Internal Revenue bulletin

Bulletin No. 2014–42
October 14, 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

Notice 2014–52, page 712.

This notice describes regulations that the IRS and the Treasury Department will issue with respect to inversions and related transactions.

Notice 2014–57, page 723.

This notice provides the 2014–2015 special per diem rates for taxpayers to use in substantiating the amount of ordinary and necessary business expenses incurred while traveling away from home. The notice includes (1) the special transportation industry rate, (2) the rate for the incidental expenses only deduction, and (3) the rates and list of high-cost localities for the high-low substantiation method.

EMPLOYEE PLANS

T.D. 9695, page 707.

This treasury decision contains final regulations relating to the requirements for filing certain employee retirement benefit plan statements, returns, and reports on magnetic media. The term magnetic media includes electronic filing, as well as other magnetic media specifically permitted under applicable regulations, revenue procedures, publications, forms, instructions, or other guidance on the IRS gov Internet website. These regulations affect plan administrators and employers maintaining retirement plans that are subject to various employee benefit plan reporting requirements under the Internal Revenue Code.

ADMINISTRATIVE

Notice 2014–57, page 723.

This notice provides the 2014–2015 special per diem rates for taxpayers to use in substantiating the amount of ordinary and necessary business expenses incurred while traveling away from home. The notice includes (1) the special transportation industry rate, (2) the rate for the incidental expenses only deduction, and (3) the rates and list of high-cost localities for the high-low substantiation method.

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

Department of the Treasury
Internal Revenue Service

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 6057.—Annual registration, etc.

26 CFR 301.6057–3: Employee Retirement Benefit Plan Returns Required on Magnetic Media

T.D. 9695

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 301

Employee Retirement Benefit Plan Returns Required on Magnetic Media

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final Regulations.

SUMMARY: This document contains final regulations relating to the requirements for filing certain employee retirement benefit plan statements, returns, and reports on magnetic media. The term magnetic media includes electronic filing, as well as other magnetic media specifically permitted under applicable regulations, revenue procedures, publications, forms, instructions, or other guidance on the IRS.gov Internet website. These regulations affect plan administrators and employers maintaining retirement plans that are subject to various employee benefit reporting requirements under the Internal Revenue Code (Code).

DATES: *Effective Date*: These regulations are effective September 29, 2014.

Applicability Date: For dates of applicability, see §§ 301.6057–3(f), 301.6058–2(f), and 301.6059–2(f).

FOR FURTHER INFORMATION CONTACT: William Gibbs or Pamela Kinard at (202) 317-6799 (not a toll–free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 301. On August 30, 2013, a notice of proposed rulemaking (REG–111837–13) relating to the requirements for filing certain employee retirement benefit plan statements, returns, and reports on magnetic media was published in the **Federal Register** (78 FR 53704). The proposed regulations provide that a plan administrator (or, in certain situations, an employer maintaining a plan) required by the Code or regulations to file at least 250 returns during the calendar year that includes the first day of the plan year must use magnetic media to file certain statements, returns, and reports required under sections 6057, 6058, and 6059 of the Code. Comments responding to the notice of proposed rulemaking were received. No public hearing was requested or held. After consideration of all the comments, the proposed regulations are adopted as modified by this Treasury decision.

Summary of Comments and Explanation of Revisions

I. *Use of FIRE System for Filing Form 8955–SSA*

The proposed regulations under section 6057 provide that a registration statement required under section 6057(a) or a notification required under section 6057(b) must be filed on magnetic media if the filer is required by the Code or regulations to file at least 250 returns during the calendar year that includes the first day of the plan year. Magnetic media is defined as electronic filing or other media specifically permitted under applicable regulations, revenue procedures, publications, forms, instructions, or other guidance on the IRS.gov Internet website. See § 601.601(d)(2)(ii)(*b*) of this chapter.

The form used to satisfy the requirement to file the registration statement under section 6057 is Form 8955–SSA, "Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits." The preamble to the proposed regulations noted that many filers of the Form 8955–SSA already voluntarily file electronically with the IRS, but did not identify the system currently used to file electronically.

Commenters expressed concern that not identifying the "Filing Information Returns Electronically" (FIRE) system as the system currently used to file the Form 8955–SSA electronically could imply that the use of the FIRE system is not (or, in the near future, will not be) an acceptable system to file the Form 8955–SSA electronically. In response to this concern, the Department of the Treasury and the IRS confirm that the FIRE system is an acceptable electronic system to file the Form 8955–SSA. If, in the future, the IRS replaces the FIRE system with another electronic filing system, sufficient time will be provided to filers of the Form 8955–SSA to accommodate programming and other implementation needs.

Commenters also stated that certain aspects of the FIRE system need improvement, including the lack of an efficient batch processing system and costs associated with using the system. The specific requirements of the FIRE system are outside the scope of these regulations, but comments on possible FIRE system improvements have been forwarded to the staff at the IRS responsible for the FIRE system.

II. *Application of the E–file Mandate to One-Participant Plans*

The proposed regulations under section 6058 provide that a return required under section 6058 must be filed on magnetic media if the filer is required by the Code or regulations to file at least 250 returns during the calendar year that includes the first day of the plan year. The preamble to the proposed regulations noted that filers of the Form 5500, "Annual Return/Report of Employee Benefit Plan," and Form 5500–SF, "Short Form Annual Return/Report of Small Employee Benefit Plan," are already required, pursuant to Department of Labor (DOL) rules, to file these returns electronically through the computerized ERISA Filing Acceptance System (EFAST2). The preamble to the proposed regulations also noted that, while electronic filing is not available for the Form 5500–EZ, "Annual Return of One-Participant (Owners and their Spouses) Retirement Plan," certain filers that would otherwise file the Form 5500–EZ on paper may instead file the Form 5500–SF electronically through EFAST2.

One commenter asked whether the proposed regulations impose additional filing obligations, other than the requirement to file electronically, on one-participant plans that meet the 250-return threshold for mandatory electronic filing. In particular, the commenter asked whether a one-participant plan would now be required to file an actuarial report under section 6059 when filing the Form 5500–SF in lieu of a paper Form 5500–EZ.

In response to this comment, the Department of the Treasury and the IRS confirm that a one-participant plan (or a foreign plan) required to file electronically must use the Form 5500–SF to file the information required on the Form 5500–EZ, but will not be required to attach to the filing a Schedule SB, "Single-Employer Defined Benefit Plan Actuarial Information," or Schedule MB, "Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information."

III. *Economic Hardship Waiver*

As noted in the proposed regulations, the Commissioner may waive the requirement to file electronically in cases of undue economic hardship. Because the Department of the Treasury and the IRS believe that electronic filing will not impose significant burdens on the taxpayers covered by these regulations, the Commissioner anticipates granting waivers of the electronic filing requirement in only exceptional cases. The Department of the Treasury and the IRS anticipate issuing guidance that will set forth procedures whereby a taxpayer may request a hardship waiver for electronically filing the Form 8955–SSA and the Form 5500 series. The Department of the Treasury and the IRS anticipate that the guidance would not provide hardship waiver procedures for any electronic filing requirement for a form that a filer is already required to file electronically, such as Form 5500 and Form 5500–SF, which filers are already required to file electronically through EFAST2.

IV. *Request to Extend Proposed Effective Date*

Commenters requested that the effective date of these regulations be extended from the effective date set forth in the proposed regulations. The proposed regulations provided that they would be effective for plan years that begin on or after January 1, 2014, but only for filings with a filing deadline (not taking into account extensions) after December 31, 2014. With respect to the filing requirements under section 6057, commenters specifically requested that the IRS confirm that the use of the existing FIRE system will satisfy the electronic filing requirement for the Form 8955–SSA through 2016. Because there is no current plan to change the electronic system used to file the Form 8955–SSA prior to the end of calendar year 2016, and significant changes to the form itself are not anticipated, these regulations generally retain the proposed effective date for section 6057 filings. However, the regulations do provide an extended effective date for plans with short 2014 plan years by providing that these regulations only apply to filings with a filing deadline on or after July 31, 2015. For example, a plan with a short 2014 plan year ending November 30, 2014, would have a filing deadline of June 30, 2015, and thus would not be required to file electronically for that plan year.

With respect to the filing requirements under sections 6058 and 6059, these regulations extend the effective date by 12 months, so that the regulations generally apply to returns and actuarial reports required to be filed for plan years that begin on or after January 1, 2015, but only for filings with a filing deadline (not taking into account extensions) after December 31, 2015. As announced in the proposed regulations, the IRS anticipates adding items on the Form 5500 and Form 5500–SF relating solely to Code requirements and intends to provide an optional paper-only form containing those Code-related items for use by small filers. It is anticipated that the form will be available to satisfy the filing requirements with respect to the 2015 plan year.

V. *Certain Delinquent Filers Required to File on Paper*

Notice 2014–35 (2014–23 IRB 1072) provides administrative relief from IRS penalties under sections 6652(d), 6652(e), and 6692 for a failure to file timely in accordance with annual reporting requirements under sections 6047(e), 6057, 6058, and 6059. This administrative relief from IRS penalties applies to late filers that satisfy the requirements of the Delinquent Filer Voluntary Compliance Program ("DFVC Program") administered by DOL. In order to be eligible for relief from the IRS penalties for a plan year, the late filer, within a certain time period after completing the filing under the DFVC Program, must file on paper with the IRS any delinquent Form 8955–SSA for the plan year.

Similarly, Revenue Procedure 2014–32 (2014–23 IRB 1073) establishes a pilot program providing administrative relief for late filers of the Form 5500–EZ. In general, in order to receive relief from IRS penalties, the late filer must submit a complete Form 5500–EZ, including all required schedules and attachments, for each plan year for which the late filer is seeking penalty relief. A complete return for a plan year consists of a signed, filled-out paper version of the Form 5500–EZ for that plan year.

Although the Department of the Treasury and IRS generally encourage filers to file electronically whenever possible, the IRS currently does not have the capability to accept electronic filing of a delinquent Form 8955–SSA or Form 5500–EZ. Thus, a delinquent filing of a Form 8955–SSA or Form 5500–EZ that complies with the paper filing requirements in Notice 2014–35 and Rev. Proc. 2014–32, is excluded from the electronic filing requirements under these regulations. The IRS will announce those statements and returns that are excluded from electronic filing under these regulations in its publications, forms, and instructions.

Effective Date

The regulations apply to employee retirement benefit plan statements and notifications required to be filed under section 6057 for plan years that begin on or after January 1, 2014, but only for filings with a filing deadline (not taking into account extensions) on or after July 31, 2015.

For employee retirement benefit plan returns and reports required to be filed under sections 6058 and 6059, the regulations apply for plan years that begin on or after January 1, 2015, but only for filings with a filing deadline (not taking into account extensions) after December 31, 2015.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that 5 U.S.C. 533(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. In addition, it is hereby certified that any collection of information contained in this regulation will not have a significant economic impact on a substantial number of small entities, and therefore no flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Office of Chief Counsel for Advocacy of the Small Business Administration for comments on its impact on small businesses.

The certification is based on the fact that §§ 301.6057–1, 301.6058–1, and 301.6059–1 currently require filing with the IRS of information under sections 6057, 6058, and 6059 in accordance with applicable forms, schedules, and accompanying instructions. The regulations merely require that this information be filed electronically by persons required to file at least 250 returns for the calendar year, consistent with section 6011(e)(2)(A), which provides that, in prescribing regulations providing standards for determining which returns must be filed on magnetic media or in other machine-readable form, the Secretary shall not require any person to file returns on magnetic media unless the person is required to file at least 250 returns during the calendar year. Many small entities are unlikely to file 250 returns or more during the calendar year. Filers of the Form 5500 and Form 5500–SF are already required to file the returns electronically through EFAST2 pursuant to DOL regulations. In addition, many filers of the Form 8955–SSA already voluntarily file electronically with the IRS through the use of the FIRE system.

Further, if a taxpayer's operations are computerized, reporting in accordance with the regulations should be less costly than filing on paper. The Department of the Treasury and the IRS have determined that taxpayers should be able to comply at a reasonable cost with the requirement in these regulations to file employee retirement statements, returns, and reports on magnetic media. In addition, the regulations provide that the IRS may waive the electronic filing requirements upon a showing of economic hardship.

Drafting Information

The principal authors of these regulations are William Gibbs and Pamela R. Kinard, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

* * * * *

Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

Part 301—PROCEDURE AND ADMINISTRATION

Par. 1. The authority for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7508* * *

Par. 2. Section 301.6057–3 is added to read as follows:

§ 301.6057–3 Required use of magnetic media for filing requirements relating to deferred vested retirement benefit.

(a) *Magnetic media filing requirements under section 6057*. A registration statement required under section 6057(a) or a notification required under section 6057(b) with respect to an employee benefit plan must be filed on magnetic media if the filer is required by the Internal Revenue Code or regulations to file at least 250 returns during the calendar year that includes the first day of the plan year. Returns filed on magnetic media must be made in accordance with applicable revenue procedures, publications, forms, instructions, or other guidance on the IRS.gov Internet website. In prescribing revenue procedures, publications, forms, instructions, or other guidance on the IRS.gov Internet website, the Commissioner may direct the type of magnetic media filing. See § 601.601(d)(2)(ii)(*b*) of this chapter.

(b) *Economic hardship waiver*. The Commissioner may waive the requirements of this section in cases of undue economic hardship. The principal factor in determining hardship will be the amount, if any, by which the cost of filing the registration statements or notifications on magnetic media in accordance with this section exceeds the cost of filing the registration statements or notifications on other media. A request for a waiver must be made in accordance with applicable published guidance, publications, forms, instructions, or other guidance on the IRS.gov Internet website. See § 601.601(d)(2)(ii)(*b*) of this chapter. The waiver will specify the type of filing (that is, a registration statement or notification under section 6057) and the period to which it applies. In addition, the waiver will be subject to such terms and conditions regarding the method of filing as may be prescribed by the Commissioner.

