INTERNAL REVENUE
BULLETIN

Bulletin No. 2015–24
June 15, 2015

HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

Rev. Proc. 2015–33, page 1067.

This revenue procedure corrects or clarifies several items in Rev. Proc. 2015–13, 2015–13 I.R.B. 419, regarding certain procedures for changing a method of accounting. Specifically, this revenue procedure (1) modifies the transition rules under section 15.02(1)(a)(ii) of Rev. Proc. 2015–13 to provide additional time to file Forms 3115 under Rev. Proc. 2011–14, 2011–4 I.R.B. 330; (2) clarifies when the automatic change procedures do not apply if the taxpayer engages, within the requested year of change, in a transaction to which § 381(a) applies; (3) clarifies the meaning of "three-month window" under section 8.02(1)(a)(ii) of Rev. Proc. 2015–13 for a taxpayer with a 52–53 week taxable year; and (4) discusses a clarification to the applicable Ogden, UT, address provided in section 9.05 of Rev. Proc. 2015–1, 2015–1 I.R.B. 1.

Notice 2015–40, page 1057.

This notice requests comments regarding the effect on taxpayers' methods of accounting of new financial accounting revenue recognition standards announced by the Financial Accounting Standards Board and the International Accounting Standards Board. Comments should be submitted by September 16, 2015.

Notice 2015–41, page 1058.

This notice provides guidance under sections 1(h) and 852 of the Code to regulated investment companies and their shareholders on the computation and treatment of capital gain dividends.

EMPLOYEE PLANS

Rev. Proc. 2015–32, page 1063.

This revenue procedure establishes a permanent program providing administrative relief to the plan administrators and plan sponsors of certain retirement plans for failing to timely comply with the annual reporting requirements of sections 6047(e), 6058, and 6059. This permanent program replaces the pilot program established by Revenue Procedure 2014–32, 2012–23 I.R.B. 1073.

EXEMPT ORGANIZATIONS

Announcement 2015–16, page 1069.

Correction of Announcement 2015–14, Revocation of IRC 501(c)(3) Organizations for failure to meet the code section requirements.

Finding Lists begin on page ii.

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 III. Administrative, Procedural, and Miscellaneous

Request for Comments Regarding New Financial Accounting Standards Board and International Accounting Standards Board Revenue Recognition Standards

Notice 2015–40

PURPOSE

This notice invites comments regarding the effect on taxpayers' methods of accounting of new financial accounting revenue recognition standards, titled "Revenue from Contracts with Customers," announced by the Financial Accounting Standards Board (FASB) and the International Accounting Standards Board (IASB).

BACKGROUND

Section 446(a) of the Internal Revenue Code and § 1.446–1(a)(1) of the Income Tax Regulations provide that taxable income is computed under the method of accounting the taxpayer regularly uses to compute income in keeping the taxpayer's books. Section 1.446–1(a)(4) requires a taxpayer to maintain accounting records that include the taxpayer's regular books of account and other records and data necessary to support the entries on the taxpayer's books of account and on the taxpayer's return.

Under § 451, a taxpayer using an accrual method of accounting accrues income when the right to receive income is fixed and the amount can be determined with reasonable accuracy (the all events test). See § 1.451–1(a).

In a joint announcement on May 28, 2014, the FASB and the IASB announced new financial accounting standards for recognizing revenue (new standards). See FASB Update No. 2014–09, "Revenue from Contracts with Customers (Topic 606)," and IASB International Financial Reporting Standard (IFRS) 15, "Revenue from Contracts with Customers."

The new standards for the timing of income for financial accounting purposes may affect the timing of income for tax accounting purposes for many taxpayers, such as taxpayers (1) presently using the percentage of completion method, (2) deriving income from the provision of services, (3) engaging in bill and hold transactions for the sale of goods, (4) accounting for sales and returns of goods, and (5) earning income from warranties. The new standards may affect some industries more than others. Commenters on the new standards have noted that the software, entertainment, manufacturing, and construction industries may be particularly affected because the new standards may change the timing of income recognition for financial accounting purposes significantly for these industries.

Accounting method changes for federal income tax purposes require the permission of the Internal Revenue Service (IRS). The new standards raise a number of substantive and procedural issues for the IRS, including whether the new standards are permissible methods of accounting for federal income tax purposes, the types of accounting method change requests that will result from adopting the new standards, and whether the current procedures for obtaining IRS consent to change a method of accounting are adequate to accommodate those requests. See section 2.03(1) & (2) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419.

REQUEST FOR COMMENTS

Adoption of the new standards may create or increase differences between financial accounting and tax accounting rules. The Treasury Department and the IRS are considering whether to issue guidance on the new standards and request public comments on the scope, substance, and form of guidance needed.

Comments are requested on issues of conformity between the new standards and the Code. Specific comments are requested on the following issues:

1. To what extent do the new standards deviate from the requirements of § 451? How may they affect deferral of income?
2. What industry and/or transaction-specific issues may arise as a result of the new standards that might be addressed in future guidance?
3. What types of changes in methods of accounting do taxpayers anticipate requesting?
4. Do taxpayers anticipate requesting changes in methods of accounting prior to the effective dates of the new standards?
5. Should taxpayers be required to use the automatic consent accounting method change procedures or the advance consent procedures to request permission to change a method of accounting under the new standards, and why?
6. Which accounting method changes under the new standards, if any, should be allowed using a cut-off method instead of a § 481(a) adjustment, and why?
7. Will advance or automatic consent procedures or other procedural guidance (such as Rev. Proc. 2004–34, 2004–22 I.R.B. 991) need to be modified and if so, how?
8. What transition procedures may be helpful?
9. What related accounting method changes do taxpayers anticipate requesting that may appropriately be made on a single Form 3115, *Application for Change in Accounting Method*?

Comments should be submitted in writing on or before September 16, 2015. Comments should be sent to the following address:

Internal Revenue Service
CC:PA:LPD:PR (Notice 2015–40)
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Comments may be hand delivered to:

Courier's Desk
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224
CC:PA:LPD:PR (Notice 2015–40)

Comments also may be sent electronically to *notice.comments@irscounsel.treas.gov*.

Please include "Notice 2015–40" in the subject line.

All comments will be available for public inspection.

DRAFTING INFORMATION

The principal author of this notice is Charles Gorham of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice contact Mr. Gorham at (202) 317-5091 (not a toll-free number).

Capital Gain Distributions of Regulated Investment Companies

Notice 2015–41

SECTION 1. PURPOSE

This notice provides guidance to regulated investment companies ("RICs") and their shareholders under §§ 1(h) and 852(b) of the Internal Revenue Code concerning capital gain dividends of RICs. Notice 97–64, 1997–2 C.B. 323, described regulations to be issued under § 1(h) for RICs and real estate investment trusts ("REITs"). Notice 2004–39, 2004–1 C.B. 982, provided related guidance on the effect of subsequent changes to § 1(h). This notice addresses how changes to § 852 made by the Regulated Investment Company Modernization Act of 2010 (the "RIC Modernization Act"), Pub. L. No. 111–325, 124 Stat. 3537, affect the bifurcation adjustment described in Notice 97–64 and other aspects of the computation of capital gain dividends of RICs.[1] This notice does not address REITs.

