the Form 8027.

.06 Employers can request a lower rate (but not lower than two percent) for tip allocation purposes by submitting an application to the IRS. See Sec. 31.6053-3(h)(4) of Employment Tax Regulations. Detailed instructions for requesting a lower rate can be found in the Instructions for Form 8027. The IRS will issue a determination letter to notify the employer when and for how long a reduced rate is effective. If a lower rate is used on Form 8027 based on the IRS determination letter, a copy of this letter must be submitted within three business days after receiving acknowledgement that IRS has accepted the electronically filed Form 8027. Filers must fax the letter to 859-669-2256 or mail a copy of the letter to Internal Revenue Service, Attn: ICO ERS Stop 36101, 201 West River Center Blvd., Covington, KY 41011. In the transmittal (e.g., fax transmittal or cover letter), filers must include the words “Form 8027

attachment(s)” and the following information: name of establishment, name of employer, EIN, establishment number, TCC, and the tax year of the Form 8027.

.07 Electronic reporting to IRS for Form 8027 must be on a calendar year basis. The due date for filing paper Forms 8027 is the last day of February (February 29, 2012). Forms 8027 filed **electronically** are due March 31.

.08 If the due date falls on a Saturday, Sunday, or legal holiday, filing Form 8027 on the next day that is not a Saturday, Sunday, or legal holiday will be considered timely.

Sec. 5. Form 8508, Request for Waiver from Filing Information Returns Electronically

.01 If an employer is required to file electronically but fails to do so, and does not have an approved waiver on record, the employer may be subject to a penalty of \$100 per return. An employer can file up to 250 returns on paper; those returns will not be subject to a penalty for failure to file electronically.

.02 If an employer is required to file original or corrected returns electronically, but such filing would create a hardship, they may request a waiver from these filing requirements by submitting Form 8508, Request for Waiver from Filing Information Returns Electronically, to IRS/IRB. Form 8508 can be obtained on the IRS website at IRS.gov or by calling 1-800-829-3676.

.03 Even though an employer may submit as many as 249 corrections on paper, IRS encourages electronic filing of corrections. Once the 250 threshold has been met, filers are required to submit any additional returns electronically. However, if a waiver for an original filing is approved, any corrections for the same type of returns will be covered under that waiver.

.04 Generally, only the employer may sign Form 8508. A transmitter may sign if given power of attorney; however, a letter signed by the employer stating this fact must be attached to the Form 8508.

.05 A transmitter must submit a separate Form 8508 for each employer. Do not submit a list of employers.

.06 All information requested on the Form 8508 must be provided to IRS for the request to be processed.

.07 The waiver, if approved, will provide exemption from electronic filing for the current tax year only. Employers may not apply for a waiver for more than one tax year.

.08 Form 8508 may be photocopied or computer-generated as long as it contains all the information requested on the original form.

.09 Filers are encouraged to submit Form 8508 to IRS/IRB at least 45 days before the due date of the returns, but no later than the due date of the returns for which the waiver is being requested.

.10 Waiver requests must be sent using the following address:

Internal Revenue Service
Information Returns Branch
Attn: Extension of Time Coordinator
240 Murall Drive, Mail Stop 4360
Kearneysville, WV 25430

.11 **Form 8508 for Forms W-2 must be filed with IRS/IRB, not SSA.**

.12 Waivers are evaluated on a case-by-case basis and are approved or denied based on criteria set forth under section 6011(e) of the Internal Revenue Code. The transmitter must allow a minimum of 30 days for IRS/IRB to respond to a waiver request.

.13 If a waiver request is approved, the transmitter should keep the approval letter on file.

.14 An approved waiver from filing Forms 8027 electronically does not provide exemption from filing. The employer must timely file Forms 8027 on acceptable paper forms with the Cincinnati Service Center. When filing paper Forms 8027, attach a copy of the approved waiver.

Sec. 6. Form 4419, Application for Filing Information Returns Electronically (FIRE)

.01 For the purposes of this revenue procedure, the EMPLOYER is the organization supplying the information and the TRANSMITTER is the organization preparing the electronic file and/or sending the file to IRS/IRB. The employer and the transmitter may be the same entity. Employers or their transmitters are required to complete Form 4419, Application for Filing Information Returns Electronically (FIRE). The Form 4419 is subject to review before the approval to transmit electronically is granted. IRS may require additional documentation. If a determination is made concerning the validity of the documents transmitted electronically, IRS has the authority to revoke the Transmitter Control Code (TCC) and terminate the release of files.

.02 Form 4419 can be submitted at any time during the year; however, it should be submitted to IRS/IRB at least 30 days before the due date of the return(s). Upon approval, a five-character alpha/numeric Transmitter Control Code (TCC) will be assigned and included in an approval letter. Electronic returns may not be filed with IRS until the application has been approved and a TCC assigned. The TCC must be included in any correspondence with IRS/IRB.

.03 If transmitters file information returns other than Form 8027 electronically, they must obtain a separate TCC for those types of returns. The TCC assigned for Forms 8027 is to be used for the submission of these forms only.

.04 After approval to file electronically has been received, transmitters are not required to reapply each year; however, notify IRS in writing if:

(a) There is a change in the contact person's name or the name of the organization, so that the files may be updated to reflect the correct information;

(b) The transmitter discontinued filing for two years (the TCC may have been reassigned).

.05 IRS/IRB encourages transmitters who plan to file returns for multiple employers to submit one application and to use one TCC for all employers.

.06 Approval to file does not imply endorsement by IRS/IRB of any computer software or of the quality of tax preparation services provided by a service bureau or software vendor.

Sec. 7. State Abbreviations

.01 The following state and U.S. possession abbreviations are to be used when developing the state code portion of address fields.

State	Code	State	Code	State	Code
Alabama	AL	Kentucky	KY	Ohio	OH
Alaska	AK	Louisiana	LA	Oklahoma	OK
American Samoa	AS	Maine	ME	Oregon	OR
Arizona	AZ	Marshall Islands	MH	Pennsylvania	PA
Arkansas	AR	Maryland	MD	Puerto Rico	PR
California	CA	Massachusetts	MA	Rhode Island	RI
Colorado	CO	Michigan	MI	South Carolina	SC
Connecticut	CT	Minnesota	MN	South Dakota	SD
Delaware	DE	Mississippi	MS	Tennessee	TN
District of Columbia	DC	Missouri	MO	Texas	TX
Federated States of Micronesia	FM	Montana	MT	Utah	UT
Florida	FL	Nebraska	NE	Vermont	VT
Georgia	GA	Nevada	NV	Virginia	VA
Guam	GU	New Hampshire	NH	(U.S.) Virgin Islands	VI
Hawaii	HI	New Jersey	NJ	Washington	WA
Idaho	ID	New Mexico	NM	West Virginia	WV
Illinois	IL	New York	NY	Wisconsin	WI
Indiana	IN	North Carolina	NC	Wyoming	WY
Iowa	IA	North Dakota	ND		
Kansas	KS	No. Mariana Islands	MP		

.02 Filers must adhere to the city, state, and ZIP Code format for U.S. addresses. This also includes American Samoa, Federated States of Micronesia, Guam, Marshall Islands, Commonwealth of the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

Note: Form 8027 is required only for establishments in the 50 states and the District of Columbia.