(c) *Failure to file*. If a filer required to file a registration statement or other notification under section 6057 fails to file the statement or other notification on magnetic media when required to do so by this section, the filer is deemed to have failed to file the statement or other notification. See section 6652(d) for the amount imposed for the failure to file a registration statement or other notification required under section 6057. In determining whether there is reasonable cause for the failure to file the registration statement or notification under section 6057, § 301.6652–3(b) and rules similar to the rules in § 301.6724–1(c)(3)(ii) (regarding undue economic hardship related to filing information returns on magnetic media) will apply.

(d) *Meaning of terms*. The following definitions apply for purposes of this section.

(1) *Magnetic media*. The term *magnetic media* means electronic filing, as well as other media specifically permitted under applicable regulations, revenue procedures, or publications, forms, instructions, or other guidance on the IRS.gov Internet website. See § 601.601(d)(2)(ii)(*b*) of this chapter.

(2) *Registration statement required under section 6057(a)*. The term *registration statement required under section 6057(a)* means a Form 8955–SSA (or its successor).

(3) *Notification required under section 6057(b)*. The term *notification required under section 6057(b)* means either a Form 8955–SSA (or its successor) or a return in the Form 5500 series (or its successor).

(4) *Determination of 250 returns*—(i) *In general*. For purposes of this section, a filer is required to file at least 250 returns if, during the calendar year that includes the first day of the plan year, the filer is required to file at least 250 returns of any type, including information returns (for example, Forms W–2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns.

(ii) *Definition of filer*. For purposes of this section, the term *filer* means the plan administrator within the meaning of section 414(g). If the plan administrator within the meaning of section 414(g) is the employer, the special rules in § 1.6058–2(d)(3)(iii) will apply.

(e) *Example*. The following example illustrates the provisions of paragraph (d)(4) of this section:

Example. In 2015, P, the plan administrator of Plan B, is required to file 252 returns (including Forms 1099–R, “Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.;” Form 8955–SSA, “Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits;” Form 5500, “Annual Return/Report of Employee Benefit Plan;” and Form 945, “Annual Return of Withheld Federal Income Tax”). Plan B’s plan year is the calendar year. Because P is required to file at least 250 returns during the 2015 calendar year, P must file the 2015 Form 8955–SSA for Plan B electronically.

(f) *Effective/applicability date*. This section is applicable for registration statements and other notifications required to be filed under section 6057 for plan years that begin on or after January 1, 2014, but only for filings with a filing deadline (not taking into account extensions) on or after July 31, 2015.

Par. 3. Section 301.6058–2 is added to read as follows:

§ 301.6058–2 Required use of magnetic media for filing requirements relating to information required in connection with certain plans of deferred compensation.

(a) *Magnetic media filing requirements under section 6058*. A return required under section 6058 with respect to an employee benefit plan must be filed on magnetic media if the filer is required by the Internal Revenue Code or regulations to file at least 250 returns during the calendar year that includes the first day of the plan year. Returns filed on magnetic media must be made in accordance with applicable revenue procedures, publications, forms, instructions, or other guidance on the IRS.gov Internet website. In prescribing revenue procedures, publications, forms, and instructions, or other guidance on the IRS.gov Internet site, the Commissioner may direct the type of magnetic media filing. See § 601.601(d)(2)(ii)(*b*) of this chapter.

(b) *Economic hardship waiver*. The Commissioner may waive the requirements of this section in cases of undue economic hardship. The principal factor in determining hardship will be the amount, if any, by which the cost of filing the return on magnetic media in accordance with this section exceeds the cost of filing the returns on other media. A request for a waiver must be made in accordance with applicable published guidance, publications, forms, instructions, or other guidance on the IRS.gov Internet website. See § 601.601(d)(2)(ii)(*b*) of this chapter. The waiver will specify the type of filing (that is, a return required under section 6058) and the period to which it applies. In addition, the waiver will be subject to such terms and conditions regarding the method of filing as may be prescribed by the Commissioner.

(c) *Failure to file*. If a filer required to file a return under section 6058 fails to file the return on magnetic media when required to do so by this section, the filer is deemed to have failed to file the return. See section 6652(e) for the amount imposed for the failure to file a return required under section 6058. In determining whether there is reasonable cause for failure to file the return, § 301.6652–3(b) and rules similar to the rules in § 301.6724–1(c)(3)(ii) (regarding undue economic hardship related to filing information returns on magnetic media) will apply.

(d) *Meaning of terms*. The following definitions apply for purposes of this section.

(1) *Magnetic media*. The term *magnetic media* means electronic filing, as well as other media specifically permitted under applicable regulations, revenue procedures, or publications, forms, instructions, or other guidance on the IRS.gov Internet website. See § 601.601(d)(2)(ii)(*b*) of this chapter.

(2) *Return required under section 6058*. The term *return required under section 6058* means a return in the Form 5500 series (or its successor).

(3) *Determination of 250 returns*—(i) *In general*. For purposes of this section, a filer is required to file at least 250 returns if, during the calendar year that includes the first day of the plan year, the filer is required to file at least 250 returns of any type, including information returns (for example, Forms W–2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns.

(ii) *Definition of filer*. For purposes of this section, the term *filer* means the employer or employers maintaining the plan and the plan administrator within the meaning of section 414(g).

(iii) *Special rules relating to determining 250 returns*. For purposes of applying paragraph (d)(3)(ii) of this section, the aggregation rules of section 414(b), (c), (m), and (o) will apply to a filer that is or includes an employer. Thus, for example, a filer that is a member of a controlled group of corporations within the meaning of section 414(b) must file the Form 5500 series on magnetic media if the aggregate number of returns required to be filed by all members of the controlled group of corporations is at least 250.

(e) *Example*. The following example illustrates the provisions of paragraph (d)(3) of this section:

Example. In 2016 Employer X (the plan sponsor of Plan A) and P (the plan administrator of Plan A) are required to file 267 returns. Employer X is required to file the following: one Form 1120, “U.S. Corporation Income Tax Return;” 195 Forms W–2, "Wage and Tax Statement;" 25 Forms 1099–DIV, "Dividends and Distributions;" one Form 940, "Employer's Annual Federal Unemployment (FUTA) Tax Return;" and four Forms 941, "Employer's Quarterly Federal Tax Return." P is required to file 40 Forms 1099–R, "Distributions From Pensions, Annuities, Retirement, Profit-Sharing Plans, IRAs, Insurance Contracts, etc." P and Employer X are jointly required to file one Form 5500 series return. Plan A's plan year is the calendar year. Because P and Employer X, in the aggregate, are required to file at least 250 returns during the calendar year, the 2016 Form 5500 for Plan A must be filed electronically.

(f) *Effective/applicability date*. This section is applicable for returns required to be filed under section 6058 for plan years that begin on or after January 1, 2015, but only for filings with a filing deadline (not taking into account extensions) after December 31, 2015.

Par. 4. Section 301.6059–2 is added to read as follows:

§ 301.6059–2 Required use of magnetic media for filing requirements relating to periodic report of actuary.

(a) *Magnetic media filing requirements under section 6059*. An actuarial report required under section 6059 with respect to an employee benefit plan must be filed on magnetic media if the filer is required by the Internal Revenue Code or regulations to file at least 250 returns during the calendar year that includes the first day of the plan year. Actuarial reports filed on magnetic media must be made in accordance with applicable revenue procedures, publications, forms, instructions, or other guidance on the IRS.gov Internet website. In prescribing revenue procedures, publications, forms, instructions, or other guidance on the IRS.gov Internet website, the Commissioner may direct the type of magnetic media filing. See § 601.601(d)(2)(ii)(*b*) of this chapter.

(b) *Economic hardship waiver*. The Commissioner may waive the requirements of this section in cases of undue economic hardship. The principal factor in determining hardship will be the amount, if any, by which the cost of filing the reports on magnetic media in accordance with this section exceeds the cost of filing the reports on other media. A request for a waiver must be made in accordance with applicable published guidance, publications, forms, instructions, or other guidance on the IRS.gov Internet website. See § 601.601(d)(2)(ii)(*b*) of this chapter. The waiver will specify the type of filing (that is, an actuarial report required under section 6059) and the period to which it applies. In addition, the waiver will be subject to such terms and conditions regarding the method of filing as may be prescribed by the Commissioner.

(c) *Failure to file*. If a filer required to file an actuarial report under section 6059 fails to file the report on magnetic media when required to do so by this section, the filer is deemed to have failed to file the report. See section 6692 for the penalty for the failure to file an actuarial report. In determining whether there is reasonable cause for failure to file the report, § 301.6692–1(c) and rules similar to the rules in § 301.6724–1(c)(3)(ii) (regarding undue economic hardship related to filing information returns on magnetic media) will apply.

(d) *Meaning of terms*. The following definitions apply for purposes of this section.

(1) *Magnetic media*. The term *magnetic media* means electronic filing, as well as other media specifically permitted under applicable regulations, revenue procedures, or publications, forms, instructions, or other guidance on the IRS.gov Internet website. See § 601.601(d)(2)(ii)(*b*) of this chapter.

(2) *Actuarial report required under section 6059*—(i) *Single employer plans*. For a single employer plan, the term *actuarial report required under section 6059* means the Schedule SB, "Single-Employer Defined Benefit Plan Actuarial Information," of the Form 5500 series (or its successor).

(ii) *Multiemployer and certain money purchase plans*. For multiemployer and certain money purchase plans, the term *actuarial report required under section 6059* means the Schedule MB, "Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information," of the Form 5500 series (or its successor).

(3) *Determination of 250 returns*—(i) *In general*. For purposes of this section, a filer is required to file at least 250 returns if, during the calendar year that includes the first day of the plan year, the filer is required to file at least 250 returns of any type, including information returns (for example, Forms W–2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns.

(ii) *Definition of filer*. For purposes of this section, the term *filer* means the plan administrator within the meaning of section 414(g). If the plan administrator within the meaning of section 414(g) is the employer, the special rules in § 1.6058–2(d)(3)(iii) will apply.

(e) *Example*. The following example illustrates the provisions of paragraph (d)(3) of this section:

Example. In 2016, P, the plan administrator of Plan B (a single employer defined benefit plan), is required to file 266 returns (including Forms 1099–R "Distributions From Pensions, Annuities, Retirement, Profit-Sharing Plans, IRAs, Insurance Contracts, etc." and one Form 5500 series). Plan B's plan year is the calendar year. Because P is required to file at least 250 returns during the calendar year, P must file the 2016 Schedule SB of the Form 5500 series return for Plan B electronically.

(f) *Effective/applicability date*. This section is applicable for actuarial reports required to be filed under section 6059 for plan years that begin on or after January 1, 2015, but only for filings with a filing deadline (not taking into account extensions) after December 31, 2015.

John Dalrymple
Deputy Commissioner for Services and Enforcement

Approved September 23, 2014.

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

(Filed by the Office of the Federal Register on September 26, 2014, 8:45 a.m., and published in the issue of the Federal Register for September 29, 2014, 79 F.R. 58256)

Part III. Administrative, Procedural, and Miscellaneous

Rules Regarding Inversions and Related Transactions

Notice 2014–52

SECTION 1. OVERVIEW

The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) are concerned that certain recent inversion transactions are inconsistent with the purposes of sections 7874 and 367 of the Internal Revenue Code (Code). The Treasury Department and the IRS understand that certain inversion transactions are motivated in substantial part by the ability to engage in certain tax avoidance transactions after the inversion that would not be possible in the absence of the inversion. In light of these concerns, this notice announces that the Treasury Department and the IRS intend to issue regulations under sections 304(b)(5)(B), 367, 956(e), 7701(l), and 7874 of the Code.

Section 2 of this notice describes regulations that the Treasury Department and the IRS intend to issue that will address transactions that are structured to avoid the purposes of sections 7874 and 367 by (i) for purposes of section 7874, disregarding certain stock of a foreign acquiring corporation that holds a significant amount of passive assets; (ii) for purposes of sections 7874 and 367, disregarding certain non-ordinary course distributions; and (iii) for purposes of section 7874, providing guidance on the treatment of certain transfers of stock of a foreign acquiring corporation (through a spin-off or otherwise) that occur after an acquisition.

Section 3 of this notice describes regulations that the Treasury Department and the IRS intend to issue that will address certain tax avoidance by (i) preventing the avoidance of section 956 through post-inversion acquisitions by controlled foreign corporations (CFCs) of obligations of (or equity investments in) the new foreign parent corporation or certain foreign affiliates; (ii) preventing the avoidance of U.S. tax on pre-inversion earnings and profits of CFCs through post-inversion transactions that otherwise would terminate the CFC status of foreign subsidiaries and/or substantially dilute the U.S. shareholders' interest in those earnings and profits; and (iii) limiting the ability to remove untaxed foreign earnings and profits of CFCs through related party stock sales subject to section 304.

Section 4 of this notice provides the effective dates of the regulations described in this notice. Section 5 of this notice requests comments and provides contact information for purposes of submitting comments.

SECTION 2. REGULATIONS TO ADDRESS INVERSION TRANSACTIONS

.01 Regulations under Section 7874 to Disregard Certain Stock Attributable to Passive Assets

(a) Section 7874 Background

A foreign corporation (foreign acquiring corporation) generally is treated as a surrogate foreign corporation under section 7874(a)(2)(B) if pursuant to a plan (or a series of related transactions) (i) the foreign acquiring corporation completes after March 4, 2003, the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation (acquisition); (ii) after the acquisition, at least 60 percent of the stock (by vote or value) of the foreign acquiring corporation is held by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation (such stock is referred to at times in this notice as "stock held by reason of"); and (iii) after the acquisition, the expanded affiliated group (EAG) that includes the foreign acquiring corporation does not have substantial business activities in the foreign country in which, or under the law of which, the foreign acquiring corporation is created or organized, when compared to the total business activities of the EAG. Similar provisions apply if a foreign acquiring corporation acquires substantially all of the properties constituting a trade or business of a domestic partnership. The domestic corporation or the domestic partnership described in this paragraph is referred to at times in this notice as the "domestic entity." For purposes of this notice, a reference to a domestic corporation, a domestic partnership, or a domestic entity includes a successor. Furthermore, the term "EAG" has the meaning provided in § 1.7874–4T(i)(3), and the term "inversion transaction" means an acquisition in which the foreign acquiring corporation is treated as a surrogate foreign corporation under section 7874(a)(2).

