



DATES: Written comments and requests for a public hearing must be received by April 2, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-248770-96), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-248770-96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Finally, taxpayers may submit comments electronically via the INTERNET by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Beverly A. Baughman, (202) 622-4940 regarding joint returns and penalties; Robert A. Miller, (202) 622-3640 regarding levy; Donna J. Welch, (202) 622-4910 regarding interest; Thomas D. Moffitt, (202) 622-7900 regarding court costs; and Kevin B. Connelly, (202) 622-3640 regarding compromises (not toll-free numbers). Concerning submissions, Evangelista Lee, (202) 622-7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received by March 3, 1997. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

Notice of Proposed Rulemaking

Miscellaneous Sections Affected by the Taxpayer Bill of Rights 2 and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

REG-248770-96

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to joint returns, property exempt from levy, interest, penalties, offers in compromise, and the awarding of costs and certain fees. The proposed regulations reflect changes to the law made by the Taxpayer Bill of Rights 2 and a conforming amendment made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The proposed regulations affect taxpayers with respect to filing of returns, interest, penalties, court costs, and payment, deposit, and collection of taxes.

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in § 301.7430-2(c)(3)(i)(B). This information is required to obtain an award of reasonable administrative costs. This information will be used to determine if a taxpayer is entitled to an award of reasonable administrative costs. The collection of information is required to obtain the award. The likely respondents are individuals, business or other for-profit institutions, nonprofit institutions, and small businesses or organizations.

Estimated total annual reporting burden: 10 hours.

The estimated annual burden per respondent: 15 minutes.

Estimated number of respondents: 38

Estimated annual frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

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.

Background

This document contains proposed amendments to the Income Tax Regulations and the Regulations on Procedure and Administration (26 CFR parts 1 and 301, respectively) relating to joint returns under section 6013, levy under section 6334, interest under section 6601, the failure to file penalty under section 6651, the failure to deposit penalty under section 6656, compromise under section 7122, and awards of costs and certain fees under section 7430.

These sections were amended by the Taxpayer Bill of Rights 2 (TBOR2) (Pub. L. No. 104-168, 110 Stat. 1452 (1996)) and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. No. 104-193, 110 Stat. 2105 (1996)). The changes made by TBOR2 and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 are reflected in the proposed regulations.

Explanation of Provisions

Interest and Penalties

Section 6601 requires a taxpayer to pay interest on late payments of tax. However, sections 6601(e)(2) and 6601(e)(3) provide an interest-free period if a taxpayer pays the tax due within a certain number of days after the date of the notice and demand for payment. Sections 303(a) and 303(b)(1) of TBOR2 amended sections 6601(e)(2) and 6601(e)(3) to extend this interest-free period. Therefore, § 301.6601-1(f) of the proposed regulations extends the interest-free period from 10 days to 21 calendar days after the date of the notice and demand (10 business days if the amount for which the notice and demand is made equals or exceeds \$100,000) with respect to any notice and demand made after December 31, 1996. The proposed regulations also define business day and calendar day for purposes of § 301.6601-1(f).

Section 6651(a)(3) imposes a penalty on any person who fails to pay the amount of tax that is required to be shown on a return but that is not so shown. However, a penalty-free period is provided if a taxpayer pays the tax due within a certain number of days after the date of the notice and demand for payment. Section 303(b)(2) of TBOR2 amended section 6651(a)(3) to extend the penalty-free period. Therefore, proposed § 301.6651-1(a)(3) extends the penalty-free period from 10 days to 21 calendar days after the date of the notice and demand (10 business days if the amount for which the notice and demand is made equals or exceeds \$100,000) with respect to any notice and demand made after December 31, 1996. In addition, the proposed regulations amend § 301.6651-1(a)(3) to conform with changes made by section 1502(b) of the Tax Reform Act of 1986 (Pub. L. No. 99-514, 100 Stat. 2085 (1986)) to repeal the special coordination rule under section 6651(c)(1)(B).

