Internal Revenue bulletin

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HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

Notice 2013–70, page 528.

Q&A on Tax Credits for Sections 25C and 25D. This notice provides guidance in a question-and-answer format regarding the credits for nonbusiness energy property under § 25C and residential energy efficient property under § 25D of the Code. The notice answers questions that arise frequently or for which taxpayers have expressed an urgent need for guidance under § 25C and § 25D. In addition, this notice incorporates the changes made to § 25C by section 710 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111–312, 124 Stat. 3296 (2010), and to § 25C and § 25D by sections 104 and 401 of the American Taxpayer Relief Act of 2012, Pub. L. No. 112–240, 126 Stat. 2313 (2013).

Notice 2013–71, page 532.

This notice modifies the use-or-lose rule for health FSAs to permit use of up to $500 of unused amounts in a health FSA in the following year. This notice also clarifies the transition relief referred to in the preamble to section 4980H proposed regulations for an employer with a 2013–2014 non-calendar year cafeteria plan.

Rev. Proc. 2013–35, page 537.

This procedure sets forth the 2014 cost-of-living adjustments to certain items due to inflation as required under various provisions of the Code and Service guidance.

Announcement 2013–44, page 545.

This announcement contains amendments to temporary regulations relating to guidance for taxpayers electing to establish a mixed straddle using straddle-by-straddle identification. These amendments include a change to the applicability date of the temporary regulations pursuant to which the temporary regulations apply to transactions established after the date of publication of the Treasury decision adopting these rules as final regulations in the Federal Register. The amendments to the temporary regulations will affect taxpayers who elect to establish a mixed straddle using straddle-by-straddle identification.

Announcement 2013–45, page 546.

This announcement contains amendments to proposed regulations relating to guidance for taxpayers electing to establish a mixed straddle using straddle-by-straddle identification. These amendments include a change to the applicability date of the proposed regulations pursuant to which the proposed regulations would apply to transactions established after the date of publication of the Treasury decision adopting these rules as final regulations in the Federal Register. The amendments to the proposed regulations will affect taxpayers who elect to establish a mixed straddle using straddle-by-straddle identification.

ESTATE TAX

Rev. Proc. 2013–35, page 537.

This procedure sets forth the 2014 cost-of-living adjustments to certain items due to inflation as required under various provisions of the Code and Service guidance.

GIFT TAX

Rev. Proc. 2013–35, page 537.

This procedure sets forth the 2014 cost-of-living adjustments to certain items due to inflation as required under various provisions of the Code and Service guidance.

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Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

EXCISE TAX

Rev. Proc. 2013–35, page 537.
This procedure sets forth the 2014 cost-of-living adjustments to certain items due to inflation as required under various provisions of the Code and Service guidance.

ADMINISTRATIVE

Rev. Proc. 2013–35, page 537.
This procedure sets forth the 2014 cost-of-living adjustments to certain items due to inflation as required under various provisions of the Code and Service guidance.

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.
This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.
This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.
To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.
This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

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

Section 1.—Tax Imposed

The Service provides inflation adjustments to the tax rate tables for individuals, trusts, and estates for taxable years beginning in 2014. The Service also provides an inflation adjustment to the amount used to reduce the net unearned income of a minor child subject to the "kiddie tax" for taxable years beginning in 2014. See Rev. Proc. 2013–35, page 537.

Section 23.—Adoption Expenses

The Service provides inflation adjustments to the adoption credit allowed for the adoption of a child for taxable years beginning in 2014. The Service also provides inflation adjustments to the value used in calculating the modified adjusted gross income limitations used to determine the amount of adoption credit that is allowed in taxable years beginning in 2014. See Rev. Proc. 2013–35, page 537.

Section 24.—Child Tax Credit

The Service provides an inflation adjustment for the value used in determining the amount of the credit that may be refundable for taxable years beginning in 2014. See Rev. Proc. 2013–35, page 537.

Section 25A.—Hope and Lifetime Learning Credits

The Service provides an inflation adjustment for the amount of qualified tuition and related expenses that are taken into account in determining the amount of the Hope Scholarship Credit for taxable years beginning in 2014. Also for taxable years beginning in 2014, the Service provides an inflation adjustment for the amount of a taxpayer's modified adjusted gross income that is taken into account in determining the reduction in the amount of the Hope Scholarship and Lifetime Learning Credits otherwise available. See Rev. Proc. 2013–35, page 537.

Section 32.—Earned Income

The Service provides inflation adjustments to the limitations on the earned income credit for taxable years beginning in 2014. See Rev. Proc. 2013–35, page 537.

Section 42.—Low-Income Housing Credit

The Service provides inflation adjustments to the amounts used to calculate the State housing credit ceiling used in determining the low-income housing credit, and the per low-income unit qualified basis amount, for calendar year 2014. See Rev. Proc. 2013–35, page 537.

Section 45R.—Employee Health Insurance Expenses of Small Employers

The Service provides the dollar amount used to calculate average annual wages for determining who is eligible for the small employer health insurance credit for calendar year 2014. See Rev. Proc. 2013–35, page 537.

Section 55.—Alternative Minimum Tax Imposed

The Service provides an inflation adjustment for the exemption amounts for the alternative minimum tax for taxable years beginning in 2014. Also for taxable years beginning in 2014, the Service provides an inflation adjustment for the amounts used to determine the phaseout of the exemption amounts for the alternative minimum tax. See Rev. Proc. 2013–35, page 537.

Section 59.—Other Definitions and Special Rules

The Service provides an inflation adjustment to the exemption amount used in computing the alternative minimum tax for a minor child subject to the "kiddie tax" for taxable years beginning in 2014. See Rev. Proc. 2013–35, page 537.

Section 62.—Adjusted Gross Income Defined

The Service provides inflation adjustments to the amounts an eligible employer may pay in calendar year 2014 to certain welders and heavy equipment mechanics for rig-related expenses that are deemed substantiated under an accountable plan if paid in accordance with Rev. Proc. 2002–41, 2002–1 C.B. 1098. See Rev. Proc. 2013–35, page 537.

Section 63.—Taxable Income Defined

The Service provides inflation adjustments to the standard deduction amounts (including the limitation in the case of certain dependents, and the additional standard deduction for the aged or blind) for taxable years beginning in 2014. See Rev. Proc. 2013–35, page 537.

Section 68.—Overall Limitation on Itemized Deductions

The Service provides overall limitations on itemized deductions for individuals for taxable years beginning in 2014. See Rev. Proc. 2013–35, page 537.

Section 125.—Cafeteria Plans

The Service provides an inflation adjustment for voluntary employee salary reductions for contributions to health flexible spending arrangements for taxable years beginning in 2014. See Rev. Proc. 2013–35, page 537.

Section 132.—Certain Fringe Benefits

The Service provides inflation adjustments to the limitations on the exclusion of income for a qualified transportation fringe benefit for taxable years beginning in 2014. See Rev. Proc. 2013–35, page 537.

Section 135.—Income from United States Savings Bonds Used to Pay Higher Education Tuition and Fees

The Service provides inflation adjustments to the limitation on the exclusion of income from United States savings bonds for taxpayers who pay qualified higher education expenses for taxable years beginning in 2014. See Rev. Proc. 2013–35, page 537.

Section 137.—Adoption Assistance Programs

The Service provides inflation adjustments to the maximum amount that can be excluded from an employee's gross income in connection with a qualified adoption assistance program for taxable years beginning in 2014. The Service also provides inflation adjustments to the amount used to calculate the modified adjusted gross income limitations used to determine the amount that can be excluded from an employee's gross income for taxable years beginning in 2014. See Rev. Proc. 2013–35, page 537.

Section 146.—Volume Cap

The Service provides inflation adjustments to the amounts used to determine the State ceiling for the volume cap of private activity bonds for calendar year 2014. See Rev. Proc. 2013–35, page 537.

Section 147.—Other Requirements Applicable to Certain Private Activity Bonds

The Service provides an inflation adjustment to the loan limit amount on agricultural bonds for first-time farmers for calendar year 2014. See Rev. Proc. 2013–35, page 537.

Section 148.—Arbitrage

26 C.F.R. 1.148–5: Yield and valuation of investments. The Service provides inflation adjustments for determining in the calendar year 2014 whether a broker's commission or similar fee with respect to the acquisition of a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow is reasonable. The Service provides an inflation adjustment to the computation credit determined under permission to rely on § 1.148–3(d)(4) of the proposed Income Tax Regulations for bond years ending in 2014. See Rev. Proc. 2013–35, page 537.

Section 151.—Allowance of Deductions for Personal Exemptions

The Service provides an inflation adjustment to the personal exemption amount for taxable years beginning in 2014. See Rev. Proc. 2013–35, page 537.

Section 213.—Medical, Dental, etc., Expenses

The Service provides inflation adjustments to the limitations on the amount of eligible long-term care premiums includible in the term "medical care" for taxable years beginning in 2014. See Rev. Proc. 2013–35, page 537.

Section 220.—Archer MSAs

The Service provides inflation adjustments to the amounts used to determine whether a health plan is a "high deductible health plan" for purposes of determining whether an individual is eligible for a deduction for cash paid to a medical savings account for taxable years beginning in 2014. See Rev. Proc. 2013–35, page 537.

Section 221.—Interest on Education Loans

The Service provides inflation adjustments to the income limitations used to determine the allowable deduction for interest on education loans for taxable years beginning in 2014. See Rev. Proc. 2013–35, page 537.

Section 512.—Unrelated Business Taxable Income

The Service provides an inflation adjustment to the maximum amount of annual dues that can be paid to certain agricultural or horticultural organizations without any portion being treated as unrelated trade or business income by reason of any benefits or privileges available to members for taxable years beginning in 2014. See Rev. Proc. 2013–35, page 537.

Section 513.—Unrelated Trade or Business

The Service provides an inflation adjustment to the maximum cost of a "low cost article" for taxable years beginning in 2014. Funds raised through a charity's distribution of "low cost articles" will not be treated as unrelated business income to the charity. See Rev. Proc. 2013–35, page 537.

Section 877.—Expatriation to Avoid Tax

The Service provides an inflation adjustment to the amount used for calendar year 2014 to determine whether an individual's loss of United States citizenship had the avoidance of United States tax as one of its principal purposes. See Rev. Proc. 2013–35, page 537.

Section 877A.—Tax Responsibilities of Expatriation

The Service provides an inflation adjustment to the amount that reduces the amount that would be includible in the gross income of a covered expatriate for taxable years beginning in 2014. See Rev. Proc. 2013–35, page 537.

Section 911.—Citizens or Residents of the United States Living Abroad

The Service provides an inflation adjustment to the amount of foreign earned income that may be excluded from gross income for taxable years beginning in 2014. See Rev. Proc. 2013–35, page 537.

Section 2010.—United Credit Against Estate Tax

The Service provides an inflation adjustment to the amount of the unified credit against estate tax for the estate of a decedent dying in calendar year 2014. See Rev. Proc. 2013–35, page 537.

