Internal Revenue bulletin

Bulletin No. 2014–22
May 27, 2014

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

REG–131239–13, page 1064.

Proposed regulations under section 381 of the Internal Revenue Code modify the definition of an acquiring corporation for purposes of section 381 with regard to certain acquisitions of assets. Written or electronic comments and requests for a public hearing must be received by August 5, 2014.

Announcement 2014–22, page 1066.

This document contains corrections to final and temporary regulations (TD 9650) that were published in the Federal Register on Tuesday, December 31, 2013 (78 FR 79602). The regulations provide guidance on determining ownership of a passive foreign investment company ("PFIC") and on the annual filing requirements for shareholders of PFICs.

Announcement 2014–23, page 1067.

This document contains corrections to a notice of proposed rulemaking by cross-reference to temporary regulations (REG–140974–11) that was published in the Federal Register on Tuesday, December 31, 2013 (78 FR 79650). The proposed regulations provide guidance on determining the ownership of a passive foreign investment company (PFIC), the annual filing requirements for shareholders of PFICs, and an exclusion from certain filing requirements for shareholders that constructively own interests in certain foreign corporations.

Rev. Proc. 2014–33, page 1060.

This revenue procedure provides the exclusive procedures for taxpayers to obtain the automatic consent of the Commissioner to change a method of accounting for sales-based royalties and sales-based vendor chargebacks to comply with final regulations under §§ 263A and 471 of the Code. The final regulations (TD 9652) were published in the Federal Register on January 13, 2014.

Notice 2014–36, page 1058.

Credit for Renewable Electricity Production, Refined Coal Production, and Indian Coal Production, and Publication of Inflation Adjustment Factors and Reference Prices for Calendar Year 2014: The notice reports for 2014 the inflation adjustment factors and reference prices used to determine the availability of the section 45 credit for electricity produced from qualified energy resources and refined coal and includes the credit amounts for renewable electricity production and refined coal production. The notice also reports the inflation adjustment factor for Indian coal and includes the credit amounts for Indian coal production.

T.D. 9663, page 1038.

Final regulations provide rules under section 36B of the Code relating to requirements for Affordable Insurance Exchanges to report information relating to the health insurance premium tax credit, enacted by section 1401 of the Affordable Care Act.

T.D. 9664, page 1045.

Final Regulations under section 67 of the Code provide that certain costs incurred by estates or non-grantor trusts are miscellaneous itemized deductions that are deductible only to the extent they exceed 2 percent of the adjusted gross income of the estate or non-grantor trust. This limitation is often referred to as the "2-percent floor." Other costs incurred by estates or non-grantor trusts are deductible without regard to the 2-percent floor. These final regulations provide guidance on the types of costs that are and are not subject to the 2-percent floor.

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

Department of the Treasury
Internal Revenue Service

T.D. 9665, page 1050.

These final regulations clarify the general rule under section 402(a) that amounts held in a qualified retirement plan that are used to pay accident or health insurance premiums are taxable distributions unless described in certain statutory exceptions. The final regulations do not extend this result to arrangements under which amounts are used to pay premiums for disability insurance that replaces retirement plan contributions in the event of a participant's disability.

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 36.— Refundable Credit for Coverage Under a Qualified Health Plan

26 CFR 1.36B-5: Information reporting by Exchanges.

T.D. 9663

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Information Reporting for Affordable Insurance Exchanges

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to requirements for Affordable Insurance Exchanges (Exchanges) to report information relating to the health insurance premium tax credit enacted by the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010. These final regulations apply to Exchanges that make qualified health plans available to individuals.

DATES: *Effective date*: These regulations are effective on May 7, 2014.

Applicability Dates: For dates of applicability, see § 1.36B–1(o).

FOR FURTHER INFORMATION CONTACT: Shareen S. Pflanz or Arvind Ravichandran, (202) 317-4718 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-2232.

The collection of information in these final regulations is in § 1.36B–5 and will be reported on Form 1095–A. The collection of information is necessary to compute the premium tax credit and to reconcile the amount of the premium tax credit with advance payments of the premium tax credit (advance credit payments) made under section 1412 of the Patient Protection and Affordable Care Act (42 U.S.C. 18082). The collection of information is needed for compliance with the provisions of section 36B(f)(3) of the Internal Revenue Code (Code). The likely respondents are Exchanges established under section 1311 or 1321 of the Patient Protection and Affordable Care Act (42 U.S.C. 13031 or 42 U.S.C. 18041).

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.

The estimated total annual reporting burden is 10,050 hours. The estimated annual burden per respondent is 670 hours. The estimated number of respondents is 15.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer SE:W:CAR:MP:TM:S, Washington, DC 20224, and 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.

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

This document contains final regulations that amend § 1.36B–5 of the Income Tax Regulations (26 CFR part 1), providing detailed rules for information reporting by Exchanges on enrollments in qualified health plans. Section 36B(f)(3) directs Exchanges to report to the IRS and to taxpayers certain information necessary to reconcile the premium tax credit with advance credit payments and to administer the premium tax credit generally.

On July 2, 2013, a notice of proposed rulemaking (REG–140789–12) was published in the **Federal Register** (78 FR 39644). Written comments responding to the proposed regulations were received and considered. The comments are available for public inspection at www.regulations.gov or on request. No public hearing was requested or held. After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision.

Explanation of Provisions and Summary of Comments

1. *Individuals Subject to Exchange Reporting*.

The proposed regulations required Exchanges to report information for all individuals who enroll in a qualified health plan. The proposed regulations used the terms *taxpayer* and *responsible adult* to describe, respectively, an individual who applies to enroll one or more members of the individual's family in a qualified health plan and who requests advance credit payments and to describe an individual who enrolls one or more members of the individual's family and does not request advance credit payments.

A commenter suggested that these terms do not accommodate nontraditional family structures because the definitions assume that the individual who claims a dependent also enrolled the dependent in coverage. Commenters also felt the terms were confusing.

The terms taxpayer and responsible adult in the proposed regulations were intended to describe the individual who is expected to file an income tax return for the year of coverage for the enrolling family. Whether that individual is the one who completes the enrollment application is not significant. Accordingly, the final regulations clarify that these terms describe the individual who is expected to file an income tax return for the year of coverage with respect to individuals enrolling in a qualified health plan.

To avoid confusion with other uses of the term *taxpayer*, the final regulations instead use the term *tax filer* to identify individuals on behalf of whose families advance credit payments are made. This term is used in regulations at 45 CFR 155.300 to describe a taxpayer and thus is more familiar to Exchanges.

The final regulations clarify that if more than one tax family enrolls in the same qualified health plan there is a tax filer or responsible adult for each family and that the tax filer or responsible adult may or may not enroll in coverage.

The final regulations clarify the information required to be reported for qualified health plan enrollments for which advance credit payments are made or not made. Because the primary difference in the information reported relates to whether or not advance credit payments are made on behalf of an individual, the final regulations distinguish the reporting categories based on whether or not advance credit payments are made on behalf of an individual, rather than on whether an individual requests advance credit payments.

2. *Information Required to be Reported*

a. Specific data elements

The proposed regulations required Exchanges to report information concerning all individuals enrolled in qualified health plans. For each plan, the information includes the name, address, and taxpayer identification numbers (TINs), or dates of birth if a TIN is not available, for each individual covered under the plan; applicable benchmark plan premiums or the amount that would be the benchmark premium that would apply to all enrolled individuals (unless that information is made available to individuals through an alternative method that they can access at tax return filing); the amount of the premium for the qualified health plan the individuals enroll in; the name of the qualified health plan issuer and the issuer's employer identification number (EIN); the qualified health plan policy number; the Exchange's unique identification number; and the unique number that identifies the family's specific account to enable data association from month to month. For individuals enrolled in a plan for which advance credit payments were requested, the proposed regulations required Exchanges to report the amount of advance credit payments, whether the individuals enrolled are the taxpayer's dependents, and certain information concerning employers.

The final regulations generally require Exchanges to report the data elements identified in the proposed regulations but make several minor changes and clarifications in response to comments and based on what is needed to determine the premium tax credit.

Commenters requested that the final regulations omit certain data elements from the reporting requirements. A commenter expressed concern that it would not be able to report accurate information about the amount of advance credit payments. Another commenter questioned the need to report the family's specific account number. Other commenters advised that issuers often do not assign a policy number and that HHS regulations do not require issuers to report policy numbers to Exchanges.

The final regulations require Exchanges to report the policy identification number assigned by the Exchange instead of a policy number created by an issuer and clarify that the "specific account number" is the unique identifying number the Exchange uses to report data that enables the IRS to associate the data with the proper account. These data elements, including the amount of advance credit payments and the unique data association number, are available to Exchanges and essential for the IRS to properly administer the premium tax credit.

The proposed regulations required Exchanges to report whether an individual enrolled in a qualified health plan by a taxpayer is the taxpayer's dependent. A commenter suggested that Exchanges should not be required to report this information because Exchanges will obtain this information from the IRS as part of the verification of an applicant's information. The final regulations do not adopt this comment because information the IRS provides as part of the verification process is from the taxpayer's most recently filed tax return, which may be two years old. Accordingly, the final regulations retain the rule in the proposed regulations that, for plans for which advance credit payments are made, Exchanges will report which covered individuals a tax filer represented to the Exchange that he or she would claim as a dependent for the coverage year. This information is necessary because advance credit payments are based, in part, on information concerning the individuals whom a tax filer expects to claim as dependents for the taxable year for which the advance credit payments are made.

In addition, the final regulations make several minor changes to the data elements reported based on what is needed to determine the premium tax credit.

The proposed regulations provided that Exchanges must report the issuer's EIN on both the annual statement and the monthly statements. The final regulations provide that Exchanges will report the issuer's EIN on a monthly basis only, as this information is not needed on the annual report. The proposed regulations provided that Exchanges must report an address for a taxpayer's spouse. The final regulations omit this information, as it is unnecessary. Finally, the proposed regulations provided that Exchanges must report the dates of each individual's coverage under the qualified health plan. The final regulations provide that Exchanges also must report the start and end dates for the qualified health plan itself, as this information may be needed to determine the amount of the premium tax credit.

b. *Information on applicable benchmark premium*

The proposed regulations required Exchanges to report to the IRS information concerning the monthly premium for the applicable benchmark plan. For qualified health plans for which advance credit payments were approved, the proposed regulations provided that Exchanges must report the monthly premium for the applicable benchmark plan used to compute advance credit payments. For plans for which advance credit payments were not requested or were not approved, the proposed regulations required Exchanges to report the premium for the applicable benchmark plan that would apply to the individuals enrolled in a qualified health plan, unless the information is made available through an alternative method. Commenters requested clarification on the distinction between the benchmark premium information reported in each case.

The proposed and final regulations require Exchanges to report the monthly premium for the applicable benchmark plan that applies to the coverage family (the members of the family enrolling and eligible for a premium tax credit subsidy) that is used to compute advance credit payments. If no advance credit payments are made, Exchanges may not determine which individuals enrolled would be part of the coverage family and the applicable benchmark premium that would apply to that coverage family. Nonetheless, the final regulations, like the proposed regulations, require reporting the benchmark premium that would apply if the coverage family included everyone covered under the plan because individuals for whom advance credit payments are not made may claim the premium tax credit on the tax return for the year of coverage and must know the premium for the applicable benchmark plan to compute the amount of the credit. In lieu of reporting this benchmark premium, however, Exchanges may provide a reasonable method for taxpayers to use to determine at the time of filing the tax return the premium for the applicable benchmark plan that applies to a coverage family.

c. *Verification of employment information*

For individuals enrolled in a qualified health plan for which advance credit payments were requested, the proposed regulations required Exchanges to report information on employment, including the name, address, and EIN of each employer of each enrolled individual and whether the employer offered minimum essential coverage to the extent provided to the Exchange. A commenter requested confirmation that the requirement to report employment information does not obligate the Exchange to request or verify a taxpayer's employment information on a monthly basis or otherwise ensure the accuracy of the information supplied.

The proposed and final regulations provide that Exchanges must report employment information "to the extent this information is provided to the Exchange." Thus, Exchanges must report only employment information provided to the Exchange and are not obligated to verify the accuracy, except to the extent required by Department of Health and Human Services regulations. However, if during the year an enrollee provides updated or corrected employment information to an Exchange, the Exchange must report that information to the IRS in its next monthly report. Exchanges must submit corrected monthly reports for the coverage year by April 15th following the year of coverage.

d. *Annual versus monthly reporting*

The proposed regulations required Exchanges to report certain information to the IRS annually by January 31 of the year following the calendar year of coverage. Exchanges must report certain information on a monthly basis by the 15th of the month for the previous month and all previous months in that calendar year. A commenter requested that the final regulations delete the amount of the advance credit payments made on a taxpayer's behalf each month from the annual report to the IRS. The commenter suggested that the IRS already will have this information from monthly reports.

The final regulations do not adopt this comment. The information provided on the annual report is identical to the information reported on the statement to individuals, discussed later in this preamble. It summarizes for the year the information submitted monthly that taxpayers claiming the premium tax credit must have to properly claim the credit on their returns and to reconcile the premium tax credit with advance credit payments. Accordingly, the final regulations do not omit this information from the annual report.

e. *Family members with enrollments or exemptions at different exchanges*

A commenter asked how Exchanges will identify the members of a tax household if the members enroll in, or receive minimum essential coverage exemptions from, different Exchanges. The final regulations clarify that an Exchange will report only information on enrollments and exemptions at that Exchange. The IRS will associate information reports from multiple Exchanges with the appropriate tax return.

f. *Multiple families enrolled in one qualified health plan*

Under § 1.36B–3(h), if more than one tax family enrolls in a single policy, each applicable taxpayer covered by the plan may claim a premium tax credit, computed using the applicable percentage, household income, and benchmark plan that applies to that taxpayer. Under these circumstances, each applicable taxpayer must have the information specific to that tax family to claim the premium tax credit on the income tax return. Accordingly, the final regulations clarify that Exchanges will report the specified information for each family enrolled in a qualified health plan, whether receiving advance credit payments or not, including multiple families submitting a single application or enrolled in a single qualified health plan.

3. *Information Reporting on the SHOP*

Commenters asked whether Exchanges must report information for taxpayers obtaining health care coverage through a Small Business Health Options Program (SHOP) Exchange. The final regulations clarify that section 36B(f)(3) and these regulations do not require the reporting of information for taxpayers enrolling in health care coverage through a SHOP Exchange. However, under regulations at 45 CFR 155.720, SHOP Exchanges will report to the IRS information concerning employer participation, employer contribution, and employee enrollment in a time and format to be determined by the Department of Health and Human Services.

4. *Time for Reporting*

The proposed regulations required Exchanges to report certain information to the IRS on or before the 15th day following each month of coverage (monthly reporting), commencing in February, 2014. Commenters requested that the IRS delay the initial monthly report until June or July, 2014, to allow Exchanges sufficient time to develop the systems and processes necessary to support the monthly reporting requirements. In response to these comments, the final regulations provide that the Commissioner may establish an initial monthly reporting date in other guidance, see § 601.601(d), but no earlier than June 15, 2014. The report must include cumulative information for enrollments for the period January 1 through the end of the month preceding the initial monthly reporting date. For example, an initial report due June 15, 2014, must include cumulative information for the period January 1 to May 31, 2014.

5. *Statements Furnished to Individuals*

a. *Individual receiving the statement*

The proposed regulations directed Exchanges to furnish to each individual who enrolled one or more family members in a qualified health plan through the Exchange a written statement that includes the information the Exchange must report to the IRS annually. Exchanges may use Form 1095–A for the statement and must furnish the statement on or before January 31 of the year following the calendar year of coverage.

The proposed regulations required that an Exchange furnish a statement only to the individual who enrolls one or more family members through the Exchange. Several commenters indicated that Exchange regulations allow an individual applying for coverage to designate another person as an authorized representative for dealing with the Exchange on the individual's behalf. They requested that the final regulations recognize an individual's authorization of a third person as a representative for Exchange purposes as sufficient authority to allow Exchanges to provide the statement required under these regulations to the authorized representative, or that the final regulations require Exchanges to do so. Other commenters asked that the final regulations accommodate nontraditional family arrangements by allowing Exchanges to provide statements to individuals such as a grandparent or noncustodial parent who may claim a child as a dependent and would require the information on the statement to claim the premium tax credit for that dependent's coverage.

The final regulations do not prohibit Exchanges from providing statements to third parties if permitted under other law. However, section 36B(f)(3) does not authorize the IRS to require Exchanges to do so. In addition, the IRS is not able to provide statements to third parties based on authorization to an Exchange because information obtained pursuant to section 36B(f)(3) is return information and, under section 6103, return information may be disclosed only under express authority of the Code.

