

subject to the tax imposed by § 4261(a) and purchased mileage that does not meet either of these conditions.

These rules apply to amounts paid after September 30, 1997. However, any amount paid after June 11, 1997, by one member of a controlled group for a mileage award that is furnished by another member of the controlled group after September 30, 1997, is treated as paid after September 30, 1997.

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## Inflation-Adjusted Amounts for 2001

### Notice 2001-12

#### PURPOSE

This notice clarifies Rev. Proc. 2001-13, 2001-3 I.R.B. (Jan. 16, 2001), to provide that the inflation-adjustment amounts set forth in Part I of section 3 of that revenue procedure are the applicable amounts for 2001 in light of recently enacted legislation.

#### BACKGROUND

Section 3 of Rev. Proc. 2001-13, released on December 15, 2000, set forth two alternative sets of inflation adjustment figures for 2001 for certain items. Part I of section 3 provided the figures for these items that would apply if certain legislation, pending on the date of release, were to be enacted. Part II of section 3 provided alternative figures for these items that would apply if the pending legislation were not enacted. Section 2.02 of Rev. Proc. 2001-13 stated that the Service would issue subsequent notification clarifying whether the amounts set forth in Part I or Part II of section 3 are in fact the appropriate figures for 2001.

The then-pending legislation was subsequently enacted as section 308 of H.R. 5662, the Community Renewal Tax Relief Act of 2000 (the "Act"), the text of which was incorporated by reference in section

1(a)(7) of the Consolidated Appropriations Act of 2001, Public Law 106-554, 106th Cong., 2nd Sess. (Dec. 21, 2000).

#### APPLICATION

As a result of section 308 of the Act, the tax tables and other items adjusted for inflation for 2001 in Rev. Proc. 2001-13 are required to reflect the unpublished corrections made by the Bureau of Labor Statistics in the Consumer Price Index for All Urban Consumers for September 1999 through December 1999. Thus, the applicable inflation-adjusted amounts for 2001 are those set forth in Part I of section 3 of Rev. Proc. 2001-13. Part II of section 3 should be disregarded. The specific items that are affected are:

- (1) the tax rate tables (set forth in section 3.01);
- (2) certain figures relating to the earned income tax credit (section 3.03);
- (3) the aggregate amount of gifts received from foreign persons for purposes of information reporting under § 6039F (section 3.22); and
- (4) the amount used to determine the validity of certain tax liens under § 6323(b)(7) (section 3.23).

#### EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2001-13 is clarified.

#### DRAFTING INFORMATION

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26 CFR. 601.602: Tax forms and instructions. (Also Part I, secs. 6011, 6061, 6071, 6651; 31.6011(a)-3, 31.6011(a)-7, 31.6061-1, 301.6061-1, 31.6071(a)-1, 301.6651-1)

### Rev. Proc. 2001-9

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#### SECTION 1. PURPOSE

This revenue procedure provides the requirements for electronically filing the Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return in the "Form 940 e-file Program." Under "IRS e-file for Business," there are two options for electronically filing Form 940: 940 e-file Option and 940 On-Line Option, both similar to the 941 e-file and 941 On-Line options. There is no 940 TeleFile option at this time. The technical specifications for filing Form 940 electronically are published separately in Publication 3715, *Technical Specifications Guide for the Electronic Filing of Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return*. This revenue procedure does not address the requirements of the Form 941 e-file Program, which can be found in Rev. Proc. 99-39, 1999-2 C.B. 532.

#### SECTION 2. BACKGROUND

.01 Section 6011(a) of the Internal Revenue Code provides that any person

liable for any tax imposed by this title, or for the collection thereof, must make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement must include therein the information required by such forms or regulations.

.02 Section 31.6011(a)-3 of the Regulations on Employment Taxes and Collection of Income Tax at Source provides in general that every person must make a return of tax under the Federal Unemployment Tax Act for each calendar year in which the person is an employer as defined in section 31.3306(a)-1. Except as otherwise provided, Form 940 is the form prescribed for making the return.

.03 Section 31.6011(a)-7 provides that each return, together with any prescribed copies or supporting data, must be filled in and disposed of in accordance with the forms, instructions, and regulations applicable thereto. The return may be made by an agent in the name of the person required to make the return if an acceptable power of attorney is filed with the Internal Revenue Service office with which such person is required to file returns and if such a return includes all taxes required to be reported by such person on such return. Form 8655, *Reporting Agent Authorization for Magnetic Tape/Electronic Filers*, is an acceptable power of attorney, if prepared in accordance with the requirements set forth in Rev. Proc. 96-17, 1996-1 C.B. 633, as modified by section 18 of this revenue procedure.

.04 Section 31.6061-1 provides that the return may be signed for the taxpayer by an agent that is fully authorized in accordance with section 31.6011(a)-7 to make such return. An agent may sign the Form 940 on behalf of a taxpayer that has a valid form on file with the Service.