Section 6651(a)(2) imposes a penalty on any person who fails to pay the amount of tax shown on a return by the payment due date (including extensions). Pursuant to section 6020(b), if a taxpayer does not file a tax return, the Secretary can make a substitute return for the taxpayer. Prior to TBOR2, a taxpayer with a substitute return was not subject to a section 6651(a)(2) penalty because the substitute return was not treated as a return for purposes of the penalty. See Rev. Rul. 76-562, 1976-2 C.B. 430. Section 1301 of TBOR2 amended section 6651 to apply the section 6651(a)(2) failure to pay penalty to returns prepared by the Secretary pursuant to section 6020(b). Thus, for returns due (determined without regard to extensions) after July 30, 1996, proposed § 301.6651-1(g) provides that a taxpayer with a substitute return may be subject to a failure to pay penalty under section 6651(a)(2).

Section 6656 imposes a penalty for failure to deposit taxes with a government depository by the prescribed due date. Section 304 of TBOR2 amended section 6656 to provide exceptions to the failure to deposit penalty for first time depositors of employment taxes. Accordingly, § 301.6656-3(a) of the proposed regulations provides that in the case of first time depositors of employment taxes, the Secretary will generally waive the penalty for failure to deposit if (1) the failure to deposit is inadvertent based on all the facts and circumstances, (2) the depositing entity meets certain net worth requirements, (3) the failure to deposit occurs during the first quarter the depositing entity is required to deposit any employment tax, and (4) the return for the employment tax is filed on time.

In addition, proposed § 301.6656-3(b) provides that the Secretary may abate any penalty for failure to make deposits if the first time a depositor is required to make a deposit, the amount required to be deposited is inadvertently sent to the Secretary instead of to the appropriate government depository. Proposed § 301.6656-3 applies to deposits required to be made after July 30, 1996.

Joint Returns

Prior to TBOR2, married individuals making an election under section 6013(b) to file a joint return after filing a separate return for the same taxable year were required to pay the full amount of the tax shown on the joint return at or before the time of filing the

joint return. With respect to taxable years beginning after July 30, 1996, section 402 of TBOR2 amended section 6013(b) to permit married individuals who previously filed separate returns to file joint returns for the same taxable year without paying the full amount of tax shown on the joint return. Accordingly, § 1.6013-2(b)(1) of the proposed regulations provides that the full payment requirement applies only to taxable years beginning on or before July 30, 1996.

Levy and Compromise

Section 6334 lists the items of property that are exempt from levy by the IRS. Section 502 of TBOR2 amended section 6334 to (1) increase the dollar amount exempt from levy under section 6334(a)(2) and provide that this exemption amount applies to all taxpayers, not just heads of a family; (2) increase the dollar amount exempt from levy under section 6334(a)(3); and (3) provide a yearly inflation adjustment for the dollar amounts exempt from levy. In addition, section 110(l)(6) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, in a conforming amendment, amended section 6334(a)-(11)(A) to delete the language “(relating to aid to families with dependent children)”.

Accordingly, § 301.6334-1(a)(2) of the proposed regulations increases from \$1,650 (\$1,550 in the case of levies issued during 1989) to \$2,500 the amount exempt from levy for fuel, provisions, furniture, and personal effects, and makes this exemption applicable to all taxpayers, not just taxpayers who are heads of a family. The proposed regulations also increase from \$1,100 (\$1,050 in the case of levies issued during 1989) to \$1,250 the amount exempt from levy for books and tools of a trade, business, or profession. These changes are effective with respect to levies issued after December 31, 1996. In addition, for calendar years beginning after 1997, § 301.6334-1(e) of the proposed regulations provides an inflation adjustment for the exemption amounts described above and for rounding to the nearest multiple of \$10.

Prior to the enactment of TBOR2, section 7122(b) required the General Counsel of the Treasury or his delegate to file an opinion with the Secretary whenever the Secretary compromised a case, unless the compromise involved a civil case in which the unpaid amount

of the tax assessed (including any interest, additional amount, addition to the tax, or assessable penalty) was less than \$500. Effective July 30, 1996, section 503 of TBOR2 amended section 7122 to raise the dollar threshold for mandatory review of compromises of civil cases by the General Counsel of the Department of Treasury or his delegate from \$500 to \$50,000. Accordingly, § 301.7122-1(e) of the proposed regulations provides that for compromises accepted on or after July 30, 1996, no opinion is required if the unpaid amount of tax is less than \$50,000.