Sec. 8. Penalties Associated With Information Returns

.01 The following penalties generally apply to the person required to file information returns. The penalties apply to electronic filers as well as to paper filers.

.02 Failure To File Correct Information Returns by the Due Date (Section 6721). If you fail to file a correct information return by the due date and you cannot show reasonable cause, you may be subject to a penalty. The penalty applies if you fail to file timely, you fail to include all information required to be shown on a return, or you include incorrect information on a return. The penalty also applies if you file on paper when you were required to file electronically, you report an incorrect TIN or fail to report a TIN, or you fail to file paper forms that are machine readable.

The amount of the penalty is based on when you file the correct information return. The penalty is:

- **\$30** per information return if you correctly file within 30 days of the due date of the return (See Part A, Sec. 7.02); maximum penalty \$250,000 per year (\$75,000 for small businesses).

- **\$60** per information return if you correctly file more than 30 days after the due date but by August 1; maximum penalty \$500,000 per year (\$200,000 for small businesses).
- **\$100** per information return if you file after August 1 or you do not file required information returns; maximum penalty \$1.5 million per year (\$500,000 for small businesses).

.03 A late filing penalty may be assessed for a replacement file which is not transmitted by the required date. See Part B, Sec. 4.06, for more information on replacement files.

.04 **Intentional disregard of filing requirements.** If the failure to file correct information returns is due to intentional disregard of the filing requirements, the penalty is at least \$250 per information return with no maximum penalty.

.05 **Failure To Furnish Correct Payee Statements (Section 6722).** For information regarding penalties which may apply to failure to furnish correct payee statements, see the Penalties Section of the *2011 Instructions for Forms W-2 and W-3*.

Sec. 9. Corrected Returns, Paper Forms, and Computer-Generated Forms

.01 If returns must be corrected, approved electronic filers must provide such corrections electronically if filing 250 or more forms. If the information is filed electronically, corrected returns are identified by using the “Corrected 8027 Indicator” in field position 370 of the employer record.

.02 A correction file must be identified by entering the correction indicator “G” in position 370.

.03 When replacing a correction file that was bad, a replacement file must be submitted. When replacing a correction file, the correction indicator “G” must be entered in position 370.

.04 If corrections are not submitted electronically, employers must submit them on official Forms 8027. Substitute forms that have been previously approved by IRS, or computer-generated forms that are exact facsimiles of the official form (except for minor page size or print style deviations), may be submitted without obtaining IRS approval before using the form.

.05 Employers/establishments may send corrected paper Forms 8027 to IRS at the address shown in Part A, Sec. 9.06. Corrected paper returns are identified by marking the “AMENDED” check box on Form 8027.

.06 If filing more than one paper Form 8027, attach a completed Form 8027-T, Transmittal of Employer’s Annual Information Return of Tip Income and Allocated Tips, to the Forms 8027 and send to:

Department of the Treasury
Internal Revenue Service Center
Cincinnati, OH 45999

IRS/IRB processes Forms 8027 submitted electronically only. Employers must not send paper Forms 8027 to IRS/IRB.

.07 If part of a submission is filed electronically and the rest of the submission is filed on paper Forms 8027, send the paper forms to the Cincinnati Service Center. For example, Forms 8027 were filed electronically with IRS/IRB, and later ten of the forms filed need to be corrected. The filer may submit the corrections on paper Forms 8027 because the number of corrections filed is under the 250 threshold. These corrected paper Forms 8027 must be sent, along with Form 8027-T, to the Cincinnati Service Center.

Sec. 10. Validation of Form 8027 at IRS/IRB

.01 The accuracy of data reported on Form 8027 will be validated at the IRS Service Center. All fields indicated as “Required” in the record layout must contain valid information. If the IRS identifies an error, filers will be notified and required to provide correct information.

.02 The address for the establishment must agree with the state and ZIP Code. If there are inconsistencies or if the ZIP Code does not agree with the address, it will result in a file status of “bad”.

.03 All alpha characters must be in upper case.

.04 The following is clarification of monetary amount requirements:

- Charged Receipts (positions 260–271) must exceed Charged Tips (positions 248–259).
- Total Tips Reported (positions 308–319) must equal the combined amount of the Indirect Tips (positions 284–295) and Direct Tips (positions 296–307).
- Gross Receipts (positions 320–331) must exceed all other monetary amounts with the exception that Gross Receipts could equal Charged Receipts if all transactions were conducted on charge cards.
- The Tip Percentage Rate Times Gross Receipts (332–343) must equal the Gross Receipts times the Tip Rate. Normally, the Tip Rate is 8 percent. The Tip Rate must be entered as 0800 in positions 344–347 unless IRS has granted a lower rate.
- Generally, an employer would have allocated tips if the Total Tips Reported (positions 308–319) is less than the Tip Percentage Rate Times Gross Receipts (positions 332–343). The difference must be entered as Allocated Tips (positions 348–359).

Sec. 11. Definition of Terms

ELEMENT	DESCRIPTION
Correction	A correction is an information return submitted by the employer/transmitter to correct an information return that was previously submitted to and successfully processed by IRS, but contained erroneous information.
EIN	A nine-digit Employer Identification Number which has been assigned by IRS to the reporting entity.
Employees hours worked	The average number of employee hours worked per business day during a month is figured by dividing the total hours worked during the month by all your employees who are employed in a food or beverage operation by the average number of days in the month that each food or beverage operation at which these employees worked was open for business.
Employer	The organization supplying the information. Use the same name and EIN used on Forms W-2 and Forms 941.
Establishment	A large food or beverage establishment that provides food or beverage for consumption on the premises; where tipping is a customary practice; and where there are normally more than ten employees who work more than 80 hours on a typical business day during the preceding calendar year.
File	For the purpose of this revenue procedure, a file is the Form 8027 information submitted electronically by an Employer or Transmitter.
More than ten employees	An employer is considered to have more than ten employees on a typical business day during the calendar year if half the sum of: the average number of employee hours worked per business day in the calendar month in which the aggregate gross receipts from food and beverage operations were greatest, plus the average number of employee hours worked per business day in the calendar month in which the total aggregate gross receipts from food and beverage operations were the least, equals more than 80 hours.
Replacement	A replacement is an information return file sent by the employer/transmitter at the request of IRS/IRB because of errors encountered while processing the filer's original file or correction file.
Transmitter	The person or organization preparing electronic file(s). This may be the employer or an agent of the employer.
Transmitter Control Code (TCC)	A five character alpha/numeric code assigned by IRS to the transmitter prior to electronically filing. This number is inserted in the record and must be present in all files submitted electronically through the FIRE system. An application (Form 4419) must be filed with IRS to receive this number.

Part B. Electronic Filing Specifications

Note: The FIRE system does not provide fill-in forms, except for Form 8809, Application for Extension of Time to File Information Returns. Filers must program files according to the Record Layout Specifications contained in this publication.

Sec. 1. General

.01 Electronic filing of Form 8027 returns, originals and replacements, is a reporting method required for filers submitting 250 or more Forms 8027. Payers who are under the filing threshold requirement, are encouraged to file electronically.

.02 All electronic filings of information returns are received at IRS/IRB via the FIRE (Filing Information Returns Electronically) system. To connect to the FIRE system, point the browser to <http://fire.irs.gov>. The system is designed to support the electronic filing of information returns only.

