Internal Revenue
bulletin

Bulletin No. 2013–52
December 23, 2013

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

Rev. Rul. 2013–25, page 802.

Interest rates: underpayment and overpayments. The rates for interest determined under section 6621 of the code for the calendar quarter beginning January 1, 2014, will be 3 percent for overpayments (2 percent in the case of a corporation), 3 percent for the underpayments, and 5 percent for large corporation underpayments. The rate of interest paid on the portion of a corporation overpayment exceeding $10,000 will be 0.5 percent.

T.D. 9648, page 798.

These final regulations provide a definition of the term "specified notional principal contract" with respect to a payment of a dividend equivalent made prior to January 1, 2016. These final regulations also amend other provisions of the Code to address the treatment of dividend equivalents, such as withholding rules.

REG–120282–10, page 837.

These proposed regulations describe payments that are dividend equivalents for purposes of section 871(m) and explain how to calculate the amount of a dividend equivalent. These proposed regulations also provide guidance regarding when payments will constitute dividend equivalents and U.S. source income. Comments are requested by March 5, 2014. A public hearing is scheduled for April 11, 2014.

REG–126285–12, page 853.

These proposed regulations concern the deductibility of start-up expenditures and organizational expenses for partnerships. The proposed regulations provide guidance regarding the deductibility of start-up expenditures and organizational expenses for partnerships following a technical termination of a partnership. Comments are requested by March 10, 2014.

EMPLOYEE PLANS

Notice 2013–74, page 819.

This notice provides guidance under § 402A(c)(4)(E) of the Code relating to the expansion of rollovers from § 401(k) plans, § 403(b) plans and governmental § 457(b) plans to designated Roth accounts in the same plan ("in-plan Roth rollovers"). This notice also provides guidance that applies to all in-plan Roth rollovers under § 402A(c)(4). Section 402A(c)(4)(E) was added by § 902 of the American Taxpayer Relief Act of 2012 ("ATRA"), P.L. 112–240. Notice 2010–84 and Rev. Rul. 2004–12 are modified.

Notice 2013–84, page 822.

This notice contains the 2013 Cumulative List of Changes in Plan Qualification Requirements (2013 Cumulative List) described in section 4 of Rev. Proc. 2007–44, 2007–2 C.B. 54. The 2013 Cumulative List is to be used by plan sponsors and practitioners submitting determination, opinion, or advisory letter applications for plans during the period beginning February 1, 2014 and ending January 31, 2015.

Notice 2013–85, page 827.

This notice contains updates for the corporate bond weighted average interest rate for plan years beginning in December 2013; the 24-month average segment rates; the funding segment rates applicable for December 2013; and the minimum present value rates for November 2013. The rates in this notice reflect certain changes implemented by the Moving Ahead for Progress in the 21st Century Act, Public Law 112–141 (MAP–21).

(Continued on the next page)

Finding Lists begin on page ii.
Index for July through December begins on page iv.

Department of the Treasury
Internal Revenue Service

EXEMPT ORGANIZATIONS

REG–134417–13, page 856.

These proposed regulations provide guidance to tax-exempt social welfare organizations on political activities related to candidates that will not be considered to promote social welfare. These regulations will affect tax-exempt social welfare organizations and organizations seeking such status. Comments are requested by February 27, 2014.

EMPLOYMENT TAX

Rev. Proc. 2013–39, page 830.

This revenue procedure describes and updates the procedure for requesting the IRS authorize a person to act as agent under section 3504 of the Code for purposes of income tax withholding, the Federal Insurance Contributions Act (FICA), and Railroad Retirement Tax Act (RRTA). Special instructions are also set forth for agents authorized to perform acts for purposes of the Federal Unemployment Tax Act (FUTA). Notice 95–18, Rev. Proc. 70–6, Rev. Proc. 80–4, and Notice 2003–70 are affected.

ADMINISTRATIVE

T.D. 9647, page 816.

These final regulations amend the regulations that provide user fees for installment agreements and offers in compromise. The amendments affect taxpayers who wish to pay their liabilities through installment agreements and offers in compromise.

Notice 2013–80, page 821.

Optional standard mileage rates. This notice announces 56 cents as the optional standard mileage rate for substantiating the amount of the deduction for the business use of an automobile, 14 cents as the optional rate for use of an automobile as a charitable contribution, and 23.5 cents as the optional rate for use of an automobile as a medical or moving expense for 2014. The notice also provides the amount a taxpayer must use in calculating reductions to basis for depreciation taken under the business standard mileage rate and the maximum standard automobile cost for automobiles under a FAVR allowance. Notice 2012–72 superseded.

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 871.—Tax on Nonresident Alien Individuals

TD 9648

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Dividend Equivalents from Sources within the United States

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to certain dividend equivalents for purposes of section 871(m) of the Internal Revenue Code (Code). The regulations provide guidance to nonresident alien individuals and foreign corporations that hold specified notional principal contracts providing for payments that are contingent upon or determined by reference to U.S. source dividend payments and to withholding agents.

DATES: *Effective Date*: These regulations are effective on December 5, 2013.

Applicability Date: For dates of applicability, see §§1.863–7(a)(2), 1.871–15(o), 1.881–2(e), 1.892–3(c), 1.894–1(e), 1.1441–2(f), 1.1441–3(h)(2), 1.1441–4(g)(1), 1.1441–6(i)(1), 1.1441–7(a)(4) and (g), and 1.1461–1(c)(2)(iii).

FOR FURTHER INFORMATION CONTACT: D. Peter Merkel or Karen Walny at (202) 317-6938 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Congress enacted section 871(m) (originally designated as section 871(l)) on March 18, 2010, in section 541 of the Hiring Incentives to Restore Employment Act (HIRE Act), Public Law 111–147 (124 Stat. 71).

Section 871(m) applies to any substitute dividend made pursuant to a securities lending or a sale-repurchase transaction (repo) that is contingent upon, or determined by reference to, the payment of a U.S. source dividend, any payment made pursuant to a notional principal contract (NPC) that is a specified notional principal contract (specified NPC) when the payment is contingent upon, or determined by reference to, the payment of a U.S. source dividend, and any other payment determined by the Secretary to be substantially similar (dividend equivalent). Section 871(m) treats a dividend equivalent as a dividend from sources within the United States for purposes of sections 871(a), 881, and 4948(a), and chapters 3 and 4 of subtitle A of the Code. Section 871(m) generally applies to any dividend equivalent payment made on or after September 14, 2010. With respect to payments made on or after September 14, 2010, and on or before March 18, 2012, section 871(m)(3)(A) provides a factor-based test for determining whether an NPC is a specified NPC. With respect to payments made after March 18, 2012, section 871(m)(3)(B) provides that any NPC is a specified NPC unless the Secretary determines that the contract is of a type which does not have the potential for tax avoidance.

On January 23, 2012, the **Federal Register** published temporary regulations (TD 9572) at 77 FR 3108 (2012 temporary regulations), and a notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing at 77 FR 3202 (2012 proposed regulations, and together with the 2012 temporary regulations, 2012 section 871(m) regulations) under section 871(m) of the Code. The 2012 section 871(m) regulations related to dividend equivalents from sources within the United States paid to nonresident alien individuals and foreign corporations. Corrections to the 2012 temporary regulations were published on February 6, 2012, and March 8, 2012, in the **Federal Register** at 77 FR 5700 and 77 FR 13969, respectively. A correcting amendment to the 2012 temporary regulations was also published on August 31, 2012, in the **Federal Register** at 77 FR 53141.

The Treasury Department and the IRS received written comments on the 2012 section 871(m) regulations, which are available at *www.regulations.gov*. A public hearing was held on April 27, 2012. The majority of the comments related to the 2012 proposed regulations. Comments received regarding the provisions being finalized in this document are described in the Explanation of Provisions part of the preamble. An explanation of the other comments on the 2012 section 871(m) regulations is provided in the withdrawal of notice of proposed rulemaking, notice of proposed rulemaking and notice of public hearing in this issue of the *Bulletin*.

Explanation of Provisions

Section 1.871–15(d)(1) of these final regulations adopts with minimal changes §1.871–16T(b) of the 2012 temporary regulations, which incorporates the definition of a specified NPC provided in section 871(m)(3)(A). The four-factor specified NPC definition provided in §1.871–16T(b) applies to payments made after March 18, 2012, and before January 1, 2014. These final regulations extend the applicability of the four-factor definition to payments made before January 1, 2016. Proposed regulations set forth in this issue of the *Bulletin* (the 2013 proposed regulations) contain the proposed definition of a specified NPC for payments made on or after January 1, 2016. The 2013 proposed regulations replace the 2012 proposed regulations, which provided a seven-factor approach to defining a specified NPC. Comments indicated that financial services providers would have difficulty modifying their systems to implement the 2012 proposed regulations under the timeline provided in the 2012 proposed regulations. The Treasury Department and the IRS believe that an extension of the statutory definition of the term specified NPC is necessary because the 2013 proposed regulations adopt a different approach

from the 2012 proposed regulations for determining whether an NPC is a specified NPC. In addition, this extension will allow the financial services industry adequate time to establish necessary systems and other operating procedures to comply with the rules described in the 2013 proposed regulations.

The 2012 temporary regulations amended several regulations to clarify the application of section 871(m). For example, the 2012 temporary regulations modified §1.863–7 to provide that the general source rule for NPCs did not apply to a dividend equivalent under section 871(m). The 2012 temporary regulations also provided that section 871(m) and §1.871–16T applied to dividend equivalents received by foreign corporations. These final regulations adopt those temporary rules without change.

These final regulations also amend certain regulations under section 1441 to require a withholding agent to withhold tax owed with respect to a dividend equivalent. Generally, these amendments are consistent with the amendments made in the 2012 temporary regulations. In addition, these final regulations reinstate to §1.1441–7(a)(3) examples relating to the definition of a withholding agent, which were inadvertently deleted by the 2012 temporary regulations.

One comment suggested that the regulations clarify that financial intermediaries and custodians are not parties to a section 871(m) transaction and should not be withholding agents with respect to a dividend equivalent payment. The Treasury Department and the IRS disagree and believe that a financial intermediary or custodian that satisfies the definition of a withholding agent provided in §1.1441–7(a) should be considered a withholding agent for purposes of section 871(m).

Another comment stated that §1.1441–3T(i), which permitted a withholding agent to use the distributing corporation's estimates to determine the amount of a dividend equivalent, was unduly harsh because the withholding agent remained liable for tax, interest, and penalties when the actual dividend exceeded the estimate. Section 1.1441–3T(i) is withdrawn and is not adopted in these final regulations. The Treasury Department and the IRS believe that withholding agents should comply with §1.1441–3(d)(1) in the event that the amount of a dividend equivalent is uncertain.

Other comments relating to the withholding provisions described the difficulties that withholding agents would encounter when administering the 2012 proposed regulations. The Treasury Department and the IRS believe that withdrawing the 2012 proposed regulations and publishing the 2013 proposed regulations addresses these comments.

In addition, these regulations finalize portions of the 2012 proposed regulations relating to the treatment of dividend equivalent payments for purposes of sections 892 and 894. Comments to the 2012 proposed regulations generally supported the proposed regulations under sections 892 and 894. These portions of the proposed regulations are finalized without change.

The Treasury Department and the IRS will continue to closely scrutinize other transactions that are not covered by section 871(m) and that may be used to avoid U.S. taxation and U.S. withholding. In addition, the IRS may challenge the U.S. tax results claimed in connection with transactions that are designed to avoid the application of section 871(m) using all available statutory provisions and judicial doctrines (including the substance over form doctrine, the economic substance doctrine under section 7701(o), the step transaction doctrine, and tax ownership principles) as appropriate. For example, nothing in section 871(m) precludes the IRS from asserting that a contract labeled as an NPC is in fact an ownership interest in the equity referenced in the contract.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect multinational financial institutions, which tend to be larger businesses, and foreign entities. Moreover, the number of taxpayers affected and the average burden are minimal. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are D. Peter Merkel and Karen Walny of the Office of Associate Chief Counsel (International). Other personnel from the Treasury Department and the IRS also participated in their development.

*** * * * ***

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by revising the entry for §1.863–7 and adding an entry for §1.871–15 to read in part as follows:

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

§1.863–7 also issued under 26 U.S.C. 863(a) and 871(m). * * *

§1.871–15 also issued under 26 U.S.C. 871(m). * * *

Par. 2. Section 1.863–7 is amended by:

1. Revising paragraph (a)(1).

2. In paragraph (a)(2), revising the heading and adding a sentence at the end.

The revisions and addition read as follows:

§1.863–7 Allocation of income attributable to certain notional principal contracts under section 863(a).

(a) *Scope*—(1) *Introduction*. This section provides rules relating to the source and, in certain cases, the character of notional principal contract income. However, this section does not apply to income from a section 988 transaction within the meaning of section 988 and the regula-

tions thereunder, relating to the treatment of certain nonfunctional currency transactions. Further, this section does not apply to a dividend equivalent described in section 871(m) and the regulations thereunder. Notional principal contract income is income attributable to a notional principal contract as defined in §1.446–3(c). An agreement between a taxpayer and a qualified business unit (as defined in section 989(a)) of the taxpayer, or among qualified business units of the same taxpayer, is not a notional principal contract, because a taxpayer cannot enter into a contract with itself.

(2) *Effective/applicability date*. * * * With respect to a dividend equivalent described in section 871(m) and the regulations thereunder, this section applies to payments made on or after January 23, 2012.

* * * * *

§1.863–7T [Removed].

Par. 3. Section 1.863–7T is removed.

Par. 4. Section 1.871–15 is added as follows:

§1.871–15 Treatment of dividend equivalents.

(a) through (c) [Reserved].

(d) *Specified NPCs*—(1) *Specified NPCs before January 1, 2016*. For payments made after March 18, 2012, and before January 1, 2016, a specified NPC is any NPC if—

(i) In connection with entering into the contract, any long party to the contract transfers the underlying security to any short party to the contract;

(ii) In connection with the termination of the contract, any short party to the contract transfers the underlying security to any long party to the contract;

(iii) The underlying security is not readily tradable on an established securities market; or

(iv) In connection with entering into the contract, the underlying security is posted as collateral by any short party to the contract with any long party to the contract.

(d)(2) through (n) [Reserved].

(o) *Effective/applicability date*. This section applies to payments made on or after January 23, 2012.

§1.871–15T [Removed].

Par. 5. Section 1.871–15T is removed.

§1.871–16T [Removed].

Par. 6. Section 1.871–16T is removed.

Par. 7. Section 1.881–2 is amended by:

1. Revising paragraph (b)(3).

2. In paragraph (e), revising the heading and adding a sentence at the end.

The revisions and addition read as follows:

§1.881–2 Taxation of foreign corporations not engaged in U.S. business.

* * * * *

(b) * * *

(3) *Dividend Equivalents*. For rules applicable to a foreign corporation's receipt of a dividend equivalent, see section 871(m) and the regulations thereunder.

* * * * *

(e) *Effective/applicability date*. * * * Paragraph (b)(3) of this section applies to payments made on or after January 23, 2012. * * *

§1.881–2T [Removed].

Par. 8. Section 1.881–2T is removed.

Par. 9. Section 1.892–3 is added to read as follows:

§1.892–3 Income of foreign governments.

(a)(1) through (a)(5) [Reserved]. For further information, see §1.892–3T(a)(1) through (a)(5).

(6) *Dividend equivalents*. Income from investments in stocks includes the payment of a dividend equivalent described in section 871(m) and the regulations thereunder.

(b) [Reserved]. For further information, see §1.892–3T(b).

(c) *Effective/applicability date*. Paragraph (a)(6) of this section applies to payments made on or after December 5, 2013.

Par.10. Section 1.894–1 is amended by:

1. Redesignating paragraph (c) as (c)(1) and adding paragraph (c)(2).
2. In paragraph (e):
   a. Revising the heading,
   b. Revising the third sentence, and
   c. Adding a new fourth sentence.

The addition and revisions read as follows:

§1.894–1 Income affected by treaty.

* * * * *

(c) * * *

(2) *Dividend equivalents*. The provisions of an income tax convention relating to dividends paid to or derived by a foreign person apply to the payment of a dividend equivalent described in section 871(m) and the regulations thereunder.

* * * * *

(e) *Effective/applicability date*. * * * Paragraph (c)(1) of this section applies to payments made after November 13, 1997. Paragraph (c)(2) of this section applies to payments made on or after December 5, 2013. * * *

Par. 11. Section 1.1441–2 is amended by:

1. Revising paragraph (b)(6).
2. Adding a sentence to the end of paragraph (f).

The revision and addition read as follows:

§1.1441–2 Amounts subject to withholding.

* * * * *

(b) * * *

(6) *Dividend equivalents*. Amounts subject to withholding include a dividend equivalent described in section 871(m) and the regulations thereunder. For this purpose, the amount of a dividend equivalent includes any gross amount that is used in computing any net amount that is transferred to or from the taxpayer under the terms of the transaction or any other payment described in section 871(m) and the regulations thereunder.

* * * * *

(f) *Effective/applicability date*. * * * Paragraph (b)(6) of this section applies to payments made on or after January 23, 2012.

§1.1441–2T [Removed].

Par. 12. Section 1.1441–2T is removed.

Par. 13. Section 1.1441–3 is amended by:

1. Revising paragraph (h).

2. Removing paragraph (i).

3. Redesignating paragraph (j) as newly-designated paragraph (i) and removing the language "paragraph (g)" from newly-redesignated paragraph (i) and adding "paragraphs (g) and (h)" in its place.

The revisions read as follows:

§1.1441–3 Determination of amounts to be withheld.

* * * * *

(h) *Dividend equivalents*—(1) *Withholding on gross amount*. The gross amount of a dividend equivalent described in section 871(m) and the regulations thereunder is subject to withholding in an amount equal to the gross amount of the dividend equivalent used in computing any net amount that is transferred to or from the taxpayer.

(2) *Effective/applicability date*. This paragraph (h) applies to payments made on or after January 23, 2012.

* * * * *

§1.1441–3T [Removed].

Par. 14. Section 1.1441–3T is removed.

Par. 15. Section 1.1441–4 is amended by:

1. Revising paragraphs (a)(3)(i) and (iii).

2. Revising the heading to paragraph (g).

3. Removing the language "2000." in paragraph (g)(1) and adding "2000, except that paragraph (a)(3)(iii) of this section applies to payments made on or after January 23, 2013." in its place.

The revisions read as follows:

§1.1441–4 Exemptions from withholding for certain effectively connected income and other amounts.

(a) * * *

(3) *Income on notional principal contracts*—(i) *General rule*. Except as otherwise provided in paragraph (a)(3)(iii) of this section, a withholding agent that pays amounts attributable to a notional principal contract described in §1.863–7(a) or §1.988–2(e) shall have no obligation to withhold on the amounts paid under the terms of the notional principal contract regardless of whether a withholding certificate is provided. However, a withholding agent must file returns under §1.1461–1(b) and (c) reporting the income that it must treat as effectively connected with the conduct of a trade or business in the United States under the provisions of this paragraph (a)(3). Except as otherwise provided in paragraph (a)(3)(ii) of this section, a withholding agent must treat the income as effectively connected with the conduct of a U.S. trade or business if the income is paid to, or to the account of, a qualified business unit of a foreign person located in the United States or, if the payment is paid to, or to the account of, a qualified business unit of a foreign person located outside the United States, the withholding agent knows, or has reason to know, the payment is effectively connected with the conduct of a trade or business within the United States. Income on a notional principal contract does not include the amount characterized as interest under the provisions of §1.446–3(g)(4).

* * * * *

(iii) *Exception for specified notional principal contracts*. A withholding agent that makes a payment attributable to a specified notional principal contract described in section 871(m) and the regulations thereunder that is not treated as effectively connected with the conduct of a trade or business within the United States is obligated to withhold on the amount of the payment that is a dividend equivalent.

* * * * *

(g) *Effective/applicability date*—* * *

* * * * *

§1.1441–4T [Removed].

Par. 16. Section 1.1441–4T is removed.

Par. 17. Section 1.1441–6 is amended by:

1. Revising paragraph (c)(2).

2. Redesignating paragraph (h) as paragraph (i) and revising newly-redesignated paragraph (i)(1).

3. Adding a new paragraph (h).

The revisions and addition read as follows:

§1.1441–6 Claim of reduced withholding under an income tax treaty.

* * * * *

(c) * * *

(2) *Income to which special rules apply*. The income to which paragraph (c)(1) of this section applies is dividends and interest from stocks and debt obligations that are actively traded, dividends from any redeemable security issued by an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1), dividends, interest, or royalties from units of beneficial interest in a unit investment trust that are (or were upon issuance) publicly offered and are registered with the Securities and Exchange Commission under the Securities Act of 1933 (15 U.S.C. 77a), and amounts paid with respect to loans of securities described in this paragraph (c)(2). With respect to a dividend equivalent described in section 871(m) and the regulations thereunder, this paragraph (c)(2) applies to the extent that the underlying security described in section 871(m) and the regulations thereunder satisfies the requirements of this paragraph (c)(2). For purposes of this paragraph (c)(2), a stock or debt obligation is actively traded if it is actively traded within the meaning of section 1092(d) and §1.1092(d)–1 when documentation is provided.

* * * * *

(h) *Dividend equivalents*. The rate of withholding on a dividend equivalent may be reduced to the extent provided under an income tax treaty in effect between the United States and a foreign country. For this purpose, a dividend equivalent as described in section 871(m) and the regulations thereunder is treated as a dividend from sources within the United States. To receive a reduced rate of withholding with respect to a dividend equivalent, a foreign person must satisfy the other requirements described in this section.

(i) *Effective/applicability dates*—(1) *General rule*. This section applies to payments made after December 31, 2000, except that—

(i) Paragraph (g) of this section applies to payments made after December 31, 2001, and

(ii) Paragraph (h) of this section applies to payments made on or after December 5, 2013.

* * * * *

Par. 18. Section 1.1441–7 is amended by:

1. Removing paragraph (a)(3).
2. Redesignating paragraph (a)(2) as paragraph (a)(3) and revising newly-redesignated paragraph (a)(3).
3. Adding a new paragraph (a)(2).
4. Adding a new paragraph (a)(4).
5. Revising paragraph (g).

The revisions and additions read as follows:

§1.1441–7 General provisions relating to withholding agents.

(a) * * *

(2) *Withholding agent with respect to dividend equivalents*. Each person that is a party to any contract or arrangement that provides for the payment of a dividend equivalent, as described in section 871(m) and the regulations thereunder, is treated as having control and custody of the payment.

(3) *Examples*. The following examples illustrate the rules of paragraphs (a)(1) and (a)(2) of this section:

Example 1. USB is a broker organized in the United States. USB pays U.S. source dividends and interest, which are amounts subject to withholding under § 1.1441–2(a), to FC, a foreign corporation that has an investment account with USB. USB is a withholding agent as defined in paragraph (a)(1) of this section.

Example 2. USB is a bank organized in the United States. FB is a bank organized in country X. FB has an omnibus account with USB through which FB invests in debt and equity instruments that pay amounts subject to withholding as defined in § 1.1441–2(a). FB is a nonqualified intermediary, as defined in § 1.1441–1(c)(14). Both USB and FB are withholding agents as defined in paragraph (a)(1) of this section.

Example 3. The facts are the same as in *Example 2*, except that FB is a qualified intermediary. Both USB and FB are withholding agents as defined in paragraph (a)(1) of this section.

Example 4. FB is a bank organized in country X. FB has a branch in the United States. FB's branch has customers that are foreign persons who receive amounts subject to withholding, as defined in §1.1441–2(a). FB is a withholding agent under paragraph (a)(1) of this section and is required to withhold and report payments of amounts subject to withholding in accordance with chapter 3 of the Internal Revenue Code.

Example 5. X is a foreign corporation. X pays dividends to shareholders who are foreign persons. Under section 861(a)(2)(B), a portion of the dividends are from sources within the United States and constitute amounts subject to withholding within the meaning of §1.1441–2(a). The dividends are not subject to tax under section 884(a). See section 884(e)(3). X is a withholding agent under paragraph (a)(1) of this section.

Example 6. FC, a foreign corporation, enters into a notional principal contract (NPC) with Bank X, a bank organized in the United States. The NPC is a specified NPC for purposes of section 871(m) and the regulations thereunder. FC is the long party to the contract and Bank X is the short party. The NPC references a specified number of shares of dividend-paying common stock issued by a domestic corporation. As the long party, FC receives payments from Bank X based on any appreciation in the value of the common stock and dividends paid with respect to the common stock. As the short party, Bank X receives payment from FC based on any depreciation in the value of the common stock and a payment based on LIBOR. Bank X is a withholding agent because Bank X is deemed to have control and custody of a dividend equivalent as a party to the NPC. If FC's tax liability under section 881 has not been satisfied in full by Bank X as withholding agent, FC is required to file a return on Form 1120-F (*U.S. Income Tax Return of a Foreign Corporation*).

(4) *Effective/applicability date*. Paragraph (a)(2) of this section and *Example 6* apply on or after January 23, 2012.

* * * * *

(g) *Effective/applicability date*. Except as otherwise provided in paragraphs (a)(4) and (f)(3) of this section, this section applies to payments made after December 31, 2000.

§1.1441–7T [Removed].

Par. 19. Section 1.1441–7T is removed.

Par. 20. Section 1.1461–1 is amended by:

1. Revising paragraph (c)(2)(i)(L).
2. Adding paragraph (c)(2)(iii).

The revision and addition read as follows:

§1.1461–1 Payment and returns of tax withheld.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(L) Dividend equivalents as described in section 871(m) and the regulations thereunder;

* * * * *

(iii) *Effective/applicability date*. Paragraph (c)(2)(i)(L) of this section applies on or after January 23, 2012.

* * * * *

§1.1461–1T [Removed].

Par. 21. Section 1.1461–1T is removed.

John Dalrymple,
Deputy Commissioner for Services and Enforcement.

Approved November 26, 2013

Mark J. Mazur,
Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on December 4, 2013, 8:45 a.m., and published in the issue of the Federal Register for December 5, 2013, 78 F.R. 73079)

Section 6621.—Determination of Rate of Interest

26 CFR 301.6621–1: Interest rate.

Rev. Rul. 2013–25

Section 6621 of the Internal Revenue Code establishes the interest rates on overpayments and underpayments of tax. Under section 6621(a)(1), the overpayment rate is the sum of the federal short-term rate plus 3 percentage points (2 percentage points in the case of a corporation), except the rate for the portion of a corporate overpayment of tax exceeding $10,000 for a taxable period is the sum of the federal short-term rate plus 0.5 of a percentage point. Under section 6621(a)(2), the underpayment rate is the sum of the federal short-term rate plus 3 percentage points.

Section 6621(c) provides that for purposes of interest payable under section 6601 on any large corporate underpayment, the underpayment rate under section 6621(a)(2) is determined by substituting "5 percentage points" for "3 percentage points." See section 6621(c) and section 301.6621–3 of the Regulations on Procedure and Administration for the definition

of a large corporate underpayment and for the rules for determining the applicable date. Section 6621(c) and section 301.6621–3 are generally effective for periods after December 31, 1990.

Section 6621(b)(1) provides that the Secretary will determine the federal short-term rate for the first month in each calendar quarter. Section 6621(b)(2)(A) provides that the federal short-term rate determined under section 6621(b)(1) for any month applies during the first calendar quarter beginning after that month. Section 6621(b)(2)(B) provides that in determining the addition to tax under section 6654 for failure to pay estimated tax for any taxable year, the federal short-term rate that applies during the third month following the taxable year also applies during the first 15 days of the fourth month following the taxable year. Section 6621(b)(3) provides that the federal short-term rate for any month is the federal short-term rate determined during that month by the Secretary in accordance with section 1274(d), rounded to the nearest full percent (or, if a multiple of 1/2 of 1 percent, the rate is increased to the next highest full percent).

Notice 88–59, 1988–1 C.B. 546, announced that in determining the quarterly interest rates to be used for overpayments and underpayments of tax under section 6621, the Internal Revenue Service will use the federal short-term rate based on daily compounding because that rate is most consistent with section 6621 which, pursuant to section 6622, is subject to daily compounding.

The federal short-term rate determined in accordance with section 1274(d) during October 2013 is the rate published in Revenue Ruling 2013–22, 2013–46 I.R.B. 496 to take effect beginning November 1, 2013. The federal short-term rate, rounded to the nearest full percent, based on daily compounding determined during the month of October 2013 is 0 percent. Accordingly, an overpayment rate of 3 percent (2 percent in the case of a corporation) and an underpayment rate of 3 percent are established for the calendar quarter beginning January 1, 2014. The overpayment rate for the portion of a corporate overpayment exceeding $10,000 for the calendar quarter beginning January 1, 2014, is 0.5 percent. The underpayment rate for large corporate underpayments for the calendar quarter beginning January 1, 2014, is 5 percent. These rates apply to amounts bearing interest during that calendar quarter.

The 3 percent rate also applies to estimated tax underpayments for the first calendar quarter in 2014.

Interest factors for daily compound interest for annual rates of 0.5 percent are published in Appendix A of this Revenue Ruling. Interest factors for daily compound interest for annual rates of 2 percent, 3 percent and 5 percent are published in Tables 9, 11, and 15 of Rev. Proc. 95–17, 1995–1 C.B. 563, 565, and 569.

Annual interest rates to be compounded daily pursuant to section 6622 that apply for prior periods are set forth in the tables accompanying this revenue ruling.

DRAFTING INFORMATION

The principal author of this revenue ruling is Deborah Colbert-James of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue ruling, contact Ms. Colbert-James at (202) 317-3400 (not a toll-free call).

APPENDIX A

365 Day Year

0.5% Compound Rate 184 Days

Days	Factor	Days	Factor	Days	Factor
1	0.000013699	63	0.000863380	125	0.001713784
2	0.000027397	64	0.000877091	126	0.001727506
3	0.000041096	65	0.000890801	127	0.001741228
4	0.000054796	66	0.000904512	128	0.001754951
5	0.000068495	67	0.000918223	129	0.001768673
6	0.000082195	68	0.000931934	130	0.001782396
7	0.000095894	69	0.000945646	131	0.001796119
8	0.000109594	70	0.000959357	132	0.001809843
9	0.000123294	71	0.000973069	133	0.001823566
10	0.000136995	72	0.000986781	134	0.001837290
11	0.000150695	73	0.001000493	135	0.001851013
12	0.000164396	74	0.001014206	136	0.001864737
13	0.000178097	75	0.001027918	137	0.001878462
14	0.000191798	76	0.001041631	138	0.001892186
15	0.000205499	77	0.001055344	139	0.001905910
16	0.000219201	78	0.001069057	140	0.001919635
17	0.000232902	79	0.001082770	141	0.001933360
18	0.000246604	80	0.001096484	142	0.001947085

365 Day Year

0.5% Compound Rate 184 Days

Days	Factor	Days	Factor	Days	Factor
19	0.000260306	81	0.001110197	143	0.001960811
20	0.000274008	82	0.001123911	144	0.001974536
21	0.000287711	83	0.001137625	145	0.001988262
22	0.000301413	84	0.001151339	146	0.002001988
23	0.000315116	85	0.001165054	147	0.002015714
24	0.000328819	86	0.001178768	148	0.002029440
25	0.000342522	87	0.001192483	149	0.002043166
26	0.000356225	88	0.001206198	150	0.002056893
27	0.000369929	89	0.001219913	151	0.002070620
28	0.000383633	90	0.001233629	152	0.002084347
29	0.000397336	91	0.001247344	153	0.002098074
30	0.000411041	92	0.001261060	154	0.002111801
31	0.000424745	93	0.001274776	155	0.002125529
32	0.000438449	94	0.001288492	156	0.002139257
33	0.000452154	95	0.001302208	157	0.002152985
34	0.000465859	96	0.001315925	158	0.002166713
35	0.000479564	97	0.001329641	159	0.002180441
36	0.000493269	98	0.001343358	160	0.002194169
37	0.000506974	99	0.001357075	161	0.002207898
38	0.000520680	100	0.001370792	162	0.002221627
39	0.000534386	101	0.001384510	163	0.002235356
40	0.000548092	102	0.001398227	164	0.002249085
41	0.000561798	103	0.001411945	165	0.002262815
42	0.000575504	104	0.001425663	166	0.002276544
43	0.000589211	105	0.001439381	167	0.002290274
44	0.000602917	106	0.001453100	168	0.002304004
45	0.000616624	107	0.001466818	169	0.002317734
46	0.000630331	108	0.001480537	170	0.002331465
47	0.000644039	109	0.001494256	171	0.002345195
48	0.000657746	110	0.001507975	172	0.002358926
49	0.000671454	111	0.001521694	173	0.002372657
50	0.000685161	112	0.001535414	174	0.002386388
51	0.000698869	113	0.001549133	175	0.002400120
52	0.000712578	114	0.001562853	176	0.002413851
53	0.000726286	115	0.001576573	177	0.002427583
54	0.000739995	116	0.001590293	178	0.002441315
55	0.000753703	117	0.001604014	179	0.002455047
56	0.000767412	118	0.001617734	180	0.002468779
57	0.000781121	119	0.001631455	181	0.002482511
58	0.000794831	120	0.001645176	182	0.002496244
59	0.000808540	121	0.001658897	183	0.002509977
60	0.000822250	122	0.001672619	184	0.002523710
61	0.000835960	123	0.001686340		
62	0.000849670	124	0.001700062		

366 Day Year

0.5% Compound Rate 184 Days

Days	Factor	Days	Factor	Days	Factor
1	0.000013661	63	0.000861020	125	0.001709097
2	0.000027323	64	0.000874693	126	0.001722782
3	0.000040984	65	0.000888366	127	0.001736467
4	0.000054646	66	0.000902040	128	0.001750152
5	0.000068308	67	0.000915713	129	0.001763837
6	0.000081970	68	0.000929387	130	0.001777522
7	0.000095632	69	0.000943061	131	0.001791208
8	0.000109295	70	0.000956735	132	0.001804893
9	0.000122958	71	0.000970409	133	0.001818579
10	0.000136620	72	0.000984084	134	0.001832265
11	0.000150283	73	0.000997758	135	0.001845951
12	0.000163947	74	0.001011433	136	0.001859638
13	0.000177610	75	0.001025108	137	0.001873324
14	0.000191274	76	0.001038783	138	0.001887011
15	0.000204938	77	0.001052459	139	0.001900698
16	0.000218602	78	0.001066134	140	0.001914385
17	0.000232266	79	0.001079810	141	0.001928073
18	0.000245930	80	0.001093486	142	0.001941760
19	0.000259595	81	0.001107162	143	0.001955448
20	0.000273260	82	0.001120839	144	0.001969136
21	0.000286924	83	0.001134515	145	0.001982824
22	0.000300590	84	0.001148192	146	0.001996512
23	0.000314255	85	0.001161869	147	0.002010201
24	0.000327920	86	0.001175546	148	0.002023889
25	0.000341586	87	0.001189223	149	0.002037578
26	0.000355252	88	0.001202900	150	0.002051267
27	0.000368918	89	0.001216578	151	0.002064957
28	0.000382584	90	0.001230256	152	0.002078646
29	0.000396251	91	0.001243934	153	0.002092336
30	0.000409917	92	0.001257612	154	0.002106025
31	0.000423584	93	0.001271291	155	0.002119715
32	0.000437251	94	0.001284969	156	0.002133405
33	0.000450918	95	0.001298648	157	0.002147096
34	0.000464586	96	0.001312327	158	0.002160786
35	0.000478253	97	0.001326006	159	0.002174477
36	0.000491921	98	0.001339685	160	0.002188168
37	0.000505589	99	0.001353365	161	0.002201859
38	0.000519257	100	0.001367044	162	0.002215550
39	0.000532925	101	0.001380724	163	0.002229242
40	0.000546594	102	0.001394404	164	0.002242933
41	0.000560262	103	0.001408085	165	0.002256625
42	0.000573931	104	0.001421765	166	0.002270317
43	0.000587600	105	0.001435446	167	0.002284010
44	0.000601269	106	0.001449127	168	0.002297702

366 Day Year

0.5% Compound Rate 184 Days

Days	Factor	Days	Factor	Days	Factor
45	0.000614939	107	0.001462808	169	0.002311395
46	0.000628608	108	0.001476489	170	0.002325087
47	0.000642278	109	0.001490170	171	0.002338780
48	0.000655948	110	0.001503852	172	0.002352473
49	0.000669618	111	0.001517533	173	0.002366167
50	0.000683289	112	0.001531215	174	0.002379860
51	0.000696959	113	0.001544897	175	0.002393554
52	0.000710630	114	0.001558580	176	0.002407248
53	0.000724301	115	0.001572262	177	0.002420942
54	0.000737972	116	0.001585945	178	0.002434636
55	0.000751643	117	0.001599628	179	0.002448331
56	0.000765315	118	0.001613311	180	0.002462025
57	0.000778986	119	0.001626994	181	0.002475720
58	0.000792658	120	0.001640678	182	0.002489415
59	0.000806330	121	0.001654361	183	0.002503110
60	0.000820003	122	0.001668045	184	0.002516806
61	0.000833675	123	0.001681729		
62	0.000847348	124	0.001695413		

