

## Safe Harbor Rules for Welding Rigs Revenue Procedure 2002-41

1. IRS news release 5/23/2002
2. Page from National PI Agreement-Welding Rigs
3. Rev. Rul. 2002-35 and 2002-41
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  - b. 2002-41 Initial rates bottom page 2 and page 3
4. Rev. Proc. 2011-52 See page 12 at paragraph .10
  - a. Various administrative changes
  - b. New rig rates effective 1/1/2012
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    - ii. \$10 per hour if fuel provided
5. Rev. Proc. 2012-41 See page 3 at section 3
  - a. 2013 Adjusted Items
  - b. New rig rates effective 1/1/2013
    - i. \$17 per hour no fuel provided
    - ii. \$10 per hour if fuel provided

## Part III

### Administrative, Procedural, and Miscellaneous

26 CFR 601.602: Tax forms and instructions.

(Also Part I, §§ 1, 42, 59, 62, 135, 146, 147, 148, 213, 220, 512, 513, 877, 877A, 911, 2032A, 2503, 2523, 4161, 4261, 6033, 6039F, 6323, 6334, 6601, 7430, 7702B; 1.148-5.)

#### Rev. Proc. 2012-41

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#### SECTION 1. PURPOSE

This revenue procedure sets forth inflation-adjusted items for 2013.

#### SECTION 2. CHANGES

This revenue procedure does not include the following items: the tax rate tables under § 1 of the Internal Revenue Code (Code), the adoption credit under § 23, the child tax credit under § 24, the Hope Scholarship and Lifetime Learning Credits under § 25A, the earned income credit under § 32, the standard deduction under § 63, the overall limitation on itemized deductions under § 68, the qualified transportation fringe benefit under § 132(f), the adoption assistance exclusion under § 137, the personal exemption under § 151, the election to expense certain depreciable assets under § 179, the interest on education loans under § 221, and the unified credit against estate tax for estates of decedents under § 2010(c). Those items will be addressed in future guidance.

#### **SECTION 3. 2013 ADJUSTED ITEMS**

.01 Unearned Income of Minor Children Taxed as if Parent's Income (the "Kiddie Tax"). For taxable years beginning in 2013, the amount in § 1(g)(4)(A)(ii)(I), which is used to reduce the net unearned income reported on the child's return that is subject to the "kiddie tax," is \$1,000. This \$1,000 amount is the same as the amount provided in § 63(c)(5)(A), as adjusted for inflation. The same \$1,000 amount is used for purposes of § 1(g)(7) (that is, to determine whether a parent may elect to include a child's gross income in the parent's gross income and to calculate the "kiddie tax"). For example, one of the requirements for the parental election is that a child's gross income is more than the amount referenced in § 1(g)(4)(A)(ii)(I) but less than 10 times that amount; thus, a child's gross income for 2013 must be more than \$1,000 but less than \$10,000.

.02 Rehabilitation Expenditures Treated as Separate New Building. For calendar year 2013, the per low-income unit qualified basis amount under § 42(e)(3)(A)(ii)(II) is \$6,400.

.03 Low-Income Housing Credit. For calendar year 2013, the amount used under § 42(h)(3)(C)(ii) to calculate the State housing credit ceiling for the low-income housing credit is the greater of (1) \$2.25 multiplied by the State population, or (2) \$2,590,000.

.04 Alternative Minimum Tax Exemption for a Child Subject to the "Kiddie Tax." For taxable years beginning in 2013, for a child to whom the § 1(g) "kiddie tax" applies, the exemption amount under §§ 55 and 59(j) for purposes of the alternative minimum tax under § 55 may not exceed the sum of (1) the child's earned income for the taxable year, plus (2) \$7,150.

.05 Transportation Mainline Pipeline Construction Industry Optional Expense

Substantiation Rules for Payments to Employees under Accountable Plans. For

calendar year 2013, an eligible employer may pay certain welders and heavy equipment mechanics an amount of up to \$17 per hour for rig-related expenses that is deemed substantiated under an accountable plan if paid in accordance with Rev. Proc. 2002-41, 2002-1 C.B. 1098. If the employer provides fuel or otherwise reimburses fuel expenses, up to \$10 per hour is deemed substantiated if paid under Rev. Proc. 2002-41.

.06 Income from United States Savings Bonds for Taxpayers Who Pay Qualified Higher Education Expenses. For taxable years beginning in 2013, the exclusion under § 135, regarding income from United States savings bonds for taxpayers who pay qualified higher education expenses, begins to phase out for modified adjusted gross income above \$112,050 for joint returns and \$74,700 for other returns. The exclusion is completely phased out for modified adjusted gross income of \$142,050 or more for joint returns and \$89,700 or more for other returns.

.07 Private Activity Bonds Volume Cap. For calendar year 2013, the amounts used under § 146(d)(1) to calculate the State ceiling for the volume cap for private activity bonds is the greater of (1) \$95 multiplied by the State population, or (2) \$291,875,000.

.08 Loan Limits on Agricultural Bonds. For calendar year 2013, the loan limit amount on agricultural bonds under § 147(c)(2)(A) for first-time farmers is \$501,100.

.09 General Arbitrage Rebate Rules. For bond years ending in 2013, the amount of the computation credit determined under the permission to rely on § 1.148-3(d)(4) of the proposed Income Tax Regulations is \$1,590.

.10 Safe Harbor Rules for Broker Commissions on Guaranteed Investment Contracts

or Investments Purchased for a Yield Restricted Defeasance Escrow. For calendar year 2013, under § 1.148-5(e)(2)(iii)(B)(1), a broker's commission or similar fee for the acquisition of a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow is reasonable if (1) the amount of the fee that the issuer treats as a qualified administrative cost does not exceed the lesser of (A) \$37,000, and (B) 0.2 percent of the computational base (as defined in § 1.148-5(e)(2)(iii)(B)(2)) or, if more, \$4,000; and (2) the issuer does not treat more than \$106,000 in brokers' commissions or similar fees as qualified administrative costs for all guaranteed investment contracts and investments for yield restricted defeasance escrows purchased with gross proceeds of the issue.

.11 Eligible Long-Term Care Premiums. For taxable years beginning in 2013, the limitations under § 213(d)(10), regarding eligible long-term care premiums includible in the term "medical care," are as follows:

<u>Attained Age Before the Close of the Taxable Year</u>	<u>Limitation on Premiums</u>
40 or less	\$360
More than 40 but not more than 50	\$680
More than 50 but not more than 60	\$1,360
More than 60 but not more than 70	\$3,640
More than 70	\$4,550

.12 Medical Savings Accounts.

(1) Self-only coverage. For taxable years beginning in 2013, the term "high deductible health plan" as defined in § 220(c)(2)(A) means, for self-only coverage, a

health plan that has an annual deductible that is not less than \$2,150 and not more than \$3,200, and under which the annual out-of-pocket expenses required to be paid (other than for premiums) for covered benefits do not exceed \$4,300.

(2) Family coverage. For taxable years beginning in 2013, the term "high deductible health plan" means, for family coverage, a health plan that has an annual deductible that is not less than \$4,300 and not more than \$6,450, and under which the annual out-of-pocket expenses required to be paid (other than for premiums) for covered benefits do not exceed \$7,850.

.13 Treatment of Dues Paid to Agricultural or Horticultural Organizations. For taxable years beginning in 2013, the limitation under § 512(d)(1), regarding the exemption of annual dues required to be paid by a member to an agricultural or horticultural organization, is \$155.

.14 Insubstantial Benefit Limitations for Contributions Associated with Charitable Fund-Raising Campaigns.

(1) Low cost article. For taxable years beginning in 2013, for purposes of defining the term "unrelated trade or business" for certain exempt organizations under § 513(h)(2), "low cost articles" are articles costing \$10.20 or less.

(2) Other insubstantial benefits. For taxable years beginning in 2013, under § 170, the \$5, \$25, and \$50 guidelines in section 3 of Rev. Proc. 90-12, 1990-1 C.B. 471 (as amplified by Rev. Proc. 92-49, 1992-1 C.B. 987, and modified by Rev. Proc. 92-102, 1992-2 C.B. 579), for the value of insubstantial benefits that may be received by a donor in return for a contribution, without causing the contribution to fail to be fully deductible,

are \$10.20, \$51, and \$102, respectively.

.15 Expatriation to Avoid Tax. For calendar year 2013, an individual with “average annual net income tax” of more than \$155,000 for the five taxable years ending before the date of the loss of United States citizenship under § 877(a)(2)(A) is a covered expatriate for purposes of § 877A(g)(1).

.16 Tax Responsibilities of Expatriation. For taxable years beginning in 2013, the amount that would be includible in the gross income of a covered expatriate by reason of § 877A(a)(1) is reduced (but not below zero) by \$668,000.

.17 Foreign Earned Income Exclusion. For taxable years beginning in 2013, the foreign earned income exclusion amount under § 911(b)(2)(D)(i) is \$97,600.

