INTERNAL REVENUE
BULLETIN

IRS

HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2015–46
November 16, 2015

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 2015–73, page 660.

The Treasury and IRS released Notice 2015–47, 2015–30 I.R.B. 76, a Listing Notice that applies to a type of structured financial transaction in which a taxpayer attempts to defer and treat ordinary income and short-term capital gain (earned under a contract denominated as an option contract that references a basket of securities) as long-term capital gain. Notice 2015–73 was initiated in response to commenters' concerns that difficulty in identifying transactions that are the same as or substantially similar to the transactions described in Notice 2015–47 may cause taxpayers to file disclosures for transactions that are not intended to be treated as listed transactions at this time. Notice 2015–73 revokes Notice 2015–47 and provides additional details on the types of transactions that are listed transactions. Notice 2015–73 also provides procedures for taxpayers to change their method of accounting for transactions within the scope of the notice. The transaction described in Notice 2015–73 is similar to a transaction of interest described in Notice 2015–74.

Notice 2015–74, page 663.

The Treasury and IRS released Notice 2015–48, 2015–30 I.R.B. 77, a Transaction of Interest Notice that applies to a type of structured financial transaction in which a taxpayer attempts to defer and treat ordinary income and short-term capital gain (earned under a contract denominated as a derivative contract that references a basket of securities) as long-term capital gain. Notice 2015–74 was initiated in response to commenters' concerns that difficulty in identifying transactions that are the same as or substantially similar to the transactions described in Notice 2015–48 may cause taxpayers to file disclosures for transactions that are not intended to be treated as transactions of interest at this time. Notice 2015–74 revokes Notice 2015–48 and provides additional details on the types of transactions that are transactions of interest. Notice 2015–74 also provides procedures for taxpayers to change their method of accounting for transactions within the scope of the notice. The transaction described in Notice 2015–74 is similar to a listed transaction described in Notice 2015–73.

EMPLOYEE PLANS

Notice 2015–75, page 668.

Section 415 of the Internal Revenue Code (the Code) provides for dollar limitations on benefits and contributions under qualified retirement plans. Section 415(d) requires that the Secretary of the Treasury annually adjust these limits for cost of living increases. Other limitations applicable to deferred compensation plans are also affected by these adjustments under § 415. Under § 415(d), the adjustments are to be made under adjustment procedures similar to those used to adjust benefit amounts under § 215(i)(2)(A) of the Social Security Act.

EXEMPT ORGANIZATIONS

Announcement 2015–28, page 673.

Revocation of IRC 501(c)(3) Organizations for failure to meet the code section requirements. Contributions made to the organizations by individual donors are no longer deductible under IRC 170(b)(1)(A).

Announcement 2015–29, page 673.

Serves notice to potential donors of a stipulated decision by the United States Tax Court in declaratory judgment proceedings under Section 7428.

Announcement 2015–30, page 673.

Serves notice to potential donors of a stipulated decision by the United States Tax Court in declaratory judgment proceedings under Section 7428.

(Continued on the next page)

Finding Lists begin on page ii.

EXCISE TAX

Notice 2015–76, page 669.

This notice requests comments about issues that should be addressed in guidance relating to the excise tax imposed on amounts paid for the right to award free or reduced rate air transportation. Section 4261(e)(3) authorizes the IRS and Treasury Department to prescribe rules to exclude from the air transportation excise tax imposed by § 4261 amounts attributable to mileage awards (sometimes referred to as frequent flyer miles) that are redeemed other than for taxable transportation.

ADMINISTRATIVE

REG–121496–15, page 674.

This document contains proposed regulations that will reduce the user fee to obtain or renew a Preparer Tax Identification Number (PTIN) from $50 to $33 for each original and renewal application.

Notice 2015–76, page 669.

This notice requests comments about issues that should be addressed in guidance relating to the excise tax imposed on amounts paid for the right to award free or reduced rate air transportation. Section 4261(e)(3) authorizes the IRS and Treasury Department to prescribe rules to exclude from the air transportation excise tax imposed by § 4261 amounts attributable to mileage awards (sometimes referred to as frequent flyer miles) that are redeemed other than for taxable transportation.

T.D. 9742, page 657.

This document contains temporary regulations that will reduce the user fee to obtain or renew a Preparer Tax Identification Number (PTIN) from $50 to $33 for each original and renewal application.

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

T.D. 9742

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 300

Preparer Tax Identification Number (PTIN) User Fee Update

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the imposition of certain user fees on tax return preparers. The temporary regulations reduce the user fee to apply for or renew a preparer tax identification number (PTIN) and affect individuals who apply for or renew a PTIN. The Independent Offices Appropriations Act of 1952 authorizes the charging of user fees. The text of the temporary regulations also serves as the text of the proposed regulations (REG–121496–15) set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Bulletin**.

DATES: *Effective Date*: These regulations are effective on October 30, 2015.

Applicability Date: For date of applicability, see paragraph (d) of these temporary regulations.

FOR FURTHER INFORMATION CONTACT: Concerning the temporary regulations, Hollie M. Marx at (202) 317-6844; concerning cost methodology, Eva J. Williams at (202) 803-9728 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The Independent Offices Appropriations Act of 1952 (IOAA), which is codified at 31 U.S.C. 9701, authorizes agencies to prescribe regulations that establish user fees for services provided by the agency. The charges must be fair and must be based on the costs to the government, the value of the service to the recipient, the public policy or interest served, and other relevant facts. The IOAA provides that regulations implementing user fees are subject to policies prescribed by the President; these policies are set forth in the Office of Management and Budget Circular A–25, 58 FR 38142 (July 15, 1993) (OMB Circular A–25).

Under OMB Circular A–25, federal agencies that provide services that confer benefits on identifiable recipients are to establish user fees that recover the full cost of providing the special benefit. An agency that seeks to impose a user fee for government-provided services must calculate the full cost of providing those services. In general, a user fee should be set at an amount that allows the agency to recover the direct and indirect costs of providing the service, unless the Office of Management and Budget grants an exception. OMB Circular A–25 provides that agencies are to review user fees biennially and update them as necessary.

PTIN Requirement

Section 6109(a)(4) of the Internal Revenue Code authorizes the Secretary to prescribe regulations for the inclusion of a tax return preparer's identifying number on a return, statement, or other document required to be filed with the IRS. On September 30, 2010, the Treasury Department and IRS published final regulations under section 6109 (REG–134235–08) in the **Federal Register** (TD 9501) (75 FR 60315) (PTIN regulations) to provide that, for returns or claims for refund filed after December 31, 2010, the identifying number of a tax return preparer is the individual's PTIN or such other number prescribed by the IRS in forms, instructions, or other appropriate guidance. The PTIN regulations require a tax return preparer who prepares or who assists in preparing all or substantially all of a tax return or claim for refund after December 31, 2010 to have a PTIN. The PTIN regulations also state that the IRS will set forth in forms, instructions or other appropriate guidance PTIN application and renewal procedures, including the payment of a user fee. The PTIN regulations further state that the IRS may conduct a Federal tax compliance check on an individual who applies for or renews a PTIN.

In accordance with section 1.6109–2(d) of the PTIN regulations, the IRS has set forth application and renewal procedures in Form W–12, *IRS Paid Preparer Tax Identification Number (PTIN) Application and Renewal*, and the Form W–12 Instructions. Individuals may also apply for or renew a PTIN and pay the user fee online at irs.gov/ptin. The annual PTIN application and renewal period generally begins in the fall (on October 15 in previous years) of the year preceding the filing season to which the PTIN relates. A third-party vendor processes applications to obtain or renew a PTIN and charges a reasonable fee that is separate from the user fee charged by the government.

Requiring the use of PTINs improves tax administration and tax compliance and benefits tax return preparers by allowing them to provide an identifying number on the return that is not an SSN. Requiring the use of PTINs enables the IRS to better collect and track data on tax return preparers, including the number of persons who prepare returns, the qualifications of those who prepare returns, and the number of returns each person prepares. PTIN use allows the IRS to more easily identify and communicate with tax return preparers who make errors on returns, which benefits tax return preparers by improving compliance and therefore reducing the number of client returns that are examined. The PTIN also enables the IRS to more easily locate and review returns prepared by a tax return preparer when instances of misconduct or potential misconduct are detected, which aids tax administration and compliance. These aids to tax administration and compliance in turn benefit taxpayers and tax return preparers by working to reduce preparer error and misconduct.

Section 1.6109–2(d) states that only individuals authorized to practice before the IRS under 31 U.S.C. 330 are eligible

to obtain a PTIN. Under section 1.6109–2(h), the IRS may prescribe in forms, instructions, or other appropriate guidance exceptions to the requirements of the PTIN regulations, including the requirement that an individual must be authorized to practice before the IRS to be eligible to receive a PTIN. On December 30, 2010, the IRS released Notice 2011–6 (2011–3 IRB 315 (Jan. 17, 2011)), which stated that, until December 31, 2013, a provisional PTIN could be renewed upon proper application and payment of the applicable user fee, even if the individual holding the provisional PTIN was not authorized to practice before the IRS.

On June 3, 2011, the Treasury Department and the IRS published in the **Federal Register** (76 FR 32286) amendments to Treasury Department Circular No. 230 (31 CFR part 10), to regulate all tax return preparers under 31 U.S.C. 330. In *Loving v. IRS*, 917 F.Supp.2d 67 (D.D.C. 2013), the district court concluded that the IRS and Treasury Department lacked statutory authority to regulate tax return preparation as practice before the IRS under 31 U.S.C. 330 and enjoined the IRS and Treasury from enforcing the regulation of registered tax return preparers. The district court subsequently modified its order to clarify that the IRS's authority to require that tax return preparers obtain a PTIN is unaffected by the injunction. *Loving v. IRS*, 920 F.Supp.2d 108, 109 (D.D.C. 2013) (stating "Congress has specifically authorized the PTIN scheme by statute . . . [and that] scheme, therefore, does not fall within the scope of the injunction and may proceed as promulgated."). The United States Court of Appeals for the District of Columbia Circuit affirmed the district court's decision and order for injunction. *Loving v. IRS*, 742 F.3d 1013 (D.C. Cir. 2014).

PTIN User Fee

Final regulations (REG–139343–08) published in the **Federal Register** (TD 9503) (75 FR 60316) (PTIN user fee regulations) on September 30, 2010, established a $50 user fee to apply for or renew a PTIN. The $50 user fee was based on an annual PTIN renewal period and an estimate that 1.2 million individuals would be applying for or renewing a PTIN each year.