Section 7874(a)(1) provides that the taxable income of an "expatriated entity" for any year that includes any portion of the applicable period (as defined in section 7874(d)(1)) shall in no event be less than the inversion gain (as defined in section 7874(d)(2)) of the entity for the taxable year. Pursuant to section 7874(a)(2)(A), the term expatriated entity means a domestic corporation or a domestic partnership referred to in section 7874(a)(2)(B)(i) (in other words, a domestic entity), or any United States person who is related (within the meaning of section 267(b) or 707(b)(1)) to such domestic corporation or domestic partnership.

Under section 7874(c)(4), a transfer of properties or liabilities (including by contribution or distribution) is disregarded if the transfer is part of a plan a principal purpose of which is to avoid the purposes of section 7874. In addition, section 7874(c)(6) grants the Secretary authority to prescribe regulations as may be appropriate to determine whether a corporation is a surrogate foreign corporation, including regulations to treat stock as not stock. Finally, section 7874(g) grants the Secretary authority to provide regulations necessary to carry out section 7874, including regulations adjusting the application of section 7874 as necessary to prevent the avoidance of the purposes of section 7874, including the avoidance of such purposes through (i) the use of related persons, pass-through or other non-corporate entities, or other intermediaries, or (ii) transactions designed to have persons cease to be (or not become) members of expanded affiliated groups or related persons.

Under section 7874(c)(2)(B) (statutory public offering rule), stock of the foreign acquiring corporation that is sold in a public offering related to the acquisition described in section 7874(a)(2)(B)(i) is excluded from the denominator of the fraction used for purposes of calculating the ownership percentage described in section 7874(a)(2)(B)(ii) (ownership fraction). The statutory public offering rule furthers the policy that section 7874 is intended to curtail transactions that allow the benefits of an inversion but “permit corporations and other entities to continue to conduct business in the same manner as they did prior to the inversion.” S. Rep. No. 192, 108th Cong., 1st. Sess., at 142 (2003); Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in the 108th Congress (JCS–5–05) (May 31, 2005), at 343.

Section 1.7874–4T modifies the statutory public offering rule. The preamble to § 1.7874–4T provides that “the IRS and Treasury Department believe that stock of the foreign acquiring corporation transferred in exchange for certain property in a transaction related to the acquisition, but not through a public offering, presents the same opportunity to inappropriately reduce the ownership fraction.” TD 9654, 2014–6 IRB 461. Accordingly, § 1.7874–4T(b) provides that, subject to a de minimis exception, “disqualified stock” is not included in the denominator of the ownership fraction. Disqualified stock generally includes stock of the foreign acquiring corporation that is transferred to a person (other than the domestic entity) in exchange for “nonqualified property.” The term nonqualified property means (i) cash or cash equivalents, (ii) marketable securities, (iii) certain obligations, or (iv) any other property acquired in a transaction related to the acquisition with a principal purpose of avoiding the purposes of section 7874.

(b) Transactions at Issue and Regulations to be Issued

The Treasury Department and the IRS are aware that taxpayers may be engaging in transactions with a foreign corporation that has substantial cash and other liquid assets in order to facilitate an inversion to avoid the application of section 7874. Although § 1.7874–4T addresses cases in which nonqualified property held directly or indirectly by the foreign acquiring corporation is received in exchange for stock of the foreign acquiring corporation in a transaction related to the acquisition, that regulation will not apply to nonqualified property held directly or indirectly by the foreign acquiring corporation that was not acquired by the foreign acquiring corporation in a transaction related to the acquisition. As a result of this limitation in the application of § 1.7874–4T, stock of the foreign acquiring corporation may be included in the denominator of the ownership fraction, thereby decreasing the ownership fraction, even though a substantial portion of the value of such stock is attributable to nonqualified property.

The Treasury Department and the IRS intend to issue regulations under section 7874(c)(6) providing that, if more than 50 percent of the gross value of all “foreign group property” constitutes “foreign group nonqualified property,” a portion of the stock of the foreign acquiring corporation will be excluded from the denominator of the ownership fraction, as described below. This 50 percent test is applied after the acquisition and all transactions related to the acquisition, if any, are completed.

For this purpose, foreign group property means any property (including property that gives rise to disqualified stock upon application of § 1.7874–4T) held by the EAG after the acquisition (and all transactions related to the acquisition, if any) are completed, other than the following property: (i) property that is directly or indirectly acquired in the acquisition and that, at the time of the acquisition, was held directly or indirectly by the domestic entity; and (ii) to avoid double counting, stock or a partnership interest in a member of the EAG and an obligation described in § 1.7874–4T(i)(7)(iii)(A) (that is, an obligation of a member of the EAG).

Except as provided in the immediately succeeding sentence, foreign group nonqualified property means foreign group property that is described in § 1.7874–4T(i)(7) other than property that gives rise to income described in section 1297(b)(2)(A) or section 954(h) or (i) (determined by substituting the term “foreign corporation” for the term “controlled foreign corporation”). Foreign group property that otherwise would not be foreign group nonqualified property nevertheless is treated as foreign group nonqualified property if, in a transaction related to the acquisition, such property (substitute property) is acquired in exchange for other property (transferred property) that would be foreign group nonqualified property had such transferred property not been exchanged for the substitute property.

If the 50 percent threshold is satisfied, the portion of the stock of the foreign acquiring corporation that will be excluded from the denominator of the ownership fraction is the product of (i) the value of the stock of the foreign acquiring corporation other than (a) stock described in section 7874(a)(2)(B)(ii) (that is, stock held by reason of), and (b) stock excluded from the denominator of the ownership fraction under either § 1.7874–1(b) (because it is held by a member of the EAG) or § 1.7874–4T(b) (because it is disqualified stock); and (ii) a fraction (foreign group nonqualified property fraction), the numerator of which is the gross value of all foreign group nonqualified property, and the denominator of which is the gross value of all foreign group property. Solely for purposes of the preceding sentence, property received by the foreign acquiring corporation that gives rise to disqualified stock (within the meaning of § 1.7874–4T(c)) that is excluded from the denominator of the ownership fraction pursuant to § 1.7874–4T(b) is excluded from both the numerator and the denominator of the foreign group nonqualified property fraction.

The regulations to be issued also will contain a rule that incorporates the principles of § 1.7874–4T(h) (regarding the interaction of the expanded affiliated group rules with the rule that excludes disqualified stock from the denominator of the ownership fraction) with respect to stock of the foreign acquiring corporation that is excluded from the denominator of the ownership fraction under the rules described in this section 2.01(b).

The following example illustrates the regulations described in this section 2.01(b):

Example. (i) *Facts*. FA, a foreign corporation, has 20 shares of a single class of stock outstanding, all of which are owned by Individual A. FA acquires all the stock of DT, a domestic corporation, solely in exchange for 76 shares of newly issued FA stock (DT acquisition). In a transaction related to the DT acquisition, FA issues four shares of stock to Individual A in exchange for $50x of cash. After the DT acquisition, in addition to the DT stock and $50x of cash received from Individual A, FA holds Asset A (gross value of $150x), which is foreign group nonqualified property, and Asset B (gross value of $100x), which is not foreign group nonqualified property.

(ii) *Analysis*. The four shares of FA stock issued to Individual A in exchange for $50x of cash, which is nonqualified property, are disqualified stock and excluded from the denominator of the ownership fraction pursuant to § 1.7874–4T(b). After the DT acquisition, in addition to the DT stock, FA has foreign group property with a gross value of $300x, $200x of which is foreign group nonqualified property (Asset A and cash of $50x). Accordingly, 66.67% of the gross value of all the foreign group property constitutes foreign group nonqualified property ($200x/$300x). Because the 50 percent threshold is satisfied, a portion of the FA stock will be excluded from the denominator of the ownership fraction under this section 2.01(b). Because FA has only one class of stock outstanding, the multiplicand of the computation is 20 shares (100 shares of FA stock outstanding less the 76 shares of FA stock that are held by reason of and the four shares of disqualified stock). Those 20 shares are multiplied by the foreign group disqualified property fraction. The numerator of the fraction is $150x ($200x less $50x of cash that gives rise to disqualified stock) and the denominator is $250x ($300x less the $50x of cash). Thus, the portion of the FA stock that is excluded from the denominator of the ownership fraction under this section 2.01(b), is the product of 20 shares multiplied by $150x / $250x, or 12 shares. As a result, the denominator of the ownership fraction is 84 shares (100 shares reduced by four shares of disqualified stock excluded under § 1.7874–4T(b) and 12 shares excluded under this section 2.01(b)), with the result that the ownership fraction is 90.4 percent (76/84).

.02 Regulations under Sections 7874 and 367 to Disregard Certain Distributions by the Domestic Entity

(a) Section 367(a) Background

Subject to certain exceptions, section 367(a)(1) generally provides that if a United States person transfers property to a foreign corporation in an exchange described in section 332, 351, 354, 356, or 361, the foreign corporation shall not be considered a corporation for purposes of determining the extent to which the United States person recognizes gain on such transfer. Section 1.367(a)–3(c) provides an exception to the general rule of section 367(a)(1) for certain transfers by a U.S. person of stock or securities of a domestic corporation (the U.S. target company) to a foreign corporation. This exception only applies, however, if the U.S. target company complies with the reporting requirements in § 1.367(a)–3(c)(6) and if the four conditions set forth in § 1.367(a)–3(c)(1)(i) through (iv) are satisfied. The condition set forth in § 1.367(a)–3(c)(1)(iv) requires the active trade or business test (as defined in § 1.367(a)–3(c)(3)) to be satisfied, which, in turn, requires the substantiality test (as defined in § 1.367(a)–3(c)(3)(iii)) to be satisfied (among other requirements). The substantiality test is satisfied if, at the time of the transfer, the fair market value of the transferee foreign corporation is at least equal to the fair market value of the U.S. target company. For this purpose, the fair market value of the transferee foreign corporation generally does not include assets acquired outside the ordinary course of business within the 36-month period preceding the exchange if they produce, or are held for the production of, passive income or are acquired for the principal purpose of satisfying the substantiality test.

(b) *Transactions at Issue and Regulations to be Issued*

The Treasury Department and the IRS are aware that a domestic entity may distribute property to its former shareholders (within the meaning of § 1.7874–2(b)(2)) or former partners (within the meaning of § 1.7874–2(b)(3)), in order to reduce the ownership fraction by reducing the numerator. Similarly, to avoid the application of section 367(a)(1), a U.S. target company may distribute property to its shareholders in contemplation of an acquisition to satisfy the substantiality test. To address these transactions, the Treasury Department and the IRS intend to issue regulations under sections 7874 and 367, as described below.

For purposes of applying section 7874(c)(4) (which disregards transfers of properties or liabilities if the transfer is part of a plan a principal purpose of which is to avoid the purposes of section 7874), non-ordinary course distributions (defined below) made by the domestic entity (including a predecessor) during the 36-month period ending on the acquisition date (within the meaning of § 1.7874–3T(d)(1)) will be treated as part of a plan a principal purpose of which is to avoid the purposes of section 7874. Accordingly, such distributions will be disregarded for purposes of section 7874.

For purposes of this notice, non-ordinary course distributions mean the excess of all distributions made during a taxable year by the domestic entity with respect to its stock or partnership interests, as applicable, over 110 percent of the average of such distributions during the thirty-six month period immediately preceding such taxable year. A distribution means any distribution, regardless of whether it is treated as a dividend or whether, for example, it qualifies under section 355. Thus, a distribution includes any distribution made by the domestic entity in redemption of its stock, such as a distribution to which section 302(a) applies. A distribution also includes a transfer of money or other property to the owners of the domestic entity that is made in connection with the acquisition described in section 7874(a)(2)(B)(i) to the extent the money or other property is directly or indirectly provided by the domestic entity. For example, if the acquisition of the domestic entity by the foreign acquiring corporation qualifies as a reorganization under section 368(a) and the shareholders of the domestic entity receive other property or "boot" (within the meaning of section 356) in connection with the reorganization, then, to the extent the boot is directly or indirectly provided by the domestic entity for purposes of section 356, the domestic entity is treated as having made a distribution in the amount of that boot for purposes of this section 2.02(b)).

Section 1.367(a)–3(c) will be modified to include a rule that incorporates the principles described above for purposes of the substantiality test.

.03 Regulations under Section 7874 Regarding Subsequent Transfers of Stock of the Foreign Acquiring Corporation

(a) Section 7874 Background and Transactions at Issue

Section 7874(c)(2)(A) provides that stock of a foreign acquiring corporation that is held by members of the EAG is not included in the numerator or the denominator of the ownership fraction (statutory EAG rule). To illustrate the application of the statutory EAG rule, assume a domestic corporation (DC) is wholly owned by a U.S. parent corporation (USP), and that USP transfers all the DC stock to a newly formed foreign corporation (FA) in exchange for all of the stock of FA. Absent the statutory EAG rule, the ownership fraction would be 100 percent and the foreign acquiring corporation would be treated as a domestic corporation (assuming the EAG does not have substantial business activities in the relevant foreign country). However, under the statutory EAG rule, the stock of FA held by USP is excluded from the numerator and the denominator of the ownership fraction, so that the numerator and the denominator of the ownership fraction are zero and FA is respected as a foreign corporation.

However, application of the statutory EAG rule does not always lead to the appropriate result, for example, when a domestic entity has minority shareholders. To illustrate, assume that DC is owned 90 percent by USP and 10 percent by individual A, and that USP and individual A transfer all of their DC stock to newly formed FA in exchange for 90 percent and 10 percent, respectively, of the stock of FA. Absent an exception to the statutory EAG rule, the stock of FA held by USP would be excluded from the numerator and the denominator of the ownership fraction, such that the ownership fraction would be 100 percent (10/10) and FA would be treated as a domestic corporation.