.18 Valuation of Qualified Real Property in Decedent's Gross Estate. For an estate of a decedent dying in calendar year 2013, if the executor elects to use the special use valuation method under § 2032A for qualified real property, the aggregate decrease in the value of qualified real property resulting from electing to use § 2032A for purposes of the estate tax cannot exceed \$1,070,000.

.19 Annual Exclusion for Gifts.

(1) For calendar year 2013, the first \$14,000 of gifts to any person (other than gifts of future interests in property) are not included in the total amount of taxable gifts under § 2503 made during that year.

(2) For calendar year 2013, the first \$143,000 of gifts to a spouse who is not a citizen of the United States (other than gifts of future interests in property) are not included in the total amount of taxable gifts under §§ 2503 and 2523(i)(2) made during

that year.

.20 Tax on Arrow Shafts. For calendar year 2013, the tax imposed under § 4161(b)(2)(A) on the first sale by the manufacturer, producer, or importer of any shaft of a type used in the manufacture of certain arrows is \$0.48 per shaft.

.21 Passenger Air Transportation Excise Tax. For calendar year 2013, the tax under § 4261(b)(1) on the amount paid for each domestic segment of taxable air transportation is \$3.90. For calendar year 2013, the tax under § 4261(c)(1) on any amount paid (whether within or without the United States) for any international air transportation, if the transportation begins or ends in the United States, generally is \$17.20. Under § 4261(c)(3), however, a lower amount applies under § 4261(c)(1) to a domestic segment beginning or ending in Alaska or Hawaii, and the tax applies only to departures. For calendar year 2013, the rate is \$8.60.

.22 Reporting Exception for Certain Exempt Organizations with Nondeductible Lobbying Expenditures. For taxable years beginning in 2013, the annual per person, family, or entity dues limitation to qualify for the reporting exception under § 6033(e)(3) (and section 5.05 of Rev. Proc. 98-19, 1998-1 C.B. 547), regarding certain exempt organizations with nondeductible lobbying expenditures, is \$108 or less.

.23 Notice of Large Gifts Received from Foreign Persons. For taxable years beginning in 2013, § 6039F authorizes the Treasury Department and the Internal Revenue Service to require recipients of gifts from certain foreign persons to report these gifts if the aggregate value of gifts received in the taxable year exceeds \$15,102.

.24 Persons Against Whom a Federal Tax Lien Is Not Valid. For calendar year 2013, a

federal tax lien is not valid against (1) certain purchasers under § 6323(b)(4) who purchased personal property in a casual sale for less than \$1,470, or (2) a mechanic's lienor under § 6323(b)(7) who repaired or improved certain residential property if the contract price with the owner is not more than \$7,350.

.25 Property Exempt from Levy. For calendar year 2013, the value of property exempt from levy under § 6334(a)(2) (fuel, provisions, furniture, and other household personal effects, as well as arms for personal use, livestock, and poultry) cannot exceed \$8,790. The value of property exempt from levy under § 6334(a)(3) (books and tools necessary for the trade, business, or profession of the taxpayer) cannot exceed \$4,400.

.26 Interest on a Certain Portion of the Estate Tax Payable in Installments. For an estate of a decedent dying in calendar year 2013, the dollar amount used to determine the "2-percent portion" (for purposes of calculating interest under § 6601(j)) of the estate tax extended as provided in § 6166 is \$1,430,000.

.27 Attorney Fee Awards. For fees incurred in calendar year 2013, the attorney fee award limitation under § 7430(c)(1)(B)(iii) is \$190 per hour.

.28 Periodic Payments Received under Qualified Long-Term Care Insurance Contracts or under Certain Life Insurance Contracts. For calendar year 2013, the stated dollar amount of the per diem limitation under § 7702B(d)(4), regarding periodic payments received under a qualified long-term care insurance contract or periodic payments received under a life insurance contract that are treated as paid by reason of the death of a chronically ill individual, is \$320.

#### SECTION 4. EFFECTIVE DATE

.01 General Rule. Except as provided in section 4.02, this revenue procedure applies to taxable years beginning in 2013.

.02 Calendar Year Rule. This revenue procedure applies to transactions or events occurring in calendar year 2013 for purposes of sections 3.02 (rehabilitation expenditures treated as separate new building), 3.03 (low-income housing credit), 3.05 (transportation mainline pipeline construction industry optional expense substantiation rules for payments to employees under accountable plans), 3.07 (private activity bonds volume cap), 3.08 (loan limits on agricultural bonds), 3.09 (general arbitrage rebate rules), 3.10 (safe harbor rules for broker commissions on guaranteed investment contracts or investments purchased for a yield restricted defeasance escrow), 3.15 (expatriation to avoid tax), 3.18 (valuation of qualified real property in decedent's gross estate), 3.19 (annual exclusion for gifts), 3.20 (tax on arrow shafts), 3.21 (passenger air transportation excise tax), 3.24 (persons against whom a federal tax lien is not valid), 3.25 (property exempt from levy), 3.26 (interest on a certain portion of the estate tax payable in installments), 3.27 (attorney fee awards), and 3.28 (periodic payments received under qualified long-term care insurance contracts or under certain life insurance contracts).

#### SECTION 5. DRAFTING INFORMATION

The principal author of this revenue procedure is William Ruane of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Mr. Ruane at (202) 622-4920 (not a toll-free call).

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REV. RU L. 2012-41

**Safe Harbor Rules for Welding Rigs  
Revenue Procedure 2002-41**

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# IRS



## News Release

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Media Relations Office

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### IRS PROVIDES SIMPLIFIED ACCOUNTABLE PLAN RULES FOR CERTAIN EMPLOYERS

WASHINGTON – Using the Industry Issue Resolution (IIR) program, Internal Revenue Service today issued guidance that provides employers in the pipeline construction industry an optional deemed substantiation method for reimbursing certain employee business expenses. Under Revenue Procedure 2002-41, payments by pipeline construction employers to employees who are required to use their own welding or mechanics rigs as a condition of employment are deemed substantiated at up to \$13 an hour.

Along with the revenue procedure, the IRS today issued Revenue Ruling 2002-35, which clarifies that payments to employees for equipment they are required to provide as a condition of employment are wages for federal employment tax purposes, unless such amounts are paid under an accountable plan. Today's ruling also revokes Revenue Ruling 68-624.

The new revenue procedure and revenue ruling do not apply to independent contractors.

The IIR program, launched in 2001 by IRS, tackles tax issues submitted by taxpayers, associations and other groups representing businesses. The objective is to resolve frequently disputed or burdensome tax issues.

Revenue Procedure 2002-41 also requests comments from other industries facing similar issues in implementing accountable plans, especially where the nature of the industry results in employees working for multiple employers during the year.

Revenue Ruling 2002-35 and Revenue Procedure 2002-41 will be in Internal Revenue Bulletin 2002-23, dated June 10, 2002, and will be posted on the IRS Web site, [www.irs.gov](http://www.irs.gov). Information on the Industry Issue Resolution program may be found in Notice 2002-20 and in Internal Revenue Bulletin 2002-17, also available at the Web site.

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ARTICLE XVI. Welding Rigs

National PL Agreement

any work or the continuance of work once started, no pay for time not worked shall be required under any of the above enumerated conditions.

(G) Where notification of Employees is required under this Agreement to the effect that work shall not be performed on a particular day, notification of such fact must be made to the affected Employees. Notice to the steward shall not constitute sufficient notification to the Employees.

## XVI.

### WELDING RIGS

(A) It shall not be a condition of employment for Welder Journeymen to provide their own welding rigs. It is understood and agreed, however, that a Welder Journeyman who is dispatched to a project as a rig Welder will be required to provide a usable rig as a condition of the dispatch. If the Union is unable to fill the dispatch request, the Employer may obtain rig Welders from any source in accordance with Article V(G)(4) of the Agreement.

(B) The Parties agree to treat rig rental rates as a mandatory subject of bargaining within the meaning of the National Labor Relations Act, with all of the rights and obligations that attach to such a subject of bargaining.

(C) Employers who rent rigs from Welder Journeymen who perform work covered by the NPLA shall pay such Welder Journeymen the maximum hourly rate determined by the Internal Revenue Service ("IRS") to be non-taxable pursuant to IRS Revenue Procedure 2002-41, as periodically increased by the IRS. The Parties shall agree at the pre-job conference whether the applicable rate shall be a "wet" rate or a "dry" rate. The rig rate will not be included in calculating total package annual increases.

(D) If the IRS eliminates or issues a procedure or ruling that adversely affects the favorable tax status of rental payments for welding rigs currently provided for in IRS Revenue Procedure 2002-41, the Parties agree that they will reopen the NPLA for the limited purpose of renegotiating rig rental rates.

(E) All trucks and welding machines will be gassed up during regular working hours unless the Employer has negotiated a rental and fuel rate. Welders are entitled to a full tank of gas for their truck and welding machine on the same day they complete work on that job and they are laid off; this does not include the drag-up tank.