Awarding of Costs and Certain Fees

In general, under section 7430 a prevailing party may recover the reasonable administrative or litigation costs incurred in an administrative or a civil proceeding if the proceeding relates to the determination, collection, or refund of any tax, interest, or penalty. Prior to TBOR2, the taxpayer had the burden of proving that the position of the United States was not substantially justified. Section 701 of TBOR2 amended section 7430(c)(4) to place on the government the burden of proving that the position of the United States is substantially justified. Under TBOR2, the position of the government will be presumed not to be substantially justified if the IRS did not follow its applicable published guidance. Section 701 defines applicable published guidance.

The proposed regulations reflect these changes. Further, § 301.7430-5(c)(3) of the proposed regulations clarifies that in the definition of applicable published guidance, “regulations” means final and temporary regulations. The proposed regulations also clarify the period during which and the issues upon which the position of the United States is presumed to be not substantially justified.

Section 702 of TBOR2 amended section 7430(c)(1) to increase the allowable hourly rate of an award of attorney’s fees and provide for a yearly inflation adjustment and rounding. Sections 301.7430-2 and 301.7430-4 of the proposed regulations reflect these changes.

Finally, section 703 of TBOR2 amended section 7430(b)(1) to clarify that any failure to agree to an extension of the statute of limitations will not affect the determination of whether a taxpayer has exhausted administrative remedies as a prerequisite to recovery of attorney’s fees. Although this is consis-

tent with an example in the prior regulations (Example 4, § 301.7430-1(f)), the proposed regulations add § 301.7430-1(b)(4) to reflect the statutory language.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It is hereby certified that the regulations in this document will not have a significant economic impact on a substantial number of small entities. This certification is based on a determination that in the past only an average of 38 taxpayers per year, the majority of whom were individuals, have filed a request to recover administrative costs. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Beverly A. Baughman and Donna J. Welch, Office of Assistant Chief Counsel (Income Tax and Accounting), Robert A. Miller and Kevin B. Connelly, Office of Assistant Chief Counsel (General Litigation), and Thomas D. Moffitt, Office of Assistant Chief Counsel (Field Service). However, other personnel from the IRS and Treasury Department participated in their development.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.6013-2(b)(1) is amended by removing the language “Unless” and adding “Beginning on or before July 30, 1996, unless” in its place.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 3. The authority citation for part 301 continues to read in part as follows:

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

Par. 4. Section 301.6334-1 is amended by:

1. Revising paragraph (a)(2).

2. Removing the language “\$1,100 (\$1,050 for levies issued prior to January 1, 1990)” from paragraph (a)(3) and adding “\$1,250” in its place.

3. Removing the language “(relating to aid to families with dependent children)” from paragraph (a)(11)(i).

4. Redesignating paragraph (e) as paragraph (f) and adding a new paragraph (e).

5. Revising newly designated paragraph (f).

The additions and revisions read as follows:

§ 301.6334-1 Property exempt from levy.

(a) * * *

(2) *Fuel, provisions, furniture, and personal effects.* So much of the fuel, provisions, furniture, and personal effects in the taxpayer’s household, and of the arms for personal use, livestock, and poultry of the taxpayer, that does not exceed \$2,500 in value.

* * * * *

(e) *Inflation adjustment.* For any calendar year beginning after December 31, 1997, each dollar amount referred to in paragraphs (a)(2) and (a)(3) of this section will be increased by an amount equal to the dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for the calendar year (substituting “calendar year 1996” for “calendar year 1992” in section 1(f)(3)(B)). If any dollar amount as adjusted is not a multiple of \$10, the

dollar amount will be rounded to the nearest multiple of \$10 (rounding up if the amount is a multiple of \$5).