TABLE OF INTEREST RATES

PERIODS BEFORE JUL. 1, 1975 — PERIODS ENDING DEC. 31, 1986

OVERPAYMENTS AND UNDERPAYMENTS

PERIOD	RATE	In 1995–1 C.B. DAILY RATE TABLE
Before Jul. 1, 1975	6%	Table 2, pg. 557
Jul. 1, 1975—Jan. 31, 1976	9%	Table 4, pg. 559
Feb. 1, 1976—Jan. 31, 1978	7%	Table 3, pg. 558
Feb. 1, 1978—Jan. 31, 1980	6%	Table 2, pg. 557
Feb. 1, 1980—Jan. 31, 1982	12%	Table 5, pg. 560
Feb. 1, 1982—Dec. 31, 1982	20%	Table 6, pg. 560
Jan. 1, 1983—Jun. 30, 1983	16%	Table 37, pg. 591
Jul. 1, 1983—Dec. 31, 1983	11%	Table 27, pg. 581
Jan. 1, 1984—Jun. 30, 1984	11%	Table 75, pg. 629
Jul. 1, 1984—Dec. 31, 1984	11%	Table 75, pg. 629
Jan. 1, 1985—Jun. 30, 1985	13%	Table 31, pg. 585
Jul. 1, 1985—Dec. 31, 1985	11%	Table 27, pg. 581
Jan. 1, 1986—Jun. 30, 1986	10%	Table 25, pg. 579
Jul. 1, 1986—Dec. 31, 1986	9%	Table 23, pg. 577

TABLE OF INTEREST RATES

FROM JAN. 1, 1987 — DEC. 31, 1998

	OVERPAYMENTS			UNDERPAYMENTS		
	RATE	1995–1 C.B. TABLE	PG	RATE	1995–1 C.B. TABLE	PG
Jan. 1, 1987—Mar. 31, 1987	8%	21	575	9%	23	577
Apr. 1, 1987—Jun. 30, 1987	8%	21	575	9%	23	577
Jul. 1, 1987—Sep. 30, 1987	8%	21	575	9%	23	577
Oct. 1, 1987—Dec. 31, 1987	9%	23	577	10%	25	579
Jan. 1, 1988—Mar. 31, 1988	10%	73	627	11%	75	629
Apr. 1, 1988—Jun. 30, 1988	9%	71	625	10%	73	627
Jul. 1, 1988—Sep. 30, 1988	9%	71	625	10%	73	627
Oct. 1, 1988—Dec. 31, 1988	10%	73	627	11%	75	629
Jan. 1, 1989—Mar. 31, 1989	10%	25	579	11%	27	581
Apr. 1, 1989—Jun. 30, 1989	11%	27	581	12%	29	583
Jul. 1, 1989—Sep. 30, 1989	11%	27	581	12%	29	583
Oct. 1, 1989—Dec. 31, 1989	10%	25	579	11%	27	581
Jan. 1, 1990—Mar. 31, 1990	10%	25	579	11%	27	581
Apr. 1, 1990—Jun. 30, 1990	10%	25	579	11%	27	581
Jul. 1, 1990—Sep. 30, 1990	10%	25	579	11%	27	581
Oct. 1, 1990—Dec. 31, 1990	10%	25	579	11%	27	581
Jan. 1, 1991—Mar. 31, 1991	10%	25	579	11%	27	581
Apr. 1, 1991—Jun. 30, 1991	9%	23	577	10%	25	579
Jul. 1, 1991—Sep. 30, 1991	9%	23	577	10%	25	579
Oct. 1, 1991—Dec. 31, 1991	9%	23	577	10%	25	579
Jan. 1, 1992—Mar. 31, 1992	8%	69	623	9%	71	625
Apr. 1, 1992—Jun. 30, 1992	7%	67	621	8%	69	623
Jul. 1, 1992—Sep. 30, 1992	7%	67	621	8%	69	623
Oct. 1, 1992—Dec. 31, 1992	6%	65	619	7%	67	621
Jan. 1, 1993—Mar. 31, 1993	6%	17	571	7%	19	573
Apr. 1, 1993—Jun. 30, 1993	6%	17	571	7%	19	573
Jul. 1, 1993—Sep. 30, 1993	6%	17	571	7%	19	573
Oct. 1, 1993—Dec. 31, 1993	6%	17	571	7%	19	573
Jan. 1, 1994—Mar. 31, 1994	6%	17	571	7%	19	573
Apr. 1, 1994—Jun. 30, 1994	6%	17	571	7%	19	573
Jul. 1, 1994—Sep. 30, 1994	7%	19	573	8%	21	575
Oct. 1, 1994—Dec. 31, 1994	8%	21	575	9%	23	577
Jan. 1, 1995—Mar. 31, 1995	8%	21	575	9%	23	577
Apr. 1, 1995—Jun. 30, 1995	9%	23	577	10%	25	579
Jul. 1, 1995—Sep. 30, 1995	8%	21	575	9%	23	577
Oct. 1, 1995—Dec. 31, 1995	8%	21	575	9%	23	577
Jan. 1, 1996—Mar. 31, 1996	8%	69	623	9%	71	625
Apr. 1, 1996—Jun. 30, 1996	7%	67	621	8%	69	623
Jul. 1, 1996—Sep. 30, 1996	8%	69	623	9%	71	625
Oct. 1, 1996—Dec. 31, 1996	8%	69	623	9%	71	625
Jan. 1, 1997—Mar. 31, 1997	8%	21	575	9%	23	577
Apr. 1, 1997—Jun. 30, 1997	8%	21	575	9%	23	577

TABLE OF INTEREST RATES

FROM JAN. 1, 1987 — DEC. 31, 1998

	OVERPAYMENTS			UNDERPAYMENTS		
	RATE	1995–1 C.B. TABLE	PG	RATE	1995–1 C.B. TABLE	PG
Jul. 1, 1997—Sep. 30, 1997	8%	21	575	9%	23	577
Oct. 1, 1997—Dec. 31, 1997	8%	21	575	9%	23	577
Jan. 1, 1998—Mar. 31, 1998	8%	21	575	9%	23	577
Apr. 1, 1998—Jun. 30, 1998	7%	19	573	8%	21	575
Jul. 1, 1998—Sep. 30, 1998	7%	19	573	8%	21	575
Oct. 1, 1998—Dec. 31, 1998	7%	19	573	8%	21	575

TABLE OF INTEREST RATES

FROM JANUARY 1, 1999 — PRESENT

NONCORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	RATE	1995–1 C.B. TABLE	PAGE
Jan. 1, 1999—Mar. 31, 1999	7%	19	573
Apr. 1, 1999—Jun. 30, 1999	8%	21	575
Jul. 1, 1999—Sep. 30, 1999	8%	21	575
Oct. 1, 1999—Dec. 31, 1999	8%	21	575
Jan. 1, 2000—Mar. 31, 2000	8%	69	623
Apr. 1, 2000—Jun. 30, 2000	9%	71	625
Jul. 1, 2000—Sep. 30, 2000	9%	71	625
Oct. 1, 2000—Dec. 31, 2000	9%	71	625
Jan. 1, 2001—Mar. 31, 2001	9%	23	577
Apr. 1, 2001—Jun. 30, 2001	8%	21	575
Jul. 1, 2001—Sep. 30, 2001	7%	19	573
Oct. 1, 2001—Dec. 31, 2001	7%	19	573
Jan. 1, 2002—Mar. 31, 2002	6%	17	571
Apr. 1, 2002—Jun. 30, 2002	6%	17	571
Jul. 1, 2002—Sep. 30, 2002	6%	17	571
Oct. 1, 2002—Dec. 31, 2002	6%	17	571
Jan. 1, 2003—Mar. 31, 2003	5%	15	569
Apr. 1, 2003—Jun. 30, 2003	5%	15	569
Jul. 1, 2003—Sep. 30, 2003	5%	15	569
Oct. 1, 2003—Dec. 31, 2003	4%	13	567
Jan. 1, 2004—Mar. 31, 2004	4%	61	615
Apr. 1, 2004—Jun. 30, 2004	5%	63	617
Jul. 1, 2004—Sep. 30, 2004	4%	61	615
Oct. 1, 2004—Dec. 31, 2004	5%	63	617
Jan. 1, 2005—Mar. 31, 2005	5%	15	569
Apr. 1, 2005—Jun. 30, 2005	6%	17	571
Jul. 1, 2005—Sep. 30, 2005	6%	17	571
Oct. 1, 2005—Dec. 31, 2005	7%	19	573
Jan. 1, 2006—Mar. 31, 2006	7%	19	573

TABLE OF INTEREST RATES

FROM JANUARY 1, 1999 — PRESENT

NONCORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	RATE	1995–1 C.B. TABLE	PAGE
Apr. 1, 2006—Jun. 30, 2006	7%	19	573
Jul. 1, 2006—Sep. 30, 2006	8%	21	575
Oct. 1, 2006—Dec. 31, 2006	8%	21	575
Jan. 1, 2007—Mar. 31, 2007	8%	21	575
Apr. 1, 2007—Jun. 30, 2007	8%	21	575
Jul. 1, 2007—Sep. 30, 2007	8%	21	575
Oct. 1, 2007—Dec. 31, 2007	8%	21	575
Jan. 1, 2008—Mar. 31, 2008	7%	67	621
Apr. 1, 2008—Jun. 30, 2008	6%	65	619
Jul. 1, 2008—Sep. 30, 2008	5%	63	617
Oct. 1, 2008—Dec. 31, 2008	6%	65	619
Jan. 1, 2009—Mar. 31, 2009	5%	15	569
Apr. 1, 2009—Jun. 30, 2009	4%	13	567
Jul. 1, 2009—Sep. 30, 2009	4%	13	567
Oct. 1, 2009—Dec. 31, 2009	4%	13	567
Jan. 1, 2010—Mar. 31, 2010	4%	13	567
Apr. 1, 2010—Jun. 30, 2010	4%	13	567
Jul. 1, 2010—Sep. 30, 2010	4%	13	567
Oct. 1, 2010—Dec. 31, 2010	4%	13	567
Jan. 1, 2011—Mar. 31, 2011	3%	11	565
Apr. 1, 2011—Jun. 30, 2011	4%	13	567
Jul. 1, 2011—Sep. 30, 2011	4%	13	567
Oct. 1, 2011—Dec. 31, 2011	3%	11	565
Jan. 1, 2012—Mar. 31, 2012	3%	59	613
Apr. 1, 2012—Jun. 30, 2012	3%	59	613
Jul. 1, 2012—Sep. 30, 2012	3%	59	613
Oct. 1, 2012—Dec. 31, 2012	3%	59	613
Jan. 1, 2013—Mar. 31, 2013	3%	11	565
Apr. 1, 2013—Jun. 30, 2013	3%	11	565
Jul. 1, 2013—Sep. 30, 2013	3%	11	565
Oct. 1, 2013—Dec. 31, 2013	3%	11	565
Jan. 1, 2014—Mar. 31, 2014	3%	11	565

TABLE OF INTEREST RATES

FROM JANUARY 1, 1999 — PRESENT

CORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	OVERPAYMENTS			UNDERPAYMENTS		
	RATE	1995–1 C.B. TABLE	PG	RATE	1995–1 C.B. TABLE	PG
Jan. 1, 1999—Mar. 31, 1999	6%	17	571	7%	19	573
Apr. 1, 1999—Jun. 30, 1999	7%	19	573	8%	21	575

TABLE OF INTEREST RATES

FROM JANUARY 1, 1999 — PRESENT

CORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	OVERPAYMENTS			UNDERPAYMENTS		
	RATE	1995–1 C.B. TABLE	PG	RATE	1995–1 C.B. TABLE	PG
Jul. 1, 1999—Sep. 30, 1999	7%	19	573	8%	21	575
Oct. 1, 1999—Dec. 31, 1999	7%	19	573	8%	21	575
Jan. 1, 2000—Mar. 31, 2000	7%	67	621	8%	69	623
Apr. 1, 2000—Jun. 30, 2000	8%	69	623	9%	71	625
Jul. 1, 2000—Sep. 30, 2000	8%	69	623	9%	71	625
Oct. 1, 2000—Dec. 31, 2000	8%	69	623	9%	71	625
Jan. 1, 2001—Mar. 31, 2001	8%	21	575	9%	23	577
Apr. 1, 2001—Jun. 30, 2001	7%	19	573	8%	21	575
Jul. 1, 2001—Sep. 30, 2001	6%	17	571	7%	19	573
Oct. 1, 2001—Dec. 31, 2001	6%	17	571	7%	19	573
Jan. 1, 2002—Mar. 31, 2002	5%	15	569	6%	17	571
Apr. 1, 2002—Jun. 30, 2002	5%	15	569	6%	17	571
Jul. 1, 2002—Sep. 30, 2002	5%	15	569	6%	17	571
Oct. 1, 2002—Dec. 31, 2002	5%	15	569	6%	17	571
Jan. 1, 2003—Mar. 31, 2003	4%	13	567	5%	15	569
Apr. 1, 2003—Jun. 30, 2003	4%	13	567	5%	15	569
Jul. 1, 2003—Sep. 30, 2003	4%	13	567	5%	15	569
Oct. 1, 2003—Dec. 31, 2003	3%	11	565	4%	13	567
Jan. 1, 2004—Mar. 31, 2004	3%	59	613	4%	61	615
Apr. 1, 2004—Jun. 30, 2004	4%	61	615	5%	63	617
Jul. 1, 2004—Sep. 30, 2004	3%	59	613	4%	61	615
Oct. 1, 2004—Dec. 31, 2004	4%	61	615	5%	63	617
Jan. 1, 2005—Mar. 31, 2005	4%	13	567	5%	15	569
Apr. 1, 2005—Jun. 30, 2005	5%	15	569	6%	17	571
Jul. 1, 2005—Sep. 30, 2005	5%	15	569	6%	17	571
Oct. 1, 2005—Dec. 31, 2005	6%	17	571	7%	19	573
Jan. 1, 2006—Mar. 31, 2006	6%	17	571	7%	19	573
Apr. 1, 2006—Jun. 30, 2006	6%	17	571	7%	19	573
Jul. 1, 2006—Sep. 30, 2006	7%	19	573	8%	21	575
Oct. 1, 2006—Dec. 31, 2006	7%	19	573	8%	21	575
Jan. 1, 2007—Mar. 31, 2007	7%	19	573	8%	21	575
Apr. 1, 2007—Jun. 30, 2007	7%	19	573	8%	21	575
Jul. 1, 2007—Sep. 30, 2007	7%	19	573	8%	21	575
Oct. 1, 2007—Dec. 31, 2007	7%	19	573	8%	21	575
Jan. 1, 2008—Mar. 31, 2008	6%	65	619	7%	67	621
Apr. 1, 2008—Jun. 30, 2008	5%	63	617	6%	65	619
Jul. 1, 2008—Sep. 30, 2008	4%	61	615	5%	63	617
Oct. 1, 2008—Dec. 31, 2008	5%	63	617	6%	65	619
Jan. 1, 2009—Mar. 31, 2009	4%	13	567	5%	15	569
Apr. 1, 2009—Jun. 30, 2009	3%	11	565	4%	13	567
Jul. 1, 2009—Sep. 30, 2009	3%	11	565	4%	13	567

TABLE OF INTEREST RATES

FROM JANUARY 1, 1999 — PRESENT

CORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	OVERPAYMENTS			UNDERPAYMENTS		
	RATE	1995–1 C.B. TABLE	PG	RATE	1995–1 C.B. TABLE	PG
Oct. 1, 2009—Dec. 31, 2009	3%	11	565	4%	13	567
Jan. 1, 2010—Mar. 31, 2010	3%	11	565	4%	13	567
Apr. 1, 2010—Jun. 30, 2010	3%	11	565	4%	13	567
Jul. 1, 2010—Sep. 30, 2010	3%	11	565	4%	13	567
Oct. 1, 2010—Dec. 31, 2010	3%	11	565	4%	13	567
Jan. 1, 2011—Mar. 31, 2011	2%	9	563	3%	11	565
Apr. 1, 2011—Jun. 30, 2011	3%	11	565	4%	13	567
Jul. 1, 2011—Sep. 30, 2011	3%	11	565	4%	13	567
Oct. 1, 2011—Dec. 31, 2011	2%	9	563	3%	11	565
Jan. 1, 2012—Mar. 31, 2012	2%	57	611	3%	59	613
Apr. 1, 2012—Jun. 30, 2012	2%	57	611	3%	59	613
Jul. 1, 2012—Sep. 30, 2012	2%	57	611	3%	59	613
Oct. 1, 2012—Dec. 31, 2012	2%	57	611	3%	59	613
Jan. 1, 2013—Mar. 31, 2013	2%	9	563	3%	11	565
Apr. 1, 2013—Jun. 30, 2013	2%	9	563	3%	11	565
Jul. 1, 2013—Sep. 30, 2013	2%	9	563	3%	11	565
Oct. 1, 2013—Dec. 31, 2013	2%	9	563	3%	11	565
Jan. 1, 2014—Mar. 31, 2014	2%	9	563	3%	11	565

TABLE OF INTEREST RATES FOR
LARGE CORPORATE UNDERPAYMENTS

FROM JANUARY 1, 1991 — PRESENT

	RATE	1995–1 C.B. TABLE	PG
Jan. 1, 1991—Mar. 31, 1991	13%	31	585
Apr. 1, 1991—Jun. 30, 1991	12%	29	583
Jul. 1, 1991—Sep. 30, 1991	12%	29	583
Oct. 1, 1991—Dec. 31, 1991	12%	29	583
Jan. 1, 1992—Mar. 31, 1992	11%	75	629
Apr. 1, 1992—Jun. 30, 1992	10%	73	627
Jul. 1, 1992—Sep. 30, 1992	10%	73	627
Oct. 1, 1992—Dec. 31, 1992	9%	71	625
Jan. 1, 1993—Mar. 31, 1993	9%	23	577
Apr. 1, 1993—Jun. 30, 1993	9%	23	577
Jul. 1, 1993—Sep. 30, 1993	9%	23	577
Oct. 1, 1993—Dec. 31, 1993	9%	23	577
Jan. 1, 1994—Mar. 31, 1994	9%	23	577
Apr. 1, 1994—Jun. 30, 1994	9%	23	577
Jul. 1, 1994—Sep. 30, 1994	10%	25	579
Oct. 1, 1994—Dec. 31, 1994	11%	27	581

TABLE OF INTEREST RATES FOR
LARGE CORPORATE UNDERPAYMENTS

FROM JANUARY 1, 1991 — PRESENT

	RATE	1995–1 C.B. TABLE	PG
Jan. 1, 1995—Mar. 31, 1995	11%	27	581
Apr. 1, 1995—Jun. 30, 1995	12%	29	583
Jul. 1, 1995—Sep. 30, 1995	11%	27	581
Oct. 1, 1995—Dec. 31, 1995	11%	27	581
Jan. 1, 1996—Mar. 31, 1996	11%	75	629
Apr. 1, 1996—Jun. 30, 1996	10%	73	627
Jul. 1, 1996—Sep. 30, 1996	11%	75	629
Oct. 1, 1996—Dec. 31, 1996	11%	75	629
Jan. 1, 1997—Mar. 31, 1997	11%	27	581
Apr. 1, 1997—Jun. 30, 1997	11%	27	581
Jul. 1, 1997—Sep. 30, 1997	11%	27	581
Oct. 1, 1997—Dec. 31, 1997	11%	27	581
Jan. 1, 1998—Mar. 31, 1998	11%	27	581
Apr. 1, 1998—Jun. 30, 1998	10%	25	579
Jul. 1, 1998—Sep. 30, 1998	10%	25	579
Oct. 1, 1998—Dec. 31, 1998	10%	25	579
Jan. 1, 1999—Mar. 31, 1999	9%	23	577
Apr. 1, 1999—Jun. 30, 1999	10%	25	579
Jul. 1, 1999—Sep. 30, 1999	10%	25	579
Oct. 1, 1999—Dec. 31, 1999	10%	25	579
Jan. 1, 2000—Mar. 31, 2000	10%	73	627
Apr. 1, 2000—Jun. 30, 2000	11%	75	629
Jul. 1, 2000—Sep. 30, 2000	11%	75	629
Oct. 1, 2000—Dec. 31, 2000	11%	75	629
Jan. 1, 2001—Mar. 31, 2001	11%	27	581
Apr. 1, 2001—Jun. 30, 2001	10%	25	579
Jul. 1, 2001—Sep. 30, 2001	9%	23	577
Oct. 1, 2001—Dec. 31, 2001	9%	23	577
Jan. 1, 2002—Mar. 31, 2002	8%	21	575
Apr. 1, 2002—Jun. 30, 2002	8%	21	575
Jul. 1, 2002—Sep. 30, 2002	8%	21	575
Oct. 1, 2002—Dec. 31, 2002	8%	21	575
Jan. 1, 2003—Mar. 31, 2003	7%	19	573
Apr. 1, 2003—Jun. 30, 2003	7%	19	573
Jul. 1, 2003—Sep. 30, 2003	7%	19	573
Oct. 1, 2003—Dec. 31, 2003	6%	17	571
Jan. 1, 2004—Mar. 31, 2004	6%	65	619
Apr. 1, 2004—Jun. 30, 2004	7%	67	621
Jul. 1, 2004—Sep. 30, 2004	6%	65	619
Oct. 1, 2004—Dec. 31, 2004	7%	67	621
Jan. 1, 2005—Mar. 31, 2005	7%	19	573
Apr. 1, 2005—Jun. 30, 2005	8%	21	575
Jul. 1, 2005—Sep. 30, 2005	8%	21	575

TABLE OF INTEREST RATES FOR
LARGE CORPORATE UNDERPAYMENTS

FROM JANUARY 1, 1991 — PRESENT

	RATE	1995–1 C.B. TABLE	PG
Oct. 1, 2005—Dec. 31, 2005	9%	23	577
Jan. 1, 2006—Mar. 31, 2006	9%	23	577
Apr. 1, 2006—Jun. 30, 2006	9%	23	577
Jul. 1, 2006—Sep. 30, 2006	10%	25	579
Oct. 1, 2006—Dec. 31, 2006	10%	25	579
Jan. 1, 2007—Mar. 31, 2007	10%	25	579
Apr. 1, 2007—Jun. 30, 2007	10%	25	579
Jul. 1, 2007—Sep. 30, 2007	10%	25	579
Oct. 1, 2007—Dec. 31, 2007	10%	25	579
Jan. 1, 2008—Mar. 31, 2008	9%	71	625
Apr. 1, 2008—Jun. 30, 2008	8%	69	623
Jul. 1, 2008—Sep. 30, 2008	7%	67	621
Oct. 1, 2008—Dec. 31, 2008	8%	69	623
Jan. 1, 2009—Mar. 31, 2009	7%	19	573
Apr. 1, 2009—Jun. 30, 2009	6%	17	571
Jul. 1, 2009—Sep. 30, 2009	6%	17	571
Oct. 1, 2009—Dec. 31, 2009	6%	17	571
Jan. 1, 2010—Mar. 31, 2010	6%	17	571
Apr. 1, 2010—Jun. 30, 2010	6%	17	571
Jul. 1, 2010—Sep. 30, 2010	6%	17	571
Oct. 1, 2010—Dec. 31, 2010	6%	17	571
Jan. 1, 2011—Mar. 31, 2011	5%	15	569
Apr. 1, 2011—Jun. 30, 2011	6%	17	571
Jul. 1, 2011—Sep. 30, 2011	6%	17	571
Oct. 1, 2011—Dec. 31, 2011	5%	15	569
Jan. 1, 2012—Mar. 31, 2012	5%	63	617
Apr. 1, 2012—Jun. 30, 2012	5%	63	617
Jul. 1, 2012—Sep. 30, 2012	5%	63	617
Oct. 1, 2012—Dec. 31, 2012	5%	63	617
Jan. 1, 2013—Mar. 31, 2013	5%	15	569
Apr. 1, 2013—Jun. 30, 2013	5%	15	569
Jul. 1, 2013—Sep. 30, 2013	5%	15	569
Oct. 1, 2013—Dec. 31, 2013	5%	15	569
Jan. 1, 2014—Mar. 31, 2014	5%	15	569

TABLE OF INTEREST RATES FOR CORPORATE
OVERPAYMENTS EXCEEDING $10,000

FROM JANUARY 1, 1995 — PRESENT

	RATE	1995–1 C.B. TABLE	PG
Jan. 1, 1995—Mar. 31, 1995	6.5%	18	572
Apr. 1, 1995—Jun. 30, 1995	7.5%	20	574
Jul. 1, 1995—Sep. 30, 1995	6.5%	18	572
Oct. 1, 1995—Dec. 31, 1995	6.5%	18	572
Jan. 1, 1996—Mar. 31, 1996	6.5%	66	620
Apr. 1, 1996—Jun. 30, 1996	5.5%	64	618
Jul. 1, 1996—Sep. 30, 1996	6.5%	66	620
Oct. 1, 1996—Dec. 31, 1996	6.5%	66	620
Jan. 1, 1997—Mar. 31, 1997	6.5%	18	572
Apr. 1, 1997—Jun. 30, 1997	6.5%	18	572
Jul. 1, 1997—Sep. 30, 1997	6.5%	18	572
Oct. 1, 1997—Dec. 31, 1997	6.5%	18	572
Jan. 1, 1998—Mar. 31, 1998	6.5%	18	572
Apr. 1, 1998—Jun. 30, 1998	5.5%	16	570
Jul. 1. 1998—Sep. 30, 1998	5.5%	16	570
Oct. 1, 1998—Dec. 31, 1998	5.5%	16	570
Jan. 1, 1999—Mar. 31, 1999	4.5%	14	568
Apr. 1, 1999—Jun. 30, 1999	5.5%	16	570
Jul. 1, 1999—Sep. 30, 1999	5.5%	16	570
Oct. 1, 1999—Dec. 31, 1999	5.5%	16	570
Jan. 1, 2000—Mar. 31, 2000	5.5%	64	618
Apr. 1, 2000—Jun. 30, 2000	6.5%	66	620
Jul. 1, 2000—Sep. 30, 2000	6.5%	66	620
Oct. 1, 2000—Dec. 31, 2000	6.5%	66	620
Jan. 1, 2001—Mar. 31, 2001	6.5%	18	572
Apr. 1, 2001—Jun. 30, 2001	5.5%	16	570
Jul. 1, 2001—Sep. 30, 2001	4.5%	14	568
Oct. 1, 2001—Dec. 31, 2001	4.5%	14	568
Jan. 1, 2002—Mar. 31, 2002	3.5%	12	566
Apr. 1, 2002—Jun. 30, 2002	3.5%	12	566
Jul. 1, 2002—Sep. 30, 2002	3.5%	12	566
Oct. 1, 2002—Dec. 31, 2002	3.5%	12	566
Jan. 1, 2003—Mar. 31, 2003	2.5%	10	564
Apr. 1, 2003—Jun. 30, 2003	2.5%	10	564
Jul. 1, 2003—Sep. 30, 2003	2.5%	10	564
Oct. 1, 2003—Dec. 31, 2003	1.5%	8	562
Jan. 1, 2004—Mar. 31, 2004	1.5%	56	610
Apr. 1, 2004—Jun. 30, 2004	2.5%	58	612
Jul. 1, 2004—Sep. 30, 2004	1.5%	56	610
Oct. 1, 2004—Dec. 31, 2004	2.5%	58	612
Jan. 1, 2005—Mar. 31, 2005	2.5%	10	564
Apr. 1, 2005—Jun. 30, 2005	3.5%	12	566
Jul. 1, 2005—Sep. 30, 2005	3.5%	12	566

TABLE OF INTEREST RATES FOR CORPORATE
OVERPAYMENTS EXCEEDING $10,000

FROM JANUARY 1, 1995 — PRESENT

	RATE	1995–1 C.B. TABLE	PG
Oct. 1, 2005—Dec. 31, 2005	4.5%	14	568
Jan. 1, 2006—Mar. 31, 2006	4.5%	14	568
Apr. 1, 2006—Jun. 30, 2006	4.5%	14	568
Jul. 1, 2006—Sep. 30, 2006	5.5%	16	570
Oct. 1, 2006—Dec. 31, 2006	5.5%	16	570
Jan. 1, 2007—Mar. 31, 2007	5.5%	16	570
Apr. 1, 2007—Jun. 30, 2007	5.5%	16	570
Jul. 1, 2007—Sep. 30, 2007	5.5%	16	570
Oct. 1, 2007—Dec. 31, 2007	5.5%	16	570
Jan. 1, 2008—Mar. 31, 2008	4.5%	62	616
Apr. 1, 2008—Jun. 30, 2008	3.5%	60	614
Jul. 1, 2008—Sep. 30, 2008	2.5%	58	612
Oct. 1, 2008—Dec. 31, 2008	3.5%	60	614
Jan. 1, 2009—Mar. 31, 2009	2.5%	10	564
Apr. 1, 2009—Jun. 30, 2009	1.5%	8	562
Jul. 1, 2009—Sep. 30, 2009	1.5%	8	562
Oct. 1, 2009—Dec. 31, 2009	1.5%	8	562
Jan. 1, 2010—Mar. 31, 2010	1.5%	8	562
Apr. 1, 2010—Jun. 30, 2010	1.5%	8	562
Jul. 1, 2010—Sep. 30, 2010	1.5%	8	562
Oct. 1, 2010—Dec. 31, 2010	1.5%	8	562
Jan. 1, 2011—Mar. 31, 2011	0.5%*		
Apr. 1, 2011—Jun. 30, 2011	1.5%	8	562
Jul. 1, 2011—Sep. 30, 2011	1.5%	8	562
Oct. 1, 2011—Dec. 31, 2011	0.5%*		
Jan. 1, 2012—Mar. 31, 2012	0.5%*		
Apr. 1, 2012—Jun. 30, 2012	0.5%*		
Jul. 1, 2012—Sep. 30, 2012	0.5%*		
Oct. 1, 2012—Dec. 31, 2012	0.5%*		
Jan. 1, 2013—Mar. 31, 2013	0.5%*		
Apr. 1, 2013—Jun. 30, 2013	0.5%*		
Jul. 1, 2013—Sep. 30, 2013	0.5%*		
Oct. 1, 2013—Dec. 31, 2013	0.5%*		
Jan. 1, 2014—Mar. 31, 2014	0.5%*		

* The asterisk reflects the interest factors for daily compound interest for annual rates of 0.5 percent are published in Appendix A of this Revenue Ruling.

Section 7122.—Compromises.

T.D. 9647

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 300

User Fees for Processing Installment Agreements and Offers in Compromise

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide user fees charged for processing installment agreements and offers in compromise. The final regulations affect taxpayers who wish to pay their federal tax liabilities through installment agreements and offers in compromise.

DATES: *Effective date:* These regulations are effective on December 2, 2013.

Applicability Date: These regulations apply to installment agreements entered into, restructured, or reinstated and offers in compromise processed on or after January 1, 2014.

FOR FURTHER INFORMATION CONTACT: Concerning cost methodology, Eva Williams, at (202) 803-9728; concerning the regulations, Girish Prasad, at (202) 317-5429 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

This document contains amendments to 26 CFR part 300. On August 30, 2013, a notice of proposed rulemaking (REG–144990–12) relating to the user fees charged for processing installment agreements and offers in compromise was published in the **Federal Register** (78 FR 53702). The charging of user fees for services provided by agencies is authorized by the Independent Offices Appropriations Act (IOAA), which is codified at 31 U.S.C. 9701. Under the IOAA and OMB Circular A-25, 58 FR 38142 (July 15, 1993) (the OMB Circular), the charges must be fair and must be based on the costs to the government, the value of the service to the recipient, the public policy or interest served, and other relevant facts. In general, the amount of a user fee should recover the cost of providing the service, unless the Office of Management and Budget (OMB) grants an exception under the OMB Circular.

The notice of proposed rulemaking proposed to increase the fee under § 300.1 for entering into an installment agreement from $105 to $120 and to increase the fee under § 300.2 for restructuring or reinstating an installment agreement from $45 to $50. Under the notice of proposed rulemaking, the fee for a direct debit installment agreement remained $52, and low-income taxpayers, as defined in § 300.1(b)(2), would continue to pay $43 for any new installment agreement, including a direct debit installment agreement. The notice of proposed rulemaking also proposed to increase the fee under § 300.3 for processing an offer in compromise from $150 to $186. Offers based on doubt as to liability and offers from low-income taxpayers continue to be excepted from a user fee. The new fee rates for both installment agreements and offers in compromise will be effective January 1, 2014. As explained in the notice of proposed rulemaking, the fees proposed (even after the increase) were substantially less than the full costs to the Government of providing the services and OMB has granted a waiver of the full-cost requirement.

No public hearing on the notice of proposed rulemaking was held because no one requested to speak. One comment was received. After consideration of the comment, this Treasury decision adopts the proposed regulations without change.

Summary of Comment

Under the proposed regulations, the reduced fee of $43 for low-income taxpayers that request a new installment agreement would remain unchanged. This fee is substantially less than the full cost to the IRS of processing a request ($282) and the fee charged to other taxpayers ($120). The commenter commended the IRS for not increasing the user fee for low-income taxpayers, but maintained that *any* user fee discourages low-income taxpayers from entering into installment agreements. The commenter recommended that the fee be reduced to zero. The commenter stated that many low-income taxpayers do not have the means to pay the user fee, even at the reduced rate. The commenter stated that low-income taxpayers often enter into installment agreements to pay as little as $20–30 per month based on their available net income, and believed that an upfront $43 fee makes it difficult for such taxpayers to enter into the agreement.

The effect of the fee on low-income taxpayers was considered in 2006 when the installment agreement fee was last updated. The IRS determined that the fee should remain $43 for low-income taxpayers because requiring the full rate would be burdensome and many low-income taxpayers do not have bank accounts and cannot take advantage of the reduced fee for direct-debit installment agreements.

The user fee is only charged if the taxpayer enters into the agreement and the fee is collected directly from the amounts paid under the terms of the installment agreement. When the IRS grants an installment agreement, the IRS asks that the taxpayer's first payment be at least the amount of the fee for the agreement. In cases where the installment payments are more than the amount of the fee, a portion of the first payment satisfies the fee and the balance of the first payment is applied toward the liability. In cases where the installment payments are less than the amount of the fee, the full amount of the fee is sought and, in the case of direct-debit installment agreements, automatically deducted from the taxpayer's bank account. The IRS, however, does not default an agreement or otherwise penalize a taxpayer whose first payment is less than the fee but otherwise in the amount of the agreed installments. Rather, the IRS applies the first payment and successive installments against the fee until the fee is paid, and thereafter credits the balance of the payments against the liability. In all cases, the taxpayer does not have to pay both the fee and the installment agreement amount in the first month and the taxpayer does not have to pay the fee in full before the IRS respects the installment agreement. The reduced fee is, therefore, not a barrier to an installment agreement. Nev-

ertheless, the IRS will be reviewing its procedures in light of the comment and will consider clarifying its communications with taxpayers in accordance with that review.

The commenter also questioned why the fee was waived entirely for low-income taxpayers making offers in compromise but only reduced for low-income taxpayers entering into installment agreements. The Treasury Department and the IRS believe it is appropriate to charge a reduced fee for a low-income taxpayer to enter into an installment agreement but not to charge a fee to low-income taxpayers for the consideration of an offer in compromise for two reasons. First, unlike the fee for an installment agreement, which is charged only when the taxpayer enters into an installment agreement, the fee for an offer in compromise is charged for the mere consideration of the offer and is not refunded if the offer is not accepted. Therefore, the fee for an offer in compromise could dissuade a low-income taxpayer from making an offer because the taxpayer cannot be assured of reaching an agreement.

Second, a low-income taxpayer making an offer in compromise ostensibly does not have the ability to pay the tax liability in full. Section 7122(d)(3)(A) specifically provides that the IRS should not reject an offer from a low-income taxpayer based solely on the amount of the offer, and requiring a fee from low-income taxpayers could result in a similar hardship in cases where the taxpayer does not have the ability to pay the fee. In contrast, the vast majority of installment agreements contemplate full payment of the tax liability because the taxpayer has the ability to do so over time. While there are partial-payment installment agreements — those that do not provide for full payment of the liability — they are rarely used.