SECTION 2. BACKGROUND

For individuals, estates, and trusts, § 1(h) imposes differing rates of tax on net capital gains depending on the type of transaction in which the gains arise and on the taxable income of the taxpayer. The types of transaction in which a capital gain arises may cause the gain to fall into one of three rate groups: a 28-percent group (generally, gains from collectibles), a 25-percent group (generally, unrecaptured section 1250 gain), and a 20-percent group (most other net capital gain). Gains from transactions in the 20-percent group may be taxed at a 20-percent rate, a 15-percent rate, or a 0-percent rate, depending on the taxpayer's taxable income.[2] Certain gains from the sale or exchange of qualified small business stock held for more than five years are subject to a partial exclusion under § 1202(a) and a 28-percent rate on the non-excluded portion under § 1(h)(7).

The Secretary has authority to issue regulations concerning the application of § 1(h) to sales and exchanges by (and of interests in) pass-thru entities, including RICs. See § 1(h)(9).

Under § 852(b)(3), a RIC that has net capital gain for a taxable year may distribute capital gain dividends to its shareholders. A capital gain dividend is a dividend, or part thereof, that is properly reported as such by the RIC in written statements furnished to its shareholders. In general, a capital gain dividend paid by a RIC is treated by the shareholders that receive it as a gain from the sale or exchange of a capital asset held for more than one year.

If a RIC's net capital gain for a taxable year exceeds its deduction for dividends paid determined with reference to capital gain dividends only, then the RIC is subject to tax as determined under § 1201(a) on that excess. See § 852(b)(3)(A). Under § 852(b)(3)(D), the RIC may designate an amount of "undistributed capital gains" with respect to its shares. The RIC's designation must be in a written notice mailed to the RIC's shareholders prior to the expiration of 60 days after the close of the RIC's taxable year. As a result of this designation, all of the following occur:

- Each shareholder of the RIC at the close of the RIC's taxable year must include the shareholder's designated amount in computing the shareholder's long-term capital gain for the shareholder's taxable year in which the RIC's taxable year ends. The amount so includable, however, must not exceed the portion of the amount subjected to tax in the RIC's hands that the shareholder would have received if, rather than subjecting amounts to tax under § 852(b)(3)(A), the RIC had distributed those amounts as capital gain dividends to its shareholders at the close of its taxable year.
- The shareholder is treated as having paid an amount of tax equal to the tax that the RIC was required to pay on the designated amount.
- The shareholder increases the basis of the relevant shares by the difference between the shareholder's designated amount and the amount of tax that both was paid by the RIC and is deemed to have been paid by the shareholder.

If a RIC reports amounts as capital gain dividends to shareholders, the reports are ineffective to the extent that the aggregate amounts so reported exceed the RIC's net capital gain for the taxable year.[3] See § 852(b)(3)(C). If a RIC has two or more classes of stock and reports to one class a type of dividend that exceeds that class's proportionate share of the corresponding type of income, then the report is ineffective for tax purposes to the extent that the reported amount exceeds that class's proportionate share. See Rev. Rul. 89–81, 1989–1 C.B. 226. This holding applies both to capital gain dividends and to designations of undistributed capital gains.

Prior to the amendment of § 852 by the RIC Modernization Act, in computing net capital gain for purposes of determining the maximum capital gain dividends for a taxable year, most RICs were required by

[1]Some relevant provisions of § 852 that were amended by the RIC Modernization Act were further amended by technical corrections in the Tax Increase Prevention Act of 2014, Pub. L. No. 113–295, 128 Stat. 4010. The descriptions in this notice of the affected provisions generally treat the corrections as if they were made at the time of the enactment of the RIC Modernization Act.

[2]See § 1(h). The description of the rate groups reflects amendments to § 1(h) after the publication of Notice 97–64. These post-1997 amendments were contained in the Jobs and Growth Tax Relief Reconciliation Act of 2003 (the "JGTRRA"), Pub. L. No. 108–27, 117 Stat. 752, and the American Taxpayer Relief Act of 2012 (the "ATRA"), Pub. L. No. 112–240, 123 Stat. 2313.

[3]The RIC's net capital gain for a taxable year determines the amount of capital gain dividends that may be treated as distributed with respect to that taxable year. Thus, the RIC's net capital gain for the taxable year affects not only dividends that are treated by shareholders as paid during the year but also dividends governed by either § 855 or § 860.

§ 852(b)(3)(C) to disregard any net capital loss or net long-term capital loss attributable to transactions after October 31 of the taxable year. Any such post-October net capital loss or net long-term capital loss was treated for those purposes as arising on the first day of the next taxable year. For purposes of determining a RIC's taxable income, however, § 1.852–11(f) of the Income Tax Regulations provided for elective deferral of any portion of the post-October net capital loss or net long-term capital loss.

Notice 97–64 describes rules under which a RIC may make additional designations of capital gain dividends and undistributed capital gains to reflect the various rate groups under § 1(h). That notice also establishes a bifurcation adjustment under which a RIC is required in certain circumstances to bifurcate its taxable year into a pre-November portion and a post-October portion for purposes of determining the appropriate additional designations of capital gain dividends that the RIC may make with respect to that taxable year. Gains and losses are netted separately for each portion of the taxable year. The purpose of the bifurcation adjustment is to prevent post-October losses from causing pre-November gains to be recharacterized as gains from another rate group after the RIC has—

- Taken the pre-November gains into account in a calculation of the required distribution described in § 4982(b);
- Made one or more late-December distributions to its shareholders that appeared necessary under that calculation to avoid excise tax under § 4982(a); and
- Made one or more reports to shareholders regarding those distributions reflecting the conclusions of the calculation.

Notice 2004–39 explains in part how changes to § 1(h) made by the JGTRRA apply to certain RIC capital gain dividends. Notice 2004–39 provides that the rules described in Notice 97–64 continue to apply to RIC capital gain dividends, subject to appropriate modifications to take into account later changes to § 1(h). The changes to § 1(h) made by the ATRA generally did not affect the conclusions in Notice 2004–39.

Sections 871(k)(2) and 881(e) allow a RIC to report as short-term capital gain dividends certain dividends paid to nonresident aliens and foreign corporations.[4] Prior to the amendment of § 871(k)(2) by the RIC Modernization Act, a RIC was required to determine the amount of short-term capital gain dividends for a taxable year without regard to any net capital loss or net short-term capital loss attributable to transactions after October 31 of the year. Any such net capital loss or net short-term capital loss was treated as arising on the first day of the next taxable year.

Section 308 of the RIC Modernization Act made two significant changes affecting the deferral by a RIC of capital losses arising in the portion of a taxable year after October 31. First, it made the deferral of eligible losses elective for all purposes. Under § 852(b)(8)(A), a RIC may elect to defer any portion of its eligible losses, and that election applies for purposes of computing both the RIC's taxable income and the maximum amounts the RIC may distribute as capital gain dividends under § 852(b)(3)(C) and short-term capital gain dividends under §§ 871(k)(2)(C) and 881(e)(2). See § 852(b)(8)(A). Second, the RIC Modernization Act expanded the category of capital losses that may be deferred. A RIC's elective deferral applies to its "late year ordinary loss," which includes any "post-October capital loss." A post-October capital loss includes not only a net capital loss, or net long-term capital loss, attributable to the portion of the taxable year after October 31, but also a net short-term capital loss attributable to that portion of the taxable year. See § 852(b)(8)(C).

In describing this provision, the Staff of the Joint Committee on Taxation explained that the principles of § 1.852–11 are to apply to the elective deferral of a qualified late-year loss, which includes a post-October capital loss, subject to any subsequent change in the regulations. See Staff of Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in the 111th Congress (JCS–2–11), March 2011, at 682 n.1913. Section 1.852–11(f) provides that, if a RIC elects to defer all or a portion of a post-October capital loss, its taxable income for the taxable year in which that loss arose is determined by including none of the capital gains or losses that were taken into account in computing the post-October capital loss, except for capital losses that equal in the aggregate the amount of the post-October capital loss that is not deferred. Any such non-deferred loss is treated as consisting first of any short-term capital losses to the extent thereof and then of any long-term capital losses taken into account in computing the post-October capital loss.