To address this and other inappropriate results, § 1.7874–1 provides two exceptions to the statutory EAG rule: the internal group restructuring exception and the loss of control exception (together with the statutory EAG rule, the EAG rules). See §§ 1.7874–1(c)(2) and 1.7874–1(c)(3), respectively. When either of these exceptions applies, stock of the foreign acquiring corporation held by members of the EAG is excluded from the numerator but not the denominator of the ownership fraction. Thus, both exceptions have the potential to decrease the ownership fraction. In general, the internal group restructuring exception applies when the domestic entity and the foreign acquiring corporation are members of an affiliated group (membership generally being based on an 80 percent vote and value requirement) with the same common parent both before and after the acquisition. The loss of control exception applies when the former owners of the domestic entity do not hold more than 50 percent of the stock of any member of the EAG after the acquisition.

Section 1.7874–5T addresses the effect on the numerator of the ownership fraction when former shareholders or former partners of the domestic entity receive stock of the foreign acquiring corporation by reason of holding stock or a partnership interest in the domestic entity and then transfer that stock to another person. Specifically, § 1.7874–5T(a) provides that stock of the foreign acquiring corporation that is described in section 7874(a)(2)(B)(ii) (that is, stock held by reason of) shall not cease to be so described as a result of any subsequent transfer of the stock by the former shareholder or former partner that received the stock, even if the subsequent transfer is related to the acquisition described in section 7874(a)(2)(B)(i). Accordingly, such stock of the foreign acquiring corporation is included in the numerator of the ownership fraction unless the stock is excluded from the ownership fraction under the EAG rules.

The preamble to §§ 1.7874–4T and -5T notes that the Treasury Department and the IRS continue to study the extent to which subsequent transfers of stock of the foreign acquiring corporation should be taken into account in applying the EAG rules. TD 9654. The preamble describes certain divisive transactions under section 355 that involve subsequent distributions by a corporation of the stock of the foreign acquiring corporation. For example, assume a divisive transaction under section 355 in which a publicly traded U.S. parent corporation (USP) contributes all the stock of a domestic corporation (DC) to a newly formed foreign acquiring corporation (FA) (which is an acquisition described in section 7874(a)(2)(B)(i)) followed by a distribution of all of the FA stock to its shareholders. Pursuant to § 1.7874–5T, the FA stock received by USP does not cease to be described in section 7874(a)(2)(B)(ii) (that is, it continues to be treated as stock held by reason of) as a result of USP's distribution of the FA stock to its shareholders. Accordingly, absent application of the EAG rules, the FA stock is included in the numerator of the ownership fraction. An issue raised by this transaction is the extent to which the distribution should be taken into account in determining whether the FA stock received by USP is treated as stock held by a member of the EAG for purposes of the EAG rules; in other words, the extent to which the EAG should be determined by taking into account any transactions related to the acquisition.

As the preamble further notes, this issue can also arise when the subsequent transfer occurs by reason of a sale or pursuant to a reorganization described in section 368. More specifically, the issue can arise, for example, if: (i) a corporation receives stock of a foreign acquiring corporation in an acquisition described in section 7874(a)(2)(B)(i) and subsequently sells that stock (or a portion of that stock), or (ii) in connection with an acquisitive asset reorganization described in section 368, a target corporation receives stock of the foreign acquiring corporation in exchange for its assets and subsequently distributes that stock of the foreign acquiring corporation to its shareholders pursuant to the plan of reorganization. Finally, the preamble requests comments on whether different results may be appropriate depending on whether the corporation that receives the stock of the foreign acquiring corporation and only temporarily holds that stock is a foreign or a domestic corporation.

Upon further study, the Treasury Department and the IRS have determined that stock of the foreign acquiring corporation that is received by a former corporate shareholder or a former corporate partner that subsequently is transferred in a transaction related to the acquisition should not be treated as held by a member of the EAG for purposes of applying the EAG rules, subject to two exceptions. As a result, absent an exception, that stock generally will be included in the numerator of the ownership fraction (pursuant to § 1.7874–5T) and the denominator of the ownership fraction. One exception applies to "U.S.-parented groups" and the other exception applies to "foreign-parented groups." In general, the U.S.-parented group exception applies to transfers of stock of the foreign acquiring corporation that remain within the U.S.-parented group. The foreign-parented group exception is broader, applying not only to transfers of stock of the foreign acquiring corporation that remain within the foreign-parented group but also to transfers of stock of the foreign acquiring corporation outside the foreign-parented group, subject to the restriction generally that the EAG rules would have applied had the foreign-parented group not transferred any stock of the foreign acquiring corporation outside the group (including stock of the foreign acquiring corporation received in the acquisition and other stock of the foreign acquiring corporation held by the foreign-parented group).

(b) Regulations to be Issued

(i) In General

Except as provided in section 2.03(b)(ii) or (iii) of this notice, if stock of the foreign acquiring corporation described in section 7874(a)(2)(B)(ii) (that is, stock of the foreign acquiring corporation held by reason of) is received by a former corporate shareholder or former corporate partner of the domestic entity (transferring corporation), and, in a transaction (or series of transactions) related to the acquisition, that stock (transferred stock) is subsequently transferred, the transferred stock is not treated as held by a member of the EAG for purposes of applying the EAG rules. Accordingly, the transferred stock is included in the numerator and the denominator of the ownership fraction.

Except as provided in section 2.03(b)(iii) of this notice, all transactions related to the acquisition must be taken into account for purposes of determining an EAG, a U.S.-parented group, and a foreign-parented group.

For purposes of this notice, a U.S.-parented group means an affiliated group that has a domestic corporation as the common parent corporation, and a foreign-parented group means an affiliated group that has a foreign corporation as the common parent corporation. For this purpose, the term affiliated group means an affiliated group as defined in section 1504(a) but without regard to section 1504(b)(3), except that section 1504(a) is applied by substituting "more than 50 percent" for "at least 80 percent" each place it appears.

For purposes of this section 2.03(b), including for purposes of applying section 1504(a), each partner in a partnership is treated as holding its proportionate share of stock held by the partnership, as determined under the rules and principles of sections 701 through 777.

(ii) Exception for Subsequent Transfers Involving a U.S.-Parented Group

Transferred stock is treated as held by a member of the EAG for purposes of the EAG rules if (i) before and after the acquisition, the transferring corporation (or its successor) is a member of a U.S.-parented group; and (ii) after the acquisition, both the person that holds the transferred stock after all related transfers of the transferred stock are completed and the foreign acquiring corporation are members of the U.S.-parented group. Accordingly, under section 7874(c)(2)(A) and § 1.7874–1(b), such transferred stock is excluded from the numerator of the ownership fraction, and, depending upon the application of § 1.7874–1(c)(2), may be excluded from the denominator of the ownership fraction.

(iii) Exception for Subsequent Transfers Involving a Foreign-Parented Group

Transferred stock is treated as held by a member of the EAG for purposes of the EAG rules if (i) before the acquisition, the transferring corporation and the domestic entity are members of the same foreign-parented group; and (ii) after the acquisition, the transferring corporation is a member of the EAG or would be a member of the EAG absent the subsequent transfer of any stock of the foreign acquiring corporation by a member of the foreign-parented group in a transaction related to the acquisition (but taking into account all other transactions related to the acquisition). Accordingly, under section 7874(c)(2)(A) and § 1.7874–1(b), such transferred stock is excluded from the numerator of the ownership fraction, and, depending upon the application of § 1.7874–1(c)(2), may be excluded from the denominator of the ownership fraction.

(iv) Examples

The following examples illustrate the regulations described in this section 2.03(b):

Example 1. (i) *Facts*. D, a domestic corporation, owns all of the stock of DT, also a domestic corporation, and stock of other subsidiaries. The DT stock does not represent substantially all of the property of D for purposes of section 7874. Pursuant to a reorganization described in section 368(a)(1)(D), D transfers all the stock of DT to FA, a newly formed foreign corporation, in exchange solely for 100 shares of FA stock (DT acquisition) and distributes all of the FA stock to its shareholders pursuant to section 361(c)(1) (subsequent distribution). D is the common parent of a U.S.-parented group before and after the DT acquisition.

(ii) *Analysis*. Under § 1.7874–2(f)(1), the 100 shares of FA stock received by D in the DT acquisition is stock of a foreign corporation (FA) that is held by reason of holding stock in a domestic corporation (DT). Accordingly, such stock is described in section 7874(a)(2)(B)(ii). Under § 1.7874–5T(a), all 100 shares of FA stock retain their status as being described in section 7874(a)(2)(B)(ii) even though D subsequently transfers all of the FA stock to its shareholders in the subsequent distribution. Under section 2.03(b)(i) of this notice, the FA stock received by D is not treated as held by a member of the EAG for purposes of applying the EAG rules. The exception provided in section 2.03(b)(ii) of this notice does not apply because, after the DT acquisition, the shareholders of D and FA are not members of the U.S.-parented group. Accordingly, the ownership fraction is 100/100.

(iii) *Alternative facts and analysis*. The facts are the same as in paragraph (i) of this example, except that D is a foreign corporation and the common parent of a foreign-parented group. Under section 2.03(b)(iii) of this notice, the FA stock received by D is treated as held by a member of the EAG for purposes of applying the EAG rules because (i) before the DT acquisition, D and DT are members of a foreign-parented group of which D is the common parent, and (ii) D would be a member of the EAG absent the distribution of the FA stock by D to its shareholders in the subsequent distribution. In addition, the DT acquisition qualifies as an internal group restructuring under § 1.7874–1(c)(2). Accordingly, the ownership fraction is 0/100.

Example 2. (i) *Facts*. Individual A owns all the stock of FT, a foreign corporation. FT owns all the stock of DT, a domestic corporation. FT does not own any other property and has no liabilities. Pursuant to a reorganization described in section 368(a)(1)(F), FT transfers all of its DT stock to FA, a newly formed foreign corporation, in exchange for 100 shares of FA stock (DT acquisition) and distributes the FA stock to individual A in liquidation pursuant to section 361(c)(1) (subsequent distribution).

(ii) *Analysis*. Under § 1.7874–2(f)(1), the 100 shares of FA stock received by FT in the reorganization is stock of a foreign corporation (FA) that is held by reason of holding stock in a domestic corporation (DT). Accordingly, such stock is described in section 7874(a)(2)(B)(ii). Under § 1.7874–5T(a), all 100 shares of FA stock retain their status as being described in section 7874(a)(2)(B)(ii) even though FT subsequently transfers all of the FA stock to its shareholder (individual A) in the subsequent distribution. Under section 2.03(b)(iii) of this notice, the FA stock received by FT is treated as held by a member of the EAG for purposes of applying the EAG rules because (i) before the DT acquisition, FT and DT are members of a foreign-parented group (of which FT is the common parent), and (ii) absent the distribution of the FA stock by FT to individual A in the subsequent distribution, FT would be a member of the EAG. In addition, the DT acquisition qualifies as an internal group restructuring under § 1.7874–1(c)(2). Accordingly, the ownership fraction is 0/100.

(iii) *Alternative facts and analysis*. The facts are the same as in paragraph (i) of this example, except that, in a transaction related to the DT acquisition, FA subsequently issues 200 shares of stock to individual B in exchange for qualified property (within the meaning of § 1.7874–4T(i)(7)). The exception under section 2.03(b)(iii) of this notice does not apply because, taking into account FA's issuance of 200 shares to individual B, FT would not be a member of the EAG absent the subsequent distribution. Accordingly, the FA stock received by FT is not treated as held by a member of the EAG for purposes of the EAG rules. Accordingly, the ownership fraction is 100/300.

SECTION 3. REGULATIONS TO ADDRESS POST-INVERSION TAX AVOIDANCE TRANSACTIONS

.01 Regulations to Address Acquisitions of Obligations and Stock that Avoid Section 956

(a) Section 956 Background

Section 957(a) defines a CFC as a foreign corporation with respect to which more than 50 percent of the total combined voting power of all classes of stock entitled to vote or the total value of the stock of the corporation is owned (directly, indirectly, or constructively) by United States shareholders (U.S. shareholders). Section 951(b) defines a U.S. shareholder as a U.S. person that owns (directly, indirectly, or constructively) 10 percent or more of the total combined voting power of all classes of stock entitled to vote of the foreign corporation.

Section 951(a)(1) provides that every person that is a U.S. shareholder of a CFC and owns (within the meaning of section 958(a)) stock in the corporation on the last day of the CFC's taxable year must include in its gross income for its taxable year in which or with which such taxable year of the CFC ends the amount determined under section 956 with respect to the shareholder for the year (but only to the extent not excluded from gross income under section 959(a)(2)).

Section 956(a) provides:

In the case of any controlled foreign corporation, the amount determined under this section with respect to any United States shareholder for any taxable year is the lesser of—

(1) the excess (if any) of—

(A) such shareholder's pro rata share of the average of the amounts of United States property held (directly or indirectly) by the controlled foreign corporation as of the close of each quarter of such taxable year, over

(B) the amount of earnings and profits described in section 959(c)(1)(A) with respect to such shareholder, or

(2) such shareholder's pro rata share of the applicable earnings of such controlled foreign corporation.

Section 956(c)(1) provides that, for this purpose:

"United States property" means any property acquired after December 31, 1962, which is—

(A) tangible property located in the United States;

(B) stock of a domestic corporation;

(C) an obligation of a United States person; or

(D) any right to the use in the United States of—

(i) a patent or copyright,

(ii) an invention, model, or design (whether or not patented),

(iii) a secret formula or process, or

(iv) any other similar right,

which is acquired or developed by the controlled foreign corporation for use in the United States.