Commenters recommended significantly limiting the information reported on the statement to protect victims of domestic violence and children they enroll in coverage. The final regulations require Exchanges to send statements only to the tax filer or responsible adult whom the Exchange identifies. This person is likely to be the individual enrolling the child in coverage. A person claiming an individual as a dependent who is not identified as a tax filer or responsible adult will not receive a statement reporting the dependent's coverage. Therefore, if a victim of domestic abuse enrolls, or enrolls a child, in coverage as a tax filer or responsible adult, the Exchange will send a statement only to that person, even if another taxpayer claims the child as a dependent. In addition, the statement will include an address only for the person to whom it is mailed. Accordingly, on this issue, the final regulations adopt the proposed regulations without change.

b. *Electronic delivery of statements to recipients*

The proposed regulations provided that statements to individuals may be sent electronically only to individuals who affirmatively consent to the electronic format. Commenters requested that the final regulations permit electronic delivery of statements, paper delivery of statements, or both. Other commenters stated that the electronic statement rules are too complex and should be simplified.

The final regulations do not prohibit an Exchange from sending both paper and electronic statements to an individual. However, the final regulations retain the electronic statement procedures in the proposed regulations, which provide for affirmative consent to receive statements electronically, and clarify that the consent requirement is not satisfied if the recipient withdraws the consent. These procedures are the same as long-standing procedures that also apply in other information reporting contexts. The procedures are intended to ensure that all individuals, including those who do not have access to or are not fully comfortable with electronic technology, are able to access information necessary to prepare their tax returns.

The proposed regulations provided that if an Exchange furnishes a statement to an individual by mail, the statement must be sent to the individual's last known permanent address, or if no permanent address is known, to a temporary address. A commenter requested more definitive guidance on what constitutes the proper furnishing of a statement to an individual when the individual does not receive the statement, for example if the statement is returned undelivered. The commenter suggested that the final regulations adopt a rule that applies to other information reporting requirements that a first class mailing discharges the reporting entity's obligation to furnish a statement. To provide more certainty, the final regulations include this rule, which is consistent with other information reporting requirements.

Effective/Applicability Date

These regulations apply to taxable years ending after December 31, 2013.

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 has also 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 regulations do not impose a collection of information requirement on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. The Small Business Administration did not submit comments.

Drafting Information

The principal authors of these final regulations are Shareen S. Pflanz and Stephen J. Toomey of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in the development of the regulations.

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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 adding entries in numerical order to read in part as follows:

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

Section 1.36B–0 also issued under 26 U.S.C. 36B(g).

Section 1.36B–5 also issued under 26 U.S.C. 36B(g).

Par. 2. Section 1.36B–0 is amended by revising the entries for § 1.36B–5 to read as follows:

§ 1.36B–0 Table of Contents

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§ 1.36B–5 Information reporting by Exchanges.

Par. 3. Section 1.36B–5 is revised to read as follows:

§ 1.36B–5 Information reporting by Exchanges.

(a) *In general*. An Exchange must report to the Internal Revenue Service (IRS) information required by section 36B(f)(3) and this section relating to individual market qualified health plans in which individuals enroll through the Exchange. No reporting is required under this section for enrollment in plans through the Small Business Health Options Exchange.

(b) *Individual filing a return*. For purposes of this section, the terms *tax filer* and *responsible adult* describe the individual who is expected to be the taxpayer filing an income tax return for the year of coverage with respect to individuals enrolling in a qualified health plan. A tax filer is an individual on behalf of whom advance payments of the premium tax credit are made. A responsible adult is an individual on behalf of whom advance payments of the premium tax credit are not made. An individual may be a tax filer or responsible adult whether or not enrolled in coverage. If more than one family (within the meaning of § 1.36B–1(d)) enrolls in the same qualified health plan, there is a tax filer or responsible adult for each family.

(c) *Information required to be reported*—(1) *Information reported annually*. An Exchange must report to the IRS the following information for each qualified health

plan—

(i) The name, address, and taxpayer identification number (TIN), or date of birth if a TIN is not available, of the tax filer or responsible adult;

(ii) The name and TIN, or date of birth if a TIN is not available, of a tax filer's spouse;

(iii) The amount of the advance credit payments paid for coverage under the plan each month;

(iv) For plans for which advance credit payments are made, the premium (excluding the premium allocated to benefits in excess of essential health benefits, see § 1.36B–3(j)) for the applicable benchmark plan for purposes of computing advance credit payments;

(v) Except as provided in paragraph (c)(3)(ii) of this section, for plans for which advance credit payments are not made, the premium (excluding the premium allocated to benefits in excess of essential health benefits, see § 1.36B–3(j)) for the applicable benchmark plan that would apply to all individuals enrolled in the qualified health plan if advance credit payments were made for the coverage;

(vi) The name and TIN, or date of birth if a TIN is not available, and dates of coverage for each individual covered under the plan;

(vii) The coverage start and end dates of the qualified health plan;

(viii) The monthly premium for the plan in which the individuals enroll, however —

(A) The premium allocated to benefits in excess of essential health benefits is excluded, see § 1.36B–3(j);

(B) The premium for a stand-alone dental plan allocated to pediatric dental benefits is added, see § 1.36B–3(k), but if a family (within the meaning of § 1.36B–1(d)) is enrolled in more than one qualified health plan, the pediatric dental premium is added to the premium for only one qualified health plan; and

(C) The amount is not reduced for advance credit payments;

(ix) The name of the qualified health plan issuer;

(x) The Exchange-assigned policy identification number;

(xi) The Exchange's unique identifier; and

(xii) Any other information specified by forms or instructions or in published guidance, see § 601.601(d) of this chapter.

(2) *Information reported monthly*. For each calendar month, an Exchange must report to the IRS for each qualified health plan, the information described in paragraph (c)(1) of this section and the following information—

(i) For plans for which advance credit payments are made—

(A) The names, TINs, or dates of birth if no TIN is available, of the individuals enrolled in the qualified health plan who are expected to be the tax filer's dependent; and

(B) Information on employment (to the extent this information is provided to the Exchange) consisting of—

(*1*) The name, address, and EIN of each employer of the tax filer, the tax filer's spouse, and each individual covered by the plan; and

(*2*) An indication of whether an employer offered affordable minimum essential coverage that provided minimum value, and, if so, the amount of the employee's required contribution for self-only coverage;

(ii) The unique identifying number the Exchange uses to report data that enables the IRS to associate the data with the proper account from month to month;

(iii) The issuer's employer identification number (EIN); and

(iv) Any other information specified by forms or instructions or in published guidance, see § 601.601(d) of this chapter.

(3) *Special rules for information reported*—(i) *Multiple families enrolled in a single qualified health plan*. An Exchange must report the information specified in paragraphs (c)(1) and (c)(2) of this section for each family (within the meaning of § 1.36B–1(d)) enrolled in a qualified health plan, including families submitting a single application or enrolled in a single qualified health plan.

(ii) *Alternative to reporting applicable benchmark plan*. An Exchange satisfies the requirement in paragraph (c)(1)(v) of this section if, on or before January 1 of each year after 2014, the Exchange provides a reasonable method that a responsible adult may use to determine the premium (after adjusting for benefits in excess of essential health benefits) for the applicable benchmark plan that applies to the responsible adult's coverage family for the prior calendar year for purposes of determining the premium tax credit on the tax return.

(4) *Exemptions*. For each calendar month, an Exchange must report to the IRS the name and TIN, or date of birth if a TIN is not available, of each individual for whom the Exchange has granted an exemption from coverage under section 5000A(e) and the related regulations, the months for which the exemption is in effect, and the exemption certificate number.

(d) *Time for reporting*—(1) *Annual reporting*. An Exchange must submit to the IRS the annual report required under paragraph (c)(1) of this section on or before January 31 of the year following the calendar year of coverage.

(2) *Monthly reporting*—(i) *In general*. Except as provided in paragraph (d)(2)(ii) of this section, an Exchange must submit to the IRS the monthly reports required under paragraphs (c)(2) and (c)(4) of this section on or before the 15th day following each month of coverage.

(ii) *Initial monthly reporting in 2014*. Exchanges must submit to the IRS the initial monthly report required under paragraphs (c)(2) and (c)(4) of this section on a date that the Commissioner may establish in other guidance, see § 601.601(d) of this section, but no earlier than June 15, 2014. The initial report must include cumulative information for enrollments for the period January 1, 2014, through the last day of the month preceding the month for submitting the initial monthly report.

(3) *Corrections to information reported*. In general, an Exchange must correct erroneous or outdated monthly-reported information in the next monthly report. If the information must be corrected after the final monthly submission on January 15 following the coverage year, corrections should be submitted by the 15th day of the month following the month in which the incorrect information is identified. However, no monthly report correction is permitted after April 15 following the year of coverage. Errors on the annual report must be corrected and reported to the IRS and to the individual recipient identified in paragraph (f) of this section as soon as possible.

(e) *Electronic reporting*. An Exchange must submit the reports to the IRS required under this section in electronic format. The information reported monthly will be submitted to the IRS through the Department of Health and Human Services.

(f) *Annual statement to be furnished to individuals*—(1) *In general*. An Exchange must furnish to each tax filer or responsible adult (the recipient for purposes of paragraphs (f) and (g) of this section) a written statement showing—

(i) The name and address of the recipient and

(ii) The information described in paragraph (c)(1) of this section for the previous calendar year.

(2) *Form of statements*. A statement required under this paragraph (f) may be made by furnishing to the recipient identified in the annual report either a copy of the report filed with the IRS or a substitute statement. A substitute statement must include the information required to be shown on the report filed with the IRS and

must comply with requirements in published guidance (see § 601.601(d)(2) of this chapter) relating to substitute statements. A reporting entity may use an IRS truncated taxpayer identification number as the identification number for an individual in lieu of the identification number appearing on the corresponding information report filed with the IRS.

(3) *Time and manner for furnishing statements*. An Exchange must furnish the statements required under this paragraph (f) on or before January 31 of the year following the calendar year of coverage. If mailed, the statement must be sent to the recipient's last known permanent address or, if no permanent address is known, to the recipient's temporary address. For purposes of this paragraph (f)(3), an Exchange's first class mailing to the last known permanent address, or if no permanent address is known, the temporary address, discharges the Exchange's requirement to furnish the statement. An Exchange may furnish the statement electronically in accordance with paragraph (g) of this section.

(g) *Electronic furnishing of statements*—(1) *In general*. An Exchange required to furnish a statement under paragraph (f) of this section may furnish the statement to the recipient in an electronic format in lieu of a paper format. An Exchange that meets the requirements of paragraphs (g)(2) through (g)(7) of this section is treated as furnishing the statement in a timely manner.

(2) *Consent*—(i) *In general*. A recipient must have affirmatively consented to receive the statement in an electronic format. The consent may be made electronically in any manner that reasonably demonstrates that the recipient is able to access the statement in the electronic format in which it will be furnished. Alternatively, the consent may be made in a paper document that is confirmed electronically.

(ii) *Withdrawal of consent*. The consent requirement of this paragraph (g)(2) is not satisfied if the recipient withdraws the consent and the withdrawal takes effect before the statement is furnished. An Exchange may provide that the withdrawal of consent takes effect either on the date the Exchange receives it or on another date no more than 60 days later. The Exchange may provide that a request by the recipient for a paper statement will be treated as a withdrawal of consent to receive the statement in an electronic format. If the Exchange furnishes a statement after the withdrawal of consent takes effect, the recipient has not consented to receive the statement in electronic format.

(iii) *Change in hardware or software requirements*. If a change in the hardware or software required to access the statement creates a material risk that a recipient will not be able to access a statement, an Exchange must, prior to changing the hardware or software, notify the recipient. The notice must describe the revised hardware and software required to access the statement and inform the recipient that a new consent to receive the statement in the revised electronic format must be provided to the Exchange. After implementing the revised hardware and software, the Exchange must obtain a new consent or confirmation of consent from the recipient to receive the statement electronically.

(iv) *Examples*. The following examples illustrate the rules of this paragraph (g)(2):

Example 1. Furnisher F sends Recipient R a letter stating that R may consent to receive the statement required under section 36B electronically on a web site instead of in a paper format. The letter contains instructions explaining how to consent to receive the statement electronically by accessing the web site, downloading and completing the consent document, and e-mailing the completed consent to F. The consent document posted on the web site uses the same electronic format that F will use for the electronically furnished statement. R reads the instructions and submits the consent in the manner provided in the instructions. R has consented to receive the statement required under section 36B electronically in the manner described in paragraph (g)(2)(i) of this section.

Example 2. Furnisher F sends Recipient R an e-mail stating that R may consent to receive the statement required under section 36B electronically instead of in a paper format. The e-mail contains an attachment instructing R how to consent to receive the statement required under section 36B electronically. The e-mail attachment uses the same electronic format that F will use for the electronically furnished statement. R opens the attachment, reads the instructions, and submits the consent in the manner provided in the instructions. R has consented to receive the statement required under section 36B electronically in the manner described in paragraph (g)(2)(i) of this section.

Example 3. Furnisher F posts a notice on its web site stating that Recipient R may receive the statement required under section 36B electronically instead of in a paper format. The web site contains instructions on how R may access a secure web page and consent to receive the statements electronically. R accesses the secure web page and follows the instructions for giving consent. R has consented to receive the statement required under section 36B electronically in the manner described in paragraph (g)(2)(i) of this section.

(3) *Required disclosures*—(i) *In general*. Prior to, or at the time of, a recipient's consent, an Exchange must provide to the recipient a clear and conspicuous disclosure statement containing each of the disclosures described in paragraphs (g)(3)(ii) through (g)(3)(viii) of this section.

(ii) *Paper statement*. An Exchange must inform the recipient that the statement will be furnished on paper if the recipient does not consent to receive it electronically.

(iii) *Scope and duration of consent*. An Exchange must inform the recipient of the scope and duration of the consent. For example, the Exchange must inform the recipient whether the consent applies to each statement required to be furnished after the consent is given until it is withdrawn or only to the first statement required to be furnished following the consent.

(iv) *Post-consent request for a paper statement*. An Exchange must inform the recipient of any procedure for obtaining a paper copy of the recipient's statement after giving the consent described in paragraph (g)(2)(i) of this section and whether a request for a paper statement will be treated as a withdrawal of consent.

(v) *Withdrawal of consent*. An Exchange must inform the recipient that—

(A) The recipient may withdraw consent by writing (electronically or on paper) to the person or department whose name, mailing address, telephone number, and e-mail address is provided in the disclosure statement;

(B) An Exchange will confirm the withdrawal and the date on which it takes effect in writing (either electronically or on paper); and

(C) A withdrawal of consent does not apply to a statement that was furnished electronically in the manner described in this paragraph (g) before the date on which the withdrawal of consent takes effect.

(vi) *Notice of termination*. An Exchange must inform the recipient of the conditions under which the Exchange will cease furnishing statements electronically to the recipient.

(vii) *Updating information*. An Exchange must inform the recipient of the procedures for updating the information needed to contact the recipient and notify the recipient of any change in the Exchange's contact information.

(viii) *Hardware and software requirements*. An Exchange must provide the recipient with a description of the hardware and software required to access, print, and retain the statement, and the date when the statement will no longer be available on the web site. The Exchange must advise the recipient that the statement may be required to be printed and attached to a Federal, State, or local income tax return.

(4) *Format*. The electronic version of the statement must contain all required information and comply with applicable published guidance (see § 601.601(d) of this chapter) relating to substitute statements to recipients.

(5) *Notice*—(i) *In general*. If a statement is furnished on a web site, the Exchange must notify the recipient. The notice may be delivered by mail, electronic mail, or in person. The notice must provide instructions on how to access and print the statement and include the following statement in capital letters, "IMPORTANT TAX RETURN DOCUMENT AVAILABLE." If the notice is provided by electronic mail, this statement must be on the subject line of the electronic mail.

(ii) *Undeliverable electronic address*. If an electronic notice described in paragraph (g)(5)(i) of this section is returned as undeliverable, and the Exchange cannot obtain the correct electronic address from the Exchange's records or from the recipient, the Exchange must furnish the notice by mail or in person within 30 days after the electronic notice is returned.

(iii) *Corrected statement*. An Exchange must furnish a corrected statement to the recipient electronically if the original statement was furnished electronically. If the original statement was furnished through a web site posting, the Exchange must notify the recipient that it has posted the corrected statement on the web site in the manner described in paragraph (g)(5)(i) of this section within 30 days of the posting. The corrected statement or the notice must be furnished by mail or in person if—

(A) An electronic notice of the web site posting of an original statement or the corrected statement was returned as undeliverable; and

(B) The recipient has not provided a new e-mail address.

(6) *Access period*. Statements furnished on a web site must be retained on the web site through October 15 of the year following the calendar year to which the statements relate (or the first business day after October 15, if October 15 falls on a Saturday, Sunday, or legal holiday). The furnisher must maintain access to corrected statements that are posted on the web site through October 15 of the year following the calendar year to which the statements relate (or the first business day after October 15, if October 15 falls on a Saturday, Sunday, or legal holiday) or the date 90 days after the corrected forms are posted, whichever is later.