Section 2032A.—Valuation of Certain Farm, etc., Real Property

The Service provides an inflation adjustment to the maximum amount by which the value of certain farm and other qualified real property included in a decedent's gross estate may be decreased for purposes of valuing the estate of a decedent dying in calendar year 2014. See Rev. Proc. 2013–35, page 537.

Section 2503.—Taxable Gifts

The Service provides an inflation adjustment to the amount of gifts that may be made to a person in a calendar year without including the amount in taxable gifts for calendar year 2014. See Rev. Proc. 2013–35, page 537.

Section 2523.—Gift to Spouse

The Service provides an inflation adjustment to the amount of gifts that may be made in a calendar year to a spouse who is not a citizen of the United States without including the amount in taxable gifts for calendar year 2014. See Rev. Proc. 2013–35, page 537.

Section 4161.—Imposition of Tax

The Service provides an inflation adjustment to the amount of excise tax imposed for calendar year 2014 on the first sale by a manufacturer, producer, or importer of any shaft of a type used in the manufacture of certain arrows. See Rev. Proc. 2013–35, page 537.

Section 4261.—Imposition of Tax

The Service provides inflation adjustments for excise taxes on domestic and international passenger air transportation for calendar year 2014. See Rev. Proc. 2013–35, page 537.

Section 6033.—Returns by Exempt Organizations

The Service provides an inflation adjustment to the amount of dues certain exempt organizations with nondeductible lobbying expenditures can charge and still be excepted from reporting requirements for taxable years beginning in 2014. See Rev. Proc. 2013–35, page 537.

Section 6039F.—Notice of Large Gifts Received from Foreign Persons

The Service provides an inflation adjustment to the amount of gifts received in a taxable year from foreign persons that triggers a reporting requirement for a United States person for taxable years beginning in 2014. See Rev. Proc. 2013–35, page 537.

Section 6323.—Validity and Priority Against Certain Persons

The Service provides inflation adjustments for calendar year 2014 to (1) the maximum amount of a casual sale of personal property below which a federal tax lien will not be valid against a purchaser of the property, and (2) the maximum amount of a contract for the repair or improvement of certain residential property at or below which a federal tax lien will not be valid against a mechanic's lienor. See Rev. Proc. 2013–35, page 537.

Section 6334.—Property Exempt from Levy

The Service provides inflation adjustments to the value of certain property exempt from levy (fuel, provisions, furniture, household personal effects, arms for personal use, livestock, poultry, and books and tools of a trade, business, or profession) for calendar year 2014. See Rev. Proc. 2013–35, page 537.

Section 6601.—Interest on Underpayment, Nonpayment, or Extension of Time for Payment, of Tax

The Service provides an inflation adjustment to the amount used to determine the amount of interest charged on a certain portion of the estate tax payable in installments for the estate of a decedent dying in calendar year 2013. See Rev. Proc. 2013–35, page 537.

Section 7430.—Awarding of Costs and Certain Fees

The Service provides an inflation adjustment to the hourly limit on attorney fees incurred in calendar year 2014 that may be awarded in a judgment or settlement of an administrative or judicial proceeding concerning the determination, collection, or refund of tax, interest, or penalty. See Rev. Proc. 2013–35, page 537.

Section 7702B.—Treatment of Qualified Long-Term Care Insurance

The Service provides an inflation adjustment to the stated dollar amount for calendar year 2014 of the per diem limitation regarding periodic paymentsreceived 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. See Rev. Proc. 2013–35, page 537.

Part III. Administrative, Procedural, and Miscellaneous

Q&A on Tax Credits for Sections 25C and 25D

Notice 2013–70

SECTION 1. PURPOSE

This notice provides guidance with respect to the credits for nonbusiness energy property under § 25C of the Internal Revenue Code (Code) and residential energy efficient property under § 25D of the Code. This notice incorporates the changes made to § 25C by section 710 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111–312, 124 Stat. 3296 (2010) (the 2010 Act) and to § 25C and § 25D by sections 104 and 401 of the American Taxpayer Relief Act of 2012, Pub. L. No. 112–240, 126 Stat. 2313 (2013) (the 2012 Act).

SECTION 2. BACKGROUND

Section 25C allows a credit in an amount equal to the sum of (1) 10 percent of the amount paid or incurred by the taxpayer for qualified energy efficiency improvements installed during the year, and (2) the amount of the residential energy property expenditures paid or incurred by the taxpayer during the year.[1] The credit is allowed for qualifying property placed in service through December 31, 2013.[2]

Section 25D allows a credit for qualified expenditures made by a taxpayer for residential energy efficient property. Taxpayers may claim the § 25D credit for qualified property placed in service before January 1, 2017.

On May 11, 2009, the Internal Revenue Service (the Service) issued Notice 2009–41, 2009–19 I.R.B. 933, to provide procedures that manufacturers may follow to certify that property satisfies certain conditions of § 25D. The notice defines *qualified expenditures for residential energy efficient property* based on the definitions in § 25D(d).

On June 22, 2009, the Service issued Notice 2009–53, 2009–25 I.R.B. 1095, to provide procedures that manufacturers may follow to certify property as being eligible for the credit under § 25C. The notice defines the terms *qualified energy efficiency improvements* and *residential energy property expenditures* based on their respective definitions in § 25C(c) and (d) as in effect at that time. The 2010 Act subsequently modified those definitions, however, by updating certain efficiency standards and making other changes. As a result of those modifications, for properties placed in service in 2011, 2012, and 2013, taxpayers must rely on the definitions provided in § 25C(c) and (d) as amended by the 2010 Act.

Both Notice 2009–41 and Notice 2009–53 provide guidance to taxpayers seeking to claim credits under §§ 25C and 25D in reliance on a manufacturer's certification. The notices provide that for either credit, a taxpayer may rely on a manufacturer's certification that property is eligible for the credit so long as the Service has not withdrawn the manufacturer's right to make the certification. The notices further clarify that the Service may determine that a manufacturer's certification is erroneous; in such cases, the Service will withdraw a manufacturer's right to provide a certification on which future purchasers of the component or property may rely, and taxpayers purchasing the component or property after the date on which the Service publishes an announcement of the withdrawal may not rely on the manufacturer's certification.

SECTION 3. QUESTIONS AND ANSWERS RELATED TO BOTH § 25C (NONBUSINESS ENERGY PROPERTY) AND § 25D (RESIDENTIAL ENERGY EFFICIENT PROPERTY)

Q–1: Are the credits refundable or nonrefundable?

A–1: Both the § 25C credit and the § 25D credit are nonrefundable personal tax credits. A taxpayer claiming a nonrefundable credit can only use it to decrease or eliminate a tax liability. A taxpayer will not receive a tax refund for any amount that exceeds the taxpayer's tax liability for the year.

Q–2: Is a taxpayer who is subject to the alternative minimum tax (AMT) eligible to claim the credits?

A–2: Yes. A taxpayer who is subject to the AMT is eligible to claim both the § 25C credit and the § 25D credit and may offset the AMT with those credits.

Q–3: May a taxpayer carry forward unused credits to another tax year?

A–3: A taxpayer may not carry forward the § 25C credit. Thus, if a taxpayer cannot claim all or a portion of the credit in the year in which the related expenditure is treated as made, the unused amount of the credit will expire. However, a taxpayer may carry the § 25D credit forward to future tax years pursuant to § 25D(c).

Q–4: Can a taxpayer claim the credits for expenditures incurred for a newly constructed home?

A–4: A taxpayer can claim the § 25C credit only for qualifying expenditures incurred for an existing home or for an addition or renovation to an existing home, and not for a newly constructed home. In contrast, a taxpayer can claim the § 25D credit for qualifying expenditures incurred for either an existing home or a newly constructed home.

Q–5: May a taxpayer claim the credits in the year of purchase if installation of

[1]For property placed in service in taxable years beginning in 2009 and 2010, § 25C allowed taxpayers to claim a maximum aggregate credit of $1,500. However, for years other than taxable years beginning in 2009 and 2010, § 25C limits the credit allowable to any taxpayer to the excess of $500 over the aggregate credits allowed to that taxpayer under § 25C for all prior taxable years ending after December 31, 2005 (including credits claimed in 2009 and 2010).

The maximum amount of credit allowed for any taxable year is $50 for any advanced main air circulating fan; $150 for any qualified natural gas, propane, or oil furnace or hot water boiler; and $300 for any item of energy-efficient building property. In addition, in the case of amounts paid or incurred for exterior windows, including skylights, § 25C limits the credit allowable to any taxpayer to the excess of $200 over the aggregate maximum amount of the credits allowed to that taxpayer for exterior windows under § 25C for all prior taxable years ending after December 31, 2005.

[2]Section 25C expired on December 31, 2011, but was retroactively extended by the 2012 Act.

the qualifying property occurs in a later year?

A–5: No. A taxpayer may not claim the credits until the year the property is installed. The installation must be completed before the end of 2013 for the § 25C credit and before the end of 2016 for the § 25D credit.

In the case of an expenditure incurred in connection with the construction or reconstruction of a structure, a taxpayer cannot claim the credits until the year in which the taxpayer's original use of the constructed or reconstructed structure begins, and the taxpayer's original use of the constructed or reconstructed structure must begin before the end of 2013 for the § 25C credit and before the end of 2016 for the § 25D credit.

Q–6: Are the credits available for improvements made to a second home (for example, a vacation home or an investment property)?

A–6: Improvements made to a second home are not eligible for the credit under § 25C. Section 25C(c) and (d) require qualified energy efficiency improvements and residential energy property to be installed in or on a dwelling unit owned and used by the taxpayer as the taxpayer's principal residence (within the meaning of § 121).

With respect to the credit under § 25D, fuel cell property credits are not available for second homes. Section 25D(d)(3) requires fuel cell property to be installed on or in connection with a dwelling unit that is used as the taxpayer's principal residence (within the meaning of § 121). However, a taxpayer may claim a § 25D credit for other qualifying properties described in § 25D that are not fuel cell properties (solar electric property, solar water heating property, small wind energy property, and geothermal heat pump property) installed in or on a dwelling unit used as a second home or a vacation home by the taxpayer. But a taxpayer may not claim the § 25D credit for expenditures for improvements made to an investment property, such as rental property, that is not also used as a residence by the taxpayer.

Q–7: May a taxpayer claim a credit if the qualified property is also used for business purposes, such as in a dwelling unit in which the taxpayer also conducts a business?

A–7: For both credits under §§ 25C and 25D, if a taxpayer uses property solely for business purposes, the property will not qualify for the credit. For a taxpayer who otherwise qualifies for the credits, but whose use of the qualified property for business purposes exceeds 20 percent, §§ 25C(e)(1) and 25D(e)(7) provide that the taxpayer, when calculating the amount of credit, may take into account only that portion of the expenditures for the property that are properly allocable to use for nonbusiness purposes. A taxpayer who qualifies for the credits and whose use of the qualified property for business purposes is not more than 20 percent may claim the full credit.