Section 956(c)(2) provides exceptions that apply to the definition of United States property, including exceptions that limit the scope of obligations of U.S. persons and stock of domestic corporations that will be treated as United States property to obligations of sufficiently related U.S. persons and stock of sufficiently related domestic corporations. See sections 956(c)(1)(B) and (C) and 956(c)(2)(F) and (L).

Section 956 is intended to prevent a U.S. shareholder of a CFC from inappropriately deferring U.S. taxation of CFC earnings and profits by "prevent[ing] the repatriation of income to the United States in a manner which does not subject it to U.S. taxation." H.R. Rep. No. 1447, 87th Cong., 2d Sess., at 58 (1962). In the absence of section 956, a U.S. shareholder of a CFC could access the CFC's funds (untaxed earnings and profits) in a variety of ways other than by the payment of an actual taxable dividend, such that there would be no reason for the U.S. shareholder to incur the dividend tax. Section 956 eliminates this disincentive to pay a dividend by ensuring parity of treatment for different ways that CFC earnings can be made available for use in the United States or for use by the U.S. shareholder. Accordingly, under section 956, the investment by a CFC of its earnings and profits in United States property is "taxed to the [CFC's] shareholders on the grounds that this is substantially the equivalent of a dividend." S. Rep. No. 1881, 87th Cong., 2d Sess., at 88 (1962). Section 956(e) provides the Secretary with authority to "prescribe such regulations as may be necessary . . . to prevent the avoidance of the provisions of [section 956] through reorganizations or otherwise."

(b) Transactions at Issue and Regulations to be Issued

An inversion transaction may permit the top corporate parent in the newly inverted group, a group still principally comprised of U.S. shareholders and their CFCs, to avoid section 956 by accessing the untaxed earnings and profits of the CFCs without a current tax to the U.S. shareholders. This is a result that the U.S. shareholders could not achieve before the inversion. The ability of the new foreign parent to access deferred CFC earnings and profits would in many cases eliminate the need for the CFCs to pay dividends to the U.S. shareholders, thereby circumventing the purposes of section 956. Section 956(e) directs the Secretary to prescribe regulations to prevent the avoidance of the provisions of section 956 through reorganizations or otherwise; an inversion is an example of such a transaction.

In order to prevent this avoidance of section 956, the Treasury Department and the IRS intend to issue regulations under section 956(e) providing that, solely for purposes of section 956, any obligation or stock of a foreign related person (within the meaning of section 7874(d)(3) other than an "expatriated foreign subsidiary") (such person, a "non-CFC foreign related person") will be treated as United States property within the meaning of section 956(c)(1) to the extent such obligation or stock is acquired by an expatriated foreign subsidiary during the applicable period (within the meaning of section 7874(d)(1)). For purposes of this notice, except as provided in the succeeding sentence, an expatriated foreign subsidiary is a CFC with respect to which an expatriated entity (as defined in section 2.01(a) of this notice) is a U.S. shareholder. An expatriated foreign subsidiary does not include a CFC that is a member of the EAG immediately after the acquisition and all transactions related to the acquisition are completed (completion date) if the domestic entity is not a U.S. shareholder with respect to the CFC on or before the completion date. In addition, for purposes of this section, an expatriated foreign subsidiary that is a pledgor or guarantor of an obligation of a non-CFC foreign related person under the principles of section 956(d) and § 1.956–2(c) will be considered as holding such obligation.

The Treasury Department and the IRS are considering, and request comments on, whether any exceptions under section 956(c)(2) or § 1.956–2 should apply to an obligation or stock of a foreign related person that is determined to be United States property within the meaning of section 956(c)(1) pursuant to the regulations described in this section 3.01(b). However, the exception to the definition of obligation provided by Notice 88–108, 1988–2 C.B. 446, will not apply to such obligations.

.02 Regulations to Address Transactions to De-Control or Significantly Dilute CFCs

(a) Section 7701(l) Background

Section 7701(l) provides that "[t]he Secretary may prescribe regulations recharacterizing any multiple-party financing transaction as a transaction directly among any 2 or more of such parties where the Secretary determines that such recharacterization is appropriate to prevent avoidance of any tax imposed [under the Code]." The legislative history notes that, as a general matter, "[t]he tax treatment of a transaction may depend on the identity of the parties to the transaction," and cites as an example that whether a loan by a CFC to a related person will result in a section 956 inclusion depends upon whether the borrower is a U.S. person or an unrelated foreign person. H.R. Rep. No. 213, 103rd Cong., 1st Sess., at 654 (1993). The legislative history indicates that regulations could be issued under section 7701(l) to prevent the avoidance of tax under a wide variety of Code sections. "It is intended that the provision apply not solely to back-to-back loan transactions, but also to other financing transactions. For example, it would be within the proper scope of the provision for the Secretary to issue regulations dealing with multiple-party transactions involving debt guarantees or equity investments." H.R. Rep. No. 213, 103rd Cong., 1st Sess., at 655 (1993).

In describing the "reasons for change," the legislative history cites with approval several IRS rulings that disregard conduit entities, and goes on to note, "the committee does not intend that the Secretary be bound, in developing regulations, by the standards on which those rulings are based, if the Secretary deems it necessary or appropriate to adopt other standards in order to properly recharacterize a financing transaction." H.R. Rep. No. 103–111, 103rd Cong., 1st Sess., at 729 (1993). Thus, while Congress intended regulations under section 7701(l) to address conduit transactions, the legislative history indicates a broader purpose and notes that traditional approaches need not be the only appropriate response when taxpayers use financing transactions to avoid any tax imposed by the Code. Consistent with the legislative history, the statute's wording is not limited to conduit fact patterns. In this regard, see § 1.7701(l)–3 (regarding fast-pay arrangements), which treats the holders of fast-pay stock in a corporation as having acquired instruments issued by other shareholders of the corporation instead of having acquired interests in the corporation.

(b) Sections 964(e) and 954(c)(6) Background

Section 964(e)(1) provides that if a CFC sells or exchanges stock in any other foreign corporation, gain recognized on such sale or exchange is included in the gross income of the CFC as a dividend to the same extent that it would have been so included under section 1248(a) if the CFC were a United States person. Section 964(e)(2) provides that section 954(c)(3)(A)(i) (the "same country exception" to foreign personal holding company income for interest and dividends) does not apply to any amount treated as a dividend by reason of section 964(e)(1).

Section 954(c)(6)(A) provides that, for purposes of section 954(c), dividends, interest, rents, and royalties received or accrued from a CFC which is a related person shall not be treated as foreign personal holding company income to the extent attributable or properly allocable (determined under rules similar to the rules of subparagraphs (C) and (D) of section 904(d)(3)) to income of the related person which is neither subpart F income nor effectively connected income. Section 954(c)(6)(A) also provides that the Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the provision, including regulations to prevent the abuse of the purposes of the provision. Notice 2007–9, 2007–1 C.B. 401, provides that, for purposes of section 954(c)(6), the term "dividend" includes gains treated as dividends pursuant to sections 964(e).

(c) Section 367(b) Background

Section 367(b)(1) provides that, in the case of an exchange described in section 332, 351, 354, 355, 356, or 361 in connection with which there is no transfer of property described in section 367(a)(1), a foreign corporation shall be considered to be a corporation except to the extent provided in regulations prescribed by the Secretary which are necessary or appropriate to prevent the avoidance of Federal income taxes. Section 367(b)(2) provides that the regulations prescribed pursuant to section 367(b)(1) shall include (but shall not be limited to) regulations dealing with the sale or exchange of stock or securities in a foreign corporation by a United States person, including regulations providing the circumstances under which gain is recognized or deferred, amounts are included in gross income as a dividend, adjustments are made to earnings and profits, or adjustments are made to the basis of stock or securities.

Regulations under section 367(b) generally provide that if the potential application of section 1248 cannot be preserved following the acquisition of the stock or assets of a foreign corporation (foreign acquired corporation) by another foreign corporation in an exchange subject to section 367(b), then certain exchanging shareholders of the foreign acquired corporation must include in income as a dividend the section 1248 amount (as defined in § 1.367(b)–2(c)(1)) attributable to the stock of the foreign acquired corporation exchanged. See § 1.367(b)–4(b). Specifically, subject to certain exceptions, § 1.367(b)–4(b)(1)(i) requires a deemed dividend inclusion if the exchange satisfies two conditions. First, immediately before the exchange, the exchanging shareholder is either (i) a U.S. person that is a section 1248 shareholder with respect to the foreign acquired corporation, or (ii) a foreign corporation in which a U.S. person is a section 1248 shareholder with respect to such foreign corporation and the foreign acquired corporation. See

§ 1.367(b)–4(b)(1)(i)(A). Second, immediately after the exchange, either (i) the stock received by the exchanging shareholder is not stock in a CFC as to which the U.S. person described in the preceding sentence is a section 1248 shareholder, or (ii) the foreign acquiring corporation (for this purpose, as defined in § 1.367(b)–4(a)) or the foreign acquired corporation (in the case of an acquisition of the stock of the foreign acquired corporation) is not a CFC as to which the U.S. person is a section 1248 shareholder. See § 1.367(b)–4(b)(1)(i)(B).

Section 1.367(b)–4(c)(1) provides that a section 1248 amount included as a deemed dividend under § 1.367(b)–4(b) is not included as foreign personal holding company income under section 954(c).

(d) Transactions at Issue

Inversion transactions facilitate the avoidance of section 956 through techniques in addition to those discussed in section 3.01(b) of this notice. After an inversion transaction, the inverted group may cause an expatriated foreign subsidiary to cease to be a CFC using transactions that avoid the imposition of U.S. income tax, so as to avoid U.S. tax on the CFC's pre-inversion earnings and profits. For example, after an inversion transaction, a foreign acquiring corporation could issue a note or transfer property to an expatriated foreign subsidiary in exchange for stock representing at least 50 percent of the voting power and value of the expatriated foreign subsidiary. The expatriated foreign subsidiary would cease to be a CFC, and the U.S. shareholders would no longer be subject to subpart F of the Code with respect to the expatriated foreign subsidiary. As a result, the expatriated foreign subsidiary could make its pre-inversion earnings and profits available to the U.S. shareholders without causing an income inclusion under section 956.

Even if the foreign acquiring corporation acquired less stock of an expatriated foreign subsidiary, such that the expatriated foreign subsidiary remains a CFC, it could nevertheless substantially dilute a U.S. shareholder's ownership of the CFC. As a result, the U.S. shareholder could avoid tax on the CFC's pre-inversion earnings and profits if, for example, the CFC later redeemed, on a non pro rata basis, its stock held by the foreign acquiring corporation. As another example, the U.S. shareholder could avoid tax on a CFC's pre-inversion earnings and profits if the CFC paid a pro rata extraordinary distribution, although in this case the U.S. shareholder could be required to pay some tax.

The Treasury Department and the IRS have determined that it is appropriate, in order to prevent the avoidance of U.S. tax, to issue regulations under section 7701(l) that will recharacterize certain transactions that facilitate the avoidance of U.S. tax on the expatriated foreign subsidiary's pre-inversion earnings and profits. The Treasury Department and the IRS also intend to issue regulations that will modify the application of section 367(b), so as to require an income inclusion in certain nonrecognition transactions that dilute a U.S. shareholder's ownership of a CFC.

(e) Regulations to be Issued

(i) Regulations under section 7701(l)

The Treasury Department and the IRS intend to issue regulations under section 7701(l) providing that a "specified transaction" completed during the applicable period (as defined in section 7874(d)(1)) will be recharacterized in the manner described in section 3.02(e)(i)(A) of this notice, subject to the exceptions described in section 3.02(e)(i)(C) of this notice. For this purpose, a specified transaction is a transaction in which stock in an expatriated foreign subsidiary (as defined in section 3.01(b) of this notice) (specified stock) is transferred (including by issuance) to a "specified related person." For this purpose, a specified related person means a non-CFC foreign related person (as defined in section 3.01(b) of this notice), a U.S. partnership that has one or more partners that is a non-CFC foreign related person, or a U.S. trust that has one or more beneficiaries that is a non-CFC foreign related person.

In addition, the Treasury Department and the IRS intend to issue regulations providing that if a deemed dividend is included in a CFC's income under section 964(e) as a result of a specified transaction that is completed during the applicable period, the deemed dividend will not be excluded from foreign personal holding company income under section 954(c)(6) (to the extent in effect, and notwithstanding the rule described in Notice 2007–9, 2007–1 C.B. 401).

(A) *Recharacterization of a Specified Transaction*

A specified transaction is recharacterized for all purposes of the Code, as of the date on which the specified transaction occurs, as an arrangement directly between the specified related person and one or more section 958(a) U.S. shareholders of the expatriated foreign subsidiary. However, if the specified transaction is a fast-pay arrangement that is recharacterized under § 1.7701(l)–3(c)(2), then the rules of § 1.7701(l)–3 will apply instead of the regulations described in this section 3.02(e)(i).

For purposes of this notice, a section 958(a) U.S. shareholder of an expatriated foreign subsidiary is a U.S. shareholder (within the meaning of section 951(b)) with respect to the expatriated foreign subsidiary that owns (within the meaning of section 958(a)) stock in the expatriated foreign subsidiary, but only if such U.S. shareholder is related (within the meaning of section 267(b) or 707(b)(1)) to the specified related person or is under the same common control (within the meaning of section 482) as the specified related person.

If an expatriated foreign subsidiary issues the specified stock to a specified related person, the specified transaction will be recharacterized as follows: (i) the property transferred by the specified related person to acquire the specified stock (transferred property) will be treated as having been transferred by the specified related person to the section 958(a) U.S. shareholder(s) of the expatriated foreign subsidiary in exchange for instruments deemed issued by the section 958(a) U.S. shareholder(s) (deemed instrument(s)); and (ii) the transferred property or proportionate share thereof will be treated as having been contributed by the section 958(a) U.S. shareholder(s) (through intervening entities, if any, in exchange for equity in such entities) to the expatriated foreign subsidiary in exchange for stock in the expatriated foreign subsidiary. See section 3.02(e)(iii), *Example 1,* of this notice.