The commenter also expressed concern that, in order to avoid the fee associated with an installment agreement, a low-income taxpayer might request to be put into currently-not-collectible (CNC) status rather than enter into an installment agreement. The commenter was concerned, moreover, that without an installment agreement the taxpayer would not pay the tax and would instead incur substantial penalties and interest. Generally, a taxpayer who has the ability to pay his tax liability over time (and thus is eligible for an installment agreement) will not qualify for CNC status. The IRS places a taxpayer in CNC status on the basis of hardship when it determines that the taxpayer cannot pay the tax debts after paying reasonable living expenses. Even a taxpayer in CNC status may, without an installment agreement, pay the tax over time to help limit the accrual of penalties and interest. To the extent a low-income taxpayer has the ability to pay his tax liability over time, entering into an installment agreement would be in his interest because it will most likely reduce the overall amount required to be paid on his tax liability. Under section 6651(h), the penalty rate on the balance owed is reduced while an installment agreement is in effect. Additionally, interest and penalties accruing on an account will be minimized if regular payments are being applied to reduce the tax liability against which penalties and interest are calculated.

Finally, the commenter voiced concern that the reduced fee of $43 may prove to be too large in proportion to relatively smaller balances owed. The purpose of a fee, however, is to recover the cost to the Government for a particular service to the recipient, and the cost to the Government does not vary based on the amount of the balance due. The reduced fee for low-income taxpayers is therefore appropriate, regardless of the amount of taxes owed.

The commenter made two additional recommendations. The commenter recommended that the IRS implement procedures to require IRS employees to investigate whether a taxpayer making an installment agreement is eligible for the reduced fee for low-income taxpayers. The commenter also recommended that the IRS enhance internal training and establish procedures to better promote viable payment plans and avoid unrealistic installment agreements for low-income taxpayers. These comments do not affect the content of these final regulations, but the IRS will, nevertheless, consider them when updating the procedures for entering into installment agreements. The IRS notes, however, that as of January of 2008, taxpayers meeting the low-income criteria are identified systemically based on the taxpayer's last return and the account is identified as being eligible for the reduced user fee.

Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This certification is based on the information that follows. The economic impact of these regulations on any small entity would result from the entity being required to pay a fee prescribed by these regulations to obtain a particular service. The dollar amount of the fee is not, however, substantial enough to have a significant economic impact on any entity subject to the fee. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business and no comments were received.

Drafting Information

The principal author of these regulations is Girish Prasad of the Office of Associate Chief Counsel (Procedure and Administration).

*****

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 300 is amended as follows:

PART 300—USER FEES

Paragraph 1. The authority citation for part 300 continues to read as follows:

Authority: 31 U.S.C. 9701.

Par. 2. In § 300.1, paragraphs (b) introductory text and (d) are revised to read as follows:

§ 300.1 Installment agreement fee.

* * * * *

(b) *Fee*. The fee for entering into an installment agreement before January 1, 2014, is $105. The fee for entering into an installment agreement on or after January 1, 2014, is $120. A reduced fee applies in the following situations:

* * * * *

(d) *Effective/applicability date.* This section is applicable beginning January 1, 2014.

Par. 3. In § 300.2, paragraphs (b) and (d) are revised to read as follows:

§ *300.2 Restructuring or reinstatement of installment agreement fee.*

* * * * *

(b) *Fee*. The fee for restructuring or reinstating an installment agreement before January 1, 2014, is $45. The fee for restructuring or reinstating an installment agreement on or after January 1, 2014, is $50.

* * * * *

(d) *Effective/applicability date.* This section is applicable beginning January 1, 2014.

Par. 4. In § 300.3, paragraphs (b)(1) introductory text and (d) are revised to read as follows:

§ *300.3 Offer to compromise fee.*

* * * * *

(b) *Fee*. (1) The fee for processing an offer to compromise before January 1, 2014, is $150. The fee for processing an offer to compromise on or after January 1, 2014, is $186. No fee will be charged if an offer is—

* * * * *

(d) *Effective/applicability date.* This section is applicable beginning January 1, 2014.

John Dalrymple,
Deputy Commissioner for Services and Enforcement.
Approved November 22, 2013

Mark J. Mazur,
Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on November 29, 2013, 8:45a.m., and published in the issue of the Federal Register for December 2, 2013, 78 F.R. 72016)

Part III. Administrative, Procedural, and Miscellaneous

In-Plan Rollovers to Designated Roth Accounts in Retirement Plans

Notice 2013–74

I. PURPOSE

This notice provides guidance on rollovers within a retirement plan to designated Roth accounts in the same plan ("in-plan Roth rollovers"). The guidance relates to the expansion of these rollovers under new § 402A(c)(4)(E) of the Internal Revenue Code (the Code), as added by § 902 of the American Taxpayer Relief Act of 2012 ("ATRA"), P.L. 112–240. This notice also provides guidance that applies to all in-plan Roth rollovers described in § 402A(c)(4).

II. BACKGROUND

Section 402A of the Code sets forth the rules for designated Roth contributions. A designated Roth contribution is an elective deferral that would otherwise be excludable from gross income but which has been designated by the employee as not being so excludable. An employee's designated Roth contributions and attributable earnings must be maintained by the plan in a separate account (a designated Roth account). A qualified distribution, as defined in § 402A(d)(2), from an employee's designated Roth account is excludable from gross income. A distribution from an employee's designated Roth account that is not a qualified distribution is includible in gross income in proportion to the employee's investment in the contract (basis) and earnings on the contract, pursuant to § 72.

Section 2112 of the Small Business Jobs Act of 2010 ("SBJA"), P.L. 111–240, added § 402A(c)(4) to the Code, effective for distributions made after September 27, 2010, to permit a plan that includes a qualified Roth contribution program to allow employees to roll over amounts from their accounts other than designated Roth accounts to their designated Roth accounts in the plan. To be eligible for an in-plan Roth rollover under SBJA § 2112, the amount had to satisfy the rules for distribution under the Code (an "otherwise distributable amount") and had to be an eligible rollover distribution as defined in § 402(c)(4). (See Revenue Ruling 2004–12, 2004–1 C.B. 478, for a discussion of the various distribution-timing restrictions applicable to amounts held in a plan.) SBJA also expanded the types of plans that could include a qualified Roth contribution program. Previously, only § 401(k) plans and § 403(b) plans were permitted to include qualified Roth contribution programs, but for taxable years beginning after 2010, § 2111 of SBJA permitted governmental § 457(b) plans to include a qualified Roth contribution program.

Section 902 of ATRA added § 402A(c)(4)(E) to the Code to expand the type of amounts eligible for an in-plan Roth rollover. Section 402A(c)(4)(E) provides that the in-plan Roth rollover of these additional amounts ("otherwise nondistributable amounts") will not be treated as violating the statutory distribution restrictions applicable to elective deferrals (or to annual deferrals in the case of governmental § 457(b) plans). Section 402A(c)(4)(E) is effective for in-plan Roth rollovers made after December 31, 2012.

Revenue Ruling 2004–12 provides that where an eligible retirement plan separately accounts for amounts attributable to an employee's rollover contributions, the plan may permit distributions from that account to be made at any time pursuant to the employee's request.

Notice 2010–84, 2010–51 I.R.B. 872, provides guidance on in-plan Roth rollovers under SBJA § 2112, including the provisions of SBJA that permitted an employee who made an in-plan Roth rollover in 2010 to include in gross income half of the taxable amount of the rollover in 2011 and half in 2012.

III. GUIDANCE

This Section III provides guidance on in-plan Roth rollovers. This guidance is in addition to the guidance provided in Notice 2010–84. Part A addresses the applicability of Notice 2010–84 to in-plan Roth rollovers of otherwise nondistributable amounts. Part B provides additional guidance relating to in-plan Roth rollovers of otherwise nondistributable amounts. Part C provides guidance relating to all in-plan Roth rollovers.

Part A – Application of Notice 2010–84 to In-Plan Roth Rollovers of Otherwise Nondistributable Amounts

Q–1. How does Notice 2010–84 apply after ATRA?

A–1. Generally, the rules in Notice 2010–84 apply to all in-plan Roth rollovers, including rollovers of otherwise nondistributable amounts, as permitted under ATRA. For example, in accordance with Q&A–2 of Notice 2010–84, to be eligible for an in-plan Roth rollover, an amount must be vested.

However, as a result of the expansion of eligibility for in-plan Roth rollovers made by ATRA, the part of Q&A–2 of Notice 2010–84 that provides that an amount is not eligible for an in-plan Roth rollover unless it satisfies the rules for distribution under the Code no longer applies. In addition, the following parts of Notice 2010–84 apply only to an in-plan Roth rollover of an otherwise distributable amount and do not apply to an in-plan Roth rollover of an otherwise nondistributable amount: (i) the part of Q&A–1 that provides that an in-plan Roth rollover may be accomplished by an in-plan Roth 60-day rollover; and (ii) Q&A–5, relating to the requirement for a revised § 402(f) notice. Thus, a § 402(f) notice is not required for a participant making an in-plan Roth rollover of an otherwise nondistributable amount.

Part B – Additional Rules Applicable to In-Plan Roth Rollovers of Otherwise Nondistributable Amounts

Q–2. What amounts are eligible for an in-plan Roth rollover under § 402A(c)(4)(E) in addition to the amounts eligible under SBJA § 2112?

A–2. Section 402A(c)(4)(E) provides that a plan with a designated Roth account can permit an in-plan Roth rollover of an amount not otherwise distributable under the plan. Thus, the following contributions (and earnings thereon) may now be rolled over to a designated Roth account in the same plan, without regard to whether the amounts satisfy the conditions for distribution: elective deferrals in § 401(k) plans and § 403(b) plans; matching contributions and nonelective contributions, including qualified matching contributions and qualified nonelective contributions described in § 1.401(k)–6; and annual de-

ferrals made to governmental § 457(b) plans. (The federal government's Thrift Savings Plan is treated as a § 401(k) plan for this purpose.)

Q–3. Is an amount rolled over to an employee's designated Roth account pursuant to § 402A(c)(4)(E) subject to any distribution restrictions after the in-plan Roth rollover?

A–3. Yes. If an amount is rolled over to a designated Roth account pursuant to § 402A(c)(4)(E), then, notwithstanding Revenue Ruling 2004–12, the amount rolled over and applicable earnings remain subject to the distribution restrictions that were applicable to the amount before the in-plan Roth rollover. Thus, for example, if a § 401(k) plan participant who has not had a severance from employment makes an in-plan Roth rollover of an amount from the participant's pre-tax elective deferral account prior to age 59½, that amount and applicable earnings may not be distributed from the plan prior to attainment of age 59½ or the occurrence of another event described in § 401(k)(2)(B).

Q–4. Does withholding under § 3405 or 3402(p) apply to an in-plan Roth rollover of an otherwise nondistributable amount?

A–4. No. An in-plan Roth rollover of an otherwise nondistributable amount is treated as an eligible rollover distribution for purposes of § 3405, and because an in-plan Roth rollover of an otherwise nondistributable amount must be made by a direct rollover, no withholding under § 3405 applies. See § 3405(c)(1)(A) and (c)(2). Also, because this amount is not distributable (other than for purposes of making an in-plan Roth rollover), no part of the rollover may be withheld for voluntary withholding under § 3402(p). An employee making an in-plan Roth rollover may need to increase his or her withholding or make estimated tax payments to avoid an underpayment penalty.

Q–5. When is a plan amendment providing for in-plan Roth rollovers of otherwise nondistributable amounts required to be adopted in order to be effective for a plan year?

A–5. (a) *Section 401(k) plans generally*. Under section 5.02 of Rev. Proc. 2007–44, 2007–2 C.B. 54, which sets forth certain deadlines for adopting amendments to qualified plans, a plan amendment that provides for in-plan Roth rollovers of otherwise nondistributable amounts is a discretionary amendment that is not permitted to be adopted later than the last day of the first plan year in which the amendment is effective. However, to give plan sponsors sufficient time to adopt such an amendment and thereby enable plan participants to make in-plan Roth rollovers of otherwise nondistributable amounts before the end of the 2013 plan year, the Internal Revenue Service (IRS) is extending the deadline for adopting a plan amendment described in paragraph (e) of this Q&A-5 to the later of the last day of the first plan year in which the amendment is effective or December 31, 2014, provided the amendment is effective as of the date the plan first operates in accordance with the amendment. Thus, in the case of a § 401(k) plan that has a calendar-year plan year, in order for the plan to permit an in-plan Roth rollover of an otherwise nondistributable amount during 2013, a plan amendment providing for that option must be adopted no later than December 31, 2014.

(b) *Section 401(k) safe harbor plans*. Under § 1.401(k)–3(e)(1), sponsors of § 401(k) safe harbor plans described in § 401(k)(12) or (13) are prohibited from making mid-year changes to plan provisions that satisfy § 1.401(k)–3 except as provided in § 1.401(k)–3(g) (relating to certain reductions or suspensions of safe harbor contributions) or in guidance of general applicability published in the Internal Revenue Bulletin. For purposes of the preceding sentence, a "mid-year change" is a change made after the beginning of a plan year that is effective during that plan year.

In accordance with § 1.401(k)–3(e)(1), this notice provides a temporary period during which sponsors of safe harbor plans are permitted to make a mid-year change to provide for in-plan Roth rollovers of otherwise nondistributable amounts. The period ends December 31, 2014. Thus, in the case of a § 401(k) safe harbor plan that has a calendar-year plan year, in order for the plan to permit an in-plan Roth rollover of an otherwise nondistributable amount during 2013 or 2014, a plan amendment providing for that option must be adopted by December 31, 2014.

(c) *Section 403(b) plans*. Rev. Proc. 2013–22, 2013–18 I.R.B. 985, provides that if an employer adopts, on or before December 31, 2009 (or, if later, the date the plan is established), a written § 403(b) plan intended to satisfy the requirements of § 403(b) and the regulations thereunder, the employer has a remedial amendment period in which to amend the plan to correct any form defects retroactive to January 1, 2010 (or the date the plan is established). The IRS will announce the end date of this remedial amendment period around the time the IRS issues opinion and advisory letters for pre-approved § 403(b) plans under Rev. Proc. 2013–22. The end date of the remedial amendment period is expected to be more than a year after the date of that announcement. In the case of a § 403(b) plan that has a remedial amendment period pursuant to Rev. Proc. 2013–22, a plan amendment permitting in-plan Roth rollovers of otherwise nondistributable amounts is permitted to be adopted on or before the last day of that remedial amendment period or, if later, the last day of the first plan year in which the amendment is effective, provided the amendment is effective as of the date the plan first operates in accordance with the amendment. See Rev. Proc. 2013–22, Section 21.

(d) *Governmental § 457(b) plans*. A governmental § 457(b) plan must reflect any optional provisions to ensure that the plan is operated in accordance with its plan terms. In the case of a governmental § 457(b) plan, an amendment permitting in-plan Roth rollovers of otherwise nondistributable amounts during 2013 or 2014 must be adopted by the later of the last day of the first plan year in which the amendment is effective or December 31, 2014, provided the amendment is effective as of the date the plan first operates in accordance with the amendment.

(e) *Covered amendments*. The extended amendment deadlines in this Q&A–5 apply not only to a plan amendment that permits in-plan Roth rollovers of otherwise nondistributable amounts but also to the following related amendments: (i) a plan amendment that permits elective deferrals under the plan to be designated as Roth contributions; (ii) a plan amendment that provides for the acceptance of rollover contributions by designated Roth accounts; and (iii) a plan amendment that permits in-plan Roth rollovers of some or all otherwise distributable amounts.

Part C – Additional Rules Applicable to All In-Plan Roth Rollovers

Q–6. Is a plan permitted to restrict the type of contributions eligible for an in-plan Roth rollover and the frequency of in-plan Roth rollovers?

A–6. Yes. Subject to the nondiscrimination requirements normally applicable to plan benefits, rights, and features (such as the right to make a rollover), a plan may limit the type of contributions eligible for an in-plan Roth rollover and the frequency of in-plan Roth rollovers. For example, to simplify recordkeeping in a designated Roth account, a plan could provide that only otherwise distributable amounts are eligible for an in-plan Roth rollover. Under this approach, the designated Roth account would include only rollover amounts that could be distributed at any time upon the employee's request. Because the account would not accept rollovers of amounts that are subject to the distribution restrictions described in Q&A–3, the plan would not need to separately account for different types of in-plan Roth rollover amounts

Q–7. Would a plan with an ongoing qualified Roth contribution program violate § 411(d)(6) if it discontinued in-plan Roth rollovers?

A–7. No. An employee's ability to make an in-plan Roth rollover is not a section 411(d)(6) protected benefit. However, an amendment to eliminate in-plan Roth rollovers is subject to the rules in § 1.401(a)(4)–5, relating to whether the timing of a plan amendment or a series of plan amendments has the effect of discriminating significantly in favor of highly compensated employees or former highly compensated employees.

Q–8. If an in-plan Roth rollover is the first contribution made to an employee's designated Roth account, when does the 5-taxable-year period of participation that is required under § 402A(d)(2) for a qualified distribution from an employee's designated Roth account begin?

A–8. If an in-plan Roth rollover is the first contribution made to an employee's designated Roth account, the 5-taxable-year period of participation that is required under § 402A(d)(2) for a qualified distribution begins on the first day of the first taxable year in which the employee makes the in-plan Roth rollover.

Q–9. Is an in-plan Roth rollover treated as a distribution for purposes of determining eligibility for the special tax rules on net unrealized appreciation ("NUA") in employer securities paid in the form of a lump sum distribution under § 402(e)(4)(B)?

A–9. Yes. An in-plan Roth rollover is treated as a distribution for purposes of determining eligibility for the special tax rules on NUA, whether the rollover is made by an in-plan Roth direct rollover or by an in-plan Roth 60-day rollover. See also Q&A–7 of Notice 2010–84.

Q-10. How is an in-plan Roth rollover treated for purposes of determining top-heavy status under § 416?

A–10. An in-plan Roth rollover is a "related rollover" within the meaning of § 1.416–1, Q&A T–32. Accordingly, the accepting plan (which, in the case of an in-plan Roth rollover, is also the distributing plan) must count the rollover in determining the present value of accrued benefits for purposes of determining top-heavy status under § 416.

Q–11. If an employee rolls over into a designated Roth account all of his or her funds from other accounts in the same plan, what is the proper treatment of an amount rolled over that is later determined to be an excess amount?

A–11. If an employee rolls over into a designated Roth account all of his or her funds from other accounts in the same plan and all or a portion of the rollover is later determined to be an excess deferral described in § 402(g)(2)(A), an excess contribution described in § 401(k)(8)(B), or an excess aggregate contribution described in § 401(m)(6)(B), and the excess amount (plus applicable earnings) is to be distributed from the plan, then the excess amount (plus applicable earnings) must be distributed from the designated Roth account, even if the amount was an otherwise nondistributable amount at the time of the in-plan Roth rollover.

IV. EFFECT ON OTHER DOCUMENTS

Notice 2010–84 and Revenue Ruling 2004–12 are modified.

DRAFTING INFORMATION

The principal author of this notice is Roger Kuehnle of the Employee Plans, Tax Exempt and Government Entities Division. Questions regarding this notice may be sent via e-mail to *RetirementPlanQuestions@irs.gov*.

2014 Standard Mileage Rates

Notice 2013–80

SECTION 1. PURPOSE

This notice provides the optional 2014 standard mileage rates for taxpayers to use in computing the deductible costs of operating an automobile for business, charitable, medical, or moving expense purposes. This notice also provides the amount taxpayers must use in calculating reductions to basis for depreciation taken under the business standard mileage rate, and the maximum standard automobile cost that may be used in computing the allowance under a fixed and variable rate (FAVR) plan.

SECTION 2. BACKGROUND

Rev. Proc. 2010–51, 2010–51 I.R.B. 883, provides rules for computing the deductible costs of operating an automobile for business, charitable, medical, or moving expense purposes, and for substantiating, under § 274(d) of the Internal Revenue Code and § 1.274–5 of the Income Tax Regulations, the amount of ordinary and necessary business expenses of local transportation or travel away from home. Taxpayers using the standard mileage rates must comply with Rev. Proc. 2010–51. However, a taxpayer is not required to use the substantiation methods described in Rev. Proc. 2010–51, but instead may substantiate using actual allowable expense amounts if the taxpayer maintains adequate records or other sufficient evidence.

An independent contractor conducts an annual study for the Internal Revenue Service of the fixed and variable costs of operating an automobile to determine the standard mileage rates for business, medical, and moving use reflected in this notice. The standard mileage rate for charitable use is set by § 170(i).

SECTION 3. STANDARD MILEAGE RATES

The standard mileage rate for transportation or travel expenses is 56 cents per mile for all miles of business use (business standard mileage rate). See section 4 of Rev. Proc. 2010–51.

The standard mileage rate is 14 cents per mile for use of an automobile in rendering gratuitous services to a charitable organization under § 170. See section 5 of Rev. Proc. 2010–51.

The standard mileage rate is 23.5 cents per mile for use of an automobile (1) for medical care described in § 213, or (2) as part of a move for which the expenses are deductible under § 217. See section 5 of Rev. Proc. 2010–51.

SECTION 4. BASIS REDUCTION AMOUNT

For automobiles a taxpayer uses for business purposes, the portion of the business standard mileage rate treated as depreciation is 23 cents per mile for 2010, 22 cents per mile for 2011, 23 cents per mile for 2012, 23 cents per mile for 2013, and 22 cents per mile for 2014. See section 4.04 of Rev. Proc. 2010–51.

SECTION 5. MAXIMUM STANDARD AUTOMOBILE COST

For purposes of computing the allowance under a FAVR plan, the standard automobile cost may not exceed $28,200 for automobiles (excluding trucks and vans) or $30,400 for trucks and vans. See section 6.02(6) of Rev. Proc. 2010–51.

SECTION 6. EFFECTIVE DATE

This notice is effective for (1) deductible transportation expenses paid or incurred on or after January 1, 2014, and (2) mileage allowances or reimbursements paid to an employee or to a charitable volunteer (a) on or after January 1, 2014, and (b) for transportation expenses the employee or charitable volunteer pays or incurs on or after January 1, 2014.

SECTION 7. EFFECT ON OTHER DOCUMENTS

Notice 2012–72 is superseded.

DRAFTING INFORMATION

The principal author of this notice is Bernard P. Harvey of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information on this notice contact Bernard P. Harvey on (202) 317-7005 (not a toll-free call).

2013 Cumulative List of Changes in Plan Qualification Requirements

Notice 2013–84

I. PURPOSE

This notice contains the 2013 Cumulative List of Changes in Plan Qualification Requirements (2013 Cumulative List) described in section 4 of Rev. Proc. 2007–44, 2007–2 C.B. 54. The 2013 Cumulative List is to be used by plan sponsors and practitioners submitting determination letter applications for plans during the period beginning February 1, 2014 and ending January 31, 2015.

Plans using this Cumulative List will primarily be single employer individually designed defined contribution plans and single employer individually designed defined benefit plans that are in Cycle D and multiemployer plans as described in § 414(f). Generally an individually designed plan is in Cycle D if the last digit of the employer identification number of the plan sponsor is 4 or 9.

The list of changes in section IV of this notice does not extend the deadline by which a plan must be amended to comply with any statutory, regulatory, or guidance changes. The general deadline for timely adoption of an interim or discretionary amendment can be found in section 5.05 of Rev. Proc. 2007–44.

II. BACKGROUND

Rev. Proc. 2007–44 sets forth procedures for issuing opinion, advisory, and determination letters and describes the five-year remedial amendment cycle for individually designed plans and the six-year remedial amendment cycle for pre-approved plans. In addition, section 5.05 of Rev. Proc. 2007–44 provides the deadline for timely adoption of an interim amendment or discretionary amendment.

Under section 4 of Rev. Proc. 2007–44, the Internal Revenue Service (the Service) announced its intention to annually publish a Cumulative List to identify statutory, regulatory, and guidance changes that must be taken into account in submissions by plan sponsors to the Service requesting opinion, advisory, and determination letters whose submission period begins on February 1st following issuance of the Cumulative List.

In Notice 2012–76, 2012–52 I.R.B. 775, the Service published the 2012 Cumulative List of Changes in Plan Qualification Requirements (2012 Cumulative List).[1]

III. APPLICATION OF 2013 CUMULATIVE LIST

This notice is being issued in conjunction with the determination letter program for individually designed plans eligible for Cycle D. In accordance with Rev. Proc. 2007–44, the Service will start accepting determination letter applications for Cycle D individually designed plans beginning on February 1, 2014. The 12-month submission period for Cycle D plans will end on January 31, 2015.

The 2013 Cumulative List, set forth in section IV of this notice, informs plan sponsors of issues the Service has specifically identified for review in determining whether a plan filing in Cycle D has been properly updated. Specifically, the 2013 Cumulative List reflects law changes under the Pension Protection Act of 2006 (PPA '06), Pub. L. 109–280; the U.S. Troop Readiness, Veterans' Care, Katrina Recovery and Iraq Accountability Appropriations Act, 2007, Pub. L. 110–28; the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act), Pub. L. 110–245; the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA), Pub. L. 110–458; the Small Business Jobs Act of 2010 (SBJA), Pub. L. 111–240; the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (PRA 2010), Pub. L. No. 111–192; the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112–141; and the American Taxpayer Relief Act of 2012 (ATRA), P.L. 112–240.

[1]For previous cumulative lists, see Notice 2011–97, 2011–52 I.R.B. 923; Notice 2010–90, 2010–52 I.R.B. 909; Notice 2009–98, 2009–52 I.R.B. 974; Notice 2008–108, 2008–2 C.B. 1275; Notice 2007–94, 2007–2 C.B. 1179; Notice 2007–3, 2007–1 C.B. 255; Notice 2005–101, 2005–2 C.B. 1219; and Notice 2004–84, 2004–2 C.B. 1030 for the 2011, 2010, 2009, 2008, 2007, 2006, 2005, and 2004 Cumulative Lists, respectively.

Except as provided below, the Service will not consider in its review of any determination letter application for the submission period that begins February 1, 2014, any:

(1) guidance issued after October 1, 2013;

(2) statutes enacted after October 1, 2013;

(3) qualification requirements first effective in 2015 or later; or

(4) statutory provisions that are first effective in 2014, for which there is no guidance identified in this notice.

However, in order to be qualified, a plan must comply with all relevant qualification requirements, not just those on the 2013 Cumulative List.

The Service's review of a determination letter application filed in the Cycle D submission period will not consider the 2010 final hybrid plan regulations (other than with respect to § 411(a)(13)(A)) unless the plan has been amended to satisfy those regulations. For this purpose, the Service will only consider those provisions of the regulations that are effective for plan years beginning on or after January 1, 2011.

The 2013 Cumulative List includes the following guidance issued after October 1, 2013:

Final regulations under § 401(k) and § 401(m) provide guidance on permitted mid-year reductions or suspensions of safe harbor nonelective contributions in certain circumstances for amendments adopted after May 18, 2009 and revise the requirements for permitted mid-year reductions or suspensions of safe harbor matching contributions for plan years beginning on or after January 1, 2015. (78 Fed. Reg. 68735).

Notice 2013–74, 2013–52 I.R.B. 819, provides guidance under new § 402A(c)(4)(E) of the Internal Revenue Code (the Code), as added by § 902 of ATRA, relating to the expansion of rollovers from § 401(k) plans, § 403(b) plans, and governmental § 457(b) plans to designated Roth accounts in the same plan ("in-plan Roth rollovers"). Section 402A(c)(4)(E) provides for in-plan Roth rollovers of otherwise nondistributable amounts. This notice also provides guidance that applies to all in-plan Roth rollovers under § 402A(c)(4).

With respect to matters addressed by proposed regulations identified in the footnotes of section IV of this notice, the Service's review of the plan will be based on a reasonable interpretation of the statute, existing final regulations, or other published guidance. For this purpose, compliance with proposed regulations will be treated as meeting that standard. However, a determination letter cannot be relied on with respect to whether the plan complies with the proposed regulations.

Terminating plans must include all law changes in effect at the time of termination. See section 8 of Rev. Proc. 2007–44 regarding plan termination.

IV. 2013 CUMULATIVE LIST OF CHANGES IN PLAN QUALIFICATION REQUIREMENTS

The following list consists of statutory provisions and associated guidance which reflect changes to plan qualification requirements. Miscellaneous guidance is also provided. The Service has identified below plan qualification requirements that differ from those that were on the 2012 or earlier Cumulative Lists as "(New)."

Items from the 2008 Cumulative List have been deleted from the 2013 Cumulative List. Thus, the 2013 Cumulative List contains the plan qualification requirements in the 2009, 2010, 2011 and 2012 Cumulative Lists, as well as additional 2013 plan qualification requirements. The deletions have been made to enhance the utility of the cumulative list, by removing items that would have been previously reviewed in the case of a plan that was submitted during the initial Cycle D submission period (February 1, 2009 – January 31, 2010). However, if a plan has not been previously reviewed for items on earlier cumulative lists, the items from the earlier cumulative lists must be taken into account. These items can be found in Notice 2008–108, 2008–2 C.B. 1275.

1. *401(a)*:

- Notice 2008–98, 2008–2 C.B. 1080, provides that the Service and Treasury intend to amend the normal retirement age regulations to change the effective date for governmental plans to plan years beginning on or after January 1, 2011. (2009 C. L.)
- Notice 2009–86, 2009–46 I.R.B. 629, provides that the Service and Treasury intend to amend the normal retirement age regulations to change the effective date for governmental plans to plan years beginning on or after January 1, 2013. (2010 C. L.)
- Rev. Rul. 2011–1, 2011–2 I.R.B. 251, revises the generally applicable rules for group trusts and, if certain requirements are met, permits the participation in group trusts of custodial accounts under § 403(b)(7), retirement income accounts under § 403(b)(9), and governmental retiree benefit plans under § 401(a)(24). This revenue ruling also modifies the transition relief provided in Rev. Rul. 2008–40. (2011 C. L.)
- Notice 2012–6, 2012–3 I.R.B. 293, extends and expands the transition relief provided under Rev. Rul. 2011–1 for certain group trusts, certain retirement trusts that qualify under the Puerto Rico Internal Revenue Code that participate in group trusts, and certain qualified retirement plans that benefit Puerto Rico residents. The notice also provides additional time for governmental retiree benefit plans described in § 401(a)(24) to be amended to satisfy the applicable requirements of Rev. Rul. 2011–1. (2012 C. L.)
- Notice 2012–29, 2012–18 I.R.B. 872, provides that the Service and Treasury intend to modify the normal retirement age regulations to clarify that governmental plans that do not provide for in-service distributions before age 62 do not need to have a definition of normal retirement age and to modify the age-50 safe harbor rule for qualified public safety employees. The notice also provides that the Service and Treasury intend to amend the normal retirement age regulations to extend the effective date for governmental plans to annuity starting dates that occur in plan years beginning on or after the later of (1) January 1, 2015 or (2) the close of the first regular legislative session of the legislative body with the authority to amend the plan that begins on or after the date that is 3 months after the final regulations are published in the Federal Register. (2012 C. L.)
- *United States v. Windsor*, 570 U.S. ___, 133 S. Ct. 2675 (2013). The Supreme Court found that Section 3 of the Defense of Marriage Act (DOMA), which provides that in determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the

United States, the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife, is unconstitutional because it violates the principles of equal protection. (New)

- Revenue Ruling 2013–17, 2013–38 I.R.B. 201, provides that for Federal tax purposes, the terms "spouse," "husband and wife," "husband," and "wife" include an individual married to a person of the same sex if the individuals are lawfully married under state law, and the term "marriage" includes such a marriage between individuals of the same sex and the Service adopts a general rule recognizing a marriage of same-sex individuals that was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages. (New)

2. *401(a)(9)*:

- Pursuant to PPA '06 § 823, final regulations under § 401(a)(9) were published on September 8, 2009, which permit a governmental plan to comply with the required minimum distribution rules of § 401(a)(9) by using a reasonable and good faith interpretation of the statute. (2009 C. L.)
- WRERA § 201(a) added § 401(a)(9)(H) which provides a suspension of the required minimum distribution rules for 2009 applicable to defined contribution plans. (2010 C. L.)
  - Notice 2009–82, 2009–41 I.R.B. 491, provides guidance relating to the suspension of the required minimum distribution rules for 2009 applicable to defined contribution plans. (2010 C. L.)

3. *401(a)(22)*:

- Notice 2011–19, 2011–11 I.R.B. 550, provides that the terms "readily tradable on an established securities market" and "readily tradable on an established market" mean employer securities that are readily tradable on an established securities market within the meaning of § 1.401(a)(35)–1(f)(5) for purposes of § 401(a)(22). Notice 2011–19 is effective for plan years that begin on or after January 1, 2012, except for certain plans that have a delayed effective date. (2011 C. L.)

4. *401(a)(28)(C):*

- Notice 2011–19 provides that the terms "readily tradable on an established securities market" and "readily tradable on an established market" mean employer securities that are readily tradable on an established securities market within the meaning of § 1.401(a)(35)–1(f)(5) for purposes of § 401(a)(28)(C). Notice 2011–19 is effective for plan years that begin on or after January 1, 2012, except for certain plans that have a delayed effective date. (2011 C. L.)

5. *401(a)(35)*:

- WRERA § 109(a) amended the definition of one-participant retirement plan under § 401(a)(35)(E)(iv). (2009 C. L.)
- Notice 2009–97, 2009–52 I.R.B. 972, extends the deadline to amend for § 401(a)(35) to the last day of the first plan year that begins on or after January 1, 2010. (2010 C. L.)
- Final regulations under § 401(a)(35) were published on May 19, 2010. (2010 C. L.)
- Notice 2013–17, 2013–20 I.R.B. 1082, provides relief from anti-cutback rules for an amendment to an ESOP to eliminate all in-service distribution options previously used to satisfy the diversification requirements of § 401(a)(28)(B)(i). (New)

6. *401(a)(37)*:

- HEART Act § 104(a) added § 401(a)(37) with respect to benefits payable on the death of a plan participant while performing qualified military service. (2010 C. L.)
- Notice 2010–15, 2010–6 I.R.B. 390, provides guidance regarding HEART Act § 104(a). (2010 C. L.)

7. *401(k) & 401(m)*:[2]

- HEART Act § 107(a) extends the applicability of the qualified reservist distribution to individuals ordered or called to active duty after December 31, 2007. (2009 C. L.)
  - Notice 2010–15 provides guidance regarding HEART Act § 107. (2010 C. L.)
- Final regulations under § 401(k) with respect to qualified automatic contribution arrangements were published on February 24, 2009. (2009 C. L.)
- Rev. Rul. 2009–30, 2009–39 I.R.B. 391, provides information with respect to automatic contribution increases under automatic contribution arrangements. (2009 C. L.)
- Notice 2009–65, 2009–39 I.R.B. 413, provides sample amendments that plan sponsors can use to add automatic contribution features to their plans. (2009 C. L.)
- Final regulations under § 401(m) with respect to qualified automatic contribution arrangements were published on February 24, 2009. (2009 C. L.)
- Final regulations provide guidance on permitted mid-year reductions or suspensions of safe harbor nonelective contributions in certain circumstances for amendments adopted after May 18, 2009, and revise the requirements for permitted mid-year reductions or suspensions of safe harbor matching contributions for plan years beginning on or after January 1, 2015, were published on November 15, 2013. (New)

8. *402(c)(11)*:

- WRERA § 108(f) requires that plans provide for nonspouse beneficiary rollovers under § 402(c)(11), effective for plan years beginning after December 31, 2009. (2009 C. L.)

9. *402(f)*:

- Notice 2009–68, 2009–39 I.R.B. 423, provides two safe harbor explanations that may be provided to recipients of eligible rollover distributions from an employer to satisfy § 402(f). (2009 C. L.)

[2]Proposed amendments to the regulations under 401(k) and 401(m) were published on May 18, 2009 (74 Fed. Reg. 23134) and may be relied upon for periods prior to the issuance of final regulations.

- WRERA § 108(f)(2) amended § 402(f)(2)(A) with respect to the definition of eligible rollover distribution. (2009 C. L.)

10. *402(g)(2)*:

- WRERA § 109(b)(3) amended § 402(g)(2)(A)(ii) to eliminate the distribution of gap period earnings with excess deferrals. (2009 C. L.)