SECTION 3. REPORTING OR DESIGNATION OF RATE GROUPS

This notice modifies the reporting and designation rule described in section 3 of Notice 97–64 (which that notice called a "designation rule") to require (rather than merely permit) a RIC that reports capital gain dividends or designates undistributed capital gains to indicate a rate group for its capital gain dividends or undistributed capital gains. This notice also modifies the reporting and designation rule to reflect both changes in capital gains rates under § 1(h) since Notice 97–64 was published and changes that the RIC Modernization Act made to the procedures for capital gain dividends under § 852(b).

If a RIC reports a dividend as a capital gain dividend for a taxable year in written statements furnished to its shareholders, as described in § 852(b)(3)(C), the RIC must also report in these statements the amounts of the dividend that constitute a "28% rate gain distribution," an "unrecaptured section 1250 gain distribution," a "section 1202 gain distribution," and a "20% rate gain distribution." Similarly, if a RIC designates an amount as undistributed capital gains for a taxable year in a written notice mailed to its shareholders, as described in § 852(b)(3)(D), the RIC must also designate in the written notice the amounts of the undistributed capital gains that the shareholders must include

[4] Under the current definition in § 871(k)(2)(C) (which applies for purposes of §§ 871(k)(2) and 881(e)), the term "short-term capital gain dividend" does not include a dividend with respect to a RIC's taxable year beginning after December 31, 2014.

as a 28% rate gain distribution, an unrecaptured section 1250 gain distribution, a section 1202 gain distribution, or a 20% rate gain distribution.

The written statements or designations may be made in some circumstances on Internal Revenue Service forms. As of the date of this notice, Form 1099–DIV (dividends and distributions) and Form 2439 (undistributed capital gains) provide boxes corresponding both to total capital gain dividends (total long-term capital gain on Form 2439) and to all but one of the possible components of that total. That is, there are boxes for unrecaptured section 1250 gain, for 28% rate gain, and for section 1202 gain, but not for 20% rate gain. If the written statements or designations described in this section 3 are made on Form 1099–DIV or Form 2439 (or successor forms that similarly provide boxes for reporting total capital gain dividends or total undistributed capital gain and for reporting all but one of the possible component types), then any amount of capital gain dividend or undistributed capital gain that is reported in the total and that is not reported in one of the component boxes is deemed to be reported or designated by the RIC as 20% rate gain (or whichever component type is missing from any such successor form). These deemed reports and designations are subject to the same limits as written reports and designations of rate groups. If the information on the forms is incomplete or incorrect, penalties may apply under § 6721 (failure to file correct information returns) and § 6722 (failure to furnish correct payee statements).

Reports (including deemed reports) and designations are ineffective for purposes of determining the rate group for a capital gain dividend or undistributed capital gains to the extent that the amounts reported or designated exceed the limits described in section 2 or section 5 of this notice. An amount that otherwise meets the requirements to be a capital gain dividend (or undistributed capital gain) does not fail to be a capital gain dividend (or undistributed capital gain) solely because of a failure by the RIC to make an effective report (or designation) of a rate group for the amount.

SECTION 4. SHAREHOLDER TREATMENT

Section 4 of Notice 97–64 continues to apply with appropriate modifications to take into account changes to § 1(h). Thus, a shareholder that receives a capital gain dividend from a RIC treats the dividend as follows:

- A 20% rate gain distribution is an amount of long-term capital gain in the 20-percent group (which may be taxed at a 20-percent rate, a 15-percent rate, or a 0-percent rate, depending on the shareholder's taxable income);
- An unrecaptured section 1250 gain distribution is an amount of long-term capital gain in the 25-percent group;
- A 28% rate gain distribution is an amount of long-term capital gain in the 28-percent group; and
- A section 1202 gain distribution generally is an amount of gain from a sale or exchange of qualified small business stock held for more than five years, subject to additional requirements and rules under § 1202(g).

SECTION 5. LIMITATIONS ON DESIGNATIONS OF CAPITAL GAIN DIVIDENDS

The limitations in section 5 of Notice 97–64 continue to apply, with appropriate modifications to take into account changes to § 1(h) and changes described in section 3 of this notice to the designation and reporting requirements.

Reports (or designations) of capital gain dividends (or undistributed capital gain) for a taxable year are effective only to the extent that the aggregate amounts reported or designated do not exceed applicable limitations.[5] The additional reports and designations described in section 3 of this notice must be consistent with the principles of Revenue Ruling 89–81 and must not together exceed the following limits.

A RIC determines the maximum amount that may be reported or designated for each rate group by performing the computation required by § 1(h) (with the modifications described in this notice) as if the RIC were an individual whose ordinary income is subject to a marginal tax rate of 39.6 percent. In this determination—

- The maximum 20% rate gain is equal to the amount that is multiplied by 20% in the computation;
- The maximum unrecaptured section 1250 gain is equal to the amount that is multiplied by 25% in performing the computation; and
- The maximum 28% rate gain is the RIC's net capital gain for the taxable year minus the sum of the maximum unrecaptured section 1250 gain and the maximum 20% rate gain.

The computation under § 1(h) is modified in the following three ways:

- The RIC disregards qualified dividend income;
- The RIC must first give effect to any election under § 852(b)(8) to treat all or a portion of a post-October capital loss as arising on the first day of the next taxable year, as described in section 6 of this notice; and
- The RIC must give effect to the bifurcation adjustment described in section 7 of this notice, if applicable.

As described in section 8 of Notice 97–64, which continues to apply, the maximum distributable section 1202 gain for each issuer is calculated separately from the limitations on the other classes of capital gain dividends and may not in the aggregate exceed the RIC's net capital gain. Section 1202 gain distributions are subject to the limitations provided by § 1202(g).

SECTION 6. DEFERRAL UNDER § 852(b)(8)

The deferral adjustment described in section 6 of Notice 97–64 was a statutory requirement that section 308 of the RIC Modernization Act replaced with an elec-

[5]In addition to the limitations applicable to additional reports or designations (which are discussed in this section 5), the basic report or designation as a capital gain dividend or undistributed capital gain is limited by the maximum amounts set forth in § 852(b)(3)(C) and § 852(b)(3)(D), respectively.

tive deferral regime for taxable years beginning after December 22, 2010.

Under § 852(b)(8)(A), a RIC generally may elect to treat any portion of a qualified late-year loss for a taxable year as arising on the first day of the following taxable year for all purposes of the Code. Under § 852(b)(8)(B), a qualified late-year loss includes a post-October capital loss. Under § 852(b)(8)(C), a post-October capital loss means any net capital loss attributable to the portion of the taxable year after October 31, or if there is no such loss, any net long-term capital loss or net short-term capital loss attributable to that portion of the taxable year.

If a RIC elects under § 852(b)(8)(A) to treat all or a portion of its post-October capital loss as arising on the first day of the following taxable year, then for all purposes of the Code, all gains and losses taken into account in computing the post-October capital loss are treated as arising on the first day of the following taxable year, except for an amount of those losses (selected as described in the following paragraph) that equals in the aggregate the amount (if any) of the post-October capital loss that is not deferred. For example, if, for a taxable year, (i) a RIC has a post-October capital loss that is a net long-term capital loss attributable to the post-October portion of its taxable year and (ii) the RIC elects to defer all but $5000 of that net long-term capital loss, then every one of the RIC's post-October long-term capital gains is treated as arising on the first day of the following taxable year, and every one of the RIC's post-October long-term capital losses is treated as arising on the first day of the following taxable year, except for long-term capital losses that in the aggregate equal $5000.

