INTERNAL REVENUE
BULLETIN

IRS

HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2016–21
May 23, 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–127199–15, page 1007.

Proposed regulations would treat a domestic disregarded entity wholly owned by a foreign person as a domestic corporation separate from its owner for the limited purposes of the reporting, record maintenance and associated compliance requirements that apply to 25 percent foreign-owned domestic corporations under section 6038A of the Code.

Rev. Proc. 2016–29, page 880.

This revenue procedure provides the List of Automatic Changes to which the automatic change procedures in 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, and as modified by Rev. Proc. 2016–1, 2016–1 I.R.B. 1, (or successor) apply. The definitions in section 3 of Rev. Proc. 2015–13 apply to this revenue procedure. Rev. Proc. 2015–14 is superseded in part.

Rev. Proc. 2016–30, page 981.

This document revises Rev. Proc. 2009–14, which outlines the procedures to resolve issues through a pre-filing agreement (PFA). The Rev. Proc. (1) expands the scope of a PFA to include issues relating to changes in methods of accounting requested pursuant to the automatic consent procedures; (2) reflects LBI's new structure; (3) clarifies or updates procedures for fling PFA requests; and (4) increases the user fee for PFAs from $50,000 to $134,300 for requests submitted on or after the date that is 30 days after the Rev. Proc. is released, to $218,600 for requests submitted on or after January 1, 2017.

Rev. Proc. 2016–31, page 988.

The revenue procedure provides that certain contributions that money market funds receive from sponsors may be excluded from the distribution requirements of § 852(a) of the Internal Revenue Code but are included in investment company taxable income for purposes of § 852(b).

Notice 2016–32, page 878.

The notice provides alternative diversification requirements under section 817(h) of the Internal Revenue Code for a segregated asset account that invests in a money market fund (MMF) that is a government MMF.

T.D. 9767, page 857.

Final regulations providing guidance under section 432(e)(9)(D)(vii) on an additional limitation on a benefit suspension with respect to certain multiemployer defined benefit pension plans in critical and declining funded status.

EMPLOYEE PLANS

T.D. 9767, page 857.

Final regulations providing guidance under section 432(e)(9)(D)(vii) on an additional limitation on a benefit suspension with respect to certain multiemployer defined benefit pension plans in critical and declining funded status.

(Continued on the next page)

Finding Lists begin on page ii.

EXEMPT ORGANIZATIONS

Announcement 2016–20, page 991.

Serves notice to potential donors of organizations that have recently filed a timely declaratory judgment suit under section 7428 of the Code, challenging revocation of its status as an eligible donee under section 170(c)(2).

EMPLOYMENT TAX

REG–114307–15, page 1006.

Generally, for federal income tax purposes, a business entity that has a single owner and is not a corporation is disregarded as an entity separate from its owner (a disregarded entity). However, for purposes of employment taxes, a disregarded entity is treated as a corporation, except that the owner of a disregarded entity who is treated as a sole proprietor for income tax purposes remains subject to self-employment taxes. The current regulations do not explicitly address situations in which the owner of a disregarded entity is a partnership. These proposed regulations address this issue by clarifying that the rule that a disregarded entity is treated as a corporation for employment tax purposes does not alter the self-employment tax treatment of any individuals who are partners in the partnership that owns a disregarded entity.

REG–127561–15, page 991.

The Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 requires the establishment of a voluntary certification program for professional employer organizations. A professional employer organization, sometimes referred to as an employee leasing company, is an organization that enters into an agreement with a client to perform some or all of the federal employment tax withholding, reporting, and payment functions related to workers performing services for the client. Being certified by the IRS as a certified professional employer organization (CPEO) has certain federal employment tax consequences for both the CPEO and its customers and clients. These proposed regulations set forth the federal employment tax liabilities and other obligations of persons certified by the IRS as CPEOs.

T.D. 9766, page 855.

Generally, for federal income tax purposes, a business entity that has a single owner and is not a corporation is disregarded as an entity separate from its owner (a disregarded entity). However, for purposes of employment taxes, a disregarded entity is treated as a corporation, except that the owner of a disregarded entity who is treated as a sole proprietor for income tax purposes remains subject to self-employment taxes. The current regulations do not explicitly address situations in which the owner of a disregarded entity is a partnership. These temporary regulations address this issue by clarifying that the rule that a disregarded entity is treated as a corporation for employment tax purposes does not alter the self-employment tax treatment of any individuals who are partners in the partnership that owns a disregarded entity.

T.D. 9768, page 862.

The Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 requires the establishment of a voluntary certification program for professional employer organizations. A professional employer organization, sometimes referred to as an employee leasing company, is an organization that enters into an agreement with a client to perform some or all of the federal employment tax withholding, reporting, and payment functions related to workers performing services for the client. Being certified by the IRS as a certified professional employer organization (CPEO) has certain federal employment tax consequences for both the CPEO and its customers and clients. These final and temporary regulations describe the requirements a person must satisfy in order to become and remain a CPEO.

SELF–EMPLOYMENT TAX

REG–114307–15, 1006.

Generally, for federal income tax purposes, a business entity that has a single owner and is not a corporation is disregarded as an entity separate from its owner (a disregarded entity). However, for purposes of employment taxes, a disregarded entity is treated as a corporation, except that the owner of a disregarded entity who is treated as a sole proprietor for income tax purposes remains subject to self-employment taxes. The current regulations do not explicitly address situations in which the owner of a disregarded entity is a partnership. These proposed regulations address this issue by clarifying that the rule that a disregarded entity is treated as a corporation for employment tax purposes does not alter the self-employment tax treatment of any individuals who are partners in the partnership that owns a disregarded entity.

(Continued on the next page)

T.D. 9766, page 855.

Generally, for federal income tax purposes, a business entity that has a single owner and is not a corporation is disregarded as an entity separate from its owner (a disregarded entity). However, for purposes of employment taxes, a disregarded entity is treated as a corporation, except that the owner of a disregarded entity who is treated as a sole proprietor for income tax purposes remains subject to self-employment taxes. The current regulations do not explicitly address situations in which the owner of a disregarded entity is a partnership. These temporary regulations address this issue by clarifying that the rule that a disregarded entity is treated as a corporation for employment tax purposes does not alter the self-employment tax treatment of any individuals who are partners in the partnership that owns a disregarded entity.

ADMINISTRATIVE

REG–127199–15, page 1007

Proposed regulations would treat a domestic disregarded entity wholly owned by a foreign person as a domestic corporation separate from its owner for the limited purposes of the reporting, record maintenance and associated compliance requirements that apply to 25 percent foreign-owned domestic corporations under section 6038A of the Code.

Rev. Proc. 2016–30, page 981.

This document revises Rev. Proc. 2009–14, which outlines the procedures to resolve issues through a pre-filing agreement (PFA). The Rev. Proc. (1) expands the scope of a PFA to include issues relating to changes in methods of accounting requested pursuant to the automatic consent procedures; (2) reflects LBI's new structure; (3) clarifies or updates procedures for fling PFA requests; and (4) increases the user fee for PFAs from $50,000 to $134,300 for requests submitted on or after the date that is 30 days after the Rev. Proc. is released, to $218,600 for requests submitted on or after January 1, 2017.

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

§ 301.7701–2T: Business entities; definitions (temporary)

T.D. 9766

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 301

Self-employment Tax Treatment of Partners in a Partnership that Owns a Disregarded Entity

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations that clarify the employment tax treatment of partners in a partnership that owns a disregarded entity. These regulations affect partners in a partnership that owns a disregarded entity. The text of these temporary regulations serves as the text of proposed regulations (REG–114307–15) published in the Proposed Rules section in this issue of the **Internal Revenue Bulletin.**

DATES: *Effective date*: These regulations are effective on May 4, 2016.

Applicability date: For date of applicability, see § 301–7701–2T(e)(8).

FOR FUTHER INFORMATION CONTACT:

Andrew K. Holubeck at (202) 317-4774 (not a toll-free number).

SUPPLEMENTARY INFORMATION

Background

Section 301.7701–2(c)(2)(i) states that, except as otherwise provided, a business entity that has a single owner and is not a corporation under § 301.7701–2(b) is disregarded as an entity separate from its owner (a disregarded entity). However, § 301.7701–2(c)(2)(iv)(B) provides that an entity that is a disregarded entity is treated as a corporation for purposes of employment taxes imposed under subtitle C of the Internal Revenue Code (Code). Therefore, the disregarded entity, rather than the owner, is considered to be the employer of the entity's employees for purposes of employment taxes imposed by subtitle C.

While § 301.7701–2(c)(2)(iv)(B) treats a disregarded entity as a corporation for employment tax purposes, this rule does not apply for self-employment tax purposes. Specifically, § 301.7701–2(c)(2)(iv)(C)(*2*) provides that the general rule of § 301.7701–2(c)(2)(i) applies for self-employment tax purposes. After setting forth this general rule, the regulation applies this rule in the context of a single individual owner by stating that the owner of an entity that is treated in the same manner as a sole proprietorship is subject to tax on self-employment income. The regulation, at § 301.7701–2(c)(2)(iv)(D), also includes an example that specifically illustrates the mechanics of the rule. In the example, the disregarded entity is subject to employment tax with respect to employees of the disregarded entity. The individual owner, however, is subject to self-employment tax on the net earnings from self-employment resulting from the disregarded entity's activities. The regulations do not include a separate example in which the disregarded entity is owned by a partnership.

It has come to the attention of the Treasury Department and the IRS that even though the regulations set forth a general rule that an entity is disregarded as a separate entity from the owner for self-employment tax purposes, some taxpayers may have read the current regulations to permit the treatment of individual partners in a partnership that owns a disregarded entity as employees of the disregarded entity because the regulations did not include a specific example applying the general rule in the partnership context. Under this reading, which was not intended, some taxpayers have permitted partners to participate in certain tax-favored employee benefit plans. The Treasury Department and the IRS note that the regulations did not create a distinction between a disregarded entity owned by an individual (that is, a sole proprietorship) and a disregarded entity owned by a partnership in the application of the self-employment tax rule. Rather, § 301.7701–2(c)(2)(iv)(C)(*2*) provides that the general rule of § 301.7701–2(c)(2)(i) applies for self-employment tax purposes for any owner of a disregarded entity without carving out an exception regarding a partnership that owns such a disregarded entity. In addition, the Treasury Department and the IRS do not believe that the regulations alter the holding of Rev. Rul. 69–184, 1969–1 CB 256, which provides that: (1) bona fide members of a partnership are not employees of the partnership within the meaning of the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, and the Collection of Income Tax at Source on Wages (chapters 21, 23, and 24, respectively, subtitle C, Internal Revenue Code of 1954), and (2) such a partner who devotes time and energy in the conduct of the trade or business of the partnership, or in providing services to the partnership as an independent contractor, is, in either event, a self-employed individual rather than an individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.

To address this issue, the Treasury Department and the IRS clarify in these temporary regulations that the rule that a disregarded entity is treated as a corporation for employment tax purposes does not apply to the self-employment tax treatment of any individuals who are partners in a partnership that owns a disregarded entity. The rule that the entity is disregarded for self-employment tax purposes applies to partners in the same way that it applies to a sole proprietor owner. Accordingly, the partners are subject to the same self-employment tax rules as partners in a partnership that does not own a disregarded entity.

Explanation of Provisions

This document contains amendments to the Procedure and Administration Regulations (26 CFR part 301) under section

7701 of the Code to clarify that a disregarded entity that is treated as a corporation for purposes of employment taxes imposed under subtitle C of the Code is not treated as a corporation for purposes of employing its individual owner, who is treated as a sole proprietor, or employing an individual that is a partner in a partnership that owns the disregarded entity. Rather, the entity is disregarded as an entity separate from its owner for this purpose. Existing regulations already provide that the entity is disregarded for self-employment tax purposes and specifically note that the owner of an entity treated in the same manner as a sole proprietorship under § 301.7701–2(a) is subject to tax on self-employment income. These temporary regulations apply this existing general rule to illustrate that, if a partnership is the owner of a disregarded entity, the partners in the partnership are subject to the same self-employment tax rules as partners in a partnership that does not own a disregarded entity.

While these temporary regulations provide that a disregarded entity owned by a partnership is not treated as a corporation for purposes of employing any partner of the partnership, these regulations do not address the application of Rev. Rul. 69–184 in tiered partnership situations. Several commenters have requested that the IRS provide additional guidance on the application of Rev. Rul. 69–184 to tiered partnership situations, and have also suggested modifying the holding of Rev. Rul. 69–184 to allow partnerships to treat partners as employees in certain circumstances, such as, for example, employees in a partnership who obtain a small ownership interest in the partnership as an employee compensatory award or incentive. However, these commenters have not provided detailed analyses and suggestions as to how the employee benefit and employment tax rules would apply in such situations. The Treasury Department and the IRS request comments on the appropriate application of the principles of Rev. Rul. 69–184 to tiered partnership situations, the circumstances in which it may be appropriate to permit partners to also be employees of the partnership, and the impact on employee benefit plans (including, but not limited to, qualified retirement plans, health and welfare plans, and fringe benefit plans) and on employment taxes if Rev. Rul. 69–184 were to be modified to permit partners to also be employees in certain circumstances.

In order to allow adequate time for partnerships to make necessary payroll and benefit plan adjustments, these temporary regulations will apply on the later of: (1) August 1, 2016, or (2) the first day of the latest-starting plan year following May 4, 2016, of an affected plan (based on the plans adopted before, and the plan years in effect as of, May 4, 2016) sponsored by an entity that is disregarded as an entity separate from its owner for any purpose under § 301.7701–2. For these purposes, an affected plan includes any qualified plan, health plan, or section 125 cafeteria plan if the plan benefits participants whose employment status is affected by these regulations. For rules that apply before the applicability date of these regulations, see 26 CFR part 301 revised as of April 1, 2016.

Special Analysis

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), please refer to the Special Analysis section in the preamble to the cross-referenced notice of proposed rulemaking in the Proposed Rules section of this issue of the **Internal Revenue Bulletin.** Pursuant to section 7805(f) of the Code, these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Andrew Holubeck of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

* * * * *

Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

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

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

Par. 2. Section 301.7701–2 is amended by:

1. Revising paragraph (c)(2)(iv)(C)(*2*).
2. Adding paragraph (e)(8).

The revision and addition reads as follows:

§ 301.7701–2 Business entities; definitions.

* * * * *

(c) * * *

(2) * * *

(iv) * * *

(C) * * *

(*2*) [Reserved]. For further guidance, see § 301.7701–2T(c)(2)(iv)(C)(*2*).

* * * * *

(e)(8) [Reserved]. For further guidance, see § 301.7701–2T(e)(8).

Par. 3. Section 301.7701–2T is added to read as follows:

§ 301.7701–2T Business entities; definitions (temporary).

(a) through (c)(2)(iv)(C)(*1*) [Reserved]. For further guidance, see § 301.7701–2(a) through (c)(2)(iv)(C)(*1*).

(*2*) Section 301.7701–2(c)(2)(i) applies to taxes imposed under subtitle A, including Chapter 2—Tax on Self-Employment Income. Thus, an entity that is treated in the same manner as a sole proprietorship under § 301.7701–2(a) is not treated as a corporation for purposes of employing its owner; instead, the entity is disregarded as an entity separate from its owner for this purpose and is not the employer of its owner. The owner will be subject to self-employment tax on self-employment income with respect to the entity's activities. Also, if a partnership is the owner of an entity that is disregarded as an entity separate from its owner for any purpose under § 301.7701–2, the entity is not treated as a corporation for purposes of employing a partner of the partnership that owns the entity; instead, the entity is disregarded as an entity separate from the partnership for this purpose and is not the employer of any partner of the partnership that owns the entity. A partner of a partnership that owns an entity that is disregarded as an entity separate from its owner for any purpose under § 301.7701–2 is subject to the same self-employment tax rules as a partner of a partnership that does not own an entity that is disregarded as an entity separate from its owner for any purpose under § 301.7701–2.

(c)(2)(iv)(D) through (e)(7) [Reserved]. For further guidance, see § 301.7701–2(c)(2)(iv)(D) through (e)(7).

(8)(i) *Effective/applicability date*. Paragraph (c)(2)(iv)(C)(*2*) of this section applies on the later of–

(A) August 1, 2016, or

(B) The first day of the latest-starting plan year following May 4, 2016, of an affected plan (based on the plans adopted before, and the plan years in effect as of, May 4, 2016) sponsored by an entity that is disregarded as an entity separate from its owner for any purpose under § 301.7701–2. For rules that apply before the applicability date of these regulations, see 26 CFR part 301 revised as of April 1, 2016. For these purposes—

(*1*) An affected plan includes any qualified plan, health plan, or section 125 cafeteria plan if the plan benefits participants whose employment status is affected by paragraph (c)(2)(iv)(C)(2),

(*2*) A qualified plan means a plan, contract, pension, or trust described in paragraph (A) or (B) of section 219(g)(5) (other than paragraph (A)(iii)), and

(3) A health plan means an arrangement described under § 1.105–5 of this chapter.

(ii) *Expiration date*. The applicability of paragraph (c)(2)(iv)(C)(*2*) of this section expires on or before May 3, 2019 or such earlier date as may be determined under amendments to the regulations issued after May 3, 2016.

John M. Dalrymple
Deputy Commissioner for Services and Enforcement.

Approved: April 20, 2016.

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

(Filed by the Office of the Federal Register on May 3, 2016, 8:45 a.m., and published in the issue of the Federal Register for May 4, 2016, 81 F.R. 26693)

---

26 CFR 1.432(e)(9)–1

T.D. 9767

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Additional Limitation on Suspension of Benefits Applicable to Certain Pension Plans Under the Multiemployer Pension Reform Act of 2014

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: The Multiemployer Pension Reform Act of 2014 (“MPRA”), which was enacted by Congress as part of the Consolidated and Further Continuing Appropriations Act of 2015, relates to multiemployer defined benefit pension plans that are projected to have insufficient funds, within a specified timeframe, to pay the full plan benefits to which individuals will be entitled (referred to as plans in “critical and declining status”). Under MPRA, the sponsor of such a plan is permitted to reduce the pension benefits payable to plan participants and beneficiaries if certain conditions and limitations are satisfied (referred to in MPRA as a “suspension of benefits”). One specific limitation governs the application of a suspension of benefits under any plan that includes benefits directly attributable to a participant’s service with any employer that has withdrawn from the plan in a complete withdrawal, paid its full withdrawal liability, and, pursuant to a collective bargaining agreement, assumed liability for providing benefits to participants and beneficiaries equal to any benefits for such participants and beneficiaries reduced as a result of the financial status of the plan. This document contains final regulations that provide guidance relating to this specific limitation. These regulations affect active, retired, and deferred vested participants and beneficiaries under any such multiemployer plan in critical and declining status as well as employers contributing to, and sponsors and administrators of, those plans.

DATES: *Effective Date*: These regulations are effective on May 5, 2016.

Applicability Date: These regulations apply to suspensions for which the approval or denial is issued on or after April 26, 2016. In the case of a systemically important plan, the final regulations apply with respect to any modified suspension implemented on or after April 26, 2016.

FOR FURTHER INFORMATION CONTACT: The Department of the Treasury MPRA guidance information line at (202) 622-1559 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 432(e)(9) of the Internal Revenue Code (Code), as amended by section 201 of the Multiemployer Pension Reform Act of 2014, Division O of the Consolidated and Further Continuing Appropriations Act, 2015, Public Law No. 113–235 (128 Stat. 2130 (2014)) (MPRA).[1] As amended, section 432(e)(9) permits plan sponsors of certain multiemployer plans to reduce the plan benefits payable to participants and beneficiaries by plan amendment (referred to in the

[1]Section 201 of MPRA makes parallel amendments to section 305 of the Employee Retirement Income Security Act of 1974, Public Law 93–406 (88 Stat. 829 (1974)), as amended (ERISA). The Treasury Department has interpretive jurisdiction over the subject matter of these provisions under ERISA as well as the Code. See also section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713). Thus, these final Treasury regulations issued under section 432 of the Code apply as well for purposes of section 305 of ERISA.

statute as a "suspension of benefits") if specified conditions are satisfied. A plan sponsor that seeks to implement a suspension of benefits must submit an application for approval of that suspension to the Secretary of the Treasury. The Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor (generally referred to in this preamble as the Treasury Department, PBGC, and Labor Department, respectively), is required by the statute to approve the application upon finding that certain specified conditions are satisfied.

One condition, set forth in section 432(e)(9)(D)(vii), is a specific limitation on how a suspension of benefits must be applied under a plan that includes benefits that are directly attributable to a participant's service with any employer described in section 432(e)(9)(D)(vii)(III). An employer is described in section 432(e)(9)(D)(vii)(III) if the employer has, prior to the date MPRA was enacted (December 16, 2014): (1) withdrawn from the plan in a complete withdrawal under section 4203 of ERISA; (2) paid the full amount of the employer's withdrawal liability under section 4201(b)(1) of ERISA or an agreement with the plan; and (3) pursuant to a collective bargaining agreement, assumed liability for providing benefits to participants and beneficiaries of the plan under a separate, single-employer plan sponsored by the employer, in an amount equal to any amount of benefits for these participants and beneficiaries reduced as a result of the financial status of the plan. Such an employer is referred to in this preamble as a "subclause III employer," and a collective bargaining agreement under which the employer assumes liability for those benefits is referred to as a "make-whole agreement."

If section 432(e)(9)(D)(vii) applies to a plan then, under section 432(e)(9)(D)(vii)(I), the suspension of benefits must first be applied to the maximum extent permissible to benefits attributable to a participant's service with an employer that withdrew from the plan and failed to pay (or is delinquent with respect to paying) the full amount of its withdrawal liability under section 4201(b)(1) of ERISA or an agreement with the plan. Such an employer is referred to in this preamble as a "subclause I employer." Second, under section 432(e)(9)(D)(vii)(II), except as provided in section 432(e)(9)(D)(vii)(III), a suspension of benefits must be applied to all other benefits under the plan that may be suspended. Third, under section 432(e)(9)(D)(vii)(III), a suspension must be applied to benefits under the plan that are directly attributable to a participant's service with a subclause III employer. An employer under the plan is referred to in this preamble as a "subclause II employer" if it is neither a subclause I employer nor a subclause III employer.

On October 23, 2015, the Treasury Department published a notice in the **Federal Register** (80 FR 64508) regarding an application for a proposed suspension of benefits, which represented that the plan is of the type to which section 432(e)(9)(D)(vii) applies. The notice requested public comments on all aspects of the application, including with respect to the interpretation of section 432(e)(9)(D)(vii) that is reflected in the application.

On February 11, 2016, the Treasury Department and the IRS published proposed regulations (REG–101701–16) regarding the specific limitation on a suspension of benefits under section 432(e)(9)(D)(vii) in the **Federal Register** at 81 FR 7253. Comments were received on the proposed regulations and a public hearing was held on March 22, 2016.

After consideration of the written comments received and the oral comments presented at the public hearing, the provisions of the proposed regulations are adopted as revised by this Treasury decision. The Treasury Department consulted with PBGC and the Labor Department in developing these regulations.[2]

Explanation of Provisions

These regulations amend the Income Tax Regulations (26 CFR part 1) to provide guidance regarding section 432(e)(9)(D)(vii). Section 432(e)(9)(D)(vii) sets forth a rule that limits how a suspension may be applied under a plan that includes benefits that are directly attributable to a participant's service with a subclause III employer. In determining how a suspension should be allocated consistent with MPRA's framework and purpose, the Treasury Department and the IRS analyzed the statute and applied well-established principles of statutory construction to interpret section 432(e)(9)(D)(vii). In so doing, the Treasury Department and the IRS interpreted section 432(e)(9)(D)(vii) in the context of section 432(e)(9) as a whole, which requires, among other things, that any suspension be subject to certain limitations, including that the suspension be equitably distributed across the participant and beneficiary population.

I. *Application of a Suspension of Benefits to Subclause I Benefits to the Maximum Extent Permissible*

Subclause (I) of section 432(e)(9)(D)(vii) provides that the suspension of benefits must first be applied "to the maximum extent permissible" to benefits attributable to service with a subclause I employer (referred to in this preamble as "subclause I benefits"). Accordingly, the proposed regulations provided that, for a plan that is subject to section 432(e)(9)(D)(vii), a suspension of benefits must be applied to the maximum extent permissible to subclause I benefits before reductions are permitted to be applied to any other benefits. Under the proposed regulations, only if such a suspension is not reasonably estimated to achieve the level that is necessary to enable the plan to avoid insolvency may a suspension then be applied to other benefits that are permitted to be suspended and that are attributable to a participant's service with other employers. No commenters objected to this provision of the proposed regulations, and these final regulations adopt this provision as proposed.

II. *Relationship Between Subclause II Benefits and Subclause III Benefits*

In contrast to subclause (I) of section 432(e)(9)(D)(vii), subclause (II) does not include the phrase "to the maximum extent permissible." Accordingly, the Treasury Department and the IRS developed the rules in the proposed regulations based

[2]TheTreasury Department and the IRS have published final regulations providing general guidance regarding section 432(e)(9). *See* § 1.432(e)(9)–1 (TD 9765), published in the Federal Register on April 28, 2016 (81 FR 25539).

on the interpretation that a suspension need not be applied to the maximum extent permissible to benefits described in subclause (II) before any suspension is applied to benefits described in subclause (III).

A number of commenters expressed views regarding the rules under the proposed regulations describing how the suspension of benefits is permitted to apply to benefits attributable to service with a subclause II employer (referred to in this preamble as "subclause II benefits") and benefits directly attributable to service with a subclause III employer (referred to in this preamble as "subclause III benefits"). Many of these commenters agreed with the analysis set forth in the preamble to the proposed regulations and supported an interpretation of the statute that subclause II benefits are not required to be reduced to the maximum extent permissible before any subclause III benefits can be reduced.

Two commenters advocated that the statute be interpreted to require that subclause II benefits be suspended to the maximum extent permissible before a suspension is permitted to apply to any subclause III benefits. These commenters maintained that this result is required by the ordinal numbering of the three subclauses and asserted that Congress intended to favor any withdrawing employer that not only paid the full amount of its withdrawal liability but also entered into a make-whole agreement. If such an approach were applied under section 432(e)(9)(D)(vii), then the benefits described in each of the first two subclauses would be required to be suspended to the maximum extent permissible before any suspension could apply to benefits described in the successive subclause. Under that approach, subclause III benefits would be permitted to be suspended only if all benefits attributable to participants' service with all subclause I and subclause II employers were suspended to the maximum extent permissible. In support of this position, one commenter asserted that the Treasury Department and the IRS misinterpreted the import of the absence of the phrase "to the maximum extent permissible" in subclause (II). This commenter asserted that the combined use in subclause (II) of "second," "except as provided by subclause (III)," and "all other benefits" has the same effect with respect to subclause II benefits as the use in subclause (I) of "to the maximum extent permissible" has with respect to subclause I benefits. This commenter argued that the difference in language between subclause (I) and subclause (II) does not prevent the two rules from having the same effect, and cited to *Kirtsaeng v. John Wiley & Sons, Inc.*, 568 U.S. ___, 133 S. Ct. 1351, 1364 (2013) in support of this argument.

After carefully considering this argument and applicable authorities, the Treasury Department and the IRS have concluded that this interpretation is incorrect; the statute does not require subclause II benefits to be suspended to the maximum extent permissible before any subclause III benefits are permitted to be suspended, and the rule set forth in the proposed regulations is the correct interpretation of the statute. Applicable case law establishes that a difference in language between one statutory provision and the next immediately following provision should be given meaning. *See Loughrin v. United States*, 573 U.S. ___,134 S. Ct. 2384, 2390 (2014) ("We have often noted that when 'Congress includes particular language in one section of a statute but omits it in another'—let alone in the very next provision—this Court 'presume[s]' that Congress intended a difference in meaning." (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983)). To read subclause (II) to require that subclause II benefits be suspended "to the maximum extent permissible" even though that language does not appear in subclause (II) would effectively rewrite the statute either by moving the phrase the "to the maximum extent permissible" from subclause (I) to the introductory language of section 432(e)(9)(D)(vii) or by adding it to subclause (II).[3] The interpretation in the proposed regulations is also consistent with the language in subclause (II) ("except as provided in subclause (III)"), which contemplates a coordinated application of two provisions that are to be applied "second" and "third;" this language in subclause (II) is not consistent with an interpretation that requires application of a suspension to subclause II benefits that is independent of (and entirely preceding) the application of the suspension to subclause III benefits.

Kirtsaeng, which the one commenter cited to contest this interpretation in the proposed regulations, involved two phrases that "mean roughly the same thing." *Id.* at 1358–59, 1364 ("The language of [the relevant statute] read literally favors [petitioner's] interpretation, namely, that 'lawfully made under this title' means made 'in accordance with' or 'in compliance with' the Copyright Act."). There are no "roughly" similar phrases across subclauses (I) and (II). *Kirtsaeng* is therefore inapposite.[4]

The Treasury Department and the IRS recognize that the language of section 432(e)(9)(D)(vii) bears some similarity to other statutory provisions that establish priority categories requiring claims to be fully satisfied under each earlier category before any claims are permitted to be satisfied under any subsequent category—for example, section 4044(a) of ERISA and sections 507(a) and 726(a) and (c) of the Bankruptcy Code, which in each instance prescribes ordering rules relating to the distribution of limited assets. However, in contrast to the language in section 432(e)(9)(D)(vii), these other statutory provisions do not include language in one category instructing that the category must be fully exhausted before reaching the next category, while omitting that language in other categories. Furthermore, if the ordinal numbering of section 432(e)(9)(D)(vii) were to be interpreted to require that each category be fully exhausted before reaching the next category, then the phrase "to the maximum extent permissible" in subclause (I) would not serve any purpose and would be superfluous.[5]

The broad scope of benefits included in subclause (III) further supports the con-

[3]*See Hall v. United States*, 566 U.S. ___, 132 S. Ct. 1882, 1893 (2012) ("[I]t is not for us to rewrite the statute.")

[4]*Kirtsaeng* is further inapposite because the statutory provisions of the Copyright Act that were compared to each other in that case (i.e., 17 U.S.C. § 109 and § 602) were not in immediate proximity to each other unlike the subclauses at issue here.

[5]*See Marx v. General Revenue Corp.*, 568 U.S. ___, 133 S. Ct. 1166, 1178 (2013) ("[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.").

clusion that a suspension need not be applied to the maximum extent permissible to subclause II benefits before any suspension is applied to subclause III benefits. As explained in Section D of this preamble, subclause III benefits include all benefits that are directly attributable to service with a subclause III employer, without regard to whether those benefits are subject to a make-whole agreement. If subclause II benefits were required to be reduced to the maximum extent permissible before any subclause III benefits could be reduced (including subclause III benefits not subject to a make-whole agreement), then participants with subclause III benefits who are not subject to the make-whole agreement could experience significantly smaller reductions than participants with subclause II benefits (including benefits attributable to service with employers that never withdrew from the plan), without regard to whether that difference is consistent with the equitable distribution requirement.

For these reasons, these final regulations adopt the rule under the proposed regulations that subclause II benefits are not required to be suspended "to the maximum extent permissible" before any suspension is permitted to be applied to subclause III benefits.

III. *Standard for Application of Suspension to Subclause III Benefits Relative to Subclause II Benefits*

In order to give effect to the requirement that a suspension of benefits be applied "second" to subclause II benefits and "third" to subclause III benefits, the proposed regulations provided that a suspension would not be permitted to reduce subclause III benefits unless subclause II benefits were reduced to at least the same extent as subclause III benefits were reduced. Under the proposed regulations, this limitation would be satisfied if no participant's benefits that are directly attributable to service with a subclause III employer were reduced more than that participant's benefits would have been reduced if, holding constant the benefit formula, work history, and all relevant factors used to compute benefits, those benefits were attributable to service with any other employer. The effect of the proposed rule is to protect a subclause III employer from the possibility that the suspension would be expressly designed to take advantage of the employer's commitment to make participants and beneficiaries whole for the reductions.

Most commenters agreed with the analysis set forth in the preamble to the proposed regulations and supported the rule that a suspension would not be permitted to reduce subclause III benefits unless subclause II benefits are reduced to at least the same extent. However, one commenter maintained that, if the Treasury Department and the IRS were to adopt the rule set forth in the proposed regulations intended to protect a subclause III employer, then the rule should be modified to prohibit facially neutral suspension provisions that have a disparate impact on subclause III benefits or that are intentionally designed to produce such an impact. Under such a rule, a suspension of benefits that disproportionally reduces subclause III benefits in the aggregate relative to subclause II benefits in the aggregate would be prohibited under section 432(e)(9)(D)(vii) even if the suspension does not by its terms treat individuals with subclause III benefits in a less favorable manner than similarly situated individuals with subclause II benefits.

Nothing in the statute or preexisting case law requires the application of a disparate impact standard. Both Congress and the Supreme Court have required such a standard only in the unique context in which "barriers operate invidiously to discriminate on the basis of racial or other impermissible classification," *Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971); *see*, *e.g*., 42 U.S.C. § 2000e–2(k)(1)(A)(i) (prohibiting "a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin"); *see also Texas Department of Housing and Community Affairs, et al., v. Inclusive Communities Project, Inc., et al.*, 576 U. S. ___ , 135 S. Ct. 2507, 2513 (2015) ("a disparate-impact claim challenges practices that have a 'disproportionately adverse effect on minorities' and are otherwise unjustified by a legitimate rationale"). Those unique circumstances are not present here.

After considering the public comments, the Treasury Department and the IRS have determined that the rule set forth in the proposed regulations appropriately protects a subclause III employer from the possibility that the suspension would be expressly designed to take advantage of the employer's commitment to make participants and beneficiaries whole for the reductions in a manner that is most consistent with all of the statutory language.[6] However, in response to comments identifying potential ambiguities in the proposed regulations, the application of this rule in the final regulations has been clarified. Accordingly, these final regulations provide that a suspension does not violate the required relationship between subclause III benefits and subclause II benefits if no individual's benefits that are subclause III benefits are reduced more than that individual's benefits would have been reduced if, holding constant the benefit formula, work history, and all other relevant factors used to determine the individual's benefits, those benefits were attributable to service with any other employer.

IV. *Treatment of Participants with Service for a Subclause III Employer Who Are Not Covered by a Make-Whole Agreement*

The proposed regulations provided that the benefits described in section 432(e)(9)(D)(vii)(III) are any benefits that are directly attributable to a participant's service with a subclause III employer, without regard to whether the employer has assumed liability for providing benefits to the participant or beneficiary that were reduced as a result of the financial status of the plan. For example, if, before the date a subclause III employer entered into a make-whole agreement, a participant commenced receiving retirement benefits under a plan that are directly attributable to service with that employer, then the participant's benefits would be

[6] The preamble to the proposed regulations requested comments on an alternative interpretation of section 432(e)(9)(vii) that would require that any suspension of benefits be applied to provide for a lesser reduction in benefits that are directly attributable to service with a subclause III employer than to benefits that are attributable to any other service. No commenters recommended adopting the alternative interpretation.

described in section 432(e)(9)(D)(vii)(III) even if those benefits were not covered by the make-whole agreement. This interpretation is based on the statutory language in section 432(e)(9)(D)(vii)(III), which defines the benefits to which that subclause applies as those benefits that are directly attributable to service with an employer that has met the conditions set forth in section 432(e)(9)(D)(vii)(III)(aa) and (bb). In other words, the statutory provision refers to benefits directly attributable to service with an employer described in subclause (III) and not only to benefits covered by the make-whole agreement.

Some of the commenters on the proposed regulations expressed views regarding whether subclause III benefits should include benefits that are not covered by a make-whole agreement. Two commenters supported the rule set forth in the proposed regulations, under which subclause III benefits include all benefits directly attributable to service with a subclause III employer. Two other commenters expressed the view that subclause III benefits include only benefits that are covered by a make-whole agreement. The latter two commenters asserted that Congress included this provision in order to prevent a suspension from unreasonably shifting costs onto an employer that had entered into a make-whole agreement, and that this Congressional intent suggests that only benefits subject to the make-whole agreement were intended to be protected. They also noted that interpreting this provision to include benefits that are not covered by a make-whole agreement could result in benefits for many participants being covered under subclause III even if an employer entered into a make-whole agreement covering only a few participants, and argued that Congress did not intend such a result.

After considering the public comments, the Treasury Department and the IRS remain convinced that the rule set forth in the proposed regulations reflects the plain language of the statute. The statute defines subclause III benefits as benefits attributable to service with a subclause III employer, not benefits covered by a make-whole agreement. Furthermore, the ability of an employer to take advantage of this interpretation by entering into a make-whole agreement that covers only a few participants is limited by the fact that subclause (III) applies only if all the conditions of subclause (III) (including the condition that the employer enter into a make-whole agreement) were satisfied prior to December 16, 2014 (the date of enactment of MPRA). Because this date has passed, there is no cause for concern that an employer could plan to become a subclause (III) employer. Accordingly, these regulations adopt the rule set forth in the proposed regulations under which subclause III benefits include all benefits attributable to a participant's service with a subclause III employer without regard to whether the participant or beneficiary is covered by a make-whole agreement.

Effective/Applicability Dates

These regulations apply to suspensions for which the approval or denial is issued on or after April 26, 2016. In the case of a systemically important plan, these regulations apply with respect to any modified suspension implemented on or after April 26, 2016.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

The Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6) requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities. In this case, the IRS and the Treasury Department believe that the regulations likely would not have a "significant economic impact on a substantial number of small entities." 5 U.S.C. 605. This certification is based on the fact that the number of small entities affected by this rule is unlikely to be substantial because it is unlikely that a substantial number of small multiemployer plans in critical and declining status are subject to the limitation contained in section 432(e)(9)(D)(vii). Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Contact Information

For general questions regarding these regulations, please contact the Department of the Treasury MPRA guidance information line at (202) 622-1559 (not a toll-free number). For information regarding a specific application for a suspension of benefits, please contact the Treasury Department at (202) 622-1534 (not a toll-free number).

* * * * *

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.432(e)(9)–1 is amended by revising paragraph (d)(8) to read as follows:

§ 1.432(e)(9)–1 Benefit suspensions for multiemployer plans in critical and declining status.

* * * * *

(d) *Limitations on suspension.* * * *

(8) *Additional rules for plans described in section 432(e)(9)(D)(vii)*—(i) *In general*. In the case of a plan that includes the benefits described in paragraph (d)(8)(i)(C) of this section, any suspension of benefits under this section shall—

(A) First, be applied to the maximum extent permissible to benefits attributable to a participant's service for an employer that withdrew from the plan and failed to pay (or is delinquent with respect to paying) the full amount of its withdrawal liability under section 4201(b)(1) of ERISA or an agreement with the plan;

(B) Second, except as provided by paragraph (d)(8)(i)(C) of this section, be applied to all other benefits that may be suspended under this section; and

(C) Third, be applied to benefits under a plan that are directly attributable to a participant's service with any employer that has, prior to December 16, 2014—

(*1*) Withdrawn from the plan in a complete withdrawal under section 4203 of ERISA and paid the full amount of the employer's withdrawal liability under section 4201(b)(1) of ERISA or an agreement with the plan; and

(*2*) Pursuant to a collective bargaining agreement, assumed liability for providing benefits to participants and beneficiaries of the plan under a separate, single-employer plan sponsored by the employer, in an amount equal to any amount of benefits for such participants and beneficiaries reduced as a result of the financial status of the plan.

(ii) *Application of suspensions to benefits that are directly attributable to a participant's service with certain employers*—(A) *Greater reduction in certain benefits not permitted*. A suspension of benefits under this section must not be applied to provide for a greater reduction in benefits described in paragraph (d)(8)(i)(C) of this section than the reduction that is applied to benefits described in paragraph (d)(8)(i)(B) of this section. The requirement in the preceding sentence is satisfied if no individual's benefits that are directly attributable to service with an employer described in paragraph (d)(8)(i)(C) of this section are reduced more than that individual's benefits would have been reduced if, holding the benefit formula, work history, and all other relevant factors used to compute benefits constant, those benefits were attributable to service with an employer that is not described in paragraph (d)(8)(i)(C) of this section.

(B) *Application of limitation to benefits of participants with respect to which the employer has not assumed liability*. Benefits described in paragraph (d)(8)(i)(C) of this section include all benefits of a participant or beneficiary that are directly attributable to service with an employer described in paragraph (d)(8)(i)(C) of this section without regard to whether the employer has assumed liability for providing benefits to that participant or beneficiary that are reduced as a result of the financial status of the plan as described in paragraph (d)(8)(i)(C)(*2*) of this section. Thus, the rule of paragraph (d)(8)(ii)(A) of this section limits the amount by which a suspension of benefits is permitted to reduce benefits under a plan that are directly attributable to a participant's service with such an employer, even if the employer has not, pursuant to a collective bargaining agreement that satisfies the requirements of paragraph (d)(8)(i)(C)(*2*) of this section, assumed liability with respect to that participant's benefits.

John Dalrymple,
Deputy Commissioner for Services and Enforcement.

Approved: April 29, 2016.

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

(Filed by the Office of the Federal Register on May 3, 2016, 4:15 p.m., and published in the issue of the Federal Register for May 5, 2016, 81 F.R. 27011)

---

26 CFR 301.7705–1T: Certified professional employer organization; 26 CFR 301.7705–2T: CPEO certification requirements.

T.D. 9768

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Parts 301 and 602

Certified Professional Employer Organizations; Final and Temporary Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to certified professional employer organizations (CPEOs). The Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 requires the IRS to establish a voluntary certification program for professional employer organizations. These final and temporary regulations contain the requirements a person must satisfy in order to become and remain a CPEO. The final and temporary regulations will affect persons that apply to be CPEOs and are certified by the IRS as meeting the applicable requirements. The text of these final and temporary regulations also serves, in part, as the text of the proposed regulations (REG–127561–15) set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Internal Revenue Bulletin**.

DATES: *Effective Date*: These final and temporary regulations are effective on May 6, 2016.

Applicability Date: For date of applicability, *see* § 301.7705–2T(o).

FOR FURTHER INFORMATION CONTACT: Melissa L. Duce at (202) 317-6798 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-2266.

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

For further information concerning this collection of information, where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referenced notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Internal Revenue Bulletin**.

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

Background

Overview

The Stephen Beck, Jr., Achieving a Better Life Experience (ABLE) Act of 2014, enacted on December 19, 2014, as part of The Tax Increase Prevention Act of 2014 (Pub. L. 113–295), added new sections 3511 and 7705 to the Internal Revenue Code (Code) relating to the federal employment tax[1] consequences and certification requirements, respectively, of a certified professional employer organization (CPEO). The ABLE Act requires the IRS to establish a voluntary program for persons to apply to become certified as a CPEO. This document contains temporary regulations under section 7705 that, together with a forthcoming revenue procedure that will be published in the Internal Revenue Bulletin, describe the application process and certification requirements necessary for a person to become and remain a CPEO.

The temporary regulations in this document apply on and after July 1, 2016, the date the IRS will begin accepting applications for CPEO certification. These temporary regulations, along with the forthcoming revenue procedure and the application forms and instructions that the IRS plans to release before July 1, 2016, provide guidance to enable persons that wish to apply to become CPEOs to prepare and submit applications on and after July 1, 2016, and to enable the IRS to begin processing these applications and make determinations as to whether to approve or deny certification.

Proposed regulations published elsewhere in this issue of the **Internal Revenue Bulletin** provide general guidance regarding the federal employment tax consequences under section 3511 for persons certified as CPEOs and their customers, as well as certain definitions under section 7705 that are necessary to implement section 3511. The proposed regulations also propose to adopt the temporary regulations in this document by cross-reference.

The regulations have been divided, as described, into temporary regulations and proposed regulations in order to balance the interest in considering public comments on rules before they apply with the desire to provide guidance on application procedures that is effective early enough to open the application process and implement the statutory provisions.

The forthcoming revenue procedure will prescribe the specifics of the application process for a person to become a CPEO. In the future, the IRS intends to release another revenue procedure that prescribes the ongoing requirements that CPEOs must meet to maintain certification and describes the consequences of the failure to meet the ongoing requirements.

Professional Employer Organizations

A professional employer organization (PEO), sometimes referred to as an employee leasing company, enters into an agreement with a client to perform some or all of the federal employment tax withholding, reporting, and payment functions related to workers performing services for the client. The terms of a PEO arrangement typically provide that the PEO is the employer (or "co-employer") of the client's employees and is responsible for paying the employees and for the related federal employment tax compliance. A PEO also may manage human resources, employee benefits, workers compensation claims, and unemployment insurance claims for the client. The client typically pays the PEO a fee based on payroll costs plus an additional amount. In most cases, however, the employees working in the client's business are the common law employees of the client for federal tax purposes, and the client is therefore legally responsible for federal employment tax compliance.

The ABLE Act of 2014

The ABLE Act requires the IRS to establish a voluntary certification program for persons to become CPEOs. Section 7705 provides a framework for the IRS to establish such a program. Section 7705(a) defines a CPEO as a person who applies to be treated as a CPEO for purposes of section 3511 and has been certified by the Secretary as meeting the requirements of section 7705(b). Being certified as a CPEO has certain federal employment tax consequences under section 3511 that are described in the proposed regulations under that section published in the Proposed Rules section in this issue of the **Internal Revenue Bulletin**.

Section 7705(b) sets forth the certification requirements that a person must satisfy in order to become a CPEO. Under the statute, a person meets the requirements of section 7705(b) if: (1) the person (and any owner, officer, and other person as may be specified in regulations) demonstrates that it meets such requirements as the Secretary shall establish, including requirements relating to tax status, background, experience, business location, and annual financial audits; (2) agrees to satisfy certain bond and financial review requirements; (3) agrees to satisfy reporting requirements imposed by the Secretary; (4) computes its taxable income using an accrual method of accounting unless the Secretary approves another method; (5) agrees to verify on such periodic basis as the Secretary may prescribe that it continues to meet the certification requirements; and (6) agrees to notify the Secretary in writing (within such time as the Secretary may prescribe) of any change that materially affects the continuing accuracy of any agreement or information that was previously made or provided to the IRS in order to meet the certification requirements.

Section 7705(c) prescribes bond and independent financial review requirements that a person must satisfy in order to become and remain a CPEO. To meet these requirements, section 7705(c)(2) provides that a CPEO must post a bond for the payment of federal employment taxes (in a form acceptable to the Secretary) that is in an amount at least equal to a specified amount. This specified amount is, for the period beginning on April 1 of any calendar year through March 31 of the following calendar year, the greater of five percent of the CPEO's liability under section 3511 in the preceding calendar year (but not more than $1,000,000) or $50,000.

Under section 7705(c)(3)(A), a CPEO must, as of the most recent audit date, cause to be prepared and provided to the Secretary (in such manner as the Secretary may prescribe) an opinion of an independent certified public accountant (CPA) as to whether the CPEO's financial statements are presented fairly in accordance with generally accepted accounting principles (GAAP). Section 7705(c)(6) states that the audit date for these purposes is six

[1]For purposes of this preamble, "federal employment taxes" refers to taxes imposed under subtitle C of the Code.

months after the completion of the CPEO's fiscal year.

Section 7705(c)(3)(B) requires a CPEO to provide to the Secretary, by the last day of the second month beginning after the end of each calendar quarter, an assertion that the CPEO has withheld and made deposits of all federal employment taxes (other than Federal Unemployment Tax Act (FUTA) taxes under chapter 23 of the Code) and an examination level attestation from an independent CPA that states this assertion is fairly stated in all material respects.

Section 7705(d) gives the Secretary the authority to suspend or revoke the certification of any person for purposes of section 3511 if the Secretary determines that such person is not satisfying the agreements or requirements of sections 7705(b) or (c), or fails to satisfy applicable accounting, reporting, payment, or deposit requirements. Section 7705(f) provides that the Secretary shall make available to the public the name and address of each person certified as a CPEO and each person whose certification is suspended or revoked.

November 2015 IRS Request for Information on PEO Industry Practices

In an effort to streamline the implementation of a new federal CPEO program and better understand the potential impact of such a program on the PEO industry, on November 17, 2015, the IRS requested information from the public regarding certain PEO industry practices. *See* IRS News Release IR–2015–127. In particular, the IRS requested information on current PEO industry practices relating to financial audits, verification of payroll tax obligations, working capital and net worth requirements, and covered employees. In response to the IRS request for information, the IRS received comments from seven taxpayers, which were considered in developing the temporary regulations.

Explanation of Provisions

1. *Applicable Definitions*

The temporary regulations define a CPEO as a person that applies to be certified as a CPEO in accordance with the temporary regulations and has been certified by the IRS as meeting the requirements under those regulations. Consistent with section 7705(b), most of the requirements in these temporary regulations apply both to persons that have been certified as CPEOs and to any person that has applied to be certified and whose application for certification is pending with the IRS (referred to in the temporary regulations as "CPEO applicants").

Section 7705(b)(1) provides that the Secretary may establish requirements for certification that apply not only to the CPEO applicant or CPEO, but also to "any owner, officer, and other persons as may be specified in regulations." Accordingly, the temporary regulations contain a number of requirements that apply to certain owners, officers, and other individuals (referred to in the regulations as "responsible individuals"), as well as certain persons that are related to the CPEO (referred to as "related entities" and "precursor entities"). The remainder of this section 1 of the preamble explains the definitions of these categories of persons.

a. *Responsible individual*

The temporary regulations generally define a responsible individual as an individual in any of the following categories with respect to the CPEO applicant or CPEO: (1) certain owners; (2) directors and officers; (3) individuals with ultimate responsibility for implementing the decisions of the organization's governing body; (4) individuals with ultimate responsibility for the organization's management and operations; (5) individuals with ultimate responsibility for managing the organization's finances; (6) managing members or general partners; (7) the sole proprietor of a sole proprietorship; and (8) any other individuals with primary responsibility for federal employment tax compliance of the organization.

With respect to determining whether an individual is a responsible individual by reason of ownership, the temporary regulations specify that, in the case of a CPEO applicant or CPEO that is a corporation, a responsible individual includes any individual who owns 33 percent or more of the total combined voting power of all classes of stock of the corporation entitled to vote or the total value of shares of all classes of stock of the corporation. In the case of a CPEO applicant or CPEO that is a partnership (defined in the temporary regulations as a business entity that is classified as a partnership for federal tax purposes under §§ 301.7701–1, 301.7701–2, and 301.7701–3), a responsible individual includes any individual who owns 33 percent or more of the profits interest or capital interest in the partnership. In both cases, ownership may be direct or indirect and is determined by applying the constructive ownership rules of section 1563(e) with respect to stock ownership and by substituting the term "interest" for the term "stock" and the term "partnership" for the term "corporation" used in that section, as appropriate for purposes of determining whether an interest in a partnership is indirectly owned by any person. The Department of the Treasury (Treasury Department) and the IRS request comments regarding the administrability of applying the definition of responsible individual with respect to ownership of profits interests in a partnership, the value of which may fluctuate over time.

With respect to directors and officers of the CPEO applicant or CPEO, the temporary regulations provide that a director is any voting member of the governing body (such as the board of directors). An officer is determined by reference to the organization's organizing document, bylaws, or resolutions, or is otherwise designated consistent with state law (and often includes an organization's president, vice-president, treasurer, and secretary).

The temporary regulations also provide that a responsible individual includes any individual who, regardless of title, has ultimate responsibility for: (1) implementing the decisions of the organization's governing body (typically, the chief executive officer (CEO), executive director, or president); (2) supervising the management, administration, or operation of the organization (typically, the chief operating officer (COO)); or (3) managing the organization's finances (typically, the chief financial officer (CFO) or treasurer). Any individual who serves with the titles of executive director, president, CEO, COO, CFO, or treasurer will be considered to have the ultimate responsibilities that are consistent with that title. The temporary regulations also provide that an individual with this ultimate responsibility may include an individual who is not treated as an employee of the CPEO applicant or CPEO.

b. *Related entity*

The temporary regulations define a related entity of a CPEO applicant or CPEO as including any person that is a member of a controlled group (within the meaning of sections 414(b) and (c) and the regulations thereunder, with two adjustments) of which the CPEO is also a member. Section 414(b) incorporates by reference the controlled group definitions in section 1563. Likewise, the regulations prescribed under section 414(c) — §§ 1.414(c)–2 and 1.414(c)–3 — rely on principles that are substantially similar to the controlled group definitions in section 1563. However, with respect to persons that are not providers of employment-related services, the temporary regulations substitute "more than 50 percent" for "at least 80 percent" in each place the term appears in section 1563(a) and § 1.414(c)–2. For persons that are providers of employment-related services, the temporary regulations substitute "more than 5 percent" for "at least 80 percent" in each place the term appears in section 1563(a) and § 1.414(c)–2. The temporary regulations define a provider of employment-related services as a person that provides payroll or other employment tax administration and compliance services to clients, including, but not limited to, collecting, reporting, and paying employment taxes with respect to wages or compensation paid by the provider of employment-related services to individuals performing services for the clients. A provider of employment-related services includes, but is not limited to, a PEO and a CPEO.

A related entity of a CPEO applicant or CPEO also includes any provider of employment-related services if a majority of the directors or a majority of the officers of the CPEO applicant or CPEO are also directors or officers, respectively, of the provider of employment-related services. Finally, a related entity includes any provider of employment-related services with an owner who is a responsible individual of both the provider of employment-related services and the CPEO applicant or CPEO by virtue of the individual's ownership percentage.

c. *Precursor entity*

The temporary regulations generally define a precursor entity as including any related entity of a CPEO applicant that is or was a provider of employment-related services and has ceased operations, dissolved, or made a substantial asset transfer to the CPEO applicant during the calendar year that the CPEO applicant applies for certification or any of the three preceding calendar years. A precursor entity also includes a related provider of employment-related services that plans to make a substantial asset transfer to the CPEO applicant while the application for certification is pending or in the 12-month period following the date of the CPEO applicant's application.

For this purpose, the temporary regulations define a substantial asset transfer as any transfer of 35 percent or more of the value of the transferor's operating assets, whether through one or a series of transactions and whether accomplished through sale, lease, gift, assignment, succession, merger, consolidation, corporate separation, or any other means. The temporary regulations further provide that operating assets include both tangible and intangible resources related to the conduct of the transferor's trade or business, including but not limited to such intangible assets as contracts, agreements, receivables, employees, and goodwill (which includes the value of a trade or business based on expected continued customer patronage due to its name, reputation, or any other factors). In the case of a contract described in section 7705(e)(2) or service agreement described in § 31.3504–2(b)(2)[2] with a provider of employment-related services, even if the contract or agreement is not sold, gifted, assigned, or otherwise formally transferred to a CPEO applicant, it will be considered transferred from a person to the CPEO applicant if the person entered into the contract or agreement but the CPEO applicant reports, withholds, or pays, under its employer identification number (EIN), any applicable federal employment taxes with respect to the wages of any individuals covered by the contract or agreement.

Finally, the temporary regulations contain a rule for purposes of determining whether a provider of employment-related services that has ceased operations, dissolved, or made a substantial asset transfer to a CPEO applicant is a related entity of the CPEO applicant. Specifically, the provider of employment-related services is a related entity of a CPEO applicant if it would be or would have been a related entity of the CPEO applicant as described in section 1.b of the preamble at the time of the provider's ceasing of operations, dissolution, or substantial asset transfer, as applicable. This determination is based on the provider's ownership and responsible individuals at the time of its ceasing of operations, dissolution, or substantial asset transfer, as applicable, and the ownership and responsible individuals of the CPEO applicant at the time of its application.

2. *Application Process and Effective Date of Certification*

The temporary regulations provide that in order to be certified, a CPEO applicant must submit a properly completed and executed application to the IRS. In addition, the CPEO applicant's responsible individuals must also submit the information required by the regulations and in further guidance.

The IRS will notify the CPEO applicant as to whether its application for certification has been approved or denied and the effective date of its certification. If the IRS denies the application, the IRS will inform the CPEO applicant of the reason(s) for denial. The temporary regulations also state that if the IRS approves a CPEO applicant's application for certification, the IRS will make available to the public the name and address of the CPEO,

[2]A service agreement described in § 31.3504–2(b)(2) is a written or oral agreement pursuant to which the payor: (1) asserts it is the employer (or "co-employer") of individuals performing services for the client; (2) pays wages or compensation to the individuals for services the individuals perform for the client; and (3) assumes responsibility to collect, report, and pay, or assumes liability for, any employment taxes with respect to the wages or compensation paid by the payor to the individuals performing services for the client.

as well as the effective date of its certification.

3. *Requirements for Certification*

Section 7705(b)(1) provides that, to become and remain certified as a CPEO,[3] a person, as well as any owner, officer, or other person specified in regulations (which, in the temporary regulations, is any responsible individual, related entity, or precursor entity), must meet such requirements as the Secretary shall establish in order for the person to be certified, including requirements with respect to tax status, background, experience, business location, and annual financial audits. The temporary regulations elaborate upon the requirements that a CPEO applicant and CPEO must meet in each of these categories to become and remain certified.

The temporary regulations provide that the IRS may deny a CPEO applicant's application for certification or revoke or suspend a CPEO's certification if a CPEO applicant or CPEO, or any of the precursor entities, related entities, or responsible individuals of the CPEO applicant or CPEO, fails to meet any applicable requirement described in the regulations or other applicable guidance. The temporary regulations also provide that the IRS will deny a CPEO applicant's application for certification or revoke or suspend a CPEO's certification if the IRS determines, in its sole discretion, that such failure presents a material risk to the IRS's collection of federal employment taxes. In determining whether one or more failures to meet the requirements described in the regulations presents a material risk to the IRS's collection of federal employment taxes, the IRS will generally consider all relevant facts and circumstances, including the size, scope, nature, significance, recurrence, and timing of and reason for the failure(s), and, in the case of a CPEO, any prior failures of the CPEO to meet the requirements of this section.

a. *Suitability*

The Treasury Department and the IRS view tax compliance of the CPEO applicant or CPEO, and of its responsible individuals, related entities, and precursor entities, as an important factor in determining whether the CPEO applicant's or the CPEO's certification presents a material risk to the IRS's collection of federal employment taxes. Therefore, the temporary regulations provide that the IRS may deny an application for certification, or suspend or revoke a CPEO's certification, if the CPEO applicant or CPEO, or any of its precursor entities, related entities, or responsible individuals, has failed to pay any applicable federal, state, or local taxes or file any required federal, state, or local tax or information returns in a timely and accurate manner, unless the failure to file or failure to pay is determined to be due to reasonable cause and not to willful neglect. In addition, the temporary regulations provide that a CPEO must be a business entity described in § 301.7701–2(a) except that it may not be a disregarded entity for federal tax purposes under §§ 301.7701–2 and 301.7701–3 (without regard to the special rule in § 301.7701–2(c)(2)(iv) that provides that such entities are corporations for federal employment tax purposes). Under § 301.7701–2(a), a business entity is any entity recognized for federal tax purposes that is not properly classified as a trust under § 301.7701–4 or otherwise subject to special treatment under the Code.

The Treasury Department and the IRS consider the criminal background of a CPEO applicant or CPEO and its responsible individuals to present a material risk to tax compliance and, therefore, the absence of such criminal background is another important requirement for certification. Consistent with section 7705(b)(1), which includes background as a category with respect to which the IRS may establish requirements for certification, the temporary regulations state that the IRS may deny an application for certification, or suspend or revoke a CPEO's certification, if the CPEO applicant or CPEO, or any of its precursor entities, related entities, or responsible individuals, has been charged or convicted of any criminal offense under the laws of the United States or of a state or political subdivision thereof, or is the subject of an active IRS criminal investigation. This is also consistent with suggestions made by the Joint Committee on Taxation, which noted that the regulations under section 7705(b)(1) could include requirements for favorable criminal background checks. *See* Staff of the Joint Committee on Taxation (JCS), General Explanation of Tax Legislation Enacted in the 113th Congress, JCS–1–15, at 233 (March 2015) (General Explanation). Additionally, the IRS may consider whether the CPEO applicant or CPEO, or any precursor entities, related entities, or responsible individuals of the CPEO applicant or CPEO, is listed on any sanctions list compiled by the Office of Foreign Assets Control (OFAC) within the Department of Treasury, including but not limited to the OFAC Consolidated Sanctions List and the OFAC Specially Designated Nationals (SDN) List.

The temporary regulations further state, consistent with section 7705(b)(1), that the IRS may deny a CPEO applicant's application for certification, or suspend or revoke a CPEO's certification, if the CPEO applicant or CPEO, or any of its precursor entities, related entities, or responsible individuals, has been sanctioned or had a license, registration, or accreditation (including a license, registration, or accreditation relating to its status or ability to operate as a PEO) denied, suspended, or revoked by a court of competent jurisdiction, licensing board, assurance or other professional organization, or federal or state agency, court, body, board, or other authority for any misconduct that bears upon the suitability of the CPEO applicant or CPEO to perform its professional functions. Such misconduct may relate to dishonesty, fraud, or breach of trust and would include any criminal or civil penalties for violating any state laws prohibiting the transfer or acquisition of a business solely or primarily for the purpose of obtaining a lower

[3]Section 7705(a)(1) provides that a person must be certified by the Secretary as meeting the requirements of section 7705(b) to become certified as a CPEO, and section 7705(b)(5) provides that the person must agree to verify that it continues to meet the requirements of section 7705(b) on such periodic basis as the Secretary may prescribe. In addition, section 7705(d) provides that the Secretary may suspend or revoke a certification of any person if the Secretary determines that such person is not satisfying the agreements or requirements of section 7705(b) (including the CPEO's agreement to verify that it continues to meet the requirements of section 7705(b) that it makes pursuant to section 7705(b)(5)).

unemployment tax rate or avoiding a higher unemployment tax rate.

In addition, the temporary regulations provide that the IRS may deny a CPEO applicant's application for certification, or revoke or suspend a CPEO's certification, if the CPEO applicant or CPEO, or any of its precursor entities, related entities, or responsible individuals, fails to demonstrate a history of financial responsibility, which the IRS may assess through checks on credit history and other similar indicators.

With respect to the requirements relating to experience referred to in section 7705(b)(1), the Treasury Department and the IRS consider it important that a CPEO applicant or CPEO be managed by individuals with knowledge or experience regarding federal and state employment tax compliance and business practices relating to those compliance requirements. This is consistent with the suggestions made by the Joint Committee on Taxation. *See* General Explanation at 233. The temporary regulations provide that the IRS may deny a CPEO applicant's application for certification or revoke or suspend a CPEO's certification if the CPEO applicant or CPEO and its responsible individuals fail to demonstrate adequate collective knowledge or experience with respect to federal or state employment tax reporting, depositing, and withholding requirements; handling and accounting of payroll, tax payments, and other funds on behalf of others; effective recordkeeping systems; retention of qualified personnel and legal advisors; and general business and risk management.

The temporary regulations provide that the IRS may deny a CPEO applicant's application for certification, or revoke or suspend a CPEO's certification, if the CPEO applicant or CPEO, or any of its responsible individuals, gives false or misleading information (including by intentionally omitting relevant information) or participates in any way in the giving of false or misleading information, to the IRS, knowing, or having reason to know, the information to be false or misleading. For these purposes, the term "information" includes: facts or other matters contained in testimony, federal tax returns, and financial statements and opinions regarding such statements; applications for certification (and all accompanying documentation); affidavits, declarations, assertions, attestations, statements, and agreements; periodic verifications that the requirements of this section continue to be met; and any other information that is required to be provided by these temporary regulations, section 3511 and the regulations thereunder, or further guidance.