.05 Section 301.6061-1 of the Regulations on Procedure and Administration provides that the Secretary may prescribe in forms, instructions, or other appropriate guidance the method for signing any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations. The Service has prescribed in Publication 3715 that an electronically-filed Form 940 is signed by the entry of the Authorized Signatory's Personal

Identification Number ("PIN").

.06 Section 31.6071(a)-1(c) generally provides that each return of the tax imposed by the Federal Unemployment Tax Act required to be made under section 31.6011(a)-3 must be filed on or before the last day of the first calendar month following the period for which it is made. However, that regulation also provides that a return may be filed on or before the 10th day of the second calendar month following the tax period if timely deposits under section 6302(c) of the Code and the regulations thereunder have been made in full payment of such tax due for the period.

.07 Procedures for the magnetic filing of Form 940 are in Rev. Proc. 96-18, 1996-1 C.B. 637, and the specifications are in Publication 1314. For further information, see Publication 1314, Form 940—Employer's Federal Unemployment Tax Return (FUTA): *File Specifications, Processing Criteria, and Record Layouts for Magnetic Tape Filing*.

### SECTION 3. SCOPE

.01 The Form 940 *e-file* Program applies to electronically-filed Forms 940 for the year ending December 31, 2000, and thereafter that are timely filed. Late and/or amended Forms 940 must not be filed electronically. A violation of these restrictions may cause a Processing Interruption (as defined in section 4.10 of this revenue procedure). Late and/or amended Forms 940 must be filed by paper only.

.02 The Form 940 *e-file* Program applies only to the Form 940. The Form 940 *e-file* Program does not apply to the Form 940 (PR), *Employer's Annual Federal Unemployment (FUTA) Tax Return (Puerto Rican Version)* or the Form 940 EZ, *Employer's Annual Federal Unemployment (FUTA) Tax Return*. Do not file the listed forms electronically. Taxpayers who currently file a paper Form 940 EZ, however, may wish to electronically file a Form 940.

### SECTION 4. DEFINITIONS

.01 *Form 940 e-file Program*. The program within "IRS *e-file* for Business" that provides two options for electronically filing Forms 940, *Employer's Annual Federal Unemployment (FUTA) Tax*

*Return: 940 e-file Option and 940 On-Line Option*.

.02 *940 e-file Option*. The option for electronically filing a Form 940 in the Form 940 *e-file* Program that allows taxpayers to use a Reporting Agent to prepare, sign and electronically file Form 940 for the taxpayer.

.03 *940 On-Line Option*. The option for electronically filing a Form 940 in the Form 940 *e-file* Program that allows taxpayers to use the World Wide Web, via a Transmitter, to electronically file Form 940.

.04 *Authorized Signatory*. An Authorized Signatory is a person who is authorized to use a PIN to sign returns filed by or through an Electronic Filer under the Form 940 *e-file* Program or during software development testing.

.05 *Electronic Filer*. An Electronic Filer may be a:

(1) *Reporting Agent*. A Reporting Agent ("Agent"), commonly called a "payroll service," is an accounting service, franchiser, bank, or other person that complies with Rev. Proc. 96-17, as modified by section 18 of this revenue procedure, and is authorized to prepare, sign, and electronically file a Form 940 for a taxpayer by using the 940 *e-file* Option of the Form 940 *e-file* Program;

(2) *Software Developer*. A Software Developer develops software for the purposes of (a) formatting returns according to the Service's electronic return specifications in Publication 3715; and/or (b) transmitting electronic returns directly to the Service. A Software Developer may also sell its software. A Software Developer may develop software for the 940 *e-file* Option and/or the 940 On-Line Option of the Form 940 *e-file* Program; or

(3) *Transmitter*. A Transmitter is a firm, organization, or individual that receives returns and Letters of Application electronically from its clients, reformats the data (if necessary), batches the data with returns or electronic Letters of Application from other clients, and then transmits the data to the Service. A Transmitter does not have signature authority for the taxpayers that it services. A Transmitter receives the data from its clients via the World Wide Web and transmits the data to the Service by using the On-Line Option of the Form 940 *e-file* Program.

.06 *On-Line Filer*. An On-Line Filer is a taxpayer that electronically files a Form 940 through a Transmitter using a personal computer, modem, and commercial tax preparation software.

.07 *Electronic Filing Help Desks*. The Electronic Filing Help Desks ("e-file" Help Desks) in Austin, Texas, and in Memphis, Tennessee, are responsible for the administration of the Form 940 e-file Program. See section 17 of this revenue procedure for a description of their respective responsibilities, and the address and telephone number of each e-file Help Desk.

.08 *Letter of Application*. A Letter of Application ("LOA") is a paper or electronic request that is submitted to the Service by a prospective Electronic Filer or On-Line Filer to participate in the Form 940 e-file Program and, if submitted by an Authorized Signatory, to receive a Personal Identification Number. A sample LOA is printed in Publication 3715.

.09 *Personal Identification Number*. A Personal Identification Number ("PIN") is a number assigned by the Service to the Authorized Signatory for purposes of signing an electronically-filed Form 940.

