

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

## Section 42.—Low-Income Housing Credit

**Low-income housing credit; satisfactory bond; “bond factor” amounts for the period April through June 1997.** This ruling announces the monthly bond factor amounts to be used by taxpayers who dispose of qualified low-income buildings or interests therein during the period April through June 1997.

## Rev. Rul. 97-25

In Rev. Rul. 90-60, 1990-2 C.B. 3, the Internal Revenue Service provided guidance to taxpayers concerning the general methodology used by the Treasury Department in computing the bond factor amounts used in calculating the amount of bond considered satisfactory by the Secretary under § 42(j)(6) of the Internal Revenue Code. It further announced that the Secretary would pub-

lish in the Internal Revenue Bulletin a table of “bond factor” amounts for dispositions occurring during each calendar month.

This revenue ruling provides in Table 1 the bond factor amounts for calculating the amount of bond considered satisfactory under § 42(j)(6) for dispositions of qualified low-income buildings or interests therein during the period April through June 1997.

Calendar Year Building Placed in Service or, if Section 42(f)(1) Election Was Made, the Succeeding Calendar Year											
Month of Disposition	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997
Apr '97	79.00	81.35	83.91	86.90	90.40	94.39	98.50	102.45	106.31	110.36	112.52
May '97	78.77	81.11	83.66	86.64	90.13	94.09	98.18	102.11	105.95	109.98	112.52
Jun '97	78.55	80.88	83.42	86.40	89.87	93.81	97.88	101.79	105.61	109.64	112.52

For a list of bond factor amounts applicable to dispositions occurring during other calendar years, see the following revenue rulings: Rev. Rul. 90-60, 1990-2 C.B. 3, for dispositions occurring during calendar years 1987, 1988, and 1989; Rev. Rul. 90-88, 1990-2 C.B. 7, for dispositions occurring during calendar year 1990; Rev. Rul. 91-67, 1991-2 C.B. 13, for dispositions occurring during calendar year 1991; Rev. Rul. 92-101, 1992-2 C.B. 9, for dispositions occurring during calendar year 1992; Rev. Rul. 93-83, 1993-2 C.B. 6, for dispositions occurring during calendar year 1993; Rev. Rul. 94-71, 1994-2 C.B. 4, for dispositions occurring during calendar year 1994; Rev. Rul. 95-83, 1995-2 C.B. 8, for dispositions occurring during calendar year 1995; Rev. Rul. 96-16, 1996-1 C.B. 3, for dispositions occurring during the period January through March 1996; Rev. Rul. 96-33, 1996-27 I.R.B. 4, for dispositions occurring during the period April through June 1996; Rev. Rul. 96-45, 1996-39 I.R.B. 5, for dispositions occurring during the period July through September 1996; Rev. Rul. 96-59, 1996-50 I.R.B. 4, for dispositions occurring during the period October through December 1996; and Rev. Rul. 97-16, 1997-13 I.R.B. 4, for disposi-

tions occurring during the period January through March 1997.

### DRAFTING INFORMATION

The principal author of this revenue ruling is Jack Malgeri of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Mr. Malgeri at (202) 622-3040 (not a toll-free call).

### Section 446.—General Rule for Methods of Accounting

*26 CFR 1.446-1: General rule for methods of accounting.*

### T.D. 8719

### DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1, 301 and 601

### Requirements Respecting the Adoption or Change of Accounting Method; Extensions of Time to Make Elections

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the

procedure for requesting a change in accounting method and to the standards for granting an extension of time to request a change in accounting method. The regulations provide for a longer period of time for filing an application for change in accounting method with the Commissioner. The regulations also provide that an extension of time to file an application for change in accounting method will be granted only in unusual and compelling circumstances. The regulations affect taxpayers requesting a change in method of accounting for federal income tax purposes. The text of these temporary regulations also serves as the text of REG-209837-96 and REG-105299-97, page 8.

DATES: These regulations are effective May 15, 1997.

For dates of applicability of these regulations, see §§ 1.446-1T(e)(3)(iii), 301.9100-1T(h) and 601.204T(e) of these regulations.

FOR FURTHER INFORMATION CONTACT: Cheryl L. Oseekey at (202) 622-4970 (not a toll-free number).

### SUPPLEMENTARY INFORMATION:

#### Background

This document contains amendments to the Regulations on Income Taxes (26

CFR part 1), the Regulations on Procedure and Administration (26 CFR part 301), and the Statement of Procedural Rules (26 CFR part 601) relating to the requirements for changes in method of accounting and extensions of time to make elections. Proposed and temporary regulations relating to extensions of time to make elections were published in the **Federal Register** for June 27, 1996 (61 FR 29714 and 61 FR 33365). These regulations extend the time for filing an application for change in accounting method under § 1.446-1(e)(3)(i) and amend §§ 301.9100-1T and 301.9100-3T to provide that an extension of time to file an application for change in accounting method beyond the year provided in these regulations will be granted only in unusual and compelling circumstances.

*Explanation of Provisions*

Section 446(e) requires that a taxpayer obtain the Commissioner's consent before changing a method of accounting. Sections 1.446-1(e)(3)(i) and 601.204(b) require the taxpayer to file a Form 3115, Application for Change in Accounting Method, with the Commissioner within the first 180 days of the taxable year in which the taxpayer desires to make the change. Sections 301.9100-1T and 301.9100-3T provide limited relief for extending the time to file a Form 3115 (not to exceed 90 days from the deadline for filing the Form 3115 except in unusual and compelling circumstances).

Sections 1.446-1(e)(3)(i) and 601.204(b) are amended to provide that a taxpayer must file a Form 3115 with the Commissioner during the taxable year in which the taxpayer desires to make the change in method of accounting. Taxpayers are encouraged to file the Form 3115 as early as possible during the year of change to provide the IRS adequate time to process the application prior to the original due date of the taxpayer's return.

In addition, §§ 301.9100-1T and 301.9100-3T are amended to provide that an extension of time to file a Form 3115 (i.e., beyond the taxable year) will only be granted in unusual and compelling circumstances.

These amendments are effective for Forms 3115 filed on or after May 15, 1997.

*Special Analyses*

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Sections 1.446-1(e)(3)(i) and 601.204(b) require a taxpayer to file a Form 3115, Application for Change in Accounting Method, with the Commissioner within the first 180 days of the taxable year in which the taxpayer desires to make the change. The temporary regulations in this document, §§ 1.446-1T(e)(3)(i) and 601.204T(b), merely extend the time for filing the Form 3115 and, therefore, do not contain a new collection of information. Thus, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

*Drafting Information*

The principal author of these regulations is Cheryl L. Oseekey of the Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

\* \* \* \* \*

*Adoption of Amendments to the Regulations*

Accordingly, 26 CFR parts 1, 301, and 601 are 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 1.446-1, paragraph (e)(3)(i) is amended by adding a sentence at the end of the paragraph to read as follows:

*§ 1.446-1 General rule for methods of accounting.*

\* \* \* \* \*

(e)(3) \* \* \* For any Form 3115 filed on or after May 15, 1997, see § 1.446-1T(e)(3)(i)(B).

Par. 3. Section 1.446-1T is added to read as follows:

*§ 1.446-1T General rule for methods of accounting (temporary).*

(a) through (d) [Reserved] For further guidance, see § 1.446-1(a) through (d).

(e) *Requirement respecting the adoption or change of accounting method.*

(1) and (2) [Reserved] For further guidance, see § 1.446-1 (e)(1) and (2).

(3)(i)(A) [Reserved] For further guidance, see § 1.446-1(e)(3)(i).