.03 The electronic filing of information returns is not affiliated with any other IRS electronic filing programs. Filers must obtain separate approval to participate in each program. Only inquiries concerning electronic filing of information returns should be directed to IRS/IRB.

.04 Files submitted to IRS/IRB electronically must be in standard ASCII code. Filers must not submit paper forms with the same information as electronically submitted files. This would create duplicate reporting resulting in penalty notices.

.05 Form 8809, Application for Extension of Time to File Information Returns, is available as a fill-in form via the FIRE system. If filers do not already have a User ID and password they should refer to Section 7. At the Main Menu, filers must click “Extension of Time Request” and then click “Fill-in Extension Form.” This option is only used to request an automatic 30-day extension and must be completed by the due date of the return for each payer requesting an extension. Print the approval page for a record of the approved extension. Additional information about requesting extensions of time electronically is included in Part D of this publication.

Sec. 2. Electronic Filing Approval Procedure

.01 Filers must obtain a Transmitter Control Code (TCC) prior to submitting files electronically. Refer to Part A, Sec. 6, for information on how to obtain a TCC.

.02 Once a TCC is obtained, electronic filers must create a User ID, password, and PIN (Personal Identification Number). See Part B, Sec. 5, for more information about PIN requirements.

.03 If a filer is submitting files for more than one TCC, it is not necessary to create a separate logon and password for each TCC.

.04 For all passwords, it is the user’s responsibility to remember the password and not allow the password to be compromised. Passwords are user assigned at first logon and must be eight alpha/numeric characters containing at least one uppercase, one lowercase, and one numeric. However, filers who forget their password or PIN, can call **1-866-455-7438** for assistance. The FIRE system requires passwords to be changed every 90 days or at the first logon attempt after 90 days. The previous 24 passwords cannot be used. Users can change their passwords at any time from the Main Menu.

Sec. 3. Test Files

.01 Filers are not required to submit a test file; however, the submission of a test file is encouraged for all new electronic filers to test hardware and software. If filers wish to submit an electronic test file for Tax Year 2011 (returns to be filed in 2012), it **must** be submitted to IRS/IRB **no earlier than** November 1, 2011, and **no later than** February 15, 2012. **The FIRE system will be down from 6 p.m. ET December 16, 2011, through January 3, 2012.** To connect to the FIRE test system, point the browser to <http://fire.test.irs.gov>.

.02 Filers who encounter problems while transmitting the electronic test file can contact IRS/IRB at **866-455-7438** for assistance.

.03 Within five days, the results of the electronic transmission will be e-mailed to the filer if an accurate e-mail address was provided on the “Verify Your Filing Information” screen. If filers are using e-mail filtering software, it must be configured to accept e-mail from fire@irs.gov and irs.e-helpmail@irs.gov. If the file is bad, the filer must return to <http://fire.test.irs.gov> to determine what errors are in the file by clicking on CHECK FILE STATUS. If an e-mail is not received within five business days, filers should log into the FIRE system and click on CHECK FILE STATUS to view the results of the file.

Sec. 4. Electronic Submissions

.01 Electronically filed information may be submitted to IRS/IRB 24 hours a day, seven days a week. Technical assistance is available Monday through Friday between 8:30 a.m. and 4:30 p.m. ET by calling **1-866-455-7438**.

.02 **The FIRE system will be down from 6 p.m. ET December 16, 2011, through January 3, 2012.** This allows IRS/IRB to make yearly updates to reflect current year changes. In addition, the FIRE system may be down every Wednesday from 2:00 a.m. to 5:00 a.m. ET for programming updates.

.03 If sending files larger than 10,000 records electronically, data compression is encouraged. The file size cannot exceed 2.5 million records. WinZip and PKZip are the only acceptable compression packages. IRS/IRB cannot accept self-extracting zip files or compressed files containing multiple files. The time required to transmit information returns electronically will vary depending upon the type of connection to the Internet and if data compression is used. **The time required to transmit a file can be reduced by as much as 95 percent by using compression.** *Transmitters that experience problems transmitting files with a scripting process should contact IRS/IRB at 1-866-455-7438 for assistance.*

.04 Files submitted through the FIRE system will be assigned a unique filename (users can name the file anything they choose; however, most software products provide a filename). The filenames assigned by the FIRE system will consist of submission type (ORIG [original], TEST [test], CORR [correction], and REPL [replacement]), the filer’s TCC, and a four-digit sequence number. The sequence number will be incremental for every file sent. For example, if this is the first original file for the calendar year for TCC 21000, the IRS assigned filename would be ORIG.21000.0001. **Record the filename.** This information will be needed by IRS/IRB to identify the file if assistance is required.

.05 If a timely submitted file is bad, the filer will have up to 60 days from the day the file was transmitted to submit an acceptable replacement file. If an acceptable replacement file is not received within 60 days, the employer may be subject to late filing penalties.

.06 The following definitions have been provided to help distinguish between a correction and a replacement:

- A **correction** is an information return submitted by the transmitter to correct an information return that was previously submitted to and successfully processed by IRS/IRB, but contained erroneous information. (See Note.)

Note: Corrections should only be made to returns that have been submitted incorrectly, not the entire file.

- A **replacement** is an information return file sent by the filer because the CHECK FILE STATUS option on the FIRE system indicated the original/correction file was bad. After the necessary changes have been made, the file must be transmitted through the FIRE system. (See Note.)

Note: Filers should never transmit anything to IRS/IRB as a “Replacement” file unless the CHECK FILE STATUS option on the FIRE system indicates a previous file is bad.

.07 Prior year data may be submitted; however, each tax year must be submitted in a separate file transmission. For prior year data, use the current year format, enter the tax year being reported in field positions 375–378, and enter a “P” in field position 379 to indicate the file contains prior year data.

Sec. 5. PIN Requirements

.01 Filers will be prompted to create a PIN consisting of 10 numeric characters when establishing their initial User ID name and password.

.02 The PIN is required each time an ORIGINAL, CORRECTION, or REPLACEMENT file is sent electronically and is permission to release the file. It is not needed for a TEST file. An authorized agent may enter their PIN; however, the payer is responsible for the accuracy of the returns. The payer will be liable for penalties for failure to comply with filing requirements. If there is a problem with a PIN, filers should call **1-866-455-7438** for assistance.

Sec. 6. Electronic Filing Specifications

.01 The FIRE System is designed exclusively for the filing of Forms 8027, 1097, 1098, 1099, 3921, 3922, 5498, 8935, 8955-SSA, W-2G, and 1042-S.

.02 A transmitter must have a TCC (see Part A, Sec. 6) before a file can be transmitted.

.03 Within five days, the results of the electronic transmission will be e-mailed to the transmitter if an accurate e-mail address was provided on the “Verify Your Filing Information” screen. If e-mail filtering software is being used, the software must be configured to accept e-mail from fire@irs.gov and irs.e-helpmail@irs.gov. If the e-mail indicates the file is bad, filers must log into the FIRE system and go to the CHECK FILE STATUS area to determine what errors are in the file. If filers do not receive an e-mail in five business days, they must log back into the FIRE system and click on CHECK FILE STATUS to view the results of the file.