(7) *Paper statements after withdrawal of consent*. An Exchange must furnish a paper statement if a recipient withdraws consent to receive a statement electronically and the withdrawal takes effect before the statement is furnished. A paper statement furnished under this paragraph (g)(7) after the statement due date is timely if furnished within 30 days after the date the Exchange receives the withdrawal of consent.

John Dalrymple,
Deputy Commissioner
for Services and Enforcement.

Approved: May 1, 2014

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

(Filed by the Office of the Federal Register on May 2, 2014, 4:15 p.m., and published in the issue of the Federal Register for May 7, 2014, 79 F.R. 26113)

Section 67.—2-percent floor on miscellaneous itemized deductions

26 CFR 1.67-4: Costs paid or incurred by estates or non-grantor trusts.

T.D. 9664

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Limitations on Estates or Trusts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that provide guidance on which costs incurred by estates or trusts other than grantor trusts (non-grantor trusts) are subject to the 2-percent floor for miscellaneous itemized deductions under section 67(a) of the Internal Revenue Code. These regulations affect estates and non-grantor trusts.

DATES: *Effective Date*: These regulations are effective on May 9, 2014.

Applicability Date: For date of applicability, see § 1.67–4(d).

FOR FURTHER INFORMATION CONTACT: Jennifer N. Keeney, (202) 317-6852 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Income Tax Regulations (26 CFR Part 1) under section 67 of the Internal Revenue Code (Code) by adding § 1.67–4 regarding which costs incurred by an estate or a non-grantor trust are subject to the 2-percent floor for miscellaneous itemized deductions under section 67(a).

Section 67(a) of the Code provides that, for an individual taxpayer, miscellaneous itemized deductions are allowed only to the extent that the aggregate of those deductions exceeds 2 percent of adjusted gross income. Section 67(b) excludes certain itemized deductions from the definition of "miscellaneous itemized deductions." Section 67(e) provides that, for purposes of section 67, the adjusted gross income of an estate or trust shall be computed in the same manner as in the case of an individual. However, section 67(e)(1) provides that the deductions for costs paid or incurred in connection with the administration of the estate or trust that would not have been incurred if the property were not held in such estate or trust shall be treated as allowable in arriving at adjusted gross income. Therefore, deductions described in section 67(e)(1) are not subject to the 2-percent floor for miscellaneous itemized deductions under section 67(a).

A notice of proposed rulemaking (REG–128224–06) was published in the **Federal Register** (72 FR 41243) on July 27, 2007 (the 2007 proposed regulations). The 2007 proposed regulations provided that a cost is fully deductible to the extent that the cost is unique to an estate or trust. If a cost is not unique to an estate or trust, such that an individual could have incurred the expense, then that cost was subject to the 2-percent floor. The 2007 proposed regulations also addressed costs subject to the 2-percent floor that are included as part of a comprehensive fee paid to the trustee or executor (bundled fees). Written comments were received in response to the notice of proposed rulemaking. A public hearing was held on November 14, 2007, at which several commentators offered comments on the notice of proposed rulemaking.

On January 16, 2008, the Supreme Court of the United States issued its decision in *Michael J. Knight, Trustee of the William L. Rudkin Testamentary Trust v. Commissioner*, 552 U.S. 181, 128 S. Ct. 782 (2008), holding that fees paid to an investment advisor by an estate or non-grantor trust generally are subject to the 2-percent floor for miscellaneous itemized deductions under section 67(a). The Court reached this decision based upon an interpretation of section 67(e) that differed from the 2007 proposed regulations. The Court held that the proper reading of the language in section 67(e), which asks whether the expense "would not have been incurred if the property were not held in such trust or estate," requires an inquiry into whether a hypothetical individual who held the same property outside of a trust "customarily" or "commonly" would incur such expenses. Expenses that are "customarily" or "commonly" incurred by individuals are subject to the 2-percent floor.

After consideration of the Court's holding in *Knight*, the Treasury Department and the IRS issued Notice 2008–32 (2008–11 IRB 593) (March 17, 2008) to provide interim guidance on the treatment of bundled fees. Subsequent notices extended the interim guidance. (Notice 2008–116 (2008–52 IRB 1372) (December 29, 2008); Notice 2010–32 (2010–16 IRB 594) (April 19, 2010); Notice 2011–37 (2011–20 IRB 785) (May 16, 2011)). On September 7, 2011, a notice of proposed rulemaking and a notice of public hearing (REG–128224–06) were published in the **Federal Register** (76 FR 55322) (the 2011 proposed regulations) and the 2007 proposed regulations were withdrawn.

A public hearing on the 2011 proposed regulations was scheduled for December 19, 2011, but later was cancelled because no one requested to speak. However, comments responding to the 2011 proposed regulations were received. After consideration of these comments, the 2011 proposed regulations are adopted as revised by this Treasury decision. These final regulations generally retain the provisions of the 2011 proposed regulations with minor modifications.

Summary of Comments and Explanation of Revisions

A. *Commonly or Customarily Incurred – In General*

The proposed regulations provide that a cost is subject to the 2-percent floor to the extent that it is included in the definition of miscellaneous itemized deductions under section 67(b), is incurred by an estate or non-grantor trust, and commonly or customarily would be incurred by a hypothetical individual holding the same property. To determine whether the cost commonly or customarily would be incurred by a hypothetical individual owning the same property, it is the type of product or service rendered to the estate or non-grantor trust that is determinative. The proposed regulations also provide that costs that do not depend on the identity of the payor (in particular, whether the payor is an individual or, instead, is an estate or trust) are costs that are incurred commonly or customarily by individuals.

One commentator stated that treating costs that do not depend on the identity of the payor as costs that are commonly or customarily incurred in all cases is overly broad, and that such treatment effectively represents a disguised reassertion of the standard rejected by *Knight* of making the 2-percent floor applicable to any expense that *could* be incurred by an individual. In response to this comment, the final regulations remove the reference to costs that do not depend on the identity of the payor.

B. *Ownership costs*

The proposed regulations provide that, for purposes of section 67(e), ownership costs are costs that are commonly or customarily incurred by a hypothetical individual owner of such property. Therefore, ownership costs are subject to the 2-percent floor. The proposed regulations define ownership costs as costs that are chargeable to or incurred by an owner of property simply by reason of being the owner of the property, such as condominium fees, real estate taxes, insurance premiums, maintenance and lawn services, automobile registration and insurance costs, and partnership costs deemed to be passed through to and reportable by a partner. One commentator suggested that the final regulations adopt a rebuttable presumption that ownership costs are not subject to the 2-percent floor. The final regulations do not adopt this comment because the Treasury Department and the IRS believe that ownership costs are costs that commonly or customarily would be incurred by a hypothetical individual holding the same property, and accordingly, should be subject to the 2-percent floor.

Several commentators stated that the examples used to illustrate ownership costs in the proposed regulations are problematic. First, commentators correctly pointed out that real estate taxes are not a miscellaneous itemized deduction because they are fully deductible under section 62(a)(4) or section 164(a). Second, commentators suggested that the final regulations clarify that costs incurred in connection with a trade or business or for the production of rents or royalties are fully deductible under section 162 or section 62(a)(4) and thus are not miscellaneous deductions. Third, a commentator requested that the final regulations clarify that the partnership costs reportable by a partner are subject to the 2-percent floor only if those costs are miscellaneous itemized deductions under section 67(b). Thus, for example, a partnership cost that is fully deductible is not subject to the 2-percent floor. The final regulations adopt these clarifications.

C. *Tax Return Preparation Costs*

The proposed regulations provide that the application of the 2-percent floor to the cost of preparing tax returns on behalf of the estate, decedent, or non-grantor trust will depend upon the particular tax return. The proposed regulations provide that all costs of preparing estate and generation-skipping transfer tax returns, fiduciary income tax returns, and the decedent's final individual income tax returns are not subject to the 2-percent floor. However, the proposed regulations also provide that costs of preparing other individual income tax returns, gift tax returns, and tax returns for a sole proprietorship or a retirement plan, for example, are costs commonly and customarily incurred by individuals and thus are subject to the 2-percent floor.

Several commentators pointed out that it would be very rare for a trust to pay for the preparation of the tax return of an individual other than the decedent. In the unlikely event that it did, such a cost would either be a deemed beneficiary distribution or would represent a breach of fiduciary duty. Furthermore, tax preparation fees for sole proprietorships and retirement plans would be fully deductible as business expenses under section 162.

To resolve these ambiguities in the proposed regulations, the final regulations provide an exclusive list of tax return preparation costs that are not subject to the 2-percent floor. Any other tax return preparation cost that is included in the definition of miscellaneous itemized deduction under section 67(b) is subject to the 2-percent floor.

A few commentators suggested that the final regulations should expressly provide that the cost of preparing all gift tax returns should be exempt from the application of the 2-percent floor. However, gifts are made by individuals, and the gift tax returns required to report those gifts are commonly and customarily required to be prepared and filed by or on behalf of individuals. Therefore, the final regulations do not adopt the recommendation to include gift tax returns within the category of returns whose preparation costs are exempt from the 2-percent floor.

D. *Investment advisory fees*

The proposed regulations provide that fees for investment advice (including any related services that would be provided to any individual investor as part of an investment advisory fee) are incurred commonly or customarily by a hypothetical individual investor and, therefore, are subject to the 2-percent floor. The proposed regulations also provide guidance regarding a special type of investment advice discussed by the Supreme Court in *Knight*. The Court noted that it is conceivable "that a trust may have an unusual investment objective, or may require a specialized balancing of the interests of various parties, such that a reasonable comparison with individual investors would be improper." The Court further stated that, "in such a case, the incremental cost of expert advice beyond what would normally be required for the ordinary taxpayer would not be subject to the 2-percent floor."

The proposed regulations provide that, to the extent that a portion (if any) of an investment advisory fee exceeds the fee generally charged to an individual investor, and that excess is attributable to an unusual investment objective of the trust or estate or to a specialized balancing of the interests of various parties such that a reasonable comparison with individual investors would be improper, that excess is not subject to the 2-percent floor. The preamble to the proposed regulations explained that individual investors commonly have investment objectives that may require a balancing between investing for income and investing for growth and/or a specialized approach for particular assets. The preamble requested comments on the types of incremental charges, as described in this paragraph, that may be incurred by trusts or estates, as well as a specific description and rationale for any such charges. No response to this request was received, and the final regulations retain this provision as proposed.

E. *Appraisal Fees and Certain Other Fiduciary Expenses*

One commentator suggested that the final regulations include appraisal fees incurred by an estate or trust as a category of expense that is not subject to the 2-percent floor. Although individuals commonly or customarily would have assets appraised, estates and non-grantor trusts are required to undertake valuations for the maintenance and administration of these entities that an individual would not undertake. For example, Form 5227, "Split-Interest Trust Information Return", requires taxpayers to determine the fair market value of the trust's assets for each taxable year.

Accordingly, in response to these comments, the final regulations expressly provide that certain appraisal fees incurred by an estate or non-grantor trust are not subject to the 2-percent floor. Those appraisal fees are for appraisals needed to determine value as of the decedent's date of death (or the alternate valuation date), to determine value for purposes of making distributions, or as otherwise required to properly prepare the estate's or trust's tax returns. Appraisals for these purposes are not customarily obtained by individuals (unlike, for example, appraisals to determine the proper amount of insurance needed on certain property) and thus meet the requirements for exemption from the 2-percent floor under section 67(e).

One commentator requested confirmation of the inapplicability of the 2-percent floor to certain other fiduciary expenses. The final regulations contain such a statement with regard to some examples of fiduciary expenses that are not commonly or customarily incurred by individuals.

F. *Bundled Fees*

The proposed regulations provide that a bundled fee (generally, a fee for both costs that are subject to the 2-percent floor and costs that are not) must be allocated between those two categories of costs. However, the proposed regulations provide an exception to this allocation requirement for a bundled fee that is not computed on an hourly basis. Specifically, for such a fee, only the portion attributable to investment advice (including any related services that would be provided to any individual investor as part of the investment advisory fee) will be subject to the 2-percent floor. Notwithstanding this exception, payments made to third parties out of the bundled fee that would have been subject to the 2-percent floor if they had been paid directly by the estate or non-grantor trust, and any payments for expenses separately assessed by the fiduciary or other service provider that are commonly or customarily incurred by an individual owner of such property will be subject to the 2-percent floor.

The proposed regulations contain an example to illustrate a type of expense that is separately assessed: an additional fee charged by the fiduciary for managing rental real estate owned by the estate or non-grantor trust. Several commentators correctly noted that the expense in this example is not a miscellaneous itemized deduction, but is instead fully deductible. See sections 62(a)(4), 212, and 611. Therefore, the final regulations delete this example.

Most commentators objected to the requirement that a fiduciary commission be unbundled. They recommended that a single fiduciary commission that is not computed on an hourly basis, or otherwise separately stated, be entirely exempt from the 2-percent floor. The primary reason that commentators gave for this recommendation is the administrative difficulty and burden of the required calculations and recordkeeping. At least one commentator, however, acknowledged that unbundling a fiduciary commission is appropriate to provide the same tax treatment to the same expenses, regardless of how those expenses are billed.

Commentators also challenged the regulatory authority to require this unbundling, arguing that there is no statutory ambiguity with regard to a fiduciary commission and thus no authority to apply the 2-percent floor to any portion of that commission.

The Treasury Department and IRS believe the authority to unbundle rests with the authority to define expenses that "would not have been incurred if the property were not held in such trust or estate." Consistent with the *Knight* decision, these final regulations interpret this statutory exception to the 2-percent floor to capture those expenses that would not commonly or customarily be incurred by an individual. In identifying these expenses, the *Knight* Court specifically recognized that unbundling may be required in the case of investment advisory fees, the costs of which exceed the costs charged to an individual investor and which are incurred either because the investment advice is being rendered to a fiduciary or because of an unusual investment objective or the need for a specialized balancing of interests of various parties. The final regulations adopt this reasoning and, consistent with the *Knight* decision, provide that the portion of such a fee in excess of what would have been charged to an individual investor may be exempt from the 2-percent floor. Based upon the *Knight* decision and the authority to promulgate interpretative regulations, the Treasury Department and IRS believe that the final regulations are within the scope of regulatory authority.

The Treasury Department and IRS also believe that retaining the unbundling requirement in the final regulations is appropriate because it provides equitable tax treatment to similarly situated taxpayers. Taxpayers that pay investment fees to a third-party investment advisor and those that pay investment fees as part of a bundled fee should receive similar tax treatment.

The Treasury Department and IRS also believe that the limitations to the unbundling requirement reduce administrative burdens. For example, a fiduciary fee, an attorney's fee, or an accountant's fee that is not computed on an hourly basis is fully deductible except for (i) amounts allocable to investment advice; (ii) amounts paid out of the bundled fee by the fiduciary to third parties if those amounts would have been subject to the 2-percent floor if they had been paid directly by the non-grantor estate or trust; and (iii) amounts that are separately assessed (in addition to the usual or basic fiduciary fee or commission) by the fiduciary or other service provider that are commonly or customarily incurred by an individual owner of such property. Because the latter two categories relate to amounts that are traceable to separate payments, the Treasury Department and IRS believe that the administrative burden associated with subjecting these amounts to the 2-percent floor is insubstantial.

Furthermore, where amounts are allocable to investment advice but are not traceable to separate payments, the final regulations retain the flexibility of allowing the use of any reasonable method to make the allocation to investment advice. The Treasury Department and the IRS believe that the availability of any reasonable method mitigates administrative burden. However, to provide additional guidance, these final regulations provide non-exclusive factors to further reduce administrative burden for both taxpayers and the IRS.

In the preamble to the proposed regulations, the Treasury Department and the IRS requested comments on the types of methods for making a reasonable allocation to investment advice, including possible factors on which a reasonable allocation is most likely to be based, and on the related substantiation needed to satisfy the reasonable method standard. The Treasury Department and the IRS received only one comment in response to this request, which explained that there is no single standard that could be applied to multiple trusts or even to the same trust in different years.

In finalizing these regulations, the Treasury Department and the IRS reconsidered comments received in response to Notice 2008–32. Although some comments supported a percentage safe harbor, the percentages suggested assumed that all fees that are customarily incurred by individuals (and not just investment advisory fees) would be required to be unbundled. For this reason, the percentages that were suggested are not readily applied to the framework of the final regulations. The final regulations, however, permit the Treasury Department and the IRS to provide safe harbors in future published guidance.

Effective/Applicability Date

The final regulations apply to taxable years beginning on or after May 9, 2014.

Availability of IRS Documents

The IRS notices cited in this preamble are available at www.irs.gov.

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, and because these regulations do 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, the notice of proposed rulemaking that preceded these regulations 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 Jennifer N. Keeney, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS 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 continues to read in part as follows:

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

Par. 2. Section 1.67–4 is added to read as follows:

§ 1.67–4 Costs paid or incurred by estates or non-grantor trusts.