Q–8: May a taxpayer include labor costs when calculating the credits?

A–8: When calculating the § 25C credit, a taxpayer may include the labor costs for the onsite preparation, assembly, or original installation of residential energy property such as qualifying electric heat pumps, qualifying air conditioners, and qualifying biomass stoves. In contrast, a taxpayer may not include the labor costs for qualified energy efficient building envelope components including a qualifying insulation material or system, exterior window, skylight, exterior door, or roof. Thus, for an energy efficient building envelope component for which a taxpayer pays a fixed price, the taxpayer must make a reasonable allocation between the qualifying cost of the property and the nonqualifying labor cost of the installation. When calculating the § 25D credit, a taxpayer may include the expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the qualified property and for piping or wiring to interconnect the qualifying property to the home.

Q–9: May a taxpayer include sales tax when calculating the amount of expenditures eligible for the credits?

A–9: Generally, yes. Because the sales tax on a qualifying property is part of the amount paid or incurred, a taxpayer may include the amount of sales tax when calculating both the § 25C credit and the § 25D credit. However, because labor costs for qualified energy efficient building envelope components in § 25C are ineligible for the credit as described in A–8, to the extent that sales tax is allocable to these labor costs, the sales tax is similarly ineligible for the credit.

Q–10: Are tenant-stockholders in a cooperative housing corporation and condominium owners eligible to claim the credits?

A–10: Yes. Sections 25C(e)(1) and 25D(e)(5) treat a tenant-stockholder (as defined in § 216) in a cooperative housing corporation (as defined in § 216) as making his or her proportionate share (as defined in § 216(b)(3)) of any expenditures of such corporation. Similarly, §§ 25C(e)(1) and 25D(e)(6) treat a member of a condominium management association as having made the individual's proportionate share of any expenditures of such association.

Q–11: If a government or a public utility provides a subsidy (for example, an incentive, grant, or rebate) to a taxpayer to purchase or install a qualifying property under § 25C or § 25D, is the taxpayer required to reduce the cost basis of the property by the amount of the subsidy received, thereby reducing the amount of the qualified expenditure for which a credit may be claimed?

A–11: The answer depends on the facts that apply to each taxpayer.

.01 *Public Utility*. Under § 136, if a public utility provides (directly or indirectly) a subsidy to a customer for the purchase or installation of any energy conservation measure, the customer does not include in his or her gross income the value of the subsidy. As a result, the taxpayer may not claim a credit for the amount of the subsidy that is excluded from the taxpayer's gross income. This rule applies whether a third-party contractor receives a subsidy on behalf of the taxpayer or the taxpayer receives the subsidy directly. Not all payments from a public utility fall within the provisions of § 136.

.02 *Rebates*. Rebates generally represent a reduction in the purchase price or cost of property, and the taxpayer must exclude the amount of the rebate from the amount of the qualified expenditure on which the taxpayer calculates the tax credit. In general, in order for a receipt of funds to be considered a nontaxable rebate, the rebate must be based on or related to the cost of the property; the rebate must be received from someone having a reasonable nexus to the sale of the property, for example, the manufacturer, distributor, or seller/installer; and the rebate must not represent payment or compensation for services.

.03 *State Energy-Efficiency Incentives*. A state may provide energy-efficiency incentives to encourage taxpayers to purchase qualifying property under § 25C or § 25D. Section 136 does not address these incentives.

Generally, a taxpayer is not required to reduce the purchase price or cost of property acquired with a governmental energy-efficiency incentive that is not a rebate. Many states label their energy-efficiency incentives as rebates, but these incentives may not in fact constitute rebates or purchase-price adjustments for federal income tax purposes.

However, for qualifying property under § 25C placed in service after 2010 that is financed in whole or in part by subsidized energy financing, the amount of expenditures eligible for the § 25C credit does not include any expenditures that are made from subsidized energy financing. Subsidized energy financing means financing provided under a federal, state, or local program a principal purpose of which is to provide subsidized financing for projects designed to conserve or produce energy.

Q–12: If a taxpayer is eligible to claim a state tax credit related to the purchase of qualifying property under § 25C or § 25D, is the taxpayer required to reduce the cost basis of the property by the amount of the state tax credit claimed, thereby reducing the amount of the qualified expenditure for which the § 25C or § 25D credit may be claimed?

A–12: No. The taxpayer does not reduce the amount of the qualified expenditure by the amount of the state tax credit claimed in calculating the credits.

Q–13: If a taxpayer finances the purchase of a qualifying property under § 25C or § 25D through the seller of the property, may the taxpayer calculate the amount of the credit based on the full cost of the property if the taxpayer is contractually obligated to pay that entire amount?

A–13: Yes. If the taxpayer is contractually obligated to pay the full cost of the qualifying property, the taxpayer may claim a tax credit based on that amount.

Q–14: May a taxpayer claim a credit for payments of interest owed through financing or for expenses such as an origination fee or an extended warranty?

A–14: No. Interest expense is not part of the expenditure for qualifying property under § 25C or § 25D. Other miscellaneous costs such as an origination fee or an amount paid for an extended warranty are also ineligible for the credits.

Q–15: May a taxpayer claim a credit for property that the taxpayer leases rather than purchases?

A–15: No. A taxpayer must purchase the qualifying property to claim the credits under §§ 25C and 25D.

Q–16: May a taxpayer claim the credits when the taxpayer does not have a manufacturer's certification that the property is eligible for the credit?

A–16: Yes. A taxpayer may qualify for the credits under §§ 25C and 25D without a manufacturer's certification statement if the taxpayer can show that the property meets the required efficiency standards. A taxpayer should retain documentation sufficient to establish the entitlement to, and amount of, any credit.

SECTION 4. QUESTIONS AND ANSWERS RELATING TO § 25C (NONBUSINESS ENERGY PROPERTY)

Q–17: If a taxpayer claimed a § 25C credit in the amount of $1,000 in 2009, is the taxpayer eligible to claim additional credits for qualifying § 25C property expenditures made in 2013?

A–17: No. Prior law allowed taxpayers to claim an aggregate credit of $1,500 under § 25C for the 2009 and 2010 tax years. However, the 2010 Act amended § 25C(b) to provide a lifetime limitation of $500 of which no more than $200 may be attributable to expenditures on windows. Thus, a taxpayer who has claimed less than $500 in total for all previous years is eligible for the § 25C credit in 2013. For example, a taxpayer who claimed a § 25C credit in the amount of $100 in 2006 and $50 in 2007 for non-window expenditures and claimed no § 25C credit in 2009, 2010, 2011, and 2012 is eligible to claim up to $350 as a § 25C credit for 2013 (of which no more than $200 may be attributable to expenditures on windows).

Q–18: Is a sealant such as caulk or weather stripping an insulation material or system eligible for the credit?

A–18: Section 25C(c) defines a building envelope component as any insulation material or system that is specifically and primarily designed to reduce the heat loss or gain of a dwelling unit when installed in or on such dwelling unit and meets the prescriptive criteria for such material or system established by the 2009 International Energy Conservation Code (IECC), including supplements, as in effect on February 17, 2009.

Section 402.4 of the 2009 IECC addresses components to reduce air leakage. Section 402.4.1 provides, in part, that the building thermal envelope must be durably sealed to limit infiltration. The following must be caulked, gasketed, weather-stripped or otherwise sealed with an air barrier material, suitable film, or solid material:

1. All joints, seams, and penetrations.
2. Site-built windows, doors and skylights.
3. Openings between window and door assemblies and their respective jambs and framing.
4. Utility penetrations.
5. Dropped ceilings or chases adjacent to the thermal envelope.
6. Knee walls.
7. Walls and ceilings separating a garage from conditioned spaces.
8. Behind tubs and showers on exterior walls.
9. Common walls between dwelling units.
10. Attic access openings.
11. Rim joist junction.
12. Other sources of infiltration.[3]

Thus, if a taxpayer uses an air barrier material, suitable film, or solid material such as caulk or weatherstripping to seal the areas of a principal residence listed above, the taxpayer may claim the § 25C credit with respect to amounts paid for

[3]Source: 2009 International Energy Conservation Code, copyright 2009. Washington, DC: International Code Council. Reproduced with permission. *www.iccsafe.org*.

such sealant as long as the taxpayer satisfies the other requirements of § 25C.

Q–19: The manufacturer of a radiant barrier would like to certify that its product is eligible for the § 25C credit. Can the manufacturer refer to the U-factor as an alternative to the R-value when determining if the requirements of the 2009 IECC are satisfied?

A–19: Yes. Section 25C requires that an insulation material or system meet the prescriptive criteria for such material or system, established by the 2009 IECC, as in effect on February 17, 2009. The 2009 IECC established criteria for insulating materials to reach certain minimum R-values, which measures the material's ability to stop heat transfer. Instead of the R-value, section 402.1.3 of the 2009 IECC allows taxpayers to use the U-factor, which measures the amount of heat transmitted through a given assembly, as an alternative criterion. Thus, a manufacturer of a radiant barrier can use the U-factor instead of the R-value if measured in compliance with the provisions of section 402.1.3 of the 2009 IECC, as in effect on February 17, 2009.

Q–20: Is a window sash replacement kit considered an exterior window under § 25C(c)(2)(B) that is eligible for the § 25C credit?

A–20: Yes. Although window sash replacement kits are generally comprised of only the sashes, glazing, and adjacent parts and are not whole windows, the Service considers the kit an exterior window for purposes of the credit. To be eligible for the credit, pursuant to § 25C(c)(1), the window sash replacement kit must meet the requirements of the Energy Star program.

SECTION 5. QUESTIONS AND ANSWERS RELATING TO § 25D (RESIDENTIAL ENERGY EFFICIENT PROPERTY)

.01 *General Questions*.

Q–21: A taxpayer may claim a § 25D credit if a qualifying property is installed in or on an existing home or a newly constructed home. In the case of a newly constructed home, how does the taxpayer determine the cost of the qualifying property under § 25D?

A–21: The taxpayer may request that the homebuilder make a reasonable allocation or the taxpayer may use any other reasonable method to determine the cost of the property that is eligible for the § 25D credit. See Q&A 8 for information concerning labor costs.

Q–22: A homebuilder constructed a house in which qualifying § 25D property was installed in year 1. The house was not sold and used as a residence until year 2. May a taxpayer that buys the home for use as a residence in year 2 claim the § 25D credit?

A–22: Yes. As long as the taxpayer begins to use the house as a residence before 2017, the taxpayer may claim the § 25D credit in year 2. Section 25D(e)(8) treats an expenditure in connection with the construction or reconstruction of a structure as made when the taxpayer begins to originally use the constructed or reconstructed structure as a residence.

Q–23: Same facts as Q–22, but the house was a model home, and the qualifying property was used during the time it was marketed for sale. May a taxpayer claim the § 25D credit in year 2?

A–23: Yes. The expenditure is treated as made when the use of the structure as a residence begins.