If, for a taxable year, (i) a RIC has a post-October capital loss that is a net capital loss attributable to the post-October portion of its taxable year, and (ii) the RIC elects to defer less than the entire amount of that post-October capital loss, then as part of that election, the RIC determines the extent to which its long-term or short-term capital losses constitute the portion of the loss that is treated as arising in the taxable year (that is, the portion not deferred). If, for a taxable year, (i) a RIC has a post-October capital loss that includes long-term capital losses, and (ii) the RIC's election under § 852(b)(8)(A) (including the decision described in the preceding sentence) results in the deferral of less than all of those long-term capital losses, then as part of that election, the RIC determines the extent to which its losses from each rate group constitute the portion of the long-term capital loss that is treated as arising in the taxable year.

The deferral of a post-October capital loss under § 852(b)(8) does not extend the holding period associated with any of the gains or losses that, as a result of the deferral, are treated as arising on the first day of the following taxable year.

Pending further guidance, a RIC makes the election described in § 852(b)(8)(A) for a taxable year by giving effect to its elective deferral in computing its capital gains and losses for that taxable year and by completing its income tax return (including any necessary schedules) for the taxable year in accordance with the instructions for those items applicable to the election.

SECTION 7. BIFURCATION ADJUSTMENT

The bifurcation adjustment described in section 6 of Notice 97–64 continues to apply in certain circumstances. The criteria for the application of the bifurcation adjustment described below reflect that the RIC Modernization Act eliminated the mandatory deferral adjustment, as described above in section 6, and broadened the scope of elective deferral under § 852(b)(8), as described above in section 2.

Unless a RIC is excepted from the requirements of § 4982 for the taxable year under § 4982(f), the RIC must make the bifurcation adjustment described below for a taxable year if—

(1) The taxable year of the RIC is not the period used to determine capital gain net income for purposes of the excise tax imposed by § 4982;[6]
(2) For the pre-November portion of the taxable year, the RIC has a net capital gain;
(3) For the post-October portion of the taxable year, the RIC has a net loss in one or more rate groups that would cause pre-November net capital gain to be recharacterized (because the RIC would have less capital gain in a rate group for its full taxable year than for the pre-November portion of that year); and
(4) The RIC does not have a post-October capital loss the deferral of which, in whole or in part, under § 852(b)(8)(A), would prevent recharacterization of the RIC's pre-November gain.

If a RIC is required to make a bifurcation adjustment, then, for all federal tax purposes, it must net its capital gains and losses as if the pre-November and post-October portions of its taxable year were separate taxable periods. The RIC must calculate its maximum distributable gain in each rate group separately for the pre-November and post-October portions of its year. The maximum distributable gain in each rate group for the taxable year is the sum of the maximum distributable amounts determined for the two portions of the year.

SECTION 8. EXAMPLE

The following example illustrates the application of section 7 of this notice:

RIC X's taxable year ends on July 31. X has only the following capital gains and losses for the periods indicated:

[6]A RIC's taxable year coincides with the period for determining capital gain net income for purposes of the excise tax if either: (i) the RIC's taxable year ends with the month of October, or (ii) the RIC's taxable year ends with the month of November or December and the RIC has made the election under § 4982(e)(4).

8/1/2015 to 10/31/2015	Net gain / (loss)
Long-term capital gain or loss	
20-percent group	$100
25-percent group	
28-percent group	
Short-term capital gain or loss	
11/1/2015 to 7/31/2016	
Long-term capital gain or loss	
20-percent group	($100)
25-percent group	
28-percent group	$150
Short-term capital gain or loss	($50)

For the post-October portion of its taxable year, X has a net short-term capital loss of $50 and no net capital loss or net long-term capital loss. Therefore, under § 852(b)(8)(C), X has a post-October capital loss, which is the $50 net short-term capital loss. Under § 852(b)(8)(A), X may elect to treat any portion of that loss as arising on the first day of the following taxable year for federal income tax purposes.

X has a taxable year that is not the period used to determine its capital gain net income for purposes of § 4982. X has net capital gain for the portion of its taxable year before November 1 (all of which is in the 20-percent group). X also has a loss in the 20-percent group for the portion of its taxable year after October 31. But for the bifurcation adjustment, that post-October loss would cause recharacterization of pre-November gain because that post-October loss would cause X to have more gain in the 20-percent group for the pre-November portion of its taxable year ($100) than for its full taxable year ($0). More specifically, if X's gains and losses were netted for X's full taxable year, X's $100 of gain in the 20-percent group for the pre-November portion of the year would be offset by the $100 loss in the 20-percent group, with only gain in the 28-percent group remaining. X does not have a post-October capital loss the deferral of which would prevent such recharacterization, because whether or not X elects to defer its post-October capital loss (the $50 short-term loss), the loss in the 20-percent group for the post-October portion would offset the gain in that rate group for the pre-November portion. Therefore, regardless of whether X elects to defer any portion of its post-October capital loss, X must make a bifurcation adjustment.

For the pre-November portion of its taxable year, X has $100 of net capital gain all of which is in the 20-percent group. For the post-October portion, if X elects to defer its entire post-October capital loss, X has $50 of net capital gain, all of which is in the 28-percent group. Because X's taxable year is bifurcated, the $100 of loss in the 20-percent group in the post-October portion is netted with $100 of the $150 of gain in the 28-percent group in the post-October portion, and not with the $100 of gain in the 20-percent group in the pre-November portion. Therefore, X may report (or designate) up to $150 as capital gain dividends (or undistributed capital gains) with respect to its taxable year ending on July 31, 2016. If X reports the entire amount as capital gain dividends, X must report $100 as 20% rate gain distributions and $50 as 28% rate gain distributions. Because X elected to defer its entire post-October capital loss, X must treat the short-term capital gains and losses constituting the $50 post-October short-term capital loss as arising on August 1, 2016 (the first day of the next taxable year).

SECTION 9. CAPITAL LOSS CARRYOVERS

Because post-October losses are subject to deferral, a RIC's capital gain or loss computation for a taxable year may depend in part on whether a capital loss carryover from a prior year is treated as arising on the first day of the taxable year or ratably over the taxable year. Section 101 of the RIC Modernization Act changed the treatment of capital loss carryovers of RICs for years beginning after the date of its enactment (December 22, 2010) in several ways. Under § 1212(a)(3), capital loss carryovers are now treated as losses arising on the first day of the taxable year to which they are carried over.

Capital loss carryovers arising before the date of enactment of the RIC Modernization Act will likewise be treated as arising on the first day of the taxable year to which they are carried over and not as arising ratably during the year.

SECTION 10. EFFECT ON OTHER DOCUMENTS

Notice 97–64 and Notice 2004–39 are modified.

SECTION 11. EFFECTIVE DATE

This notice is effective for taxable years beginning after May 31, 2015. Taxpayers may rely on section 9 of this notice for prior taxable years. Taxpayers may rely on the other provisions of this notice for prior taxable years beginning after the date of enactment of the RIC Modernization Act (December 22, 2010).

SECTION 12. PAPERWORK REDUCTION ACT

The collection of information contained in this notice has been submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) through the Forms 2439 (1545–0145) and 1099–DIV (1545–0110).

The collection of information in this notice is in section 3. This information is a minor modification to an existing requirement that applies to a RIC when providing written statements to its shareholders as described in § 852(b)(3)(C) and written notices to its shareholders as described in § 852(b)(3)(D). The likely respondents are RICs.