(a) *In general*. Section 67(e) provides an exception to the 2-percent floor on miscellaneous itemized deductions for costs that are paid or incurred in connection with the administration of an estate or a trust not described in § 1.67–2T(g)(1)(i) (a non-grantor trust) and that would not have been incurred if the property were not held in such estate or trust. A cost is subject to the 2-percent floor to the extent that it is included in the definition of miscellaneous itemized deductions under section 67(b), is incurred by an estate or non-grantor trust, and commonly or customarily would be incurred by a hypothetical individual holding the same property.

(b) *"Commonly" or "Customarily" Incurred*—(1) *In general*. In analyzing a cost to determine whether it commonly or customarily would be incurred by a hypothetical individual owning the same property, it is the type of product or service rendered to the estate or non-grantor trust in exchange for the cost, rather than the description of the cost of that product or service, that is determinative. In addition to the types of costs described as commonly or customarily incurred by individuals in paragraphs (b)(2), (3), (4), and (5) of this section, costs that are incurred commonly or customarily by individuals also include, for example, costs incurred in defense of a claim against the estate, the decedent, or the non-grantor trust that are unrelated to the existence, validity, or administration of the estate or trust.

(2) *Ownership costs*. Ownership costs are costs that are chargeable to or incurred by an owner of property simply by reason of being the owner of the property. Thus, for purposes of section 67(e), ownership costs are commonly or customarily incurred by a hypothetical individual owner of such property. Such ownership costs include, but are not limited to, partnership costs deemed to be passed through to and reportable by a partner if these costs are defined as miscellaneous itemized deductions pursuant to section 67(b), condominium fees, insurance premiums, maintenance and lawn services, and automobile registration and insurance costs. Other expenses incurred merely by reason of the ownership of property may be fully deductible under other provisions of the Code, such as sections 62(a)(4), 162, or 164(a), which would not be miscellaneous itemized deductions subject to section 67(e).

(3) *Tax preparation fees*. Costs relating to all estate and generation-skipping transfer tax returns, fiduciary income tax returns, and the decedent's final individual income tax returns are not subject to the 2-percent floor. The costs of preparing all other tax returns (for example, gift tax returns) are costs commonly and customarily incurred by individuals and thus are subject to the 2-percent floor.

(4) *Investment advisory fees*. Fees for investment advice (including any related services that would be provided to any individual investor as part of an investment advisory fee) are incurred commonly or customarily by a hypothetical individual investor and therefore are subject to the 2-percent floor. However, certain incremental costs of investment advice beyond the amount that normally would be charged to an individual investor are not subject to the 2-percent floor. For this purpose, such an incremental cost is a special, additional charge that is added solely because the investment advice is rendered to a trust or estate rather than to an individual or attributable to an unusual investment objective or the need for a specialized balancing of the interests of various parties (beyond the usual balancing of the varying interests of current beneficiaries and remaindermen) such that a reasonable comparison with individual investors would be improper. The portion of the investment advisory fees not subject to the 2-percent floor by reason of the preceding sentence is limited to the amount of those fees, if any, that exceeds the fees normally charged to an individual investor.

(5) *Appraisal fees*. Appraisal fees incurred by an estate or a non-grantor trust to determine the fair market value of assets as of the decedent's date of death (or

the alternate valuation date), to determine value for purposes of making distributions, or as otherwise required to properly prepare the estate's or trust's tax returns, or a generation-skipping transfer tax return, are not incurred commonly or customarily by an individual and thus are not subject to the 2-percent floor. The cost of appraisals for other purposes (for example, insurance) is commonly or customarily incurred by individuals and is subject to the 2-percent floor.

(6) *Certain Fiduciary Expenses*. Certain other fiduciary expenses are not commonly or customarily incurred by individuals, and thus are not subject to the 2-percent floor. Such expenses include without limitation the following: probate court fees and costs; fiduciary bond premiums; legal publication costs of notices to creditors or heirs; the cost of certified copies of the decedent's death certificate; and costs related to fiduciary accounts.

(c) *Bundled fees*—(1) *In general*. If an estate or a non-grantor trust pays a single fee, commission, or other expense (such as a fiduciary's commission, attorney's fee, or accountant's fee) for both costs that are subject to the 2-percent floor and costs (in more than a de minimis amount) that are not, then, except to the extent provided otherwise by guidance published in the Internal Revenue Bulletin, the single fee, commission, or other expense (bundled fee) must be allocated, for purposes of computing the adjusted gross income of the estate or non-grantor trust in compliance with section 67(e), between the costs that are subject to the 2-percent floor and those that are not.

(2) *Exception*. If a bundled fee is not computed on an hourly basis, only the portion of that fee that is attributable to investment advice is subject to the 2-percent floor; the remaining portion is not subject to that floor.

(3) *Expenses Not Subject to Allocation*. Out-of-pocket expenses billed to the estate or non-grantor trust are treated as separate from the bundled fee. In addition, payments made from the bundled fee to third parties that would have been subject to the 2-percent floor if they had been paid directly by the estate or non-grantor trust are subject to the 2-percent floor, as are any fees or expenses separately assessed by the fiduciary or other payee of the bundled fee (in addition to the usual or basic bundled fee) for services rendered to the estate or non-grantor trust that are commonly or customarily incurred by an individual.

(4) *Reasonable Method*. Any reasonable method may be used to allocate a bundled fee between those costs that are subject to the 2-percent floor and those costs that are not, including without limitation the allocation of a portion of a fiduciary commission that is a bundled fee to investment advice. Facts that may be considered in determining whether an allocation is reasonable include, but are not limited to, the percentage of the value of the corpus subject to investment advice, whether a third party advisor would have charged a comparable fee for similar advisory services, and the amount of the fiduciary's attention to the trust or estate that is devoted to investment advice as compared to dealings with beneficiaries and distribution decisions and other fiduciary functions. The reasonable method standard does not apply to determine the portion of the bundled fee attributable to payments made to third parties for expenses subject to the 2-percent floor or to any other separately assessed expense commonly or customarily incurred by an individual, because those payments and expenses are readily identifiable without any discretion on the part of the fiduciary or return preparer.

(d) *Effective/applicability date*. This section applies to taxable years beginning on or after May 9, 2014.

§ 1.67–4T [Removed]

Par. 3. Section 1.67–4T is removed.

John Dalrymple
Deputy Commissioner for Services and Enforcement.

Approved: April 1, 2014

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

(Filed by the Office of the Federal Register on May 8, 2014, 8:45 a.m., and published in the issue of the Federal Register for May 9, 2014, 79 F.R. 26616)

Section 402.— Taxability of Beneficiary of Employee's Trust

T.D. 9665

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Tax Treatment of Qualified Retirement Plan Payment of Accident or Health Insurance Premiums

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final Regulations.

SUMMARY: This document contains final regulations clarifying the rules regarding the tax treatment of payments by qualified retirement plans for accident or health insurance. The final regulations set forth the general rule under section 402(a) that amounts held in a qualified plan that are used to pay accident or health insurance premiums are taxable distributions unless described in certain statutory exceptions. The final regulations do not extend this result to arrangements under which amounts are used to pay premiums for disability insurance that replaces retirement plan contributions in the event of a participant's disability. These regulations affect sponsors, administrators, participants, and beneficiaries of qualified retirement plans.

DATES: *Effective Date*: These regulations are effective on May 12, 2014.

Applicability Date: These regulations generally apply for taxable years that begin on or after January 1, 2015. However, taxpayers may elect to apply the regulations to earlier taxable years. See the "**Effective/Applicability Dates**" section in this preamble for additional information regarding the applicability of these regulations.

FOR FURTHER INFORMATION CONTACT: Michael P. Brewer or Lauson C. Green at (202) 317-6700 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1 under section 402(a) of the Internal Revenue Code (Code), as well as conforming amendments under sections 72, 105, 106, 401, 402(c), 403(a), and 403(b).

Section 104(a)(3) provides, in general, that gross income does not include amounts received through accident or health insurance (or through an arrangement having the effect of accident or health insurance) for personal injuries or sickness. This exclusion does not apply to amounts attributable to (and not in excess of) deductions allowed under section 213 for any prior taxable year, or to other amounts received by an employee to the extent the amounts either are attributable to contributions by the employer that were not includible in the gross income of the employee or are paid by the employer.

Section 105(a) provides that, except as otherwise provided, amounts received by an employee through accident or health insurance for personal injuries or sickness are included in gross income to the extent the amounts (1) are attributable to contributions by the employer that were not includible in the gross income of the employee or (2) are paid by the employer.

Section 105(b) generally provides that, except in the case of amounts attributable to deductions allowed under section 213 for any prior taxable year, gross income does not include amounts referred to in section 105(a) if the amounts are paid, directly or indirectly, to the taxpayer to reimburse the taxpayer for expenses incurred by the taxpayer for the medical care of the taxpayer and his or her spouse or dependents (as defined in section 152, determined without regard to paragraphs (b)(1), (b)(2), and (d)(1)(B) thereof) and any child (as defined in section 152(f)(1)) of the taxpayer who as of the end of the taxable year has not attained age 27.

Section 106(a) provides that, except as otherwise provided, the gross income of an employee does not include employer-provided coverage under an accident or health plan. Section 1.106–1 of the Income Tax Regulations provides that the gross income of an employee does not include contributions that the employer makes to "an accident or health plan for compensation (through insurance or otherwise) to the employee for personal injuries or sickness incurred" by the employee or the employee's spouse or dependents.

For purposes of the Code, section 7702B(a) treats a qualified long-term care insurance contract as an accident and health insurance contract, and a plan of an employer providing coverage under a qualified long-term care insurance contract as an accident and health plan with respect to that coverage.

Section 213 generally allows a deduction for expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer and the taxpayer's spouse and dependents, to the extent that the expenses exceed 10 percent of the taxpayer's adjusted gross income.[1] Section 213(d)(1) provides that the term "medical care" includes amounts paid for insurance covering medical care (including eligible long-term care premiums with respect to qualified long-term care insurance contracts).

Section 401(a) sets forth requirements for a trust forming part of a pension, profit-sharing, or stock bonus plan to be qualified under section 401(a).

Section 401(h) provides that a pension or annuity plan may provide for the payment of benefits for sickness, accident, hospitalization, and medical expenses of retired employees, their spouses and their dependents only if certain enumerated conditions are met. Those conditions include: (1) the aggregate actual contributions for medical benefits (when added to actual contributions for life insurance protection under the plan) may not exceed 25 percent of the total actual contributions to the plan (other than contributions to fund past service credits) after the date on which the account is established; (2) a separate account must be established and maintained for such benefits; (3) the employer's contributions to the separate account must be reasonable and ascertainable; (4) it must be impossible, at any time prior to the satisfaction of all liabilities under the plan to provide such benefits, for any part of the corpus or income of such separate account to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of such benefits; (5) any amount remaining after satisfaction of all liabilities must, under the terms of the plan, be returned to the employer; and (6) special limitations for the accounts of key employees (as defined in section 401(h)) must be satisfied.

Section 402(a) provides, in general, that any amount actually distributed by a qualified plan is taxable under section 72 in the taxable year in which distributed.

Section 72(a) provides that, except as otherwise provided, gross income includes any amount received as an annuity (whether for a period certain or during one or more lives) under an annuity, endowment, or life insurance contract. Sections 72(d) and (e), which apply to any amount received as an annuity and any amount not received as an annuity, respectively, provide rules for determining the portion of any distribution that is not includable in gross income as a recovery of a participant's investment in the contract (generally the amount of the unrecovered after-tax employee contributions) under a qualified employer retirement plan.

Section 402(l) provides a limited exclusion from gross income for distributions from an eligible retirement plan used to pay health or long-term care insurance premiums of an eligible retired public safety officer to the extent that the aggregate amount of the distributions for the taxable year is not in excess of the qualified health insurance premiums of the retired public safety officer and his or her spouse or dependents. The total amount excluded from gross income pursuant to section 402(l) is limited to $3,000.

Section 1.72–15 provides rules relating to the tax treatment of amounts paid from an employer-established plan to which section 72 applies and which provides for distributions of accident or health benefits.

[1]The 7.5 percent threshold applicable before 2013 continues to apply through 2016 for individuals age 65 and older. See section 213(f).

With respect to benefits that are attributable to employer contributions, § 1.72–15(d) provides that any amount received as an accident or health benefit is includible in gross income, except to the extent excludable from gross income under section 105(b) (relating to reimbursements of medical care expenses as defined in section 213(d)).[2] Section 1.72–15(e) provides that the taxability of benefits that are not accident or health benefits is determined under section 72 without regard to any exclusion under section 104 or 105.

Section 1.401–1(b)(1)(i) provides that a plan is not a pension plan within the meaning of section 401(a) if it provides for the payment of benefits not customarily included in a pension plan, such as layoff benefits or benefits for sickness, accident, hospitalization, or medical expenses (except for medical benefits described in section 401(h)).

Section 1.401–1(b)(1)(ii) provides that a profit-sharing plan within the meaning of section 401(a) is primarily a plan of deferred compensation, but that amounts allocated to the account of a participant may be used to provide incidental life or accident or health insurance for the participant and the participant's family. Section 1.401–1(b)(1)(iii) provides that a stock bonus plan is a plan established and maintained by the employer to provide benefits similar to those of a profit-sharing plan.

Rev. Rul. 61–164 (1961–2 CB 99) (see § 601.601(d)(2)(ii)(*b*)) holds that a profit-sharing plan does not violate the incidental benefit rule in § 1.401–1(b)(1)(ii) merely because, in accordance with the plan's terms, each participant's account under the plan is charged with the cost of health insurance for the participant under group hospitalization insurance for the employer's employees, provided that the total amount used for life or accident or health insurance for the employee and the employee's family is incidental. The ruling also holds that the use of profit-sharing plan funds to pay for medical insurance for a participant and his or her beneficiary is a distribution within the meaning of section 402.

Rev. Rul. 73–501 (1973–2 CB 127) (see § 601.601(d)(2)(ii)(*b*)) applies the incidental benefit rule to the purchase of life insurance by a profit-sharing plan. The ruling states that "[u]nder a qualified profit-sharing plan, the use of trust funds to pay the cost of life, accident, or health insurance for an employee is a distribution within the purview of section 402 of the Code."

Rev. Rul. 2003–62 (2003–1 CB 1034) holds that amounts distributed from a qualified retirement plan that the distributee elects to have applied to pay health insurance premiums under a cafeteria plan are includible in the distributee's gross income. The ruling also holds that the same conclusion applies if amounts distributed from the plan are applied directly to reimburse medical care expenses incurred by a participant.

Rev. Rul. 2005–55 (2005–2 CB 284) holds that a profit-sharing plan that provides a sub-account that permits distributions only for the purpose of reimbursing the participant for substantiated medical expenses imposes conditions on the entitlement of the participant to amounts held in the sub-account and, as a result of the conditions, does not meet the nonforfeitability requirements of section 411.

Proposed regulations (REG–148393–06) under section 402(a) (proposed regulations) were published by the Treasury Department and the IRS in the **Federal Register** on August 20, 2007 (72 FR 46421). Corrections to the proposed regulations were published in Announcement 2007–98 (2007–2 CB 896). The Treasury Department and the IRS received written comments on the proposed regulations and a public hearing was held on December 6, 2007.

After consideration of the comments received in response to the proposed regulations, these final regulations generally adopt the provisions of the proposed regulations with certain modifications as described under the heading "Summary of Comments and Explanation of Provisions."

Summary of Comments and Explanation of Provisions

General Treatment of Accident or Health Insurance

Consistent with the proposed regulations, the final regulations clarify that a payment from a qualified plan for an accident or health insurance premium generally constitutes a distribution under section 402(a) that is taxable to the distributee under section 72 in the taxable year in which the premium is paid. The taxable amount generally equals the amount of the premium charged against the participant's benefits under the plan. If a defined contribution plan pays these premiums from a current year contribution or forfeiture that has not been allocated to a participant's account, then the amount of the premium for each participant will be treated as first being allocated to the participant and then charged against the participant's benefits under the plan. Therefore, the payment of an accident or health plan premium from unallocated contributions or forfeitures also will constitute a distribution to the participant under section 402(a) that is taxable under section 72 in the taxable year in which the premium is paid.

Like the proposed regulations, these regulations provide that a distribution for the payment of the premiums by a qualified plan generally is not excluded from gross income under sections 104, 105, or 106. However, the distribution may constitute a payment for medical care under section 213. Furthermore, to the extent that the payment of premiums for accident or health insurance has been treated as a distribution from a qualified plan, amounts received through the accident or health insurance for personal injuries or sickness are excludable from gross income under section 104(a)(3) and are not treated as distributions from the plan.

The general rule that the payment of an accident and health insurance premium from a qualified plan constitutes a distribution that is taxable under section 402 does not apply if another statutory provision provides for a different result. For

[2] Section 1.72–15(d) also refers to benefits excludible under section 105(c) (relating to certain payments unrelated to absence from work) or section 105(d), which was repealed in 1983 (and which related to certain disability payments).

example, section 402(l) provides an exclusion from gross income, up to $3,000 annually, for distributions paid directly to an insurer to purchase accident or health insurance or qualified long-term care insurance for an eligible retired public safety officer and his or her spouse or dependents. A similar exclusion applies for medical benefits for retired employees provided from an account described in section 401(h).