.10 *Processing Interruption*. A Processing Interruption is an abnormal termination of a program run caused by the electronic data submitted by an Electronic Filer.

.11 *Reporting Agent Authorization*. A Reporting Agent Authorization ("Authorization") allows a taxpayer to designate an Agent. The Authorization may be submitted on Form 8655, or any other instrument that complies with Rev. Proc. 96-17, as modified by section 18 of this revenue procedure. An Authorization must be submitted for each taxpayer on the Reporting Agent's List.

.12 *Reporting Agent's List*. For purposes of the Form 940 e-file Program, a Reporting Agent's List ("Agent's List") identifies all taxpayers for whom an Agent will file Forms 940 electronically. A separate Authorization must be submitted for each taxpayer on the Agent's List. The Agent's List must contain each taxpayer's employer identification number ("EIN").

.13 *User identification/password*. The user identification/password ("userid/password") consists of an identification number (userid) issued by the Service and a confi-

dential set of characters (password) that, when used in conjunction with each other, permit an Electronic Filer access to the Form 940 e-file Program.

.14 *Validated Reporting Agent's List*. A Validated Reporting Agent's List ("Validated Agent's List") is a list of taxpayers and their EINs prepared by an Agent that is confirmed and assigned name controls by the Service. A Validated Agent's List is to be used as a source for the identification of each taxpayer by an Electronic Filer that is an Agent. Once the Service returns a Validated Agent's List, the Agent must use it to fill in certain required fields (for example, the name control field) of the electronic transmission. See Publication 3715.

#### SECTION 5. APPLICATION FOR THE FORM 940 e-file PROGRAM

.01 A prospective Electronic Filer must first submit an LOA to the Service to participate in the Form 940 e-file Program. The LOA of a prospective Electronic Filer may be submitted electronically or by paper. See Publication 3715 for a sample LOA for an Agent, a Software Developer, and a Transmitter, and the application procedures.

.02 A prospective On-Line Filer must submit an electronic LOA through a Transmitter to participate in the Form 940 e-file Program. A prospective On-Line Filer must use the electronic LOA provided in the commercial tax preparation software used by the taxpayer in order to participate in the Form 940 e-file Program. The Transmitter is required to batch and bundle the electronic LOA files, and then transmit those files to the Service. The Transmitter is required to send an acknowledgment to the On-Line Filer to verify that the electronic LOA was transmitted successfully to the Service.

.03 In addition to the LOA, an Agent must also include an Agent's List, providing the names of all taxpayers for which it will file returns. Each name on the Agent's List must be accompanied by an Authorization made on Form 8655, or acceptable substitute, except as provided in section 5.04 of this revenue procedure. See Rev. Proc. 96-17, as modified by section 18 of this revenue procedure, for general instructions on preparing Form 8655. See section 6.10 of this revenue procedure

for instructions on adding names to, or deleting names from, the Agent's List.

.04 A revised Authorization is not required to replace an Authorization made on Form 8655 with a revision date before October 1995 (or its equivalent) that was previously submitted to the Service by an Agent, if the Authorization places no restriction on the medium for filing Form 940, and the Agent:

(1) advises its client that its Forms 940 may be filed electronically, and provides the client with the option of rejecting electronic filing as the medium for filing its Forms 940. An Agent may use the most efficient and timely method of clearly providing this notification to a client. A client's rejection of electronic filing for its Forms 940 must be submitted in writing to the Agent; and

(2) immediately removes from its electronic filing client base any client that rejects having its Forms 940 filed electronically.

#### SECTION 6. ACCEPTANCE IN THE FORM 940 e-file PROGRAM

.01 A prospective Electronic Filer or On-Line Filer will receive an acceptance or rejection regarding its LOA for the Form 940 e-file Program within 45 days of the Service's receipt of their completed LOA.

.02 An Electronic Filer that is accepted in the Form 940 e-file Program will be required to submit a successful test transmission before being granted approval to file tax returns. Details regarding test requirements may be found in Publication 3715.

.03 After evaluating the test file, the Service will notify an Electronic Filer in writing of approval or denial of electronic filing privileges. An approval remains in effect unless the Electronic Filer:

(1) that is an Agent fails to comply with the Authorization requirements of sections 5.03 and 5.04 of this revenue procedure;

(2) that is a Software Developer fails to comply with the requirements of section 8.04 of this revenue procedure;

(3) that is a Transmitter fails to comply with the requirements of section 8.03 of this revenue procedure; or

(4) is suspended from the Form 940 e-file Program. See section 14 of this rev-

enue procedure for the effect of a suspension.

.04 The acceptance by the Service of a Software Developer as an Electronic Filer:

(1) establishes only that the test electronic transmission(s) are formatted properly and may be processed by the Service;

(2) is not an endorsement by the Service of the software or the quality of services provided by the Software Developer; and

(3) does not entitle the Software Developer to electronically file Forms 940 unless the Software Developer is also accepted in the Form 940 *e-file* Program as an Agent or Transmitter.

