INTERNAL REVENUE
BULLETIN

IRS

HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2016–4
January 25, 2016

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

INCOME TAX

REG–138344–13, page 294.

This document withdraws proposed regulations that would implement the statutory exception to the "contemporaneous written acknowledgement" requirement for substantiating charitable contribution deductions of $250 or more. The withdrawal affects persons that make charitable contributions and organizations that receive charitable contributions.

Rev. Rul. 2016–02, page 284.

Insurance Companies; interest rate tables. Prevailing state assumed interest rates are provided for the determination of reserves under section 807 of the Internal Revenue Code for contracts issued in 2015 and 2016. Rev. Rul. 92–19 is supplemented in part.

Announcement 2016–03, page 294.

This announcement provides notice that the IRS will not impose penalties under section 6721 or 6722 on eligible educational institutions required to file Forms 1098–T, Tuition Statement, for the 2015 calendar year, solely because they fail to include a student's correct taxpayer identification number (TIN) on Form 1098–T.

EMPLOYMENT TAX

Notice 2016–06, page 287.

This notice provides a special administrative procedure that allows employers that treated transit benefits in excess of $130 per month per employee as wages in 2015 and have not yet filed their fourth quarter From 941 for 2015 to make the necessary corrections on the fourth quarter Form 941.

ADMINISTRATIVE

Announcement 2016–03, page 294.

This announcement provides notice that the IRS will not impose penalties under section 6721 or 6722 on eligible educational institutions required to file Forms 1098–T, Tuition Statement, for the 2015 calendar year, solely because they fail to include a student's correct taxpayer identification number (TIN) on Form 1098–T.

Rev. Proc. 2016–13, page 290.

This revenue procedure updates Rev. Proc. 2015–16, 2015–7 I.R.B. 596, and identifies circumstances under which the disclosure on a taxpayer's income tax return with respect to an item or position is adequate for the purpose of reducing the understatement of income tax under section 6662(d) of the Internal Revenue Code (relating to the substantial understatement aspect of the accuracy-related penalty), and for the purpose of avoiding the tax return preparer penalty under section 6694(a) (relating to understatements due to unreasonable positions) with respect to income tax returns.

Finding Lists begin on page ii.

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.
This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.
This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.
To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.
This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 807.—Rules for Certain Reserves

Rev. Rul. 2016–02

For purposes of § 807(d)(4) of the Internal Revenue Code, for taxable years beginning after December 31, 2014, this ruling supplements the schedules of prevailing state assumed interest rates set forth in Rev. Rul. 92–19, 1992–1 C.B. 227. This information is to be used by insurance companies in computing their reserves for (1) life insurance and supplementary total and permanent disability benefits, (2) individual annuities and pure endowments, and (3) group annuities and pure endowments. As § 807(d)(2)(B) requires that the interest rate used to compute these reserves be the greater of (1) the applicable federal interest rate, or (2) the prevailing state assumed interest rate, the table of applicable federal interest rates in Rev. Rul. 92–19 is also supplemented.

Following are supplements to schedules A, B, C, and D to Part III of Rev. Rul. 92–19, providing prevailing state assumed interest rates for insurance products with different features issued in 2015 and 2016, and a supplement to the table in Part IV of Rev. Rul. 92–19, providing the applicable federal interest rates under § 807(d) for 2015 and 2016. This ruling does not supplement Parts I and II of Rev. Rul. 92–19.

This is the twenty-fourth supplement to the interest rates provided in Rev. Rul. 92–19. Earlier supplements were published in Rev. Rul. 93–58, 1993–2 C.B. 241 (interest rates for insurance products issued in 1992 and 1993); Rev. Rul. 94–11, 1994–1 C.B. 196 (1993 and 1994); Rev. Rul. 95–4, 1995–1 C.B. 141 (1994 and 1995); Rev. Rul. 96–2, 1996–1 C.B. 141 (1995 and 1996); Rev. Rul. 97–2, 1997–1 C.B. 134 (1996 and 1997); Rev. Rul. 98–2, 1998–1 C.B. 259 (1997 and 1998); Rev. Rul. 99–10, 1999–1 C.B. 671 (1998 and 1999); Rev. Rul. 2000–17, 2000–1 C.B. 842 (1999 and 2000); Rev. Rul. 2001–11, 2001–1 C.B. 780 (2000 and 2001); Rev. Rul. 2002–12, 2002–1 C.B. 624 (2001 and 2002); Rev. Rul. 2003–24, 2003–1 C.B. 557 (2002 and 2003); Rev. Rul. 2004–14, 2004–1 C.B. 511 (2003 and 2004); Rev. Rul. 2005–29, 2005–1 C.B. 1080 (2004 and 2005); Rev. Rul. 2006–25, 2006–1 C.B. 882 (2005 and 2006); Rev. Rul. 2007–10, 2007–1 C.B. 660 (2006 and 2007); Rev. Rul. 2008–19, 2008–1 C.B. 669 (2007 and 2008); Rev. Rul. 2009–3, 2009–5 I.R.B. 382 (2008 and 2009); Rev. Rul. 2010–7, 2010–8 I.R.B. 417 (2009 and 2010); Rev. Rul. 2011–23, 2011–43 I.R.B. 585 (2010 and 2011); Rev. Rul. 2012–6, 2012–6 I.R.B. 349 (2011 and 2012); Rev. Rul. 2013–4, 2013–9 I.R.B. 520 (2012 and 2013); Rev. Rul. 2014–4, 2014–5 I.R.B. 449 (2013 and 2014); and Rev. Rul. 2015–02, 2015–03 I.R.B. 325 (2014 and 2015).

Part III. Prevailing State Assumed Interest Rates—Products Issued in Years After 1982.*

Schedule A

STATUTORY VALUATION INTEREST RATES
BASED ON THE 1980 AMENDMENTS TO THE
NAIC STANDARD VALUATION LAW

A. Life insurance valuation:

Guarantee Duration (years)	*Calendar Year of Issue* 2016
10 or fewer	3.75**
More than 10 but not more than 20	3.75**
More than 20	3.50**

Source: Rates calculated from the monthly averages, ending June 30, 2015, of Moody's Composite Yield on Seasoned Corporate Bonds.

*The terms used in the schedules in this ruling and in Part III of Rev. Rul. 92–19 are those used in the Standard Valuation Law; the terms are defined in Rev. Rul. 92–19.

**As these rates exceed the applicable federal interest rate for 2016 of 1.56 percent, the valuation interest rate to be used for this product under § 807 is the applicable rate specified in this table.

Part III, Schedule B

STATUTORY VALUATION INTEREST RATES
BASED ON THE 1980 AMENDMENTS TO THE
NAIC STANDARD VALUATION LAW

B. Single premium immediate annuities and annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options:

Calendar Year of Issue	*Valuation Interest Rate*
2015	4.00*

Source: Rates calculated from the monthly averages, ending June 30, 2015, of Moody's Composite Yield on Seasoned Corporate Bonds.

*As this prevailing state assumed interest rate exceeds the applicable federal interest rate for 2015 of 1.68 percent, the valuation interest rate of 4.00 percent is to be used for this product under § 807.