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REV. RUL. 2002-35

Part I

Section 62. Adjusted Gross Income Defined  
(Also §§ 3121(a), 3306(b), 3401(a), 7805(b).)

26 CFR 1.62-2: Reimbursements and other expense allowance arrangements.  
(Also §§ 31.3121(a), 31.3306(b), 31.3401(a), 301.7805-1.)

Rev. Rul. 2002-35

ISSUE

Whether amounts paid to employees for employee-provided equipment, including vehicles, that are used by the employee to provide services as an employee are wages subject to federal employment taxes?

## FACTS

Situation 1 – Business A is engaged in pipeline construction and repair. A hires welder B and heavy equipment mechanic C to perform services as employees in connection with the construction of a pipeline. Business A requires B to provide and maintain a welding rig for B's use in providing welding services and requires C to provide and maintain a mechanics rig for C's use in performing repair and maintenance services at the work site on the employer's heavy equipment. B and C are required to provide rigs sufficient to perform the required employee services. (Neither employee B nor C is an independent contractor.)

A welding rig consists of a truck equipped with a welding machine and other specialized welding equipment required to perform welding services. B is paid an hourly wage of \$X for the performance of services as an employee. In addition, A pays B an hourly amount of \$Y per hour for providing the welding rig. This rig reimbursement is only paid for those hours that B performs services as A's employee.

A mechanics rig consists of a heavy truck equipped with a crane, welding machine, and various other equipment used in the repair of heavy construction equipment. C is paid an hourly wage of \$X for the performance of services as an employee. In addition A pays C an additional \$Y amount per day for providing the mechanics rig. This rig reimbursement is only paid for the days that C performs services as A's employee.

Business A requires B and C to each execute a document specifying that the employee owns the rig provided and will insure and maintain the rig. Employees B and C bear all expenses associated with the operation and maintenance of their respective rigs. The flat dollar amount paid as rig reimbursement is not related to the actual employee business expenses B or C incurs while performing services as an employee of A. Business A does not require B or C to substantiate expenses incurred related to the rig provided. Nor does A require B or C to return any amount paid as a rig reimbursement that exceeds the actual employee business expenses B or C incurs in connection with providing a rig while performing services as an employee of A.

Situation 2 – Business A also hires laborer D to perform services as an employee. Employee D uses D's pickup truck for transportation along the pipeline. Employee D is paid an hourly wage of \$X for the performance of services as an employee and is also paid an additional amount of \$Y per day for providing the pickup truck. Business A does not require D to substantiate mileage or actual employee business expenses incurred while performing services as an employee of A. Employee D is not required to return any of the daily amounts paid for the pickup truck if the amount paid exceeds the employee business expenses D incurred in connection with the pickup truck while performing services as an employee of A. (Laborer D is not an independent contractor.)

## LAW AND ANALYSIS

Section 3402(a) of the Internal Revenue Code (Code) requires employers paying wages to deduct and withhold income tax on wages. For income tax withholding purposes, § 3401(a) provides that the term "wages," with certain exceptions, means all

remuneration for services performed by an employee for an employer. Under §§ 3111 and 3301, Federal Insurance Contributions Act (FICA) tax and Federal Unemployment Tax Act (FUTA) tax, respectively, excise taxes are imposed on the employer in an amount equal to a percentage of the wages paid by that employer. Under § 3101, FICA tax also is imposed on the employee. Under §§ 3121(a) and 3306(b), the term "wages" for FICA tax purposes and FUTA tax purposes, respectively, means, with certain exceptions, all remuneration for employment. Under §§ 3121(b) and 3306(c), "employment" is defined as any service, of whatever nature, performed by an employee for the person employing him.

Consistent with this definition, § 31.3121(a)-1(c) of the Employment Tax Regulations provides that the name by which the remuneration for employment is designated is immaterial. Section 31.3121(a)-1(d) further provides that generally, the basis upon which remuneration is paid to an employee is immaterial in determining whether the remuneration constitutes wages under FICA.

No specific section of the Code or regulations excepts from wages amounts paid to employees for providing equipment used in the performance of services as an employee. However, amounts paid to employees for certain employee business expenses incurred in connection with such equipment are excluded from wages if paid under a reimbursement or other expense allowance arrangement that meets the requirements of § 62(c).

Under § 1.62-2(c)(1) of the Income Tax Regulations, a reimbursement or other expense allowance arrangement satisfies the requirements of § 62(c) if it meets the

requirements set forth in paragraphs (d), (e), and (f) of § 1.62-2 (business connection, substantiation, and return of excess). If an arrangement meets these requirements, all amounts paid under the arrangement are treated as paid under an accountable plan.

§ 1.62-2(c)(2)(i). Amounts paid under an accountable plan are excluded from the employee's gross income, are not required to be reported on the employee's Form W-2, and are exempt from the withholding and payment of employment taxes.

§§ 31.3121(a)-3, 31.3306(b)-2, 31.3401(a)-4, and 1.6041-3(h)(1).

If an arrangement does not satisfy one or more of these requirements, all amounts paid under the arrangement are paid under a "nonaccountable plan." Amounts paid under a nonaccountable plan are included in the employee's gross income for the taxable year, must be reported to the employee on Form W-2, and are subject to withholding and payment of employment taxes. §§ 1.62-2(c)(5), 31.3121(a)-3(b)(2), 31.3306(b)-2(b)(2), 31.3401(a)-4(b)(2), and § 1.6041-3(h)(1). Additionally, § 1.62-2(k) provides that if a payor's reimbursement or other expense allowance arrangement evidences a pattern of abuse of the rules of § 62(c) and the regulations thereunder, all payments made under the arrangement will be treated as made under a nonaccountable plan.

Rev. Rul. 68-624, 1968-2 C.B. 424, considered what portion of the total amount paid by a corporation for the use of a truck and the services of a driver was allocable as wages of the driver for federal employment tax purposes. The driver hauled stone from the corporation's quarry to its river loading dock at a fixed amount per load. The corporation allocated one-third of the amount paid to the employee as wages and two-thirds as payment for the use of the truck. The ruling held that an allocation of the amounts paid to an individual when the payment is for both personal services and the

use of equipment must be governed by the facts in each case. If the contract of employment did not specify a reasonable division of the total amount paid between wages and equipment, a proper allocation could have been arrived at by reference to the prevailing wage scale in a particular locality for similar services in operating the same class of equipment or the fair rental value of similar equipment.

Rev. Rul. 68-624 pre-dates the Tax Reform Act of 1986 (TRA '86), Pub. L. 99-514, and the Family Support Act of 1988, Pub. L. 100-485, which limit the deductions of employee business expenses. Pursuant to section 132 of TRA '86, which added § 67 to the Code, employee business expenses are allowed only as miscellaneous itemized deductions, to the extent that the aggregate of those deductions exceeds 2 percent of adjusted gross income. Section 62(c), which was enacted in the Family Support Act of 1988, in part limits employee business expense reimbursements that can be excluded from adjusted gross income to those paid under an accountable plan. Further, Rev. Rul. 68-624 does not address whether the truck driver was engaged in the trade or business of truck rental in addition to the trade or business of being an employee.

An arrangement that merely allocates compensation paid to an employee between wages and a reimbursement for business expenses will not meet the requirements of § 62(c). For example, in Shotgun Delivery, Inc. v. United States, 269 F.3d 969 (9th Cir. 2001), the court held that a courier company's arrangement that paid employee drivers 40 percent of the delivery charge rate less an hourly minimum wage payment did not meet the business connection requirement because the drivers were reimbursed regardless of actual mileage driven or expenses incurred. Accordingly, the arrangement was not a valid accountable plan under § 62(c).

## CONCLUSION

Under the facts specified in Situations 1 and 2, the amounts paid to employees B, C, and D for providing equipment, including vehicles, used in performing services for the employer as an employee are not paid under an accountable plan. Each arrangement fails the business connection requirement because in each situation the employer pays an amount to the employee regardless of whether the employee incurs (or is reasonably expected to incur) business expenses that would be deductible under §§ 161 through 198. Each arrangement fails to require the employee to substantiate employee business expenses, as required by § 1.62-2(e). Finally, the arrangements do not require the return of excess as required under § 1.62-2(f).

## HOLDING

In Situations 1 and 2, because the amounts paid to the employee for providing equipment, including vehicles, for use in performing services as an employee are not paid under an accountable plan, they are wages subject to the withholding and payment of income and employment taxes.

This ruling is not intended to provide guidance regarding the treatment of payment for equipment, including vehicles, provided by independent contractors.

See Rev. Proc. 2002-41, published elsewhere in this Internal Revenue Bulletin, regarding a deemed substantiation rule for use in implementing an accountable plan in

connection with reimbursements to certain employees for costs associated with providing welding rigs or mechanics rigs.

#### EFFECT ON OTHER REVENUE RULINGS

This ruling revokes Rev. Rul. 68-624.

#### EFFECTIVE DATE

This revenue ruling is effective for payments to employees after October 13, 1988 (the date of enactment for § 62(c), as part of the Family Support Act of 1988).