(B) For any Form 3115 filed on or after May 15, 1997, permission to change a taxpayer's method of accounting will not be granted unless the taxpayer agrees to the Commissioner's prescribed terms and conditions for effecting the change, including the taxable year or years in which any adjustment necessary to prevent amounts from being duplicated or omitted is to be taken into account.

(ii) and (iii) [Reserved] For further guidance, see § 1.446-1(e)(3) (ii) and (iii).

**PART 301—PROCEDURE AND ADMINISTRATION**

Par. 4. The authority citation for part 301 continues to read in part as follows:

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

Par. 5. In § 301.9100-1T, paragraph (h) is amended by adding a sentence at the end of the paragraph to read as follows:

*§ 301.9100-1T Extensions of time to make elections (temporary).*

\* \* \* \* \*

(h) \* \* \* In addition, § 301.9100-3T(c)(2)(i) is effective for any Form 3115 filed on or after May 15, 1997.

Par. 6. In § 301.9100-3T, paragraph (c)(2)(i) is revised to read as follows:

*§ 301.9100-3T Other extensions (temporary).*

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(i) Subject to the procedure described in § 1.446-1T(e)(3)(i) of this chapter (requiring the advance written consent of the Commissioner);

\* \* \* \* \*

**PART 601—STATEMENT OF PROCEDURAL RULES**

Par. 7. The authority citation for part 601 continues to read as follows:

Authority: 26 U.S.C. 301 and 552, unless otherwise noted.

Par. 8. Section 601.204, paragraph (b) is amended by adding a sentence at the end of the paragraph to read as follows:

§ 601.204 *Changes in accounting periods and in methods of accounting.*

\* \* \* \* \*

(b) \* \* \* For any Form 3115 filed on or after May 15, 1997, see § 601.204T-(b)(2).

Par. 9. Section 601.204T is added to read as follows:

§ 601.204T *Changes in accounting periods and in methods of accounting (temporary).*

(a) [Reserved] For further guidance, see § 601.204(a).

(b) *Methods of accounting.* (1) [Reserved] For further guidance, see § 601.204(b).

(2) For any Form 3115 filed on or after May 15, 1997, application for permission to change the method of accounting employed shall be made on Form 3115 and filed with the Commissioner during the taxable year in which the taxpayer desires to make the change in method of accounting. Permission to change the method of accounting will not be granted unless the taxpayer and the Commissioner agree to the terms and conditions under which the change will be effected.

(c) and (d) [Reserved] For further guidance, see § 601.204(c) and (d).

Margaret Milner Richardson,  
*Commissioner of Internal Revenue.*

Approved May 2, 1997.

Donald C. Lubick,  
*Assistant Secretary of the Treasury.*

(Filed by the Office of the Federal Register on May 14, 1997, 8:45 a.m., and published in the issue of the Federal Register for May 15, 1997, 62 F.R. 26740)

## Section 2652.—Other Definitions

26 CFR 26.2652-1: *Transferor defined; other definitions.*

### T.D. 8720

## DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 26

### Generation-Skipping Transfer Tax

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Final Regulations.

SUMMARY: This document contains final regulations relating to the generation-skipping transfer (GST) tax regulations under chapter 13 of the Internal Revenue Code (Code). This document amends the final regulations under section 2652 and is necessary to provide guidance to taxpayers so that they may comply with chapter 13 of the Code.

DATES: This regulation is effective on May 20, 1997.

For dates of applicability of these regulations, see *Effective Date* under Supplementary Information.

FOR FURTHER INFORMATION CONTACT: James F. Hogan, (202) 622-3090 (not a toll-free number),

### SUPPLEMENTARY INFORMATION:

#### *Background*

On December 27, 1995, the IRS published final regulations in the **Federal Register** (60 FR 66898 [T.D. 8644 C.B. 200]) under sections 2611, 2612, 2613, 2632, 2641, 2642, 2652, 2653, 2654, and 2663. On June 12, 1996, a notice of proposed rulemaking deleting § 26.2652-1(a)(4) and two related examples was published in the **Federal Register** (61 FR 29714 [PS-22-96, 1996-33 I.R.B. 15]). No comments responding to the notice of proposed rulemaking were received, and no public hearing was requested or held. The final regulations are adopted as proposed.

#### *Explanation of Provision*

Section 2652(a)(1) provides generally, that the term *transferor* means—(A) in the case of any property subject to the tax imposed by chapter 11, the decedent, and (B) in the case of any property subject to the tax imposed by chapter 12, the donor. An individual is treated as transferring any property with respect to which the individual is the transferor. Under § 26.2652-1(a)(2), a transfer is subject to Federal gift tax if a gift tax is imposed under section 2501(a) and is subject to Federal estate tax if the value of the property is includible in the decedent's gross estate determined under section 2031 or section 2103. Under § 26.2652-1(a)(4), the exercise of a power of appointment that is not a general power of appointment is also treated as a transfer subject to Federal estate or gift tax by the holder of the

power if the power is exercised in a manner that may postpone or suspend the vesting, absolute ownership, or power of alienation of an interest in property for a period, measured from the date of the creation of the trust, extending beyond any specified life in being at the date of creation of the trust plus a period of 21 years plus, if necessary, a reasonable period of gestation.

The purpose of the rule in § 26.2652-1(a)(4) was to impose the GST tax when it may not otherwise have applied. It was never intended to (nor could it) prevent the application of the tax pursuant to the statutory provisions that apply based on the original taxable transfer. To eliminate any uncertainty concerning the proper application of the GST tax, the regulations under section 2652(a) are clarified by eliminating § 26.2652-1(a)(4) and *Example 9* and *Example 10* in § 26.2652-1(a)(6) from the regulations.

#### *Effective Date*

These amendments apply to transfers to trusts on or after June 12, 1996.

#### *Special Analyses*

It has been determined that this Treasury Decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

#### *Drafting Information*

The principal author of this regulation is James F. Hogan, Office of the Chief Counsel, IRS. Other personnel from the IRS and Treasury Department participated in its development.

\* \* \* \* \*

#### *Amendments to the Regulations*

Accordingly, 26 CFR part 26 is amended as follows:

PART 26—GENERATION-SKIPPING TRANSFER TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1986

Paragraph 1. The authority citation for part 26 continues to read, in part, as follows:

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

Par. 2 Section 26.2652-1 is amended as follows:

1. Paragraph (a)(4) is removed and paragraphs (a)(5) and (a)(6) are redesignated as paragraphs (a)(4) and (a)(5), respectively.

2. In newly designated paragraph (a)(5), *Examples 9 and 10* are removed

and *Example 11* is redesignated as *Example 9*.

Margaret Milner Richardson,  
*Commissioner of Internal Revenue.*

Approved May 1, 1997.

Donald C. Lubick,  
*Assistant Secretary of the Treasury.*

(Filed by the Office of the Federal Register on May 19, 1997, 8:45 a.m., and published in the issue of the Federal Register for May 20, 1997, 62 F.R. 27496)

**Section 6012.—Persons Required To Make Returns of Income**

*26 CFR 1.6012-5: Composite return in lieu of specified form.*

General procedures are provided to inform those who participate in the Magnetic Media/Electronic Filing Program for Form 1040NR, of their obligations to the Internal Revenue Service, taxpayers, and other participants. See Rev. Proc. 97-28, page 9.

**Section 6061.—Signing of Returns and Other Documents**

*26 CFR 1.6061-1: Signing of returns and other documents by individuals.*

General procedures are provided to inform those who participate in the Magnetic Media/Electronic Filing Program for Form 1040NR, of their obligations to the Internal Revenue Service, taxpayers, and other participants. See Rev. Proc. 97-28, page 9.