Part III, Schedule C24–2015

STATUTORY VALUATION INTEREST RATES
BASED ON NAIC STANDARD VALUATION LAW
FOR 2015 CALENDAR YEAR BUSINESS
GOVERNED BY THE 1980 AMENDMENTS

C. Valuation interest rates for other annuities and guaranteed interest contracts that are valued on an issue year basis:

Cash Settlement Options?	*Future Interest Guarantee?*	*Guarantee Duration (years)*	*Valuation Interest Rate For Plan Type* *A*	*B*	*C*
Yes	Yes	5 or fewer	4.00*	3.75*	3.50*
		More than 5, but not more than 10	4.00*	3.75*	3.50*
		More than 10, but not more than 20	3.75*	3.50*	3.50*
		More than 20	3.50*	3.50*	3.50*
Yes	No	5 or fewer	4.00*	3.75*	3.75*
		More than 5, but not more than 10	4.00*	3.75*	3.75*
		More than 10, but not more than 20	3.75*	3.75*	3.50*
		More than 20	3.50*	3.50*	3.50*
No	Yes or No	5 or fewer	4.00*		
		More than 5, but not more than 10	4.00*	NOT APPLICABLE	
		More than 10, but not more than 20	3.75*		
		More than 20	3.50*		

Source: Rates calculated from the monthly averages, ending June 30, 2015, of Moody's Composite Yield on Seasoned Corporate Bonds.

*As these rates exceed the applicable federal interest rate for 2015 of 1.68 percent, the valuation interest rate to be used for this product under § 807 is the applicable rate specified in the above table.

Part III, Schedule D24–2015

STATUTORY VALUATION INTEREST RATES
BASED ON NAIC STANDARD VALUATION LAW
FOR 2015 CALENDAR YEAR BUSINESS
GOVERNED BY THE 1980 AMENDMENTS

D. Valuation interest rates for other annuities and guaranteed interest contracts that are contracts with cash settlement options and that are valued on a change in fund basis:

Cash Settlement Options?	*Future Interest Guarantee?*	*Guarantee Duration (years)*	*Valuation Interest Rate For Plan Type* *A*	*B*	*C*
Yes	Yes	5 or fewer	4.25*	4.00*	3.75*
		More than 5, but not more than 10	4.00*	4.00*	3.75*
		More than 10, but not more than 20	4.00*	4.00*	3.50*
		More than 20	3.75*	3.75*	3.50*
Yes	No	5 or fewer	4.25*	4.00*	3.75*
		More than 5, but not more than 10	4.25*	4.00*	3.75*
		More than 10, but not more than 20	4.00*	4.00*	3.75*
		More than 20	3.75*	3.75*	3.50*

Source: Rates calculated from the monthly averages, ending June 30, 2015, of Moody's Composite Yield on Seasoned Corporate Bonds.

* As these rates exceed the applicable federal interest rate for 2015 of 1.68 percent, the valuation interest rate to be used for this product under § 807 is the applicable rate specified in the above table.

Part IV. Applicable Federal Interest Rates.

TABLE OF
APPLICABLE FEDERAL INTEREST RATES
FOR PURPOSES OF § 807

Year	*Interest Rate*
2015	1.68
2016	1.56

Sources: Rev. Rul. 2004–106, 2004–2 C.B. 893, for the 2005 rate; Rev. Rul. 2005–77, 2005–2 C.B. 1071, for the 2006 rate; Rev. Rul. 2006–61, 2006–2 C.B 1028 for the 2007 rate; Rev. Rul. 2007–70, 2007–2 C.B. 1158 for the 2008 rate; Rev. Rul. 2008–53, 2008–2 C.B. 1231 for the 2009 rate; Rev. Rul. 2009–38, 2009–49 I.R.B. 736, for the 2010 rate; Rev. Rul. 2010–29, 2010–50 I.R.B. 818 for the 2011 rate; Rev. Rul. 2011–31, 2011–49 I.R.B. 829 for the 2012 rate; Rev. Rul. 2012–31, 2012–49 I.R.B. 636 for the 2013 rate; Rev. Rul. 2013–26, 2013–50 I.R.B. 628 for the 2014 rate; Rev. Rul. 2014–31, 2014–50 I.R.B. 935 for the 2015 rate; and Rev. Rul. 2015–25, 2015–49 I.R.B. 695 for the 2016 rate.

EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 92–19 is supplemented by the addition to Part III of that ruling of prevailing state assumed interest rates under § 807 for certain insurance products issued in 2015 and 2016 and is further supplemented by an addition to the table in Part IV of Rev. Rul. 92–19 listing applicable federal interest rates. Parts I and II of Rev. Rul. 92–19 are not affected by this ruling.

DRAFTING INFORMATION

The principal author of this revenue ruling is Linda K. Boyd of the Office of Associate Chief Counsel (Financial Institutions and Products). For further information regarding this revenue ruling contact Ms. Boyd at (202) 317-6995 (not a toll-free number).

Part III. Administrative, Procedural, and Miscellaneous

Application of Retroactive Increase in Excludable Transit Benefits

Notice 2016–6

PURPOSE

This notice provides guidance related to the enactment of § 105 of the Consolidated Appropriations Act, 2016, Public Law No. 114–113 (the "Act"). Section 105 of the Act amended § 132(f)(2) of the Internal Revenue Code to create parity, for periods after December 31, 2014, between the transit benefit exclusion for the aggregate of transportation in a commuter highway vehicle and any transit pass, and the exclusion for qualified parking. As a result of this amendment, the monthly transit benefit exclusion under § 132(f)(2)(A) for the aggregate of transportation in a commuter highway vehicle and any transit pass increased from $130 per participating employee to $250 per participating employee for the period from January 1, 2015, through December 31, 2015. For 2016, the monthly exclusion under both § 132(f)(2)(A) (the aggregate of transportation in a commuter highway vehicle and any transit pass) and § 132(f)(2)(B) (qualified parking) is $255.

To address employers' questions regarding the retroactive application of the increased exclusion for 2015 and to reduce filing and reporting burdens, the Internal Revenue Service (Service) is clarifying how the increase applies for 2015 and providing a special administrative procedure for employers to use in filing Form 941, Employer's QUARTERLY Federal Tax Return, for the fourth quarter of 2015 to reflect changes in the excludable amount for transit benefits provided in all quarters of 2015 and in filing Forms W–2, Wage and Tax Statement.

BACKGROUND

Section 132(a)(5) provides that any fringe benefit that is a qualified transportation fringe is excluded from gross income. Section 132(f)(1) provides in relevant part that the term "qualified transportation fringe" includes (when provided by an employer to an employee): (1) transportation in a commuter highway vehicle between home and work, (2) any transit pass, or (3) qualified parking.[1] Under § 132(f)(3), cash reimbursements by employers for transit passes constitute a qualified transportation fringe only if a voucher or similar item which may be exchanged only for a transit pass is not readily available for direct distribution by the employer to the employee. Section 1.132–9(b) of the Income Tax Regulations provides guidance on the exclusion for qualified transportation fringes. See § 1.132–9(b) Q/A 16(b)(4) for the meaning of the term "readily available."

Prior to the enactment of the Act, § 132(f)(2) provided that the amount of fringe benefits which was provided by an employer to any employee and which could be excluded from gross income under § 132(a)(5) could not exceed $100 per month in the case of the aggregate of transportation in a commuter highway vehicle and any transit pass, and $175 per month in the case of qualified parking, adjusted, in each case, for inflation. Prior to amendment by the Act, the adjusted maximum monthly excludable amount for 2015 for the aggregate of transportation in a commuter highway vehicle and any transit pass was $130, and the adjusted maximum monthly excludable amount for qualified parking was $250. See § 3.17 of Rev. Proc. 2014–61, 2014–47 I.R.B. 860.