11. *402A*:

- SBJA § 2112 added § 402A(c)(4) which permits rollovers of otherwise distributable amounts from a plan account other than a designated Roth account to the plan's designated Roth account. (2010 C. L.)
  - Notice 2010–84, 2010–51 I.R.B. 872, provides guidance regarding § 402A(c)(4). (2010 C. L.)
- Notice 2013–74 provides guidance under new § 402A(c)(4)(E) relating to the expansion of rollovers from § 401(k) plans, § 403(b) plans, and governmental § 457(b) plans to designated Roth accounts in the same plan ("in-plan Roth rollovers"). Section 402A(c)(4)(E) provides for in-plan Roth rollovers of otherwise nondistributable amounts. This notice also provides guidance that applies to all in-plan Roth rollovers under § 402A(c)(4). (New)

12. *409*:

- Notice 2011–19 provides that the terms "readily tradable on an established securities market" and "readily tradable on an established market" mean employer securities that are readily tradable on an established securities market within the meaning of § 1.401(a)(35)–1(f)(5) for purposes of § 409(h)(1)(B) and § 409(l). Notice 2011–19 is effective for plan years that begin on or after January 1, 2012, except for certain plans that have a delayed effective date. (2011 C. L.)

13. *411(a)*:

- Rev. Rul. 2012–4, 2012–8 I.R.B. 386, describes whether a qualified defined benefit pension plan that accepts a direct rollover of an eligible rollover distribution from a qualified defined contribution plan maintained by the same employer satisfies §§ 411 and 415 in a case in which the defined benefit plan provides an annuity resulting from the direct rollover. (2012 C. L.).

14. *411(a)(13)*:

- WRERA § 107(b)(2) amended § 411(a)(13)(A). (2009 C. L.)
- Notice 2009–97 extends the deadline for amending cash balance and other applicable defined benefit plans, within the meaning of § 411(a)(13)(C), to meet the requirements of § 411(a)(13) (other than § 411(a)(13)(A)) to the last day of the first plan year that begins on or after January 1, 2010. (2010 C. L.)
- Final Regulations under § 411(a)(13) were published on October 19, 2010.[3] (2010 C. L.)
- Notice 2010–77, 2010–51 I.R.B. 851, extends the deadline for amending cash balance and other applicable defined benefit plans, within the meaning of § 411(a)(13)(C), to meet the requirements of § 411(a)(13) (other than § 411(a)(13)(A)) to the last day of the first plan year that begins on or after January 1, 2011. (2010 C. L.)
- Notice 2011–85, 2011–44 I.R.B. 605, extends the deadline for adopting an interim or discretionary amendment under § 411(a)(13) (other than § 411(a)(13)(A)). (2011 C. L.)
- Notice 2012–61, 2012–42 I.R.B. 479, provides that certain provisions in the 2010 final hybrid plan regulations will not be effective for plan years beginning before January 1, 2014. (2012 C. L.)

15. *411(b)(1)*:[4]

- Proposed regulations under § 411(b)(1) were published on October 19, 2010 (75 Fed. Reg. 64197) with respect to a variable interest crediting rate that potentially can be negative in any given year. (2010 C. L.)

16. *411(b)(5)*:

- WRERA § 107(b)(1) amended § 411(b)(5). (2009 C. L.)
- Notice 2009–97 extends the deadline for amending cash balance and other applicable defined benefit plans, within the meaning of § 411(a)(13)(C), to meet the requirements of § 411(b)(5) to the last day of the first plan year that begins on or after January 1, 2010. (2010 C. L.)
- Final Regulations under § 411(b)(5) were published on October 19, 2010.[5] (2010 C. L.)
- Notice 2010–77 extends the deadline for amending cash balance and other applicable defined benefit plans, within the meaning of § 411(a)(13)(C), to meet the requirements of § 411(b)(5) to the last day of the first plan year that begins on or after January 1, 2011. (2010 C. L.)
- Notice 2011–85 announces that the Treasury Department and the Service intend to amend the 2010 final hybrid plan regulations to postpone the effective/applicability date of § 1.411(b)(5)–1(d)(1)(iii), (d)(1)(vi), and (d)(6)(i) to plan years that begin on or after a date to be specified in those regulations that is not earlier than January 1, 2013. This notice also extends the deadline for adopting an interim or discretionary amendment under § 411(b)(5). (2011 C. L.)
- Notice 2012–61 provides that certain provisions in the 2010 final hybrid plan regulations will not be effective for plan years beginning before January 1, 2014. (2012 C. L.)

17. *411(d)(6):*

- Final Regulations under § 411(d)(6), which provide an additional limited exception to the anti-cutback rules to a plan sponsor who is a debtor in a bankruptcy proceeding, were published on November 8, 2012 (77 Fed. Reg. 66915). (2012 C. L.)

[3]Proposed regulations under 411(a)(13) were published on October 19, 2010 (75 Fed. Reg. 64197) and may be relied upon until final regulations are issued.

[4]Proposed regulations under 411(b)(1) were published on June 18, 2008 (73 Fed. Reg. 34665) with respect to the application of the accrual rule where plan benefits are determined on the basis of the greater of two or more separate formulas.

[5]Proposed regulations under 411(b)(5) also were published on October 19, 2010 (75 Fed. Reg. 64197) and may be relied upon until final regulations are issued.

- Notice 2013–17 provides relief from anti-cutback rules for an amendment to an ESOP to eliminate all in-service distribution options previously used to satisfy the diversification requirements of § 401(a)(28)(B)(i). (New)

18. *414(u)*:

- HEART Act § 104(b) amended § 414(u) by adding § 414(u)(9) regarding how a plan may provide benefit accruals for a person who dies or becomes disabled while performing qualified military service. (2010 C. L.)
  - Notice 2010–15 provides guidance regarding HEART Act § 104(b). (2010 C. L.)
- HEART Act § 105(b)(1) added § 414(u)(12) with respect to the treatment of differential wage payments during the period a person, while on active duty, is performing service in the uniformed services. (2010 C. L.)
  - Notice 2010–15 provides guidance regarding HEART Act § 105(b)(1). (2010 C. L.)

19. *414(w)*:

- WRERA § 109(b)(4), (5), and (6) amended § 414(w)(3), (5), and (6), respectively. (2009 C. L.)
- Final regulations under § 414(w) with respect to eligible automatic contribution arrangements were published on February 24, 2009. (2009 C. L.)
- Rev. Rul. 2009–30 provides information with respect to automatic contribution increases under automatic contribution arrangements. (2009 C. L.)
- Notice 2009–65 provides sample amendments that plan sponsors can use to add automatic contribution features to their plans. (2009 C. L.)

20. *414(x)*:

- PPA '06 § 903(a) added § 414(x) with respect to special rules for eligible combined plans that consist of a defined benefit plan and a qualified cash or deferred arrangement. (2010 C. L.)

21. *415*:

- WRERA § 103(a) changed the deadline to adopt PFEA amendments from the end of the 2008 plan year to the end of the 2009 plan year. (2009 C. L.)
- WRERA § 103(b)(2)(B)(i) amended § 415(b)(2)(E)(v) to change the mortality table to the applicable mortality table within the meaning of § 417(e)(3)(B). (2009 C. L.)
- Rev. Rul. 2012–4 describes whether a qualified defined benefit pension plan that accepts a direct rollover of an eligible rollover distribution from a qualified defined contribution plan maintained by the same employer satisfies §§ 411 and 415 in a case in which the defined benefit plan provides an annuity resulting from the direct rollover. (2012 C. L.)

22. *417*:

- Rev. Rul. 2012–3, 2012–6 I.R.B. 383, describes how the qualified joint and survivor annuity ("QJSA") and the qualified preretirement survivor annuity ("QPSA") rules, described in §§ 401(a)(11) and 417, apply when a deferred annuity contract is purchased under a profit sharing plan. (2012 C. L.)

23. *420*:

- MAP-21 §§ 40241 and 40242 amend § 420 to extend the provisions relating to transfers of excess pension assets to retiree health accounts and to expand those provisions to allow transfers to retiree group term life insurance accounts. (2012 C. L.)

24. *431(b)(8)*:

- PRA 2010 § 211(a)(2) added § 431(b)(8), which provides two special funding rules available to multiemployer plans. (2011 C. L.)
  - Notice 2010–83, 2010–51 I.R.B. 862, provides guidance with respect to the special funding rules under § 431(b)(8). (2011 C. L.)

25. *432*:

- WRERA § 204 provides a temporary delay of designation of multiemployer plans in endangered or critical status. (2009 C. L.)
  - Notice 2009–31, 2009–16 I.R.B. 856, as modified by Notice 2009–42, 2009–20 I.R.B. 1011, provides election and notice procedures for multiemployer plans under WRERA § 204. (2009 C. L.)
  - Rev. Proc. 2009–43, 2009–40 I.R.B. 460, provides procedures with respect to the revocation of elections by multiemployer plans to freeze funded status under WRERA § 204. (2009 C. L.)
- WRERA § 205 provides a temporary extension of the funding improvement or rehabilitation periods for multiemployer plans in endangered or critical status for 2008 or 2009. (2009 C. L.)
  - Notice 2009–31, as modified by Notice 2009–42, provides election and notice procedures for multiemployer plans under WRERA § 205. (2009 C. L.)

26. *436*:

- Section 1.436–1 provides guidance on the application of § 436, which provides a series of limitations on the accrual and payment of benefits under underfunded single employer defined benefit plans. (2012 C. L.)
- Notice 2011–3, 2011–2 I.R.B. 263, provides guidance on the special rules relating to the relaxation of § 436 rules that were included in the funding relief for single employer defined benefit pension plans under PRA 2010. (2012 C. L.)
- Notice 2011–96, 2011–52 I.R.B. 915, provides a sample plan amendment that plan sponsors may adopt to satisfy § 436 regarding limitations on the accrual and payment of benefits. The notice also extends both the deadline to amend a plan to satisfy § 436 and the period during which such an amendment is eligible for relief from the anti-cutback requirements of § 411(d)(6). (2012 C. L.)
- Notice 2012–70, 2012–51 I.R.B. 712, extends the deadline, as set forth in Notice 2011–96, to amend a defined benefit plan to satisfy the requirements of § 436 and provides associated relief from the requirements of § 411(d)(6). (2011 C. L.)
- Notice 2013–11, 2013–11 I.R.B. 610, provides guidance on the 25-year average segment rates that are applied to adjust the otherwise applicable 24-month average segment rates that are

used to compute the minimum contribution requirements for single-employer defined benefit plans under § 430 of the Code and § 303 of the Employee Retirement Income Security Act of 1974 (ERISA), as amended by MAP-21, for plan years beginning in 2013. (New)

27. *Miscellaneous*:

- Rev. Rul. 2009–31, 2009–39 I.R.B. 395, provides guidance with respect to annual paid time-off contributions. (2009 C. L.)
- Rev. Rul. 2009–32, 2009–39 I.R.B. 398, provides guidance with respect to paid time-off contributions at termination of employment. (2009 C. L.)

The following guidance contains sample or model amendments: Notice 2009–65 (automatic contribution features); Notice 2009–82 (suspension of the minimum distribution requirement for 2009); Rev. Rul. 2011–1 (group trusts); and Notice 2011–96 (limitations on the accrual and payment of benefits under underfunded single employer defined benefit plans).

DRAFTING INFORMATION

The principal author of this notice is Kathleen Herrmann of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, please contact the Employee Plans taxpayer assistance answering service at 1-877-829-5500 (a toll free number) or e-mail Ms. Herrmann at *RetirementPlanQuestions@irs.gov*.

Update for Weighted Average Interest Rates, Yield Curves, and Segment Rates

Notice 2013–85

This notice provides guidance on the corporate bond monthly yield curve (and the corresponding spot segment rates), and the 24-month average segment rates under § 430(h)(2) of the Internal Revenue Code. In addition, this notice provides guidance as to the interest rate on 30-year Treasury securities under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning before 2008, the 30-year Treasury weighted average rate under § 431(c)(6)(E)(ii)(I), and the minimum present value segment rates under § 417(e)(3)(D) as in effect for plan years beginning after 2007. These rates reflect certain changes implemented by the Moving Ahead for Progress in the 21st Century Act, Public Law 112–141 (MAP–21). MAP–21 provides that for purposes of § 430(h)(2), the segment rates are limited by the applicable maximum percentage or the applicable minimum percentage based on the average of segment rates over a 25-year period.

YIELD CURVE AND SEGMENT RATES

Generally, except for certain plans under sections 104 and 105 of the Pension Protection Act of 2006, § 430 of the Code specifies the minimum funding requirements that apply to single employer plans pursuant to § 412. Section 430(h)(2) specifies the interest rates that must be used to determine a plan's target normal cost and funding target. Under this provision, present value is generally determined using three 24-month average interest rates ("segment rates"), each of which applies to cash flows during specified periods. To the extent provided under § 430(h)(2)(C)(iv), these segment rates are adjusted by the applicable percentage of the 25-year average segment rates for the period ending September 30 of the year preceding the calendar year in which the plan year begins. However, an election may be made under § 430(h)(2)(D)(ii) to use the monthly yield curve in place of the segment rates.

Notice 2007–81, 2007–44 I.R.B. 899, provides guidelines for determining the monthly corporate bond yield curve, and the 24-month average corporate bond segment rates used to compute the target normal cost and the funding target. Pursuant to Notice 2007–81, the monthly corporate bond yield curve derived from November 2013 data is in Table I at the end of this notice. The spot first, second, and third segment rates for the month of November 2013 are, respectively, 1.19, 4.53, and 5.66. For plan years beginning on or after January 1, 2012, the 24-month average segment rates determined under § 430(h)(2)(C)(iv) must be adjusted by the applicable percentage of the corresponding 25-year average segment rates. The 25-year average segment rates for plan years beginning in 2012, 2013, and 2014 were published in Notice 2012–55, 2012–36 I.R.B. 332, Notice 2013–11, 2013–11 I.R.B. 610, and Notice 2013–58, 2013–40 I.R.B. 294, respectively. The three 24-month average corporate bond segment rates applicable for December 2013 without adjustment, and the adjusted 24-month average segment rates taking into account the applicable percentages of the corresponding 25-year average segment rates, are as follows:

For Plan Years Beginning In		24-Month Average Segment Rates Not Adjusted			Adjusted 24-Month Average Segment Rates, Based on Applicable Percentage of 25-Year Average Rates		
	Applicable Month	First Segment	Second Segment	Third Segment	First Segment	Second Segment	Third Segment
2012	December 2013	1.28	4.05	5.07	5.54	6.85	7.52
2013	December 2013	1.28	4.05	5.07	4.94	6.15	6.76
2014	December 2013	1.28	4.05	5.07	4.43	5.62	6.22

30-YEAR TREASURY SECURITIES INTEREST RATES

Generally for plan years beginning after 2007, § 431 specifies the minimum funding requirements that apply to multiemployer plans pursuant to § 412. Section 431(c)(6)(B) specifies a minimum amount for the full-funding limitation described in section 431(c)(6)(A), based on the plan's current liability. Section 431(c)(6)(E)(ii)(I) provides that the interest rate used to calculate current liability for this purpose must be no more than 5 percent above and no more than 10 percent below the weighted average of the rates of interest on 30-year Treasury securities during the four-year period ending on the last day before the beginning of the plan year. Notice 88–73, 1988–2 C.B. 383, provides guidelines for determining the weighted average interest rate. The rate of interest on 30-year Treasury securities for November 2013 is 3.80 percent. The Service has determined this rate as the average of the daily determinations of yield on the 30-year Treasury bond maturing in August 2043 determined each day through November 13, 2013, and the yield on the 30-year Treasury bond maturing in November 2043 determined each day for the balance of the month. The following rates were determined for plan years beginning in the month shown below.

For Plan Years Beginning in		30-Year Treasury Weighted Average	Permissible Range		
Month	*Year*		90%	to	105%
December	2013	3.46	3.11		3.63

MINIMUM PRESENT VALUE SEGMENT RATES

In general, the applicable interest rates under § 417(e)(3)(D) are segment rates computed without regard to a 24-month average. Notice 2007–81 provides guidelines for determining the minimum present value segment rates. Pursuant to that notice, the minimum present value segment rates determined for November 2013 are as follows:

First Segment	Second Segment	Third Segment
1.19	4.53	5.66

DRAFTING INFORMATION

The principal author of this notice is Tony Montanaro of the Employee Plans, Tax Exempt and Government Entities Division. Mr. Montanaro may be e-mailed at *RetirementPlanQuestions@irs.gov*.

Table I
Monthly Yield Curve for September 2013
Derived from September 2013 Data

Maturity	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*
0.5	0.32	20.5	5.40	40.5	5.69	60.5	5.80	80.5	5.85
1.0	0.45	21.0	5.42	41.0	5.69	61.0	5.80	81.0	5.85
1.5	0.60	21.5	5.43	41.5	5.70	61.5	5.80	81.5	5.85
2.0	0.78	22.0	5.44	42.0	5.70	62.0	5.80	82.0	5.86
2.5	1.00	22.5	5.45	42.5	5.71	62.5	5.80	82.5	5.86
3.0	1.23	23.0	5.46	43.0	5.71	63.0	5.81	83.0	5.86
3.5	1.48	23.5	5.47	43.5	5.71	63.5	5.81	83.5	5.86
4.0	1.74	24.0	5.48	44.0	5.72	64.0	5.81	84.0	5.86
4.5	2.00	24.5	5.49	44.5	5.72	64.5	5.81	84.5	5.86
5.0	2.25	25.0	5.50	45.0	5.72	65.0	5.81	85.0	5.86
5.5	2.50	25.5	5.50	45.5	5.73	65.5	5.81	85.5	5.86
6.0	2.74	26.0	5.51	46.0	5.73	66.0	5.82	86.0	5.86
6.5	2.98	26.5	5.52	46.5	5.73	66.5	5.82	86.5	5.86
7.0	3.20	27.0	5.53	47.0	5.74	67.0	5.82	87.0	5.86
7.5	3.42	27.5	5.54	47.5	5.74	67.5	5.82	87.5	5.87
8.0	3.61	28.0	5.55	48.0	5.74	68.0	5.82	88.0	5.87
8.5	3.80	28.5	5.55	48.5	5.74	68.5	5.82	88.5	5.87
9.0	3.97	29.0	5.56	49.0	5.75	69.0	5.82	89.0	5.87
9.5	4.13	29.5	5.57	49.5	5.75	69.5	5.83	89.5	5.87
10.0	4.28	30.0	5.58	50.0	5.75	70.0	5.83	90.0	5.87
10.5	4.41	30.5	5.58	50.5	5.75	70.5	5.83	90.5	5.87
11.0	4.54	31.0	5.59	51.0	5.76	71.0	5.83	91.0	5.87
11.5	4.65	31.5	5.60	51.5	5.76	71.5	5.83	91.5	5.87
12.0	4.74	32.0	5.60	52.0	5.76	72.0	5.83	92.0	5.87
12.5	4.83	32.5	5.61	52.5	5.76	72.5	5.83	92.5	5.87
13.0	4.91	33.0	5.62	53.0	5.77	73.0	5.84	93.0	5.87
13.5	4.98	33.5	5.62	53.5	5.77	73.5	5.84	93.5	5.87
14.0	5.04	34.0	5.63	54.0	5.77	74.0	5.84	94.0	5.88
14.5	5.09	34.5	5.63	54.5	5.77	74.5	5.84	94.5	5.88
15.0	5.14	35.0	5.64	55.0	5.78	75.0	5.84	95.0	5.88
15.5	5.18	35.5	5.64	55.5	5.78	75.5	5.84	95.5	5.88
16.0	5.22	36.0	5.65	56.0	5.78	76.0	5.84	96.0	5.88
16.5	5.25	36.5	5.65	56.5	5.78	76.5	5.84	96.5	5.88
17.0	5.27	37.0	5.66	57.0	5.78	77.0	5.84	97.0	5.88
17.5	5.30	37.5	5.66	57.5	5.79	77.5	5.85	97.5	5.88
18.0	5.32	38.0	5.67	58.0	5.79	78.0	5.85	98.0	5.88
18.5	5.34	38.5	5.67	58.5	5.79	78.5	5.85	98.5	5.88
19.0	5.36	39.0	5.68	59.0	5.79	79.0	5.85	99.0	5.88
19.5	5.38	39.5	5.68	59.5	5.79	79.5	5.85	99.5	5.88
20.0	5.39	40.0	5.69	60.0	5.80	80.0	5.85	100.0	5.88

Rev. Proc. 2013–39

26 CFR 31.3504–1: Designation of Agent by Application

SECTION 1. PURPOSE

This Revenue Procedure describes and updates the procedure for requesting the IRS authorize a person to act as agent under section 3504 of the Internal Revenue Code (Code) and §31.3504–1 of the Employment Tax Regulations for purposes of Chapters 21, 22, 24, and 25 of the Code. Special instructions are also set forth for agents authorized to perform acts for purposes of Chapter 23 of the Code.

SECTION 2. BACKGROUND

.01 Chapters 21, 22, 23, 24, and 25 of the Code impose obligations on employers with regard to employment taxes. Specifically, Chapter 21 imposes Federal Insurance Contributions Act (FICA) tax, Chapter 22 imposes Railroad Retirement Tax Act (RRTA) tax, Chapter 23 imposes Federal Unemployment Tax Act (FUTA) tax, Chapter 24 imposes Collection of Income Tax at Source on Wages (income tax withholding), and Chapter 25 provides general provisions relating to employment taxes.

.02 Section 3504 of the Code authorizes the Secretary to promulgate regulations to authorize a fiduciary, agent, or other person ("agent") who has the control of, receives, has custody of, disposes of, or pays the wages of an employee or group of employees, employed by one or more employers, to perform certain specified acts required of employers. Under section 3504, all provisions of law (including penalties) applicable with respect to an employer are applicable to the agent and remain applicable to the employer. Accordingly, both the agent and employer are liable for the employment taxes and penalties associated with the employer's employment tax obligations undertaken by the agent.

.03 Section 31.3504–1(a) as amended by T.D. 9649, effective December 12, 2013, provides that the Internal Revenue Service (IRS) may authorize a person who pays, controls, receives, has custody of, or disposes of (collectively "paid") wages or compensation of an employee or group of employees employed by one or more employers as an agent. The regulation provides that applications for authorization to act as agent shall be signed by the agent and employer and made on the form prescribed by the IRS, and shall be filed with the IRS as prescribed in the instructions to the form and other applicable guidance. Generally this authorization is applicable to FICA tax, RRTA tax, and income tax withholding and relevant general employment tax provisions under the Code.

.04 Section 31.3504–1(b) as amended by T.D. 9649, effective December 12, 2013, permits an agent authorized for purposes of FICA tax and income tax withholding to perform acts required of an employer who is a home care service recipient to also be authorized for purposes of FUTA tax. Section 31.3504–1(b)(2) defines "home care services" to include health care and personal attendant care services rendered to the home care service recipient. Section 31.3504–1(b)(3) defines a "home care service recipient" as an individual who receives home care services while enrolled, and for the remainder of the calendar year after ceasing to be enrolled, in a program administered by a Federal, state, or local government agency that provides Federal, state, or local government funds to pay, in whole or in part, for home care services for that individual.

.05 Rev. Proc. 70–6, 1970–1 C.B. 420, sets forth procedures to be followed in requesting authorization to act as agent under section 3504 for purposes of FICA tax, RRTA tax, income tax withholding, and general provisions relating to employment tax. It provides that application for authorization should be made in writing by the agent, accompanied by Form 2678, *Employer Appointment of Agent*, executed by each employer for whom the agent is to act. The agent must file one return for each tax-return period, and maintain records that will disclose the full wages paid to each employee on behalf of, and identified by, each employer for whom the agent acts.

.06 Rev. Proc. 80–4, 1980–1 C.B. 581, sets forth the procedures to be followed by state and local health and welfare agencies wishing to act as agents under section 3504 for welfare recipients who become the employers of individuals furnished by the agencies to provide in-home domestic service for the welfare recipients. It provides that the state or local agency does not need to receive a Form 2678 from each welfare recipient/employer, so long as its application to the IRS references the document that the welfare recipient/employer filed with the agency appointing the agency as agent. The guidance also provides that when a welfare recipient/employer is liable for FUTA tax, the IRS will interpose no objection if the state or local agency acting as an agent for FICA tax and income tax withholding, also acts as an agent for FUTA tax. However, Rev. Proc. 80–4 does not apply to state and local welfare agencies that contract with outside organizations to provide the in-home domestic services.

.07 Notice 95–18, 1995–1 C.B. 300, provides guidance to household employers on rules regarding federal employment taxes and income tax withholding under section 2 of the Social Security Domestic Employment Reform Act of 1994 (the Act), Pub. L. 103–387. The Act added section 3510 to the Code to provide that returns with respect to domestic service employment taxes be made on a calendar year basis, and amended the FICA provisions of the Code to establish an annual threshold for cash remuneration paid by an employer to an employee for domestic service in a private home of the employer in order to be subject to FICA tax. The notice explains the major changes made by the Act and has a series of questions and answers related to household employers.

Specifically, the notice provides that state and local government health and welfare agencies that act as agents pursuant to Rev. Proc. 80–4 should obtain a separate employer identification number (EIN) for use in reporting taxes with respect to individuals furnished by the agencies to provide household services for recipients of public assistance. It also provides that the IRS will waive penalties for these state and local government health and welfare agencies for failure to deposit the FICA and FUTA taxes and withheld income taxes on wages paid to household employees during 1995, provided all taxes are deposited on or before the due date of the applicable return.

.08 Notice 2003–70, 2003–2 C.B. 916, proposes a revenue procedure giving up-

dated guidance to state and local government agencies on how they can serve as agents ("state agents") under section 3504 for disabled individuals and other welfare recipients ("service recipients") who employ home-care service providers to assist them in their homes. The notice provides that until a final version of the proposed revenue procedure is issued, the IRS will not challenge the way a state meets the employment tax obligations with respect to home-care service providers employed in its in-home domestic services program if the employment taxes are being timely withheld, reported, and paid, and the procedures for reporting and paying the taxes are based on a reasonable, good faith interpretation of existing guidance, including on positions set forth in the proposed revenue procedure.

Notice 2003–70 proposes to modify Rev. Proc. 80–4 to apply not only to state and local agencies that furnish individuals to provide in-home domestic services, but also to state and local agencies that do not furnish the individuals who provide in-home domestic services. The notice allows the state agent to remit taxes with a timely filed return rather than make deposits according to the schedule that would otherwise be applicable under §31.6302–1. It also allows the service recipient to designate the state agent without having to obtain an EIN as he or she would otherwise be required to do in order to execute a Form 2678.

Notice 2003–70 also provides guidance on withholding and reporting rules for third parties acting either as a "reporting agent" of the state agent or as a "subagent" of the state agent. The notice explains that a reporting agent is an accounting service, franchiser, bank, service bureau or other entity authorized to perform one or more acts on behalf of an employer, including sign and file Forms 940, *Employer's Annual Federal Unemployment Tax Act (FUTA) Return*, and 941, *Employer's QUARTERLY Federal Tax Return*, and make federal tax deposits for the taxes reported on these forms. The notice defines a subagent as an individual or entity designated as an agent by a state agent in accordance with Rev. Proc. 70–6 and the notice. Notice 2003–70 provides that both a reporting agent and subagent of a state agent should use the special EIN of the state agent, and file one Form 940 using the name and special EIN of the state agent on behalf of all service recipients for whom it acts. The notice allows the reporting agent of the state agent to remit taxes with a timely filed return. The subagent of the state agent must follow the deposit schedule in §31.6302–1 that is otherwise applicable.

.09 The purpose of this revenue procedure is to update and consolidate the previously issued guidance discussed in this section and incorporate recently finalized rules related to home care service recipients (HCSRs). The updates to the prior guidance principally reflect changes already implemented in IRS administrative processes. For example, the IRS no longer requires an application for authorization to act as agent to accompany Form 2678. Also, Form 941-X, *Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund*, has replaced Form 941c, Supporting Statement To Correct Information, for correcting wages, and since 2010, agents have been required to attach allocation schedules to their aggregate returns. Other changes that modify current procedures are noted.

.10 The term "wages" as used in this revenue procedure shall be construed to include compensation under the RRTA unless the context indicates otherwise.

SECTION 3. GENERAL RULES TO REQUEST AUTHORIZATION TO ACT AS AGENT

.01 To request that the IRS authorize an agent under §31.3504–1 to perform acts required of an employer, the parties must use Form 2678, *Employer/Payer Appointment of Agent.*

.02 The employer submits a properly executed Form 2678 to the person it wishes to appoint as agent, indicating on Form 2678 the acts for which it seeks to appoint the agent and whether the agent will be appointed with regard to some or all of the employer's employees. If the employer anticipates paying any wages (such as taxable noncash fringe benefits or bonuses) to any of its employees, the employer must indicate on Form 2678 that the appointment of the agent is only for some of its employees. To accept the appointment, the agent files Form 2678 with the IRS as provided in the form instructions. If either the employer or the person the employer wishes to appoint as agent has not obtained an EIN prior to the filing of the Form 2678, the agent must include a properly executed Form SS-4, *Application for Employer Identification Number*, with the Form 2678 to request an EIN for the employer or agent as necessary.

.03 If the IRS approves the request, the IRS sends a letter of approval to the agent and employer, except as provided in section 10.03 of this revenue procedure. The authorization to act as agent is effective on the date indicated in the letter of approval mailed by the IRS.

.04 If the IRS approves the request and the authorization is with respect to all the employer's employees, the employer may need to file a final return for any form the agent is authorized to file. Specifically, the employer enters its name and EIN in the spaces provided for the employer and indicates that it is a final return in the manner provided in the form instructions. If the agent was authorized for some employees only (including because the employer was expecting to pay some wages in accordance with section 3.02 of this revenue procedure), the employer does not file a final return, but must continue filing a return with regard to the other employees (or wages). The employer does not file a final return if the employer was not required to file a return prior to the agent's authorization, for example, because the employer had not previously paid wages to any employees.

.05 The provisions of law (including penalties) applicable with respect to an employer that are made applicable to the agent under section 3504 remain applicable to the employer and agent.

SECTION 4. FILING OF RETURNS BY AGENT WITH APPROVED FORM 2678

.01 The agent with an approved Form 2678 is required to file one return for each tax-return period reporting the wages and employment taxes on the wages paid to its employees, and the wages and employment taxes on the wages paid by the agent to the employees of each employer for whom the agent is authorized to act ("aggregate return").

.02 The agent's name and EIN are entered in the spaces provided for the em-

ployer on the returns, and the returns are to be executed in accordance with the form instructions.

.03 The agent must complete an allocation schedule and attach it to each aggregate return as described in the form instructions. On the allocation schedule, the agent lists the name and EIN of each employer for whom the agent is authorized to act and allocates the wages, taxes, and payments reported on the aggregate return to each employer. For example, the IRS has designated Schedule R (Form 941), *Allocation Schedule for Aggregate Return Filers*, as the allocation schedule to attach to an aggregate Form 941. The agent is responsible for maintaining records that show the wages paid by the agent to each employee on behalf of, and identified by, each employer for whom the agent is authorized to act. The employer is responsible for maintaining records that show the wages paid by the agent to its employees. See §§31.6001–1 through 31.6001–5.

.04 The wages paid to an employee are considered with respect to each employer separately, and not in conjunction with the wages paid to the employee by the agent as employer or by the agent on behalf of any other employer, for purposes of any dollar threshold or wage base applicable in determining the employment tax liability.

.05 Generally, the agent furnishes and files one Form W-2, *Wage and Tax Statement*, for each employee. The agent's EIN is entered in the spaces provided for the employer. The name of the agent, followed by "Agent for (name of employer)," is entered in the space provided for the employer. If the agent (a) is acting as an agent for two or more employers or is an employer and is acting as an agent for another employer, (b) pays social security wages to an individual on behalf of more than one employer, and (c) the total of the individual's social security wages from these employers is greater than the social security wage base, the agent furnishes and files separate Forms W-2 for the affected employee reflecting the wages paid by each employer.

SECTION 5. DEPOSITS BY AGENT WITH APPROVED FORM 2678

Except as provided in section 10.05 of this revenue procedure, the deposit rules apply to the agent with an approved Form 2678 based on the total employment taxes accumulated by the agent for its own employees and on behalf of all employers for whom the agent is authorized to act. The deposit rules that would have applied to any employer for whom the agent acts, had the agent not been authorized, do not apply to the agent.

SECTION 6. CORRECTIONS OF WAGES BY AGENT WITH APPROVED FORM 2678

Wages erroneously reported by the agent must be corrected by the agent on behalf of the employer using the form that corresponds to the return being corrected. For example, the IRS has designated Form 941-X as the form to correct errors on a previously filed Form 941. The agent attaches an allocation schedule as prescribed in the instructions for the form being filed. The name and EIN of the agent are entered in the spaces provided for the employer as it appeared on the return being corrected. Generally, the agent's obligation to make the correction is not affected by a subsequent revocation of the authorization as discussed in section 9 of this revenue procedure. However, an agent may not make corrections after its authorization to act as agent is revoked by the IRS under section 9.02 of this revenue procedure.

SECTION 7. USE OF REPORTING AGENT BY AGENT WITH APPROVED FORM 2678

.01 A reporting agent is an accounting service, franchiser, bank, service bureau, or other entity authorized to perform one or more acts on behalf of a taxpayer. See Rev. Proc. 2012–32, 2012–35 I.R.B. 1, for rules related to reporting agent authorizations and a description of the acts that may be performed by reporting agents. An agent with an approved Form 2678 may designate a reporting agent to sign and file certain employment tax returns and make tax deposits on behalf of the agent.

.02 The reporting agent files only one return on behalf of the agent for each tax-return period. The agent's name and EIN, not the reporting agent's name and EIN, are entered in the spaces provided for the employer on the returns. If the return instructions prescribe an allocation schedule, the reporting agent is required to enter the name and EIN of the agent as shown on the return, and list the name and EIN of each employer for whom the agent is authorized to act in the spaces provided for clients.

.03 The deposit rules that apply to the agent continue to apply with regard to deposits made by the reporting agent.

.04 The agent is responsible for maintaining records that show the wages paid by the agent to each employee on behalf of, and identified by, each employer for whom the agent is authorized to act. The employer is responsible for maintaining records that show the wages paid by the agent to its employees. See §§31.6001–1 through 31.6001–5.

.05 The provisions of law (including penalties) applicable with respect to an employer that are made applicable to the agent under section 3504 remain applicable to the employer and agent.

SECTION 8. USE OF SUBAGENT BY AGENT WITH APPROVED FORM 2678

.01 An agent with an approved Form 2678 ("first agent" for purposes of this section) may want to appoint an agent under section 3504 ("subagent") using the procedures described in section 3 of this revenue procedure.

.02 If the subagent is authorized by the IRS, the rules described in section 4 related to filing of returns apply to the subagent as an agent. For example, the subagent is required to attach Schedule R (Form 941) with its own name and EIN entered as shown on the return, and list the name and EIN of each employer who appointed the first agent, and for whom the subagent is authorized to act, in the spaces provided for clients. Unless the subagent is appointed to deposit, pay, and file on behalf of the first agent in the agent's capacity as employer, the first agent is not listed as a client on Schedule R (Form 941).

.03 The rules described in section 5 of this revenue procedure related to deposits and section 6 of this revenue procedure related to corrections of wages apply to the subagent as an agent.

.04 The subagent and agent are responsible for maintaining records that show

the wages paid by the subagent to each employee on behalf of, and identified by, each employer for whom the subagent is authorized to act. The employer is responsible for maintaining records that show the wages paid by the agent and subagent to its employees. See §§31.6001–1 through 31.6001–5.

.05 The provisions of law (including penalties) applicable with respect to an employer that are made applicable to the subagent and the first agent under section 3504 remain applicable to the employer, first agent, and subagent.

SECTION 9. REVOCATION OF AUTHORIZATION OF AGENT WITH APPROVED FORM 2678

.01 The employer or agent with an approved Form 2678 may request the IRS revoke an existing authorization using Form 2678, executed by the party seeking to revoke the appointment. Except as provided in section 10.07 of this revenue procedure, the IRS confirms the revocation by letter to the agent and employer, and the revocation is effective on the date indicated in the letter mailed by the IRS.

.02 The IRS may independently revoke an existing authorization if the facts and circumstances indicate such revocation is warranted. Except as provided in section 10.07 of this revenue procedure, the revocation is by notice to the agent and employer. The revocation of the authorization is effective when the IRS mails the notice.

.03 An agent files Form 2678 to revoke an authorization if there is no longer an agency relationship, for example, because the employer or agent goes out of business, the employer no longer exists due to a merger or acquisition, the employer is deceased, or the employer appoints another person on Form 2678 to act as agent for the same acts the agent is authorized to perform.