The IRS and Treasury Department determined that a $50 user fee to apply for or renew a PTIN would recover the full direct and indirect costs that the government incurs to administer the PTIN application and renewal process. The initial determination of a $50 annual fee took into account certain costs that the IRS ascertained it would incur to provide the special benefit associated with the provision of PTINs. As explained in the PTIN user fee regulations, the initial projected costs included the development and maintenance of the IRS information technology system that would interface with a third-party vendor, the development and maintenance of internal applications that would have the capacity to process and administer the anticipated increase in PTIN applications, customer service support activities, which included website development and maintenance and call center staffing to respond to questions regarding PTIN usage and renewal. The $50 user fee was also determined to recover costs for personnel, administrative, and management support needed to evaluate and address tax compliance issues of individuals applying for and renewing a PTIN, to investigate and address conduct and suitability issues, and otherwise support and enforce the programs that required an individual to apply for and renew a PTIN.

The vendor's fee, currently set at $14.25 for new applications and $13 for renewal applications, is paid directly to the vendor and covers the costs incurred by the vendor to process applications and renewals. The agency user fee and the vendor fee pay for different aspects of the PTIN program, each of which is essential to the program.

Explanation of Provisions

Pursuant to the guidelines in OMB Circular A–25, the IRS has re-calculated its cost of providing services under the PTIN application and renewal process. The IRS has determined that the full cost of administering the PTIN program going forward has been reduced from $50 to $33 per application or renewal. Individuals who prepare or assist in preparing all or substantially all of a tax return or claim for refund for compensation are required to have a PTIN. The ability to prepare tax returns and claims for refund for compensation is a special benefit, for which the IRS may charge a user fee to recover the full costs of providing the special benefit.

The amount of the user fee is $33 for both initial PTIN applications and renewals because the activities the IRS is required to perform to issue a new PTIN or renew an existing PTIN are the same. Pursuant to the authority granted in section 6109(c), the IRS has determined that it requires certain information to assign (or, in the case of a renewal, re-assign) a PTIN to an individual. The required information is set forth in the Form W–12 and Form W–12 Instructions.

The PTIN user fee is based on direct costs of the PTIN program, which include staffing and contract-related costs for activities, processes, and procedures related to the electronic and paper registration and renewal submissions; tax compliance and background checks; professional designation checks; foreign preparer processing; compliance and IRS complaint activities; information technology and contract-related expenses; and communications. The PTIN user fee also takes into account various indirect program costs, including management and support costs.

The reduction in the fee amount is attributable to several factors, which include the reduced number of PTIN holders (approximately 700,000) from the number originally projected (1.2 million) in 2010, which reduced associated costs; the absorption of certain development costs in the early years of the program; and the fact that certain activities that would have been required to regulate registered tax return preparers will not be performed. In particular, the determination of the user fee no longer includes expenses for personnel who perform functions primarily related to continuing education and testing for registered tax return preparers. Additionally, expenses related to personnel who perform continuing education and testing for enrolled agents and enrolled retirement plan agents were also removed from the user fee.

Individuals who apply for or renew a PTIN will continue to pay a fee directly to a third-party vendor, which is separate from the user fee described in this Trea-

sury decision. The vendor fee is increasing from $14.25 for original applications and $13 for renewal applications to $17 for original applications and $17 for renewal applications.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563.

Historically, the annual PTIN application and renewal period has begun on October 15. For 2015, the date has been postponed to November 1. There is insufficient time before November 1 to provide an opportunity for notice and public comment and issue a final regulation prior to that date. To enable the reduced fee amount to be in effect for PTINs issued or renewed by tax return preparers preparing returns in 2016, the IRS and Treasury find that there is good cause to dispense with (1) notice and public comment pursuant to 5 U.S.C. 553(b) and (c) and (2) a delayed effective date pursuant to 5 U.S.C. 553(d). It would be impracticable, unnecessary, and contrary to the public interest to continue to charge the current fee when the IRS has determined pursuant to the biennial review conducted under OMB Circular A–25 that the fee should be reduced going forward. The IRS and Treasury Department will consider public comments submitted in response to the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the **Bulletin** and will promulgate a final rule after considering those comments.

For applicability of the Regulatory Flexibility Act, please refer to the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the **Bulletin**. Pursuant to section 7805(f), this Treasury decision has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Hollie M. Marx, Office of the Associate Chief Counsel (Procedure and Administration).

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 300 is amended as follows:

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

Authority: 31 U.S.C. 9701.

Par. 2. Section 300.13 is amended by removing and reserving paragraph (b) to read as follows:

§ 300.13 Fee for obtaining a preparer tax identification number.

* * * * *

(b) *Fee*. [Reserved]

* * * * *

Par. 3. Section 300.13T is added to read as follows:

§ 300.13T Fee for obtaining a preparer tax identification number.

(a) [Reserved]

(b) *Fee*. The fee to apply for or renew a preparer tax identification number is $33 per year, which is the cost to the government for processing the application for a preparer tax identification number and does not include any fees charged by the vendor.

(c) [Reserved]

(d) *Effective/applicability date*. This section will be applicable for all PTIN applications filed on or after November 1, 2015.

Karen M. Schiller
Acting Deputy Commissioner for Services and Enforcement.

Approved: October 16, 2015.

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

(Filed by the Office of the Federal Register on October 29, 2015, 8:45 a.m., and published in the issue of the Federal Register for October 30, 2015, 80 F.R. 27789)

Part III. Administrative, Procedural, and Miscellaneous

Listing Notice–Basket Option Contracts

Notice 2015–73

The Treasury Department and the Internal Revenue Service (the "IRS") are aware of a type of structured financial transaction, described below, in which a taxpayer attempts to defer income recognition and convert short-term capital gain and ordinary income to long-term capital gain using a contract denominated as an option contract. The Treasury Department and the IRS believe this transaction (the "basket option contract") is a tax avoidance transaction. Notice 2015–47, 2015–30 I.R.B. 76, identified the basket option contract and substantially similar transactions as listed transactions for purposes of § 1.6011–4(b)(2) of the Income Tax Regulations and §§ 6111 and 6112 of the Internal Revenue Code ("the Code"). Notice 2015–47 also alerted persons involved in these transactions about certain responsibilities that may arise from their involvement with these transactions.

Commenters expressed concern that difficulty in identifying transactions that are the same as, or substantially similar to, the transaction described in Notice 2015–47 may cause taxpayers to file disclosures for transactions that are not intended to be treated as listed transactions at this time. This notice revokes Notice 2015–47. Section 2 of this notice provides additional details on the types of transactions that are the same as, or substantially similar to, the transaction described in this notice, and thus listed transactions for purposes of § 1.6011–4(b)(2) and §§ 6111 and 6112 of the Code. Section 3.06 of this notice provides procedures for taxpayers to change their method of accounting for transactions within the scope of this notice.

Section 2.04 of this notice more specifically describes the tax benefits that identify the transaction described in this notice as a listed transaction. No inference is intended regarding the appropriate treatment of transactions not described in this notice. The IRS may challenge, including by asserting judicial doctrines, claimed tax benefits under §§ 871, 881 and 882 or other provisions of the Code, and assert failures to comply with reporting obligations associated with investments in passive foreign investment companies and withholding and reporting obligations under Chapters 3 and 4 of the Code.

SECTION 1. BACKGROUND

In a basket option contract, a taxpayer ("T"), typically a hedge fund or a high net-worth individual, enters into a contract that is denominated as an option with a counterparty ("C"), typically a bank, to receive a return based on the performance of a notional basket of referenced actively traded personal property (the "reference basket"). T, or a designee named by T, will either determine the assets that comprise the reference basket or design or select a trading algorithm that determines the assets. While the basket option contract remains open, T[1] has the right to change the assets in the reference basket, request that C change the assets in the reference basket, change the trading algorithm, or request that C change the trading algorithm (collectively, discretion).[2] The terms of the basket option contract may permit C to reject certain changes requested by T to the assets in the reference basket or the trading algorithm. C, however, generally accepts all or nearly all of the changes requested by T.

When the basket option contract is entered into, T typically makes an upfront cash payment to C of between 10 and 40 percent of the value of the assets in the reference basket. To manage its risk under the basket option contract, C typically acquires substantially all of the assets in the reference basket at the inception of the contract and acquires and disposes of assets during the term of the contract either when T changes the assets in the reference basket or the trading algorithm provides for such changes. C generally supplies the additional cash required to purchase the assets in the reference basket. The assets in the reference basket would typically generate ordinary income if held directly by T, and short-term gains and losses if purchases and sales of the assets were carried out directly by T.

The basket option contract has a stated term of more than one year but contains provisions that in effect allow either party to terminate the contract at any time during the stated contract term with proper notice. The amount that T receives upon settlement of the basket option contract is based on the performance of the assets in the reference basket. A common payout formula on the basket option contract entitles T to a return equal to the upfront payment, plus net basket gain or minus net basket loss. The net basket gain or net basket loss includes net changes in the values of the assets in the reference basket, together with interest, dividend, and other periodic income on the assets, reduced by C's fee for its role in the transaction. The basket option contract typically includes a provision automatically terminating the contract if the amount of the net basket loss reaches the amount of the upfront payment, giving T a cash settlement amount of zero. The basket option contract also may permit or require T to provide additional collateral or otherwise reduce risk in the reference basket if a specified level of risk is reached.

The basket option contract typically contains other safeguards to minimize the economic risk to C. For example, C may terminate the basket option contract if T violates investment guidelines that are part of the contract. C typically holds the rights associated with legal title to the assets and positions in the reference basket, including voting rights and the right to commingle, lend, pledge, transfer, or otherwise use the assets in the basket without notice to T.

T takes the position that T's short-term trading gains and interest, dividend, and other ordinary periodic income from the performance of the reference basket are deferred until the basket option contract

[1]When used in this sentence and subsequently with respect to changing or requesting changes to the assets in the reference basket or the trading algorithm, references to "T" include T's designee as defined in section 2.02 of this notice.

[2]See also section 2.03 of this notice.

terminates and, if the basket option contract is held for more than one year, that the entire gain is treated as long-term capital gain.

The Treasury Department and the IRS are concerned that taxpayers are using a basket option contract to inappropriately defer income recognition or convert ordinary income or short-term capital gain into long-term capital gain. In some cases, taxpayers are also mischaracterizing a transaction as an option to avoid application of § 1260. Therefore, the Treasury Department and the IRS are identifying transactions described in section 2 of this notice as listed transactions.

The IRS may assert one or more arguments to challenge the parties' tax characterization of a basket option contract, including: (1) that C, in substance, holds the assets in the reference basket as an agent of T and that T is the beneficial owner of the assets for tax purposes; (2) that the basket option contract is not an option for tax purposes; (3) that changes to the assets in the reference basket during the year materially modify the basket option contract and result in taxable dispositions of the contract under § 1001 throughout the term of the contract; and (4) that T actually owns separate contractual rights with respect to each asset in the reference basket such that each change to the assets in the basket results in a taxable disposition of a contractual right under § 1001 with respect to the asset affected by the change. The IRS may assert other arguments supporting the conclusion that T is the beneficial owner of the assets in the reference basket for tax purposes.