Under the authority of § 7805(b), a taxpayer that actually paid amounts separate from wages for the use of employee-provided equipment (such as described in Situation 1 and the truck described in Rev. Rul. 68-624) and reported these payments on timely issued Forms 1099 for calendar years beginning before January 1, 2002, may continue to report these payments on Form 1099 for periods ending on or before December 31, 2002.

#### DRAFTING INFORMATION

The principal author of this revenue ruling is Joe Spires of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), IRS.

However, other personnel from the IRS and Treasury Department participated in its

development. For further information regarding this revenue ruling, call Mr. Spires on (202) 622-6040 (not a toll free number).

DIVIDER PAGE  
REV. RUL. 2002-41

## Part III

### Administrative, Procedural, and Miscellaneous

26 CFR 1.62-2: Reimbursements and other expense allowance arrangements.  
(Also Part I, § 62.)

Rev. Proc. 2002-41

The purpose of this revenue procedure is to provide an optional expense substantiation rule so that businesses in the pipeline construction industry can provide reimbursements under an accountable plan to employees who also furnish welding rigs or mechanics rigs as part of their performance of services as employees. This revenue procedure is not intended to suggest that all workers providing such services and equipment are employees. Rather, the method in this revenue procedure may be applied when businesses choose to use an accountable plan to reimburse individuals who are employees for rig-related expenses incurred as employees.

As part of the Industry Issue Resolution Pilot Program, announced in Notice 2000-65, representatives of the pipeline construction industry requested clarification of the proper treatment of amounts paid to employee welders and heavy equipment mechanics who provide heavy equipment in connection with the performance of services. At issue was whether the amounts should be treated as payments of rent, payments of wages, or as the reimbursement of expenses subject to the accountable plan requirements.

Employers in the pipeline construction industry encounter several challenges to reimbursing under an accountable plan the costs relating to employee-provided welding rigs and mechanics rigs, particularly in determining the proper amount of the expense incurred. Rig welders and heavy equipment mechanics work for multiple companies for relatively short periods. Therefore, the proper allocation of fixed costs related to the equipment among employers is unclear. Moreover, although the rigs are mobile, the existing mileage-based expense substantiation provision does not accurately reflect rig-related costs because rigs are used primarily while stationary. Further, these employees incur substantial expenses as employees in providing these rigs as a condition of employment. Due to these unique features, reimbursing employees for rig-related expenses under the existing accountable plan requirements is unworkable for this industry. In order to enable this industry to reimburse rig-related expenses to employees under an accountable plan, this revenue procedure provides an optional expense substantiation rule under which rig-related expenses may be treated as substantiated when reimbursing these expenses under an accountable plan.

Under this revenue procedure an employer may pay certain welders and heavy equipment mechanics an amount of up to \$13 per hour for rig-related expenses that is deemed substantiated under an accountable plan when paid in accord with this revenue procedure (up to \$8 per hour if the employer provides fuel or otherwise reimburses fuel expenses). This revenue procedure provides for an annual inflation adjustment to these amounts after 2003, if necessary and is effective for payments made on or after January 1, 2003. The rules are provided in Questions and Answers below.

The Service recognizes that employers in other industries may similarly provide payments to employees for the costs of providing equipment as employees used in the performance of services as employees. To the extent that the unique features of other industries creates similar challenges to implementing accountable plans, the Service welcomes comments regarding the appropriateness and design of similar relief. We specifically request comments concerning other categories of qualified nonpersonal use vehicles owned by employees and used by the employees in the course of providing services as employees, especially where the nature of an industry results in employees working for multiple employers during each year, for which a deemed substantiation rule would be appropriate.

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## **SECTION 6. EFFECTIVE DATE**

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## SECTION 1. PURPOSE AND SCOPE

**Q - 1.        *Must an employer use this revenue procedure to reimburse employees for rig-related expenses?***

A - 1. No. Use of the rule described in this revenue procedure is not mandatory, and an employer may, outside the scope of this revenue procedure, reimburse actual expenses under an arrangement that meets the accountable plan requirements of § 62(c) of the Internal Revenue Code (Code) and regulations thereunder. Alternatively, an employer may reimburse employee business expenses under a nonaccountable plan (defined in Answer 6), or may choose not to reimburse employee business expenses.

**Q - 2.        *What is the tax treatment of amounts deemed substantiated under this revenue procedure?***

A - 2. If the other requirements described in Answer 5 are satisfied, the amounts substantiated in accordance with this revenue procedure are treated as paid under an accountable plan. Thus, the amounts are not reported as wages on Form W-2 and are exempt from the withholding and payment of income and employment taxes. Also, no

return of information (e.g., Form 1099) is required for payments made under an accountable plan. § 1.6041-3(h)(1).

**Q - 3.           Which employers may use the deemed substantiation rule provided in this revenue procedure?**

A - 3. This substantiation rule may be used by any “eligible employer.” An eligible employer is any employer that hires employee rig welders or heavy equipment mechanics and requires, as a condition of employment, that the rig welders and heavy equipment mechanics provide a welding rig or mechanics rig and use the rig in performing services as an employee employed in the construction, repair, or maintenance of transportation mainline pipeline. The business of transportation mainline pipeline construction or repair includes the construction, maintenance, or repair of transportation mainline pipeline up to the first metering station or connection. This includes mainline pipeline whether it transports coal, gas, water, or other transportable materials, vapors, or liquids. The first metering station or connection means the point where a valve, consumer connection, or town border station divides mainline transmission lines or higher pressure lateral and branch lines from lower pressure distribution systems.

**Q - 4.        *For which vehicles and equipment may eligible employers use the deemed substantiation rule provided in this revenue procedure?***

A - 4. Eligible employers may use the deemed substantiation rule in this revenue procedure only to reimburse employees for expenses related to the use of welding rigs and mechanics rigs described in Answer 9.

## **SECTION 2. BACKGROUND**

**Q - 5.        *What provisions of the tax law apply when an employer reimburses an employee for employee business expenses?***

A - 5. The tax rules that apply when an employer reimburses an employee for employee business expenses depend upon whether the reimbursement is made under an accountable plan or nonaccountable plan. An accountable plan is a reimbursement or other expense allowance arrangement that meets three requirements under § 1.62-2: business connection, substantiation, and return of amounts in excess of substantiated expenses. The business connection requirement is satisfied if the arrangement provides advances, allowances or reimbursements only for business expenses allowable as deductions under §§ 161-198 that are paid or incurred by an employee (or that the employer reasonably expects the employee to incur) in connection with the performance of services as an employee. The substantiation

requirement is satisfied if the arrangement requires each business expense to be substantiated to the employer within a reasonable period of time. The return of excess requirement is satisfied if the arrangement requires the employee to return to the payor within a reasonable period of time any amount paid under the arrangement in excess of the expenses substantiated. A nonaccountable plan is a reimbursement or other expenses allowance arrangement that does not satisfy one or more of the three requirements.

**Q - 6.        *What are the tax consequences to an employee when an employer reimburses expenses under a nonaccountable plan?***

A - 6. Generally, § 162(a) allows a deduction for all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including the trade or business of being an employee. Under § 1.62-2(c)(5), amounts treated as paid under a nonaccountable plan are included in the employee's gross income, must be reported as wages on the employee's Form W-2, and are subject to withholding and payment of income and employment taxes (Federal Insurance Contributions Act (FICA), Federal Unemployment Tax Act (FUTA), and income tax withholding). See also Employment Tax Regulations §§ 31.3121(a)-3 (FICA); 31.3306(b)-2 (FUTA); 31.3401(a)-4 (income tax withholding); and Income Tax Regulation § 1.6041-3(h)(1) (return of information exemption) (for exemption from

reporting requirements for payments made under an accountable plan before January 1, 2001, see § 1.6041-3(i)(1)). The employee may still deduct the expenses. However, those deductions may only be claimed as miscellaneous itemized deductions, which are limited by § 67 to the amount exceeding 2 percent of adjusted gross income.

**Q - 7.            *What are the tax consequences to an employee when an employer reimburses expenses under an accountable plan?***

A - 7. Section 1.62-2(c)(4) provides that amounts treated as paid under an accountable plan are excluded from the employee's gross income, are not reported as wages or other compensation on the employee's Form W-2, and are exempt from the withholding and payment of income and employment taxes.

### **SECTION 3. DEEMED SUBSTANTIATION FOR RIG-RELATED EXPENSES**

**Q - 8.            *What is the amount of rig-related expenses that can be deemed substantiated under this revenue procedure?***

A - 8. If an eligible employer either provides fuel or separately reimburses fuel expenses, expenses of up to \$8 per hour for welding rigs or mechanics rigs may be deemed substantiated if the other requirements in this revenue procedure are met. If

an eligible employer does not provide fuel or separately reimburse fuel expenses, rig-related expenses of up to \$13 per hour for welding or mechanics rigs may be deemed substantiated if the other requirements in this revenue procedure are met.