.04 If the agency relationship is being terminated because the employer appoints another person to act as agent, the agent whose authorization is being revoked is liable to report, deposit, and pay taxes on behalf of the employer with regard to wages it paid during periods for which it was authorized to act as agent of the employer. It remains liable for such employment taxes even after the authorization is revoked as provided in this section.

SECTION 10. SPECIAL RULES FOR AGENTS OF HOME CARE SERVICE RECIPIENTS, INCLUDING FOR STATE AGENTS

.01 Except as otherwise provided in this section, the rules generally applicable to agents and employers described in sections 3, 4, 5, 6, 7, 8, and 9 of this revenue procedure shall apply to a person authorized to act as agent for an employer who is a home care service recipient (HCSR) as defined in §31.3504–1(b)(3). This section also sets forth special rules that apply to state agents. For purposes of this revenue procedure, a state agent is a state or local government agency administering a program to provide home care services, as defined in §31.3504–1(b)(2), which has been authorized by the IRS as agent for a HCSR. Only government agencies can be state agents. Third parties, whether nonprofit or for-profit, that are engaged by a government agency to administer all or some aspects of a home care services program are not state agents for purposes of this revenue procedure.

.02 Section 31.3504–1(b) provides that the IRS may authorize a person to act as agent on behalf of an employer who is a HCSR with respect to FUTA taxes imposed on wages paid for home care services, as defined in §31.3504–1(b)(2), provided that the person has been authorized to act as agent for the HCSR for income tax withholding and FICA tax purposes under §31.3504–1(a).

.03 The general rules to request authorization to act as agent set forth in section 3 of this revenue procedure apply to request authorization to act as agent for a HCSR, including for FUTA tax purposes, except that the letter mailed by the IRS approving the request will only be sent to the agent. Sections 10.03(1) through 10.03(3), below, provide special rules for state agents when requesting authorization to act as agent of HCSRs.

(1) A state agent may request authorization from the IRS without filing Form 2678 on behalf of each HCSR for whom the state agent seeks to act. In lieu of Form 2678, the state agent may solicit appointment by each HCSR on the forms the individuals must complete in order to enroll in the program administered by the state agent. The state agent submits a letter to the IRS address to which it would have been required to submit the Forms 2678. The letter must reference the forms appointing the state agent and identify each HCSR for whom the state agent wishes to be authorized by either (a) including each HCSR's name and EIN on a list, or (b) including a properly executed Form SS-4 for the HCSR if the HCSR has not previously obtained an EIN, with its letter to the IRS. State agents were not previously required to notify the IRS of the HCSRs for whom they acted; however, notification is now necessary to ensure the IRS' records properly reflect the parties' filing requirements and to ensure the correct taxes are reported and paid by the agent on behalf of each HCSR. The notification procedures apply with respect to each HCSR who enrolls in the program and wishes to appoint the state agent. The state agent must also notify the IRS of each HCSR for whom its authority to act as agent is revoked.

(2) Because Rev. Proc. 80–4 allowed HCSRs to appoint state agents without filing Form 2678, Notice 2003–70, Q&A 10, provided that HCSRs who appoint state agents do not need to obtain an EIN if an EIN is not required for any other purpose. The IRS now requires all agents to file allocation schedules which show information for each employer, identified by the employer's EIN. Therefore, all HCSRs, including those whose agents were authorized before the effective date of this revenue procedure, must now obtain an EIN so the state agent may fulfill its reporting obligations to the IRS. See also section 6109 and §31.6011(b)–1. As indicated in section 10.03(1) of this revenue procedure, if the HCSR has not previously obtained an EIN, the state agent may assist a HCSR in applying for an EIN by including a properly executed Form SS-4 on behalf of the HCSR with the state agent's request for authorization to act as agent. HCSRs whose agents were authorized before the effective date of this revenue procedure who do not have an EIN must apply for an EIN within a reasonable period of time after the effective date of this revenue procedure.

(3) All state agents should use Form SS-4 to request a special EIN for the state

agent to report and pay taxes on behalf of the HCSRs for whom the state agent acts. The application for the special EIN should indicate the state agent is a government entity. The state agent may not use its special EIN to report or pay employment taxes for wages paid for services other than home care services, or for an employer who is not a HCSR.

.04 The filing of return procedures set forth in section 4 of this revenue procedure apply to agents authorized to act on behalf of a HCSR for any returns the agent is authorized to file. For example, the agent with an approved Form 2678 for FUTA tax purposes files one aggregate Form 940 for each tax-return period reporting the FUTA tax liability related to wages it pays to its employees and to wages it pays for home care services to employees of each HCSR for whom the agent is authorized to act. The IRS has designated Schedule R (Form 940), *Allocation Schedule for Aggregate Form 940 Filers*, as the allocation schedule to attach to an aggregate Form 940. Sections 10.04(1) through 10.04(3), below, provide special rules for state agents filing returns on behalf of HCSRs.

(1) As indicated in section 10.03(3) of this revenue procedure, state agents should obtain a separate EIN to report and pay employment taxes on behalf of HCSRs. The state agent enters its own name and special EIN in the spaces provided for the employer.

(2) If the state agent designates a reporting agent, the reporting agent must use the state agent's name and special EIN to report and pay employment taxes on behalf of the HCSRs for whom the state agent is authorized to act.

(3) If the state agent appoints a subagent, the subagent must use its own name and EIN to report and pay employment taxes on behalf of the HCSRs for whom the state agent is authorized to act. Notice 2003–70, Q&A 27 permitted the subagent to use a state agent's special EIN in order to be able to report and pay FUTA taxes on behalf of HCSRs. However, now that §31.3504–1(b) provides that any person, not just a state agent, may be authorized as agent of a HCSR with respect to FUTA taxes owed for home care services, it is no longer necessary for the subagent to use the state agent's special EIN in order to act as an agent for FUTA tax purposes. Furthermore, because the subagent is subject to normal deposit rules, and the deposit rules that apply to the state agent discussed in section 10.06 of this revenue procedure do not apply to the subagent, the use of the state agent's special EIN by the subagent is not appropriate.

.05 An agent authorized to act on behalf of a HCSR furnishes and files a Form W-2 for each employee on behalf of each HCSR, unless the compensation is excepted from both income tax withholding and FICA tax.

.06 The deposit procedures set forth in section 5 of this revenue procedure apply to an agent authorized to act on behalf of a HCSR for any deposits the agent is required to make. Sections 10.06(1) through 10.06(3), below, provide special rules for state agents when making deposits.

(1) A state agent may remit FICA tax, FUTA tax, and income tax withholding on behalf of a HCSR with a timely filed return, and the IRS will not assess any penalties for failure to deposit timely. Other penalties may apply, for example, if taxes are not paid or if a correct return is not timely filed.

(2) If the state agent uses a reporting agent, the reporting agent may deposit taxes with a timely filed return.

(3) If the state agent uses a subagent, the deposit rules apply to the subagent based on the total taxes accumulated by the subagent for its employees and on behalf of all employers, including HCSRs, for whom it is authorized to act. The deposit rules that would have applied to any employer, or to the state agent, had the subagent not been appointed, do not apply to the subagent.

.07 The revocation procedures set forth in section 9 of this revenue procedure are generally followed to revoke an appointment of an agent authorized to act on behalf of a HCSR, except that the letter confirming the revocation will only be sent to the agent. Sections 10.07(1) through 10.07(4), below, provide special rules related to revocations for FUTA tax purposes.

(1) Under §31.3504–1(b), the agent may only act for FUTA tax purposes for a HCSR while the HCSR is enrolled, and for the remainder of the calendar year in which he or she ceases to be enrolled, in a government program. If a HCSR ceases to be enrolled in a government program during the year, an agent may report and pay FUTA taxes on behalf of that HCSR either for the entire calendar year, or for a portion of the calendar year, as described in sections 10.07(2) and 10.07(3) below.

(2) The agent may report and pay FUTA taxes on wages it paid for home care services for the HCSR for the entire calendar year in which the HCSR ceases to be enrolled, but not after such year. The agent files a Form 2678 to request the IRS to revoke the authorization with respect to FUTA taxes by the end of the calendar year in which the individual ceases to be a HCSR.

(3) The agent may report and pay FUTA taxes only for the portion of the year it paid wages for home care services for the HCSR. If the agent stops paying wages for home care services for the HCSR before the end of the calendar year, the agent must file a Form 2678 to request the IRS to revoke the authorization for FUTA taxes when the agent stops paying wages or otherwise stops acting as agent with respect to the HCSR's FUTA taxes.

(4) Under either sections 10.07(2) or 10.07(3), above, the agent may still act as agent with respect to the individual's FICA tax and income tax withholding responsibilities.

SECTION 11. EXAMPLES

The rules provided in this revenue procedure are illustrated by the following examples.

Example 1. *Final return.* Employer B and Agent W complete and file Form 2678 to request the IRS authorize Agent W to file Form 941 with respect to all of Employer B's employees. The IRS approves the authorization effective April 1, 2014. Employer B files a Form 941 for the first quarter of 2014, indicating that it is a final return by checking the appropriate box and entering that it stopped paying wages as of March 31, 2014. For periods beginning on and after April 1, 2014, Agent W pays wages to all of Employer B's employees, makes related employment tax deposits and payments, and reports the wages and taxes on an aggregate Form 941. Agent W attaches Schedule R (Form 941) listing Employer B as a client.

Example 2. *No final return.* Same facts as Example 1, except that Employer B is a new business that has not paid wages to any employees prior to the effective date of the authorization. Therefore, Employer B does not file a final Form 941.

Example 3. *Authorization for some employees.* Employer C and Agent V complete and file Form 2678 to request the IRS authorize Agent V to file Form 941 with respect to some of Employer C's employees. The IRS approves the authorization effective April 1, 2014. For periods beginning on and after April 1, 2014, Agent V pays wages to some of Employer C's employees, makes related employment tax deposits and payments, and reports the wages and taxes on an aggregate Form 941. Agent V attaches Schedule R (Form 941) listing Employer C as a client. Employer C continues to pay wages for some employees, make related employment tax deposits, and report the wages and taxes on its Form 941.

Example 4. *HCSR and other employer.* Agent Y is authorized to file Form 941 for Employer S and for Employer T, who is a home care service recipient (HCSR) as defined in §31.3504–1(b)(3). Agent Y is also authorized to file Form 940 for Employer T.

Agent Y pays wages to all of Employer S's and Employer T's employees, makes related employment tax deposits and payments, and reports the wages and taxes on an aggregate Form 941. Agent Y attaches Schedule R (Form 941) listing Employer S and Employer T as clients. Agent Y also reports wages and taxes with respect to home care services provided to Employer T on an aggregate Form 940. Agent Y attaches Schedule R (Form 940) listing Employer T as a client. Employer S files Form 940 with respect to wages paid to its employees.

Example 5. *State agent.* State K funds a program to provide home care services to eligible individuals. Department H administers the home care services program, including disbursing the funds to pay for the services. Each of the individuals enrolled in the program is a HCSR, as defined in § 31.3504–1(b)(3).

As part of the enrollment process, each HCSR completes a form to appoint Department H as agent under section 3504 of the Code to file Form 940 and Form 941 for the HCSRs. Department H sends a letter to the IRS stating it is a government agency that wishes to become a state agent. Department H attaches to the letter a sample copy of the form it uses to be appointed by a HCSR, a list of the names and EINs of each HCSR that has appointed Department H as agent, and a Form SS-4 with respect to each HCSR named in its letter that does not have an EIN. Department H also attaches a Form SS-4 to apply for a special EIN for it to use as state agent of the HCSRs enrolled in its home care services program that have appointed Department H as agent. Department H receives a letter from the IRS authorizing it as agent for each HCSR.

Department H pays wages to the HCSR's employees and reports the wages and taxes on an aggregate Form 941, with its name and special EIN entered in the space provided for the employer. Department H attaches Schedule R (Form 941), listing each HCSR as a client. Because Department H is a state agent, it remits payment with its timely filed aggregate Form 941.

Department H also reports wages and taxes with respect to the HCSRs on an aggregate Form 940 with its name and special EIN entered in the space provided for the employer. Department H attaches Schedule R (Form 940), listing each HCSR as a client. Because Department H is a state agent, it remits payment with its timely filed aggregate Form 940.

Example 6. *State agent designates reporting agent.* Same facts as Example 5. The following year (Year 2) Department H designates reporting agent R with respect to HCSRs for whom Department H is authorized as state agent, by following the procedures described in Rev. Proc. 2012–32. Reporting agent R enters Department H's name and special EIN in the space provided for the employer on the aggregate employment tax returns and on the attached allocation schedules. Reporting agent R lists each HCSR as a client on each allocation schedule. Reporting agent R also remits payment for employment taxes with the timely filed employment tax returns.

Example 7. *State agent appoints subagent.* Same facts as Example 5, except in Year 2, Department H appoints S as its subagent on Form 2678 with respect to the HCSRs for whom Department H is authorized as state agent. The IRS approves the authorization.

Subagent S pays wages to the HCSRs' employees, makes related employment tax deposits and payments, and reports the wages and taxes on an aggregate Form 941, with its name and EIN entered in the space provided for the employer. Subagent S attaches Schedule R (Form 941), listing each HCSR as a client. Subagent S also reports wages and taxes with respect to the HCSRs on an aggregate Form 940 with its name and EIN entered in the space provided for the employer. Subagent S attaches Schedule R (Form 940), listing each HCSR as a client.

Example 8. *Form 940 revocation – end of year.* Individual A, a HCSR as defined in §31.3504–1(b)(3), has only home care service employees. Individual A and Agent X complete and file Form 2678 to request the IRS to authorize Agent X to file Form 941 and Form 940 with respect to the employees providing home care services to Individual A. The IRS approves the authorization effective January 1, 2014.

On July 31, 2014, Individual A ceases to be enrolled in the government program but continues to receive home care services which Agent X pays for with private funds provided by Individual A. Under §31.3504–1(b)(3), Individual A continues to be a HCSR for the remainder of the calendar year after ceasing to be enrolled in the government program.

Agent X reports the wages and taxes with respect to Individual A for the entire year on an aggregate Form 940. Agent X attaches Schedule R (Form 940) listing Individual A as a client.

The IRS approves Agent X's request, filed on Form 2678, to revoke its authorization to file Form 940 for Individual A, effective December 31, 2014. Agent X remains authorized to file Form 941 for Individual A.

Example 9. *Form 940 revocation – before end of year.* Same facts as Example 8, except that the IRS approves Agent X's request, filed on Form 2678, to revoke its authorization to file Form 940 for Individual A, effective August, 1, 2014.

Agent X reports the wages and taxes accrued with respect to Individual A on or

before July 31, 2014, on an aggregate Form 940. Agent X attaches Schedule R (Form 940), listing Individual A as a client. Individual A is responsible for reporting wages and taxes accrued with respect to wages paid for home care services on or after August 1, 2014.

SECTION 12. EFFECT ON OTHER DOCUMENTS

Notice 95–18, 1995–1 C.B. 300, is modified in part. Rev. Proc. 70–6, 1970–1 C.B. 420, Rev. Proc. 80–4, 1980–1 C.B. 581, and Notice 2003–70, 2003–2 C.B. 916, are modified and superseded. This document does not affect authorizations in effect under Rev. Proc. 70–6, Rev. Proc. 80–4, or by reasonable reliance on Notice 2003–70, as of the effective date of this revenue procedure. However, agents must follow the rules of this revenue procedure after its effective date to make requests for authorization to act as agent and, with regard to all authorizations, to make employment tax payments and deposits, and to file and correct employment tax returns.

SECTION 13. EFFECTIVE DATE

This revenue procedure is effective December 12, 2013.

SECTION 14. DRAFTING INFORMATION

The principal author of this revenue procedure is Michelle R. Weigelt of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this revenue procedure contact Michelle R. Weigelt at 202-317-6798 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking and Notice of Public Hearing

Dividend Equivalents from Sources within the United States

REG–120282–10

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking, notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document provides guidance to nonresident alien individuals and foreign corporations that hold certain financial products providing for payments that are contingent upon or determined by reference to U.S. source dividend payments and to withholding agents. It withdraws proposed regulations under section 871(m) that were published in the **Federal Register** on January 23, 2012 (77 FR 3202). This document also provides a notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by March 5, 2014. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for April 11, 2014, at 10 a.m., must be received by March 5, 2014.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–120282–10), room 5203, 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–120282–10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–120282–10). The public hearing will be held in the auditorium, beginning at 10 a.m., at the Internal Revenue Service Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, D. Peter Merkel or Karen Walny at (202) 317-6938 (not a toll-free number); concerning submission of comments, the hearing, or to be placed on the building access list to attend the hearing, Oluwafunmilayo (Funmi) Taylor, Publications and Regulations Branch Specialist, at (202) 317-6901 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Office for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by February 3, 2014. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collections of information in this notice of proposed rulemaking are in §§1.871–15(j) and (o), and are an increase in the total annual burden in the current regulations under §§1.1441–1 through 1.1441–9, 1.1461–1 and 1.1474–1. Under §1.871–15(o), a broker, dealer, or short party is required to provide information relating to a potential section 871(m) transaction in a commercially reasonable fashion. The information may include whether the transaction is a section 871(m) transaction, the delta of the transaction, estimates of dividends, and the amount of the dividend equivalents. This information is required to establish whether a payment is treated as a U.S. source dividend for purposes of section 871(m). This information will be used for audit and examination purposes. The likely respondents are businesses and other for-profit institutions.

Estimated total annual reporting burden is 240,000 hours.

Estimated average annual burden per respondent is 8 hours.

Estimated average burden per response is 4 minutes.

Estimated number of respondents is 30,000.

Estimated total annual frequency of responses is 4,000,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by 26 U.S.C. 6103.

Background

On January 23, 2012, the **Federal Register** published temporary regulations (TD 9572) at 77 FR 3108 (2012 temporary regulations) and a notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing at 77 FR 3202 (2012 proposed regulations,

and together with the 2012 temporary regulations, 2012 section 871(m) regulations) under section 871(m) of the Internal Revenue Code (Code). The 2012 section 871(m) regulations related to dividend equivalents from sources within the United States paid to nonresident alien individuals and foreign corporations. Corrections to the 2012 temporary regulations were published on February 6, 2012, and March 8, 2012, in the **Federal Register** at 77 FR 5700 and 77 FR 13969, respectively. A correcting amendment to the 2012 temporary regulations was also published on August 31, 2012, in the **Federal Register** at 77 FR 53141. The Treasury Department and the IRS received written comments on the 2012 proposed regulations, which are available at *www.regulations.gov*. A public hearing was held on April 27, 2012.

This document withdraws the 2012 proposed regulations and provides new proposed regulations (2013 proposed regulations). Based on comments received on the 2012 proposed regulations, the Treasury Department and the IRS believe that the 2013 proposed regulations better identify (1) when a notional principal contract (NPC) "is of a type which does not have the potential for tax avoidance" and (2) other payments that are dividend equivalents because they are substantially similar to specified NPC payments and substitute dividend payments.

This preamble discusses section 871(m), describes the 2012 section 871(m) regulations, summarizes the comments received on the 2012 section 871(m) regulations, and explains the 2013 proposed regulations.

1. *Section 871(m)*

Congress enacted section 871(m) (originally designated as section 871(l)) on March 18, 2010, in section 541 of the Hiring Incentives to Restore Employment Act (HIRE Act), Public Law 111–147 (124 Stat. 71). Section 871(m) treats a dividend equivalent as a dividend from sources within the United States for purposes of sections 871(a), 881, and 4948(a), and chapters 3 and 4 of subtitle A of the Code. Section 871(m) applies to any dividend equivalent paid on or after September 14, 2010. Section 871(m)(5) provides that the term payment includes any gross amount that is used in computing any net payment that is transferred to or from the taxpayer.

Section 871(m)(2) defines a dividend equivalent as (1) any substitute dividend made pursuant to a securities lending or a sale-repurchase transaction that (directly or indirectly) is contingent upon or determined by reference to the payment of a dividend from sources within the United States, (2) any payment made pursuant to a specified NPC that (directly or indirectly) is contingent upon or determined by reference to the payment of a dividend from sources within the United States, or (3) any other payment that the Secretary determines is "substantially similar" to a specified NPC payment or substitute dividend payment.

Section 871(m)(3) defines the term specified NPC. For payments made on or after September 14, 2010, and on or before March 18, 2012, section 871(m)(3)(A) defines a specified NPC as any NPC if (1) the long party transferred the underlying security to the short party in connection with entering into the NPC, (2) the short party transferred the underlying security to the long party in connection with the termination of the NPC, (3) the underlying security is not readily tradable on an established securities market, (4) the short party posted the underlying security as collateral with the long party, or (5) the NPC is identified by the Secretary as a specified NPC. For payments made after March 18, 2012, section 871(m)(3)(B) provides that any NPC is a specified NPC unless the Secretary determines that the NPC is of a type that does not have the potential for tax avoidance.

2. *2012 Section 871(m) Regulations*

The 2012 section 871(m) regulations provided guidance regarding dividend equivalents under section 871(m). Generally, the 2012 section 871(m) regulations defined the terms specified NPC and substantially similar payment, addressed certain issues regarding withholding of tax with respect to the payment of a dividend equivalent, and provided other rules relating to dividend equivalents.

Section 1.871–15(c) of the 2012 proposed regulations provided that a dividend equivalent included any gross amount used to compute any net amount transferred to or from the taxpayer, even if the taxpayer made a net payment or no payment was made because the net amount was zero. A dividend equivalent, however, did not include any amount determined by reference to an estimate of an expected (but not yet announced) dividend. This exception did not apply if the estimate adjusted to reflect the amount of the actual dividend.

Section 1.871–16 of the 2012 section 871(m) regulations defined the term specified NPC with respect to payments made after March 18, 2012. For payments made prior to January 1, 2014, the 2012 temporary regulations (as amended by the correcting amendment published at 77 FR 53141) defined a specified NPC using substantially the same definition as provided in section 871(m)(3)(A). For payments made on or after January 1, 2014, the 2012 proposed regulations defined a specified NPC as an NPC that meets one or more of the following factors: (1) the long party is "in the market" on the same day that the parties priced or terminated the NPC; (2) the underlying security is not regularly traded on a qualified exchange; (3) the short party posts the underlying security as collateral and the underlying security represents more than ten percent of the collateral posted by the short party; (4) the actual term of the NPC is fewer than 90 days; (5) the long party controls the short party's hedge; (6) the notional principal amount is greater than five percent of the total public float of the underlying security or greater than 20 percent of the 30-day daily average trading volume; or (7) the NPC is entered into on or after the announcement of a special dividend and prior to the ex-dividend date.

Section 1.871–15(d) of the 2012 proposed regulations described payments that are substantially similar to substitute dividends made pursuant to securities lending and sale-repurchase transactions and to payments made pursuant to specified NPCs. A substantially similar payment was any (1) gross-up amount paid by a short party in satisfaction of the long party's tax liability with respect to a dividend equivalent, or (2) payment made pursuant to an equity-linked instrument (ELI) that was calculated by reference to a dividend from sources within the United States if

the ELI satisfied one or more of the specified NPC factors.

The 2012 proposed regulations provided that certain indices referenced by an NPC or ELI would not be underlying securities, and therefore, would not be subject to section 871(m). Section 1.871–16(f)(1) of the 2012 proposed regulations provided that each component security of a customized index would be treated as an underlying security in a separate NPC. Section 1.871–16(f)(3) of the 2012 proposed regulations defined a customized index as (1) a "narrow-based index," which was generally defined based on the Securities Exchange Act of 1934, section 3(a)(55)(B); or (2) any other index unless futures contracts or options contracts referencing the index trade on a qualified board or exchange.

The 2012 section 871(m) regulations provided rules under section 1441 to require a withholding agent to withhold tax owed with respect to a dividend equivalent. Many of these amendments and proposals simply coordinated the rules in §1.871–16T of the 2012 temporary regulations and §§1.871–15 and 1.871–16 of the 2012 proposed regulations with the withholding rules in chapter 3 of the Code. Section 1.1441–3(h)(2) of the 2012 proposed regulations explained the procedures for withholding when an NPC became a specified NPC after the date that the parties entered into the NPC. The proposed regulations provided that the term dividend equivalent included any payment that was made prior to the date the NPC became a specified NPC and that was (directly or indirectly) contingent upon or determined by reference to the payment of a dividend from sources within the United States.

3. *Summary of Comments on the 2012 Section 871(m) Regulations*

The Treasury Department and the IRS received numerous comments regarding the 2012 section 871(m) regulations. The major concerns raised in the comments related to (1) the definition of a specified NPC, (2) the definition of an ELI, (3) withholding issues that arise regarding the payment of a dividend equivalent, (4) the potential for over-withholding in a chain of transactions, (5) the treatment of indices, and (6) the effective date of the 2012 proposed regulations.

A. *Definition of Specified NPC*

Several comments on the 2012 proposed regulations stated that the seven-factor approach to defining a specified NPC would not accurately identify tax avoidance transactions. These comments asserted that the factors could treat a contract as a specified NPC even when the contract was not entered into primarily to avoid withholding. Similarly, comments noted that some tax-motivated transactions would not be subject to tax under section 871(m) because the transaction would not meet any of the seven factors. These comments generally recommended substantial modification to the factors used in the 2012 proposed regulations.

Comments stated that the term of a contract does not indicate the potential for tax avoidance. Comments noted that the term rule could result in retroactive withholding obligations and that it would be difficult for withholding agents to design systems to monitor withholding obligations that may arise after a payment has been made. Other comments asserted that 90 days was not the appropriate threshold for a minimum term and suggested eliminating the 90-day term factor or reducing the minimum term. Another comment acknowledged that the length of the term may indicate that a contract has a tax avoidance motive; however, this comment recommended adding an exception for termination events that are beyond the control of the parties to the transaction.

Comments asserted that withholding agents and taxpayers would have difficulty applying the "in the market" factor. Those comments recommended that a long party should be treated as being "in the market" only when the long party sold or purchased the underlying security "in connection with" entering into or terminating an NPC. In addition, several comments indicated that withholding agents would have difficulty determining whether a long party was "in the market" and would have to rely on representations from the long party to the withholding agent.

B. *Definition of ELI*

Comments stated that the definition of a specified ELI in the 2012 proposed regulations was overly broad because numerous types of ELIs do not give rise to the policy concerns underlying section 871(m). The comments requested that the final regulations limit the scope of the term ELI to contracts that provide delta-one or near-delta-one exposure to the underlying equity. One comment explained that the delta of an instrument reflects the change in the value of the instrument relative to a change in the value of the underlying security. These comments asserted that non-delta-one derivatives do not provide investors with a substitute for physical ownership of the underlying security. One comment, however, disagreed that a delta-based standard is the appropriate criteria for ELIs. This comment stated that a delta-based standard would provide non-delta-one financial instruments with a competitive advantage over delta-one products because non-delta-one financial instruments would be subject to more favorable tax treatment.

Another comment suggested that the term ELI should not include single stock futures contracts (SSFs) unless the SSF is an "exchange future for physical" (EFP). That comment described an EFP as a transaction in which an investor (1) sold stock and purchased an SSF for future delivery of the same stock or (2) purchased stock and sold an SSF to deliver the same stock in the future. The comment maintained that an SSF, other than an EFP, should not be treated as an ELI because SSFs trade on a regulated exchange, unlike bilateral over-the-counter contracts. The comment also asserted that an adjustment to the settlement price of an SSF is not a payment upon which withholding may be applied.

Similarly, several comments recommended that the final regulations provide an exception to the term ELI for exchange-traded options because many of these options do not provide close economic substitutes for owning stock. These comments explained that two of the seven specified NPC factors will apply to many standard exchange-traded options. First, the majority of exchange-traded options have an initial term of less than 90 days. Second, when an investor exercises an exchange-traded call

option, the investor acquires the underlying securities because the terms of the transaction require physical settlement. If exchange-traded options continue to be treated as ELIs, these comments recommended that the final regulations account for the differences between over-the-counter and exchange-traded options.

C. *Withholding issues*

Comments requested clarification on how the 2012 proposed regulations would interact with the withholding rules of chapter 3. Comments asserted that the 2012 proposed regulations did not clearly address whether intermediaries, custodians, clearing organizations, and members of clearing organizations are withholding agents. Due to the large volume of transactions cleared by exchanges on a daily basis, one comment noted that it would be impractical to treat an exchange as a withholding agent. Other comments stated that the 2012 proposed regulations would impose an undue burden on broker-dealers with non-U.S. customers because the broker-dealers would have to develop complicated systems to determine whether an instrument is an ELI and the amount of any dividend equivalent.

Other comments suggested limiting a withholding agent's liability for withholding tax with respect to dividend equivalents. Comments stated that a withholding agent should not be liable for U.S. tax when the withholding agent lacks the information necessary to determine whether a transaction constitutes a specified NPC. For instance, comments noted that a withholding agent may not know whether a long party is selling or purchasing underlying securities on the same day that a specified NPC or ELI is entered into or terminated. A comment asserted that withholding for U.S. tax would be complicated and impractical if the final regulations do not limit a withholding agent's knowledge to the information available to the withholding agent at the trading unit level.

Comments also questioned the rule in §1.1441–3(h)(2) of the 2012 proposed regulations treating all payments as dividend equivalents if a contract became a specified NPC only as a result of the long party acquiring physical shares upon termination ("crossing out"). Comments stated that the 2012 proposed regulations unfairly would have required a withholding agent to withhold for U.S. tax on all payments made pursuant to a contract that would be treated as dividend equivalents when the contract only became a specified NPC because of a "cross out" at the end of the contract. Other comments recommended that this rule prescribing retroactive treatment of a payment as a dividend equivalent should apply only to NPCs that are specified NPCs because they meet the "in the market" or the 90-day factor.

D. *Chain of transactions*

Several comments stated that a chain of equity derivatives could result in the collection of cascading U.S. tax, for example, when each transaction in a chain of back-to-back equity derivatives referencing the same underlying security is subject to U.S. withholding tax. Some comments recommended that the final regulations incorporate specified NPCs into the qualified securities lender and credit forward regimes described in Notice 2010–46, 2010–24 I.R.B. 757, which outlines a framework for limiting the amount of U.S. tax withheld in a chain of securities lending or sale-repurchase transactions. See §601.601(d)(2)(ii)(*b*). Other comments recommended that certain transactions be exempt from section 871(m), such as transactions entered into by a non-U.S. dealer as a long party in the ordinary course of business with customers. Comments explained that these transactions should be exempt from section 871(m) because the non-U.S. dealer does not enter into the transaction to avoid U.S. tax and U.S. tax would be paid on any dividend equivalent paid to the customers of the non-U.S. dealer.

E. *Indices*

Comments recommended several changes to the definition of the terms "narrow-based index" and "customized index." One comment questioned the definition of narrow-based index and suggested that the final regulations incorporate the exceptions to that term provided in section 3(a)(55) of the Securities Exchange Act of 1934.

Several comments suggested changes that would narrow the scope of the term customized index. For example, comments suggested that the term customized index be revised to apply only to a narrow-based index or any index offered by a publisher that is not a "recognized independent index publisher." Another comment recommended that the definition of a customized index exclude an index if an exchange-traded fund, exchanged-traded note, or other exchange-traded derivative tracked that index. One comment suggested that the final regulations provide that a customized index does not include any index with respect to which U.S. equity securities comprise less than 20 percent of the notional value.

Other comments suggested that the final regulations broaden the definition of customized index because the definition in the 2012 proposed regulation may have permitted certain transactions designed to avoid U.S. tax. For example, one comment suggested that a customized index should include any index that uses dividend yield as the primary criteria for inclusion in the index. Another comment noted that a partnership may function in the same manner as a customized index if the partnership was formed to hold a small basket of U.S. securities.

F. *Effective dates*

The 2012 proposed regulations provided that the rules would apply to payments made on or after the date of publication of the Treasury decision adopting those rules as final regulations. Comments expressed concern about the potentially retroactive effect of the regulations. With respect to ELIs, comments recommended that the final regulations should apply only to those transactions entered into after the effective date (rather than payments made after the effective date) because taxpayers and withholding agents did not foresee that these contracts would be subject to U.S. tax. Comments also recommended that the effective date of the final regulations be delayed because market participants will be required to make systems modifications and operational adjustments to comply with the final regulations.

4. *Explanation of Provisions*

After consideration of the comments, the Treasury Department and the IRS agree that the proposed seven-factor approach to identify a specified NPC does not provide the best framework for evaluating whether an NPC "is of a type which does not have the potential for tax avoidance" and that the seven-factor approach would be difficult to administer, both for the IRS and withholding agents. Accordingly, the Treasury Department and the IRS are withdrawing the 2012 proposed regulations and proposing new regulations based on the objective measurement of a derivative's delta to determine whether a contract is subject to tax under section 871(m). The delta of an NPC or ELI is the ratio of the change in the fair market value of the contract to the change in the fair market value of the property referenced by the contract. This approach is consistent with comments suggesting that the delta of an option be used to determine whether the option is a specified ELI.

The Treasury Department and the IRS believe that this delta-based standard will prevent taxpayers from avoiding withholding tax by electing derivative exposure to U.S. equities rather than physical ownership.

A transaction has the "potential for tax avoidance" if it approximates the economics of owning an underlying security without incurring the tax liability associated with owning that security. In many cases, a long party is indifferent as to whether to invest in a derivative or a physical position because the derivative and the physical position provide comparable economic returns. Furthermore, the short party will often hedge an NPC or ELI by acquiring physical securities in proportion to the delta of the derivative to which it is exposed. When dividends paid on physical securities are subject to tax while dividend equivalents with respect to economically comparable derivatives are not, those derivatives have a potential for tax avoidance regardless of whether a long party is using the derivative in a particular case to avoid tax. Accordingly, the Treasury Department and the IRS favor a delta approach that objectively identifies transactions in which the long party is able to sufficiently approximate the economic returns associated with an underlying security.

In addition, the Treasury Department and the IRS believe that the delta-based standard of the 2013 proposed regulations provides a simpler and more administrable framework than the seven-factor test of the 2012 proposed regulations. Using the delta of an NPC or ELI to determine the application of section 871(m) employs a single standard for NPCs and ELIs, although the regulations have different applicability dates for specified NPCs and specified ELIs. Therefore, for both equity swaps and other equity derivatives, the determination of whether a transaction may give rise to a dividend equivalent will generally depend only on the determination of a single objective measurement at the time the transaction is acquired.

This notice of proposed rulemaking should not be construed as providing guidance with respect to any other section of the Code. For example, this notice should not be used as a basis for applying the delta standard to interpret other Code sections.

A. *In General*

Section 1.871–15(b) of the 2013 proposed regulations treats a dividend equivalent as a dividend from sources within the United States for purposes of sections 871(a), 881, 892, 894, and 4948(a), and chapters 3 and 4 of subtitle A of the Code. Section 1.871–15(c) provides that a dividend equivalent is (1) any payment of a substitute dividend made pursuant to a securities lending or sale-repurchase transaction that references a U.S. source dividend payment, (2) any payment made pursuant to a specified NPC that references a U.S. source dividend payment, (3) any payment made pursuant to a specified ELI that references a U.S. source dividend payment, or (4) any other substantially similar payment. A payment references a U.S. source dividend payment if the payment is directly or indirectly contingent upon or determined by reference to the payment of a dividend from sources within the United States.

Certain transactions typically provide for dividend equivalents to be paid at the time a dividend is paid, and in an amount equal to that dividend payment, on a referenced stock. Stock loans, equity sale-repurchase transactions, and total return swaps referencing stock are the most common types of equity-linked transactions that provide the long party with either a dividend or a dividend equivalent equal to the dividend paid on the referenced stock.

Other transactions that are linked to U.S. equities may also provide for dividend equivalents. The Treasury Department and the IRS believe that an ELI that has economic terms that are substantially similar to a payment made pursuant to a securities lending or sale-repurchase transaction, or a specified NPC, creates the same potential for avoidance of U.S. withholding tax as those transactions. Section 1.871–15(a)(4) of the 2013 proposed regulations defines an ELI as any financial transaction (other than a securities lending or sale-repurchase transaction or an NPC) that references the value of one or more underlying securities. The term ELI includes instruments such as forward contracts, futures contracts, options, debt instruments convertible into underlying securities, and debt instruments with payments linked to underlying securities. The long party with respect to an ELI is the counterparty that holds a long position with respect to an underlying security, such as the purchaser of a call option or the writer of a put option.

Section 1.871–15(f) of the 2013 proposed regulations provides that another substantially similar payment is a gross-up amount paid by a short party in satisfaction of the long party's tax liability with respect to a dividend equivalent. The Treasury Department and the IRS request comments regarding whether other payments should be treated as substantially similar payments, such as a payment made by a seller of stock to the purchaser of the stock pursuant to an agreement to deliver a pending U.S. source dividend after the record date (for example, a due bill).