(f) *Effective date.* Generally, these provisions are effective with respect to levies made on or after July 1, 1989. However, any reasonable attempt by a taxpayer to comply with the statutory amendments addressed by the regulations in this section prior to February 21, 1995, will be considered as meeting the requirements of the regulations in this section. In addition, paragraphs (a)(2), (a)(3), (a)(11)(i) and (e) of this section are applicable with respect to levies issued after December 31, 1996.

Par. 5. Section 301.6601-1 is amended by:

1. Revising paragraphs (f)(3) and (f)(4).

2. Redesignating paragraph (f)(5) as paragraph (f)(6) and adding new paragraph (f)(5).

The additions and revisions read as follows:

§ 301.6601-1 Interest on underpayments.

* * * * *

(f) * * *

(3) Interest will not be imposed on any assessable penalty, addition to the tax, or additional amount if the amount is paid within 21 calendar days (10 business days if the amount stated in the notice and demand equals or exceeds \$100,000) from the date of the notice and demand. If interest is imposed, it will be imposed only for the period from the date of the notice and demand to the date on which payment is received. This paragraph (f)(3) is applicable with respect to any notice and demand made after December 31, 1996.

(4) If notice and demand is made after December 31, 1996, for any amount and the amount is paid within 21 calendar days (10 business days if the amount equals or exceeds \$100,000) from the date of the notice and demand, interest will not be imposed for the period after the date of the notice and demand.

(5) For purposes of paragraphs (f)(3) and (f)(4) of this section—

(i) The term *business day* means any day other than a Saturday, Sunday, legal holiday in the District of Columbia, or a statewide legal holiday in the state where the taxpayer resides or where the taxpayer’s principal place of business is located. With respect to the tenth business day (after taking into account the first sentence of this paragraph (f)(5)(i)),

see section 7503 relating to time for performance of acts where the last day falls on a statewide legal holiday in the state where the act is required to be performed.

(ii) The term *calendar day* means any day. With respect to the twenty-first calendar day, see section 7503 relating to time for performance of acts where the last day falls on a Saturday, Sunday, or legal holiday.

* * * * *

Par. 6. Section 301.6651-1 is amended by:

1. Revising paragraph (a)(3).

2. Adding paragraph (g).

The additions and revisions read as follows:

§ 301.6651-1 Failure to file tax return or to pay tax.

(a) * * *

(3) *Failure to pay tax not shown on return.* In the case of failure to pay any amount of any tax required to be shown on a return specified in paragraph (a)(1) of this section that is not so shown (including an assessment made pursuant to section 6213(b)) within 21 calendar days from the date of the notice and demand (10 business days if the amount for which the notice and demand is made equals or exceeds \$100,000) with respect to any notice and demand made after December 31, 1996, there will be added to the amount stated in the notice and demand the amount specified below unless the failure to pay the tax within the prescribed time is shown to the satisfaction of the district director or the director of the service center to be due to reasonable cause and not to willful neglect. The amount added to the tax is 0.5 percent of the amount stated in the notice and demand if the failure is for not more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof during which the failure continues, but not to exceed 25 percent in the aggregate.

* * * * *

(g) *Treatment of returns prepared by the Secretary—(1) In general.* A return prepared by the Secretary under section 6020(b) will be disregarded for purposes of determining the amount of the addition to tax for failure to file any return pursuant to paragraph (a)(1) of this section. However, the return prepared by the Secretary will be treated as a return filed by the taxpayer for purposes of determining the amount of the addition to tax for failure to pay the tax shown

on any return and for failure to pay the tax required to be shown on a return that is not so shown pursuant to paragraphs (a)(2) and (a)(3) of this section, respectively.

(2) *Effective date.* This paragraph (g) applies to returns the due date for which (determined without regard to extensions) is after July 30, 1996.

Par. 7. Section 301.6656-3 is added to read as follows:

§ 301.6656-3 *Abatement of penalty.*

(a) *Exception for first time depositors of employment taxes*—(1) *Waiver.* The Secretary will generally waive the penalty imposed by section 6656(a) on a person's failure to deposit any employment tax under subtitle C of the Internal Revenue Code if—

(i) The failure is inadvertent;

(ii) The person meets the requirements referred to in section 7430(c)(4)(A)(ii) (relating to the net worth requirements applicable for awards of attorney's fees);

(iii) The failure occurs during the first quarter that the person is required to deposit any employment tax; and

(iv) The return of the tax is filed on or before the due date.