SECTION 2. LISTED TRANSACTIONS

.01 *Transactions Identified as Listed Transactions*

A transaction is the same as, or substantially similar to, the transaction identified in this notice only if: (1) T enters into a transaction with C that is denominated as an option contract; (2) T receives a return based on the performance of the reference basket; (3) substantially all of the assets in the reference basket primarily consist of actively traded personal property as defined under § 1.1092(d)–1(a); (4) the contract is not fully settled at intervals of one year or less; (5) T or T's designee (as defined in section 2.02 of this notice) has exercised discretion (as defined in section 2.03 of this notice) to change (either directly or through a request to C) the assets in the reference basket or the trading algorithm; and (6) T's tax return for a taxable year ending on or after January 1, 2011,[3] reflects a tax benefit described in section 2.04 of this notice. Notwithstanding any other provision in this notice, a transaction is not the same as, or substantially similar to, the listed transaction identified in this notice if the transaction is described in section 2.05 of this notice.

.02 *Designee*

For purposes of this notice, any reference to T having the right to change or request changes to the assets in the reference basket or the trading algorithm includes T's designee as defined in this section 2.02. T's designee is any person who is: (1) T's agent under principles of agency law; (2) compensated by T for suggesting, requesting, or determining changes in the assets in the reference basket or the trading algorithm; or (3) selected by T to suggest, request, or determine changes in the assets in the reference basket or the trading algorithm. A person will not, however, be treated as compensated or selected by T as a result of: (1) the person's position as an investment advisor, officer, or employee of an entity, such as a mutual fund, when the entity's publicly offered securities are included in the reference basket; or (2) the person's use of, the person's payment of a licensing fee for the right to use, or the person's authority to suggest, request, or determine changes in the assets included in (y) a widely used and publicly quoted index that is based on objective financial information or (z) an index that tracks a broad market or a market segment.

.03 *Discretion*

For purposes of this notice, T will not be treated as having discretion to change (either directly or through a request to C) the assets in the reference basket or the trading algorithm if changes in the assets in the reference basket or the trading algorithm are made according to objective instructions, operations, or calculations that are disclosed at the inception of the transaction (the rules) and T does not have the right to alter or amend the rules during the term of the transaction or to deviate from the assets in the reference basket or the trading algorithm selected in accordance with the rules. For these purposes, T will not be treated as having authority to alter or amend the rules solely because T has the authority to: (1) exercise routine judgment in the administration of the rules provided, however, that such routine judgment does not include deviations or alteration to the rules that are designed to improve the financial performance of the reference basket; (2) correct errors in the implementation of the rules or calculations made pursuant to the rules; or (3) make an adjustment to respond to an unanticipated event outside of T's control, such as a stock split, merger, listing or delisting, nationalization, or insolvency of a component of a basket, a disruption in the financial markets for specific assets or in a particular jurisdiction, regulatory compliance requirement, force majeure, or any other unanticipated event of similar magnitude and significance.

.04 *Tax Benefit*

For purposes of this notice, a tax benefit is a deferral of income into a later taxable year or a conversion of ordinary income or short-term capital gain or loss into long-term capital gain or loss.

.05 *Excluded Contracts*

A transaction is not the same as, or substantially similar to, the transaction described in this notice if: (1) the contract is traded on (a) a national securities exchange that is regulated by the Securities and Exchange Commission or a domestic board of trade regulated by the Commodity Futures Trading Commission, or (b) a foreign exchange or board of trade that is subject to regulation by a comparable regulator; or (2) the contract is treated as a contingent payment debt instrument under § 1.1275–4 (including a short-term con-

[3]See section 3.01 for disclosure requirements.

tingent payment debt instrument) or a variable rate debt instrument under § 1.1275–5. With respect to T, a transaction is not the same as, or substantially similar to, the transaction described in this notice unless T's tax return for a taxable year ending on or after January 1, 2011,[4] reflects a tax benefit of the transaction that is described in section 2.04 of this notice. With respect to C, a transaction is not the same as, or substantially similar to, the transaction described in this notice if: (1) T represents to C in writing under penalties of perjury that T's tax return has not and will not reflect a tax benefit described in section 2.04 of this notice in any taxable year ending on or after January 1, 2011,[5] or (2) C has established that T is a nonresident alien that is not engaged in a U.S. trade or business or a foreign corporation that is not engaged in a U.S. trade or business by obtaining a valid withholding certificate from the beneficial owner of the payments made or to be made under the basket option contract (W–8BEN, W–8BEN–E, or W–8EXP), or in the case of payments made outside of the U.S. on offshore obligations, by obtaining documentary evidence as described in § 1.1441–1(c)(17).

SECTION 3. RULES OF APPLICATION

.01 *Effective Date*

Transactions in effect on or after January 1, 2011, that are the same as, or substantially similar to, the transaction described in this notice are identified as "listed transactions" for purposes of § 1.6011–4(b)(2) and §§ 6111 and 6112 as of October 21, 2015. Persons engaged in transactions in effect on or after January 1, 2011, must disclose the transactions as described in § 1.6011–4 for each taxable year in which the taxpayer participated in the transactions, provided that the period of limitations for assessment of tax had not ended on or before October 21, 2015. Material advisors who make a tax statement on or after January 1, 2011, with respect to transactions in effect on or after January 1, 2011, have disclosure and list maintenance obligations under §§ 6111 and 6112. See §§ 301.6111–3, 301.6112–1.

Independent of their classification as listed transactions, transactions that are the same as, or substantially similar to, the transaction described in this notice may already be subject to the requirements of §§ 6011, 6111, or 6112, or the regulations thereunder. If a transaction is identified as a listed transaction under section 2.01 of this notice and as a transaction of interest in Notice 2015–74, the transaction is identified as a listed transaction. Persons satisfying the disclosure requirements for a listed transaction under this notice are deemed to have satisfied the disclosure requirements under Notice 2015–74.

.02 *Participation*

Under § 1.6011–4(c)(3)(i)(A), for each year in which a transaction described in this notice (basket option contract) is open, only the following parties are treated as participating in the listed transaction identified in this notice: (1) the purchaser of the basket option contract, (2) if the purchaser of the basket option contract is a partnership, any general partner of the purchaser, (3) if the purchaser of the basket option contract is a limited liability company, any managing member of the purchaser, and (4) the counterparty to the basket option contract.

.03 *Time for Disclosure*

For rules regarding the time for providing disclosure of a transaction described in this notice, see § 1.6011–4(e) and § 301.6111–3(e). However, if, under § 1.6011–4(e), a taxpayer is required to file a disclosure statement with respect to the listed transaction described in this notice after October 21, 2015, and prior to January 19, 2016, that disclosure statement will be considered to be timely filed if the taxpayer alternatively files the disclosure with the Office of Tax Shelter Analysis by January 19, 2016.

.04 *Material Advisor Threshold Amount*

For the threshold amounts necessary to become a material advisor to a listed transaction, see § 301.6111–3(b)(3)(i)(B).

.05 *Penalties and Period of Limitations*

Persons required to disclose these transactions under § 1.6011–4 who fail to do so may be subject to the penalty under § 6707A. Persons required to disclose these transactions under § 6111 who fail to do so may be subject to the penalty under § 6707(a). Persons required to maintain lists of advisees under § 6112 who fail to do so (or who fail to provide such lists when requested by the IRS) may be subject to the penalty under § 6708(a). In addition, the IRS may impose other penalties on parties involved in these transactions or substantially similar transactions, including the accuracy-related penalty under §§ 6662 or 6662A. Persons required to disclose these transactions under § 1.6011–4 who fail to do so may be subject to an extended period of limitations on assessment under § 6501(c)(10).

The Treasury Department and the IRS recognize that some taxpayers may have filed tax returns taking the position that they were entitled to the purported tax benefits of the type of transaction described in this notice. These taxpayers should take appropriate corrective action and ensure that their transactions are disclosed properly.

.06 *Requests for a Change in Method of Accounting*

(1) *Background*. Section 446(e) and § 1.446–1(e) provide that, except as otherwise provided, a taxpayer must secure the consent of the Commissioner before changing a method of accounting for federal income tax purposes. Section 1.446–1(e)(3)(i) provides that, to obtain the Commissioner's consent to an accounting method change, a taxpayer must file a Form 3115, *Application for Change in Accounting Method*, during the taxable year in which the taxpayer desires to make the proposed change. Section 1.446–1(e)(3)(ii) authorizes the Commissioner to prescribe administrative procedures setting forth the limitations, terms, and conditions deemed necessary to permit a taxpayer to obtain consent to change a

[4]See section 3.01 for disclosure requirements.

[5]See section 3.01 for disclosure requirements.

method of accounting in accordance with § 446(e).

Rev. Proc. 2015–13, 2015–5 I.R.B. 419, as clarified and modified by Rev. Proc. 2015–33, 2015–24 I.R.B. 1067, provides the procedures for obtaining the consent of the Commissioner to change a method of accounting for Federal income tax purposes. Under the non-automatic change procedures of Rev. Proc. 2015–13, a taxpayer generally must file a Form 3115 during the year of change. When a taxpayer computes its taxable income using a method of accounting that differs from the method of accounting used during the preceding taxable year, a § 481(a) adjustment is required to prevent the duplication or omission of taxable income. See § 1.446–1(e)(3)(ii).

Section 11.02 of Rev. Proc. 2015–13 states that the national office will deny any Form 3115 requesting consent to make a change in method of accounting in any situation in which the national office determines that permitting the requested change in method of accounting would not clearly reflect income or would otherwise not be in the interest of sound tax administration. As part of this determination, the national office will consider whether the change in method of accounting would clearly and directly frustrate compliance efforts of the IRS in administering the income tax laws. The national office will consider all the facts and circumstances and exercise discretion under §§ 446(e) and 481(c) in a manner that generally minimizes distortions of income across taxable years, as well as on an annual basis.

Rev. Rul. 90–38, 1990–1 C.B. 57, provides that, if a taxpayer uses an erroneous method of accounting for two or more consecutive taxable years, the taxpayer has adopted a method of accounting. The ruling further provides that a taxpayer may not, without the Commissioner's consent, retroactively change from an erroneous to a permissible method of accounting by filing an amended return. See also Rev. Proc. 2015–13, section 2.03(1).

(2) *In general*. The IRS has determined that it is not in the interest of sound tax administration to permit a prospective change in method of accounting[6] for a transaction within the scope of this notice. Accordingly, the IRS will not process applications for any changes in method of accounting filed under the non-automatic change procedures of Rev. Proc. 2015–13 for a transaction within the scope of this notice. A taxpayer may, however, change its method of accounting for a transaction within the scope of this notice by filing an amended return in accordance with section 3.06(3) of this notice.

(3) *Change in method of accounting by filing amended returns*.