The definition of an underlying security has also been revised. The 2013 proposed regulations define an underlying security as any interest in an entity taxable as a corporation for Federal tax purposes if a payment with respect to that interest may give rise to a U.S. source dividend. If a transaction references more than one such entity (including a reference to an index that is not a qualified index), each

interest is treated as a separate underlying security. If a transaction references a qualified index, the qualified index is treated as a single security that is not an underlying security.

The 2013 proposed regulations also revise the rules pertaining to indices. In general, a qualified index is any index that (1) references 25 or more underlying securities; (2) references only long positions in underlying securities; (3) contains no underlying security that represents more than 10 percent of the index's weighting; (4) rebalances based on objective rules at set intervals; (5) does not provide for a high dividend yield; and (6) is referenced by futures or option contracts that trade on a national securities exchange or a domestic board of trade.

B. *Section 871(m) Transactions and Delta*

The 2013 proposed regulations define a section 871(m) transaction as any securities lending or sale-repurchase transaction, specified NPC, or specified ELI. Section 1.871–15(a)(10) of the 2013 proposed regulations defines a securities lending transaction and sale-repurchase transaction by reference to §1.861–3(a)(6) and includes substantially similar transactions.

As noted above, to determine whether a transaction is a specified NPC or specified ELI, the 2013 proposed regulations replace the seven-factor test in the 2012 proposed regulations with a single-factor test. Section 1.871–15(d)(2) provides that, with respect to payments made on or after January 1, 2016, a specified NPC is any NPC that has a delta of 0.70 or greater when the long party acquires the transaction. Similarly, §1.871–15(e) provides that a specified ELI is any ELI that has a delta of 0.70 or greater when the long party acquires the transaction. If a transaction references more than one underlying security, the taxpayer must determine whether the transaction is a section 871(m) transaction with respect to each underlying security. A transaction, therefore, may be a section 871(m) transaction with respect to one or more underlying securities referenced in the transaction, but may not be treated as a section 871(m) transaction with respect to other underlying securities referenced by that same transaction.

Section 1.871–15(g)(1) of the 2013 proposed regulations provides that the delta of an NPC or an ELI is the ratio of the change in the fair market value of the NPC or ELI to the change in the fair market value of the property referenced by the NPC or ELI. For purposes of the 2013 proposed regulations, the delta of a transaction must be determined in a commercially reasonable manner. If a taxpayer calculates delta for non-tax business purposes, that delta ordinarily is treated as the delta for purposes of this section. For example, to determine whether an option is a specified ELI, a dealer may use the delta that it calculates to determine the number of shares needed to balance its position on the option (even though that number of shares may not correspond to the dealer's actual hedge). If an NPC or ELI contains more than one reference to a single underlying security, all references to that underlying security are taken into account in determining the delta. If an NPC or an ELI references more than one underlying security or other property or liability, a separate delta must be determined with respect to each underlying security without taking into account any other underlying security or other property or liability referenced in the transaction. Section 1.871–15(g)(2) provides that if the delta of an NPC or ELI is not reasonably expected to vary during the term of the transaction, the NPC or ELI has a constant delta and the delta is treated as 1.0. If a transaction would not have a delta of 1.0 but for the rule in §1.871–15(g)(2), the number of shares of the underlying security is adjusted to reflect the constant delta of 1.0. This rule is intended to prevent taxpayers from avoiding the application of the 2013 proposed regulations by using transactions that reduce delta while retaining the economics of owning a set amount of shares. For example, a transaction that provides 50 percent of the appreciation, dividends, and depreciation on 200 shares of stock X throughout the term of the transaction (and therefore has a delta of 0.5) will be treated as a contract that provides 100 percent of the same exposure on 100 shares of stock X (and therefore has a delta of 1.0). The Treasury Department and the IRS request comments regarding whether taxpayers could avoid the constant delta rule by structuring transactions with the potential for de minimis delta variability and whether such transactions should be deemed to have a constant delta.

The Treasury Department and the IRS understand that a long party may enter into multiple transactions referencing the same underlying security to substantially replicate the economics of owning the underlying security. For example, a taxpayer may purchase a call option and sell a put option referencing the same underlying security that individually have a delta below 0.70 but together have a delta that exceeds 0.70. If section 871(m) were to apply to each transaction separately, neither transaction would be a section 871(m) transaction even though the economics of the positions when considered together are the same as another transaction that would be a section 871(m) transaction. Therefore, §1.871–15(l) of the 2013 proposed regulations treats multiple transactions as a single transaction for purposes of determining if the transactions are a section 871(m) transaction with respect to an underlying security when a long party (or a related person) enters into two or more transactions that reference the same underlying security and the transactions were entered into in connection with each other. These rules apply only to combine transactions in which the taxpayer is the long party. Section 1.871–15(l) does not combine transactions when a taxpayer is the long party with respect to an underlying security in one transaction and the short party with respect to the same underlying security in another transaction. Transactions that are combined for purposes of determining whether there is a section 871(m) transaction are treated as separate transactions for all other purposes of this section, including for purposes of determining the amount of a dividend equivalent with respect to each transaction. A withholding agent, however, is not required to withhold on a dividend equivalent paid pursuant to a transaction that has been combined with one or more other transactions unless the withholding agent knows that the long party (or a related person) entered into the potential section 871(m) transactions in connection with each other.

The Treasury Department and the IRS request comments regarding whether (and, if applicable, how) the rules for combining separate transactions to determine whether the transactions are section 871(m) transactions should apply in other situations, such as when a taxpayer holds both long and short positions with respect to the same underlying security. Comments also are requested regarding whether (and, if applicable, how) the remaining transaction (or transactions) should be retested when a long party terminates one or more, but not all, of the transactions that make up a combined position.

C. *Amount of Dividend Equivalent*

Section 1.871–15(h) of the 2013 proposed regulations provides rules for identifying a payment of a dividend equivalent. A payment includes any gross amount that references a U.S. source dividend and that is used to compute any net amount transferred to or from the long party even if the long party makes a net payment to the short party or the net payment is zero. For purposes of section 871(m), a payment is treated as made on the date the amount of the dividend equivalent is fixed even if it is paid or otherwise taken into account on a later date.

The 2012 proposed regulations provided that estimates of expected dividends were not dividend equivalents unless the estimate was adjusted to reflect actual dividend payments. The 2013 proposed regulations eliminate this exception and explicitly treat estimated dividend payments as dividend equivalents because the economic benefit of a dividend is present in contracts that use estimated dividends in much the same way as a contract that adjusts for actual dividends. Moreover, the Treasury Department and the IRS are concerned that taxpayers may inappropriately avoid section 871(m) if estimated dividends are not treated as dividend equivalents.

In the 2013 proposed regulations, a dividend equivalent includes any amount that references the payment of a U.S. source dividend. In addition to an actual payment of dividends and an estimated payment of dividends, a dividend equivalent includes any other contractual term of a potential section 871(m) transaction that is calculated based on an actual or estimated dividend. For example, when a long party enters into an NPC that provides for payments based on the appreciation in the value of an underlying security but does not explicitly entitle the long party to receive payments based on regular dividends (a price return swap), the 2013 proposed regulations treat the price return swap as a transaction that provides for the payment of a dividend equivalent because the anticipated dividend payments are presumed to be taken into account in determining other terms of the NPC, such as in the payments that the long party is required to make to the short party or in setting the price of the underlying securities referenced in the price return swap.

The 2013 proposed regulations also provide rules for calculating the amount of a dividend equivalent. For a securities lending or sale-repurchase transaction, §1.871–15(i) provides that the amount of a dividend equivalent for each underlying security equals the actual per share dividend amount paid on the underlying security multiplied by the number of shares of the underlying security transferred pursuant to the transaction. For a specified NPC or specified ELI, the amount of a dividend equivalent equals the per share dividend amount with respect to the underlying security multiplied by the number of shares of the underlying security referenced in the transaction (subject to adjustment) multiplied by the delta of the transaction with respect to the underlying security at the time that the amount of the dividend equivalent is determined.

If a transaction provides for a payment based on an estimated dividend (including an implicit estimated dividend), §1.871–15(h)(2)(i) and (iii) of the 2013 proposed regulations require that the actual amount of the dividend payment is used to calculate the amount of the dividend equivalent unless the short party identifies a reasonable estimated dividend amount in writing at the inception of the transaction. Prop. Treas. Reg. §1.871–15(h)(2)(i) and (iii). If a transaction that provides for payment based on estimated dividends is supported by the required documentation, the per share dividend amount used to compute the amount of a dividend equivalent is the lesser of the amount of the estimated dividend and the amount of the actual dividend paid.

The delta used to determine whether a potential section 871(m) transaction is a section 871(m) transaction may differ from the delta used to determine the amount of the dividend equivalent of a section 871(m) transaction. Whereas the delta of a transaction at the time the long party acquires a potential section 871(m) transaction is used to determine whether the transaction is a section 871(m) transaction, the delta of the section 871(m) transaction at the time that the amount of the dividend equivalent is determined is used to calculate the amount of the dividend equivalent. Because the delta of a transaction may vary over time, the delta of the transaction at the time of acquisition may differ from the delta of the transaction at the time the amount of the dividend equivalent is determined. Under §1.871–15(i)(1)(ii)(C)(*1*) of the 2013 proposed regulations, the delta used to calculate the amount of a dividend equivalent is not used to re-test whether a transaction is a section 871(m) transaction; a long party's section 871(m) transaction continues to be subject to tax even if the delta of the section 871(m) transaction is below 0.70 at the time the amount of the dividend equivalent is determined. Similarly, a long party that acquires a potential section 871(m) transaction that has a delta below 0.70 at the time of acquisition will not have a section 871(m) transaction even if the delta increases to be above 0.70 during the time the long party holds the transaction.

Under the 2013 proposed regulations, the amount of the dividend equivalent generally is determined on the earlier of the ex-dividend date or the record date for the dividend. However, if a section 871(m) transaction has a term of one year or less, the amount of the dividend equivalent is determined when the long party disposes of the transaction. Therefore, a long party that acquires an option with a term of one year or less that is a specified ELI will not incur a withholding tax if the option lapses.

D. *Other rules*

In response to comments, §1.871–15(j) of the 2013 proposed regulations provides exceptions to the definition of a section 871(m) transaction for two types of potential section 871(m) transactions that have little potential for tax avoidance. The first exception applies when a qualified dealer enters into a transaction as the long party in its capacity as a dealer. A qualified dealer is any dealer in securities within the meaning of section 475 that is subject to regulatory supervision by a governmental authority in the jurisdiction in which it was created or organized. In addition, the dealer must certify to the short party that it is a qualified dealer acting in its capacity as a dealer in securities and that it will withhold and deposit any tax imposed by section 871(m) with respect to a section 871(m) transaction that it enters into as a short party in its capacity as a dealer. The second exception applies when a taxpayer enters into a transaction as part of a plan pursuant to which one or more persons (including the taxpayer) are obligated to acquire 50 percent or more of the entity issuing the underlying securities.

A comment to the 2012 proposed regulations stated that an NPC may reference a partnership interest and that the partnership could be formed to hold a small basket of U.S. equity securities. Noting that a partnership may function like a customized index, the comment recommended that regulations treat an NPC that references a partnership interest as a separate NPC with respect to each underlying security held by the partnership. To address the concern noted in the comment, §1.871–15(m) of the 2013 proposed regulations treats a transaction that references an interest in an entity that is not a C corporation for Federal tax purposes as referencing the allocable portion of any underlying securities and potential section 871(m) contracts held directly or indirectly by that entity. The 2013 proposed regulations provide an exception for a transaction that references an interest in an entity that is not a C corporation if underlying securities and potential section 871(m) transactions represent, in the aggregate, 10 percent or less of the value of the interest in the referenced entity at the time the transaction is entered into.

Section 1.871–15(n) of the 2013 proposed regulations provides that the Commissioner may treat any payment made with respect to a transaction as a dividend equivalent if the taxpayer acquires a transaction with a principal purpose of avoiding the application of these rules. The Treasury Department and the IRS will continue to closely scrutinize other transactions that are not covered by section 871(m) and that may be used to avoid U.S. taxation and U.S. withholding. In addition, the IRS may challenge the U.S. tax results claimed in connection with transactions that are designed to avoid the application of section 871(m) using all available statutory provisions and judicial doctrines (including the substance over form doctrine, the economic substance doctrine under section 7701(o), the step transaction doctrine, and tax ownership principles) as appropriate. For example, nothing in section 871(m) precludes the IRS from asserting that a contract labeled as an NPC or other equity derivative is in fact an ownership interest in the equity referenced in the contract.

The 2013 proposed regulations also make a number of conforming changes to reporting and withholding requirements. Most equity-linked transactions involve a financial institution acting as a broker, dealer, or intermediary. A financial institution is usually in the best position to undertake the responsibility to report the tax consequences of a potential section 871(m) transaction. Accordingly, §1.871–15(o) of the 2013 proposed regulations provides that when a broker or dealer is a party to a potential section 871(m) transaction, the broker or dealer is required to determine whether the transaction is a section 871(m) transaction, and if so, the amounts of the dividend equivalents. If a broker or dealer is not a party to the transaction or both parties are brokers or dealers, the short party must determine whether the transaction is a section 871(m) transaction and the amounts of the dividend equivalents. Determinations made by the broker, dealer, or short party are binding on the parties to the section 871(m) transaction unless the other person knows or has reason to know that the information is incorrect; the determinations are not binding on the IRS. In addition, certain persons described in §1.871–15(o)(3)(ii) of the 2013 proposed regulations are permitted to request information from certain parties to a potential section 871(m) transaction who are described in §1.871–15(o)(1) when the information is necessary to satisfy their withholding or information reporting obligations, or to determine their tax liability. If a withholding agent reasonably relies on information received, it will not be liable for underwithholding; however, the party to the transaction who failed to properly determine the amount will be liable for the underwithholding. The Treasury Department and the IRS solicit comments with respect to these reporting rules, including comments regarding the parties that should be required to report and the extent of information that is appropriate.

The 2013 proposed regulations include amendments to chapter 3 specifically addressing dividend equivalents. The 2013 proposed regulations describe how the exception to withholding where no money or property is paid applies to a dividend equivalent. Section 1.1441–2(d)(5) of the 2013 proposed regulations provides that a withholding agent is not obligated to withhold on a dividend equivalent until the later of: (1) the time that the amount of the dividend equivalent is determined and (2) the time at which any of the following has occurred: (a) money or other property is paid pursuant to a section 871(m) transaction, (b) the withholding agent has custody or control of money or other property of the long party at any time on or after the amount of the dividend equivalent is determined, or (c) there is an upfront payment or a prepayment of the purchase price. Although §1.1441–2(d)(5) of the 2013 proposed regulations relieves a withholding agent of liability to withhold when the withholding agent does not have control of money or other property of the long party, the long party remains liable for U.S. tax on the dividend equivalent pursuant to section 871(m) and Prop. Treas. Reg. §1.871–15.

E. *Certain Contingent Interest*

Generally, section 871(h)(4) provides that U.S. source portfolio interest received by a nonresident alien individual is not subject to the 30-percent U.S. tax imposed under section 871(a)(1). Certain contingent in-

terest payments, however, are excluded from the definition of portfolio interest. Section 871(h)(4)(A)(ii) grants the Secretary authority to impose tax on contingent interest when necessary to prevent the avoidance of Federal income tax. Most contingent debt instruments are either referenced to a qualified index, have an embedded option with a delta below 0.70, or both. A debt obligation that is a specified ELI and provides for a contingent interest payment determined by reference to a U.S. source dividend payment has the potential to be used by a nonresident alien individual or foreign corporation to avoid section 871(m). Therefore, §1.871–14(h) of the 2013 proposed regulations provide that any contingent interest will not qualify for the portfolio interest exemption to the extent that the contingent interest payment is a dividend equivalent.

F. *Effective/applicability Date*

The 2013 proposed regulations generally will apply to payments made on or after the date of publication of the Treasury decision adopting these rules as final regulations. Certain provisions in the 2013 proposed regulations, however, apply at different dates. For example, the definition of a specified NPC in the 2013 proposed regulations will apply to payments made pursuant to a specified NPC on or after January 1, 2016. For payments made before January 1, 2016, the definition of a specified NPC is provided in section 871(m)(3)(A), §1.871–16T(b) of the 2012 temporary regulations, and §1.871–15(d)(1) of the final regulations in the Rules and Regulations section of this issue of the Federal Register. For specified ELIs, the rules of the 2013 proposed regulations will apply to payments made on or after January 1, 2016, but only with respect to an ELI that was acquired by the long party on or after March 5, 2014.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect multinational financial institutions, which tend to be larger businesses, and foreign entities. Moreover the number of taxpayers affected and the average burden are minimal. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for April 11, 2014, beginning at 10 a.m. in the auditorium of the Internal Revenue Service Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble. The rules of §601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments by March 5, 2014 and an outline of the topics to be discussed and the time to be devoted to each topic by March 5, 2014. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the schedule of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are D. Peter Merkel and Karen Walny of the Office of Associate Chief Counsel (International). Other personnel from the Treasury Department and the IRS also participated in the development of these regulations.

* * * * *

Withdrawal of Proposed Regulations

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG–120282–10) that was published in the **Federal Register** on Monday, January 23, 2012, (77 FR 3202) is withdrawn.

Proposed 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 continues to read in part as follows:

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

1.871–14(h) also issued under 26 U.S.C. 871(h) and 871(m). * * *

1.871–15 also issued under 26 U.S.C. 871(m). * * *

Par. 2. Section 1.871–14 is amended by:

1. Redesignating paragraphs (h) and (i) as paragraphs (i) and (j), respectively.

2. Adding new paragraphs (h) and (j)(3).

The additions read as follows:

§1.871–14 Rules relating to repeal of tax on interest of nonresident alien individuals and foreign corporations received from certain portfolio debt investments.

* * * * *

(h) *Portfolio interest not to include certain contingent interest*—(1) *Dividend equivalents*. Contingent interest does not qualify as portfolio interest to the extent that the interest is a dividend equivalent within the meaning of section 871(m).

(2) *Amount of dividend equivalent that is not portfolio interest*. The amount that does not qualify as portfolio interest because it is a dividend equivalent equals the amount of the dividend equivalent determined pursuant to §1.871–15(i). Unless otherwise excluded pursuant to section 871(h), any other interest paid on an obligation that is not a dividend equivalent may qualify as portfolio interest.

* * * * *

(j) * * *

(3) *Effective/applicability date*. The rules of paragraph (h) of this section apply to payments made on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register.**

Par. 3. Section 1.871–15 is added to read as follows:

§1.871–15 Treatment of dividend equivalents.

(a) *Definitions*. For purposes of this section, the following terms have the meanings described in this paragraph (a).

(1) *Acquire*. To *acquire* means to enter into, purchase, accept by transfer, by exchange, or by conversion, or otherwise acquire a potential section 871(m) transaction.

(2) *Dealer*. A *dealer* is a dealer in securities within the meaning of section 475(c)(1).

(3) *Dividend*. A *dividend* means a dividend as described in section 316.

(4) *Equity-linked instrument*. An *equity-linked instrument* (*ELI*) is a financial transaction, other than a securities lending or sale-repurchase transaction or an NPC, that references the value of one or more underlying securities. For example, a futures contract, forward contract, option, debt instrument, or other contractual arrangement that references the value of one or more underlying securities is an ELI.

(5) *Notional principal contract*. A *notional principal contract* (*NPC*) is a notional principal contract as defined in §1.446–3(c).

(6) *Option*. An *option* includes an option embedded in any debt instrument, forward contract, NPC, or other potential section 871(m) transaction.

(7) *Parties to a transaction*—(i) *Long party*. A *long party* is the party to a potential section 871(m) transaction with respect to an underlying security that is entitled to a dividend equivalent described in paragraph (c) of this section.

(ii) *Short party*. A *short party* is the party to a potential section 871(m) transaction with respect to an underlying security that is liable for a dividend equivalent described in paragraph (c) of this section.

(iii) *Party to a transaction*. A *party to a transaction* is any person that is a long party or a short party to a potential section 871(m) transaction.

(iv) *Party to a transaction that is both a long party and a short party*—(A) *In general*. If a potential section 871(m) transaction references more than one underlying security, the long party and short party are determined separately with respect to each underlying security. A party to a potential section 871(m) transaction is both a long party and a short party when the potential section 871(m) transaction entitles the party to receive a payment that references a dividend payment on an underlying security and obligates the same party to make a payment that references a dividend payment on another underlying security.

(B) *Example*. The following example illustrates the definitions in paragraph (a)(7) of this section:

Example. (i) Stock X and Stock Y are underlying securities within the meaning of paragraph (a)(11) of this section. Corporations A and B enter into an NPC. The NPC entitles A to receive payments from B based on any appreciation in the value of Stock X and dividends paid on Stock X during the term of the contract and obligates A to make payments to B based on any depreciation in the value of Stock X during the term of the contract. In return, the NPC entitles B to receive payments from A based on any appreciation in the value of Stock Y and dividends paid on Stock Y during the term of the contract and obligates B to make payments to A based on any depreciation in the value of Stock Y during the term of the contract.

(ii) A is the long party with respect to dividend equivalents it receives based on Stock X. A is the short party with respect to dividend equivalents it makes based on Stock Y. B is the long party with respect to divided equivalents it receives based on Stock Y. B is the short party with respect to dividend equivalents it makes based on Stock X.

(8) *Reference*. *Reference* means to be contingent upon or determined by reference to, directly or indirectly, whether in whole or in part.

(9) *Section 871(m) transaction*. A *section 871(m) transaction* is any securities lending or sale-repurchase transaction, specified NPC, or specified ELI. A *potential section 871(m) transaction* is any securities lending or sale-repurchase transaction, NPC, or ELI that references one or more underlying securities.

(10) *Securities lending or sale-repurchase transaction*. A *securities lending or sale-repurchase transaction* is any securities lending transaction, sale-repurchase transaction, or substantially similar transaction. *Securities lending transaction* and *sale-repurchase transaction* have the same meaning as provided in §1.861–3(a)(6).

(11) *Underlying security*. An *underlying security* is any interest in an entity taxable as a C corporation (within the meaning of section 1361(a)(2)) if a payment with respect to that interest could give rise to a U.S. source dividend pursuant to §1.861–3. If a potential section 871(m) transaction references an interest in more than one entity described in the preceding sentence (including a reference to an index that is not a qualified index described in paragraph (k) of this section) or different interests in the same entity, each referenced interest is a separate underlying security for purposes of applying the rules of this section.

(b) *Source of a dividend equivalent*. A dividend equivalent is treated as a dividend from sources within the United States for purposes of sections 871(a), 881, 892, 894, and 4948(a), and chapters 3 and 4 of subtitle A of the Code.

(c) *Dividend equivalent*—(1) *In general*. Except as provided in paragraph (2), *dividend equivalent* means—

(i) Any payment (as described in paragraph (h) of this section) pursuant to a securities lending or sale-repurchase transaction that references the payment of a dividend from an underlying security;

(ii) Any payment (as described in paragraph (h) of this section) pursuant to a specified NPC described in paragraph (d) of this section (*specified NPC*) that references the payment of a dividend from an underlying security;

(iii) Any payment (as described in paragraph (h) of this section) pursuant to a specified ELI described in paragraph (e) of this section (*specified ELI*) that refer-

ences the payment of a dividend from an underlying security; and

(iv) Any other substantially similar payment as described in paragraph (f) of this section.

(2) *Exceptions*—(i) *Not a dividend*. A payment pursuant to a section 871(m) transaction that references a distribution with respect to an underlying security is not a dividend equivalent to the extent that the distribution would not be subject to tax pursuant to section 871 or 881, or withholding under chapter 3 or 4, if the long party owned the underlying security referenced by the section 871(m) transaction. For example, if a specified NPC references stock in a regulated investment company that pays a capital gains dividend described in section 852(b)(3)(C) that would not be subject to withholding tax if paid directly to the long party, then an NPC payment determined by reference to the capital gains dividend is not a dividend equivalent.

(ii) *Section 305 coordination*. A payment pursuant to a section 871(m) transaction is not a dividend equivalent to the extent that the payment is treated as a distribution taxable as a dividend pursuant to section 305.

(d) *Specified NPCs*—(1) [Reserved].

(2) *Specified NPC on or after January 1, 2016*. With respect to payments made on or after January 1, 2016, a specified NPC is any NPC that has a delta of 0.70 or greater with respect to an underlying security at the time that the long party acquires the NPC. If an NPC references more than one underlying security, the NPC is a specified NPC only with respect to underlying securities for which the NPC has a delta of 0.70 or greater at the time that the long party acquires the NPC. For example, if an NPC references underlying security A and underlying security B, and it has a delta of 1.0 with respect to A and 1.0 with respect to B, the NPC is a specified NPC with respect to A and B.

(e) *Specified ELIs*. With respect to payments made on or after January 1, 2016, a specified ELI is any ELI acquired by the long party on or after March 5, 2014, that has a delta of 0.70 or greater with respect to an underlying security at the time that the long party acquires the ELI. If an ELI references more than one underlying security, the ELI is a specified ELI only with respect to underlying securities for which the ELI has a delta of 0.70 or greater at the time that the long party acquires the ELI. For example, if an ELI references underlying security A and underlying security B, and it has a delta of 0.90 with respect to A and 0.30 with respect to B, the ELI is a specified ELI with respect to A and is not a specified ELI with respect to B.

(f) *Other substantially similar payments*. For purposes of this section, the following payments are substantially similar payments:

(1) *Payment of a tax liability*. Any payment (as described in paragraph (h) of this section) in satisfaction of a tax liability with respect to a dividend equivalent made by a withholding agent is a dividend equivalent received by the long party in an amount determined under the gross-up formula provided in §1.1441–3(f)(1); and

(2) *Due bill*. [Reserved].

(g) *Delta*—(1) *Determination of delta*. Delta is the ratio of the change in the fair market value of an NPC or ELI to the change in the fair market value of the property referenced by the NPC or ELI. If an NPC or ELI contains more than one reference to a single underlying security, all references to that underlying security are taken into account in determining the delta with respect to that underlying security. If an NPC or ELI references more than one underlying security, a separate delta must be determined with respect to each underlying security without taking into account any other underlying security or other property or liability. For purposes of this section, the delta of an NPC or ELI must be determined in a commercially reasonable manner. If a taxpayer calculates delta for non-tax business purposes, that delta ordinarily is the delta used for purposes of this section.

(2) *Constant delta*. An NPC or ELI is treated as having a delta of one (1.0) with respect to an underlying security when it has a constant delta with respect to the underlying security at the time it is acquired by the long party. An NPC or ELI has a constant delta with respect to an underlying security if the NPC or ELI has a delta that is not reasonably expected to vary during the term of the transaction with respect to that underlying security. If a transaction would not have a delta of one with respect to an underlying security without this paragraph, the number of shares of the underlying security of an NPC or ELI that has a constant delta is adjusted as described in paragraph (i)(1)(ii)(B)(*2*) of this section.

(3) *Examples*. The following examples illustrate the rules of paragraph (g) of this section. For purposes of these examples, Stock X and Stock Y are common stock of domestic corporations X and Y. LP is the long party to the transaction.

Example 1. The terms of an NPC require LP to pay the short party an amount equal to all of the depreciation in the value of 100 shares of Stock X and an interest-rate based return. In return, the NPC requires the short party to pay LP an amount equal to all of the appreciation in the value of 100 shares of Stock X and any dividends paid by X on those shares. The value of the NPC will change by $1 for each $0.01 change in the price of a share of Stock X. The NPC therefore has a delta of 1.0 ($1.00 / ($0.01 × 100)).

Example 2. LP acquires a call option that references 100 shares of Stock X. At the time LP purchases the call option, the value of the option is expected to change by $0.30 for a $0.01 change in the price of a share of Stock X. The call option has a delta of 0.3 ($0.30 / ($0.01 × 100)) when LP acquired it.

Example 3. (i) LP acquires an NPC that entitles LP to receive 50 percent of the appreciation and dividends on 100 shares of Stock X in return for the obligation to pay the short party 50 percent of the depreciation on 100 shares of Stock X and an interest based return. The value of the NPC is expected to change by $0.50 for each $0.01 change in the price of a share of Stock X. The delta is expected to remain constant during the term of the transaction.

(ii) Pursuant to the terms of the NPC and the amount of referenced underlying securities, the NPC has a delta of 0.5 ($0.50 / ($0.01 × 100)) on the date that LP acquired the transaction. The delta of the NPC, however, is not expected to vary during the term of the transaction. Therefore, the NPC has a constant delta and is treated as having a delta equal to 1.0 on 50 shares of Stock X after the adjustments described in §1.871–15(i)(1)(ii)(B)(*2*).

(h) *Payment of a dividend equivalent*—(1) *Payments determined on gross basis*. For purposes of this section, a payment includes any gross amount that references the payment of a dividend and that is used in computing any net amount transferred to or from the long party even if the long party makes a net payment to the short party or no payment is made because the net amount is zero.

(2) *Actual and estimated dividends*—(i) *In general*. A payment includes any amount that references an actual or estimated payment of dividends, whether the reference is explicit or implicit. If a potential section 871(m) transaction pro-

vides for a payment based on an estimated dividend that adjusts to account for the amount of an actual dividend paid, the payment is treated as referencing the actual dividend amount and not an estimated dividend amount.

(ii) *Implicit dividends*. A payment includes an actual or estimated dividend payment that is implicitly taken into account in computing one or more of the terms of a potential section 871(m) transaction, including interest rate, notional amount, purchase price, premium, upfront payment, strike price, or any other amount paid or received pursuant to the potential section 871(m) transaction.

(iii) *Actual dividend presumption*. A section 871(m) transaction is treated as paying a per share dividend amount equal to the actual dividend amount unless the short party to the section 871(m) transaction identifies a reasonable estimated dividend amount in writing at the inception of the transaction. For this purpose, a reasonable estimated dividend amount stated in an offering document or the documents governing the terms of the transaction will establish the estimated dividend amount in writing at the inception of the transaction. To qualify as an estimated dividend amount, the written estimated dividend amount must separately state the amount estimated for each anticipated dividend or state a formula that allows each dividend to be determined. If a stock is not expected to pay a dividend, a reasonable estimate of the dividend amount may be zero.

(iv) *Limitation on estimated payments*. When a section 871(m) transaction provides for one or more payments based on estimated dividends supported by documentation described in paragraph (h)(2)(iii) of this section, the per share dividend amount used to calculate the amount of the dividend equivalent is the lesser of the estimated dividend amount and the actual dividend amount paid on the stock while the long party was a party to the section 871(m) transaction. If a section 871(m) transaction provides for any payment determined by reference to a dividend in addition to the estimated dividends (for example, a special dividend), the actual dividend amount paid on the stock is used for the additional dividend payment.

(3) *Deferred payments*. A payment occurs when the amount of a dividend equivalent is fixed pursuant to the terms of the transaction, even if paid or otherwise taken into account on a later date. For example, if a specified NPC provides for a payment at settlement that takes into account an earlier dividend payment, the dividend equivalent is treated as paid on the date that the amount of the dividend equivalent is fixed pursuant to the terms of the contract.

(4) *Examples*. The following examples illustrate the rules of paragraph (h) of this section. For purposes of these examples, Stock X is common stock of Corporation X, a domestic corporation, that historically pays quarterly dividends on Stock X. The parties anticipate that Corporation X will continue to pay the quarterly dividends.

Example 1. Forward contract to purchase domestic stock. (i) When Stock X is trading at $50 per share, Foreign Investor enters into a forward contract to purchase 100 shares of Stock X in one year. Reasonable estimates of the quarterly dividend are specified in the transaction documents. The price in the forward contract is determined by multiplying the number of shares referenced in the contract by the current price of the shares and an interest rate, and subtracting the future value of any dividends expected to be paid during the term of the contract. Assuming that the forward contract is priced using an interest rate of 4 percent and estimated dividends with a future value of $1 per share during the term of the forward contract, the purchase price set in the forward contract is $5,100 (100 shares × $50 per share × 1.04 − ($1 × 100)).

(ii) Subject to paragraph (h)(2)(iv), the estimated dividend amount is the per share dividend amount because the estimate is reasonable and specified in accordance with paragraph (h)(2)(iii) of this section. Those estimated per share dividend amounts are dividend equivalents for purposes of this section.

Example 2. Price return only swap contract. (i) Foreign Investor enters into a price return swap contract that entitles Foreign Investor to receive payments based on the appreciation in the value of 100 shares of Stock X and requires Foreign Investor to pay an amount based on LIBOR plus any depreciation in the value of Stock X. The swap contract does not explicitly entitle Foreign Investor to payments based on dividends paid on Stock X during the term of the contract and the swap contract does not contain any reference to an estimated dividend amount. The LIBOR rate on the swap contract, however, is reduced to reflect expected annual dividends on Stock X.

(ii) Because the LIBOR leg of the swap contract is reduced to reflect estimated dividends and the estimated dividend amount is not specified, Foreign Investor is treated as receiving the actual dividend amount in accordance with paragraph (h)(2) of this section. Those actual per share dividend amounts are dividend equivalents for purposes of this section.

(i) *Amount of dividend equivalent*—(1) *Calculation of the amount of a dividend equivalent*—(i) *Securities lending or sale-repurchase transactions*. For a securities lending or sale-repurchase transaction, the amount of the dividend equivalent for each underlying security equals the amount of the actual per share dividend paid on the underlying security multiplied by the number of shares of the underlying security transferred pursuant to the securities lending or sale-repurchase transaction.

(ii) *Specified NPCs and specified ELIs*—(A) *In general*. For a specified NPC or a specified ELI, the amount of the dividend equivalent for each underlying security equals:

(*1*) The amount of the per share dividend (as determined under paragraph (h) of this section) with respect to the underlying security multiplied by;

(*2*) The number of shares of the underlying security as calculated pursuant to paragraph (i)(1)(ii)(B) of this section multiplied by;

(*3*) The delta of the section 871(m) transaction with respect to the underlying security at the time that the amount of the dividend equivalent is determined.

(B) *Calculation of the number of shares*—(*1*) *In general*. Except as provided in paragraph (i)(1)(ii)(B)(*2*) of this section, the number of shares of an underlying security for purposes of this section is the number of shares of the underlying security referenced in the section 871(m) transaction.

(*2*) *Adjustments*. When a section 871(m) transaction multiplies the number of shares of an underlying security by a factor or fraction, or otherwise alters the amount of a payment, the number of shares of a section 871(m) transaction is adjusted to take into account the factor, fraction, or other alteration provided by the section 871(m) transaction. For example, if a total return swap entitles a long party to receive a payment based on the appreciation and dividend amount on 100 shares of an underlying security multiplied by a factor of 1.50, the number of shares of the underlying security is 150 shares.

(C) *Delta at the time the amount of the dividend equivalent is determined*—(*1*) *In*

general. The delta of a section 871(m) transaction at the time that the amount of the dividend equivalent is determined is the delta of the section 871(m) transaction determined at the time specified in paragraph (i)(2) of this section. This delta is used solely for purposes of determining the amount of the dividend equivalent at that time, and the transaction is not retested to determine if it is a section 871(m) transaction. For example, if a transaction had a delta of 0.80 when acquired by the long party and was a section 871(m) transaction, the transaction remains a section 871(m) transaction even if the delta is below 0.70 at the time the amount of the dividend equivalent is determined.

(*2*) *Delta of an option at lapse*. The delta of an option when it lapses is treated as zero.

(*3*) *Delta of an option at exercise*. The delta of an option when it is exercised is treated as one (1.0).

(iii) *Other substantially similar payments*. In addition to any amount determined pursuant to paragraph (i)(1)(i) or (ii), the amount of a dividend equivalent includes the amount of any payment described in paragraph (f) of this section.

(2) *Time for determining the amount of a dividend equivalent*—(i) *In general*. Except as provided in paragraph (i)(2)(ii) of this section, the amount of a dividend equivalent is determined on the earlier of the date that the underlying security becomes ex-dividend with respect to the dividend and the record date of the dividend. For example, if a specified NPC provides for a payment at settlement that takes into account an earlier dividend payment, the amount of a dividend equivalent is determined on the earlier of the ex-dividend date or the record date for that dividend.

(ii) *Specified NPCs and specified ELIs with a term of one year or less*. For a specified NPC or specified ELI with a term of one year or less when acquired by the long party, the amount of a dividend equivalent is determined when the long party disposes of the section 871(m) transaction. For purposes of this paragraph, to *dispose of* means to sell, exercise, terminate, allow to lapse or expire, transfer, settle (whether in cash or otherwise), cancel, exchange, convert, surrender, forfeit, or otherwise dispose of or allow to expire.