Q–24: In 2010, Taxpayer A purchases and moves into a newly constructed home that contains qualifying § 25D property. Taxpayer A claims the § 25D credit in 2010. In 2013, Taxpayer A sells the home to Taxpayer B. Is Taxpayer B eligible for a credit on the same § 25D property?

A–24: No. Section 25D(e)(8) generally treats an expenditure as made when the original installation of the qualifying property is completed. In the case of an expenditure incurred in connection with the construction or reconstruction of a structure, the expenditure is treated as made when the original use of the constructed or reconstructed structure as a residence by the taxpayer begins. Thus, only the taxpayer who begins the original use of the constructed or reconstructed structure as a residence or the taxpayer using the home as a residence when the property was originally installed is eligible for the tax credit.

.02 *Solar Electric Property*

Q–25: If a taxpayer installs solar electric property other than directly on the taxpayer's home, may the taxpayer claim the § 25D credit?

A–25: Section 25D(d)(2) defines a qualified solar electric property expenditure, in part, as an expenditure for property that uses solar energy to generate electricity for use in a dwelling unit that is used as a residence by the taxpayer. Therefore, if solar panels that are not directly located on the taxpayer's home use solar energy to generate electricity directly for the taxpayer's home the taxpayer may claim the § 25D credit.

Q–26: A taxpayer purchases solar panels that are placed on an off-site solar array and connected to the local public utility's electrical grid that supplies electricity to the taxpayer's residence. The taxpayer enters into a direct contractual arrangement with the local public utility that supplies electricity to the taxpayer's residence to allow the taxpayer to provide electricity to the grid using a net metering system that measures the amount of electricity produced by the taxpayer's solar panels and transmitted to the grid and the amount of electricity used by the taxpayer's residence and drawn from the grid. The contract states that the taxpayer owns the energy transmitted by the solar panels to the utility grid until drawn from the grid at his residence. Absent unusual circumstances, the panels will not generate electricity for a specified period in excess of the amount expected to be consumed at the taxpayer's residence during that specified period. Can the taxpayer claim the § 25D credit?

A–26: Yes. Section 25D(d)(2) defines a qualified solar electric property expenditure, in part, as an expenditure for property that uses solar energy to generate electricity for use in a dwelling unit used as a residence by the taxpayer. The taxpayer's expenditure for off-site solar panels under this type of contractual arrangement with a local public utility that supplies electricity to the taxpayer's residence meets the definition of qualified solar electric property expenditure.

Q–27: A taxpayer purchases and installs solar electric property to generate electricity for the taxpayer's own home and to allow the taxpayer to sell excess electricity to a utility. Unlike the taxpayer in Q–26, this taxpayer generates more than a minimal amount of excess electricity. Does this taxpayer qualify for the

§ 25D credit on the full amount of the solar electric property?

A–27: No. Under these facts, the taxpayer may not claim the § 25D credit for the full amount of the solar electric property expenditure because the property not only generates electricity for use in the taxpayer's home, but it also generates electricity for sale by the taxpayer. The taxpayer may only claim the § 25D credit for the portion of the solar electric property expenditure that relates to the electricity generated for use in the taxpayer's home. In addition, the taxpayer may be able to claim the § 48 credit for a portion of the solar electric property expenditure if the requirements of § 48 are satisfied.

Q–28: Is an expenditure for a solar air heater eligible for the § 25D credit?

A–28: No. Section 25D(d)(2) defines a qualified solar electric property expenditure, in part, as an expenditure for property that uses solar energy to generate electricity for use in a dwelling unit. Section 25D(d)(1) defines a qualified solar water heating property expenditure, in part, as an expenditure for property to heat water for use in a dwelling unit if at least half of the energy used by such property for such purpose is derived from the sun. A solar air heater that warms air and does not generate electricity or heat water is not eligible for the § 25D credit.

Q–29: Is an expenditure for a solar powered exhaust fan eligible for the § 25D credit?

A–29: Only the component part of a property that actually generates electricity for the dwelling unit is eligible for the § 25D credit. If a solar panel on a fan generates electricity to power the fan for use in the dwelling unit, the cost of the panel component may be eligible for the § 25D credit if all the requirements of § 25D are met; however, the entire cost of the fan is not eligible. Additionally, § 25D(e)(1) specifically allows certain labor costs to be taken into account when calculating the credit. Under this provision, a taxpayer may take into account only the labor costs allocable to the qualifying component when calculating the credit.

.03 *Small Wind Energy Property*.

Q–30: May a taxpayer claim the § 25D credit for the purchase of small wind energy property made from remanufactured wind turbines?

A–30: Yes. Section 25D does not require that the original use of the qualified property or parts of the property begin with the taxpayer.

.04 *Geothermal Heat Pump Property*.

Q–31: A taxpayer contacts a seller to inquire about the installation of a geothermal heat pump to heat his home. The seller/installer informs the taxpayer that the following items must be installed in addition to the geothermal heat pump: heat exchange equipment in the ground outside of the house, a distribution system for the home, and a back-up emergency heating or cooling system. Which of these costs, if any, are eligible for the § 25D credit?

A–31: Only the cost of the heat exchange equipment in the ground outside the house can be eligible for the § 25D credit. The costs for the distribution system for the home and a back-up emergency heating or cooling system are not eligible for the credit because they are not incurred for qualified geothermal heat pump property. Section 25D(d)(5)(B) defines qualified geothermal heat pump property as any equipment that (1) uses the ground or ground water as a thermal energy source to heat the dwelling unit or as a thermal energy sink to cool such dwelling unit, and (2) meets the requirements of the Energy Star program in effect at the time that the expenditure for such equipment is made. Section 25D(e)(1) provides that expenditures for piping and wiring to interconnect qualified property to a dwelling unit are eligible for the § 25D credit. However, nothing in § 25D extends the credit to other auxiliary equipment such as distribution systems within the dwelling unit or backup emergency heating and cooling systems.

Q–32: Is a manufacturer of geothermal heat pump property that provides a certification pursuant to Notice 2009–41 required to become an Energy Star partner?

A–32: No. A manufacturer of geothermal heat pump property is not required to become an Energy Star partner to provide a certification pursuant to Notice 2009–41. However, the geothermal heat pump property must meet the requirements of the Energy Star program in effect at the time the taxpayer purchases the property. Furthermore, any manufacturer that provides a certification must retain in its records documentation establishing that the property meets those requirements and, upon request, make such documentation available for inspection by the Service.

SECTION 6. EFFECT ON OTHER DOCUMENTS

This notice clarifies and amplifies Notice 2009–53 and Notice 2009–41.

SECTION 7. DRAFTING INFORMATION

The principal author of this notice is Martha M. Garcia of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Ms. Garcia on (202) 622-3110 (not a toll-free call).

Modification of "Use-or-Lose" Rule for Health Flexible Spending Arrangements (FSAs) and Clarification Regarding 2013–2014 Non-Calendar Year Salary Reduction Elections Under § 125 Cafeteria Plans

Notice 2013–71

I. PURPOSE

This notice contains modifications to the rules for § 125 cafeteria plans. First, sections II through V of the notice modify the "use-or-lose" rule for health FSAs that is currently set forth in proposed regulations under § 125 of the Internal Revenue Code (the Code). This modification permits § 125 cafeteria plans to be amended to allow up to $500 of unused amounts remaining at the end of a plan year in a health FSA to be paid or reimbursed to plan participants for qualified medical expenses incurred during the following plan year, provided that the plan does not also incorporate the grace period rule. This carryover of up to $500 does not affect the maximum amount of salary reduction contributions that the participant is permitted to make under §125(i) of the Code ($2,500 adjusted for inflation after 2012). This carryover option provides an alternative to the current grace period rule and administrative relief similar to that rule.

Second, section VI of this notice clarifies the scope of the transition relief provided in the preamble to proposed regulations under § 4980H that allows greater flexibility for individuals to make changes in salary reduction elections for accident and health plans provided through § 125 cafeteria plans for non-calendar cafeteria plan years beginning in 2013.

II. BACKGROUND

Section 125(d)(1) defines a § 125 cafeteria plan as a written plan maintained by an employer under which all participants are employees, and all participants may choose among two or more benefits consisting of cash and qualified benefits. Section 125(f) defines a qualified benefit as any benefit which, with the application of § 125(a), is not includable in the gross income of the employee by reason of an express provision of the Code (with certain exceptions). Qualified benefits include employer-provided accident and health plans excludable from gross income under §§ 106 and 105(b), but exclude long term care insurance and certain qualified health plans offered through an Exchange (also referred to as a Marketplace) established under § 1311 of the Patient Protection and Affordable Care Act (the Act).[4]

Pursuant to § 125(d)(2)(A), a § 125 cafeteria plan generally does not include any plan that provides for deferred compensation. Proposed regulations under § 125 that predated the enactment of the Act generally have prohibited participants from using contributions made for one plan year to purchase a benefit that will be provided in a subsequent plan year. Commonly referred to as the "use-or-lose" rule, this requires that unused benefits or contributions remaining as of the end of the plan year (that is, amounts credited to a health FSA participant's account that remain unused, referred to below as "unused amounts") be forfeited. See Prop. Treas. Reg. §§ 1.125–1(c)(7)(C), 1.125–1(o), and 1.125–5(c).

In 2005, the Treasury Department and the IRS modified the use-or-lose rule by adopting the grace period rule. Under the grace period rule, a § 125 cafeteria plan may permit an employee to use amounts remaining from the previous year (including amounts remaining in a health FSA) to pay expenses incurred for certain qualified benefits during the period of up to two months and 15 days immediately following the end of the plan year. See Notice 2005–42, 2005–1 C.B. 1204, and Prop. Treas. Reg. § 1.125–1(e). This exception was based on other areas of tax law that do not treat certain arrangements as providing for deferred compensation if the compensation payment is made no later than the fifteenth day of the third month after the taxable year in which the services are performed. See, for example, Treas. Reg. § 1.404(b)–1T, Q&A–2.

Section 125(i)[5] provides that, beginning in 2013, a health FSA is not treated as a qualified benefit unless the § 125 cafeteria plan limits each employee's salary reduction contributions to the health FSA to no more than $2,500 per taxable year (as indexed for cost-of-living adjustments). Notice 2012–40, 2012–26 I.R.B. 1046, provides that the term "taxable year" in § 125(i) refers to the plan year of the § 125 cafeteria plan, so that the limit is applicable only beginning with the first day of the first plan year beginning in 2013.

Notice 2012–40 stated that "[t]he $2,500 limit, while not addressing the 'use-or-lose' rule, limits the potential for using health FSAs to defer compensation and the extent to which salary reduction amounts may accumulate over time. Given the $2,500 limit, the Treasury Department and the IRS are considering whether the use-or-lose rule for health FSAs should be modified to provide a different form of administrative relief (instead of, or in addition to, the current 2½ month grace period rule)." Notice 2012–40 requested comments on whether the proposed regulations under § 125 should be modified to provide flexibility with respect to the operation of the use-or-lose rule for health FSAs in addition to the 2½-month grace period rule. Numerous comments were submitted in response to this request, the overwhelming majority favoring modification of the use-or-lose rule.