The Act amended § 132(f) to create parity in the amount of the exclusion for these qualified transportation fringes. After the amendment, the applicable statutory limit on the amount of these qualified transportation fringes that may be provided by an employer to any employee and that may be excluded from gross income under § 132(a)(5) is in each case $175 per month, adjusted annually for inflation. Accordingly, after the enactment of the Act, the maximum monthly excludable amount for the aggregate of transportation in a commuter highway vehicle and any transit pass is equal to the maximum monthly excludable amount for qualified parking.[2] The amendment is effective retroactively to January 1, 2015.

Amounts that are excluded from gross income under § 132 are also excluded from Federal Insurance Contributions Act (FICA) taxes (social security and Medicare, including Additional Medicare Tax) and Federal income tax withholding. Sections 3121(a)(20) and 3401(a)(19).

Generally, corrections of overpayments of FICA tax are made after an error has been ascertained using the adjustment process under § 6413 or using the refund claim process under § 6402. An error is ascertained when the employer has sufficient knowledge of the error to be able to correct it.

Under §§ 31.6413(a)–1(a) and 31.6413(a)–2(b) of the Employment Tax Regulations, before making an adjustment of an overpayment of FICA tax, an employer generally must repay or reimburse its employee in the amount of the overcollection prior to the expiration of the period of limitations on credit or refund, and, for FICA tax overcollected in a prior year (other than Additional Medicare Tax), must also secure the employee's written statement confirming that the employee has not made any previous claims (or the claims were rejected) and will not make any future claims for refund or credit of the amount of the overcollected FICA tax. An employer repays an employee by direct payment to the employee; an employer reimburses an employee by applying the amount of the overcollection against the employee FICA tax which attaches to wages paid by the employer to the employee. Sections 31.6413(a)–1(a)(2)(ii) and 31.6413(a)–2(a)(1) provide that withheld Additional Medicare Tax can only be repaid or reimbursed and subsequently adjusted during the same calen-

[1]Section 132(f)(1)(D) also includes any qualified bicycle commuting reimbursement as a qualified transportation fringe, subject to a separate exclusion limit in §§ 132(f)(2)(C) and 132(f)(5)(F)(ii). The Act did not affect the qualified bicycle commuting reimbursement amount.

[2]Although the Act did not amend the base year for the inflation adjustment of the excludable amount for the aggregate of transportation in a commuter highway vehicle and any transit pass in § 132(f)(6)(A), the Act provides for parity in the amount of the exclusion for these qualified transportation fringes and qualified parking, and the limits are applied accordingly.

dar year in which it is withheld. Similarly, § 31.6413(a)–1(b) provides that employers cannot adjust overpayments of withheld income tax after the end of the calendar year. Rather, the withheld Additional Medicare Tax and the withheld income tax are applied against the taxes shown on the employee's individual income tax return (for example, Form 1040, U.S. Individual Income Tax Return) and any excess will be refunded to the employee.

Section 31.6402(a)–2 prescribes rules under which a refund claim for an overpayment of FICA tax (other than Additional Medicare Tax) may be made. Pursuant to § 31.6402(a)–2(a), an employer has a duty to assure that its employee's rights to recover overcollected taxes are protected by repaying or reimbursing overcollected amounts. Alternatively, an employer may obtain the employee's consent to the filing of the refund claim. Under § 31.6402(a)–2(a)(iii), no refund to the employer is permitted with regard to Additional Medicare Tax which the employer deducted or withheld from the employee. Similarly, under §§ 6414 and 31.6414–1, no refund to the employer is allowed for the overpayment of withheld income tax which the employer deducted or withheld from an employee.

To make employment tax corrections for overpayments (that is, to make adjustments or to claim refunds), an employer uses the "X" form that corresponds to the return being corrected. Thus, an employer corrects overreported taxes on a previously filed Form 941 by filing Form 941–X, Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund. A separate X form must be filed for each taxable period.

APPLICATION OF RETROACTIVE INCREASE TO TRANSIT BENEFITS PROVIDED IN 2015

For purposes of the remaining discussion, "transit benefits" refers to the aggregate benefits of transportation in a commuter highway vehicle and transit passes that meet the requirements of § 132 and the applicable regulations. Pursuant to the change made by the Act, which was retroactive to January 1, 2015, transit benefits provided during 2015 by an employer to an employee in excess of $130 (the former maximum monthly excludable amount) up to $250 (the amended maximum monthly excludable amount) are excluded from the employee's gross income and wages. These excess amounts are referred to as "excess transit benefits" in this notice. The exclusion applies whether the transit benefits were provided in 2015 by the employer from its own funds or through compensation reduction arrangements as permitted by §§ 132(f)(4) and 1.132–9(b) Q/A 11–15.

For 2015, employers must reduce the taxable wages of affected employees, as reported on Forms 941 and W–2 and any equivalent forms, by the amount of any excess transit benefits. For example, if an employer gave an employee a monthly transit pass worth $200 for the month of December 2015 and included $70 in the employee's taxable wages for the month for withholding purposes, the employer must subtract that $70 from the employee's taxable wages reported on Forms 941 and W–2. As another example, if an employer maintained a salary reduction plan and an employee purchased a $200 transit pass for the month of December 2015 by way of a pre-tax deduction of $130 and a post-tax deduction of $70, the $70 post-tax deduction must be treated as a pre-tax deduction for purposes of reporting the employee's taxable wages on Forms 941 and W–2.

Neither § 132 nor the change made by the Act mandates that employers provide additional transit benefits to their employees for 2015. Also, the Act does not separately provide that additional benefits provided to employees in 2016 to compensate employees for transit expenses incurred in 2015 are automatically excludable from income under § 132(f). With regard to transit benefits provided pursuant to compensation reduction arrangements, § 1.132–9(b) Q/A 13 provides that, each month, the amount of the compensation reduction may not exceed the combined applicable statutory monthly limit for transportation in a commuter highway vehicle and transit passes. Section 1.132–9(b) Q/A 14(b) provides that the compensation reduction election must be made before the employee is able to receive the cash or other taxable amount at the employee's discretion. Accordingly, employees may not retroactively increase their compensation reduction for 2015 to take advantage of the increase in the excludable amount for transit benefits in 2015. In addition, employees may not reduce their compensation by more than $255 per month in 2016 (the applicable statutory monthly limit for 2016) in order to receive any permissible reimbursement for transit expenses incurred in 2015.

Furthermore, the Act did not change the other requirements of § 132, including the limitation on providing cash reimbursements for transit passes when transit passes are readily available for direct distribution by the employer to the employee. Consequently, cash reimbursements to cover transit expenses up to $250 for periods during 2015 are not excludable under § 132 if transit passes were readily available for periods in 2015 for which the cash reimbursements are provided.

SPECIAL ADMINISTRATIVE PROCEDURE FOR EMPLOYERS THAT DESIRE TO MAKE ADJUSTMENTS FOR 2015 ON THE FORM 941 FILED FOR THE FOURTH QUARTER OF 2015

Employers that originally reported excess transit benefits as includible in gross income and wages and withheld income taxes and FICA taxes would normally be required to file Form 941–X for each quarter to make corrections.