In order to confirm the accuracy of information provided to the IRS with respect to these requirements, the temporary regulations require the CPEO applicant or CPEO, and each of its responsible individuals, to take such actions as are necessary to authorize the IRS to investigate the accuracy of statements and submissions made by the CPEO applicant or CPEO, including waiving confidentiality and privilege when necessary, and to conduct comprehensive background checks, including, but not limited to, checks on tax compliance, criminal background, professional experience (including through the contact of third-party references), credit history, and professional sanctions. In addition, each responsible individual of a CPEO applicant or CPEO must submit fingerprints in the time and manner and under the circumstances prescribed by the Commissioner in further guidance. The IRS is considering whether to expand the category of individuals who must authorize the IRS to conduct comprehensive background checks and submit fingerprint cards to include certain directors, officers, and owners of a CPEO applicant's or CPEO's related entities. Treasury and the IRS request comments regarding such possible expansion, including how any such expansion could be as administrable as possible. To submit comments, please follow the instructions in the "Comments and Requests for Public Hearing" section in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Internal Revenue Bulletin**.

b. *Business location*

Section 7705(b)(1) specifically lists business location as one of the categories of certification requirements that the Secretary may establish. The temporary regulations require a CPEO applicant or CPEO to have one or more established physical business locations in the United States at which regular operations that constitute a trade or business within the United States (within the meaning of section 864(b)) take place and at which a significant portion of its CPEO-related functions are carried on and the administrative records relating to those functions are kept.[4] The temporary regulations also require the CPEO applicant or CPEO to be created or organized in the United States or under the law of the United States or of any state. The temporary regulations further require that a majority of the CPEO applicant's or CPEO's responsible individuals be citizens or residents of the United States. Finally, a CPEO applicant or CPEO must use only financial institutions described in section 265(b)(5) to hold its cash and cash equivalents, receive payments from customers, and pay wages and federal employment taxes. Under section 265(b)(5), a financial institution is, among other requirements, a person who is subject to federal or state supervision as a financial institution or a bank or trust company that is subject to supervision and examination by state or federal authority having supervision over banking institutions.

c. *Financial statements*

In addition to the specific requirements with respect to financial statements in section 7705(c), section 7705(b)(1) provides that the Secretary may establish requirements with respect to annual financial audits. Pursuant to these provisions, the temporary regulations require a CPEO applicant to provide to the IRS, with its application, a copy of its annual audited financial statements for the most recently completed fiscal year as of the date it applies for certification. If a CPEO applicant applies for certification before the

[4]This requirement is consistent with the General Explanation, which provides that "the existence of an established business location within the United States at which significant operations regularly take place" is a business location requirement that the Secretary could impose. General Explanation, at 234.

last day of the sixth month following its most recently completed fiscal year, and the audit of the financial statements for this fiscal year has not yet been completed at the time of application, a CPEO applicant must also provide to the IRS a copy of its audited financial statements for the immediately preceding fiscal year, if any. The temporary regulations provide that the CPEO applicant must subsequently provide to the IRS the financial statements for the most recently completed fiscal year by the last day of the sixth month after such fiscal year ends. In addition, for any fiscal year that ends after the CPEO applicant applies for certification and on or before the effective date of certification, if applicable, the CPEO applicant must provide the audited financial statements by the last day of the sixth month after such fiscal year ends. The obligation to provide the audited financial statements described in the preceding sentence continues to apply after the CPEO applicant is certified as a CPEO. Once certified, pursuant to section 7705(b)(1), a CPEO is required by the temporary regulations to provide a copy of its annual audited financial statements to the IRS within six months of the end of each fiscal year (beginning with the first fiscal year that ends after the CPEO's effective date of certification). For these purposes, a CPEO applicant's or CPEO's fiscal year will be considered completed once the last day of that fiscal year has ended, even if the CPEO was not operating or certified for the full fiscal year or the fiscal year was a short year consisting of fewer than 12 months.

Additionally, the Treasury Department and the IRS believe a CPEO with annual audited financial statements that reflect positive working capital (as determined in accordance with GAAP) presents a materially lower risk to the IRS's collection of federal employment taxes than a CPEO without such financial statements. Accordingly, pursuant to section 7705(b)(1) and consistent with several state PEO certification and registration laws, the temporary regulations require a CPEO applicant or CPEO to cause to be prepared and provided to the IRS, by the same date it must provide a copy of its annual audited financial statements, an opinion of an independent CPA that such financial statements reflect positive working capital for the fiscal year, unless the exception described in the next paragraph applies. In addition, the temporary regulations require this opinion to set forth in detail a calculation of the CPEO applicant's or CPEO's working capital. Consistent with section 7705(c)(3)(A), this CPA opinion must also generally state that the financial statements are presented fairly in accordance with GAAP.

The Treasury Department and the IRS recognize that working capital may fluctuate over the course of a CPEO's fiscal year due to normal business operations. To allow for some fluctuation in working capital, the temporary regulations contain an exception to the positive working capital requirement. Under this exception, a CPEO applicant or CPEO will not fail to meet the positive working capital requirement if three requirements are satisfied. First, the CPEO applicant or CPEO must have negative working capital for no more than two consecutive fiscal quarters of that fiscal year (as demonstrated by the financial statements for the final fiscal quarter of the fiscal year or the quarterly statements described in this section 3.c of the preamble for any other fiscal quarter). Second, the CPEO applicant or CPEO or its CPA must provide an explanation to the IRS describing the reason for the failure in such time and manner as the Commissioner may prescribe in further guidance. Third, the IRS must determine, in its sole discretion, that the failure does not present a material risk to the IRS's collection of federal employment taxes.

The temporary regulations provide special rules for newly established CPEO applicants. A CPEO applicant that was not operating as a provider of employment-related services for all or part of the most recently completed fiscal year as of the date it applies for certification must also provide a copy of the audited financial statements of any precursor entity for the precursor entity's most recently completed fiscal year as of the date of the application for certification, as well as a CPA opinion that these financial statements demonstrate positive working capital and are presented fairly in accordance with GAAP. The financial statements and CPA opinion for a precursor entity must be provided in such time and manner as the Commissioner may prescribe in further guidance.

In accordance with section 7705(c)(3)(A), the temporary regulations require the opinion regarding a CPEO's financial statements to be provided by a CPA who is independent of the CPEO. For this purpose, the temporary regulations require a CPA to be independent as prescribed by the American Institute of Certified Public Accountants' Professional Standards, Code of Professional Conduct, and its interpretations and rulings. The Treasury Department and the IRS request comments regarding whether the CPA independence guidelines or requirements of other governmental agencies or departments or industry self-regulatory bodies, as adapted for a CPA of a CPEO, would better ensure the impartiality of CPAs providing opinions on CPEO's financial statements, such as: (1) the Department of Labor's guidelines on the independence of CPAs retained by employee benefit plans under 29 CFR 2509.75–9; (2) the Securities and Exchange Commission's (SEC) independence guidelines for auditors reporting on financial statements included in SEC filings; and (3) the Government Accountability Office's auditor independence requirements under Government Auditing Standards that cover federal entities and organizations receiving federal funds.

As previously noted, section 7705(b)(5) requires a CPEO to verify on a periodic basis that it meets certification requirements. In accordance with this requirement and pursuant to the Secretary's general authority under section 7705(b)(1) to establish requirements for CPEOs to become and remain certified, the temporary regulations further require a responsible individual of the CPEO applicant or the CPEO to provide, by the last day of the second month after the end of each calendar quarter and beginning with the most recently completed quarter as of the date of the application for certification, a statement verifying under penalties of perjury that the CPEO applicant or the CPEO has positive working capital with respect to the most recently completed fiscal quarter. However, as with the requirement that annual financial statements reflect positive working capital, the temporary regulations also contain an exception to this requirement. The exception applies only if the CPEO does not have negative working capital at the end of the two fiscal quarters immediately preceding the fiscal quarter to which the statement relates. As with the exception provided with respect to annual financial statements that reflect negative working capital, the CPEO must also provide an explanation to the IRS describing the reason for the failure in such time and manner as the Commissioner may prescribe in further guidance, and the IRS must determine, in its sole discretion, that the failure does not present a material risk to the IRS's collection of federal employment taxes.

d. *Quarterly assertion and attestation*

Section 7705(c)(3)(B) requires a CPEO to provide to the Secretary an assertion and examination level attestation regarding its compliance with federal employment tax withholding and depositing requirements. In accordance with this provision, the temporary regulations state that a CPEO must provide, on a quarterly basis and beginning with the first calendar quarter that ends after the CPEO's effective date of certification, an assertion signed by a responsible individual under penalties of perjury stating that the CPEO has withheld and made deposits of all federal employment taxes (other than taxes imposed by chapter 23 of the Code) as required for the quarter.[5] In addition, the CPEO must provide an examination level attestation from a CPA stating that this assertion is fairly stated. The assertion and attestation must be provided by the last day of the second month after the end of each calendar quarter. These quarterly assertion and attestation requirements also apply to a CPEO applicant, who must provide the required assertion and attestation for the most recently completed calendar quarter as of the date of its application for certification and each subsequent calendar quarter while its application is pending. A CPEO applicant that was not operating as a provider of employment-related services during the most recently completed calendar quarter as of the date of its application for certification or during any quarter that ends while its application for certification is pending must provide an assertion and attestation for any precursor entity in such time and manner as the Commissioner may prescribe in further guidance.

The temporary regulations provide that a CPEO applicant or CPEO will not fail to meet the quarterly assertion and attestation requirements if the CPA examination level attestation indicates that the CPEO applicant or CPEO has failed to withhold or make deposits in certain immaterial respects, provided that the attestation includes a summary of the immaterial failures that were found and states that the failures were immaterial and isolated and do not reflect a meaningful lapse in compliance with federal employment tax withholding and deposit requirements. Furthermore, in order for this exception for immaterial failures to apply, the IRS must determine, in its sole discretion, that the isolated and immaterial failures identified by the CPA do not present a material risk to the IRS's collection of federal employment taxes.

e. *Bond requirements*

Section 7705(c)(2) sets forth the bond requirements that a person must satisfy in order to become and remain a CPEO. The provisions of section 7101 and its accompanying regulations apply to bonds required by section 7705(c)(2), except to the extent modified in the temporary regulations. The temporary regulations provide that a CPEO must post a bond for the payment of federal employment taxes in a specified amount. This specified amount is, for each period beginning on April 1 of any calendar year (or, in the case of a newly certified CPEO, on the effective date of certification) and ending on March 31 of the following calendar year (the bond period), an amount that is at least equal to the greater of: (1) five percent of the CPEO's liability under section 3511 (or, if applicable, the liability as determined for newly certified CPEOs, discussed in section 3.e.i of this preamble) during the calendar year preceding the bond period, but not more than $1,000,000; or (2) $50,000. The proposed regulations require the bond to be issued by a surety company that holds a certificate of authority from the Secretary as an acceptable surety on federal bonds and meets such other requirements as the Commissioner may prescribe in further guidance.

One benefit of the bond requirement in section 7705(c) is that the CPEO must submit to the bonding surety's financial underwriting process to obtain the bond, which provides the IRS with a certain level of assurance concerning the financial condition of the CPEO. The Treasury Department and the IRS believe that this benefit is substantially diminished if the CPEO obtains the bond by posting collateral in the amount of the bond. For this reason, the temporary regulations provide that the CPEO must meet the bond requirements without posting collateral.

i. Calculating Five Percent of Liability under Section 3511

In calculating five percent of its liability under section 3511 (or, if applicable, the liability described in the subsequent paragraph) during the preceding calendar year, the temporary regulations require that a CPEO base its calculation on the amount of applicable federal employment taxes[6] it reported and paid in the preceding calendar year. However, if the CPEO or the IRS subsequently determines that the applicable federal employment tax liability for the preceding calendar year was higher than the amount reported and paid (and makes an adjustment or assessment, respectively, reflecting that determination), and if the bond that the CPEO had posted was less than $1,000,000, the CPEO must post a strengthening bond that, together with the initially-posted bond, equals a total amount that reflects the adjusted applicable federal employment tax liability up to $1,000,000. Alternatively, the CPEO could post a superseding bond in such an adjusted amount.

[5]Although the temporary regulations (and section 7705(c)(3)(B)) do not require the assertion to include a statement with respect to taxes imposed by chapter 23 of the Code, the IRS expects to evaluate compliance with deposit requirements with respect to taxes imposed by chapter 23 through tax compliance checks.

[6]As noted in the Background section of this preamble, the term "federal employment taxes" includes all taxes imposed under Subtitle C of the Code, including income tax withholding and FICA, RRTA, and FUTA taxes. As such, the liability described in this paragraph is based on an amount that includes both the employee and employer shares of FICA and RRTA, as well as income tax withholding and FUTA.

A newly certified CPEO will not have any liability under section 3511 for the calendar year preceding its certification on which to base its calculation of the required bond amount. In such cases, the temporary regulations provide that, in calculating the bond amount, the liability used for the preceding calendar year (or portion thereof[7]) when the CPEO was not certified is the federal employment tax liability of the CPEO[8] and of any precursor entity of the CPEO that made a substantial asset transfer to the CPEO, that results from one or more service agreements described in § 31.3504–2(b)(2). In determining the federal employment tax liability of a precursor entity of a CPEO for a preceding year, only liability amounts that resulted from service agreements that were transferred or are intended to be transferred to the CPEO (at the time that the amount of the bond is determined) are included. If no such precursor entity exists and the CPEO otherwise had no federal employment tax liability during the preceding calendar year, the amount of the bond will be $50,000.

ii. Cancellation

The temporary regulations provide that the bond posted by a CPEO must provide that it may be cancelled by the surety only after the surety gives written notice to the IRS and the CPEO. (*See* Form 14751, "Certified Professional Employer Organization Surety Bond," for details on the time and manner in which such written notice must be provided.) The bond must also provide that, if the surety cancels the bond without issuing a superseding bond to the CPEO, the surety will remain liable for all federal employment tax liability accrued by the CPEO during the period beginning with the effective date of the first bond issued by the surety to the CPEO in any consecutive series of bonds issued by that surety prior to cancellation and ending with the cancellation (the total bond period), up to the penal amount of the bond at the time of cancellation. The temporary regulations provide that a cancelling surety will remain liable for federal employment tax liability accrued during the total bond period up to the penal amount of the bond for as long as the Commissioner may assess and collect taxes for such period under sections 6501 and 6502.

4. *Controlled Groups*

The temporary regulations provide that CPEO applicants and CPEOs that are members of a controlled group, within the meaning of sections 414(b) and (c), will be treated as a single CPEO applicant or CPEO for purposes of the financial statement, quarterly assertion and attestation, and bond requirements described in this preamble, except that the annual and quarterly requirements imposed under the scope of sections 7705(b)(1) and 7705(b)(5) with respect to positive working capital apply to each CPEO applicant or CPEO on a separate basis.

5. *Consents to Disclose*

In order to receive and maintain certification, the temporary regulations state that a CPEO applicant or CPEO must provide such consents for the IRS to disclose confidential tax information to its customers, and to other persons as necessary to carry out the purposes of these regulations, that relates to its certification and obligations to report, deposit, and pay federal employment taxes as the Commissioner may require in further guidance.

6. *Periodic Verification and Notification of Material Changes*

Consistent with section 7705(b)(5), the temporary regulations require a CPEO to verify periodically that it continues to meet the certification requirements in such time and manner as the Commissioner may prescribe in further guidance. Consistent with section 7705(b)(6), the temporary regulations provide that a CPEO applicant or CPEO must notify the IRS, in the time and manner prescribed by the Commissioner in further guidance, of any change that materially affects the continuing accuracy of any agreement or information that was previously made or provided to the IRS. The Treasury Department and the IRS expect to provide further details regarding these requirements in a future revenue procedure that will prescribe the ongoing requirements that CPEOs must meet to maintain certification.

7. *Accrual Method of Accounting*

Consistent with section 7705(b)(4), the temporary regulations require a CPEO to compute its taxable income using an accrual method of accounting or, if applicable, another method that the Commissioner prescribes in further guidance.

8. *Compliance with Reporting Obligations*

The temporary regulations provide that a CPEO must make reports to the IRS and to its clients as provided in section 3511(g) and regulations issued thereunder. This includes the filing of all federal employment tax and information returns. The temporary regulations also require a CPEO to file all returns, schedules, reports, and other forms and documents on magnetic media when required to do so by section 3511(g) and regulations issued thereunder, or by other Treasury regulations. With respect specifically to the requirement that CPEOs file Form 940, "Employer's Annual Federal Unemployment (FUTA) Tax Return," and Form 941, "Employer's QUARTERLY Federal Tax Return," on magnetic media, compliance with this requirement is a condition of certification. The CPEO program is a voluntary certification regime; a person that does not wish to file Forms 940 and 941 on magnetic media is not obligated to apply for or obtain certification as a CPEO.

9. *Suspension and Revocation*

The temporary regulations provide that the IRS may suspend or revoke the certification of any CPEO as a result of a

[7]Unless the CPEO is certified effective January 1, the CPEO will not have liability under section 3511 for the portion of the calendar year in which it was certified that preceded its certification.

[8]For purposes of this paragraph, the term "CPEO" is intended to include the CPEO before it applied for certification and while its application for certification was pending.

failure to meet any of the requirements for CPEOs, and the IRS will suspend or revoke certification if the IRS determines, in its sole discretion, that such failure presents a material risk to the IRS's collection of federal employment taxes. If a CPEO's certification is suspended, section 3511 will not apply to any contract described in section 7705(e)(2) into which the CPEO enters during the suspension period. If a CPEO's certification is revoked, the organization will not be considered a CPEO for purposes of section 3511 after the effective date of such revocation unless and until it again applies and is again certified as a CPEO. However, an organization whose certification as a CPEO has been revoked may not re-apply to be certified as a CPEO until one year has passed since the effective date of its revocation. Neither the suspension nor the revocation of an organization's status as a CPEO will affect its potential liability under § 31.3504–2.

The temporary regulations provide that an organization whose certification as a CPEO has been suspended or revoked must notify its customers of the suspension or revocation (in the time and manner provided in further guidance). In addition, the IRS will make public a CPEO's suspension or revocation and may also individually notify the CPEO's customers of such suspension or revocation.

Effective/Applicability Date

The IRS has announced that it plans to begin accepting applications for CPEO certification on July 1, 2016. Accordingly, the temporary regulations apply on and after July 1, 2016. Pursuant to section 7805(e)(2), the temporary regulations expire on or before May 3, 2019.

Statement of Availability of IRS Documents

IRS revenue procedures, revenue rulings, notices, and other guidance cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS Web site at http://www.irs.gov.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) please refer to the Special Analyses section of the preamble to the cross-referenced notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Internal Revenue Bulletin**. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are Melissa Duce, Andrew Holubeck, and Neil Shepherd of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

List of Subjects

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 301 and 602 are amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding entries in numerical order to read in part as follows:

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

Section 301.7705–1T also issued under 26 U.S.C. 7705(h).

Section 301.7705–2T also issued under 26 U.S.C. 7705(h).

* * * * *

Par. 2. Sections 301.7705–1T and 301.7705–2T are added to read as follows:

§ 301.7705–1T Certified professional employer organization.

(a) *Application*. The definitions set forth in this section apply for purposes of this section, § 301.7705–2T and sections 3302(h), 3303(a)(4), 3511, 6053(c)(8), and 7528(b)(4).

(b) *Definitions*—(1) *Certified professional employer organization* (CPEO) means a person that applies to be certified as a CPEO in accordance with § 301.7705–2T(a) and has been certified by the Internal Revenue Service (IRS) as meeting the requirements of § 301.7705–2T. For purposes of § 301.7705–2T(g)(2), the term CPEO also includes the person before it applied for certification and while its application is pending with the IRS. For all other purposes, a person is a CPEO as of the effective date of its certification (as specified in the certification notice described in § 301.7705–2T(a)(2)) and until its certification is revoked by the IRS (as described in § 301.7705–2T(n)) or, if earlier and applicable, until the CPEO voluntarily terminates its certification in the time and manner prescribed by the Commissioner in further guidance.

(2) *CPEO applicant* means a person that has applied to be certified as a CPEO in accordance with § 301.7705–2T(a) and whose application is pending with the IRS.

(3) *CPEO contract*. [Reserved]

(4) *Certified public accountant* (*CPA*) means a certified public accountant who—

(i) With respect to a CPEO applicant or CPEO, is independent of the CPEO applicant or CPEO (as prescribed by the American Institute of Certified Public Accountants' Professional Standards, Code of Professional Conduct, and its interpretations and rulings);

(ii) Is not currently under suspension or disbarment from practice before the IRS;

(iii) Is duly qualified to practice in any state;

(iv) Files with the IRS a written declaration that he or she is currently qualified as a CPA and authorized to represent the CPEO applicant or CPEO before the IRS; and

(v) Meets such other requirements as the Commissioner may prescribe in further guidance.

(5) *Covered employee*. [Reserved]

(6) *Customer*. [Reserved]

(7) *Federal employment taxes* means the taxes imposed by subtitle C of the Internal Revenue Code.

(8) *Guidance* includes guidance published in the Federal Register or Internal Revenue Bulletin, as well as administrative guidance such as forms, instructions, publications, or other guidance on the IRS.gov Web site.

(9) *Partnership* means a business entity (as described in § 301.7701–2(a)) that is classified as a partnership for federal tax purposes under §§ 301.7701–1, 301.7701–2, and 301.7701–3. Accordingly, any references to a managing member or general partner of a partnership mean a managing member or general partner of an entity that is classified as a partnership for federal tax purposes.

(10) *Precursor entity*—(i) *In general*. A precursor entity means, with respect to a CPEO applicant, any related entity of the CPEO applicant that is or was a provider of employment-related services that—

(A) Has made a substantial asset transfer to the CPEO applicant during the calendar year that the CPEO applicant applies for certification or any of the three preceding calendar years or plans to make such a substantial asset transfer while the application for certification is pending or in the 12-month period following the date of the CPEO applicant's application for certification; or

(B) Has ceased operations or dissolved during the calendar year that the CPEO applicant applied for certification or any of the three preceding calendar years.

(ii) *Related*. For purposes of this paragraph (b)(10), a provider of employment-related services is considered a related entity of a CPEO applicant if it is a related entity within the meaning of paragraph (b)(12) of this section or if it would be or would have been such a related entity based on the ownership and responsible individuals of the provider of employment-related services at the time of its substantial asset transfer, ceasing of operations, or dissolution, as applicable, and the ownership and responsible individuals of the CPEO applicant at the time of its application.

(11) *Provider of employment-related services* means a person that provides employment tax administration, payroll services, or other employment-related compliance services to clients, including, but not limited to, collecting, reporting, and paying employment taxes with respect to wages or compensation paid by the person to individuals performing services for the clients. A provider of employment-related services includes, but is not limited to, a CPEO.

(12) *Related entity* means, with respect to a CPEO applicant or CPEO, any person that meets one or more of the following criteria:

(i) The person is a member of a controlled group of which the CPEO applicant or CPEO is also a member. For purposes of this paragraph (b)(12)(i), controlled group has the meaning given to such term by sections 414(b) and (c) and the regulations thereunder, except that—

(A) With respect to a person that is not a provider of employment-related services "more than 50 percent" will be substituted for "at least 80 percent" each place it appears in section 1563(a) (which is cross-referenced in section 414(b)) and § 1.414(c)–2 of this chapter); and

(B) With respect to a person that is a provider of employment-related services, "more than 5 percent" will be substituted for "at least 80 percent" each place it appears in section 1563(a) and § 1.414(c)–2 of this chapter; or

(ii) The person is a provider of employment-related services and—

(A) A majority of the directors or a majority of the officers (as described in paragraph (b)(13)(ii) of this section) of the CPEO applicant or CPEO are directors or officers (as described in paragraph (b)(13)(ii) of this section), respectively, of the provider of employment-related services; or

(B) An individual is a responsible individual of both the provider of employment-related services and the CPEO applicant or CPEO by reason of paragraph (b)(13)(i) of this section.

(13) *Responsible individual* means, with respect to a CPEO applicant or CPEO, (or, for purposes of paragraphs (b)(10)(ii) or (b)(12)(ii) of this section, a provider of employment-related services), the following individuals:

(i) Any individual who owns, directly or indirectly and applying the constructive ownership rules of section 1563(e) with respect to stock ownership and by substituting the term "interest" for the term "stock" and the term "partnership" for the term "corporation" used in that section, as appropriate for purposes of determining whether an interest in a partnership is indirectly owned by any person, 33 percent or more of—

(A) In the case of a corporation, the total combined voting power of all classes of stock entitled to vote of such corporation or of the total value of shares of all classes of stock of such corporation; or

(B) In the case of a partnership, the capital interest or profits interest of such partnership.

(ii) Any individual who is a director or an officer. For purposes of this paragraph (b)(13)(ii), a director is a voting member of the governing body (that is, the board of directors or equivalent controlling body authorized under state law to make governance decisions on behalf of the organization), and the officers are determined by reference to the organizing document, bylaws, or resolutions of the governing body, or otherwise designated consistent with state law. Officers may include a president, vice-president, secretary, and treasurer.

(iii) Any individual who, regardless of title, has ultimate responsibility for implementing the decisions of the organization's governing body. An individual who serves with the title of chief executive officer, executive director, and/or president has this ultimate responsibility. An individual with this ultimate responsibility may include an individual who is not treated as an employee of the organization. If this ultimate responsibility resides with two or more individuals (for example, co-presidents), who may exercise such responsibility in concert or individually, then each individual is a responsible individual.

(iv) Any individual who, regardless of title, has ultimate responsibility for supervising the management, administration, or operation of the organization. An individual who serves with the title of chief operating officer has this ultimate responsibility. An individual with this ultimate responsibility may include an individual who is not treated as an employee of the organization. If this ultimate responsibility resides with two or more individuals, who may exercise such responsibility in concert or individually, then each individual is a responsible individual.

(v) Any individual who, regardless of title, has ultimate responsibility for managing the organization's finances. An individual who serves with the title of chief financial officer or treasurer has this ultimate responsibility. An individual with this ultimate responsibility may include an individual who is not treated as an employee of the organization. If this ultimate responsibility resides with two or more individuals who may exercise the responsibility in concert or individually, then each individual is a responsible individual.

(vi) In the case of a partnership, any individual who is a managing member or general partner.

(vii) In the case of a sole proprietorship, the sole proprietor.

(viii) Any other individual with primary responsibility for the organization's federal employment tax compliance.

(14) *Self-employed individual*. [Reserved]

(15) *Substantial asset transfer* means any transfer of 35 percent or more of the value of the operating assets of the person making the transfer, whether through one or a series of transactions and whether accomplished through sale, lease, gift, assignment, succession, merger, consolidation, corporate separation, or any other means. For purposes of this paragraph (b)(15), operating assets include both tangible and intangible resources related to the conduct of the person's trade or business, including but not limited to such intangible assets as contracts, agreements, receivables, employees, and goodwill (which includes the value of a trade or business based on expected continued customer patronage due to its name, reputation, or any other factors). In the case of a contract described in section 7705(e)(2) or a service agreement described in § 31.3504–2(b)(2) of this chapter entered into by a provider of employment-related services, even if the contract or agreement is not sold, gifted, assigned, or otherwise formally transferred to a CPEO applicant, it will be considered transferred from the provider of employment-related services to the CPEO applicant if the CPEO applicant reports, withholds, or pays, under its employer identification number (EIN), any applicable federal employment taxes with respect to the wages of any individuals covered by the contract or agreement.

(c) *Effective/applicability date*—(1) *In general*. Except as provided in paragraph (c)(2) of this section, this section applies on and after July 1, 2016.

(2) *Definitions related to section 3511*. [Reserved]

(3) *Expiration date*. The applicability of this section expires on or before May 3, 2019.

§ 301.7705–2T CPEO certification requirements.

(a) *Application requirement and certification*—(1) *Application*. To be certified as a certified professional employer organization (CPEO), a person must submit a properly completed and executed application for certification as a CPEO in the time and manner prescribed by, and providing such information as required by, this section and any further guidance issued by the Commissioner. In addition, the applicant's responsible individuals must submit such information as is specified in this section and further guidance.

(2) *Notice*. A CPEO applicant will be notified by the Internal Revenue Service (IRS) whether its application for certification has been approved or denied, and, if approved, the effective date of certification. If the IRS denies the application, the IRS will inform the CPEO applicant of the reason(s) for denial.

(3) *Public disclosure of certification*. If the IRS approves a CPEO applicant's application for certification, the IRS will make available to the public the name and address of the CPEO, as well as the effective date of its certification, in the time and manner described in further guidance.

(4) *Effective date of certification*. A CPEO's certification will be effective as of the effective date of certification specified in the notice described in paragraph (a)(2) of this section and in the public disclosure described in paragraph (a)(3) of this section and will continue in effect until the effective date of the revocation of the CPEO's certification, if any, as described in paragraph (n) of this section or, if earlier, the date that the CPEO voluntarily terminates its certification in the time and manner prescribed by the Commissioner in further guidance.

(b) *Requirements for certification*. To receive and maintain certification, a CPEO applicant or CPEO must meet the requirements described in this section, as well as any additional requirements the Commissioner may prescribe in further guidance. In addition, any precursor entities, related entities, and responsible individuals (as defined in §§ 301.7705–1T(b)(10), (12), and (13), respectively) of the CPEO applicant or CPEO must meet any requirements applicable to them described in this section and in further guidance. The IRS may deny an application for certification or revoke or suspend a CPEO's certification if a CPEO applicant or CPEO, or one or more of its precursor entities, related entities, or responsible individuals, fails to meet any applicable requirement described in this section or other applicable guidance, and the IRS will do so if the IRS determines, in its sole discretion, that such failure presents a material risk to the IRS's collection of federal employment taxes. In determining whether one or more failures to meet the requirements described in this section presents a material risk to the IRS's collection of federal employment taxes, the IRS generally will consider all relevant facts and circumstances, including the size, scope, nature, significance, recurrence, and timing of and reason for the failure and, in the case of a CPEO, any prior failures of the CPEO to meet the requirements of this section.

(c) *Suitability*—(1) *In general*. The IRS may deny an application for certification or revoke or suspend a CPEO's certification for any of the following reasons:

(i) The CPEO applicant or CPEO, or any of its precursor entities, related entities, or responsible individuals, has failed to pay any applicable federal, state, or local taxes or file any required federal, state, or local tax or information returns in a timely and accurate manner, unless the failure is determined to be due to reasonable cause and not due to willful neglect.

(ii) The CPEO applicant or CPEO, or any of its precursor entities, related entities, or responsible individuals, has been charged or convicted of any criminal offense under the laws of the United States or of a state or political subdivision thereof, or is the subject of an active IRS criminal investigation.

(iii) The CPEO applicant or CPEO, or any of its precursor entities, related entities, or responsible individuals, has been sanctioned, or had a license, registration, or accreditation (including a license, registration, or accreditation relating to its status or ability to operate as a professional employer organization) denied, suspended, or revoked, by a court of competent jurisdiction, licensing board, assurance or other professional organization, or federal or state agency, court, body, board, or other authority for any misconduct that involves dishonesty, fraud, or breach of trust or that otherwise bears upon the suitability of the CPEO applicant or CPEO to perform its professional functions (including, but not limited to, any civil or criminal penalty described in 42 U.S.C. 503(k)(1)(D) imposed by state law).

(iv) The CPEO applicant or CPEO, or any of its precursor entities, related entities, or responsible individuals, is listed on any sanctions list compiled by the Office of Foreign Assets Control (OFAC) within the Department of Treasury, including, but not limited to the OFAC Consolidated Sanctions List and the OFAC Specially Designated Nationals (SDN) List.

(v) The CPEO applicant or CPEO, or any of its precursor entities, related entities, or responsible individuals, fails to demonstrate a history of financial responsibility, which the IRS may assess by checks on credit history and other similar indicators.

(vi) The CPEO applicant or CPEO and the responsible individuals of the CPEO applicant or CPEO fail to demonstrate adequate collective knowledge or experience with respect to:

(A) Federal or state employment tax reporting, depositing, and withholding requirements;

(B) Handling and accounting of payroll, tax payments, and other funds on behalf of others;

(C) Effective recordkeeping systems;

(D) Retention of qualified personnel and legal advisors as needed; and

(E) General business and risk management.

(vii) The CPEO applicant or CPEO, or any of its responsible individuals, gives false or misleading information (including by intentionally omitting relevant information), or participates in any way in the giving of false or misleading information, to the IRS, knowing, or having reason to know, that the information is false or misleading. For the purpose of this subsection, "information" includes (but is not limited to) facts or other matters contained in testimony, federal tax returns, and financial statements and opinions regarding such statements; applications for certification (and all accompanying documentation); affidavits, declarations, assertions, attestations, statements, and agreements; and periodic verifications that the requirements of this section continue to be met; and any other information that is required to be provided by this section, section 3511(g) and regulations thereunder, or further guidance.

(2) *Must be a business entity that is not a disregarded entity*. A CPEO must be a business entity described in § 301.7701–2(a), except that a CPEO may not be a business entity that is disregarded as an entity separate from its owner for federal tax purposes under §§ 301.7701–2 and 301.7701–3 (without regard to the special rule in § 301.7701–2(c)(2)(iv) that provides that such entities are corporations for federal employment tax purposes). Accordingly, a CPEO may not be an individual or an entity classified as a trust under § 301.7701–4.

(3) *Authorization to investigate suitability*. A CPEO applicant or CPEO, and each of its responsible individuals, must take such actions as are necessary to authorize the IRS to investigate the accuracy of statements and submissions, including waiving confidentiality and privilege when necessary, and to conduct comprehensive background checks, including, but not limited to, checks on tax compliance, criminal background, professional experience (including through the contact of third-party references), credit history, and professional sanctions. In addition, a CPEO applicant or CPEO, and any of its responsible individuals, must provide the IRS with such additional information as the IRS may request to facilitate such background investigations. Each responsible individual of a CPEO applicant or CPEO must also submit fingerprints in the time and manner and under the circumstances prescribed by the Commissioner in further guidance.

(d) *Business location*—(1) *State of organization*. A CPEO applicant or CPEO must be created or organized in the United States or under the law of the United States or of any state.

(2) *Business location in the United States.* A CPEO applicant or CPEO must have one or more established, physical business locations in the United States at which regular operations that constitute a trade or business within the United States (within the meaning of section 864(b)) take place and at which a significant portion of its CPEO-related functions are carried on and administrative records are kept.

(3) *United States responsible individuals*. A majority of the CPEO applicant's or CPEO's responsible individuals must be citizens or residents of the United States.

(4) *Use of financial institution*. A CPEO applicant or CPEO must use only financial institutions described in section 265(b)(5) to hold its cash and cash equivalents, receive payments from customers, and pay wages and federal employment taxes.

(e) *Financial statements*—(1) *CPEOs*. By the last day of the sixth month after the end of each fiscal year, and beginning with the first fiscal year that ends after the CPEO's effective date of certification, a CPEO must cause to be prepared and provided to the IRS a copy of its annual audited financial statements for the fiscal year and an opinion of a certified public accountant (CPA) that such financial statements—

(i) Are presented fairly in accordance with GAAP; and

(ii) Reflect positive working capital or, only if the CPEO satisfies the requirements of paragraph (e)(3) of this section, reflect negative working capital, with such opinion in either case setting forth in detail a calculation of the CPEO's working capital as reflected in the financial statements.

(2) *CPEO applicants*—(i) *In general*. A CPEO applicant must cause to be prepared and provided to the IRS, with its application, a copy of its annual audited financial statements and an opinion with respect to such financial statements (as described in paragraph (e)(1) of this section) for the most recently completed fiscal year as of the date it applies for certification. Notwithstanding the preceding sentence, if a CPEO applicant applies for certification before the last day of the sixth month following its most recently completed fiscal year, and the audit of the financial statements for this fiscal year has not yet been completed at the time of application, a CPEO applicant must provide to the IRS, with its application, the financial statements and opinion described in paragraph (e)(1) of this section for the immediately preceding fiscal year, if any, and must subsequently provide to the IRS the financial statements and opinion described in paragraph (e)(1) of this section for the most recently completed fiscal year by the last day of the sixth month after such fiscal year ends. In addition, for any fiscal year that ends after the CPEO applicant applies for certification and on or before the effective date of certification, if applicable, the CPEO applicant must provide the audited financial statements and opinion described in paragraph (e)(1) of this section by the last day of the sixth month after such fiscal year ends. The obligation to provide the audited financial statements described in the preceding sentence continues to apply even if the CPEO applicant is certified as a CPEO prior to the date the audited financial statements are provided.

(ii) *Newly established CPEO applicants*. In addition to the requirements in paragraph (e)(2)(i) of this section, a CPEO applicant that was not operating as a provider of employment-related services for all or part of the most recently completed fiscal year as of the date it applies for certification must provide a copy of the audited financial statements of any precursor entity, if one exists, and an opinion with respect to such financial statements (as described in paragraph (e)(1) of this section) for the precursor entity's most recently completed fiscal year as of the date of the application for certification in such time and manner as the Commissioner may prescribe in further guidance, as well as such additional information as the Commissioner may prescribe in further guidance.

(3) *Exception to positive working capital requirement*. A CPEO applicant or CPEO with annual audited financial statements for a fiscal year that do not reflect positive working capital will not fail to meet the requirements of paragraph (e)(1)(ii) of this section if—

(i) The CPEO applicant or CPEO has negative working capital for no more than two consecutive fiscal quarters of that fiscal year, as demonstrated by the financial statements (for the final fiscal quarter in the fiscal year) and the statements described in paragraph (f)(1)(ii) of this section (for any other fiscal quarter);

(ii) The CPEO applicant or CPEO, or its CPA, provides, in such time and manner as the Commissioner may prescribe in further guidance, an explanation to the IRS describing the reason for the failure; and

(iii) The IRS determines, in its sole discretion, that the failure does not present a material risk to the IRS's collection of federal employment taxes.

(4) *Completed fiscal year*. For purposes of this paragraph (e), a fiscal year will be considered completed once the last day of that fiscal year has ended, regardless of whether the CPEO applicant or CPEO was in operation or certified for all 12 months of the fiscal year or the fiscal year consisted of fewer than 12 months.

(f) *Quarterly assertions and attestations*—(1) *CPEOs*. By the last day of the second month after the end of each calendar quarter, and beginning with the first calendar quarter, that ends after the CPEO's effective date of certification, a CPEO must provide the following to the IRS:

(i) An assertion, signed by a responsible individual under penalties of perjury, stating that the CPEO has withheld and made deposits of all federal employment taxes (other than taxes imposed by chapter 23 of the Code) as required by subtitle C for such calendar quarter and an examination level attestation from a CPA stating that such assertion is fairly stated in all material respects.

(ii) A statement signed by a responsible individual under penalties of perjury verifying that the CPEO has positive working capital (as determined in accordance with GAAP) at the end of the most recently completed fiscal quarter, as well as such additional financial information that the Commissioner may specify in further guidance.

(2) *Exceptions*—(i) *Immaterial failures*. A CPEO will not fail to meet the requirements of paragraph (f)(1)(i) of this section if the CPA examination level attestation indicates that the CPEO has failed to withhold or make deposits in certain immaterial respects, provided that—

(A) The attestation provides a summary of the immaterial failures that were found;

(B) The attestation states that the failures were immaterial and isolated and do not reflect a meaningful lapse in compliance with federal employment tax withholding and deposit requirements; and

(C) The IRS determines, in its sole discretion, that the isolated and immaterial failures identified by the CPA do not present a material risk to the IRS's collection of federal employment taxes.

(ii) *Negative working capital*. A CPEO with negative working capital at the end of a fiscal quarter will not fail to meet the requirements of paragraph (f)(1)(ii) of this section if—

(A) The CPEO does not have negative working capital at the end of the two fiscal quarters immediately preceding such fiscal quarter, as demonstrated by the financial statements described in paragraph (e)(1) of this section, if available, or the statements described in paragraph (f)(1)(ii) of this section;

(B) The CPEO provides an explanation to the IRS describing the reason for such negative working capital in such time and manner as the Commissioner may prescribe in further guidance; and

(C) The IRS determines, in its sole discretion, that the negative working capital does not present a material risk to the IRS's collection of federal employment taxes.

(3) *CPEO applicants*—(i) *In general*. By the last day of the second month after

the end of each calendar quarter, beginning with the most recently completed calendar quarter as of the date of a CPEO applicant's application for certification and ending with the most recently completed calendar quarter as of the effective date of certification (if applicable), a CPEO applicant must provide to the IRS the assertion, examination level attestation, and working capital statement described in paragraph (f)(1) of this section, subject to the exceptions described in paragraph (f)(2) of this section (though substituting "CPEO applicant" for "CPEO").

(ii) *Newly established CPEO applicants*. A CPEO applicant that was not operating as a provider of employment-related services during the most recently completed calendar quarter as of the date of its application for certification or during any calendar quarter that ends while its application for certification is pending must provide to the IRS the assertion, examination level attestation, and working capital statement described in paragraph (f)(1) of this section with respect to any precursor entity, if applicable, in such time and manner as the Commissioner may prescribe in further guidance, as well as such additional information as the Commissioner may prescribe in further guidance.

(g) *Bond*—(1) *In general*. A CPEO must post a bond for the payment of federal employment taxes issued in the form and containing the terms prescribed by the Commissioner in further guidance and in an amount described in paragraph (g)(2) of this section.

(2) *Bond amount*—(i) *In general*. The amount of the bond described in paragraph (g)(1) of this section must be, for each period beginning on April 1 of any calendar year and ending on March 31 of the following calendar year (or, in the case of a newly certified CPEO, beginning with the effective date of certification and ending on the subsequent March 31) (the bond period), at least equal to the greater of—

(A) Five percent of the CPEO's liability under section 3511 (or, if applicable, the liability described in paragraph (g)(2)(ii) of this section) during the calendar year preceding the beginning of the bond period, but not more than $1,000,000; or

(B) $50,000.

(ii) *Amount of bond in first and second year as a CPEO*. If a CPEO does not have any liability under section 3511 for all or a portion of a preceding calendar year because the CPEO was not certified as a CPEO for all or a portion of that preceding calendar year, the liability applied for purposes of paragraph (g)(2)(i)(A) of this section for the entirety or portion of the preceding calendar year during which the CPEO was not certified will be the federal employment tax liability of the CPEO, and of any precursor entity of the CPEO described in § 301.7705–1T(b)(10)(i)(A), that results from one or more service agreements described in § 31.3504–2(b)(2) of this chapter. With respect to the federal employment tax liability of such precursor entity during a preceding calendar year, the liability will only be applied for purposes of paragraph (g)(2)(i)(A) of this section to the extent it results from service agreements that have been transferred or are intended to be transferred by the precursor entity to the CPEO at the time the bond amount is determined. For purposes of this paragraph (g)(2)(ii), an entity is considered a precursor entity of a CPEO described in § 301.7705–1T(b)(10)(i)(A) if it was determined to be its precursor entity under that section at the time it was a CPEO applicant.

(3) *Cancellation*—(i) *Notice*. A bond required under this paragraph (g) must provide that it may be cancelled by the surety only after the surety gives written notice of such cancellation to the IRS and the CPEO in such time and manner as the Commissioner may prescribe in further guidance.

(ii) *Ongoing liability*. A bond required under this paragraph (g) must provide that, if a surety cancels the bond without issuing a superseding bond to the CPEO, the surety will, notwithstanding the cancellation, remain liable for all federal employment tax liability accrued by the CPEO during the period beginning with the effective date of the first bond issued by the surety to the CPEO in any consecutive series of bonds issued by that surety prior to cancellation and ending with the cancellation of the bond (the total bond period), up to the penal amount of the bond at the time of the cancellation. A cancelling surety will remain liable as described in this paragraph (g)(3)(ii) for federal employment tax liability accrued during the total bond period up to the penal amount of the bond for as long as the Commissioner may assess and collect taxes for such period under sections 6501 and 6502.

(4) *Strengthening bonds to reflect CPEO adjustment or IRS assessment*. In calculating five percent of its liability under section 3511 (or other applicable federal employment tax liability) for a preceding calendar year for purposes of determining a bond amount, a CPEO must base its calculation on the amount of applicable federal employment taxes that it reported and paid for that preceding calendar year. However, if the CPEO or the IRS subsequently determines during the period for which the bond amount applies that the applicable federal employment tax liability for the preceding calendar year was higher than the amount reported and paid (and makes an adjustment or assessment, respectively, reflecting such determination) and if the bond that the CPEO had posted was less than $1,000,000, the CPEO must post a strengthening bond that, together with the initially-posted bond, equals a total amount that reflects the adjusted applicable federal employment tax liability up to $1,000,000. Alternatively, such a CPEO could post a superseding bond in such adjusted amount.

(5) *No posting of collateral*. A CPEO must meet the bond requirements of this paragraph (g) without posting collateral.

(6) *Requirements for surety*. Any surety that issues a bond required by this paragraph (g) to a CPEO must be a surety company that holds a certificate of authority from the Secretary as an acceptable surety on federal bonds and meets such other requirements as the Commissioner may prescribe in further guidance.

(h) *Controlled group*. All CPEO applicants and CPEOs that are members of a controlled group within the meaning of sections 414(b) and (c) will be treated as a single CPEO applicant or CPEO for purposes of paragraphs (e) (other than (e)(1)(ii)), (f) (other than (f)(1)(ii)), and (g) of this section.

(i) *Consents to disclose*. To receive and maintain certification, a CPEO applicant or CPEO must provide such consents for the IRS to disclose confidential tax information to its customers, and to other persons as necessary to carry out the purposes of these regulations, that relates to its certification and obligations to report, deposit, and pay federal employment taxes as the Commissioner may require in further guidance.

(j) *Periodic verification*. A CPEO must periodically verify that it continues to meet the requirements of this section in the time and manner prescribed by the Commissioner in further guidance.

(k) *Notification of material changes*. A CPEO applicant or CPEO must notify the IRS, in the time and manner prescribed by the Commissioner in further guidance, of any change that materially affects the continuing accuracy of any agreement or information that was previously made or provided to the IRS.

(l) *Accrual method of accounting*. A CPEO must compute its taxable income using an accrual method of accounting or, if applicable, another method that the Commissioner provides for in further guidance.

(m) *Compliance with reporting obligations*—(1) *In general*. A CPEO must agree to make reports to the IRS and to its clients as provided in section 3511(g) and the regulations thereunder, including filing all federal employment tax returns and information returns as required.

(2) *Filing on magnetic media*. A CPEO must file all returns, schedules, reports, and other forms and documents on magnetic media when required by section 3511(g) and the regulations thereunder or other Treasury regulations.

(n) *Suspension and revocation*—(1) *In general*. The IRS may suspend or revoke the certification of any CPEO, in the time and manner and under the circumstances prescribed by the Commissioner in further guidance, as a result of one or more failures to meet any of the requirements for CPEOs described in this section, section 3511(g) and the regulations thereunder, and any further guidance and will suspend or revoke certification if the IRS determines, in its sole discretion, that such failure(s) present a material risk to the IRS's collection of federal employment taxes. *See* paragraph (b) of this section for the factors the IRS will consider in determining whether one or more failures to meet any of the requirements described in this section presents a material risk to the IRS's collection of federal employment taxes.

(2) *Suspension*. Section 3511 will not apply to any contract described in section 7705(e)(2) into which the CPEO enters while its certification is suspended.

(3) *Revocation*. If an organization's certification as a CPEO is revoked, the organization will not be considered a CPEO for purposes of section 3511 unless and until it again applies to be certified as a CPEO in accordance with paragraph (a) of this section and is again certified by the IRS as meeting the requirements of this section. An organization whose certification as a CPEO has been revoked may not re-apply to be certified as a CPEO until one year has passed since the effective date of its revocation.

(4) *Disclosure of suspension and revocation*—(i) *Notification by the CPEO*. An organization whose certification as a CPEO has been suspended or revoked must notify its customers of such suspension or revocation in the time and manner prescribed by the Commissioner in further guidance.

(ii) *Disclosure by the IRS*. If the IRS suspends or revokes an organization's certification as a CPEO, the IRS will make available to the public the fact of such suspension or revocation in the time and manner described in further guidance. The IRS may also individually notify the organization's customers of such suspension or revocation.

(o) *Effective/applicability date*—(1) *In general*. This section applies on and after July 1, 2016.

(2) *Expiration date*. The applicability of this section expires on or before May 3, 2019.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read in part as follows:

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

Par. 4. In § 602.101, paragraph (b) is amended by adding the following entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control no.
* * * * * * *	
301.7705–1T	1545–2266
301.7705–2T	1545–2266
* * * * * * *	

Kirsten B. Wielobob,
Acting Deputy Commissioner for Services and Enforcement.

Approved: April 28, 2016.

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

(Filed by the Office of the Federal Register on May 4, 2016, 4:15 p.m., and published in the issue of the Federal Register for May 6, 2016, 81 F.R. 27315)

Part III. Administrative, Procedural, and Miscellaneous

Diversification Requirements for Variable Annuity, Endowment, and Life Insurance Contracts under Section 817(h)

Notice 2016–32

This notice provides guidance to taxpayers regarding the diversification requirements under section 817(h) of the Internal Revenue Code (Code) for a segregated asset account that invests in a money market fund (MMF) that is a government MMF. An MMF is a type of investment company registered under the Investment Company Act of 1940 (1940 Act) and regulated as an MMF under Rule 2a–7 under the 1940 Act (17 CFR 270.2a–7).

I. BACKGROUND

a. *Money market funds*

In 2014, the Securities and Exchange Commission (SEC) amended Rule 2a–7 and other rules governing MMFs. *See* Money Market Fund Reform; Amendments to Form PF (79 FR 47736). Rule 2a–7 as amended identifies circumstances under which an MMF is permitted or required to impose a liquidity fee or is permitted to impose a redemption gate. When an MMF has a liquidity fee in effect, the liquidity fee reduces the proceeds received by all redeeming shareholders. A redemption gate is a temporary suspension of redemptions of shares in the MMF. Liquidity fees and redemption gates may be imposed by all MMFs in certain circumstances.

Rule 2a–7 defines a government MMF as an MMF "that invests 99.5 percent or more of its total assets in cash, government securities, and/or repurchase agreements that are collateralized fully [by cash items or government securities]." 17 CFR 270.2a–7(a)(14). Section 2(a)(16) of the 1940 Act defines government security to mean "any security issued or guaranteed as to principal or interest by the United States, or by a person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States; or any certificate of deposit for any of the foregoing." 15 USC 80a–2(a)(16). As with certain other 1940 Act definitions, this definition of government security also applies for purposes of section 851(b)(3) of the Code, which generally applies to MMFs. *See* section 851(c)(6).

Rule 2a–7 as amended requires an MMF other than a government MMF to be prepared to impose a liquidity fee, and, in certain circumstances, to impose such a fee unless the MMF's board of directors determines that such a fee is not in the best interests of the fund. In contrast, Rule 2a–7 permits, but does not require, government MMFs to impose liquidity fees. It is expected that some existing MMFs will convert to government MMFs.

b. *Variable contracts*

Section 817(d) of the Code defines the term "variable contract" to mean a contract that (1) "provides for the allocation of all or part of the amounts received under the contract to an account which, pursuant to State law or regulation, is segregated from the general asset accounts of the company"; (2) provides for the payment of annuities, is a life insurance contract, or provides for funding of insurance on retired lives, as described in section 807(c)(6); and (3) satisfies additional requirements in the rest of that subsection, including requirements to reflect the current investment return and market value of the segregated asset account.

Under section 817(h)(1) of the Code, "a variable contract (other than a pension plan contract [as defined in section 818(a)]) which is otherwise described in [section 817] and which is based on a segregated asset account shall not be treated as an annuity, endowment, or life insurance contract for any period (and any subsequent period) for which the investments made by such account are not, in accordance with regulations prescribed by the Secretary, adequately diversified." *See also* § 1.817–5(a)(1) of the Income Tax Regulations.

As defined in § 1.817–5(e), a "segregated asset account" consists of "all assets the investment return and market value of each of which must be allocated in an identical manner to any variable contract invested in any of such assets." *See also* § 1.817–5(g) (providing examples illustrating the application of the segregated asset account definition).

Generally, the policyholder of a variable contract may select among various investment strategies each of which results in investment in different groups of assets. Each of these groups may be a segregated asset account within the meaning of § 1.817–5(e). *See, e.g.*, Rev. Rul. 81–225, 1981–2 C.B. 12, modified by Rev. Proc. 99–44, 1999–2 C.B. 598, clarified and amplified by Rev. Rul. 2007–7, 2007–1 C.B. 468. Each segregated asset account must be adequately diversified within the meaning of section 817(h). In addition, the policyholder must not have investor control either as a result of the ability to select among investment strategies or for any other reason. *See, e.g.*, Rev. Rul. 77–85, 1977–1 C.B. 12; Rev. Rul. 2003–91, 2003–2 C.B. 347.

Section 1.817–5(b)(1)(i) provides that, except as otherwise provided by exceptions in paragraphs (b) and (c) of § 1.817–5, the investments of a segregated asset account are considered adequately diversified only if:

(A) No more than 55 percent of the value of the total assets of the account is represented by any one investment;

(B) No more than 70 percent of the value of the total assets of the account is represented by any two investments;

(C) No more than 80 percent of the value of the total assets of the account is represented by any three investments; and

(D) No more than 90 percent of the value of the total assets of the account is represented by any four investments.

Under § 1.817–5(c)(1), an account is treated as adequately diversified for a calendar quarter if it satisfies the requirements of § 1.817–5(b) on the last day of the calendar quarter or within 30 days after that last day.

In applying the diversification requirement of § 1.817–5(b), a look-through rule in § 1.817–5(f) treats a segregated asset account as the owner of assets held indirectly through certain investment vehicles (certain regulated investment companies, certain real estate investment trusts, certain partnerships, or certain trusts). If one of these vehicles satisfies the criteria of § 1.817–5(f)(2) and if a segregated asset account holds an interest in the vehicle, diversification of the account is tested as if a pro rata portion of each asset of the vehicle were an asset of the account.

Section 1.817–5(h)(1) defines "government security" as "any security issued or guaranteed or insured by the United States or an instrumentality of the United States; or any certificate of deposit for any of the foregoing." (This definition is similar to the language used to define "government security" in section 2(a)(16) of the 1940 Act (quoted above).) For purposes of § 1.817–5(h)(1), "an instrumentality of the United States" means "any person that is treated for purposes of 15 U.S.C. 80a–2(16), as amended, as a person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States." Under section 817(h)(6), for purposes of determining whether a segregated asset account is adequately diversified, each United States Government agency or instrumentality is treated as a separate issuer. *See also* § 1.817–5(b)(1)(ii)(B).

Under current practice, only a limited number of United States agencies or instrumentalities issue securities that Rule 2a–7 allows MMFs to hold. Also, as was described above, some MMFs are expected to convert to government MMFs, resulting in increased demand for government securities. This increased demand may exacerbate MMFs' difficulty in acquiring the assets necessary both to qualify as a government MMF and to satisfy the diversification requirements under section 817(h) and § 1.817–5.

II. ALTERNATIVE DIVERSIFICATION REQUIREMENTS FOR A SEGREGATED ASSET ACCOUNT THAT INVESTS IN A GOVERNMENT MMF

The Treasury Department and the Internal Revenue Service have determined that variable contracts should be able to offer government MMFs as an investment option. Therefore, the Treasury Department and the Internal Revenue Service intend to amend § 1.817–5. Pending the promulgation and effective date of future administrative or regulatory guidance, taxpayers may rely on the following alternative diversification requirements under § 1.817–5 for a segregated asset account that invests in a government MMF:

A segregated asset account within the meaning of § 1.817–5(e) is adequately diversified for purposes of section 817(h) if—

(1) No policyholder has investor control; and

(2) Either—

   (a) The account itself is a government MMF under Rule 2a–7(a)(14); or

   (b) The account invests all of its assets in an "investment company, partnership, or trust" as defined in § 1.817–5(f)(1) that satisfies the criteria of § 1.817–5(f)(2) and qualifies as a government MMF under Rule 2a–7(a)(14).

III. DRAFTING INFORMATION

The principal authors of this notice are Steve D. Hooe and Alexis A. MacIvor of the Office of the Associate Chief Counsel (Financial Institutions and Products). For further information regarding this notice, contact Mr. Hooe at (202) 317-3900 (not a toll-free number) or Ms. MacIvor at (202) 317-6995 (not a toll-free number).

26 CFR 601.204: Changes in accounting periods and in methods of accounting.
(Also Part I, §§ 56, 61, 77, 118, 162, 163, 166, 167, 168, 171, 174, 179D, 194, 195, 197, 263, 263A, 267, 280F, 404, 446, 447, 448, 451, 454, 455, 461, 467, 471, 472, 475, 481, 585, 816, 832, 833, 846, 860A–860G, 861, 904, 953, 985, 1272, 1273, 1278, 1281, 1363, 1400I, 1400L, 1400N; 1.61–1, 1.61–4, 1.61–8, 1.77–1, 1.77–2, 1.118–2, 1.162–1, 1.162–3, 1.162–4, 1.162–11, 1.162–12, 1.166–1, 1.166–2, 1.166–4, 1.167(a)–2, 1.167(a)–3(b), 1.167(a)–4, 1.167(a)–7, 1.167(a)–8, 1.167(a)–11, 1.167(a)–14, 1.167(e)–1, 1.168(d)–1, 1.168(i)–1, 1.168(i)–4, 1.168(i)–6, 1.168(i)–7, 1.168(i)–8, 1.168(k)–1, 1.171–4, 1.174–1, 1.174–3, 1.174–4, 1.179–5, 1.194–1, 1.195–1, 1.197–2, 1.263(a)–1, 1.263(a)–2, 1.263(a)–3, 1.263(a)–4, 1.263(a)–5, 1.263A–1, 1.263A–2, 1.263A–3, 1.263A–4, 1.263A–7, 1.267(a)–1, 1.280F–6, 1.404(b)–1T, 1.446–1, 1.446–1T, 1.446–2, 1.446–5, 1.446–6, 1.448–1T, 1.448–2, 1.451–1, 1.451–5, 1.454–1, 1.455–6, 1.461–1, 1.461–4, 1.461–5, 1.467–1, 1.471–1, 1.471–2, 1.471–3, 1.471–4, 1.471–5, 1.471–8, 1.472–1, 1.472–2, 1.472–6, 1.472–8, 1.481–1, 1.481–4, 1.832–4, 1.832–5, 1.860A–6, 1.861–18, 1.985–5, 1.985–8, 1.1016–3, 1.1245–3, 1.1272–1, 1.1273–1, 1.1273–2, 1.1363–2, 1.1374–4, 1.1400L(b)–1.)

Rev. Proc. 2016–29

This revenue procedure provides the List of Automatic Changes to which the automatic change procedures in 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, and as modified by Rev. Proc. 2016–1, 2016–1 I.R.B. 1, (or successor) apply. The definitions in section 3 of Rev. Proc. 2015–13 apply to this revenue procedure.

LIST OF AUTOMATIC CHANGES

SECTION 1. GROSS INCOME (§ 61)

.01 *Up-front Payments for Network Upgrades received by Utilities.*

(1) *Description of change*. This change applies to a Utility that wants to change its method of accounting for Up-front Payments to the safe harbor method described in Rev. Proc. 2005–35, 2005–2 C.B. 76. In general, this change applies to a Utility that receives an Up-front Payment from a Generator to finance Network Upgrades to the Utility's Transmission System. For federal income tax purposes, if an Up-front Payment is made pursuant to an Interconnection Agreement that satisfies all of the conditions of section 5.02 of Rev. Proc. 2005–35, a Utility may treat that Up-front Payment as not being taxable income under § 61 when received (the safe harbor method). In addition, a Utility that uses the safe harbor method is not entitled to any deduction for its reimbursements of the Up-front Payment. To the extent that Federal Energy Regulatory Commission (FERC) interest is deductible, it must be properly allocated to the periods in which it accrues. A Utility us-

ing the safe harbor method must comply with all other applicable provisions of Rev. Proc. 2005–35. See Rev. Proc. 2005–35 for the definitions of certain terms for purposes of this change.

(2) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 1.01 is "91."

(3) *Contact information*. For further information regarding a change under this section, contact William E. Blanchard at (202) 317-3900 (not a toll-free call).

SECTION 2. COMMODITY CREDIT LOANS (§ 77)

.01 *Treating amounts received as loans*.

(1) *Description of change*. This change applies to a taxpayer that wants to change its method of accounting for loans received from the Commodity Credit Corporation from including the loan amount in gross income for the taxable year in which each loan is received to treating each loan amount as a loan.

(2) *Certain eligibility rule inapplicable*. The eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, does not apply to this change.

(3) *Manner of making change*. This change is made on a cut-off basis and applies only to loans received from the Commodity Credit Corporation on or after the beginning of the year of change. Accordingly, a § 481(a) adjustment is neither permitted nor required.

(4) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 2.01 is "1."

(5) *Contact information*. For further information regarding a change under this section, contact William Ruane at (202) 317-4718 (not a toll-free call).

SECTION 3. TRADE OR BUSINESS EXPENSES (§ 162)

.01 *Advances made by a lawyer on behalf of clients*.

(1) *Description of change*. This change applies to a lawyer who advances money to pay for costs of litigation or for other expenses on behalf of clients, and who wants to change the method of accounting for such advances from treating them as deductible business expenses to treating them as loans. This change applies to cases handled either on a non-contingent or a contingent fee basis. *See Pelton & Gunther, P.C. v. Commissioner*, T.C. Memo. 1999–339 (non-contingent fee); *Canelo v. Commissioner*, 53 T.C. 217 (1969), *aff'd per curiam*, 447 F.2d 484 (9^{th} Cir. 1971) (contingent fee).

(2) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 3.01 is "2."

(3) *Contact information*. For further information regarding a change under this section, contact Peter Ford at (202) 317-7011(not a toll-free call).

.02 *ISO 9000 costs*.

(1) *Description of change*. This change applies to a taxpayer that wants to change its method of accounting for costs incurred to obtain, maintain, and renew ISO 9000 certification to conform with Rev. Rul. 2000–4, 2000–1 C.B. 331, as modified by this revenue procedure.

(2) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 3.02 is "3."

(3) *Contact information*. For further information regarding a change under this section, contact Peter Ford at (202) 317-7011 (not a toll-free call).

.03 *Restaurant or tavern smallwares packages*.

(1) *Description of change*. This change applies to a taxpayer engaged in the trade or business of operating a restaurant or tavern (within the meaning of section 4.01 of Rev. Proc. 2002–12, 2002–1 C.B. 374) that wants to change its method of accounting for the costs of smallwares to the smallwares method described in Rev. Proc. 2002–12, as modified by this revenue procedure.

(2) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 3.03 is "4."

(3) *Contact information*. For further information regarding a change under this section, contact Peter Ford at (202) 317-7011 (not a toll-free call).

.04 *Timber grower fertilization costs*.

(1) *Description of change*. This change applies to a timber grower that wants to change its method of accounting to treat post-establishment fertilization costs of an established timber stand as ordinary and necessary business expenses deductible under § 162. *See* Rev. Rul. 2004–62, 2004–1 C.B. 1072, as modified by this revenue procedure.

(2) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 3.04 is "86."

(3) *Contact information*. For further information regarding a change under this section, contact Peter Ford at (202) 317-7011 (not a toll-free call).

.05 *Materials and supplies*.

See section 11.08 of this revenue procedure.

.06 *Repair and maintenance costs*.

See section 11.08 of this revenue procedure.

.07 *Wireline network asset maintenance allowance and units of property methods of accounting under Rev. Proc. 2011–27*.

(1) *Description of change*. This change applies to a wireline telecommunications carrier that is within the scope of Rev. Proc. 2011–27, 2011–18 I.R.B. 740, and wants to change its treatment of wireline network asset expenditures to use either (a) the wireline network asset maintenance allowance method of accounting, or (b) all or some of the units of property described in Rev. Proc. 2011–27.

(2) *Section 481(a) adjustment*. In general, a change to the wireline network asset maintenance allowance method of accounting or to use all or some of the units of property specified in Rev. Proc. 2011–27 requires an adjustment under § 481(a). The § 481(a) adjustment shall not include any amount attributable to property for which the taxpayer elected to

apply the repair allowance under § 1.167(a)–11(d)(2).

(3) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 3.07 is "158."

(4) *Contact information*. For further information regarding a change under this section, contact Lewis Saideman at (202) 317-5100 (not a toll-free call).

.08 *Wireless network asset maintenance allowance and units of property methods of accounting under Rev. Proc. 2011–28*.

(1) *Description of change*. This change applies to a wireless telecommunications carrier that is within the scope of Rev. Proc. 2011–28, 2011–18 I.R.B. 743, and wants to change its treatment of wireless network asset expenditures to use either (a) the wireless network asset maintenance allowance method of accounting, or (b) all or some of the units of property described in Rev. Proc. 2011–28.