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

SECTION 13. DRAFTING INFORMATION

The principal author of this notice is Steven Harrison of the Office of Assistant Chief Counsel (Financial Institutions and Products). For further information regarding this notice contact Steven Harrison at (202) 317-6842 (not a toll-free number).

Penalty Relief Program – Late Annual Reporting for Non-Title I Retirement Plans ("One-Participant Plans" and Certain Foreign Plans)

Rev. Proc. 2015–32

SECTION 1. PURPOSE

This revenue procedure establishes a permanent program providing administrative relief to plan administrators and plan sponsors of certain retirement plans from the penalties otherwise applicable under §§ 6652(e) and 6692 of the Internal Revenue Code (the "Code") for failing to timely comply with the annual reporting requirements imposed under §§ 6047(e), 6058, and 6059. This permanent program replaces the temporary pilot program established by Rev. Proc. 2014–32, 2014–23 I.R.B. 1073. The administrative relief provided under this revenue procedure applies only to plan administrators (as defined in § 414(g)) and plan sponsors of retirement plans that are subject to the reporting requirements of §§ 6047(e), 6058, and 6059, but that are not subject to the reporting requirements of Title I of the Employee Retirement Income Security Act of 1974 ("ERISA") (Pub. L. No. 93–406).

SECTION 2. BACKGROUND

Both the Code and Title I of ERISA impose annual reporting requirements with respect to certain retirement plans. To minimize the filing burden on plan sponsors and plan administrators of employee benefit plans, the Internal Revenue Service (the "IRS"), the Department of Labor (the "DOL"), and the Pension Benefit Guaranty Corporation have consolidated these various annual reporting requirements by issuing a series of forms that filers can use to satisfy their annual reporting requirements under both the Code and Title I of ERISA. This Form 5500 series includes Form 5500, Annual Return/Report of Employee Benefit Plan; Form 5500–SF, Short Form Annual Return/Report of Employee Benefit Plan; and Form 5500–EZ, Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan.[1]

Plan sponsors and plan administrators who fail to timely file Form 5500 series returns for their retirement plans may be subject to civil penalties under the Code. In particular, the IRS may assess penalties under §§ 6652(e) and 6692 for the failure to satisfy the requirements for annual returns. Section 6652(e) generally provides, in part, that in the case of any failure to timely file a return or statement required under § 6058 (annual return of employee benefit plans) or § 6047(e) (returns and reports for employee stock ownership plans), the late filer shall pay, upon notice and demand, a penalty of $25 for each day the failure continues, up to $15,000 per return or statement. Section 6692 generally provides that, in the case of any failure to timely file a report required by § 6059 (actuarial report for employee benefit plans), the late filer shall pay a penalty of $1,000 for each failure. No penalty is imposed under these sections if it is shown that such failure to timely file is due to reasonable cause. Failure to timely file returns/reports may also result in civil penalties under Title I of ERISA.

In 1995, the DOL sought to encourage voluntary compliance by establishing the Delinquent Filer Voluntary Compliance ("DFVC") program. The DFVC program includes reduced late filing monetary penalties on filers of delinquent annual reports. In Notice 2002–23, 2002–1 C.B. 742, the IRS determined that it would not impose the penalties under §§ 6652(c)(1), (d), (e) and 6692 (to the extent applicable) on a person who is eligible for, and satisfies the requirements of, the DFVC program with respect to the filing of a Form 5500 return. The relief under Notice 2002–23 was available only to filers who were required to file both a report under Title I of ERISA and a return under the Code. Notice 2002–23 has been superseded by Notice 2014–35, 2014–23 I.R.B. 1072. As under Notice 2002–23, the penalty relief provided by Notice 2014–35 does not apply to a delinquent filing of a Form 5500–EZ return for retirement plans that are not subject to the annual reporting requirements of Title I of ERISA (such as a "one-participant plan" under which a sole owner of a business and the owner's spouse are the only participants). See 29 C.F.R. 2510.3–3(b) and (c).

Certain retirement plans that are not subject to Title I of ERISA are exempt from some of the annual reporting requirements if they satisfy certain criteria specified by statute or by the IRS in published guidance. For example, for years beginning after 2006, section 1103 of the Pension Protection Act of 2006 (Pub. L. No. 109–280) provides that "one-participant plans" that are not subject to Title I of ERISA with assets of $250,000 or less at the end of the plan year are not required to file a Form 5500 series return. The IRS has determined that such plans must, however, file an annual return when

[1]In general, returns satisfy Code reporting requirements, and reports satisfy Title I of ERISA reporting requirements. Form 5500 and Form 5500-SF returns/reports can be used to satisfy the reporting requirements of both the Code and Title I of ERISA. Form 5500-EZ returns are used only by plan administrators and plan sponsors of retirement plans that are not subject to the reporting requirements of Title I of ERISA and hence are used to satisfy only the reporting requirements of the Code.

the plan is terminated and all assets have been distributed.

SECTION 3. PENALTY RELIEF UNDER REV. PROC. 2014–32

Rev. Proc. 2014–32 established a one-year pilot program that provides administrative relief from the penalties imposed under §§ 6652(e) and 6692 for a failure to timely comply with the annual reporting requirements under §§ 6047(e), 6058, and 6059. The relief applies to "one-participant plans" and certain foreign plans, which are not subject to the annual reporting requirements of Title I of ERISA and thus are not eligible for the penalty relief provided by Notice 2014–35.

Under the pilot program, applicants are required to file a complete Form 5500 series return for each year for which the applicant is seeking penalty relief. A complete return consists of a signed, filled-out paper version of the applicable Form 5500 series return, including all required schedules and attachments.

The Form 5500 series return to be submitted under the pilot program is generally the specific Form 5500 series return that was required to be submitted for the plan year. For example, if a 2005 Form 5500 return should have been filed for the 2005 plan year but was not, a 2005 Form 5500 return must be submitted. For 2009 plan years and later, only the Form 5500–EZ return applicable to the plan year may be submitted. Thus, a delinquent Form 5500–SF return cannot be filed for the plan year, either on paper with the IRS or electronically through the EFAST2 system (even if a Form 5500–SF return could have been timely filed for the plan year through EFAST2).

No penalty or other payment is required to be paid under the pilot program. Section 5.01 of Rev. Proc. 2014–32 states, however, that a fee or other payment will be required if the pilot program is made permanent.

SECTION 4. COMMENTS ON REV. PROC. 2014–32

Section 7 of Rev. Proc. 2014–32 requested comments as to whether the pilot program should be replaced by a permanent program and how the fee for such a permanent program should be determined. All of the comments received were in favor of replacing the pilot program with a permanent program, and two commenters suggested potential fee structures. Commenters noted that a permanent program is needed so that one-participant and foreign plans, which are prohibited from seeking relief under DOL's DFVC program, may also seek relief from late-filer penalties.

SECTION 5. PERMANENT PENALTY RELIEF PROGRAM

This revenue procedure establishes a permanent program to provide administrative relief from the penalties imposed under §§ 6652(e) and 6692 for a failure to timely comply with the annual reporting requirements under §§ 6047(e), 6058, and 6059. The relief applies to filers who are eligible to participate under Section 6 of this revenue procedure and who satisfy the procedural requirements of Section 7 of this revenue procedure. As an alternative to making a submission under this program, filers may instead file for the relief currently available for a failure to timely file that is due to reasonable cause.[2] However, a filer who is denied relief for reasonable cause with respect to a particular delinquent return will receive a CP 283 Notice, Penalty Charged on Your Form 5500 Return, and, in accordance with Section 6.05, will not be eligible for relief as to that return under this program. Also, filers may not seek relief for reasonable cause as part of their submission under this program.