(2) *Inadvertent failure.* For purposes of paragraph (a)(1)(i) of this section, the Secretary will determine if a failure to deposit is inadvertent based on all the facts and circumstances.

(b) *Deposit sent to Secretary.* The Secretary may abate the penalty imposed by section 6656(a) if the first time a depositor is required to make a deposit, the amount required to be deposited is inadvertently sent to the Secretary instead of to the appropriate government depository.

(c) *Effective date.* This section applies to deposits required to be made after July 30, 1996.

Par. 8. Paragraph (e) of § 301.7122-1 is revised to read as follows:

§ 301.7122-1 *Compromises.*

* * * * *

(e) *Record*—(1) *In general.* If an offer in compromise is accepted, there will be placed on file the opinion of the Chief Counsel of the IRS with respect to the compromise, with the reasons for the opinion, and including a statement of—

(i) The amount of tax assessed;

(ii) The amount of interest, additional amount, addition to the tax, or assessable penalty, imposed by law on the person against whom the tax is assessed; and

(iii) The amount actually paid in accordance with the terms of the compromise.

(2) *Exception.* For compromises accepted on or after July 30, 1996, no opinion will be required with respect to the compromise of any civil case in which the unpaid amount of tax assessed (including any interest, additional amount, addition to the tax, or assessable penalty) is less than \$50,000. However, the compromise will be subject to continuing quality review by the Secretary.

* * * * *

Par 9. Section 301.7430-0 is amended by:

1. Adding under the heading § 301.7430-1, a caption (b)(4) to read “(4) Failure to agree to extension of time for assessments.”.

2. Adding under the heading § 301.7430-5, a caption (c)(3) to read “(3) Presumption.”.

Par. 10. Section 301.7430-1 is amended by adding paragraph (b)(4) to read as follows:

§ 301.7430-1 *Exhaustion of administrative remedies.*

* * * * *

(b) * * *

(4) *Failure to agree to extension of time for assessments.* Any failure by the prevailing party to agree to an extension of the time for the assessment of any tax will not be taken into account for purposes of determining whether the prevailing party has exhausted the administrative remedies available to the party within the IRS.

* * * * *

Par. 11. Section 301.7430-2 is amended by:

1. Removing the language “7430(c)(4)(B)(ii)” from the third sentence of paragraph (b)(2) and adding “7430(c)(4)(C)(ii)” in its place.

2. Revising paragraph (c)(3)(i)(B).

3. Removing the language “If more than \$75” from paragraph (c)(3)(ii)(C) and adding “In the case of administrative proceedings commenced after July 30, 1996, if more than \$110” in its place.

The revision reads as follows:

§ 301.7430-2 *Requirements and procedures for recovery of reasonable administrative costs.*

* * * * *

(c) * * *

(3) * * *

(i) * * *

(B) A clear and concise statement of the reasons why the taxpayer alleges that the position of the IRS in the administrative proceeding was not substantially justified. For administrative proceedings commenced after July 30, 1996, if the taxpayer alleges that the IRS did not follow any applicable published guidance, the statement must identify all applicable published guidance that the taxpayer alleges that the IRS did not follow. For purposes of this paragraph (c)(3)(i)(B), the term *applicable published guidance* means final or temporary regulations, revenue rulings, revenue procedures, information releases, notices, announcements, and, if issued to the taxpayer, private letter rulings, technical advice memoranda, and determination letters. Also, for purposes of this paragraph (c)(3)(i)(B), the term *administrative proceeding* includes only those administrative proceedings or portions of administrative proceedings occurring on or after the administrative proceeding date as defined in § 301.7430-3(c).

* * * * *

Par. 12. Section 301.7430-4 is amended by:

1. Removing the language “\$75” from paragraph (b)(3)(i) and adding “, in the case of proceedings commenced after July 30, 1996, \$110” in its place.