In accordance with these regulations, as with the proposed regulations, if a payment of a premium for accident or health insurance is treated as a distribution from the trust, then the insurance contract would not be treated as an investment under which the insurer's payments to the trust are treated as a return on that investment. As a result, payments from such a contract that are made to the trust (rather than made to the medical service provider or the participant as reimbursement for covered expenses) are treated as having been made to the participant and then contributed by the participant to the plan.

Special Rule for Disability Insurance Coverage

The preamble to the proposed regulations requested comments on whether there should be limited exceptions to the general rule in the proposed regulations, including whether there should be an exception for a provision that has the effect of a waiver of premium in the case of disability. All of the commenters that addressed the issue of payment of premiums for disability insurance from a plan recommended an exception for disability insurance arrangements that replace retirement plan contributions, describing these arrangements as having the same effect as a waiver of premiums in the case of disability. For example, commenters described an employer's general disability program that not only provides for wage replacement, but also provides for the purchase of insurance to make payments to a qualified plan in the event of a participant's disability that are intended to replace the contributions that would have been made if the participant was not disabled. These commenters requested that the regulations provide that a participant not be currently taxable on the premiums paid by the plan for this type of disability coverage. Similarly, they recommended the participant not be taxed when payments from the disability insurance contract are allocated to the participant's account after the participant becomes disabled. These comments pointed out that the payments would be taxable when benefits are ultimately distributed from the plan.

The Treasury Department and the IRS agree that the purchase of this type of disability coverage by a qualified plan is distinguishable from the purchase of medical insurance by a plan because the functional purpose of the disability insurance coverage is to replace retirement contributions to the plan, instead of providing medical benefits outside of the plan. Accordingly, these final regulations provide an exception for the payment of disability insurance premiums from a qualified plan if the insurance contract provides for payment of benefits to be made to the trust in the event of an employee's inability to continue employment with the employer due to disability, provided that the payment of benefits with respect to an employee's account does not exceed the reasonable expectation of the annual contributions that would have been made to the plan on the employee's behalf during the period of disability, reduced by any other contributions made on the employee's behalf for the period of disability within the year. For example, under this standard, the payment of benefits with respect to an employee's account may increase to reflect reasonably expected future salary increases. To the extent these conditions are satisfied, the insurance does not constitute a distribution to which section 402(a) applies and instead will be treated as any other plan investment. However, if the insurance contract provides for payment of benefits that exceed the reasonable expectation of the annual contributions that would have been made to the plan on the employee's behalf during the period of disability, then the exception for disability coverage would not apply and all of the premium payments made to provide the benefits to the employee would be treated as distributed to the employee under section 402(a) and (as described in this preamble) benefits from the coverage paid to the plan would constitute contributions. This limitation on the benefits payable under a contract is consistent with treating the disability coverage as a waiver of premium in case of disability, similar to the provision in § 1.408–3(a) under which a contract is not treated as other than an individual retirement annuity merely because it provides for waiver of premium upon disability. Additionally, the limitation means that benefits provided by the plan in the event of disability generally will be comparable to the disability benefits provided by a qualified disability benefit under a defined benefit plan, as described in section 411(a)(9) and § 1.411(a)–7(c)(3).

Some commenters recommended that the exception for disability coverage not result in different tax treatment for plan participants depending upon whether their employer insured or self-insured the disability benefit. The final regulations only address the situation in which payment of premiums is made from the plan. The Treasury Department and the IRS have concluded that, to the extent the insurance premiums are not paid by the plan or out of contributions to the plan, the disability insurance contract is not an asset of the plan and the amounts received by the plan under the disability insurance contract are not properly treated as a return on a plan investment. Instead, in such a case, the amounts paid from the insurance contract to the plan would be treated as contributions to the plan and would be subject to the general rules that apply to qualified plan contributions, including section 415(c). Similarly, to the extent the employer self-insures or makes arrangements to finance the disability coverage other than through third party insurance, the amounts paid to the plan on account of disability would be considered a contribution to the plan and would be subject to the general rules that apply to qualified plan contributions, including section 415(c). Payments to the plan will not be properly characterized as a return on a plan investment in any of these situations.

Conforming Amendments

The regulations contain conforming amendments to the Income Tax Regulations under sections 72, 105, 106, 401, and 402(c). These conforming amendments remove obsolete provisions, as well as cite to the rules in these regulations for determining the tax treatment of the payment of premiums for accident and health insurance from a qualified plan.[3]

Conforming amendments to the regulations under sections 403(a) and 403(b) also add a cross-reference applying these rules under section 402(a) to sections 403(a) and 403(b) arrangements. As a result, amounts paid for disability insurance premiums from an annuity or account under section 403(a) or 403(b) do not constitute distributions (and the disability insurance contracts are treated as plan investments) if the requirements applicable to the purchase of disability insurance by qualified plans are met. As in the case of a plan described in section 401(a), if the plan sponsor of an annuity or custodial account under section 403(a) or section 403(b) financed the disability protection by paying premiums for disability insurance that provides coverage to protect against a loss of contributions during a period of disability, then the benefits paid by the disability insurer would be treated as employer contributions to the annuity or account. However, if the premiums for the disability insurance were paid from the annuity or account in accordance with the rules that apply to qualified plans, then the benefits paid by the disability insurer will be treated as a return on plan investment.

In addition, the regulations revise the first sentence of § 1.106–1 in order to update the definition of the term "dependent" to reflect section 207 of the Working Families Tax Relief Act of 2004, Public Law 108–311 (118 Stat. 1166 (2004)) and Notice 2004–79 (2004–2 CB 898) and to reflect the amendment of section 105(b) made by section 1004(d)(1) of the Health Care and Education Reconciliation Act of 2010, Public Law 111–152 (124 Stat. 1029 (2010)), to include certain children who have not attained age 27. For periods before the applicability date of the regulations, taxpayers can rely on the interpretation of this latter provision set forth in Notice 2010–38 (2010–20 IRB 682).

These regulations also include a cross-reference to section 402(l) and amend § 1.402(c)–2, Q&A–4, to add distributions of premiums for accident or health insurance under § 1.402(a)–1(e)(1) to the list of items that are not eligible rollover distributions.

Effective/Applicability Date

The regulations apply for taxable years beginning on or after January 1, 2015. No inference should be drawn that the payment of accident or health premiums from a qualified plan does not constitute a taxable distribution if made in an earlier taxable year. However, taxpayers may elect to apply the regulations to earlier taxable years.

Statement of Availability of IRS Documents

The recently issued IRS notices and revenue rulings cited in this preamble are published in the Internal Revenue Bulletin or Cumulative Bulletin and are available from the Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000, or by visiting the IRS Web site at http://www.irs.gov.

Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in Executive Order 12866. 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 these regulations do 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, the proposed regulations preceding these final regulations were 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 Michael P. Brewer and Lauson C. Green, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART I—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 1.72–15 is amended by:

1. Revising the last sentence of paragraph (a).
2. Revising paragraph (d).
3. Removing and reserving paragraph (f).
4. Revising paragraphs (h) and (i).

The revisions read as follows:

§ 1.72–15 Applicability of section 72 to accident or health plans.

(a) *Applicability of section*. * * * Paragraphs (d), (h), and (i) of this section apply for taxable years beginning on or after January 1, 2015.

* * * * *

(d) *Accident or health benefits attributable to employer contributions*. Any amounts received as accident or health benefits and not attributable to contributions of the employee are includible in gross income except to the extent that the amounts are excludable from gross income under section 105(b) or (c) and the regulations under those sections. See § 1.402(a)–1(e) for rules relating to the use of a qualified plan under section 401(a) to pay premiums for accident or health insurance.

* * * * *

[3]The regulations do not alter the incidental benefit rule of § 1.401–1(b)(1)(ii) (which provides that a profit-sharing plan may provide incidental life or accident or health insurance for the participant and the participant's family) nor do they alter the tax treatment of the payment of life insurance. For the tax treatment of payments for life insurance, see section 72(m)(3) and § 1.72–16.

(h) *Medical benefits for retired employees, etc*. See § 1.402(a)–1(e)(2) for rules relating to the payment of medical benefits described in section 401(h) under a qualified pension or annuity plan.

(i) *Special rules*—(1) *In general*. For purposes of section 72(b) and (d) and this section, the taxpayer must maintain such records as are necessary to substantiate the amount treated as an investment in the taxpayer's annuity contract.

(2) *Delegation to Commissioner*. The Commissioner may prescribe a form and instructions with respect to the taxpayer's past and current treatment of amounts received under section 72 or 105, and the taxpayer's computation, or recomputation, of the taxpayer's investment in his or her annuity contract. This form may be required to be filed with the taxpayer's returns for years in which the amounts are excluded under section 72 or 105.

§ 1.105–4 [Removed]

Par. 3. Section 1.105–4 is removed.

§ 1.105–6 [Removed]

Par. 4. Section 1.105–6 is removed.

Par. 5. Section 1.106–1 is amended by:

1. Redesignating the existing text as paragraph (a).
2. In new-designated paragraph (a), revising the first sentence and adding a new sentence at the end of the paragraph.
3. Adding a new paragraph (b).

The revisions and additions read as follows:

§ 1.106–1 Contributions by employer to accident and health plans.

(a) The gross income of an employee does not include the contributions that the employer makes to an accident or health plan for compensation (through insurance or otherwise) to the employee for personal injuries or sickness incurred by the employee, the employee's spouse, the employee's dependents (as defined in section 152 determined without regard to section 152(b)(1), (b)(2), or (d)(1)(B)), or any child (as defined in section 152(f)(1)) of the employee who as of the end of the taxable year has not attained age 27. * * * For the treatment of the payment of premiums for accident or health insurance from a qualified trust under section 401(a), see §§ 1.72–15 and 1.402(a)–1(e).

(b) *Effective/applicability date*. The first and last sentences of paragraph (a) of this section apply for taxable years beginning on or after January 1, 2015.

Par. 6. Section 1.401–1 is amended by adding a new sentence at the end of paragraph (b)(1)(ii) to read as follows:

§ 1.401–1 Qualified pension, profit-sharing, and stock bonus plans.

* * * * *

(b) * * *

(1) * * *

(ii) * * * See §§ 1.72–15, 1.72–16, and 1.402(a)–1(e) for rules regarding the tax treatment of incidental life or accident or health insurance.

* * * * *

Par. 7. Section 1.402(a)–1 is amended by:

1. Revising the next to last sentence in paragraph (a)(1)(ii).
2. Removing the last sentence in paragraph (a)(1)(ii).
3. Adding paragraph (e).

The revision and addition read as follows:

§ 1.402(a)–1 Taxability of beneficiary under a trust which meets the requirements of section 401(a).

(a) * * *

(1) * * *

(ii) * * * Paragraph (e) of this section provides rules relating to use of a qualified pension, annuity, profit-sharing, or stock bonus plan to provide accident or health benefits or coverage otherwise described in sections 104, 105, or 106.

* * * * *

(e) *Medical, accident, etc. benefits paid from a qualified pension, annuity, profit-sharing, or stock bonus plan*—(1) *Payment of premiums*—(i) *General rule*. Except as provided in paragraph (e)(1)(iii) of this section, a payment made from a qualified trust that is a premium for accident or health insurance (including a qualified long-term care insurance contract under section 7702B) constitutes a distribution under section 402(a) to the participant for whose benefit the premium is charged. The amount of the distribution equals the amount of the premium charged against the participant's benefits under the plan. If a defined contribution plan pays these premiums from a current year contribution or forfeiture that has not been allocated to a participant's account, then the amount of the premium for each participant is treated as first being allocated to the participant and then charged against the participant's benefits under the plan, so that the amount of the distribution is treated in the same manner as determined under the preceding sentence. Except as provided in paragraphs (e)(2) and (e)(3) of this section, a distribution described in this paragraph (e)(1) is not excludable from gross income.

(ii) *Treatment of amounts received through accident or health insurance*. To the extent that the payment of a premium for accident or health insurance constitutes a distribution under this paragraph (e)(1), amounts received through accident or health insurance are neither paid by the employer nor attributable to contributions by the employer that are excludable from the gross income of the employee. Accordingly, to the extent the premium for accident or health insurance constitutes a distribution under this paragraph (e)(1), amounts received through the accident or health insurance for personal injuries or sickness are excludable from gross income under section 104(a)(3) and are not treated as distributions from the plan. If those amounts are paid to the plan instead of to the employee, those amounts are treated as having been paid to the employee and then contributed by the employee to the plan (and must satisfy the qualification requirements applicable to employee contributions).

(iii) *Exception for disability insurance that replaces retirement contributions*. The rules of paragraph (e)(1)(i) of this section do not apply to the payment made from a qualified trust that is a premium paid to an insurance company for a contract providing for payment of benefits to be made to the trust in the event of an employee's inability to continue employment with the employer due to disability, provided that the payment of benefits with respect to the employee's account for each year does not exceed the reasonable expectation of the annual contributions that would have been made to the plan on the employee's behalf for the period of disability within that year, reduced by any other contributions made on the employee's behalf for the period of disability within that year. The payment of premiums described in the preceding sentence is not treated as a distribution under section 402(a), but instead constitutes incidental accident or health insurance as provided in § 1.401–1(b)(1)(ii). The Commissioner may issue rules of general applicability in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin further describing the tax treatment of disability coverage described in this paragraph (e)(1)(iii).

(2) *Medical benefits for retired employees provided under an account described in section 401(h)*. The payment of medical benefits under a pension or annuity plan from an account described in section 401(h) is treated in the same manner as a payment of accident or health benefits attributable to employer contributions, or employer-provided coverage under an accident or health plan. See § 1.401–14(a) for the definition of medical benefits described in section 401(h). Accordingly, amounts applied for the payment of accident or health benefits, or for the payment of accident or health coverage, from a section 401(h) account are not includible in the gross income of the participant on whose behalf such contributions are made to the extent they are excludible from gross income under section 104, 105, or 106.

(3) *Distributions to eligible retired public safety officers*. See section 402(l) (and any guidance issued under section 402(l)) for a limited exclusion from gross income for distributions used to pay for certain accident or health premiums (including premiums for qualified long-term care insurance contracts). This limited exclusion applies to eligible retired public safety officers, as defined in section 402(l)(4)(B).

(4) *Effect of distribution of insurance premiums on plan qualification*. See § 1.401–1(b)(1) for rules concerning the types and amount of medical coverage and benefits that are permitted to be provided under a plan that is part of a trust described in section 401(a). For example, § 1.401–1(b)(1)(ii) provides that a profit-sharing plan is primarily a plan of deferred compensation, but the amounts allocated to the account of a participant may be used to provide incidental accident or health insurance for the participant and the participant's family. See also section 401(k)(2)(B) for certain restrictions on the distribution of elective contributions.

(5) *Applicability to beneficiaries and alternate payees*. This paragraph (e) applies to the payment of premiums charged against the benefits of a beneficiary or an alternate payee in the same manner as the payment of premiums charged against the account of a participant.

(6) *Examples*. The provisions of this paragraph (e) are illustrated by the following examples:

Example 1. (i) *Facts*. Employer A sponsors a profit-sharing plan qualified under section 401(a). The plan provides solely for non-elective employer profit-sharing contributions. The plan's trustee enters into a contract with a third-party insurance carrier to provide health insurance for certain plan participants. The insurance contract provides for the payment of medical expenses incurred by those participants. The plan limits the amounts used to provide medical benefits to comply with the incidental benefit rules. The trustee makes monthly payments of $1,000 to pay the premiums due for Participant P's health insurance and Participant P's account balance is reduced by $1,000 at the time of each premium payment. In June 2015, Participant P is admitted to the hospital for covered medical care, and in July 2015, the health insurer pays the hospital $5,000 for the medical care provided to Participant P in June.

(ii) *Conclusion*. Under paragraph (e)(1) of this section, each of the trustee's payments of $1,000 constitutes a taxable distribution under section 402(a) to Participant P on the date of each payment. The amount of these distributions may constitute payments for medical care under section 213. The $5,000 payment to the hospital is excludable from Participant P's gross income under section 104(a)(3) and is not treated as a distribution from the plan.

Example 2. (i) *Facts*. Employer B sponsors a profit-sharing plan qualified under section 401(a). The plan provides for elective contributions described in section 401(k) and matching contributions as well as non-elective employer profit-sharing contributions. The plan does not provide that a disabled participant's compensation for purposes of determining plan contributions includes amounts that the participant would have received in the absence of the disability, and accordingly Employer B does not make any contributions to the plan for the benefit of a disabled employee for the period of disability. The plan's trustee enters into a contract with a third-party insurance carrier to provide disability insurance for plan participants who elect to be covered under the insurance contract. The insurance contract provides for the payment of an amount to the trustee on a participant's behalf during the period of the participant's disability. Amounts to be paid to the trustee from the insurance contract with respect to a participant are equal to the sum of the elective, matching, and non-elective employer profit-sharing contributions that would have been made on the participant's behalf during the participant's disability (based on the participant's rate of compensation before becoming disabled) with the payments to continue for the duration of the disability until age 65 (or 5 years after the participant became disabled, if later). Participant Q elects to be covered under the insurance contract, and the trustee makes the periodic premium payments out of the account balance of Participant Q. In June 2015, Participant Q becomes disabled. During the period Participant Q is absent from employment due to disability, the insurer pays the trust the amount of the elective contributions and non-elective employer profit-sharing contributions that would have been made to the trust with respect to Participant Q had Participant Q not been disabled. The amount of the premiums for the insurance contract satisfies the limitations on incidental benefits under § 1.401–1(b)(1)(ii).