(2) *Section 481(a) adjustment*. In general, a change to the wireless network asset maintenance allowance method of accounting or to use all or some of the units of property specified in Rev. Proc. 2011–28 requires an adjustment under § 481(a). The § 481(a) adjustment does not include any amount attributable to property for which the taxpayer elected to apply the repair allowance under § 1.167(a)–11(d)(2).

(3) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 3.08 is "159."

(4) *Contact information*. For further information regarding a change under this section, contact Lewis Saideman at (202) 317-5100 (not a toll-free call).

.09 *Method of accounting under Rev. Proc. 2011–43 for taxpayers in the business of transporting, delivering, or selling electricity*.

(1) *Description of change*. This change applies to a taxpayer that is within the scope of Rev. Proc. 2011–43, 2011–37 I.R.B. 326, and wants to change its treatment of transmission and distribution property expenditures to use the method of accounting described in Rev. Proc. 2011–43.

(2) *Section 481(a) adjustment*. A taxpayer must take the entire net § 481(a) adjustment into account (whether positive or negative) in computing taxable income for the year of change. The § 481(a) adjustment does not include any amount attributable to property for which the taxpayer elected to apply the repair allowance under § 1.167(a)–11 (d)(2) for any taxable year in which the election was made. For guidance regarding permissible § 481(a) calculation methodologies, see section 7.02 and Appendix A of Rev. Proc. 2011–43.

(3) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 3.09 is "160."

(4) *Contact information*. For further information regarding a change under this section, contact Lewis Saideman at (202) 317-5100 (not a toll-free call).

.10 *Method of accounting under Rev. Proc. 2013–24 for taxpayers in the business of generating steam or electric power*.

(1) *Description of change*. This change applies to a taxpayer that is within the scope of Rev. Proc. 2013–24, 2013–22 I.R.B. 1142, and wants to change its treatment of generation property expenditures to use all or some of the unit of property definitions and the corresponding major component definitions described in Rev. Proc. 2013–24.

(2) *Certain eligibility rules temporarily inapplicable*. The eligibility rules in sections 5.01(1)(d) and (f) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, do not apply to an eligible taxpayer that changes to the method of accounting provided in Rev. Proc. 2013–24 for its first, second, or third taxable year ending after December 30, 2012.

(3) *Section 481(a) adjustment*.

(a) A taxpayer must take the entire net § 481(a) adjustment into account (whether positive or negative) in computing taxable income for the year of change. For guidance regarding the use of extrapolation in computing a § 481(a) adjustment, see sections 6.02 and Appendix B of Rev. Proc. 2013–24.

(b) A taxpayer changing to this method of accounting must not include in the § 481(a) adjustment any amount attributable to property for which the taxpayer elected to apply the repair allowance under § 1.167(a)–11(d)(2) for any taxable year in which the repair allowance election was made.

(4) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 3.10 is "182."

(5) *Contact information*. For further information regarding a change under this section, contact Lewis Saideman at (202) 317-5100 (not a toll free call).

.11 *Cable network asset capitalization methods of accounting under Rev. Proc. 2015–12*.

(1) *Description of change*. This change applies to a cable system operator that is within the scope of Rev. Proc. 2015–12, 2015–2 I.R.B. 266, and wants to make one or more of the of the following changes in method of accounting:

(a) Change its treatment of cable network asset expenditures to the cable network asset maintenance allowance method of accounting provided in section 5 of Rev. Proc. 2015–12;

(b) Change to use any of the unit of property definitions provided in section 6 of Rev. Proc. 2015–12;

(c) Change to use the specific identification method for installations and customer drop costs described in section 7.01(1) of Rev. Proc. 2015–12;

(d) Change to use the safe harbor allocation method for installations and customer drop costs described in section 7.01(2) of Rev. Proc. 2015–12; or

(e) Change to deduct the labor costs associated with installing customer premises equipment under section 7.02 of Rev. Proc. 2015–12.

(2) *Certain eligibility rules temporarily inapplicable*. The eligibility rules in section 5.01(1)(d) and (f) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, do not apply to a cable system operator that changes to a method of accounting provided in section 5, section 6, or section 7 of Rev. Proc. 2015–12 for its first or second taxable year ending after December 31, 2013.

(3) *Concurrent automatic change*. A taxpayer that wants to make both one or more changes in method of accounting pursuant to this section 3.11 and a change to a UNICAP method under section 12 of this revenue procedure for the same year of change should file a single Form 3115 that includes all of these changes and must enter the designated automatic accounting method change numbers for all of these changes on the appropriate line on the Form 3115. See section 6.03(1)(b) of Rev. Proc. 2015–13 for information on making concurrent changes.

(4) *Section 481(a) adjustment*.

(a) In general, a change to one or more of the of the changes in method of accounting described in section 3.11(1) of this revenue procedure requires an adjustment under § 481(a). The § 481(a) adjustment shall not include any amount attributable to property for which the taxpayer elected to apply the repair allowance under § 1.167(a)–11(d)(2).

(b) *Itemized listing on Form 3115*. The taxpayer must include on Form 3115 (Rev. December 2015), Part IV, line 26, the total § 481(a) adjustment for all changes in methods of accounting being made. If the taxpayer is making more than one change in method of accounting under Rev. Proc. 2015–12, the taxpayer must include on an attachment to Form 3115:

(i) the information required by Part IV, line 26 for each change in method of accounting (including the amount of the § 481(a) adjustment for each change in method of accounting, which includes the portion of the § 481(a) adjustment attributable to UNICAP);

(ii) the information required by Part II, line 14 of Form 3115 that is associated with each change; and

(iii) the citation to the paragraph of Rev. Proc. 2015–12 that provides for each proposed method of accounting.

(5) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change to a method of accounting provided in section 5 or 6 of Rev. Proc. 2015–12 is "208." The designated automatic accounting method change number for a change to a method of accounting provided in section 7 of Rev. Proc. 2015–12 is "209."

(6) *Contact information*. For further information regarding a change under this section, contact Merrill Feldstein at (202) 317-5100.

SECTION 4. BAD DEBTS (§ 166)

.01 *Change from reserve method to specific charge-off method*.

(1) *Description of change*. This change applies to a taxpayer (other than a bank as defined in § 585(a)(2)) that wants to change its method of accounting for bad debts from a reserve method (or other improper method) to a specific charge-off method that complies with § 166. For procedures applicable to banks, see § 585(c) and the regulations thereunder and section 24 of this revenue procedure.

(2) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 4.01 is "5."

(3) *Contact information*. For further information regarding a change under this section, contact Renay France at (202) 317-7003 (not a toll-free call).

.02 *Conformity election by bank after previous election automatically revoked*.

(1) *Description of change*. This change applies to a bank that wants to change its method of accounting for bad debts by making the conformity election under § 1.166–2(d)(3)(iii)(C)(*3*).

(2) *Applicability*. This change only applies to a bank (as defined in § 1.166–2(d)(4)(i)) that:

(a) is subject to supervision by Federal authorities, or by state authorities maintaining substantially equivalent standards;

(b) has previously adopted or elected to change to the method of accounting for bad debts described in § 1.166–2(d)(3);

(c) has had that previous election automatically revoked under § 1.166–2(d)(3)(iv)(C);

(d) meets the express determination requirement of § 1.166–2(d)(3)(iii)(D) for the year of change; and

(e) now seeks the consent of the Commissioner to make an election under § 1.166–2(d)(3)(iii)(C)(*3*).

(3) *Certain eligibility rule inapplicable*. The eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, does not apply to this change.

(4) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 4.02 is "211."

(5) *Contact information*. For further information regarding a change under this section, contact K. Scott Brown at (202) 317-6945 (not a toll-free call).

SECTION 5. INTEREST EXPENSE (§ 163) AND AMORTIZABLE BOND PREMIUM (§ 171)

.01 *Revocation of § 171(c) election*.

(1) *Description of change*. This change applies to a taxpayer that wants to change its method of accounting for amortizable bond premium by revoking its § 171(c) election. Under § 171(c), a taxpayer that holds certain taxable bonds may elect to amortize any bond premium on the bonds in accordance with regulations prescribed by the Secretary. Sections 1.171–1 through 1.171–5 provide rules relating to the amortization of bond premium by a taxpayer. Section 1.171–4 provides the procedures to make a § 171(c) election to amortize bond premium.

(2) *Revocation of election*. The revocation of a § 171(c) election applies to all taxable bonds that are held by the taxpayer on the first day of the first taxable year for which the revocation is effective (year of change), and to all taxable bonds that are subsequently acquired by the taxpayer.

(3) *Manner of making change*. This change is made using a cut-off basis and applies only to taxable bonds held on or after the beginning of the year of change. Accordingly, a § 481(a) adjustment is neither permitted nor required.

Under the cut-off basis, for taxable bonds held at the beginning of the year of change, the taxpayer may not amortize any remaining bond premium on the bonds. Because the cut-off basis is prescribed for this change, the basis of any bond, adjusted for amounts previously amortized during the period of the election, is not affected by the revocation.

(4) *Designated automatic accounting method change number*. The designated automatic accounting method change

number for a change under this section 5.01 is "16."

(5) *Additional requirements*. On a statement attached to the Form 3115, the taxpayer must provide:

(a) the reason(s) for revoking the election; and

(b) a description of the method by which, and the date on which, the taxpayer made the § 171(c) election that is proposed to be revoked.

(6) *Audit protection*. Any audit protection applicable to this change under section 8 of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, does not preclude the Commissioner from examining the method used by the taxpayer to determine the amount of amortizable bond premium under § 171(b) for a taxable year prior to the year of change.

(7) *Contact information*. For further information regarding a change under this section, contact William E. Blanchard at (202) 317-3900 (not a toll-free call).

.02 *Change to comply with § 163(e)(3).*

(1) *Description of change*. This change applies to a taxpayer that wants to change its method or methods of accounting to comply with the requirements of § 163(e)(3), which defers certain deductions attributable to original issue discount debt instruments held by related foreign persons. Any portion of the original issue discount will not be allowable as a deduction to the U.S. person issuer until paid.

(2) *Accelerated § 481(a) adjustment period in certain situations*. In addition to the circumstances set forth in section 7.03(4) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, the § 481 adjustment period provided in section 7.03 of Rev. Proc. 2015–13 will be accelerated for a U.S. person with a remaining balance of a § 481(a) adjustment that arose by reason of a change in method of accounting described in this section 5.02 if a debt instrument subject to the change is paid off, retired, or significantly modified within the meaning of § 1.1001–3 prior to the end of the § 481(a) adjustment period. The portion of the remaining § 481(a) adjustment attributable to the debt instrument must be taken into account in the taxable year the debt instrument is paid off, retired, or significantly modified within the meaning of § 1.1001–3.

(3) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 5.02 is "212."

(4) *Contact information*. For further information regarding a change under this section, contact Joseph Vetting at (202) 317-4960 (not a toll-free call).

SECTION 6. DEPRECIATION OR AMORTIZATION (§ 56(a)(1), 56(g)(4)(A), 167, 168, 197, 280F(a), 1400I, 1400L, or 1400N(d), OR FORMER § 168)

.01 *Impermissible to permissible method of accounting for depreciation or amortization.*

(1) *Description of change*.

(a) *Applicability*. This change applies to a taxpayer that wants to change from an impermissible to a permissible method of accounting for depreciation or amortization (depreciation) for any item of depreciable or amortizable property under the taxpayer's present or proposed method of accounting:

(i) for which the taxpayer used the impermissible method of accounting in at least two taxable years immediately preceding the year of change (but see section 6.01(1)(b) of this revenue procedure for property placed in service in the taxable year immediately preceding the year of change);

(ii) for which the taxpayer is making a change in method of accounting under § 1.446–1(e)(2)(ii)(*d*);

(iii) for which depreciation is determined under § 56(a)(1), § 56(g)(4)(A), § 167, § 168, § 197, § 1400I, or § 1400L(c), under § 168 prior to its amendment in 1986 (former § 168), or under any additional first year depreciation deduction provision of the Code (for example, § 168(k), § 168(l), § 1400L(b), or § 1400N(d)); and

(iv) that is owned by the taxpayer at the beginning of the year of change (but see section 6.07 of this revenue procedure for property disposed of before the year of change).

(b) *Taxpayer has not adopted a method of accounting for the item of property*. If a taxpayer does not satisfy section 6.01(1)(a)(i) of this revenue procedure for an item of depreciable or amortizable property because this item of property is placed in service by the taxpayer in the taxable year immediately preceding the year of change ("1-year depreciable property"), the taxpayer may change from the impermissible method of determining depreciation to the permissible method of determining depreciation for the 1-year depreciable property by filing a Form 3115 for this change, provided the § 481(a) adjustment reported on the Form 3115 includes the amount of any adjustment that is attributable to all property (including the 1-year depreciable property) subject to the Form 3115. Alternatively, the taxpayer may change from the impermissible method of determining depreciation to the permissible method of determining depreciation for a 1-year depreciable property by filing an amended federal tax return for the property's placed-in-service year prior to the date the taxpayer files its federal tax return for the taxable year succeeding the placed-in-service year.

(c) *Inapplicability*. This change does not apply to:

(i) any property to which § 1016(a)(3) (regarding property held by a tax-exempt organization) applies;

(ii) a taxpayer that is required under § 263A and the regulations thereunder to capitalize the costs with respect to which the taxpayer wants to change its method of accounting under this section 6.01 if the taxpayer is not capitalizing these costs, unless the taxpayer concurrently changes its method to capitalize these costs in conjunction with a change to a UNICAP method under section 12.01, 12.02, 12.08, or 12.12 of this revenue procedure (as applicable);

(iii) any property for which a taxpayer is making a change in depreciation under § 1.446–1(e)(2)(ii)(*d*)(*2*)(*vi*) or (*vii*);

(iv) any property subject to § 167(g) regarding property depreciated under the income forecast method;

(v) any § 1250 property that a taxpayer is reclassifying to an asset class of Rev. Proc. 87–56, 1987–2 C.B. 674 (as clarified and modified by Rev. Proc. 88–22, 1988–1 C.B. 785), or Rev. Proc. 83–35, 1983–1 C.B. 745, as appropriate, that does not explicitly include § 1250 property (for example, asset class 57.0, Distributive Trades and Services);

(vi) any property for which a taxpayer is revoking a timely valid election, or making a late election, under § 167, § 168, § 179, § 1400I, § 1400L(c), former § 168, § 13261(g)(2) or (3) of the Revenue Reconciliation Act of 1993 (1993 Act), 1993–3 C.B. 1, 128 (relating to amortizable § 197 intangibles), or any additional first year depreciation deduction provision of the Code (for example, § 168(k), § 168(l), § 1400L(b), or § 1400N(d)). A taxpayer may request consent to revoke or make the election by submitting a request for a letter ruling under Rev. Proc. 2016–1, 2016–1 I.R.B. 1 (or successor). However, if a taxpayer is revoking or making an election under § 179, see § 179(c) and § 1.179–5. *See* § 1.446–1(e)(2)(ii)(*d*)(*3*)(*iii*);

(vii) any property for which depreciation is determined under § 56(g)(4)(A) or § 167 (other than under § 168, § 1400I, § 1400L(c), former § 168, or any additional first year depreciation deduction provision of the Code (for example, § 168(k), § 168(l), § 1400L(b), or § 1400N(d))) and a taxpayer is changing the useful life of the property. A change in the useful life of property is corrected by adjustments in the applicable taxable year provided under § 1.446–1(e)(2)(ii)(*d*)(*5*)(*iv*). However, this section 6.01(1)(c)(vii) does not apply if the taxpayer is changing to or from a useful life, recovery period, or amortization period that is specifically assigned by the Code (for example, § 167(f)(1), § 168(c)), the regulations thereunder, or other guidance published in the Internal Revenue Bulletin and, therefore, this change is a change in method of accounting (unless section 6.01(1)(c)(xv) of this revenue procedure applies). *See* § 1.446–1(e)(2)(ii)(*d*)(*3*)(*i*);

(viii) any depreciable property for which the use changes in the hands of the same taxpayer. *See* § 1.446–1(e)(2)(ii)(*d*)(*3*)(*ii*);

(ix) any property for which depreciation is determined in accordance with § 1.167(a)–11 (regarding the Class Life Asset Depreciation Range System (ADR));

(x) any change in method of accounting involving a change from deducting the cost or other basis of any property as an expense to capitalizing and depreciating the cost or other basis, or *vice versa* (but see section 11.08 of this revenue procedure for making such a change in method of accounting under the final tangible property regulations);

(xi) any change in method of accounting involving a change from one permissible method of accounting for the property to another permissible method of accounting for the property. For example:

(A) a change from the straight-line method of depreciation to the income forecast method of depreciating for videocassettes. *See* Rev. Rul. 89–62, 1989–1 C.B. 78; or

(B) a change from charging the depreciation reserve with costs of removal and crediting the depreciation reserve with salvage proceeds to deducting costs of removal as an expense (provided the costs of removal are not required to be capitalized under any provision of the Code, such as § 263(a)) and including salvage proceeds in taxable income (see section 6.02 of this revenue procedure for making this change for property for which depreciation is determined under § 167);

(xii) any change in method of accounting involving both a change from treating the cost or other basis of the property as nondepreciable or nonamortizable property to treating the cost or other basis of the property as depreciable or amortizable property and the adoption of a method of accounting for depreciation requiring an election under § 167, § 168, § 1400I, § 1400L(c), former § 168, § 13261(g)(2) or (3) of the 1993 Act, or any additional first year depreciation deduction provision of the Code (for example, § 168(k), § 168(l), § 1400L(b), or § 1400N(d)) (for example, a change in the treatment of the space consumed in landfills placed in service in 2006 from nondepreciable to depreciable property (assuming section 6.01(1)(c)(xiii) of this revenue procedure does not apply) and the making of an election under § 168(f)(1) to depreciate this property under the unit-of-production method of depreciation under § 167);

(xiii) any change in method of accounting for any item of income or deduction other than depreciation, even if the change results in a change in computing depreciation under § 1.446–1(e)(2)(ii)(*d*)(*2*)(*i*), (*ii*), (*iii*), (*iv*), (*v*), (*vi*), (*vii*), or (*viii*). For example, a change in method of accounting involving:

(A) a change in inventory costs (for example, when property is reclassified from inventory property to depreciable property, or vice versa) (but see section 11.02 of this revenue procedure for making a change in method of accounting from inventory property to depreciable property for unrecoverable line pack gas or unrecoverable cushion gas, and section 11.06 of this revenue procedure for making a change in method of accounting from inventory property to depreciable property for rotable spare parts); or

(B) a change in the character of a transaction from sale to lease, or vice versa (but see section 6.03 of this revenue procedure for making this change);

(xiv) a change from determining depreciation under § 168 to determining depreciation under former § 168 for any property subject to the transition rules in § 203(b) or § 204(a) of the Tax Reform Act of 1986, 1986–3 (Vol. 1) C.B. 1, 60–80;

(xv) any change in the placed-in-service date of a depreciable or amortizable property. This change is corrected by adjustments in the applicable taxable year provided under § 1.446–1(e)(2)(ii)(*d*)(*5*)(*v*); or

(xvi) any property for which the taxpayer has claimed a federal income tax credit (*e.g.*, the rehabilitation credit under § 47).

(2) *Certain eligibility rules inapplicable*. The eligibility rule in section 5.01(1)(d) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, does not apply to this change. If during any of the five taxable years ending with the year of change, a taxpayer requested or made a change in method of accounting from expensing to capitalizing, or *vice versa*, the cost or other basis of an asset, the eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015–13 is not applicable to a change under this section 6.01 for that same asset.

(3) *Additional requirements*. A taxpayer also must comply with the following:

(a) *Permissible method of accounting for depreciation*. A taxpayer must change to a permissible method of accounting for depreciation for the item of depreciable or amortizable property. The permissible method of accounting is the same method that determines the depreciation allowable for the item of property (as provided in section 6.01(7) of this revenue procedure).

(b) *Statements required*. A taxpayer (including a qualified small taxpayer as defined in section 6.01(4)(b) of this revenue procedure) must provide the following statements, if applicable, and attach them to the completed Form 3115:

(i) a detailed description of the present and proposed methods of accounting. A general description of these methods of accounting is unacceptable (for example, MACRS to MACRS, erroneous method to proper method, claiming less than the depreciation allowable to claiming the depreciation allowable);

(ii) to the extent not provided elsewhere on the Form 3115, a statement describing the taxpayer's business or income-producing activities. Also, if the taxpayer has more than one business or income-producing activity, a statement describing the taxpayer's business or income-producing activity in which the item of property at issue is primarily used by the taxpayer;

(iii) to the extent not provided elsewhere on the Form 3115, a statement of the facts and law supporting the proposed method of accounting, new classification of the item of property, and new asset class in, as appropriate, Rev. Proc. 87–56 or Rev. Proc. 83–35. If the taxpayer is the owner and lessor of the item of property at issue, the statement of the facts and law supporting the new asset class also must describe the business or income-producing activity in which that item of property is primarily used by the lessee;

(iv) to the extent not provided elsewhere on the Form 3115, a statement identifying the year in which the item of property was placed in service by the taxpayer;

(v) if any item of property is public utility property within the meaning of § 168(i)(10) or former § 167(I)(3)(A), as applicable, a statement providing that the taxpayer agrees to the following additional terms and conditions:

(A) a normalization method of accounting (within the meaning of former § 167(I)(3)(G), former § 168(e)(3)(B), or § 168(i)(9), as applicable) will be used for the public utility property subject to the Form 3115;

(B) as of the beginning of the year of change, the taxpayer will adjust its deferred tax reserve account or similar reserve account in the taxpayer's regulatory books of account by the amount of the deferral of federal income tax liability associated with the § 481(a) adjustment applicable to the public utility property subject to the Form 3115; and

(C) within 30 calendar days of filing the federal income tax return for the year of change, the taxpayer will provide a copy of the completed Form 3115 to any regulatory body having jurisdiction over the public utility property subject to the Form 3115;

(vi) if the taxpayer is changing the classification of an item of § 1250 property placed in service after August 19, 1996, to a retail motor fuels outlet under § 168(e)(3)(E)(iii), a statement containing the following representation: "For purposes of § 168(e)(3)(E)(iii) of the Internal Revenue Code, the taxpayer represents that (A) 50 percent or more of the gross revenue generated from the item of § 1250 property is from the sale of petroleum products (not including gross revenue from related services, such as the labor cost of oil changes and gross revenue from the sale of nonpetroleum products such as tires and oil filters), (B) 50 percent or more of the floor space in the item of property is devoted to the sale of petroleum products (not including floor space devoted to related services, such as oil changes and floor space devoted to nonpetroleum products such as tires and oil filters), or (C) the item of § 1250 property is 1,400 square feet or less."; and

(vii) if the taxpayer is changing the classification of an item of property from § 1250 property to § 1245 property under § 168 or former § 168, a statement of the facts and law supporting the new § 1245 property classification, and a statement containing the following representation: "Each item of depreciable property that is the subject of the Form 3115 filed under section 6.01 of Rev. Proc. 2016–29 for the year of change beginning [*Insert the date]*, and that is reclassified from [*Insert, as appropriate: nonresidential real property, residential rental property, qualified leasehold improvement property, qualified restaurant property, qualified retail improvement property, 19-year real property, 18-year real property, or 15-year real property*] to an asset class of [*Insert, as appropriate, either: Rev. Proc. 87–56, 1987–2 C.B. 674, or Rev. Proc. 83–35, 1983–1 C.B. 745*] that does not explicitly include § 1250 property, is § 1245 property for depreciation purposes."

(4) *Reduced filing requirement for qualified small taxpayers*.

(a) *In general*. A qualified small taxpayer, as defined in section 6.01(4)(b) of this revenue procedure, is required to complete only the following information on Form 3115 (Rev. December 2015) to make this change:

(a) The identification section of page 1 (above Part I);
(b) The signature section at the bottom of page 1;
(c) Part I;
(d) Part II, all lines except lines 13, 15b, 16c, 17, and 19;
(e) Part IV, all lines except line 25; and
(f) Schedule E.

(b) *Definition of qualified small taxpayer*. A "qualified small taxpayer" is a taxpayer whose average annual gross receipts, as determined under § 1.263(a)–3(h)(3), for the three preceding taxable years is less than or equal to $10,000,000.

(5) *Section 481(a) adjustment*. Because the adjusted basis of the property is changed as a result of a method change made under this section 6.01 (*see* section 6.01(6) of this revenue procedure), items are duplicated or omitted. Accordingly, this change is made with a § 481(a) adjustment. This adjustment may result in either a negative § 481(a) adjustment (a decrease in taxable income) or a positive § 481(a) adjustment (an increase in taxable income) and may be a different amount for regular tax, alternative minimum tax, and adjusted current earnings purposes. This § 481(a) adjustment equals the difference between the total amount of depreciation taken into account in computing taxable income for the property under the taxpayer's present method of accounting (including the amount attributable to any property described in section 6.01(1)(b) of this revenue procedure that is included in the taxpayer's Form 3115), and the total amount of depreciation allowable for the property under the taxpayer's proposed method of accounting (as determined under section 6.01(7) of this revenue procedure, and including the amount attributable to any property described in section 6.01(1)(b) of this revenue procedure that is included in the taxpayer's Form 3115), for open and closed

years prior to the year of change. However, the amount of the § 481(a) adjustment must be adjusted to account for the proper amount of the depreciation allowable that is required to be capitalized under any provision of the Code (for example, § 263A) at the beginning of the year of change.

(6) *Basis adjustment*. As of the beginning of the year of change, the basis of depreciable property to which this section 6.01 applies must reflect the reductions required by § 1016(a)(2) for the depreciation allowable for the property (as determined under section 6.01(7) of this revenue procedure).

(7) *Meaning of depreciation allowable*.

(a) *In general*. Section 6.01(7) of this revenue procedure provides the amount of the depreciation allowable determined under § 56(a)(1), § 56(g)(4)(A), § 167, § 168, § 197, § 1400I, or § 1400L(c), or former § 168. This amount, however, may be limited by other provisions of the Code (for example, § 280F).

(b) *Section 56(a)(1) property*. The depreciation allowable for any taxable year for property for which depreciation is determined under § 56(a)(1) is determined by using the depreciation method, recovery period, and convention provided for under § 56(a)(1) that applies for the property's placed-in-service date.

(c) *Section 56(g)(4)(A) property*. The depreciation allowable for any taxable year for property for which depreciation is determined under § 56(g)(4)(A) is determined by using the depreciation method, recovery period or useful life, as applicable, and convention provided for under § 56(g)(4)(A) that applies for the property's placed-in-service date.

(d) *Section 167 property*. Generally, for any taxable year, the depreciation allowable for property for which depreciation is determined under § 167, is determined either:

(i) under the depreciation method adopted by the taxpayer for the property; or

(ii) if that depreciation method does not result in a reasonable allowance for depreciation or the taxpayer has not adopted a depreciation method for the property, under the straight-line depreciation method.

For determining the estimated useful life and salvage value of the property, see § 1.167(a)–1(b) and (c), respectively.

The depreciation allowable for any taxable year for property subject to § 167(f) (regarding certain property excluded from § 197) is determined by using the depreciation method and useful life prescribed in § 167(f). If computer software is depreciated under § 167(f)(1) and is qualified property (as defined in § 168(k)(2) and § 1.168(k)–1), 50-percent bonus depreciation property (as defined in § 168(k)(4) (as in effect on the day before the date of enactment of the Economic Stimulus Act of 2008, Pub. L. No. 110–185, 122 Stat. 613 (February 13, 2008)) and § 1.168(k)–1), qualified disaster assistance property (as defined in § 168(n)(2)), qualified New York Liberty Zone (Liberty Zone) property (as defined in § 1400L(b)(2) and § 1.1400L(b)–1), qualified Gulf Opportunity Zone (GO Zone) property (as defined in § 1400N(d)(2) and sections 2.02 and 2.03 of Notice 2006–77, 2006–2 C.B. 590, as clarified, modified, and amplified by Notice 2007–36, 2007–1 C.B. 1000), specified Gulf Opportunity Zone extension property (GO Zone extension property) (as defined in § 1400N(d)(6) and section 4 of Notice 2007–36), or qualified Recovery Assistance (RA) property (as defined in sections 2.02 and 2.03 of Notice 2008–67, 2008–32 I.R.B. 307), the depreciation allowable for that computer software under § 167(f)(1) is also determined by taking into account the additional first year depreciation deduction provided by § 168(k), § 168(n), § 1400L(b), or § 1400N(d), or by § 15345(a)(1) and (d)(1) of the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110–246, 122 Stat. 1651 (June 18, 2008), as applicable, unless the taxpayer made a timely valid election not to deduct any additional first year depreciation for the computer software.

(e) *Section 168 property*. The depreciation allowable for any taxable year for property for which depreciation is determined under § 168, is determined as follows:

(i) by using either:

(A) the general depreciation system in § 168(a); or

(B) the alternative depreciation system in § 168(g) if the property is required to be depreciated under the alternative depreciation system pursuant to § 168(g)(1) or other provisions of the Code (for example, property described in § 263A(e)(2)(A) or § 280F(b)(1)). Property required to be depreciated under the alternative depreciation system pursuant to § 168(g)(1) includes property in a class (as set out in § 168(e)) for which the taxpayer made a timely valid election under § 168(g)(7);

(ii) if the property is qualified property, 50-percent bonus depreciation property, qualified disaster assistance property, Liberty Zone property, GO Zone property, GO Zone extension property, or RA property, by also taking into account the additional first year depreciation deduction provided by § 168(k), § 168(n), § 1400L(b), or § 1400N(d), or by § 15345(a)(1) and (d)(1) of the Food, Conservation, and Energy Act of 2008, as applicable, unless the taxpayer made a timely valid election not to deduct the additional first year depreciation (or made a deemed election not to deduct the additional first year depreciation; for further guidance, see, for example, Rev. Proc. 2002–33, 2002–1 C.B. 963, Rev. Proc. 2003–50, 2003–2 C.B. 119, Notice 2006–77, Notice 2008–67, section 5 of Rev. Proc. 2011–26, 2011–16 I.R.B. 664, or Rev. Proc. 2015–48, 2015–40 I.R.B. 469) for the class of property (as defined in § 1.168(k)–1(e)(2), § 1.1400L(b)–1(e)(2), or section 4.02 of Notice 2006–77, as applicable) in which that property is included;

(iii) if the property is qualified second generation biofuel plant property (as defined in § 168(l)(2) and (3)) or qualified cellulosic biofuel plant property (as defined in former § 168(l)(2) and (3)), by also taking into account the additional first year depreciation deduction provided by § 168(l)(1), unless the taxpayer made a timely valid election not to deduct the additional first year depreciation for the property; and

(iv) if the property is qualified reuse and recycling property (as defined in § 168(m)(2)), by also taking into account the additional first year depreciation deduction provided by § 168(m)(1), unless the taxpayer made a timely valid election not to deduct the additional first year depreciation for the property.

(f) *Section 197 property*. The amortization allowable for any taxable year for an amortizable § 197 intangible (including any property for which a timely election under § 13261(g)(2) of the 1993 Act was made) is determined in accordance with § 1.197–2(f).

(g) *Former § 168 property*. The depreciation allowable for any taxable year for property subject to former § 168 is determined by using either:

(i) the accelerated method of cost recovery applicable to the property (for example, for 5-year property, the recovery method under former § 168(b)(1)); or

(ii) the straight-line method applicable to the property if the property is required to be depreciated under the straight-line method (for example, property described in former § 168(f)(2) or former § 280F(b)(2)) or if the taxpayer elected to determine the depreciation allowance under the optional straight-line percentage (for example, the straight-line method in former § 168(b)(3)).

(h) *Qualified revitalization building*. The depreciation allowable for any taxable year for any qualified revitalization building (as defined in § 1400I(b)(1)) for which the taxpayer has made a timely valid election under § 1400I(a) is determined as follows:

(i) if the taxpayer elected to deduct one-half of any qualified revitalization expenditures (as defined in § 1400I(b)(2) and as limited by § 1400I(c)) chargeable to a capital account with respect to the qualified revitalization building for the taxable year in which the building is placed in service by the taxpayer, the depreciation allowable for the qualified revitalization building's placed-in-service year is equal to one-half of the qualified revitalization expenditures for the building and the depreciation allowable for the remaining depreciable basis of the qualified revitalization building for its placed-in-service year and subsequent taxable years is determined using the general depreciation system of § 168(a) or the alternative depreciation system of § 168(g), as applicable; or

(ii) if the taxpayer elected to amortize all of the qualified revitalization expenditures chargeable to a capital account with respect to the qualified revitalization building ratably over the 120-month period beginning with the month in which the building is placed in service, the depreciation allowable for the qualified revitalization expenditures is determined in accordance with this election and the depreciation allowable for the remaining depreciable basis of the qualified revitalization building is determined using the general depreciation system of § 168(a) or the alternative depreciation system of § 168(g), as applicable.

(i) *Qualified New York Liberty Zone leasehold improvement property*. The depreciation allowable for any taxable year for qualified New York Liberty Zone leasehold improvement property (as defined in § 1400L(c)(2)) is determined by using the depreciation method and recovery period prescribed in § 1400L(c) unless the taxpayer made a timely valid election under § 1400L(c)(5) not to use that recovery period.

(8) *Concurrent automatic change*.

(a) A taxpayer making this change for more than one asset for the same year of change should file a single Form 3115 for all such assets and provide a single net § 481(a) adjustment for all the changes included in that Form 3115. If one or more of the changes in that single Form 3115 generate a negative § 481(a) adjustment and other changes in that same Form 3115 generate a positive § 481(a) adjustment, the taxpayer may provide a single negative § 481(a) adjustment for all the changes that are included in that Form 3115 generating such adjustment and a single positive § 481(a) adjustment for all the changes that are included in that Form 3115 generating such adjustment. For example, a taxpayer files a single Form 3115 to change the depreciation methods, recovery periods, and/or conventions under § 168(a) resulting from the reclassification of two computers from nonresidential real property to 5-year property, one office desk from nonresidential real property to 7-year property, and two office desks from 5-year property to 7-year property. On that Form 3115, the taxpayer must provide either (i) a single net § 481(a) adjustment that covers all the changes resulting from all of these reclassifications, or (ii) a single negative § 481(a) adjustment that covers the changes resulting from the reclassifications of the two computers and one office desk from nonresidential real property to 5-year property and 7-year property, respectively, and a single positive § 481(a) adjustment that covers the changes resulting from the reclassifications of the two office desks from 5-year property to 7-year property.

(b) A taxpayer making both this change and a change to a UNICAP method under section 12.01, 12.02, 12.08, or 12.12 of this revenue procedure (as applicable) for the same year of change should file a single Form 3115 for both changes, in which case the taxpayer must enter the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115. See section 6.03(1)(b) of Rev. Proc. 2015–13 for information on making concurrent changes. For example, a qualified small taxpayer must include on the single Form 3115 the information required by section 6.01(4)(a) of this revenue procedure for this change and the information required by the lines on Form 3115 applicable to the UNICAP method change, including Part II line 14 and 15, Part IV, and Schedule D, and must include a separate response to each line on Form 3115 that is applicable to both changes (such as Part II lines 6b, 7, 8b, 14, and, as applicable for this change, Part IV) for which the taxpayer's response is different for this change and the change to a UNICAP method.

(9) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 6.01 is "7."

(10) *Contact information*. For further information regarding a change under this section, contact Charles Magee at (202) 317-7005 (not a toll-free call).

.02 *Permissible to permissible method of accounting for depreciation*.

(1) *Description of change*. This change applies to a taxpayer that wants to change from a permissible method of accounting for depreciation under § 56(g)(4)(A)(iv) or § 167 to another permissible method of accounting for depreciation under § 56(g)(4)(A)(iv) or § 167. Pursuant to § 1.167(a)–7(a) and (c), a taxpayer may account for depreciable property either by treating each individual asset as an account or by combining two or more assets in a single account and, for each account, depreciation allowances are computed separately.

(2) *Applicability*.

(a) *In general*. This change applies to any taxpayer wanting to make a change in method of accounting for depreciation specified in section 6.02(4) of this revenue procedure for the property in an account:

(i) for which the present and proposed methods of accounting for depreciation specified in section 6.02(4) of this revenue procedure are permissible methods for the property under § 56(g)(4)(A)(iv) or § 167; and

(ii) that is owned by the taxpayer at the beginning of the year of change.

(b) *Inapplicability*. This change does not apply to:

(i) a taxpayer that is required under § 263A and the regulations thereunder to capitalize the costs with respect to which the taxpayer wants to change its method of accounting under this section 6.02 if the taxpayer is not capitalizing these costs, unless the taxpayer concurrently changes its method to capitalize these costs in conjunction with a change to a UNICAP method under section 12.01, 12.02, 12.08, or 12.12 of this revenue procedure (as applicable);

(ii) any property to which § 1016(a)(3) (regarding property held by a tax-exempt organization) applies;

(iii) any property described in § 167(f) (regarding certain property excluded from § 197);

(iv) any property subject to § 167(g) (regarding property depreciated under the income forecast method);

(v) any property for which depreciation is determined under § 56(a)(1), § 56(g)(4)(A)(i), (ii), (iii), or (v), § 168, § 1400I, § 1400L(c), § 168 prior to its amendment in 1986 (former § 168), or any additional first year depreciation deduction provision of the Code (for example, § 168(k), § 168(l), § 1400L(b), or § 1400N(d));

(vi) any property that the taxpayer elected under § 168(f)(1) or former § 168(e)(2) to exclude from the application of, respectively, § 168 or former § 168;

(vii) any property for which depreciation is determined in accordance with § 1.167(a)–11 (ADR);

(viii) any depreciable property for which the taxpayer is changing the depreciation method pursuant to § 1.167(e)–1(b) (change from declining-balance method to straight-line method), § 1.167(e)–1(c) (certain changes for § 1245 property), or § 1.167(e)–1(d) (certain changes for § 1250 property). These changes must be made prospectively and are not permitted under the cited regulations for property for which the depreciation is determined under § 168, § 1400I, § 1400L(c), former § 168, or any additional first year depreciation deduction provision of the Code (for example, § 168(k), § 168(l), § 1400L(b), or § 1400N(d)); or

(ix) any distributor commissions (as defined by section 2 of Rev. Proc. 2000–38, 2000–2 C.B. 310, as modified by Rev. Proc. 2007–16, 2007–1 C.B. 358) for which the taxpayer is changing the useful life under the distribution fee period method or the useful life method (both described in Rev. Proc. 2000–38). A change in this useful life is corrected by adjustments in the applicable taxable year provided under § 1.446–1(e)(2)(ii)(*d*)(*5*)(*iv*).

(3) *Certain eligibility rule inapplicable*. The eligibility rule in section 5.01(1)(d) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, does not apply to this change.

(4) *Changes covered*. This section 6.02 only applies to the following changes in methods of accounting for depreciation:

(a) a change from the straight-line method to the sum-of-the-years-digits method, the sinking fund method, the unit-of-production method, or the declining-balance method using any proper percentage of the straight-line rate;

(b) a change from the declining-balance method using any percentage of the straight-line rate to the sum-of-the-years-digits method, the sinking fund method, or the declining-balance method using a different proper percentage of the straight-line rate;

(c) a change from the sum-of-the-years-digits method to the sinking fund method, the declining-balance method using any proper percentage of the straight-line rate, or the straight-line method;

(d) a change from the unit-of-production method to the straight-line method;

(e) a change from the sinking fund method to the straight-line method, the unit-of-production method, the sum-of-the-years-digits method, or the declining-balance method using any proper percentage of the straight-line rate;

(f) a change in the interest factor used in connection with a compound interest method or sinking fund method;

(g) a change in averaging convention as set forth in § 1.167(a)–10(b). However, as specifically provided in § 1.167(a)–10(b), in any taxable year in which an averaging convention substantially distorts the depreciation allowance for the taxable year, it may not be used (*see* Rev. Rul. 73–202, 1973–1 C.B. 81);

(h) a change from charging the depreciation reserve with costs of removal and crediting the depreciation reserve with salvage proceeds to deducting costs of removal as an expense and including salvage proceeds in taxable income as set forth in § 1.167(a)–8(e)(2). *See* Rev. Rul. 74–455, 1974–2 C.B. 63. This section 6.02 applies to this change, however, only if:

(i) the change is applied to all items in the account for which the change is being made; and

(ii) the removal costs are not required to be capitalized under any provision of the Code (for example, § 263(a), 263A, or 280B);

(i) a change from crediting the depreciation reserve with the salvage proceeds realized on normal retirement sales to computing and recognizing gains and losses on the sales (*see* Rev. Rul. 70–165, 1970–1 C.B. 43);

(j) a change from crediting ordinary income (including the combination method of crediting the lesser of estimated salvage value or actual salvage proceeds to the depreciation reserve, with any excess of salvage proceeds over estimated salvage value credited to ordinary income) with the salvage proceeds realized on normal retirement sales, to computing and recognizing gains and losses on the sales (*see* Rev. Rul. 70–166, 1970–1 C.B. 44);

(k) a change from item accounting for specific assets to multiple asset accounting (pooling) for the same assets, or vice versa;

(l) a change from one type of multiple asset accounting (pooling) for specific assets to a different type of multiple asset accounting (pooling) for the same assets;

(m) a change from one method described in Rev. Proc. 2000–38 for amortizing distributor commissions (as defined by section 2 of Rev. Proc. 2000–38) to another method described in Rev. Proc. 2000–38 for amortizing distributor commissions; or

(n) a change from pooling to a single asset, or vice versa, for distributor commissions (as defined by section 2 of Rev. Proc. 2000–38) for which the taxpayer is using the distribution fee period method or the useful life method (both described in Rev. Proc. 2000–38).

(5) *Additional requirements*. A taxpayer also must comply with the following:

(a) *Basis for depreciation*. At the beginning of the year of change, the basis for depreciation of property to which this change applies is the adjusted basis of the property as provided in § 1011 at the end of the taxable year immediately preceding the year of change (determined under taxpayer's present method of accounting for depreciation). If applicable under the taxpayer's proposed method of accounting for depreciation, this adjusted basis is reduced by the estimated salvage value of the property (for example, a change to the straight-line method).

(b) *Rate of depreciation*. The rate of depreciation for property changed to:

(i) the straight-line or the sum-of-the-years-digits method of depreciation must be based on the remaining useful life of the property as of the beginning of the year of change; or

(ii) the declining-balance method of depreciation must be based on the useful life of the property measured from the placed-in-service date, and not the expected remaining life from the date the change becomes effective.

(c) *Regulatory requirements*. For changes in method of depreciation to the sum-of-the-years-digits or declining-balance method, the property must meet the requirements of § 1.167(b)–0 or 1.167(c)–1, as appropriate.

(d) *Public utility property*. If any item of property is public utility property within the meaning of former § 167(l)(3)(A), the taxpayer (including a qualified small taxpayer as defined in section 6.01(4)(b) of this revenue procedure) must attach to the Form 3115 a statement providing that the taxpayer agrees to the following additional terms and conditions:

(i) a normalization method of accounting within the meaning of former § 167(l)(3)(G) will be used for the public utility property subject to the Form 3115; and

(ii) within 30 calendar days of filing the federal income tax return for the year of change, the taxpayer will provide a copy of the completed Form 3115 to any regulatory body having jurisdiction over the public utility property subject to the Form 3115.

(6) *Reduced filing requirement for qualified small taxpayers*. A qualified small taxpayer, as defined in section 6.01(4)(b) of this revenue procedure, is required to complete only the following information on Form 3115 (Rev. December 2015) to make this change:

(a) The identification section of page 1 (above Part I);
(b) The signature section at the bottom of page 1;
(c) Part I;
(d) Part II, all lines except lines 13, 15b, 16, 17, and 19;
(e) Part IV, line 25; and
(f) Schedule E.

(7) *Section 481(a) adjustment*. Because the adjusted basis of the property is not changed as a result of a method change made under this section 6.02, no items are being duplicated or omitted. Accordingly, a § 481(a) adjustment is neither required nor permitted.

(8) *Concurrent automatic change*.

(a) A taxpayer making this change for more than one asset for the same year of change should file a single Form 3115 for all such assets.

(b) A taxpayer making both this change and a change to a UNICAP method under section 12.01, 12.02, 12.08, or 12.12 of this revenue procedure (as applicable) for the same year of change should file a single Form 3115 for both changes, in which case the taxpayer must enter the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115. See section 6.03(1)(b) of Rev. Proc. 2015–13 for information on making concurrent changes. For example, a qualified small taxpayer must include on the single Form 3115 the information required by section 6.02(6) of this revenue procedure for this change and the information required by the lines on Form 3115 applicable to the UNICAP method change, including Part II line 14 and 15, Part IV, and Schedule D, and must include a separate response to each line on Form 3115 that is applicable to both changes (such as Part II lines 6b, 7, 8b, 14, and, as applicable for this change, Part IV) for which the taxpayer's response is different for this change and the change to a UNICAP method.

(9) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 6.02 is "8."

(10) *Contact information*. For further information regarding a change under this section, contact Charles Magee at (202) 317-7005 (not a toll-free call).

.03 *Sale, lease, or financing transactions*.

(1) *Description of change and scope*.

(a) *Applicability*. This change applies to a taxpayer that wants to change its method of accounting from:

(i) improperly treating property as sold by the taxpayer to properly treating property as leased or financed by the taxpayer;

(ii) improperly treating property as leased by the taxpayer to properly treating property as sold or financed by the taxpayer;

(iii) improperly treating property as financed by the taxpayer to properly treating property as sold or leased by the taxpayer;

(iv) improperly treating property as purchased by the taxpayer to properly treating property as leased by the taxpayer; and

(v) improperly treating property as leased by the taxpayer to properly treating property as purchased by the taxpayer.

(b) *Inapplicability*. This change does not apply to:

(i) a rent-to-own dealer that wants to change its method of accounting for rent-to-own contracts described in section 3 of Rev. Proc. 95–38, 1995–2 C.B. 397; or

(ii) a taxpayer that holds assets for sale or lease, if any asset so held is not the subject of a sale or lease transaction as of the beginning of the year of change.

(2) *Manner of making change*.

(a) The change in method of accounting under this section 6.03 is made using a cut-off method and applies to transactions entered into on or after the beginning of the year of change. Accordingly, a § 481(a) adjustment is neither required nor permitted.

(b) If a taxpayer wants to change its method of accounting for sale, lease or financing transactions entered into before the beginning of the year of change, the taxpayer must file a Form 3115 under the non-automatic change procedures of Rev. Proc. 2015–13, 2015–5 I.R.B. 419. A change involving sale, lease, or financing transactions entered into before the beginning of the year of change will require a § 481(a) adjustment. The IRS will generally not consider a taxpayer's request to change a method of accounting for a sale, lease, or financing transaction entered into before the beginning of the year of change unless the taxpayer's proposed method of accounting is consistent with the method used by the counterparty to the agreement. The following information should be submitted with Form 3115 to substantiate that the taxpayer's proposed method is consistent with the counterparty's method: (i) the name of the counterparty to the transaction; and (ii) a representation, signed under penalties of perjury, from the counterparty that provides the method of accounting for the agreement used by the counterparty for federal income tax purposes. If a taxpayer does not submit the counterparty information, the taxpayer's request to change a method of accounting for a sale, lease, or financing transaction entered into before the beginning of the year of change will be considered only in unusual and compelling circumstances. The requirement to obtain counterparty information from multiple counterparties will not be considered unusual or compelling.

(3) *No audit protection*. A taxpayer does not receive audit protection under section 8.01 of Rev. Proc. 2015–13 in connection with this change. *See* section 8.02(2) of Rev. Proc. 2015–13.

(4) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 6.03 is "10."

(5) *Contact information*. For further information regarding a change under this section, contact Edward Schwartz at (202) 317-7006 (not a toll-free call).

.04 *Change in general asset account treatment due to a change in the use of MACRS property*.

(1) *Description of change*. This change applies to a taxpayer that wants to change the method of accounting for general asset account treatment of MACRS property (as defined in § 1.168(b)–1(a)(2)) to the method of accounting provided in § 1.168(i)–1(c)(2)(ii)(I) or § 1.168(i)–1(h)(2), which applies when there is a change in the use of MACRS property pursuant to § 1.168(i)–4(d).

(2) *Manner of making change*.

(a) The change is made on a modified cut-off basis (as defined in § 1.446–1(e)(2)(ii)(*d*)(*5*)(*iii*)) and, thus, the adjusted depreciable basis of the MACRS property as of the beginning of the year of change is recovered using the proposed method of accounting for general asset account treatment. Accordingly, a § 481(a) adjustment is neither permitted nor required. See § 1.168(i)–1(h)(2)(ii) and (iii) for more information regarding how to establish the general asset account when a change in the use of MACRS property occurs pursuant to § 1.168(i)–4(d).

(b) *Reduced filing requirement for qualified small taxpayers*. A qualified small taxpayer, as defined in section 6.01(4)(b) of this revenue procedure, is required to complete only the following information on Form 3115 (Rev. December 2015) to make this change:

(i) The identification section of page 1 (above Part I);

(ii) The signature section at the bottom of page 1;

(iii) Part I;

(iv) Part II, all lines except lines 13, 15b, 16, 17, and 19;

(v) Part IV, line 25; and

(vi) Schedule E.

(3) *Concurrent automatic change*. A taxpayer making this change for more than one asset for the same year of change should file a single Form 3115 for all such assets.

(4) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 6.04 is "87."

(5) *Contact information*. For further information regarding a change under this section, contact Elizabeth Binder at (202) 317-7005 (not a toll-free call).

.05 *Change in method of accounting for depreciation due to a change in the use of MACRS property*.

(1) *Description of change*. This change applies to a taxpayer that wants to (a) change the method of accounting for depreciation of MACRS property (as defined in § 1.168(b)–1(a)(2)) to the method of accounting for depreciation provided in § 1.168(i)–4, which applies when there is a change in the use of MACRS property, or (b) revoke the election provided in § 1.168(i)–4(d)(3)(ii) to disregard a change in the use of MACRS property. *See* § 1.168(i)–4(g)(2).

(2) *Reduced filing requirement for qualified small taxpayers*. A qualified small taxpayer, as defined in section 6.01(4)(b) of this revenue procedure, is required to complete only the following information on Form 3115 (Rev. December 2015) to make this change:

(a) The identification section of page 1 (above Part I);

(b) The signature section at the bottom of page 1;

(c) Part I;

(d) Part II, all lines except lines 13, 15b, 16, 17, and 19;

(e) Part IV, all lines except line 25; and

(f) Schedule E.

(3) *Concurrent automatic change*. A taxpayer making this change for more than one asset for the same year of change should file a single Form 3115 for all such assets and provide a single net § 481(a) adjustment for all the changes included in that Form 3115. If one or more of the changes in that single Form 3115 generate a negative § 481(a) adjustment and other changes in that same Form 3115 generate a positive § 481(a) adjustment, the taxpayer may provide a single negative § 481(a) adjustment for all the changes that are included in that Form 3115 generating such adjustment and a single positive § 481(a) adjustment for all the changes that are included in that Form 3115 generating such adjustment.

(4) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 6.05 is "88."

(5) *Contact information*. For further information regarding a change under this section, contact Elizabeth Binder at (202) 317-7005 (not a toll-free call).

.06 *Depreciation of qualified nonpersonal use vans and light trucks*.

(1) *Description of change*. This change applies to a taxpayer that wants to change the method of accounting for depreciation for certain vehicles in accordance with § 1.280F–6(f)(2)(iv). Section 1.280F–6(f)(2)(iv) applies to a truck or van that is a qualified nonpersonal use vehicle as defined under § 1.274–5T(k), was placed in service by the taxpayer before July 7, 2003, and was treated by the taxpayer as a passenger automobile under § 1.280F–6T as in effect prior to July 7, 2003. If the taxpayer files Form 3115, in accordance with § 1.280F–6(f)(2)(iv), the treatment of the truck or van will be changed from property to which § 280F(a) applies to property to which § 280F(a) does not apply.

(2) *Reduced filing requirement for qualified small taxpayers*. A qualified small taxpayer, as defined in section 6.01(4)(b) of this revenue procedure, is required to complete only the following information on Form 3115 (Rev. December 2015) to make this change:

(a) The identification section of page 1 (above Part I);

(b) The signature section at the bottom of page 1;

(c) Part I;

(d) Part II, all lines except lines 13, 15b, 16, 17, and 19;

(e) Part IV, all lines except line 25; and

(f) Schedule E.

(3) *Concurrent automatic change*. A taxpayer making this change for more than one asset for the same year of change should file a single Form 3115 for all such assets and provide a single net § 481(a) adjustment for all the changes included in that Form 3115. If one or more of the changes in that single Form 3115 generate a negative § 481(a) adjustment and other changes in that same Form 3115 generate a positive § 481(a) adjustment, the taxpayer may provide a single negative § 481(a) adjustment for all the changes that are included in that Form 3115 generating such adjustment and a single positive § 481(a) adjustment for all the changes that are included in that Form 3115 generating such adjustment.

(4) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 6.06 is "89."

(5) *Contact information*. For further information regarding a change under this section, contact Bernard Harvey at (202) 317-7005 (not a toll-free call).

.07 *Impermissible to permissible method of accounting for depreciation or amortization for disposed depreciable or amortizable property*.

(1) *Description of change*. This change applies to a taxpayer that wants to make the change in method of accounting for depreciation or amortization (depreciation) provided under section 3 of Rev. Proc. 2007–16, 2007–1 C.B. 358, for an item of depreciable or amortizable property that has been disposed of by the taxpayer. Section 3 of Rev. Proc. 2007–16 allows a taxpayer to make a change in method of accounting for depreciation for the disposed property if the taxpayer used an impermissible method of accounting for depreciation for the property under which the taxpayer did not take into account any depreciation allowance, or did take into account some depreciation but less than the depreciation allowable, in the year of change (as defined in section 6.07(4) of this revenue procedure) or any prior taxable year.

(2) *Applicability*.

(a) *In general*. Except as provided in section 6.07(2)(b) of this revenue procedure, this section 6.07 applies to a taxpayer that is changing from an impermissible method of accounting for depreciation to a permissible method of accounting for depreciation for any item of depreciable or amortizable property subject to §§ 167, 168, 197, 1400I, or 1400L(c), to former § 168, or to any additional first year depreciation deduction provision of the Code (for example, § 168(k), § 168(l), § 1400L(b), or § 1400N(d)):

(i) that has been disposed of by the taxpayer during the year of change (as defined in section 6.07(4) of this revenue procedure); and

(ii) for which the taxpayer did not take into account any depreciation allowance, or did take into account some depreciation but less than the depreciation allowable (hereinafter, both are referred to as "claimed less than the depreciation allowable"), in the year of change (as defined in section 6.07(4) of this revenue procedure) or any prior taxable year.

(b) *Inapplicability*. This section 6.07 does not apply to:

(i) any property to which § 1016(a)(3) (regarding property held by a tax-exempt organization) applies;

(ii) any property for which a taxpayer is revoking a timely valid depreciation election, or making a late depreciation election, under the Code or regulations thereunder, or under other guidance published in the Internal Revenue Bulletin (including under § 13261(g)(2) or (3) of the Revenue Reconciliation Act of 1993 (1993 Act), 1993–3 C.B. 1, 128 (relating to amortizable § 197 intangibles));

(iii) any property for which the taxpayer deducted the cost or other basis of the property as an expense; or

(iv) any property disposed of by the taxpayer in a transaction to which a nonrecognition section of the Code applies (for example, § 1031, transactions subject to § 168(i)(7)(B)). However, this section 6.07(2)(b)(iv) does not apply to property disposed of by the taxpayer in a § 1031 or § 1033 transaction if the taxpayer elects under § 1.168(i)–6(i) and (j) to treat the entire basis (that is, both the exchanged and excess basis (as defined in § 1.168(i)–6(b)(7) and (8), respectively) of the replacement MACRS property (as defined in § 1.168(i)–6(b)(1)) as property placed in service by the taxpayer at the time of replacement and treat the adjusted depreciable basis of the relinquished MACRS property (as defined in § 1.168(i)–6(b)(2)) as being disposed of by the taxpayer at the time of disposition.

(3) *Manner of making the change*.

(a) *Change made on an original return for the year of change*. This change may be made on a taxpayer's timely filed (including any extension) original federal tax return for the year of change (as defined in section 6.07(4) of this revenue procedure), provided the taxpayer files the original Form 3115 in accordance with section 6.03(1)(a) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419.

(b) *Change made on an amended return for the year of change*. This change may also be made on an amended federal tax return for the year of change (as defined in section 6.07(4) of this revenue procedure), provided:

(i) the taxpayer files the original Form 3115 with the taxpayer's amended federal tax return for the year of change (as defined in section 6.07(4) of this revenue procedure) prior to the expiration of the period of limitation for assessment under § 6501(a) for the taxable year in which the item of depreciable or amortizable property was disposed of by the taxpayer; and

(ii) the taxpayer's amended federal tax return for the year of change (as defined in section 6.07(4) of this revenue procedure) includes the adjustments to taxable income and any collateral adjustments to taxable income or tax liability (for example, adjustments to the amount or character of the gain or loss of the disposed depreciable or amortizable property) resulting from the change in method of accounting for depreciation made by the taxpayer under this section 6.07.

(4) *Year of change*. The year of change for this change is the taxable year in which the item of depreciable or amortizable property was disposed of by the taxpayer.

(5) *Certain eligibility rules inapplicable*. The eligibility rules in sections 5.01(1)(d) and (f) of Rev. Proc. 2015–13 do not apply to this change.

(6) *Filing requirements*.

(a) Notwithstanding section 6.03(1)(a) of Rev. Proc. 2015–13, a taxpayer making this change in accordance with section 6.07(3)(b) of this revenue procedure must attach the original Form 3115 to the taxpayer's timely filed amended federal tax return for the year of change and must file the required copy (with signature) of the Form 3115 with the IRS in Covington, KY, no later than when the original Form 3115 is filed with the amended federal tax return for the year of change. If a taxpayer is making this change in accordance with section 6.07(3)(a) of this revenue procedure, the filing requirements in section 6.03(1)(a) of Rev. Proc. 2015–13 apply.

(b) *Reduced filing requirement for qualified small taxpayers*. A qualified small taxpayer, as defined in section 6.01(4)(b) of this revenue procedure, is required to complete only the following information on Form 3115 (Rev. December 2015) to make this change:

(i) The identification section of page 1 (above Part I);
(ii) The signature section at the bottom of page 1;
(iii) Part I;
(iv) Part II, all lines except lines 13, 15b, 16, 17, and 19;
(v) Part IV, all lines except line 25; and
(vi) Schedule E.

(7) *Section 481(a) adjustment period*. A taxpayer must take the entire § 481(a) adjustment into account in computing taxable income for the year of change.

(8) *Concurrent automatic change*. A taxpayer making this change for more than one asset for the same year of change should file a single Form 3115 for all such assets.

(9) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 6.07 is "107."

(10) *Contact information*. For further information regarding a change under this section, contact Charles Magee at (202) 317-7005 (not a toll-free call).

.08 *Tenant construction allowances*.

(1) *Description of change and scope*.

(a) *Applicability*. This change applies to a taxpayer that wants to change its method of accounting for tenant construction allowances:

(i) from improperly treating the taxpayer as having a depreciable interest in the property subject to the tenant construction allowances for federal income tax purposes to properly treating the taxpayer as not having a depreciable interest in such property for federal income tax purposes; or

(ii) from improperly treating the taxpayer as not having a depreciable interest in the property subject to the tenant construction allowances for federal income tax purposes to properly treating the taxpayer as having a depreciable interest in such property for federal income tax purposes.

(b) *Inapplicability*. This change does not apply to:

(i) any tenant construction allowance that qualifies under § 110;

(ii) any portion of a tenant construction allowance that is not expended on depreciable property; or

(iii) any amount expended for depreciable property in excess of the tenant construction allowance.

(2) *Definition*. For purposes of this section 6.08, the term "tenant construction allowance(s)" means any amount received by a lessee from a lessor to construct, acquire, or improve property for use by the lessee pursuant to a lease.

(3) *Manner of making the change*.

(a) The change in method of accounting under this section 6.08 is made using a cut-off method and only applies to leases entered into on or after the beginning of the year of change. Accordingly, a § 481(a) adjustment is neither required nor permitted.

(b) If a taxpayer wants to change its method of accounting for tenant construction allowances under existing leases, the taxpayer must file a Form 3115 with the Commissioner in accordance with the non-automatic change procedures of Rev. Proc. 2015–13, 2015–5 I.R.B. 419. A change involving tenant construction allowances under existing leases will require a § 481(a) adjustment. The Commissioner may grant consent to change a method of accounting for tenant construction allowances under existing leases only if the taxpayer's treatment of the property subject to the tenant construction allowances is consistent with the treatment of such property by the counterparty for federal income tax purposes. The taxpayer must submit the following information with a Form 3115 submitted under the non-automatic change procedures of Rev. Proc. 2015–13 and this section 6.08.

(i) If a lessee is filing the Form 3115, the lessee must submit with the Form 3115: (A) a statement that provides the amount of the tenant construction allowance received by the lessee, the amount of such tenant construction allowance expended by the lessee on property, and the name of the lessor that provided the tenant construction allowance; and (B) a representation, signed under penalties of perjury, from such lessor that provides the amount of the tenant construction allowance provided to the lessee and an explanation as to how the lessor is treating the property subject to such tenant construction allowance for federal income tax purposes. If the lessor capitalized the tenant construction allowance (or any portion thereof) provided to the lessee and depreciated the property subject to such tenant construction allowance, the representation must also include the amount that was capitalized by the lessor, the Internal Revenue Code section under which the property is depreciated by the lessor, and the life over which the property is depreciated by the lessor.

(ii) If a lessor is filing the Form 3115, the lessor must submit with the Form 3115: (A) a statement that provides the amount of the tenant construction allowance provided to a lessee and the name of the lessee that received such tenant construction allowance; and (B) a representation, signed under penalties of perjury, from such lessee that provides the amount of the tenant construction allowance received from the lessor, the amount of such tenant construction allowance recognized as gross income by the lessee, the amount of the tenant construction allowance expended by the lessee on property, and an explanation as to how the lessee is treating the property subject to the tenant construction allowance for federal income tax purposes. If the lessee capitalized the tenant construction allowance (or any portion thereof) received from the lessor and depreciated the property subject to such tenant construction allowance, the representation must also include the amount that was capitalized by the lessee, the Internal Revenue Code section under which the property is depreciated by the lessee, and the life over which the property is depreciated by the lessee.

(4) *Reduced filing requirement for qualified small taxpayers*. A qualified small taxpayer, as defined in section 6.01(4)(b) of this revenue procedure, is required to complete only the following information on Form 3115 (Rev. December 2015) to make this change in accordance with section 6.08(3)(a) of this revenue procedure:

(a) The identification section of page 1 (above Part I);
(b) The signature section at the bottom of page 1;
(c) Part I;
(d) Part II, all lines except lines 13, 15b, 16, 17, and 19;
(e) Part IV, line 25; and
(f) Schedule E.

(5) *No audit protection*. A taxpayer does not receive audit protection under section 8.01 of Rev. Proc. 2015–13 in connection with this change made in accordance with section 6.08(3)(a) of this revenue procedure. *See* section 8.02(2) of Rev. Proc. 2015–13.

(6) *Concurrent automatic change*. A taxpayer making this change for more than one asset for the same year of change should file a single Form 3115 for all such assets.

(7) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 6.08 is "145."

(8) *Contact information*. For further information regarding a change under this section, contact Elizabeth Binder at (202) 317-7005 (not a toll-free call).

.09 *Safe harbor method of accounting for determining the depreciation of certain tangible assets used by wireless telecommunications carriers under Rev. Proc. 2011–22.*

(1) *Description of change*. This change applies to a taxpayer that is within the scope of Rev. Proc. 2011–22, 2011–18 I.R.B. 737, and wants to change to the recovery periods described in section 5 of Rev. Proc. 2011–22 and any collateral change to the depreciation methods for all, or some of, the assets listed in that section.