Sec. 7. Connecting to the FIRE System

.01 Have the TCC and TIN available before connecting.

.02 Turn off pop-up blocking software before transmitting files.

.03 Make sure the browser supports the security standards listed below.

.04 Set the browser to receive “cookies.” Cookies are used to preserve the User ID status.

.05 Point the browser to <http://fire.irs.gov> to connect to the FIRE system or <http://fire.test.irs.gov> to connect to the FIRE test system (Nov.1 through Feb. 15).

.06 FIRE Internet Security Technical Standards are:

HTTP 1.1 Specification (<http://www.w3.org/Protocols/rfc2616/rfc2616.txt>)

SSL 3.0 or TLS 1.0. SSL and TLS are implemented using SHA and RSA 1024 bits during the asymmetric handshake.

SSL 3.0 Specifications (<http://wp.netscape.com/eng/ssl3>)

TLS 1.0 Specifications (<http://www.ietf.org/rfc/rfc2246.txt>)

The filer can use one of the following encryption algorithms, listed in order of priority, using SSL or TLS:

AES 256-bit (FIPS-197)

AES 128-bit (FIPS-197)

TDES 168-bit (FIPS-46-3)

First time connection to the FIRE System (If there has been a previous logon, skip to “Subsequent Connections to the FIRE System.”)

Click “**Create New Account**”

Fill out the registration form and click “**Submit**”

Create **User ID**

Create and verify **password** (The **password** is user created and must be eight alpha/numeric characters, containing at least one uppercase, one lowercase, one numeric, and cannot contain the User ID. The *FIRE system requires passwords to be changed every 90 days or at the first logon attempt after 90 days. The previous 24 passwords cannot be used.*

Click **“Create”**

If the message **“Account Created”** is received, click **“OK”**

Create and verify the ten-digit self-assigned PIN (Personal Identification Number)

Click **“Submit”**

If the message **“Your PIN has been successfully created!”** is received, click **“OK”**

Read the bulletin(s) and/or **“Click here to continue”**

Subsequent connections to The FIRE System

Click **“Log On”**

Enter the **User ID**

Enter the **Password** (The password is case sensitive.)

Read the bulletin(s) and/or **“Click here to continue”**

Uploading a file to the FIRE System

At Menu Options:

Click **“Send Information Returns”**

Enter the **TCC**

Enter the **TIN**

Click **“Submit”**

The system will display the company name, address, city, state, ZIP code, telephone number, contact, and e-mail address. This information is used to e-mail the transmitter regarding the transmission. Update as appropriate and/or click **“Accept”**.

Note: Please provide an accurate e-mail address for the correct person to receive the e-mail and to avoid having the e-mail returned to IRS as undeliverable. If SPAM filtering software is being used, configure it to allow an e-mail from fire@irs.gov and irs.e-helpmail@irs.gov.

Click one of the following:

Original File

Replacement File

Correction File

Test File (This option will only be available from Nov. 1 through Feb. 15 at <http://fire.test.irs.gov>.)

Enter the ten-digit PIN (If sending a test file, there is no prompt for this.)

Click **“Submit”**

Click **“Browse”** to locate the file and open it

Click **“Upload”**

When the upload is complete, the screen will display the total bytes received and the IRS assigned filename of the file. IF THIS INFORMATION IS NOT DISPLAYED ON THE SCREEN, IRB MAY NOT HAVE RECEIVED THE FILE. To verify, go to the **“CHECK FILE STATUS”** option on the Main Menu. If the filename is displayed, the count is equal to **“0”**, and the results indicate **“not yet processed,”** IRB received the file. If the filename is not displayed, send the file again.

If there are more files to upload for that TCC:

Click **“File Another?”** otherwise,

Click **“Main Menu”**

It is the filer's responsibility to check the acceptability of the file(s). If an e-mail is not received within five business days or an e-mail is received and it indicates the file is bad, log back into the FIRE system and click on "CHECK FILE STATUS" to view the results of the file.

Checking the FILE STATUS

If the correct e-mail address was provided on the "Verify Your Filing Information" screen when the file was sent, an e-mail will be sent regarding the FILE STATUS. If the results in the e-mail indicate "Good, not Released" and the "Count of Payees" is correct, the filer is finished with this file. If there are any other results, the filer must follow the instructions below.

At the Main Menu:

Click "**Check File Status**"
Enter the **TCC**
Enter the **TIN**
Click "**Search**"

If the "Results" indicate:

"Good, Not Released" — If the "Count of Payees" is correct, the filer is finished with this file. The file will automatically be released after ten calendar days unless the filer contacts IRB within this timeframe.

"Good, Released" — The file has been released to the mainline processing.

"Bad" — The file has errors. Click on the filename to view the error message(s), fix the errors, and resubmit the file timely as a **"replacement."**

"Not yet processed" — The file has been received, but results are not available. Please check back in a few days.

When finished, click "**Log Out**"

Click "**Close Web Browser**"

Sec. 8. Common Problems and Questions Associated with Electronic Filing

.01 The following are the major errors associated with electronic filing:

NON-FORMAT ERRORS

1. SPAM filters are not set to receive e-mail from fire@irs.gov and irs.e-helpmail@irs.gov.

To receive e-mails concerning files, processing results, reminders and notices, set the SPAM filter to receive e-mail from fire@irs.gov and irs.e-helpmail@irs.gov.

2. Incorrect e-mail address provided.

When the "Verify Your Filing Information" screen is displayed, make sure the correct e-mail address is displayed. If not, please update with the correct e-mail address.

NON-FORMAT ERRORS

3. Transmitter does not check the FIRE system to determine file acceptability.

Generally, the results of file transfers are posted to the FIRE system within five business days. If the correct e-mail address was provided on the "Verify Your Filing Information" screen when the file was sent, an e-mail will be sent regarding the FILE STATUS. If the results in the e-mail indicate "Good, Not Released" and the "Count of Payees" is correct, the filer is finished with this file. If any other results are received, follow the instructions in the "Check File Status" option. If the file contains errors, get an online listing of the errors. If the file status is good, but the file should not be processed, filers should contact IRS/IRB within ten calendar days from the transmission of the file.

4. Replacement file is not submitted timely.

If a file is bad, correct the file and resubmit timely as a replacement.

5. Transmitter compresses several files into one.

Only compress one file at a time. For example, if there are ten uncompressed files to send, compress each file separately and send ten separate compressed files.

6. Transmitter sends an original file that is good, and then sends a correction file for the entire file even though there are only a few changes.

The correction file, containing the proper coding, should only contain the records requiring correction, not the entire file.

7. File is formatted as EBCDIC.

All files submitted electronically must be in standard ASCII code. All alpha characters must be uppercase.

8. Transmitter has one TCC, but is filing for multiple companies, which TIN should be used when logging into the FIRE system to send a file?

When sending the file electronically, enter the TIN of the company assigned to the TCC. The uploaded file should contain the TINs for the businesses that made payments that are subject to reporting on information returns. The payer TIN is the information that will be passed forward.

9. Transmitter sent the wrong file, what should be done?

Call IRS/IRB at 1-866-455-7438. IRB may be able to stop the file before it has been processed.

10. Transmitter sends a file and "CHECK FILE STATUS" indicates that the file is good, but the transmitter wants to send another file containing the same information.

