

MEMO# 16448

August 19, 2003

IRS ISSUES PROPOSED REGULATIONS CONCERNING WAIVER OF PENALTIES FOR FAILURE TO FILE CORRECT INFORMATION RETURNS

[16448] August 19, 2003 TO: PENSION COMMITTEE No. 28-03 PENSION OPERATIONS ADVISORY COMMITTEE No. 51-03 TAX COMMITTEE No. 52-03 RE: IRS ISSUES PROPOSED REGULATIONS CONCERNING WAIVER OF PENALTIES FOR FAILURE TO FILE CORRECT INFORMATION RETURNS The Internal Revenue Service ("IRS") has issued proposed regulations relating to the waiver under section 6724 of the Internal Revenue Code of penalties imposed by section 6721 for failure to file a correct information return with the IRS. The proposed regulations would revise the 30-day correction interval currently found in section 301.6724-1(d)(1)(ii)(D) of the regulations in order to conform to the schedule for tiered penalties under section 6721.1 Under the tiered-penalty structure of section 6721, penalties for failures to file, or file correct, information returns are reduced from \$50 per return (with a maximum of \$250,000 per calendar year) to \$15 per return (with a maximum of \$75,000 per calendar year) if the failures are corrected within 30 days of the required filing date. The penalties are reduced to \$30 per return (with a maximum of \$150,000 per calendar year) if corrected before August 1 of the calendar year in which the required filing date occurs. A filer can qualify for a waiver of these penalties under section 6724, if its failure was due to reasonable cause and not willful neglect. In order to prove reasonable cause, the filer must establish, among other things, that it acted in a responsible manner both before and after the failure. The regulations further define acting in a responsible manner to include rectifying the failure as promptly as possible. Under the current regulations, a rectification is considered prompt if it is made (1) within 30 days after the impediment is removed or the failure is discovered; or (2) on the earliest date thereafter on which a regular submission of corrections is made. Filers must make these submissions at intervals of 30 days or less in order for the submissions to qualify as "regular." The proposed regulations address this 30-day rule. Filers have expressed concern that the 30-day rule requires a filer that discovers numerous errors over a period of several months to submit multiple corrections in a series of filings. In response to requests from filers, the 1 The preamble to the proposed regulation notes that the proposed regulations would not apply for the purpose of determining whether there is reasonable cause for waiving the penalties imposed by section 6722 (relating to payee statements) or section 6723 (relating to other information reporting requirements). 2 proposed regulations would permit "bundling" of multiple corrections. The proposed regulations track the timeframes applicable to the tiered penalties in section 6721, and would provide that a correction of an information return is prompt if the filer makes the correction within 30 days of the required

filing date, or by August 1 following the required filing date. After August 1, a correction would be prompt if the filer made the correction by the date or dates announced in guidance governing the electronic or magnetic filing of information returns or in other guidance including forms and instructions. These dates would generally fall in November or December of the calendar year in which the required filing date occurred. Comments on the proposed regulations are due by October 7, 2003. Please contact me by telephone at (202) 371-5432, by fax at (202) 326-5841, or by email at kireland@ici.org by Thursday, September 18 if you have any comments that the Institute should consider including in a comment letter concerning the proposed regulations. Kathy D. Ireland Senior Associate Counsel Attachment (in .pdf format)

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