(2) *Reduced filing requirement for qualified small taxpayers*. A qualified small taxpayer, as defined in section 6.01(4)(b) of this revenue procedure, is required to complete only the following information on Form 3115 (Rev. December 2015) to make this change:

(a) The identification section of page 1 (above Part I);
(b) The signature section at the bottom of page 1;
(c) Part I;
(d) Part II, all lines except lines 13, 15b, 16, 17, and 19;
(e) Part IV, all lines except line 25; and
(f) Schedule E.

(3) *Concurrent automatic change*. A taxpayer making this change for more than one asset for the same year of change should file a single Form 3115 for all such assets and provide a single net § 481(a) adjustment for all the changes included in that Form 3115. If one or more of the changes in that single Form 3115 generate a negative § 481(a) adjustment and other changes in that same Form 3115 generate a positive § 481(a) adjustment, the taxpayer may provide a single negative § 481(a) adjustment for all the changes that are included in that Form 3115 generating such adjustment and a single positive § 481(a) adjustment for all the changes that are included in that Form 3115 generating such adjustment.

(4) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 6.09 is "157."

(5) *Contact information*. For further information regarding a change under this section, contact Charles Magee at (202) 317-7005 (not a toll-free call).

.10 *Late partial disposition election (§ 168; § 1.168(i)–8).*

(1) *Description of change*.

(a) *Applicability*. This change applies to a taxpayer that wants to make: (i) a late partial disposition election under § 1.168(i)–8(d)(2)(i) for the disposition of a portion of an asset (as determined under § 1.168(i)–8(c)(4)) by the taxpayer; or (ii) the late partial disposition election specified in § 1.168(i)–8(d)(2)(i) that is made pursuant to § 1.168(i)–8(d)(2)(iv)(B) for the disposition of a portion of an asset by the taxpayer. This change also may affect whether the taxpayer must capitalize amounts paid to restore a unit of property (as determined under § 1.263(a)–3(e) or (f)) under § 1.263(a)–3(k).

(b) *Inapplicability*. This change does not apply to the following:

(i) Any asset of which the disposed portion was a part that is not owned by the taxpayer at the beginning of the year of change;

(ii) A taxpayer making any late election specified in section 6.10(1)(a) of this revenue procedure after the time specified in section 6.10(3) of this revenue procedure. Any such late election is not a change in method of accounting pursuant to § 1.446–1(e)(2)(ii)(*d*)(*3*)(*iii*);

(iii) The partial disposition election specified in § 1.168(i)–8(d)(2)(i) that is made pursuant to § 1.168(i)–8(d)(2)(iii) (but see section 6.12 of this revenue procedure for making this change);

(iv) A taxpayer within the scope requirements of Rev. Proc. 2015–20, 2015–9 I.R.B. 694, and that calculated a § 481(a) adjustment as of the first day of the taxpayer's year of change that took into account only dispositions in taxable years beginning on or after January 1, 2014, for any change in method of accounting provided in section 6.37(3)(a)(iv), (a)(v), (a)(vii), or (a)(viii), section 6.38, or section 6.39 of Rev. Proc. 2015–14, 2015–5 I.R.B. 450, as modified by Rev. Proc. 2015–20 (now section 6.14(3)(a)(iv), (a)(v), (a)(vii), or (a)(viii), section 6.15, or section 6.16 of this revenue procedure); or

(v) A taxpayer within the scope requirements of Rev. Proc. 2015–20 and that calculated a § 481(a) adjustment as of the first day of the taxpayer's year of change that took into account only amounts paid or incurred in taxable years beginning on or after January 1, 2014, for any change in method of accounting provided in section 10.11(3)(a) of Rev. Proc. 2015–14 (now section 11.08(3) of this revenue procedure).

(2) *Change in method of accounting*. The IRS will treat the making of the late election specified in section 6.10(1) of this revenue procedure as a change in method of accounting only for the time specified in section 6.10(3) of this revenue procedure.

(3) *Time for making the change*.

(a) If the change under this section 6.10 is made pursuant to § 1.168(i)–8(d)(2)(i), this change must be made for any taxable year beginning on or after January 1, 2012, and beginning before January 1, 2015.

(b) If the change under this section 6.10 is made pursuant to § 1.168(i)–8(d)(2)(iv)(B), this change must be made for the first or second taxable year succeeding the applicable taxable year (as defined in § 1.168(i)–8(d)(2)(iv)), pursuant to § 1.168(i)–8(d)(2)(iv)(B).

(4) *Certain eligibility rules inapplicable*.

(a) *In general*. The eligibility rules in sections 5.01(1)(d) and (f) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, do not apply to this change.

(b) *Concurrent automatic change*. If a taxpayer makes both a change under this section 6.10 and a change under section 6.01 of this revenue procedure for any taxable year specified in section 6.10(3) of this revenue procedure, as applicable, on a single Form 3115 for the same asset for the same year of change in accordance with section 6.10(6)(b) of this revenue procedure, the eligibility rules in sections 5.01(1)(d) and (f) of Rev. Proc. 2015–13 do not apply to the taxpayer for either change.

(5) *Manner of making change*.

(a) A qualified small taxpayer, as defined in section 6.01(4)(b) of this revenue procedure, is required to complete only the following information on Form 3115 (Rev. December 2015) to make this change:

(i) The identification section of page 1 (above Part I);
(ii) The signature section at the bottom of page 1;
(iii) Part I, line 1(a);
(iv) Part II, all lines except lines 13, 15b, 16, 17, and 19;
(v) Part IV, all lines except line 25; and
(vi) Schedule E.

(b) A taxpayer (including a qualified small taxpayer) making this change must:

(i) Apply § 1.168(i)–8(h)(1) and (3) (accounting for asset disposed of);

(ii) If the asset (as determined under § 1.168(i)–8(c)(4)) of which the disposed portion is a part is properly included in one of the asset classes 00.11 through 00.4 of Rev. Proc. 87–56, 1987–2 C.B. 674, classify the replacement portion of such asset under the same asset class as the disposed portion of the asset in the taxable year in which the replacement portion is placed in service by the taxpayer;

(iii) If the taxpayer's present method of accounting is not in accord with § 1.168(i)–8(c)(4) (determination of asset disposed of), change to the appropriate asset as determined under § 1.168(i)–8(c)(4). This change is made under this section 6.10 instead of under section 6.15 or section 6.16 of this revenue procedure, as applicable;

(iv) If the taxpayer continues to deduct depreciation for the disposed portion of the asset (as determined under § 1.168(i)–8(c)(4)) under the taxpayer's present method of accounting, change from depreciating such disposed portion to recognizing gain or loss for the disposed portion or, if § 280B and § 1.280B–1 apply to the disposition, change from depreciating such disposed portion to capitalizing the loss sustained on account of the demolition to the land on which the demolished structure was located. This change is made under this section 6.10 instead of under section 6.15 or section 6.16 of this revenue procedure, as applicable;

(v) If the taxpayer recognized a gain or loss under § 1.168(i)–1T or § 1.168(i)–8T for the disposed portion of the asset in a taxable year prior to the year of change, recognize gain or loss for such disposed portion under § 1.168(i)–8. This change is made under this section 6.10 instead of under section 6.15 or section 6.16 of this revenue procedure, as applicable; and

(vi) If any asset is public utility property within the meaning of § 168(i)(10), attach to its Form 3115 a statement providing that the taxpayer agrees to the following additional terms and conditions:

(A) A normalization method of accounting (within the meaning of § 168(i)(9)) will be used for the public utility property subject to the Form 3115;

(B) Within 30 calendar days of filing the federal income tax return for the year of change, the taxpayer will provide a copy of the completed Form 3115 to any regulatory body having jurisdiction over the public utility property subject to the Form 3115; and

(C) As of the beginning of the year of change, the taxpayer will adjust its deferred tax reserve account or similar account in the taxpayer's regulatory books of account by the amount of the deferral of federal income tax liability associated with the § 481(a) adjustment applicable to the public utility property subject to the Form 3115.

(6) *Concurrent automatic change*.

(a) A taxpayer making this change for more than one asset for the same year of change should file a single Form 3115 for all such assets. If the change for more than one asset included in that Form 3115 is specified in section 6.10(1) of this revenue procedure, the single Form 3115 should provide a single net § 481(a) adjustment for all such changes. If one or more of the changes specified in section 6.10(1) of this revenue procedure in that single Form 3115 generate a negative § 481(a) adjustment and other changes specified in section 6.10(1) of this revenue procedure in that same Form 3115 generate a positive § 481(a) adjustment, the taxpayer may provide a single negative § 481(a) adjustment for all such changes that are included in that Form 3115 generating such negative adjustment and a single positive § 481(a) adjustment for all such changes that are included in that Form 3115 generating such positive adjustment.

(b) A taxpayer making this change and any change listed in section 6.10(6)(b)(i)–(ii) of this revenue procedure for the same year of change should file a single Form 3115 for all such changes and must enter the designated automatic accounting method change numbers for the changes on the appropriate line on the Form 3115. This section 6.10(6)(b) applies only if all of these changes are made for any taxable year specified in section 6.10(3) of this revenue procedure, as applicable (for example, for a taxable year beginning on or after January 1, 2012, and beginning before January 1, 2015, if the change under section 6.10 of this revenue procedure is made pursuant to § 1.168(i)–8(d)(2)(i)). See section 6.03(1)(b) of Rev. Proc. 2015–13 for information on making concurrent changes. For example, a qualified small taxpayer must include on the single Form 3115 the information required to be completed on Form 3115 by a qualified small taxpayer under this revenue procedure for each change in method of accounting included on that Form 3115. The listed changes are:

(i) A change under section 6.01 of this revenue procedure; and

(ii) A change under section 6.11 of this revenue procedure.

(7) *Examples*. The following examples illustrate the changes that may be made under this section 6.10.

(a) *Example 1*. (i) X, a fiscal year taxpayer with a taxable year beginning on December 1 and ending on November 30, acquired and placed in service a truck in 2009. The truck is described in asset class 00.242 of Rev. Proc. 87–56. X depreciates the truck under § 168. X does not reasonably expect to replace the engine of the truck more than once during its class life of 6 years. The engine is a major component of the truck under § 1.263(a)–3T(i)(1)(vi).

(ii) In December 2012, X replaced the engine of the truck. X applied § 1.168(i)–8T and § 1.263(a)–3T for its taxable year ended November 30, 2013. Because the truck is the asset for disposition purposes, X did not recognize a loss on the retirement of the engine under § 1.168(i)–8T and continues to depreciate the original engine. Further, X capitalized the new engine as an improvement, classified the new engine under asset class 00.242 of Rev. Proc. 87–56, and depreciates the new engine under § 168.

(iii) X complies with § 1.168(i)–8 beginning with its taxable year ending November 30, 2015. X also decides to make the late partial disposition election under this section 6.10 for the truck's original engine that X retired in December 2012. Although the truck is the asset for disposition purposes under § 1.168(i)–8(c)(4)(ii)(C), the partial disposition rule under § 1.168(i)–8(d)(2)(i) results in the retirement of the engine being a disposition under § 1.168(i)–8(b)(2). Thus, in accordance with section 6.10 of this revenue procedure, X may file a Form 3115 with its federal income tax return for the taxable year ending November 30, 2015, to make the late disposition election for the engine and change from depreciating the original engine to recognizing a loss upon its retirement.

(b) *Example 2*. (i) Y, a fiscal year taxpayer with a taxable year beginning on December 1 and ending on November 30, acquired and placed in service a building and its structural components in 2000. Y depreciates this building and its structural components under § 168. The roof is a structural component of the building. Y replaced the entire roof in June 2010. On its federal income tax return for the taxable year ended November 30, 2010, Y did not recognize a loss on the retirement of the original roof and continued to depreciate the original roof. Y also capitalized the cost of the replacement roof and has been depreciating this roof under § 168 since June 2010. The adjusted depreciable basis of the original roof at the time of the retirement in 2010 (taking into account the applicable convention) is $11,000, and Y claimed depreciation of $1,000 for such roof after its retirement (taking into account the applicable convention) and before the taxable year ended November 30, 2013.

(ii) In accordance with § 1.168(i)–8T(c)(4)(ii)(A) and (B) and section 6.29(3)(a) and (b) of the APPENDIX to Rev. Proc. 2011–14, as modified by Rev. Proc. 2012–20, 2012–14 I.R.B. 700, Y filed with its federal income tax return for the taxable year ended November 30, 2013, a Form 3115 to treat the building as an asset and each structural component of the building as a separate asset for disposition purposes and also to change from depreciating the original roof to recognizing a loss upon its retirement. The amount of the net negative § 481(a) adjustment on this Form 3115 is $10,000 (adjusted depreciable basis of $11,000 for the original roof at the time of its retirement (taking into account the applicable convention) less depreciation of $1,000 claimed for such roof after its retirement (taking into account the applicable convention) and before the taxable year ended November 30, 2013).

(iii) Y complies with § 1.168(i)–8 beginning with its taxable year ending November 30, 2015. Y also decides to make the late partial disposition election under this section 6.10 for the building's original roof that Y retired in 2010. Although the original building (including its original roof and other original structural components) is the asset for disposition purposes under § 1.168(i)–8(c)(4)(ii)(A), the partial disposition rule under § 1.168(i)–8(d)(2)(i) results in the retirement of the original roof being a disposition under § 1.168(i)–8(b)(2). Thus, in accordance with this section 6.10, Y may file a Form 3115 with its federal income tax return for the taxable year ending November 30, 2015, to make a late partial disposition election for the original roof, treat the original building (including its original roof and other original structural components) as an asset and the replacement roof to the building as a separate asset for disposition purposes, and recognize a loss upon the retirement of the original roof under § 1.168(i)–8.

(iv) The computation of the net § 481 adjustment for this change is computed as follows:

Net Loss on retirement of original roof on 2012 return under § 1.168(i)–8T	$10,000
Net Loss on retirement of original roof under § 1.168(i)–8	(10,000)
Net § 481(a) adjustment for the roof	$ 0

(8) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change to the method of accounting under this section 6.10 is "196."

(9) *Contact information*. For further information regarding a change under this section, contact Patrick Clinton at (202) 317-7005 (not a toll-free call).

.11 *Revocation of a general asset account election (§ 168; § 1.168(i)–1, § 1.168(i)–1T and Prop. Reg. § 1.168(i)–1).*

(1) *Description of change*.

(a) *Applicability*. This change, as described in Rev. Proc. 2014–54, 2014–41 I.R.B. 675, applies to a taxpayer that wants to revoke its general asset account election:

(i) Made under section 6.32(1)(a)(i) of Rev. Proc. 2015–14 or section 6.32(1)(a)(i) of the APPENDIX to Rev. Proc. 2011–14 for one or more items of property depreciated under § 168 (MACRS property) included in the general asset account. This change also may affect whether the taxpayer must capitalize amounts paid to restore a unit of property (as determined under § 1.263(a)–3(e) or (f)) under § 1.263(a)–3(k); or

(ii) Made under § 1.168(i)–1, § 1.168(i)–1T, or Prop. Reg. § 1.168(i)–1 for one or more items of MACRS property placed in service by the taxpayer in a taxable year beginning on or after January 1, 2012, and beginning before January 1, 2014. This change also may affect whether the taxpayer must capitalize amounts paid to restore a unit of property (as determined under § 1.263(a)–3(e) or (f)) under § 1.263(a)–3(k).

(b) *Inapplicability*. Because of the changes made to the general asset account temporary regulations (§ 1.168(i)–1T) by § 1.168(i)–1, the IRS will treat the revocation of the elections specified in section 6.11(1)(a) of this revenue procedure as a change in method of accounting only for the time specified in section 6.11(2) of this revenue procedure. Accordingly, this treatment does not apply to a taxpayer that makes any revocation specified in section 6.11(1)(a) of this revenue procedure before or after the time specified in section 6.11(2) of this revenue procedure. Any such revocation is not a change in method of accounting pursuant to § 1.446–1(e)(2)(ii)(*d*)(*3*)(*iii*). The elections specified in section 6.11(1)(a) of this revenue procedure are irrevocable except as provided in § 1.168(i)–1(c)(1)(ii)(A), (e)(3), (g), or (h).

(2) *Time for making the change*. The change under this section 6.11 must be made for any taxable year beginning on or after January 1, 2012, and beginning before January 1, 2015.

(3) *Certain eligibility rules inapplicable*.

(a) *In general*. The eligibility rules in sections 5.01(1)(d) and (f) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, do not apply to this change.

(b) *Concurrent automatic change*. If a taxpayer makes both a change under this section 6.11 and a change under section 6.01 of this revenue procedure for any taxable year beginning on or after January 1, 2012, and beginning before January 1, 2015, on a single Form 3115 for the same asset for the same year of change in accordance with section 6.11(6)(b) of this revenue procedure, the eligibility rules in sections 5.01(1)(d) and (f) of Rev. Proc. 2015–13 do not apply to the taxpayer for either change.

(4) *Section 481(a) adjustment period*. A taxpayer making this change must take the entire § 481(a) adjustment into account in computing taxable income for the year of change.

(5) *Manner of making change*.

(a) A qualified small taxpayer, as defined in section 6.01(4)(b) of this revenue procedure, is required to complete only the following information on Form 3115 (Rev. December 2015) to make this change:

(i) The identification section of page 1 (above Part I);
(ii) The signature section at the bottom of page 1;
(iii) Part I, line 1(a);
(iv) Part II, all lines except lines 13, 15b, 16, 17, and 19;
(v) Part IV, all lines except line 25; and
(vi) Schedule E.

(b) A taxpayer (including a qualified small taxpayer) making this change must:

(i) Attach to its Form 3115 a statement with a description of the asset(s) to which this change applies (for example, all general asset accounts established pursuant to a Form 3115 filed under section 6.32(1)(a)(i) of the APPENDIX to Rev. Proc. 2011–14 for the year of change beginning January 1, 2012 (for a change specified in section 6.11(1)(a)(i) of this revenue procedure); one desk costing $2,000 in 2012 General Asset Account #1 (for a change specified in section 6.11(1)(a)(ii) of this revenue procedure));

(ii) Include the asset(s) that were in the general asset account(s) at the end of the taxable year immediately preceding the year of change in a single asset account or a multiple asset account in accordance with § 1.168(i)–7. The single asset account or the multiple asset account must include a beginning balance for both the unadjusted depreciable basis and the depreciation reserve. For a single asset account, the beginning balance for the unadjusted depreciable basis of that single asset account is equal to the unadjusted depreciable basis as of the beginning of the year of change for the asset included in that single asset account and the beginning balance of the depreciation reserve of that single asset account is the greater of the depreciation allowed or allowable as of the beginning of the year of change for the asset included in that single asset account. For a multiple asset account, the beginning balance for the unadjusted depreciable basis of that multiple asset account is equal to the sum of the unadjusted depreciable bases as of the beginning of the year of change for all assets included in that multiple asset account and the beginning balance of the depreciation reserve of that multiple asset account is equal to the sum of the greater of the depreciation allowed or allowable as of the beginning of the year of change for all assets included in that multiple asset account; and

(iii) If any asset is public utility property within the meaning of § 168(i)(10), attach to its Form 3115 a statement providing that the taxpayer agrees to the following additional terms and conditions:

(A) A normalization method of accounting (within the meaning of § 168(i)(9)) will be used for the public utility property subject to the Form 3115;

(B) Within 30 calendar days of filing the federal income tax return for the year of change, the taxpayer will provide a copy of the completed Form 3115 to any regulatory body having jurisdiction over the public utility property subject to the Form 3115; and

(C) As of the beginning of the year of change, the taxpayer will adjust its deferred tax reserve account or similar account in the taxpayer's regulatory books of account by the amount of the deferral of federal income tax liability associated with the § 481(a) adjustment applicable to the public utility property subject to the Form 3115.

(6) *Concurrent automatic change*.

(a) A taxpayer making this change for more than one asset for the same year of change should file a single Form 3115 for all such assets. If the change for more than one asset included in that Form 3115 is specified in section 6.11(1)(a) of this revenue procedure, the single Form 3115 must provide a single net § 481(a) adjustment for all such changes.

(b) A taxpayer making this change and any change listed in section 6.11(6)(b)(i)–(iv) of this revenue procedure for the same year of change should file a single Form 3115 for all such changes and must enter the designated automatic accounting method change numbers for the changes on the appropriate line on the Form 3115. This section 6.11(6)(b) applies only if all of these changes are made for any taxable year beginning on or after January 1, 2012, and beginning before January 1, 2015. See section 6.03(1)(b) of Rev. Proc. 2015–13 for information on making concurrent changes. For example, a qualified small taxpayer must include on the single Form 3115 the information required to be completed on Form 3115 by a qualified small taxpayer under this revenue procedure for each change in method of accounting included on that Form 3115. The listed changes are:

(i) A change under section 6.01 of this revenue procedure;

(ii) A change under section 6.10 of this revenue procedure made pursuant to § 1.168(i)–8(d)(2)(i);

(iii) A change under section 6.15 of this revenue procedure; and

(iv) A change under section 6.16 of this revenue procedure.

(7) *Examples*. The following examples illustrate the changes that may be made under this section 6.11.

(a) *Example 1*. (i) On its federal tax return for the taxable year ended November 30, 2013 (2012 taxable year), X made a general asset account election under § 1.168(i)–1T to apply § 1.168(i)–1T to all of its assets placed in service during the 2012 taxable year. No such assets were disposed of during the 2012 taxable year. X complies with §§ 1.168(i)–1 and 1.168(i)–8 for its taxable year ending November 30, 2015. Because of the change in the definition of a qualifying disposition under § 1.168(i)–1(e)(3)(iii), X does not want its assets placed in service during the 2012 taxable year in general asset accounts. In accordance with this section 6.11, X files with its federal tax return for the taxable year ending November 30, 2015, a Form 3115 to revoke the general asset account election for all assets placed in service during the 2012 taxable year and include such assets in one multiple asset account in accordance with § 1.168(i)–7. Because the adjusted depreciable basis of the assets is not changed as a result of this change, a § 481(a) adjustment is neither required nor permitted.

(b) *Example 2*. (i) Y, a fiscal year taxpayer with a taxable year beginning December 1 and ending November 30, acquired and placed in service three used trucks in May 2012. The trucks are described in asset class 00.242 of Rev. Proc. 87–56, 1987–2 C.B. 674. Of the three trucks, one truck costs $20,000 and the other two trucks cost a total of $30,000. Y depreciates the trucks under § 168. In June 2013, Y sold the truck that cost $20,000 to an unrelated party for $12,000. The adjusted depreciable basis of the truck at the time of its disposition (taking into account the applicable convention) is $12,800 (cost of $20,000 less depreciation of $7,200 for the taxable years ended November 30, 2012, and November 30, 2013).

(ii) In accordance with § 1.168(i)–1T and section 6.32(1)(a)(i) of the APPENDIX to Rev. Proc. 2011–14, as modified by Rev. Proc. 2012–20, 2012–14 I.R.B. 700, Y filed with its federal tax return for the taxable year ended November 30, 2013 (2012 taxable year), a Form 3115 to make a late general asset account election to include the three trucks in one general asset account. Because a sales transaction is a qualifying disposition under § 1.168(i)–1T(e)(3)(iii)(B), Y also elected to apply § 1.168(i)–1T(e)(3)(iii) for the sale of the truck in the 2012 taxable year. As a result, Y removed this truck from the general asset account and, on its federal tax return for the taxable year ended November 30, 2013, recognized a loss of $800 under § 1.168(i)–8T (sales proceeds of $12,000 less the adjusted depreciable basis of $12,800 for the truck.)

(iii) Y complies with §§ 1.168(i)–1 and 1.168(i)–8 beginning with its taxable year ending November 30, 2015. Because a sales transaction is not a qualifying disposition under § 1.168(i)–1(e)(3)(iii)(B), Y should have recognized all of the sales proceeds of $12,000 from the sale of the truck in the 2012 taxable year as ordinary income and continued to deduct depreciation for this truck in the general asset account. As a result and in accordance with sections 6.11 and 6.16(3)(i) of this revenue procedure, Y files with its federal tax return for the taxable year ending November 30, 2015, a Form 3115 to revoke the general asset account election for the three trucks placed in service in May 2012, include the two unsold trucks in one multiple asset account in accordance with § 1.168(i)–7, and recognize the loss of $800 upon the sale of the truck in the 2012 taxable year under § 1.168(i)–8.

(iv) The computation of the § 481 adjustment for this change is computed as follows:

Loss on sale of truck on 2012 return under § 1.168(i)–8T	$ 800
Loss on sale of truck under § 1.168(i)–8	(800)
Net § 481(a) adjustment for the asset	$ 0

(c) *Example 3*. (i) Z, a fiscal year taxpayer with a taxable year beginning December 1 and ending November 30, acquired and placed in service a building and its structural components in 2000. Z depreciates this building and its structural components under § 168. The roof is a structural component of the building. Z replaced the entire roof in June 2010. On its federal tax return for the taxable year ended November 30, 2010, Z did not recognize a loss on the retirement of the original roof and continued to depreciate the original roof. Z also capitalized the cost of the replacement roof and has been depreciating this roof under § 168 since June 2010. The adjusted depreciable basis of the original roof at the time of its retirement in 2010 (taking into account the applicable convention) is $11,000, and Z claimed depreciation of $1,000 for such roof after its retirement (taking into account the applicable convention) and before the taxable year ended November 30, 2013 (2012 taxable year). Also, the 12-month allowable depreciation deduction for the original roof is $500 for the 2012 taxable year and $500 for the taxable year ended November 30, 2014 (2013 taxable year).

(ii) In accordance with § 1.168(i)–1T and section 6.32(1)(a) of the APPENDIX to Rev. Proc. 2011–14, as modified by Rev. Proc. 2012–20, 2012–14 I.R.B. 700, Z filed with its federal tax return for the taxable year ended November 30, 2013, a Form 3115 to: (1) make a late general asset account election to include the building (including its structural components) placed in service in 2000 in one general asset account and the replacement roof in a separate general asset account; and (2) make a late qualifying disposition election for the retirement of the original roof in 2010. As a result, Z removed the original roof from the general asset account and reported a net negative § 481(a) adjustment on this Form 3115 of $10,000 (adjusted depreciable basis of $11,000 for the original roof at the time of its retirement (taking into account the applicable convention) less depreciation of $1,000 claimed for such roof after its retirement (taking into account the applicable convention) and before the 2012 taxable year).

(iii) Z complies with §§ 1.168(i)–1 and 1.168(i)–8 for its taxable year ending November 30, 2015 (2014 taxable year), but decides not to make any late partial disposition election under section 6.10 of this revenue procedure. In accordance with sections 6.11 and 6.15(3)(a) of this revenue procedure, Z files a Form 3115 with its federal income tax return for the 2014 taxable year to revoke the general asset account election for the building (including its structural components) placed in service in 2000 and for the replacement roof, and to change to treating the building (including its original roof and other original structural components) placed in service in 2000 as an asset and the replacement roof as a separate asset for disposition purposes. The net positive § 481(a) adjustment for this change is $9,000 (net loss of $10,000 claimed on the 2012 return for the retirement of the original roof less depreciation of $1,000 for the original roof for the 2012 and 2013 taxable years) and is included in Z's taxable income for the 2014 taxable year.

(8) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change to the method of accounting under this section 6.11 is "197."

(9) *Contact information*. For further information regarding a change under this section, contact Patrick Clinton at (202) 317-7005 (not a toll-free call).

.12 *Partial dispositions of tangible depreciable assets to which the IRS's adjustment pertains (§ 168; § 1.168(i)–8)*.

(1) *Description of change*.

(a) *Applicability*. This change applies to a taxpayer that is described in § 1.168(i)–8(d)(2)(iii) and, pursuant to § 1.168(i)–8(d)(2)(iii), that wants to make the partial disposition election specified in § 1.168(i)–8(d)(2)(i) to the disposition of a portion of an asset to which the IRS's adjustment (as described in § 1.168(i)–8(d)(2)(iii)) pertains.

(b) *Inapplicability*. This change does not apply to:

(i) Any asset of which the disposed portion was a part that is not owned by the taxpayer at the beginning of the year of change; or

(ii) The partial disposition election specified in § 1.168(i)–8(d)(2)(i) that is made pursuant to § 1.168(i)–8(d)(2)(iv) (but see section 6.10 of this revenue procedure for making this change).

(2) *Change in method of accounting*. The IRS will treat the making of the late election specified in section 6.12(1) of this revenue procedure as a change in method of accounting.

(3) *Certain eligibility rules inapplicable*. The eligibility rules in sections 5.01(1)(d) and (f) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, do not apply to this change.

(4) *Manner of making change*.

(a) A qualified small taxpayer, as defined in section 6.01(4)(b) of this revenue procedure, is required to complete only the following information on Form 3115 (Rev. December 2015) to make this change:

(i) The identification section of page 1 (above Part I);

(ii) The signature section at the bottom of page 1;

(iii) Part I;

(iv) Part II, all lines except lines 13, 15b, 16, 17, and 19;

(v) Part IV, all lines except line 25; and

(vi) Schedule E.

(b) A taxpayer (including a qualified small taxpayer) making this change must:

(i) Apply § 1.168(i)–8(h)(1) and (3) (accounting for asset disposed of);

(ii) If the asset (as determined under § 1.168(i)–8(c)(4)) of which the disposed portion is a part is properly included in one of the asset classes 00.11 through 00.4 of Rev. Proc. 87–56, 1987–2 C.B. 674, classify the replacement portion of such asset under the same asset class as the disposed portion of the asset in the taxable year in which the replacement portion is placed in service by the taxpayer;

(iii) If the taxpayer's present method of accounting is not in accord with § 1.168(i)–8(c)(4) (determination of asset disposed of), change to the appropriate asset as determined under § 1.168(i)–8(c)(4);

(iv) If the taxpayer continues to deduct depreciation for the disposed portion of the asset (as determined under § 1.168(i)–8(c)(4)) under the taxpayer's present method of accounting, change from depreciating such disposed portion to recognizing gain or loss for the disposed portion or, if § 280B and § 1.280B–1 apply to the disposition, change from depreciating such disposed portion to capitalizing the loss sustained on account of the demolition to the land on which the demolished structure was located; and

(v) If any asset is public utility property within the meaning of § 168(i)(10), attach a statement to its Form 3115 providing that the taxpayer agrees to the following additional terms and conditions:

(A) A normalization method of accounting (within the meaning of § 168(i)(9)) will be used for the public utility property subject to the Form 3115;

(B) Within 30 calendar days of filing the federal income tax return for the year of change, the taxpayer will provide a copy of the completed Form 3115 to any regulatory body having jurisdiction over the public utility property subject to the Form 3115; and

(C) As of the beginning of the year of change, the taxpayer will adjust its deferred tax reserve account or similar account in the taxpayer's regulatory books of account by the amount of the deferral of federal income tax liability associated with the § 481(a) adjustment applicable to the public utility property subject to the Form 3115.

(5) *Concurrent automatic change*. A taxpayer making this change for more than one asset for the same year of change should file a single Form 3115 for all such assets. If the change for more than one asset included in that Form 3115 is specified in section 6.12(1) of this revenue procedure, the single Form 3115 should provide a single net § 481(a) adjustment for all such changes. If one or more of the changes specified in section 6.12(1) of this revenue procedure in that single Form 3115 generate a negative § 481(a) adjustment and other changes specified in section 6.12(1) of this revenue procedure in that same Form 3115 generate a positive § 481(a) adjustment, the taxpayer may provide a single negative § 481(a) adjustment for all such changes that are included in that Form 3115 generating such negative adjustment and a single positive § 481(a) adjustment for all such changes

that are included in that Form 3115 generating such positive adjustment.

(6) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change to the method of accounting under this section 6.12 is "198."

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

.13 *Depreciation of leasehold improvements (§§ 167, 168, and 197; § 1.167(a)–4).*

(1) *Description of change*. This change, as described in Rev. Proc. 2014–17, 2014–12 I.R.B. 661, applies to a taxpayer that wants to change its method of accounting to comply with § 1.167(a)–4 for leasehold improvements in which the taxpayer has a depreciable interest at the beginning of the year of change:

(a) From improperly depreciating the leasehold improvements to which § 168 applies over the term of the lease (including renewals, if applicable) to properly depreciating these improvements under § 168;

(b) From improperly amortizing leasehold improvements to which § 197 applies over the term of the lease (including renewals, if applicable) to properly amortizing these improvements under § 197; or

(c) From improperly amortizing leasehold improvements to which § 167(f)(1) applies over the term of the lease (including renewals, if applicable) to properly amortizing these improvements under § 167(f)(1).

(2) *Certain eligibility rules inapplicable*.

(a) *In general*. The eligibility rule in section 5.01(1)(d) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, does not apply to a taxpayer making this change.

(b) *Special rule*. The eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015–13 does not apply to a taxpayer making this change for any taxable year beginning on or after January 1, 2012, and beginning before January 1, 2016.

(3) *Manner of making change*.

(a) A qualified small taxpayer, as defined in section 6.01(4)(b) of this revenue procedure, is required to complete only the following information on Form 3115 (Rev. December 2015) to make this change:

(i) The identification section of page 1 (above Part I);

(ii) The signature section at the bottom of page 1;

(iii) Part I;

(iv) Part II, all lines except lines 13, 15b, 16, 17, and 19;

(v) Part IV, all lines except line 25; and

(vi) Schedule E.

(b) If any leasehold improvement is public utility property within the meaning of § 168(i)(10) or former § 167(l)(3)(A), a taxpayer (including a qualified small taxpayer) making this change must attach to its Form 3115 a statement providing that the taxpayer agrees to the following additional terms and conditions:

(i) A normalization method of accounting (within the meaning of § 168(i)(9) or former § 167(l)(3)(G)) will be used for the public utility property subject to the change;

(ii) As of the beginning of the year of change, the taxpayer will adjust its deferred tax reserve account or similar account in the taxpayer's regulatory books of account by the amount of the deferral of federal income tax liability associated with the § 481(a) adjustment applicable to the public utility property subject to the change; and

(iii) Within 30 calendar days of filing the federal income tax return for the year of change, the taxpayer will provide a copy of the completed Form 3115 to any regulatory body having jurisdiction over the public utility property subject to the change.

(4) *Concurrent automatic change*.

(a) A taxpayer making this change for more than one asset for the same year of change should file a single Form 3115 for all such assets and provide a single net § 481(a) adjustment for all the changes included in that Form 3115. If one or more of the changes in that single Form 3115 generate a negative § 481(a) adjustment and other changes in that same Form 3115 generate a positive § 481(a) adjustment, the taxpayer may provide a single negative § 481(a) adjustment for all the changes that are included in that Form 3115 generating such adjustment and a single positive § 481(a) adjustment for all the changes that are included in that Form 3115 generating such adjustment.

(b) A taxpayer making both this change and a change to a UNICAP method under section 12.01, 12.02, 12.08, or 12.12 of this revenue procedure (as applicable) for the same year of change should file a single Form 3115 for all such changes and must enter the designated automatic accounting method change numbers for the changes on the appropriate line on the Form 3115. See section 6.03(1)(b) of Rev. Proc. 2015–13 for information on making concurrent changes. For example, a qualified small taxpayer must include on the single Form 3115 the information required by section 6.13(3)(a) of this revenue procedure for this change and the information required by the lines on Form 3115 applicable to the UNICAP method change, including Part II line 14 and 15, Part IV, and Schedule D, and must include a separate response to each line on Form 3115 that is applicable to both changes (such as Part II lines 6b, 7, 8b, 14, and, as applicable for this change, Part IV) for which the taxpayer's response is different for this change and the change to a UNICAP method.

(5) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change to a method of accounting under this section 6.13 is "199."

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

.14 *Permissible to permissible method of accounting for depreciation of MACRS property (§ 168; §§ 1.168(i)–1, 1.168(i)–7, and 1.168(i)–8).*

(1) *Description of change*.

(a) *Applicability*. This change, as described in Rev. Proc. 2014–54, 2014–41 I.R.B. 675, applies to a taxpayer that wants to make a change in method of accounting for depreciation that is specified in section 6.14(3) of this revenue procedure for an asset:

(i) to which § 168 applies (MACRS property);

(ii) for which the present and proposed methods of accounting are permissible methods of accounting under § 1.168(i)–1,

§ 1.168(i)–7, or § 1.168(i)–8, as applicable; and

(iii) that is owned by the taxpayer at the beginning of the year of change.

(b) *Inapplicability*. This change does not apply to any property that is not depreciated under § 168 under the taxpayer's present and proposed methods of accounting.

(2) *Certain eligibility rules inapplicable*.

(a) *In general*. The eligibility rule in section 5.01(1)(d) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, does not apply to a taxpayer making this change.

(b) *Special rule*.

(i) The eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015–13 does not apply to a taxpayer making this change for any taxable year beginning on or after January 1, 2012, and beginning before January 1, 2016.

(ii) If a taxpayer makes both a change under this section 6.14 and a change under section 6.01 of this revenue procedure for any taxable year beginning on or after January 1, 2012, and beginning before January 1, 2016, on a single Form 3115 for the same asset for the same year of change in accordance with section 6.14(6)(b) of this revenue procedure, the eligibility rules in sections 5.01(1)(d) and (f) of Rev. Proc. 2015–13 do not apply to the taxpayer for either change.

(3) *Changes covered*. This section 6.14 only applies to the following changes in methods of accounting for depreciation of MACRS property: (a) For the items of MACRS property not subject to a general asset account election under § 168(i)(4) and the regulations thereunder—

(i) a change from single asset accounts (or item accounts) for specific items of MACRS property to multiple asset accounts (or pools) for the same assets, or *vice versa*, in accordance with § 1.168(i)–7;

(ii) a change from grouping specific items of MACRS property in multiple asset accounts to a different grouping of the same assets in multiple asset accounts in accordance with § 1.168(i)–7(c);

(iii) a change in the method of identifying which assets in multiple asset accounts or which portions of assets have been disposed of by the taxpayer from the specific identification method under § 1.168(i)–8(g)(1) to the first-in, first-out (FIFO) method of accounting under § 1.168(i)–8(g)(2)(i) or the modified FIFO method of accounting under § 1.168(i)–8(g)(2)(ii);

(iv) a change in the method of identifying which assets in multiple asset accounts or which portions of assets have been disposed of by the taxpayer from the FIFO method of accounting under § 1.168(i)–8(g)(2)(i) or the modified FIFO method of accounting under § 1.168(i)–(g)(2)(ii) to the specific identification method under § 1.168(i)–8(g)(1);

(v) a change in the method of identifying which assets in multiple asset accounts or which portions of assets have been disposed of by the taxpayer from the FIFO method of accounting under § 1.168(i)–8(g)(2)(i) to the modified FIFO method of accounting under § 1.168(i)–8(g)(2)(ii), or *vice versa*;

(vi) a change in the method of identifying which mass assets (as defined in § 1.168(i)–8(b)(3)) in multiple asset accounts or which portions of mass assets have been disposed of by the taxpayer from the specific identification method under § 1.168(i)–8(g)(1) to a mortality dispersion table in accordance with § 1.168(i)–8(g)(2)(iii);

(vii) a change in the method of identifying which mass assets (as defined in § 1.168(i)–8(b)(3)) in multiple asset accounts or which portions of mass assets have been disposed of by the taxpayer from the FIFO method of accounting under § 1.168(i)–8(g)(2)(i) or the modified FIFO method of accounting under § 1.168(i)–8(g)(2)(ii) to a mortality dispersion table in accordance with § 1.168(i)–8(g)(2)(iii);

(viii) a change in the method of identifying which mass assets (as defined in § 1.168(i)–8(b)(3)) in multiple asset accounts or which portions of mass assets have been disposed of by the taxpayer from a mortality dispersion table in accordance with § 1.168(i)–8(g)(2)(iii) to the specific identification method under § 1.168(i)–8(g)(1), the FIFO method of accounting under § 1.168(i)–8(g)(2)(i), or the modified FIFO method of accounting under § 1.168(i)–8(g)(2)(ii);

(ix) if § 1.168(i)–8(f)(2) applies (disposition of an asset in a multiple asset account) and it is impracticable from the taxpayer's records to determine the unadjusted depreciable basis of the asset disposed of, a change in the method of determining the unadjusted depreciable basis of all assets in the same multiple asset account from one reasonable method to another reasonable method; or

(x) if § 1.168(i)–8(f)(3) applies (disposition of a portion of an asset) and it is impracticable from the taxpayer's records to determine the unadjusted depreciable basis of the disposed portion of the asset, a change in the method of determining the unadjusted depreciable basis of all disposed portions of the asset from one reasonable method to another reasonable method; and

(b) For the items of MACRS property subject to a general asset account election under § 168(i)(4) and the regulations thereunder—

(i) a change from grouping specific items of MACRS property in general asset accounts to a different grouping of the same assets in general asset accounts in accordance with § 1.168(i)–1(c);

(ii) a change in the method of identifying which assets or which portions of assets have been disposed of by the taxpayer from the specific identification method under § 1.168(i)–1(j)(2)(i)(A) to the FIFO method of accounting under § 1.168(i)–1(j)(2)(i)(B) or the modified FIFO method of accounting under § 1.168(i)–1(j)(2)(i)(C);

(iii) a change in the method of identifying which assets or which portions of assets have been disposed of by the taxpayer from the FIFO method of accounting under § 1.168(i)–1(j)(2)(i)(B) or the modified FIFO method of accounting under § 1.168(i)–1(j)(2)(i)(C) to the specific identification method under § 1.168(i)–1(j)(2)(i)(A);

(iv) a change in the method of identifying which assets or which portions of assets have been disposed of by the taxpayer from the FIFO method of accounting under § 1.168(i)–1(j)(2)(i)(B) to the modified FIFO method of accounting under § 1.168(i)–1(j)(2)(i)(C), or *vice versa*;

(v) a change in the method of identifying which mass assets (as defined in § 1.168(i)–1(b)(6)) or which portions of mass assets that are in a separate general asset account in accordance with § 1.168–1(c)(2)(ii)(H), have been disposed of by the taxpayer from the specific identification method under § 1.168(i)–1(j)(2)(i)(A) to a mortality dispersion table in accordance with § 1.168(i)–1(j)(2)(i)(D);

(vi) a change in the method of identifying which mass assets (as defined in § 1.168(i)–1(b)(6)) or which portions of mass assets that are in a separate general asset account in accordance with § 1.168–1(c)(2)(ii)(H), have been disposed of by the taxpayer from the FIFO method of accounting under § 1.168(i)–1(j)(2)(i)(B) or the modified FIFO method of accounting under § 1.168(i)–1(j)(2)(i)(C) to a mortality dispersion table in accordance with § 1.168(i)–1(j)(2)(i)(D);

(vii) a change in the method of identifying which mass assets (as defined in § 1.168(i)–1(b)(6)), or which portions of mass assets that are in a separate general asset account in accordance with § 1.168–1(c)(2)(ii)(H), have been disposed of by the taxpayer from a mortality dispersion table in accordance with § 1.168(i)–1(j)(2)(i)(D) to the specific identification method under § 1.168(i)–1(j)(2)(i)(A), the FIFO method of accounting under § 1.168(i)–1(j)(2)(i)(B), or the modified FIFO method of accounting under § 1.168(i)–1(j)(2)(i)(C); or

(viii) if § 1.168(i)–1(j)(3) applies (basis of a disposed asset or a disposed portion of an asset in a general asset account) and it is impracticable from the taxpayer's records to determine the unadjusted depreciable basis of the disposed asset or the disposed portion of the asset, a change in the method of determining the unadjusted depreciable basis of all assets in the same general asset account from one reasonable method to another reasonable method.

(4) *Manner of making change*.

(a) The changes in methods of accounting specified in section 6.14(3)(a)(i) and (ii) and section 6.14(3)(b)(i) of this revenue procedure are made using a modified cut-off method under which the unadjusted depreciable basis and the depreciation reserve of the asset as of the beginning of the year of change are accounted for using the proposed method of accounting.

(i) If the change specified in section 6.14(3)(a)(i) of this revenue procedure is a change to a single asset account, the new single asset account must include a beginning balance for both the unadjusted depreciable basis and the depreciation reserve of the asset included in that single asset account.

(ii) If the change specified in section 6.14(3)(a)(i) or (ii) of this revenue procedure is a change to a multiple asset account (either a new one or a different grouping), the multiple asset account must include a beginning balance for both the unadjusted depreciable basis and the depreciation reserve. The beginning balance for the unadjusted depreciable basis of each multiple asset account is equal to the sum of the unadjusted depreciable bases as of the beginning of the year of change for all assets included in that multiple asset account. The beginning balance of the depreciation reserve of each multiple asset account is equal to the sum of the greater of the depreciation allowed or allowable as of the beginning of the year of change for all assets included in that multiple asset account.

(iii) The change specified in section 6.14(3)(b)(i) of this revenue procedure requires the general asset account to include a beginning balance for both the unadjusted depreciable basis and the depreciation reserve. The beginning balance for the unadjusted depreciable basis of each general asset account is equal to the sum of the unadjusted depreciable bases as of the beginning of the year of change for all assets included in that general asset account. The beginning balance of the depreciation reserve of each general asset account is equal to the sum of the greater of the depreciation allowed or allowable as of the beginning of the year of change for all assets included in that general asset account.

(b) The changes in methods of accounting specified in section 6.14(3)(a)(iii), (vi), (ix), and (x) and section 6.14(3)(b)(ii), (v), and (viii) of this revenue procedure are made using a cut-off method and apply to dispositions occurring on or after the beginning of the year of change.

(c) Even though the changes in methods of accounting specified in section 6.14(3)(a)(iv), (v), (vii), and (viii) and section 6.14(3)(b)(iii), (iv), (vi), and (vii) of this revenue procedure are changes from one permissible method of accounting to another permissible method of accounting, these changes are made with a § 481(a) adjustment. However, see section 6.14(4)(f) of this revenue procedure for an exception. For the changes in methods of accounting specified in section 6.14(3)(b)(iii), (iv), (vi), and (vii) of this revenue procedure, the § 481(a) adjustment should be zero unless § 1.168(i)–1(e)(3) applies to the asset subject to the change.

(d) A qualified small taxpayer, as defined in section 6.01(4)(b) of this revenue procedure, is required to complete only the following information on Form 3115 (Rev. December 2015) to make this change:

(i) The identification section of page 1 (above Part I);

(ii) The signature section at the bottom of page 1;

(iii) Part I;

(iv) Part II, all lines except lines 13, 15b, 16, 17, and 19 if the qualified small taxpayer is not making a change in method of accounting specified in section 6.14(3)(a)(ix) and (x) and section 6.14(3)(b)(viii) of this revenue procedure;

(v) Part II, all lines except lines 13, 15b, 16c, 17, and 19 if the qualified small taxpayer is making a change in method of accounting specified in section 6.14(3)(a)(ix) or (x) or section 6.14(3)(b)(viii) of this revenue procedure;

(vi) Part IV; and

(vii) Schedule E.

(e) If any asset subject to this change is public utility property within the meaning of § 168(i)(10), a taxpayer (including a qualified small taxpayer) making this change must attach to its Form 3115 a statement providing that the taxpayer agrees to the following additional terms and conditions:

(i) A normalization method of accounting (within the meaning of § 168(i)(9)) will be used for the public utility property subject to the change;

(ii) As of the beginning of the year of change, the taxpayer will adjust its deferred tax reserve account or similar account in the taxpayer's regulatory books of account by the amount of the deferral of federal income tax liability associated with the § 481(a) adjustment applicable to a change in method of accounting specified in section 6.14(3)(a)(iv), (v), (vii), or (viii) or section 6.14(3)(b)(iii), (iv), (vi), or (vii) of this revenue procedure made for the public utility property subject to the change; and

(iii) Within 30 calendar days of filing the federal income tax return for the year of change, the taxpayer will provide a copy of the completed Form 3115 to any regulatory body having jurisdiction over the public utility property subject to the change.

(f) A taxpayer that met the scope requirements of section 4 of Rev. Proc. 2015–20, 2015–9 I.R.B. 694, and that changed its method of accounting under section 6.37(3)(a)(iv), (a)(v), (a)(vii), or (a)(viii) of Rev. Proc. 2015–14 (which is now section 6.14(3)(a)(iv), (a)(v), (a)(vii), or (a)(viii) of this revenue procedure) by following section 5 of Rev. Proc. 2015–20 is required to calculate a § 481(a) adjustment as of the first day of the year of change that takes into account only dispositions in taxable years beginning on or after January 1, 2014.

(5) *No audit protection*. A taxpayer calculating a § 481(a) adjustment under section 6.14(4)(f) of this revenue procedure that takes into account only dispositions in taxable years beginning on or after January 1, 2014, does not receive audit protection under section 8.01 of Rev. Proc. 2015–13 for dispositions subject to a change under section 6.14(3)(a)(iv), (a)(v), (a)(vii), or (a)(viii) of this revenue procedure in taxable years beginning before January 1, 2014. *See* section 5.03 of Rev. Proc. 2015–20.

(6) *Concurrent change*.

(a) A taxpayer making this change for more than one asset for the same year of change should file a single Form 3115 for all such assets. If the change for more than one asset included in that Form 3115 is specified in section 6.14(3)(a)(iv), (v), (vii), or (viii) or section 6.14(3)(b)(iii), (iv), (vi), or (vii) of this revenue procedure, the single Form 3115 also should provide a single net § 481(a) adjustment for all such changes. If one or more changes specified in section 6.14(3)(a)(iv), (v), (vii), or (viii) or section 6.14(3)(b)(iii), (iv), (vi), or (vii) of this revenue procedure in that single Form 3115 generate a negative § 481(a) adjustment and other changes specified in section 6.14(3)(a)(iv), (v), (vii), or (viii) or section 6.14(3)(b)(iii), (iv), (vi), or (vii) of this revenue procedure in that same Form 3115 generate a positive § 481(a) adjustment, the taxpayer may provide a single negative § 481(a) adjustment for all such changes that are included in that Form 3115 generating such negative adjustment and a single positive § 481(a) adjustment for all such changes that are included in that Form 3115 generating such positive adjustment.

(b) A taxpayer making this change and any change listed in section 6.14(6)(b)(i)–(iv) of this revenue procedure for the same year of change should file a single Form 3115 for all such changes and must enter the designated automatic accounting method change numbers for the changes on the appropriate line on the Form 3115. See section 6.03(1)(b) of Rev. Proc. 2015–13 for information on making concurrent changes. For example, a qualified small taxpayer must include on the single Form 3115 the information required to be completed on Form 3115 by a qualified small taxpayer under this revenue procedure for each change in method of accounting included on that Form 3115. The listed changes are:

(i) A change under section 6.01 of this revenue procedure;

(ii) A change under section 6.15 of this revenue procedure;

(iii) A change under section 6.16 of this revenue procedure;

(iv) A change under section 6.17 of this revenue procedure; and

(v) A change under section 11.07(3)(c) of this revenue procedure.

(7) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change to a method of accounting under this section 6.14 is "200."

(8) *Contact information*. For further information regarding a change under this section, contact Patrick Clinton at (202) 317-7005 (not a toll-free call).

.15 *Disposition of a building or structural component (§ 168; § 1.168(i)–8).*

(1) *Description of change*.

(a) *Applicability*. This change, as described in Rev. Proc. 2014–54, 2014–41 I.R.B. 675, applies to a taxpayer that wants to make a change in method of accounting that is specified in section 6.15(3) of this revenue procedure for disposing of a building or a structural component or disposing of a portion of a building (including its structural components) to which the partial disposition rule in § 1.168(i)–8(d)(1) applies. These specified changes are consistent with §§ 1.168(i)–8(b)(2), 1.168(i)–8(c)(4)(ii)(A), (B), and (D), 1.168(i)–8(f), and 1.168(i)–8(g), as applicable. This change also affects the determination of gain or loss from disposing of the building, the structural component, or the portion of the building (including its structural components) and may affect whether the taxpayer must capitalize amounts paid to restore a unit of property (as determined under § 1.263(a)–3(e) or (f)) under § 1.263(a)–3(k).

(b) *Inapplicability*. This change does not apply to the following:

(i) Any asset (as determined under § 1.168(i)–8(c)(4)) that is not depreciated under § 168 under the taxpayer's present method of accounting and, if applicable, under the taxpayer's proposed method of accounting;

(ii) Any asset subject to a general asset account election under § 168(i)(4) and the regulations thereunder (but see section 6.17 of this revenue procedure for making a change in method of accounting for dispositions of tangible depreciable assets subject to a general asset account election);

(iii) Any multiple buildings, condominium units, or cooperative units that are treated as a single building under the taxpayer's present method of accounting, or will be treated as a single building under the taxpayer's proposed method of accounting, pursuant to § 1.1250–1(a)(2)(ii);

(iv) Any disposition of a portion of an asset in a transaction described in the last sentence in § 1.168(i)–8(d)(1) for which the taxpayer did not make a partial disposition election in accordance with § 1.168(i)–8(d)(2)(ii) or (iii), as applicable (but see section 6.10 of this revenue procedure for making a late partial disposition election and section 6.12 of this revenue procedure for making a partial disposition election pursuant to § 1.168(i)–8(d)(2)(iii)); or

(v) Any demolition of a structure to which § 280B and § 1.280B–1 apply.

(2) *Certain eligibility rules inapplicable*.

(a) *In general*. The eligibility rule in section 5.01(1)(d) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, does not apply to a taxpayer making this change.

(b) *Special rule*.

(i) The eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015–13 does not apply to a taxpayer making this change for any taxable year beginning on or after January 1, 2012, and beginning before January 1, 2016.

(ii) If a taxpayer makes both a change under this section 6.15 and a change under section 6.01 of this revenue procedure for any taxable year beginning on or after January 1, 2012, and beginning before January 1, 2016, on a single Form 3115 for the same asset for the same year of change in accordance with section 6.15(10)(b) or (c) of this revenue procedure, the eligibility rules in sections 5.01(1)(d) and (f) of Rev. Proc. 2015–13 do not apply to the taxpayer for either change.

(3) *Covered changes*. This section 6.15 only applies to the following changes in methods of accounting for a building (including its structural components), condominium unit (including its structural components), cooperative unit (including its structural components), or an improvement or addition (including its structural components) thereto:

(a) For purposes of applying § 1.168(i)–8(c)(4) (determination of asset disposed of), a change to the appropriate asset as determined under § 1.168(i)–8(c)(4)(ii)(A), (B), or (D), as applicable;

(b) If the taxpayer makes the change specified in section 6.15(3)(a) of this revenue procedure, and if the taxpayer disposed of the asset as determined under section 6.15(3)(a) of this revenue procedure in a taxable year prior to the year of change but under its present method of accounting continues to deduct depreciation for such disposed asset, a change from depreciating the disposed asset to recognizing gain or loss upon disposition or, if § 280B and § 1.280B–1 apply to the disposition, change from depreciating such disposed asset to capitalizing the loss sustained on account of the demolition to the land on which the demolished structure was located;

(c) If the taxpayer makes the change specified in section 6.15(3)(a) of this revenue procedure, and if the taxpayer disposed of a portion of the asset as determined under section 6.15(3)(a) of this revenue procedure in a transaction described in the first sentence in § 1.168(i)–8(d)(1) in a taxable year prior to the year of change but under its present method of accounting continues to deduct depreciation for such disposed portion, a change from depreciating the disposed portion to recognizing gain or loss upon disposition or, if § 280B and § 1.280B–1 apply to the disposition, change from depreciating such disposed portion to capitalizing the loss sustained on account of the demolition to the land on which the demolished structure was located;

(d) If the taxpayer's present method of accounting for its buildings (including their structural components), condominium units (including their structural components), cooperative units (including their structural components), and improvements or additions (including its structural components) thereto that are depreciated under § 168 is in accord with § 1.168(i)–8(c)(4)(ii)(A), (B), and (D), and if the taxpayer disposed of an asset as determined under § 1.168(i)–8(c)(4)(ii)(A), (B), or (D), as applicable, in a taxable year prior to the year of change but under its present method of accounting continues to deduct depreciation for such disposed asset, a change from depreciating the disposed asset to recognizing gain or loss upon disposition or, if § 280B and § 1.280B–1 apply to the disposition, change from depreciating such disposed asset to capitalizing the loss sustained on account of the demolition to the land on which the demolished structure was located;

(e) If the taxpayer's present method of accounting for its buildings (including their structural components), condominium units (including their structural components), cooperative units (including their structural components), and improvements or additions (including its structural components) thereto that are depreciated under § 168 is in accord with § 1.168(i)–8(c)(4)(ii)(A), (B), and (D), and if the taxpayer disposed of a portion of an asset as determined under § 1.168(i)–8(c)(4)(ii)(A), (B), or (D), as applicable, in a transaction described in the first sentence in § 1.168(i)–8(d)(1) in a taxable year prior to the year of change but under its present method of accounting continues to deduct depreciation for such disposed portion, a change from depreciating the disposed portion to recognizing gain or loss upon disposition or, if § 280B and § 1.280B–1 apply to the disposition, change from depreciating such disposed portion to capitalizing the loss sustained on account of the demolition to the land on which the demolished structure was located;

(f) A change in the method of identifying which assets in multiple asset accounts or which portions of assets have been disposed of from a method of accounting not specified in § 1.168(i)–8(g)(1) or (2)(i), (ii), or (iii) (for example, the last-in, first-out (LIFO) method of accounting) to a method of accounting specified in § 1.168(i)–8(g)(1) or (2)(i), (ii), or (iii), as applicable;

(g) If § 1.168(i)–8(f)(2) applies (disposition of an asset in a multiple asset account) and it is practicable from the taxpayer's records to determine the unadjusted depreciable basis of the disposed asset, a change in the method of determining the unadjusted depreciable basis of the disposed asset from a method of not using the taxpayer's records to a method of using the taxpayer's records;

(h) If § 1.168(i)–8(f)(2) applies (disposition of an asset in a multiple asset account) and it is impracticable from the taxpayer's records to determine the unadjusted depreciable basis of the disposed asset, a change in the method of determining the unadjusted depreciable basis of all assets in the same multiple asset account from an unreasonable method (for example, discounting the cost of the replacement asset to its placed-in-service year cost using the Consumer Price Index) to a reasonable method;

(i) If § 1.168(i)–8(f)(3) applies (disposition of a portion of an asset) and it is practicable from the taxpayer's records to determine the unadjusted depreciable basis of the disposed portion of the asset, a change in the method of determining the unadjusted depreciable basis of the disposed portion of the asset from a method of not using the taxpayer's records to a method of using the taxpayer's records;

(j) If § 1.168(i)–8(f)(3) applies (disposition of a portion of an asset) and it is impracticable from the taxpayer's records to determine the unadjusted depreciable basis of the disposed portion of the asset, a change in the method of determining the unadjusted depreciable basis of the disposed portion of the asset from an unreasonable method (for example, discounting the cost of the replacement portion of the asset to its placed-in-service year cost using the Consumer Price Index) to a reasonable method; or

(k) A change from recognizing gain or loss under § 1.168(i)–8T upon the disposition of an asset (as determined under § 1.168(i)–8(c)(4)(ii)(A), (B), or (D), as applicable) included in a general asset account to recognizing gain or loss upon the disposition of the same asset under § 1.168(i)–8 if: (A) the taxpayer makes the change specified in section 6.11 of this revenue procedure (revocation of a general asset account election); (B) the taxpayer made a qualifying disposition election under § 1.168(i)–1T(e)(3)(iii) in a taxable year prior to the year of change for the disposition of such asset; (C) the taxpayer's present method of accounting for such asset is in accord with § 1.168(i)–8(c)(4)(ii)(A), (B), or (D), as applicable; and (D) the taxpayer recognized a gain or loss under § 1.168(i)–8T upon the disposition of such asset in a taxable year prior to the year of change.

(4) *Examples*. The following examples illustrate the covered changes specified in section 6.15(3) of this revenue procedure.

(a) *Example 1*. X, a calendar-year taxpayer, acquired and placed in service a building and its structural components in 2000. In 2005, X constructed and placed in service an addition to this building. X depreciates the building, the addition, and their structural components under § 168. A change by X to treating the original building (including its structural components) as an asset and the addition to the building (including the structural components of such addition) as a separate asset for disposition purposes is a change described in section 6.15(3)(a) of this revenue procedure solely for purposes of § 1.168(i)–8(c)(4).

(b) *Example 2*. Y, a calendar year taxpayer, acquired and placed in service a building and its structural components in 1990. Y depreciates this building and its structural components under § 168. In 2000, a tornado damaged the roof and, as a result, Y replaced the entire roof of the building. Y did not recognize a loss on the retirement of the original roof and continues to depreciate the original roof. Y also capitalized the cost of the replacement roof and has been depreciating this roof under § 168 since 2000. Because the original roof was disposed of as a result of a casualty event described in § 165, a change by Y from depreciating the original roof to recognizing a loss upon its retirement is a covered change described in section 6.15(3)(e) of this revenue procedure solely for purposes of § 1.168(i)–8.

(c) *Example 3*. The facts are the same as in *Example 2*, except a tornado did not occur, but Y still replaced the entire roof of the building in 2000. Because the original roof was not disposed of as a result of any of the events described in the first sentence in § 1.168(i)–8(d)(1) that require a partial disposition, a partial disposition election must be made to change from depreciating the original roof to recognizing a loss upon its retirement. Pursuant to section 6.15(1)(b)(iv) of this revenue procedure, section 6.15 does not apply to the disposition of the original roof in 2000. But see section 6.10 of this revenue procedure for making the late partial disposition election under § 1.168(i)–8(d)(2)(i) for the original roof.

(5) *Manner of making change*.

(a) A taxpayer (including a qualified small taxpayer as defined in section 6.01(4)(b) of this revenue procedure) making this change must attach to its Form 3115 a statement with the following:

(i) A description of the assets to which this change applies;

(ii) If the taxpayer is making a change specified in section 6.15(3)(a) of this revenue procedure, a description of the assets for disposition purposes under the taxpayer's present and proposed methods of accounting;

(iii) If the taxpayer is making the change specified in section 6.15(3)(f) of this revenue procedure, a description of the methods of identifying which assets have been disposed of under the taxpayer's present and proposed methods of accounting;

(iv) If the taxpayer is making the change specified in section 6.15(3)(h) or (j) of this revenue procedure, a description of the methods of determining the unadjusted depreciable basis of the disposed asset or disposed portion of the asset, as applicable, under the taxpayer's present and proposed methods of accounting; and

(v) If any asset is public utility property within the meaning of § 168(i)(10), a statement providing that the taxpayer agrees to the following additional terms and conditions:

(A) A normalization method of accounting (within the meaning of § 168(i)(9)) will be used for the public utility property subject to the application;

(B) As of the beginning of the year of change, the taxpayer will adjust its deferred tax reserve account or similar account in the taxpayer's regulatory books of account by the amount of the deferral of federal income tax liability associated with the § 481(a) adjustment applicable to the public utility property subject to the application; and

(C) Within 30 calendar days of filing the federal income tax return for the year of change, the taxpayer will provide a copy of the completed application to any regulatory body having jurisdiction over the public utility property subject to the application.

(b) A qualified small taxpayer, as defined in section 6.01(4)(b) of this revenue procedure, is required to complete only the following information on Form 3115 (Rev. December 2015) to make this change:

(i) The identification section of page 1 (above Part I);

(ii) The signature section at the bottom of page 1;

(iii) Part I;

(iv) Part II, all lines except lines 13, 15b, 16, 17, and 19 if the qualified small taxpayer is not making a change in method of accounting specified in section 6.15(3)(h) and (j) of this revenue procedure;

(v) Part II, all lines except lines 13, 15b, 16c, 17, and 19 if the qualified small taxpayer is making a change in method of accounting specified in section 6.15(3)(h) or (j) of this revenue procedure;

(v) Part IV, all lines except line 25; and

(vi) Schedule E.

(6) *No ruling on asset*. The consent granted under section 9 of Rev. Proc. 2015–13 for a change specified in section 6.15(3)(a) of this revenue procedure is not a determination by the Commissioner that the taxpayer is using the appropriate asset under § 1.168(i)–8(c)(4) for determining what asset is disposed of by the taxpayer and does not create any presumption that the proposed asset is permissible under § 1.168(i)–8(c)(4). The director will ascertain whether the taxpayer's determination of its asset under § 1.168(i)–8(c)(4) is permissible.