(ii) *Conclusion*. The payment of premiums from the trust is described in paragraph (e)(1)(iii) of this section. Accordingly, none of the premium payments under the contract constitute a distribution under section 402(a) to Participant Q. Further, amounts paid from the insurance contract to the trust also do not constitute a distribution to Participant Q. However, when Participant Q's account balance is distributed from the trust, the distribution will be subject to taxation in the year of distribution in accordance with the rules in section 402.

(7) *Effective/applicability date*. This paragraph (e) applies for taxable years beginning on or after January 1, 2015.

Par. 8. Section 1.402(c)–2 is amended by redesignating paragraph A–4(j) as paragraph A–4(k) and adding a new paragraph A–4(j) to read as follows:

§ 1.402(c)–2 Eligible rollover contributions; questions and answers.

* * * * *

A–4: * * *

(j) Distributions of premiums for accident or health insurance under § 1.402(a)–1(e)(1)(i). This paragraph A–4(j) applies for taxable years beginning on or after January 1, 2015.

* * * * *

Par. 9. Section 1.403(a)–1 is amended by revising paragraph (g) to read as follows:

§ 1.403(a)–1 Taxability of beneficiary under a qualified annuity plan.

* * * * *

(g) The rules of § 1.402(a)–1(e) apply for purposes of determining the treatment of amounts paid to provide accident and health insurance benefits.

Par. 10. Section 1.403(b)–6 is amended by revising paragraph (g) by adding two new sentences at the end of the paragraph to read as follows:

§ 1.403(b)–6 Timing of distributions and benefits.

* * * * *

(g) * * * The rules of § 1.402(a)–1(e) apply for purposes of determining when certain incidental benefits are treated as distributed and included in gross income. See §§ 1.72–15 and 1.72–16.

* * * * *

John Dalrymple,
Deputy Commissioner for Services and Enforcement.

Approved May 6, 2014.

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

(Filed by the Office of the Federal Register on May 5, 2014, 8:45 a.m., and published in the issue of the Federal Register for May 12, 2014, 79 F.R. 26838)

Section 471.—Trade or Business Expenses

The exclusive procedures are provided for taxpayers to obtain the automatic consent of the Commissioner to change a method of accounting for sales-based royalties and sales-based vendor chargebacks to comply with final regulations under §§ 263A and 471 of the Code. The final regulations (TD 9652) were published in the Federal Register on January 13, 2014. See Rev. Proc. 2014–33, page.

Part III. Administrative, Procedural, and Miscellaneous

Credit for Renewable Electricity Production, Refined Coal Production, and Indian Coal Production, and Publication of Inflation Adjustment Factors and Reference Prices for Calendar Year 2014

Notice 2014–36

This notice publishes the inflation adjustment factors and reference prices for calendar year 2014 for the renewable electricity production credit, the refined coal production credit, and the Indian coal production credit under section 45 of the Internal Revenue Code. The 2014 inflation adjustment factors and reference prices are used in determining the availability of the credits. The 2014 inflation adjustment factors and reference prices apply to calendar year 2014 sales of kilowatt hours of electricity produced in the United States or a possession thereof from qualified energy resources and to calendar year 2014 sales of refined coal and Indian coal produced in the United States or a possession thereof.

BACKGROUND

Section 45(a) provides that the renewable electricity production credit for any tax year is an amount equal to the product of 1.5 cents multiplied by the kilowatt hours of specified electricity produced by the taxpayer and sold to an unrelated person during the tax year. This electricity must be produced from qualified energy resources and at a qualified facility during the 10-year period beginning on the date the facility was originally placed in service.

Section 45(b)(1) provides that the amount of the credit determined under section 45(a) is reduced by an amount which bears the same ratio to the amount of the credit as (A) the amount by which the reference price for the calendar year in which the sale occurs exceeds 8 cents, bears to (B) 3 cents. Under section 45(b)(2), the 1.5 cent amount in section 45(a), the 8 cent amount in section 45(b)(1), the $4.375 amount in section 45(e)(8)(A), the $2.00 amount in section 45(e)(8)(D)(ii)(I), and in section 45(e)(8)(B)(i), the reference price of fuel used as feedstock (within the meaning of section 45(c)(7)(A)) in 2002 are each adjusted by multiplying the amount by the inflation adjustment factor for the calendar year in which the sale occurs. If any amount as increased under the preceding sentence is not a multiple of 0.1 cent, the amount is rounded to the nearest multiple of 0.1 cent. In the case of electricity produced in open-loop biomass facilities, small irrigation power facilities, landfill gas facilities, trash facilities, qualified hydropower facilities, and marine and hydrokinetic renewable energy facilities, section 45(b)(4)(A) requires the amount in effect under section 45(a)(1) (before rounding to the nearest 0.1 cent) to be reduced by one-half.

Section 45(c)(1) defines qualified energy resources as wind, closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, and marine and hydrokinetic renewable energy.

Section 45(d)(1) defines a qualified facility using wind to produce electricity as any facility owned by the taxpayer that is originally placed in service after December 31, 1993, and the construction of which begins before January 1, 2014. See section 45(e)(7) for rules relating to the inapplicability of the credit to electricity sold to utilities under certain contracts.

Section 45(d)(2)(A) defines a qualified facility using closed-loop biomass to produce electricity as any facility (i) owned by the taxpayer that is originally placed in service after December 31, 1992, and the construction of which begins before January 1, 2014; or (ii) owned by the taxpayer which before January 1, 2014, is originally placed in service and modified to use closed-loop biomass to co-fire with coal, with other biomass, or with both, but only if the modification is approved under the Biomass Power for Rural Development Programs or is part of a pilot project of the Commodity Credit Corporation as described in 65 Fed. Reg. 63052. For purposes of section 45(d)(2)(A)(ii), a facility shall be treated as modified before January 1, 2014, if the construction of such modification begins before such date. Section 45(d)(2)(C) provides that in the case of a qualified facility described in section 45(d)(2)(A)(ii), (i) the 10-year period referred to in section 45(a) is treated as beginning no earlier than the date of enactment of section 45(d)(2)(C)(i) (October 22, 2004); and (ii) if the owner of the facility is not the producer of the electricity, the person eligible for the credit allowable under section 45(a) is the lessee or the operator of the facility.

Section 45(d)(3)(A) defines a qualified facility using open-loop biomass to produce electricity as any facility owned by the taxpayer which (i) in the case of a facility using agricultural livestock waste nutrients, (I) is originally placed in service after the date of enactment of section 45(d)(3)(A)(i)(I) (October 22, 2004) and the construction of which begins before January 1, 2014, and (II) the nameplate capacity rating of which is not less than 150 kilowatts; and (ii) in the case of any other facility, the construction of which begins before January 1, 2014. In the case of any facility described in section 45(d)(3)(A), if the owner of the facility is not the producer of the electricity, section 45(d)(3)(C) provides that the person eligible for the credit allowable under section 45(a) is the lessee or the operator of the facility.

Section 45(d)(4) defines a qualified facility using geothermal or solar energy to produce electricity as any facility owned by the taxpayer which is originally placed in service after the date of enactment of section 45(d)(4) (October 22, 2004) and which, (A) in the case of a facility using solar energy, is placed in service before January 1, 2006, or (B) in the case of a facility using geothermal energy, the construction of which begins before January 1, 2014. A qualified facility using geothermal or solar energy does not include any property described in section 48(a)(3) the basis of which is taken into account by the taxpayer for purposes of determining the energy credit under section 48.

Section 45(d)(5) defines a qualified facility using small irrigation power to produce electricity as any facility owned by the taxpayer which is originally placed in service after the date of enactment of section 45(d)(5) (October 22, 2004) and before October 3, 2008.

Section 45(d)(6) defines a qualified facility using gas derived from the biodegradation of municipal solid waste to produce electricity as any facility owned by the taxpayer which is originally placed in service after the date of enactment of section 45(d)(6) (October 22, 2004) and the construction of which begins before January 1, 2014.

Section 45(d)(7) defines a qualified facility (other than a facility described in section 45(d)(6)) that burns municipal solid waste to produce electricity as any facility owned by the taxpayer which is originally placed in service after the date of enactment of section 45(d)(7) (October 22, 2004) and the construction of which begins before January 1, 2014. A qualified facility burning municipal solid waste includes a new unit placed in service in connection with a facility placed in service on or before the date of enactment of section 45(d)(7), but only to the extent of the increased amount of electricity produced at the facility by reason of such new unit.

Section 45(d)(8) provides in the case of a facility that produces refined coal, the term "refined coal production facility" means (A) with respect to a facility producing steel industry fuel, any facility (or any modification to a facility) which is placed in service before January 1, 2010, and (B) with respect to any other facility producing refined coal, any facility placed in service after the date of the enactment of the American Jobs Creation Act of 2004 (October 22, 2004) and before January 1, 2012.

Section 45(d)(9) defines a qualified facility producing qualified hydroelectric production described in section 45(c)(8) as (i) any facility producing incremental hydropower production, but only to the extent of its incremental hydropower production attributable to efficiency improvements or additions to capacity described in section 45(c)(8)(B) placed in service after the date of enactment of section 45(d)(9)(A)(i) (August 8, 2005) and before January 1, 2014; and (ii) any other facility placed in service after the date of enactment of section 45(d)(9)(A)(ii) (August 8, 2005) and the construction of which begins before January 1, 2014. Section 45(d)(9)(B) provides that in the case of a qualified facility described in section 45(d)(9)(A), the 10-year period referred to in section 45(a) is treated as beginning on the date the efficiency improvements or additions to capacity are placed in service. Section 45(d)(9)(C) provides that for purposes of section 45(d)(9)(A)(i), an efficiency improvement or addition to capacity is treated as placed in service before January 1, 2014, if the construction of such improvement or addition begins before such date.

Section 45(d)(10) provides in the case of a facility that produces Indian coal, the term "Indian coal production facility" means a facility which is placed in service before January 1, 2009.

Section 45(d)(11) provides in the case of a facility producing electricity from marine and hydrokinetic renewable energy, the term "qualified facility" means any facility owned by the taxpayer which (A) has a nameplate capacity rating of at least 150 kilowatts, and (B) which is originally placed in service on or after the date of the enactment of section 45(d)(11)(B) (October 3, 2008) and the construction of which begins before January 1, 2014.

Section 45(e)(8)(A) provides that the refined coal production credit is an amount equal to $4.375 per ton of qualified refined coal (i) produced by the taxpayer at a refined coal production facility during the 10-year period beginning on the date the facility was originally placed in service, and (ii) sold by the taxpayer (I) to an unrelated person and (II) during the 10-year period and the tax year. Section 45(e)(8)(B) provides that the amount of credit determined under section 45(e)(8)(A) is reduced by an amount which bears the same ratio to the amount of the increase as (i) the amount by which the reference price of fuel used as feedstock (within the meaning of section 45(c)(7)(A)) for the calendar year in which the sale occurs exceeds an amount equal to 1.7 multiplied by the reference price for such fuel in 2002, bears to (ii) $8.75. Section 45(e)(8)(D)(ii)(I) provides that in the case of a taxpayer who produces steel industry fuel, section 45(e)(8)(A) shall be applied by substituting "$2 per barrel-of-oil equivalent" for "$4.375 per ton." Section 45(e)(8)(D)(ii)(II) provides that in lieu of the 10-year period referred to in sections 45(e)(8)(A)(i) and 45(e)(8)(A)(ii)(II), the credit period shall be the period beginning on the later of the date such facility was originally placed in service, the date the modifications described in section 45(e)(8)(D)(iii) were placed in service, or October 1, 2008, and ending on the later of December 31, 2009, or the date which is 1 year after the date such facility or the modifications described in section 45(e)(8)(D)(iii) were placed in service. Section 45(e)(8)(D)(ii)(III) provides that section 45(e)(8)(B) (dealing with the phaseout of the credit) will not apply.

Section 45(e)(10)(A) provides in the case of a producer of Indian coal, the credit determined under section 45 for any taxable year shall be increased by an amount equal to the applicable dollar amount per ton of Indian coal (i) produced by the taxpayer at an Indian coal production facility during the 8-year period beginning on January 1, 2006, and (ii) sold by the taxpayer (I) to an unrelated person, and (II) during such 8-year period and such taxable year.

Section 45(e)(10)(B)(i) defines "applicable dollar amount" for any taxable year as (I) $1.50 in the case of calendar years 2006 through 2009, and (II) $2.00 in the case of calendar years beginning after 2009.

Section 45(e)(2)(A) requires the Secretary to determine and publish in the Federal Register each calendar year the inflation adjustment factor and the reference price for the calendar year. The inflation adjustment factors and the reference prices for the 2014 calendar year were published in the Federal Register on April 16, 2014.

Section 45(e)(2)(B) defines the inflation adjustment factor for a calendar year as the fraction the numerator of which is the GDP implicit price deflator for the preceding calendar year and the denominator of which is the GDP implicit price deflator for the calendar year 1992. The term "GDP implicit price deflator" means the most recent revision of the implicit price deflator for the gross domestic product as computed and published by the Department of Commerce before March 15 of the calendar year.

Section 45(e)(2)(C) provides that the reference price is the Secretary's determination of the annual average contract price per kilowatt hour of electricity generated from the same qualified energy resource and sold in the previous year in the United States. Only contracts entered into after December 31, 1989, are taken into account.

Under section 45(e)(8)(C), the determination of the reference price for fuel used as feedstock within the meaning of section 45(c)(7)(A) is made according to rules similar to the rules under section 45(e)(2)(C).

Under section 45(e)(10)(B)(ii), in the case of any calendar year after 2006, each of the dollar amounts under section 45(e)(10)(B)(i) shall be equal to the product of such dollar amount and the inflation adjustment factor determined under section 45(e)(2)(B) for the calendar year, except that section 45(e)(2)(B) shall be applied by substituting 2005 for 1992.

INFLATION ADJUSTMENT FACTORS AND REFERENCE PRICES

The inflation adjustment factor for calendar year 2014 for qualified energy resources and refined coal is 1.5088. The inflation adjustment factor for Indian coal is 1.1587.

The reference price for calendar year 2014 for facilities producing electricity from wind (based upon information provided by the Department of Energy) is 4.85 cents per kilowatt hour. The reference prices for fuel used as feedstock within the meaning of section 45(c)(7)(A), relating to refined coal production (based upon information provided by the Department of Energy) are $31.90 per ton for calendar year 2002 and $56.88 per ton for calendar year 2014. The reference prices for facilities producing electricity from closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, and marine and hydrokinetic energy have not been determined for calendar year 2014.

PHASEOUT CALCULATION

Because the 2014 reference price for electricity produced from wind (4.85 cents per kilowatt hour) does not exceed 8 cents multiplied by the inflation adjustment factor, the phaseout of the credit provided in section 45(b)(1) does not apply to such electricity sold during calendar year 2014. Because the 2014 reference price of fuel used as feedstock for refined coal ($56.88) does not exceed $81.82 (which is the $31.90 reference price of such fuel in 2002 multiplied by the inflation adjustment factor (1.5088) and 1.7), the phaseout of credit provided in section 45(e)(8)(B) does not apply to refined coal sold during calendar year 2014. Further, for electricity produced from closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, and marine and hydrokinetic energy, the phaseout of credit provided in section 45(b)(1) does not apply to such electricity sold during calendar year 2014.

CREDIT AMOUNT BY QUALIFIED ENERGY RESOURCE AND FACILITY, REFINED COAL, AND INDIAN COAL

As required by section 45(b)(2), the 1.5 cent amount in section 45(a)(1), the 8 cent amount in section 45(b)(1), the $4.375 amount in section 45(e)(8)(A) and the $2.00 amount in section 45(e)(8)(D) are each adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. If any amount as increased under the preceding sentence is not a multiple of 0.1 cent, such amount is rounded to the nearest multiple of 0.1 cent. In the case of electricity produced in open-loop biomass facilities, small irrigation power facilities, landfill gas facilities, trash facilities, qualified hydropower facilities, and marine and hydrokinetic renewable energy facilities, section 45(b)(4)(A) requires the amount in effect under section 45(a)(1) (before rounding to the nearest 0.1 cent) to be reduced by one-half. Under the calculation required by section 45(b)(2), the credit for renewable electricity production for calendar year 2014 under section 45(a) is 2.3 cents per kilowatt hour on the sale of electricity produced from the qualified energy resources of wind, closed-loop biomass, geothermal energy, and solar energy, and 1.1 cents per kilowatt hour on the sale of electricity produced in open-loop biomass facilities, small irrigation power facilities, landfill gas facilities, trash facilities, qualified hydropower facilities, and marine and hydrokinetic energy facilities. Under the calculation required by section 45(b)(2), the credit for refined coal production for calendar year 2014 under section 45(e)(8)(A) is $6.601 per ton on the sale of qualified refined coal. The credit for Indian coal production for calendar year 2014 under section 45(e)(10)(B) is $2.317 per ton on the sale of Indian coal.