## Part III. Administrative, Procedural, and Miscellaneous

### Notice of Proposed Rulemaking

#### Requirements Respecting the Adoption or Change of Accounting Method; Extensions of Time To Make Elections

REG-209837-96; REG-105299-97

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In T.D. 8719, page 4, the IRS is issuing temporary regulations relating to the procedure for requesting a change in accounting method and to the standards for granting an extension of time to request a change in accounting method. The regulations provide for a longer period of time for filing an application for change in accounting method with the Commissioner. The regulations also provide that an extension of time to file an application for change in accounting method will be granted only in unusual and compelling circumstances. The regulations affect taxpayers requesting a change in method of accounting for federal income tax purposes. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written comments must be received by August 13, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-209837-96 and REG-105299-97), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-209837-96 and REG-105299-97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Taxpayers may also 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](http://www.irs.ustreas.gov/prod/tax_regs/comments.html).

FOR FURTHER INFORMATION CONTACT: Cheryl L. Oseekey, (202) 622-4970 (not a toll-free number).

### SUPPLEMENTARY INFORMATION:

#### Background

Temporary regulations T.D. 8719 amend Regulations on Income Taxes (26 CFR part 1), the Regulations on Procedure and Administration (26 CFR part 301), and the Statement of Procedural Rules (26 CFR part 601) relating to the requirements for changes in method of accounting and extensions of time to make elections. Proposed and temporary regulations relating to extensions of time to make elections were published in the **Federal Register** for June 27, 1996 (61 FR 29714 and 61 FR 33365). These regulations extend the time for filing an application for change in accounting method under § 1.446-1(e)(3)(i) and amend §§ 301.9100-1T and 301.9100-3T to provide that an extension of time to file an application for change in accounting method will be granted only in unusual and compelling circumstances.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the rules provided by the regulations.

#### 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 also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Sections 1.446-1(e)(3)(i) and 601.204(b) require a taxpayer to file a Form 3115, Application for Change in Accounting Method, with the Commissioner within the first 180 days of the taxable year in which the taxpayer desires to make the change. The proposed regulations in this document merely extend the time for filing the Form 3115 and, therefore, do not contain a new collection of information. Thus, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. 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 Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS (a signed original and eight (8) copies if the comments are written). All comments will be available for public inspection and copy. A public hearing may be scheduled if requested in writing by a person that timely submits 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 author of these regulations is Cheryl L. Oseekey of the Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

\* \* \* \* \*

### Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1, 301, and 601 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 1.446-1 is amended by revising paragraph (e)(3)(i) to read as follows:

#### § 1.446-1 General rule for methods of accounting.

[The text of proposed paragraph (e)(3)(i) is the same as the text in § 1.446-1T(e)(3)(i) published in T.D. 8719.]

#### 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. In § 301.9100-1, paragraph (h) is added to read as follows:

#### § 301.9100-1 Extensions of time to make elections.

[The text of proposed paragraph (h) is the same as the text of § 301.9100-

1T(h) published June 27, 1996, at 61 FR 33368, and amended in T.D. 8719.]

Par. 5. In proposed § 301.9100-3, published June 27, 1996, at 61 FR 33409, paragraph (c)(2)(i) is revised to read as follows:

§ 301.9100-3 *Other extensions.*

[The text of proposed paragraph (c)(2)(i) is the same as the text in § 301.9100-3T(c)(2)(i) published in T.D. 8719.]

**PART 601—STATEMENT OF PROCEDURAL RULES**

Par. 6. The authority citation for part 601 continues to read as follows:

Authority: 26 U.S.C. 301 and 552.

\* \* \*

Par. 7. In § 601.204, paragraph (b) is revised to read as follows:

§ 601.204 *Changes in accounting periods and in methods of accounting.*

[The text of proposed paragraph (b) is the same as the text in § 601.204T(b) published in T.D. 8719.]

Margaret Milner Richardson,  
*Commissioner of Internal Revenue.*

(Filed by the Office of the Federal Register on May 14, 1997, 8:45 a.m., and published in the issue of the Federal Register for May 15, 1997, 62 F.R. 26755)

26 CFR 601.602 : *Tax forms and instructions.*  
(Also Part I, §§ 6012, 6061; 1.6012-5, 1.6061-1.)

**Rev. Proc. 97-28**

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**SECTION 1. PURPOSE**

This revenue procedure informs those who participate in the 1997 Magnetic Media/Electronic Filing Program for Form 1040NR, U.S. Nonresident Alien Income Tax Return (“1040NR Program”), of their obligations to the Internal Revenue Service, taxpayers, and other participants. This revenue procedure updates Rev. Proc. 96-35, 1996-1 C.B. 721.

**SECTION 2. BACKGROUND AND CHANGES**

.01 Section 1.6012-5 of the Income Tax Regulations provides that the Commissioner may authorize the use, at the option of a person required to make a return, of a composite return in lieu of any form specified in 26 CFR Part 1 (Income Tax), subject to the conditions, limitations, and special rules governing the preparation, execution, filing, and correction thereof as the Commissioner may deem appropriate.

.02 For purposes of this revenue procedure, a magnetically or electronically filed Form 1040NR is a composite return consisting of data submitted on magnetic tape, floppy disk, or via modem (the “data portion”), and certain paper documents (the “paper portion”). The paper portion of the return consists of a Form 8453-NR, U.S. Nonresident Alien Income Tax Declaration for Magnetic Media Filing, and other paper documents that cannot be filed magnetically or electronically. Form 8453-NR must be received by the Service before any composite return is complete (see section 5.07 of this revenue procedure). A composite return must contain the same information that a return filed

completely on paper contains. See section 7 of this revenue procedure for procedures for completing Form 8453-NR.

.03 The Magnetic Media Project Office (“Project Office”, see section 17 of this revenue procedure for the address and telephone numbers) will periodically issue a list of the forms and schedules that can be magnetically or electronically filed.

.04 A Form 1040NR with a zero balance, balance due, or refund due may be magnetically or electronically filed.

.05 A Form 1040NR cannot be filed magnetically or electronically after December 5, 1997, notwithstanding the fact that the taxpayer has been granted an extension to file beyond that date. Form 2688, Application for Additional Extension of Time To File U.S. Individual Income Tax Return, cannot be filed magnetically or electronically.

.06 An amended tax return cannot be filed magnetically or electronically. A taxpayer must file an amended tax return on paper in accordance with the instructions for Form 1040X, Amended U.S. Individual Income Tax Return.

.07 Upon request, the Project Office will provide technical information (file specifications, record layouts, and testing procedures) for filing Form 1040NR magnetically or electronically.