III. FURTHER MODIFICATION OF USE-OR-LOSE RULE

The public comments argued for additional flexibility with respect to the operation of the use-or-lose rule for a number of reasons. These included the difficulty for employees of predicting their future needs for medical expenditures, the desirability of minimizing incentives for unnecessary spending at the end of a year or grace period, the possibility that lower- and moderate-paid employees are more reluctant than others to participate because of aversion to even modest forfeitures of their salary reduction contributions, and the opportunity to ease and potentially to simplify the administration of health FSAs. In light of these comments, the Treasury Department and the IRS have determined that it is appropriate to modify the use-or-lose rule to permit the use of up to $500 of unused amounts in a health FSA in the immediately following plan year.

Accordingly, an employer, at its option, is permitted to amend its § 125 cafeteria plan document to provide for the carryover to the immediately following plan year of up to $500 of any amount remaining unused as of the end of the plan year in a health FSA. The carryover of up to $500 may be used to pay or reimburse medical expenses under the health FSA incurred during the entire plan year to which it is carried over. For this purpose, the amount remaining unused as of the end of the plan year is the amount unused after medical expenses have been reimbursed at the end of the plan's run-out period[6] for the plan year. In addition to the unused amounts of up to $500 that a plan may permit an individual to carry over to the next year, the plan may permit the

[4]Public Law 111–148 (124 Stat. 1029 (2010)), amended by § 10104 and § 10203 of the Act.

[5]Section 125(i) was added to the Code by § 9005 of the Act, amended by § 10902 of the Act, and further amended by § 1403(b) of the Health Care and Education Reconciliation Act of 2010 (HCERA), Pub. L. No. 111–152.

[6]A "run-out period" is a period immediately following the end of a plan year during which a participant can submit a claim for reimbursement of expenses incurred for qualified benefits during the plan year. See Prop. Treas. Reg. § 1.125–1(f). By contrast, a grace period is a period of up to two months and 15 days immediately following the end of a plan year during which a participant may use amounts remaining from the previous plan year (including amounts remaining in a health FSA) to pay expenses incurred for certain qualified benefits during that two-month-and-15-day period. See Notice 2005–42, 2005–1 C.B. 1204, and Prop. Treas. Reg. § 1.125–1(e). (A run-out period may also be provided immediately following the end of a grace period instead of immediately following the end of a plan year, so that participants can submit claims for reimbursement of expenses incurred during the grace period or the previous plan year.)

individual to also elect up to the maximum allowed salary reduction amount under § 125(i). Thus, the carryover of up to $500 does not count against or otherwise affect the indexed $2,500 salary reduction limit applicable to each plan year. Although the maximum unused amount allowed to be carried over in any plan year is $500, the plan may specify a lower amount as the permissible maximum (and the plan sponsor has the option of not permitting any carryover at all).

A plan adopting this carryover provision is not permitted to also provide a grace period with respect to health FSAs. Nor is the plan, for any plan year, permitted to allow an individual to salary reduce for qualified health FSA benefits more than the indexed $2,500 salary reduction limit or permitted to reimburse claims incurred during the plan year that exceed the applicable indexed $2,500 salary reduction limit (and any nonelective employer flex credits) plus the carryover amount of up to $500. If an employer amends its plan to adopt a carryover, the same carryover limit must apply to all plan participants. A § 125 cafeteria plan is not permitted to allow unused amounts relating to a health FSA to be cashed out or converted to any other taxable or nontaxable benefit. Unused amounts relating to a health FSA may be used only to pay or reimburse certain § 213(d) medical expenses (excluding health insurance, long-term care services or insurance, see Prop. Treas. Reg. §1.125–1(q)). With respect to a participant, the amount that may be carried over to the following plan year is equal to the lesser of (1) any unused amounts from the immediately preceding plan year or (2) $500 (or a lower amount specified in the plan). Any unused amount in excess of $500 (or a lower amount specified in the plan) that remains unused as of the end of the plan year (that is, at the end of the run-out period for the plan year) is forfeited. Any unused amount remaining in an employee's health FSA as of termination of employment also is forfeited (unless, if applicable, the employee elects COBRA continuation coverage with respect to the health FSA).

The uniform coverage rule requires that the maximum amount of reimbursement from the health FSA (including both salary reduction amounts and any nonelective employer flex credits) be available for claims incurred at all times during the period of coverage (properly reduced as of any particular time for prior reimbursements for the same period of coverage). That rule continues to apply to § 125 cafeteria plans adopting the carryover of up to $500.

Use of the carryover option permitted under this notice does not affect the ability of a health FSA to provide for the payment of expenses incurred in one plan year during a permitted run-out period at the beginning of the following plan year (just as a run-out period can also be provided when using the grace period rule). Thus, for plans using the new carryover option, a participant's unused health FSA balance at the end of the prior plan year may be used (a) for expenses incurred in the prior plan year, but only if claimed during the plan's run-out period that begins at the end of the prior plan year (in effect retroactively reducing the unused amount as of the end of the prior plan year) or (b) to the extent of the permitted carryover amount of up to $500 from the final prior plan year unused amount, for expenses that are incurred at any time in the current plan year. In contrast, salary reduction or other amounts credited to a health FSA with respect to service in the current plan year may be used only for expenses incurred in the current plan year (unless and to the extent that these current plan year amounts may later be carried over to the following plan year).

For ease of administration, a § 125 cafeteria plan is permitted to treat reimbursements of all claims for expenses that are incurred in the current plan year as reimbursed first from unused amounts credited for the current plan year and, only after exhausting these current plan year amounts, as then reimbursed from unused amounts carried over from the preceding plan year. Any unused amounts from the prior plan year that are used to reimburse a current year expense (a) reduce the amounts available to pay prior plan year expenses during the run-out period, (b) must be counted against the permitted carryover of up to $500, and (c) cannot exceed the permitted carryover. For examples of how the carryover operates, see section V of this notice.

IV. WRITTEN § 125 CAFETERIA PLAN AMENDMENT

To utilize the new carryover option permitted under this notice, a § 125 cafeteria plan offering a health FSA must be amended to set forth the carryover provision. The amendment must be adopted on or before the last day of the plan year from which amounts may be carried over and may be effective retroactively to the first day of that plan year, provided that the § 125 cafeteria plan operates in accordance with the guidance under this notice and informs participants of the carryover provision, and provided further that a plan may be amended to adopt the carryover provision for a plan year that begins in 2013 at any time on or before the last day of the plan year that begins in 2014.

A § 125 cafeteria plan that incorporates a carryover provision may not also provide for a grace period in the plan year to which unused amounts may be carried over. Accordingly, if, pursuant to the carryover provision, a plan permits amounts that were unused in a plan year to be carried over to the following plan year, the plan is not permitted to provide for a grace period that occurs in that following plan year. For example, a calendar year plan permitting a carryover to 2015 of unused 2014 health FSA amounts (as determined at the end of the run-out period in early 2015) would not be permitted to have a grace period in 2015, but would be permitted to have had a grace period during the first 2½ months of 2014.

If a plan has provided for a grace period and is being amended to add a carryover provision, the plan must also be amended to eliminate the grace period provision by no later than the end of the plan year from which amounts may be carried over. The ability to eliminate a grace period provision previously adopted for the plan year in which the amendment is adopted may be subject to non-Code legal constraints.

V. EXAMPLES

The preceding rules of this notice are illustrated by the following examples:

Example 1. Employer sponsors a § 125 cafeteria plan and health FSA with a calendar plan year, an annual run-out period from January 1 through March 31 in which participants can submit claims for expenses incurred during the preceding plan year, and an annual open enrollment season in November in which participants elect a salary reduction amount (not to exceed $2,500) for the following plan year. The plan is timely amended to provide for a carryover that allows all participants to apply up to $500 of unused health FSA amounts remaining at the end of the run-out period to the health FSA for expenses incurred at any time during that plan year. The plan does not provide for a grace period with respect to the health FSA. The plan also does not provide for nonelective employer flex credits.

In November 2014, Participant A elects a salary reduction amount of $2,500 for 2015. By December 31, 2014, A's unused amount from the 2014 plan year is $800. On February 1, 2015, A submits claims and is reimbursed with respect to $350 of expenses incurred during the 2014 plan year, leaving a carryover on March 31, 2015 (the end of the run-out period) of $450 of unused health FSA amounts from 2014. The $450 amount is not forfeited; instead, it is carried over to 2015 and available to pay claims incurred in that year so that $2,950 (that is, $2,500 + $450) is available to pay claims incurred in 2015. A incurs and submits claims for expenses of $2,700 during the month of July 2015, and does not submit any other claims during 2015. A is reimbursed with respect to the $2,700 claim, leaving $250 as a potential unused amount from 2015 (depending upon whether A submits claims during the 2015 run-out period in early 2016).

This § 125 cafeteria plan satisfies the preceding rules of this notice.

Example 2. The same facts as *Example 1*, except that A's expenses of $2,700 are incurred and submitted during the month of January 2015 (and not July 2015). The plan may treat $500 of the $800 unused amounts as of December 31, 2014, as available to pay current year expenses. Accordingly, A is reimbursed with respect to the $2,700 claim. The plan treats the first $2,500 of the claim as reimbursed with health FSA contributions for 2015, and the remaining $200 of the claim as reimbursed with the unused amounts as of December 31, 2014. The unused amount remaining from 2014 from which claims for expenses incurred during the 2014 plan year may be reimbursed during the 2014 run-out period in early 2015 is reduced to $600 ($800 – $200). On February 1, 2015, A submits and is reimbursed with respect to $350 of claims for expenses incurred during the 2014 plan year. After the $350 reimbursement, the unused amount remaining for 2014 from which claims for expenses incurred during the 2014 plan year may be reimbursed during the 2014 run-out period in early 2015 is reduced to $250 ($600 – $350). A submits no further claims for expenses incurred during the 2014 plan year, so that in addition to the $200 previously used to reimburse the January 2015 claim, $250 is carried over to the 2015 plan year. A submits no further claims for 2015. The amount carried over to 2016 is $250.

This § 125 cafeteria plan satisfies the preceding rules of this notice.

Example 3. The same facts as *Example 2*, except that on February 1, 2015, A submits claims with respect to $700 of expenses incurred during the 2014 plan year. Because the unused amount remaining from 2014 from which claims for expenses incurred during the 2014 plan year may be reimbursed has been reduced to $600 prior to February 1, 2015, the plan reimburses A for only $600 of the total $700 of claims. After the $600 reimbursement, the unused amount remaining from 2014 from which claims for expenses incurred during the 2014 plan year may be reimbursed is reduced to zero ($600 – $600). A submits no further claims for expenses incurred during the 2014 plan year, so that the amount carried over to the 2015 plan year is $0 (the entire $800 of unused amounts as of December 31, 2014, having been used to reimburse claims submitted in January 2015 ($200) and February 2015 ($600)).

