

***** JUSTIFICATION FOR EMERGENCY APPROVAL *****

Emergency approval is requested by the Commissioner of Internal Revenue under 44 U.S.C § 3507(j)(1) for the Foreign Asset Disclosure Initiative, included in the attached revenue procedure. The two requirements of § 3507(j)(1)(A) are satisfied.

The attached revenue procedure addresses, in part, the problem of United States taxpayers who use foreign accounts and entities in order to understate their tax liability to the United States. In spite of the heavy consequences relating to the failure to report foreign accounts and income, many wealthy taxpayers have nonetheless failed to fulfill their tax obligations with respect to foreign accounts and assets, relying on the secrecy practices of foreign financial institutions and service providers to keep them safe from detection.

First, as required by § 3507(j)(1)(A)(i), the collection of information is needed prior to the expiration of the normal clearance procedures (approximately May 2009). Several recent Senate investigations have publicly documented devices taxpayers use to move funds and assets secretly offshore, and control and enjoy those funds and assets through accounts nominally owned by shell corporations, trusts, foundations, and other similar entities. Both the Senate Finance Committee and the Permanent Subcommittee on Investigations of the Senate Committee on Homeland Security and Governmental Affairs have recently conducted hearings in this area, at which the Commissioner or a high-ranking IRS executive were called to testify. At the same time that there has been increased Congressional interest in this area of tax noncompliance by the very wealthy, the IRS has begun to receive information regarding this group of taxpayers, both from voluntary disclosures to the IRS on the part of these taxpayers and from informants who have presented the IRS with information from private banks in jurisdictions with strict bank secrecy laws. In addition, the IRS has recently expanded its enforcement efforts by issuing a John Doe summons to a Swiss bank, which is expected to yield a substantial amount of information regarding this group of taxpayers. The IRS also is pursuing dozens of criminal investigations of United States taxpayers for offshore tax evasion, many of which are in connection with accounts in Liechtenstein.

Publicity aroundt the Congressional hearings, informant disclosures, the John Doe summons, and the DOJ criminal investigations, has generated significant interest, both within the government and in the private sector, in developing an initiative that would bring taxpayers back into compliance, promote uniform treatment and efficiently resolve complex cases that involve foreign and international laws, including foreign bank secrecy statutes. The attached initiative would produce those results, particularly if the IRS can start the initiative in the near future in order to leverage the heightened interest in illegal offshore activities. The normal clearance procedures would not be timely enough to allow

the IRS to take advantage of the current pressure to reach resolution of these issues.

Second, as required by § 3507(j)(1)(A)(ii), the collection of information is essential to the IRS mission of fostering compliance. This initiative is intended to quickly and effectively resolve tax avoidance transactions and bring these taxpayers into compliance. Tax abuse not only gives noncompliant taxpayers an advantage over compliant taxpayers, fostering noncompliance, but also deprives the United States Treasury of much needed revenue. The quick release of this initiative is critical in order to leverage the public's current attention on offshore financial activities into a potentially larger number of taxpayers wishing to resolve their activities involving the nonreporting or underreporting of United States tax liabilities through the use of foreign accounts or foreign entities.

In addition, each of the three disjunctive requirements of § 3507(j)(1)(B) are satisfied, and any one of these three requirements would be sufficient to justify the emergency approval. First, as required by § 3705(j)(1)(B)(i), public harm is reasonably likely to occur if the normal clearance procedures are followed. Statutory periods limiting the assessment of taxes at issue may expire if the disclosure initiative is not announced until approximately May 2009 under the normal review procedures. The IRS needs time to evaluate the applications to identify the taxes at issue, including the relevant statutory periods limiting the assessment of taxes, eligibility requirements, and the need for further information. Given the scope of this initiative, it is necessary to issue this revenue procedure as soon as possible so that extensions of the period of limitations for assessment of the taxes can be obtained prior to the expiration of any period of assessment. In some cases we may not know immediately what taxes are at issue and which periods of assessment might need to be extended. Delay in announcing the initiative for approximately four and a half to six months so that an OMB control number can be obtained through traditional channels will delay the announcement of the initiative and result in applications under this initiative being filed too close to, or after, the expiration of the period of limitations for assessment of the taxes for the IRS to identify and extend the relative statutes, almost certainly resulting in less tax dollars being collected.

Second, as required by § 3507(j)(1)(B)(ii), unanticipated events have occurred. As stated above, there has been an increasing number of informant disclosures, taxpayers voluntarily disclosing, criminal investigations, and Congressional hearings. These will only increase the pressure to find an effective and efficient way to resolve these issues.

Third, as required by § 3507(j)(1)(B)(iii) and as mentioned above, the use of the normal clearance procedures is reasonably likely to prevent the IRS from completely resolving these cases prior to the expiration of some of the applicable statutory periods limiting the assessment of taxes.