Once a file has been transmitted, a replacement file cannot be sent unless the "CHECK FILE STATUS" indicates the file is bad (five business days after the file was transmitted). If a file should not be processed, contact IRS/IRB at 1-866-455-7438 to see if this is a possibility.

Part C. Filing Specifications and Record Format

.01 If the file does not meet these specifications, IRS/IRB will request a replacement file. Filers are encouraged to submit a test prior to submitting the actual file. Contact IRS/IRB at 1-866-455-7438 for further information.

Note: The only allowable characters in the name and address fields are alphas, numerics, and blanks. Punctuation marks such as periods, hyphens, ampersands, slashes, and commas are not allowed and will cause the file to be rejected. For example, O'Hurley's Bar & Grill, 210 N. Queen St., Suite #300 must be entered as OHurleys Bar Grill 210 N Queen St Suite 300.

FORM 8027 RECORD FORMAT

Field Position	Field Title	Length	Description and Remarks
1	Establishment Type	1	Required. This number identifies the kind of establishment. Enter the number which describes the type of establishment, as shown below: 1. for an establishment that serves evening meals only (with or without alcoholic beverages). 2. for an establishment that serves evening meals and other meals (with or without alcoholic beverages). 3. for an establishment that serves only meals other than evening meals (with or without alcoholic beverages). 4. for an establishment that serves food, if at all, only as an incidental part of the business of serving alcoholic beverages.
2-6	Establishment Serial Numbers	5	Required. These five-digit Serial Numbers are for identifying individual establishments of an employer reporting under the same EIN. The employer will assign a unique number to each establishment. Numeric characters only.
7-46	Establishment Name	40	Required. Enter the name of the establishment. Left-justify information and fill unused positions with blanks. Allowable characters are alphas, numerics, and blanks.
47-86	Establishment Street Address	40	Required. Enter the mailing address of the establishment. The street address should include the number, street, apartment, or suite number (use a P O Box only if mail is not delivered to a street address). Left-justify information and fill unused positions with blanks. Allowable characters are alphas, numerics, and blanks.
87-111	Establishment City	25	Required. Enter the city, town, or post office. Left-justify and blank fill. Allowable characters are alphas, numerics, and blanks.
112-113	Establishment State	2	Required. Enter the state code from the state abbreviations table in Part A, Sec. 7.
114-122	Establishment ZIP Code	9	Required. Enter the complete nine-digit ZIP Code of the establishment. If using a five digit ZIP Code, left-justify the five digit ZIP Code and fill the remaining four positions with blanks.
123-131	Employer Identification Number	9	Required. Enter the nine-digit number assigned to the employer by IRS. Do not enter hyphens, alphas, all 9s or all zeros.
132-171	Employer Name	40	Required. Enter the name of the employer as it appears on tax forms (e.g., Form 941). Any extraneous information must be deleted. Left-justify information and fill unused positions with blanks. Allowable characters are alphas, numerics, and blanks.
172-211	Employer Street Address	40	Required. Enter the mailing address of the employer. The street address should include the number, street, apartment, or suite number (use a P O Box only if mail is not delivered to a street address). Left-justify information and fill unused positions with blanks. Allowable characters are alphas, numerics, and blanks.
212-236	Employer City	25	Required. Enter the city, town, or post office. Left-justify the information and fill unused positions with blanks. Allowable characters are alphas, numerics, and blanks.
237-238	Employer State	2	Required. Enter the state code from the state abbreviations table in Part A, Sec. 7.

FORM 8027 RECORD FORMAT

Field Position	Field Title	Length	Description and Remarks
239–247	Employer ZIP Code	9	Required. Enter the complete nine-digit ZIP Code of the establishment. If using a five digit ZIP Code, left-justify the five digit ZIP Code and fill the remaining four positions with blanks.
Note: The ZIP Code must be nine numeric characters or five numeric characters and four blanks. Do not enter the dash.			
248–259	Charged Tips	12	Required. Enter the total amount of tips that are shown on charge receipts for the calendar year. Amount must be entered in U.S. dollars and cents. The right- most two positions represent cents. Right-justify information and fill unused positions with zeros. If this field is not utilized, enter zeros. Numeric characters only. Do not enter decimal points, dollar signs, or commas.
260–271	Charged Receipts	12	Required. Enter the total sales for the calendar year other than carry-out sales or sales with an added service charge of ten percent or more, that are on charge receipts with a charged tip shown. This includes credit card charges, other credit arrangements, and charges to a hotel room unless the employer’s normal accounting practice consistently excludes charges to a hotel room. Do not include any state or local taxes in the amount reported. The amount must be entered in U.S. dollars and cents. The right-most two positions represent cents. Right-justify information and fill unused positions with zeros. If this field is not utilized, enter all zeros. Numeric characters only. Do not enter decimal points, dollar signs, or commas.
272–283	Service Charge Less Than 10 Percent	12	Required. Enter the total amount of service charges less than 10 percent added to customers’ bills and were distributed to your employees for the calendar year. In general, service charges added to the bill are not tips since the customer does not have a choice. These service charges are treated as wages and are included on Form W-2. Amount must be entered in U.S. dollars and cents. The right-most two positions represent cents. Right-justify and zero fill. If no entry, zero fill. Numeric characters only. Do not enter decimal points, dollar signs, or commas.
284–295	Indirect Tips Reported	12	Required. Enter the total amount of tips reported by indirectly tipped employees (e.g., bussers, service bartenders, cooks) for the calendar year. Do not include tips received by employees in December of the prior tax year but not reported until January. Include tips received by employees in December of the tax year being reported, but not reported until January of the subsequent year. The amount must be entered in U.S. dollars and cents. The right-most two positions represent cents. Right-justify information and fill unused positions with zeros. If this field is not utilized, enter zeros. Numeric characters only. Do not enter decimal points, dollar signs, or commas.

FORM 8027 RECORD FORMAT

Field Position	Field Title	Length	Description and Remarks
296-307	Direct Tips Reported	12	Required. Enter the total amount of tips reported by directly tipped employees (e.g., servers, bartenders) for the calendar year. Do not include tips received by employees in December of the prior tax year but not reported until January. Include tips received by employees in December of the tax year being reported, but not reported until January of the subsequent year. Amount must be entered in U.S. dollars and cents. The right-most two positions represent cents. Right-justify and zero fill. If no entry, zero fill. Numeric characters only. Do not enter decimal points, dollar signs, or commas.
308-319	Total Tips Reported	12	Required. Enter the total amount of tips reported by all employees (both indirectly tipped and directly tipped) for the calendar year. Do not include tips received in December of the prior tax year but not reported until January. Include tips received in December of the tax year being reported, but not reported until January of the subsequent year. The amount must be entered in U.S. dollars and cents. The right-most two positions represent cents. Right-justify information and fill unused positions with zeros. If this field is not utilized, enter zeros. Numeric characters only. Do not enter decimal points, dollar signs, or commas.
320-331	Gross Receipts	12	Required. Enter the total gross receipts from the provision of food and/or beverages for this establishment for the calendar year. Do not include receipts for carry-out sales or sales with an added service charge of ten percent or more. Do not include in gross receipts charged tips (field positions 248-259) shown on charge receipts unless you have reduced the cash sales amount because you have paid cash to tipped employees for tips they earned that were charged. Do not include state or local taxes in gross receipts. If not charging separately for food or beverages along with other services (such as a package deal for food and lodging), make a good faith estimate of the gross receipts attributable to the food or beverages. This estimate must reflect the cost of providing the food or beverages plus a reasonable profit factor. Include the retail value of complimentary food or beverages served to customers if tipping for them is customary and they are provided in connection with an activity engaged in for profit whose receipts would not be included as gross receipts from the provision of food or beverages (e.g., complimentary drinks served to customers at a gambling casino). Amount must be entered in U.S. dollars and cents. The right-most two positions represent cents. Right-justify and zero fill. If no entry, zero fill. Numeric characters only. Do not enter decimal points, dollar signs, or commas.