2. Revising paragraph (b)(3)(ii).

3. Removing the language “\$75” from the first, second, and third sentences of paragraph (b)(3)(iii)(B) and adding “\$110” in its place.

4. Removing the language “\$75” from paragraph (b)(3)(iii)(C) and adding “\$110” in its place.

5. Removing the language “\$75” from the third sentence of the example in paragraph (b)(3)(iii)(D) and adding “\$110” in its place.

6. Removing the language “\$75” from the second and third sentences of paragraph (c)(2)(ii) and adding “\$110” in its place.

The revision reads as follows:

§ 301.7430-4 *Reasonable administrative costs.*

* * * * *

(b) * * *

(3) * * *

(ii) *Cost of living adjustment.* The IRS will make a cost of living adjustment to the \$110 per hour limitation for fees incurred in any calendar year beginning after December 31, 1996. The cost of living adjustment will be an amount equal to \$110 multiplied by the cost-of-living adjustment determined under section 1(f)(3) for the calendar year (substituting "calendar year 1995" for "calendar year 1992" in section 1(f)(3)(B)). If the dollar limitation as adjusted by this cost-of-living increase is not a multiple of \$10, the dollar amount will be rounded to the nearest multiple of \$10 (rounding up if the amount is a multiple of \$5).

* * * * *

Par. 13. Section 301.7430-5 is amended by:

- 1. Revising paragraph (a).
- 2. Adding paragraph (c)(3).

The addition and revision read as follows:

§ 301.7430-5 *Prevailing party.*

(a) *In general.* For purposes of an award of reasonable administrative costs under section 7430 in the case of administrative proceedings commenced after July 30, 1996, a taxpayer is a prevailing party only if—

- (1) The position of the IRS was not substantially justified;
- (2) The taxpayer substantially prevails as to the amount in controversy or with respect to the most significant issue or set of issues presented; and
- (3) The taxpayer satisfies the net worth and size limitations referenced in paragraph (f) of this section.

* * * * *

(c) * * *

(3) *Presumption.* If the IRS did not follow any applicable published guidance in an administrative proceeding commenced after July 30, 1996, the position of the IRS, on those issues to which the guidance applies and for all periods during which the guidance was not followed, will be presumed not to be substantially justified. This presumption may be rebutted. For purposes of this paragraph (c)(3), the term *applicable published guidance* means final or temporary regulations, revenue rulings, revenue procedures, information releases, notices, announcements, and, if issued to the taxpayer, private letter rulings, technical advice memoranda, and determination letters. Also, for purposes of this paragraph (c)(3), the term *administrative*

proceeding includes only those administrative proceedings or portions of administrative proceedings occurring on or after the administrative proceeding date as defined in § 301.7430-3(c).

* * * * *

Par. 14. Section 301.7430-6 is revised to read as follows:

§ 301.7430-6 *Effective date.*

Sections 301.7430-2 through 301.7430-6, other than §§ 301.7430-2(b)(2), (c)(3)(i)(B), (c)(3)(ii)(C), and (c)(5); §§ 301.7430-4(b)(3)(i), (b)(3)(ii), (b)(3)(iii)(B), (b)(3)(iii)(C), (b)(3)(iii)(D), and (c)(2)(ii); and §§ 301.7430-5(a) and (c)(3), apply to claims for reasonable administrative costs filed with the IRS after December 23, 1992, with respect to costs incurred in administrative proceedings commenced after November 10, 1988. Section 301.7430-2(c)(5) is applicable March 23, 1993. Section 301.7430-0, §§ 301.7430-2(b)(2), (c)(3)(i)(B), and (c)(3)(ii)(C); §§ 301.7430-4(b)(3)(i), (b)(3)(ii), (b)(3)(iii)(B), (b)(3)(iii)(C), (b)(3)(iii)(D), and (c)(2)(ii); and §§ 301.7430-5(a) and (c)(3) are applicable for administrative proceedings commenced after July 30, 1996.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on December 31, 1996, 8:45 a.m., and published in the issue of the Federal Register for January 2, 1997, 62 F.R. 77)