.05 If an LOA is approved, the Service will send the following:

(1) for an Electronic Filer, a notification of approval that will contain the userid/password, and information and procedures regarding signing onto the system for electronically filing Forms 940; and

(2) for an Authorized Signatory, a PIN that may be used only by the Authorized Signatory named in the LOA.

.06 Upon receipt of the document(s) referenced in section 6.05 of this revenue procedure, the Electronic Filer must return the following documents to the Service:

(1) an acknowledgment signed by each employee recipient of the userid/password indicating possession of, and responsibility for, the userid/password; and

(2) where applicable, an acknowledgment signed by the Authorized Signatory indicating possession of, and responsibility for, the proper use of the PIN for signing tax returns (pursuant to § 301.6061-1) filed in the Form 940 *e-file* Program.

See Publication 3715 for a sample userid/password and PIN receipt.

.07 Upon receipt of the PIN referenced in section 6.05(2) of this revenue procedure, the On-Line Filer must return an acknowledgment signed by the Authorized Signatory indicating possession of, and responsibility for, the proper use of the PIN for signing tax returns (pursuant to § 301.6061-1) filed in the Form 940 *e-file* Program.

.08 The Service will activate the userid/password and the PIN upon receiv-

ing the Electronic Filer's or On-Line Filer's acknowledgments referenced in sections 6.06 and 6.07 of this revenue procedure.

.09 If a prospective Electronic Filer that is an Agent is denied, or does not receive, approval to participate in the Form 940 *e-file* Program before the end of the year for which the Forms 940 will be filed, the Agent may file the Forms 940 on magnetic tape (if the Agent meets the requirements of Rev. Proc. 96-18) or prepare paper Forms 940. See section 9.02 of this revenue procedure for the circumstances that must exist for an Electronic Filer who is an Agent to use a Form 8655 as authority to sign and file a paper Form 940.

.10 After a Reporting Agent is notified that the application for electronically filing Forms 940 has been approved, the Agent may need to add and delete taxpayers' names from the Agent's List.

(1) To add taxpayers, the Agent must submit an Add Llist with names to be added, their respective employer identification numbers, and Authorization for each taxpayer added to the Agent's List. The Service will validate and mail the validated Add List to the Agent within 10 business days of receiving the Add List.

(2) To delete taxpayers, the Agent must submit a Delete List with the names to be deleted, and if known, a short statement indicating which taxpayers will not remain in business.

## SECTION 7. ELECTRONIC FILING OF FORM 940

.01 An Electronic Filer that is an Agent must ensure that a current electronic Form 940 is filed on or before the due date of the return. The due dates prescribed for filing paper Forms 940 with the Service also apply to returns filed under the Form 940 *e-file* Program. Forms 940 are due on or before the last day of the first calendar month following the calendar year for which the return is made. However, a return for which all tax deposits were made when due may be filed by the 10th day of the second calendar month following the end of the calendar year.

.02 An Electronic Filer that is a Transmitter must ensure that an electronic Form 940 is transmitted to the Service on or before the due date of the return, as described in sec. 7.01, without regard to

extensions.

.03 An electronically-filed Form 940 is not considered filed until it has been acknowledged as accepted for processing by the Service. If an electronically-filed Form 940 is transmitted to the Service on or before the return due date, and acknowledged as accepted for processing, the return will be deemed timely filed. If an electronically-filed Form 940 is initially transmitted to the Service on or before the return due date and is ultimately rejected, but the Electronic Filer complies with section 7.04 or 7.05 of this revenue procedure, as appropriate, and the On-Line Filer also complies with section 7.06 of this revenue procedure, the return will be deemed timely filed.

.04 An electronic transmission that causes a Processing Interruption will not be accepted for processing by the Service. An Electronic Filer that is an Agent will be asked to resubmit the return(s). If the electronic transmission is acknowledged as rejected by the Service, the Agent should correct the error(s) and retransmit the return(s) on the same calendar day. If the Agent chooses not to have the previously-rejected return retransmitted, or if the return still cannot be accepted for processing, a paper Form 940 (or a Form 940 on magnetic tape if the Electronic Filer meets the requirements of Rev. Proc. 96-18) must be filed by the later of: (1) the due date of the return; or (2) within five calendar days of the rejection or notice that the return cannot be retransmitted, with an explanation of why the return is being filed after the due date. For the penalty for failure to file a timely return, see section 16 of this revenue procedure.

.05 If a Processing Interruption occurs with an Electronic Filer that is a Transmitter, and the Transmitter cannot promptly correct any transmission error that causes an electronic transmission to be rejected, then the Transmitter, within 24 hours of receiving the rejection acknowledgment, must take reasonable steps to inform the On-Line Filer that the return has not been filed. When the Transmitter advises the On-Line Filer that the return has not been filed, the Transmitter must provide the On-Line Filer with the reject code(s), an explanation of the reject code(s), and the

sequence number of each reject code(s). See Publication 3715 for an explanation of the reject codes.