(a) *In general*. In accordance with § 1.446–1(e)(3)(ii) and Rev. Rul. 90–38, consent is hereby granted for any taxpayer that has engaged in a transaction within the scope this notice to file amended returns to retroactively change from an impermissible method of accounting to a permissible method of accounting for the transaction. This consent is granted only if the taxpayer files such amended returns using a permissible method of accounting for such transactions for the first taxable year in which the taxpayer used the impermissible method of accounting for any such transaction (or if the period of limitations has expired for such taxable year, for the first taxable year for which the period of limitations has not expired) and for each subsequent taxable year in which the taxpayer's use of the impermissible method of accounting for these transactions affected the taxpayer's taxable income. If the period of limitations has expired for the first taxable year in which a taxpayer used the impermissible method of accounting for these transactions and the taxpayer files amended returns pursuant to this notice, the amended return for the first taxable year for which the period of limitations has not expired must include the entire amount of the § 481(a) adjustment, whether positive or negative, attributable to the change in accounting method as ordinary in character. The terms, conditions, and administrative procedures of Rev. Proc. 2015–13, as clarified and modified by Rev. Proc. 2015–33, do not apply to a taxpayer changing its method of accounting by amending its Federal income tax returns under section 3.06(3) of this notice.

(b) *Manner of making change*.

A taxpayer filing amended returns under this notice must comply with the requirements of § 1.6011–4 including, but not limited to, attaching to the amended return any disclosure statements that may be required in accordance with § 1.6011–4(a) and (e). In addition, a taxpayer filing an amended return under this section 3.06(3)(b) must write "FILED UNDER NOTICE 2015–73" at the top of any amended paper return or, with respect to any amended return submitted electronically, must indicate "FILED UNDER NOTICE 2015–73."

SECTION 4. EFFECT ON OTHER DOCUMENTS

Notice 2015–47 is revoked.

SECTION 5. DRAFTING INFORMATION

The principal authors of this notice are Orla J. O'Connor and Robert A. Martin of the Office of the Associate Chief Counsel (Financial Institutions and Products). For further information regarding this notice, contact Ms. O'Connor at (202) 317-6367 or Mr. Martin at (202) 317-4455 (not toll-free numbers).

Transaction of Interest–Basket Contracts

Notice 2015–74

The Treasury Department and the Internal Revenue Service (the "IRS") are aware of a type of structured financial transaction, described below, in which a taxpayer attempts to defer income recognition and may attempt to convert short-term capital gain and ordinary income to long-term capital gain through a contract denominated as an option, notional principal contract, forward contract, or other derivative contract. The Treasury Department and the IRS believe this transaction (the "basket contract") has a potential for tax avoidance or evasion but lack enough information to determine whether the transaction should be identified specifically as a tax avoidance transaction. Notice 2015–48, 2015–30 I.R.B. 77, identified the basket

[6]Nothing in this notice may be construed as identifying whether the taxpayer's treatment of any particular aspect of a transaction described in this notice is a method of accounting.

contract and substantially similar transactions as transactions of interest for purposes of § 1.6011–4(b)(6) of the Income Tax Regulations and §§ 6111 and 6112 of the Internal Revenue Code ("the Code"). Notice 2015–48 also alerted persons involved in these transactions about certain responsibilities that may arise from their involvement with these transactions.

Commenters expressed concern that difficulty in identifying transactions that are the same as, or substantially similar to, the transaction described in Notice 2015–48 may cause taxpayers to file disclosures for transactions that are not intended to be treated as transactions of interest at this time. This notice revokes Notice 2015–48. Section 2 of this notice provides additional details on the types of transactions that are the same as or substantially similar to the transaction described in this notice, and thus transactions of interest for purposes of § 1.6011–4(b)(6) and §§ 6111 and 6112 of the Code. Section 3.06 of this notice provides procedures for taxpayers to change their method of accounting for transactions within the scope of this notice.

Section 2.04 of this notice more specifically describes the tax benefits that identify the transaction described in this notice as a transaction of interest. No inference is intended regarding the appropriate treatment of transactions not described in this notice. The IRS may challenge, including by asserting judicial doctrines, claimed tax benefits under §§ 871, 881 and 882 or other provisions of the Code, and assert failures to comply with reporting obligations associated with investments in passive foreign investment companies and withholding and reporting obligations under Chapters 3 and 4 of the Code.

SECTION 1. BACKGROUND

In a basket contract, a taxpayer ("T") enters into a contract with a counterparty ("C") to receive a return based on the performance of a notional basket of referenced assets (the "reference basket"). The assets that comprise the reference basket may include (1) interests in entities that trade securities, commodities, foreign currency, or similar property ("hedge fund interests"), (2) securities, (3) commodities, (4) foreign currency, or (5) similar property (or positions in such property). T, or a designee named by T, will either determine the assets that comprise the reference basket or design or select a trading algorithm that determines the assets. While the basket contract remains open, T[1] has the right to change the assets in the reference basket, request that C change the assets in the reference basket, change the trading algorithm, or request that C change the trading algorithm (collectively, discretion).[2] The terms of the basket contract may permit C to reject certain changes requested by T to the assets in the reference basket or the trading algorithm. C, however, generally accepts all or nearly all of the changes requested by T.

When the basket contract is entered into, T typically makes an upfront cash payment to C of between 10 and 40 percent of the value of the assets in the reference basket. To manage its risk under the basket contract, C typically acquires all or substantially all of the assets in the reference basket at the inception of the contract and acquires and disposes of assets during the term of the contract either when T changes the assets in the reference basket or the trading algorithm provides for such changes. C generally supplies the additional cash required to purchase the assets in the reference basket. The assets in the reference basket would typically generate ordinary income if held directly by T, and short-term gains and losses if purchases and sales of the assets were carried out directly by T.

The basket contract has a stated term of more than one year or overlaps two of T's taxable years but contains provisions that in effect allow either party to terminate the contract at any time during the stated contract term with proper notice. The amount that T receives upon settlement of the basket contract is based on the performance of the assets in the reference basket. A common payout formula on the basket contract entitles T to a return equal to the upfront payment, plus net basket gain or minus net basket loss. The net basket gain or net basket loss includes net changes in the values of the assets in the reference basket, together with interest, dividend, and other periodic income on the assets, reduced by C's fee for its role in the transaction. The basket contract typically includes a provision automatically terminating the contract if the amount of the net basket loss reaches the amount of the upfront payment, giving T a cash settlement amount of zero. The basket contract also may permit or require T to provide additional collateral or otherwise reduce risk in the reference basket if a specified level of risk is reached.

The basket contract typically contains other safeguards to minimize the economic risk to C. For example, C may terminate the basket contract if T violates investment guidelines that are part of the contract. C typically holds the rights associated with legal title to the assets and positions in the reference basket, including voting rights and the right to commingle, lend, pledge, transfer, or otherwise use the assets in the basket without notice to T.

T takes the position that T's short-term trading gains and interest, dividend, and other ordinary periodic income from the performance of the reference basket are deferred until the basket contract terminates and, if the basket contract is held for more than one year, that the entire gain is treated as long-term capital gain.

The Treasury Department and the IRS are concerned that taxpayers may be using a basket contract to inappropriately defer income recognition or convert ordinary income or short-term capital gain into long-term capital gain. In some cases, taxpayers also may be mischaracterizing the form of the transaction to avoid application of § 1260. Therefore, the Treasury Department and the IRS are identifying transactions described in section 2 of this notice as transactions of interest. The Treasury Department and the IRS believe that the use of a basket contract to claim the tax treatment specified herein may be improper.

[1]When used in this sentence and subsequently with respect to changing or requesting changes to the assets in the reference basket or the trading algorithm, references to "T" include T's designee as defined in section 2.02 of this notice.

[2]See also section 2.03 of this notice.

SECTION 2. TRANSACTIONS OF INTEREST

.01 *Transactions Identified as Transactions of Interest*

A transaction is the same as, or substantially similar to, the transaction of interest identified in this notice only if: (1) T enters into a contract with C to receive a return based on the performance of the reference basket; (2) the basket contract has a stated term of more than one year or overlaps two of T's taxable years; (3) T or T's designee (as defined in section 2.02 of this notice) has exercised discretion (as defined in section 2.03 of this notice) to change (either directly or through a request to C) the assets in the reference basket or the trading algorithm; and (4) T's tax return for a taxable year ending on or after January 1, 2011,[3] reflects a tax benefit described in section 2.04 of this notice. Notwithstanding any other provision in this notice, a transaction is not the same as, or substantially similar to, the transaction of interest identified in this notice if the transaction is described in section 2.05 of this notice.

.02 *Designee*

For purposes of this notice, any reference to T having the right to change or request changes to the assets in the reference basket or the trading algorithm includes T's designee as defined in this section 2.02. T's designee is any person who is: (1) T's agent under principles of agency law; (2) compensated by T for suggesting, requesting, or determining changes in the assets in the reference basket or the trading algorithm; or (3) selected by T to suggest, request, or determine changes in the assets in the reference basket or the trading algorithm. A person will not, however, be treated as compensated or selected by T as a result of: (1) the person's position as an investment advisor, officer, or employee of an entity, such as a mutual fund, when the entity's publicly offered securities are included in the reference basket; or (2) the person's use of, the person's payment of a licensing fee for the right to use, or the person's authority to suggest, request, or determine changes in the assets included in (y) a widely used and publicly quoted index that is based on objective financial information or (z) an index that tracks a broad market or a market segment.

.03 *Discretion*

For purposes of this notice, T will not be treated as having discretion to change (either directly or through a request to C) the assets in the reference basket or the trading algorithm if changes in the assets in the reference basket or the trading algorithm are made according to objective instructions, operations, or calculations that are disclosed at the inception of the transaction (the rules) and T does not have the right to alter or amend the rules during the term of the transaction or to deviate from the assets in the reference basket or the trading algorithm selected in accordance with the rules. For these purposes, T will not be treated as having authority to alter or amend the rules solely because T has the authority to: (1) exercise routine judgment in the administration of the rules provided, however, that such routine judgment does not include deviations or alteration to the rules that are designed to improve the financial performance of the reference basket; (2) correct errors in the implementation of the rules or calculations made pursuant to the rules; or (3) make an adjustment to respond to an unanticipated event outside of T's control, such as a stock split, merger, listing or delisting, nationalization, or insolvency of a component of a basket, a disruption in the financial markets for specific assets or in a particular jurisdiction, regulatory compliance requirement, force majeure, or any other unanticipated event of similar magnitude and significance.

.04 *Tax Benefit*

For purposes of this notice, a tax benefit is a deferral of income into a later taxable year or a conversion of ordinary income or short-term capital gain or loss into long-term capital gain or loss.