Similar principles will apply to recharacterize a specified transaction in which a shareholder transfers specified stock of the expatriated foreign subsidiary to a specified related person. Section 3.02(e)(1)(iii), *Example 2*, of this notice illustrates an application of these principles when a shareholder of an expatriated foreign subsidiary transfers stock of an expatriated foreign subsidiary to a partnership that is a specified related person. The Treasury Department and the IRS request comments on this example, and specifically, on alternative recharacterizations that could apply to transfers to partnerships.

(B) *Other Rules Relating to the Recharacterization*

A deemed instrument described in section 3.02(e)(i)(A) of this notice will have the same terms as the specified stock (other than issuer). Accordingly, if a distribution is made with respect to specified stock of the expatriated foreign subsidiary, matching seriatim distributions with respect to stock will be treated as made by the expatriated foreign subsidiary (through intervening entities, if any) to the section 958(a) U.S. shareholder(s). The section 958(a) U.S. shareholder(s), in turn, will be treated as making payments, with respect to the deemed instrument(s), to the specified related person(s).

An expatriated foreign subsidiary will be treated as the paying agent of a section 958(a) U.S. shareholder of the expatriated foreign subsidiary with respect to the deemed instrument treated as issued by the section 958(a) U.S. shareholder to a specified related person. In addition, rules similar to those described in § 1.7701(l)–3(b)(3)(iii) (regarding transactions that affect benefited stock) will apply to transactions affecting specified stock.

(C) *Certain Specified Transactions are not Recharacterized*

A specified transaction will not be recharacterized under the rules of section 3.02(e)(i)(A) of this notice in two situations. The first exception applies if the specified stock was transferred by a shareholder of the expatriated foreign subsidiary and, under applicable U.S. tax rules, the shareholder either is required to recognize and include in income all of the gain in the specified stock (including gain treated as a deemed dividend pursuant to section 964(e) or 1248(a) or characterized as a dividend pursuant to section 356(a)(2)) or has a deemed dividend included in income with respect to the specified stock under 1.367(b)–4 (including by reason of the regulations described in section 3.02(e)(ii) of this notice that apply to specified exchanges).

The second exception applies if (i) the expatriated foreign subsidiary is a CFC immediately after the specified transaction and all related transactions, and (ii) the amount of stock (by value) in the expatriated foreign subsidiary (and any lower-tier expatriated foreign subsidiary) that is owned, in the aggregate, directly or indirectly by the section 958(a) U.S. shareholders of the expatriated foreign subsidiary immediately before the specified transaction and any transactions related to the specified transaction does not decrease by more than 10 percent as a result of the specified transaction and any related transactions.

(ii) Regulations under Section 367(b)

The Treasury Department and the IRS intend to amend the regulations under section 367(b) to provide that an exchanging shareholder described in § 1.367(b)–4(b)(1)(i)(A) will be required to include in income as a deemed dividend the section 1248 amount attributable to the stock of an expatriated foreign subsidiary exchanged in a "specified exchange," without regard to whether the conditions set forth in § 1.367(b)–4(b)(1)(i)(B) are satisfied. The regulations will apply to specified exchanges completed during the applicable period (as defined in section 7874(d)(1)). For this purpose, a specified exchange is an exchange in which a shareholder of an expatriated foreign subsidiary exchanges stock in the expatriated foreign subsidiary for stock in another foreign corporation pursuant to a transaction described in § 1.367(b)–4(a). See section 3.02(e)(iii), *Example 3*, of this notice.

In addition, the regulations will provide an exception that incorporates the principles of the second exception described in section 3.02(e)(i)(C) of this notice (regarding specified transactions that do not decrease, in aggregate, the section 958(a) U.S. shareholders' ownership of stock in an expatriated foreign subsidiary (or lower-tier expatriated foreign subsidiary) by more than 10 percent).

Finally, the regulations will provide that § 1.367(b)–4(c)(1) (regarding the exclusion of a deemed dividend from foreign personal holding company income) will not apply to a deemed dividend that results from a specified exchange pursuant to the regulations described in this section 3.02(e)(ii) and that such deemed dividend will not qualify for the exceptions from foreign personal holding company income provided by section 954(c)(3)(A)(i) or section 954(c)(6) (to the extent in effect).

(iii) Examples

The following examples illustrate the regulations described in this section 3.02(e). For each of the examples, assume that FA, a foreign corporation, wholly owns DT, a domestic corporation, which, in turn, wholly owns FT, a foreign corporation that is a CFC. FA wholly owns FS, a foreign corporation. FA acquired DT in an inversion transaction that was completed on January 1, 2015. Accordingly, DT is a domestic entity, FT is an expatriated foreign subsidiary, and FS is a specified related person with respect to FT.

Example 1. (i) *Facts*. On February 1, 2015, FA acquires $10x of FT stock from FT, representing 60 percent of total voting power and value of the stock of FT, in exchange for $10x of cash.

(ii) *Analysis*. (A) FA's acquisition of the FT stock from FT is a specified transaction, because stock of an expatriated foreign subsidiary was transferred (by issuance) to a specified related person (FA).

(B) FA's acquisition of the FT stock is recharacterized as follows, with the result that FT continues to be a CFC:

(*1*) DT is treated as having issued a deemed instrument to FA in exchange for $10x of cash.

(*2*) DT is treated as having contributed the $10x of cash to FT in exchange for FT stock.

(C) Any distribution with respect to the FT stock actually acquired by FA will be treated as a distribution to DT, which, in turn, will be treated as making a matching distribution with respect to the deemed instrument that DT is treated as having issued to FA. FT is treated as the paying agent of DT with respect to the deemed instrument issued by DT to FA.

(iii) *Alternative facts and analysis*. The facts are the same as in paragraph (i) of this example, except that instead of acquiring FT stock from FT in exchange for $10x of cash, FA acquires 60% of the FT stock held by DT in exchange for $4x of cash in a fully taxable transaction. In this case, the specified transaction is not recharacterized under section 3.02(e)(i)(A) of this notice pursuant to the first exception described in section 3.02(e)(i)(C) of this notice. This is because DT is required to recognize and include in income all of the gain (including any gain treated as a deemed dividend pursuant to section 1248(a)) with respect to the FT stock transferred to FA.

Example 2. (i) *Facts*. On February 1, 2015, DT transfers all of the stock of FT to FPRS, a foreign partnership, in exchange for 40% of the capital and profits interests in the partnership. Furthermore, FA contributes property to FPRS in exchange for the other 60% of the capital and profits interests.

(ii) *Analysis*. (A) DT's transfer of the FT stock is a specified transaction, because stock of an expatriated foreign subsidiary was transferred to a specified related person (FPRS).

(B) Under the principles of section 3.02(e)(i)(A) of this notice, DT's transfer of the FT stock is recharacterized as follows, with the result that FT continues to be a CFC:

(*1*) FPRS is treated as having issued 40% of its capital and profits interests to DT in exchange for a deemed instrument treated as having been issued by DT.

(*2*) DT is treated as continuing to own all of the stock of FT.

(C) Any distribution with respect to the FT stock actually acquired by FPRS will be treated as a distribution to DT, which, in turn, will be treated as making a matching distribution with respect to the deemed instrument that DT is treated as having issued to FPRS. FT is treated as the paying agent of DT with respect to the deemed instrument issued by DT to FPRS.

Example 3. (i) *Facts*. On February 1, 2015, DT exchanges all of the stock of FT solely in exchange for 60% of the stock of FS pursuant to a reorganization described in section 368(a)(1)(B). Immediately before the exchange, FT is a CFC in which DT is a section 1248 shareholder. Immediately after the exchange, FS and FT are CFCs in which DT is a section 1248 shareholder.

(ii) *Analysis*. (A) DT's exchange of the FT stock is a specified exchange described in section 3.02(e)(ii) of this notice, because DT exchanged stock of an expatriated foreign subsidiary (FT) for stock in a foreign corporation (FS) pursuant to a transaction described in § 1.367(b)–4(a) (which includes a reorganization described in section 368(a)(1)(B)). Although the specified exchange is also a specified transaction because there is a transfer of FT stock to a specified related person (FS), the exchange is not recharacterized under section 3.02(e)(i)(A) of this notice pursuant to the first exception in section 3.02(e)(i)(C) of this notice.

(B) Under § 1.367(b)–4(b)(1)(i), as modified by the regulations described in section 3.02(e)(ii) of this notice, DT must include in income the section 1248 amount with respect to the FT stock exchanged, without regard to the fact that immediately after the exchange, (i) the FS stock received by DT in the exchange is stock in a corporation that is a CFC as to which DT is a section 1248 shareholder, and (ii) FT is a CFC as to which DT is a section 1248 shareholder.

(iv) Request for Comments

The Treasury Department and the IRS are considering whether to provide an exception to the application of the regulations described in this section 3.02(e), such that a taxpayer's chosen form would be respected, when (1) a specified transaction is undertaken in order to integrate similar or complementary businesses, and (2) after the inversion transaction, the inverted group in fact does not exploit that form in order to avoid U.S. taxation on the expatriated foreign subsidiary's pre-inversion earnings and profits. For example, the exception could be limited to situations in which the expatriated foreign subsidiary does not, during the applicable period (within the meaning of section 7874(d)(1)), engage in any avoidance transactions, such as, for example, acquiring United States property (including obligations or stock treated as United States property under the regulations described in section 3.01(b) of this notice), paying extraordinary dividends out of pre-inversion earnings and profits, or engaging in non pro rata redemptions of the new foreign shareholder in order to bail out pre-inversion earnings and profits.

In addition to comments on whether any such exception is warranted, the Treasury Department and the IRS request comments on the types of transactions that taxpayers can use to avoid tax on a CFC's pre-inversion earnings after a specified transaction and that therefore should serve as triggers for denying the exception. The Treasury Department and the IRS also request comments on the provisions that would be necessary to administer any such exception. For example, in order to avoid the recharacterization of any specified transaction, the regulations could require a taxpayer to (i) extend the statute of limitations with respect to the U.S. tax consequences of the specified transaction until the close of the third full taxable year following the close of the applicable period; (ii) agree to certify annually that there have been no avoidance transactions for the taxable year, or, if there is an avoidance transaction, to file amended returns, as appropriate; and (iii) maintain sufficient documentation regarding, for example, accounts tracking pre-inversion earnings and profits described in section 959(c)(3) and the extent to which such earnings and profits are reduced during the applicable period.

.03 Regulations under Section 304 to Prevent the Removal of Untaxed Foreign Earnings and Profits

(a) Section 304(b)(5)(B) Background

Section 304(a)(1) generally provides that, for purposes of sections 302 and 303, if one or more persons are in control of each of two corporations and in return for property one of the corporations (acquiring corporation) acquires stock in the other corporation (issuing corporation) from the person (or persons) so in control, then (unless section 304(a)(2) applies) the property shall be treated as a distribution in redemption of the stock of the acquiring corporation.

Section 304(a)(2) provides that, for purposes of sections 302 and 303, if in return for property, one corporation acquires from a shareholder of another corporation stock in such other corporation, and the issuing corporation controls the acquiring corporation, then the property shall be treated as a distribution in redemption of the stock of the issuing corporation.

Section 304(b)(2) provides that, in the case of any acquisition to which section 304(a) applies, the determination of the amount that is a dividend (and the source thereof) shall be made as if the property were distributed by the acquiring corporation to the extent of its earnings and profits, and then by the issuing corporation to the extent of its earnings and profits.

Section 304(b)(5)(B) limits the earnings and profits taken into account under section 304(b)(2) where the acquiring corporation is foreign. Specifically, section 304(b)(5)(B) provides that no earnings and profits are taken into account for purposes of section 304(b)(2)(A) (and section 304(b)(2)(A) shall not apply) if more than 50 percent of the dividends arising from such acquisition (determined without regard to section 304(b)(5)(B)) would neither be subject to tax for the taxable year in which the dividends arise, nor be included in the earnings and profits of a CFC. The Staff of the Joint Committee on Taxation's technical explanation of section 304(b)(5)(B) provides:

> The provision prevents the foreign acquiring corporation's E&P from permanently escaping U.S. taxation by being deemed to be distributed directly to a foreign person (i.e., the transferor) without an intermediate distribution to a domestic corporation in the chain of ownership between the acquiring corporation and the transferor corporation.

Staff of the Joint Committee on Taxation, Technical Explanation of the Revenue Provisions of the Senate Amendment to the House Amendment to the Senate Amendment to H.R. 1586, Scheduled for Consideration by the

House of Representatives on August 10, 2010, at 28 (August 10, 2010).

Section 304(b)(5)(C) provides that the Secretary shall prescribe such regulations as are necessary to carry out the purposes of section 304(b)(5).

Dividends paid by a domestic corporation to a foreign person generally are subject to a 30-percent gross basis tax under section 871(a) or 881(a), and to withholding under section 1441 or 1442, unless reduced or eliminated pursuant to an applicable income tax treaty.

(b) Transactions at Issue and Regulations to be Issued

Taxpayers may be engaging in certain transactions following an inversion transaction that reduce the earnings and profits of a CFC to facilitate repatriation of cash and other property of the CFC. For example, after an inversion transaction, the foreign acquiring corporation may sell a portion of the stock of the domestic corporation acquired in the inversion transaction to a wholly owned CFC of the domestic corporation in exchange for property of the CFC. This sale would be subject to section 304(a)(2). The exchange of property (for stock of the domestic corporation) by the CFC in many cases will not result in income or gain that gives rise to an income inclusion under section 951, even though the CFC generally will recognize income or gain on the exchange of the property (other than cash) for U.S. tax purposes pursuant to section 1001. For example, the property exchanged may be property used by the CFC in a trade or business, including property held by the CFC through an entity that is disregarded as an entity separate from its owner, as described in § 301.7701–2(c)(2)(i). See § 1.954–2(e)(1)(ii). The Treasury Department and the IRS understand that taxpayers may interpret section 304(b)(5)(B) to not apply where more than 50 percent of the dividend arising upon application of section 304 is sourced from the domestic corporation, even though, for example, pursuant to an income tax treaty there may be no (or a reduced rate of) U.S. withholding tax imposed on a dividend sourced from the domestic corporation. Under this position, the dividend sourced from earnings and profits of the CFC would never be subject to U.S. tax. To address these transactions, the Treasury Department and the IRS intend to issue regulations under section 304(b)(5)(C) as described below.