.08 This revenue procedure updates Rev. Proc. 96-35, which applied to the 1040NR Program for the 1996 filing season. The updates include changes in the 1040NR Program for the 1997 filing season, clarifications of prior 1040NR Program statements, and additional guidance derived from other Service documents that relate to the 1040NR Program. Some of the updates are:

(1) a Service Bureau may submit returns directly to the Service (section 3.02);

(2) in certain circumstances, a letter may be submitted in lieu of a revised Form MAR-8980 (section 4.03);

(3) a nonparticipating 1040NR Filer may be dropped from the 1040NR Program (section 4.06);

(4) a 1040NR Filer may not base a fee for the magnetic or electronic transmission of a Form 1040NR using any amount from the return (section 5.04);

(5) the time period for a 1040NR Filer to notify the Service that it is discontinuing its participation in the 1040NR Program is extended to 30 days (section 5.06);

(6) the duties of a 1040NR Return Originator are clarified (sections 5.11, 5.12, 5.13, and 5.14);

(7) the duties of a 1040NR Transmitter are clarified (section 5.17);

(8) a 1040NR Filer, financial institution, or any other entity associated with the magnetic or electronic filing of a return must not put its address on Form 8453–NR or anywhere in the data portion of the return (section 7.01);

(9) procedures for corrections to Form 8453–NR are clarified (section 7.02);

(10) a 1040NR Return Originator must advise taxpayers that refund status information is available on TeleTax (section 8.05);

(11) information a 1040NR Filer must provide regarding a taxpayer's address of record is clarified (section 8.06);

(12) information a 1040NR Return Originator must provide regarding direct deposit is clarified (section 9.04);

(13) the two-year periods for denial and suspension are modified and clarified (sections 12.07 and 12.08);

(14) the time and method to respond to a proposed letter of denial and a denial letter are clarified (sections 13.03 and 13.06); and

(15) the time and method to respond to a proposed suspension letter and a suspension letter are clarified (sections 14.02 and 14.05).

### **SECTION 3. 1040NR PROGRAM PARTICIPANTS—DEFINITIONS**

.01 After acceptance into the 1040NR Program, as described in section 4 of this revenue procedure, a participant is referred to as a "1040NR Filer."

.02 A 1040NR Filer is categorized as follows:

(1) **1040NR RETURN ORIGINATOR.** A "1040NR Return Originator" is: (a) a "1040NR Return Preparer" who prepares tax returns, including Forms 8453–NR, for taxpayers who intend to have their returns magnetically or electronically filed; and/or (b) a "1040NR Return Collector" who accepts completed tax returns, including Forms 8453–NR, from taxpayers who intend to have their returns magnetically or electronically filed.

(2) **SERVICE BUREAU.** A "Service Bureau" receives tax return information on any media from a 1040NR Return Originator, formats the return information, and either (a) sends back the return information to the 1040NR

Return Originator, (b) forwards the return information to a Transmitter, or (c) submits the composite tax return directly to the Service.

(3) **SOFTWARE DEVELOPER.** A "Software Developer" develops software for the purposes of (a) formatting returns according to the Service's magnetic or electronic return filing specifications; and/or (b) filing returns magnetically or electronically directly with the Service. A Software Developer may also sell its software.

(4) **TRANSMITTER.** A "Transmitter" accepts a 1040NR composite tax return from a 1040NR Return Originator or Service Bureau and submits the return directly to the Service.

.03 The 1040NR Filer categories are not mutually exclusive. For example, a 1040NR Return Originator can, at the same time, be considered a Transmitter, Software Developer, or Service Bureau depending on the function(s) performed.

### **SECTION 4. ACCEPTANCE INTO THE 1040NR PROGRAM**

.01 Except as provided in sections 4.02 and 4.03 of this revenue procedure, a 1040NR Filer that has actively participated in the 1996 1040NR Program does not have to reapply to participate in the 1997 1040NR Program. (See section 4.06 of this revenue procedure for a definition of active participation.) However, a 1040NR Filer that intends to function as a Transmitter or a Software Developer in the 1997 1040NR Program must first successfully complete the testing described in section 4.04 of this revenue procedure. In addition, section 4.05 of this revenue procedure provides for the Service's issuance of credentials necessary for participation in the 1997 1040NR Program.

.02 Applicants and 1040NR Filers must file a new Form MAR–8980, Application for Electronic/Magnetic Media Filing of Form 1040NR, with the Project Office if:

(1) the applicant has never actively participated in the 1040NR Program;

(2) the applicant has previously been denied participation in the 1040NR Program; or

(3) the applicant has been suspended from the 1040NR Program. Applications described in this section 4.02 may be submitted at any time during the year.

.03 To participate in the 1997 1040NR Program, a 1040NR Filer in the 1996 1040NR Program must submit to

the Project Office either a revised Form MAR–8980, or a letter containing the same information contained in the revised Form MAR–8980, if there is any change to the following information:

(1) the Firm name or Doing Business As (DBA) name;

(2) the business or mailing address;

(3) the contact person's name or telephone number; or

(4) the 1040NR Filer category. Revised applications described in this section 4.03 must be submitted within 30 days of the change(s) reflected on the revised Form MAR–8980 or in the letter.

.04 A 1040NR Filer may not submit tax returns under the 1040NR Program until 30 days after it has successfully completed the necessary testing administered by the Project Office.

.05 The Service will issue credentials to eligible applicants for the 1997 1040NR Program, as well as 1040NR Filers that do not have to reapply pursuant to section 4.01, 4.02, or 4.03 of this revenue procedure (provided they have first satisfactorily completed the testing described in section 4.04 of this revenue procedure if they intend to function as a Transmitter or Software Developer). No one may participate in the 1040NR Program for the 1997 filing season without the following credentials:

(1) a letter of acceptance into the 1040NR Program for the 1997 filing season; and

(2) a Magnetic Tape 1040NR Filer Identification Number (MTFIN).

.06 A 1040NR Filer will not be considered to have actively participated in the 1996 1040NR Program unless the Service received and accepted magnetically or electronically filed returns containing the 1040NR Filer's MTFIN during the 1996 filing season. The Service will notify an inactive 1040NR Filer that it may be dropped from the 1040NR Filing Program and explain what steps the 1040NR Filer needs to take to participate in the program.

.07 The following reasons may result in rejection of an application to participate in the 1040NR Program (this list is not all-inclusive):

(1) conviction of any criminal offense under the revenue laws of the United States, or of any offense involving dishonesty or breach of trust;

(2) failure to timely and accurately file tax returns, including returns indicating that no tax is due;

(3) failure to timely pay any tax liabilities;

- (4) assessment of tax penalties;
- (5) suspension/disbarment from practice before the Service;
- (6) other facts or conduct of a disreputable nature that would reflect adversely on the 1040NR Program;
- (7) misrepresentation on an application;
- (8) suspension or rejection from the 1040NR Program in a prior year;
- (9) unethical practices in return preparation;
- (10) stockpiling returns prior to official acceptance into the 1040NR Program (see section 5.10 of this revenue procedure);
- (11) knowingly and directly or indirectly employing or accepting assistance from any firm, organization, or individual that is prohibited from applying to participate in the 1040NR Program (see section 12.07 of this revenue procedure) or that is suspended from participating in that Program (see section 12.08 of this revenue procedure). This includes any individual whose actions resulted in the rejection or suspension of a corporation or a partnership from the 1040NR Program; or
- (12) knowingly and directly or indirectly accepting employment as an associate, correspondent, or as a sub-agent from, or sharing fees with, any firm, organization, or individual that is prohibited from applying to participate in the 1040NR Program (see section 12.07 of this revenue procedure) or that is suspended from participating in that Program (see section 12.08 of this revenue procedure). This includes any individual whose actions resulted in the rejection or suspension of a corporation or a partnership from the 1040NR Program.

## **SECTION 5. RESPONSIBILITIES OF A 1040NR FILER**

.01 To ensure that complete returns are accurately and efficiently filed, a 1040NR Filer must comply with all publications and notices of the Service. Currently, these publications and notices include:

- (1) Procedures for Magnetic Media Filing of U.S. Nonresident Alien Income Tax Returns, Form 1040NR (available from the Project Office);
- (2) File Specifications and Record Layouts for Magnetic Media Filing of U.S. Nonresident Alien Income Tax Returns, Form 1040NR (available from the Project Office); and

(3) Postings to the Electronic Filing System Bulletin Board (EFS Bulletin Board).