(7) *Section 481(a) adjustment*.

(a) A taxpayer changing its method of accounting under this section 6.15 may use statistical sampling in determining the § 481(a) adjustment by following the guidance provided in Rev. Proc. 2011–42, 2011–37 I.R.B. 318.

(b) A taxpayer that met the scope requirements of section 4 of Rev. Proc. 2015–20, 2015–9 I.R.B. 694, and that changed its method of accounting under section 6.38 of Rev. Proc. 2015–14 (which is now this section 6.15) by following section 5 of Rev. Proc. 2015–20 is required to calculate a section § 481(a) adjustment as of the first day of the year of change that takes into account only dispositions in taxable years beginning on or after January 1, 2014.

(8) *Section 481(a) adjustment period.*

(a) A taxpayer must take the entire amount of the § 481(a) adjustment into account in computing taxable income for the year of change:

(i) If the taxpayer is making the change specified in section 6.15(3)(a) of this revenue procedure and if the taxpayer recognized a gain or loss under § 1.168(i)–8T on the disposition of the asset (or if applicable, a portion thereof) in a taxable year prior to the year of change;

(ii) If the taxpayer is making the change specified in section 6.15(3)(k) of this revenue procedure; or

(iii) If the taxpayer is a qualified taxpayer as defined in section 4.01 of Rev. Proc. 2015–56, 2015–49 I.R.B. 827, and that is within the scope of section 3 of Rev. Proc. 2015–56, and is making the change specified in section 5.02(5)(b) of Rev. Proc. 2015–56 on or before the first taxable year that the qualified taxpayer uses the remodel-refresh safe harbor provided in section 5.02 of Rev. Proc. 2015–56.

(b) If section 6.15(8)(a) of this revenue procedure does not apply, see section 7.03 of Rev. Proc. 2015–13 for the § 481(a) adjustment period.

(c) *Example*. (i) Y, a fiscal year taxpayer with a taxable year beginning December 1 and ending November 30, acquired and placed in service a building and its structural components in 2000. Y depreciates this building and its structural components under § 168. The roof is a structural component of the building. Y replaced the entire roof in June 2010. On its federal tax return for the taxable year ended November 30, 2010, Y did not recognize a loss on the retirement of the original roof and continues to depreciate the original roof. Y also capitalized the cost of the replacement roof and has been depreciating this roof under § 168 since June 2010. The adjusted depreciable basis of the original roof at the time of its retirement in 2010 (taking into account the applicable convention) is $11,000, and Y claimed depreciation of $1,000 for such roof after its retirement (taking into account the applicable convention) and before the taxable year ended November 30, 2013 (2012 taxable year). Also the 12-month allowable depreciation deduction for the original roof is $500 for the 2012 taxable year and $500 for the taxable year ended November 30, 2014 (2013 taxable year).

(ii) In accordance with § 1.168(i)–8T(c)(4)(ii)(A) and (B) and section 6.29(3)(a) and (b) of the APPENDIX to Rev. Proc. 2011–14, as modified by Rev. Proc. 2012–20, 2012–14 I.R.B. 700, Y filed with its federal income tax return for the taxable year ended November 30, 2013, a Form 3115 to treat the building as an asset and each structural component of the building as a separate asset for disposition purposes and also to change from depreciating the original roof to recognizing a loss upon its retirement. The amount of the net negative § 481(a) adjustment on this Form 3115 is $10,000 (adjusted depreciable basis of $11,000 for the original roof at the time of its retirement (taking into account the applicable convention) less depreciation of $1,000 claimed for such roof after its retirement (taking into account the applicable convention) and before the 2012 taxable year).

(iii) Y complies with § 1.168(i)–8 beginning with its taxable year ending November 30, 2015 (2014 taxable year), but decides not to make any late partial disposition election under section 6.10 of this revenue procedure. In accordance with section 6.15(3)(a) of this revenue procedure, Y files a Form 3115 with its federal income tax return for the 2014 taxable year to change to treating the original building (including its original roof and other original structural components) as an asset and the replacement roof as a separate asset for disposition purposes. Because Y is not making a late partial disposition election for the original roof, Y does not recognize the net loss of $10,000 upon the retirement of the original roof under § 1.168(i)–8 and Y will continue to depreciate the original roof. Thus, the net positive § 481(a) adjustment for this change is $9,000 (net loss of $10,000 claimed on the 2012 return for the retirement of the original roof less depreciation of $1,000 for the original roof for the 2012 and 2013 taxable years) and is included in Y's taxable income for the 2014 taxable year.

(9) *No audit protection*. A taxpayer calculating a § 481(a) adjustment under section 6.15(7)(b) of this revenue procedure that takes into account only dispositions in taxable years beginning on or after January 1, 2014, does not receive audit protection under section 8.01 of Rev. Proc. 2015–13 for dispositions subject to a change under this section 6.15 in taxable years beginning before January 1, 2014. *See* section 5.04 of Rev. Proc. 2015–20.

(10) *Concurrent automatic change*.

(a) A taxpayer making this change for more than one asset for the same year of change should file a single Form 3115 for all such assets and provide a single net § 481(a) adjustment for all the changes included in that Form 3115. If one or more of the changes in that single Form 3115 generate a negative § 481(a) adjustment and other changes in that same Form 3115 generate a positive § 481(a) adjustment, the taxpayer may provide a single negative § 481(a) adjustment for all the changes that are included in that Form 3115 generating such negative adjustment and a single positive § 481(a) adjustment for all the changes that are included in that Form 3115 generating such positive adjustment.

(b) A taxpayer making this change and any change listed in section 6.15(10)(b)(i)–(iv) of this revenue procedure for the same year of change should file a single Form 3115 for all of such changes and must enter the designated automatic accounting method change numbers for the changes on the appropriate line on the Form 3115. See section 6.03(1)(b) of Rev. Proc. 2015–13 for information on making concurrent changes. For example, a qualified small taxpayer must include on the single Form 3115 the information required to be completed on Form 3115 by a qualified small taxpayer under this revenue procedure for each change in method of accounting included on that Form 3115. The listed changes are:

(i) A change under section 6.01 of this revenue procedure;

(ii) A change under section 6.14 of this revenue procedure;

(iii) A change under section 6.16 of this revenue procedure; and

(iv) A change under section 6.17 of this revenue procedure.

(c) A taxpayer making this change and a change under section 6.11 of this revenue procedure (revocation of a general asset account election) and/or any change listed in section 6.15(10)(c)(i)–(iii) of this revenue procedure for the same year of change should file a single Form 3115 for all such changes and must enter the designated automatic accounting method change numbers for the changes on the appropriate line on the Form 3115. This section 6.15(10)(c) applies only if all of these changes are made for any taxable year beginning on or after January 1, 2012, and beginning before January 1, 2015. See section 6.03(1)(b) of Rev. Proc. 2015–13 for information on making concurrent changes. For example, a qualified small taxpayer must include on the single Form 3115 the information required to be completed on Form 3115 by a qualified small taxpayer under this revenue procedure for each change in method of accounting included on that Form 3115. The listed changes are:

(i) A change under section 6.01 of this revenue procedure;

(ii) A change under section 6.14(3)(a) of this revenue procedure; and

(iii) A change under section 6.16 of this revenue procedure.

(11) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change to the method of accounting under this section 6.15 is "205."

(12) *Contact information*. For further information regarding a change under this section, contact Patrick Clinton at (202) 317-7005 (not a toll-free call).

.16 *Dispositions of tangible depreciable assets (other than a building or its structural components) (§ 168; § 1.168(i)–8).*

(1) *Description of change*.

(a) *Applicability*. This change, as described in Rev. Proc. 2014–54, 2014–41 I.R.B. 675, applies to a taxpayer that wants to make a change in method of accounting that is specified in section 6.16(3) of this revenue procedure for disposing of § 1245 property or a depreciable land improvement or disposing of a portion of § 1245 property or a depreciable land improvement to which the partial disposition rule in § 1.168(i)–8(d)(1) applies. These specified changes are consistent with §§ 1.168(i)–8(c)(4)(i), 1.168(i)–8(c)(4)(ii)(C) and (D), 1.168(i)–8(f), and 1.168(i)–8(g), as applicable. This change also affects the determination of gain or loss from disposing of the § 1245 property, the depreciable land improvement, or a portion of the § 1245 property or depreciable land improvement, and may affect whether the taxpayer must capitalize amounts paid to restore a unit of property (as determined under § 1.263(a)–3(e) or (f)) under § 1.263(a)–3(k).

(b) *Inapplicability*. This change does not apply to the following:

(i) Any asset (as determined under § 1.168(i)–8(c)(4)) that is not depreciated under § 168 under the taxpayer's present method of accounting and, if applicable, under the taxpayer's proposed method of accounting;

(ii) Any building (including its structural components), condominium unit (including its structural components), cooperative unit (including its structural components), or an improvement or addition (including its structural components) thereto (but see section 6.15 of this revenue procedure for making this change);

(iii) Any asset subject to a general asset account election under § 168(i)(4) and the regulations thereunder (but see section 6.17 of this revenue procedure for making a change for dispositions of tangible depreciable assets subject to a general asset account election); or

(iv) Any disposition of a portion of an asset in a transaction described in the last sentence in § 1.168(i)–8(d)(1) for which the taxpayer did not make a partial disposition election in accordance with § 1.168(i)–8(d)(2)(ii) or (iii), as applicable (but see section 6.10 of this revenue procedure for making a late partial disposition election and section 6.12 of this revenue procedure for making a partial disposition election pursuant to § 1.168(i)–8(d)(2)(iii)).

(2) *Certain eligibility rules inapplicable*.

(a) *In general*. The eligibility rule in section 5.01(1)(d) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, does not apply to a taxpayer making this change.

(b) *Special rule*.

(i) The eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015–13 does not apply to a taxpayer making this change for any taxable year beginning on or after January 1, 2012, and beginning before January 1, 2016.

(ii) If a taxpayer makes both a change under this section 6.16 and a change under section 6.01 of this revenue procedure for any taxable year beginning on or after January 1, 2012, and beginning before January 1, 2016, on a single Form 3115 for the same asset for the same year of change in accordance with section 6.16(9)(b) or (c) of this revenue procedure, the eligibility rules in sections 5.01(1)(d) and (f) of Rev. Proc. 2015–13 do not apply to the taxpayer for either change.

(3) *Covered changes*. This section 6.16 only applies to the following changes in methods of accounting for a § 1245 property, a depreciable land improvement, or an improvement or addition thereto:

(a) For purposes of applying § 1.168(i)–8(c)(4) (determination of asset disposed of), a change to the appropriate asset as determined under § 1.168(i)–8(c)(4)(i), (ii)(C), or (ii)(D), as applicable;

(b) If the taxpayer makes the change specified in section 6.16(3)(a) of this revenue procedure, and if the taxpayer disposed of the asset as determined under section 6.16(3)(a) of this revenue procedure in a taxable year prior to the year of change but continues to deduct depreciation for such disposed asset under the taxpayer's present method of accounting, a change from depreciating the disposed asset to recognizing gain or loss upon disposition;

(c) If the taxpayer makes the change specified in section 6.16(3)(a) of this revenue procedure, and if the taxpayer disposed of a portion of the asset as determined under section 6.16(3)(a) of this revenue procedure in a transaction described in the first sentence in § 1.168(i)–8(d)(1) in a taxable year prior to the year of change but under its present method of accounting continues to deduct depreciation for such disposed portion, a change from depreciating the disposed portion to recognizing gain or loss upon disposition;

(d) If the taxpayer's present method of accounting for its § 1245 property, depreciable land improvements, or improvements or additions thereto is in accord with § 1.168(i)–8(c)(4)(i) or (ii), as applicable, and if the taxpayer disposed of an asset as determined under § 1.168(i)–8(c)(4)(i) or (ii), as applicable, in a taxable year prior to the year of change but under its present method of accounting continues to deduct depreciation for this disposed asset, a change from depreciating the disposed asset to recognizing gain or loss upon disposition;

(e) If the taxpayer's present method of accounting for its § 1245 property, depreciable land improvements, or improvements or additions thereto is in accord with § 1.168(i)–8(c)(4)(i) or (ii), as applicable, and if the taxpayer disposed of a portion of an asset as determined under § 1.168(i)–8(c)(4)(i) or (ii), as applicable, in a transaction described in the first sentence in § 1.168(i)–8(d)(1) in a taxable year prior to the year of change but under its present method of accounting continues to deduct depreciation for such disposed portion, a change from depreciating the disposed portion to recognizing gain or loss upon disposition;

(f) A change in the method of identifying which assets in multiple asset accounts or which portions of assets have been disposed of from a method of accounting not specified in § 1.168(i)–8(g)(1) or (2)(i), (ii), or (iii) (for example, the last-in, first-out (LIFO) method of accounting) to a method of accounting specified in § 1.168(i)–8(g)(1) or (2)(i), (ii), or (iii), as applicable;

(g) If § 1.168(i)–8(f)(2) applies (disposition of an asset in a multiple asset account) and it is practicable from the taxpayer's records to determine the unadjusted depreciable basis of the disposed asset, a change in the method of determining the unadjusted depreciable basis of the disposed asset from a method of not using the taxpayer's records to a method of using the taxpayer's records;

(h) If § 1.168(i)–8(f)(2) applies (disposition of an asset in a multiple asset account) and it is impracticable from the taxpayer's records to determine the unadjusted depreciable basis of the disposed asset, a change in the method of determining the unadjusted depreciable basis of all assets in the same multiple asset account from an unreasonable method (for example, discounting the cost of the replacement asset to its placed-in-service year cost using the Consumer Price Index) to a reasonable method;

(i) If § 1.168(i)–8(f)(3) applies (disposition of a portion of an asset) and it is practicable from the taxpayer's records to determine the unadjusted depreciable basis of the disposed portion of the asset, a change in the method of determining the unadjusted depreciable basis of the disposed portion of the asset from a method of not using the taxpayer's records to a method of using the taxpayer's records;

(j) If § 1.168(i)–8(f)(3) applies (disposition of a portion of an asset) and it is impracticable from the taxpayer's records to determine the unadjusted depreciable basis of the disposed portion of the asset, a change in the method of determining the unadjusted depreciable basis of the disposed portion of the asset from an unreasonable method (for example, discounting the cost of the replacement portion of the asset to its placed-in-service year cost using the Consumer Price Index) to a reasonable method; or

(k) A change from recognizing gain or loss under § 1.168(i)–8T upon the disposition of a section 1245 property, depreciable land improvement, or improvement or addition thereto included in a general asset account to recognizing gain or loss upon the disposition of the same asset under § 1.168(i)–8 if: (A) the taxpayer makes the change specified in section 6.11 of this revenue procedure (revocation of a general asset account election); (B) the taxpayer made a qualifying disposition election under § 1.168(i)–1T(e)(3)(iii) in a taxable year prior to the year of change for the disposition of such asset; (C) the taxpayer's present method of accounting for such asset is in accord with § 1.168(i)–8(c)(4)(i) or (ii), as applicable; and (D) the taxpayer recognized a gain or loss under § 1.168(i)–8T on the disposition of such asset in a taxable year prior to the year of change.

(4) *Manner of making change*.

(a) A taxpayer (including a qualified small taxpayer as defined in section 6.01(4)(b) of this revenue procedure) making this change must attach to its Form 3115 a statement with the following:

(i) A description of the assets to which this change applies;

(ii) If the taxpayer is making a change specified in section 6.16(3)(a) of this revenue procedure, a description of the assets for disposition purposes under the taxpayer's present and proposed methods of accounting;

(iii) If the taxpayer is making the change specified in section 6.16(3)(f) of this revenue procedure, a description of the methods of identifying which assets have been disposed of under the taxpayer's present and proposed methods of accounting;

(iv) If the taxpayer is making the change specified in section 6.16(3)(h) or (j) of this revenue procedure, a description of the methods of determining the unadjusted depreciable basis of the disposed asset or disposed portion of the asset, as applicable, under the taxpayer's present and proposed methods of accounting; and

(v) If any asset is public utility property within the meaning of § 168(i)(10), a statement providing that the taxpayer agrees to the following additional terms and conditions:

(A) A normalization method of accounting (within the meaning of § 168(i)(9)) will be used for the public utility property subject to the application;

(B) As of the beginning of the year of change, the taxpayer will adjust its deferred tax reserve account or similar account in the taxpayer's regulatory books of account by the amount of the deferral of federal income tax liability associated with the § 481(a) adjustment applicable to the public utility property subject to the application; and

(C) Within 30 calendar days of filing the federal income tax return for the year of change, the taxpayer will provide a copy of the completed application to any regulatory body having jurisdiction over the public utility property subject to the application.

(b) A qualified small taxpayer, as defined in section 6.01(4)(b) of this revenue procedure, is required to complete only the following information on Form 3115 (Rev. December 2015) to make this change:

(i) The identification section of page 1 (above Part I);

(ii) The signature section at the bottom of page 1;

(iii) Part I;

(iv) Part II, all lines except lines 13, 15b, 16, 17, and 19 if the qualified small taxpayer is not making a change in method of accounting specified in section 6.16(3)(h) and (j) of this revenue procedure;

(v) Part II, all lines except lines 13, 15b, 16c, 17, and 19 if the qualified small taxpayer is making a change in method of accounting specified in section 6.16(3)(h) or (j) of this revenue procedure;

(v) Part IV, all lines except line 25; and

(vi) Schedule E.

(5) *No ruling on asset*. The consent granted under section 9 of Rev. Proc. 2015–13 for a change specified in section 6.16(3)(a) of this revenue procedure is not a determination by the Commissioner that the taxpayer is using the appropriate asset under § 1.168(i)–8(c)(4) for determining what asset is disposed of by the taxpayer and does not create any presumption that the proposed asset is permissible under § 1.168(i)–8(c)(4). The director will ascertain whether the taxpayer's determina-

tion of its asset under § 1.168(i)–8(c)(4) is permissible.

(6) *Section 481(a) adjustment*.

(a) A taxpayer changing its method of accounting under section 6.16 of the revenue procedure may use statistical sampling in determining the § 481(a) adjustment by following the guidance provided in Rev. Proc. 2011–42, 2011–37 I.R.B. 318.

(b) A taxpayer that met the scope requirements of section 4 of Rev. Proc. 2015–20, 2015–9 I.R.B. 694, and that changed its method of accounting under section 6.39 of Rev. Proc. 2015–14 (which is now this section 6.16) by following section 5 of Rev. Proc. 2015–20 is required to calculate a section § 481(a) adjustment as of the first day of the year of change that takes into account only dispositions in taxable years beginning on or after January 1, 2014.

(7) *Section 481(a) adjustment period*.

(a) A taxpayer must take the entire amount of the § 481(a) adjustment into account in computing taxable income for the year of change:

(i) If the taxpayer is making the change specified in section 6.16(3)(a) of this revenue procedure and if the taxpayer recognized a gain or loss under § 1.168(i)–8T on the disposition of the § 1245 property, depreciable land improvement, or improvement or addition thereto (or if applicable, a portion of such asset) in a taxable year prior to the year of change; or

(ii) If the taxpayer is making the change specified in section 6.16(3)(k) of this revenue procedure.

(b) If section 6.16(7)(a) of this revenue procedure does not apply, see section 7.03 of Rev. Proc. 2015–13 for the § 481(a) adjustment period.

(8) *No audit protection*. A taxpayer calculating a § 481(a) adjustment under section 6.16(6)(b) of this revenue procedure that takes into account only dispositions in taxable years beginning on or after January 1, 2014, does not receive audit protection under section 8.01 of Rev. Proc. 2015–13 for dispositions subject to a change under this section 6.16 in taxable years beginning before January 1, 2014. *See* section 5.05 of Rev. Proc. 2015–20.

(9) *Concurrent automatic change*.

(a) A taxpayer making this change for more than one asset for the same year of change should file a single Form 3115 for all such assets and provide a single net § 481(a) adjustment for all the changes included in that Form 3115. If one or more of the changes in that single Form 3115 generate a negative § 481(a) adjustment and other changes in that same Form 3115 generate a positive § 481(a) adjustment, the taxpayer may provide a single negative § 481(a) adjustment for all the changes that are included in that Form 3115 generating such negative adjustment and a single positive § 481(a) adjustment for all the changes that are included in that Form 3115 generating such positive adjustment.

(b) A taxpayer making this change and any change listed in section 6.16(9)(b)(i)–(iv) of this revenue procedure for the same year of change should file a single Form 3115 for all of such changes and must enter the designated automatic accounting method change numbers for the changes on the appropriate line on the Form 3115. See section 6.03(1)(b) of Rev. Proc. 2015–13 for information on making concurrent changes. For example, a qualified small taxpayer must include on the single Form 3115 the information required to be completed on Form 3115 by a qualified small taxpayer under this revenue procedure for each change in method of accounting included on that Form 3115. The listed changes are:

(i) A change under section 6.01 of this revenue procedure;

(ii) A change under section 6.14 of this revenue procedure;

(iii) A change under section 6.15 of this revenue procedure; and

(iv) A change under section 6.17 of this revenue procedure.

(c) A taxpayer making this change and a change under section 6.11 of this revenue procedure (revocation of a general asset account election) and/or any change listed in section 6.16(9)(c)(i)–(iii) of this revenue procedure for the same year of change should file a single Form 3115 for all such changes and must enter the designated automatic accounting method change numbers for the changes on the appropriate line on the Form 3115. This section 6.16(9)(c) applies only if all of these changes are made for any taxable year beginning on or after January 1, 2012, and beginning before January 1, 2015. See section 6.03(1)(b) of Rev. Proc. 2015–13 for information on making concurrent changes. For example, a qualified small taxpayer must include on the single Form 3115 the information required to be completed on Form 3115 by a qualified small taxpayer under this revenue procedure for each change in method of accounting included on that Form 3115. The listed changes are:

(i) A change under section 6.01 of this revenue procedure;

(ii) A change under section 6.14(3)(a) of this revenue procedure; and

(iii) A change under section 6.15 of this revenue procedure.

(10) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change to the method of accounting under this section 6.16 is "206."

(11) *Contact information*. For further information regarding a change under this section, contact Patrick Clinton at (202) 317-7005 (not a toll-free call).

.17 *Dispositions of tangible depreciable assets in a general asset account (§ 168(i)(4); § 1.168(i)–1)*.

(1) *Description of change*.

(a) *Applicability*. This change, as described in Rev. Proc. 2014–54, 2014–41 I.R.B. 675, applies to a taxpayer that wants to make a change in method of accounting that is specified in section 6.17(3) of this revenue procedure for disposing of an asset subject to a general asset account election under § 168(i)(4) and the regulations thereunder. These specified changes are consistent with §§ 1.168(i)–1(e)(1), 1.168(i)–1(e)(2)(viii), and 1.168(i)–1(j), as applicable. This change also may affect the determination of gain or loss from disposing of the asset and may affect whether the taxpayer must capitalize amounts paid to restore a unit of property (as determined under § 1.263(a)–3(e) or (f)) under § 1.263(a)–3(k).

(b) *Inapplicability*. This change does not apply to the following:

(i) Any asset (as determined under § 1.168(i)–1(e)(2)(viii)) that is not depreciated under § 168 under the taxpayer's present method of accounting and, if applicable, proposed method of accounting; or

(ii) Any asset not subject to a general asset account election under § 168(i)(4) and the regulations thereunder (but see sections 6.15 and 6.16 of this revenue procedure for making a change for dispositions of tangible depreciable assets not subject to a general asset account election).

(2) *Certain eligibility rules inapplicable*.

(a) *In general*. The eligibility rule in section 5.01(1)(d) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, does not apply to a taxpayer making this change.

(b) *Special rule*.

(i) The eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015–13 does not apply to a taxpayer making this change for any taxable year beginning on or after January 1, 2012, and beginning before January 1, 2016.

(ii) If a taxpayer makes both a change under this section 6.17 and a change under section 6.01 of this revenue procedure for any taxable year beginning on or after January 1, 2012, and beginning before January 1, 2016, on a single Form 3115 for the same asset for the same year of change in accordance with section 6.17(7)(b) of this revenue procedure, the eligibility rules in sections 5.01(1)(d) and (f) of Rev. Proc. 2015–13 do not apply to the taxpayer for either change.

(3) *Covered changes*. This section 6.17 only applies to the following changes in methods of accounting for an asset subject to a general asset account election under § 168(i)(4) and the regulations thereunder:

(a) For purposes of applying § 1.168(i)–1(e)(2)(viii) (determination of asset disposed of), a change to the appropriate asset as determined under § 1.168(i)–1(e)(2)(viii)(A) or (B), as applicable;

(b) A change in the method of identifying which assets or which portions of assets have been disposed of from a method of accounting not specified in § 1.168(i)–1(j)(2)(i)(A), (B), (C), or (D) (for example, the last-in, first-out (LIFO) method of accounting) to a method of accounting specified in § 1.168(i)–1(j)(2)(i)(A), (B), (C), or (D), as applicable;

(c) If § 1.168(i)–1(j)(3) applies (basis of disposed asset or disposed portion of an asset) and it is practicable from the taxpayer's records to determine the unadjusted depreciable basis of the disposed asset or the disposed portion of an asset, as applicable, a change in the method of determining the unadjusted depreciable basis of the disposed asset or the disposed portion of an asset, as applicable, from a method of not using the taxpayer's records to a method of using the taxpayer's records; or

(d) If § 1.168(i)–1(j)(3) applies (basis of disposed asset or disposed portion of an asset) and it is impracticable from the taxpayer's records to determine the unadjusted depreciable basis of the disposed asset or the disposed portion of an asset, as applicable, a change in the method of determining the unadjusted depreciable basis of all assets in the same general asset account from an unreasonable method (for example, discounting the cost of the replacement asset to its placed-in-service year cost using the Consumer Price Index) to a reasonable method.

(4) *Manner of making change*.

(a) A taxpayer (including a qualified small taxpayer as defined in section 6.01(4)(b) of this revenue procedure) making this change must attach to its Form 3115 a statement with the following:

(i) A description of the assets to which this change applies;

(ii) If the taxpayer is making the change specified in section 6.17(3)(a) of this revenue procedure, a description of the assets for disposition purposes under the taxpayer's present and proposed methods of accounting;

(iii) If the taxpayer is making the change specified in section 6.17(3)(b) of this revenue procedure, a description of the methods of identifying which assets have been disposed of under the taxpayer's present and proposed methods of accounting;

(iv) If the taxpayer is making the change specified in section 6.17(3)(d) of this revenue procedure, a description of the methods of determining the unadjusted depreciable basis of the disposed asset or disposed portion of the asset, as applicable, under the taxpayer's present and proposed methods of accounting; and

(v) If any asset is public utility property within the meaning of § 168(i)(10), a statement providing that the taxpayer agrees to the following additional terms and conditions:

(A) A normalization method of accounting (within the meaning of § 168(i)(9)) will be used for the public utility property subject to the application;

(B) As of the beginning of the year of change, the taxpayer will adjust its deferred tax reserve account or similar account in the taxpayer's regulatory books of account by the amount of the deferral of federal income tax liability associated with the § 481(a) adjustment applicable to the public utility property subject to the application; and

(C) Within 30 calendar days of filing the federal income tax return for the year of change, the taxpayer will provide a copy of the completed application to any regulatory body having jurisdiction over the public utility property subject to the application.

(b) A qualified small taxpayer, as defined in section 6.01(4)(b) of this revenue procedure, is required to complete only the following information on Form 3115 (Rev. December 2015) to make this change:

(i) The identification section of page 1 (above Part I);

(ii) The signature section at the bottom of page 1;

(iii) Part I;

(iv) Part II, all lines except lines 13, 15b, 16, 17, and 19 if the qualified small taxpayer is not making a change in method of accounting specified in section 6.17(3)(a) and (d) of this revenue procedure;

(v) Part II, all lines except lines 13, 15b, 16c, 17, and 19 if the qualified small taxpayer is making a change in method of accounting specified in section 6.17(3)(a) or (d) of this revenue procedure;

(v) Part IV, all lines except line 25; and

(vi) Schedule E.

(5) *No ruling on asset*. The consent granted under section 9 of Rev. Proc. 2015–13 for a change specified in section 6.17(3)(a) of this revenue procedure is not a determination by the Commissioner that the taxpayer is using the appropriate asset under § 1.168(i)–1(e)(2)(viii) for determining what asset is disposed of by the taxpayer and does not create any presumption that the proposed asset is per-

missible under § 1.168(i)–1(e)(2)(viii). The director will ascertain whether the taxpayer's determination of its asset under § 1.168(i)–1(e)(2)(viii) is permissible.

(6) *Section 481(a) adjustment period*.

(a) A taxpayer must take the entire amount of the § 481(a) adjustment into account in computing taxable income for the year of change:

(i) If the taxpayer makes the change specified in section 6.17(3)(a) of this revenue procedure and if the taxpayer recognized a gain or loss under § 1.168(i)–1T or § 1.168(i)–8T, as applicable, on the disposition of a portion of the asset in a taxable year prior to the year of change; or

(iii) If the taxpayer is a qualified taxpayer as defined in section 4.01 of Rev. Proc. 2015–56, 2015–49 I.R.B. 827, and that is within the scope of section 3 of Rev. Proc. 2015–56, and is making the change specified in section 5.02(5)(b) of Rev. Proc. 2015–56 on or before the first taxable year that the qualified taxpayer uses the remodel-refresh safe harbor provided in section 5.02 of Rev. Proc. 2015–56.

(b) If section 6.17(6)(a) of this revenue procedure does not apply, see section 7.03 of Rev. Proc. 2015–13 for the § 481(a) adjustment period.

(c) *Example*. (i) X, a fiscal year taxpayer with a taxable year beginning December 1 and ending November 30, acquired and placed in service a building and its structural components in 2000. X depreciates this building and its structural components under § 168. The roof is a structural component of the building. X replaced the entire roof in June 2010. On its federal tax return for the taxable year ended November 30, 2010, X did not recognize a loss on the retirement of the original roof and continues to depreciate the original roof. X also capitalized the cost of the replacement roof and has been depreciating this roof under § 168 since June 2010. The adjusted depreciable basis of the original roof at the time of its retirement in 2010 (taking into account the applicable convention) is $11,000, and X claimed depreciation of $1,000 for such roof after its retirement (taking into account the applicable convention) and before the taxable year ended November 30, 2013 (2012 taxable year). Also the 12-month allowable depreciation deduction for the original roof is $500 for the 2012 taxable year and $500 for the taxable year ended November 30, 2014 (2013 taxable year).

(ii) In accordance with § 1.168(i)–1T and section 6.32(1)(a) of the APPENDIX to Rev. Proc. 2011–14, as modified by Rev. Proc. 2012–20, 2012–14 I.R.B. 700, X filed with its federal tax return for the taxable year ended November 30, 2013, a Form 3115 to: (1) make a late general asset account election to include the building (including its structural components) placed in service in 2000 in one general asset account and the replacement roof in a separate general asset account; and (2) make a late qualifying disposition election for the retirement of the original roof in 2010. As a result, X removed the original roof from the general asset account and reported a net negative § 481(a) adjustment on this Form 3115 of $10,000 (adjusted depreciable basis of $11,000 for the original roof at the time of its retirement (taking into account the applicable convention) less depreciation of $1,000 claimed for such roof after its retirement (taking into account the applicable convention) and before the 2012 taxable year).

(iii) X complies with § 1.168(i)–1 beginning with its taxable year ending November 30, 2015 (2014 taxable year). In accordance with section 6.17(3)(a) of this revenue procedure, X files a Form 3115 with its federal income tax return for the 2014 taxable year to change to treating the building (including its original roof and other original structural components) placed in service in 2000 as an asset and the replacement roof as a separate asset for disposition purposes. As a result, X must include the original roof that X retired in 2010 in the general asset account. Thus, the net positive § 481(a) adjustment for this change is $9,000 (net loss of $10,000 claimed on the 2012 return for the retirement of the original roof less depreciation of $1,000 for the original roof for the 2012 and 2013 taxable years) and is included in X's taxable income for the 2014 taxable year.

(7) *Concurrent automatic change*.

(a) A taxpayer making this change for more than one asset for the same year of change should file a single Form 3115 for all such assets and provide a single net § 481(a) adjustment for all the changes included in that Form 3115. If one or more of the changes in that single Form 3115 generate a negative § 481(a) adjustment and other changes in that same Form 3115 generate a positive § 481(a) adjustment, the taxpayer may provide a single negative § 481(a) adjustment for all the changes that are included in that Form 3115 generating such negative adjustment and a single positive § 481(a) adjustment for all the changes that are included in that Form 3115 generating such positive adjustment.

(b) A taxpayer making this change and any change listed in section 6.17(7)(b)(i)–(iv) of this revenue procedure for the same year of change should file a single Form 3115 for all of such changes and must enter the designated automatic accounting method change numbers for the changes on the appropriate line on the Form 3115. See section 6.03(1)(b) of Rev. Proc. 2015–13 for information on making concurrent changes. For example, a qualified small taxpayer must include on the single Form 3115 the information required to be completed on Form 3115 by a qualified small taxpayer under this revenue procedure for each change in method of accounting included on that Form 3115. The listed changes are:

(i) A change under section 6.01 of this revenue procedure;

(ii) A change under section 6.14 of this revenue procedure;

(iii) A change under section 6.15 of this revenue procedure; and

(iv) A change under section 6.16 of this revenue procedure.

(8) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change to the method of accounting under this section 6.17 is "207."

(9) *Contact information*. For further information regarding a change under this section, contact Patrick Clinton at (202) 317-7005 (not a toll-free call).

.18 *Summary of certain changes in methods of accounting related to dispositions of MACRS property*.

(1) *Final regulations*. The following chart summarizes the changes in methods of accounting under § 1.167(a)–4, § 1.168(i)–1, § 1.168(i)–7, and § 1.168(i)–8 that a taxpayer may make under Rev. Proc. 2016–29.

FINAL REGULATION SECTION	SECTION # in in REV. PROC. 2016–29	DESIGNATED CHANGE NUMBER (DCN)
§ 1.167(a)–4, Depreciation of leasehold improvements	6.13	199
General Asset Accounts:		
a. § 1.168(i)–1(c), Change in grouping assets	6.14	200
b. § 1.168(i)–1(e)(2)(viii), Change in determining asset disposed of	6.17	207
c. § 1.168(i)–1(j)(2), Change in method of identifying which assets or portions of assets have been disposed of from one method to another method specified in § 1.168(i)–1(j)(2)	6.14	200
d. § 1.168(i)–1(j)(2), Change in method of identifying which assets or portions of assets have been disposed of from a method not specified in § 1.168(i)–1(j)(2) to a method specified in § 1.168(i)–1(j)(2)	6.17	207
e. § 1.168(i)–1(j)(3), Change in determining unadjusted depreciable basis of disposed asset or disposed portion of an asset from one reasonable method to another reasonable method when it is impracticable from the taxpayer's records to determine the unadjusted depreciable basis of disposed asset or disposed portion of asset	6.14	200
f. § 1.168(i)–1(j)(3), Change in determining unadjusted depreciable basis of disposed asset or disposed portion of an asset from not using to using the taxpayer's records when it is practicable from the taxpayer's records to determine the unadjusted depreciable basis of disposed asset or disposed portion of asset	6.17	207
g. § 1.168(i)–1(j)(3), Change in determining unadjusted depreciable basis of disposed asset or disposed portion of an asset from an unreasonable method to a reasonable method when it is impracticable from the taxpayer's records to determine the unadjusted depreciable basis of disposed asset or disposed portion of asset	6.17	207
Single Asset Accounts or Multiple Asset Accounts for MACRS Property:		
a. § 1.168(i)–7, Change from single asset accounts to multiple asset accounts, or *vice versa*	6.14	200
b. § 1.168(i)–7(c), Change in grouping assets in multiple asset accounts	6.14	200
Dispositions of MACRS Property (not in a general asset account):		
a. § 1.168(i)–8(c)(4), Change in determining asset disposed of	6.15 (Building or structural component)	205
	6.16 (Property other than a building or structural component)	206
b. § 1.168(i)–8(f)(2) or (3), Change in determining unadjusted depreciable basis of disposed asset in a multiple asset account or disposed portion of an asset from one reasonable method to another reasonable method when it is impracticable from the taxpayer's records to determine the unadjusted depreciable basis of disposed asset or disposed portion of asset	6.14	200
c. § 1.168(i)–8(f)(2) or (3), Change in determining unadjusted depreciable basis of disposed asset in a multiple asset account or disposed portion of an asset from not using to using the taxpayer's records when it is practicable from the taxpayer's records to determine the unadjusted depreciable basis of disposed asset or disposed portion of asset	6.15 (Building or structural component)	205
	6.16 (Property other than a building or structural component)	206
d. § 1.168(i)–8(f)(2) or (3), Change in determining unadjusted depreciable basis of disposed asset in a multiple asset account or disposed portion of an asset from an unreasonable method to a reasonable method when it is impracticable from the taxpayer's records to determine the unadjusted depreciable basis of disposed asset or disposed portion of asset	6.15 (Building or structural component)	205
	6.16 (Property other than a building or structural component)	206

FINAL REGULATION SECTION	SECTION # in in REV. PROC. 2016–29	DESIGNATED CHANGE NUMBER (DCN)
e. § 1.168(i)–8(g), Change in method of identifying which assets in a multiple asset account or portions of assets have been disposed of from one method to another method specified in § 1.168(i)–8(g)(1) or (2)	6.14	200
f. § 1.168(i)–8(g), Change in method of identifying which assets in a multiple asset account or portions of assets have been disposed of from a method not specified in § 1.168(i)–8(g)(1) or (2) to a method specified in § 1.168(i)–8(g)(1) or (2)	6.15 (Building or structural component)	205
	6.16 (Property other than a building or structural component)	206
g. § 1.168(i)–8(h)(1), Change from depreciating a disposed asset or disposed portion of an asset to recognizing gain or loss upon disposition when a taxpayer continues to depreciate the asset or portion that the taxpayer disposed of prior to the year of change	6.15 (Building or structural component)	205
	6.16 (Property other than a building or structural component)	206
h. § 1.168(i)–8(d)(2)(iii), Partial disposition election for the disposition of a portion of an asset to which the IRS's adjustment pertains	6.12	198

(2) *Late elections or revocation of a general asset account election*. The following chart summarizes the late elections under § 1.168(i)–8 that are treated as a change in method of accounting for a limited period of time. The chart includes the revocation of a general asset account election that also is treated as a change in method of accounting for a limited period of time.

ELECTION OR REVOCATION	TIME PERIOD FOR TREATING ELECTION OR REVOCATION AS A METHOD CHANGE	SECTION # IN REV. PROC. 2016–29, AND DCN
General Asset Accounts:		
a. Revocation of a general asset account election made under § 1.168(i)–1, Prop. Reg. § 1.168(i)–1, or § 1.168(1)–1T, or made under section 6.32 in the APPENDIX of Rev. Proc. 2011–14 or section 6.32 in Rev. Proc. 2015–14, as applicable	Taxable year beginning on or after 1/1/2012 and beginning before 1/1/2015	6.11 DCN 197
Late Partial Disposition Election for MACRS Property (not in a general asset account):		
a. Late partial disposition election made under § 1.168(i)–8(d)(2)(iv)(B)	First or second taxable succeeding the applicable taxable year as defined in § 1.168(i)–8(d)(2)(iv)	6.10 DCN 196
b. Other late partial disposition elections made under § 1.168(i)–8(d)(2)(i)	Taxable year beginning on or after 1/1/2012 and beginning before 1/1/2015	6.10 DCN 196

.19 *Depreciation of fiber optic transfer node and fiber optic cable used by a cable system operator (§§ 167 and 168).*

(1) *Description of change*.

(a) *Applicability*. This change applies to a cable system operator that is within the scope of Rev. Proc. 2015–12, 2015–2 I.R.B. 266, and wants to change to the safe harbor method of accounting provided in section 8.03 of Rev. Proc. 2015–12 for determining depreciation under §§ 167 and 168 of a fiber optic transfer node and trunk line consisting of fiber optic cable used in a cable distribution network providing one-way and two-way communication services. The safe harbor method provided by section 8.03 of Rev. Proc. 2015–12 determines the asset for purposes of §§ 167 and 168.

(b) *Inapplicability*. This change does not apply to the following:

(i) any property that is not depreciated under § 168 under the taxpayer's present and proposed methods of accounting; or

(ii) any property that is not owned by the taxpayer at the beginning of the year of change.

(2) *Certain eligibility rules inapplicable*.

(a) The eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, does not apply to a taxpayer that makes this change for its first or second taxable year ending after December 31, 2013.

(b) The eligibility rule in section 5.01(d) of Rev. Proc. 2015–13 does not apply to a taxpayer that makes this change.

(3) *Concurrent automatic change*.

(a) A taxpayer that wants to make this change for more than one asset for the same year of change should file a single Form 3115 for all such assets and provide a single net § 481(a) adjustment for all the changes included in that Form 3115. If one or more of the changes in that single Form 3115 generate a negative § 481(a) adjustment and other changes in that same Form 3115 generate a positive § 481(a) adjustment, the taxpayer may provide a single negative § 481(a) adjustment for all the changes that are included in that Form 3115 generating such adjustment and a single positive § 481(a) adjustment for all the changes that are included in that Form 3115 generating such adjustment.

(b) A taxpayer that wants to make both this change and a change to a UNICAP method under section 12.01, 12.02, 12.08, or 12.12 of this revenue procedure, as applicable, for the same year of change should file a single Form 3115 for all such changes and must enter the designated automatic accounting method change numbers for the changes on the appropriate line on the Form 3115. See section 6.03(1)(b) of Rev. Proc. 2015–13 for information on making concurrent changes.

(4) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change to the method of accounting under this section 6.19 is "210."

(5) *Contact information*. For further information regarding a change under this section, contact Charles Magee at (202) 317-7005 (not a toll-free call).

.20 *Revocation of partial disposition election under the remodel-refresh safe harbor described in Rev. Proc. 2015–56.*

(1) *Description of change*.

(a) *Applicability*. This change applies to a qualified taxpayer as defined in section 4.01 of Rev. Proc. 2015–56, 2015–49 I.R.B. 827, and that is within the scope of Rev. Proc. 2015–56 and wants to revoke a partial disposition election, as provided in section 5.02(4)(b)(ii)(B) of Rev. Proc. 2015–56, related to a qualified building, as defined in section 4.02 of Rev. Proc. 2015–56, for which the qualified taxpayer uses the remodel-refresh safe harbor method of accounting provided in section 5.02 of Rev. Proc. 2015–56. See section 11.10 of this revenue procedure for making a change to this safe harbor method of accounting.

(b) *Inapplicability*. This change does not apply to a qualified taxpayer, as described in section 6.20(1)(a) of this revenue procedure, that makes the revocation of the partial disposition specified in section 6.20(1)(a) of this revenue procedure before or after the time specified in section 6.20(3) of this revenue procedure. Any such revocation is not a change in method of accounting pursuant to § 1.446–1(e)(2)(ii)(*d*)(*3*)(*iii*).

(2) *Change in method of accounting*. The IRS will treat the revocation of the partial disposition election specified in section 6.20(1)(a) of this revenue procedure as a change in method of accounting only for the time specified in section 6.20(3) of this revenue procedure.

(3) *Time for making the change*. The change under this section 6.20 must be made by a qualified taxpayer for any taxable year beginning after December 31, 2013, and ending before December 31, 2016.

(4) *Certain eligibility rules inapplicable*.

(a) *In general*. The eligibility rules in sections 5.01(1)(d) and (f) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, do not apply to a qualified taxpayer making this change for any taxable year beginning after December 31, 2013, and ending before December 31, 2016.

(b) *Concurrent automatic change*. If a qualified taxpayer makes both a change under this section 6.20 and a change under section 11.10 of this revenue procedure for any taxable year beginning after December 31, 2013, and ending before December 31, 2016, on a single Form 3115 for the same asset for the same year of change in accordance with section 6.20(7)(b), the eligibility rules in sections 5.01(1)(d) and (f) of Rev. Proc. 2015–13 do not apply to the qualified taxpayer for either change.

(5) *Section 481(a) adjustment period*. A qualified taxpayer making this change must take the entire § 481(a) adjustment into account in computing taxable income for the year of change.

(6) *Reduced filing requirement for qualified small taxpayers*. A qualified small taxpayer, as defined in section 6.01(4)(b) of this revenue procedure, may complete only the following information on Form 3115 (Rev. December 2015):

(a) The identification section of page 1 (above Part I);

(b) The signature section at the bottom of page 1;

(c) Part I, line 1(a);

(d) Part II, all lines except lines 5, 13, 15, 16, 17, and 19;

(e) Part IV, lines 25, 26, and 27; and

(f) Schedule E.

(7) *Concurrent automatic change*.

(a) A qualified taxpayer making this change for more than one asset for the same year of change should file a single Form 3115 for all such assets. The single Form 3115 must provide a single net § 481(a) adjustment for all such changes.

(b) A qualified taxpayer making this change and a change under section 11.10 of this revenue procedure for the same year of change should file a single Form 3115 for both changes and must enter the designated automatic accounting method change numbers for the changes on the appropriate line on the Form 3115. See section 6.03(1)(b) of Rev. Proc. 2015–13 for information on making concurrent changes.

(8) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change to the method of accounting under this section 6.20 is "221."

(9) *Contact information*. For further information regarding a change under this section, contact Elizabeth Binder at (202) 317-7005 (not a toll-free call).

SECTION 7. RESEARCH AND EXPERIMENTAL EXPENDITURES (§ 174)

.01 *Changes to a different method or different amortization period.*

(1) *Description of change*.

(a) This change applies to a taxpayer that wants to change the treatment of expenditures that qualify as research and experimental expenditures under § 174.

(b) Section 174 and the regulations thereunder provide the specific rules for changing a method of accounting under § 174 for research and experimental expenditures. Under § 174, a taxpayer may treat research and experimental expenditures that are paid or incurred by the taxpayer during the taxable year in connection with the taxpayer's trade or business as expenses under § 174(a) or as deferred expenses amortizable ratably over a period of not less than 60 months under § 174(b). Pursuant to § 1.174–1, research and experimental expenditures that are not treated as expenses or deferred expenses under § 174 must be treated as a charge to capital account. Further, § 1.174–1 provides that the expenditures to which § 174 applies may relate either to a general research program or to a particular project. Finally, §§ 1.174–3(a) and 1.174–4(a)(5) provide that in no event will a taxpayer be permitted to apply one method as to part of the expenditures relative to a particular project and apply a different method to the balance of the expenditures relating to the same project for the same taxable year.

(c) If a taxpayer has not treated research and experimental expenditures as expenses under § 174(a), § 174(a)(2)(B) and § 1.174–3(b)(2) provide that the taxpayer may, with consent, adopt the expense method at any time.

(d) If a taxpayer has treated research and experimental expenditures as expenses under § 174(a), § 174(a)(3) and § 1.174–3(b)(3) provide that the taxpayer may, with consent, change to a different method of treating research and experimental expenditures.

(e) If a taxpayer has treated research and experimental expenditures as deferred expenses under § 174(b), § 174(b)(2) and § 1.174–4(b)(2) provide that the taxpayer may, with consent, change to a different method of treating research or experimental expenditures or to a different period of amortization for deferred expenses.

(2) *Applicability*.

(a) *In general*. This change applies to any taxpayer that is changing:

(i) from treating research and experimental expenditures for a particular project or projects as expenses under § 174(a) to treating such expenditures as deferred expenses under § 174(b), or vice versa;

(ii) to a different period of amortization for research and experimental expenditures for a particular project or projects that are being treated as deferred expenses under § 174(b);

(iii) from treating research and experimental expenditures for a particular project or projects as expenses under § 174(a) or deferred expenses under § 174(b) to treating such expenditures as a charge to capital account, or vice versa; or

(iv) from treating research and experimental expenditures under any provision of the Code other than § 174 to treating such expenditures under § 174 and the regulations thereunder.

(b) *Inapplicability*. This change does not apply to:

(i) a change in the treatment of computer software costs under Rev. Proc. 2000–50, 2000–1 C.B. 601, as modified by Rev. Proc. 2007–16, 2007–1 C.B. 358 (but see section 9 of this revenue procedure for making that change); or

(ii) a change in the treatment of Year 2000 costs under Rev. Proc. 97–50, 1997–2 C.B. 525.

(3) *Certain eligibility rule inapplicable*. The eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, is not applicable to this change.

(4) *Manner of making change*.

(a) This change is made on a cut-off basis and applies to all research and experimental expenditures paid or incurred for a particular project or projects on or after the beginning of the year of change. See § 174(b)(2), and §§ 1.174–3(a), 1.174–3(b)(2), and 1.174–4(a)(5) for more information regarding a cut-off basis. Accordingly, a § 481(a) adjustment is neither permitted nor required.

(b) The requirement under §§ 1.174–3(b)(2), 1.174–3(b)(3), and 1.174–4(b)(2) to file an application (that is, a Form 3115) no later than the end of the first taxable year in which the different method or different amortization period is to be used is waived for this change. However, see section 6.03 of Rev. Proc. 2015–13 for filing requirements applicable to a change under this section 7.01.

(c) The consent granted under section 9 of Rev. Proc. 2015–13 satisfies the consent required under §§ 174(a)(2)(B), 174(a)(3), and 174(b)(2), and §§ 1.174–3(b)(2), 1.174–3(b)(3), and 1.174–4(b)(2).

(5) *Additional requirement*. A taxpayer must attach to its Form 3115 a written statement providing:

(a) the information required in § 1.174–3(b)(2) if the taxpayer is changing to treating research and experimental expenditures as expenses under § 174(a);

(b) the information required in § 1.174–3(b)(3) if the taxpayer is changing from treating research and experimental expenditures as expenses under § 174(a); or

(c) the information required in § 1.174–4(b)(2) if the taxpayer is changing from treating research and experimental expenditures as deferred expenses under § 174(b) or is changing to a different period of amortization for research and experimental expenditures being treated as deferred expenses under § 174(b).

(6) *No audit protection*. A taxpayer does not receive audit protection under section 8.01 of Rev. Proc. 2015–13 in connection with this change. *See* section 8.02(2) of Rev. Proc. 2015–13.

(7) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 7.01 is "17."

(8) *Contact information*. For further information regarding a change under this section, contact Elizabeth Binder at (202) 317-7005 (not a toll-free call).

SECTION 8. ELECTIVE EXPENSING PROVISIONS (§ 179D)

.01 *Deduction for Energy Efficient Commercial Buildings (§ 179D).*

(1) *Description of change*. This change, as described in Rev. Proc. 2012–39, 2012–41 I.R.B. 470, applies to a taxpayer that wants to change its method of accounting to deduct under § 179D amounts paid or incurred for the installation of energy efficient commercial building property, as defined in § 179D(c)(1). The deduction for energy efficient commercial building property is subject to the limits of § 179D(b) and must be claimed in the taxable year in which the property is placed in service. The basis of the energy efficient commercial building property is reduced by the amount of the § 179D deduction taken and the remaining basis of the energy efficient commercial building property is depreciated over its recovery period.

(2) *Applicability*. This change applies to a taxpayer that places in service property for which a deduction is allowed under § 179D(a).

(3) *Inapplicability*. This change does not apply to a designer to whom the owner

of a government building allocates the § 179D deduction.

(4) *Manner of making change*. A taxpayer making this change must attach to its Form 3115 (the original, the copy filed at Covington, KY, and any additional copies) a statement with a detailed description of the tax treatment of the property under the taxpayer's present and proposed methods of accounting.

(5) *Certification requirement*. In addition to the statement required by section 8.01(4) of this revenue procedure, a taxpayer making this change must attach to its Form 3115 a certification as required by section 4 of Notice 2006–52, 2006–1 C.B. 1175, or section 5 of Notice 2008–40, 2008–1 C.B. 725, to demonstrate that the energy efficient commercial building property has achieved the reduction in energy and power costs or in lighting power density necessary to qualify for the § 179D deduction.

(6) *No ruling on qualification*. The consent granted under section 9 of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, for a change provided in this section 8.01 is not a determination by the Commissioner that the taxpayer qualifies for a deduction under section 179D. The director will ascertain whether the taxpayer qualifies for a deduction under section 179D (including a review of the required certifications). *See* section 12 of Rev. Proc. 2015–13.

(7) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 8.01 is "152."

(8) *Contact information*. For further information regarding a change under this section, contact Jennifer Bernardini at (202) 317-6853 (not a toll-free call).

SECTION 9. COMPUTER SOFTWARE EXPENDITURES (§§ 162, 167, and 197)

.01 *Computer software expenditures*.

(1) *Description of change*. This change applies to a taxpayer that wants to change its method of accounting for the costs of computer software to a method described in Rev. Proc. 2000–50, 2000–1 C.B. 601, as modified by Rev. Proc. 2007–16, 2007–1 C.B. 358. Section 5 of Rev. Proc. 2000–50 describes the methods applicable to the costs of developing computer software. Section 6 of Rev. Proc. 2000–50 describes the method applicable to the costs of acquired computer software. Section 7 of Rev. Proc. 2000–50 describes the method applicable to leased or licensed computer software.

(2) *Scope*. This change applies to all costs of computer software as defined in section 2 of Rev. Proc. 2000–50. However, this change does not apply to any computer software that is subject to amortization as an "amortizable section 197 intangible" as defined in § 197(c) and the regulations thereunder, or to costs that a taxpayer has treated as research and experimentation expenditures under § 174.

(3) *Statement required*. If a taxpayer is changing to the method described in section 5.01(2) of Rev. Proc. 2000–50, the taxpayer must attach to its Form 3115 a statement providing the information required in section 8.02(2) of Rev. Proc. 2000–50.

(4) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 9.01 is "18."

(5) *Contact information*. For further information regarding a change under this section, contact Charles Magee at (202) 317-7005 (not a toll-free call).

SECTION 10. START-UP EXPENDITURES (§ 195)

.01 *Start-up expenditures*.

(1) *Description of change and scope*.

(a) *Applicability*. This change applies to a taxpayer that wants to change its method of accounting under § 195 to change:

(i) the characterization of an item as a start-up expenditure; or

(ii) the determination of the taxable year in which the taxpayer's active trade or business to which the start-up expenditures relate begins.

(b) *Inapplicability*. This change does not apply to:

(i) start-up expenditures paid or incurred before October 23, 2004; or

(ii) start-up expenditures paid or incurred after October 22, 2004, and before August 17, 2011, if the period of limitations on assessment of tax for the taxable year the election under § 1.195–1(b) is deemed made has expired.

(2) *No rulings*.

(a) *Characterization of item*. The consent granted under section 9 of Rev. Proc. 2015–13 for a change specified in section 10.01(1)(a)(i) of this revenue procedure is not a determination by the Commissioner that the taxpayer has properly characterized an item as a start-up expenditure and does not create any presumption that the proposed characterization of an item as a start-up expenditure is permissible under § 195(c)(1). The director will ascertain whether the taxpayer's characterization of an item as a start-up expenditure is permissible.

(b) *When active trade or business begins*. The consent granted under section 9 of Rev. Proc. 2015–13 for a change specified in section 10.01(1)(a)(ii) of this revenue procedure is not a determination by the Commissioner that the taxpayer has properly determined the taxable year in which the taxpayer's active trade or business to which the start-up expenditures relate begins and does not create any presumption that the proposed taxable year in which the taxpayer's active trade or business to which the start-up expenditures relate begins is permissible under § 195(c)(2). The director will ascertain whether the taxpayer's determination of the taxable year in which the taxpayer's active trade or business to which the start-up expenditures relate begins is permissible.

(3) *Designated automatic accounting method change number*. The designated accounting method change number for a change to a method of accounting under this section 10.01 is "223."

(4) *Contact information*. For further information regarding a change under this section, contact Elizabeth Binder at (202) 317-7005 (not a toll-free number).

SECTION 11. CAPITAL EXPENDITURES (§ 263)

.01 *Package design costs*.

(1) *Description of change*.

(a) *Applicability*. This change applies to a taxpayer that wants to change its method of accounting for package design costs that are within the scope of Rev. Proc. 97–35, 1997–2 C.B. 448, as modified by Rev. Proc. 98–39, 1998–1 C.B. 1320, to one of the three alternative methods of accounting for package design costs described in section 5 of Rev. Proc. 97–35, which are: (i) the capitalization method, (ii) the design-by-design capitalization and 60-month amortization method, and (iii) the pool-of-cost capitalization and 48-month amortization method.

(b) *Inapplicability*. This change does not apply to a taxpayer that wants to change to the capitalization method for costs of developing or modifying any package design that has an ascertainable useful life.

(2) *Additional requirements*. If a taxpayer is changing its method of accounting for package design costs to the capitalization method or the design-by-design capitalization and 60-month amortization method, the taxpayer must attach a statement to its timely filed Form 3115. The statement must provide a description of each package design, the date on which each was placed in service, and the cost basis of each (as determined under sections 5.01(2) or 5.02(2) of Rev. Proc. 97–35).

(3) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 11.01 is "19."

(4) *Contact information*. For further information regarding a change under this section, contact Jason Kristall at (202) 317-7003 (not a toll-free call).

.02 *Line pack gas or cushion gas*.

(1) *Description of change*. This change applies to a taxpayer that wants to change its method of accounting for line pack gas or cushion gas to a method consistent with the holding in Rev. Rul. 97–54, 1997–2 C.B. 23. Rev. Rul. 97–54 holds that the cost of line pack gas or cushion gas is a capital expenditure under § 263, the cost of recoverable line pack gas or recoverable cushion gas is not depreciable, and the cost of unrecoverable line pack gas or unrecoverable cushion gas is depreciable under §§ 167 and 168.

(2) *Additional requirements*. A taxpayer that changes its method of accounting for unrecoverable line pack gas or unrecoverable cushion gas under this section 11.02 must change to a permissible method of accounting for depreciation for the cost of that gas as part of this change.

(3) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 11.02 is "20."

(4) *Contact information*. For further information regarding a change under this section, contact Jason Kristall at (202) 317-7003 (not a toll-free call).

.03 *Removal costs*.

(1) *Description of change*.

(a) *Applicability*. This change applies to a taxpayer that wants to change its method of accounting for certain costs in the retirement and removal of a depreciable asset to conform with Rev. Rul. 2000–7, 2000–1 C.B. 712, as modified by this revenue procedure, or for removal costs in disposal of a depreciable asset, including a partial disposition, as described under § 1.263(a)–3(g)(2)(i).

(b) *Inapplicability*. This change does not apply to a taxpayer that wants to change its method of accounting for removal costs in the disposal of a component of a unit of property where the disposal of the component is not a disposition for federal tax purposes. To make that change, see section 11.08 of this revenue procedure.

(c) *Manner of making change*. A qualified small taxpayer, as defined in section 6.01(4)(b) of this revenue procedure, is required to complete only the following information on Form 3115 (Rev. December 2015):

(i) The identification section of page 1 (above Part I);

(ii) The signature section at the bottom of page 1;

(iii) Part I, line 1(a);

(iv) Part II, all lines except lines 13, 15, 16, 17, and 19, if the change is not to depreciating property;

(v) Part II, all lines except lines 13, 15b, 16, 17, and 19, if the change is to depreciating property;

(vi) Part IV, lines 26 and 27; and

(vii) Schedule E, if applicable.

(2) *Additional requirements*.

(a) Except for assets for which depreciation is determined in accordance with § 1.167(a)–11 (ADR), the taxpayer's proposed method of treating removal costs for assets accounted for in a multiple asset account must be consistent with the taxpayer's method of treating salvage proceeds. *See* Rev. Rul. 74–455, 1974–2 C.B. 63. (See section 6.02 of this revenue procedure for changing a taxpayer's present method of treating salvage proceeds.)

(b) If this change involves assets that are public utility property within the meaning of § 168(i)(10) or former § 167(l)(3)(A), the taxpayer must comply with the terms and conditions in section 6.01(3)(b)(v) of this revenue procedure.

(3) *Certain eligibility rule inapplicable*. The eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, does not apply to this change.

(4) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 11.03 is "21."

(5) *Contact information*. For further information regarding a change under this section, contact Jason Kristall at (202) 317-7003 (not a toll-free call).

.04 *Distributor commissions*.

(1) *Description of change*.

(a) *Applicability*. This change applies to a taxpayer that wants to change from currently deducting distributor commissions (as defined by section 2 of Rev. Proc. 2000–38, 2002–2 C.B. 310, as modified by Rev. Proc. 2007–16, 2007–1 C.B. 358) to a method of capitalizing and amortizing distributor commissions using the distribution fee period method, the 5-year method, or the useful life method (all described in Rev. Proc. 2000–38).

(b) *Inapplicability*. This change does not apply to an amortizable section 197 intangible (including any property for which a timely election under § 13261(g)(2) of the Revenue Reconciliation Act of 1993, 1993–3 C.B. 1, 128, was made).

(2) *Manner of making change*. This change is made on a cut-off basis and applies only to distributor commissions paid or incurred on or after the beginning of the year of change. Accordingly, a § 481(a) adjustment is neither permitted nor required.

(3) *Designated automatic accounting method change number*. The designated automatic accounting method change

number for a change under this section 11.04 is "47."

(4) *Contact information*. For further information regarding a change under this section, contact Jason Kristall at (202) 317-7003 (not a toll-free call).

.05 *Intangibles*.

(1) *Description of change*. This change applies to a taxpayer that wants to change its treatment of an item to a method of accounting permitted by §§ 1.263(a)–4, 1.263(a)–5, and 1.167(a)–3(b). See Rev. Proc. 2006–12, 2006–1 C.B. 310, as modified by Rev. Proc. 2006–37, 2006–2 C.B. 499, for the specific requirements, information, and documentation required for this change.

(2) *Section 481(a) adjustment*. In computing the § 481(a) adjustment for this change, the taxpayer takes into account only amounts paid or incurred in taxable years ending on or after January 24, 2002. See section 5 of Rev. Proc. 2006–12 for detailed rules for computing the § 481(a) adjustment and reporting it on Form 3115.

(3) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 11.05 is "78."

(4) *Contact information*. For further information regarding a change under this section, contact Jason Kristall at (202) 317-7003 (not a toll-free call).

.06 *Rotable spare parts safe harbor method*.

(1) *Description of change*. This change applies to a taxpayer that maintains a pool or pools of rotable spare parts that are primarily used to repair customer-owned (or customer-leased) equipment under warranty or maintenance agreements, and wants to change its method of accounting for the rotable spare parts to the safe harbor method of accounting provided in Rev. Proc. 2007–48, 2007–2 C.B. 110. The taxpayer must meet the requirements in section 4.01 of Rev. Proc. 2007–48 to use this safe harbor method of accounting.

(2) *Change from safe harbor method*. A taxpayer that is required to change its method of accounting from the safe harbor method under section 5.06 of Rev. Proc. 2007–48, must make the change under section 21.09 of this revenue procedure.

(3) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 11.06 is "109."

(4) *Contact information*. For further information regarding a change under this section, contact Jason Kristall at (202) 317-7003 (not a toll-free call).

.07 *Repairable and reusable spare parts*.

(1) *Description of change*.

(a) *Applicability*. This change applies to a taxpayer that wants to change its method of accounting to treat repairable and reusable spare parts as depreciable property to conform with the holdings in Rev. Rul. 69–200, 1969–1 C.B. 60, and Rev. Rul. 69–201, 1969–1 C.B. 60. This change applies to repairable and reusable spare parts that: are owned by the taxpayer at the beginning of the year of change; are used to repair equipment owned by the taxpayer; are acquired by the taxpayer for a specific type of equipment at the time that the related equipment is acquired; usually have the same useful life as the related equipment; and have been placed in service by the taxpayer after 1986. A taxpayer making a change in method of accounting under this section 11.07 may treat its repairable and reusable spare parts as tangible property for which depreciation is allowable at the time that the related equipment is placed in service by the taxpayer. The method of computing depreciation for the repairable and reusable spare parts is the same method of computing depreciation for the related equipment.