**Q - 9.            *For what types of vehicles may rig-related expenses be deemed substantiated?***

A - 9. Under this revenue procedure, rig-related expenses may be deemed substantiated only with respect to welding rigs and mechanics rigs. For purposes of this revenue procedure, welding rigs are  $\frac{3}{4}$  ton or heavier trucks equipped with a welding machine and other necessary equipment, such as tanks and generators. For purposes of this revenue procedure, mechanics rigs are heavy trucks equipped with a permanently installed mechanics bed and other necessary equipment that is used to repair and maintain heavy machinery on a job site. As explained in Answer 11, mechanics rigs and welding rigs are qualified nonpersonal use vehicles. The rule in this revenue procedure is not available for any other vehicles.

**Q -10.            *May expenses be deemed substantiated for pickup trucks under this revenue procedure?***

A -10. No. Expenses for pickup trucks may not be deemed substantiated as rig-related expenses under this revenue procedure unless the pickup truck is part of a welding rig

as described in Answer 9. (See Rev. Proc. 2001-54 for rules under which the amount of ordinary and necessary expenses of local travel or transportation incurred by an employee will be deemed substantiated under § 1.274-5 when an employer provides a mileage allowance under an accountable plan.)

**Q -11.        *Are welding rigs and mechanics rigs qualified nonpersonal use vehicles?***

A -11. Under the authority of § 1.274-5T(k)(2)(ii)(S), the Commissioner, solely for purposes of applying the deemed substantiation rule in this revenue procedure, designates the welding rigs and mechanics rigs as described in Answer 9 as qualified nonpersonal use vehicles.

**Q -12.        *For which employees may an eligible employer deem rig-related expenses substantiated under this revenue procedure?***

A -12. An eligible employer may deem rig-related expenses substantiated only for employee rig welders and heavy equipment mechanics who are required, as a condition of employment, to provide a welding or mechanics rig for use in providing personal services as an employee.

**Q -13. Under what circumstances may an eligible employer anticipate that an employee would incur rig-related expenses while performing services as an employee for an eligible employer under the deemed substantiation rule?**

A -13. An eligible employer's reimbursement will meet the business connection requirement of § 1.62-2(d) if the eligible employer reasonably anticipates that the employee will incur rig-related expenses in connection with the performance of services for the employer. It would not be reasonable for an eligible employer to anticipate that an employee would incur rig-related expenses for hours that it actually knew the employee's rig was not used (such as during a work stoppage for inclement weather).

**Q -14. Will the amount deemed substantiated under this revenue procedure be adjusted for inflation?**

A -14. Yes. For calendar years after 2003, the hourly rate will be adjusted annually for inflation under § 1(f)(3), except that the base year for such adjustment will be calendar year 2002 and no adjustment will be made unless the increase is at least one dollar. Any adjustment will be rounded to the nearest dollar. Any adjustment to the rates provided in this revenue procedure will be published annually.

**Q -15.      *May an independent contractor determine deductible expenses under this revenue procedure?***

A -15. No. Independent contractors engaged in the trade or business of providing welding services or services as heavy equipment mechanics may not use the deemed substantiation method in this revenue procedure to determine deductible expenses in their trade or business.

#### **SECTION 4. EMPLOYEE TREATMENT OF RIG-RELATED EXPENSES**

**Q -16.      *May an employee exclude from income amounts reimbursed and deemed substantiated under this revenue procedure?***

A -16. Yes. This is true even if the amounts reimbursed and deemed substantiated exceed the actual rig-related expenses. For example, assume an employee incurs \$20,000 in rig-related expenses, and the employer reimburses \$20,800 at the \$13 per hour rate for welding rigs provided under this revenue procedure. Because the reimbursement was paid under an accountable plan, the entire reimbursement is excluded from the employee's income.

**Q -17.        *May an employee claim deductions for rig-related expenses that exceed amounts reimbursed under an accountable plan or deemed substantiated under this revenue procedure?***

A -17. Yes. To the extent employee business expenses exceed those reimbursed under an accountable plan, they may be claimed as miscellaneous itemized deductions on Schedule A. To do this, the employee must report all reimbursed amounts, including those deemed substantiated, and must offset expenses on Form 2106.

**Q -18.        *May an employee treat payments made under a nonaccountable plan as if they were made under an accountable plan by voluntarily substantiating expenses and returning any excess to the employer?***

A -18. No. An employee cannot create an accountable plan. Under § 1.62-2(c)(3), if an employer provides a nonaccountable plan, an employee who receives payments under the plan cannot compel the employer to treat the payments as paid under an accountable plan by voluntarily substantiating the expenses or returning any excess to the employer.

**Q -19.        *May an employee deduct any rig-related expenses that exceed those reimbursed by an employer and deemed substantiated under this revenue procedure on Schedule C, Profit or Loss From Business?***

A -19. No. Expenses incurred in connection with the trade or business of being an employee may not be deducted on Schedule C.

**Q -20.        *May an employee deduct any rig-related expenses that exceed those reimbursed by an employer and deemed substantiated under this revenue procedure on Schedule E, Supplemental Income and Loss?***

A -20. No. Expenses incurred in connection with the trade or business of being an employee may not be deducted on Schedule E.

**Q -21.        *May an employee deduct expenses that an eligible employer has already reimbursed under an accountable plan?***

A -21. No.

## SECTION 5. SPECIAL RULES FOR EMPLOYERS

**Q -22.        *May an eligible employer establish an accountable plan to reimburse rig welders or heavy equipment mechanics for non-rig-related business expenses?***

A -22. Yes. An employer may establish a separate accountable plan to reimburse non-rig-related employee business expenses incurred by rig welders or heavy equipment mechanics in addition to the arrangement provided under this revenue procedure. For example, Rev. Proc. 2001-47 provides rules under which an employer may establish an accountable plan for which the amount of ordinary and necessary business expenses of an employee for lodging, meal, and incidental expenses or for meal and incidental expenses incurred while traveling away from home will be deemed substantiated under § 1.274-54.

**Q -23.        *May an eligible employer substitute a rig-related reimbursement for a portion of wages otherwise payable to an employee?***

A -23. This revenue procedure is not intended to permit the recharacterization of wages otherwise payable to an employee. For example, if an employer normally pays an employee \$35 per hour in wages and does not provide a rig reimbursement in the event of inclement weather, the employer may not recharacterize a portion of the \$35 hourly wage into rig reimbursement during inclement weather. If an employer's reimbursement or other expenses allowance arrangement evidences a pattern of abuse of the accountable plan rules, then all payments made under the arrangement will be treated as paid under a nonaccountable plan.

**Q -24.        *What are the tax consequences if an employer that uses the deemed substantiation rule in this revenue procedure provides an additional reimbursement of rig-related expenses?***

A -24. If an employer that uses the deemed substantiation rule separately reimburses an employee for any rig-related expenses, the additional payment is treated as paid under a nonaccountable plan. Thus, the additional payment is reported as wages or other compensation of the employee's Form W-2, and is subject to withholding and payment of income and employment taxes.

For example, employee A is reimbursed for rig-related expenses deemed substantiated under this revenue procedure, and A incurs expenses for cleaning the rig and an oil

change. The employer pays employee A an additional \$25 per week to cover cleaning and the oil change. Because the employer also pays a rig reimbursement under this revenue procedure, the \$25 paid by the employer is treated as paid under a nonaccountable plan. Thus, the additional payment is reported as wages or other compensation of the employee's Form W-2, and is subject to withholding and payment of income and employment taxes.

## **SECTION 6. EFFECTIVE DATE**

This revenue procedure is effective for payments made on or after January 1, 2003.

## **SECTION 7. REQUEST FOR COMMENTS**

We welcome comments regarding this revenue procedure. We specifically request comments concerning other categories of qualified nonpersonal use vehicles owned by employees and used by the employees in the course of providing services as employees, especially where the nature of an industry results in employees working for multiple employers during each year, for which a deemed substantiation rule would be appropriate.

Comments regarding this revenue procedure should be sent by September 9, 2002 in writing, and should reference Rev. Proc. 2002-41. Comments can be addressed to:

CC:ITA:RU (Rev. Proc. 2002-41), room 5226 Internal Revenue  
Service POB 7604, Ben Franklin Station Washington, DC  
20044

Comments also may be hand delivered between the hours of 8 a.m. and 5 p.m. to:

CC:ITA:RU (Rev. Proc. 2002-41) Courier's Desk Internal  
Revenue Service 1111 Constitution Avenue NW Washington,  
DC.

Alternatively, taxpayers may transmit comments electronically via the following e-mail address:

[Notice.Comments@irsounsel.treas.gov](mailto:Notice.Comments@irsounsel.treas.gov)

## **SECTION 8. DRAFTING INFORMATION**

The principal author of this revenue procedure is Joe Spires of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), IRS.

However, other personnel from the IRS and Treasury Department participated in its development. For further information regarding this revenue procedure, call Mr. Spires on (202) 622-6040 (not a toll free number).