FORM 8027 RECORD FORMAT

Field Position	Field Title	Length	Description and Remarks
332-343	Tip Percentage Rate Times Gross Receipts	12	Required. Enter the amount determined by multiplying Gross Receipts for the year (field positions 320-331) by the Tip Percentage Rate (field positions 344-347). For example, if the value of Gross Receipts is "000045678900" and the Tip Percentage Rate is ".0800", multiply \$456,789.00 by .0800 to get \$36,543.12 and enter "000003654312". If tips are allocated using other than the calendar year, enter zeros; this may occur if you allocated tips based on the time period for which wages were paid or allocated on a quarterly basis. Amount must be entered in U.S. dollars and cents. The right-most two positions represent cents. Right-justify and zero fill. If no entry, zero fill. Numeric characters only. Do not enter decimal points, dollar signs, or commas.
344-347	Tip Percentage Rate	4	Required. Enter 8 percent (0800) unless a lower rate has been granted by the IRS. The determination letter must follow the electronic submission. See Part A, Sec. 4.06 for details. Numeric characters only. Do not enter decimal points, dollar signs, or commas.
348-359	Allocated Tips	12	Required. If the Tip Percentage Rate times Gross Receipts (field positions 332-343) is greater than Total Tips Reported (field positions 308-319), the difference becomes Allocated Tips. Otherwise, enter all zeros. If tips are allocated using other than the calendar year, enter the amount of allocated tips from your records. A amount must be entered in U.S. dollars and cents. The right-most two positions represent cents. Right-justify and zero fill. If no entry, zero fill. Numeric characters only. Do not enter decimal points, dollar signs, or commas.
360	Allocation Method	1	Required. Use the following list to enter the allocation method used if Allocated Tips (field positions 348-359) are greater than zero: 0) if allocated tips are equal to zero. 1) for allocation based on hours worked. 2) for allocation based on gross receipts. 3) for allocation based on a good faith agreement. The good faith agreement must follow the electronic submission. See Part A, Sec.4.05 for details.
361-364	Number of Directly Tipped Employees	4	Required. Enter the total number (must be greater than zero) of directly tipped employees employed by the establishment for the calendar year. Right-justify information and fill unused positions with zeros. Numeric characters only.
365-369	Transmitter Control Code (TCC)	5	Required. Enter the five-digit Transmitter Control Code assigned by the IRS.
370	Corrected 8027 Indicator	1	Required. Enter blank for an original return. Enter "G" for a corrected return. A corrected return must be a complete new return replacing the original return.
371	Final Return Indicator	1	Required. Enter the appropriate code: F) this is the last time the employer will file Form 8027 N) this is not the last time the employer will file Form 8027 Do not enter a blank.

FORM 8027 RECORD FORMAT

Field Position	Field Title	Length	Description and Remarks
372	Charge Card Indicator	1	Required. Enter the appropriate code: 1) your establishment accepts credit cards, debit cards or other charges. 2) your establishment does not accept credit cards, debit cards or other charges.
373–374	Blank	2	Enter blanks.
375–378	Tax Year	4	Required. Enter the four-digit tax year.
379	Prior Year Indicator	1	Required. Enter a “P” only if reporting prior year data; otherwise, enter a blank.
380	Test File Indicator	1	Required for test files only. Enter “T” if this is a test file; otherwise, enter a blank.
381–410	Reserved	30	Enter blanks.
411–418	Record Sequence Number	8	Required. Enter the number of the record as it appears within the file. The first record in the file will be “1” and each record, thereafter, must be incremental by one in ascending numerical sequence, i.e. 2, 3, 4, etc. Right-justify numbers with leading zeros in the field. For example, the first record in the file would appear as “00000001”, followed by “00000002”, “00000003” and so on until the final record of the file.
419–420	Blank	2	Enter blanks or CR/LF characters.

FORM 8027 RECORD LAYOUT

Establishment Type	Establishment Serial Numbers	Establishment Name	Establishment Street Address
1	2-6	7-46	47-86

Establishment City	Establishment State	Establishment ZIP Code	Employer Identification Number
87-111	112-113	114-122	123-131

Employer Name	Employer Street Address	Employer City	Employer State
132-171	172-211	212-236	237-238

Employer Zip Code	Charged Tips	Charged Receipts	Service Charge Less Than Ten Percent
239-247	248-259	260-271	272-283

Indirect Tips Reported	Direct Tips Reported	Total Tips Reported	Gross Receipts
284-295	296-307	308-319	320-331

Tip Percentage Rate Times Gross Receipts	Tip Percentage Rate	Allocated Tips	Allocation Method
332-343	344-347	348-359	360

Number of Directly Tipped Employees	Transmitter Control Code (TCC)	Corrected 8027 Indicator	Final Return Indicator
361-364	365-369	370	371

Charge Card Indicator	Blanks	Tax Year	Prior Year Indicator
372	373-374	375-378	379

Test File Indicator	Reserved	Record Sequence Number	Blank or CR/LF
380	381-410	411-418	419-420

Part D. Extensions of Time

Sec. 1. General

.01 Employers can get an automatic 30-day extension of time to file by completing Form 8809, Application for Extension of Time To File Information Returns. An extension of time to file may be requested for Forms 8027 and W-2. If requesting extensions of time for more than one employer, the extension of time requests must be submitted online or with an electronic file through the FIRE system.

Note: IRS encourages the employer/transmitter community to utilize the online fill-in form in lieu of the paper Form 8809. A TCC is not required to use the online fill-in form option.

.02 The fill-in Form 8809 may be completed online via the FIRE system. (See Part B, Sec. 7, for instructions on connecting to the FIRE system.) At the Main Menu, click “Extension of Time Request” and then click “Fill-in Extension Form.” This option is only used to request an automatic 30-day extension. Extension requests completed online via the FIRE system receive an instant response if completed properly and timely. If requesting an additional extension of time, a paper Form 8809 must be submitted. Requests for an additional extension of time to file information returns are not automatically granted. These requests are granted only in cases of extreme hardship or catastrophic event. The IRS will send a letter of explanation approving or denying requests for an additional extension of time.

.03 A paper Form 8809 may be submitted to IRS/IRB at the address listed in .09 of this section. This form may be used to request an extension of time to file information returns submitted on paper. Use a separate Form 8809 for each method of filing information returns used, i.e., electronically or paper. A separate Form 8809 must be completed for each employer. Form 8809 may be computer-generated or photocopied. Be sure to use the most recently updated version and include all the pertinent information.