.05 *Excluded Contracts*

A transaction is not the same as, or substantially similar to, the transaction described in this notice if: (1) the contract is traded on (a) a national securities exchange that is regulated by the Securities and Exchange Commission or a domestic board of trade regulated by the Commodity Futures Trading Commission, or (b) a foreign exchange or board of trade that is subject to regulation by a comparable regulator; or (2) the contract is treated as a contingent payment debt instrument under § 1.1275–4 (including a short-term contingent payment debt instrument) or a variable rate debt instrument under § 1.1275–5. With respect to T, a transaction is not the same as, or substantially similar to, the transaction described in this notice unless T's tax return for a taxable year ending on or after January 1, 2011,[4] reflects a tax benefit of the transaction that is described in section 2.04 of this notice. With respect to C, a transaction is not the same as, or substantially similar to, the transaction described in this notice if: (1) T represents to C in writing under penalties of perjury that T's tax return has not and will not reflect a tax benefit described in section 2.04 of this notice in any taxable year ending on or after January 1, 2011,[5] or (2) C has established that T is a nonresident alien that is not engaged in a U.S. trade or business or a foreign corporation that is not engaged in a U.S. trade or business by obtaining a valid withholding certificate from the beneficial owner of the payments made or to be made under the basket contract (W–8BEN, W–8BEN–E, or W–8EXP), or in the case of payments made outside of the U.S. on offshore obligations, by obtaining documentary evidence as described in § 1.1441–1(c)(17).

SECTION 3. RULES OF APPLICATION

.01 *Effective Date*

Transactions entered into on or after November 2, 2006, that are the same as, or substantially similar to, the transac-

[3]See section 3.01 for disclosure requirements.

[4]See section 3.01 for disclosure requirements.

[5]See section 3.01 for disclosure requirements.

tions described in this notice, and in effect on or after January 1, 2011, are identified as transactions of interest for purposes of § 1.6011–4(b)(6) and §§ 6111 and 6112 as of October 21, 2015. Persons engaged in transactions entered into on or after November 2, 2006, and in effect on or after January 1, 2011, must disclose the transactions as described in § 1.6011–4 for each taxable year in which the taxpayer participated in the transactions, provided that the period of limitations for assessment of tax had not ended on or before October 21, 2015. Material advisors who make a tax statement on or after January 1, 2011, with respect to transactions in effect on or after January 1, 2011, have disclosure and list maintenance obligations under §§ 6111 and 6112. See §§ 301.6111–3, 301.6112–1.

Independent of their classification as transactions of interest, transactions that are the same as, or substantially similar to, the transaction described in this notice may already be subject to the requirements of §§ 6011, 6111, or 6112, or the regulations thereunder. If a transaction is identified as a listed transaction under section 2.01 of Notice 2015–73, and as a transaction of interest under this notice, the transaction is identified as a listed transaction. Persons satisfying the disclosure requirements for a listed transaction under Notice 2015–73 are deemed to have satisfied the disclosure requirements under this notice.

When the Treasury Department and the IRS have gathered enough information to make an informed decision as to whether these transactions are a tax avoidance type of transaction, the Treasury Department and the IRS may take one or more administrative actions, including removing the transactions from the transactions of interest category in published guidance, designating the transactions as a listed transaction, or providing a new category of reportable transactions. In the interim, in appropriate situations, the IRS may challenge the taxpayer's position taken as part of these transactions under §§ 1260, 1001, or other provisions of the Code or under judicial doctrines, such as substance over form.

.02 *Participation*

Under § 1.6011–4(c)(3)(i)(E), for each year in which a transaction described in this notice (basket contract) is open, only the following parties are treated as participating in the transaction of interest identified in this notice: (1) the purchaser of the basket contract, (2) if the purchaser of the basket contract is a partnership, any general partner of the purchaser, (3) if the purchaser of the basket contract is a limited liability company, any managing member of the purchaser, and (4) the counterparty to the basket contract.

.03 *Time for Disclosure*

For rules regarding the time for providing disclosure of a transaction described in this notice, see § 1.6011–4(e) and § 301.6111–3(e). However, if, under § 1.6011–4(e), a taxpayer is required to file a disclosure statement with respect to the transaction of interest described in this notice after October 21, 2015, and prior to January 19, 2016, that disclosure statement will be considered to be timely filed if the taxpayer alternatively files the disclosure with the Office of Tax Shelter Analysis by January 19, 2016.

.04 *Material Advisor Threshold Amount*

The threshold amounts are the same as those for listed transactions. See § 301.6111–3(b)(3)(i)(B).

.05 *Penalties*

Persons required to disclose these transactions under § 1.6011–4 who fail to do so may be subject to the penalty under § 6707A. Persons required to disclose these transactions under § 6111 who fail to do so may be subject to the penalty under § 6707(a). Persons required to maintain lists of advisees under § 6112 who fail to do so (or who fail to provide such lists when requested by the IRS) may be subject to the penalty under § 6708(a). In addition, the IRS may impose other penalties on parties involved in these transactions or substantially similar transactions, including the accuracy-related penalty under §§ 6662 or 6662A.

The Treasury Department and the IRS recognize that some taxpayers may have filed tax returns taking the position that they were entitled to the purported tax benefits of the type of transaction described in this notice. These taxpayers should take appropriate corrective action and ensure that their transactions are disclosed properly.

.06 *Requests for a Change in Method of Accounting*

(1) *Background*. Section 446(e) and § 1.446–1(e) provide that, except as otherwise provided, a taxpayer must secure the consent of the Commissioner before changing a method of accounting for federal income tax purposes. Section 1.446–1(e)(3)(i) provides that, to obtain the Commissioner's consent to an accounting method change, a taxpayer must file a Form 3115, *Application for Change in Accounting Method*, during the taxable year in which the taxpayer desires to make the proposed change. Section 1.446–1(e)(3)(ii) authorizes the Commissioner to prescribe administrative procedures setting forth the limitations, terms, and conditions deemed necessary to permit a taxpayer to obtain consent to change a method of accounting in accordance with § 446(e).

Rev. Proc. 2015–13, 2015–5 I.R.B. 419, as clarified and modified by Rev. Proc. 2015–33, 2015–24 I.R.B. 1067, provides the procedures for obtaining the consent of the Commissioner to change a method of accounting for Federal income tax purposes. Under the non-automatic change procedures of Rev. Proc. 2015–13, a taxpayer generally must file a Form 3115 during the year of change.

When a taxpayer computes its taxable income using a method of accounting that differs from the method of accounting used during the preceding taxable year, a § 481(a) adjustment is required to prevent the duplication or omission of taxable income. Except as otherwise provided in Rev. Proc. 2015–13, a letter ruling to the taxpayer, or in other guidance published in the Internal Revenue Bulletin, section 7.03 of Rev. Proc. 2015–13 provides that a positive § 481(a) adjustment is taken into account ratably over four taxable years, and a negative § 481(a) adjustment is taken into account in one taxable year. A taxpayer that timely files a Form 3115 under Rev. Proc. 2015–13 generally receives audit protection for taxable years

prior to the year of change, as provided in section 8 of Rev. Proc. 2015–13.

Section 11.02 of Rev. Proc. 2015–13 states that the national office will deny any Form 3115 requesting consent to make a change in method of accounting in any situation in which the national office determines that permitting the requested change in method of accounting would not clearly reflect income or would otherwise not be in the interest of sound tax administration. As part of this determination, the national office will consider whether the change in method of accounting would clearly and directly frustrate compliance efforts of the IRS in administering the income tax laws. The national office will consider all the facts and circumstances and exercise discretion under §§ 446(e) and 481(c) in a manner that generally minimizes distortions of income across taxable years, as well as on an annual basis.

Rev. Rul. 90–38, 1990–1 C.B. 57, provides that, if a taxpayer uses an erroneous method of accounting for two or more consecutive taxable years, the taxpayer has adopted a method of accounting. The ruling further provides that a taxpayer may not, without the Commissioner's consent, retroactively change from an erroneous to a permissible method of accounting by filing an amended return. See also Rev. Proc. 2015–13, section 2.03(1).

(2) *In general.*[6]

(a) *Deferral transaction.* A taxpayer that wants to change a method of accounting for a transaction described in this notice, for a transaction from which the taxpayer's only tax benefit is a deferral of income into a later taxable year (a "deferral transaction"), may change its method of accounting for the deferral transaction by either: (1) filing amended returns in accordance with section 3.06(3) of this notice, or (2) if eligible, requesting a change in method of accounting under the non-automatic change procedures of Rev. Proc. 2015–13 subject to the rules provided in section 3.06(4) of this notice.

(b) *Conversion transaction.* The IRS has determined that it is not in the interest of sound tax administration to permit a prospective change in method of accounting for a transaction within the scope of this notice that involves the conversion of ordinary income or short-term capital gain or loss into long-term capital gain or loss (a "conversion transaction"). Accordingly, the IRS will not process applications for any changes in method of accounting filed under the non-automatic change procedures of Rev. Proc. 2015–13 for a conversion transaction within the scope of this notice. A taxpayer may, however, change its method of accounting for a conversion transaction within the scope of this notice by filing an amended return in accordance with section 3.06(3) of this notice.

(3) *Change in method of accounting by filing amended returns.*

(a) *In general.* In accordance with § 1.446–1(e)(3)(ii) and Rev. Rul. 90–38, consent is hereby granted for any taxpayer that has engaged in a transaction within the scope of this notice, to file amended returns to retroactively change from an impermissible method of accounting to a permissible method of accounting for the transaction. This consent is granted only if the taxpayer files such amended returns using a permissible method of accounting for such transactions for the first taxable year in which the taxpayer used the impermissible method of accounting for any such transaction (or if the period of limitations has expired for such taxable year, for the first taxable year for which the period of limitations has not expired) and for each subsequent taxable year in which the taxpayer's use of the impermissible method of accounting for these transactions affected the taxpayer's taxable income. If the period of limitations has expired for the first taxable year in which a taxpayer used the impermissible method of accounting for these transactions and the taxpayer files amended returns pursuant to this notice, the amended return for the first taxable year for which the period of limitations has not expired must include the entire amount of the § 481(a) adjustment, whether positive or negative, attributable to the change in accounting method as ordinary in character. The terms, conditions, and administrative procedures of Rev. Proc. 2015–13, as clarified and modified by Rev. Proc. 2015–33, do not apply to a taxpayer changing its method of accounting by amending its Federal income tax returns under section 3.06(3) of this notice.

(b) *Manner of making change.*

A taxpayer filing amended returns under this notice must comply with the requirements of § 1.6011–4 including, but not limited to, attaching to the amended return any disclosure statements that may be required in accordance with § 1.6011–4(a) and (e). In addition, a taxpayer filing an amended return under this section 3.06(3)(b) must write "FILED UNDER NOTICE 2015–74" at the top of any amended paper return or, with respect to any amended return submitted electronically, must indicate "FILED UNDER NOTICE 2015–74."

(4) *Filing Form 3115 under Rev. Proc. 2015–13 for a deferral transaction.* A taxpayer that wants to change its method of accounting under Rev. Proc. 2015–13 for a deferral transaction described in this notice, must use the non-automatic change procedures in Rev. Proc. 2015–13. Consistent with the discretion granted to the National Office under sections 7.01 and 7.03 of Rev. Proc. 2015–13, a taxpayer making a change in method of accounting under Rev. Proc. 2015–13 to the method described in this notice must take into account the entire amount of a positive § 481(a) adjustment in the taxable year of change.