This § 125 cafeteria plan satisfies the preceding rules of this notice.

Example 4. The same facts as *Example 1*, except that, for 2014, A elects a salary reduction amount of $600 and, on December 31, 2014, A still has $600 of unused health FSA amounts.

For 2015, A elects no salary reduction for the health FSA, submits no claims during the run-out period, and as of the end of the run-out period on March 31, 2015, $600 in unused health FSA amounts remains. Of that amount, $100 is forfeited because it exceeds the $500 carryover limit, and $500 is carried over to the 2015 plan year. A incurs $200 in expenses during the 2015 plan year, which are reimbursed during that plan year. As of December 31, 2015, A has $300 in unused health FSA amounts.

For 2016, A elects no salary reduction for the health FSA but has the $300 carryover from 2015, which is not forfeited. A incurs medical expenses of $300 in 2016, which are reimbursed using the $300 carryover from 2015.

This § 125 cafeteria plan satisfies the preceding rules of this notice.

VI. CLARIFICATION OF SCOPE OF TRANSITION RULE APPLICABLE TO NON-CALENDAR PLAN YEARS BEGINNING IN 2013 FOR PARTICIPANT CHANGES IN SALARY REDUCTION ELECTIONS UNDER HEALTH PLANS PROVIDED THROUGH § 125 CAFETERIA PLANS

A. BACKGROUND

Generally, § 125 cafeteria plan elections must be made before the start of the plan year, and are irrevocable during the plan year, with limited exceptions, including certain changes in status. See Prop. Treas. Reg. § 1.125–2, Treas. Reg. §1.125–4. Under existing regulations, the availability of health plan coverage through an Affordable Insurance Exchange (also referred to in other published guidance as a Marketplace) beginning with calendar year 2014 does not constitute such a change in status. As a result, employees would not be able to change their salary reduction elections for health coverage during a plan year in order to, for example, cease their salary reductions and § 125 cafeteria plan coverage and purchase coverage through an Exchange. However, the Treasury Department and the IRS previously concluded that transition relief is appropriate for individuals with respect to non-calendar § 125 cafeteria plan years beginning in 2013. For individuals eligible for such a plan, health plan coverage through an Exchange will first become available in the middle of the plan's 2013–2014 non-calendar plan year (that is, January 2014). Accordingly, the Treasury Department and the IRS have provided transition relief from the election rules in Prop. Treas. Reg. § 1.125–2 with respect to salary reduction elections under a § 125 cafeteria plan for an employer-provided accident and health plan with a non-calendar plan year beginning in 2013. The transition relief was provided in Section IX.B of the preamble to proposed regulations (issued on December 28, 2012) under § 4980H (referred to below as "Section IX.B"). See 78 Fed. Reg. 218, 237 (Jan. 2, 2013).

Specifically, Section IX.B permits an employer, at its election, to amend one or more of its written § 125 cafeteria plans to allow employees to make either or both of the following changes in salary reduction elections, whether or not the employee experienced a change in status event described in Treas. Reg. § 1.125–4:

1. An employee who elected to salary reduce through the employer's § 125 cafeteria plan for accident and health plan coverage with a non-calendar plan year beginning in 2013 is allowed to prospectively revoke or change his or her election with respect to the accident and health plan once during that plan year; and
2. An employee who failed to make a salary reduction election through the employer's § 125 cafeteria plan for accident and health plan coverage with a non-calendar plan year beginning in 2013 before the deadline in Prop. Treas. Reg. § 1.125–2 for making elections for the § 125 cafeteria plan year beginning in 2013 is allowed to make a prospective salary reduction election for accident and health coverage on or after the first day of the 2013 plan year of the § 125 cafeteria plan.

B. CLARIFICATION OF § 125 CAFETERIA PLAN TRANSITION RULE FOR PARTICIPANT SALARY REDUCTION ELECTIONS AS SET FORTH IN SECTION IX.B

Although the description of the § 125 cafeteria plan transition rule in Section IX.B refers to applicable large employer members (generally meaning a person that, together with one or more other persons, is treated as a single employer that is an applicable large employer), the relief is available, subject to the rules set forth in Section IX.B, to an employer with a § 125 cafeteria plan non-calendar plan year beginning in 2013 whether or not the employer is an applicable large employer or applicable large employer member under § 4980H.

Stakeholders have asked whether employees may use the relief set forth in Section IX.B if their employer amends its § 125 cafeteria plan to allow changes in salary reduction elections but adopts an amendment that is more limited than the two options listed in Section IX.B, as described above. An amendment to a § 125 cafeteria plan adopted pursuant to Section IX.B may be more restrictive than the amendments described in Section IX.B but may not be less restrictive. For example, an employer may amend its § 125 cafeteria plan to allow an employee who elected to salary reduce through the § 125 cafeteria plan to pay for accident and health plan coverage under the § 125 cafeteria plan with a non-calendar plan year beginning in 2013 to prospectively revoke or change his or her election with respect to the accident and health plan once, during a limited period (for example, the first month of 2014 only rather than the entire plan year) without regard to whether the employee experienced a change in status event described in Treas. Reg. § 1.125–4.

VII. EFFECTIVE DATES

An employer may adopt the carryover provision (of up to $500) authorized in this notice to health FSAs for the current § 125 cafeteria plan year (and/or subsequent § 125 cafeteria plan years) by amending the § 125 cafeteria plan document in the manner and within the time frames described in section IV of this notice.

The clarifications described in section VI of this notice of the relief provided in Section IX.B may be applied beginning on or after December 28, 2012 (the date on which the proposed regulations that included Section IX.B were issued).

VIII. EFFECT ON OTHER DOCUMENTS

The Treasury Department and the IRS intend to amend Prop. Treas. Reg. §§ 1.125–1(o) and 1.125–5(c) to reflect the guidance in this notice; taxpayers may rely on the guidance in this notice pending the issuance and effectiveness of those amendments to the regulations.

IX. DRAFTING INFORMATION

The principal author of this notice is Janet A. Laufer of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding the modification of the use or lose rules contained in this notice, contact Ms. Laufer at (202) 927-9639 (not a toll-free call). For further information regarding the clarifications to Section IX.B, contact Ms. Katy Johnson at (202) 927-9639 (not a toll-free call).

26 CFR 601.602: Tax forms and instructions.
(Also Part I, §§ 1, 23, 24, 25A, 32, 42, 45R, 55, 59, 62, 63, 68, 125, 132(f),135, 137, 146, 147, 148, 151, 213, 220, 221, 512, 513, 877, 877A, 911, 2010, 2032A, 2503, 2523, 4161, 4261, 6033, 6039F, 6323, 6334, 6601, 7430, 7702B; 1.148–5.)

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SECTION 1. PURPOSE

This revenue procedure sets forth inflation-adjusted items for 2014.

SECTION 2. CHANGES

.01 Section 1421(a) of the Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111–148, 124 Stat. 119 (PPACA), added § 45R to the Internal Revenue Code. Section 45R provides a Federal income tax credit to certain small employers that make nonelective contributions toward their employees' health insurance premiums. The maximum credit is a percentage of the premiums that the employer paid during the tax year for certain health insurance coverage that the employer provided to certain employees. Under § 45R(c) the maximum credit is phased out based on the employer's number of full-time equivalent employees in excess of 10 and the employer's average annual wages in excess of the dollar amount in effect under § 45R(d)(3)(B). For a taxable year beginning after 2013, an inflation adjustment applies to the dollar amount in § 45R(d)(3)(B), which is used under § 45R(c) as described above and under § 45R(d)(1)(B) in determining who is an eligible small employer for purposes of qualifying for this credit.

.02 Section 9005 of the PPACA amended § 125 to provide limitations on Health Flexible Spending Arrangements. Section 10902 of the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111–152, 124 Stat. 1029, amended section 9005 and § 125 to provide that the dollar limitation under § 125(i) on voluntary employee salary reductions for contributions to health flexible spending arrangements is adjusted for inflation for taxable years beginning after December 31, 2013.

SECTION 3. 2014 ADJUSTED ITEMS

.01 *Tax Rate Tables*. For taxable years beginning in 2014, the tax rate tables under § 1 are as follows:

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

If Taxable Income Is:	*The Tax Is:*
Not over $18,150	10% of the taxable income
Over $18,150 but not over $73,800	$1,815 plus 15% of the excess over $18,150
Over $73,800 but not over $148,850	$10,162.50 plus 25% of the excess over $73,800
Over $148,850 but not over $226,850	$28,925 plus 28% of the excess over $148,850
Over $226,850 but not over $405,100	$50,765 plus 33% of the excess over $226,850
Over $405,100 but not over $457,600	$109,587.50 plus 35% of the excess over $405,100
Over $457,600	$127,962.50 plus 39.6% of the excess over $457,600

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

If Taxable Income Is:	*The Tax Is:*
Not over $12,950	10% of the taxable income
Over $12,950 but not over $49,400	$1,295 plus 15% of the excess over $12,950
Over $49,400 but not over $127,550	$6,762.50 plus 25% of the excess over $49,400
Over $127,550 but not over $206,600	$26,300 plus 28% of the excess over $127,550
Over $206,600 but not over $405,100	$48,434 plus 33% of the excess over $206,600
Over $405,100 not over $432,200	$113,939 plus 35% of the excess over $405,100
Over $432,200	$123,424 plus 39.6% of the excess over $432,200

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

If Taxable Income Is:	*The Tax Is:*
Not over $9,075	10% of the taxable income
Over $9,075 but not over $36,900	$907.50 plus 15% of the excess over $9,075
Over $36,900 but not over $89,350	$5,081.25 plus 25% of the excess over $36,900
Over $89,350 but not over $186,350	$18,193.75 plus 28% of the excess over $89,350
Over $186,350 but not over $405,100	$45,353.75 plus 33% of the excess over $186,350
Over $405,100 not over $406,750	$117,541.25 plus 35% of the excess over $405,100
Over $406,750	$118,118.75 plus 39.6% of the excess over $406,750

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

If Taxable Income Is:	*The Tax Is:*
Not over $9,075	10% of the taxable income
Over $9,075 but not over $36,900	$907.50 plus 15% of the excess over $9,075
Over $36,900 but not over $74,425	$5,081.25 plus 25% of the excess over $36,900
Over $74,425 but not over $113,425	$14,462.50 plus 28% of the excess over $74,425
Over $113,425 but not over $202,550	$25,382.50 plus 33% of the excess over $113,425
Over $202,550 not over $228,800	$54,793.75 plus 35% of the excess over $202,550
Over $228,800	$63,981.25 plus 39.6% of the excess over $228,800

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

If Taxable Income Is:	*The Tax Is:*
Not over $2,500	15% of the taxable income
Over $2,500 but not over $5,800	$375 plus 25% of the excess over $2,500
Over $5,800 but not over $8,900	$1,200 plus 28% of the excess over $5,800
Over $8,900 but not over $12,150	$2,068 plus 33% of the excess over $8,900
Over $12,150	$3,140.50 plus 39.6% of the excess over $12,150

.02 *Unearned Income of Minor Children Taxed as if Parent's Income (the "Kiddie Tax")*. For taxable years beginning in 2014, 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 2014 must be more than $1,000 but less than $10,000.