In view of the timing of the statutory change and the due dates for Forms 941 for the fourth quarter of 2015 and Forms W–2, and in order to reduce administrative burden, the Service is providing a special administrative procedure for employers that treated excess transit benefits as wages and that have not yet filed their fourth quarter Form 941 for 2015. Employers desiring to use this special administrative procedure must repay or reimburse their employees for the overcollected FICA tax (including any Additional Medicare Tax) on the excess transit benefits for all four quarters of 2015 upon or before filing the fourth quarter Form 941. The employer, in reporting amounts on its fourth quarter Form 941, may reduce the fourth quarter Wages, tips and compensation reported on line 2, Taxable social security wages reported on line 5a, Taxable Medicare wages and tips reported on line 5c, and Taxable wages & tips subject

to Additional Medicare Tax withholding reported on line 5d by the excess transit benefits for all four quarters of 2015. By taking advantage of this special administrative procedure, employers will avoid having to file Forms 941–X, and will also avoid having to file Forms W–2c as discussed below.

This procedure can be used only to the extent that employers have repaid or reimbursed their employees for the employee share of FICA tax (including any Additional Medicare Tax) attributable to the excess transit benefits. Under this special administrative procedure, employers may correct the employer share of FICA tax only if the employees' share of FICA tax has been repaid or reimbursed to the employees. Employers using this special procedure do not need to obtain written statements from their employees confirming, for each employee, that the employee did not make a claim (or if the employee did make a claim, that the claim was rejected) and will not make a claim for refund of FICA tax overcollected in a prior year.

The repayment or reimbursement of overwithheld social security tax and the corresponding reduction for wages reported on Form 941, line 5a, Taxable social security wages, must take into account that refunds or credits of social security tax are limited to the amount paid on that portion of the excess transit benefits that, when added to other wages for the year for an employee, did not exceed the social security wage base for 2015 ($118,500). Similarly, the repayment or reimbursement of overwithheld Additional Medicare Tax and the corresponding reduction for wages reported on Form 941, line 5d, Taxable wages & tips subject to Additional Medicare Tax withholding, must take into account that refunds or credits of Additional Medicare Tax are limited to the amount paid on that portion of the excess transit benefits that, when subtracted from the total of the excess transit benefits and other wages paid or provided to that employee for the year, leaves a balance of Medicare wages and tips equal to or greater than $200,000.

To ensure that use of this special administrative procedure does not result in a mismatch between the total taxes reported on Form 941, line 10, Total taxes after adjustments, and the Total liability for the quarter reported on Form 941, line 14 (for a monthly schedule depositor) or Schedule B (Form 941) (for a semiweekly schedule depositor), an employer should use the following procedure. The employer should reduce the last liability of the quarter reported (that is, Month 3 on line 14 or the last liability entry on Schedule B) by the amount of the tax reduction due to use of the special administrative procedure. If the amount of the tax reduction exceeds the last liability of the quarter reported on line 14 or Schedule B, the employer should apply the amount of the tax reduction to reduce previous liabilities in reverse order until the amount of the tax reduction is completely used. Note that negative numbers must not be entered on line 14 or Schedule B.

The same procedures are available to filers of other employment tax returns reporting FICA taxes (for example, the related Spanish-language return or return for U.S. possessions) and to filers of employment tax returns reporting taxes under the Railroad Retirement Tax Act.

NORMAL PROCEDURES FOR EMPLOYERS THAT HAVE FILED FOURTH QUARTER FORM 941 OR HAVE NOT REPAID OR REIMBURSED EMPLOYEES PRIOR TO FILING FOURTH QUARTER FORM 941

Employers that have already filed the fourth quarter Form 941 must use Form 941–X and normal procedures to make an adjustment or claim a refund for any quarter in 2015 with regard to the overpayment of tax on the excess transit benefits after repaying or reimbursing their employees or, for claims for refund, securing consents from their employees. Similarly, to the extent employers have not repaid or reimbursed their employees who received excess transit benefits in 2015 prior to filing the fourth quarter Form 941, the employers must use Form 941–X to make an adjustment or claim for refund with respect to the excess transit benefits provided to those employees and must follow the normal procedures.

Under the normal procedures, the employer must obtain the required statements under §§ 31.6413(a)–1 or 31.6402(a)–2 (subject to the exception for making reasonable efforts). Furthermore, the employer may not repay or reimburse, make an adjustment with respect to, or seek a refund of Additional Medicare Tax or income tax deducted or withheld from the employee in 2015.

EMPLOYER INSTRUCTIONS FOR FORM W–2

Employers that paid excess transit benefits in 2015 and have not furnished 2015 Forms W–2 to their employees must take into account the increased exclusion for 2015 transit benefits in calculating the amount of wages reported in box 1, Wages, tips, other compensation; box 3, Social security wages; and box 5, Medicare wages and tips. Employers that have repaid or reimbursed their employees for the overcollected FICA taxes prior to furnishing Form W–2 (whether they utilized the special administrative procedure or the normal procedures) must reduce the amounts of withheld tax reported in box 4, Social security tax withheld, and box 6, Medicare tax withheld, by the amounts of the repayments or reimbursements. Note that under the normal procedures, the amount reported in box 6, Medicare tax withheld, will not be reduced with regard to any Additional Medicare Tax withheld on the excess transit benefits because no repayment or reimbursement of such amount is permitted after the end of 2015.

In all cases, employers must report in box 2, Federal income tax withheld, the amount of income tax actually withheld during 2015. The additional income tax withholding will be applied against the taxes shown on the employee's individual income tax return (Form 1040, U.S. Individual Income Tax Return).

Employers that repaid or reimbursed their employees for the overcollected FICA taxes after furnishing Forms W–2 to their employees but before filing Forms W–2 with the Social Security Administration (SSA) must check the "Void" box at the top of each incorrect Form W–2 (Copy A). These employers must prepare new Forms W–2 with the correct information, and send these new Forms W–2 (Copy A) to the SSA. The employers must write "CORRECTED" on the employees' new copies (B, C, and 2) and furnish them to the employees. See the 2015 General Instructions for Forms W–2 and W–3.

Employers that have already filed 2015 Forms W–2 with SSA must file Forms W–2c, Corrected Wage and Tax Statement, to take into account the increased exclusion for transit benefits and to reflect any repayments or reimbursements of the withheld FICA tax and must furnish copies of the Forms W–2c to the employees.

DRAFTING INFORMATION

The principal author of this notice is Jean M. Casey of the Office of Associate Chief Counsel (Tax Exempt & Government Entities). For further information regarding this notice contact Ms. Casey on (202) 317-4774 (not a toll-free number).

Section 6413.—This notice provides a special administrative procedure for the filing of the fourth quarter Form 941 for employers who treated transit benefits in excess of $130 per months as wages in 2015.

This notice provides a special administrative procedure for the filing of the fourth quarter Form 941 for employers who treated transit benefits in excess of $130 per months as wages in 2015. See Notice 2016–6, page 287.