.02 A 1040NR Filer must maintain a high degree of integrity, compliance, and accuracy.

.03 A 1040NR Filer may accept returns for magnetic or electronic filing only from a taxpayer or from a 1040NR Return Originator.

.04 If a 1040NR Filer charges a fee for the submission of a magnetically or electronically filed tax return, the fee may not be based on a percentage of the refund amount or any other amount from the tax return. A 1040NR Filer may not charge a separate fee for Direct Deposit. See section 9 of this revenue procedure for a discussion of Direct Deposit.

.05 A 1040NR Filer must submit a revised Form MAR-8980 to the Project Office within 30 days of when any of the conditions or changes described in section 4.03 of this revenue procedure occur.

.06 A 1040NR Filer must notify the Project Office within 30 days of discontinuing its participation in the 1040NR Program. This does not preclude reapplication in the future.

.07 A 1040NR Filer must ensure that the composite return is filed on or before the due date of the tax return. A composite return is not considered filed until the data portion of the tax return is acknowledged by the Service as accepted for processing and a completed and signed Form 8453-NR is received by the Service. However, if the data portion of a return is successfully transmitted on or shortly before the due date (see section 5.08 of this revenue procedure) and the 1040NR Filer complies with section 7.01 of this revenue procedure, the return will be deemed timely filed. If the data portion of a return is transmitted on or shortly before the due date but is ultimately rejected, the return will be deemed timely filed if the 1040NR Filer and the taxpayer comply with section 5.14 of this revenue procedure. In the case of a balance due return, see section 10 of this revenue procedure for instructions on how to make a timely payment of tax.

.08 A 1040NR Filer must ensure that the return for any individual is received by the Service on or before:

- (1) April 15 if the individual was an employee and received wages subject to U.S. federal income tax withholding; or

(2) June 16 if the individual did not receive such wages. However, section 2.05 of this revenue procedure provides that a composite return cannot be filed after December 5, 1997.

.09 A 1040NR Filer must ensure against the unauthorized use of its MTFIN. A 1040NR Filer must not transfer its MTFIN by sale, merger, loan, gift, or otherwise to another entity.

.10 A 1040NR Filer is responsible for ensuring that stockpiling does not occur. Prior to official acceptance of the 1040NR Filer into the 1040NR Program, stockpiling means collecting returns from taxpayers. After official acceptance, stockpiling means:

- (1) in the case of a 1040NR Return Originator, waiting for more than three calendar days after receiving the necessary information to submit a return to a Transmitter, or
- (2) in the case of a Transmitter, waiting for more than ten calendar days after receiving the necessary information to submit a composite return to the Service.

.11 A 1040NR Filer that functions as a Return Originator must:

- (1) comply with the procedures for completing Form 8453-NR described in section 7 of this revenue procedure;
- (2) comply with the procedures described in section 10 of this revenue procedure for handling a balance due return;
- (3) furnish the taxpayer with a copy of the signed Form 8453-NR and, in the case of a prepared or corrected return, a copy of the paper portions of the return;
- (4) while returns are being filed, retain and, if requested, make available to the Service the following material at the business address from which a return was accepted for magnetic or electronic filing:

(a) a copy of the signed Form 8453-NR, paper copies of Forms W-2, Wage and Tax Statement, W-2G, Certain Gambling Winnings, 1099-R, Distributions From Pensions, Annuities, Retirement or Profit Sharing Plans, IRAs, Insurance Contracts, etc., and the paper portion of the taxpayer's return;

(b) a complete copy of the data portion of the taxpayer's return (may be retained on computer media) that can be readily and accurately converted into magnetic or electronic data that the Service can process; and

(c) the acknowledgement file received from the Service or from a Transmitter;



(5) retain until the end of the calendar year in which a return was filed and, if requested, make available to the Service the materials described in section 5.11(4) of this revenue procedure, at the business address from which a return was accepted for magnetic or electronic filing or from the contact person named on Form MAR-8980.

.12 A 1040NR Return Originator who is the paid preparer of a magnetically or electronically filed Form 1040NR must also retain for the prescribed amount of time the materials described in § 1.6107-1(b) that are required to be kept by an income tax return preparer.

.13 A 1040NR Return Originator must identify the paid preparer (if any) in the appropriate field of the data portion of the return, in addition to ensuring that the paid preparer signed Form 8453-NR. If Form 8453-NR is not signed by the paid preparer, the 1040NR Return Originator must attach a copy of the Form 1040NR originally signed by the paid preparer. This copy must be marked "COPY-DO NOT PROCESS" to prevent duplicate filings.

.14 If the data portion of a taxpayer's return is acknowledged as rejected by the Service, and the reason for the rejection cannot be rectified by making nonsubstantive changes as described in section 6.02(3) of this revenue procedure, the 1040NR Return Originator, within 24 hours of receiving the rejection, must take all reasonable steps to tell the taxpayer that the taxpayer's return has not been filed. If the taxpayer chooses to have the data portion of the return resubmitted magnetically or electronically, and the 1040NR Return Originator successfully works with the Project Office to correct the problems causing the data portion of the return to be rejected, the return will be accepted as timely filed. A new Form 8453-NR may be required (see section 7 of this revenue procedure). However, even when no new Form 8453-NR is required, the Transmitter must submit a photocopy of the original Form 8453-NR with the rejected file or return and mark the photocopy "Retransmitted." If the Project Office determines that the data portion of a return cannot be accepted for processing or the taxpayer chooses not to have the rejected data portion of the return resubmitted magnetically or electronically, the taxpayer must file a paper return by the later of:

(1) the due date (with regard to any extensions of time to file) of the return; or

(2) within ten calendar days after the Service's acknowledgement that the return is rejected or notification that the return cannot be retransmitted with an explanation of why the return is being filed after the due date.

A paper return filed in good faith under any of these circumstances will be accepted as timely filed.

.15 A 1040NR Return Originator must use the taxpayer's address in the data portion of the return. In addition, a 1040NR Return Originator must not put its address as the taxpayer's address in the data portion of the return.

.16 A 1040NR Filer that functions as a Service Bureau must:

(1) deliver all data portions of composite returns to a Transmitter or return them to the 1040NR Return Originator who gave the data portions of the returns to the Service Bureau within three calendar days of receipt;

(2) retrieve the acknowledgement file from the Transmitter within one calendar day of receipt by the Transmitter;

(3) initiate the communication of the acknowledgement file to the 1040NR Return Originator (whether related or not) within one work day of retrieving the acknowledgement file;

(4) if the Service Bureau processes Forms 8453-NR, send back to the 1040NR Return Originator any return and Form 8453-NR that needs correction, unless the correction is described in section 7.02(1) of this revenue procedure;

(5) accept tax return information only from 1040NR Filers;

(6) include its MTFIN and the 1040NR Return Originator's MTFIN with all return information the Service Bureau sends back to the 1040NR Return Originator, forwards to a Transmitter, or submits to the Service;

(7) retain each acknowledgement file received from a Transmitter until the end of the calendar year in which the composite return was filed;

(8) if requested, serve as a contact point between its client 1040NR Return Originator and the Service; and

(9) if requested, provide the Service with a list of each client 1040NR Return Originator.