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REV. PROC. 2011-52

## Part III

### Administrative, Procedural, and Miscellaneous

26 CFR 601.602: Tax forms and instructions.

(Also Part I, §§ 1, 23, 24, 25A, 32, 42, 59, 62, 63, 132, 135, 137, 146, 147, 148, 151, 179, 213, 220, 221, 512, 513, 877, 877A, 911, 2010, 2032A, 2503, 2523, 4161, 4261, 6033, 6039F, 6323, 6334, 6601, 7430, 7702B; 1.148-5.)

Rev. Proc. 2011-52

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SECTION 4. EFFECTIVE DATE

SECTION 5. DRAFTING INFORMATION

## SECTION 1. PURPOSE

This revenue procedure sets forth inflation adjusted items for 2012.

## SECTION 2. CHANGES

.01 Sections 10909(a)(1) and (b) of the Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, 124 Stat. 119 (PPACA), and § 101(a) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, H.R. 4853, Pub. L. No. 111-312, 124 Stat. 3296 (TRUIRJCA), temporarily designated § 23 of the Code as § 36C. As designated, § 36C provides a temporary refundable adoption credit, and an increase in the maximum adoption credit from \$10,000 (as adjusted for inflation under former § 23(h)) to \$13,170, for taxable years beginning after December 31, 2009, and before January 1, 2012. For taxable years beginning after December 31, 2011, these temporary changes no longer apply. Accordingly, for taxable years beginning after December 31, 2011, the credit is redesignated as § 23 and is no longer refundable. In addition, the maximum adoption credit is \$10,000, as adjusted for inflation. (See section 3.03 of this revenue procedure.)

.02 Section 1151 of the American Recovery and Reinvestment Tax Act of 2009, Tit. I of Div. B of Pub. L. No. 111-5, 123 Stat. 115, and § 727(a) of TRUIRJCA amended § 132(f)(2) of the Code to temporarily increase the amount excludable from gross income for certain employer-provided transportation fringe benefits. For months beginning after February 17, 2009, and before January 1, 2012, the monthly limitation under § 132(f)(2)(A) for transportation in a commuter highway vehicle and any transit pass is the same as the amount in effect under § 132(f)(2)(B) for qualified parking. For

months beginning after December 31, 2011, the temporary increase no longer applies. Accordingly, the monthly limitation under § 132(f)(2)(A) is \$100, as adjusted for inflation. (See section 3.12 of this revenue procedure.)

.03 Section 10909(a)(2) of PPACA and § 101(a) of TRUIRJCA amended § 137(a)(2) and (b)(1) of the Code to temporarily increase the maximum adoption assistance exclusion from \$10,000 (as adjusted for inflation) to \$13,170, for taxable years beginning after December 31, 2009, and before January 1, 2012. Accordingly, for taxable years beginning after December 31, 2011, the maximum exclusion is \$10,000, as adjusted for inflation. (See section 3.14 of this revenue procedure).

.04 Section 402 of TRUIRJCA amended § 179(b)(1) and (2) of the Code to provide that the dollar limitation for the aggregate cost of § 179 property that a taxpayer may elect to expense is \$125,000, and that dollar amount is reduced by the amount the cost of all § 179 property placed into service during the taxable year exceeds \$500,000. For taxable years beginning in 2012, these amounts are adjusted for inflation. Accordingly, these amounts are included in this revenue procedure. (See section 3.20 of this revenue procedure.)

.05 Section 303 of TRUIRJCA amended § 2010(c) of the Code to provide that the basic exclusion amount for determining the amount of the unified credit against estate tax for estates of decedents dying after December 31, 2009, is \$5,000,000. For taxable years beginning after December 31, 2011, this \$5,000,000 amount is adjusted for inflation. Accordingly, this amount is included in this revenue procedure. (See section 3.29 of this revenue procedure.)

.06 Section 202(b)(1) of the Surface and Air Transportation Programs Extension Act of 2011, Pub. L. No. 112-30, 125 Stat. 342, amended § 4261(j)(1)(A)(ii) of the Code (which governs the period of applicability of § 4261(b)(1), (c)(1), and (c)(3)). The effect of that amendment is to temporarily extend the passenger air transportation excise taxes of \$3.00 for domestic travel, \$12.00 for international travel, and \$6.00 for departures beginning or ending in Alaska or Hawaii. These excise taxes apply to transportation taken through January 31, 2012. In addition, these excise taxes apply to amounts paid on or before January 31, 2012, for transportation taken after that date. The \$3.00, \$12.00, and \$6.00 amounts are adjusted for inflation. Accordingly, these amounts are included in this revenue procedure. (See section 3.33 of this revenue procedure.)

### SECTION 3. 2012 ADJUSTED ITEMS

.01 Tax Rate Tables. For taxable years beginning in 2012, the tax rate tables under § 1 are as follows:

TABLE 1 - Section 1(a) - Married Individuals Filing Joint Returns and Surviving Spouses

<u>If Taxable Income Is:</u>	<u>The Tax Is:</u>
Not over \$17,400	10% of the taxable income
Over \$17,400 but not over \$70,700	\$1,740 plus 15% of the excess over \$17,400
Over \$70,700 but not over \$142,700	\$9,735 plus 25% of the excess over \$70,700
Over \$142,700 but not over \$217,450	\$27,735 plus 28% of the excess over \$142,700

Over \$217,450 but not over \$388,350	\$48,665 plus 33% of the excess over \$217,450
Over \$388,350	\$105,062 plus 35% of the excess over \$388,350

TABLE 2 - Section 1(b)—Heads of Households

<u>If Taxable Income Is:</u>	<u>The Tax Is:</u>
Not over \$12,400	10% of the taxable income
Over \$12,400 but not over \$47,350	\$1,240 plus 15% of the excess over \$12,400
Over \$47,350 but not over \$122,300	\$6,482.50 plus 25% of the excess over \$47,350
Over \$122,300 but not over \$198,050	\$25,220 plus 28% of the excess over \$122,300
Over \$198,050 but not over \$388,350	\$46,430 plus 33% of the excess over \$198,050
Over \$388,350	\$109,229 plus 35% of the excess over \$388,350

TABLE 3 - Section 1(c)—Unmarried Individuals (other than Surviving Spouses and Heads of Households)

<u>If Taxable Income Is:</u>	<u>The Tax Is:</u>
Not over \$8,700	10% of the taxable income
Over \$8,700 but not over \$35,350	\$870 plus 15% of the excess over \$8,700
Over \$35,350 but not over \$85,650	\$4,867.50 plus 25% of the excess over \$35,350
Over \$85,650 but not over \$178,650	\$17,442.50 plus 28% of the excess over \$85,650
Over \$178,650 but	\$43,482.50 plus 33% of

not over \$388,350	the excess over \$178,650
Over \$388,350	\$112,683.50 plus 35% of the excess over \$388,350

TABLE 4 - Section 1(d)—Married Individuals Filing Separate Returns

<u>If Taxable Income Is:</u>	<u>The Tax Is:</u>
Not over \$8,700	10% of the taxable income
Over \$8,700 but not over \$35,350	\$870 plus 15% of the excess over \$8,700
Over \$35,350 but not over \$71,350	\$4,867.50 plus 25% of the excess over \$35,350
Over \$71,350 but not over \$108,725	\$13,867.50 plus 28% of the excess over \$71,350
Over \$108,725 but not over \$194,175	\$24,332.50 plus 33% of the excess over \$108,725
Over \$194,175	\$52,531 plus 35% of the excess over \$194,175

TABLE 5 - Section 1(e)—Estates and Trusts

<u>If Taxable Income Is:</u>	<u>The Tax Is:</u>
Not over \$2,400	15% of the taxable income
Over \$2,400 but not over \$5,600	\$360 plus 25% of the excess over \$2,400
Over \$5,600 but not over \$8,500	\$1,160 plus 28% of the excess over \$5,600
Over \$8,500 but not over \$11,650	\$1,972 plus 33% of the excess over \$8,500
Over \$11,650	\$3,011.50 plus 35% of the excess over \$11,650

.02 Unearned Income of Minor Children Taxed as if Parent's Income (the "Kiddie Tax"). For taxable years beginning in 2012, the amount in § 1(g)(4)(A)(ii)(I), which is used to reduce the net unearned income reported on the child's return that is subject to the "kiddie tax," is \$950. This amount is the same as the \$950 standard deduction amount provided in section 3.11(2) of this revenue procedure. The same \$950 amount is used for purposes of § 1(g)(7) (that is, to determine whether a parent may elect to include a child's gross income in the parent's gross income and to calculate the "kiddie tax"). For example, one of the requirements for the parental election is that a child's gross income is more than the amount referenced in § 1(g)(4)(A)(ii)(I) but less than 10 times that amount; thus, a child's gross income for 2012 must be more than \$950 but less than \$9,500.