The Treasury Department and the IRS intend to issue regulations providing that, for purposes of applying section 304(b)(5)(B), the determination of whether more than 50 percent of the dividends that arise under section 304(b)(2) is subject to tax or includible in the earnings and profits of a CFC will be made by taking into account only the earnings and profits of the acquiring corporation (and therefore excluding the earnings and profits of the issuing corporation). If a partnership, option (or similar interest), or other arrangement, is used with a principal purpose of avoiding the application of the rule in this section 3.03(b) (for example, to treat a transferor as a CFC), then the partnership, option (or similar interest), or other arrangement will be disregarded for purposes of applying the rule in this section 3.03(b).

The rules of this section 3.03(b) will apply as a general matter, without regard to whether an inversion transaction has occurred.

The following examples illustrate the regulations described in this section 3.03(b):

Example 1. (i) *Facts*. FA, a foreign corporation that is not a CFC, wholly owns DT, a domestic corporation. DT wholly owns FS1, a CFC. DT has earnings and profits of $51x, and FS1 has earnings and profits of $49x. FA transfers DT stock with a value of $100x to FS1 in exchange for $100x of cash.

(ii) *Analysis*. Under section 304(a)(2), the $100x of cash is treated as a distribution in redemption of the stock of DT. The redemption of the DT stock is treated as a distribution to which section 301 applies pursuant to section 302(d), which ordinarily would be sourced first from FS1 under section 304(b)(2)(A). Without regard to the application of section 304(b)(5)(B), more than 50 percent of the dividend arising from the acquisition, taking into account only the earnings and profits of FS1 pursuant to this section 3.03(b), would not be subject to tax under Chapter 1 of the Code. In particular, no portion of a dividend from FS1 would be subject to U.S. tax or includible in the earnings and profits of a CFC. Accordingly, section 304(b)(5)(B) applies to the transaction, and no portion of the distribution of $100x is treated under section 301(c)(1) as a dividend (as defined in section 316) out of the earnings and profits of FS1. Furthermore, the $100x of cash is treated as a dividend to the extent of the earnings and profits of DT ($51x).

Example 2. (i) *Facts*. FA, a foreign corporation that is not a CFC, wholly owns DT, a domestic corporation. DT wholly owns FS1, a CFC. FA and DT own 40 percent and 60 percent, respectively, of the capital and profits interests of PRS, a foreign partnership. PRS wholly owns FS2, a CFC. The FS2 stock has a fair market value of $100x. FS1 has earnings and profits of $150x. PRS transfers all of its FS2 stock to FS1 in exchange for $100x of cash. DT enters into a gain recognition agreement that complies with the requirements set forth in section 4.01 of Notice 2012–15, 2012–9 IRB 424, with respect to the portion (60 percent) of the FS2 stock that DT is deemed to transfer to FS1 in an exchange described in section 367(a)(1). See § 1.367(a)–1T(c)(3)(i)(A).

(ii) *Analysis*. Under section 304(a)(1), PRS and FS1 are treated as if PRS transferred its FS2 stock to FS1 in an exchange described in section 351(a) solely for FS1 stock, and, in turn, FS1 redeemed such FS1 stock in exchange for $100x of cash. The redemption of the FS1 stock is treated as a distribution to which section 301 applies pursuant to section 302(d). Without regard to the application of section 304(b)(5)(B), more than 50 percent of a dividend arising from the acquisition, taking into account only the earnings and profits of FS1 pursuant to this section 3.03(b), would be subject to tax under Chapter 1 of the Code. In particular, 60 percent of a dividend from FS1 would be included in DT's distributive share of PRS's partnership income and therefore would be subject to tax. Accordingly, section 304(b)(5)(B) does not apply and the entire distribution of $100x is treated under section 301(c)(1) as a dividend (as defined in section 316) out of the earnings and profits of FS1.

SECTION 4. EFFECTIVE DATES

Except as provided in this section 4, the regulations described in (i) section 2.01(b) of this notice (which disregards certain stock of the foreign acquiring corporation attributable to passive assets) will apply to acquisitions completed on or after September 22, 2014; (ii) section 2.02(b) of this notice (which disregards certain distributions by a domestic entity) will apply to acquisitions, or to transfers of domestic stock described in § 1.367(a)–3(c), completed on or after September 22, 2014; (iii) section 2.03(b) of this notice (regarding the application of the EAG rules upon a subsequent transfer of stock of the foreign acquiring corporation) will apply to acquisitions completed on or after September 22, 2014; (iv) section 3.01(b) of this notice will apply to acquisitions of obligations or stock of a non-CFC foreign related person by an expatriated foreign subsidiary completed on or after September 22, 2014, but only if the inversion transaction is completed on or after September 22, 2014; (v) section 3.02(e) of this notice will apply to specified transactions and specified exchanges completed on or after September 22, 2014, but only if the inversion transaction is completed on or after September 22, 2014; and (vi) section 3.03(b) of this notice will apply to acquisitions of stock described in section 304 completed on or after September 22, 2014.

Taxpayers may elect to apply the rule in section 2.03(b)(iii) of this notice (regarding subsequent transfers of stock of the foreign acquiring corporation when a domestic entity is a member of a foreign-parented group) to acquisitions completed before September 22, 2014.

No inference is intended regarding the treatment of transactions described in this notice under current law, and the IRS may challenge such transactions under applicable Code provisions or judicial doctrines.

SECTION 5. REQUEST FOR COMMENTS AND CONTACT INFORMATION

The Treasury Department and the IRS expect to issue additional guidance to further limit inversion transactions that are contrary to the purposes of section 7874 and the benefits of post-inversion tax avoidance transactions. In particular, the Treasury Department and the IRS are considering guidance to address strategies that avoid U.S. tax on U.S. operations by shifting or "stripping" U.S.-source earnings to lower-tax jurisdictions, including through intercompany debt. Comments are requested regarding the approaches such guidance should take. Future guidance will apply prospectively; however, the Treasury Department and the IRS expect that, to the extent any tax avoidance guidance applies only to inverted groups, such guidance will apply to groups that completed inversion transactions on or after September 22, 2014.

The Treasury Department is also reviewing its tax treaty policy regarding inverted groups and the extent to which taxpayers inappropriately obtain tax treaty benefits that reduce U.S. withholding taxes on U.S. source income.

Written comments may be submitted to the Office of Associate Chief Counsel (International), Attention: David A. Levine, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224. Alternatively, taxpayers may submit comments electronically to *notice.comments@irscounsel.treas.gov*. Comments will be available for public inspection and copying. The principal authors of this notice are Mr. Levine and Rose E. Jenkins of the Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in its development. For further information regarding this notice, contact Mr. Levine at (202) 317-6937 or Ms. Jenkins at (202) 317-6934 (not a toll-free number).

2014–2015 Special Per Diem Rates

Notice 2014–57

SECTION 1. PURPOSE

This annual notice provides the 2014–2015 special *per diem* rates for taxpayers to use in substantiating the amount of ordinary and necessary business expenses incurred while traveling away from home, specifically (1) the special transportation industry meal and incidental expenses (M&IE) rates, (2) the rate for the incidental expenses only deduction, and (3) the rates and list of high-cost localities for purposes of the high-low substantiation method.

SECTION 2. BACKGROUND

Rev. Proc. 2011–47, 2011–42 I.R.B. 520, provides rules for using a *per diem* rate to substantiate, under § 274(d) of the Internal Revenue Code and § 1.274–5 of the Income Tax Regulations, the amount of ordinary and necessary business expenses paid or incurred while traveling away from home. Taxpayers using the rates and list of high-cost localities provided in this notice must comply with Rev. Proc. 2011–47. Notice 2013–65, 2013–42 I.R.B. 440, provides the rates and list of high-cost localities for the period October 1, 2013, to September 30, 2014.

Section 3.02(3) of Rev. Proc. 2011–47 provides that the term "incidental expenses" has the same meaning as in the Federal Travel Regulations, 41 C.F.R. 300–3.1, and that future changes to the definition of incidental expenses in the Federal Travel Regulations would be announced in the annual *per diem* notice. Subsequent to publication of Rev. Proc. 2011–47, the General Services Administration published final regulations revising the definition of incidental expenses under the Federal Travel Regulations to include only fees and tips given to porters, baggage carriers, hotel staff, and staff on ships. Transportation between places of lodging or business and places where meals are taken, and the mailing cost of filing travel vouchers and paying employer-sponsored charge card billings, are no longer included in incidental expenses. Accordingly, taxpayers using *per diem* rates may separately deduct or be reimbursed for transportation and mailing expenses.

SECTION 3. SPECIAL M&IE RATES FOR TRANSPORTATION INDUSTRY

The special M&IE rates for taxpayers in the transportation industry are $59 for any locality of travel in the continental United States (CONUS) and $65 for any locality of travel outside the continental United States (OCONUS). *See* section 4.04 of Rev. Proc. 2011–47.

SECTION 4. RATE FOR INCIDENTAL EXPENSES ONLY DEDUCTION

The rate for any CONUS or OCONUS locality of travel for the incidental expenses only deduction is $5 per day. *See* section 4.05 of Rev. Proc. 2011–47.

SECTION 5. HIGH-LOW SUBSTANTIATION METHOD

1. *Annual high-low rates*. For purposes of the high-low substantiation method, the *per diem* rates in lieu of the rates described in Notice 2013–65 (the *per diem* substantiation method) are $259 for travel to any high-cost locality and $172 for travel to any other locality within CONUS. The amount of the $259 high rate and $172 low rate that is treated as paid for meals for purposes of § 274(n) is $65 for travel to any high-cost locality and $52 for travel to any other locality within CONUS. *See* section 5.02 of Rev. Proc. 2011–47. The *per diem* rates in lieu of the rates described in Notice 2013–65 (the meal and incidental expenses only substantiation method) are $65 for travel to any high-cost locality and $52 for travel to any other locality within CONUS.

2. *High-cost localities*. The following localities have a federal *per diem* rate of $216 or more, and are high-cost localities for all of the calendar year or the portion of the calendar year specified in parentheses under the key city name.

Key city	*County or other defined location*
Arizona	
Sedona	City limits of Sedona
(March 1–May 31)	
California	
Monterey	Monterey
(July 1–August 31)	
Napa	Napa
(October 1–November 30 and February 1–September 30)	
San Francisco	San Francisco
San Mateo/Foster City/Belmont	San Mateo
San Barbara	San Barbara
Santa Cruz	Santa Cruz
(June 1–August 31)	
Santa Monica	City limits of Santa Monica
Sunnyvale/Palo Alto/San Jose	Santa Clara
Colorado	
Aspen	Pitkin
(December 1–March 31 and June 1–August 31)	
Denver/Aurora	Denver, Adams, Arapahoe and Jefferson
Steamboat Springs	Routt
(December 1–March 31)	
Telluride	San Miguel
(December 1–March 31 and June 1–September 30)	
Vail	Eagle
(December 1–March 31 and July 1–August 31)	
District of Columbia	
Washington D.C. (also the cities of Alexandria, Falls Church, and Fairfax, and the counties of Arlington and Fairfax, in Virginia; and the counties of Montgomery and Prince George's in Maryland) (See also Maryland and Virginia)	
Florida	
Boca Raton/Delray Beach/Jupiter	Palm Beach and Hendry
(January 1–April 30)	
Fort Lauderdale	Broward
(January 1–March 31)	
Fort Walton Beach/De Funiak Springs	Okaloosa and Walton
(June 1–July 31)	
Key West	Monroe
Miami	Miami-Dade
(October 1–March 31)	
Naples	Collier
(January 1–April 30)	
Illinois	

Key city	*County or other defined location*
Chicago	Cook and Lake
(October 1–November 30 and March 1–September 30)	
Louisiana	
New Orleans	Orleans, St. Bernard, Jefferson and Plaquemine Parishes
(October 1–June 30)	
Maine	
Bar Harbor	Hancock
(July 1–August 31)	
Maryland	
Baltimore City	Baltimore City
(October 1–November 30 and March 1–Spetember 30)	
Cambridge/St. Michaels	Dorchester and Talbot
(June 1–August 31)	
Ocean City	Worcester
(June 1–August 31)	
Washington, DC Metro Area	Montgomery and Prince George's
Massachusetts	
Boston/Cambridge	Suffolk, City of Cambridge
Falmouth	City limits of Falmouth
(July 1–August 31)	
Martha's Vineyard	Dukes
(July 1–August 31)	
Nantucket	Nantucket
(June 1–September 30)	
Montana	
Glendive/Sidney	Dawson and Richland
New Hampshire	
Conway	Carroll
(July 1–August 31)	
New York	
Glens Falls	Warren
(July 1–August 31)	
Lake Placid	Essex
(July 1–August 31)	
New York City	Bronx, Kings, New York, Queens and Richmond
Saratoga Springs/Schenectady	Saratoga and Schenectady
(July 1–August 31)	
Tarrytown/White Plains/New Rochelle	Westchester
North Carolina	
Kill Devil	Dare
(July 1–August 31)	
North Dakota	
Williston	Williams, Mountrail and McKenzie
Pennsylvania	

Key city	County or other defined location
Philadelphia	Philadelphia
(October 1–November 30 and March 1–June 30 and September 1–September 30)	
Rhode Island	
Jamestown/Middletown/Newport	Newport
(October 1–October 31 and May 1–Spetember 30)	
South Carolina	
Charleston	Charleston, Berkeley and Dorchester
(March 1–May 31)	
Texas	
Midland	Midland
Utah	
Park City	Summit
(December 1–March 31)	
Virginia	
Washington, DC Metro Area	Cities of Alexandria, Fairfax, and Falls Church; counties of Arlington and Fairfax
Virginia Beach	City of Virginia Beach
(June 1–August 31)	
Washington	
Seattle	King
Wyoming	
Jackson/Pinedale	Teton and Sublette
(July 1–August 31)	

3. *Changes in high-cost localities*. The list of high-cost localities in this notice differs from the list of high-cost localities in section 5 of Notice 2013–65.

a. The following localities have been added to the list of high-cost localities: San Mateo/Foster City/Belmont, California; Sunnyvale/Palo Alto/San Jose, California; Glendive/Sidney, Montana; Williston, North Dakota.

b. The following localities have changed the portion of the year in which they are high-cost localities: Sedona, Arizona; Napa, California; Vail, Colorado; Fort Lauderdale, Florida; Miami, Florida; Philadelphia, Pennsylvania.

c. The following localities have been removed from the list of high-cost localities: Yosemite National Park, California; San Diego, California; Floral Park/Garden City/Great Neck, New York.