The permanent program generally follows the requirements of the pilot program, but some changes have been made to reflect the comments received as well as to reflect the addition of a payment requirement.

The most significant change is the addition of a payment requirement with all submissions. The payment for each submission is $500 for each delinquent return for each plan, up to a maximum of $1,500 per plan. Because applicants under this program will typically be smaller than filers under the DFVC program, a smaller payment is required under this program for two or fewer delinquent returns than is required under the DFVC program, but the maximum amount per plan (which applies under this program to three or more delinquent returns) is the same. In order to keep the calculation of the payment simple, payments are not based on the number of days the return is delinquent.[3]

As under the pilot program, the permanent program requires that a Form 5500–EZ return be filed even though the applicant could have filed a Form 5500–SF return electronically if the return had been timely filed. Because a Form 5500–SF return must be electronically filed under DOL's EFAST2 filing system and any payment under this program must be submitted directly to the IRS, the Department of the Treasury and the IRS are concerned that it would be difficult to match a payment with a delinquent, electronically-filed Form 5500–SF return. The Department of the Treasury and the IRS will consider future changes in the program to allow electronic filing of delinquent returns as administrative and technological capacities improve.

The permanent program provides that the applicant must submit the delinquent return on the Form 5500–EZ that applied for the plan year for which the return was delinquent. An exception is provided for returns for plan years prior to 1990 because those returns are more difficult for applicants to obtain. For returns for plan years prior to 1990, the applicant may use a current-year Form 5500–EZ filled out with the beginning and ending dates for the plan year for which the return was delinquent.

[2] A request for relief due to reasonable cause may be attached to a delinquent return when the return is filed or may be filed separately. The request should state the reason why the return was late and be signed by a person in authority. See §§ 301.6652–3(b) and 301.6692–1(c) of the Regulations on Procedure and Administration. The request (with the delinquent return, if applicable) should be mailed to the filing address provided in the instructions for the most current Form 5500–EZ available to taxpayers.

[3] Because the lowest payment under this permanent program is $500 for a delinquent return, some filers who file a delinquent return less than 20 days late may prefer to pay the penalty of $25 per day under § 6652(e) rather than file under this program.

As noted in Rev. Proc. 2014–32, prior to 2009, some plans that are not subject to Title I of ERISA were required to file returns on Form 5500 rather than Form 5500–EZ. Under the pilot program, these filers were required to file a Form 5500 return for the applicable year rather than a Form 5500–EZ return. To simplify the program for both filers and the IRS, filers that would have been required to file a Form 5500 return under the pilot program are instead required under the permanent program to file a current-year Form 5500–EZ return, filled out with the beginning and ending dates for the plan year for which the return was delinquent.

The pilot program also provided that multiple returns for multiple plans could be included in a submission. Because the permanent program requires a payment based on the number of delinquent returns for each plan, however, the permanent program requires that delinquent returns for each plan must be submitted separately. Thus, multiple delinquent returns for a single plan should be submitted in a single package, but delinquent returns for different plans must be submitted in different packages.

Under the permanent program, applicants must include a Form 14704, Transmittal Schedule – Form 5500–EZ Delinquent Filer Penalty Relief Program (Rev. Proc. 2015–32), with each submission, as further described in Section 7.03(3).[4] Unlike the pilot program, the IRS will contact the applicant if the Form 14704 is not included, the documents submitted are inconsistent with the Form 14704, a required signature on a delinquent return is not provided, or the amount of payment is incorrect. As under the pilot program, however, the IRS generally does not expect to contact the applicant in other cases. Filers may use a tracking or other system provided by the United States Postal Service (or by a private delivery service if a delivery service is used) to determine when delivery of a submission is completed. Filers may also receive notice from their bank or other financial institution when a check has been processed by the IRS.

The Department of the Treasury and the IRS intend that this program will be of indefinite duration, but the program, upon publication of further guidance, may be modified from time to time or terminated.

SECTION 6. PROGRAM ELIGIBILITY

.01 *General rule*. The relief provided by this revenue procedure is only available to the plan administrator or plan sponsor of a retirement plan that is subject to the filing requirements of §§ 6047(e), 6058, or 6059 but is not subject to Title I of ERISA for the plan year that a Form 5500 series return is delinquent. Thus, the relief under this revenue procedure is only available to the plan administrator or plan sponsor of (1) small business (owner-spouse) plans and plans of business partnerships (together, "one-participant plans") described in Section 6.02 and (2) foreign plans described in Section 6.03.

.02 *One-participant plans*. For purposes of this revenue procedure, a one-participant plan is a retirement plan with one or more participants that:

- Covers only the owner of the entire business (or the owner and the owner's spouse) or covers only one or more partners (or partners and their spouses) in a business partnership, and
- Does not provide benefits for anyone except the owner (or the owner and the owner's spouse) or one or more partners (or partners and their spouses).

.03 *Foreign plans*. The plan administrator or plan sponsor of a foreign plan (that is, a retirement plan maintained outside the United States primarily for nonresident aliens) is eligible for relief under this revenue procedure if the employer that maintains the plan is a domestic employer or a foreign employer with income derived from sources within the United States (including foreign subsidiaries of domestic employers) that deducts contributions to the plan on its U.S. income tax return.

.04 *Title I plans ineligible*. A plan administrator or plan sponsor is not eligible for penalty relief under this revenue procedure if the affected retirement plan is subject to Title I of ERISA for the plan year for which a filing is delinquent. Instead, a plan administrator or plan sponsor of a Title I retirement plan may request relief from penalties under ERISA and the Code in accordance with the DFVC program and Notice 2014–35. Please refer to *http://www.dol.gov/ebsa/* for more information regarding the DFVC program.

.05 *Penalty assessment notices*. The relief provided by this revenue procedure is not available with respect to a delinquent return if a penalty has been assessed (that is, if a CP 283 Notice has been issued by the IRS to a plan sponsor or administrator) with respect to that delinquent return.

SECTION 7. PROCEDURAL REQUIREMENTS

.01 *Payment*. The correct payment must be included with each submission. The amount of the payment is $500 per delinquent return up to a maximum of $1,500 per submission (that is, the payment is equal to $500 for a single return, $1,000 for two returns for the same plan, and $1,500 for three or more returns for the same plan). All payments under this program must be submitted by a check payable to the United States Treasury and must be attached to the Form 14704 that is included as part of the submission. The applicant's EIN and the plan number should be written on the check.

.02 *Submission limited to a single plan*. Multiple delinquent returns for a single plan may be submitted in a single submission, but separate submissions are required for separate plans. For example, if an employer maintains a defined contribution plan and a defined benefit plan, and returns for each plan are delinquent for three plan years, the applicant must submit two separate submissions, one for each plan. In all cases, the requirements of Section 7.03 of this revenue procedure must be satisfied for each such submission (including a Form 14704 and check).

.03 *Filing contents*. The applicant must submit the following information to the IRS in order to receive penalty relief:

(1) *A complete Form 5500–EZ return*. The submission must include a complete Form 5500–EZ return, including all required schedules and attachments, for each plan year for which the applicant is

[4]Under the pilot program, the transmittal schedule is an appendix to Rev. Proc. 2014–32. Under this permanent program, the transmittal schedule is a new IRS form.

seeking penalty relief under this revenue procedure. All returns submitted in accordance with this revenue procedure must be sent to the IRS at the address listed in Section 7.04 below and cannot be filed through the DOL's EFAST2 filing system. Filings sent to the DOL's EFAST2 filing system will not be treated as submissions under this program and will continue to be subject to applicable penalties under the Code. For purposes of this revenue procedure:

(a) In general, the Form 5500–EZ return that applied for the delinquent plan year must be submitted on paper. Thus, a delinquent Form 5500–SF return cannot be filed for a plan year, either on paper or electronically (even if a timely Form 5500–SF return could have been filed electronically for the plan year through EFAST2).