DRAFTING AND CONTACT INFORMATION

The principal author of this notice is Philip Tiegerman of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Philip Tiegerman on (202) 317-6853 (not a toll-free Number).

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26 CFR 601.204: Changes in accounting periods and in methods of accounting.
(Also Part I, §§ 263A, 446, 471, 481)

Rev. Proc. 2014–33

SECTION 1. PURPOSE

This revenue procedure provides the exclusive procedures by which a taxpayer obtains the consent of the Commissioner under § 446(e) of the Internal Revenue Code to (1) change its method of accounting for royalties described in § 1.263A–1(e)(3)(ii)(U)(*2*) of the Income Tax Regulations, (2) change its method of accounting for sales-based vendor chargebacks described in § 1.471–3(e)(1), or (3) change its simplified production method or simplified resale method for costs allocated only to inventory property that has been sold, to comply with final regulations under §§ 263A and 471.

SECTION 2. BACKGROUND

.01 Section 263A requires taxpayers to capitalize the direct costs and indirect costs that are properly allocable to real property or tangible personal property the taxpayer produces and real property or personal property described in § 1221(a)(1) that the taxpayer acquires for resale. Taxpayers must allocate costs required to be capitalized to property produced or acquired for resale during the taxable year using a cost allocation method described in the regulations. For example, taxpayers may use the simplified methods provided in § 1.263A–2(b) (the simplified production method) or § 1.263A–3(d) (the simplified resale method) to allocate costs to inventory property produced or acquired for resale.

.02 Under § 471, when the use of inventories is necessary to clearly determine the income of any taxpayer, inventories must be taken on the basis that most clearly reflects income. Section 1.471–2(c) permits merchants and manufacturers to value inventories at either (1) cost, or (2) cost or market, whichever is lower. Under § 1.471–3(b), the cost of merchandise purchased by taxpayers is, in general, the invoice price less trade or other discounts.

.03 On January 13, 2014, the Internal Revenue Service and Treasury Department published final regulations under §§ 263A and 471 (TD 9652, 79 Fed. Reg. 2094) relating to (1) the capitalization and allocation of royalties that a taxpayer incurs only upon the sale of property produced or acquired for resale (sales-based royalties), and (2) the adjustment of the cost of inventory for sales-based vendor chargebacks, a type of sales-based vendor allowance. The final regulations apply to taxable years ending on or after January 13, 2014.

.04 Section 1.263A–1(e)(3)(ii)(U) of the final regulations clarifies that sales-based royalties, which are royalties incurred in securing the contractual right to use a trademark, corporate plan, manufacturing procedure, special recipe, or other similar right associated with property produced or property acquired for resale, are indirect costs and are properly allocable to property produced or acquired for resale to the extent the costs directly benefit or are incurred by reason of production or resale activities. Under § 1.263A–1(e)(3)(ii)(U)(*2*) of the final regulations, a taxpayer may allocate capitalizable sales-based royalties entirely to the units of property produced or acquired for resale that are sold and, in the case of inventory property, allocate these costs only to cost of goods sold.

.05 Under § 1.263A–1(c)(5) of the final regulations, a cost that is allocated entirely to inventory property sold must be included in cost of goods sold and may not be included in determining the cost of goods on hand at the end of the taxable year.

.06 Section 1.471–3(e)(1) of the final regulations provides that a sales-based vendor chargeback, one type of sales-based vendor allowance, is an allowance or price rebate that reduces only cost of goods sold and does not adjust the cost of goods on hand at the end of the taxable year. A sales-based vendor chargeback is defined as an allowance, discount, or price rebate to which a taxpayer becomes unconditionally entitled by selling a vendor's merchandise to specific customers identified by the vendor at a price determined by the vendor. The final regulations reserve rules addressing other types of sales-based vendor allowances.

.07 The final regulations under §§ 1.263A–2(b) and 1.263A–3(d) revise the simplified production method and the simplified resale method by providing that additional § 263A costs incurred during the taxable year, § 471 costs incurred during the taxable year, and § 471 costs remaining on hand at year end do not include costs specifically described in § 1.263A–1(e)(3)(ii) (currently only capitalizable depletion and sales-based royalties) and cost reductions described in § 1.471–3(e) (such as sales-based vendor chargebacks) that are properly allocated to property that has been sold. Consequently, a taxpayer allocating sales-based royalties or sales-based vendor chargebacks to cost of goods sold and currently including these amounts in § 471 costs or additional § 263A costs must remove the sales-based royalties or sales-based vendor chargebacks in the same manner that the taxpayer included them. Changes in methods of accounting for depletion under these regulations will be addressed in separate guidance.

.08 Sections 446(e) and 1.446–1(e)(2) state that, except as otherwise provided, a taxpayer must secure the consent of the Commissioner before changing a method of accounting for federal income tax purposes. Section 1.446–1(e)(3)(ii) authorizes the Commissioner to prescribe administrative procedures setting forth the limitations, terms, and conditions necessary to permit a taxpayer to obtain consent to change a method of accounting in accordance with § 446(e).

.09 Rev. Proc. 97–27, 1997–1 C.B. 680, modified and amplified by Rev. Proc. 2002–19, 2002–1 C.B. 696, amplified and clarified by Rev. Proc. 2002–54, 2002–2 C.B. 432, modified by Rev. Proc. 2007–67, 2007–2 C.B. 1072, clarified and modified by Rev. Proc. 2009–39, 2009–38 C.B. 371, modified by Rev. Proc. 2011–14,2011–4 C.B. 330, and clarified and modified by Rev. Proc. 2012–39, 2012–41 C.B. 470, provides the general procedures for obtaining the advance consent of the Commissioner to change a method of accounting. See also Rev. Proc. 2014–1, 2014–1 I.R.B. 1 (or successor).

.10 Rev. Proc. 2011–14, 2011–1 C.B. 330, provides procedures for a taxpayer to obtain automatic consent of the Commissioner to change to a method of accounting described in the APPENDIX of Rev. Proc. 2011–14.

.11 Section 481(a) requires the adjustments necessary to prevent amounts from being duplicated or omitted when a taxpayer's taxable income is determined under a method of accounting different from the method used to determine taxable income for the preceding taxable year.

SECTION 3. SCOPE

This revenue procedure applies to a taxpayer that wants to make one or more of the accounting method changes described in section 4 of this revenue procedure.

SECTION 4. CHANGES IN METHOD OF ACCOUNTING

.01 Rev. Proc. 2011–14 is modified to add new section 11.11 of the APPENDIX, to read as follows:

.11 *Sales-Based Royalties*

(1) *Description of change.* This change applies to a taxpayer that wants to change its method of accounting for sales-based royalties (as described in § 1.263A–1(e)(3)(ii)(U)(*2*)) that are properly allocable to inventory property:

(a) From not capitalizing sales-based royalties to capitalizing these costs and allocating them entirely to cost of goods sold under a taxpayer's method of accounting;

(b) From not capitalizing sales-based royalties to capitalizing these costs and allocating them to inventory property under a taxpayer's method of accounting;

(c) From capitalizing sales-based royalties and allocating these costs to inventory property to allocating them entirely to cost of goods sold; or

(d) From capitalizing sales-based royalties and allocating these costs entirely to cost of goods sold to allocating them to inventory property.

(2) *Limitations.*

(a) A taxpayer may not make a change in method of accounting under this section 11.11 of the APPENDIX if the taxpayer wants to change to capitalizing sales-based royalties and allocating them to inventory property using an other reasonable allocation method within the meaning of § 1.263A–1(f)(4).

(b) A taxpayer making the changes described in section 11.11(1)(a) or 11.11(1)(c) of the APPENDIX that uses a simplified method to determine the additional § 263A costs allocable to inventory property on hand at year end must remove sales-based royalties allocated to cost of goods sold from the formulas used to allocate additional § 263A costs to ending inventory in the same manner that the taxpayer included these amounts in the formulas.

(c) A taxpayer making a change in method of accounting under this section 11.11 of the APPENDIX that uses a simplified method with an historic absorption ratio election (see §§ 1.263A–2(b)(4) and 1.263A–3(d)(4)) and currently includes, or is changing its method to include, sales-based royalties in any part of its historic absorption ratio must revise its previous and current historic absorption ratios. To revise its historic absorption ratios, the taxpayer must apply its proposed method of accounting during the test period, during all recomputation years, and during all updated test periods to determine the § 471 costs and additional § 263A costs that were incurred. The revised historic absorption ratios must be used to revalue beginning inventory and must be accounted for in the taxpayer's § 481(a) adjustment. The taxpayer must use a method described in § 1.263A–7(c) to revalue beginning inventory.

(3) *Certain scope limitations temporarily inapplicable*. The scope limitations in section 4.02(1) through (4) and (7) of this revenue procedure do not apply to this change for a taxpayer's first and second taxable years ending on or after January 13, 2014.

(4) *Concurrent automatic changes*. A taxpayer that wants to make a change under this section 11.11 of the APPENDIX and one or more automatic changes in method of accounting under § 263A for the same year of change may file a single Form 3115 for all changes, provided the taxpayer enters the designated automatic change numbers for all changes on the appropriate line on the Form 3115 and complies with the ordering rules of § 1.263A–7(b)(2).

(5) *Ogden copy of Form 3115 required in lieu of national office copy*. A taxpayer changing its method of accounting under this section 11.11 of the APPENDIX must file a signed copy of its completed Form 3115 with the IRS in Ogden, UT in lieu of filing the national office copy no earlier than the first day of the year of change and no later than the date the taxpayer files the original Form 3115 with its federal income tax return for the year of change. A taxpayer that makes both this change and a concurrent automatic change under § 263A on a single Form 3115 for the same year of change must file a signed copy of the completed Form 3115 with the IRS in Ogden, UT in lieu of filing the national office copy no earlier than the first day of the year of change and no later than the date the taxpayer files the original Form 3115 with its federal income tax return for the year of change. *See* sections 6.02(3)(a)(ii)(B) (providing the general rules) and 6.02(7)(b) (providing the mailing address) of this revenue procedure.

(6) *Designated automatic accounting method change number*. The designated automatic accounting method change number for changes in method of accounting under section 11.11 of the APPENDIX is No. 201.

(7) *Contact information*. For further information regarding a change under this section, contact John Roman Faron at (202) 317-7005 (not a toll-free call).

.02 Rev. Proc. 2011–14 is modified to add new section 11.12 of the APPENDIX, to read as follows:

.12 *Treatment of Sales-Based Vendor Chargebacks under a Simplified Method*

(1) *Description of change.* This change applies to a taxpayer that wants to change its method of accounting to no longer include cost adjustments for sales-based vendor chargebacks described in § 1.471–3(e)(1) in the formulas used to allocate additional § 263A costs to ending inventory under a simplified method.

(2) *Limitations*.

(a) A taxpayer making this change that uses a simplified method to determine the additional § 263A costs allocable to inventory property on hand at year end must remove sales-based vendor chargebacks from the formulas used to allocate additional § 263A costs to ending inventory in the same manner that the taxpayer included these amounts in the formulas.

(b) A taxpayer making a change in method of accounting under this section 11.12 of the APPENDIX that uses a simplified method with an historic absorption ratio election (see §§ 1.263A–2(b)(4) and 1.263A–3(d)(4)) and currently includes sales-based vendor chargebacks in any part of its historic absorption ratio must revise its previous and current historic absorption ratio(s). To revise its historic absorption ratios, the taxpayer must apply its proposed method of accounting during the test period, during all recomputation years, and during all updated test periods to determine the § 471 costs and additional § 263A costs that were incurred. The revised historic absorption ratios must be used to revalue beginning inventory and must be accounted for in the taxpayer's § 481(a) adjustment. The taxpayer must use a method described in § 1.263A–7(c) to revalue beginning inventory.

(3) *Certain scope limitations temporarily inapplicable*. The scope limitations in section 4.02(1) through (4) and (7) of this revenue procedure do not apply to this change for a taxpayer's first and second taxable years ending on or after January 13, 2014.

(4) *Concurrent automatic changes*. A taxpayer that wants to make both this change and one or more automatic changes in method of accounting under § 263A, or both this change and the change described in section 21.15 of the APPENDIX for the same taxable year of change may file a single Form 3115 for both changes, provided the taxpayer enters the designated automatic change numbers for all changes on the appropriate line on the Form 3115 and complies with the ordering rules of § 1.263A–7(b)(2).

(5) *Ogden copy of Form 3115 required in lieu of national office copy*. A taxpayer changing its method of accounting under this section 11.12 of the APPENDIX must file a signed copy of its completed Form 3115 with the IRS in Ogden, UT in lieu of filing the national office copy no earlier than the first day of the year of change and no later than the date the taxpayer files the original Form 3115 with its federal income tax return for the year of change. If a taxpayer makes both this change and a concurrent automatic change under § 263A or both this change and the change described in section 21.15 of the APPENDIX on a single Form 3115 for the same year of change, then the taxpayer must file a signed copy of that completed Form 3115 with the IRS in Ogden, UT in lieu of filing the national office copy no earlier than the first day of the year of change and no later than the date the taxpayer files the original Form 3115 with its federal income tax return for the year of change. *See* sections 6.02(3)(a)(ii)(B) (providing the general rules) and 6.02(7)(b) (providing the mailing address) of this revenue procedure.

(6) *Designated automatic accounting method change number*. The designated automatic accounting method change number for changes in method of accounting under section 11.12 of the APPENDIX is No. 202.

(7) *Contact information*. For further information regarding a change under this section, contact John Roman Faron at (202) 317-7005 (not a toll-free call).

.03 Rev. Proc. 2011–14 is modified to add new section 21.15 of the APPENDIX, to read as follows:

.15 Sales-Based Vendor Chargebacks

(1) *Description of change.* This change applies to a taxpayer that wants to change its method of accounting to treat sales-based vendor chargebacks as a reduction in cost of goods sold in accordance with § 1.471–3(e)(1).

(2) *Certain scope limitations temporarily inapplicable.* The scope limitations in section 4.02(1) through (4) and (7) of this revenue procedure do not apply to this change for a taxpayer's first and second taxable years ending on or after January 13, 2014.

(3) *Concurrent automatic changes*. A taxpayer that wants to make both this change and the change described in section 11.12 of the APPENDIX for the same taxable year of change may file a single Form 3115 for both changes, provided the taxpayer enters the designated automatic change numbers for both changes on the appropriate line on the Form 3115, and complies with the ordering rules of § 1.263A–7(b)(2).

(4) *Ogden copy of Form 3115 required in lieu of national office copy*. A taxpayer changing its method of accounting under this section 21.15 of the APPENDIX must file a signed copy of its completed Form 3115 with the IRS in Ogden, UT in lieu of filing the national office copy no earlier than the first day of the year of change and no later than the date the taxpayer files the original Form 3115 with its federal income tax return for the year of change. If a taxpayer makes both this change and a concurrent automatic change described in section 11.12 of the APPENDIX on a single Form 3115 for the same year of change, then the taxpayer must file a signed copy of that completed Form 3115 with the IRS in Ogden, UT in lieu of filing the national office copy no earlier than the first day of the year of change and no later than the date the taxpayer files the original Form 3115 with its federal income tax return for the year of change. *See* sections 6.02(3)(a)(ii)(B) (providing the general rules) and 6.02(7)(b) (providing the mailing address) of this revenue procedure.

(5) *Designated automatic accounting method change number*. The designated automatic accounting method change number for changes in methods of accounting under section 21.15 of the APPENDIX is 203. *See* section 6.02(4) of this revenue procedure.

(6) *Contact information*. For further information regarding a change under this section, contact John Roman Faron at (202) 317-7005 (not a toll-free call).

SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2011–14 is modified to add new sections 11.11, 11.12, and 21.15 to the APPENDIX.

SECTION 6. EFFECTIVE DATE

.01 *In general*. Except as provided in section 6.02 of this revenue procedure, this revenue procedure is effective for taxable years ending on or after January 13, 2014.