.03 *Adoption Credit*. For taxable years beginning in 2014, under § 23(a)(3) the credit allowed for an adoption of a child with special needs is $13,190. For taxable years beginning in 2014, under § 23(b)(1) the maximum credit allowed for other adoptions is the amount of qualified adoption expenses up to $13,190. The available adoption credit begins to phase out under § 23(b)(2)(A) for taxpayers with modified adjusted gross income in excess of $197,880 and is completely phased out for taxpayers with modified adjusted gross income of $237,880 or more. (See section 3.18 of this revenue procedure for the adjusted items relating to adoption assistance programs.)

.04 *Child Tax Credit*. For taxable years beginning in 2014, 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 2014, 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 2014 is $2,500.

(2) For taxable years beginning in 2014, 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 2014, a taxpayer's modified adjusted gross income in excess of $54,000 ($108,000 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 2014, 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 2014.

	Number of Qualifying Children			
Item	*One*	*Two*	*Three or More*	*None*
Earned Income Amount	$ 9,720	$13,650	$13,650	$6,480
Maximum Amount of Credit	$ 3,305	$ 5,460	$ 6,143	$ 496
Threshold Phaseout Amount (Single, Surviving Spouse, or Head of Household)	$17,830	$17,830	$17,830	$8,110
Completed Phaseout Amount (Single, Surviving Spouse, or Head of Household)	$38,511	$43,756	$46,997	$14,590
Threshold Phaseout Amount (Married Filing Jointly)	$23,260	$23,260	$23,260	$13,540
Completed Phaseout Amount (Married Filing Jointly)	$43,941	$49,186	$52,427	$20,020

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 2014, the earned income tax credit is not allowed under § 32(i) if the aggregate amount of certain investment income exceeds $3,350.

.07 *Rehabilitation Expenditures Treated as Separate New Building*. For calendar year 2014, the per low-income unit qualified basis amount under § 42(e)(3)(A)(ii)(II) is $6,500.

.08 *Low-Income Housing Credit*. For calendar year 2014, 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) $2.30 multiplied by the State population, or (2) $2,635,000.

.09 *Employee Health Insurance Expense of Small Employers*. For taxable years beginning in 2014, the dollar amount in effect under § 45R(d)(3)(B) is $25,400. This amount is used under § 45R(c) for limiting the small employer health insurance credit and under § 45R(d)(1)(B) for determining who is an eligible small employer for purposes of the credit.

.10 *Exemption Amounts for Alternative Minimum Tax*. For taxable years beginning in 2014, the exemption amounts under § 55(d)(1) are:

Joint Returns or Surviving Spouses	$82,100
Unmarried Individuals (other than Surviving Spouses)	$52,800
Married Individuals Filing Separate Returns	$41,050
Estates and Trusts	$23,500

For taxable years beginning in 2014, under § 55(b)(1), the excess taxable income above which the 28 percent tax rate applies is:

Married Individuals Filing Separate Returns	$ 91,250
Joint Returns, Unmarried Individuals (other than surviving spouses), and Estates and Trusts	$182,500

For taxable years beginning in 2014, the amounts used under § 55(d)(3) to determine the phaseout of the exemption amounts are:

Joint Returns or Surviving Spouses	$156,500
Unmarried Individuals (other than Surviving Spouses)	$117,300
Married Individuals Filing Separate Returns and Estates and Trusts	$ 78,250

.11 *Alternative Minimum Tax Exemption for a Child Subject to the "Kiddie Tax*." For taxable years beginning in 2014, 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) $7,250.

.12 *Transportation Mainline Pipeline Construction Industry Optional Expense Substantiation Rules for Payments to Employees under Accountable Plans*. For calendar year 2014, 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.

.13 *Standard Deduction*.

(1) *In general*. For taxable years beginning in 2014, 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))	$12,400
Heads of Households (§ 1(b))	$ 9,100
Unmarried Individuals (other than Surviving Spouses and Heads of Households) (§ 1(c))	$ 6,200
Married Individuals Filing Separate Returns (§ 1(d))	$ 6,200

(2) *Dependent*. For taxable years beginning in 2014, 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) $1,000, or (2) the sum of $350 and the individual's earned income.

(3) *Aged or blind*. For taxable years beginning in 2014, the additional standard deduction amount under § 63(f) for the aged or the blind is $1,200. The additional standard deduction amount is increased to $1,550 if the individual is also unmarried and not a surviving spouse.

.14 *Overall Limitation on Itemized Deductions*. For taxable years beginning in 2014, the applicable amounts under § 68(b) are $305,050 in the case of a joint return or a surviving spouse, $279,650 in the case of a head of household, $254,200 in the case of an individual who is not married and who is not a surviving spouse or head of household, $152,525 in the case of a married individual filing a separate return.

.15 *Cafeteria Plans*. For the taxable years beginning in 2014, the dollar limitation under § 125(i) on voluntary employee salary reductions for contributions to health flexible spending arrangements is $2,500.

.16 *Qualified Transportation Fringe Benefit*. For taxable years beginning in 2014, 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 $130. The monthly limitation under § 132(f)(2)(B) regarding the fringe benefit exclusion amount for qualified parking is $250.

.17 *Income from United States Savings Bonds for Taxpayers Who Pay Qualified Higher Education Expenses*. For taxable years beginning in 2014, 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 $113,950 for joint returns and $76,000 for all other returns. The exclusion is completely phased out for modified adjusted gross income of $143,950 or more for joint returns and $91,000 or more for all other returns.

.18 *Adoption Assistance Programs*. For taxable years beginning in 2014, 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 $13,190. For taxable years beginning in 2014, 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 $13,190. 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 $197,880 and is completely phased out for taxpayers with modified adjusted gross income of $237,880 or more. (See section 3.03 of this revenue procedure for the adjusted items relating to the adoption credit.)

.19 *Private Activity Bonds Volume Cap*. For calendar year 2014, 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) $100 multiplied by the State population, or (2) $296,825,000.

.20 *Loan Limits on Agricultural Bonds*. For calendar year 2014, the loan limit amount on agricultural bonds under § 147(c)(2)(A) for first-time farmers is $509,600.

.21 *General Arbitrage Rebate Rules*. For bond years ending in 2014, 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 $1,620.

.22 *Safe Harbor Rules for Broker Commissions on Guaranteed Investment Contracts or Investments Purchased for a Yield Restricted Defeasance Escrow*. For calendar year 2014, 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) $38,000, 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 $108,000 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.

.23 *Personal Exemption*.

(1) For taxable years beginning in 2014, the personal exemption amount under § 151(d) is $3,950.

(2) *Phaseout*. For taxable years beginning in 2014, the personal exemption phases out for taxpayers with the following adjusted gross income amounts:

Filing Status	*AGI – Beginning of Phaseout*	*AGI – Completed Phaseout*
Married Individuals Filing Joint Returns and Surviving Spouses (§ 1(a))	$305,050	$427,550
Heads of Households (§ 1(b))	$279,650	$402,150
Unmarried Individuals (other than Surviving Spouses and Heads of Households) (§ 1(c))	$254,200	$376,700
Married Individuals Filing Separate Returns (§ 1(d))	$152,525	$213,775

.24 *Eligible Long-Term Care Premiums*. For taxable years beginning in 2014, the limitations under § 213(d)(10), regarding eligible long-term care premiums includible in the term "medical care," are as follows:

Attained Age Before the Close of the Taxable Year	*Limitation on Premiums*
40 or less	$ 370
More than 40 but not more than 50	$ 700
More than 50 but not more than 60	$1,400
More than 60 but not more than 70	$3,720
More than 70	$4,660

.25 *Medical Savings Accounts*.

(1) *Self-only coverage*. For taxable years beginning in 2014, 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 $2,200 and not more than $3,250, and under which the annual out-of-pocket expenses required to be paid (other than for premiums) for covered benefits do not exceed $4,350.

(2) *Family coverage*. For taxable years beginning in 2014, the term "high deductible health plan" means, for family coverage, a health plan that has an annual deductible that is not less than $4,350 and not more than $6,550, and under which the annual out-of-pocket expenses required to be paid (other than for premiums) for covered benefits do not exceed $8,000.

.26 *Interest on Education Loans*. For taxable years beginning in 2014, 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 $65,000 ($130,000 for joint returns), and is completely phased out for taxpayers with modified adjusted gross income of $80,000 or more ($160,000 or more for joint returns).

.27 *Treatment of Dues Paid to Agricultural or Horticultural Organizations*. For taxable years beginning in 2014, 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 $158.

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

(1) *Low cost article*. For taxable years beginning in 2014, for purposes of defining the term "unrelated trade or business" for certain exempt organizations under § 513(h)(2), "low cost articles" are articles costing $10.40 or less.

(2) *Other insubstantial benefits*. For taxable years beginning in 2014, 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 $10.40, $52, and $104, respectively.

.29 *Expatriation to Avoid Tax*. For calendar year 2014, under § 877A(g)(1)(A), unless an exception under § 877A(g)(1)(B) applies, an individual is a covered expatriate if the individual's "average annual net income tax" under §877(a)(2)(A) for the five taxable years ending before the expatriation date is more than $157,000.

.30 *Tax Responsibilities of Expatriation*. For taxable years beginning in 2014, 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 $680,000.

.31 *Foreign Earned Income Exclusion*. For taxable years beginning in 2014, the foreign earned income exclusion amount under § 911(b)(2)(D)(i) is $99,200.

.32 *Unified Credit Against Estate Tax*. For an estate of any decedent dying during calendar year 2014, the basic exclusion amount is $5,340,000 for determining the amount of the unified credit against estate tax under § 2010.

.33 *Valuation of Qualified Real Property in Decedent's Gross Estate*. For an estate of a decedent dying in calendar year 2014, 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 $1,090,000.

.34 *Annual Exclusion for Gifts*.

(1) For calendar year 2014, 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 2014, the first $145,000 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.

.35 *Tax on Arrow Shafts*. For calendar year 2014, 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.

.36 *Passenger Air Transportation Excise Tax*. For calendar year 2014, the tax under § 4261(b)(1) on the amount paid for each domestic segment of taxable air transportation is $4. For calendar year 2014, 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 $17.50. 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 2014, the rate is $8.70.

.37 *Reporting Exception for Certain Exempt Organizations with Nondeductible Lobbying Expenditures*. For taxable years beginning in 2014, 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 $110 or less.

.38 *Notice of Large Gifts Received from Foreign Persons*. For taxable years beginning in 2014, § 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 $15,358.