(b) A Form 5500–EZ return for the current plan year (rather than the Form 5500 series return that applied for the delinquent plan year) may be filed on paper if either (i) the filer would otherwise be required to file a Form 5500 return for the delinquent plan year, or (ii) the return is delinquent for a year prior to 1990. Any such current-year Form 5500–EZ return must be filled out with the beginning and ending dates for the plan year for which the return was delinquent.

(c) All schedules applicable to the plan for the year for which the return is delinquent must be included with the return. For example:

- For plan years prior to 2005, a Schedule B (Actuarial Information) was required to be submitted with the Form 5500 series return for non-Title I defined benefit pension plans and certain money purchase pension plans. Accordingly, a submission for these plans for these plan years must include a Schedule B.
- For 2005 and subsequent plan years, a Schedule B (or the successor Schedule SB (Single Employer Defined Benefit Plan Actuarial Information)) was not required to be submitted to the IRS with the annual Form 5500 series return for one-participant plans and foreign plans subject to filing under the Code and not under Title I of ERISA. Accordingly, a submission for these plans for these plan years need not include a Schedule B (or Schedule SB). However, an applicant must include in the submission a representation that the applicable annual actuarial report has been prepared (even though it is not being submitted to the IRS). This statement should be attached to the applicable return in lieu of a Schedule B (or Schedule SB).
- For plan years prior to 2005, a Schedule E (ESOP Annual Information) was required to be submitted with the Form 5500 series return for an employee stock ownership plan. Accordingly, a submission for these plans for these plan years must include a Schedule E.

(d) The Form 5500–EZ (but not required schedules) that applied for each plan year after 1989 may be found at *http://apps.irs.gov/app/picklist/list/priorFormPublication.html?value=5500-EZ&criteria=formNumber*. In addition, an applicant can obtain a Form 5500–EZ, plus required schedules, for any plan year by calling 1-800-TAX Form (1-800-829-3676). Also, applicable schedules (for plan years after 1994) can be found at *http://www.dol.gov/ebsa/5500main.html*.

(2) *Delinquent returns must be marked*. For each delinquent Form 5500 series return submitted to the IRS under this revenue procedure, the applicant must mark in red letters in the top margin of the first page of the return (above the title of the form): "Delinquent Return Submitted under Rev. Proc. 2015–32, Eligible for Penalty Relief." Failure to properly mark the submitted delinquent return may cause the IRS to treat the return as ineligible for the relief provided under this revenue procedure and assess all applicable penalties.

(3) *Required Form 14704*. Each submission must include a completed paper copy of Form 14704. Form 14704 may be found at *http://www.irs.gov/Forms-&-Pubs*. A completed Form 14704 must be attached to the front of the oldest delinquent return in the submission. For example, if delinquent returns are included in the same submission for the plan years 2010, 2011, and 2012, the completed Form 14704 must be attached to the front of the 2010 return. Failure to include a completed Form 14704 as directed may cause the IRS to treat the returns as ineligible for the relief provided under this revenue procedure and assess all applicable penalties.

.04 *Mailing address*. Submissions under this revenue procedure should be mailed to:

Internal Revenue Service
1973 North Rulon White Blvd.
Ogden, UT 84404-0020

.05 *Private delivery services*. Applicants may make their submissions using any of the private delivery systems listed in the instructions to the most recent Form 5500–EZ. The private delivery service can provide information on how to obtain written proof of the mailing date.

SECTION 8. EFFECTIVE DATE

The relief provided under this revenue procedure is effective June 3, 2015. Returns submitted before June 3, 2015 will be processed in accordance with Rev. Proc. 2014–32.

SECTION 9. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-0956.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this revenue procedure is in Form 14704. This information is required to enable the Commissioner, Tax Exempt and Government Entities Division, to ensure the proper processing of the delinquent returns and the associated payments. The likely respondents are individuals and small businesses or organizations.

The estimated total annual reporting recordkeeping burden is 167 hours.

The estimated annual burden per respondent/recordkeeper is five minutes.

The estimated number of respondents/recordkeepers is 2,000.

The estimated frequency of responses is occasional.

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

SECTION 10. DRAFTING INFORMATION

The principal drafter of this revenue procedure is Robert M. Walsh of the Office of the Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the Department of the Treasury and the IRS participated in the development of this guidance. For further information regarding this revenue procedure, you may contact Mr. Walsh at 202-317-4102 (not a toll-free number). For questions regarding submissions under this revenue procedure, please contact the Employee Plans' taxpayer assistance telephone service at 1-877-829-5500 (not a toll-free number).

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26 CFR 601.204: Changes in accounting periods and in methods of accounting.
(Also Part I, §§ 446, 481; 1.446–1, 1.481–1, 1.481–4.)

Rev. Proc. 2015–33

SECTION 1. PURPOSE

This revenue procedure modifies the procedures in Rev. Proc. 2015–13, 2015–5 I.R.B. 419, for obtaining the consent of the Commissioner of Internal Revenue (Commissioner) to change a method of accounting for federal income tax purposes under § 446(e) of the Internal Revenue Code and § 1.446–1(e) of the Income Tax Regulations. Specifically, this revenue procedure (1) modifies the transition rules under section 15.02(1)(a)(ii) of Rev. Proc. 2015–13 to provide additional time to file Forms 3115 under Rev. Proc. 2011–14, 2011–4 I.R.B. 330, as clarified and modified by Rev. Proc. 2012–39, 2012–41 I.R.B. 470; (2) clarifies when the automatic change procedures do not apply if the taxpayer engages, within the requested year of change, in a transaction to which § 381(a) applies; (3) clarifies the meaning of "three-month window" under section 8.02(1)(a)(ii) of Rev. Proc. 2015–13 for a taxpayer with a 52–53 week taxable year; and (4) discusses a clarification to the applicable Ogden, UT, address provided in section 9.05 of Rev. Proc. 2015–1, 2015–1 I.R.B. 1.

SECTION 2. BACKGROUND

.01 Rev. Proc. 2015–13 updates and revises the general procedures under § 446(e) and § 1.446–1(e) to obtain the consent of the Commissioner to change a method of accounting for federal income tax purposes. Specifically, Rev. Proc. 2015–13 provides general procedures to obtain the advance (non-automatic) consent of the Commissioner to change a method of accounting and provides the procedures to obtain the automatic consent of the Commissioner to change a method of accounting described in Rev. Proc. 2015–14, 2015–5 I.R.B. 450, (or successor) (List of Automatic Changes).