.06 If the On-Line Filer chooses not to have the electronic portion of the return corrected and transmitted to the Service, or if the electronic portion of the return cannot be accepted for processing by the Service, the On-Line Filer must file a paper Form 940 by the later of: (1) the due date of the return; or (2) within five calendar days of the rejection acknowledgment described in section 7.05, with an explanation of why the return is being filed after the due date. For the penalty for failure to file a timely return, see section 16 of this revenue procedure.

## SECTION 8. RESPONSIBILITIES OF PARTICIPANTS IN FORM 940 *e-file* PROGRAM

.01 To ensure that complete returns are accurately and efficiently filed, Electronic Filers must comply with the technical specifications detailed in Publication 3715.

.02 An Electronic Filer or On-Line Filer must comply with the following applicable userid/password and PIN requirements:

(1) if an Electronic Filer suspects that the confidentiality of the userid/password has been compromised, the Electronic Filer must contact the Austin, Texas, *e-file* Help Desk within 24 hours for instructions on how to proceed. See section 17 of this revenue procedure for Service contact information;

(2) the Electronic Filer or On-Line Filer is responsible for ensuring that the PIN remains the confidential information of the Authorized Signatory. If the Electronic Filer or On-Line Filer suspects that the confidentiality of the PIN has been compromised, the Electronic Filer or On-Line Filer must contact the Austin, Texas, *e-file* Help Desk within 24 hours for instructions on how to proceed. See section 17 of this revenue procedure for Service contact information;

(3) if the Authorized Signatory changes, the Electronic Filer or On-Line Filer must notify the Service of the name and title of the new Authorized Signatory for the electronically-filed Form 940 and apply for a new PIN no later than 15 days before the filing of another return. After this notification, the Service will deacti-

vate the current PIN and issue a new PIN to the new Authorized Signatory. The new Authorized Signatory must submit a PIN receipt as specified in section 6.06 or 6.07 of this revenue procedure in order to activate the new PIN; and

(4) the Authorized Signatory must manually enter the PIN signature for each transmission of electronically-filed Forms 940.

.03 An Electronic Filer that is a Transmitter must:

(1) retrieve the acknowledgment file (in which the Service states whether it accepts or rejects the electronic portion of a taxpayer's return for processing) within two work days of transmission;

(2) match the acknowledgment file to the original transmission file and send to the On-Line Filer either:

(a) an acceptance notice within two days of retrieving the acknowledgment file; or

(b) a rejection notice within 24 hours of retrieving the acknowledgment file;

(3) immediately contact the appropriate service center for further instructions if an acknowledgment of acceptance for processing has not been received by the Transmitter within two work days of transmission or if a Transmitter receives an acknowledgment for a return that was not transmitted on the designated transmission;

(4) promptly correct any transmission error that causes an electronic transmission to be rejected; and

(5) ensure the security of all transmitted data.

.04 An Electronic Filer that is a Software Developer must:

(1) promptly correct any software error that may cause, or causes, an electronic return to be rejected;

(2) promptly distribute any such software correction;

(3) ensure that any software package that will be used to transmit returns from multiple Electronic Filers that are Agents has the capability of combining these returns into one Service transmission file; and

(4) not incorporate into its software a Service-assigned PIN.

.05 An Agent must retain the following material for four years after the due date of the return, unless otherwise notified by the Service:

(1) a complete copy of the electronically-filed Form 940;

(2) a copy of the Service's acknowledgment of receipt of the return; and

(3) a copy of each Authorization.

.06 An Electronic Filer that is an Agent or a Transmitter must:

(1) provide the taxpayer with a copy of the taxpayer's electronically-filed Form 940. This information may be provided on a replica or an official form or in any other format that provides all of the return information and references the line numbers of the official form);

(2) advise the taxpayer to retain a copy of the return and any supporting material; and

(3) provide the taxpayer, upon request, with the date the return was transmitted to the Service and the date the Service acknowledged receipt of the taxpayer's return.

## SECTION 9. ALTERNATIVE FILING PROCEDURES

.01 Procedures for the filing of Form 940 on magnetic tape are in Rev. Proc. 96-18 and the specifications are in Publication 1314.

.02 An Electronic Filer that is an Agent may use an Authorization to sign and file a paper Form 940 under the following circumstances:

(1) the late receipt of payroll information from a taxpayer would jeopardize the timely submission of the taxpayer's return;

(2) the amendment of returns filed under the Form 940 *e-file* Program;

(3) the rejection of an electronic transmission that would jeopardize the timely submission of the taxpayer's return;

(4) an authorization by the Service for an Agent to file paper Forms 940 instead of electronically-filed Forms 940;

(5) the suspension of an Agent from the Form 940 *e-file* Program as provided in section 14.02(3) of this revenue procedure; or

(6) a prospective Electronic Filer that is an Agent is denied, or does not receive, approval to participate in the Form 940 *e-file* Program before the end of the year for which the Forms 940 will be filed.