(b) *Inapplicability*. This change does not apply to:

(i) A taxpayer that is currently capitalizing and depreciating the cost of its repairable and reusable spare parts, or that is currently capitalizing the cost of its repairable and reusable spare parts and treating these parts as nondepreciable property (but see section 6.01 of this revenue procedure for making a change from an impermissible to a permissible method of accounting for depreciation);

(ii) A taxpayer that is using an impermissible method of accounting for depreciation for the related equipment for which the repairable and reusable spare parts are acquired, unless the taxpayer concurrently changes its method to use a permissible method of accounting for depreciation under section 6 of this revenue procedure;

(iii) A repairable and reusable spare part that meets the definition of rotable spare parts, temporary spare parts, or standby emergency spare parts in § 1.162–3(c)(2) or (3), for which the cost was paid or incurred by the taxpayer in a taxable year beginning on or after January 1, 2014 (or in a taxable year beginning on or after January 1, 2012, if the taxpayer chooses to apply § 1.162–3 to amounts paid or incurred in those taxable years), and for which the taxpayer did not make the election under § 1.162–3(d) to capitalize and depreciate such repairable and reusable spare part; or

(iv) a taxpayer that chooses to apply § 1.162–3T to a repairable and reusable spare part that meets the definition of rotable spare parts or temporary spare parts in § 1.162–3T(c)(2), for which the cost was paid or incurred by the taxpayer in a taxable year beginning on or after January 1, 2012, and before January 1, 2014, and for which the taxpayer did not make the election under § 1.162–3T(d) to capitalize and depreciate such repairable and reusable spare part.

(2) *Additional requirements*.

(a) To change a method of accounting under this section 11.07, a taxpayer (including a qualified small taxpayer as defined in section 6.01(4)(b) of this revenue procedure) must complete Schedule E of Form 3115 for the repairable and reusable spare parts and also attach the following information to the completed Form 3115:

(i) A description of the repairable and reusable spare parts;

(ii) A list of related equipment for which the repairable and reusable spare parts are acquired; and

(iii) A complete description of the method of computing depreciation (for example, depreciation method, recovery period, convention, and applicable asset class under Rev. Proc. 87–56, 1987–2 C.B. 674, as clarified and modified by Rev. Proc. 88–22, 1988–1 C.B. 785) that the taxpayer uses for the related equipment for which the repairable and reusable spare parts are acquired.

(b) *Reduced filing requirement for qualified small taxpayers*. A qualified small taxpayer, as defined in section 6.01(4)(b) of this revenue procedure, is required to complete only the following information on Form 3115 (Rev. December 2015):

(i) The identification section of page 1 (above Part I);

(ii) The signature section at the bottom of page 1;

(iii) Part I;

(iv) Part II, all lines except lines 13, 15b, 16, 17, and 19; and

(v) Part IV, all lines except line 25.

(3) *Concurrent automatic change*.

(a) A taxpayer making both this change and a change to a UNICAP method under section 12.01, 12.02, 12.08, or 12.12 of this revenue procedure (as applicable) for the same year of change should file a single Form 3115 for both changes, in which case the taxpayer must enter the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115. See section 6.03(1)(b) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, for information on making concurrent changes. For example, a qualified small taxpayer, as defined in section 6.01(4)(b) of this revenue procedure, must include on the single Form 3115 the information required by section 11.07(2)(b) of this revenue procedure and the information required by the lines on Form 3115, applicable to the UNICAP method change, including Part II line 14 and 15, Part IV, and Schedule D, and must include a separate response to each line on Form 3115 that is applicable to both changes (such as Part II lines 6b, 7, 8b, 14, and, as applicable for this change, Part IV) for which the taxpayer's response is different for this change and the change to a UNICAP method.

(b) A taxpayer making both this change and a change to a permissible method of accounting for depreciation for repairable and reusable spare parts, or for the related equipment for which the repairable and reusable spare parts are acquired, under section 6 of this revenue procedure (as applicable) for the same year of change should file a single Form 3115 for both changes, in which case the taxpayer must enter the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115. See section 6.03(1)(b) of Rev. Proc. 2015–13 for information on making concurrent changes. For example, a qualified small taxpayer must include on the single Form 3115 the information required to be completed on Form 3115 by a qualified small taxpayer under this revenue procedure for each change in method of accounting included on that Form 3115.

(c) A taxpayer making this change also may establish pools for the repairable and reusable spare parts or may identify disposed repairable and reusable spare parts in accordance with section 6.14 of this revenue procedure. A taxpayer making both this change and the change under section 6.14 of this revenue procedure for the same year of change should file a single Form 3115 for both changes, in which case the taxpayer must enter the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115. See section 6.03(1)(b) of Rev. Proc. 2015–13 for information on making concurrent changes. For example, a qualified small taxpayer must include on the single Form 3115 the information required to be completed on Form 3115 by a qualified small taxpayer under this revenue procedure for each change in method of accounting included on that Form 3115.

(4) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 11.07 is "121".

(5) *Contact information*. For further information regarding a change under this section, contact Jason Kristall at (202) 317-7003 (not a toll-free call).

.08 *Tangible property*.

(1) *Description of change*.

(a) *Applicability*. This change, as described in Rev. Proc. 2014–16, 2014–9 I.R.B. 606, applies to a taxpayer that wants to make a change to a method of accounting specified in section 11.08(3) of this revenue procedure and permitted under:

(i) Section 1.162–3, § 1.162–4, § 1.263(a)–1, § 1.263(a)–2, or § 1.263(a)–3 (the final tangible property regulations) for taxable years beginning on or after January 1, 2012; or

(ii) Section 1.446–1(e)(2)(ii)(*d*)(*2*) if the property for which the taxpayer is otherwise changing its method of accounting under this section is depreciable under either the present or the proposed method of accounting.

(b) *Inapplicability*. This change does not apply to:

(i) A taxpayer that wants to change its method of accounting for dispositions of depreciable property, including a change in the asset disposed of (but see sections 6.10, 6.11, 6.12, 6.15, 6.16, and 6.17 of this revenue procedure);

(ii) Amounts paid or incurred for certain materials and supplies that the taxpayer has elected to capitalize and depreciate under § 1.162–3(d);

(iii) Amounts paid or incurred to which the taxpayer has elected to apply the de minimis safe harbor under § 1.263(a)–1(f);

(iv) Amounts paid or incurred for employee compensation or overhead that the taxpayer has elected to capitalize under § 1.263(a)–2(f)(2)(iv)(B);

(v) Amounts paid or incurred to which the taxpayer has elected to apply the safe harbor for small taxpayers under § 1.263(a)–3(h);

(vi) Amounts paid or incurred for repair and maintenance costs that the taxpayer has elected to capitalize under § 1.263(a)–3(n);

(vii) Amounts paid or incurred to facilitate the acquisition or disposition of assets that constitute a trade or business (but see section 10.05 of this revenue procedure); or

(viii) Amounts paid or incurred for repair and maintenance costs that the taxpayer is changing from capitalizing to deducting and for which the taxpayer has claimed a federal income tax credit or elected to apply § 168(k)(4).

(2) *Certain eligibility rules temporarily inapplicable*.

(a) *In general*. The eligibility rules in sections 5.01(1)(d) and (f) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, do not apply to a taxpayer that makes one or more changes in method of accounting under this section for any taxable year beginning before January 1, 2016.

(b) *Concurrent automatic change*. If the taxpayer makes both a change under this section 11.08 and a change to a UNI-

CAP method under section 12.01, 12.02, 12.08, or 12.12 of this revenue procedure (as applicable) for any taxable year beginning before January 1, 2016, on a single Form 3115 for the same year of change in accordance with section 11.08(5) of this revenue procedure, the eligibility rules in sections 5.01(1)(d) and (f) of Rev. Proc. 2015–13 do not apply to the taxpayer for either change. See section 6.03(1)(b) of Rev. Proc. 2015–13 for information on making concurrent changes.

(3) *Covered changes*. This section 11.08 only applies to the following changes in methods of accounting:

(a) A change to deducting amounts paid or incurred to acquire or produce non-incidental materials and supplies in the taxable year in which they are first used in the taxpayer's operations or consumed in the taxpayer's operations in accordance with §§ 1.162–3(a)(1) and 1.162–3(c)(1);

(b) A change to deducting amounts to acquire or produce incidental materials and supplies in the taxable year in which paid or incurred in accordance with §§ 1.162–3(a)(2) and 1.162–3(c)(1);

(c) A change to deducting amounts paid or incurred to acquire or produce non-incidental rotable and temporary spare parts in the taxable year which the taxpayer disposes of the parts in accordance with §§ 1.162–3(a)(3) and 1.162–3(c)(2);

(d) A change to the optional method of accounting for rotable and temporary spare parts in accordance with § 1.162–3(e);

(e) A change to deducting amounts paid or incurred for repair and maintenance in accordance with § 1.162–4, including a change, if any, in identifying the unit of property under § 1.263(a)–3(e) or, in the case of a building, identifying the building structure or building systems under § 1.263(a)–3(e)(2) for purposes of making the change to deducting the amounts;

(f) A change to capitalizing amounts paid or incurred for improvements to tangible property in accordance with § 1.263(a)–3 and, if depreciable, to depreciating such property under § 167 or § 168, including a change, if any, in identifying the unit of property under § 1.263(a)–3(e) or, in the case of a building, identifying the building structure or building systems under § 1.263(a)–3(e)(2) for purposes of making the change to capitalizing the amounts;

(g) A change by a dealer in property to deduct amounts paid or incurred for commissions and other costs that facilitate the sale of property in accordance with § 1.263(a)–1(e)(2);

(h) A change by a non-dealer in property to capitalizing amounts paid or incurred for commissions and other costs that facilitate the sale of property in accordance with § 1.263(a)–1(e);

(i) A change to capitalizing amounts paid or incurred to acquire or produce property in accordance with § 1.263(a)–2, and if depreciable, to depreciating such property under § 167 or § 168;

(j) A change to deducting amounts paid or incurred in the process of investigating or otherwise pursuing the acquisition of real property if the amounts meet the requirements of § 1.263(a)–2(f)(2)(iii); and

(k) A change to the optional regulatory accounting method in accordance with § 1.263(a)–3(m) to determine whether amounts paid or incurred to repair, maintain, or improve tangible property are treated as deductible expenses or capital expenditures.

(4) *Manner of making change*.

(a) *Form 3115*. In addition to the other information required on line 14 of Form 3115, the taxpayer must include the following:

(i) The citation to the paragraph of the final tangible property regulations that provides for the proposed method, or methods, of accounting to which the taxpayer is changing (for example, § 1.162–3(a), § 1.263(a)–3(i), § 1.263(a)–3(k)); and

(ii) If the taxpayer is changing any unit(s) of property under § 1.263(a)–3(e) or, in the case of a building, is changing the identification of any building structure(s) or building system(s) under § 1.263–3(e)(2) for purposes of determining whether amounts are deducted as repair and maintenance costs under section § 1.162–4 or capitalized as improvement costs under § 1.263(a)–3, the taxpayer must include a detailed description of the unit(s) of property, building structure(s), or buildings system(s) used under its present method of accounting and a detailed description of the unit(s) of property, building structure(s), and building system(s) under its proposed method of accounting, together with a citation to the paragraph of the final tangible property regulations under which the unit of property is permitted.

(iii) A taxpayer changing its method of accounting under this section 11.08 to capitalizing amounts paid or incurred and to depreciating such property under § 167 or § 168, as applicable, must complete Schedule E of Form 3115.

(b) *Reduced filing requirement for qualified small taxpayers*. A qualified small taxpayer, as defined in section 6.01(4)(b) of this revenue procedure, is required to complete only the following information on Form 3115 (Rev. December 2015):

(i) The identification section of page 1 (above Part I);

(ii) The signature section at the bottom of page 1;

(iii) Part I, line 1(a);

(iv) Part II, all lines except lines 13, 15, 16, 17, and 19, if the change is to not depreciating property;

(v) Part II, all lines except line 13, line 15b, 16, 17, and 19, if the change is to depreciating property;

(vi) Part IV, lines 26 and 27; and

(vii) Schedule E, if applicable.

(5) *Concurrent automatic change*.

(a) A taxpayer making two or more changes in method of accounting pursuant to this section 11.08 should file a single Form 3115 for all of these changes and must enter the designated automatic accounting method change numbers for all of these changes on the appropriate line on the Form 3115.

(b) A taxpayer making both one or more changes in method of accounting pursuant to this section 11.08 and a change to a UNICAP method under section 12 of this revenue procedure (as applicable) for the same year of change should file a single Form 3115 that includes all of these changes and must enter the designated automatic accounting method change numbers for all of these changes on the appropriate line on that Form 3115. See section 6.03(1)(b) of Rev. Proc. 2015–13 for information on making concurrent changes. For example, a qualified small taxpayer, as defined in section

6.01(4)(b) of this revenue procedure, must include on the single Form 3115 the information required by section 11.08(4)(b) of this revenue procedure for this change and the information required by the lines on Form 3115, applicable to the UNICAP method change, including Part II lines 14 and 15, Part IV, and Schedule D, and must include a separate response to each line on Form 3115 that is applicable to both changes (such as Part II lines 6b, 7, 8b, 14, and, as applicable for this change, Part IV) for which the taxpayer's response is different for this change and the change to a UNICAP method.

(6) *Section 481(a) adjustment*.

(a) *In general*. Except as provided in section 11.08(6)(b) of this revenue procedure, a taxpayer changing to a method of accounting provided in this section 11.08 must apply § 481(a) and take into account any applicable § 481(a) adjustment in the manner provided in section 7.03 of Rev. Proc. 2015–13.

(b) *Limited adjustment for certain changes*.

(i) *Final tangible property regulations*. A taxpayer changing to a method of accounting under § 1.162–3 (except § 1.162–3(e)), § 1.263(a)–2(f)(2)(iii), § 1.263(a)–2(f)(3)(ii), § 1.263(a)–3(m), § 1.263A–1(e)(2)(i)(A), and § 1.263A–1(e)(3)(ii)(E) is required to calculate a § 481(a) adjustment as of the first day of the taxpayer's taxable year of change that takes into account only amounts paid or incurred in taxable years beginning on or after January 1, 2014. Optionally, a taxpayer may take into account amounts paid or incurred in taxable years beginning on or after January 1, 2012.

(ii) *Small business exception*. A taxpayer that met the scope requirements of section 4 of Rev. Proc. 2015–20, 2015–9 I.R.B. 694, and that changed its method of accounting under section 10.11(3)(a) of Rev. Proc. 2015–14 (which is now section 11.08(3) of this revenue procedure) by following section 5 of Rev. Proc. 2015–20 is required to calculate a § 481(a) adjustment as of the first day of the year of change that takes into account only amounts paid or incurred in taxable years beginning on or after January 1, 2014.

(c) *Itemized listing on Form 3115*. A taxpayer changing to a method of accounting provided in this section 11.08 must include on Form 3115 (Rev. December 2015), Part IV, line 26, the total § 481(a) adjustment for each change in method of accounting being made. If the taxpayer is making more than one change in method of accounting under the final tangible property regulations, the taxpayer (including a qualified small taxpayer) must include on an attachment to Form 3115:

(i) The information required by Part IV, line 26 of Form 3115 (Rev. December 2015) for each change in method of accounting (including the amount of the § 481(a) adjustment for each change in method of accounting, which includes the portion of the § 481(a) adjustment attributable to UNICAP);

(ii) The information required by Part II, line 14 of Form 3115 (Rev. December 2015) for each change; and

(iii) The citation to the paragraph of the final tangible property regulations that provides for each proposed method of accounting.

(d) *Repair allowance property*. A taxpayer changing to a method of accounting provided by § 1.263(a)–3 under this section 11.08 must not include in the § 481(a) adjustment any amount attributable to property for which the taxpayer elected to apply the repair allowance under § 1.167(a)–11(d)(2) for any taxable year in which the repair allowance election was made.

(e) *Statistical Sampling*. Except for any change in accounting method for which a taxpayer is required to compute a § 481(a) adjustment under section 11.08(6)(b) of this revenue procedure, a taxpayer changing its method of accounting under this section 11.08 may use statistical sampling in determining the § 481(a) adjustment by following the guidance provided in Rev. Proc. 2011–42, 2011–37 I.R.B. 318.

(7) *No audit protection*. A taxpayer calculating a § 481(a) adjustment under section 11.08(6)(b)(ii) of this revenue procedure that takes into account only amounts paid or incurred in taxable years beginning on or after January 1, 2014, does not receive audit protection under section 8.01 of Rev. Proc. 2015–13 for amounts subject to a change under this section 11.08 that are paid or incurred in taxable years beginning before January 1, 2014. *See* section 5.02 of Rev. Proc. 2015–20.

(8) *Designated automatic accounting method change number*. See the following table for the designated automatic accounting method change numbers (DCN) for the changes in method of accounting under this section 11.08.

(a) *Changes under the final tangible property regulations.*

Description of Change	*DCN*	*Citation*
A change to deducting amounts paid or incurred for repair and maintenance or a change to capitalizing amounts paid or incurred for improvements to tangible property and, if depreciable, to depreciating such property under § 167 or § 168. Includes a change, if any, in the method of identifying the unit of property, or in the case of a building, identifying the building structure or building systems for the purpose of making this change.	184	§§ 1.162–4, 1.263(a)–3
Change to the regulatory accounting method.	185	§ 1.263(a)–3(m)
Change to deducting non-incidental materials and supplies when used or consumed.	186	§§ 1.162–3(a)(1), (c)(1)
Change to deducting incidental materials and supplies when paid or incurred.	187	§§ 1.162–3(a)(2), (c)(1)
Change to deducting non-incidental rotable and temporary spare parts when disposed of.	188	§ 1.162–3(a)(3), (c)(2)

Description of Change	DCN	Citation
Change to the optional method for rotable and temporary spare parts.	189	§ 1.162–3(e)
Change by a dealer in property to deduct commissions and other costs that facilitate the sale of property.	190	§ 1.263(a)–1(e)(2)
Change by a non-dealer in property to capitalizing commissions and other costs that facilitate the sale of property.	191	§ 1.263(a)–1(e)(1)
Change to capitalizing acquisition or production costs and, if depreciable, to depreciating such property under § 167 or § 168.	192	§ 1.263(a)–2
Change to deducting certain costs for investigating or pursuing the acquisition of real property (whether and which).	193	§ 1.263(a)–2(f)(2)(iii)

(8) *Contact information*. For further information regarding a change under this section, contact Lewis Saideman at (202) 317-5100 (not a toll-free call).

.09 *Railroad track structure expenditures*.

(1) *Description of change*. This change applies to a taxpayer that wants to change its method of accounting for railroad track structures to:

(a) the safe harbor method provided in Rev. Proc. 2002–65, 2002–2 C.B. 700; or

(b) the safe harbor method provided in Rev. Proc. 2001–46, 2001–2 C.B. 263.

(2) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 11.09 is "213."

(3) *Contact information*. For further information regarding a change under this section, contact Charles Gorham at (202) 317-7003 (not a toll-free call).

.10 *Remodel-refresh safe harbor method*.

(1) *Description of change*.

(a) *Applicability*. This change applies to a qualified taxpayer as defined in section 4.01 of Rev. Proc. 2015–56, 2015–49 I.R.B. 827, and within the scope of Rev. Proc. 2015–56 that wants to change to the remodel-refresh safe harbor method of accounting provided in section 5.02 of Rev. Proc. 2015–56 for its qualified costs, including the making of a late general asset account election as provided under section 5.02(6)(d) of Rev. Proc. 2015–56.

(b) *Inapplicability*. This change does not apply to the following:

(i) The revocation of a partial disposition election that is made pursuant to section 5.02(4)(b)(ii)(B) of Rev. Proc. 2015–56 (but see section 6.20 of this revenue procedure for making this revocation);

(ii) A change in determination of the asset disposed of described in section 5.02(5) of Rev. Proc. 2015–56 (which is made under section 6.15(3)(a) or 6.17(3)(a) of this revenue procedure, as applicable). See section 11.10(6)(b) of this revenue procedure for making the change under section 6.15(3)(a) or 6.17(3)(a) of this revenue procedure as a concurrent change;

(iii) The making of a late general asset account election not provided under section 5.02(6)(d) of Rev. Proc. 2015–56;

(iv) If section 5.02(4)(c) of Rev. Proc. 2015–56 applies to a qualified building (partial disposition election made in a prior year and the qualified taxpayer did not revoke such election within the time and in the manner provided in section 5.02(4)(b)(ii) of Rev. Proc. 2015–56), any qualified costs paid for that qualified building prior to the year of change for a Form 3115 filed to make the change to the remodel-refresh safe harbor method of accounting under this section 11.10; or

(v) If section 5.02(5)(b) of Rev. Proc. 2015–56 applies to a qualified building (recognized gain or loss under § 1.168(i)–1T or § 1.168(i)–8T, or in a taxable year beginning before January 1, 2012, for disposition of a component of a qualified building) and the qualified taxpayer did not make the required change in method of accounting to be in accord with § 1.168(i)–1(e)(2)(viii) or § 1.168–8(c)(4), as applicable, on or before the first taxable year that the qualified taxpayer uses the remodel-refresh safe harbor and take the entire amount of the § 481(a) adjustment into account in computing the qualified taxpayer's taxable income for that year of change, any qualified costs paid for that qualified building prior to the first taxable year that the qualified taxpayer or the IRS makes the change specified in section 6.15(3)(a) or 6.17(3)(a) of this revenue procedure, as applicable, for that qualified building and takes into account the entire amount of the § 481(a) adjustment in computing taxable income for the year of change.

(2) *Certain eligibility rules inapplicable*.

(a) *In general*. The eligibility rules in sections 5.01(1)(d) and (f) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, do not apply to a qualified taxpayer that changes to a method of accounting provided under this section 11.10 for any taxable year beginning after December 31, 2013, and ending before December 31, 2016.

(b) *Concurrent automatic change*. If a qualified taxpayer makes both a change under this section 11.10 and a change under section 6.14(3)(b), 6.15(3)(a), and/or 6.17 of this revenue procedure for any taxable year beginning after December 31, 2013, and ending before December 31, 2016, on a single Form 3115 for the same asset for the same year of change in accordance with section 11.10(7)(b) of this revenue procedure, the eligibility rules in sections 5.01(1)(d) and (f) of Rev. Proc. 2015–13 do not apply to the qualified taxpayer for either change.

(3) *No audit protection*. If section 5.02(4)(c) or 5.02(5)(b) of Rev. Proc. 2015–56 applies to a qualified building (and, in the case of section 5.02(5)(b), the qualified taxpayer does not make the required change on or before the first tax-

able year that the qualified taxpayer uses the remodel-refresh safe harbor), the qualified taxpayer does not receive audit protection under section 8.01 of Rev. Proc. 2015–13 in connection with this change for that qualified building. *See* section 8.02(2) of Rev. Proc. 2015–13.

(4) *Manner of making change*.

(a) *Reduced filing requirement for qualified small taxpayers*. A qualified small taxpayer, as defined in section 6.01(4)(b) of this revenue procedure, may complete only the following information on Form 3115 (Rev. December 2015):

(i) The identification section of page 1 (above Part I);

(ii) The signature section at the bottom of page 1;

(iii) Part I, line 1(a);

(iv) Part II, all lines except lines5, 13, 15, 16, 17, and 19;

(v) Part IV, lines 25, 26, and 27;

(vi) Schedule E; and

(vii) If applicable, the election statement described in section 11.10(4)(b)(ii).

(b) *Late general asset account election*.

(i) *In general*. If under section 5.02(6)(d) of Rev. Proc. 2015–56 the qualified taxpayer is required to make a late general asset account election, the late general asset account election change is made using a modified cut-off method under which the unadjusted depreciable basis and the depreciation reserve of the asset as of the beginning of the year of change are accounted for using the new method of accounting. The late general asset account election change requires the general asset account to include a beginning balance for both the unadjusted depreciable basis and the depreciation reserve. The beginning balance for the unadjusted depreciable basis of each general asset account is equal to the sum of the unadjusted depreciable bases as of the beginning of the year of change for all assets included in that general asset account. The beginning balance of the depreciation reserve of each general asset account is equal to the sum of the greater of the depreciation allowed or allowable as of the beginning of the year of change for all assets included in that general asset account.

(ii) *Election statement*. The qualified taxpayer (including a qualified small taxpayer) must attach to its Form 3115 a statement providing that the qualified taxpayer agrees to the following additional terms and conditions:

(A) The qualified taxpayer consents to, and agrees to apply, all of the provisions of § 1.168(i)–1 to the assets that are subject to the election specified in section 5.02(6)(d) of Rev. Proc. 2015–56; and

(B) Except as provided in § 1.168(i)–1(c)(1)(iii)(A), (e)(3), (g), or (h), the election made by the qualified taxpayer under section 5.02(6)(d) of Rev. Proc. 2015–56 is irrevocable and will be binding on the qualified taxpayer for computing taxable income for the year of change and for all subsequent taxable years with respect to the assets that are subject to this election.

(c) *Cut-off method required for certain changes*.

(i) If section 5.02(4)(c) of Rev. Proc. 2015–56 applies to a qualified building, the change to the remodel-refresh safe harbor method of accounting for that qualified building, and any improvements to that qualified building, is made using a cut-off method and applies only to qualified costs paid or incurred for that qualified building, and any improvements to that qualified building, beginning in the year of change for the change made to the remodel-refresh safe harbor method of accounting.

(ii) If section 5.02(5)(b) of Rev. Proc. 2015–56 applies to a qualified building and the qualified taxpayer does not change its present method of accounting to be in accord with § 1.168(i)–1(e)(2)(viii) or § 1.168(i)–8(c)(4), as applicable, on or before the first taxable year that the qualified taxpayer used the remodel-refresh safe harbor and take the entire amount of the § 481(a) adjustment into account in computing the qualified taxpayer's taxable income for that year of change, the change to the remodel-refresh safe harbor method of accounting for that qualified building, and any improvements to that qualified building, is made using a cut-off method and applies only to qualified costs paid or incurred for that qualified building, and any improvements to that qualified building, beginning in the year of change for the change made to comply with § 1.168(i)–1(e)(2)(viii) or § 1.168(i)–8(c)(4), as applicable. *See* section 6.15(3)(a) and section 6.17(3)(a) of this revenue procedure, as applicable.

(5) *Section 481(a) adjustment*.

(a) *In general*. A qualified taxpayer changing its method of accounting under this section 11.10 must apply § 481(a) and take into account any applicable § 481(a) adjustment in the manner provided in section 7.03 of Rev. Proc. 2015–13. However, a § 481(a) adjustment is neither required nor permitted for the late general asset account election under section 5.02(6)(d) of Rev. Proc. 2015–56 or, if section 5.02(4)(c) or 5.02(5)(b) of Rev. Proc. 2015–56 applies to a qualified building, and an improvement to a qualified building (and, in the case of section 5.02(5)(b) of Rev. Proc. 2015–56, the qualified taxpayer did not make the required change on or before the first taxable year that the qualified taxpayer uses the remodel-refresh safe harbor), for the change to the remodel-refresh safe harbor method of accounting for that qualified building and an improvement to that qualified building.

(b) *Repair allowance property*. A qualified taxpayer changing to the method of accounting provided under this section 11.10 must not include in the § 481(a) adjustment any amount attributable to property for which the qualified taxpayer elected to apply the repair allowance under § 1.167(a)–11(d)(2) for any taxable year in which the repair allowance election was made.

(c) *Statistical sampling*. A qualified taxpayer changing its method of accounting under this section 11.10 may use statistical sampling in determining the § 481(a) adjustment only by following the sampling procedures provided in Rev. Proc. 2011–42, 2011–37 I.R.B. 318.

(6) *Concurrent automatic change*.

(a) A qualified taxpayer making this change for more than one asset for the same year of change should file a single Form 3115 for all such assets. The single Form 3115 must provide a single net § 481(a) adjustment for all such changes.

(b) A qualified taxpayer making this change, a change under section 6.15(3)(a) or 6.20 of this revenue procedure, and any change listed in section 6.14(3)(b) or section 6.17 of this revenue procedure for the same year of change should file a single Form 3115 for all such changes and must enter the designated automatic accounting method change numbers for the changes on the appropriate line on the Form 3115. See section 6.03(1)(b) of Rev. Proc. 2015–13 for information on making concurrent changes.

(7) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change to the method of accounting under this section 11.10 is "222."

(8) *Contact information*. For further information regarding a change under this section, contact Merrill Feldstein at (202) 317-5100 (not a toll-free call).

SECTION 12. UNIFORM CAPITALIZATION (UNICAP) METHODS (§ 263A)

.01 *Certain uniform capitalization (UNICAP) methods used by resellers and reseller-producers*.

(1) *Description of change*.

(a) *Applicability*. This change applies to:

(i) a small reseller of personal property that wants to change from a permissible UNICAP method to a permissible non-UNICAP inventory capitalization method in any taxable year that it qualifies as a small reseller;

(ii) a formerly small reseller that wants to change from a permissible non-UNICAP inventory capitalization method to a permissible UNICAP method in the first taxable year that it does not qualify as a small reseller;

(iii) a reseller-producer that wants to change from a permissible UNICAP method for both its production and resale activities to a permissible simplified resale method described in § 1.263A–3(d)(3) in any taxable year that it qualifies to use a simplified resale method for both its production and resale activities under § 1.263A–3(a)(4) (resellers with de minimis production activities);

(iv) a reseller-producer that wants to change from a permissible simplified resale method described in § 1.263A–3(d)(3) for both its production and resale activities to a permissible UNICAP method for both its production and resale activities in the first taxable year that it does not qualify to use a simplified resale method for both its production and resale activities under § 1.263A–3(a)(4);

(v) a reseller that wants to change its permissible UNICAP method to include a special reseller cost allocation rule;

(vi) a reseller or reseller-producer that wants to change to a UNICAP method (or methods) specifically described in the regulations and includes any necessary changes in the identification of costs subject to § 263A that will be accounted for using the proposed method in any taxable year, other than the first taxable year, that it does not qualify as a small reseller; or

(vii) a reseller or reseller-producer that wants to change from not capitalizing a cost subject to § 263A to capitalizing that cost under a UNICAP method (or methods) specifically described in the regulations that the reseller or reseller-producer is already using.

(b) *Inapplicability*.

(i) *Self-constructed assets*. This change does not apply to a taxpayer that wants to use either the simplified service cost method or the simplified production method for self-constructed assets under §§ 1.263A–1(h)(2)(i)(D) and 1.263A–2(b)(2)(i)(D).

(ii) *Historic absorption ratio*. This change does not apply to a taxpayer that wants to make an historic absorption ratio election under §§ 1.263A–2(b)(4) or 1.263A–3(d)(4), or to a taxpayer that wants to revoke an election to use the historic absorption ratio with the simplified resale method (*see* § 1.263A–3(d)(4)(iii)(B)), including a taxpayer using the simplified resale method with an historic absorption ratio that wants to change to a UNICAP method specifically described in the regulations that does not include the historic absorption ratio. However, this change applies to a small reseller that wants to change from the historic absorption ratio with the simplified resale method to a permissible non-UNICAP inventory capitalization method under section 12.01(1)(a)(i) of this revenue procedure.

(iii) *Interest capitalization*. This change does not apply to a change in method of accounting for interest capitalization (but see section 12.14 of this revenue procedure for making this change).

(iv) *Recharacterizing costs under the simplified resale method*. This change does not include a change for purposes of recharacterizing "section 471 costs" as "additional § 263A costs" (or vice versa) under the simplified resale method.

(2) *Certain eligibility rule inapplicable*. The eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, does not apply to the changes described insection 12.01(1)(a)(i) and (ii) of this revenue procedure.

(3) *Definitions*.

(a) "Reseller" means a taxpayer that acquires real or personal property described in § 1221(a)(1) for resale.

(b) "Small reseller" means a reseller whose average annual gross receipts for the three immediately preceding taxable years (or fewer, if the taxpayer has not been in existence for the three preceding taxable years) do not exceed $10,000,000. *See* § 263A(b)(2)(B).

(c) "Formerly small reseller" means a reseller that no longer qualifies as a small reseller.

(d) "Producer" means a taxpayer that produces real or tangible personal property.

(e) "Reseller-producer" means a taxpayer that is both a producer and a reseller.

(f) "Permissible UNICAP method" means a method of capitalizing costs that is permissible under § 263A.

(g) "A UNICAP method specifically described in the regulations" includes the 90–10 *de minimis* rule to allocate a mixed service department's costs to resale activities (§ 1.263A–1(g)(4)(ii)), the 1/3–2/3 rule to allocate labor costs of personnel to purchasing activities (§ 1.263A–3(c)(3)(ii)(A)), the 90–10 *de minimis* rule to allocate a dual-function storage facility's costs to property acquired for resale (§ 1.263A–3(c)(5)(iii)(C)), the specific identification method (§ 1.263A–1(f)(2)), the burden rate method (§ 1.263A–1(f)(3)), the standard cost method (§ 1.263A–1(f)(3)), the direct reallocation method (§ 1.263A–1(g)(4)(iii)(A)), the step-allocation method (§ 1.263A–1(g)(4)(iii)(B)), the simplified service cost method (§ 1.263A–1(h)) (with a labor-based allocation ratio), and the simplified resale method without the historic absorption ratio election (§ 1.263A–3(d)), but does not include any other reasonable allocation method within the meaning of § 1.263A–1(f)(4).

(h) "Special reseller cost allocation rule" means the 90–10 *de minimis* rule to allocate a mixed service department's costs to property acquired for resale (§ 1.263A–1(g)(4)(ii)), the 1/3 – 2/3 rule to allocate labor costs of personnel to purchasing activities (§ 1.263A–3(c)(3)(ii)(A)), and the 90–10 *de minimis* rule to allocate a dual-function storage facility's costs to property acquired for resale (§ 1.263A–3(c)(5)(iii)(C)).

(i) "Permissible non-UNICAP inventory capitalization method" means a method of capitalizing inventory costs that is permissible under § 471.

(4) *Section 481(a) adjustment period*. Beginning with the year of change, a taxpayer changing its method of accounting for costs pursuant to section 12.01(1)(a)(i), 12.01(1)(a)(iii), or 12.01(1)(a)(iv) of this revenue procedure generally must take any applicable net positive § 481(a) adjustment for such change into account ratably over the same number of taxable years, not to exceed four, that the taxpayer used its former method of accounting. A taxpayer changing its method of accounting for costs pursuant to section 12.01(1)(a)(ii), 12.01(1)(a)(v), or 12.01(1)(a)(vi) of this revenue procedure must take any applicable net positive § 481(a) adjustment for such change into account as provided in section 7.03 of Rev. Proc. 2015–13.

(5) *Multiple changes*. A taxpayer making both this change and another change in method of accounting for the same year of change must comply with the ordering rules of § 1.263A–7(b)(2).

(6) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 12.01 is "22."

(7) *Example*. The following example illustrates the principles of this section 12.01 for small resellers and formerly small resellers.

Assume *X*, a corporate reseller of personal property, incorporated January 2, 2005, adopted a taxable year ending December 31. In determining whether *X* is a small reseller, as provided in section 12.01(3)(b) of this revenue procedure, *X* calculates its average annual gross receipts for the three taxable years (or fewer, if applicable) immediately preceding the taxable year being analyzed. For each of the taxable years 2005 through 2014, *X* calculates the corresponding average annual gross receipts for the three immediately preceding taxable years (or fewer, if applicable). The results are shown in the table below:

Current Taxable Year	Average Annual Gross Receipts for the Three Taxable Years Immediately Preceding the Current Taxable Year
2005	$ 0
2006	5,000,000
2007	6,000,000
2008	7,000,000
2009	11,000,000
2010	11,000,000
2011	9,000,000
2012	8,000,000
2013	11,000,000
2014	12,000,000

Furthermore, *X* which adopted the dollar-value LIFO inventory method, has the following LIFO inventory balances determined without considering the effects of the UNICAP method:

	Beginning	Ending
2009	$1,000,000	$1,100,000
2010	1,100,000	1,200,000
2011	1,200,000	1,300,000
2012	1,300,000	1,400,000
2013	1,400,000	1,500,000
2014	1,500,000	1,600,000

X was required by § 263A to change to the UNICAP method for 2009 because its average annual gross receipts for the three taxable years immediately preceding 2009 were $11,000,000, which exceeded the $10,000,000 ceiling permitted by the small reseller exception. Assume that *X* was required to capitalize $80,000 of "additional § 263A costs" to the cost of its 2009 beginning inventory because of this change in inventory method. In addition, *X* was required to include one-fourth of the § 481(a) adjustment when computing taxable income for each of the four taxable years beginning with 2009. Thus, *X* was required to include a $20,000 positive § 481(a) adjustment in its 2009 taxable income.

X elected to use the simplified resale method without an historic absorption ratio election under § 1.263A–3(d)(3) for determining the amount of additional § 263A costs to be capitalized to each LIFO layer. Assume that *X* was required to add $10,000 of additional § 263A costs to the cost of its 2009 ending inventory because of the $100,000 increment for 2009.

X's 2009 Ending Inventory:

Beginning Inventory (Without UNICAP costs)	$1,000,000
2009 Increment	100,000
Additional § 263A Costs in Beginning Inventory	80,000
Additional § 263A Costs in 2009 Increment	10,000
Total 2009 Ending Inventory	$1,190,000

X's Unamortized 2009 § 481(a) Adjustment:

2009 § 481(a) Adjustment	$80,000
Amount included in 2009 Taxable Income	<20,000>
Unamortized 2009 § 481(a) Adjustment—12/31/09	$60,000

Because *X* failed to satisfy the small reseller exception for 2010, *X* was required to continue using the UNICAP method for its inventory costs. Furthermore, *X* was required to include $20,000 of the unamortized 2009 positive § 481(a) adjustment in 2010 taxable income. Assume that *X* was required to add $10,000 of additional § 263A costs to the cost of its 2010 ending inventory because of the $100,000 increment for 2010.

X's 2010 Ending Inventory:

Beginning Inventory (With UNICAP costs)	$1,190,000
2010 Increment	100,000
Additional § 263A Costs in 2010 Increment	10,000
Total 2010 Ending Inventory	$1,300,000

X's Unamortized 2009 § 481(a) Adjustment:

Unamortized 2009 § 481(a) Adjustment—12/31/09	$60,000
Amount Included in 2010 Taxable Income	<20,000>
Unamortized 2009 § 481(a) Adjustment—12/31/10	$40,000

Because *X* satisfied the small reseller exception for 2011, *X* may change voluntarily from the UNICAP method to a permissible non-UNICAP inventory capitalization method (such a change for a current taxable year is provided in section 12.01 of this revenue procedure). To reflect the removal of the additional § 263A costs from the cost of its 2011 beginning inventory, *X* must compute a corresponding § 481(a) adjustment, which is a negative $100,000 ($1,200,000 - $1,300,000). The entire amount of this negative § 481(a) adjustment is included in the computation of *X*'s taxable income for 2011. In addition, *X* must include $20,000 of the unamortized 2009 § 481(a) adjustment in 2011 taxable income.

X's 2011 Ending Inventory:

Beginning Inventory (With UNICAP costs)	$1,300,000
2011 Increment	100,000
2011 § 481(a) Adjustment <Negative>	<100,000>
Total 2011 Ending Inventory	$1,300,000

X's Unamortized 2009 § 481(a) Adjustment:	
Unamortized 2009 § 481(a) Adjustment—12/31/10	$40,000
Amount included in 2011 Taxable Income	<20,000>
Unamortized 2009 § 481(a) Adjustment—12/31/11	$20,000

X's Unamortized 2011 § 481(a) Adjustment:	
2011 § 481(a) Adjustment <Negative>	$<100,000>
Amount included in 2011 Taxable Income	100,000
Unamortized 2011 § 481(a) Adjustment—12/31/11	$ 0

X also satisfies the small reseller exception for 2012 and, therefore, is not required to return to the UNICAP method for 2012. *X*, however, must include $20,000 of the unamortized 2009 positive § 481(a) adjustment in its 2012 taxable income.

X's 2012 Ending Inventory:	
Beginning Inventory (Without UNICAP costs)	$1,300,000
2012 Increment	100,000
Total 2012 Ending Inventory	$1,400,000

X's Unamortized 2009 § 481(a) Adjustment:	
Unamortized 2009 § 481(a) Adjustment—12/31/11	$20,000
Amount in 2012 Taxable Income	<20,000>
Unamortized 2009 § 481(a) Adjustment—12/31/12	$ 0

In 2013, *X* fails to satisfy the small reseller exception and, therefore, must return to the UNICAP method (such a change for a current taxable year is provided in section 12.01 of this revenue procedure). *X* changes to the simplified resale method without a historic absorption ratio election under § 1.263A–3(d)(3). Assume that *X* must capitalize $120,000 of additional § 263A costs to the cost of its 2013 beginning inventory because of this change in inventory method. Because *X* used a non-UNICAP method for two taxable years prior to 2013, the § 481 spread period for the positive § 481(a) adjustment is two years. Therefore, *X* must include one-half of the § 481(a) adjustment ($60,000) when computing taxable income for 2013 and 2014. Assume that *X* must add $10,000 of additional § 263A costs to the cost of its 2013 ending inventory because of the $100,000 increment for 2013.

X's 2013 Ending Inventory:	
Beginning Inventory (Without UNICAP costs)	$1,400,000
2013 Increment	100,000
Additional § 263A costs in Beginning Inventory	120,000
Additional § 263A costs in 2013 Increment	10,000
Total 2013 Ending Inventory	$1,630,000

X's Unamortized 2013 § 481(a) Adjustment:

2013 § 481 Adjustment	$ 120,000
Amount included in 2013 Taxable Income	<60,000>
Unamortized 2013 § 481(a) Adjustment—12/31/13	$ 60,000

Because *X* fails to satisfy the small reseller exception for 2014, *X* must continue using the UNICAP method for its inventory costs. Furthermore, *X* is required to include $60,000 of the unamortized 2013 positive § 481(a) adjustment in 2014 taxable income. Assume that *X* is required to add $10,000 of additional § 263A costs to the cost of its 2014 ending inventory because of the $100,000 increment for 2014.

X's 2014 Ending Inventory:	
Beginning Inventory (With UNICAP costs)	$1,630,000
2014 Increment	100,000
Additional § 263A Costs in 2014 Increment	10,000
Total 2014 Ending Inventory	$1,740,000

X's Unamortized 2013 § 481(a) Adjustment:	
Unamortized 2013 § 481(a) Adjustment—12/31/13	$ 60,000
Amount included in 2014 Taxable Income	<60,000>
Unamortized 2013 § 481(a) Adjustment—12/31/14	$ 0

(8) *Contact information*. For further information regarding a change under this section, contact Natasha Mulleneaux, at (202) 317-7007 (not a toll-free call).

.02 *Certain uniform capitalization (UNICAP) methods used by producers and reseller-producers*.

(1) *Description of change*.

(a) *Applicability*. This change applies to a producer (as defined in section 12.01(3)(d) of this revenue procedure) or a reseller-producer (as defined in section 12.01(3)(e) of this revenue procedure) that wants to change to a UNICAP method (or methods) specifically described in the regulations, including any necessary changes in the identification of costs subject to § 263A that will be accounted for using the proposed method. This change also includes a change from not capitalizing a cost subject to § 263A to capitalizing that cost for a producer or a reseller-producer under a UNICAP method (or methods) specifically described in the regulations that the producer or reseller-producer is already using.

(b) *Inapplicability*.

(i) *Self-constructed assets*. This change does not apply to a taxpayer that wants to use either the simplified service cost method or the simplified production method for self-constructed assets under §§ 1.263A–1(h)(2)(i)(D) and 1.263A–2(b)(2)(i)(D).

(ii) *Historic absorption ratio*. This change does not apply to a taxpayer that wants to make an historic absorption ratio election under §§ 1.263A–2(b)(4) or 1.263A–3(d)(4), or to a taxpayer that wants to revoke an election to use the historic absorption ratio with the simplified production method (*see* § 1.263A–2(b)(4)(iii)(B)), including a taxpayer using the simplified production method with an historic absorption ratio changing to a UNICAP method specifically described in the regulations that does not include the historic absorption ratio.

(iii) *Interest capitalization*. This change does not apply to a change in method of accounting for interest capitalization (but see section 12.14 of this revenue procedure for making this change).

(iv) *Recharacterizing costs under the simplified production method*. This change does not include a change for purposes of recharacterizing "section 471 costs" as "additional § 263A costs" (or *vice versa*) under the simplified production method.

(2) *Definition*. A "UNICAP method specifically described in the regulations" includes the 90–10 de minimis rule to allocate a mixed service department's costs to production or resale activities (§ 1.263A–1(g)(4)(ii)), the 1/3 – 2/3 rule to allocate labor costs of personnel to purchasing activities (§ 1.263A–3(c)(3)(ii)(A)), the 90–10 de minimis rule to allocate a dual-function storage facility's costs to property acquired for resale (§ 1.263A–3(c)(5)(iii)(C)), the specific identification method (§ 1.263A–1(f)(2)), the burden rate method (§ 1.263A–1(f)(3)), the standard cost method (§ 1.263A–1(f)(3)), the direct reallocation method (§ 1.263A–1(g)(4)(iii)(A)), the step-allocation method (§ 1.263A–1(g)(4)(iii)(B)), the simplified service cost method (§ 1.263–1(h)) (with either a labor-based allocation ratio or a produc-

tion cost allocation ratio), and the simplified production method without the historic absorption ratio election (§ 1.263A–2(b)), but does not include any other reasonable allocation method within the meaning of § 1.263A–1(f)(4).

(3) *Multiple changes*. A taxpayer making both this change and another change in method of accounting in the same year of change must comply with the ordering rules of § 1.263A–7(b)(2).

(4) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 12.02 is "23."

(5) *Contact information*. For further information regarding a change under this section, contact Natasha Mulleneaux, at (202) 317-7007 (not a toll-free call).

.03 *Impact fees*.

(1) *Description of change*. This change applies to a taxpayer that incurs impact fees as defined in Rev. Rul. 2002–9, 2002–1 C.B. 614, in connection with the construction of a new residential rental building that wants to capitalize the costs to the building under §§ 263(a) and 263A. See Rev. Rul. 2002–9 for further information.

(2) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 12.03 is "25."

(3) *Contact information*. For further information regarding a change under this section, contact Natasha Mulleneaux at (202) 317-7007 (not a toll-free call).

.04 *Change to capitalizing environmental remediation costs under § 263A*.

(1) *Description of change*. This change applies to a taxpayer that wants to change its method of accounting for environmental remediation costs from a method that does not comply with the holding in Rev. Rul. 2004–18, 2004–1 C.B. 509, to capitalizing them to inventory under § 263A.

(2) *Concurrent automatic changes*. A taxpayer making both this change and another automatic change under § 263A for the same year of change may file a single Form 3115 for both changes, provided the taxpayer enters the designated automatic change numbers for both changes on the appropriate line on that Form 3115, and complies with the ordering rules of § 1.263A–7(b)(2). See section 6.03(1)(b) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, for information on making concurrent changes.

(3) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 12.04 is "77."

(4) *Contact information*. For further information regarding a change under this section, contact Sean Dwyer at (202) 317-7005 (not a toll-free call).

.05 *Change in allocating environmental remediation costs under § 263A*.

(1) *Description of change*. This change applies to a taxpayer that capitalizes environmental remediation costs to inventory under § 263A, but allocates these costs to inventory using a method of accounting that does not comply with the holding in Rev. Rul. 2005–42, 2005–2 C.B. 67, and wants to change to allocating these costs to inventory produced during the taxable year in which the costs are incurred under § 263A. See Rev. Rul. 2005–42 for further information.

(2) *Concurrent automatic changes*. A taxpayer making both this change and another automatic change under § 263A for the same year of change may file a single Form 3115 for both changes, provided the taxpayer enters the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115, and complies with the ordering rules of § 1.263A–7(b)(2). See section 6.03(1)(b) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, for information on making concurrent changes.

(3) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 12.05 is "92."

(4) *Contact information*. For further information regarding a change under this section, contact Sean Dwyer at (202) 317-7005 (not a toll-free call).

.06 *Safe harbor methods under § 263A for certain dealerships of motor vehicles*.

(1) *Description of change*. This change applies to a motor vehicle dealership, as defined in section 4 of Rev. Proc. 2010–44, 2010–49 I.R.B. 811, that is within the scope of section 3 of Rev. Proc. 2010–44 and wants to change its method of accounting to (1) treat its sales facility as a retail sales facility or (2) be treated as a reseller without production activities, as described in section 5 of Rev. Proc. 2010–44. A motor vehicle dealership that wants to make an automatic change in method of accounting to use one or both safe harbor methods described in section 5 of Rev. Proc. 2010–44 may make any corresponding changes in the identification of costs subject to § 263A that will be accounted for using the proposed method (for example, to remove internal profit from inventory costs) or to no longer include negative amounts as additional § 263A costs in the numerator of the simplified resale method formula or the simplified production method formula. However, except as provided in the preceding sentence, a change under this section does not include a change for purposes of recharacterizing "§ 471 costs" as "additional § 263A costs" (or *vice versa*) under the simplified resale method or the simplified production method.

(2) *Concurrent automatic changes*. A motor vehicle dealership making an automatic change to one or both safe harbor methods described in section 5 of Rev. Proc. 2010–44 and another automatic change under § 263A for the same taxable year may file one Form 3115 to make both changes, provided the dealership enters the designated automatic change numbers for all such changes in Part I on that Form 3115, and complies with the ordering rules of § 1.263A–7(b)(2). See section 6.03(1)(b) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, for information on making concurrent changes.

(3) *Multiple adjustments*. In the event that a motor vehicle dealership is taking into account a § 481(a) adjustment from another accounting method change in addition to the § 481(a) adjustment required by a change to a safe harbor method described in section 5 of Rev. Proc. 2010–

44, the § 481(a) adjustments must be taken into account separately. For example, a motor vehicle dealership that changed to comply with § 263A in 2009 and was required to take its § 481(a) adjustment into account over four years must continue to take into account that adjustment over the remainder of that four year § 481(a) adjustment period even though the dealership changed to a safe harbor method described in section 5 of Rev. Proc. 2010–44 in 2010 and has an additional § 481(a) adjustment required by that change.

(4) *Designated automatic accounting method change numbers*. The designated automatic accounting method change number for a change to treat certain sales facilities as retail sales facilities as described in section 5.01 of Rev. Proc. 2010–44 is "150." The designated automatic accounting method change number for a change to be treated as a reseller without production activities as described in section 5.02 of Rev. Proc. 2010–44 is "151."

(5) *Contact information*. For further information regarding a change under this section, contact Natasha Mulleneaux at (202) 317-7007 (not a toll-free call).

.07 *Change to not apply § 263A to one or more plants removed from the list of plants that have a preproductive period in excess of 2 years.*

(1) *Description of change*. This change, as described in Rev. Proc. 2013–20, 2013–14 I.R.B. 744, applies to a taxpayer that is not a corporation, partnership, or tax shelter required to use an accrual method of accounting under § 447 or § 448(a)(3), and either (a) wants to not apply § 263A, pursuant to § 263A(d)(1) and § 1.263A–4(a)(2), to the production of one or more plants that the IRS and the Treasury Department have removed from the list of plants that have a nationwide weighted average preproductive period in excess of 2 years, or (b) properly elected, pursuant to § 263A(d)(3) and § 1.263A–4(d), to not apply § 263A to the production of a plant or plants that have been removed from the list of plants that have a nationwide weighted average preproductive period in excess of 2 years, and wishes to revoke its § 263A(d)(3) election with respect to those plants. *See* Notice 2013–18, 2013–14 I.R.B. 742, or its successor.

(2) *Certain eligibility rule temporarily inapplicable*. The eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, does not apply to a taxpayer that wants to make the change for its first or second taxable year ending after February 15, 2013.

(3) *Audit protection*. If a taxpayer currently does not apply § 263A to its blackberry, raspberry, or papaya plants in a manner that complies with the requirements of § 263A(d)(1) and § 1.263A–4(a)(2), the IRS will not raise such method of accounting for a taxable year that ends on or before February 15, 2013. Also, if the use of such a method of accounting by a taxpayer is an issue under consideration (within the meaning of section 3.08 of Rev. Proc. 2015–13) for taxable years in examination, before an Appeals office, or before the U.S. Tax Court in a taxable year that ends on or before February 15, 2013, the IRS will not further pursue that issue.

(4) *Manner of making change*. A change under this section 12.07 is made with any necessary adjustments under § 481(a). For example, the revocation of an election under § 263A(d)(3) results in a § 481(a) adjustment that must take into account the change in depreciation from the alternative depreciation system to the general depreciation system included within such revocation.

(5) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 12.07 is "181."

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

.08 *Change to a reasonable allocation method described in § 1.263A–1(f)(4) for self-constructed assets.*

(1) *Description of change*.

(a) *Applicability*. This change, as described in Rev. Proc. 2014–16, 2014–9 I.R.B. 606, applies to a producer (as defined in section 12.01(3)(d) of this revenue procedure) or a reseller-producer (as defined in section 12.01(3)(e) of this revenue procedure) that wants to change to a reasonable allocation method within the meaning of § 1.263A–1(f)(4), other than the methods specifically described in § 1.263A–1(f)(2) or (3), for self-constructed assets produced during the taxable year, including any necessary changes in the identification of costs subject to § 263A that will be accounted for using the proposed method. This section 12.08 also includes a change from not capitalizing a cost subject to § 263A to capitalizing that cost for a producer or reseller-producer under a reasonable allocation method within the meaning of § 1.263A–1(f)(4) that the producer or reseller-producer is already using for self-constructed assets, other than the methods specifically described in § 1.263A–1(f)(2) or (3). See section 12.02 of this revenue procedure for a producer or reseller-producer that wants to change to a method described in § 1.263A–1(f)(2) or (3).

(b) *Inapplicability*. This change does not apply to an allocation method based on the number of units produced or an allocation method that does not allocate costs to the units of property produced. This change does not apply to a change described in another section of this revenue procedure or in other guidance published in the Internal Revenue Bulletin. For example, this change does not apply to a change described in section 12.01 or 12.02 of this revenue procedure.

(2) *No ruling on reasonableness of method*. The consent granted in section 9 of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, for this change is not a determination by the Commissioner that the taxpayer is using a reasonable allocation method for costs subject to § 263A and does not create any presumption that the proposed allocation method is permissible. The director will ascertain whether the taxpayer's allocation method is reasonable within the meaning of § 1.263A–1(f)(4).

(3) *Multiple changes*. A taxpayer making both this change and another change in method of accounting under section 11.08 of this revenue procedure for the same year of change must comply with the ordering rules of § 1.263A–7(b)(2).

(4) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 12.08 is "194."

(5) *Contact information*. For further information regarding a change under this section, contact Natasha Mulleneaux at (202) 317-7007 (not a toll-free call).

.09 *Real property acquired through foreclosure*.

(1) *Applicability*. This change, as described in Rev. Proc. 2014–16, 2014–9 I.R.B. 606, applies to a taxpayer that capitalizes costs under § 263A(b)(2) and § 1.263A–3(a)(1) to real property acquired through foreclosure, or similar transaction, where the taxpayer wants to change its method of accounting to an otherwise permissible method of accounting under which the acquisition and holding costs for real property acquired through foreclosure, or similar transaction, are not capitalized under § 263A(b)(2) and § 1.263A–3(a)(1). To qualify for this change in method of accounting, a taxpayer must:

(a) originate, or acquire and hold for investment, loans that are secured by real property; and

(b) acquire the real property that secures the loans at a foreclosure sale, by deed in lieu of foreclosure, or in another similar transaction.

(2) *Inapplicability*. This change does not apply to costs capitalized under § 263A(b)(1) and § 1.263A–2(a)(1) by the taxpayer to the acquired real property as a result of production activities.

(3) *Certain eligibility rule temporarily inapplicable*. The eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, does not apply to a taxpayer that makes this change for its first or second taxable year ending after December 31, 2012.

(4) *Designated automatic accounting method change numbers*. The designated automatic accounting method change number for a change under this section 12.09 is "195."

(5) *Contact information*. For further information regarding a change under this section, contact Sue-Jean Kim at (202) 317-7007 (not a toll-free call).

.10 *Sales-Based Royalties.*

(1) *Description of change.* This change, as described in Rev. Proc. 2014–33, 2014–22 I.R.B. 1060, applies to a taxpayer that wants to change its method of accounting for sales-based royalties (as described in § 1.263A–1(e)(3)(ii)(U)(*2*)) that are properly allocable to inventory property:

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

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

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

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

(2) *Limitations.*

(a) A taxpayer may not make a change in method of accounting under this section 12.10 if the taxpayer wants to change to capitalizing sales-based royalties and allocating them to inventory property using an other reasonable allocation method within the meaning of § 1.263A–1(f)(4).

(b) A taxpayer making the changes described in section 12.10(1)(a) or 12.10(1)(c) of this revenue procedure that uses a simplified method to determine the additional § 263A costs allocable to inventory property on hand at year end must remove sales-based royalties allocated to cost of goods sold from the formulas used to allocate additional § 263A costs to ending inventory in the same manner that the taxpayer included these amounts in the formulas.

(c) A taxpayer making a change in method of accounting under this section 12.10 that uses a simplified method with an historic absorption ratio election (see §§ 1.263A–2(b)(4) and 1.263A–3(d)(4)) and currently includes, or is changing its method to include, sales-based royalties in any part of its historic absorption ratio must revise its previous and current historic absorption ratios. To revise its historic absorption ratios, the taxpayer must apply its proposed method of accounting during the test period, during all recomputation years, and during all updated test periods to determine the § 471 costs and additional § 263A costs that were incurred. The revised historic absorption ratios must be used to revalue beginning inventory and must be accounted for in the taxpayer's § 481(a) adjustment. The taxpayer must use a method described in § 1.263A–7(c) to revalue beginning inventory.

(3) *Certain eligibility rule temporarily inapplicable*. The eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, does not apply to this change for a taxpayer's first and second taxable years ending on or after January 13, 2014.

(4) *Concurrent automatic changes*. A taxpayer making a change under this section 12.10 and one or more automatic changes in method of accounting under § 263A for the same year of change may file a single Form 3115 for all changes, provided the taxpayer enters the designated automatic change numbers for all changes on the appropriate line on the Form 3115 and complies with the ordering rules of § 1.263A–7(b)(2). See section 6.03(1)(b) of Rev. Proc. 2015–13 for information on making concurrent changes.

(5) *Designated automatic accounting method change number*. The designated automatic accounting method change number for changes in method of accounting under this section 12.10 is "201."

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

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

(1) *Description of change.* This change, as described in Rev. Proc. 2014–33, 2014–22 I.R.B. 1060, applies to a taxpayer that wants to change its method of accounting to no longer include cost adjustments for sales-based vendor chargebacks described in § 1.471–3(e)(1) in the formulas used to allocate additional § 263A costs to ending inventory under a simplified method.

(2) *Limitations*.

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

(b) A taxpayer making a change in method of accounting under this section 12.11 that uses a simplified method with an historic absorption ratio election (see §§ 1.263A–2(b)(4) and 1.263A–3(d)(4)) and currently includes sales-based vendor chargebacks in any part of its historic absorption ratio must revise its previous and current historic absorption ratio(s). To revise its historic absorption ratios, the taxpayer must apply its proposed method of accounting during the test period, during all recomputation years, and during all updated test periods to determine the § 471 costs and additional § 263A costs that were incurred. The revised historic absorption ratios must be used to revalue beginning inventory and must be accounted for in the taxpayer's § 481(a) adjustment. The taxpayer must use a method described in § 1.263A–7(c) to revalue beginning inventory.

(3) *Certain eligibility rule temporarily inapplicable*. The eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, does not apply to this change for a taxpayer's first and second taxable years ending on or after January 13, 2014.

(4) *Concurrent automatic changes*. A taxpayer making both this change and one or more automatic changes under § 263A, or both this change and the change described in section 21.15 of this revenue procedure for the same taxable year of change may file a single Form 3115 for both changes, provided the taxpayer enters the designated automatic change numbers for all changes on the appropriate line on the Form 3115 and complies with the ordering rules of § 1.263A–7(b)(2). See section 6.03(1)(b) of Rev. Proc. 2015–13 for information on making concurrent changes.

(5) *Designated automatic accounting method change number*. The designated automatic accounting method change number for changes in method of accounting under this section 12.11 is "202".

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

.12 *U.S. ratio method*.

(1) *Change to the U.S. ratio method*.

(a) *Description of change*. This change applies to a foreign person, as defined in Notice 88–104, 1988–2 C.B. 443, as modified by Notice 89–67, 1989–1 C.B. 723, that is required to capitalize costs under § 263A and wants to change its method of accounting to the U.S. ratio method, as described in Notice 88–104.

(b) *Manner of making change*. A taxpayer requesting a change on behalf of a foreign person under section 12.12(1) of this revenue procedure must attach a statement to the Form 3115 providing the following information:

(i) *Foreign person requirement*. A representation that the foreign person is a qualified business unit (QBU), as defined in § 1.989(a)–1(b), of a foreign person, or the foreign branch of a U.S. person that constitutes a separate QBU, within the meaning of Notice 88–104. If the taxpayer is requesting a change in method of accounting on behalf of multiple foreign persons, please provide a representation that each foreign person is a QBU, as defined in § 1.989(a)–1(b), of a foreign person or the foreign branch of a U.S. person that constitutes a separate QBU, within the meaning of Notice 88–104;

(ii) *Description of trade or business*. The name and employer identification number (if applicable) for each foreign person and an explanation of each trade or business, as defined in § 1.446–1(d), for which a request to change to the U.S. ratio method is being made under this section 12.12(1);

(iii) *Applicable U.S. trade or business requirement*. The identity of the "applicable U.S. trade or business," as defined in Notice 88–104, that the foreign person wishes to use and an explanation of how this U.S. trade or business is "the same as, or most similar to" the trade or business conducted by the foreign person. If the taxpayer is requesting a change in method of accounting for multiple foreign persons, the taxpayer must identify the "applicable U.S. trade or business" for each foreign person, and explain how the respective U.S. trade or business is "the same as, or most similar to" the trade or business conducted by the foreign person; and

(iv) *Relationship requirement*. An explanation of how the "applicable U.S. trade or business" identified in section 12.12(1)(b)(iii) of this revenue procedure is a trade or business conducted in the United States by a "related person," as defined in Notice 88–104, with respect to the foreign person requesting a change under this section. If the taxpayer is requesting a change in method of accounting for multiple foreign persons, the taxpayer must explain how the "applicable U.S. trade or business" identified in section 12.12(1)(b)(iii) of this revenue procedure is a trade or business conducted in the United States by "related person" for purposes of Notice 88–104 for each foreign person requesting a change in method of accounting. Use §§ 267(b) or 707(b), as applicable, to explain the relationship.

(c) *Additional requirements*.

(i) A foreign person must continue to use the U.S. ratio of the applicable U.S. trade or business identified in section 12.12(1)(b)(iii) of this revenue procedure unless consent of the Commissioner is obtained to use the U.S. ratio of a different applicable U.S. trade or business under § 446(e) (see section 12.12(2) of this revenue procedure);

(ii) In the case of a controlled foreign corporation, the controlling U.S. shareholder, or in the case of a foreign branch of a U.S. person, the U.S. person, must maintain records of the U.S. ratio used by each foreign person to calculate the additional § 263A costs capitalized to property produced and property acquired for resale for the year of change and for subsequent taxable years for each foreign person requesting a change in method of accounting under this section 12.12. In the case of a controlled foreign partnership, the U.S. partner must maintain records of the U.S. ratio used by each foreign person to calculate the additional § 263A costs capitalized to property produced and property acquired for resale for the year of change and for subsequent taxable years for each foreign person requesting a change in method of accounting under this section 12.12.

(iii) The § 481(a) adjustment is computed in the manner provided in Notice 88–104;

(iv) The U.S. ratio is determined, and the ratio is applied to the costs of property produced or property acquired for resale incurred by the foreign person, in accordance with Notice 88–104; and

(v) If any foreign person is unable to obtain a U.S. ratio from the applicable U.S. trade or business identified in section 12.12(2)(b)(iii) of this revenue procedure, or is otherwise no longer eligible to use the U.S. ratio method, the foreign person is no longer permitted to use the U.S. ratio method. However, the foreign person is not ineligible to use the U.S. ratio method if the foreign person is able to obtain a U.S. ratio from a different applicable U.S. trade or business, and changes the applicable U.S. trade or business pursuant to section 12.12(2) of this revenue procedure or under the non-automatic change procedures of this revenue procedure, as applicable. If a foreign person is no longer eligible to use the U.S. ratio method, it is required to change its method of accounting to a method that complies with §§ 263A and 471 using either the automatic change procedures of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, and sections 12.01, 12.02, or 12.08, as applicable, of this revenue procedure or the non-automatic change procedures of Rev. Proc. 2015–13.