.03 Adoption Credit. For taxable years beginning in 2012, under § 23(a)(3) the credit allowed for an adoption of a child with special needs is \$12,650. For taxable years beginning in 2012, under § 23(b)(1) the maximum credit allowed for other adoptions is the amount of qualified adoption expenses up to \$12,650. The available adoption credit begins to phase out under § 23(b)(2)(A) for taxpayers with modified adjusted gross income in excess of \$189,710 and is completely phased out for taxpayers with modified adjusted gross income of \$229,710 or more. (See section 3.14 of this revenue procedure for the adjusted items relating to adoption assistance programs.)

.04 Child Tax Credit. For taxable years beginning in 2012, the value used in § 24(d)(1)(B)(i) to determine the amount of credit under § 24 that may be refundable is \$3,000.

.05 Hope Scholarship, American Opportunity, and Lifetime Learning Credits.

(1) For taxable years beginning in 2012, the Hope Scholarship Credit under § 25A(b)(1), as increased under § 25A(i) (the American Opportunity Tax Credit), is an amount equal to 100 percent of qualified tuition and related expenses not in excess of \$2,000, plus 25 percent of those expenses in excess of \$2,000, but not in excess of \$4,000. Accordingly, the maximum Hope Scholarship Credit allowable under § 25A(b)(1) for taxable years beginning in 2012 is \$2,500.

(2) For taxable years beginning in 2012, a taxpayer's modified adjusted gross income in excess of \$80,000 (\$160,000 for a joint return) is used to determine the reduction under § 25A(d)(2) in the amount of the Hope Scholarship Credit otherwise allowable under § 25A(a)(1). For taxable years beginning in 2012, a taxpayer's modified adjusted gross income in excess of \$52,000 (\$104,000 for a joint return) is used to determine the reduction under § 25A(d)(2) in the amount of the Lifetime Learning Credit otherwise allowable under § 25A(a)(2).

.06 Earned Income Credit.

(1) In general. For taxable years beginning in 2012, the following amounts are used to determine the earned income credit under § 32(b). The "earned income amount" is the amount of earned income at or above which the maximum amount of the earned income credit is allowed. The "threshold phaseout amount" is the amount of adjusted gross income (or, if greater, earned income) above which the maximum amount of the credit begins to phase out. The "completed phaseout amount" is the amount of adjusted gross income (or, if greater, earned income) at or above which no credit is

allowed. The threshold phaseout amounts and the completed phaseout amounts shown in the table below for married taxpayers filing a joint return include the increase provided in § 32(b)(3)(B)(i), as adjusted for inflation for taxable years beginning in 2012.

<u>Item</u>	<u>Number of Qualifying Children</u>			
	<u>One</u>	<u>Two</u>	<u>Three or More</u>	<u>None</u>
Earned Income Amount	\$9,320	\$13,090	\$13,090	\$6,210
Maximum Amount of Credit	\$3,169	\$5,236	\$5,891	\$475
Threshold Phaseout Amount (Single, Surviving Spouse, or Head of Household)	\$17,090	\$17,090	\$17,090	\$7,770
Completed Phaseout Amount (Single, Surviving Spouse, or Head of Household)	\$36,920	\$41,952	\$45,060	\$13,980
Threshold Phaseout Amount (Married Filing Jointly)	\$22,300	\$22,300	\$22,300	\$12,980
Completed Phaseout Amount (Married Filing Jointly)	\$42,130	\$47,162	\$50,270	\$19,190

The instructions for the Form 1040 series provide tables showing the amount of the earned income credit for each type of taxpayer.

(2) Excessive investment income. For taxable years beginning in 2012, the earned income tax credit is not allowed under § 32(i) if the aggregate amount of certain investment income exceeds \$3,200.

.07 Rehabilitation Expenditures Treated as Separate New Building. For calendar year 2012, the per low-income unit qualified basis amount under § 42(e)(3)(A)(ii)(II) is \$6,200.

.08 Low-Income Housing Credit. For calendar year 2012, the amount used under § 42(h)(3)(C)(ii) to calculate the State housing credit ceiling for the low-income housing credit is the greater of (1) \$2.20 multiplied by the State population, or (2) \$2,525,000.

.09 Alternative Minimum Tax Exemption for a Child Subject to the "Kiddie Tax." For taxable years beginning in 2012, for a child to whom the § 1(g) "kiddie tax" applies, the exemption amount under §§ 55 and 59(j) for purposes of the alternative minimum tax under § 55 may not exceed the sum of (1) the child's earned income for the taxable year, plus (2) \$6,950.

.10 Transportation Mainline Pipeline Construction Industry Optional Expense Substantiation Rules for Payments to Employees under Accountable Plans. For calendar year 2012, an eligible employer may pay certain welders and heavy equipment mechanics an amount of up to \$16 per hour for rig-related expenses that is deemed substantiated under an accountable plan if paid in accordance with Rev. Proc. 2002-41, 2002-1 C.B. 1098. If the employer provides fuel or otherwise reimburses fuel expenses, up to \$10 per hour is deemed substantiated if paid under Rev. Proc. 2002-41.

.11 Standard Deduction.

(1) In general. For taxable years beginning in 2012, the standard deduction amounts under § 63(c)(2) are as follows:

Filing Status

Standard Deduction

Married Individuals Filing Joint Returns and Surviving Spouses (§ 1(a))	\$11,900
Heads of Households (§ 1(b))	\$8,700
Unmarried Individuals (other than Surviving Spouses and Heads of Households) (§ 1(c))	\$5,950
Married Individuals Filing Separate Returns (§ 1(d))	\$5,950

(2) Dependent. For taxable years beginning in 2012, the standard deduction amount under § 63(c)(5) for an individual who may be claimed as a dependent by another taxpayer cannot exceed the greater of (1) \$950, or (2) the sum of \$300 and the individual's earned income.

(3) Aged or blind. For taxable years beginning in 2012, the additional standard deduction amount under § 63(f) for the aged or the blind is \$1,150. These amounts are increased to \$1,450 if the individual is also unmarried and not a surviving spouse.

.12 Qualified Transportation Fringe Benefit. For taxable years beginning in 2012, the monthly limitation under § 132(f)(2)(A), regarding the aggregate fringe benefit exclusion amount for transportation in a commuter highway vehicle and any transit pass, is \$125. The monthly limitation under § 132(f)(2)(B), regarding the fringe benefit exclusion amount for qualified parking, is \$240.

.13 Income from United States Savings Bonds for Taxpayers Who Pay Qualified Higher Education Expenses. For taxable years beginning in 2012, the exclusion under § 135, regarding income from United States savings bonds for taxpayers who pay qualified higher education expenses, begins to phase out for modified adjusted gross income above \$109,250 for joint returns and \$72,850 for other returns. The exclusion is

completely phased out for modified adjusted gross income of \$139,250 or more for joint returns and \$87,850 or more for other returns.

.14 Adoption Assistance Programs. For taxable years beginning in 2012, under § 137(a)(2) the amount that can be excluded from an employee's gross income for the adoption of a child with special needs is \$12,650. For taxable years beginning in 2012, under § 137(b)(1) the maximum amount that can be excluded from an employee's gross income for the amounts paid or expenses incurred by an employer for qualified adoption expenses furnished pursuant to an adoption assistance program for other adoptions by the employee is \$12,650. The amount excludable from an employee's gross income begins to phase out under § 137(b)(2)(A) for taxpayers with modified adjusted gross income in excess of \$189,710 and is completely phased out for taxpayers with modified adjusted gross income of \$229,710 or more. (See section 3.03 of this revenue procedure for the adjusted items relating to the adoption credit.)

.15 Private Activity Bonds Volume Cap. For calendar year 2012, the amounts used under § 146(d)(1) to calculate the State ceiling for the volume cap for private activity bonds is the greater of (1) \$95 multiplied by the State population, or (2) \$284,560,000.

.16 Loan Limits on Agricultural Bonds. For calendar year 2012, the loan limit amount on agricultural bonds under § 147(c)(2)(A) for first-time farmers is \$488,600.

.17 General Arbitrage Rebate Rules. For bond years ending in 2012, the amount of the computation credit determined under permission to rely on § 1.148-3(d)(4) of the proposed Income Tax Regulations is \$1,550.

.18 Safe Harbor Rules for Broker Commissions on Guaranteed Investment Contracts

or Investments Purchased for a Yield Restricted Defeasance Escrow. For calendar year 2012, under § 1.148-5(e)(2)(iii)(B)(1), a broker's commission or similar fee for the acquisition of a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow is reasonable if (1) the amount of the fee that the issuer treats as a qualified administrative cost does not exceed the lesser of (A) \$37,000, and (B) 0.2 percent of the computational base (as defined in § 1.148-5(e)(2)(iii)(B)(2)) or, if more, \$4,000; and (2) the issuer does not treat more than \$103,000 in brokers' commissions or similar fees as qualified administrative costs for all guaranteed investment contracts and investments for yield restricted defeasance escrows purchased with gross proceeds of the issue.

.19 Personal Exemption. For taxable years beginning in 2012, the personal exemption amount under § 151(d) is \$3,800.