SECTION 4. EFFECT ON OTHER DOCUMENTS

Notice 2015–48 is revoked.

SECTION 5. DRAFTING INFORMATION

The principal authors of this notice are Orla J. O'Connor and Robert A. Martin of the Office of the Associate Chief Counsel (Financial Institutions and Products). For further information regarding this notice, contact Ms. O'Connor at (202) 317-6367 or Mr. Martin at (202) 317-4455 (not toll-free numbers).

---

[6]Nothing in this notice may be construed as identifying whether the taxpayer's treatment of any particular aspect of a transaction described in this notice is a method of accounting.

2016 Limitations Adjusted As Provided in Section 415(d), etc.

Notice 2015–75

Section 415 of the Internal Revenue Code (the Code) provides for dollar limitations on benefits and contributions under qualified retirement plans. Section 415(d) requires that the Secretary of the Treasury annually adjust these limits for cost-of-living increases. Other limitations applicable to deferred compensation plans are also affected by these adjustments under § 415. Under § 415(d), the adjustments are to be made under adjustment procedures similar to those used to adjust benefit amounts under § 215(i)(2)(A) of the Social Security Act.

Cost-of-Living Adjusted Limits for 2016

Effective January 1, 2016, the limitation on the annual benefit under a defined benefit plan under § 415(b)(1)(A) remains unchanged at $210,000.

For a participant who separated from service before January 1, 2016, the participant's limitation under a defined benefit plan under § 415(b)(1)(B) is computed by multiplying the participant's compensation limitation, as adjusted through 2015, by 1.0011.

The limitation for defined contribution plans under § 415(c)(1)(A) remains unchanged in 2016 at $53,000.

The Code provides that various other dollar amounts are to be adjusted at the same time and in the same manner as the dollar limitation of § 415(b)(1)(A). After taking into account the applicable rounding rules, the amounts for 2016 are as follows:

The limitation under § 402(g)(1) on the exclusion for elective deferrals described in § 402(g)(3) remains unchanged at $18,000.

The annual compensation limit under §§ 401(a)(17), 404(l), 408(k)(3)(C), and 408(k)(6)(D)(ii) remains unchanged at $265,000.

The dollar limitation under § 416(i)(1)(A)(i) concerning the definition of "key employee" in a top-heavy plan remains unchanged at $170,000.

The dollar amount under § 409(o)(1)(C)(ii) for determining the maximum account balance in an employee stock ownership plan subject to a 5-year distribution period remains unchanged at $1,070,000, while the dollar amount used to determine the lengthening of the 5-year distribution period remains unchanged at $210,000.

The limitation used in the definition of "highly compensated employee" under § 414(q)(1)(B) remains unchanged at $120,000.

The dollar limitation under § 414(v)(2)(B)(i) for catch-up contributions to an applicable employer plan other than a plan described in § 401(k)(11) or § 408(p) for individuals aged 50 or over remains unchanged at $6,000. The dollar limitation under § 414(v)(2)(B)(ii) for catch-up contributions to an applicable employer plan described in § 401(k)(11) or 408(p) for individuals aged 50 or over remains unchanged at $3,000.

The annual compensation limitation under § 401(a)(17) for eligible participants in certain governmental plans that, under the plan as in effect on July 1, 1993, allowed cost-of-living adjustments to the compensation limitation under the plan under § 401(a)(17) to be taken into account, remains unchanged at $395,000.

The compensation amount under § 408(k)(2)(C) regarding simplified employee pensions (SEPs) remains unchanged at $600.

The limitation under § 408(p)(2)(E) regarding SIMPLE retirement accounts remains unchanged at $12,500.

The limitation on deferrals under § 457(e)(15) concerning deferred compensation plans of state and local governments and tax-exempt organizations remains unchanged at $18,000.

The compensation amounts under § 1.61–21(f)(5)(i) of the Income Tax Regulations concerning the definition of "control employee" for fringe benefit valuation purposes remains unchanged at $105,000. The compensation amount under § 1.61–21(f)(5)(iii) remains unchanged at $215,000.

The Code provides that the $1,000,000,000 threshold used to determine whether a multiemployer plan is a systematically important plan under § 432(e)(9)(H)(v)(III)(aa) is adjusted using the cost-of-living adjustment provided under § 432(e)(9)(H)(v)(III)(bb). After taking the applicable rounding rule into account, the threshold used to determine whether a multiemployer plan is a systematically important plan under § 432(e)(9)(H)(v)(III)(aa) is increased in 2016 from $1,000,000,000 to $1,012,000,000.

The Code also provides that several retirement-related amounts are to be adjusted using the cost-of-living adjustment under § 1(f)(3). After taking the applicable rounding rules into account, the amounts for 2016 are as follows:

The adjusted gross income limitation under § 25B(b)(1)(A) for determining the retirement savings contribution credit for married taxpayers filing a joint return is increased from $36,500 to $37,000; the limitation under § 25B(b)(1)(B) is increased from $39,500 to $40,000; and the limitation under §§ 25B(b)(1)(C) and 25B(b)(1)(D) is increased from $61,000 to $61,500.

The adjusted gross income limitation under § 25B(b)(1)(A) for determining the retirement savings contribution credit for taxpayers filing as head of household is increased from $27,375 to $27,750; the limitation under § 25B(b)(1)(B) is increased from $29,625 to $30,000; and the limitation under §§ 25B(b)(1)(C) and 25B(b)(1)(D) is increased from $45,750 to $46,125.

The adjusted gross income limitation under § 25B(b)(1)(A) for determining the retirement savings contribution credit for all other taxpayers is increased from $18,250 to $18,500; the limitation under § 25B(b)(1)(B) is increased from $19,750 to $20,000; and the limitation under §§ 25B(b)(1)(C) and 25B(b)(1)(D) is increased from $30,500 to $30,750.

The deductible amount under § 219(b)(5)(A) for an individual making qualified retirement contributions remains unchanged at $5,500.

The applicable dollar amount under § 219(g)(3)(B)(i) for determining the deductible amount of an IRA contribution for taxpayers who are active participants in a qualified plan (or another retirement plan specified in § 219(g)(5)) filing a joint return or as a qualifying widow(er) remains unchanged at $98,000. The applicable dollar amount under § 219(g)(3)(B)(ii) for all other taxpayers (other than married taxpayers filing separate returns) remains unchanged at $61,000. The applicable dollar amount under § 219(g)(3)(B)(iii) for a married individual filing a separate return is not subject to an annual cost-of-living adjustment and remains $0. The applicable dollar amount under § 219(g)(7)(A) for a taxpayer who is not an active participant but whose spouse is an active participant is increased from $183,000 to $184,000.

Accordingly, under § 219(g)(2)(A), the deduction for taxpayers making contributions to a traditional IRA is phased out for single individuals and heads of household who are active participants in a qualified plan (or another retirement plan specified in § 219(g)(5)) and have adjusted gross incomes (as defined in § 219(g)(3)(A)) between $61,000 and $71,000. This income phase-out range remains unchanged. For married couples filing jointly, if the spouse who makes the IRA contribution is an active participant, the income phase-out range remains unchanged at $98,000 to $118,000. For an IRA contributor who is not an active participant and is married to someone who is an active participant, the deduction is phased out if the couple's income is between $184,000 and $194,000, increased from between $183,000 and $193,000. For a married individual filing a separate return who is an active participant, the phase-out range is not subject to an annual cost-of-living adjustment and remains $0 to $10,000.

The adjusted gross income limitation under § 408A(c)(3)(B)(ii)(I) for determining the maximum Roth IRA contribution for married taxpayers filing a joint return or for taxpayers filing as a qualifying widow(er) is increased from $183,000 to $184,000. The adjusted gross income limitation under § 408A(c)(3)(B)(ii)(II) for all other taxpayers (other than married taxpayers filing separate returns) is increased from $116,000 to $117,000. The applicable dollar amount under § 408A(c)(3)(B)(ii)(III) for a married individual filing a separate return is not subject to an annual cost-of-living adjustment and remains $0.

Accordingly, under § 408A(c)(3)(A), the adjusted gross income phase-out range for taxpayers making contributions to a Roth IRA is $184,000 to $194,000 for married couples filing jointly, increased from $183,000 to $193,000. For singles and heads of household, the income phase-out range is $117,000 to $132,000, increased from $116,000 to $131,000. For a married individual filing a separate return, the phase-out range is not subject to an annual cost-of-living adjustment and remains $0 to $10,000.

The dollar amount under § 430(c)(7)(D)(i)(II) used to determine excess employee compensation with respect to a single-employer defined benefit pension plan for which the special election under § 430(c)(2)(D) has been made is increased from $1,101,000 to $1,106,000.

Drafting Information

The principal author of this notice is Tom Morgan of the Office of the Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS participated in the development of this guidance. For further information regarding this notice, contact Mr. Morgan at 202-317-6700 or John Heil at 443-853-5519 (not toll-free numbers).

REQUEST FOR COMMENTS REGARDING THE EXCISE TAX ON AMOUNTS PAID FOR THE RIGHT TO PROVIDE MILEAGE AWARDS

Notice 2015–76

SECTION 1. PURPOSE

The Treasury Department and the Internal Revenue Service (IRS) are considering exercising their authority under § 4261(e)(3)(C) of the Internal Revenue Code (Code) to prescribe rules to exclude from the tax imposed by § 4261(a) certain amounts attributable to mileage awards (sometimes referred to as "frequent flyer miles") that are redeemed other than for the taxable transportation of persons by air (referred to in this notice as "other than for taxable air transportation"), such as, but not limited to, redemptions for international air transportation, restaurant gift cards, magazine and newspaper subscriptions, free hotel nights, and items from the airline's shopping catalog. This notice invites public comments on issues that should be addressed in guidance relating to § 4261(e)(3).

SECTION 2. BACKGROUND

Section 4261(a) of the Code imposes a tax on the amount paid for the taxable transportation of any person.

Section 4262(a) defines "taxable transportation" to generally include transportation by air that begins and ends in the United States.

Section 4261(d) provides that the tax is paid by the person making the payment subject to tax, and § 4291 provides that the tax is collected by the person receiving the payment.

Section 4261(e)(3)(A) provides that for purposes of § 4261(a) any amount paid (and the value of any other benefit provided) to an air carrier (or any related person) for the right to provide mileage awards for (or other reductions in the cost of) any transportation of persons by air is treated as an amount paid for taxable transportation.

Section 4261(e)(3)(C) provides that the Secretary may prescribe rules that exclude amounts attributable to mileage awards that are used other than for the transportation of persons by air from the tax imposed by § 4261(a).