SECTION 6. EFFECTIVE DATE

This notice is effective for *per diem* allowances for lodging, meal and incidental expenses, or for meal and incidental expenses only, that are paid to any employee on or after October 1, 2014, for travel away from home on or after October 1, 2014. For purposes of computing the amount allowable as a deduction for travel away from home, this notice is effective for meal and incidental expenses or for incidental expenses only paid or incurred on or after October 1, 2014. See sections 4.06 and 5.04 of Rev. Proc. 2011–47 for transition rules for the last 3 months of calendar year 2014.

SECTION 7. EFFECT ON OTHER DOCUMENTS

Notice 2013–65 is superseded.

DRAFTING INFORMATION

The principal author of this notice is Neville R. Jiang of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice contact Mr. Jiang at (202) 317-7007 (not a toll-free number).

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.

Numerical Finding List[1]

Bulletins 2014–27 through 2014–42

Announcements:

2014-2, 2014-28 I.R.B. *120*
2014-28, 2014-34 I.R.B. *391*
2014-29, 2014-35 I.R.B. *452*

Notices:

2014-40, 2014-27 I.R.B. *100*
2014-41, 2014-27 I.R.B. *97*
2014-42, 2014-34 I.R.B. *387*
2014-43, 2014-31 I.R.B. *249*
2014-44, 2014-32 I.R.B. *270*
2014-45, 2014-34 I.R.B. *388*
2014-46, 2014-36 I.R.B. *520*
2014-47, 2014-36 I.R.B. *522*
2014-48, 2014-36 I.R.B. *523*
2014-49, 2014-41 I.R.B. *665*
2014-50, 2014-40 I.R.B. *590*
2014-51, 2014-40 I.R.B. *594*
2014-52, 2014-42 I.R.B. *712*
2014-54, 2014-41 I.R.B. *670*
2014-55, 2014-41 I.R.B. *672*
2014-56, 2014-41 I.R.B. *674*
2014-57, 2014-42 I.R.B. *723*

Proposed Regulations:

REG-104579-13, 2014-33 I.R.B. *370*
REG-120756-13, 2014-31 I.R.B. *252*
REG-105067-14, 2014-34 I.R.B. *391*
REG-110948-14, 2014-30 I.R.B. *239*
REG-121542-14, 2014-28 I.R.B. *119*
REG-107012-14, 2014-33 I.R.B. *371*
REG-123286-14, 2014-33 I.R.B. *377*
REG-209459-78, 2014-31 I.R.B. *253*
REG-129507-14, 2014-38 I.R.B. *561*
REG-129786-14, 2014-38 I.R.B. *562*
REG-105739-11, 2014-41 I.R.B. *704*

Revenue Procedures:

2014-26, 2014-27 I.R.B. *26*
2014-27, 2014-27 I.R.B. *41*
2014-29, 2014-28 I.R.B. *105*
2014-37, 2014-33 I.R.B. *363*
2014-38, 2014-29 I.R.B. *132*
2014-39, 2014-29 I.R.B. *151*
2014-40, 2014-30 I.R.B. *229*
2014-41, 2014-33 I.R.B. *364*
2014-42, 2014-29 I.R.B. *193*
2014-43, 2014-32 I.R.B. *273*
2014-44, 2014-32 I.R.B. *274*
2014-45, 2014-34 I.R.B. *388*
2014-46, 2014-33 I.R.B. *367*
2014-47, 2014-35 I.R.B. *393*
2014-48, 2014-36 I.R.B. *527*

Revenue Procedures—Continued:

2014-49, 2014-37 I.R.B. *535*
2014-50, 2014-37 I.R.B. *540*
2014-51, 2014-37 I.R.B. *543*
2014-52, 2014-38 I.R.B. *560*
2014-53, 2014-39 I.R.B. *573*
2014-54, 2014-41 I.R.B. *675*

Revenue Rulings:

2014-14, 2014-27 I.R.B. *12*
2014-19, 2014-32 I.R.B. *266*
2014-20, 2014-28 I.R.B. *101*
2014-21, 2014-34 I.R.B. *381*
2014-22, 2014-37 I.R.B. *523*
2014-23, 2014-40 I.R.B. *575*
2014-24, 2014-37 I.R.B. *529*
2014-25, 2014-40 I.R.B. *574*
2014-26, 2014-41 I.R.B. *663*

Treasury Decisions:

9664, 2014-32 I.R.B. *254*
9668, 2014-27 I.R.B. *1*
9669, 2014-28 I.R.B. *103*
9670, 2014-29 I.R.B. *121*
9671, 2014-29 I.R.B. *124*
9672, 2014-30 I.R.B. *196*
9673, 2014-30 I.R.B. *212*
9674, 2014-30 I.R.B. *225*
9675, 2014-31 I.R.B. *242*
9676, 2014-32 I.R.B. *260*
9677, 2014-31 I.R.B. *241*
9678, 2014-32 I.R.B. *262*
9679, 2014-32 I.R.B. *267*
9680, 2014-32 I.R.B. *254*
9681, 2014-33 I.R.B. *340*
9682, 2014-33 I.R.B. *342*
9683, 2014-33 I.R.B. *330*
9684, 2014-33 I.R.B. *345*
9685, 2014-34 I.R.B. *379*
9686, 2014-34 I.R.B. *382*
9687, 2014-36 I.R.B. *486*
9688, 2014-36 I.R.B. *482*
9689, 2014-36 I.R.B. *456*
9690, 2014-38 I.R.B. *548*
9691, 2014-38 I.R.B. *547*
9692, 2014-40 I.R.B. *574*
9693, 2014-41 I.R.B. *596*
9694, 2014-41 I.R.B. *626*
9695, 2014-42 I.R.B. *707*

[1]A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2014–01 through 2014–26 is in Internal Revenue Bulletin 2014–26, dated June 30, 2014.

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

Bulletins 2014–27 through 2014–42

Announcements:

2012-11
Supplemented by
Ann. 2014-2, 2014-28 I.R.B. *120*

2013-11
Supplemented by
Ann. 2014-2, 2014-28 I.R.B. *120*

2010-41
Obsoleted by
Rev. Proc. 2014-43, 2014-32 I.R.B. *273*

Revenue Procedures:

1981-38
Superseded by
Rev. Proc. 2014-42, 2014-29 I.R.B. *193*

93-37
Modified and Superseded by
Rev. Proc. 2014-43, 2014-32 I.R.B. *273*

1981-38
Modified by
Rev. Proc. 2014-42, 2014-29 I.R.B. *193*

2000-12
Superseded by
Rev. Proc. 2014-39, 2014-29 I.R.B. *151*

2002-55
Revoked by
Rev. Proc. 2014-39, 2014-29 I.R.B. *151*

2003-64
Superseded by
Rev. Proc. 2014-47, 2014-35 I.R.B. *393*

2004-21
Superseded by
Rev. Proc. 2014-47, 2014-35 I.R.B. *393*

2005-77
Superseded by
Rev. Proc. 2014-47, 2014-35 I.R.B. *393*

2011-14
Modified by
Rev. Proc. 2014-48, 2014-36 I.R.B. *527*

2011-14
Modified by
Rev. Proc. 2014-54, 2014-41 I.R.B. *675*

2011-16
Superseded by
Rev. Proc. 2014-51, 2014-37 I.R.B. *543*

Revenue Procedures—Continued:

2011-16
Modified by
Rev. Proc. 2014-51, 2014-51 I.R.B. *543*

2012-38
Superseded by
Rev. Proc. 2014-27, 2014-27 I.R.B. *26*

2012-46
Superseded by
Rev. Proc. 2014-26, 2014-27 I.R.B. *41*

2014-4
Amplified by
Rev. Proc. 2014-40, 2014-30 I.R.B. *229*

2014-4
Modified by
Rev. Proc. 2014-41, 2014-41 I.R.B. *675*

2014-5
Amplified by
Rev. Proc. 2014-40, 2014-30 I.R.B. *229*

2014-8
Amplified by
Rev. Proc. 2014-40, 2014-30 I.R.B. *229*

2014-9
Amplified by
Rev. Proc. 2014-40, 2014-30 I.R.B. *229*

2014-10
Amplified by
Rev. Proc. 2014-40, 2014-30 I.R.B. *229*

2014-13
Modified by
Rev. Proc. 2014-38, 2014-29 I.R.B. *132*

2014-13
Superseded by
Rev. Proc. 2014-38, 2014-29 I.R.B. *132*

2014-16
Superseded by
Rev. Proc. 2014-51, 2014-37 I.R.B. *543*

2014-16
Modified by
Rev. Proc. 2014-51, 2014-37 I.R.B. *543*

2014-12
Modified by
Rev. Proc. 2014-54, 2014-41 I.R.B. *675*

2014-17
Modified by
Rev. Proc. 2014-54, 2014-41 I.R.B. *675*

Revenue Rulings:

2008-40
Modified by
Rev. Rul. 2014-24, 2014-37 I.R.B. *529*

2011-1
Modified by
Rev. Rul. 2014-24, 2014-37 I.R.B. *529*

2012-6
Modified by
Rev. Rul. 2014-24, 2014-37 I.R.B. *529*

Notices:

2013-11
Modified by
Notice 2014-48, 2014-36 I.R.B. *523*

2013-23
Modified by
Notice 2014-48, 2014-36 I.R.B. *523*

2013-28
Modified by
Notice 2014-48, 2014-36 I.R.B. *523*

2013-29
Modified by
Notice 2014-46, 2014-36 I.R.B. *520*

2013-29
Clarified by
Notice 2014-46, 2014-36 I.R.B. *520*

2013-32
Modified by
Notice 2014-48, 2014-36 I.R.B. *523*

2013-37
Modified by
Notice 2014-48, 2014-36 I.R.B. *523*

2013-51
Obsoleted by
Notice 2014-42, 2014-34 I.R.B. *387*

2013-60
Modified by
Notice 2014-46, 2014-36 I.R.B. *520*

2013-60
Clarified by
Notice 2014-46, 2014-36 I.R.B. *520*

2013-65
Superseded by
Notice 2014-57, 2014-42 I.R.B. *723*

2014-44
Supplemented by
Notice 2014-45, 2014-34 I.R.B. *388*

[1]A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2014–01 through 2014–26 is in Internal Revenue Bulletin 2014–26, dated June 30, 2014.

Treasury Decisions:

2005-47
Obsoleted by
T.D. 9668 2014-27 I.R.B. *1*

2010-51
Obsoleted by
T.D. 9684 2014-33 I.R.B. *345*

2010-71
Obsoleted by
T.D. 9684 2014-33 I.R.B. *345*

2011-6
Obsoleted by
T.D. 9684 2014-33 I.R.B. *345*

2011-9
Obsoleted by
T.D. 9684 2014-33 I.R.B. *345*

INDEX

Internal Revenue Bulletins 2014–27 through 2014–42

The abbreviation and number in parenthesis following the index entry refer to the specific item; numbers in roman and italic type following the parentheses refer to the Internal Revenue Bulletin in which the item may be found and the page number on which it appears.

Key to Abbreviations:

Ann	Announcement
CD	Court Decision
DO	Delegation Order
EO	Executive Order
PL	Public Law
PTE	Prohibited Transaction Exemption
RP	Revenue Procedure
RR	Revenue Ruling
SPR	Statement of Procedural Rules
TC	Tax Convention
TD	Treasury Decision
TDO	Treasury Department Order

ADMINISTRATIVE

ADMINISTRATIVE—Cont.

EMPLOYEE PLANS

EMPLOYMENT TAX

ESTATE TAX

EXCISE TAX

EXCISE TAX—Cont.

EXEMPT ORGANIZATIONS

GIFT TAX

INCOME TAX

INCOME TAX—Cont.

INCOME TAX—Cont.

INCOME TAX—Cont.

SELF-EMPLOYMENT TAX

SPECIAL ANNOUNCEMENT

Internal Revenue Service
Washington, DC 20224

Official Business
Penalty for Private Use, $300

INTERNAL REVENUE BULLETIN

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

CUMULATIVE BULLETINS

The contents of the weekly Bulletins were consolidated semiannually into permanent, indexed, Cumulative Bulletins through the 2008–2 edition.

INTERNAL REVENUE BULLETINS ON CD-ROM

Internal Revenue Bulletins are available annually as part of Publication 1796 (Tax Products CD-ROM). The CD-ROM can be purchased from National Technical Information Service (NTIS) on the Internet at *www.irs.gov/cdorders* (discount for online orders) or by calling 1-877-233-6767. The first release is available in mid-December and the final release is available in late January.

We Welcome Comments About the Internal Revenue Bulletin

If you have comments concerning the format or production of the Internal Revenue Bulletin or suggestions for improving it, we would be pleased to hear from you. You can email us your suggestions or comments through the IRS Internet Home Page (*www.irs.gov*) or write to the IRS Bulletin Unit, SE:W:CAR:MP:P:SPA, Washington, DC 20224.