(2) *Change within U.S. ratio method*. This change applies to a foreign person currently using the U.S. ratio method that wants to use the U.S. ratio of a different applicable U.S. trade or business for purposes of applying the U.S. ratio method as described in section 12.12(2)(a) or 12.12(2)(b) of this revenue procedure.

(a) *Required change in the applicable U.S. trade or business*.

(i) *In general*. A foreign person is permitted to change its method of accounting under this section 12.12(2)(a) to use the U.S. ratio of a different applicable U.S. trade or business, as defined in Notice 88–104, if the foreign person is no longer able to obtain the U.S. ratio from the applicable U.S. trade or business previously identified and if: (A) the U.S. person or related person in which the applicable U.S. trade or business is conducted terminates its existence; (B) the foreign person is no longer related, within the meaning of § 267(b) or § 707(b), to the U.S. person or related person in which the applicable U.S. trade or business is conducted; or (C) the U.S. person or related person ceases to conduct the applicable U.S. trade or business.

(ii) *Certain eligibility rule inapplicable*. The eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015–13 does not apply to the change described in section 12.12(2)(a) of this revenue procedure.

(iii) *Manner of making change*. A foreign person making a change in method of accounting under this section 12.12(2)(a) must make the change in accordance with the requirement set forth in section 12.12(2)(c) of this revenue procedure.

(b) *Other changes in the applicable U.S. trade or business*.

(i) *In general*. If the foreign person cannot make the change in method of accounting described in section 12.12(2)(a) of this revenue procedure, or there is more than one U.S. trade or business that can reasonably be considered the "same as, or most similar to" the foreign person's trade or business, the foreign person is permitted to change its method of accounting under this section 12.12(2)(b) to use the U.S. ratio of a different applicable U.S. trade or business.

(ii) *Manner of making change*. A foreign person making a change in method of accounting under this section 12.12(2)(b) must make the change in accordance with the requirement set forth in section 12.12(2)(c) of this revenue procedure.

(c) *Short Form 3115 in lieu of a Form 3115*. In accordance with § 1.446–1(e)(3)(ii), the requirement of § 1.446–1(e)(3)(i) to file a Form 3115 is waived and pursuant to section 6.02(2) of Rev. Proc. 2015–13, a short Form 3115 is authorized for a change described in section 12.12(2)(a) or 12.12(2)(b) of this revenue procedure. The short Form 3115 (Rev. December 2015) must include the following information:

(i) the identification section of page 1 (above Part I);

(ii) the signature section at the bottom of page 1;

(iii) Part I, line 1(a);

(iv) the information required under section 12.12(1)(b) of this revenue procedure; and

(v) a statement that the change in method of accounting is made under section 12.12(2)(a) or 12.12(2)(b) of Rev. Proc. 2016–29, as applicable.

(3) *Designated automatic accounting method change numbers*. The designated automatic accounting method change number for a change under this section 12.12 is "214."

(4) *Contact information*. For further information regarding a change under this section, contact Sean Dwyer at (202) 317-7005 (not a toll-free call).

.13 *Depletion*.

(1) *Description of change.* This change applies to a taxpayer that wants to change its method of accounting for depletion to treat these amounts as an indirect cost that is only properly allocable to property that has been sold (that is, for purposes of determining gain or loss on the sale of the property) under § 1.263A–1(e)(3)(ii)(J).

(2) *Limitation.*

(a) A taxpayer making this change in method of accounting that uses a simplified method to determine the additional § 263A costs allocable to inventory property on hand at year end must remove depletion allocated to cost of goods sold from the formulas used to allocate additional § 263A costs to ending inventory in the same manner that the taxpayer included these amounts in the formulas.

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

(3) *Certain eligibility rule inapplicable.* The eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, does not apply to this change.

(4) *Concurrent automatic changes*. A taxpayer making both this change and another automatic change under § 263A for the same year of change may file a single Form 3115 for both changes, provided the taxpayer enters the designated automatic change numbers for both changes on the appropriate line on that Form 3115 and complies with the ordering rules of § 1.263A–7(b)(2). See section 6.03(1)(b) of Rev. Proc. 2015–13 for information on making concurrent changes.

(5) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change in method of accounting under this section 12.13 is "215."

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

.14 *Interest capitalization*.

(1) *Description of change*. This change applies to a taxpayer that wants to change its method of accounting for interest from either not capitalizing any interest or capitalizing interest in accordance with its book method of accounting, with respect to the production of designated property, to capitalizing interest with respect to the production of designated property in accordance with §§ 1.263A–8 through 14.

(2) *Manner of making change*. A taxpayer requesting a change under this section 12.14 must attach a statement to the Form 3115 with the following information:

(a) Whether the taxpayer elects to not trace debt under § 1.263A–9(d);

(b) The computation period(s) and measurement dates used under the new method;

(c) A representation that the taxpayer's method is in accordance with the avoided cost method under § 1.263A–9; and

(d) A representation that the taxpayer will comply with § 1.263A–14 and Notice 88–89, 1988–2 C.B. 422, should the taxpayer incur average excess expenditures allocable to related persons.

(3) *Concurrent automatic changes*. A taxpayer making a change under this section 12.14 and one or more automatic changes in method of accounting under § 263A for the same year of change may file a single Form 3115 for all changes, provided the taxpayer enters the designated automatic change numbers for all changes on the appropriate line on the Form 3115 and complies with the ordering rules of § 1.263A–7(b)(2). See section 6.03(1)(b) of Rev. Proc. 2015–13 for information on making concurrent changes.

(4) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change in method of accounting under this section 12.14 is "224."

(5) *Contact information*. For further information regarding a change under this section, contact Steven Gee at (202) 317-7007 (not a toll-free call).

SECTION 13. LOSSES, EXPENSES, AND INTEREST WITH RESPECT TO TRANSACTIONS BETWEEN RELATED TAXPAYERS (§ 267)

.01 *Change to comply with § 267*.

(1) *Description of change*. This change applies to a taxpayer that wants to change its method or methods of accounting to comply with the requirements of § 267, which disallows or defers certain deductions attributable to transactions between related taxpayers. However, this change does not apply to a change for original issue discount (OID), including stated interest that is OID because it is not qualified stated interest (as defined in § 1.1273–1(c)). See section 5.02 of this revenue procedure for a change to comply with § 163(e)(3) for OID on an obligation held by a related foreign person.

(2) *Certain eligibility rules inapplicable*. The eligibility rules in sections 5.01(1)(e) and (f) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, do not apply to this change to comply with § 267(a)(3).

(3) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 13.01 is "26."

(4) *Contact information*. For further information regarding a change under this section, contact Steven Gee at (202) 317–7007 (not a toll-free call). For further information regarding a change to comply with § 267(a)(3), contact Joseph Vetting at (202) 317-4960 (not a toll-free call).

SECTION 14. DEFERRED COMPENSATION (§ 404)

.01 *Deferred compensation*.

(1) *Description of change*. This change applies to a taxpayer using an overall accrual method of accounting that wants to change its method of accounting to treat bonuses or vacation pay as follows (*see* § 404(a)(5) and § 1.404(b)–1T, Q&A 2):

(a) *Applicability*.

(i) *Bonuses*.

(A) *Bonuses not subject to capitalization under § 263A*. If by the end of the taxable year all the events have occurred that establish the fact of the liability to pay a bonus and the amount of the liability can be determined with reasonable accuracy (*see* § 1.446–1(c)(1)(ii)), and the bonus is otherwise deductible, but the bonus is received by the employee after the 15th day of the 3rd calendar month after the end of that taxable year, to treat the bonus as deductible in the taxable year of the employer in which or with which ends the taxable year of the employee in which the bonus is includible in the gross income of the employee; or

(B) *Bonuses that are subject to capitalization under § 263A*. If by the end of the taxable year all the events have occurred that establish the fact of the liability to pay a bonus and the amount of the liability can be determined with reasonable accuracy (*see* § 1.446–1(c)(1)(ii)), and the bonus is otherwise deductible (without regard to § 263A), but the bonus is received by the employee after the 15th day of the 3rd calendar month after the end of that taxable year, to treat the bonus as capitalizable (within the meaning of § 1.263A–1(c)(3)) in the taxable year of the employer in which or with which ends the taxable year of the employee in which the bonus is includible in the gross income of the employee.

(ii) *Vacation pay*.

(A) *Vacation pay not subject to capitalization under § 263A*. If by the end of the taxable year all the events have occurred that establish the fact of the liability to pay vacation pay and the amount of the liability can be determined with reasonable accuracy (*see* § 1.446–1(c)(1)(ii)), and the vacation pay is otherwise deductible but the vacation pay is received by the employee after the 15th

day of the 3^{rd} calendar month after the end of that taxable year, to treat the vacation pay as deductible in the taxable year of the employer in which the vacation pay is paid to the employee; or

(B) *Vacation pay that is subject to capitalization under § 263A*. If by the end of the taxable year all the events have occurred that establish the fact of the liability to pay vacation pay and the amount of the liability can be determined with reasonable accuracy (*see* § 1.446–1(c)(1)(ii)), and the vacation pay is otherwise deductible (without regard to § 263A), but the vacation pay is received by the employee after the 15^{th} day of the 3^{rd} calendar month after the end of that taxable year, to treat the vacation pay as capitalizable (within the meaning of § 1.263A–1(c)(3)) in the taxable year of the employer in which the vacation pay is paid to the employee.

(b) *Inapplicability*. This change does not apply to a taxpayer that is required under § 263A and the regulations thereunder to capitalize the costs with respect to which the taxpayer wants to change its method of accounting under this section 14.01 if the taxpayer is not capitalizing these costs, unless the taxpayer concurrently changes its method to capitalize these costs in conjunction with a change to a UNICAP method under section 12.01, 12.02, 12.08, or 12.12 of this revenue procedure (as applicable).

(2) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 14.01 is "28."

(3) *Contact information*. For further information regarding a change under this section, contact Maryellen Furr at (202) 317-5600 (not a toll-free call).

.02 *Grace period contributions*.

(1) *Description of change*. This change applies to a taxpayer that wants to cease deducting contributions made during the § 404(a)(6) grace period to a qualified cash or deferred arrangement within the meaning of § 401(k) or to a defined contribution plan as matching contributions with the meaning of § 401(m) when the contributions are attributable to compensation earned by plan participants after the end of a taxable year as required by Rev. Rul. 2002–46, 2002–2 C.B. 117, as modified by Rev. Rul. 2002–73, 2002–2 C.B. 805.

(2) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 14.02 is "29."

(3) *Contact information*. For further information regarding a change under this section, contact David Ziegler at (202) 317-8629 or Carlton Watkins at (202) 317-8631 (not toll-free calls).

SECTION 15. METHODS OF ACCOUNTING (§ 446)

.01 *Change in overall method from the cash method to an accrual method*.

(1) *Description of change*.

(a) *Applicability*. This change applies to a taxpayer that wants to change its overall method of accounting from the cash receipts and disbursements method (cash method) (as defined in section 15.01(2)(a) of this revenue procedure) to an accrual method (as defined in section 15.01(2)(b) of this revenue procedure). A change under this section 15.01 applies to (1) a taxpayer required to make this change by § 448, any other section of the Code or regulations, or in other guidance published in the Internal Revenue Bulletin (IRB), as well as (2) a taxpayer that wants to make this change but is not required to do so by § 448, any other section of the Code or regulations, or in other guidance published in the IRB. A taxpayer changing to an overall accrual method because it is prohibited from using the overall cash method under § 448 may use this section 15.01 regardless of whether the year of change is the first taxable year that the taxpayer is required by § 448 to change from the cash method ("the first § 448 year"), or is a taxable year other than the taxpayer's first § 448 year.

Additionally, a taxpayer qualifies to change its overall method of accounting from the cash method to an accrual method using this section 15.01 even if the taxpayer is also making one or more of the following changes in method of accounting for the same year of change:

(i) adopting the recurring item exception (as defined in section 15.01(2)(c) of this revenue procedure) for one or more types of recurring items (*see* § 1.461–5(d));

(ii) adopting or changing to a permissible inventory method of accounting and is either adopting this inventory method or qualifies to change to this inventory method using the automatic change procedures of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, and a section of this revenue procedure, or the change can be made automatically under any section of the Code or regulations, or other guidance published in the IRB (see Rev. Rul. 90–38, 1990–1 C.B. 57 (regarding when a taxpayer may adopt a method of accounting));

(iii) adopting or changing to a permissible § 263A method of accounting and is either adopting this § 263A method or qualifies to change to this § 263A method using the automatic change procedures of Rev. Proc. 2015–13 and a section of this revenue procedure, or the change can be made automatically under any section of the Code or regulations, or other guidance published in the IRB (see Rev. Rul. 90–38 (regarding when a taxpayer may adopt a method of accounting)); or

(iv) adopting or changing to any other special method of accounting (as defined in section 15.01(2)(d) of this revenue procedure) and is either adopting this special method or qualifies to change to this special method using the automatic change procedures of Rev. Proc. 2015–13 and a section of this revenue procedure, or the change can be made automatically under any section of the Code or regulations, or other guidance published in the IRB (see Rev. Rul. 90–38 (regarding when a taxpayer may adopt a method of accounting));

Also, a taxpayer qualifies to use this section 15.01 when that taxpayer, in the taxable year immediately preceding the year of change, has used a permissible inventory method for that year, and, if that taxpayer was subject to § 263A for that year, has also used a permissible § 263A method for that year, and the method(s) continue to be used for the year of change.

(b) *Inapplicability*. This change does not apply to:

(i) a taxpayer that is making a change from a hybrid method of accounting (as defined in section 15.01(2)(e) of this revenue procedure);

(ii) a taxpayer that is changing its method of accounting for one or more items of income or expense, but not its overall method of accounting. See section 15.09 of this revenue procedure for a description of accounting method changes from the cash method to an accrual method for specific items that are to be made using the automatic change procedures of Rev. Proc. 2015–13 and that section 15.09;

(iii) a taxpayer that is required by the Code, regulations, or other guidance published in the IRB to use a special method (for example, an inventory method, a § 263A method, or a long-term contract method) in the year of change and fails to adopt or change to that method;

(iv) a taxpayer that has included in its § 481(a) adjustment any amount of deferred compensation that is described under § 457A(d)(3) that is attributable to services performed before January 1, 2009;

(v) a taxpayer that is engaged in two or more trades or businesses, unless that taxpayer makes this change for each trade or business so that the identical accrual method is used for each trade or business beginning with the year of change;

(vi) a taxpayer that is required by § 447 to change to an accrual method when the year of change is the first taxable year that taxpayer is required by § 447 to change to that method;

(vii) a cooperative organization described in §§ 501(c)(12), 521, or 1381; or

(viii) an individual taxpayer, except for activities conducted as a sole proprietorship.

(2) *Definitions*.

(a) *Cash method of accounting* is the method identified by § 446(c)(1) and §§ 1.446–1(c)(1)(i), 1.451–1(a), and 1.461–1(a)(1). For purposes of this section 15.01, the cash method also includes the overall cash method with inventoriable items treated as either inventory or as non-incidental materials and supplies under § 1.162–3 as permitted by Rev. Proc. 2001–10, 2001–1 C.B. 272, as modified by Rev. Proc. 2011–14, 2011–4 I.R.B. 330, or Rev. Proc. 2002–28, 2002–1 C.B. 815, as modified by Rev. Proc. 2011–14.

(b) *Accrual method of accounting* is a method identified by § 446(c)(2) and §§ 1.446–1(c)(1)(ii), 1.451–1(a), and 1.461–1(a)(2).

(c) *Recurring item exception* is the method described in § 461(h)(3) and § 1.461–5.

(d) *Special method of accounting* within the meaning of this section 15.01 is a method of accounting, other than the cash method, expressly permitted or required by the Code, regulations, or in other guidance published in the IRB that deviates from the tax accrual accounting rules of §§ 446, 451 and 461 and the regulations thereunder. For example, the installment method of accounting under § 453, the mark-to-market method under § 475, a long-term contract method such as the percentage of completion method under § 460, and the deferral method of Rev. Proc. 2004–34, 2004–1 C.B. 991, as clarified and modified by Rev. Proc. 2011–18, 2011–5 I.R.B. 443, and Rev. Proc. 2013–29, 2013–33 I.R.B. 141, and as modified by Rev. Proc. 2011–14, are special methods of accounting. In contrast, application of the all-events test under a specific set of facts is not a special method of accounting. See, for example, Rev. Rul. 69–314, 1969–1 C.B. 139 (concerning the treatment of retainages).

(e) *Hybrid method of accounting* is a combination of the cash and accrual methods under which one or more items of income or expense are reported on the cash method and one or more items of income or expense are reported on an accrual method. For purposes of this section 15.01, a hybrid method of accounting includes, for example, a taxpayer that uses an accrual method with respect to purchases and sales of inventories and uses the cash method in computing all other items of income and expense.

(3) *Manner of making change*.

(a) *Section 481(a) adjustment*. A taxpayer changing its method of accounting under this section 15.01 must compute a § 481(a) adjustment. This adjustment must reflect the account receivables, account payables, inventory, and any other item determined to be necessary in order to prevent items from being duplicated or omitted. However, the adjustment does not include any item of income accrued but not received that was worthless or partially worthless (within the meaning of § 166(a)) on the last day of the year immediately prior to the year of change.

(b) *Prior change eligibility rule inapplicable*. Any prior change to the overall cash method that the taxpayer implemented using the provisions of Rev. Proc. 2001–10, as modified by Rev. Proc. 2011–14, or Rev. Proc. 2002–28, as modified by Rev. Proc. 2011–14, is disregarded for purposes of section 5.01(1)(e) of Rev. Proc. 2015–13.

(c) *Adoption of recurring item exception*. The taxpayer must attach to its Form 3115 a statement describing the types of liabilities for which the recurring item exception will be used.

(d) *Concurrent automatic change to a special method*.

(i) *Generally only one Form 3115 required*. Except as provided in section 15.01(3)(d)(ii) of this revenue procedure, a taxpayer that is changing from the overall cash method to an overall accrual method under this section 15.01 and changing to a special method, as permitted under section 15.01(1)(a)(ii), (iii), or (iv), must timely file a single Form 3115 for both changes and must enter the designated automatic accounting method change numbers for both changes on the appropriate line of that Form 3115. For example, a taxpayer making both a change from the overall cash method to an overall accrual method under this section 15.01 and an automatic change to the deferral method for advance payments under Rev. Proc. 2004–34 (*see* section 16.07 of this revenue procedure) must timely file a single Form 3115 for both changes and enter the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115. See section 6.03(1)(b) of Rev. Proc. 2015–13 for information on making concurrent changes.

(ii) *Two Forms 3115 required when a concurrent change is being implemented under section 31.01 of this revenue procedure for short-term obligations*. When a taxpayer subject to § 1281 is changing its method of accounting for interest income on short-term obligations as part of the change to an overall accrual method under this section 15.01, that taxpayer must request the change for the interest income under section 31.01 of this revenue procedure. The taxpayer must timely file individual Forms 3115 for each change requested. This section 15.01 will govern the change to an overall accrual method.

(e) *Concurrent change in accounting method not permitted to be implemented using the automatic change procedures of Rev. Proc. 2015–13 and a section of this revenue procedure, any section of the Code or regulations, or other guidance published in the IRB*. A taxpayer that does not qualify to change from the overall cash method to an overall accrual method under this section 15.01 because that taxpayer is concurrently changing to a method of accounting that may not be implemented using the automatic change procedures of Rev. Proc. 2015–13 and a section of this revenue procedure, any section of the Code or regulations, or other guidance published in the IRB, must timely request both changes using the non-automatic change procedures in Rev. Proc. 2015–13. See Rev. Proc. 2016–1, 2016–1 I.R.B. 1 (or successor), for more information on whether one Form 3115 is required to implement the changes, and for information on the appropriate user fee.

(4) *Change made in the first § 448 year*.

(a) *In general*. If the year of change is the first § 448 year for a taxpayer and that taxpayer qualifies to make the change from the cash method under the provisions of §§ 1.448–1(g) and (h) as well as this section 15.01, that taxpayer may choose to make the change using this section 15.01. However, that taxpayer must still comply with the requirements and provisions of §§ 1.448–1(g) and (h) in addition to the requirements and provisions of this section 15.01. For example, if the taxpayer is a hospital, defined in § 1.448–1(g)(2)(ii)(B), and that taxpayer chooses to make its change from the cash method for the first § 448 year using this section 15.01, the applicable § 481(a) adjustment period is provided by § 1.448–1(g)(2)(ii). If a taxpayer chooses not to implement its change from the cash method using this section 15.01, that taxpayer must make the change under the provisions of §§ 1.448–1(g) and (h).

(b) *Prior change eligibility rule inapplicable*. For a taxpayer making a change from the cash method in the first § 448 year, any prior change to the overall cash method is disregarded for purposes of section 5.01(1)(e) of Rev. Proc. 2015–13.

(5) *Designated automatic accounting method change number*.

(a) *Change made in the first § 448 year*. The designated automatic accounting method change number for a change from the cash method in the first § 448 year is "123." Entering designated automatic accounting method change number "123" on the appropriate line on the Form 3115 fulfills the requirement of § 1.448–1(h)(2)(i) to type or print "Automatic Change to Accrual Method – Section 448" at the top of page 1 of the Form 3115.

(b) *All other changes from the cash method to an overall accrual method*. The designated automatic accounting method change number for all other changes from the cash method under this section 15.01 is "122."

(6) *Contact information*. For further information regarding a change under this section, contact Cheryl Oseekey, at (202) 317-7007 (not a toll-free call).

.02 *Multi-year insurance policies for multi-year service warranty contracts*.

(1) *Description of change*.

(a) *Applicability*. This change applies to a manufacturer, wholesaler, or retailer of motor vehicles or other durable consumer goods that wants to change its method of accounting for insurance costs paid or incurred to insure its risks under multi-year service warranty contracts to the method described in section 15.02(2) of this revenue procedure. Multi-year service warranty contracts to which this change applies include only those separately priced contracts sold by a manufacturer, wholesaler, or retailer also selling the motor vehicles or other durable consumer goods underlying the contracts (to the ultimate customer or to an intermediary). The classification of goods as "durable consumer goods" for purposes of this change depends on the common usage of the goods, rather than the purchaser's actual intended use of the goods.

(b) *Inapplicability*. This change does not apply to a taxpayer that covers its risks under its multi-year service warranty contracts through arrangements not constituting insurance.

(2) *Description of method*. If a taxpayer purchases a multi-year service warranty insurance policy (in connection with its sale of multi-year service warranty contracts to customers) by paying a lump-sum premium in advance, the taxpayer must capitalize the amount paid or incurred and may only obtain deductions for that amount by prorating (or amortizing) it over the life of the insurance policy (whether the cash method or an accrual method of accounting is used to account for service warranty transactions).

(3) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 15.02 is "31."

(4) *Contact information*. For further information regarding a change under this section, contact Timothy Azarchs, at (202) 317-5100 (not a toll-free call).

.03 *Taxpayers changing to overall cash method*.

(1) *Description of change*. This change applies to either:

(a) a "qualifying taxpayer" that qualifies to make the change to the overall cash receipts and disbursements (cash) method under Rev. Proc. 2001–10, 2001–1 C.B. 272, (other than a taxpayer described in § 448(a)(3) or a bank described in section 14.12(2)(a) of this revenue procedure) with "average annual gross receipts" (as defined in section 5.01 of Rev. Proc. 2001–10) of $1,000,000 or less that wants to change to the overall cash method of accounting as provided in Rev. Proc. 2001–10, as modified by Announcement 2004–16, 2004–1 C.B. 668 (regarding placement of § 481(a) adjustment on the Form 3115), and Rev. Proc. 2011–14, 2011–4 I.R.B. 330 (removing § 6.02(1)(a) of Rev. Proc. 2001–10); or

(b) a "qualifying small business taxpayer" that qualifies to make a change to the overall cash receipts and disbursements (cash) method under Rev. Proc. 2002–28, 2002–1 C.B. 815, (other than a taxpayer prohibited from using the cash method under § 448 or a bank described in section 15.12(2)(a) of this revenue procedure) with "average annual gross receipts" (as defined in section 5.02 of Rev. Proc. 2002–28) of $10,000,000 or less that wants to change the overall method of accounting for an "eligible trade or business" (as defined in section 4.01 of Rev.

Proc. 2002–28) to the overall cash method of accounting as provided in Rev. Proc. 2002–28, as modified by Announcement 2004–16 (regarding placement of § 481(a) adjustment on the Form 3115), and Rev. Proc. 2011–14 (removing § 7.02(1)(a) of Rev. Proc. 2002–28).

(2) *Manner of making change*. See either Rev. Proc. 2001–10 or Rev. Proc. 2002–28 for additional guidance on the computation of the § 481(a) adjustment and the completion of the Form 3115.

(3) *Concurrent automatic change to treat inventoriable items as nonincidental materials and supplies under Rev. Proc. 2001–10 or Rev. Proc. 2002–28*. A taxpayer making both a change to the overall cash method under this section 15.03 and a change to treat inventoriable items as materials and supplies that are not incidental pursuant to § 1.162–3 under section 22.03 of this revenue procedure for the same year of change may file a single Form 3115 for both changes, provided the taxpayer enters the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115. See section 6.03(1)(b) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, for information on making concurrent changes.

(4) *Banks changing to overall cash/hybrid method*. This change does not apply to a bank described in section 15.12(2)(a) of this revenue procedure. However, such a bank may be eligible to change to the overall cash/hybrid method under section 15.12 of this revenue procedure if it meets the requirements of that section.

(5) *Farming businesses changing to overall cash method*. A farming business may be eligible to make this change under section 15.03(1)(a) of this revenue procedure. However, a farming business is not eligible to make this change under section 15.03(1)(b) of this revenue procedure. A farming business that is not eligible under this section 15.03 may still be eligible to change to the overall cash method under section 15.13 of this revenue procedure if it meets the requirements of that section.

(6) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under section 15.03(1)(a) of this revenue procedure is "32." The designated automatic accounting method change number for a change under section 15.03(1)(b) of this revenue procedure is "33."

(7) *Contact information*. For further information regarding a change under this section, contact Megan Kirmil at (202) 317-7007 (not a toll-free call).

.04 *Nonaccrual-experience method*.

(1) *Description of change*.

(a) *Applicability*. This change applies to a taxpayer that wants to make one or more of the changes in method of accounting to, from, or within a nonaccrual-experience (NAE) method of accounting that are described in sections 3.01(1) through (5) of Rev. Proc. 2006–56, 2006–2 C.B. 1169, as modified by Rev. Proc. 2011–14, 2011–4 I.R.B. 330, and as modified and amplified by Rev. Proc. 2011–46, 2011–42 I.R.B. 518.

(b) *Inapplicability*. This change does not apply to a taxpayer within the scope of section 3.01(6) through 3.01(8) of Rev. Proc. 2006–56, as modified and amplified by Rev. Proc. 2011–46.

(2) *Manner of making the change*.

(a) *Changes made with a § 481(a) adjustment*. A change in method of accounting described in section 3.01(1), (2), (3), or (5) of Rev. Proc. 2006–56, as modified and amplified by Rev. Proc. 2011–46, is made with a § 481(a) adjustment.

(b) *Changes made on a cut-off basis*.

(i) *In general*. A change described in section 3.01(4) of Rev. Proc. 2006–56 is made on a cut-off basis and the new applicable period applies only to the taxpayer's NAE calculation of its uncollectible amount for the year of change and for subsequent years. Moreover, a change described in sections 5.02 and 5.03 of Rev. Proc. 2011–46 is made on a cut-off basis and the proposed method applies only to accounts receivable earned on or after the first day of the year of change. Accordingly, a § 481(a) adjustment is neither permitted nor required for a change described in section 3.01(4) of Rev. Proc. 2006–56 or in section 5.02 or 5.03 of Rev. Proc. 2011–46.

(ii) *Special filing rules for changes made under section 5.02 and 5.03 of Rev. Proc. 2011–46, as modified by this revenue procedure*.

(A) *Certain eligibility rule inapplicable*. The eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, does not apply to a change in method of accounting made under section 5.02 or 5.03 of Rev. Proc. 2011–46, as modified by this revenue procedure.

(B) *Filing rules*. In accordance with § 1.446–1(e)(3)(ii), the requirement of § 1.446–1(e)(3)(i) to file a Form 3115 is waived and a statement in lieu of a Form 3115 is authorized for this change. Notwithstanding the definition of Form 3115 in section 3.07 of Rev. Proc. 2015–13, the statement in lieu of a Form 3115 that is permitted under section 5.02 or 5.03 of Rev. Proc. 2011–46 and this section 15.04 is considered a Form 3115 for purposes of the automatic consent procedures of Rev. Proc. 2015–13. However, the requirement to file the Duplicate copy, under section 6.03(1)(a) of Rev. Proc. 2015–13, is waived. See section 5.02 or 5.03 of Rev. Proc. 2011–46, as applicable, for what information is required to be provided on the statement.

(3) *Concurrent change to overall accrual method and a NAE method of accounting*. A taxpayer making both an automatic change to, from, or within a NAE method of accounting under this section 15.04 and an automatic change to an overall accrual method under section 15.01 of this revenue procedure (whether or not it is the taxpayer's first § 448 year), must file a single Form 3115 for both changes. The taxpayer must complete all applicable sections of Form 3115, including sections that apply to the change to an overall accrual method and to the change to a NAE method, and must enter the automatic accounting method change numbers for both changes on Form 3115. See section 6.03(1)(b) of Rev. Proc. 2015–13 for information on making concurrent changes.

A taxpayer making both an automatic change to, from, or within a NAE method of accounting under this section 15.04 and a required change to an overall accrual method under § 448 (the taxpayer's first § 448 year), and is either not eligible to make the change to an overall accrual method under section 15.01 of this revenue procedure or chooses to make the change to an overall accrual method using the procedures of § 1.448–1(h)(2), must make both changes (change to, from, or within a NAE method and change to an overall accrual method) on a single Form 3115. The taxpayer must follow the automatic change procedures of Rev. Proc. 2015–13 and this section 15.04 for the NAE change, and the procedures of § 1.448–1(h)(2) for the change to an overall accrual method (except that entering the designated automatic accounting method change number "34" on the Form 3115 fulfills the requirement of § 1.448–1(h)(2) to type or print "Automatic Change to Accrual – Section 448" at the top of page 1 of the Form 3115). The taxpayer must complete all applicable sections of Form 3115, including sections that apply to the change to an overall accrual method and to the change to the NAE method and must enter the designated automatic accounting method change numbers for both changes on Form 3115.

(4) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change to, from, or within a NAE method of accounting under this section 15.04 is "35."

(5) *Contact information*. For further information regarding a change under this section, contact Sean Dwyer at (202) 317-7005 (not a toll-free call).

.05 *Interest accruals on short-term consumer loans—Rule of 78's method*.

(1) *Description of change*. This change applies to a taxpayer that wants to change its method of accounting from the Rule of 78's method to the constant yield method for stated interest (including stated interest that is original issue discount) on short-term consumer loans described in Rev. Proc. 83–40, 1983–1 C.B. 774, which was obsoleted by Rev. Proc. 97–37, 1997–2 C.B. 455.

(2) *Background*.

(a) A short-term consumer loan is described in Rev. Proc. 83–40, provided:

(i) the loan is a self-amortizing loan that requires level payments, at regular intervals at least annually, over a period not in excess of five years (with no balloon payment at the end of the loan term); and

(ii) the loan agreement between the borrower and the lender provides that interest is earned, or upon the prepayment of the loan interest is treated as earned, in accordance with the Rule of 78's method.

(b) In general, the Rule of 78's method allocates interest over the term of a loan based, in part, on the sum of the periods' digits for the term of the loan. See Rev. Rul. 83–84, 1983–1 C.B. 97, for a description of the Rule of 78's method.

(c) In general, the constant yield method allocates interest and original issue discount over the term of a loan based on a constant yield. See § 1.1272–1(b) for a description of the constant yield method. The Rule of 78's method generally front-loads interest as compared to the constant yield method.

(d) Rev. Proc. 83–40 was obsoleted because, under §§ 1.446–2 and 1.1272–1 (which were effective for debt instruments issued on or after April 4, 1994), taxpayers generally must account for stated interest and original issue discount on a debt instrument (loan) by using a constant yield method. As a result, the Rule of 78's method is no longer an acceptable method of accounting for federal income tax purposes.

(3) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 15.05 is "71."

(4) *Contact information*. For further information regarding a change under this section, contact William E. Blanchard at (202) 317-3900 (not a toll-free call).

.06 *Film producer's treatment of certain creative property costs*.

(1) *Description of change*. This change applies to a taxpayer that wants to change the method of accounting for creative property costs to the safe harbor method provided by section 5 of Rev. Proc. 2004–36, 2004–1 C.B. 1063. This safe harbor method of accounting applies to a taxpayer engaged in the trade of business of film production and to creative property costs (as defined in section 2.01 of Rev. Proc. 2004–36) properly written off by the taxpayer under The American Institute of Certified Public Accountants Statement of Position (SOP) 00–2, "Accounting for Producers or Distributors of Film."

(2) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 15.06 is "85."

(3) *Contact information*. For further information regarding a change under this section, contact Bernard Harvey at (202) 317-7005 (not a toll-free call).

.07 *Deduction of incentive payments to health care providers*.

(1) *Description of change*. This change applies to a taxpayer that wants to change to the method of accounting for provider incentive payments under which those payments are included in discounted unpaid losses without regard to § 404, as provided in Rev. Proc. 2004–41, 2004–2 C.B. 90. A payment by a taxpayer to a health care provider is a "provider incentive payment," and thus eligible for this treatment, if (a) the taxpayer is taxable as an insurance company under Part II of subchapter L; (b) the payment is made pursuant to a written agreement the purpose of which is to encourage participating health care providers to provide quality health care to the taxpayer's subscribers in a cost-efficient manner; (c) the taxpayer's liability for the payment is dependent on the attainment of one or more preestablished goals during a performance period consisting of not more than 12 consecutive months; (d) the terms of the arrangement pursuant to which the payment is made are established unilaterally by the taxpayer, and are not negotiated with the health care providers; (e) the taxpayer normally makes payments to health care providers under the arrangement within 12 months after the close of the performance period; (f) deferring the receipt of income by the health care provider or otherwise providing a tax benefit to the provider is not a principal purpose of the arrangement; (g) the taxpayer records a liability for the payment on its annual statement filed for state regulatory purposes, and includes this liability in the determination of discounted unpaid losses under § 846; and (h) the health care provider is not an employee, and is not providing health care as an agent, of the taxpayer. *See* Rev. Proc. 2004–41.

(2) *Designated automatic accounting method change number*. The designated automatic accounting method change

number for a change under this section 15.07 is "90."

(2) *Contact information*. For further information regarding a change under this section, contact Rebecca L. Baxter, at (202) 317-6995 (not a toll-free call).

.08 *Change by bank for uncollected interest*.

(1) *Description of change*. This change applies to a "bank" as defined in § 1.166–2(d)(4)(i) that: (a) uses an overall accrual method of accounting to determine its taxable income for federal income tax purposes; (b) is subject to supervision by Federal authorities, or by state authorities maintaining substantially equivalent standards; (c) has uncollected interest other than interest described in § 1.446–2(a)(2); and (d) has six or more years of collection experience. Under the safe harbor method of accounting provided by section 4 of Rev. Proc. 2007–33, 2007–1 C.B. 1289, a bank determines for each taxable year the amount of uncollected interest (other than interest described in § 1.446–2(a)(2)) for which it is considered to have a reasonable expectancy of payment by multiplying: (a) the total accrued (determined under § 1.446–2) but uncollected interest for the year, by (b) the bank's "recovery percentage" (determined under section 4.02 of Rev. Proc. 2007–33) for that year. Solely for purposes of this safe harbor, the bank is not considered to have a reasonable expectancy of payment for the excess, if any, of the accrued but uncollected interest over the expected collection amount determined using the bank's recovery percentage. The bank includes in gross income the portion of accrued but uncollected interest for which it has a reasonable expectancy of payment. The bank excludes from income the portion of accrued but uncollected interest for which it has no reasonable expectancy of payment.

(2) *Recovery percentage*. Subject to the limitations and conditions in Rev. Proc. 2007–33, sections 4.02(2), (3), and (4), a bank determines its recovery percentage for each taxable year by dividing: (a) total payments that the bank received on loans (including principal and interest) during the 5 taxable years immediately preceding the taxable year, by (b) total amounts that were due and payable to the bank on loans during the same 5 taxable years. The recovery percentage cannot exceed 100 percent and must be calculated to at least four decimal places. The data used in the recovery percentage must take into account acquisitions and dispositions. If a bank acquires the major portion of a trade or business of another person (predecessor) or the major portion of a separate unit of a trade or business of a predecessor, then in applying Rev. Proc. 2007–33 for any taxable year ending on or after the acquisition, the data from preceding taxable years of the predecessor attributable to the portion of the trade or business acquired, if available, must be used in determining the bank's recovery percentage. If a bank disposes of a major portion of a trade or business or the major portion of a separate unit of a trade or business, and the bank furnished the acquiring person the information necessary for the computations required by Rev. Proc. 2007–33, then in applying the revenue procedure for any taxable year ending on or after the disposition, the data from preceding taxable years attributable to the disposed portion of the trade or business may not be used in determining the bank's recovery percentage.

(3) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 15.08 is "108."

(4) *Contact information*. For further information regarding a change under this section, contact K. Scott Brown at (202) 317-6945 (not a toll-free call).

.09 *Change from the cash method to an accrual method for specific items*.

(1) *Description of change*.

(a) *Applicability*. This change applies to a taxpayer that uses an overall accrual method of accounting but has identified a specific item or items of income or expense (or both) that are being accounted for on the cash method of accounting. This change does not apply to a taxpayer that is changing its overall method of accounting from cash to accrual. Such a taxpayer may be eligible to change to an overall accrual method using section 15.01 of this revenue procedure.

(b) *Inapplicability*. This change does not apply to:

(i) a taxpayer that will not have all items of income and expense on an accrual method subsequent to the change under this section 15.09;

(ii) a cooperative organization described in § 501(c)(12), 521, or 1381;

(iii) an individual taxpayer, except for activities conducted as a sole proprietorship;

(iv) a taxpayer engaged in two or more trades or businesses, unless the taxpayer makes this change so that the identical accrual method is used for each such trade or business beginning with the year of change;

(v) a change in method of accounting for any payment liability described in § 1.461–4(g);

(vi) a change in the method of accounting for interest that is not taken into account under § 1.446–2;

(vii) a taxpayer that has included in its § 481(a) adjustment any amount of deferred compensation that is described under § 457A(d)(3) that is attributable to services performed before January 1, 2009; and

(viii) any change that is specifically provided in another section of this revenue procedure.

(2) *Definitions*.

(a) "Cash method of accounting" is the method identified by § 446(c)(1) and §§ 1.446–1(c)(1)(i), 1.451–1(a), and 1.461–1(a)(1).

(b) "Accrual method of accounting" is the method identified by § 446(c)(2) and §§ 1.446–1(c)(1)(ii), 1.451–1(a), and 1.461–1(a)(2).

(3) *Additional requirements*. To change a method of accounting under this section 15.09, a taxpayer must attach to its completed Form 3115 a full and complete description of each specific item for which the change in method of accounting is being made and how the accrual method of accounting applies to each item, and list the § 481(a) adjustment, if any, for each item associated with the change. The change is fully and completely described if each income and expense item is described with specificity and how the all-events test (and the economic performance requirement, if applicable) applies to each item is described under the facts and circumstances of the taxpayer's trade or business. For example, a taxpayer that

merely states that it is changing its accounting method for advertising expenses from the cash method to an accrual method, recites the regulations under § 1.461–1(a)(2), and enters the associated § 481(a) adjustment has failed to describe fully and completely the specific item for which the change in method of accounting is being made. In contrast, a taxpayer that states that it is changing its method of accounting for print advertising expenses from the cash method of accounting to an accrual method of accounting, describes all of the relevant facts related to the print advertising expenses, and explains how the all-events test applies to those facts and when economic performance occurs has fully and completely described the item and the change. See section 6.03 of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, for additional filing requirements.

(4) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 15.09 is "124."

(5) *Contact information*. For further information regarding a change under this section, contact Douglas Kim at (202) 317-7003 (not a toll-free call).

.10 *Multi-year service warranty contracts*.

(1) *Description of change*.

(a) *Applicability*. This change applies to a manufacturer, wholesaler, or retailer of motor vehicles or other durable consumer goods that uses an overall accrual method of accounting, and wants to change to the service warranty income method described in section 5 of Rev. Proc. 97–38, 1997–2 C.B. 479. Under the service warranty income method, a qualifying taxpayer may, in certain specified and limited circumstances, include a portion of an advance payment related to the sale of a multi-year service warranty contract in gross income generally over the life of the service warranty obligation.

(b) *Inapplicability*. This change does not apply to a taxpayer not within the scope of Rev. Proc. 97–38.

(2) *Manner of making change and designated automatic accounting method change number*.

(a) This change is made on a cut-off basis and applies only to qualified advance payments for multi-year service warranty contracts on or after the beginning of the year of change. Accordingly, a § 481(a) adjustment is neither permitted nor required.

(b) In accordance with § 1.446–1(e)(3)(ii), the requirement of § 1.446–1(e)(3)(i) to file a Form 3115 is waived and pursuant to section 6.02(2) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, a short Form 3115 is authorized for this change. The short Form must include the following information:

(i) the identification section of page 1 (above Part I);

(ii) the signature section at the bottom of page 1;

(iii) Part I, line 1(a); and

(iv) the information required under section 6.03 of Rev. Proc. 97–38, except that the statement under section 6.03(2) (that the taxpayer agrees to all of the terms and conditions of the revenue procedure) also should refer to Rev. Proc. 2015–13.

(3) *Additional requirement*. A taxpayer changing to the service warranty income method of accounting under this section 15.10 must satisfy the annual reporting requirement set forth in section 6.04 of Rev. Proc. 97–38.

(4) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 15.10 is "125."

(5) *Contact information*. For further information regarding a change under this section, contact Timothy Azarchs at (202) 317-5100 (not a toll-free call).

.11 *Overall cash method for specified transportation industry taxpayers*.

(1) *Description of change*. This change applies to a "specified transportation industry taxpayer" with "average annual gross receipts" of more than $10,000,000 and not in excess of $50,000,000 that wants to change to the overall cash receipts and disbursement (cash) method.

(2) *Definitions*. For purposes of this section 15.11 the following definitions apply:

(a) *Specified transportation industry taxpayer*. A specified transportation industry taxpayer is a taxpayer that satisfies the following criteria for the year of change:

(i) The taxpayer reasonably identifies its "business" (as defined in section 15.11(2)(b) below) as being described in one of the following NAICS subsector codes (first three digits of the six-digit NAICS codes):

(A) Air Transportation, Rail Transportation, Water Transportation, Truck Transportation, Transit and Ground Passenger Transportation, or Scenic and Sightseeing Transportation, within the meaning of NAICS subsector codes 481–485 and 487; or

(B) Support Activities for Transportation within the meaning of NAICS subsector code 488.

(ii) The taxpayer is not prohibited from using the overall cash method under § 448.

(b) *Business*. A taxpayer may use any reasonable method of applying the relevant facts and circumstances to determine its business. A business may consist of several activities, which may or may not be related. For example, a taxpayer engaged in transportation activities may provide various services such as transporting air cargo and then subsequently trucking the cargo throughout a metropolitan area to warehouses and wholesale/retail stores. However, each activity within a taxpayer's business must individually satisfy the description of a NAICS subsector code in section 15.11(2)(a)(i)(A) or (B) of this revenue procedure. For example, a sightseeing bus operator that sells box lunches in connection with its tours is not a "specified transportation industry taxpayer" because one of the two activities of its business (food sales) does not satisfy the description of a NAICS subsector code in section 15.11(2)(a)(i)(A) or (B) of this revenue procedure. While the sightseeing transportation activity satisfies the description of the NAICS subsector code in section 15.11(2)(a)(i)(A) of this revenue procedure, the food sales activity does not satisfy the description of any NAICS subsector code in section 15.11(2)(a)(i)(A) or (B) of this revenue procedure, and thus, the taxpayer's business fails to meet the criteria of section 15.11(2)(a)(i). Similarly, a train operator who operates a dining car where meals are served is not a "specified transportation industry taxpayer" because one of the two activities of its business (food service) does not satisfy the description of a NAICS subsector code in section 15.11(2)(a)(i)(A) or (B) of this revenue procedure. While the rail transportation activity satisfies the description of a NAICS subsector code in section 15.11(2)(a)(i)(A) of this revenue procedure, the food service activity does not satisfy the description of any NAICS subsector code in section 15.11(2)(a)(i)(A) or (B) of this revenue procedure, and thus, the taxpayer's business fails to meet the criteria of section 15.11(2)(a)(i).

(c) *Average annual gross receipts*. A taxpayer has average annual gross receipts of more than $10,000,000 and not in excess of $50,000,000 if, for each prior taxable year ending on or after December 31, 2006, the taxpayer's average annual gross receipts for the three prior taxable-year period ending with the applicable prior taxable year are more than $10,000,000 and do not exceed $50,000,000. If a taxpayer has not been in existence for three prior taxable years, the taxpayer must determine its average annual gross receipts for the number of years (including short taxable years) that the taxpayer has been in existence. *See* § 448(c)(3)(A).

(d) *Gross receipts*. Gross receipts is defined consistent with § 1.448–1T(f)(2)(iv). Thus, gross receipts for a taxable year equal all receipts that must be recognized under the method of accounting actually used by the taxpayer for that taxable year for federal income tax purposes. *See* also § 448(c)(3)(C).

(e) *Aggregation of gross receipts*. For purposes of computing gross receipts under section 15.11(2)(d) of this revenue procedure, all taxpayers treated as a single employer under § 52(a) or (b) or § 414(m) or (o) (or that would be treated as a single employer under these sections if the taxpayers had employees) will be treated as a single taxpayer. However, when transactions occur between taxpayers that are treated as a single taxpayer by the previous sentence, gross receipts arising from these transactions will not be treated as gross receipts for purposes of the average annual gross receipts limitation. *See* § 448(c)(2) and § 1.448–1T(f)(2)(ii).

(f) *Treatment of short taxable year*. In the case of a short taxable year, a taxpayer's gross receipts must be annualized by multiplying the gross receipts for the short taxable year by 12 and then dividing the result by the number of months in the short taxable year. *See* § 448(c)(3)(B) and § 1.448–1T(f)(2)(iii).

(g) *Treatment of predecessors*. Any reference to a taxpayer in this section 15.11 includes a reference to any predecessor of that taxpayer. *See* § 448(c)(3)(D).

(h) *Cash method*. The "cash method" is the method identified by § 446(c)(1) and §§ 1.446–1(c)(1)(i), 1.451–1(a), and 1.461–1(a)(1).

(3) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 15.11 is "126."

(4) *Example*. Taxpayer *X* is an LLC and taxed for federal income tax purposes as a partnership. Taxpayer *X* does not have any C corporations as partners and Taxpayer *X* is not a tax shelter within the meaning of § 448(d)(3). Taxpayer *X*'s business consists of short-haul trucking among various cities within State *Y*, which satisfies the description of the NAICS subsector code 484. Taxpayer *X* determines that its 3-year average annual gross receipts for each prior taxable year ending on or after December 31, 2006, have been more than $10,000,000 and not in excess of $50,000,000. Taxpayer *X* qualifies to change to the overall cash method using this section 15.11.

(5) *Contact information*. For further information regarding a change under this section, contact Megan Kirmil at (202) 317-7007 (not a toll-free call).

.12 *Change to overall cash/hybrid method for certain banks*.

(1) *Description of change*.

(a) *Applicability*. This change applies to a bank described in section 15.12(2)(a) of this revenue procedure that wants to change to an overall cash/hybrid method described in section 15.12(2)(b) of this revenue procedure.

(b) *Inapplicability*. A bank's change to an overall cash/hybrid method under this section 15.12 does not include any change in the accounting treatment of an item for which the bank uses a special method (as described in section 15.12(2)(b) of this revenue procedure) before the change, or is required to use a special method, or will use a special method after the change. A bank may not change the accounting treatment of such an item under this section 15.12. Any change in the accounting treatment of such an item must be made under an applicable section of this revenue procedure, under the non-automatic change procedures of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, or under another guidance published in the Internal Revenue Bulletin, as appropriate.

(2) *Definitions*. The following definitions apply for purposes of this section 15.12.

(a) *Bank*. A bank is described in this section 15.12(2)(a) if the bank:

(i) is a bank as defined in § 581;

(ii) is an S corporation as defined in § 1361(a)(1), or a qualified subchapter S subsidiary as defined in § 1361(b)(3)(B); and

(iii) has average annual gross receipts (computed as described in section 15.12(5) of this revenue procedure) not in excess of $50,000,000.

(b) *Overall cash/hybrid method*. An overall cash/hybrid method is the use of a combination of accounting methods under which some items of income or expense are reported on the cash receipts and disbursements method (cash method) and other items of income or expense are reported on methods permitted or required for the accounting treatment of special items (special methods).

(i) *Cash method*. The cash method is the method identified by § 446(c)(1) and §§ 1.446–1(c)(1)(i), 1.451–1(a), and 1.461–1(a)(1).

(ii) *Special methods*. A few of the special methods typically used by banks include those provided for the accounting treatment of the following items: securities held by a dealer in securities as defined in § 475(c)(1) (the mark-to-market method of § 475); securities held by a dealer in securities as defined in § 1.471–5 (inventories maintained under § 471 and § 1.446–1(c)(2)(i)); hedging transactions (§ 1.446–4); contracts to which § 1256 applies (§ 1256); original issue discount on debt instruments (§§ 163(e) and 1271–1275); interest income (including acquisition discount and original issue discount) on short-term obligations (§§ 1281–1283); and stripped debt instruments (§ 1286). For example, a bank that regularly purchases or originates mortgages in the ordinary course of its business and engages in more than negligible sales of those mortgages generally is a dealer in securities under § 475(c)(1) and § 1.475(c)–1(c) and thus must use the mark-to-market method of § 475 for mortgages and any other securities (as defined in § 475(c)(2)) held by the bank.

(3) *Additional condition of change*. To change to an overall cash/hybrid method under this section 15.12, a bank must comply with the following additional condition. In addition to complying with the terms and conditions set forth in section 7 of Rev. Proc. 2015–13, the bank must keep its books and records for the year of change and for subsequent taxable years on an overall cash/hybrid method allowed by this section 15.12. This condition is considered satisfied if the bank reconciles the results obtained under the method used in keeping its books and records and those obtained under the method used for federal income tax purposes pursuant to this section 15.12 and the bank maintains sufficient records to support such reconciliation. *See also* § 1.446–1(a)(4).

(4) *Additional filing requirement*. To change to an overall cash/hybrid method under this section 15.12, a bank must include with its completed Form 3115 a description of each specific item of the bank's income or expense that is affected by the change under this section 15.12 and, for each such item, identify the following: the method of accounting under which the bank reports that item for federal income tax purposes immediately before the change; and the amount of the § 481(a) adjustment associated with changing that item to the cash method under this section 15.12.

(5) *Computation of average annual gross receipts*. For purposes of section 15.12(2)(a)(iii) of this revenue procedure, a bank's average annual gross receipts are computed as described in this section 15.12(5).

(a) *Average annual gross receipts*. A bank has average annual gross receipts not in excess of $50,000,000 if, for each prior taxable year ending on or after December 31, 2006, the bank's average annual gross receipts for the three prior taxable-year period ending with the applicable prior taxable year do not exceed $50,000,000. If a bank has not been in existence for three prior taxable years, the bank must determine its average annual gross receipts for the number of years (including short taxable years) that the bank has been in existence. *See* § 448(c)(3)(A).

(b) *Gross receipts*. Gross receipts is defined consistent with § 1.448–1T(f)(2)(iv). Thus, gross receipts for a taxable year equal all receipts that must be recognized under the method of accounting actually used by the bank for that taxable year for federal income tax purposes. *See also* § 448(c)(3)(C).

(c) *Aggregation of gross receipts*. For purposes of computing gross receipts under section 15.12(5)(b) of this revenue procedure, all taxpayers treated as a single employer under § 52(a) or (b) or § 414(m) or (o) (or that would be treated as a single employer under these sections if the taxpayers had employees) will be treated as a single taxpayer (that is, a single bank). However, when transactions occur between taxpayers that are treated as a single taxpayer by the previous sentence, gross receipts arising from these transactions will not be treated as gross receipts for purposes of the average annual gross receipts limitation. *See* § 448(c)(2) and § 1.448–1T(f)(2)(ii).

(d) *Treatment of short taxable year*. In the case of a short taxable year, a bank's gross receipts must be annualized by multiplying the gross receipts for the short taxable year by 12 and then dividing the result by the number of months in the short taxable year. *See* § 448(c)(3)(B) and § 1.448–1T(f)(2)(iii).

(e) *Treatment of predecessors*. Any reference to a bank or taxpayer in section 15.12(5) of this revenue procedure includes a reference to any predecessor of that bank or taxpayer. *See* § 448(c)(3)(D).

(6) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 15.12 is "127."

(7) *Contact information*. For further information regarding a change under this section, contact K. Scott Brown at (202) 317-6945 (not a toll-free call).

.13 *Change to overall cash method for farmers*.

(1) *Description of change*.

(a) *Applicability*. This change applies to a taxpayer engaged in the trade or business of farming that wants to change to the overall cash receipts and disbursement (cash) method. If a taxpayer is engaged in more than one trade or business, this change applies only to the taxpayer's trade or business of farming.

(b) *Inapplicability*. This change does not apply to a taxpayer that is required to use an accrual method pursuant to § 447 or prohibited from using the cash method by § 448.

(2) *Definitions*.

(a) Cash method of accounting is the method defined by § 446(c)(1) and §§ 1.446–1(c)(1)(i), 1.451–1(a), and 1.461–1(a)(1). See also §§ 1.61–4 and 1.162–12 for specific rules relating to farmers.

(b) The trade or business of farming is a farming business as defined by § 263A(e)(4) and the regulations thereunder.

(3) *Manner of making change*. Generally, a taxpayer changing its method of accounting under this section 15.13 must compute a § 481(a) adjustment. However, if the taxpayer is changing from the crop method, that portion of the change is made using a cut-off basis under which expenses reported on the crop method and not deducted prior to the year of change are deducted in the year the related crop is sold.

(4) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 15.13 is "128."

(5) *Contact information*. For further information regarding a change under this section, contact Maxine Woo-Garcia at (202) 317-7011 or Christina Glendening at (202) 317-7003 (not a toll-free call).

.14 *Nonshareholder contributions to capital under § 118*.

(1) *Description of change*.

(a) *Water and sewerage disposal utilities*.

(i) This change applies to a regulated public utility described in § 118(c) that wants to change its method of accounting for payments received from customers as customer connection fees, which are not contributions to the capital of the regulated public utility within the meaning of § 118(c), from excluding the payments from gross income as nontaxable contributions to capital under § 118 to including the payments in gross income under § 61. *See* Rev. Rul. 2008–30, 2008–1 C.B. 1156.

(ii) This change applies to a regulated public utility described in § 118(c) that wants to change its method of accounting for payments or property received that are contributions in aid of construction under § 118(c) and § 1.118–2 and that meet the requirements of §§ 118(c)(1)(B) and 118(c)(1)(C) from including the payments or the fair market value of the property in gross income under § 61 to excluding the payments or the fair market value of the property from income as nontaxable contributions to capital under § 118(a).

(b) *Other payments or property received*. This change applies to a taxpayer that wants to change its method of accounting for payments or property received (other than the payments received by a public utility described in § 118(c) that are addressed in section 15.14(1)(a)(i) of this revenue procedure) that do not constitute contributions to the capital of the taxpayer within the meaning of § 118 and the regulations thereunder, from excluding the payments or the fair market value of the property from gross income as nontaxable contributions to capital under § 118 to including the payments or the fair market value of the property in gross income under § 61.

(2) *Additional requirement*. A taxpayer that is making a change described in section 15.14(1)(a)(i) or (1)(b) must complete Schedule E of Form 3115 for the depreciable property to which the change relates (as well as all other relevant portions of the Form 3115).

(3) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 15.14 is "129."

(4) *Contact information*. For further information regarding a change under this section, contact David H. McDonnell at (202) 317-4137 (not a toll-free call).

.15 *Debt issuance costs*.

(1) *Description of change*. This change applies to a taxpayer that wants to change its method of accounting for capitalized debt issuance costs to comply with § 1.446–5, which provides rules for allocating the costs over the term of the debt. This change also applies to a taxpayer that wants to change its method of accounting for capitalized debt issuance costs from one permissible method to another permissible method under the last sentence in § 1.446–5(b)(2) if the total original issue discount determined for purposes of § 1.446–5 is *de minimis*.

(2) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 15.15 is "148."

(3) *Contact information*. For further information regarding a change under this section, contact Charles W. Culmer at (202) 317-6945 (not a toll-free number).

SECTION 16. TAXABLE YEAR OF INCLUSION (§ 451)

.01 *Accrual of interest on nonperforming loans*.

(1) *Description of change*.

(a) This change applies to a taxpayer using an overall accrual method of accounting that is a bank as defined in § 581 (or whose primary business is making or managing loans) and wants to change its method of accounting to comply with § 451 and § 1.451–1(a) for qualified stated interest (as defined in § 1.1273–1(c)) on nonperforming loans.

(b) Section 1.451–1(a) requires income to be accrued when all the events have occurred that fix the right to receive the income and the amount thereof can be determined with reasonable accuracy. A taxpayer may not stop accruing qualified stated interest on a nonperforming loan for federal income tax purposes merely because payments on the loan are overdue by a certain length of time, such as 90 days, even if a federal, state, or other regulatory authority having jurisdiction over the taxpayer permits or requires that the overdue interest not be accrued for regulatory purposes.

(c) Under § 451 and § 1.451–1(a), a taxpayer must continue accruing qualified stated interest on any nonperforming loan until either (i) the loan is worthless under § 166 and charged off as a bad debt, or (ii) the interest is determined to be uncollectible. In order for interest to be determined uncollectible, the taxpayer must substantiate, taking into account all the facts and circumstances, that it has no reasonable expectation of payment of the interest. This substantiation requirement is applied on a loan by loan basis.

(d) A taxpayer that changes its method of accounting under this section 16.01 must do so for all of its loans.

(2) *Section 481(a) adjustment*. In general, the § 481(a) adjustment for a method change under this section 16.01 represents the amount of qualified stated interest on the taxpayer's nonperforming loans outstanding as of the beginning of the year of change that should have been accrued under § 451 and § 1.451–1(a) and was not accrued. Interest for which the taxpayer, as of the beginning of the year of change, has no reasonable expectation of payment is not taken into account in determining the amount of the § 481(a) adjustment.

(3) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 16.01 is "36."

(4) *Contact information*. For further information regarding a change under this section, contact K. Scott Brown at (202) 317-6945 (not a toll-free call).

.02 *Advance rentals*.

(1) *Description of change*. This change applies to a taxpayer that wants to change its method of accounting for advance rentals (other than advance rentals subject to § 467 and the regulations thereunder) to include such advance rentals in gross income in the taxable year received. *See* § 1.61–8(b).

(2) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 16.02 is "37."

(3) *Contact information*. For further information regarding a change under this section, contact Daniel Cassano at (202) 317-7011 (not a toll-free call).

.03 *State or local income or franchise tax refunds.*

(1) *Description of change*. This change applies to a taxpayer using an overall accrual method of accounting that receives a state or local income or franchise tax refund and wants to accrue the refund in the taxable year the taxpayer receives payment or notice that the claim has been approved, whichever is earlier, as provided in Rev. Rul. 2003–3, 2003–1 C.B. 252.

(2) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 16.03 is "38."

(3) *Contact information*. For further information regarding a change under this section, contact Sandra Cheston at (202) 317-7011 (not a toll-free call).

.04 *Capital Cost Reduction Payments.*

(1) *Description of change*. This change applies to a taxpayer that purchases motor vehicles subject to leases and assumes the associated leases from the vehicles' dealers and wants to use the safe harbor method of accounting for capital cost reduction (CCR) payments specified in Rev. Proc. 2002–36, 2002–1 C.B. 993.

(2) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 16.04 is "39."

(3) *Contact information*. For further information regarding a change under this section, contact Bill Ruane at (202) 317-4718 (not a toll-free call).

.05 *Credit card annual fees.*

(1) *Description of change*. This change applies to a taxpayer that wants to change its method of accounting for credit card annual fees as described in Rev. Rul. 2004–52, 2004–1 C.B. 973, either to a method that satisfies the all events test in accordance with Rev. Rul. 2004–52 or to the Ratable Inclusion Method for Credit Card Annual Fees that is described in section 4 of Rev. Proc. 2004–32, 2004–1 C.B. 988. Rev. Rul. 2004–52 holds that credit card annual fees are not interest for federal income tax purposes and that such fees are includible in income by the card issuer when the all events test under § 451 is satisfied. Rev. Proc. 2004–32 provides additional guidance for taxpayers seeking to change their methods of accounting for such fees, including guidance with respect to the Ratable Inclusion Method for Credit Card Annual Fees. However, a taxpayer may make either change under this revenue procedure only if the taxpayer uses an overall accrual method of accounting for federal income tax purposes and issues credit cards to, and receives annual fees from, cardholders under agreements that allow each cardholder to use a credit card to access a revolving line of credit to make purchases of goods and services and, if so authorized, to obtain cash advances.

(2) *Manner of making change*. In completing its Form 3115 to make this change, a taxpayer must identify the specific method to which the taxpayer is changing.

(3) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 16.05 to a method that satisfies the all events test in accordance with Rev. Rul. 2004–52 is "80." The designated automatic accounting method change number for a change under this section 16.05 to the Ratable Inclusion Method for Credit Card Annual Fees is "81."

(4) *Contact information*. For further information regarding a change under this section, contact Kate Sleeth at (202) 317-7053 (not a toll-free call).

.06 *Credit card late fees.*

(1) *Description of change*. This change applies to a taxpayer that wants to change its method of accounting for credit card late fees to a method that treats these fees as interest income that creates or increases the amount of original issue discount (OID) on the pool of credit card loans to which the fees relate. This change is available only to a taxpayer that issues credit cards allowing cardholders to access a revolving line of credit established by the taxpayer and that, for federal income tax purposes, does not treat the credit card purchase transactions of its cardholders as creating either debt that is given in consideration for the sale or exchange of property (within the meaning of § 1274) or debt that is deferred payment for property (within the meaning of § 483). See Rev. Proc. 2004–33, 2004–1 C.B. 989, for additional guidance relating to this change.

(2) *Additional requirements*. A taxpayer making this change must be able to demonstrate both of the following:

(a) the amount of any credit card late fee charged to each cardholder by the taxpayer is separately stated on the cardholder's account when that fee is imposed; and

(b) under the applicable credit card agreement governing each cardholder's use of the credit card, no amount identified as a credit card late fee is charged for property or for specific services performed by the taxpayer for the benefit of the cardholder.

(3) *Audit protection*. Any audit protection provided in connection with this change is not a determination by the Commissioner that the taxpayer is properly accounting for any OID income on that pool of credit card loans. Thus, for example, the IRS is not precluded from pursuing the issue of whether a taxpayer is properly accounting for its OID income (including any OID income attributable to credit card late fees) on its pool of credit card loans in accordance with § 1272(a)(6).

(4) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 16.06 is "82."

(5) *Contact information*. For further information regarding a change under this section, contact Kate Sleeth at (202) 317-7053 (not a toll-free call).

.07 *Advance payments.*

(1) *Description of change*.