---

26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.
(Also: Part 1, §§ 6662, 6694, 1.6662–4, 1.6694–2)

Adequate Disclosure Revenue Procedure Renewal

Rev. Proc. 2016–13

SECTION 1. PURPOSE

This revenue procedure updates Rev. Proc. 2015–16, 2015–7 I.R.B. 596, and identifies circumstances under which the disclosure on a taxpayer's income tax return with respect to an item or position is adequate for the purpose of reducing the understatement of income tax under section 6662(d) of the Internal Revenue Code (relating to the substantial understatement aspect of the accuracy-related penalty), and for the purpose of avoiding the tax return preparer penalty under section 6694(a) (relating to understatements due to unreasonable positions) with respect to income tax returns. This revenue procedure does not apply with respect to any other penalty provisions (including but not limited to the disregard provisions of the section 6662(b)(1) accuracy-related penalty, the section 6662(b)(6) accuracy-related penalty and the section 6662(i) increased accuracy-related penalty in the case of nondisclosed noneconomic substance transactions, and the section 6662(j) increased accuracy-related penalty in the case of undisclosed foreign financial asset understatements). If this revenue procedure does not include an item, disclosure is adequate with respect to that item only if made on a properly completed Form 8275 or 8275–R, as appropriate, attached to the return for the year or to a qualified amended return. *See* Treas. Reg. § 1.6664–2(c) for information about qualified amended returns.

This revenue procedure applies to any income tax return filed on 2015 tax forms for a taxable year beginning in 2015, and to any income tax return filed in 2016 on 2015 tax forms for short taxable years beginning in 2016.

SECTION 2. CHANGES FROM REV. PROC. 2015–16

Editorial changes have been made throughout this revenue procedure. In addition, section 4.02(3) has been updated to reflect that for tax years ending December 31, 2014, or later, filers that (a) are required to file Schedule M–3 (Form 1120), *Net Income (Loss) Reconciliation for Corporations With Total Assets of $10 Million or More*, and have less than $50 million in total assets at the end of the tax year or (b) are not required to file Schedule M–3 and voluntarily file Schedule M–3, are not required to file Schedule B (Form 1120), *Additional Information for Schedule M–3 Filers*. Section 4.02(3) has also been updated to reflect that for tax years ending on December 31, 2014, or later, partnerships that (a) are required to file Schedule M–3 (Form 1065), *Net Income (Loss) Reconciliation for Certain Partnerships*, and have less than $50 million in total assets at the end of the tax year or (b) are not required to file Schedule M–3 and voluntarily file Schedule M–3, are not required to file Schedule C (Form 1065), *Additional Information for Schedule M–3 Filers*. No additional substantive changes have been made.

SECTION 3. BACKGROUND

.01 If section 6662 applies to any portion of an underpayment of tax required to be shown on a return, an amount equal to 20 percent of the portion of the underpayment is added to the tax. The penalty rate increases to 40 percent in the case of gross valuation misstatements under section 6662(h), nondisclosed noneconomic substance transactions under section 6662(i), or undisclosed foreign financial asset understatements under section 6662(j). Section 6662(b)(2) applies to the portion of an underpayment of tax that is attributable to a substantial understatement of income tax.

.02 There is a substantial understatement of income tax if the amount of the understatement exceeds the greater of (i) 10 percent of the amount of tax required to be shown on the return for the taxable year or (ii) $5,000. Section 6662(d)(1). Section 6662(d)(1)(B) provides a special rule for corporations. A corporation (other than an S corporation or a personal holding company) has a substantial understatement of income tax if the amount of the understatement exceeds the lesser of (i) 10 percent of the tax required to be shown on the return for a taxable year (or, if greater, $10,000) or (ii) $10,000,000. An understatement is the excess of the amount of tax required to be shown on the return for the taxable year over the amount of the tax that is shown on the return reduced by any rebate. Section 6662(d)(2).

.03 In the case of an item not attributable to a tax shelter, if the taxpayer has a reasonable basis for the tax treatment of the item, the amount of the understatement is reduced by the portion of the understatement attributable to the item with respect to which the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return. Section 6662(d)(2)(B)(ii).

.04 Section 6694(a) imposes a penalty on a tax return preparer who prepares a return or claim for refund reflecting an understatement of liability due to an "unreasonable position" if the tax return pre-

parer knew (or reasonably should have known) of the position. A position (other than a position with respect to a tax shelter or a reportable transaction to which section 6662A applies) is generally treated as unreasonable unless (i) there is or was substantial authority for the position, or (ii) the position was properly disclosed in accordance with section 6662(d)(2)(B)(ii)(I) and had a reasonable basis. If the position is with respect to a tax shelter (as defined in section 6662(d)(2)(C)(ii)) or a reportable transaction to which section 6662A applies, the position is treated as unreasonable unless it is reasonable to believe that the position would more likely than not be sustained on the merits. *See* Notice 2009–5, 2009–3 I.R.B. 309, for interim penalty compliance rules for tax shelter transactions.

.05 In general, this revenue procedure provides guidance for determining when disclosure by return is adequate for purposes of section 6662(d)(2)(B)(ii) and section 6694(a)(2)(B). For purposes of this revenue procedure, the taxpayer must furnish all required information in accordance with the applicable forms and instructions, and the money amounts entered on these forms must be verifiable.

.06 This revenue procedure may apply to a return for a fiscal tax year that begins in 2015 and ends in 2016. This revenue procedure may also apply to a short year return for a period beginning in 2016 if the return is to be filed before the 2016 forms are available. (Note that individuals are generally not put in this position. The most frequent situation in which a short year arises is when filing a decedent's final return for a fractional part of a year. In that situation, the 2016 form will be available because the final return is due the fifteenth day of the fourth month following the close of the 12-month period that began with the first day of such fractional part of the year (meaning the due date is not accelerated). *See* Treas. Reg. § 1.6072–1(b).) In the case of fiscal year and short year returns, the taxpayer must take into account any tax law changes that are effective for tax years beginning after December 31, 2015, even though these changes are not reflected on the form or instructions.

.07 This document does not take into account the effect of tax law changes effective for tax years beginning after December 31, 2015. If a line referenced in this revenue procedure is affected by such a change and requires additional reporting, a taxpayer may have to file Form 8275, *Disclosure Statement*, or Form 8275–R, *Regulation Disclosure Statement*, until the Service prescribes criteria for complying with the requirement.

.08 A complete and accurate disclosure of a tax position on the appropriate year's Schedule UTP, *Uncertain Tax Position Statement*, will be treated as if the corporation filed a Form 8275 or Form 8275–R regarding the tax position. The filing of a Form 8275 or Form 8275–R, however, will not be treated as if the corporation filed a Schedule UTP.

SECTION 4. PROCEDURE

.01 General

(1) Additional disclosure of facts relevant to, or positions taken with respect to, issues involving any of the items set forth below is unnecessary for purposes of reducing any understatement of income tax under section 6662(d) (except as otherwise provided in section 4.02(3) concerning Schedules M–1 and M–3), provided that the forms and attachments are completed in a clear manner and in accordance with their instructions.

(2) The money amounts entered on the forms must be verifiable, and the information on the return must be disclosed in the manner described below. For purposes of this revenue procedure, a number is verifiable if, on audit, the taxpayer can prove the origin of the amount (even if that number is not ultimately accepted by the Internal Revenue Service) and the taxpayer can show good faith in entering that number on the applicable form.

(3) The disclosure of an amount as provided in section 4.02 below is not adequate when the understatement arises from a transaction between related parties. If an entry may present a legal issue or controversy because of a related-party transaction, then that transaction and the relationship must be disclosed on a Form 8275 or Form 8275–R.