.17 A 1040NR Filer that functions as a Transmitter must:

(1) transmit all data portions of composite returns within ten calendar days of receipt;

(2) match the acknowledgement file to the original transmission file and initiate the communication of the acknowledgement file to the 1040NR Return Originator or the Service Bureau (whether or not the 1040NR Return Originator or the Service Bureau are related to the Transmitter) within five calendar days after receipt of the acknowledgement file from the Service;

(3) retain an acknowledgement file received from the Service until the end of the calendar year in which the composite return was filed;

(4) immediately contact the Project Office for further instructions if an acknowledgement of acceptance for processing has not been received by the Transmitter within 14 calendar days of transmission, or if a Transmitter receives an acknowledgement for a return that was not transmitted on the designated transmission;

(5) promptly correct any transmission error that causes a data portion of a composite return to be rejected;

(6) contact the Project Office for assistance if a data portion of a composite return has been rejected after three transmission attempts; and

(7) ensure the security of all transmitted data.

.18 A Transmitter that provides transmission services to another 1040NR Filer must, in addition to the items covered in section 5.17 of this revenue procedure, also:

(1) accept composite returns for transmission to the Service only from an accepted 1040NR Filer;

(2) provide each client with the acknowledgement file for the data portion of the composite return within five calendar days after receipt of the acknowledgement file from the Service; and

(3) use its assigned MTFIN when filing returns.

.19 A 1040NR Filer that functions as a Software Developer must:

(1) promptly correct any software error that causes a data portion of a composite return to be rejected;

(2) promptly distribute any software correction made to its software packages to all 1040NR Filers utilizing these packages; and

(3) not incorporate into its software a Service-assigned production password.

.20 In addition to the specific responsibilities described in this section, a

1040NR Filer must meet all the requirements in this revenue procedure to keep the privilege of participating in the 1040NR Program.

## SECTION 6. PENALTIES

### .01 Penalties for Disclosure or Use of Information.

(1) A 1040NR Filer, except a Software Developer, is a tax return preparer (“Preparer”) under the definition of § 301.7216-1(b) of the Regulations on Procedure and Administration. A Preparer is subject to a criminal penalty for disclosure or use of tax return information, as described in § 301.7216-1(a). In general, that regulation provides that any preparer who discloses or uses any tax return information for a purpose other than preparing, assisting in preparing, or obtaining or providing services in connection with the preparation of a tax return is guilty of a misdemeanor. In addition, § 6713 of the Internal Revenue Code provides for civil penalties that may be assessed against a preparer who makes an unauthorized disclosure or use of tax return information.

(2) Under § 301.7216-2(h), disclosure of tax return information among accepted 1040NR Filers for the purpose of preparing a return is permissible. For example, it is permissible for a 1040NR Return Originator to pass on tax return information to a Service Bureau and/or a Transmitter for the purpose of having the data portion of a composite return formatted and filed with the Service. However, if the tax return information is disclosed or used in any other way, a Service Bureau and or a Transmitter may be guilty of a misdemeanor as described in section 6.01(1) of this revenue procedure.

### .02 Other Preparer Penalties.

(1) Preparer penalties may be asserted against an individual or firm who meets the definition of an income tax return preparer under §§ 7701(a)(36) and 301.7701-15. Examples of preparer penalties that may be asserted under appropriate circumstances include, but are not limited to, those set forth in §§ 6694, 6695, and 6713.

(2) Under § 301.7701-15(d), 1040NR Return Collectors, Service Bureaus, Software Developers, and Transmitters are not income tax return preparers for the purpose of assessing most preparer penalties as long as their services are limited to “typing, reproduction, or

other mechanical assistance in the preparation of a return or claim for refund.”

(3) If a 1040NR Return Collector, Service Bureau, Software Developer, or Transmitter alters the return information in a nonsubstantive way, this alteration will be considered to come under the “mechanical assistance” exception described in § 301.7701-15(d)(1). A nonsubstantive change is a correction or change limited to a transposition error, misplaced entry, spelling error, or arithmetic correction that falls within one of the following tolerances:

(a) the Total Tax amount, Total Payments amount, Refund amount, or the Amount You Owe shown on Form 8453-NR differs from the corresponding amount on the data portion of the composite return by no more than \$7;

(b) the Total Effectively Connected Income amount shown on Form 8453-NR differs from the corresponding amount on the data portion of the composite return by no more than \$25; or

(c) dropping cents and rounding to whole dollars.

(4) If a 1040NR Return Collector, Service Bureau, or Transmitter alters the return information in a substantive way, rather than having the taxpayer alter the return, the 1040NR Return Collector, Service Bureau, or Transmitter will be considered to be an income tax return preparer for purposes of § 7701(a)(36).

(5) If a 1040NR Return Collector, Service Bureau, Transmitter, or the product of a Software Developer, goes beyond mechanical assistance, any of these parties may be held liable for income tax return preparer penalties. Rev. Rul. 85-189, 1985-2 C.B. 341, describes a situation where a Software Developer was determined to be an income tax return preparer and subject to certain preparer penalties.

.03 In addition to the above specified provisions, the Service reserves the right to assert all appropriate civil and criminal penalties, including preparer, nonpreparer, and disclosure penalties, against a 1040NR Filer as warranted under the circumstances.

## SECTION 7. FORM 8453-NR, U.S. NONRESIDENT ALIEN INCOME TAX DECLARATION FOR MAGNETIC MEDIA FILING

.01 Procedures for Completing Form 8453-NR.

(1) Form 8453-NR must be completed in accordance with the instructions for Form 8453-NR.

(2) The taxpayer’s name, address, taxpayer identification number, tax return information, and direct deposit of refund information in the data portion of the composite return must be identical to the information on the Form 8453-NR that the taxpayer signed and provided for submission to the Service.

(3) A 1040NR Filer, a financial institution, or any other entity associated with the magnetic or electronic filing of a taxpayer’s return must not put its address on Form 8453-NR or anywhere in the data portion of a return.

(4) After the composite return has been prepared and before the return is submitted, the taxpayer must verify the information on the data portion of the composite return and on Form 8453-NR, and must sign Form 8453-NR.

(5) A 1040NR Filer must submit a Form 8453-NR to the Project Office with each magnetically or electronically filed return. A single Form 8453-NR (inscribed with the language “See attached Multiple Return Information Listing”) may be used for a multiple return filing if the person who signs Form 8453-NR has authorization, either by a specific power of attorney or as a responsible representative or agent under § 1.6012-3(b), to sign each of the returns included in the multiple return filing. A person who makes a multiple return filing must attach to Form 8453-NR an information page(s) titled “Form 8453-NR for Multiple Returns—Tax Return Information Listing” at the top of the page(s). Below the title, the multiple return 1040NR Filer must provide his or her name and address. The next item on the page(s) must be a list that includes every taxpayer’s name control, taxpayer identification number, and the information shown on lines one through five on Form 8453-NR, for each return included in a multiple return filing.

(6) If a 1040NR Filer functions as a 1040NR Return Originator, the 1040NR Filer must sign the 1040NR Return Originator’s Declaration on Form 8453-NR.

(7) If the 1040NR Filer is also the paid preparer, the 1040NR Filer must check the “Paid Preparer” box and sign the 1040NR Return Originator Declaration on Form 8453-NR.

.02 Corrections to Form 8453-NR.

(1) A new form 8453-NR is not required for a nonsubstantive change. A

nonsubstantive change is limited to a correction that does not exceed the tolerances, described in section 7.02(2) of this revenue procedure for arithmetic errors, a transposition error, a misplaced entry, or a spelling error. The incorrect nonsubstantive information must be neatly lined through on the Form 8453-NR and the correct data entered next to the lined through entry. Also the individual making the correction must initial the correction.

(2) The tolerances for section 7.02(1) of this revenue procedure are:

(a) the "Total Effectively Connected Income" (Form 8453-NR, line 1) differs from the amount on the data portion of the composite return by more than \$25; or

(b) the "Total Tax" (Form 8453-NR, line 2), the "Refund" (Form 8453-NR, line 4), or the "Amount Owed" (Form 8453-NR, line 5) differs from the amount on the data portion of the composite return by more than \$7.