.39 *Persons Against Whom a Federal Tax Lien Is Not Valid*. For calendar year 2014, 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 $1,490, 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 $7,470.

.40 *Property Exempt from Levy*. For calendar year 2014, 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 $8,940. 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 $4,470.

.41 *Interest on a Certain Portion of the Estate Tax Payable in Installments*. For an estate of a decedent dying in calendar year 2014, 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 $1,450,000.

.42 *Attorney Fee Awards*. For fees incurred in calendar year 2014, the attorney fee award limitation under § 7430(c)(1)(B)(iii) is $190 per hour.

.43 *Periodic Payments Received under Qualified Long-Term Care Insurance Contracts or under Certain Life Insurance Contracts*. For calendar year 2014, 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 $330.

SECTION 4. EFFECTIVE DATE

.01 *General Rule*. Except as provided in section 4.02, this revenue procedure applies to taxable years beginning in 2014.

.02 *Calendar Year Rule*. This revenue procedure applies to transactions or events occurring in calendar year 2014 for purposes of sections 3.07 (rehabilitation expenditures treated as separate new building), 3.08 (low-income housing credit), 3.12 (transportation mainline pipeline construction industry optional expense substantiation rules for payments to employees under accountable plans), 3.19 (private activity bonds volume cap), 3.20 (loan limits on agricultural bonds), 3.21 (general arbitrage rebate rules), 3.22 (safe harbor rules for broker commissions on guaranteed investment contracts or investments purchased for a yield restricted defeasance escrow), 3.29 (expatriation to avoid tax), 3.33 (valuation of qualified real property in decedent's gross estate), 3.34 (annual exclusion for gifts), 3.35 (tax on arrow shafts), 3.36 (passenger air transportation excise tax), 3.39 (persons against whom a federal tax lien is not valid), 3.40 (property exempt from levy), 3.41 (interest on a certain portion of the estate tax payable in installments), 3.42 (attorney fee awards), and 3.43 (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).

Part IV. Items of General Interest

Mixed Straddles; Straddle-by-Straddle Identification Under Section 1092(b)(2)(A)(i)(I); Correction

Announcement 2013–44

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations; correcting amendments.

SUMMARY: This document contains amendments to temporary regulations relating to guidance for taxpayers electing to establish a mixed straddle using straddle-by-straddle identification. These amendments include a change to the applicability date of the temporary regulations pursuant to which the temporary regulations apply to transactions established after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register.** The amendments to the temporary regulations will affect taxpayers who elect to establish a mixed straddle using straddle-by-straddle identification.

DATES: *Effective Date*: These amendments are effective on October 29, 2013.

Applicability Date: As corrected, §1.1092(b)–6T applies to identified mixed straddles established after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Pamela Lew or Robert B. Williams at (202) 622-3950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of these amendments are under section 1092 of the Internal Revenue Code (Code). The temporary regulations (TD 9627) were published in the **Federal Register** on Friday, August 2, 2013 (78 FR 46807). The temporary regulations applied to all identified mixed straddles established after the date of filing, August 1, 2013.

Need for amendments

The Treasury Department and the IRS received comments raising concerns about the immediate applicability date of the temporary regulations. In response to those comments, this document amends the temporary regulations to limit the application of the identified mixed straddle transaction rules in §1.1092(b)–6T to section 1092(b)(2) identified mixed straddles established after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register.** This document also amends the examples in the temporary regulations to reflect the change in the applicability date and to clarify the determination of a holding period. The Treasury Department and the IRS anticipate finalizing the regulations no later than the end of the current Priority Guidance Plan year on June 30, 2014, and will as part of that process consider all comments received.

* * * * *

Amendments to the Regulations

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

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

Section 1.1092(b)–6T also issued under 26 U.S.C. 1092(b)(1).

Section 1.1092(b)–6T also issued under 26 U.S.C. 1092(b)(2).* * *

Par. 2. Section 1.1092(b)–3T is amended by:

1. Revising the heading of paragraph (b)(6).
2. Revising the first sentence of paragraph (b)(6).

The amendments read as follows:

§1.1092(b)–3T Mixed straddles; straddle-by-straddle identification under section 1092(b)(2)(A)(i)(I) (Temporary).

* * * * *

(b)(6) *Accrued gain and loss with respect to positions of a section 1092(b)(2) identified mixed straddle established on or before the applicability date of §1.1092(b)–6T.* The rules of this paragraph (b)(6) apply to all section 1092(b)(2) identified mixed straddles established on or before the applicability date of §1.1092(b)–6T; see §1.1092(b)–6T for section 1092(b)(2) identified mixed straddles established after the applicability date of §1.1092(b)–6T.* * *

* * * * *

Par. 3. Section 1.1092(b)–6T is amended as follows:

1. Revising the heading of §1.1092(b)–6T.
2. Adding a sentence at the end of the introductory text of paragraph (b) and revising *Example 1* and *Example 2* of paragraph (b).
3. Revising paragraph (c).

The amendments read as follows:

§1.1092(b)–6T Mixed straddles; accrued gain and loss associated with a position that becomes part of a section 1092(b)(2) identified mixed straddle.

* * *

(b) * * * The following examples assume that this section applies to identified mixed straddles established after August 1, Year 2.

Example 1. On August 13, Year 2, A enters into a section 1256 contract. As of the close of the day on August 15, Year 2, there is $500 of unrealized loss on the section 1256 contract. On August 16, Year 2, A enters into an offsetting non-section 1256 position and makes a valid election to treat the straddle as a section 1092(b)(2) identified mixed straddle. A continues to hold both positions of the section 1092(b)(2) identified mixed straddle on January 1, Year 3. Under these circumstances, A will recognize the $500 loss on the section 1256 contract that existed prior to establishing the section 1092(b)(2) identified mixed straddle on the last business day of Year 2 because the section 1256 contract would be treated as sold on December 31, Year 2, (the last business day of the taxable year) under section

1256(a). The loss recognized in Year 2 will be treated as 60% long-term capital loss and 40% short-term capital loss. All gains and losses occurring after the section 1092(b)(2) identified mixed straddle is established are accounted for under the applicable provisions in §1.1092(b)–3T.

Example 2. On September 3, Year 1, A enters into a non-section 1256 position. As of the close of the day on August 22, Year 2, there is $400 of unrealized short-term capital gain on the non-section 1256 position. On August 23, Year 2, A enters into an offsetting section 1256 contract and makes a valid election to treat the straddle as a section 1092(b)(2) identified mixed straddle. On September 10, Year 2, A closes out the section 1256 contract at a $500 loss and disposes of the non-section 1256 position, realizing an $875 gain. Under these circumstances, A has $400 of short-term capital gain attributable to the non-section 1256 position prior to the day the section 1092(b)(2) identified mixed straddle was established. The $400 unrealized gain earned on the non-section 1256 position will be recognized on September 10, Year 2, when the non-section 1256 position is disposed of. The gain will be short-term capital gain. See §1.1092(b)–2T for rules concerning holding period. On September 10, Year 2, the gain of $875 on the non-section 1256 position will be reduced to $475 to take into account the $400 of unrealized gain when the section 1092(b)(2) identified mixed straddle was established. The $475 gain on the non-section 1256 position will be offset by the $500 loss on the section 1256 contract. The net loss of $25 from the straddle will be treated as 60% long-term capital loss and 40% short-term capital loss because it is attributable to the section 1256 contract.

(c) *Effective/applicability date*. The rules of this section apply to all section 1092(b)(2) identified mixed straddles established after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register.**

* * * * *

Martin Franks,
Branch Chief,
Publications & Regulations Branch
Legal Processing Division
Associate Chief Counsel
(Procedure & Administration)

(Filed by the Office of the Federal Register on October 25, 2013, 8:45 a.m., and published in the issue of the Federal Register for October 29, 2013, 78 F.R. 64396)

Mixed Straddles; Straddle-by-Straddle Identification Under Section 1092(b)(2)(A)(i)(I); Correction

Announcement 2013–45

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing; correction.

SUMMARY: This document contains amendments to proposed regulations relating to guidance for taxpayers electing to establish a mixed straddle using straddle-by-straddle identification. These amendments include a change to the applicability date of the proposed regulations pursuant to which the proposed regulations would apply to transactions established after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register.** The amendments to the proposed regulations will affect taxpayers who elect to establish a mixed straddle using straddle-by-straddle identification.

DATES: Comments must be received by October 31, 2013. Request to speak and outlines of topics to be discussed at the public hearing scheduled for December 4, 2013, at 10 a.m. must be received by October 31, 2013.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–112815–12), room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–112815–12), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–112815–12).

FOR FURTHER INFORMATION CONTACT: Pamela Lew or Robert B. Williams at (202) 622-3950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of these amendments are under section 1092 of the Internal Revenue Code (Code). The text of temporary regulations (TD 9627), published in the **Federal Register** on Friday, August 2, 2013 (78 FR 46807), serves as the text of the proposed regulations. The proposed regulations (REG–112815–12) were published in the **Federal Register** on Friday, August 2, 2013 (78 FR 46854). The proposed regulations were proposed to apply to all identified mixed straddles established after the date of filing, August 1, 2013.

Need for amendments

The Treasury Department and the IRS received comments raising concerns about the immediate applicability date of the temporary regulations. In response to those comments, the Treasury Department and the IRS are amending the temporary regulations to limit the application of the identified mixed straddle transaction rules in §1.1092(b)–6T to section 1092(b)(2) identified mixed straddles established after the date of publication of the Treasury decision adopting the rules as final regulations in the **Federal Register.** The text of the temporary regulations, as amended, continues to serve as the text of these proposed regulations, and this document amends the proposed regulations to conform to the changes to the temporary regulations. The Treasury Department and the IRS anticipate finalizing the regulations no later than the end of the current Priority Guidance Plan year on June 30, 2014, and will as part of that process consider all comments received.

* * * * *

Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

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

Section 1.1092(b)–6 also issued under 26 U.S.C. 1092(b)(1).

Section 1.1092(b)–6 also issued under 26 U.S.C. 1092(b)(2).* * *

Par. 2. Section 1.1092(b)–6 is amended by revising the heading to read as follows:

§1.1092(b)–6 Mixed straddles; accrued gain and loss associated with a position that becomes part of a section 1092(b)(2) identified mixed straddle.

*****

Martin Franks,
Branch Chief,
Publications & Regulations Branch

Legal Processing Division
Associate Chief Counsel
(Procedure & Administration)

(Filed by the Office of the Federal Register on October 25, 2013, 8:45 a.m., and published in the issue of the Federal Register for October 29, 2013, 78 F.R. 64430)

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with modified, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with amplified and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, modified and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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[1] A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2013–1 through 2013–26 is in Internal Revenue Bulletin 2013–26, dated June 24, 2013.

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INTERNAL REVENUE BULLETIN

The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletins are available at *www.irs.gov/irb/*.

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We Welcome Comments About the Internal Revenue Bulletin

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