(4) When the amount of an item is shown on a line that does not have a preprinted description identifying that item (such as on an unnamed line under an "Other Expense" category), the taxpayer must clearly identify the item by including the description on that line. For example, to disclose a bad debt for a sole proprietorship, the words "bad debt" must be written or typed on the line of Schedule C that shows the amount of the bad debt. Also, for Schedule M–3 (Form 1120), Part II, line 25, Other income (loss) items with differences, or Part III, line 37, Other expense/deduction items with differences, the entry must provide descriptive language; for example, "Cost of non-compete agreement deductible not capitalizable," and the description must be provided on an attachment. Similarly, for other forms, if space limitations on a form do not allow for an adequate description, the description must be continued on an attachment.

(5) Although a taxpayer may literally meet the disclosure requirements of this revenue procedure, the disclosure will have no effect for purposes of the section 6662 accuracy-related penalty if the item or position on the return: (1) does not have a reasonable basis as defined in Treas. Reg. § 1.6662–3(b)(3); (2) is attributable to a tax shelter item as defined in section 6662(d)(2)(C)(ii); or (3) is not properly substantiated or the taxpayer failed to keep adequate books and records with respect to the item or position.

(6) Disclosure also will have no effect for purposes of the section 6694(a) penalty as applicable to tax return preparers if the position is with respect to a tax shelter (as defined in section 6662(d)(2)(C)(ii)) or a reportable transaction to which section 6662A applies.

.02 Items

(1) Form 1040, Schedule A, *Itemized Deductions:*

(a) Medical and Dental Expenses: Complete lines 1 through 4, supplying all required information.

(b) Taxes: Complete lines 5 through 9, supplying all required information. Line 8 must list each type of tax and the amount paid.

(c) Interest Expenses: Complete lines 10 through 15, supplying all required information. This section 4.02(1)(c) does not apply to (i) amounts disallowed under section 163(d) unless Form 4952, *Investment Interest Expense Deduction*, is com-

pleted, or (ii) amounts disallowed under section 265.

(d) Contributions: Complete lines 16 through 19, supplying all required information. Enter the amount of the contribution reduced by the value of any substantial benefit (goods or services) provided by the donee organization in consideration, in whole or in part, for the contribution. Entering the contribution's value, unreduced by the value of the benefit received, will not constitute adequate disclosure. If a contribution of $250 or more is made, this section will not apply unless a contemporaneous written acknowledgment, as required by section 170(f)(8), is obtained from the donee organization. If a contribution of cash of less than $250 is made, this section will not apply unless a bank record or written communication from the donee organization, as required by section 170(f)(17), is obtained. If a contribution of property other than cash is made and the amount claimed as a deduction exceeds $500, attach a properly completed Form 8283, *Noncash Charitable Contributions*, to the return. In addition to the Form 8283, if a contribution of a qualified motor vehicle, boat, or airplane has a value of more than $500, this section will not apply unless a contemporaneous written acknowledgment, as required by section 170(f)(12), is obtained from the donee organization and attached to the return. An acknowledgment under section 170(f)(8) is not required if an acknowledgment under section 170(f)(12) is required.

(e) Casualty and Theft Losses: Complete Form 4684, *Casualties and Thefts*, and attach to the return. Each item or article for which a casualty or theft loss is claimed must be listed on Form 4684.

(2) Certain Trade or Business Expenses (including, for purposes of this section, the following six expenses as they relate to the rental of property):

(a) Casualty and Theft Losses: The procedure outlined in section 4.02(1)(e) must be followed.

(b) Legal Expenses: The amount claimed must be stated. This section does not apply, however, to amounts properly characterized as capital expenditures, personal expenses, or non-deductible lobbying or political expenditures, including amounts that are required to be (or that are) amortized over a period of years.

(c) Specific Bad Debt Charge-off: The amount written off must be stated.

(d) Reasonableness of Officers' Compensation: Form 1125–E, *Compensation of Officers*, must be completed when required by its instructions. The time devoted to business must be expressed as a percentage as opposed to "part" or "as needed." This section does not apply to "golden parachute" payments, as defined under section 280G. This section will not apply to the extent that remuneration paid or incurred exceeds the employee-remuneration deduction limitations under section 162(m), if applicable.

(e) Repair Expenses: The amount claimed must be stated. This section does not apply, however, to any amount properly characterized as capital expenditures or personal expenses.

(f) Taxes (other than foreign taxes): The amount claimed must be stated.

(3) Differences in book and income tax reporting.

For Schedule M–1 and all Schedules M–3, including those listed in (a)-(f) below, the information provided must reasonably apprise the Service of the potential controversy concerning the tax treatment of the item. If the information provided does not so apprise the Service, a Form 8275 or Form 8275–R must be used to adequately disclose the item (*see* Part II of the instructions for those forms).

> Note: An item reported on a line with a pre-printed description, shown on an attached schedule or "itemized" on Schedule M–1, may represent the aggregate amount of several transactions producing that item (*i.e.,* a group of similar items, such as amounts paid or incurred for supplies by a taxpayer engaged in business). In some instances, a potentially controversial item may involve a portion of the aggregate amount disclosed on the schedule. The Service will not be reasonably apprised of a potential controversy by the aggregate amount disclosed. In these instances, the taxpayer must use Form 8275 or Form 8275–R regarding that portion of the item.

Combining unlike items, whether on Schedule M–1 or Schedule M–3 (or on an attachment when directed by the instructions), will not constitute an adequate disclosure.

Additionally, taxpayers that file the Schedule M–3 (Form 1120), *Net Income (Loss) Reconciliation for Corporations With Total Assets of $10 Million or More*, may be required to complete Schedule B (Form 1120), *Additional Information for Schedule M–3 Filers*. For further information see Who Must File in the General Instructions for Schedule B (Form 1120). Taxpayers that file the Schedule M–3 (Form 1065), *Net Income (Loss) Reconciliation for Certain Partnerships*, may be required to complete Schedule C (Form 1065), *Additional Information for Schedule M–3 Filers*. For further information see Who Must File in the General Instructions for Schedule C (Form 1065). When required, these schedules are necessary to constitute adequate disclosure.

(a) Form 1065. Schedule M–3 (Form 1065), *Net Income (Loss) Reconciliation for Certain Partnerships*: Column (a), *Income (Loss) per Income Statement*, of Part II (reconciliation of income (loss) items) and Column (a), *Expense per Income Statement*, of Part III (reconciliation of expense/deduction items); Column (b), *Temporary Difference*, and Column (c), *Permanent Difference*, of Part II (reconciliation of income (loss) items) and Part III (reconciliation of expense/deduction items); and Column (d), *Income (Loss) per Tax Return*, of Part II (reconciliation of income (loss) items) and Column (d), *Deduction per Tax Return*, of Part III (reconciliation of expense/deduction items).