Congress enacted § 4261(e) as part of the Taxpayer Relief Act of 1997 (Public Law 105–34, 111 Stat. 788). The General Explanation of Tax Legislation Enacted in 1997 (General Explanation), prepared by the Joint Committee on Taxation, JCS–23–97 at 230–231, explains that § 4261(e)(3)(C) authorizes the Treasury Department to develop regulations excluding from the § 4261(a) tax base a portion of otherwise

taxable payments, if any, with respect to awarded frequent flyer miles "if the Treasury determines that a portion properly can be allocated (traced) to frequent flyer miles that are used by consumers for purposes other than air transportation." General Explanation at 231. The General Explanation further states that as part of any rulemaking process it undertakes, the Treasury Department is authorized to review airline mileage awards programs and other information from all available sources, including industry and third-party data, in determining whether frequent flyer miles can be adequately traced to support allocations based on the ultimate use of the frequent flyer miles. The General Explanation also states that Congress intended that any adjustment to the tax base will be prescribed only if the Treasury Department finds a consistent pattern of non-air transportation usage of frequent flyer miles by consumers at levels indicating that significant mileage awarded pursuant to payments taxable under § 4261(e)(3) are being used for purposes other than for taxable air transportation.

The Treasury Department and the IRS have not prescribed an allocation method that taxpayers (for example, credit card companies) and collectors (typically airlines' mileage awards programs) can use to exclude from the taxes imposed by § 4261(a) amounts attributable to mileage awards that are used other than for taxable air transportation. As a result, taxpayers currently must pay tax on all frequent flyer miles purchased from an airline mileage awards program and then file a claim for credit or refund for tax paid on those frequent flyer miles that were ultimately redeemed other than for taxable air transportation.

The Treasury Department and the IRS are considering a possible methodology, described in Section 3 of this Notice, that would allow a reduction in a taxpayer's § 4261(a) tax base for amounts paid for mileage awards based on historical redemption data.

SECTION 3. POSSIBLE METHODOLOGY FOR DETERMINING REDUCTION IN SECTION 4261(a) TAX BASE

The Treasury Department and the IRS are considering an elective safe harbor methodology that a collector could use to reduce a taxpayer's § 4261(a) tax base on purchased frequent flyer miles. Under the methodology, for each 12 month period beginning on April 1 and ending on March 31 (the "Election Year"), the tax base for frequent flyer miles purchased from a particular airline mileage awards program would be reduced based on redemption data from that airline mileage awards program for the calendar year immediately preceding the calendar year in which the Election Year begins (the "Base Period").

The methodology would be based on the following data from the Base Period:

- Total number of frequent flyer miles redeemed under that program.
- Number of frequent flyer miles under that program redeemed for taxable air transportation.
- Number of frequent flyer miles redeemed under that program other than for taxable air transportation.

More specifically, for each specific airline mileage awards program (that is, on a per airline mileage awards program basis), a collector may reduce the tax base upon which the tax imposed by § 4261(a) is calculated by applying the following ratio:

i) The number of frequent flyer miles under that program that the airline data shows were redeemed during the Base Period other than for taxable air transportation; over
ii) The total number of frequent flyer miles under that program that the airline data shows were redeemed during the Base Period.

The collector will multiply the amount paid for the right to provide frequent flyer miles under the program by the ratio determined above (the "Exclusion Ratio") and will reduce the § 4261(a) tax base on the purchased frequent flyer miles by this amount. The Exclusion Ratio would apply for the entire Election Year.

Example. The following example illustrates this methodology:

On April 1, 2015, Company buys 5,000,000 frequent flyer miles from Airline X's only mileage award program for $.01 per frequent flyer mile (for a total cost of $50,000). Under current law, if the § 4261(a) tax is calculated on the gross purchase of the frequent flyer miles, the tax due on the purchase will be $3,750 ($50,000 x 7.5%).

For the applicable Base Period (that is, January 1, 2014, through December 31, 2014), Airline X data indicates that frequent flyer miles were redeemed as noted in the table below:

Base Period	Total Frequent Flyer Miles Redeemed	Frequent Flyer Miles Redeemed for Taxable Air Transportation	Frequent Flyer Miles Redeemed for Non-Taxable Purposes
1/1/2014 – 12/31/2014	100,000,000	70,000,000	30,000,000

Following the methodology described above, Airline X may reduce Company's tax base on the purchased frequent flyer miles as follows:

- Frequent flyer miles redeemed other than for taxable air transportation in the Base Period divided by total frequent flyer miles redeemed in that period: 30,000,000 ÷ 100,000,000 = 30%.
- Exclusion Ratio calculated in the previous step applied to the frequent flyer miles purchased on April 1, 2015: 30% x $50,000 amount paid for frequent flyer miles = § 4261(a) tax base reduction of $15,000. This results in a § 4261(a) tax base of $35,000 ($50,000 less $15,000).

Therefore, under this methodology, the tax due on the April 1, 2015, purchase is $2,625 ($35,000 § 4261(a) tax base x 7.5%).

SECTION 4. POSSIBLE PROCEDURES FOR A COLLECTOR ADOPTING AN EXCLUSION RATIO FOR A PROGRAM FOR A YEAR

4.01 The collector would file a new form (to be designated by the IRS at a future date) reporting the Exclusion Ratio to the IRS by February 1 following the close of the Base Period. The collector's filing of the form by February 1 constitutes an election to use the safe harbor methodology. The election would be irrevocable for all frequent flyer miles purchased from the collector during the Election Year beginning on April 1 following the close of the Base Period.

4.02 The collector would provide notification of the adoption of the use of an Exclusion Ratio and specify the ratio itself in program literature available to taxpayers by February 1.

4.03 The collector would be required to use the Exclusion Ratio reported by the collector in its February 1 filing for the entire Election Year.

4.04 A taxpayer that purchased frequent flyer miles offered by the collector would be deemed to have elected application of the safe harbor methodology. The collector would be required to reference this deemed election in program literature available to taxpayers.

4.05 A taxpayer would not subsequently be able to obtain a credit or refund for a portion of the tax paid if the percentage of frequent flyer miles ultimately redeemed other than for taxable air transportation ends up being higher than the percentage calculated under the safe harbor methodology, nor would the taxpayer be assessed additional § 4261(a) tax if the percentage ends up being lower.

SECTION 5. POSSIBLE PROCEDURES FOR FILING FORM 720 APPLYING AN EXCLUSION RATIO

A box would be added to Part I, *Communications and Air Transportation Taxes*, line *IRS no. 26*, of Form 720, *Quarterly Federal Excise Tax Return*, in which the collector would report the Exclusion Ratio.

SECTION 6. REQUEST FOR COMMENTS

The Treasury Department and the IRS request comments on issues that should be addressed in guidance relating to § 4261(e)(3). Specifically, the Treasury Department and the IRS request comments addressing the following:

- Whether the methodology in Section 3 of this notice, if adopted, is workable for taxpayers, airlines, and other potential stakeholders.
- Whether the methodology in Section 3 of this notice, if adopted, should be adopted as a rule of general applicability instead of as a safe harbor provision.
- Whether the methodology in Section 3 of this notice should be modified to take into account a longer or shorter period of historical data.
- Whether airlines (or airline mileage awards programs) are willing to share historical data with taxpayers so that taxpayers can verify the tax base upon which the § 4261(a) tax is applied when a taxpayer purchases frequent flyer miles.
- Whether in lieu of the methodology in Section 3 of this notice, the Treasury Department and the IRS should provide an allocation percentage that can be applied on an airline industry-wide basis, which the Treasury Department and the IRS would calculate using industry-provided data.
- How often an industry-wide allocation percentage, if adopted, should be updated to reflect current industry data and what is the best method for the Treasury Department and the IRS to collect the necessary data.
- Whether the Treasury Department and the IRS should adopt a methodology that is not described in this notice and recommendations for alternative methodologies.
- Whether the Treasury Department and the IRS should provide a mechanism for collectors to make adjustments to the Exclusion Ratio to correct computational and typographical errors after the collector reports the Exclusion Ratio to the IRS, and how such a mechanism should work.
- Whether the procedures in Sections 4 and 5 of this notice would be workable from the collector and the taxpayer's perspectives.
- How to address overpayments and underpayments of tax resulting from errors in the Exclusion Ratio, including whether the collector should be responsible for such underpayments.

DATE: Comments must be submitted by March 15, 2016.

ADDRESSES: Comments, identified by Notice 2015–76, may be sent by one of the following methods:

- Mail:

  Internal Revenue Service
  CC:PA:LPD:PR (Notice 2015–76)
  Room 5203
  P.O. Box 7604
  Ben Franklin Station
  Washington, DC 20044

- Hand or courier delivery:
  Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to:

  Courier's Desk
  Internal Revenue Service
  1111 Constitution Ave., N.W.
  Washington, DC 20224
  Attn: CC:PA:LPD:PR
  (Notice 2015–76)

- Electronic:
  Taxpayers may submit comments electronically to Notice.Comments@irscounsel.treas.gov. Please include "Notice 2015–76" in the subject line of any electronic communications.

All submissions will be available for public inspection and copying in room 1621, 1111 Constitution Avenue, NW, Washington, DC, from 9 a.m. to 4 p.m.

SECTION 7. NO EFFECT ON OTHER DOCUMENTS

This notice does not affect any other documents.

SECTION 8. NO RELIANCE BY COLLECTORS OR TAXPAYERS

Unless and until the Treasury Department and the IRS issue regulatory or other

administrative guidance under § 4261(e)(3)(C) that adopts the methodology in Section 3 of this notice, the methodology in Section 3 of this notice does not apply for purposes of calculating the tax due under § 4261(a), and neither excise tax collectors nor taxpayers may rely on that method or this notice.

SECTION 9. DRAFTING INFORMATION

The principal author of this notice is Michael H. Beker of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, please contact Mr. Beker at (202) 317-6855 (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

Announcement 2015–28

Table of Contents

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 November 16, 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
Center for Academic Research and Enrichment	January 1, 2013	San Luis Obispo, CA
Columbians of Nampa, Inc.	January 1, 2010	Nampa, ID
Community Distribution Center	January 1, 2011	Sherman Oaks, CA
Inspired Life Center, Inc.	January 1, 2011	Las Vegas, NV
Johnny's Kids, Inc.	January 1, 2011	Westerville, OH
Legacy Charter Schools, Inc.	July 1, 2011	Los Angeles, CA
Lewis Carroll Academy of the Arts a/k/a Lewis Carroll Academy of the Arts, Inc.	November 1, 2012	Porter Ranch, CA
New Life Generation, Inc.	January 1, 2013	Terre Haute, IN
Omega First Incorporated	July 1, 2010	Charlotte, NC
Partners for a Safer America, Inc.	January 1, 2012	Palm Desert, CA
People Against Drugs Affordable Housing Agency	January 1, 2011	Dallas, TX
Return: The United Fund For The Education Of Russian Immigrant Children In Israel, Inc	January 1, 2000	Brooklyn, NY
The Ted Foundation, Inc.	July 1, 2009	Aliquippa, PA
Works of Life International Ministries, Inc.	January 1, 2011	Clovis, CA

Notice of Disposition of Declaratory Judgment Proceedings under Section 7428

Announcement 2015–29

This announcement serves notice to donors that on May 21, 2015, the United States Tax Court entered a stipulated decision that effective April 1, 2010, the organization listed below is not qualified as an organization described in I.R.C. § 501(c)(3), is not exempt from taxation under I.R.C. § 501(a), and is not an organization described in I.R.C. § 170(c)(2).