(iii) *Term*. For purposes of this section, if a transaction does not specify a term, the transaction is treated as having a term of more than one year. If a transaction permits extensions, the term of the transaction is the maximum term permitted by the transaction.

(j) *Limitation on the treatment of certain transactions as section 871(m) transactions*—(1) *Dealers*—(i) *In general*. A potential section 871(m) transaction is not a section 871(m) transaction if the potential section 871(m) transaction is entered into by a qualified dealer in its capacity as a dealer in securities and the dealer is the long party with respect to the underlying security. This paragraph does not apply with respect to any proprietary position held by a dealer in securities.

(ii) *Qualified dealer*. A qualified dealer is any dealer that:

(A) Is subject to regulatory supervision by a governmental authority in the jurisdiction in which it was created or organized; and

(B) furnishes a written certification to the short party confirming that the dealer is a qualified dealer acting in its capacity as a dealer in securities and that the dealer will withhold and deposit any tax imposed by section 871(m) with respect to any section 871(m) transactions that the dealer enters into as a short party in its capacity as a dealer in securities.

(2) *Corporate acquisitions*. A potential section 871(m) transaction is not a section 871(m) transaction with respect to an underlying security if the transaction obligates the long party to acquire ownership of the underlying security as part of a plan pursuant to which one or more persons (including the long party) are obligated to acquire underlying securities representing more than 50 percent of the value of the entity issuing the underlying securities. To qualify for the exception provided in this paragraph, the long party must furnish a written certification, provided under penalties of perjury, to the short party that it satisfies the requirements of this paragraph (j)(2).

(k) *Rules relating to indices*—(1) *Qualified index not treated as an underlying security*. For purposes of this section, a qualified index is treated as a single security that is not an underlying security. The determination of whether an index is a qualified index is made at the time that a long party acquires a potential section 871(m) transaction and is determinative only with respect to that transaction. Therefore, an index can be a qualified index with respect to a transaction entered into on one day and not be a qualified index with respect to a transaction entered into on another day.

(2) *Qualified index*. A *qualified index* means an index that:

(i) References 25 or more component underlying securities;

(ii) References only long positions in component underlying securities;

(iii) Contains no component underlying security that represents more than 10 percent of the weighting of the underlying securities in the index;

(iv) Is modified or rebalanced only according to predefined objective rules at set dates or intervals;

(v) Does not provide a dividend yield from component underlying securities that is greater than 1.5 times the current dividend yield of the S&P 500 Index as reported for the month immediately preceding the date the long party acquires the potential section 871(m) transaction; and

(vi) Futures contracts or option contracts on the index (whether the contracts provide price only or total return exposure to the index) trade on a national securities exchange that is registered with the Securities and Exchange Commission or a domestic board of trade designated as a contract market by the Commodity Futures Trading Commission.

(3) *Safe harbor for indices that primarily reference assets other than underlying securities*. Notwithstanding paragraph (k)(2) of this section, an index is a qualified index if the index is comprised solely of long positions in assets and the referenced component underlying securities in the aggregate comprise 10 percent or less of the index's weighting.

(4) *Weighting of component underlying securities*. For purposes of paragraph (k) of this section, the weighting of a component underlying security of an index is the percentage of the index's value represented, or accounted for, by the component underlying security.

(5) *Indices with components other than underlying securities*. Any component of an index that is not an underlying security

is not taken into account for purposes of determining whether an index is a qualified index, except for purposes of paragraph (k)(3) of this section.

(6) *Transactions that reference a qualified index and one or more underlying securities or indices*. If a potential section 871(m) transaction references a qualified index and one or more underlying securities or indices, the qualified index will remain a qualified index only if the potential section 871(m) transaction does not reference a short position in any referenced component underlying security of the qualified index, other than a short position with respect to the entire qualified index (for example, a cap or floor). If, in connection with a potential section 871(m) transaction that references a qualified index, a taxpayer (or a related person within the meaning of section 267(b) or 707(b)) enters into one or more transactions that reduce exposure to any referenced component underlying security of the index, other than transactions that reduce exposure to the entire index, then the potential section 871(m) transaction is not treated as referencing a qualified index.

(l) *Combined transactions*—(1) *In general*. For purposes of determining whether a potential section 871(m) transaction is a section 871(m) transaction, two or more potential section 871(m) transactions are treated as a single transaction with respect to an underlying security when:

(i) A person (or a related person within the meaning of section 267(b) or 707(b)) is the long party with respect to the underlying security for each potential section 871(m) transaction;

(ii) The potential section 871(m) transactions reference the same underlying security; and

(iii) The potential section 871(m) transactions are entered into in connection with each other (regardless of whether the transactions are entered into simultaneously or with the same counterparty).

(2) *Time and delta for testing*. Combined transactions are tested each time the long party (or a related person) acquires a potential section 871(m) transaction to which paragraph (l)(1) of this section applies. The deltas used to determine whether the combined transactions are section 871(m) transactions pursuant to paragraph (l)(1) of this section are the deltas of each of the combined transactions at that time. For example, if a taxpayer buys a call option on day 1 and sells a put option on day 10 on the same underlying security and the two transactions are entered into in connection with each other, the call option is tested on day 1 to determine whether it is a section 871(m) transaction, and the combined single transaction is tested on day 10 based on the deltas of the call option and put option at that time.

(3) *Section 871(m) transactions*. If a potential section 871(m) transaction is a section 871(m) transaction, either by itself or as a result of a combination, it does not cease to be a section 871(m) transaction as a result of applying paragraph (l) of this section.

(4) *More than one underlying security referenced*. If potential section 871(m) transactions reference more than one underlying security, paragraph (l)(1) of this section applies separately with respect to each underlying security.

(5) *Separate transactions for all other purposes*. Potential section 871(m) transactions that are combined for purposes of determining whether there is a section 871(m) transaction with respect to an underlying security are treated as separate transactions for all other purposes of this section, including separately determining the amount of a dividend equivalent with respect to each transaction. For withholding obligations with respect to combined transactions, see §1.1441–1(b)(4)(xxiii).

(6) *Example*. The following examples illustrate the rules of paragraph (l) of this section. For purposes of this paragraph (l)(6), Foreign Investor (FI) is a nonresident alien individual and Stock X is common stock of Corporation X, a domestic corporation.

Example 1. (i) FI purchases a call option with a term of six months that references 100 shares of Stock X, and simultaneously sells a six month put option on 100 shares of Stock X. The delta of the call option is 0.45 and the delta of the put option is 0.40 at the time FI acquired each option.

(ii) Because the purchased call option and the sold put option are entered into simultaneously by FI and reference the same underlying security, the facts and circumstances indicate that the call option and the put option are entered into in connection with each other and are treated as a combined transaction under paragraph (l)(1) of this section. Accordingly, the call option and the put option are treated as a combined transaction to compute delta for purposes of paragraph (e) of this section. The delta of the combined purchased call option and written put option is 0.85 (0.45 + 0.40). The combined transaction is therefore a specified ELI.

Example 2. (i) FI purchases a call option with a term of six months that references 100 shares of Stock X. At the time, the delta of the call option is 0.45. Three months later, FI re-evaluates FI's position in Stock X and writes a three month put option on 100 shares of Stock X. At the time FI writes the put option, the delta of the call option is 0.65 and the delta of the put is 0.25.

(ii) FI's purchased call option and sold put option reference the same underlying security. Because FI wrote the put option referencing Stock X to adjust FI's economic position associated with the call option referencing Stock X, these options are entered into in connection with each other and treated as a combined transaction under paragraph (l)(1) of this section. Because the delta of the combined transaction is tested on the date that FI entered into the additional transaction, the delta of the combined purchased call option and sold put option is 0.90 (0.65 + 0.25). The combined transaction is a specified ELI.

Example 3. (i) FI purchases a call option with a term of one month that references 100 shares of Stock X. At the time, the delta of the call option is 0.75. Two weeks later, FI re-evaluates FI's position in Stock X and writes a two week put option on 100 shares of Stock X. At the time FI writes the put option, the delta of the call option is 0.35 and the delta of the put is 0.25.

(ii) FI's purchased call option has an initial delta of 0.75 and therefore is a specified ELI and a section 871(m) transaction. FI's purchased call option and sold put option reference the same underlying security. Because FI sold the put option referencing Stock X to adjust FI's economic position associated with the call option referencing Stock X, these options are entered into in connection with each other and treated as a combined transaction under paragraph (l)(1) of this section. Because the delta of the combined transaction is tested on the date that FI entered into the additional transaction, the delta of the combined purchased call option and sold put option is 0.60 (0.35 + 0.25). The combined transaction is not a specified ELI; however, the purchased call option remains a specified ELI.

(m) *Rules relating to interests in entities that are not taxable as corporations*—(1) *In general*. Except as provided in paragraph (m)(2) of this section, if a transaction references an interest in an entity that is not a C corporation (within the meaning of section 1361(a)(2)), the transaction references the allocable portion of any underlying security or potential section 871(m) transaction held, directly or indirectly (including through one or more other entities that are not C corporations), by the referenced entity. When a transaction references any underlying security as a result of the application of this paragraph, the transaction also references the payment of any dividends from

those underlying securities and has a dividend equivalent equal to the allocable portion of any dividend or dividend equivalent received, directly or indirectly (including through one or more other entities that are not C corporations), by the referenced entity.

(2) *Exception*. A transaction is not treated as referencing underlying securities as a result of applying paragraph (m)(1) of this section if the underlying securities held directly or indirectly by the referenced entity and the underlying securities referenced by any potential section 871(m) transaction held directly or indirectly by the referenced entity represent, in the aggregate, 10 percent or less of the value of the referenced interest in the entity at the time the long party acquires the transaction and there is no plan or intention for acquisitions or dispositions (within the meaning of paragraph (i)(2)(ii) of this section) that would cause underlying securities to represent more than 10 percent of the value of the referenced interest. For example, if actively-traded Partnership A owns a pro rata interest in Partnership B that represents 10 percent of the value of an interest in Partnership A, and Partnership B owns an interest in Underlying Security X that represents 20 percent of the value of an interest in Partnership B, then Underlying Security X represents two percent of the value of a pro rata interest in Partnership A. Accordingly, a pro rata interest in Partnership A qualifies for the exception in paragraph (m)(2) of this section and Underlying Security X is not treated as referenced by a transaction that references a pro rata interest in Partnership A pursuant to paragraph (m)(1) of this section.

(n) *Anti-abuse rule*. If a taxpayer (directly or through the use of a related person) acquires a transaction or transactions with a principal purpose of avoiding the application of this section, the Commissioner may treat any payment (as described in paragraph (h) of this section) made with respect to any transaction as a dividend equivalent to the extent necessary to prevent the avoidance of this section. Therefore, notwithstanding any other provision of this section, the Commissioner may adjust the delta of a transaction, change the number of shares, adjust an estimated dividend amount, adjust the timing of payments, combine, separate, or disregard transactions, indices, or components of indices to reflect the substance of the transaction or transactions, or otherwise depart from the rules of this section as necessary to determine whether the transaction includes a dividend equivalent or the amount or timing of a dividend equivalent.

(o) *Information required to be reported regarding a potential section 871(m) transaction*—(1) *In general*. If a broker or dealer is a party to a potential section 871(m) transaction with a counterparty or customer that is not a broker or dealer, the broker or dealer is required to determine whether the potential section 871(m) transaction is a section 871(m) transaction. If both parties to the potential section 871(m) transaction are brokers or dealers, or neither party to the potential section 871(m) transaction is a broker or dealer, the short party must determine whether the potential section 871(m) transaction is a section 871(m) transaction. The party to the transaction that is required to determine whether a transaction is a section 871(m) transaction must also determine and report to the counterparty or customer the timing and amount of any dividend equivalent (as described in paragraphs (h) and (i) of this section). The party required to make the determinations described in this paragraph is required to exercise reasonable diligence to determine whether a transaction is a section 871(m) transaction, any dividend equivalents, and any other information necessary to apply the rules of this section. The information must be provided in the manner prescribed in paragraphs (o)(2) and (o)(3) of this section. The determinations required by paragraph (o) of this section are binding on the parties to the potential section 871(m) transaction and on any person who is a withholding agent with respect to the potential section 871(m) transaction, unless the person has actual knowledge or reason to know that the information received is incorrect, but are not binding on the IRS.

(2) *Reporting requirements*. For rules regarding reporting requirements with respect to dividend equivalents described in this section, see §§1.1461–1(b) and (c), and 1.1474–1(c) and (d).

(3) *Additional information on potential section 871(m) transactions*—(i) *In general*. Upon request by any person described in paragraph (o)(3)(ii) of this section, the party required to provide information pursuant to paragraph (o)(1) must provide the requester with information regarding the amount of each dividend equivalent, the delta of the potential section 871(m) transaction, the amount of any tax withheld and deposited, the estimated dividend amount if specified in accordance with paragraph (h)(2)(iii), and any other information necessary to apply the rules of this section. With respect to the delta, the party must provide the delta when the transaction is acquired, at the time the amount of each dividend equivalent is determined, and at any other time delta information is necessary to apply the rules of this section. The information requested must be provided within a reasonable time, not to exceed 14 calendar days, and communicated in one or more of the following ways:

(A) By telephone, and confirmed in writing;

(B) By written statement sent by first class mail to the address provided by the requesting party;

(C) By electronic publication available to all persons entitled to request information; or

(D) By any other method agreed to by the parties, and confirmed in writing.

(ii) *Persons entitled to request information*. The following persons may request the information specified in paragraph (o) of this section with respect to a potential section 871(m) transaction from the party required by paragraph (o)(3)(i) of this section to provide the information—

(A) A broker who holds the potential section 871(m) transaction as an agent or nominee to any party to the transaction as described in paragraph (a)(7) of this section;

(B) A person who is required to make an information return under §1.1461–1(c) and paragraph (o)(2) of this section and who acts as an agent or nominee to any party to the transaction as described in paragraph (a)(7) of this section; or

(C) Any party to the transaction as described in paragraph (a)(7) of this section.

(iii) *Reliance on information received*. A person described in paragraph (o)(1) or

(o)(3)(ii) of this section that receives information described in paragraph (o)(1) or (o)(3)(i) of this section (first recipient) may rely on that information to provide information to any other person unless the first recipient has actual knowledge or reason to know that the information received is incorrect. When the first recipient has actual knowledge or reason to know that the information received is incorrect, the first recipient must make a reasonable effort to determine and provide the information described in paragraph (o)(1) or (o)(3)(i) of this section to any person described in paragraph (o)(1) or (o)(3)(ii) of this section that requests information from the first recipient.

(4) *Recordkeeping rules*. For rules regarding recordkeeping requirements sufficient to establish the amount of gross income treated as a dividend equivalent, see §1.6001–1.

(p) *Effective/applicability date*. This section applies to payments made on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**, except for paragraph (d)(1) of this section, which applies to payments made on or after January 23, 2012.

Par. 4. Section 1.1441–1 is amended by:* * * *

1. Adding paragraphs (b)(4)(xxii) and (xxiii).

2. Adding paragraph (f)(3).

The additions read as follows:

§1.1441–1 Requirement for the deduction and withholding of tax on payments to foreign persons.

* * * * *

(b) * * *

(4) * * *

(xxii) Amounts paid with respect to a notional principal contract described in §1.871–15(a)(5), an equity-linked instrument described in §1.871–15(a)(4), or a securities lending or sale-repurchase transaction described in §1.871–15(a)(10) are exempt from withholding under section 1441(a) as dividend equivalents under section 871(m) if the transaction is not a section 871(m) transaction within the meaning of §1.871–15(a)(9) or is subject to an exception described in §1.871–15(j). However, the amounts may be subject to withholding under section 1441(a) if they are subject to tax under any section other than section 871(m). For purposes of this withholding exemption, it is not necessary to provide documentation establishing that a notional principal contract or equity-linked instrument has a delta that is less than 0.70 at the time it was acquired by the long party. For purposes of the withholding exemption for qualified dealers described in this paragraph, §1.871–15(j)(1) applies only if the long party furnishes to the withholding agent the documentation described in §1.871–15(j)(1). For purposes of the withholding exemption regarding corporate acquisitions described in this paragraph, the exemption only applies if the long party furnishes to the withholding agent the documentation described in §1.871–15(j)(2).

(xxiii) If a potential section 871(m) transaction is only a section 871(m) transaction as a result of applying §1.871–15(l) (combined transactions) and the withholding agent did not know that the long party (or a related person) entered into the potential section 871(m) transaction in connection with any other potential section 871(m) transaction, the potential section 871(m) transaction is exempt from withholding under section 1441(a).

* * * * *

(f) * * *

(3) *Effective/applicability date*. Paragraphs (b)(xxii) and (xxiii) of this section apply to payments made on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register.**

Par. 5. Section 1.1441–2 is amended by adding paragraph (d)(5) and adding a sentence to the end of paragraph (f) to read as follows:

§1.1441–2 Amounts subject to withholding.

* * * * *

(d) * * *

(5) *Payments of dividend equivalents*. A withholding agent is not obligated to withhold until the later of—

(i) The time that the amount of a dividend equivalent is determined as provided in §1.871–15(i)(2), and

(ii) The time that the withholding agent is deemed to have control over money or other property of the long party because—

(A) Money or other property is paid to or from the long party,

(B) The withholding agent has custody or control over money or other property of the long party at any time on or after the amount of a dividend equivalent is determined as provided in §1.871–15(i)(2), or

(C) The section 871(m) transaction provides for an upfront payment or prepayment of the purchase price even though an actual payment has not been made at the time the amount of a dividend equivalent is determined as provided in §1.871–15(i)(2).

* * * * *

(f) *Effective/applicability date*. * * * Paragraph (d)(5) of this section applies to payments made on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register.**

Par. 6. Section 1.1441–3 is amended by:

1. Adding a second sentence to paragraph (h)(1).

2. Redesignating paragraph (h)(2) as (h)(3) and revising paragraph (h)(3).

3. Adding new paragraph (h)(2).

The additions and revisions read as follows:

§1.1441–3 Determination of amounts to be withheld.

* * * * *

(h) * * * (1) * * * Withholding is required on the amount of the dividend equivalent calculated under §1.871–15(i).

(2) *Reliance by withholding agent on reasonable determinations*. For purposes of determining whether a payment is a dividend equivalent and the amount of a dividend equivalent described in §1.871–15, a withholding agent may rely on the information received from the party to the transaction that is required to determine whether a transaction is a section 871(m) transaction as provided in §1.871–15(o), unless the withholding agent has actual knowledge or reason to know that the information received is incorrect. When a withholding agent fails to withhold the required amount because the party described in §1.871–15(o) fails to reasonably determine or timely provide whether a transaction is a section 871(m)

transaction, the amount of any dividend equivalent, or any other information required to be provided pursuant to §1.871–15(o) and the withholding agent reasonably relied on that party's determination, then the failure to withhold is imputed to the party required to make the determinations described in §1.871–15(o). In that case, the IRS may collect any underwithheld amount from the party to the transaction that is required to make the determinations described in §1.871–15(o) and subject that party to applicable interest and penalties as a withholding agent.

(3) *Effective/applicability date*. Except for the first sentence of paragraph (h)(1), this paragraph (h) applies to payments made on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register.** The first sentence of paragraph (h)(1) applies to payments made on or after January 23, 2012.

* * * * *

Par. 7. Section 1.1441–7 is amended by:

1. Adding entry for *Example 7* in paragraph (a)(3).
2. Adding a second sentence to paragraph (a)(4).

The additions read as follows:

§1.1441–7 General provisions relating to withholding agents.

(a) * * *

(3) * * *

Example 7. CO is a domestic clearing organization. CO serves as a central counterparty clearing and settlement service provider for derivatives exchanges in the U.S. CB is a broker organized in Foreign Country X and a clearing member of CO. CB is a nonqualified intermediary, as defined in §1.1441–1(c)(14). FC is a foreign corporation that has an investment account with CB. FC instructs CB to purchase a call option that is a specified ELI (as described in §1.871–15(e)). CB effects the trade for FC. The exchange matches FC's order with an order for a written call option with the same terms. The exchange then sends the matched trade to CO, which clears the trade. CB and the clearing member representing the call option seller settle the trade with CO. Upon receiving the matched trade, the option contracts are novated and CO becomes the counterparty to CB and the counterparty to the clearing member representing the call option seller. To the extent that there is a dividend equivalent with respect to the call option, both CO and CB are withholding agents as described in paragraph (a)(1) of this section.

(4) *Effective/applicability date*. *Example 7* of paragraph (a)(3) of this section applies to payments made on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register.**

* * * * *

John Dalrymple,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on December 4, 2013, 8:45 a.m., and published in the issue of the Federal Register on December 5, 2013, 78 F.R. 73128)

Notice of Proposed Rulemaking

Partnerships; Start-up Expenditures; Organization and Syndication Fees

REG–126285–12

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations concerning the deductibility of start-up expenditures and organizational expenses for partnerships. The proposed regulations provide guidance regarding the deductibility of start-up expenditures and organizational expenses for partnerships following a technical termination of a partnership.

DATES: Written or electronic comments must be received by March 10, 2014.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–126285–12), Room 5203, 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–126285–12), 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–126285–12)

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, David H. Kirk or Rachel Smith at (202) 317-6852; concerning submissions of comments or to request a hearing, Oluwafunmilayo Taylor, (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 708(b) of the Internal Revenue Code (Code).

1. *Section 708: Continuation of Partnership*

Section 708(a) generally provides that, for purposes of subchapter K of chapter 1 of subtitle A of Title 26, an existing partnership shall be considered as continuing if it is not terminated.

Section 708(b)(1) provides that, for purposes of section 708(a), a partnership shall be considered as terminated only if (A) no part of any business, financial operation, or venture of the partnership continues to be carried on by any of its partners in a partnership, or (B) within a 12-month period there is a sale or exchange of 50 percent or more of the total interest in partnership capital and profits.

Section 1.708–1(b)(4) of the Income Tax Regulations provides that if a partnership is terminated by a sale or exchange of an interest, the following is deemed to occur: the partnership contributes all of its assets and liabilities to a new partnership in exchange for an interest in the new partnership; immediately thereafter, the terminated partnership distributes interests in the new partnership to the purchasing partner and the other remaining partners in proportion to their respective interests in the terminated partnership in liquidation of the terminated partnership, either for the continuation of the business by the new partnership or for its dissolution and winding up.

2. *Section 195 Start-up Expenditures*

Section 195(a) provides that, except as otherwise provided in section 195, no deduction shall be allowed for start-up expen-

ditures (as defined in section 195(c)(1)). Section 195(b)(1) provides that a taxpayer may elect to deduct start-up expenditures as provided in section 195(b)(1)(A) and (B).

Section 195(b)(1)(A) allows an electing taxpayer to deduct start-up expenditures in the taxable year in which the active trade or business begins. The amount that may be deducted under section 195(b)(1)(A) in that year is the lesser of (i) the amount of start-up expenditures with respect to the active trade or business, or (ii) $5,000, reduced (but not below zero) by the amount by which the start-up expenditures exceed $50,000.

Section 195(b)(1)(B) provides that any start-up expenditures that are not deductible under section 195(b)(1)(A) shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the active trade or business begins. All start-up expenditures that relate to the active trade or business are considered in determining whether the start-up expenditures exceed $50,000, including expenditures incurred on or before October 22, 2004. Section 902(a) of the American Jobs Creation Act of 2004, Pub. L. No. 108–357, 118 Stat. 1418 ("AJCA"), amended section 195(b)(1) for start-up expenditures paid or incurred after October 22, 2004. Prior to the AJCA amendment, section 195(b)(1) (former section 195(b)(1)) allowed taxpayers to elect to treat such expenditures as deferred expenses deductible ratably over a period of at least 60 months.

Section 1.195–1(b) provides that, for start-up expenditures paid or incurred after August 16, 2011(the effective date of §1.195–1(b)), a taxpayer is deemed to make an election under section 195(b) to amortize start-up expenditures for the taxable year in which the active trade or business to which the expenditures relate begins. However, taxpayers may apply all provisions of §1.195–1 to start-up expenditures paid or incurred after October 22, 2004, provided that the period of limitations on assessment of tax for the year the election under §1.195–1(b) is deemed made has not expired.

Section 195(b)(2) provides that in any case in which a trade or business is completely disposed of by the taxpayer before the end of the amortization period, any deferred expenses attributable to such trade or business that were not allowed as a deduction by reason of section 195 may be deducted to the extent allowable under section 165.

3. *Section 709: Treatment of Organization and Syndication Fees*

Section 709(a) provides that, except as otherwise provided in section 709(b), no deduction shall be allowed for any amounts paid or incurred to organize a partnership or to promote the sale of (or to sell) an interest in the partnership. Section 709(b) provides that a partnership may elect to deduct organizational expenses, within the meaning of section 709(b)(3), as provided in section 709(b)(1)(A) and (B).

Section 709(b)(1)(A) allows an electing partnership to deduct organizational expenses in the year in which the partnership begins business. The amount that may be deducted under section 709(b)(1)(A) in that year is the lesser of (i) the amount of the organizational expenses of the partnership, or (ii) $5,000, reduced (but not below zero) by the amount by which the organizational expenses exceed $50,000.

Section 709(b)(1)(B) provides that any organizational expenses that are not deductible under section 709(b)(1)(A) shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the partnership begins business. All organizational expenses incurred by the partnership are considered in determining whether the organizational expenses exceed $50,000, including expenses incurred on or before October 22, 2004. Prior to October 22, 2004, section 709(b) contained a rule similar to former section 195(b)(1).

Section 1.709–1(b)(2) provides that, for organizational expenses as defined in section 709(b)(3) and §1.709–2(a) paid or incurred after August 16, 2011 (the effective date of §1.709–1(b)(2)), a partnership is deemed to make an election under section 709(b) to amortize organizational expenses for the taxable year in which the partnership begins business. However, taxpayers may apply all provisions of §1.709–1 to organizational expenses paid or incurred after October 22, 2004, provided that the period of limitations on assessment of tax for the year the election under §1.709–1(b)(2) is deemed made has not expired.

Section 709(b)(2) provides that in any case in which a partnership is liquidated before the end of the amortization period, any deferred expenses attributable to the partnership that were not allowed as a deduction by reason of section 709 may be deducted to the extent allowable under section 165. See also §1.709–1(b)(3). However, there is no partnership deduction with respect to its capitalized syndication expenses. Id.

Explanation of Provisions

The Treasury Department and the IRS are aware that some taxpayers are taking the position that a technical termination under section 708(b)(1)(B) entitles a partnership to deduct unamortized start-up expenses and organizational expenses to the extent provided under section 165. The Treasury Department and the IRS believe this result is contrary to the congressional intent underlying sections 195, 708, and 709. Therefore, the proposed regulations amend §1.708–1 to provide that a new partnership formed due to a transaction, or series of transactions, described in section 708(b)(1)(B) must continue amortizing the section 195 and section 709 expenses using the same amortization period adopted by the terminating partnership.

The legislative purpose of sections 195 and 709 was to allow expenses incurred in the formation of a partnership to be deducted ratably over the period during which the partnership benefits from those initial expenses. Section 195 and 709 provide that this period begins with the commencement of business (which must be an active trade or business in the case of section 195) and closes after 180 months, or when the business ceases, if earlier. The Treasury Department and the IRS believe that a technical termination under section 708(b)(1)(B) should not constitute a cessation of a trade or business to which the section 195 or section 709 expenses relate, nor does it otherwise constitute the type of disposition or liquidation that should trigger deduction of deferred section 195 or section 709 expenses.

Moreover, the Conference Report issued in conjunction with the enactment of AJCA treated start-up expenditures under section

195 and organizational expenditures under section 709 as analogous to other intangible business assets described in section 197, and accordingly determined that the period for the amortization of start-up expenditures and organizational expenditures should be consistent with the fifteen year amortization period for section 197 intangibles. H. Rep. No. 108–755, at 776–77 (October 07, 2004). Section 1.197–2(g)(2)(ii)(B) provides, generally, that in the case of a section 721 transaction in which an amortizable section 197 intangible is transferred to a partnership, the transferee partnership will continue to amortize its adjusted basis, to the extent it does not exceed the transferor's adjusted basis, ratably over the remainder of the transferor's 15-year amortization period. Section 1.197–2(g)(2)(iv)(B) provides that in applying §1.197–2(g)(2)(ii)(B) to a partnership that is terminated pursuant to section 708(b)(1)(B), the terminated partnership is treated as the transferor and the new partnership is treated as the transferee with respect to any section 197 intangible held by the terminated partnership immediately preceding the termination. Consistent with Congress' intent of aligning the amortization of start-up and organizational expenditures with the treatment of section 197 intangibles, the new partnership resulting from a technical termination under section 708(b)(1)(B) should similarly continue to amortize the section 195 and section 709 expenses using the same amortization period adopted by the terminated partnership.

Practitioners suggested guidance on this issue to alleviate uncertainty regarding the proper treatment of these items when a partnership undergoes a technical termination. One alternative to the rule set forth above would allow the terminating partnership to immediately deduct any unamortized section 195 or section 709 items to the extent provided under section 165 on the effective date of the termination (as defined in §1.708–1(b)(3)(ii)). However, the Treasury Department and the IRS decline to adopt this alternative, which as noted above would be inconsistent with Congress' intent to treat section 195 and section 709 items consistently with section 197 intangibles, and which might provide incentives for taxpayers to structure transactions in order to inappropriately accelerate the deduction of section 195 or section 709 expenses shortly after those expenses are incurred.

Proposed Effective/Applicability Date

These regulations, when published in their final form in the **Federal Register**, will apply to technical terminations that occur on or after December 9, 2013.

Special Analyses

It has been determined that these proposed regulations are not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is David H. Kirk, IRS Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

Proposed 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 continues to read in part as follows:

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

Par. 2. Section 1.195–2 is added to read as follows:

§1.195–2 Technical termination of a partnership.

(a) *In general*. If a partnership that has elected to amortize start-up expenditures under section 195(b) and §1.195–1 terminates in a transaction (or a series of transactions) described in section 708(b)(1)(B) or §1.708–1(b)(2), the termination shall not be treated as resulting in a disposition of the partnership's trade or business for purposes of section 195(b)(2). See §1.708–1(b)(6) for rules concerning the treatment of these start-up expenditures by the new partnership.

(b) *Effective/applicability date*. This section applies to a technical termination of a partnership under section 708(b)(1)(B) that occurs on or after December 9, 2013.

Par. 3. Section 1.708–1 is amended by adding paragraph (b)(6) to read as follows:

§1.708–1 Continuation of partnership.

* * * * *

(b) * * *

(6) *Treatment of certain start-up or organizational expenses following a technical termination*—(i) *In general*. If a partnership that has elected to amortize start-up expenditures under section 195(b) or organizational expenses under section 709(b)(1) terminates in a transaction (or a series of transactions) described in section 708(b)(1)(B) or paragraph (b)(2) of this section, the new partnership must continue to amortize those expenditures using the same amortization period adopted by the terminating partnership. See section 195 and §1.195–1 for rules concerning the amortization of start-up expenditures and section 709 and §1.709–1 for rules concerning the amortization of organizational expenses.

(ii) *Effective/applicability date*. This paragraph (b)(6) applies to a technical termination of a partnership under section 708(b)(1)(B) that occurs on or after December 9, 2013.

* * * * *

Par. 4. Section 1.709–1 is amended by:

1. Designating the text in paragraph (b)(3) as paragraph (b)(3)(i) , adding a heading to newly designated paragraph (b)(3)(i) and adding paragraph (b)(3)(ii);
2. Adding a sentence at the end of paragraph (b)(5).

The additions read as follows:

§1.709–1 Treatment of organization and syndication costs.

* * * * *

(b) * * *

(3) *Liquidation of partnership*—(i) *In general*. * * *

(ii) *Technical termination of a partnership*. If a partnership that has elected to amortize organizational costs under section 709(b) terminates in a transaction (or a series of transactions) described in section 708(b)(1)(B) or §1.708–1(b)(2), the termination shall not be treated as resulting in a liquidation of the partnership for purposes of section 709(b)(2). See §1.708–1(b)(6) for rules concerning the treatment of these organizational costs by the new partnership.

* * *

(5) * * * Paragraph (b)(3)(ii) of this section applies to a technical termination of a partnership under section 708(b)(1)(B) that occurs on or after December 9, 2013.

Heather C. Maloy,
Deputy Commissioner for Operations Support.

(Filed by the Office of the Federal Register on December 6, 2013, 8:45 a.m., and published in the issue of the Federal Register for December 9, 2013, 78 F.R. 73753)

Notice of Proposed Rulemaking

Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities

REG–134417–13

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance to tax-exempt social welfare organizations on political activities related to candidates that will not be considered to promote social welfare. These regulations will affect tax-exempt social welfare organizations and organizations seeking such status. This document requests comments from the public regarding these proposed regulations. This document also requests comments from the public regarding the standard under current regulations that considers a tax-exempt social welfare organization to be operated exclusively for the promotion of social welfare if it is "primarily" engaged in activities that promote the common good and general welfare of the people of the community, including how this standard should be measured and whether this standard should be changed.

DATES: Written or electronic comments and requests for a public hearing must be received by February 27, 2014.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–134417–13), Room 5205, Internal Revenue Service, P.O. 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–134417–13), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–134417–13).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Amy F. Giuliano at (202) 317-5800; concerning submission of comments and requests for a public hearing, Oluwafunmilayo Taylor at (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by January 28, 2014.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced; and

How the burden of complying with the proposed collection of information may be minimized, including through forms of information technology.

The collection of information in these proposed regulations is in §1.501(c)(4)–1(a)(2)(iii)(D), which provides a special rule for contributions by an organization described in section 501(c)(4) of the Internal Revenue Code (Code) to an organization described in section 501(c). Generally, a contribution by a section 501(c)(4) organization to a section 501(c) organization that engages in candidate-related political activity will be considered candidate-related political activity by the section

501(c)(4) organization. The special rule in §1.501(c)(4)–1(a)(2)(iii)(D) provides that a contribution to a section 501(c) organization will not be treated as a contribution to an organization engaged in candidate-related political activity if the contributor organization obtains a written representation from an authorized officer of the recipient organization stating that the recipient organization does not engage in any such activity and the contribution is subject to a written restriction that it not be used for candidate-related political activity. This special provision would not apply if the contributor organization knows or has reason to know that the representation is inaccurate or unreliable. The expected recordkeepers are section 501(c)(4) organizations that choose to contribute to, and to seek a written representation from, a section 501(c) organization.

Estimated number of recordkeepers: 2,000.

Estimated average annual burden hours per recordkeeper: 2 hours.

Estimated total annual recordkeeping burden: 4,000 hours.

A particular section 501(c)(4) organization may require more or less time, depending on the number of contributions for which a representation is sought.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

Background

Section 501(c)(4) of the Code provides a Federal income tax exemption, in part, for "[c]ivic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare." This exemption dates back to the enactment of the federal income tax in 1913. See Tariff Act of 1913, 38 Stat. 114 (1913). The statutory provision was largely unchanged until 1996, when section 501(c)(4) was amended to prohibit inurement of an organization's net earnings to private shareholders or individuals.

Prior to 1924, the accompanying Treasury regulations did not elaborate on the meaning of "promotion of social welfare." See Regulations 33 (Rev.), art. 67 (1918). Treasury regulations promulgated in 1924 explained that civic leagues qualifying for exemption under section 231(8) of the Revenue Act of 1924, the predecessor to section 501(c)(4) of the 1986 Code, are "those not organized for profit but operated exclusively for purposes beneficial to the community as a whole," and generally include "organizations engaged in promoting the welfare of mankind, other than organizations comprehended within [section 231(6) of the Revenue Act of 1924, the predecessor to section 501(c)(3) of the 1986 Code]." See Regulations 65, art. 519 (1924). The regulations remained substantially the same until 1959.

The current regulations under section 501(c)(4) were proposed and finalized in 1959. They provide that "[a]n organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community." Treas. Reg. §1.501(c)(4)–1(a)(2)(i). An organization "embraced" within section 501(c)(4) is one that is "operated primarily for the purpose of bringing about civic betterments and social improvements." *Id.* The regulations further provide that " [t]he promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office." Treas. Reg. §1.501(c)(4)–1(a)(2)(ii). This language is similar to language that appears in section 501(c)(3) requiring section 501(c)(3) organizations not to "participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office" ("political campaign intervention"). However, unlike the absolute prohibition that applies to charitable organizations described in section 501(c)(3), an organization that primarily engages in activities that promote social welfare will be considered under the current regulations to be operating exclusively for the promotion of social welfare, and may qualify for tax-exempt status under section 501(c)(4), even though it engages in some political campaign intervention.