.20 Election to Expense Certain Depreciable Assets. For taxable years beginning in 2012, under § 179(b)(1)(C) the aggregate cost of any § 179 property a taxpayer may elect to treat as an expense cannot exceed \$139,000. Under § 179(b)(2)(C), the \$139,000 limitation is reduced (but not below zero) by the amount the cost of § 179 property placed in service during the 2012 taxable year exceeds \$560,000.

.21 Eligible Long-Term Care Premiums. For taxable years beginning in 2012, the limitations under § 213(d)(10), regarding eligible long-term care premiums includible in the term "medical care," are as follows:

<u>Attained Age Before the Close of the Taxable Year</u>	<u>Limitation on Premiums</u>
40 or less	\$350

More than 40 but not more than 50	\$660
More than 50 but not more than 60	\$1,310
More than 60 but not more than 70	\$3,500
More than 70	\$4,370

.22 Medical Savings Accounts.

(1) Self-only coverage. For taxable years beginning in 2012, the term "high deductible health plan" as defined in § 220(c)(2)(A) means, for self-only coverage, a health plan that has an annual deductible that is not less than \$2,100 and not more than \$3,150, and under which the annual out-of-pocket expenses required to be paid (other than for premiums) for covered benefits do not exceed \$4,200.

(2) Family coverage. For taxable years beginning in 2012, the term "high deductible health plan" means, for family coverage, a health plan that has an annual deductible that is not less than \$4,200 and not more than \$6,300, and under which the annual out-of-pocket expenses required to be paid (other than for premiums) for covered benefits do not exceed \$7,650.

.23 Interest on Education Loans. For taxable years beginning in 2012, the \$2,500 maximum deduction for interest paid on qualified education loans under § 221 begins to phase out under § 221(b)(2)(B) for taxpayers with modified adjusted gross income in excess of \$60,000 (\$125,000 for joint returns), and is completely phased out for taxpayers with modified adjusted gross income of \$75,000 or more (\$155,000 or more for joint returns).

.24 Treatment of Dues Paid to Agricultural or Horticultural Organizations. For taxable

years beginning in 2012, the limitation under § 512(d)(1), regarding the exemption of annual dues required to be paid by a member to an agricultural or horticultural organization, is \$151.

.25 Insubstantial Benefit Limitations for Contributions Associated with Charitable Fund-Raising Campaigns.

(1) Low cost article. For taxable years beginning in 2012, the unrelated business income of certain exempt organizations under § 513(h)(2) does not include a "low cost article" of \$9.90 or less.

(2) Other insubstantial benefits. For taxable years beginning in 2012, the \$5, \$25, and \$50 guidelines in section 3 of Rev. Proc. 90-12, 1990-1 C.B. 471 (as amplified by Rev. Proc. 92-49, 1992-1 C.B. 987, and modified by Rev. Proc. 92-102, 1992-2 C.B. 579), for disregarding the value of insubstantial benefits received by a donor in return for a fully deductible charitable contribution under § 170, are \$9.90, \$49.50, and \$99, respectively.

.26 Expatriation to Avoid Tax. For calendar year 2012, an individual with "average annual net income tax" of more than \$151,000 for the five taxable years ending before the date of the loss of United States citizenship under § 877(a)(2)(A) is a covered expatriate for purposes of § 877A(g)(1).

.27 Tax Responsibilities of Expatriation. For taxable years beginning in 2012, the amount that would be includible in the gross income of a covered expatriate by reason of § 877A(a)(1) is reduced (but not below zero) by \$651,000.

.28 Foreign Earned Income Exclusion. For taxable years beginning in 2012, the

foreign earned income exclusion amount under § 911(b)(2)(D)(i) is \$95,100.

.29 Unified Credit Against Estate Tax. For an estate of any decedent dying during calendar year 2012, the basic exclusion amount is \$5,120,000 for determining the amount of the unified credit against estate tax under § 2010.

.30 Valuation of Qualified Real Property in Decedent's Gross Estate. For an estate of a decedent dying in calendar year 2012, if the executor elects to use the special use valuation method under § 2032A for qualified real property, the aggregate decrease in the value of qualified real property resulting from electing to use § 2032A for purposes of the estate tax cannot exceed \$1,040,000.

.31 Annual Exclusion for Gifts.

(1) For calendar year 2012, the first \$13,000 of gifts to any person (other than gifts of future interests in property) are not included in the total amount of taxable gifts under § 2503 made during that year.

(2) For calendar year 2012, the first \$139,000 of gifts to a spouse who is not a citizen of the United States (other than gifts of future interests in property) are not included in the total amount of taxable gifts under §§ 2503 and 2523(i)(2) made during that year.

.32 Tax on Arrow Shafts. For calendar year 2012, the tax imposed under § 4161(b)(2)(A) on the first sale by the manufacturer, producer, or importer of any shaft of a type used in the manufacture of certain arrows is \$0.46 per shaft.

.33 Passenger Air Transportation Excise Tax. For calendar year 2012, the tax under § 4261(b)(1) on the amount paid for each domestic segment of taxable air

transportation is \$3.80. For calendar year 2012, the tax under § 4261(c)(1) on any amount paid (whether within or without the United States) for any air transportation, if the transportation begins or ends in the United States, generally is \$16.70. However, for a domestic segment beginning or ending in Alaska or Hawaii as described in § 4261(c)(3), the tax applies only to departures and the rate is \$8.40.

.34 Reporting Exception for Certain Exempt Organizations with Nondeductible Lobbying Expenditures. For taxable years beginning in 2012, the annual per person, family, or entity dues limitation to qualify for the reporting exception under § 6033(e)(3) (and section 5.05 of Rev. Proc. 98-19, 1998-1 C.B. 547), regarding certain exempt organizations with nondeductible lobbying expenditures, is \$105 or less.

.35 Notice of Large Gifts Received from Foreign Persons. For taxable years beginning in 2012, recipients of gifts from certain foreign persons may be required to report these gifts under § 6039F if the aggregate value of gifts received in a taxable year exceeds \$14,723.

.36 Persons Against Whom a Federal Tax Lien Is Not Valid. For calendar year 2012, a federal tax lien is not valid against (1) certain purchasers under § 6323(b)(4) who purchased personal property in a casual sale for less than \$1,430, or (2) a mechanic's lienor under § 6323(b)(7) who repaired or improved certain residential property if the contract price with the owner is not more than \$7,160.

.37 Property Exempt from Levy. For calendar year 2012, the value of property exempt from levy under § 6334(a)(2) (fuel, provisions, furniture, and other household personal effects, as well as arms for personal use, livestock, and poultry) cannot exceed

\$8,570. The value of property exempt from levy under § 6334(a)(3) (books and tools necessary for the trade, business, or profession of the taxpayer) cannot exceed \$4,290.

.38 Interest on a Certain Portion of the Estate Tax Payable in Installments. For an estate of a decedent dying in calendar year 2012, the dollar amount used to determine the "2-percent portion" (for purposes of calculating interest under § 6601(j)) of the estate tax extended as provided in § 6166 is \$1,390,000.

.39 Attorney Fee Awards. For fees incurred in calendar year 2012, the attorney fee award limitation under § 7430(c)(1)(B)(iii) is \$180 per hour.

.40 Periodic Payments Received under Qualified Long-Term Care Insurance Contracts or under Certain Life Insurance Contracts. For calendar year 2012, the stated dollar amount of the per diem limitation under § 7702B(d)(4), regarding periodic payments received under a qualified long-term care insurance contract or periodic payments received under a life insurance contract that are treated as paid by reason of the death of a chronically ill individual, is \$310.

#### SECTION 4. EFFECTIVE DATE

.01 General Rule. Except as provided in section 4.02, this revenue procedure applies to taxable years beginning in 2012.

.02 Calendar Year Rule. This revenue procedure applies to transactions or events occurring in calendar year 2012 for purposes of sections 3.07 (rehabilitation expenditures treated as separate new building), 3.08 (low-income housing credit), 3.10 (transportation mainline pipeline construction industry optional expense substantiation rules for payments to employees under accountable plans), 3.15 (private activity bonds

volume cap), 3.16 (loan limits on agricultural bonds), 3.17 (general arbitrage rebate rules), 3.18 (safe harbor rules for broker commissions on guaranteed investment contracts or investments purchased for a yield restricted defeasance escrow), 3.26 (expatriation to avoid tax), 3.29 (unified credit against estate tax), 3.30 (valuation of qualified real property in decedent's gross estate), 3.31 (annual exclusion for gifts), 3.32 (tax on arrow shafts), 3.33 (passenger air transportation excise tax), 3.36 (persons against whom a federal tax lien is not valid), 3.37 (property exempt from levy), 3.38 (interest on a certain portion of the estate tax payable in installments), 3.39 (attorney fee awards), and 3.40 (periodic payments received under qualified long-term care insurance contracts or under certain life insurance contracts).

#### SECTION 5. DRAFTING INFORMATION

The principal author of this revenue procedure is William Ruane of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Mr. Ruane at (202) 622-4920 (not a toll-free call).