Bixun Wang and Lin Cheng Foundation
Fremont, CA

Notice of Disposition of Declaratory Judgment Proceedings under Section 7428

Announcement 2015–30

This announcement serves notice to donors that on June 22, 2015, the United States Tax Court entered a stipulated decision that effective January 1, 2008, the organization listed below is not qualified as an organization described in I.R.C. § 501(c)(3), is not exempt from taxation under section 501(a), and is not an organization described in section 170(c)(2).

Golden State Debt Management
Los Angeles, CA

Preparer Tax Identification Number (PTIN) User Fee Update

REG–121496–15

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Bulletin**, the IRS is issuing temporary regulations that will amend regulations (TD 9503) relating to the imposition of certain user fees on tax return preparers. The temporary regulations reduce the amount of the user fee to apply for or renew a preparer tax identification number (PTIN). The text of the temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by January 28, 2016.

ADDRESSES: Send submissions to: CC: PA:LPD:PR (REG–121496–15), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, D.C. 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–121496–15), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, D.C. 20224 or sent electronically via the Federal eRulemaking Portal at http://www.regulations.gov (IRS REG–121496–15). The public hearing will be held in the Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Hollie M. Marx at (202) 317-6844; concerning cost methodology, Eva J. Williams at (202) 803-9728; concerning submission of comments and/or requests for a public hearing, Oluwafunmilayo Taylor, (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Bulletin** amend regulations under 26 CFR part 300 setting a user fee for individuals who apply for or renew a PTIN. The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563.

It has been determined that an initial regulatory flexibility analysis is required for this notice of proposed rulemaking under 5 U.S.C. 603. This analysis is set forth under the heading "Initial Regulatory Flexibility Analysis."

Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Initial Regulatory Flexibility Analysis

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (5 U.S.C. chapter 6) (RFA) requires the agency "to prepare and make available for public comment an initial regulatory flexibility analysis" that will "describe the impact of the proposed rule on small entities." See 5 U.S.C. 603(a). Section 605 of the RFA provides an exception to this requirement if the agency certifies that the proposed rulemaking will not have a significant economic impact on a substantial number of small entities. A small entity is defined as a small business, small nonprofit organization, or small governmental jurisdiction. See 5 U.S.C. 601(3) through (6). The IRS and the Treasury Department conclude that the proposed rule, if promulgated, may have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is required.

Description of the reasons why action by the agency is being considered

The IRS and the Treasury Department implemented regulatory changes in 2010 that required any individual who prepares or who assists in preparing all or substantially all of a tax return or claim for refund for compensation to obtain a PTIN. Pursuant to the PTIN regulations, only those individuals who apply for and maintain a current PTIN may prepare tax returns and claims for refund for compensation. Because the ability to prepare tax returns and claims for refund for compensation is limited to individuals who have a PTIN, the provision of a PTIN confers a special benefit. The IRS incurs costs associated with processing a PTIN application and providing the special benefit associated with the PTIN. The IRS and Treasury Department initially determined that the full cost of providing the special benefit conferred by a PTIN was $50 for each original application and each annual renewal. In accordance with OMB Circular A–25, the IRS and Treasury conducted a biennial review of the PTIN user fee amount in 2015 and determined that the full cost of providing the special benefit conferred by a PTIN had been reduced to $33 for each original application and each annual renewal.

A succinct statement of the objectives of, and legal basis for, the proposed rule

The objective of the proposed regulations is to recover the costs to the government associated with providing the special benefit that an individual receives upon applying for or renewing a PTIN. These costs include activities, processes, and procedures related to the electronic and paper registration and renewal submissions; tax compliance and background checks; professional designation checks; foreign preparer processing; compliance and complaint activities; information technology and contract-related expenses; and communications. The PTIN user fee also takes into account various indirect program costs, including management and support costs. OMB Circular A–25 encourages user fees when special benefits are conferred on identifiable recipients. Individuals who obtain a PTIN receive the ability to prepare or assist in preparing all or substantially all of a tax return or claim

for refund for compensation. The ability to prepare or assist in preparing all or substantially all of a tax return or claim for refund for compensation is a special benefit.

The legal basis for the PTIN user fee is contained in section 9701 of title 31.

A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply

The proposed regulations affect all individuals who prepare or assist in preparing all or substantially all of a tax return or claim for refund for compensation. Only individuals, not businesses, can apply for or renew a PTIN. Thus, the economic impact of these regulations on any small entity generally will be a result of an individual tax return preparer who is required to apply for or renew a PTIN owning a small business or a small business otherwise employing an individual tax return preparer who is required to apply for or renew a PTIN.

The appropriate NAICS codes for PTINs are those that relate to tax preparation services (NAICS code 541213), offices of certified public accountants (NAICS code 541211), other accounting services (NAICS code 541219), and offices of lawyers (NAICS code 541110). Entities identified as tax preparation services, offices of certified public accountants, and other accounting services are considered small under the Small Business Administration size standards (13 CFR 121.201) if their annual revenue is less than $20.5 million. Entities identified as offices of lawyers are considered small under the Small Business Administration size standards if their annual revenue is less than $11 million. The IRS estimates that approximately 70 to 80 percent of the individuals subject to these proposed regulations are tax return preparers operating as or employed by small entities.

A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record

No reporting or recordkeeping requirements are projected to be associated with this proposed regulation.

An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule

The IRS is not aware of any Federal rules that duplicate, overlap, or conflict with the proposed rule.

A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities

The IOAA authorizes the charging of user fees for agency services, subject to policies designated by the President. OMB Circular A–25 implements presidential policies regarding user fees and encourages user fees when a government agency provides a special benefit to a member of the public. In the IOAA, Congress has stated a preference that special benefits be self-sustaining.

A PTIN is required for an individual to prepare or assist in preparing all or substantially all of a tax return or claim for refund for compensation. PTINs are used by the IRS to collect and track data on tax return preparers. This data allows the IRS to track the number of persons who prepare or assist in preparing returns and claims for refund, the qualifications of those persons who prepare or assist in preparing returns and claims for refund, the number of returns each person prepares, and, when instances of misconduct or potential misconduct are detected, locate and review returns and claims for refund prepared by a specific tax return preparer. PTINs must be renewed annually to ensure that the identifying information associated with a PTIN is current.

Due to the costs to the government to process the application for a PTIN, the requirement to include a PTIN on tax returns and claims for refund, and the expressed preference in the IOAA that special benefits be self-sustaining, there is no viable alternative to imposing a user fee.

Comments and Public Hearing

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

Drafting Information

The principal author of these regulations is Hollie M. Marx, Office of the Associate Chief Counsel (Procedure and Administration).

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 300 is proposed to be amended as follows:

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

Authority: 31 U.S.C. 9701.

Par. 2. Section 300.13 is amended by revising paragraphs (b) and (d) to read as follows:

§ 300.13 Fee for obtaining a preparer tax identification number.

* * * * *

(b) [The text of proposed § 300.13(b) is the same as the text of § 300.13T(b) published elsewhere in this issue of the **Bulletin**].

* * * * *

(d) [The text of proposed § 300.13(d) is the same as the text of § 300.13T(d) published elsewhere in this issue of the **Bulletin**].

Karen M. Schiller,
Acting Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on October 29, 2015, 8:45 a.m., and published in the issue of the Federal Register for October 30, 2015, 80 F.R. 27791)

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 2015–27 through 2015–46

Announcements:

Notices:

Proposed Regulations:

Proposed Regulations:—Continued

Revenue Procedures:

Revenue Rulings:

Treasury Decisions:

Treasury Decisions:—Continued

[1]A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2015–01 through 2015–26 is in Internal Revenue Bulletin 2015–26, dated June 29, 2015.

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

Bulletins 2015–27 through 2015–46

Notices:

2014-4
Modified by
Notice 2015-51, 2015-31 I.R.B. *133*

2014-17
Superseded by
Notice 2015-67, 2015-41 I.R.B. *546*

Proposed Regulations:

2009-57
Obsoleted by
REG-112997-10 2015-39 I.R.B. *422*

2013-17
Obsoleted by
REG-148998-13 2015-45 I.R.B. *653*

Revenue Procedures:

1992-75
Clarified by
Rev. Proc. 2015-40, 2015-35 I.R.B. *236*

2003-40
Modified by
Rev. Proc. 2015-40, 2015-35 I.R.B. *236*

2003-78
Modified by
Rev. Proc. 2015-46, 2015-39 I.R.B. *414*

2006-9
Modified by
Rev. Proc. 2015-41, 2015-35 I.R.B. *263*

2006-9
Superseded by
Rev. Proc. 2015-41, 2015-35 I.R.B. *263*

2006-54
Modified by
Rev. Proc. 2015-40, 2015-35 I.R.B. *236*

2006-54
Superseded by
Rev. Proc. 2015-40, 2015-35 I.R.B. *236*

2008-31
Modified by
Rev. Proc. 2015-41, 2015-35 I.R.B. *263*

2008-31
Superseded by
Rev. Proc. 2015-41, 2015-35 I.R.B. *263*

Revenue Procedures:—Continued

2011-49
Modified by
Rev. Proc. 2015-36, 2015-27 I.R.B. *20*

2011-49
Superseded by
Rev. Proc. 2015-36, 2015-27 I.R.B. *20*

2015-14
Modified by
Rev. Proc. 2015-39, 2015-33 I.R.B. *195*

2015-40
Amplified by
Rev. Proc. 2015-41, 2015-35 I.R.B. *263*

2015-41
Amplified by
Rev. Proc. 2015-40, 2015-35 I.R.B. *236*

Treasury Decisions:

58-422
Obsoleted by
T.D. 9739 2015-41 I.R.B. *528*

66-284
Obsoleted by
T.D. 9739 2015-41 I.R.B. *528*

79-250
Obsoleted by
T.D. 9739 2015-41 I.R.B. *528*

79-289
Obsoleted by
T.D. 9739 2015-41 I.R.B. *528*

96-29
Obsoleted by
T.D. 9739 2015-41 I.R.B. *528*

[1]A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2015–01 through 2015–26 is in Internal Revenue Bulletin 2015–26, dated June 29, 2015.

Internal Revenue Service
Washington, DC 20224

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/*.

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 Internal Revenue Service, Publishing Division, IRB Publishing Program Desk, 1111 Constitution Ave. NW, IR-6230 Washington, DC 20224.