The section 501(c)(4) regulations have not been amended since 1959, although Congress took steps in the intervening years to address further the relationship of political campaign activities to tax-exempt status. In particular, section 527, which governs the tax treatment of political organizations, was enacted in 1975 and provides generally that amounts received as contributions and other funds raised for political purposes (section 527 exempt function income) are not subject to tax. Section 527(e)(1) defines a "political organization" as "a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function." Section 527(f) also imposes a tax on exempt organizations described in section 501(c), including section 501(c)(4) social welfare organizations, that make an expenditure furthering a section 527 exempt function. The tax is imposed on the lesser of the organization's net investment income or section 527 exempt function expenditures. Section 527(e)(2) defines "exempt function" as "the function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any federal, state, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors" (referred to in this document as "section 527 exempt function").[1]

Unlike the section 501(c)(3) standard of political campaign intervention, and the similar standard currently applied under section 501(c)(4), both of which focus solely on candidates for elective public office, a section 527 exempt function encompasses activities related to a broader range of officials, including those who are appointed or nominated, such as executive branch officials and certain judges. Thus, while there is currently significant overlap in the activities that constitute political

[1] In 2000 and 2002, section 527 was amended to require political organizations (with some exceptions) to file a notice with the IRS when first organized and to periodically disclose publicly certain information regarding their expenditures and contributions. See sections 527(i) and 527(j).

campaign intervention under sections 501(c)(3) and 501(c)(4) and those that further a section 527 exempt function, the concepts are not synonymous.

Over the years, the IRS has stated that whether an organization is engaged in political campaign intervention depends upon all of the facts and circumstances of each case. See Rev. Rul. 78–248 (1978–1 CB 154) (illustrating application of the facts and circumstances analysis to voter education activities conducted by section 501(c)(3) organizations); Rev. Rul. 80–282 (1980–2 CB 178) (amplifying Rev. Rul. 78–248 regarding the timing and distribution of voter education materials); Rev. Rul. 86–95 (1986–2 CB 73) (holding a public forum for the purpose of educating and informing the voters, which provides fair and impartial treatment of candidates, and which does not promote or advance one candidate over another, does not constitute political campaign intervention under section 501(c)(3)). More recently, the IRS released Rev. Rul. 2007–41 (2007–1 CB 1421), providing 21 examples illustrating facts and circumstances to be considered in determining whether a section 501(c)(3) organization's activities (including voter education, voter registration, and get-out-the-vote drives; individual activity by organization leaders; candidate appearances; business activities; and Web sites) result in political campaign intervention. The IRS generally applies the same facts and circumstances analysis under section 501(c)(4). See Rev. Rul. 81–95 (1981–1 CB 332) (citing revenue rulings under section 501(c)(3) for examples of what constitutes participation or intervention in political campaigns for purposes of section 501(c)(4)).

Similarly, Rev. Rul. 2004–6 (2004–1 CB 328) provides six examples illustrating facts and circumstances to be considered in determining whether a section 501(c) organization (such as a section 501(c)(4) social welfare organization) that engages in public policy advocacy has expended funds for a section 527 exempt function. The analysis reflected in these revenue rulings for determining whether an organization has engaged in political campaign intervention, or has expended funds for a section 527 exempt function, is fact-intensive.

Recently, increased attention has been focused on potential political campaign intervention by section 501(c)(4) organizations. A recent IRS report relating to IRS review of applications for tax-exempt status states that "[o]ne of the significant challenges with the 501(c)(4) [application] review process has been the lack of a clear and concise definition of 'political campaign intervention.'" Internal Revenue Service, "Charting a Path Forward at the IRS: Initial Assessment and Plan of Action" at 20 (June 24, 2013). In addition, "[t]he distinction between campaign intervention and social welfare activity, and the measurement of the organization's social welfare activities relative to its total activities, have created considerable confusion for both the public and the IRS in making appropriate section 501(c)(4) determinations." *Id.* at 28. The Treasury Department and the IRS recognize that both the public and the IRS would benefit from clearer definitions of these concepts.

Explanation of Provisions

1. *Overview*

The Treasury Department and the IRS recognize that more definitive rules with respect to political activities related to candidates – rather than the existing, fact-intensive analysis – would be helpful in applying the rules regarding qualification for tax-exempt status under section 501(c)(4). Although more definitive rules might fail to capture (or might sweep in) activities that would (or would not) be captured under the IRS' traditional facts and circumstances approach, adopting rules with sharper distinctions in this area would provide greater certainty and reduce the need for detailed factual analysis in determining whether an organization is described in section 501(c)(4). Accordingly, the Treasury Department and the IRS propose to amend Treas. Reg. §1.501(c)(4)–1(a)(2) to identify specific political activities that would be considered candidate-related political activities that do not promote social welfare.

To distinguish the proposed rules under section 501(c)(4) from the section 501(c)(3) standard and the similar standard currently applied under section 501(c)(4), the proposed regulations would amend Treas. Reg. §1.501(c)(4)–1(a)(2)(ii) to delete the current reference to "direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office," which is similar to language in the section 501(c)(3) statute and regulations. Instead the proposed regulations would revise Treas. Reg. §1.501(c)(4)–1(a)(2)(ii) to state that "[t]he promotion of social welfare does not include direct or indirect candidate-related political activity." As explained in more detail in section 2 of this preamble, the proposed rules draw upon existing definitions of political campaign activity, both in the Code and in federal election law, to define candidate-related political activity that would not be considered to promote social welfare. The proposed rules draw in particular from certain statutory provisions of section 527, which specifically deals with political organizations and taxes section 501(c) organizations, including section 501(c)(4) organizations, on certain types of political campaign activities. Recognizing that it may be beneficial to have a more uniform set of rules relating to political campaign activity for tax-exempt organizations, the Treasury Department and the IRS request comments in subparagraphs a through c of this section of the preamble regarding whether the same or a similar approach should be adopted in addressing political campaign activities of other section 501(c) organizations, as well as whether the regulations under section 527 should be revised to adopt the same or a similar approach in defining section 527 exempt function activity.

a. *Interaction with section 501(c)(3)*

These proposed regulations do not address the definition of political campaign intervention under section 501(c)(3). The Treasury Department and the IRS recognize that, because such intervention is absolutely prohibited under section 501(c)(3), a more nuanced consideration of the totality of facts and circumstances may be appropriate in that context. The Treasury Department and the IRS request comments on the advisability of adopting an approach to defining political campaign intervention under section 501(c)(3) similar to the approach set forth in these regulations, either in lieu of the facts and circumstances approach reflected in

Rev. Rul. 2007–41 or in addition to that approach (for example, by creating a clearly defined presumption or safe harbor). The Treasury Department and the IRS also request comments on whether any modifications or exceptions would be needed in the section 501(c)(3) context and, if so, how to ensure that any such modifications or exceptions are clearly defined and administrable. Any such change would be introduced in the form of proposed regulations to allow an additional opportunity for public comment.

b. *Interaction with section 527*

As noted in the "Background" section of this preamble, a section 501(c)(4) organization is subject to tax under section 527(f) if it makes expenditures for a section 527 exempt function. Consistent with section 527, the proposed regulations provide that "candidate-related political activity" for purposes of section 501(c)(4) includes activities relating to selection, nomination, election, or appointment of individuals to serve as public officials, officers in a political organization, or Presidential or Vice Presidential electors. These proposed regulations do not, however, address the definition of "exempt function" activity under section 527 or the application of section 527(f). The Treasury Department and the IRS request comments on the advisability of adopting rules that are the same as or similar to these proposed regulations for purposes of defining section 527 exempt function activity in lieu of the facts and circumstances approach reflected in Rev. Rul. 2004–6. Any such change would be introduced in the form of proposed regulations to allow an additional opportunity for public comment.

c. *Interaction with sections 501(c)(5) and 501(c)(6)*

The proposed regulations define candidate-related political activity for social welfare organizations described in section 501(c)(4). The Treasury Department and the IRS are considering whether to amend the current regulations under sections 501(c)(5) and 501(c)(6) to provide that exempt purposes under those regulations (which include "the betterment of the conditions of those engaged in [labor, agricultural, or horticultural] pursuits" in the case of a section 501(c)(5) organization and promoting a "common business interest" in the case of a section 501(c)(6) organization) do not include candidate-related political activity as defined in these proposed regulations. The Treasury Department and the IRS request comments on the advisability of adopting this approach in defining activities that do not further exempt purposes under sections 501(c)(5) and 501(c)(6). Any such change would be introduced in the form of proposed regulations to allow an additional opportunity for public comment.

d. *Additional guidance on the meaning of "operated exclusively for the promotion of social welfare"*

The Treasury Department and the IRS have received requests for guidance on the meaning of "primarily" as used in the current regulations under section 501(c)(4). The current regulations provide, in part, that an organization is operated exclusively for the promotion of social welfare within the meaning of section 501(c)(4) if it is "primarily engaged" in promoting in some way the common good and general welfare of the people of the community. Treas. Reg. §1.501(c)(4)–1(a)(2)(i). As part of the same 1959 Treasury decision promulgating the current section 501(c)(4) regulations, regulations under section 501(c)(3) were adopted containing similar language: "[a]n organization will be regarded as 'operated exclusively' for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3)." Treas. Reg. §1.501(c)(3)–1(c)(1). Unlike the section 501(c)(4) regulations, however, the section 501(c)(3) regulations also provide that "[a]n organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose." *Id.*

Some have questioned the use of the "primarily" standard in the section 501(c)(4) regulations and suggested that this standard should be changed. The Treasury Department and the IRS are considering whether the current section 501(c)(4) regulations should be modified in this regard and, if the "primarily" standard is retained, whether the standard should be defined with more precision or revised to mirror the standard under the section 501(c)(3) regulations. Given the potential impact on organizations currently recognized as described in section 501(c)(4) of any change in the "primarily" standard, the Treasury Department and the IRS wish to receive comments from a broad range of organizations before deciding how to proceed. Accordingly, the Treasury Department and the IRS invite comments from the public on what proportion of an organization's activities must promote social welfare for an organization to qualify under section 501(c)(4) and whether additional limits should be imposed on any or all activities that do not further social welfare. The Treasury Department and the IRS also request comments on how to measure the activities of organizations seeking to qualify as section 501(c)(4) social welfare organizations for these purposes.

2. *Definition of Candidate-Related Political Activity*

These proposed regulations provide guidance on which activities will be considered candidate-related political activity for purposes of the regulations under section 501(c)(4). These proposed regulations would replace the language in the existing final regulation under section 501(c)(4) – "participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office" – with a new term – "candidate-related political activity" – to differentiate the proposed section 501(c)(4) rule from the standard employed under section 501(c)(3) (and currently employed under section 501(c)(4)). The proposed rule is intended to help organizations and the IRS more readily identify activities that constitute candidate-related political activity and, therefore, do not promote social welfare within the meaning of section 501(c)(4). These proposed regulations do not otherwise define the promotion of social welfare under section 501(c)(4). The Treasury Department and the IRS note that the fact that an activity is not candidate-related political activity under these proposed regulations does not mean that the activity promotes social welfare.

Whether such an activity promotes social welfare is an independent determination.

In defining candidate-related political activity for purposes of section 501(c)(4), these proposed regulations draw key concepts from the federal election campaign laws, with appropriate modifications reflecting the purpose of these regulations to define which organizations may receive the benefits of section 501(c)(4) tax-exempt status and to promote tax compliance (as opposed to campaign finance regulation). In addition, the concepts drawn from the federal election campaign laws have been modified to reflect that section 501(c)(4) organizations may be involved in activities related to local or state elections (in addition to federal elections), as well as the broader scope of the proposed definition of candidate (which is not limited to candidates for federal elective office).

The proposed regulations provide that candidate-related political activity includes activities that the IRS has traditionally considered to be political campaign activity per se, such as contributions to candidates and communications that expressly advocate for the election or defeat of a candidate. The proposed regulations also would treat as candidate-related political activity certain activities that, because they occur close in time to an election or are election-related, have a greater potential to affect the outcome of an election. Currently, such activities are subject to a facts and circumstances analysis before a determination can be made as to whether the activity furthers social welfare within the meaning of section 501(c)(4). Under the approach in these proposed regulations, such activities instead would be subject to a more definitive rule. In addition, consistent with the goal of providing greater clarity, the proposed regulations would identify certain specific activities as candidate-related political activity. The Treasury Department and the IRS acknowledge that the approach taken in these proposed regulations, while clearer, may be both more restrictive and more permissive than the current approach, but believe the proposed approach is justified by the need to provide greater certainty to section 501(c)(4) organizations regarding their activities and reduce the need for fact-intensive determinations.

The Treasury Department and the IRS note that a particular activity may fit within one or more categories of candidate-related political activity described in subsections b through e of this section 2 of the preamble; the categories are not mutually exclusive. For example, the category of express advocacy communications may overlap with the category of certain communications close in time to an election.

a. *Definition of "candidate"*

These proposed regulations provide that, consistent with the scope of section 527, "candidate" means an individual who identifies himself or is proposed by another for selection, nomination, election, or appointment to any public office or office in a political organization, or to be a Presidential or Vice-Presidential elector, whether or not the individual is ultimately selected, nominated, elected, or appointed. In addition, the proposed regulations clarify that for these purposes the term "candidate" also includes any officeholder who is the subject of a recall election. The Treasury Department and the IRS note that defining "candidate-related political activity" in these proposed regulations to include activities related to candidates for a broader range of offices (such as activities relating to the appointment or confirmation of executive branch officials and judicial nominees) is a change from the historical application in the section 501(c)(4) context of the section 501(c)(3) standard of political campaign intervention, which focuses on candidates for elective public office only. See Treas. Reg. §1.501(c)(3)–1(c)(3)(iii). These proposed regulations instead would apply a definition that reflects the broader scope of section 527 and that is already applied to a section 501(c)(4) organization engaged in section 527 exempt function activity through section 527(f).

b. *Express advocacy communications*

These proposed regulations provide that candidate-related political activity includes communications that expressly advocate for or against a candidate. These proposed regulations draw from Federal Election Commission rules in defining "expressly advocate," but expand the concept to include communications expressing a view on the selection, nomination, or appointment of individuals, or on the election or defeat of one or more candidates or of candidates of a political party. These proposed regulations make clear that all communications – including written, printed, electronic (including Internet), video, and oral communications – that express a view, whether for or against, on a clearly identified candidate (or on candidates of a political party) would constitute candidate-related political activity. A candidate can be "clearly identified" in a communication by name, photograph, or reference (such as "the incumbent" or a reference to a particular issue or characteristic distinguishing the candidate from others). The proposed regulations also provide that candidate-related political activity includes any express advocacy communication the expenditures for which an organization reports to the Federal Election Commission under the Federal Election Campaign Act as an independent expenditure.

c. *Public communications close in time to an election*

Under current guidance, the timing of a communication about a candidate that is made shortly before an election is a factor tending to indicate a greater risk of political campaign intervention or section 527 exempt function activity. In the interest of greater clarity, these proposed regulations would move away from the facts and circumstances approach that the IRS has traditionally applied in analyzing certain activities conducted close in time to an election. These proposed regulations draw from provisions of federal election campaign laws that treat certain communications that are close in time to an election and that refer to a clearly identified candidate as electioneering communications, but make certain modifications. The proposed regulations expand the types of candidates and communications that are covered to reflect the types of activities an organization might conduct related to local and state, as well as federal, contests, including any election or ballot measure to recall an individual who holds state or local elective public office. In addition,

the expansion of the types of communications covered in the proposed regulations reflects the fact that an organization's tax exempt status is determined based on all of its activities, even low cost and volunteer activities, not just its large expenditures.

Under the proposed definition, any public communication that is made within 60 days before a general election or 30 days before a primary election and that clearly identifies a candidate for public office (or, in the case of a general election, refers to a political party represented in that election) would be considered candidate-related political activity. These timeframes are the same as those appearing in the Federal Election Campaign Act definition of electioneering communications. The definition of "election," including what would be treated as a primary or a general election, is consistent with section 527(j) and the federal election campaign laws.

A communication is "public" if it is made using certain mass media (specifically, by broadcast, in a newspaper, or on the Internet), constitutes paid advertising, or reaches or is intended to reach at least 500 people (including mass mailings or telephone banks). The Treasury Department and the IRS intend that content previously posted by an organization on its Web site that clearly identifies a candidate and remains on the Web site during the specified pre-election period would be treated as candidate-related political activity.

The proposed regulations also provide that candidate-related political activity includes any communication the expenditures for which an organization reports to the Federal Election Commission under the Federal Election Campaign Act, including electioneering communications.

The approach taken in the proposed definition of candidate-related political activity would avoid the need to consider potential mitigating or aggravating circumstances in particular cases (such as whether an issue-oriented communication is "neutral" or "biased" with respect to a candidate). Thus, this definition would apply without regard to whether a public communication is intended to influence the election or some other, non-electoral action (such as a vote on pending legislation) and without regard to whether such communication was part of a series of similar communications. Moreover, a public communication made outside the 60-day or 30-day period would not be candidate-related political activity if it does not fall within the ambit of express advocacy communications or another specific provision of the definition. The Treasury Department and the IRS request comments on whether the length of the period should be longer (or shorter) and whether there are particular communications that (regardless of timing) should be excluded from the definition because they can be presumed to neither influence nor constitute an attempt to influence the outcome of an election. Any comments should specifically address how the proposed exclusion is consistent with the goal of providing clear rules that avoid fact-intensive determinations.

The Treasury Department and the IRS also note that this rule regarding public communications close in time to an election would not apply to public communications identifying a candidate for a state or federal appointive office that are made within a specified number of days before a scheduled appointment, confirmation hearing or vote, or other selection event. The Treasury Department and the IRS request comments on whether a similar rule should apply with respect to communications within a specified period of time before such a scheduled appointment, confirmation hearing or vote, or other selection event.

d. *Contributions to a candidate, political organization, or any section 501(c) entity engaged in candidate-related political activity*

The proposed definition of candidate-related political activity would include contributions of money or anything of value to or the solicitation of contributions on behalf of (1) any person if such contribution is recognized under applicable federal, state, or local campaign finance law as a reportable contribution; (2) any political party, political committee, or other section 527 organization; or (3) any organization described in section 501(c) that engages in candidate-related political activity within the meaning of this proposed rule. This definition of contribution is similar to the definition of contribution that applies for purposes of section 527. The Treasury Department and the IRS intend that the term "anything of value" would include both in-kind donations and other support (for example, volunteer hours and free or discounted rentals of facilities or mailing lists). The Treasury Department and the IRS request comments on whether other transfers, such as indirect contributions described in section 276 to political parties or political candidates, should be treated as candidate-related political activity.

The Treasury Department and the IRS recognize that a section 501(c)(4) organization making a contribution may not know whether a recipient section 501(c) organization engages in candidate-related political activity. The proposed regulations provide that, for purposes of this definition, a recipient organization would not be treated as a section 501(c) organization engaged in candidate-related political activity if the contributor organization obtains a written representation from an authorized officer of the recipient organization stating that the recipient organization does not engage in any such activity and the contribution is subject to a written restriction that it not be used for candidate-related political activity. This special provision would apply only if the contributor organization does not know or have reason to know that the representation is inaccurate or unreliable.

e. *Election-related activities*

The proposed definition of candidate-related political activity would include certain specified election-related activities, including the conduct of voter registration and get-out-the-vote drives, distribution of material prepared by or on behalf of a candidate or section 527 organization, and preparation or distribution of a voter guide and accompanying material that refers to a candidate or a political party. In addition, an organization that hosts an event on its premises or conducts an event off-site within 30 days of a primary election or 60 days of a general election at which one or more candidates in such election appear as part of the program (whether or not such appearance was previously scheduled) would be engaged in candidate-related political activity under the proposed definition.

The Treasury Department and the IRS acknowledge that under the facts and circumstances analysis currently used for section 501(c)(4) organizations as well as for section 501(c)(3) organizations, these election-related activities may not be considered political campaign intervention if conducted in a non-partisan and unbiased manner. However, these determinations are highly fact-intensive. The Treasury Department and the IRS request comments on whether any particular activities conducted by section 501(c)(4) organizations should be excepted from the definition of candidate-related political activity as voter education activity and, if so, a description of how the proposed exception will both ensure that excepted activities are conducted in a non-partisan and unbiased manner and avoid a fact-intensive analysis.

f. *Attribution to a section 501(c)(4) organization of certain activities and communications*

These proposed regulations provide that activities conducted by an organization include, but are not limited to, (1) activities paid for by the organization or conducted by the organization's officers, directors, or employees acting in that capacity, or by volunteers acting under the organization's direction or supervision; (2) communications made (whether or not such communications were previously scheduled) as part of the program at an official function of the organization or in an official publication of the organization; and (3) other communications (such as television advertisements) the creation or distribution of which is paid for by the organization. These proposed regulations also provide that an organization's Web site is an official publication of the organization, so that material posted by the organization on its Web site may constitute candidate-related political activity. The proposed regulations do not specifically address material posted by third parties on an organization's Web site. The Treasury Department and the IRS request comments on whether, and under what circumstances, material posted by a third party on an interactive part of the organization's Web site should be attributed to the organization for purposes of this rule. In addition, the Treasury Department and the IRS have stated in guidance under section 501(c)(3) regarding political campaign intervention that when a charitable organization chooses to establish a link to another Web site, the organization is responsible for the consequences of establishing and maintaining that link, even if it does not have control over the content of the linked site. See Rev. Rul. 2007–41. The Treasury Department and the IRS request comments on whether the consequences of establishing and maintaining a link to another Web site should be the same or different for purposes of the proposed definition of candidate-related political activity.

Proposed Effective/Applicability Date

These regulations are proposed to be effective the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. For proposed date of applicability, see §1.501(c)(4)–1(c).

Statement of Availability for IRS Documents

For copies of recently issued Revenue Procedures, Revenue Rulings, Notices, and other guidance published in the Internal Revenue Bulletin or Cumulative Bulletin, please visit the IRS Web site at *http://www.irs.gov* or the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that only a minimal burden would be imposed by the rule, if adopted. Under the proposal, if a section 501(c)(4) organization chooses to contribute to a section 501(c) organization and wants assurance that the contribution will not be treated as candidate-related political activity, it may seek a written representation that the recipient does not engage in candidate-related political activity within the meaning of these regulations. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS generally request comments on all aspects of the proposed rules. In particular, the Treasury Department and the IRS request comments on whether there are other specific activities that should be included in, or excepted from, the definition of candidate-related political activity for purposes of section 501(c)(4). Such comments should address how the proposed addition or exception is consistent with the goals of providing more definitive rules and reducing the need for fact-intensive analysis of the activity. All comments submitted by the public will be made available for public inspection and copying at *www.regulations.gov* or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Amy F. Giuliano, Office of Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Proposed 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 continues to read in part as follows:

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

Par. 2. Section 1.501(c)(4)–1 is proposed to be amended by revising the first sentence of paragraph (a)(2)(ii) and adding paragraphs (a)(2)(iii) and (c) to read as follows:

§1.501(c)(4)–1 Civic organizations and local associations of employees.

(a) * * *

(2) * * *

(ii) * * * The promotion of social welfare does not include direct or indirect candidate-related political activity, as defined in paragraph (a)(2)(iii) of this section. * * *

(iii) *Definition of candidate-related political activity*—(A) *In general*. For purposes of this section, candidate-related political activity means:

(*1*) Any communication (as defined in paragraph (a)(2)(iii)(B)(*3*) of this section) expressing a view on, whether for or against, the selection, nomination, election, or appointment of one or more clearly identified candidates or of candidates of a political party that—

(*i*) Contains words that expressly advocate, such as "vote," "oppose," "support," "elect," "defeat," or "reject;" or

(*ii*) Is susceptible of no reasonable interpretation other than a call for or against the selection, nomination, election, or appointment of one or more candidates or of candidates of a political party;

(*2*) Any public communication (defined in paragraph (a)(2)(iii)(B)(*5*) of this section) within 30 days of a primary election or 60 days of a general election that refers to one or more clearly identified candidates in that election or, in the case of a general election, refers to one or more political parties represented in that election;

(*3*) Any communication the expenditures for which are reported to the Federal Election Commission, including independent expenditures and electioneering communications;

(*4*) A contribution (including a gift, grant, subscription, loan, advance, or deposit) of money or anything of value to or the solicitation of contributions on behalf of—

(*i*) Any person, if the transfer is recognized under applicable federal, state, or local campaign finance law as a reportable contribution to a candidate for elective office;

(*ii*) Any section 527 organization; or

(*iii*) Any organization described in section 501(c) that engages in candidate-related political activity within the meaning of this paragraph (a)(2)(iii) (see special rule in paragraph (a)(2)(iii)(D) of this section);

(*5*) Conduct of a voter registration drive or "get-out-the-vote" drive;

(*6*) Distribution of any material prepared by or on behalf of a candidate or by a section 527 organization including, without limitation, written materials, and audio and video recordings;

(*7*) Preparation or distribution of a voter guide that refers to one or more clearly identified candidates or, in the case of a general election, to one or more political parties (including material accompanying the voter guide); or

(*8*) Hosting or conducting an event within 30 days of a primary election or 60 days of a general election at which one or more candidates in such election appear as part of the program.

(B) *Related definitions*. The following terms are defined for purposes of this paragraph (a)(2)(iii) only:

(*1*) "*Candidate*" means an individual who publicly offers himself, or is proposed by another, for selection, nomination, election, or appointment to any federal, state, or local public office or office in a political organization, or to be a Presidential or Vice-Presidential elector, whether or not such individual is ultimately selected, nominated, elected, or appointed. Any officeholder who is the subject of a recall election shall be treated as a candidate in the recall election.

(*2*) "*Clearly identified*" means the name of the candidate involved appears, a photograph or drawing of the candidate appears, or the identity of the candidate is apparent by reference, such as by use of the candidate's recorded voice or of terms such as "the Mayor," "your Congressman," "the incumbent," "the Democratic nominee," or "the Republican candidate for County Supervisor." In addition, a candidate may be "clearly identified" by reference to an issue or characteristic used to distinguish the candidate from other candidates.

(*3*) "*Communication*" means any communication by whatever means, including written, printed, electronic (including Internet), video, or oral communications.

(*4*) "*Election*" means a general, special, primary, or runoff election for federal, state, or local office; a convention or caucus of a political party that has authority to nominate a candidate for federal, state or local office; a primary election held for the selection of delegates to a national nominating convention of a political party; or a primary election held for the expression of a preference for the nomination of individuals for election to the office of President. A special election or a runoff election is treated as a primary election if held to nominate a candidate. A convention or caucus of a political party that has authority to nominate a candidate is also treated as a primary election. A special election or a runoff election is treated as a general election if held to elect a candidate. Any election or ballot measure to recall an individual who holds state or local elective public office is also treated as a general election.

(*5*) "*Public communication*" means any communication (as defined in paragraph (a)(2)(iii)(B)(*3*) of this section)—

(*i*) By broadcast, cable, or satellite;

(*ii*) On an Internet Web site;

(*iii*) In a newspaper, magazine, or other periodical;

(*iv*) In the form of paid advertising; or

(*v*) That otherwise reaches, or is intended to reach, more than 500 persons.

(*6*) "*Section 527 organization*" means an organization described in section 527(e)(1) (including a separate segregated fund described in section 527(f)(3)), whether or not the organization has filed notice under section 527(i).

(C) *Attribution*. For purposes of this section, activities conducted by an organization include activities paid for by the organization or conducted by an officer, director, or employee acting in that capac-

ity or by volunteers acting under the organization's direction or supervision. Communications made by an organization include communications the creation or distribution of which is paid for by the organization or that are made in an official publication of the organization (including statements or material posted by the organization on its Web site), as part of the program at an official function of the organization, by an officer or director acting in that capacity, or by an employee, volunteer, or other representative authorized to communicate on behalf of the organization and acting in that capacity.

(D) *Special rule regarding contributions to section 501(c) organizations.* For purposes of paragraph (a)(2)(iii)(A)(*4*) of this section, a contribution to an organization described in section 501(c) will not be treated as a contribution to an organization engaged in candidate-related political activity if—

(*1*) The contributor organization obtains a written representation from an authorized officer of the recipient organization stating that the recipient organization does not engage in such activity (and the contributor organization does not know or have reason to know that the representation is inaccurate or unreliable); and

(*2*) The contribution is subject to a written restriction that it not be used for candidate-related political activity within the meaning of this paragraph (a)(2)(iii).

(c) *Effective/applicability date.* Paragraphs (a)(2)(ii) and (iii) of this section apply on and after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

John Dalrymple,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on November 26, 2013, 4:15 p.m., and published in the issue of the Federal Register for November 29, 2013, 78 F.R. 71535)

Definition of Terms

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.

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.

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.

Numerical Finding List[1]

Bulletins 2013–27 through 2013–52

Announcements

Notices

Notices—Continued

Proposed Regulations

Revenue Procedures

Revenue Rulings

Treasury Decisions

[1]A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2013–1 through 2013–26 is in Internal Revenue Bulletin 2013–26, dated June 24, 2013.

Finding List of Current Actions on Previously Published Items[1]

Bulletins 2013–27 through 2013–52

Notices:

95-18
Modified in part by
Rev. Proc. 2013-39, 2013-52 I.R.B. *830*

2003-70
Modified and superseded by
Rev. Proc. 2013-39, 2013-52 I.R.B. *830*

2004-23
Clarified by
Notice 2013-57, 2013-40 I.R.B. *293*

2004-50
Clarified by
Notice 2013-57, 2013-40 I.R.B. *293*

2005-70
Obsoleted by
T.D. 9633 2013-39 I.R.B. *227*

2006-09
Modified and superseded by
Notice 2013-79, 2013-50 I.R.B. *653*

2006-40
Superseded by
Notice 2013-68, 2013-46 I.R.B. *501*

2006-54
Proposed update and supersession by
Notice 2013-78, 2013-50 I.R.B. *633*

2008-31
Modified and superseded by
Notice 2013-79, 2013-50 I.R.B. *653*

2009-41
Clarified and amplified by
Notice 2013-70, *528*

2009-53
Clarified and amplified by
Notice 2013-70, *528*

2010-84
Modified by
Notice 2013-74, 2013-52 I.R.B. *819*

2012-72
Superseded by
Notice 2013-80, 2013-52 I.R.B. *821*

2012-74
Obsoleted by
Notice 2013-51, 2013-34 I.R.B. *153*

2013-16
Superseded by
Notice 2013-55, 2013-38 I.R.B. *207*

2013-29
Clarified by
Notice 2013-60, 2013-44 I.R.B. *431*

Notices—Continued:

2013-36
Appendix updated by
Notice 2013-55, 2013-38 I.R.B. *207*
Superseded by
Notice 2013-55, 2013-38 I.R.B. *207*

2013-39
Amplified by
Notice 2013-47, 2013-31 I.R.B. *120*

2013-40
Amplified by
Notice 2013-47, 2013-31 I.R.B. *120*

Revenue Procedures:

70-6
Modified and superseded by
Rev. Proc. 2013-39, 2013-52 I.R.B. *830*

80-4
Modified and superseded by
Rev. Proc. 2013-39, 2013-52 I.R.B. *830*

81-60
Modified by
Rev. Proc. 2013-32, 2013-28 I.R.B. *55*

83-59
Modified by
Rev. Proc. 2013-32, 2013-28 I.R.B. *55*

86-42
Modified by
Rev. Proc. 2013-32, 2013-28 I.R.B. *55*

90-52
Modified by
Rev. Proc. 2013-32, 2013-28 I.R.B. *55*

95-18
Modified in part by
Rev. Proc. 2013-39, 2013-52 I.R.B. *830*

96-30
Modified by
Rev. Proc. 2013-32, 2013-28 I.R.B. *55*

97-48
Situation 1 superseded, Situation 2 obsoleted by
Rev. Proc. 2013-30, 2013-36 I.R.B. *173*

2003-43
Modified and superseded by
Rev. Proc. 2013-30, 2013-36 I.R.B. *173*

2003-48
Obsoleted in part and superseded in part by
Rev. Proc. 2013-32, 2013-28 I.R.B. *55*

2003-61
Superseded by
Rev. Proc. 2013-34, 2013-43 I.R.B. *398*

2003-70
Modified and superseded by
Rev. Proc. 2013-39, 2013-52 I.R.B. *830*

2004-34
Modified and clarified by
Rev. Proc. 2013-29, 2013-33 I.R.B. *141*

2004-48
Modified and superseded by
Rev. Proc. 2013-30, 2013-36 I.R.B. *173*

Revenue Procedures—Continued:

2004-49
Sections 4.01 & 4.02 modified and superseded
Section 4.03 obsoleted by
Rev. Proc. 2013-30, 2013-36 I.R.B. *173*

2007-44
Modified by
Ann. 2013-37, 2013-34 I.R.B. *155*

2007-62
Modified and superseded by
Rev. Proc. 2013-30, 2013-36 I.R.B. *173*

2009-25
Pilot program discontinued by
Rev. Proc. 2013-32, 2013-28 I.R.B. *55*

2011-18
Modified and clarified by
Rev. Proc. 2013-29, 2013-33 I.R.B. *141*

2011-49
Modified by
Ann. 2013-37, 2013-34 I.R.B. *155*

2012-25
Obsoleted in part by
Rev. Proc. 2013-28, 2013-27 I.R.B. *28*

2013-1
Amplified and modified by
Rev. Proc. 2013-32, 2013-28 I.R.B. *55*

2013-3
Amplified and modified by
Rev. Proc. 2013-32, 2013-28 I.R.B. *55*

Proposed Regulations:

112815-12
Corrected by
Ann. 2013-45, 2013-47 I.R.B. *546*

Revenue Rulings:

58-66
Amplified and clarified by
Rev. Rul. 2013-17, 2013-38 I.R.B. *201*

2004-12
Modified by
Notice 2013-74, 2013-52 I.R.B. *819*

2012-33
Supplemented and superseded by
Rev. Rul. 2013-23, 2013-48 I.R.B. *590*

2013-17
Supplemented by
Notice 2013-61, 2013-44 I.R.B. *432*

Treasury Decisions:

9610
Corrected by
Ann. 2013-41, 2013-40 I.R.B. *322*

9612
Corrected by
Ann. 2013-35, 2013-27 I.R.B. *46*

9622
Corrected by
Ann. 2013-39, 2013-35 I.R.B. *167*

9627
Corrected by
Ann. 2013-44, 2013-37 I.R.B. *545*

[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.

INDEX

Internal Revenue Bulletins 27 through 52

The abbreviation and number in parenthesis following the index entry refer to the specific item; numbers in roman and italic type following the parentheses refer to the Internal Revenue Bulletin in which the item may be found and the page number on which it appears.

Key to Abbreviations:

Ann	Announcement
CD	Court Decision
DO	Delegation Order
EO	Executive Order
PL	Public Law
PTE	Prohibited Transaction Exemption
RP	Revenue Procedure
RR	Revenue Ruling
SPR	Statement of Procedural Rules
TC	Tax Convention
TD	Treasury Decision
TDO	Treasury Department Order

EMPLOYEE PLANS

EMPLOYEE PLANS—Cont.

EMPLOYMENT TAX

ESTATE TAX

EXCISE TAX

EXEMPT ORGANIZATIONS

EXEMPT ORGANIZATIONS—Cont.

GIFT TAX

INCOME TAX

INCOME TAX—Cont.

INCOME TAX—Cont.

INCOME TAX—Cont.

SELF-EMPLOYMENT TAX

TAX CONVENTION

Internal Revenue Service
Washington, DC 20224

Official Business
Penalty for Private Use, $300

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/*.

CUMULATIVE BULLETINS

The contents of the weekly Bulletins were consolidated semiannually into permanent, indexed, Cumulative Bulletins through the 2008–2 edition.

INTERNAL REVENUE BULLETINS ON CD-ROM

Internal Revenue Bulletins are available annually as part of Publication 1796 (Tax Products CD-ROM). The CD-ROM can be purchased from National Technical Information Service (NTIS) on the Internet at *www.irs.gov/cdorders* (discount for online orders) or by calling 1-877-233-6767. The first release is available in mid-December and the final release is available in late January.

We Welcome Comments About the Internal Revenue Bulletin

If you have comments concerning the format or production of the Internal Revenue Bulletin or suggestions for improving it, we would be pleased to hear from you. You can email us your suggestions or comments through the IRS Internet Home Page (*www.irs.gov*) or write to the IRS Bulletin Unit, SE:W:CAR:MP:P:SPA, Washington, DC 20224.