.02 *Transition rule*. If before May 6, 2014, a taxpayer properly filed an application under Rev. Proc. 97–27 requesting consent for a change in method of accounting described in section 4 of this revenue procedure, and the Form 3115 is pending with the national office on May 6, 2014, the taxpayer may make the change under this revenue procedure if the taxpayer is otherwise eligible. The taxpayer must notify the national office of its intent to make the change under this revenue procedure prior to the issuance of a letter ruling granting or denying consent for the change. If the taxpayer timely notifies the national office that it will make the change under this revenue procedure, the national office ordinarily will return the Form 3115 to the taxpayer to make the necessary modifications to comply with the applicable provisions of this revenue procedure and will refund the user fee submitted with the Form 3115. A Form 3115 that is returned to the taxpayer for necessary modifications will be converted to an application under this revenue procedure if the taxpayer resubmits the Form 3115 with the necessary modifications, along with a copy of the national office letter sent with the returned Form 3115, to the national office within 30 calendar days after the date of the IRS's letter returning the Form 3115 to the taxpayer.

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is John Roman Faron of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Mr. Faron at (202) 317-7005 (not a toll-free number).

Part IV. Items of General Interest

Notice of proposed rulemaking Acquiring Corporation for Purposes of Section 381

REG–131239–13

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under section 381 of the Internal Revenue Code (Code). The proposed regulations modify the definition of an acquiring corporation for purposes of section 381 with regard to certain acquisitions of assets. The proposed regulations affect corporations that acquire the assets of other corporations in corporate reorganizations.

DATES: Written or electronic comments and requests for a public hearing must be received by August 5, 2014.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–131239–13), Room 5203, 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–131239–13), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC. Submissions may also be sent electronically via the Federal eRulemaking Portal at http://www.regulations.gov (IRS REG–131239–13).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Stephanie D. Floyd at (202) 317-6065 or Isaac W. Zimbalist at (202) 317-5363; concerning submissions of comments and/or requests for a public hearing, Oluwafunmilayo (Funmi) Taylor at (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to 26 CFR part 1 under section 381 of the Code. Section 381(a) generally provides that in certain acquisitions of the assets of a distributor or transferor corporation by another corporation, the acquiring corporation succeeds to the tax attributes, including the earnings and profits, of the distributor or transferor corporation. For this purpose, § 1.381(a)–1(b)(2) defines the acquiring corporation with regard to transactions described in section 381(a)(2) (relating to certain reorganizations under section 368), as either the corporation that ultimately acquires all of the assets transferred by the transferor corporation, or the corporation that directly acquires the assets transferred by the transferor corporation if no single corporation ultimately acquires all of the assets so transferred.

1. Proposed Section 312 Regulations

A notice of proposed rulemaking containing proposed regulations (REG–141268–11) under section 312 was published in the **Federal Register** on April 16, 2012 (77 FR 22515) (proposed section 312 regulations) to clarify the regulations under § 1.312–11 regarding the allocation of earnings and profits in non-recognition transfers of property from one corporation to another. The proposed section 312 regulations provide that, in a transfer described in section 381(a), the acquiring corporation, as defined in § 1.381(a)–1(b)(2), succeeds to the earnings and profits of the distributor or transferor corporation. For example, if in a reorganization under section 368(a)(1) by reason of section 368(a)(2)(C), the transferee corporation that directly acquires a transferor corporation's assets transfers some, but not all, of the acquired assets to a controlled subsidiary, the transferee corporation (the acquiring corporation under § 1.381(a)–1(b)(2)) retains the earnings and profits. However, if the transferee corporation instead transfers *all* of the transferor corporation's assets to a controlled subsidiary, then that controlled subsidiary (the acquiring corporation under § 1.381(a)–1(b)(2)) would succeed to the transferor corporation's earnings and profits. Comments responding to the notice of proposed rulemaking were received. No public hearing was requested or held.

2. Summary of Comments Received with Respect to the Proposed Section 312 Regulations

Some commenters recommended that the definition of acquiring corporation under § 1.381(a)–1(b)(2) be changed for purposes of determining the location of the transferor corporation's earnings and profits. These commenters believed that the rule in the proposed section 312 regulations allowing the section 381 acquiring corporation to succeed to the earnings and profits of the transferor inappropriately allows electivity of the location of the transferor corporation's earnings and profits in connection with section 381(a)(2) transactions based on whether the transferee corporation that directly acquires the transferor corporation's assets retains a single asset. These commenters also expressed concern that this rule raises difficult practical issues in determining whether all of the acquired assets have been transferred to a controlled subsidiary.

As an alternative to the proposed section 312 regulations, some commenters recommended adopting a rule that provides that the corporation that acquires substantially all of the assets transferred by a transferor corporation in a section 381(a)(2) transfer succeeds to the transferor's earnings and profits. One commenter recommended that earnings and profits remain with the direct acquiring corporation even if all of the acquired assets are transferred to another corporation pursuant to the plan of reorganization. Another commenter suggested that there should not be disparate treatment of earnings and profits in non-recognition transfers to controlled subsidiaries merely because a reorganization has occurred, and therefore the rule for determining the location of earnings and profits in connection with section 381(a)(2) transfers should be consistent with rules that govern non-recognition transfers to controlled subsidiaries.

The IRS and the Treasury Department believe that adopting a substantially all approach would introduce unnecessary uncertainty surrounding the measurement of "substantially all." The IRS and the Treasury Department, however, agree with the recommendation that the direct acquiring corporation should succeed to the earnings and profits. The IRS and the Treasury Department believe that this approach addresses the other comments received regarding consistency among non-recognition transactions. Moreover, after considering all comments received with regard to the proposed section 312 regulations, the IRS and the Treasury Department have concluded that this recommended change is appropriate not merely with respect to the determination of the location of the transferor corporation's earnings and profits but also with respect to the other tax attributes governed by section 381. Accordingly, this notice of proposed rulemaking (proposed section 381 regulations) revises the definition of acquiring corporation as described under the Explanation of Provisions. Because the proposed section 312 regulations merely cross-reference the section 381 regulations, those proposed regulations will remain outstanding. It is anticipated that the proposed section 312 regulations and the proposed section 381 regulations will be concurrently published as final regulations in the **Federal Register** after the comment period for the proposed section 381 regulations has closed on August 5, 2014 and the IRS and the Treasury Department have had an opportunity to consider the comments received.

Explanation of Provisions

1. Direct Transferee Corporation is the Acquiring Corporation

The proposed section 381 regulations provide that, in a transaction described in section 381(a)(2), the acquiring corporation is the corporation that directly acquires the assets transferred by the transferor corporation, even if the transferee corporation ultimately retains none of the assets so transferred. The current regulations under section 381 yield an identical result, except when a single controlled subsidiary of the direct transferee corporation acquires all of the assets transferred by the transferor corporation pursuant to a plan of reorganization. In that case, the current regulations treat the subsidiary as the acquiring corporation, a result that effectively permits a taxpayer to choose the location of a transferor corporation's attributes by causing the direct transferee corporation either to retain or not to retain a single asset. The IRS and the Treasury Department believe the proposed rule produces more appropriate results because it would eliminate this electivity. The proposed rule also eliminates the administrative burden under the current regulations associated with determining whether a particular corporation in fact has acquired all of the assets transferred by the transferor corporation pursuant to a plan of reorganization. In addition, it eliminates the disparate effect of the presence or absence of a plan of reorganization and produces results consistent with those obtained if a corporation that has not engaged in a reorganization transfers assets to a controlled subsidiary in a nonrecognition transaction.

Finally, the IRS and the Treasury Department believe the proposed rule is appropriate with respect to determining the location of the earnings and profits of a transferor corporation because the proposed rule generally maintains such earnings and profits at the corporation closest to the transferor corporation's former shareholders, except in the case of triangular reorganizations. The IRS and the Treasury Department considered an alternative approach that would achieve this result in all cases by treating the corporation that issues stock pursuant to a plan of reorganization (the "issuing corporation") as the acquiring corporation. An issuing corporation approach would, however, present complex considerations in the context of cross-border transactions, potentially requiring a number of special rules to preclude opportunities for the avoidance of tax. Accordingly, the IRS and the Treasury Department believe that the proposed rule produces more appropriate results than the current regulations (including in the context of cross-border transactions) while preserving simplicity and administrability.

2. Removal of § 1.381(a)–1(b)(3)(ii)

The proposed section 381 regulations also remove § 1.381(a)–1(b)(3)(ii) relating to a transfer by the acquiring corporation of the acquired assets to a controlled subsidiary. Section 1.381(a)–1(b)(3)(ii) provides that if the corporation that directly acquires the assets transferred by the transferor corporation is the acquiring corporation, and it transfers any acquired assets to one or more controlled subsidiaries, then the carryover of items described in section 381(c) to any controlled subsidiary is not governed by section 381. Although that rule is correct, it is unnecessary in light of the proposed section 381 regulations. Accordingly, the paragraph is removed.

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 has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these proposed regulations, and because these regulations do 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 will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their 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 (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 all aspects of the proposed regulations. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written or electronic 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 Stephanie D. Floyd of the Office of Associate Chief Counsel (Corporate). 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 1.381(a)–1 is amended by:

1. Removing the third, fourth, and fifth sentences of paragraph (b)(2)(i) and adding one sentence in its place.
2. Removing from the last sentence of paragraph (b)(2)(ii) *Example 2* "Y" and adding "X" in its place.
3. Redesignating paragraph (b)(3)(i) as paragraph (b)(3).
4. Removing paragraph (b)(3)(ii).
5. Adding a sentence at the end of paragraph (e).

The revisions and additions read as follows:

§ 1.381(a)–1 General rule relating to carryovers in certain corporate acquisitions.

* * * * *

(b) * * *

(2) * * * (i) * * * In a transaction to which section 381(a)(2) applies, the acquiring corporation is the corporation that, pursuant to the plan of reorganization, directly acquires the assets transferred by the transferor corporation, even if that corporation ultimately retains none of the assets so transferred.

* * * * *

(e) * * * Paragraph (b)(2) of this section applies to transactions occurring on or after the date of publication of the Treasury decision adopting this rule as a final regulation in the **Federal Register**.

John Dalrymple,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on May 6, 2014, 8:45 a.m., and published in the issue of the Federal Register for May 7, 2014, 79 F.R. 26190)

Definitions and Reporting Requirements for Shareholders of Passive Foreign Investment Companies; Insurance Income of a Controlled Foreign Corporation for Taxable Years Beginning After December 31, 1986; Correction

Announcement 2014–22

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final and temporary regulations (TD 9650) that were published in the **Federal Register** on Tuesday, December 31, 2013 (78 FR 79602). The regulations provide guidance on determining ownership of a passive foreign investment company ("PFIC") and on the annual filing requirements for shareholders of PFICs.

DATES: This correction is effective May 12, 2014 and applicable beginning December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Susan Massey at (202) 317-6934 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations (TD 9650) that are the subject of this correction are under sections 1291, 1298, 6038, and 6046 of the Internal Revenue Code.

Need for Correction

As published, the final and temporary regulations (TD 9650) contain errors that may prove to be misleading and are in need of clarification.

* * * * *

Correction of Publication

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

PART 1—INCOME TAXES

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

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

Par. 2. The section heading for § 1.6038–2T is revised to read as follows:

§ 1.6038–2T Information returns required of United States persons with respect to annual accounting periods of certain foreign corporations beginning after December 31, 1962 (temporary).

* * * * *

Par. 3. Section 1.6046–1 is amended as follows:

1. Paragraphs (a)(2)(i)(*a*) and (*b*) and (c)(1) and (3) are revised.
2. The language "in value" is removed wherever it appears in paragraphs (a)(3) *Example 2*.(i), (a)(3) *Example 3*., and (c)(2).
3. The language "M" in the first sentence of paragraphs (a)(3) *Example 2*.(i), (c)(2) *Example 3*.(i), and (c)(2) *Example 5*.(i) is removed and the language "M Corporation" added in its place.
4. The language "liability" in paragraph (a)(3) *Example 2*. (ii) is removed and the language "liability for A" added in its place.
5. The language "U.S." in paragraph (c) introductory text and paragraph (c)(1) introductory text is removed and the language "United States" added in its place.
6. Paragraph (l)(2) is revised.

The revisions read as follows:

§ 1.6046–1 Returns as to organizations or reorganizations of foreign corporations and as to acquisitions of their stock.

(a) * * *

(2) * * *

(i) * * *

(*a*) Acquires (whether in one or more transactions) outstanding stock of such corporation which equals, or which when added to any such stock then owned by him equals, 10 percent or more of the total combined voting power of all classes of stock of the foreign corporation entitled to vote or the total value of the stock of the foreign corporation;

(*b*) Acquires (whether in one or more transactions) an additional 10 percent or more of the total combined voting power of all classes of stock of the foreign corporation entitled to vote or the total value of the stock of the foreign corporation; or

* * * * *

(c) *Returns required of United States when liability to file arises after January 1, 1963*—(1) *United States persons required to file*. A return on Form 5471, containing the information required by paragraph (c)(4) of this section, shall be made by each United States person when at any time after January 1, 1963:

(i) Such person acquires (whether in one or more transactions) outstanding stock of such foreign corporation which equals, or which when added to any such stock then owned by him equals, 10 percent or more of the total combined voting power of all classes of stock of the foreign corporation entitled to vote or the total value of the stock of the foreign corporation;

(ii) Such person, having already acquired the interest referred to in paragraph (b) of this section or in paragraph (c)(1)(i) of this section —

(*a*) Acquires (whether in one or more transactions) an additional 10 percent or more of the total combined voting power of all classes of stock of the foreign corporation entitled to vote or the total value of the stock of the foreign corporation;

(*b*) Owns 10 percent or more of the total combined voting power of all classes of stock of the foreign corporation entitled to vote or the total value of the stock of the foreign corporation when such foreign corporation is reorganized (as defined in paragraph (f)); or

(*c*) Disposes of sufficient stock in such foreign corporation to reduce his interest to less than 10 percent of the total combined voting power of all classes of stock of the foreign corporation entitled to vote or the total value of the stock of the foreign corporation; or

(iii) Such person is, at any time after January 1, 1987, treated as a United States shareholder under *section 953(c)* with respect to a foreign corporation.

* * * * *

(3) *Shareholders who become United States persons*. A return on Form 5471, containing the information required by paragraph (c)(4) of this section, shall be made by each person who at any time after January 1, 1963, becomes a United States person while owning 10 percent or more of the total combined voting power of all classes of stock of the foreign corporation entitled to vote or the total value of the stock of the foreign corporation.

* * * * *

(l) * * *

(2) Paragraph (c)(1)(iii) of this section applies to taxable years ending on or after December 31, 2013.

* * * * *

Par. 4. Section 1.6046–1T is amended by revising paragraph (e)(5) to read as follows:

§ 1.6046–1T Returns as to organizations or reorganizations of foreign corporations and as to acquisitions of their stock (temporary).

* * * * *

(e) * * *

(5) *Persons excepted from furnishing items of information*. Any person required to furnish any item of information under paragraph (b) or (c) of this section with respect to a foreign corporation may, if such item of information is furnished by another person having an equal or greater stock interest (measured in terms of the total combined voting power of all classes of stock of the foreign corporation entitled to vote or the total value of the stock of the foreign corporation) in such foreign corporation, satisfy such requirement by filing a statement with his return on Form 5471 indicating that such liability has been satisfied and identifying the return in which such item of information was included. This paragraph (e)(5) does not apply to persons excepted from filing a return by reason of the provisions of paragraph (e)(4) of this section.

* * * * *

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

(Filed by the Office of the Federal Register on May 9, 2014, 8:45 a.m., and published in the issue of the Federal Register for May 12, 2014, 79 F.R. 26837)

Definitions and Reporting Requirements for Shareholders of Passive Foreign Investment Companies; Correction

Announcement 2014–23

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to a notice of proposed rulemaking by cross reference to temporary regulations.

SUMMARY: This document contains corrections to a notice of proposed rulemaking by cross-reference to temporary regulations (REG–140974–11) that was published in the **Federal Register** on Tuesday, December 31, 2013 (78 FR 79650). The proposed regulations provide guidance on determining the ownership of a passive foreign investment company (PFIC), the annual filing requirements for shareholders of PFICs, and an exclusion from certain filing requirements for shareholders that constructively own interests in certain foreign corporations.

DATES: Written or electronic comments and requests for a public hearing for the notice of proposed rulemaking by cross-reference to temporary regulations published at 78 FR 79650, December 31, 2013, the comment period ended on March 31, 2014.

FOR FURTHER INFORMATION CONTACT: Susan E. Massey at (202) 317-6934 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking by cross-reference to temporary regulations (REG–140974–11) that is the subject of this document is under sections 1297, 1298, 6038, and 6046 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking by cross-reference to temporary regulations (REG–140974–11) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the notice of proposed rulemaking (REG–140974–11), that was the subject of FR Doc. 2013–30845, is corrected as follows:

1. The authority citation for part 1 is amended by correcting the sectional authority for § 1.1298–1 to read in part as follows:

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

Section 1.1298–1 also issued under 26 U.S.C. 1298(f) and (g) * * *

§ 1.1298–1 [Corrected]

2. On Page 79652, column 1, the seventh line from the top of the page, the language "as the text of § 1.1298–1T(h) published" is corrected to read "as the text of § 1.1298–1T published".

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

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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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

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