(3) If the 1040NR Return Originator makes a substantive change to the data portion of the return after Form 8453-NR has been signed by the taxpayer, but before it is transmitted to the Service, the 1040NR Return Originator must have all the necessary parties described above sign a new Form 8453-NR that reflects the corrections before the return is transmitted.

(4) Dropping cents and rounding to whole dollars does not constitute a substantive change or alteration to the return unless the amount differs by more than the above tolerances. All rounding should be accomplished in accordance with the instructions in the Form 1040NR tax package.

.03 If the Service determines that a Form 8453-NR is missing, the 1040NR Return Originator must provide the Service with a replacement. A 1040NR Return Originator must also provide a copy of the Form(s) W-2, W-2G, 1099R, and all other attachments to the Form 8453-NR.

.04 If a substitute Form 8453-NR is used, it must be approved by the Service prior to use. See Rev. Proc. 96-48, 1996-39 I.R.B. 10.

## **SECTION 8. INFORMATION A 1040NR FILER MUST PROVIDE TO THE TAXPAYER**

.01 The 1040NR Return Originator must furnish the taxpayer with a complete paper copy of the taxpayer's return. A complete copy of the taxpayer's

return includes: (1) Form 8453-NR and other paper documents that cannot be magnetically or electronically transmitted, and (2) a printout of the data portion of the composite return. See section 2.02 of this revenue procedure. The data portion of the composite return can be contained on a replica of an official form or on an unofficial form. However, on an unofficial form, data entries must be referenced to the line numbers on an official form.

.02 The 1040NR Return Originator must advise the taxpayer to retain a complete copy of the return and any supporting material.

.03 The 1040NR Return Originator must advise the taxpayer that an amended return, if needed, must be filed as a paper return and mailed to the Philadelphia Service Center.

.04 The 1040NR Return Originator must, upon request, provide the taxpayer with the date the data portion of the taxpayer's composite return was acknowledged as accepted for processing by the Service.

.05 A 1040NR Return Originator must advise taxpayers that they can call the local IRS TeleTax number to inquire about the status of their tax refund. The 1040NR Return Originator should also advise taxpayers to wait at least three weeks from the acceptance date of the data portion of the composite return before calling the TeleTax number.

.06 If a taxpayer chooses to use an address other than his or her home address on the return, the 1040NR Return Originator must inform the taxpayer that the address on the data portion of the composite return, once processed by the Service, will be used to update the taxpayer's address of record. The Internal Revenue Service uses the taxpayer's address of record for various notices that are required to be sent to a taxpayer's "last known address" under the Internal Revenue Code and for refunds of overpayments of tax (unless otherwise specifically directed by the taxpayer, such as by Direct Deposit).

## **SECTION 9. DIRECT DEPOSIT OF REFUNDS**

.01 The Service will ordinarily process a request for Direct Deposit but reserves the right to issue a paper refund check.

.02 The Service does not guarantee a specific date by which a refund will be directly deposited into the taxpayer's financial institution account. The taxpayer's

account must be with a financial institution located in the United States.

.03 Neither the Service nor the Financial Management Service (FMS) is responsible for the misapplication of a Direct Deposit that is caused by error, negligence, or malfeasance on the part of the taxpayer, 1040NR Filer, financial institution, or any of their agents.

.04 A 1040NR Return Originator must:

(1) advise taxpayers of the option to receive their refund by paper check or direct deposit;

(2) not charge a separate fee for Direct Deposit;

(3) accept any Direct Deposit election to any eligible financial institution designated by the taxpayer;

(4) ensure that the taxpayer is eligible to choose Direct Deposit;

(5) verify that the Direct Deposit information requested on Part II of Form 8453-NR was entered correctly and that the information entered is the information transmitted on the data portion of the composite return;

(6) caution the taxpayer that once a data portion of a composite return has been accepted for processing by the Service:

(a) the Direct Deposit election cannot be rescinded;

(b) the Routing Transit Number (RTN) of the financial institution cannot be changed; and

(c) the taxpayer's account number cannot be changed; and

(7) advise the taxpayer that refund information is available by calling the IRS TeleTax number. See section 8.05 of this revenue procedure.

## **SECTION 10. BALANCE DUE RETURNS**

.01 A magnetically or electronically filed balance due return is submitted to the Philadelphia Service Center in the same manner that a refund or zero balance return is submitted. A balance due return is not complete unless and until the Service receives a Form 8453-NR completed and signed by the taxpayer.

.02 A taxpayer who magnetically or electronically files a balance due return must make a full and timely payment of any tax that is due. Failure to make full payment of any tax that is due on or before April 15, 1997 (for individuals who were employees and received wages subject to U.S. federal income tax withholding), or June 16, 1997 (for

individuals who were not employees receiving wages subject to U.S. federal income tax withholding), will result in the imposition of interest and may result in the imposition of penalties.

## **SECTION 11. ADVERTISING STANDARDS FOR 1040NR FILERS AND FINANCIAL INSTITUTIONS**

.01 A 1040NR Filer must comply with the advertising and solicitation provisions of 31 C.F.R. 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, FMS, or the Treasury Department. Any claims concerning faster refunds by virtue of magnetically or electronically filing returns must be consistent with the language in official Service publications.

.02 A 1040NR Filer must adhere to all relevant federal, state, and local consumer protection laws that relate to advertising and soliciting.

.03 A 1040NR Filer must not use the Service's name, "Internal Revenue Service," or "IRS" within a firm's name.

.04 A 1040NR Filer must not use improper or misleading advertising in relation to the 1040NR Program (including the time frames for refunds).

.05 Use of Direct Deposit name and logo.

(1) The name "Direct Deposit" will be used with initial capital letters or all capital letters.

(2) The logo/graphic for Direct Deposit will be used whenever feasible in advertising copy.

(3) The color or size of the Direct Deposit logo/graphic may be changed when used in advertising pieces.

.06 Advertising materials must not carry the FMS, IRS, or other Treasury seals.

.07 Advertising for a cooperative 1040NR return project (public/private sector) must clearly state the names of all cooperating parties.

.08 If a 1040NR Filer uses radio or television broadcasting to advertise, the broadcast must be pre-recorded. The 1040NR Filer must keep a copy of the pre-recorded advertisement for a period of at least 36 months from the date of the last transmission or use.

.09 If a 1040NR Filer uses direct mail or fax communications to advertise, the 1040NR Filer must retain a copy of the actual mailing or fax, along with a list or other description of the firms, organizations or individuals 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.

.10 Acceptance to participate in the 1040NR Program does not imply endorsement by the Service or FMS of the software or quality of services provided.

## **SECTION 12. MONITORING AND SUSPENSION OF A 1040NR FILER**

.01 The Service will monitor a 1040NR Filer for conformity with this revenue procedure. The Service can immediately suspend, without notice, a 1040NR Filer from the 1040NR Program. However, in most circumstances, a suspension from participation in the 1040NR Program is effective as of the date of the letter informing the 1040NR Filer of the suspension. Before suspending a 1040NR Filer, the Service may issue a warning letter that describes specific corrective action for deviations from this revenue procedure.

.02 The Service will monitor the timely receipt of Forms 8453-NR, as well as their overall legibility.

.03 The Service will monitor the quality of the 1040NR Filer's submissions throughout the filing season. The Service will also monitor data portions of composite returns and tabulate rejections, errors, and other defects. If quality deteriorates, the 1040NR Filer may receive a warning from the Service.