.02 Section 15.02(1)(a)(ii) of Rev. Proc. 2015–13 provides that a taxpayer may file a Form 3115 to request the Commissioner's consent to change a method of accounting for a taxable year ending on or after May 31, 2014, and on or before January 31, 2015, until the due date of the taxpayer's timely filed (including any extension) original federal income tax return for the requested year of change for an automatic change under the procedures of Rev. Proc. 2011–14 or Rev. Proc. 2015–13. The current provision does not allow taxpayers with taxable years ending after January 31, 2015, to request an automatic change under the procedures of Rev. Proc. 2011–14. In September 2013 the Treasury Department and the Internal Revenue Service (IRS) issued final regulations under §§ 1.162–3, 1.162–4, 1.263(a)–1, 1.263(a)–2, and 1.263(a)–3 (T.D. 9636, 2013–43 I.R.B. 331, 78 Fed. Reg. 57686) and in August 2014 issued final regulations under §§ 1.168(i)–1, 1.168(i)–7, and 1.168(i)–8 (T.D. 9689, 2014–36 I.R.B. 456, 79 Fed. Reg. 48661) (together the final tangible property regulations). The final tangible property regulations generally apply to taxable years beginning on or after January 1, 2014. This revenue procedure extends the transition procedures of section 15.02(1)(a)(ii) of Rev. Proc. 2015–13 to all taxpayers for their first taxable year in which the final tangible property regulations apply. In particular, section 3 of this revenue procedure modifies section 15.02(1) of Rev. Proc. 2015–13 to allow a taxpayer to request an automatic change under the procedures of Rev. Proc. 2011–14 or Rev. Proc. 2015–13 for a taxable year ending on or after May 31, 2014, and beginning before January 1, 2015. This revenue procedure provides that a signed copy of an original Form 3115 filed under the revised transition rules should be filed with the IRS in Ogden, UT, despite the requirement of Rev. Proc. 2011–14 that certain copies be filed with the IRS national office.

.03 Sections 5.01(1)(c) and 5.02 of Rev. Proc. 2015–13 provide rules that limit application of the automatic change procedures in certain instances when, within the year of change, the taxpayer engages in a liquidation or reorganization transaction to which § 381(a) applies. These rules are intended to provide that a taxpayer that engages in a § 381(a) transaction within the year of change may not use the automatic change procedures to request a change to a principal method (because, as prescribed by §§ 1.381(c)(4)–1(d)(1) and 1.381(c)(5)–1(d)(1), in general, an acquiring corporation does not need to secure the Commissioner's consent to use a principal method). The rules in sections 5.01(1)(c) and 5.02 inadvertently exclude from the automatic change procedures certain changes other than a change to a principal method prescribed by § 1.381(c)(4)–1(d)(1) or § 1.381(c)(5)–1(d)(1). Accordingly, section 4 of this revenue procedure modifies sections 5.01(1)(c) and 5.02 of Rev. Proc. 2015–13 to exclude from the automatic change procedures only changes prescribed by § 1.381(c)(4)–1(d)(1) or § 1.381(c)(5)–1(d)(1).

.04 Section 8.02(1)(a)(ii) of Rev. Proc. 2015–13 provides that a "three-month window" is the period beginning on the fifteenth day of the seventh month of the taxpayer's taxable year and ending on the fifteenth day of the tenth month of the taxpayer's taxable year. It is unclear how this provision applies to a taxpayer using a 52–53 week taxable year because the rule is not expressed in terms of a taxable year beginning, including, or ending with reference to the first or last day of a specified calendar month, as provided in § 1.441–2(c)(1). Accordingly, section 5 of this revenue procedure modifies section 8.02(1)(a)(ii) of Rev. Proc. 2015–13 to provide that for determining the "three-month window" the taxable year begins on the first day of the calendar month nearest to the first day of the 52–53 week taxable year.

.05 Additionally, several provisions of Rev. Proc. 2015–13 provide that a signed copy of the original Form 3115 must be filed with the IRS in Ogden, UT (Ogden copy), at the applicable address in section 9.05 of Rev. Proc. 2015–1 (or successor). The U.S. Post Office no longer accepts the Ogden, UT, zip code provided in Rev. Proc. 2015–1 for certified mail. While mail sent to the Ogden, UT, address provided in Rev. Proc. 2015–1 will be received by the IRS processing facility in Ogden, UT, to send certified mail through the U.S. Post Office to this location, taxpayers should use the following mailing address:

Internal Revenue Service
1973 Rulon White Blvd.
Mail Stop 4917
Ogden, UT 84201-1000

SECTION 3. MODIFICATION TO TRANSITION RULES

.01 The heading of section 15.02(1) of Rev. Proc. 2015–13 is modified to read as follows:

(1) *Additional time to file Forms 3115 under Rev. Proc. 97–27, Rev. Proc. 2011–14, or this revenue procedure.*

.02 Section 15.02(1)(a)(ii) of Rev. Proc. 2015–13 is modified to read as follows:

(ii) ending on or after May 31, 2014, and beginning before January 1, 2015 ("applicable taxable year"), until the due date of the taxpayer's timely filed (including any extension) original federal income tax return for the requested year of change for an automatic change under the procedures of Rev. Proc. 2011–14 or this revenue procedure. Any application filed under the transition rule provided in this paragraph must be filed with the IRS in Ogden, UT (Ogden copy), and not with the national office despite the requirement in section 6.02(3)(a)(ii) of Rev. Proc. 2011–14 that certain copies of the application be filed with the national office.

SECTION 4. CLARIFICATION OF AUTOMATIC CHANGE PROCEDURES FOLLOWING A § 381 TRANSACTION

.01 Section 5.01(1)(c) is modified to read as follows:

(c) the requested change is not required to be made under § 1.381(c)(4)–1(d)(1) or § 1.381(c)(5)–1(d)(1);

.02 Section 5.02 is modified to read "Reserved."

SECTION 5. CLARIFICATION OF THREE-MONTH WINDOW

Section 8.02(1)(a)(ii) of Rev. Proc. 2015–13 is modified to read as follows:

(II) *Three-month Window*. (A) A "three-month window" is the period beginning on the fifteenth day of the seventh month of the taxpayer's taxable year and ending on the fifteenth day of the tenth month of the taxpayer's taxable year.

(B) For purposes of paragraph (a)(ii)(A), a 52–53 week taxable year begins on the first day of the calendar month nearest to the first day of the 52–53 week taxable year.

(C) If the taxable year is a short taxable year that ends before the fifteenth day of the tenth month after the short taxable year begins, the "three-month window" is the period beginning on the first day of the second month before the month in which the short taxable year ends and ending on the last day of the short taxable year.

SECTION 6. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2015–13 is clarified and modified.

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective for Forms 3115 filed on or after January 16, 2015, for a year of change ending on or after May 31, 2014.

DRAFTING INFORMATION

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

Part IV. Items of General Interest

Deletions From Cumulative List of Organizations, Contributions to Which are Deductible Under Section 170 of the Code, Correction to Announcement 2015–14

Announcement 2015–16

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The information contained in Announcement 2015–14, 2015–20 IRB 971, is incorrect and that Announcement is hereby revoked. The correct information is contained in this announcement.

The names of organizations that no longer qualify as organizations described in section 170(c)(2) of the Internal Revenue Code of 1954 are listed below.

The Internal Revenue Service has revoked its determination that the organizations listed below qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1986.

Generally, the IRS will not disallow deductions for contributions made to a listed organization on or before the date of announcement in the Internal Revenue Bulletin that an organization no longer qualifies. However, the IRS is not precluded from disallowing a deduction for any contributions made after an organization ceases to qualify under section 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on June 15, 2015 and would end on the date the court first determines the organization is not described in section 170(c)(2) as more particularly set for in section 7428(c)(1). For individual contributors, the maximum deduction protected is $1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

NAME OF ORGANIZATION	Effective Date of Revocation	LOCATION
Bill Keller Ministries	June 1, 2006	St. Petersburg, FL
B R I D G E S	January, 1, 2009	Cleveland, OH
Filipino Community of Seattle Community Development Corporation	January 1, 2009	Seattle, WA
The Genesis Foundation Inc.	January 1, 2003	Valparaiso, IN
Powers Foundation	April 10, 2006	Abilene, TX
Social Science Conferences, Inc.	August 1, 2011	Chapel Hill, NC
Triunfo Communications	September 1, 2001	Houston, TX
Woman to Woman Breast Cancer Foundation	November 1, 2010	Plantation, FL

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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