.04 To be considered, an extension request must be postmarked, transmitted or completed online by the due date of the returns; otherwise, the request will be denied. (See Part A, Sec. 4.07, for due dates.) If requesting an extension of time to file several types of forms, use one Form 8809; however, Form 8809 or an extension file must be submitted no later than the earliest due date. For example, if requesting an extension of time to file both Forms 8027 and 5498, submit Form 8809 on or before the last day of February.

.05 As soon as it is apparent that a 30-day extension of time to file is needed, an extension request should be submitted. IRS/IRB does not begin processing extension requests until January. It may take up to 30 days for IRS/IRB to respond to a paper extension request. **Extensions completed online via the FIRE system fill-in form option receive instant results.**

.06 Under certain circumstances, a request for an extension of time may be denied. When a denial letter is received, any additional or necessary information must be resubmitted within 20 days.

.07 Requesting extensions of time for multiple employers may be done by completing the online fill-in forms via the FIRE system. A separate online Form 8809 must be completed for each employer.

.08 Employers/transmitters requesting extensions of time for multiple employers are required to submit the extension requests online via the fill-in form or in a file electronically (see Sec. 3 for the record layout). If requesting an additional extension, a signed Form 8809 must be faxed to IRB the same day as the transmission. Be sure to include the reason an additional extension is needed.

.09 All requests for an extension of time filed on Form 8809 must be sent using the following address:

Internal Revenue Service
Information Returns Branch
Attn: Extension of Time Coordinator
240 Murall Drive, Mail Stop 4360
Kearneysville, WV 25430

Note: Due to the large volume of mail received by IRS/IRB and the time factor involved in processing Extension of Time (EOT) requests, it is imperative that the attention line be present on all envelopes or packages containing Form 8809.

.10 Requests for extensions of time to file postmarked by the United States Postal Service on or before the due date of the returns, and delivered by United States mail to IRS/IRB after the due date, are treated as timely under the “timely mailing as timely filing” rule. A similar rule applies to designated private delivery services (PDSs). Notice 97–26, 1997–17 I.R.B. 6, provides rules for determining the date that is treated as the postmark date. For items delivered by a non-designated PDS, the actual date of receipt by IRS/IRB will be used as the filing date. For items delivered by a designated PDS, but through a type of service not designated in Notice 2004–83, 2004–52 I.R.B. 1030 the actual date of receipt by IRS/IRB will be used as the filing date. The timely mailing rule also applies to furnishing statements to recipients and participants.

.11 Transmitters requesting an extension of time via an electronic file will receive a denial letter, accompanied by a list of employers covered under that denial.

.12 If an additional extension of time is needed, a Form 8809 and/or extension file must be sent by the initial extended due date. Check line 7 on the form to indicate that an additional extension is being requested. An additional 30-day extension will be approved only in cases of extreme hardship or catastrophic event. **If requesting an additional 30-day extension of time, submit the information return files as soon as prepared. Do not wait for IRS/IRB to respond to your request.**

.13 If an extension request is approved, the approval notification should be kept on file. Do not send the approval notification or copy of the approval notification to IRS/IRB with the electronic file. When submitting Form 8027 on paper only to the Cincinnati Service Center attach a copy of the approval letter. If an approval letter has not been received, send a copy of the timely filed Form 8809.

.14 Request an extension for the current tax year only.

.15 A signature is not required when requesting an automatic 30-day extension. If an additional 30-day extension is requested, Form 8809 **must** be signed. Failure to properly complete and sign Form 8809 may cause delays in processing the request or result in a denial. Carefully read and follow the instructions for Form 8809.

.16 Form 8809 may be obtained by calling 1-800-TAX-Form (1-800-829-3676). The form is also available at IRS.gov.

Note: An extension of time to file is not an extension to furnish Form W-2 to the employees.

Sec. 2. Specifications for Filing Extensions of Time Electronically

.01 The specifications in Sec. 3 include the required 200-byte record layout for requesting extensions of time submitted in an electronic file. The instructions for the information that is to be entered in the record are also included. **Filers are advised to read this section in its entirety to ensure proper filing.**

.02 If a filer does not have an IRS/IRB assigned Transmitter Control Code (TCC), Form 4419, Application for Filing Information Returns Electronically (FIRE), **must** be submitted to obtain a TCC. This number **must** be used to submit extension requests in an electronic file. (See Part A, Sec. 6.)

.03 If requesting an additional extension, a signed Form 8809 must be faxed to IRB the same day as the transmission. Be sure to include the reason an additional extension is needed.

.04 Transmitters submitting an extension of time via an electronic file should not submit a list of payer/employer names and TINs with Form 8809, since this information is included in the electronic file. However, Line 6 of Form 8809 must be completed. The online fill-in Form 8809 cannot be used in lieu of the paper Form 8809 for electronic files.

.05 Do not submit tax year 2011 extension requests electronically before *January 4, 2012*.

Sec. 3. Record Layout – Extension of Time

.01 Positions 6 through 188 of the following record should contain information about the **employer** for whom the extension of time to file is being requested. Do not enter transmitter information in these fields. **Only one TCC may be present in a file.**

Record Layout for Extension of Time

Field Position	Field Title	Length	Description and Remarks
1-5	Transmitter Control Code	5	Required. Enter the five-character alpha/numeric Transmitter Control Code (TCC) issued by IRS. Only one TCC per file is acceptable.
6-14	Payer TIN	9	Required. Enter the valid nine-digit EIN/SSN assigned to the payer. Do not enter blanks, hyphens, or alpha characters. All zeros, ones, twos, etc., will have the effect of an incorrect TIN. For foreign entities that are not required to have a TIN, this field may be blank; however, the Foreign Entity Indicator, position 187, must be set to "X."
15-54	Payer Name	40	Required. Enter the name of the payer whose TIN appears in positions 6-14. Left-justify information and fill unused positions with blanks.
55-94	Second Payer Name	40	Required. If additional space is needed, this field may be used to continue name line information (e.g., c/o First National Bank); otherwise, enter blanks.
95-134	Payer Address	40	Required. Enter the payer's address. The street address should include the number, street, apartment, or suite number (or PO Box if mail is not delivered to a street address).
135-174	Payer City	40	Required. Enter the payer's city, town, or post office.

Record Layout for Extension of Time

Field Position	Field Title	Length	Description and Remarks						
175-176	Payer State	2	Required. Enter the payer's valid U.S. Postal Service state abbreviation. (Refer to Part A, Sec. 7.)						
177-185	Payer ZIP Code	9	Required. Enter the payer's ZIP Code. If using a five-digit ZIP Code, left-justify information and fill unused positions with blanks.						
186	Document Indicator (See Note.)	1	Required. Enter the appropriate document code that indicates the form for which you are requesting an extension of time.						
			<table border="1"> <thead> <tr> <th>Code</th> <th>Document</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>W-2</td> </tr> <tr> <td>5</td> <td>8027</td> </tr> </tbody> </table>	Code	Document	1	W-2	5	8027
Code	Document								
1	W-2								
5	8027								

Note: Do not enter any other values in this field. Submit a separate record for each document. For example, if requesting an extension for Form 8027 and Form W-2 for the same payer/employer, submit one record with "5" coded in this field and another record with "1" coded in this field.