.04 The Service will monitor complaints about a 1040NR Filer and issue a warning or suspension letter as appropriate.

.05 The Service reserves the right to suspend the magnetic or electronic filing privilege of any 1040NR Filer that violates any provision of this revenue procedure. Generally, the Service will advise a suspended 1040NR Filer concerning the requirements for reacceptance into the 1040NR Program. The following reasons may lead to a warning letter and/or suspension of a 1040NR Filer from the 1040NR Program (this list is not all-inclusive):

(1) the reasons listed in section 4.07 of this revenue procedure;

(2) deterioration in the format of individual submissions;

(3) unacceptable cumulative error or rejection rate;

(4) untimely received, illegible, incomplete, missing, or unapproved substitute Forms 8453-NR;

(5) stockpiling returns at any time while participating in the 1040NR Program;

(6) failure on the part of a Transmitter to initiate communication of the acknowledgement files to clients within five calendar days of receipt of the acknowledgement files from the Service;

(7) significant complaints about a 1040NR Filer's performance in the 1040NR Program;

(8) failure on the part of a 1040NR Filer to ensure that no other entity uses its assigned MTFIN;

(9) having more than one MTFIN for the same business entity at the same location (the business entity is generally the entity that reports on its return the income derived from magnetic or electronic filing), unless the Service has issued more than one MTFIN to a business entity;

(10) failure on the part of a 1040NR Filer to cooperate with the Service's efforts to monitor 1040NR Filers and investigate filing abuse;

(11) failure on the part of a 1040NR Filer to properly use the standard/non-standard W-2 indicator;

(12) failure on the part of a Service Bureau or a Transmitter to use its assigned MTFIN when filing returns;

(13) failure on the part of the Transmitter to include a Service Bureau's MTFIN in the transmission of a return submitted by a Service Bureau;

(14) failure on the part of a Service Bureau or a Transmitter to include the 1040NR Return Originator's MTFIN as part of a return that the 1040NR Return Originator submits to the Service Bureau or the Transmitter;

(15) violation of the advertising standards described in section 11 of this revenue procedure;

(16) failure to maintain and make available records as described in sections 5.11(3) and (4) of this revenue procedure;

(17) accepting a tax return for magnetic or electronic filing either directly or indirectly from a firm, organization, or individual (other than the taxpayer who is submitting his or her return) that is not in the 1040NR Program;

(18) submitting information on the data portion of the composite return that is not identical to the information on the Form 8453-NR;

(19) failure to timely pay any applicable fees, as implemented by subsequent guidance; or

(20) failure to timely submit a revised Form MAR-8980 notifying the Service of changes described in section 4.02 or 4.03 of this revenue procedure.

.06 The Service may list in the Internal Revenue Bulletin, district office listings, district office newsletters, on the EFS Bulletin Board, or in other appropriate publications, the name of any entity that is suspended from the 1040NR Program and the effective date of that suspension.

.07 If an application for participation in the 1040NR Program is denied, the applicant is ineligible to submit a new application for two years from the application date of the denied application.

.08 If a participant is suspended from participating in the 1040NR Program, the period of suspension includes the remainder of the calendar year in which the suspension occurs plus the next two calendar years.

### **SECTION 13. ADMINISTRATIVE REVIEW PROCESS FOR DENIAL OF PARTICIPATION IN THE 1040NR PROGRAM**

.01 An applicant that has been denied participation in the 1040NR Program has the right to an administrative review. During the administrative review process, the denial of participation remains in effect.

.02 In response to the submission of a Form MAR-8980, the Service will either (1) accept an applicant into the 1040NR Program, or (2) issue a proposed letter of denial that explains to the applicant why the Service proposes to reject the application to participate in the 1040NR Program.

.03 An applicant that receives a proposed letter of denial may mail or deliver, within 30 calendar days of the date of the proposed letter of denial, a written response to the Project Office. The applicant's response must address the Project Office's explanation for proposing the denial to participate.

.04 Upon receipt of an applicant's written response, the Project Office will reconsider its proposed letter of denial. The Project Office may (1) withdraw its

proposed letter of denial and admit the applicant into the 1040NR Program, or (2) finalize its proposed letter of denial and issue it to the applicant.

.05 If an applicant receives a final letter from the Project Office that denies the applicant participation in the 1040NR Program, the applicant is entitled to an appeal, in writing, to the Director of Practice.

.06 The appeal must be mailed or delivered to the Project Office within 30 calendar days of the date of the denial letter. An applicant's written appeal must contain a detailed explanation, with supporting documentation, of why the denial should be reversed. In addition, the applicant must include a copy of the applicant's Form MAR-8980 and a copy of the denial letter.

.07 The Project Office, upon receipt of a written appeal to the Director of Practice, will forward to the Director of Practice its file on the applicant and the materials described in section 13.06 that the applicant has submitted to the Project Office. The Project Office will forward these materials to the Director of Practice within 15 calendar days of receipt of the applicant's written appeal.

.08 Failure to respond within the 30-day periods described in sections 13.03 and 13.06 of this revenue procedure irrevocably terminates an applicant's right to an administrative review or appeal.

### **SECTION 14. ADMINISTRATIVE REVIEW PROCESS FOR SUSPENSION FROM THE 1040NR PROGRAM**

.01 A 1040NR Filer that has been suspended from participation in the 1040NR Program has the right to an administrative review. During the administrative review process, the suspension remains in effect.

.02 If a 1040NR Filer receives a proposed suspension letter, the 1040NR Filer may mail or deliver, within 30 calendar days of the date of the proposed suspension letter, a detailed written explanation, with supporting documentation, of why the proposed suspension letter should be withdrawn. This written response should be sent to the Project Office.

.03 Upon receipt of the 1040NR Filer's written response, the Project Office will reconsider its proposed suspension of the 1040NR Filer. The Project Office

will either withdraw its proposed suspension letter and reinstate the 1040NR Filer or finalize the proposed suspension letter and issue it to the 1040NR Filer.

.04 If a 1040NR Filer receives a suspension letter from the Project Office, the 1040NR Filer is entitled to an appeal, in writing, to the Director of Practice.

.05 The appeal must be mailed or delivered to the Project Office within 30 calendar days of the date of the suspension letter. The 1040NR Filer's written appeal must contain detailed reasons, with supporting documentation, for reversal of the suspension. In addition, the 1040NR Filer must include a copy of its Form MAR-8980 and a copy of the suspension letter.

.06 The Project Office, upon receipt of a written appeal to the Director of Practice, will forward to the Director of Practice its file on the 1040NR Filer and the material described in section 14.05 of this revenue procedure that the 1040NR Filer has submitted to the Project Office. The Project Office will forward these materials to the Director of Practice within 15 calendar days of the receipt of a 1040NR Filer's written request for appeal.

.07 Failure to appeal within the 30-day period described in section 14.05 of this revenue procedure irrevocably terminates a 1040NR Filer's right to an appeal.

### **SECTION 15. EFFECT ON OTHER DOCUMENTS**

Rev. Proc. 96-35, 1996-1 C.B. 721, is superseded.

### **SECTION 16. EFFECTIVE DATE**

This revenue procedure is effective May 23, 1997.

### **SECTION 17. PROJECT OFFICE INFORMATION**

All questions regarding this revenue procedure should be directed to:

Internal Revenue Service  
Philadelphia Service Center  
ATTN: DP-115-Magnetic Media  
Project Office  
11601 Roosevelt Blvd.  
Philadelphia, PA 19154  
U.S.A.

The telephone number of this office is (215) 516-7533 (not a toll-free number) or 800-829-6945 (a toll-free number).