.03 An Agent may prepare a paper Form 940 for the taxpayer's signature. A taxpayer's authorized representative that

is not an Agent participating in the Form 940 *e-file* Program (including a suspended Agent) must have a valid power of attorney (usually a Form 2848, Power of Attorney and Declaration of Representative) that authorizes the representative to sign and file a paper Form 940 on behalf of a taxpayer.

.04 Each paper Form 940 must be signed by the taxpayer, the taxpayer's authorized representative, or a participating Agent to the extent permitted under section 9.02 of this revenue procedure.

#### SECTION 10. REVISION OF COMPUTER SPECIFICATIONS BY THE SERVICE

.01 If Publication 3715 is revised, the Service, if necessary, will advise all current Electronic Filers to submit test files prior to filing under the new specifications. Failure to submit a test file may later result in a Processing Interruption, which may result in a notice of suspension. See section 12 of this revenue procedure concerning the reasons for suspension of electronic filing privileges.

.02 If an Electronic Filer is unable to comply with the changes in specifications, the Electronic Filer must contact the appropriate *e-file* Help Desk for further instructions. See section 17 of this revenue procedure for Service contact information.

#### SECTION 11. ADVERTISING STANDARDS

.01 An Electronic Filer must:

(1) comply with the advertising and solicitation provisions of 31 CFR Part 10 (Treasury Department Circular No. 230). This circular prohibits the use or participation in the use of any form of public communication containing a false, fraudulent, misleading, deceptive, unduly influencing, coercive, or unfair statement or claim. In addition, advertising must not imply a special relationship with the Service, Financial Management Service ("FMS"), or the Treasury Department;

(2) adhere to all relevant federal, state, and local consumer protection laws;

(3) not use the Service's name, "Internal Revenue Service" or "IRS", within a firm's name;

(4) not use improper or misleading advertising in relation to the Form 940 *e-file* Program;

(5) not carry the Service, FMS, or other Treasury Seals on its advertising material;

(6) clearly state the names of all cooperating parties if advertising for a cooperative electronic return filing project (public/private sector);

(7) pre-record any radio or television advertisement and keep a copy of this advertisement for a period of at least 36 months from the date of the last transmission or use; and

(8) retain a copy of any actual direct mailing or fax communications, along with a list or other description of persons to whom the communication was mailed, faxed, or otherwise distributed for a period of at least 36 months from the date of the last mailing, fax, or distribution.

.02 Acceptance to participate in the Form 940 *e-file* Program does not imply endorsement by the Service, FMS, or the Treasury Department of the software or quality of services provided.

#### SECTION 12. REASONS FOR SUSPENSION

.01 The Service reserves the right to suspend an Electronic Filer from the Form 940 *e-file* Program for the following reasons (this list is not all-inclusive):

(1) submitting tax returns for which the Service did not receive Authorizations;

(2) repeatedly submitting tax returns that cause a Processing Interruption;

(3) submitting tax returns that cause a Processing Interruption after failing to submit the test file required by section 6.02 of this revenue procedure;

(4) failing to comply with the responsibilities of an Electronic Filer set forth in section 8 of this revenue procedure;

(5) failing to abide by the advertising standards in section 11 of this revenue procedure; or

(6) significant complaints about an Electronic Filer's performance in the Form 940 *e-file* Program.

.02 If the Electronic Filing Coordinator informs an Electronic Filer that a certain action is a reason for suspension and the action continues, the service center director may send the Electronic Filer a notice proposing suspension of the Electronic Filer. However, a notice proposing suspension may be sent without a warning if

the Electronic Filer's action indicates an intentional disregard of rules. A notice proposing suspension will describe the reason(s) for the proposed suspension, and indicate the length of the suspension and the conditions that need to be met before the suspension will terminate.

.03 An Electronic Filer that is an Agent or Transmitter has an obligation to notify its Form 940 *e-file* Program clients when that Agent or Transmitter is suspended from filing under the Form 940 *e-file* Program as provided in sections 14.02(4) and 14.03 of this revenue procedure. The Service reserves the right to extend the period of suspension of any Agent or Transmitter that fails to comply with this requirement.

#### SECTION 13. ADMINISTRATIVE REVIEW PROCESS FOR PROPOSED SUSPENSION

.01 An Electronic Filer that receives a notice proposing suspension may request an administrative review prior to the proposed suspension taking effect.

.02 The request for an administrative review must be in writing and contain detailed reasons, with supporting documentation, for withdrawal of the proposed suspension.

.03 The written request for an administrative review and a copy of the notice proposing suspension must be delivered to the Electronic Filing Coordinator within 30 calendar days of the date on the notice proposing suspension. The Electronic Filing Coordinator will forward the written request to the National Program Analyst for Electronic Filing of Business Returns ("National Coordinator") if the service center director continues to believe that suspension is warranted.

.04 After consideration of the written request for an administrative review, the National Coordinator will either issue a suspension letter or notify the Electronic Filer in writing that the proposed suspension is withdrawn.

.05 If an Electronic Filer receives a suspension letter, the Electronic Filing Coordinator's subsequent determination of whether a reason for suspension has been corrected is not subject to review or appeal.