187	Foreign Entity Indicator	1	Enter "X" if the payer is a foreign entity.
188	Recipient Request Indicator	1	Enter "X" if the extension request is to furnish statements to the recipients of the information return.

Note: A separate file is required for this type of extension request. A file must either contain all blanks or all Xs in this field.

189-198	Blank	10	Enter blanks.
199-200	Blank	2	Enter blanks or carriage return/line feed (CR/LF) characters.

Extension of Time Record Layout

Transmitter Control Code	Payer TIN	Payer Name	Second Payer Name	Payer Address	Payer City	Payer State
1-5	6-14	15-54	55-94	95-134	135-174	175-176

Payer ZIP Code	Document Indicator	Foreign Entity Indicator	Recipient Request Indicator	Blank	Blank or CR/LF
177-185	186	187	188	189-198	199-200

Sec. 4. Extension of Time for Recipient Copies of Information Returns

.01 Request an **extension of time to furnish the statements to recipients** of Forms W-2 by submitting a letter to IRS/IRB at the address listed in Part D, Sec.1.09. The letter should contain the following information:

- (a) Payer name
- (b) TIN
- (c) Address
- (d) Type of return
- (e) Specify that the extension request is to provide statements to recipients
- (f) Reason for delay
- (g) Signature of payer or duly authorized person

.02 Requests for an extension of time to furnish statements to recipients of Forms W-2 series are not automatically approved; however, if approved, generally an extension will allow a **maximum** of 30 additional days from the due date. The request must be postmarked by the date on which the statements are due to the recipients.

.03 Generally, only the payer/employer may sign the letter requesting the extension for recipient copies. A transmitter must have a contractual agreement with the filers to submit extension requests on their behalf. This should be stated in the letter of request for recipient copy extensions.

.04 Requests for extensions of time to file recipient copies for more than ten payers are **required** to be submitted electronically. (See Sec. 3, for the record layout.) When requesting extensions of time for recipient copies, a signed letter must be faxed to IRB by the transmitter the same day as the transmission. Be sure to include the reason an extension for the recipient copies is needed.

.05 *Transmitters submitting an extension of time for recipient copies via an electronic file should not submit a list of payer/employer names and TINs with the letter since this information is included in the electronic file.*

.06 The online fill-in Form 8809 extension option cannot be used to request an extension to furnish statements to recipients.

Part IV. Items of General Interest

Notice of Disposition of Declaratory Judgment Proceedings Under Section 7428

Announcement 2011-65

This announcement serves notice to donors that on April 28, 2011, the United States Tax Court entered a stipulated decision that effective January 1, 2005, the organization listed below is not qualified as an organization described in section 501(c)(3), is not exempt from taxation under section 501(a), and is not an organization described in section 170(c)(2).

Credit Counseling Bureau of San Diego County, Inc.,
San Diego, CA

Notice of Disposition of Declaratory Judgment Proceedings Under Section 7428

Announcement 2011-66

This announcement serves notice to donors that on May 13, 2011, the United States Tax Court entered a stipulated decision that effective October 1, 2004, the organization listed below is not qualified as an organization described in section 501(c)(3) and is not exempt from taxation under section 501(a).

Chadwell-Townsend Private Foundation
Bellbrook, OH

Notice of Disposition of Declaratory Judgment Proceedings Under Section 7428

Announcement 2011-67

This announcement serves notice to donors that on May 27, 2011, the United

States Tax Court entered a stipulated decision that the organization listed below is qualified as an organization described in section 501(c)(3) and is exempt from tax under section 501(a).

Sea of Sound Productions, Inc.
Midlothian, VA

Section 7428(c) Validation of Certain Contributions Made During Pendency of Declaratory Judgment Proceedings

Announcement 2011-68

This announcement serves notice to potential donors that the organization listed below has recently filed a timely declaratory judgment suit under section 7428 of the Code, challenging revocation of its status as an eligible donee under section 170(c)(2).

Protection under section 7428(c) of the Code begins on the date that the notice of revocation is published in the Internal Revenue Bulletin and ends on the date on which a court first determines that an organization is not described in section 170(c)(2), as more particularly set forth in section 7428(c)(1).

In the case of individual contributors, the maximum amount of contributions protected during this period is limited to \$1,000.00, with a husband and wife being treated as one contributor. This protection is not extended to any individual who was responsible, in whole or in part, for the acts or omissions of the organizations that were the basis for the revocation.

This protection also applies (but without limitation as to amount) to organizations described in section 170(c)(2) which are exempt from tax under section 501(a). If the organization ultimately prevails in its declaratory judgment suit, deductibility of contributions would be subject to the normal limitations set forth under section 170.

John and Kathleen Sweazey Foundation
Atherton, CA

The Twenty-Fourth Annual Institute on International Taxation, jointly sponsored by the Internal Revenue Service and the George Washington University Law School, will be held on December 15 and 16, 2011, at the J.W. Marriott Hotel in Washington, D.C.

Announcement 2011-69

The Internal Revenue Service announces the Twenty-Fourth Annual Institute on Current Issues in International Taxation, jointly sponsored by the Internal Revenue Service and The George Washington University Law School, to be held on December 15 and 16, 2011, at the J.W. Marriott Hotel in Washington, DC. Registration is currently underway for the Institute.

The program, which is intended for international tax professionals, will present a unique opportunity for top IRS and Treasury officials and tax experts, foreign government tax authorities, and leading private sector specialists, to address breaking issues and present key perspectives on new developments.

The first day will feature sessions on:

- Competent Authority
- Unsteady Ground: Multinational Corporations Navigate New Challenges on Subsidiary Sales, Permanent Establishments, Tax Reporting, and More
- Striving for Efficiencies in Transfer Pricing Enforcement and Compliance
- Ethical Issues in International Tax Practice
- Selling the CFC: Section 1248 Topics
- Foreign Tax Credit Issues

The second day will focus on:

- Partner or Partnership: Which Matters?
- Inbound and Outbound Developments: New Today and Coming Tomorrow
- Character, Source, and Withholding Tax Treatment of Cross-Border Payments
- Taxing Transactions in the Cloud

On the first day, Douglas H. Shulman, Commissioner, Internal Revenue Service, will deliver the luncheon address. On the second day, Emily McMahon, Acting Assistant Secretary of the Treasury for Tax Policy, will deliver the luncheon address. The second day will also include a welcoming address by William J. Wilkins, Chief Counsel, Internal Revenue Service,

as well as an “Ask the IRS” panel featuring senior officials from the Service.

Those interested in attending or obtaining more information should contact The George Washington University Law School, at <http://www.law.gwu.edu/ciit>.

The principal author of this announcement is Patricia A. Bray of the Office of Associate Chief Counsel (International).

For further information regarding this announcement, contact Patricia A. Bray at 202-622-5871 (not a toll-free call).

Definition of Terms

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

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

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

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

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

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

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

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance

of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

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

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

Abbreviations

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

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.

ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
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.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.

PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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Key to Abbreviations:

Ann	Announcement
CD	Court Decision
DO	Delegation Order
EO	Executive Order
PL	Public Law
PTE	Prohibited Transaction Exemption
RP	Revenue Procedure
RR	Revenue Ruling
SPR	Statement of Procedural Rules
TC	Tax Convention
TD	Treasury Decision
TDO	Treasury Department Order

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