(b) Form 1120. (i) Schedule M–1, *Reconciliation of Income (Loss) per Books With Income per Return.*

(ii) Schedule M–3 (Form 1120), *Net Income (Loss) Reconciliation for Corporations With Total Assets of $10 Million or More*: Column (a), *Income (Loss) per Income Statement*, of Part II (reconciliation of income (loss) items) and Column (a), *Expense per Income Statement*, of Part III (reconciliation of expense/deduction items); Column (b), *Temporary Difference*, and Column (c), *Permanent Difference*, of Part II (reconciliation of income (loss) items) and Part III (reconciliation of expense/deduction items); and Column (d), *Income (Loss) per Tax Return*, of Part II (reconciliation of income

(loss) items) and Column (d), *Deduction per Tax Return*, of Part III (reconciliation of expense/deduction items).

(c) Form 1120–L. Schedule M–3 (Form 1120–L), *Net Income (Loss) Reconciliation for U.S. Life Insurance Companies With Total Assets of $10 Million or More*: Column (a), *Income (Loss) per Income Statement*, of Part II (reconciliation of income (loss) items) and Column (a), *Expense per Income Statement*, of Part III (reconciliation of expense/deduction items); Column (b), *Temporary Difference*, and Column (c), *Permanent Difference*, of Part II (reconciliation of income (loss) items) and Part III (reconciliation of expense/deduction items); and Column (d), *Income (Loss) per Tax Return*, of Part II (reconciliation of income (loss) items) and Column (d), *Deduction per Tax Return*, of Part III (reconciliation of expense/deduction items).

(d) Form 1120–PC. Schedule M–3 (Form 1120–PC), *Net Income (Loss) Reconciliation for U.S. Property and Casualty Insurance Companies With Total Assets of $10 Million or More*: Column (a), *Income (Loss) per Income Statement*, of Part II (reconciliation of income (loss) items) and Column (a), *Expense per Income Statement*, of Part III (reconciliation of expense/deduction items); Column (b), *Temporary Difference*, and Column (c), *Permanent Difference*, of Part II (reconciliation of income (loss) items) and Part III (reconciliation of expense/deduction items); and Column (d), *Income (Loss) per Tax Return*, of Part II (reconciliation of income (loss) items) and Column (d), *Deduction per Tax Return*, of Part III (reconciliation of expense/deduction items).

(e) Form 1120–S. Schedule M–3 (Form 1120–S), *Net Income (Loss) Reconciliation for S Corporations With Total Assets of $10 Million or More*: Column (a), *Income (Loss) per Income Statement*, of Part II (reconciliation of income (loss) items) and Column (a), *Expense per Income Statement*, of Part III (reconciliation of expense/deduction items); Column (b), *Temporary Difference*, and Column (c), *Permanent Difference*, of Part II (reconciliation of income (loss) items) and Part III (reconciliation of expense/deduction items); and Column (d), *Income (Loss) per Tax Return*, of Part II (reconciliation of income (loss) items) and Column (d), *Deduction per Tax Return*, of Part III (reconciliation of expense/deduction items).

(f) Form 1120–F. Schedule M–3 (Form 1120–F), *Net Income (Loss) Reconciliation for Foreign Corporations With Reportable Assets of $10 Million or More*: Column (b), *Temporary Differences*, Column (c), *Permanent Differences*, and Column (d), *Other Permanent Differences for Allocations to Non-ECI and ECI,* of Part II (reconciliation of income (loss) items) and Part III (reconciliation of expense/deduction items).

(4) Foreign Tax Items:

(a) International Boycott Transactions: Transactions disclosed on Form 5713, *International Boycott Report*; Schedule A, *International Boycott Factor (Section 999(c)(1))*; Schedule B, *Specifically Attributable Taxes and Income (Section 999(c)(2))*; and Schedule C, *Tax Effect of the International Boycott Provisions*, must be completed when required by their instructions.

(b) Treaty-Based Return Position: Transactions and amounts under section 6114 or section 7701(b) as disclosed on Form 8833, *Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)*, must be completed when required by its instructions.

(5) Other:

(a) Moving Expenses: Complete Form 3903, *Moving Expenses*, and attach to the return.

(b) Employee Business Expenses: Complete Form 2106, *Employee Business Expenses*, or Form 2106–EZ, *Unreimbursed Employee Business Expenses*, and attach to the return. This section does not apply to club dues or to travel expenses for any non-employee accompanying the taxpayer on the trip.

(c) Fuels Credit: Complete Form 4136, *Credit for Federal Tax Paid on Fuels*, and attach to the return.

(d) Investment Credit: Complete Form 3468, *Investment Credit*, and attach to the return.

SECTION 5. EFFECTIVE DATE

This revenue procedure applies to any income tax return filed on a 2015 tax form for a taxable year beginning in 2015 and to any income tax return filed on a 2015 tax form in 2016 for a short taxable year beginning in 2016.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Mark A. Bond of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue procedure, contact Branch 2 of Procedure and Administration at (202) 317-6844 (not a toll-free number).

Part IV. Items of General Interest

Limited Penalty Relief for Filers of Form 1098–T, *Tuition Statement*, Under Section 6724(f).

Announcement 2016–03

This announcement provides notice that the IRS will not impose penalties under section 6721 or 6722 on eligible educational institutions required to file Forms 1098–T, *Tuition Statement*, for the 2015 calendar year, solely because they fail to include a student's correct taxpayer identification number (TIN) on Form 1098–T. This announcement is limited to 2015 Forms 1098–T required to be filed by eligible educational institutions by February 29, 2016, or March 31, 2016 (if filed electronically). This announcement does not provide penalty relief for any other failure that would cause a filer to be subject to penalties under section 6721 or 6722, or any other penalty under any provision of the Code.

Section 6050S(a)(1) requires eligible educational institutions to file information returns (Form 1098–T) with the IRS and to furnish written statements to taxpayers relating to qualified tuition and related expenses paid to or billed by the eligible educational institution. Section 6050S(b)(2) provides that these information returns must contain, among other things, the name, address, and TIN of any individual who is enrolled at the institution and the amount of qualified tuition and related expenses paid or billed.

Section 6721 imposes a penalty on an eligible educational institution that fails to file correct and/or timely information returns with the IRS. Section 6722 imposes a penalty on an educational institution that fails to furnish correct and/or timely written statements to the student. However, section 6724(a) provides that the penalty under section 6721 or 6722 may be waived if it is shown that the failure was due to reasonable cause and not due to willful neglect.

The Trade Preferences Extension Act of 2015 (Public Law 114–27 (129 Stat. 362 (Jun. 29, 2015)) (TPEA) recently amended section 6724. Section 805 of TPEA amended section 6724 by adding a new subsection (f), which provides that no penalty will be imposed under section 6721 or 6722 against an eligible educational institution solely by reason of failing to include an individual's TIN on a Form 1098–T or related statement if the institution contemporaneously certifies under penalties of perjury in the form and manner prescribed by the Secretary that it has complied with the standards promulgated by the Secretary for obtaining such individual's TIN. The provision applies to returns required to be made and statements required to be furnished after December 31, 2015.

Relief under section 6724(f) applies only to eligible educational institutions and does not apply to insurers required to file Forms 1098–T under section 6050S(a)(2) or to persons engaged in the business of servicing student loans and obligated under section 6050S(a)(3) to report on Form 1098–E student loan interest aggregating $600 or more for a calendar year.

The IRS is unable to make necessary programming and form changes to implement section 6724(f) with respect to Forms 1098–T for the 2015 calendar year. The IRS, therefore, will not impose penalties under section 6721 or 6722 against an eligible educational institution that timely files or furnishes 2015 Forms 1098–T or statements with missing or incorrect TINs during 2016. This penalty relief does not apply to other failures subject to a penalty under section 6721 or 6722, such as failure to file 2015 Forms 1098–T timely, or a failure to include all of the other information required to be included on the Form 1098–T.