.06 If an Electronic Filer does not timely submit a written request for an admin-

administrative review, the service center director will issue a suspension letter.

.07 Failure to submit a written request for an administrative review within the 30-day period described in section 13.03 of this revenue procedure irrevocably terminates the Electronic Filer's right to an administrative review of the proposed suspension.

#### SECTION 14. EFFECT OF SUSPENSION

.01 An Electronic Filer's suspension will continue for the length of time specified in the suspension letter, or until the conditions for terminating the suspension have been met, whichever is later.

.02 In the case of an Electronic Filer that is an Agent, the following additional rules apply:

(1) if a Form 940 is due (without regard to extensions) within 60 days from the date on the suspension letter, the Agent may file the Form 940 under the Form 940 *e-file* Program;

(2) if a Form 940 is due (without regard to extensions) more than 60 days from the date on the suspension letter, the Agent may not file the Form 940 under the Form 940 *e-file* Program;

(3) if a suspended Agent has a power of attorney from a taxpayer that authorizes the Agent to sign and file Form 940, the suspended Agent will be able to sign and file a paper Form 940 for the taxpayer. See section 9.03 of this revenue procedure. Form 8655 does not authorize the filing of paper Forms 940 outside of the Form 940 *e-file* Program; and

(4) an Agent must provide written notification of a suspension to a taxpayer at least 45 days before the due date of the taxpayer's first return affected by the suspension. This notification must be provided even though the Agent may believe that the Agent will be able to meet the conditions for terminating the suspension before the due date.

.03 A Transmitter that receives a suspension letter described in section 13.04 from the Service may not accept any further LOAs from prospective On-Line Filers that want to participate in the Form 940 *e-file* Program and must immediately inform current On-Line Filers of its inability to transmit Forms 940 during its suspension

.04 An Electronic Filer will be able to participate in the Form 940 *e-file* Program

from which the Electronic Filer was suspended, without reapplying to the Form 940 *e-file* Program, after:

(1) the stated suspension period expires; and

(2) the reason(s) for suspension is corrected.

#### SECTION 15. APPEAL OF SUSPENSION

.01 If an Electronic Filer receives a suspension letter from the National Coordinator, the Electronic Filer is entitled to appeal, by written protest, to the National Director of Appeals. The written protest must be sent to the National Coordinator, who will forward it to the National Director of Appeals. During the appeals process, the suspension remains in effect.

.02 The written protest must be received by the National Coordinator within 30 calendar days of the date of the suspension letter. The written protest must contain detailed reasons, with supporting documentation, for termination of the suspension.

.03 Within 15 calendar days of receipt of a written protest, the National Coordinator will forward the file on the Electronic Filer and the material described in section 15.02 of this revenue procedure to the National Director of Appeals.

.04 Failure to appeal within the 30-day period described in section 15.02 of this revenue procedure irrevocably terminates the Electronic Filer's right to appeal the suspension.

#### SECTION 16. PENALTY FOR FAILURE TO TIMELY FILE A RETURN

Section 6651(a)(1) provides that for each month (or part thereof) a return is not filed when required (determined with regard to any extensions of time for filing), there is a penalty of 5 percent of the unpaid tax not to exceed 25 percent, absent reasonable cause. A taxpayer does not establish reasonable cause simply by engaging a competent Electronic Filer to file the taxpayer's return. However, if the Electronic Filer has reasonable cause under § 6651(a) for failing to timely file the taxpayer's return, the taxpayer will also have reasonable cause for that failure, and the failure-to-file penalty will be abated.

#### SECTION 17. INTERNAL REVENUE SERVICE CONTACT

.01 The responsibility for the Form 940 *e-file* Program is divided between the Electronic Filing Help Desk of the Austin Service Center and the Memphis Electronic Filing Desk. Questions should be directed to the appropriate Electronic Filing Help Desk as follows:

(1) All questions regarding application to the Form 940 *e-file* Program, acceptance into the Form 940 *e-file* Program, userid/passwords, and PINs should be directed to the Austin Service Center *e-file* Help Desk at the following address or telephone number:

Address  
Internal Revenue Service  
Austin Service Center  
Electronic Filing Help Desk  
P.O. Box 1231  
Stop 6380 AUSC  
Austin, TX 78767  
Attention: Electronic Filing

Telephone Number:  
(512) 460-8900 (not a toll-free number)

(2) All questions regarding the 940 On-Line Option (that allows taxpayers to use the World Wide Web, via a Transmitter, to file Form 940 electronically) should be directed to the Austin Service Center *e-file* Help Desk at the address or telephone number identified in section 17.01(1) of this revenue procedure.

(3) All questions concerning the 940 *e-file* Option (that allows taxpayers to use a Reporting Agent to prepare, sign and electronically file Form 940 for the taxpayer), except those matters identified in section 17.01(1) of this revenue procedure, should be directed to the Memphis Electronic Help Desk at the following address or telephone number:

Address  
Memphis Electronic Filing Desk  
P.O. Box 30309 AMF  
Memphis, TN 38130  
ATTN: ELF Unit Stop 26

Telephone Number  
(901) 546-2690 Ext. 7519

.02 General information about electronic filing of tax forms can be found at the following web site:

Web site for electronic services:  
[www.irs.gov/prod/elec\\_svs](http://www.irs.gov/prod/elec_svs)

.03 All questions regarding publications may be directed to the following web site:

Web site for publications:  
www.irs.gov/forms\_pubs

## SECTION 18 EFFECT ON OTHER DOCUMENTS

Section 6.05 of Rev. Proc. 96-17, 1996-1 C.B. 633, is modified to provide the same relief as set forth in section 5.04 of this revenue procedure (regarding an Agent not having to replace a previously submitted Authorization under certain circumstances).

## SECTION 19. EFFECTIVE DATE

This revenue procedure is effective for taxable years commencing after December 31, 1999.

## SECTION 20. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have 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 1545-1710.

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 control number.

The collections of information in this revenue procedure are in sections 5, 6, 7, 8, 10, and 11. This information is required by the Service to implement the Form 940 e-file Program and to enable taxpayers to file their Forms 940 electronically. The information will be used to ensure that taxpayers receive accurate and essential information regarding the filing of their electronic returns and to identify persons involved in the filing of electronic returns. The collections of information are required to retain the benefit of participating in the Form 940 e-file Program. The likely respondents are business or other for-profit institutions; federal, state or local governments; nonprofit institutions; and small businesses or organizations.

The estimated total annual reporting and recordkeeping burden is 207,127 hours. The estimated annual burden per respondent/recordkeeper varies from 10 minutes to 5 hours, depending on individ-

ual circumstances, with an estimated average of 32 minutes. The estimated number of respondents and recordkeepers is 390,685. The estimated annual frequency of responses is on occasion.

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.

*26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability. (Also Part I, §§ 860E, 860H; 1.860E-1.)*

## Rev. Proc. 2001-12

### SECTION 1. PURPOSE

This revenue procedure sets forth a safe harbor for establishing the lack of improper knowledge under § 1.860E-1(c) of the Income Tax Regulations for transfers of noneconomic residual interests in real estate mortgage investment conduits (REMICs) and ownership interests in Financial Asset Securitization Investment Trusts (FASITs).

### SECTION 2. BACKGROUND

The current regulations governing REMICs contain rules governing the transfer of noneconomic residual interests in REMICs. In general, a transfer of a noneconomic residual interest is disregarded for all tax purposes if a significant purpose of the transfer is to enable the transferor to impede the assessment or collection of tax. This purpose exists if the transferor, at the time of the transfer, either knew or should have known that the transferee would be unwilling or unable to pay taxes due on its share of the REMIC's taxable income.

The current regulations also contain a safe harbor for establishing the lack of a purpose to impede the assessment or collection of tax. Under the safe harbor, a transferor of a noneconomic residual interest in a REMIC is presumed to lack this purpose if two requirements are satisfied. First, the transferor must conduct a reasonable investigation of the transferee's financial condition. Second, the transferor must secure a representation from the transferee stating that the transferee understands the tax obligations

associated with holding a residual interest and intends to pay those taxes.

The Internal Revenue Service and Treasury have been concerned that some transferors of residual interests have claimed they satisfy the safe harbor even though the economics of a transfer clearly indicate the transferees are unwilling or unable to pay the tax associated with holding the interest. For this reason, on February 7, 2000, the Service published in the Federal Register a notice of proposed rulemaking (65 Fed. Reg. 5807) designed to clarify the safe harbor. The proposed regulation explains that the safe harbor is unavailable unless the present value of the anticipated tax liabilities associated with holding the residual interest does not exceed the sum of: (1) the present value of any consideration given to the transferee to acquire the interest; (2) the present value of the expected future distributions on the interest; and (3) the present value of the anticipated tax savings associated with holding the interest as the REMIC generates losses. This clarification is proposed to be effective on February 4, 2000. The notice of proposed rulemaking published on February 7, 2000 also contained proposed rules for FASITs. Proposed § 1.860H-6(g) provides requirements for transfers of FASIT ownership interests and adopts a safe harbor for establishing lack of improper knowledge by reference to the safe harbor provisions of the REMIC regulations.

Some commentators have stated that, although current regulations are inadequate, the proposed regulations are inappropriately restrictive. This revenue procedure sets forth an alternate safe harbor that may be used while the Service and Treasury consider the comments on the proposed regulations.

### SECTION 3. SCOPE

This revenue procedure applies to all transfers of noneconomic residual interests in REMICs. The principles set forth in this revenue procedure, appropriately adjusted with respect to terminology and other technical differences between the REMIC and FASIT provisions, also apply to transfers of ownership interests in FASITs. See section 8 for applicability.

### SECTION 4. PROCEDURE

A transferor of a residual interest in a REMIC is presumed not to have improper knowledge under § 1.860E-1(c) of the regulations if-