In addition, this penalty relief does not apply to Forms 1098–T for years prior to the 2015 calendar year that were required to be filed before January 1, 2016, but are actually filed during 2016. For information about penalty relief related to Forms 1098–T for calendar years prior to 2015, see the IRS information release at, https://www.irs.gov/uac/Newsroom/For-Colleges-and-Universities:-IRS-Waives-Penalties-for-Missing-or-Incorrect-Taxpayer-Identification-Numbers. Procedures implementing section 6724(f) for Forms 1098–T and statements required to be filed after December 31, 2016, will be provided in separate guidance.

The principal author of this announcement is James G. Hartford of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this announcement, contact Gerald Semasek at (202) 317-6845 (not a toll-free number).

Substantiation Requirement for Certain Contributions; Withdrawal

REG–138344–13

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws proposed regulations that would implement the statutory exception to the "contemporaneous written acknowledgement" requirement for substantiating charitable contribution deductions of $250 or more. The withdrawal affects persons that make charitable contributions and organizations that receive charitable contributions.

DATES: As of January 8, 2016 the notice of proposed rulemaking published on September 17, 2015 (80 FR 55802), is withdrawn.

FOR FURTHER INFORMATION CONTACT: Robert Basso at (202) 317-7011 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 170(f)(8)(A) of the Internal Revenue Code provides the statutory requirement that a taxpayer who claims a charitable contribution deduction for any contribution of $250 or more obtain substantiation in the form of a contemporaneous written acknowledgment (CWA) from the donee organization. However, in section 170(f)(8)(D), Congress provided an exception to the CWA requirement. Under the exception, a CWA is not re-

quired if the donee organization files a return on such form and in accordance with such regulations as the Treasury Department may prescribe (donee reporting).

Section 1.170A–13(f) of the Income Tax Regulations provides the rules issued by the Treasury Department and the IRS for substantiating charitable contributions of $250 or more. See TD 8690 (1997–1 CB 68). When issuing TD 8690 in 1997, the Treasury Department and the IRS specifically declined to issue regulations to implement donee reporting under section 170(f)(8)(D). The IRS has consistently maintained that the section 170(f)(8)(D) exception is not available unless and until the Treasury Department and the IRS issue final regulations prescribing the method for donee reporting. Nevertheless, some taxpayers under examination for their claimed charitable contribution deductions have recently argued that a failure to comply with the CWA requirements of section 170(f)(8)(A) may be cured if the donee organization files an amended Form 990, "Return of Organization Exempt From Income Tax," that includes the donor's contribution information. These taxpayers argue that an amended Form 990 constitutes permissible donee reporting under section 170(f)(8)(D), even if the amended Form 990 is submitted to the IRS many years after the purported charitable contribution was made. In response to some donors' requests, some donee organizations have filed amended Forms 990 attempting to effectuate donee reporting. The Treasury Department and the IRS have concluded that the Form 990 is an unsuitable reporting method for this purpose and may not be used to effectuate donee reporting.

However, in response to the interest by some taxpayers in donee reporting under the statutory exception, the Treasury Department and the IRS proposed regulations to implement a framework addressing the manner and timing for donee reporting under section 170(f)(8)(D). On September 17, 2015, a notice of proposed rulemaking (REG–138344–13) was published in the **Federal Register** (80 FR 55802). The proposed framework for donee reporting was based on a specific-use information return that would include, among other things, the donor's name, address, and taxpayer identification number. Similar to other specific-use information returns filed with the IRS, the donor's taxpayer identification number was required in order to properly associate the donation information with the correct taxpayer. Unlike a CWA, which is not sent to the IRS, the donee reporting information return would be sent to the IRS, which must have a means to store, maintain, and readily retrieve the return information for a specific taxpayer if and when substantiation is required in the course of an examination.

The proposed framework for donee reporting was intended to minimize the reporting burden on donee organizations by making it voluntary, and to protect donor privacy by not using the Form 990 series. In the preamble to the proposed regulations, the Treasury Department and the IRS expressed concern about the potential risk for identity theft with a donee reporting system based on a specific-use information return because donee organizations would be collecting donors' taxpayer identification numbers and maintaining those numbers for some period of time. The Treasury Department and the IRS requested comments, including specifically on whether additional guidance was necessary regarding the procedures a donee organization should use to mitigate the risk of identity theft of donor information.

The Treasury Department and the IRS received a substantial number of public comments in response to the notice of proposed rulemaking. Many of these public comments questioned the need for donee reporting, and many comments expressed significant concerns about donee organizations collecting and maintaining taxpayer identification numbers for purposes of the specific-use information return. In response to those comments, the Treasury Department and the IRS have decided against implementing the statutory exception to the CWA requirement, and therefore that exception remains unavailable unless and until final regulations are issued prescribing the method for donee reporting. Accordingly, the notice of proposed rulemaking is being withdrawn.

* * * * *

Withdrawal of Notice of Proposed Rulemaking

Under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG–138344–13) that was published in the **Federal Register** on September 17, 2015 (80 FR 55802) is withdrawn.

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

(Filed by the Office of the Federal Register on January 7, 2016, 8:45 a.m., and published in the issue of the Federal Register for September 17, 2015, 80 F.R. 55802)

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 2016–1 through 2016–4

Announcements:

Notices:

Proposed Regulations:

Revenue Procedures:

Revenue Rulings:

Treasury Decisions:

[1]A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2015–27 through 2015–52 is in Internal Revenue Bulletin 2015–52, dated December 28, 2015.

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

Bulletins 2016–1 through 2016–4

Announcements:

2007-21
Modified by
Ann. 2016-1, 2016-3 I.R.B. *283*

Notices:

2005-50
Modified by
Notice 2016-2, 2016-2 I.R.B. *265*

2014-79
Superseded by
Notice 2016-1, 2016-2 I.R.B. *265*

Revenue Procedures:

2015-1
Superseded by
Rev. Proc. 2016-2, 2016-1 I.R.B. *1*

2015-2
Superseded by
Rev. Proc. 2016-2, 2016-1 I.R.B. *102*

2015-3
Superseded by
Rev. Proc. 2016-3, 2016-1 I.R.B. *126*

2015-5
Superseded by
Rev. Proc. 2016-5, 2016-1 I.R.B. *142*

2015-7
Superseded by
Rev. Proc. 2016-7, 2016-1 I.R.B. *188*

2015-8
Superseded by
Rev. Proc. 2016-8, 2016-1 I.R.B. *200*

2015-9
Superseded by
Rev. Proc. 2016-5, 2016-1 I.R.B. *239*

2015-10
Superseded by
Rev. Proc. 2016-10, 2016-2 I.R.B. *270*

2015-22
Superseded by
Rev. Proc. 2016-8, 2016-1 I.R.B. *243*

2015-53
Modified by
Rev. Proc. 2016-11, 2016-2 I.R.B. *274*

Revenue Rulings:

2008-15
Revoked by
Rev. Rul. 2016-3, 2016-3 I.R.B. *282*

[1]A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2015–27 through 2015–52 is in Internal Revenue Bulletin 2015–52, dated December 28, 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.