(a) *Applicability*. This change applies to:

(i) a taxpayer using or changing to an overall accrual method of accounting that receives advance payments, as defined in Rev. Proc. 2004–34, 2004–1 C.B. 991, as modified and clarified by Rev. Proc. 2011–18, 2011–5 I.R.B. 443, and Rev. Proc. 2013–29, 2013–33 I.R.B. 141, and as modified by Rev. Proc. 2011–14, 2011–4 I.R.B. 330, and wants to change to either the full inclusion or deferral method, as described in Rev. Proc. 2004–

34, other than a taxpayer changing to a method described in section 15.11 of this revenue procedure. *See also* Announcement 2004–48, 2004–1 C.B. 998.

(ii) a taxpayer using an overall accrual method of accounting that receives advance payments, as defined in § 1.451–5(a)(1), and wants to change to the method of including advance payments in income in the taxable year of receipt. *See* § 1.451–5(b)(1).

(b) *Inapplicability*. This change does not apply to a taxpayer that wants to use the Deferral Method for payments described in section 5.02(4)(a) of Rev. Proc. 2004–34 (other than allocable payments described in section 5.02(4)(c) of Rev. Proc. 2004–34) or for payments for which a method under section 5.02(3)(b)(i) or (iii) of Rev. Proc. 2004–34 applies. The taxpayer must request any such change in method of accounting using the non-automatic change procedures in Rev. Proc. 2015–13, 2015–5 I.R.B. 419. *See* section 8.03 of Rev. Proc. 2004–34.

(2) *Concurrent automatic change to an overall accrual method*. A taxpayer making both a change to its method of accounting for advance payments under this section 16.07 and a change to an overall accrual method under section 15.01 of this revenue procedure for the same year of change must file a single Form 3115 for both changes and enter the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115. See section 6.03(1)(b) of Rev. Proc. 2015–13 for information on making concurrent changes.

(3) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under section 16.07(1)(a)(i) of this revenue procedure to use the full-inclusion method is "83." The designated automatic accounting method change number for a change under section 16.07(1)(a)(i) of this revenue procedure to use the deferral method is "84." The designated automatic accounting method change number for a change under section 16.07(1)(a)(ii) of this revenue procedure is "216."

(4) *Contact information*. For further information regarding a change under this section, contact Peter Ford at (202) 317-7011 (not a toll-free call).

.08 *Credit card cash advance fees*.

(1) *Description of change*. This change applies to a taxpayer that wants to change its method of accounting for credit card cash advance fees to a method that treats these fees as creating or increasing original issue discount (OID) on a pool of credit card loans that includes the cash advances that give rise to the fees. This change is available only to a taxpayer that issues credit cards allowing cardholders to access a revolving line of credit established by the taxpayer both to make credit card purchase transactions and to obtain cash advances and that, for federal income tax purposes, does not treat the credit card purchase transactions of its cardholders as creating debt that is given in consideration for the sale or exchange of property. See Rev. Proc. 2005–47, 2005–2 C.B. 269, for additional guidance relating to this change.

(2) *Other requirements*. A taxpayer making this change must be able to demonstrate both of the following:

(a) the amount of any credit card cash advance fee charged to a cardholder by the taxpayer is separately stated on the cardholder's account when that fee is imposed; and

(b) under the credit card agreement with the cardholder, no amount identified as a credit card cash advance fee is charged for property or for specific services performed by the taxpayer for the benefit of the cardholder.

(3) *Audit protection*. Any audit protection applicable to this change under section 8 of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, is not a determination by the Commissioner that the taxpayer is properly accounting for any OID income on that pool of credit card loans. Thus, for example, the IRS is not precluded from pursuing the issue of whether, under § 1272(a)(6), a taxpayer is correctly accounting for its OID income (including any OID income attributable to credit card cash advance fees) on its pool of credit card loans.

(4) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under section 16.08 is "94."

(5) *Contact information*. For further information regarding a change under this section, contact Kate Sleeth at (202) 317-7053 (not a toll-free call).

.09 *Retainages*.

(1) *Description of change*.

(a) *Applicability*. This change applies to a taxpayer using an overall accrual method of accounting that wants to change its method of accounting for treating retainages to a method consistent with the holding in Rev. Rul. 69–314, 1969–1 C.B. 139. A taxpayer changing its method of accounting for retainages under this section 16.09 must treat all retainages, that is both receivables and payables, in the same manner.

(b) *Inapplicability*. This change does not apply to retainages (receivables and payables) for long-term contracts that must be accounted for under the percentage-of-completion method (PCM) under § 460. Nor does this change apply to long-term contracts otherwise accounted for under the PCM or long-term contracts accounted for under exempt percentage-of-completion method or the completed contract method. For the treatment of retainages under such methods, see Treas. Reg. §§ 1.460–4(b)(4)(i)(A) and 1.460–4(d)(3).

(2) *Manner of making change*.

(a) Except as provided in section 16.09(2)(b) of this revenue procedure, a taxpayer changing its method of accounting under this section 16.09 must take into account a § 481(a) adjustment.

(b) For retainages received and paid in connection with long term contracts that are exempt construction contracts (as defined in § 1.460–3(b)(1)) accounted for using the taxpayer's overall accrual method of accounting, this change is made on a cut-off basis and applies only to long-term contracts entered into on or after the beginning of the year of change. See § 1.460–1(c)(2) for a description of when a contract is treated as "entered into." Accordingly, a § 481(a) adjustment is neither permitted nor required.

(3) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 16.09 for retainages not received under long-term contracts is "130." The desig-

nated automatic method change number for a change under this section 16.09 for retainages received under long-term contracts is "217." A taxpayer making a change under this section 16.09 that has both types of retainages must file a single Form 3115 and enter both change numbers on the appropriate line on Form 3115.

(4) *Contact information*. For further information regarding a change under this section, contact Peter Cohn at (202) 317-7011 (not a toll-free call).

.10 *Advance payments – change in applicable financial statements (AFS).*

(1) *Description of change*.

(a) *Applicability*.

(i) This change applies to a taxpayer that: (A) receives advance payments, as defined in Rev. Proc. 2004–34, 2004–1 C.B. 991, as modified and clarified by Rev. Proc. 2011–18, 2011–5 I.R.B. 443, and Rev. Proc. 2013–29, 2013–33 I.R.B. 141, and as modified by Rev. Proc. 2011–14, 2011–4 I.R.B. 330, (B) uses the deferral method described in section 5.02(3)(a) of Rev. Proc. 2004–34 for including those advance payments in gross income in accordance with its applicable financial statement (AFS), (C) changes the manner in which it recognizes advance payments in revenues in its AFS, and (D) wants to change its method of accounting to use its proposed method of recognizing advance payments in revenues in its AFS for determining the extent to which advance payments are included in gross income under Rev. Proc. 2004–34.

(ii) A taxpayer's restatement of its AFS for financial accounting presentation does not affect the propriety of the taxpayer's method of accounting for advance payments in the prior taxable year(s). Thus, if the taxpayer uses the deferral method described in section 5.02(3)(a) of Rev. Proc. 2004–34 for including advance payments in gross income in accordance with its AFS (even if the AFS for that taxable year is later restated), the taxpayer satisfies the requirement of section 16.10(1)(a)(i)(B) of this revenue procedure and may change its method of accounting under this section if it is otherwise eligible.

(b) *Inapplicability*. This change does not apply to:

(i) a taxpayer that uses a present method of accounting for advance payments that is not the deferral method described in section 5.02(3)(a) of Rev. Proc. 2004–34. For example, this change does not apply to a taxpayer that uses the full inclusion method under section 5.01 of Rev. Proc. 2004–34;

(ii) a taxpayer that wants to change its method for allocating payments under section 5.02(4) of Rev. Proc. 2004–34.

(2) *Manner of making change and designated automatic accounting method change number*.

(a) This change is made on a cut-off basis and applies only to advance payments received on or after the beginning of the year of change. Any advance payments received prior to the year of change are accounted for under the taxpayer's former method of accounting (that is, according to its former AFS). Accordingly, a § 481(a) adjustment is neither permitted nor required.

(b) In accordance with § 1.446–1(e)(3)(ii), the requirement of § 1.446–1(e)(3)(i) to file a Form 3115 is waived and a statement in lieu of a Form 3115 is authorized for this change. Notwithstanding the definition of Form 3115 in section 3.07 of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, the statement in lieu of a Form 3115 that is permitted under this section 16.10 is considered a Form 3115 for purposes of the automatic consent procedures of Rev. Proc. 2015–13. However, the requirement to file the Duplicate copy, under section 6.03(1)(a) of Rev. Proc. 2015–13, is waived. The statement attached to the taxpayer's return for the year of change must include the following information:

(i) the designated automatic accounting change number for this change, which is "153;"

(ii) the taxpayer's name and employer identification (or social security number in the case of an individual) for each applicant as would be provided had a Form 3115 been required;

(iii) the year of change (both the beginning and ending dates);

(iv) for each applicant, identify the type of applicable financial statement (as defined in section 4.06 of Rev. Proc. 2004–34) used by the taxpayer;

(v) a detailed and complete description of each type of item affected by the change in revenue recognition and the line number (or schedule) where the affected item is reflected on the federal tax return for the year of change; and

(vi) a detailed description of the basis used for deferral (that is, the method the taxpayer uses in its applicable financial statement or how the taxpayer determines amounts earned, as applicable) both before and after the change in the revenue recognition policy for the applicable financial statement.

(3) *Certain eligibility rule inapplicable*. The eligibility rule in section 5.01(1)(f) Rev. Proc. 2015–13 does not apply to this change.

(4) *No audit protection*. A taxpayer does not receive audit protection under section 8.01 of Rev. Proc. 2015–13 in connection with this change. *See* section 8.02(2) of Rev. Proc. 2015–13.

(5) *Special rule*.

(a) *Background*. Under § 446(e), a taxpayer that changes its book method of accounting must secure the Commissioner's consent before applying its new book method of accounting for tax purposes. *See also* § 1.446–1(e)(2)(i). Accordingly, a taxpayer that previously elected to defer advance payments under Rev. Proc. 2004–34 is required to obtain consent under § 446(e) if the taxpayer subsequently changes its book method for the deferred advance payments and wants to use its new AFS in determining the extent to which advance payments are included in gross income under Rev. Proc. 2004–34. The IRS recognizes that some taxpayers took the position that consent under § 446(e) was not required in these circumstances and changed their method of accounting without properly obtaining consent. The safe harbor described below in section 16.10(5)(b) of this revenue procedure is provided to reduce controversy in this area.

(b) *Safe harbor*. If before January 10, 2011, a taxpayer: (i) received advance payments, as defined in Rev. Proc. 2004–34; (ii) used the deferral method described in section 5.02(3)(a) of Rev. Proc. 2004–34 for including those advance payments in gross income in accordance with its AFS; (iii) changed the manner in which advance payments are recognized in revenues in its AFS; and (iv) used its new AFS method with respect to a timely filed original federal income tax return in determining the amount of advance payments included in gross income under the deferral method of Rev. Proc. 2004–34 without securing the consent of the Commissioner to that change in accordance with § 446(e) and § 1.446–1(e)(2)(i), the IRS will not assert that the taxpayer's present method of accounting for advance payments is not a proper deferral method described in section 5.02(3)(a) of Rev. Proc. 2004–34 solely on the ground that the taxpayer failed to obtain the consent of the Commissioner for that change.

(6) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 16.10 is "153."

(7) *Contact information*. For further information regarding a change under this section, contact Ronald Goldstein at (202) 317-7003 (not a toll-free number).

SECTION 17. OBLIGATIONS ISSUED AT DISCOUNT (§ 454)

.01 *Series E, EE, or I U.S. savings bonds*.

(1) *Description of change*. This change applies to a taxpayer that uses the overall cash receipts and disbursements (cash) method of accounting and that wants to change its method of accounting for interest income on Series E, EE, or I U.S. savings bonds. However, this change only applies to a taxpayer that previously made an election under § 454 to report as interest income the increase in redemption price on a bond occurring in a taxable year, and that now wants to report this income in the taxable year in which the bond is redeemed, disposed of, or finally matures, whichever is earliest.

(2) *Manner of making change and designated automatic accounting method change number*.

(a) This change is made on a cut-off basis and is effective for any increase in redemption price occurring after the beginning of the year of change for all Series E, EE, and I U.S. savings bonds held by the taxpayer on or after the beginning of the year of change. Accordingly, a § 481(a) adjustment is neither permitted nor required.

(b) In accordance with § 1.446–1(e)(3)(ii), the requirement of § 1.446–1(e)(3)(i) to file a Form 3115 is waived and a statement in lieu of a Form 3115 is authorized for this change. Notwithstanding the definition of Form 3115 in section 3.07 of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, the statement in lieu of a Form 3115 that is permitted under this section 17.01 is considered a Form 3115 for purposes of the automatic consent procedures of Rev. Proc. 2015–13. However, the requirement to file the Duplicate copy, under section 6.03(1)(a) of Rev. Proc. 2015–13, is waived. The statement must include the following information:

(i) the designated automatic accounting method change number for this change, which is "131";

(ii) the taxpayer's name and employer identification number or social security number, as applicable;

(iii) the year of change (both the beginning and ending dates);

(iv) the Series E, EE, or I U.S. savings bonds for which this change in accounting method is requested;

(v) a statement that the taxpayer will report all interest on any U.S. savings bonds acquired during or after the year of change when the interest is realized upon disposition, redemption, or final maturity, whichever is earliest; and

(vi) a statement that the taxpayer will report all interest on the U.S. savings bonds acquired before the year of change when the interest is realized upon disposition, redemption, or final maturity, whichever is earliest, with the exception of any interest income previously reported in prior taxable years.

(3) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 17.01 is "131."

(4) *Contact information*. For further information regarding a change under this section, contact William E. Blanchard at (202) 317-3900 (not a toll-free call).

SECTION 18. PREPAID SUBSCRIPTION INCOME (§ 455)

.01 *Prepaid subscription income*.

(1) *Description of change*. This change applies to a taxpayer using an overall accrual method of accounting that wants to change its method of accounting for prepaid subscription income to the method described in § 455 and the regulations thereunder, including an eligible taxpayer that wants to make the "within 12 months" election under § 1.455–2.

(2) *Manner of making change and designated automatic accounting method change number*.

(a) This change is made on a cut-off basis and applies only to prepaid subscription income received on or after the beginning of the year of change. The taxpayer must continue to account for prepaid subscription income received prior to the year of change under the taxpayer's present method of accounting. Accordingly, a § 481(a) adjustment is neither permitted nor required.

(b) In accordance with § 1.446–1(e)(3)(ii), the requirement in § 1.455–6 to file a statement requesting consent is satisfied by filing a short Form 3115 for a change under this section 18.01. The short Form 3115 must include the following information:

(i) the identification section of page 1 (above Part I);

(ii) the signature section at the bottom of page 1;

(iii) Part I, line 1(a);

(iv) the information described in § 1.455–6(a), as required by § 1.455–6(b); and

(v) if the taxpayer wants to make a "within 12 months" election under § 1.455–6(c), the information described in section § 1.455–6(c)(2).

(c) The consent granted in section 9 of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, satisfies the consent required under § 455(c)(3) and § 1.455–6(b).

(3) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 18.01 is "132."

(4) *Contact information*. For further information regarding a change under this section, contact Patrick Clinton at (202) 317-7005 (not a toll-free call).

SECTION 19. TAXABLE YEAR INCURRED (§ 461)

In general. Applicable provisions of the Code, regulations and other guidance published in the Internal Revenue Bulletin may prescribe the manner in which a taxpayer takes into account a liability that has been incurred. For example, for a taxpayer with inventories and subject to § 263A, the taxpayer must include direct and indirect costs in inventory costs, which may be recovered through cost of goods sold. *See* § 1.263A–1(e)(2)(i)(B). A taxpayer may not rely on any provision in this section 19 to take a current year deduction if another applicable provision requires the taxpayer to take the liability into account in a year other than the year incurred.

.01 *Timing of incurring liabilities for employee compensation*.

(1) *Self-insured employee medical benefits*.

(a) *Description of change*.

(i) *Applicability*. This change applies to a taxpayer using an overall accrual method of accounting that wants to change its method of accounting for self-insured liabilities (including any amounts not covered by insurance, such as a "deductible" amount under an insurance policy) relating to employee medical expenses (including liabilities resulting from medical services provided to retirees and to employees who have filed claims under a workers' compensation act) that are not paid from a welfare benefit fund within the meaning of § 419(e) to a method as follows:

(A) If the taxpayer has a liability to pay an employee for medical expenses incurred by the employee, the taxpayer will treat the liability as incurred in the taxable year in which the employee files the claim with the employer. *See United States v. General Dynamics Corp.*, 481 U.S. 239 (1987), 1987–2 C.B. 134.

(B) If the taxpayer has a liability to pay a 3rd party for medical services provided to its employees, the taxpayer will treat the liability as incurred in the taxable year in which the services are provided.

(ii) *Inapplicability*. This change does not apply to a taxpayer that is required under § 263A and the regulations thereunder to capitalize the costs with respect to which the taxpayer wants to change its method of accounting under this section 19.01(1) if the taxpayer is not capitalizing these costs, unless the taxpayer concurrently changes its method to capitalize these costs in conjunction with a change to a UNICAP method under section 12.01, 12.02, 12.08, or 12.12 of this revenue procedure (as applicable).

(b) *Concurrent automatic change*. A taxpayer making both this change and a change to a UNICAP method described in section 19.01(1)(a)(ii) of this revenue procedure under section 12.01, 12.02, 12.08, or 12.12 of this revenue procedure (as applicable) for the same year of change should file a single Form 3115 for both changes, in which case the taxpayer must enter the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115. See section 6.03(1)(b) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, for information on making concurrent changes.

(c) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 19.01(1) is "42."

(2) *Bonuses*.

(a) *Description of change*.

(i) *Applicability*. This change applies to a taxpayer using an overall accrual method of accounting that wants to change its method of accounting to treat bonuses as incurred in the taxable year in which all events have occurred that establish the fact of the liability to pay a bonus and the amount of the liability can be determined with reasonable accuracy (*see* § 1.446–1(c)(1)(ii)). Specifically, a taxpayer may change its method of accounting under this section 19.01(2) to one of the following methods:

(A) If all the events that establish the fact of the liability to pay a bonus have occurred by the end of the taxable year in which the related services are provided, and the bonus is received by the employee no later than the 15th day of the 3rd calendar month after the end of the taxable year in which the related services are provided, the taxpayer will treat the bonus liability as incurred in that taxable year. *See* Rev. Rul. 55–446, 1955–2 C.B. 531, as modified by Rev. Rul. 61–127, 1961–2 C.B. 36.

(B) If all the events that establish the fact of the liability to pay a bonus occur in the taxable year subsequent to the taxable year in which the related services are provided, the taxpayer will treat the bonus liability as incurred in such subsequent taxable year.

(ii) *Inapplicability*. This change does not apply to a taxpayer that is required under § 263A and the regulations thereunder to capitalize the costs with respect to which the taxpayer wants to change its method of accounting under this section 19.01(2) if the taxpayer is not capitalizing these costs, unless the taxpayer concurrently changes its method to capitalize these costs in conjunction with a change to a UNICAP method under section 12.01, 12.02, 12.08, or 12.12 of this revenue procedure (as applicable).

(b) *Concurrent automatic change*. A taxpayer making both this change and a change to a UNICAP method described in section 19.01(2)(a)(ii) of this revenue procedure under section 12.01, 12.02, 12.08, or 12.12 of this revenue procedure (as applicable) for the same year of change should file a single Form 3115 for both changes, in which case the taxpayer must enter the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115. See section 6.03(1)(b) of Rev. Proc. 2015–13 for information on making concurrent changes.

(c) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 19.01(2) is "133."

(3) *Vacation pay, sick pay, and severance pay*.

(a) *Description of change*.

(i) *Applicability*. This change applies to a taxpayer using an overall accrual method of accounting that wants to change its method of accounting to treat vacation pay, sick pay, and severance pay as incurred in the taxable year in which all events have occurred that establish the fact of the liability to pay vacation pay, sick pay, and severance pay and the amount of the liability can be determined with reasonable accuracy (*see* § 1.446–1(c)(1)(ii)). Specifically, a taxpayer may change its method of accounting under this section 19.01(3) to one of the following methods:

(A) If all the events that establish the fact of the liability to pay vacation pay, sick pay, and severance pay have occurred by the end of the taxable year in which the related services are provided, the vacation pay, sick pay, and severance pay vests in the taxable year the related services are provided, and the vacation pay, sick pay, and severance pay is received by the employee no later than the 15th day of the 3rd calendar month after the end of the taxable year in which the related services are provided, the taxpayer will treat the vacation pay, sick pay, and severance pay liability as incurred in the taxable year in which the related services are provided.

(B) If all the events that establish the fact of the liability to pay vacation pay, sick pay, and severance pay occur in the taxable year subsequent to the taxable year in which the related services are provided, the taxpayer will treat the vacation pay, sick pay, and severance pay liability as incurred in such subsequent taxable year.

(ii) *Inapplicability*. This change does not apply to a taxpayer that is required under § 263A and the regulations thereunder to capitalize the costs with respect to which the taxpayer wants to change its method of accounting under this section 19.01(3) if the taxpayer is not capitalizing these costs, unless the taxpayer concurrently changes its method to capitalize these costs in conjunction with a change to a UNICAP method under section 12.01, 12.02, 12.08, or 12.12 of this revenue procedure (as applicable).

(b) *Concurrent automatic change*. A taxpayer making both this change and a change to a UNICAP method described in section 19.01(3)(a)(ii) of this revenue procedure under section 12.01, 12.02, 12.08, or 12.12 of this revenue procedure (as applicable) for the same year of change should file a single Form 3115 for both changes, in which case the taxpayer must enter the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115. See section 6.03(1)(b) of Rev. Proc. 2015–13 for information on making concurrent changes.

(c) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 19.01(3) is "134."

(4) *Contact information*. For further information regarding a change under this section, contact Sandra Cheston at (202) 317-7011 (not a toll-free call).

.02 *Timing of incurring liabilities for real property taxes, personal property taxes, state income taxes, and state franchise taxes*.

(1) *Background*. A taxpayer using an overall accrual method of accounting generally incurs a liability in the taxable year that all the events have occurred that establish the fact of the liability, the amount of the liability can be determined with reasonable accuracy, and economic performance has occurred with respect to the liability. *See* § 1.446–1(c)(1)(ii). Under § 1.461–4(g)(6), if the liability of the taxpayer is to pay a tax, economic performance occurs as the tax is paid to the government authority that imposed the tax.

(2) *Description of change*.

(a) *Applicability*. This change applies to a taxpayer using an overall accrual method of accounting that wants to change its method of accounting to:

(i) treat liabilities (for which the all events test of § 461(h)(4) is otherwise met) for real property taxes, personal property taxes, state income taxes, or state franchise taxes as incurred in the taxable year in which the taxes are paid, under § 461 and § 1.461–4(g)(6);

(ii) account for real property taxes, personal property taxes, state income taxes, or state franchise taxes under the recurring item exception method under § 461(h)(3) and § 1.461–5(b)(1); or

(iii) revoke an election under § 461(c) (ratable accrual election).

(b) *Inapplicability*. This change does not apply to:

(i) a taxpayer's liability for a tax subject to the limitation on acceleration of accrual of taxes under § 461(d); or

(ii) a taxpayer that is required under § 263A and the regulations thereunder to capitalize the costs with respect to which the taxpayer wants to change its method of accounting under this section 19.02 if the taxpayer is not capitalizing these costs, unless the taxpayer concurrently changes its method to capitalize these costs in conjunction with a change to a UNICAP method under section 12.01, 12.02, 12.08, or 12.12 of this revenue procedure (as applicable).

(3) *Concurrent automatic change*. A taxpayer making both this change and a change to a UNICAP method described in section 19.02(2)(b)(ii) of this revenue procedure under section 12.01, 12.02, 12.08, or 12.12 of this revenue procedure (as applicable) for the same year of change should file a single Form 3115 for both changes, in which case the taxpayer must enter the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115. See section 6.03(1)(b) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, for information on making concurrent changes.

(4) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 19.02 is "43."

(5) *Contact information*. For further information regarding a change under this section, contact Kari Fisher at (202) 317-5100 (not a toll-free call).

.03 *Timing of incurring liabilities under a workers' compensation act, tort, breach of contract, or violation of law*.

(1) *Description of change*.

(a) *Applicability*. This change applies to a taxpayer using an overall accrual method of accounting that wants to change its method of accounting for self-insured liabilities (including any amounts not covered by insurance, such as a "deductible" amount under an insurance policy) arising under any workers' compensation act or out of any tort, breach of contract, or violation of law, to treating the liability for the workers' compensation, tort, breach of contract, or violation of law as being incurred in the taxable year in which all the events have occurred that establish the fact of the liability, the amount of the liability can be determined with reasonable accuracy, and payment is made to the person to which the liability is owed. *See* § 461 and § 1.461–4(g)(1) and (2). If the taxpayer has self-insured liabilities resulting from medical services provided to employees who have filed claims under a workers compensation act, the taxpayer may change its method of accounting for those liabilities under section 19.01(1) of this revenue procedure (if the taxpayer is otherwise eligible).

(b) *Inapplicability*. This change does not apply to a taxpayer that is required under § 263A and the regulations thereunder to capitalize the costs with respect to which the taxpayer wants to change its method of accounting under this section 19.03 if the taxpayer is not capitalizing these costs, unless the taxpayer concurrently changes its method to capitalize these costs in conjunction with a change to a UNICAP method under section 12.01, 12.02, 12.08, or 12.12 of this revenue procedure (as applicable).

(2) *Concurrent automatic change*. A taxpayer making both this change and change to either a method provided in section 19.01(1) of this revenue procedure for self-insured employee medical expenses or a UNICAP method described in section 19.03(1)(b) of this revenue procedure under section 12.01, 12.02, 12.08, or 12.12 of this revenue procedure (as applicable) for the same year of change should file a single Form 3115, in which case the taxpayer must enter the designated automatic accounting method change numbers for each change on the appropriate line on that Form 3115. See section 6.03(1)(b) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, for information on making concurrent changes.

(3) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 19.03 is "44."

(4) *Contact information*. For further information regarding a change under this section, contact Kari Fisher at (202) 317-5100 (not a toll-free call).

.04 *Timing of incurring certain liabilities for payroll taxes*.

(1) *Description of change*.

(a) *Applicability*. This change applies to:

(i) an employer using an overall accrual method of accounting that wants to change its method of accounting for:

(A) FICA and FUTA taxes to a method consistent with the holding in Rev. Rul. 96–51, 1996–2 C.B. 36. Rev. Rul. 96–51 permits an accrual method employer to take into account in Year 1, under the all events test of § 461, its otherwise deductible FICA and FUTA taxes imposed with respect to year-end wages properly accrued in Year 1, but paid in Year 2, if the requirements of the recurring item exception are met; and

(B) state unemployment taxes and, in the event the taxpayer is an employer within the meaning of the Railroad Retirement Tax Act (RRTA) (*see* § 3231(a)), RRTA taxes to a method under which the taxpayer may take into account in Year 1 its otherwise deductible state unemployment taxes and railroad retirement taxes (if applicable) imposed with respect to year-end wages properly accrued in Year 1, but paid in Year 2, if the requirements of the recurring item exception are met (including the requirement that, as of the end of the taxable year, all events have occurred that establish the fact of the liability and the amount of the liability can be determined with reasonable accuracy, *see* § 1.461–5(b));

(ii) an accrual method employer that utilizes a method of accounting for FICA and FUTA taxes that is consistent with the holding in Rev. Rul. 96–51 and wants to change its method of accounting for state unemployment taxes and, in the event the employer is an employer within the meaning of RRTA (*see* § 3231(a)), RRTA taxes to a method under which the taxpayer may take into account in Year 1 its otherwise deductible state unemployment taxes and railroad retirement taxes (if applicable) imposed with respect to year-end wages properly accrued in Year 1, but paid in Year 2, if the requirements of the recurring item exception are met (including the requirement that, as of the end of the taxable year, all events have occurred that establish the fact of the liability and the amount of the liability can be determined with reasonable accuracy, *see* § 1.461–5(b)); or

(iii) a taxpayer using an overall accrual method of accounting that wants to change its method of accounting for FICA and FUTA taxes to the safe harbor method provided in Rev. Proc. 2008–25, 2008–1 C.B. 686. Rev. Proc. 2008–25 provides that for purposes of the recurring item exception, a taxpayer will be treated as satisfying the requirement in § 1.461–5(b)(1)(i) for its payroll tax liability in the same taxable year in which all events have occurred that establish the fact of the related compensation liability and the amount of the related compensation liability can be determined with reasonable accuracy.

(b) *Inapplicability*. This change does not apply to a taxpayer that is required under § 263A and the regulations thereunder to capitalize the costs with respect to which the taxpayer wants to change its method of accounting under this section19.04 if the taxpayer is not capitalizing these costs, unless the taxpayer concurrently changes its method to capitalize these costs in conjunction with a change to a UNICAP method under section 12.01, 12.02, 12.08, or 12.12 of this revenue procedure (as applicable).

(2) *Recurring item exception*. A taxpayer that previously has not changed to or adopted the recurring item exception for FICA taxes, FUTA taxes, state unemployment taxes, and RRTA taxes (if applicable) must change to the recurring item exception method for FICA taxes, FUTA taxes, state unemployment taxes, and RRTA taxes (if applicable) as specified in § 461(h)(3) as part of this change.

(3) *Concurrent automatic change*. A taxpayer making both this change and a change to a UNICAP method described in section19.04(1)(b) of this revenue procedure under section 12.01, 12.02, 12.08, or 12.12 of this revenue procedure (as applicable) for the same year of change should file a single Form 3115 for both changes, in which case the taxpayer must enter the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115. See section 6.03(1)(b) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, for information on making concurrent changes.

(4) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under section 19.04(1)(a)(i) or (ii) of this revenue procedure is "45." The designated automatic accounting method change number for a change under section 19.04(1)(a)(iii) of this revenue procedure is "113."

(5) *Contact information*. For further information regarding a change under this section, contact Mon Lam at (202) 317-5100 (not a toll-free call).

.05 *Cooperative advertising*.

(1) *Description of change*. This change applies to a taxpayer using an overall ac-

crual method of accounting that wants to change its method of accounting for cooperative advertising costs to a method consistent with the holding in Rev. Rul. 98–39, 1998–2 C.B. 198. Rev. Rul. 98–39 generally provides that, under the all events test of § 461, an accrual method manufacturer's liability to pay a retailer for cooperative advertising services is incurred in the year in which the services are performed, provided the manufacturer is able to reasonably estimate this liability, and even though the retailer does not submit the required claim form until the following year.

(2) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 19.05 is "46."

(3) *Contact information*. For further information regarding a change under this section, contact Mon Lam at (202) 317-5100 (not a toll-free call).

.06 *Timing of incurring certain liabilities for services or insurance*.

(1) *Description of change*. This change applies to a taxpayer using an overall accrual method of accounting that is currently treating the mere execution of a contract for services or insurance as establishing the fact of the liability under § 461 and wants to change from that method of accounting for liabilities for services or insurance to comply with Rev. Rul. 2007–3, 2007–1 C.B. 350, that is, all the events needed to establish the fact of the liability occur when (a) the event fixing the liability, whether that be the required performance or other event occurs or (b) payment is due, whichever happens earliest.

(2) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 19.06 is "106."

(3) *Contact information*. For further information regarding a change under this section, contact Christina M. Glendening at (202) 317-7003 (not a toll-free call).

.07 *Rebates and allowances*.

(1) *Description of change*.

(a) *Applicability*. This change applies to taxpayer using an overall accrual method of accounting that wants to change its method of accounting for treating its liability for rebates and allowances to the recurring item exception method under § 461(h)(3) and § 1.461–5.

(b) *Inapplicability*. This change does not apply to a taxpayer's liability to pay a refund.

(2) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 19.07 is "135."

(3) *Contact information*. For further information regarding a change under this section, contact Mon Lam at (202) 317-5100 (not a toll-free call).

.08 *Ratable accrual of real property taxes*.

(1) *Description of change*. This change applies to a taxpayer using an overall accrual method of accounting that wants to change its method of accounting for real property taxes to the method described in § 461(c) and § 1.461–1(c)(1) (ratable accrual election). This change applies to real property taxes that relate to a definite period of time. This change does not apply to a taxpayer's first taxable year in which the taxpayer incurs real property taxes, in which case the change is made using the provisions of § 1.461–1(c)(3)(i).

(2) *Manner of making change and designated automatic accounting method change number*.

(a) This change is made on a cut-off basis and applies only to real property taxes accrued on or after the beginning of the year of change. Any real property taxes accrued prior to the year of change are accounted for under the taxpayer's former method of accounting. *See* § 1.461–1(c)(6), *Examples (2) – (5)*. Accordingly, a § 481(a) adjustment is neither permitted nor required.

(b) In accordance with § 1.446–1(e)(3)(ii), the requirement in § 1.461–1(c)(3)(ii) for requesting consent is satisfied by filing a short Form 3115 for this change. The taxpayer's short Form 3115 must include all of the following information:

(i) the identification section of page 1 (above Part I);

(ii) the signature section at the bottom of page 1;

(iii) Part I, line 1(a); and

(iv) the information described in § 1.461–1(c)(3)(ii)(*a*) through (*f*).

(c) The consent granted under section 9 of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, satisfies the consent required under § 461(c)(2)(B) and § 1.461–1(c)(3)(ii).

(3) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 19.08 is "149."

(4) *Contact information*. For further information regarding a change under this section, contact Daniel Cassano at (202) 317-7011 (not a toll-free call).

.09 *California Franchise Taxes*.

(1) *Description of change*. This change applies to a taxpayer using an overall accrual method of accounting that wants to change its method of accounting for California franchise taxes to a method consistent with the holding in Rev. Rul. 2003–90, 2003–2 C.B. 353. Rev. Rul. 2003–90 provides that for taxable years beginning on or after January 1, 2000, a taxpayer that uses an accrual method of accounting incurs a liability for California franchise tax for federal income tax purposes in the taxable year following the taxable year in which the California franchise tax is incurred under the Cal. Rev. & Tax Code, as amended.

(2) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 19.09 is "154."

(3) *Contact information*. For further information regarding a change under this section, contact Christina M. Glendening at (202) 317-7003.

.10 *Gift cards issued as a refund for returned goods*.

(1) *Description of change*.

(a) *Applicability*. This change applies to a taxpayer using an overall accrual method of accounting that sells goods at retail and that wants to change its method of accounting for gift cards (as defined by section 4.02 of Rev. Proc. 2011–17, 2011–5 I.R.B. 441) issued as a refund for returned goods to treat the transaction as (1) the payment of a cash refund in the amount of the gift card, and (2) the sale of a gift card in the amount of the gift card.

(b) *Treatment of proceeds of the deemed sale*. A taxpayer must treat the proceeds of the deemed sale of a gift card in accordance with the method of accounting it otherwise employs for sales of gift cards.

(2) *Concurrent automatic change*. A taxpayer making both this change and an automatic change to the deferral method for advance payments under Rev. Proc. 2004–34 (*see* section 16.07 of this revenue procedure) for the same taxable year of change must file a single Form 3115 for both changes and enter the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115. See section 6.03(1)(b) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, for information on making concurrent changes.

(3) *Concurrent non-automatic change*. A taxpayer making both this change and change to a permissible method of accounting under § 1.451–5 for the same taxable year of change on a single Form 3115 must request this change in method of accounting using the non-automatic procedures in Rev. Proc. 2015–13 (or any successor).

(4) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 19.10 is "156."

(5) *Contact information*. For further information regarding a change under this section, contact Christina M. Glendening at (202) 317-7003 (not a toll-free call).

.11 *Timing of incurring liabilities under the recurring item exception to the economic performance rules*.

(1) *Description of change*. This change applies to a taxpayer using an overall accrual method of accounting that wants to conform to any of the holdings in Rev. Rul. 2012–1, 2012–2 I.R.B. 255, which clarifies the treatment of certain liabilities under the recurring item exception to the economic performance requirement under § 461(h)(3) by addressing the application of the "not material" and "better matching" requirements, and distinguishes contracts for the provision of services from insurance and warranty contracts.

(2) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 19.11 is "161."

(3) *Contact information*. For further information regarding a change under this section, contact Christina M. Glendening at (202) 317-7003 (not a toll-free call).

.12 *Economic performance safe harbor for ratable service contracts*.

(1) *Description of change*. This change applies to an accrual method taxpayer that wants to change its treatment of Ratable Service Contracts to conform to the safe harbor method provided by Rev. Proc. 2015–39, 2015–33 I.R.B. 195.

(2) *Certain eligibility rules temporarily inapplicable*. The eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, does not apply to a taxpayer that wants to make a change under this section 19.12 for the taxpayer's first, second, or third taxable year ending on or after July 30, 2015.

(3) Designated automatic accounting method change number. The designated automatic accounting method change number for changes in methods of accounting under this section 19.12 is "220."

(4) *Contact information*. For further information regarding a change under this section, contact David Christensen or Peter Ford at (202) 317-7011 (not a toll-free call).

. 20. RENT (§ 467)

.01 *Change from an improper method of inclusion of rental income or expense to inclusion in accordance with the rent allocation*.

(1) *Description of change*.

(a) *Applicability*. This change applies to a taxpayer that:

(i) is a party to § 467 rental agreements (within the meaning of § 1.467–1(c)(1) for rental agreements entered into after May 18, 1999, and § 467(d) for all other agreements); and

(ii) except as provided in section 20.01(1)(b)(ii) of this revenue procedure, wants to change its method of accounting for its fixed rent (as defined in § 1.467–1(d)(2)) to the rent allocation method provided in § 1.467–1(d)(2)(iii).

(b) *Inapplicability*. This change does not apply to:

(i) rental agreements for which taxpayers are required to use the constant rental accrual method described in § 1.467–(3)(a) or the proportional rental accrual method described in § 1.467–(2)(a) for their fixed rent; and

(ii) rental agreements that provide a specific allocation of fixed rent as described in § 1.467–1(c)(2)(ii)(A)(*2*).

(2) *Additional requirements*. The taxpayer must attach to its Form 3115 a copy of one of its § 467 rental agreements to be covered by this automatic change (or at least the pages of the agreement relating to the manner in which rent is allocated).

(3) *Audit protection limited*. Any audit protection under section 8 of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, does not apply to this change for any § 467 rental agreement determined by the Commissioner to be a disqualified leaseback or long-term agreement described in § 1.467–(3)(b).

(4) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 20.01 is "136."

(5) *Contact information*. For further information regarding a change under this section, contact William Ruane at (202) 317-4718 (not a toll-free call).

SECTION 21. INVENTORIES (§ 471)

.01 *Cash discounts*.

(1) *Description of change*. This change applies to a taxpayer that wants to change its method of accounting for cash discounts (that is, discounts granted for timely payment) when they approximate a fair interest rate, from a method of consistently including the price of the goods before discount in the cost of the goods and including in gross income any discounts taken (the "gross invoice method"), to a method of reducing the cost of the goods by the cash discounts and deducting as an expense any discounts not taken (the "net invoice method"), or vice versa. *See* Rev. Rul. 73–65, 1973–1 C.B. 216.

(2) *Computation of § 481(a) adjustment for changes to net invoice method*. In the case of a taxpayer changing from the gross invoice method to the net invoice method, a negative § 481(a) adjustment is required to prevent duplications arising from the fact that the gross invoice method reported income upon timely payment for some or all of the goods that remain in inventory, and a positive § 481(a) adjustment is required to prevent omissions arising from the fact that the gross invoice method included the invoice price, unadjusted for the cash discounts, of some or all goods in cost of goods sold and the discount will be earned by payment in a subsequent taxable year. The net § 481(a) adjustment is computed by deducting the "Applicable Discount" at the beginning of the year of change from the "Available Discount" at the beginning of the year of change. The Available Discount is equal to the difference between the accounts payable balance under the gross invoice method and the net invoice method. The Applicable Discount is equal to the difference between the beginning inventory value under the gross invoice method and the net invoice method.

Example. Taxpayer's accounts payable balance at the beginning of the year of change was $1,000 under the gross invoice method and $980 under the net invoice method. Taxpayer's inventory value was $3,000 under the gross invoice method and $2,955 under the net invoice method. The Available Discount is $20 ($1,000 – $980) and the Applicable Discount is $45 ($3,000 – $2,955). Thus, Taxpayer's net § 481(a) adjustment is a negative $25 ($20 – $45).

(3) *Computation of § 481(a) adjustment for changes to gross invoice method*. In the case of a taxpayer changing from the net invoice method to the gross invoice method, a positive § 481(a) adjustment is required to prevent omissions arising from the fact that the net invoice method did not report income upon timely payment for some or all of the goods that remain in inventory, and a negative § 481(a) adjustment is required to prevent duplications arising from the fact that the net invoice method included the invoice price, adjusted for the cash discounts, of some or all goods in cost of goods sold and the discount will be earned by payment in a subsequent taxable year. The net § 481(a) adjustment can be computed by deducting the "Available Discount" at the beginning of the year of change from the "Applicable Discount" at the beginning of the year of change. The Available Discount is equal to the difference between the accounts payable balance under the gross invoice method and the net invoice method. The Applicable Discount is equal to the difference between the beginning inventory value under the gross invoice method and the net invoice method.

Example. Taxpayer's accounts payable balance at the beginning of the year of change was $980 under the net invoice method and $1,000 under the gross invoice method. Taxpayer's inventory value was $2,955 under the net invoice method and $3,000 under the gross invoice method. The Applicable Discount is $45 ($3,000 – $2,955) and the Available Discount is $20 ($1,000 – $980). Thus, Taxpayer's net § 481(a) adjustment is a positive $25 ($45 – $20).

(4) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 21.01 is "48."

(5) *Contact information*. For further information regarding a change under this section, contact Steven Gee at (202) 317-7007 (not a toll-free call).

.02 *Estimating inventory "shrinkage"*.

(1) *Description of change*. This change applies to a taxpayer that wants to change to a method of accounting for estimating inventory shrinkage in computing ending inventory, using:

(a) the "retail safe harbor method" described in section 4 of Rev. Proc. 98–29, 1998–1 C.B. 857, as modified by this revenue procedure; or

(b) a method other than the retail safe harbor method, provided (i) the taxpayer's present method of accounting does not estimate inventory shrinkage, and (ii) the taxpayer's proposed method of accounting (that estimates inventory shrinkage) clearly reflects income under § 446(b).

(2) *Additional requirements*. If the taxpayer wants to change to a method of accounting for inventory shrinkage other than the retail safe harbor method, the taxpayer must attach to its Form 3115 a statement setting forth a detailed description of all aspects of the proposed method of estimating inventory shrinkage (including, for last-in, first-out (LIFO) taxpayers, the method of determining inventory shrinkage for, or allocating inventory shrinkage to, each LIFO pool). The director or national office subsequently may review whether the proposed method clearly reflects the taxpayer's income under § 446(b), notwithstanding any provision of Rev. Proc. 2015–13, 2015–5 I.R.B. 419 (or successor). If the director or the national office determines that the proposed method of accounting does not clearly reflect the taxpayer's income, the taxpayer will be treated as having made a change in method of accounting without obtaining the consent of the Commissioner as required by § 446(e). *See* sections 2.01(3) and 2.03 of Rev. Proc. 2015–13.

(3) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 21.02 is "49."

(4) *Contact information*. For further information regarding a change under this section, contact Steven Gee at (202) 317-7007 (not a toll-free call).

.03 *Small taxpayer exception from requirement to account for inventories under § 471*.

(1) *Description of change*. This change applies to either a taxpayer (other than a taxpayer described § 448(a)(3)) with "average annual gross receipts" (as defined in section 5.01 of Rev. Proc. 2001–10, as modified by Announcement 2004–16 (regarding placement of § 481(a) adjustment on the Form 3115), and Rev. Proc. 2011–14 (removing § 6.02(1)(a) of Rev. Proc. 2001–10)) of $1,000,000 or less or a qualifying taxpayer (other than a taxpayer described in § 448) with "average annual gross receipts" (as defined in section 5.02 of Rev. Proc. 2002–28, as modified by Announcement 2004–16 (regarding placement of § 481(a) adjustment on the Form 3115), and Rev. Proc. 2011–14 (removing § 7.02(1)(a) of Rev. Proc. 2002–28)) of $10,000,000 or less that wants to change from a method of accounting for inventoriable items (including, if applicable, from the method of capitalizing costs under § 263A) to the method described in Rev. Proc. 2001–10 and Rev. Proc. 2002–28, for treating inventoriable items in the same manner as materials and supplies that are not incidental under § 1.162–3.

(2) *Manner of making change*. See Rev. Proc. 2001–10 or Rev. Proc. 2002–28 (as applicable) for additional

guidance on the computation of the § 481(a) adjustment and the completion of the Form 3115.

(3) *Concurrent automatic change to the overall cash method under Rev. Proc. 2001–10 or Rev. Proc. 2002–28*. A taxpayer making both this change and a change to the overall cash method under Rev. Proc. 2001–10 or Rev. Proc. 2002–28 (*see* section15.03 of this revenue procedure) for the same year of change may file a single Form 3115 for both changes, provided the taxpayer enters the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115. See section 6.03(1)(b) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, for information on making concurrent changes.

(4) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 21.03 for the small taxpayer ($1,000,000) inventory exception contained in Rev. Proc. 2001–10 is "50." The designated automatic accounting method change number for a change under this section 21.03 for the small taxpayer ($10,000,000) inventory exception contained in Rev. Proc. 2002–28 is "51."

(5) *Contact information*. For further information regarding a change under this section, contact Natasha Mulleneaux at (202) 317-7007 (not a toll-free call).

.04 *Qualifying volume-related trade discounts*.

(1) *Description of change*. This change applies to a taxpayer that wants to change its method of accounting to treat qualifying volume-related trade discounts as a reduction in the cost of merchandise purchased at the time the discount is recognized in accordance with § 1.471–3(b). A "qualifying volume-related trade discount" means a discount satisfying the following criteria:

(a) the taxpayer receives or earns the discount based solely upon the purchase of a particular volume of the merchandise to which the discount relates;

(b) the taxpayer is neither obligated nor expected to perform or provide any services in exchange for the discount; and

(c) the discount is not a reimbursement of any expenditure incurred or to be incurred by the taxpayer.

(2) *Section 481(a) adjustment*. The net § 481(a) adjustment attributable to the change is computed in a manner similar to the computation of a net § 481(a) adjustment in the case of a change to the net invoice method of accounting for cash discounts. *See* section 21.01(2) of this revenue procedure.

(3) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 21.04 is "53."

(4) *Contact information*. For further information regarding a change under this section, contact Steven Gee at (202) 317-7007 (not a toll-free call).

.05 *Impermissible methods of identification and valuation*.

(1) *Description of change*. This change applies to a taxpayer:

(a) changing from an impermissible method of accounting under § 471, including a LIFO taxpayer restoring a write down of inventory below cost or discontinuing maintaining an inventory reserve;

(b) changing from a method that is not in accordance with § 1.471–2(c) for determining the value of "subnormal" goods; or

. (c) changing from a gross profit method or from a method of determining market that is not in accordance with § 1.471–4. For this purpose:

(i) *Gross profit method*. A gross profit method is a method in which the taxpayer estimates the cost of goods sold by reducing its gross sales by a percentage "markup" from cost. The estimated cost of goods sold is subtracted from the sum of the beginning inventory and purchases and the result is used as the ending inventory.

(ii) *Method of determining market*. An example of a method of determining market that is not in accordance with § 1.471–4 is where a taxpayer, under ordinary circumstances, determines the market value of purchased merchandise using judgment factors, and not using the prevailing current bid price on the inventory date for the particular merchandise in the volume in which it is usually purchased by the taxpayer.

(2) *Applicability*. For purposes of this change, a taxpayer must be changing to an inventory method (identification or valuation, or both) specifically permitted by the Code, the regulations, or other guidance published in the Internal Revenue Bulletin, or a decision of the United States Supreme Court for the inventory goods, and the taxpayer is neither prohibited from using that method nor required to use a different inventory method for those inventory goods. This change does not apply to a change described in another section of this revenue procedure or in other guidance published in the Internal Revenue Bulletin.

(3) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 21.05 is "54."

(4) *Contact information*. For further information regarding a change under this section, contact Natasha Mulleneaux at (202) 317-7007 (not a toll-free call).

.06 *Core Alternative Valuation Method*.

(1) *Description of change*.

(a) *Applicability*. This change applies to a remanufacturer and rebuilder of motor vehicle parts and a reseller of remanufactured and rebuilt motor vehicle parts that use the cost or market, whichever is lower, (LCM) inventory valuation method to value their inventory of cores held for remanufacturing or sale and wants to use the Core Alternative Valuation (CAV) method specified in Rev. Proc. 2003–20, 2003–1 C.B. 445.

(b) *Inapplicability*. This change does not apply to a taxpayer that values its inventory of cores at cost (including a taxpayer using the LIFO inventory method) unless the taxpayer concurrently changes (under section 6.02 of Rev. Proc. 2003–20) from cost to the LCM method for its cores (including labor and overhead related to the cores in raw materials, work-in-process, and finished goods).

(2) *Concurrent automatic change*. A taxpayer making both this change and (i) a change from the cost method to the LCM method under section 21.11 of this revenue procedure, or (ii) a change from the LIFO inventory method to a permitted

method for identification under (and as determined and defined in) section 22.01(1)(b) of this revenue procedure for the same year of change, should file a single Form 3115 for both changes, provided the taxpayer enters the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115. See section 6.03(1)(b) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, for information on making concurrent changes.

(3) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 21.06 is "55."

(4) *Contact information*. For further information regarding a change under this section, contact Andrew Braden at (202) 317-7007 (not a toll-free call).

.07 *Replacement cost for automobile dealers' parts inventory*.

(1) *Description of change*. This change applies to a taxpayer that is engaged in the trade or business of selling vehicle parts at retail, that is authorized under an agreement with one or more vehicle manufacturers or distributors to sell new automobiles or new light, medium, or heavy-duty trucks, and that wants to use the replacement cost method described in section 4 of Rev. Proc. 2002–17, 2002–1 C.B. 676, as modified by Rev. Proc. 2006–14, 2006–1 C.B. 350, for its vehicle parts inventory. See Rev. Proc. 2002–17 for further information regarding this change.

(2) *Manner of making change*. This change is made on a cut-off basis and applies only to the computation of ending inventories on or after the beginning of the year of change. Accordingly, a § 481(a) adjustment is neither permitted nor required.

(3) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 21.07 is "63."

(4) *Contact information*. For further information regarding a change under this section, contact Andrew Braden at (202) 317-7007 (not a toll-free call).

.08 *Replacement cost for heavy equipment dealers' parts inventory*.

(1) *Description of change*. This change applies to a heavy equipment dealer that is engaged in the trade or business of selling heavy equipment parts at retail, that is authorized under an agreement with one or more heavy equipment manufacturers or distributors to sell new heavy equipment, and that wants to use the replacement cost method described in section 4 of Rev. Proc. 2006–14, 2006–1 C.B. 350, for its heavy equipment parts inventory.

(2) *Manner of making the change*. This change is made on a cut-off basis and applies only to the computation of ending inventories after the beginning of the year of change. Accordingly, a § 481(a) adjustment is neither permitted nor required.

(3) *Concurrent automatic change*. A taxpayer making both this change and another automatic change in method of accounting under § 263A (*see* section 12 of this revenue procedure) for the same year of change may file a single Form 3115 for both changes, provided the taxpayer enters the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115, and complies with the ordering rules of § 1.263A–7(b)(2).

(4) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 21.08 is "96."

(5) *Contact information*. For further information regarding a change under this section, contact Andrew Braden at (202) 317-7007 (not a toll-free call).

.09 *Rotable spare parts*.

(1) *Description of change*. This change applies to a taxpayer that is using the safe harbor method of accounting to treat its rotable spare parts as depreciable assets in accordance with Rev. Proc. 2007–48, 2007–2 C.B. 110, as modified by this revenue procedure, and wants to change its method of accounting to treat its rotable spare parts as inventoriable items. This change also applies to a taxpayer who is treating its rotable spare parts as depreciable assets in a manner similar to the safe harbor method described in Rev. Proc. 2007–48, and wants to change its method of accounting to treat its rotable spare parts as inventoriable items. A taxpayer changing its method of accounting for rotable spare parts under this section 21.09, must use a proper inventory method to identify and value its rotable spare parts.

(2) *Eligibility rule inapplicable*. The eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, does not apply to a taxpayer that is required to make the change in method of accounting pursuant to section 5.06 of Rev. Proc. 2007–48.

(3) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 21.09 is "110."

(4) *Contact information*. For further information regarding a change under this section, contact Jason Kristall at (202) 317-7003 (not a toll-free call).

.10 *Advance Trade Discount Method*.

(1) *Description of change*. This change applies to a taxpayer that wants to use the Advance Trade Discount Method described in Rev. Proc. 2007–53, 2007–2 C.B. 233.

(2) *Applicability*. This change in method of accounting applies to a taxpayer using an overall accrual method of accounting that is required to use an inventory method of accounting, that maintains inventories as provided in § 471 and the regulations thereunder, and that receives advance trade discounts as defined in section 4.03 of Rev. Proc. 2007–53.

(3) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 21.10 is "111."

(4) *Contact information*. For further information regarding a change under this section, contact Steven Gee, at (202) 317-7007 (not a toll-free call).

.11 *Permissible methods of identification and valuation*.

(1) *Description of change*.

(a) *Applicability*. This change applies to a taxpayer that wants to change from one permissible method of identifying and valuing inventories to another permissible method of identifying and valuing inventories. For example, a taxpayer using first-in, first-out (FIFO) as its inventory-identification method may change its inventory-valuation method from cost to cost or market, whichever is lower (LCM). (Note, however, a real estate developer may not value real property or improvements to the real property at LCM because real property is not inventoriable property under § 1.471–1. Also, a taxpayer who meets the definition of a "dealer in securities" under both § 1.471–5 and § 475 is required to account for securities, as defined in § 475, under § 475 and may not use the rules described in § 1.471–5 for those securities.) Furthermore, a taxpayer may change to a permissible method of valuing "subnormal" goods under § 1.471–2(c).

However, this change does not apply to any change described in another section of this revenue procedure or in other guidance published in the Internal Revenue Bulletin, or to any changes within the last-in, first-out (LIFO) inventory method. For example, this change does not apply to a taxpayer that wants to change to a rolling-average method (*but see* section 21.14 of this revenue procedure).

(b) *Permissible method defined*. For purposes of this change, a permissible method is an inventory method (identification or valuation, or both) specifically permitted for inventories by the Code, the regulations, or other guidance published in the Internal Revenue Bulletin, or a decision of the United States Supreme Court. However, an otherwise permissible inventory method is not permissible under this section 21.11 for a specific taxpayer if that taxpayer is prohibited from using that method or if that taxpayer is required to use a different method.

(2) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 21.11 is "137."

(3) *Contact information*. For further information regarding a change under this section, contact Steven Gee at (202) 317-7007 (not a toll-free call).

.12 *Change in the official used vehicle guide utilized in valuing used vehicles*.

(1) *Description of change*. Used vehicles taken in trade as part payment on the sale of vehicles by a dealer may be valued for inventory purposes at valuations comparable to those listed in an official used vehicle guide as the average wholesale prices for comparable vehicles. *See* Rev. Rul. 67–107, 1967–1 C.B. 115. This change applies to:

(a) a taxpayer that wants to change from not using an official used vehicle guide to using an official used vehicle guide for valuing used vehicles; or

(b) a taxpayer that wants to change to a different official used vehicle guide for valuing used vehicles.

(2) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 21.12 is "138."

(3) *Contact information*. For further information regarding a change under this section, contact Andrew Braden at (202) 317-7007 (not a toll-free call).

.13 *Invoiced advertising association costs for new vehicle retail dealerships*.

(1) *Description of change*. This change applies to a taxpayer that is engaged in the trade or business of retail sales of new automobiles or new light-duty trucks ("dealership") that wants to discontinue capitalizing certain advertising costs as acquisition costs under § 1.471–3(b). The change applies to advertising costs that meet the following criteria: (a) the dealership must pay this advertising fee when acquiring vehicles from the manufacturer; (b) the advertising costs are separately coded and included in the manufacturer's invoice cost of the new vehicle; (c) the advertising cost is a flat fee per vehicle or a fixed percentage of the invoice price; and (d) the fees collected by the manufacturer are paid to local advertising associations that promote and advertise the manufacturer's products in the dealership's market area. Under the proposed method, the dealership will exclude advertising costs that meet the above criteria from the cost of new vehicles and deduct the advertising costs under § 162 as the advertising services are provided to the dealership. *See* § 1.461–4(d)(2)(i).

(2) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 21.13 is "139."

(3) *Contact information*. For further information regarding a change under this section, contact Andrew Braden at (202) 317-7007 (not a toll-free call).

.14 *Rolling-average method of accounting for inventories*.

(1) *Description of change*. This change applies to a taxpayer that uses a rolling-average method to value inventories for financial accounting purposes and wants to use the same rolling-average method to value inventories for federal income tax purposes in accordance with Rev. Proc. 2008–43, 2008–30 C.B. 186, as modified by Rev. Proc. 2008–52, 2008–2 C.B. 587 (*see* section 13).

(2) *Manner of making change*. This change is made on a cut-off basis and is applied only to the computation of ending inventories after the beginning of the year of change. However, if the taxpayer's books and records contain sufficient information to compute a § 481(a) adjustment, the taxpayer may choose to implement the change with a § 481(a) adjustment as provided in sections 7.02 and 7.03 of Rev. Proc. 2015–13, 2015–5 I.R.B. 419.

(3) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 21.14 is "114."

(4) *Contact information*. For further information regarding a change under this section, contact Leo Nolan at (202) 317-7007 (not a toll-free call).

.15 *Sales-Based Vendor Chargebacks*.

(1) *Description of change.* This change, as described in Rev. Proc. 2014–33, 2014–22 I.R.B. 1060, applies to a taxpayer that wants to change its method of accounting to treat sales-based vendor chargebacks as a reduction in cost of goods sold in accordance with § 1.471–3(e)(1).

(2) *Certain eligibility rule temporarily inapplicable.* The eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, does not apply to this change for a taxpayer's first and second taxable years ending on or after January 13, 2014.

(3) *Concurrent automatic changes*. A taxpayer making both this change and the change described in section 12.11 of this revenue procedure for the same taxable year of change may file a single Form 3115 for both changes, provided the taxpayer enters the designated automatic change numbers for both changes on the appropriate line on the Form 3115, and complies with the ordering rules of § 1.263A–7(b)(2). See section 6.03(1)(b) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, for information on making concurrent changes.

(4) *Designated automatic accounting method change number*. The designated automatic accounting method change number for changes in methods of accounting under this section 21.15 is "203."

(5) *Contact information*. For further information regarding a change under this section, contact Sean Dwyer at (202) 317-7005 (not a toll-free call).

.16 *Certain changes to the cost complement of the retail inventory method.*

(1) *Description of change.* This change, as described in Rev. Proc. 2014–48, 2014–36 I.R.B. 527, applies to a taxpayer using the retail inventory method that wants to make one of the following changes:

(a) From adjusting to not adjusting the numerator of the cost complement by the amount of an allowance, discount, or price rebate that is required under § 1.471–3(e) to reduce only cost of goods sold;

(b) From adjusting to not adjusting the denominator of the cost complement for temporary markups and markdowns;

(c) In the case of a retail LCM taxpayer, to computing the cost complement using a method described in § 1.471–8(b)(3), including changes from a method described in § 1.471–8(b)(3) to another method described in § 1.471–8(b)(3); or

(d) In the case of a retail cost taxpayer, from not adjusting to adjusting the denominator of the cost complement for permanent markups and markdowns.

(2) *Effective date and certain eligibility rule temporarily inapplicable*. This section 21.16 is effective for taxable years beginning after December 31, 2014. The eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, does not apply for a taxpayer's first or second taxable years beginning after December 31, 2014.

(3) *Multiple changes*. A taxpayer making multiple changes under this section 21.16 for the same year of change should file a single Form 3115.

(4) *Manner of making change*. A taxpayer making a change under this section 21.16 for its first or second taxable year beginning after December 31, 2014, may use either a § 481(a) adjustment as provided in sections 7.02 and 7.03 of Rev. Proc. 2015–13 or implement the change on a cut-off basis. If the taxpayer uses a cut-off basis, the change applies only to the computation of ending inventories after the beginning of the year of change, and a § 481(a) adjustment is neither permitted nor required if a change is made on a cut-off basis.

(5) *Designated automatic accounting method change number*. The designated automatic accounting method change number for changes in methods of accounting under this section 21.16 is "204."

(6) *Contact information*. For further information regarding a change under this section, contact Natasha M. Mulleneaux at (202) 317-7007 (not a toll-free call).

.17 *Certain changes within the retail inventory method.*

(1) *Description of change.* This change applies to a taxpayer using the retail inventory method that wants to change from including to not including temporary markups and markdowns in determining the retail selling prices of goods on hand at the end of the taxable year.

(2) *Designated automatic accounting method change number*. The designated automatic accounting method change number for changes in methods of accounting under this section 21.17 is "225."

(3) *Contact information*. For further information regarding a change under this section, contact Natasha M. Mulleneaux at (202) 317-7007 (not a toll-free call).

SECTION 22. LAST-IN, FIRST-OUT (LIFO) INVENTORIES (§ 472)

.01 *Change from the LIFO inventory method.*

(1) *Description of change*.

(a) *In general*. This change applies to a taxpayer that wants to:

(i) change from the LIFO inventory method for all its LIFO inventory or for the entire content of one or more dollar-value pools; and

(ii) change to a permitted method or methods as determined in section 22.01(1)(b) of this revenue procedure.

(b) *Method to be used*.

(i) *Determining the permitted method to be used*. A taxpayer may change to one or more non-LIFO inventory methods for the LIFO inventories that are the subject of this accounting method change, but only if the selected non-LIFO method is a permitted method for the inventory goods to which it will be applied. For example, a heavy equipment dealer may change to the specific identification method for new heavy equipment inventories and the replacement cost method, as described in Rev. Proc. 2006–14, 2006–1 C.B. 350, for heavy equipment parts inventories.

(ii) *Permitted method defined*. For purposes of this section 22.01, an inventory method (identification or valuation, or both) is a permitted method if it is specifically permitted for the inventory goods by the Code, the regulations, or other guidance published in the Internal Revenue Bulletin, or a decision of the United States Supreme Court and if the taxpayer is neither prohibited from using that method nor required to use a different inventory method for those inventory goods.

(iii) *Determining permitted method*. Whether an inventory method is a permitted method is determined without regard to the types and amounts of costs capitalized under the taxpayer's method of computing inventory cost. *See* § 263A and the regulations thereunder, which govern the types and amounts of costs required to be included in inventory cost for taxpayers subject to those provisions.

(2) *Certain eligibility rule inapplicable*. The eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, does not apply for the first

taxable year that the taxpayer does not or will not comply with the requirements of § 472(e)(2) because the taxpayer has applied or will apply International Financial Reporting Standards in its financial statements or because the taxpayer has been acquired by an entity that has not or will not use the LIFO method in its financial statements.

(3) *Limitation on LIFO election*. The taxpayer may not re-elect the LIFO inventory method for a period of at least five taxable years beginning with the year of change unless, based on a showing of unusual and compelling circumstances, consent is specifically granted by the Commissioner to change the method of accounting at an earlier time. A taxpayer that wants to re-elect the LIFO inventory method within a period of five taxable years (beginning with the year of change) must file a Form 3115 in accordance with the non-automatic change procedures in Rev. Proc. 2015–13. A taxpayer that wants to re-elect the LIFO inventory method after a period of five taxable years (beginning with the year of change) does not file a Form 3115 using the non-automatic change procedures in Rev. Proc. 2015–13, but, rather, must file a Form 970, *Application To Use LIFO Inventory Method*, in accordance with § 1.472–3.

(4) *Effect of subchapter S election by corporation*. *See* section 7.03(4)(b) and (c) of Rev. Proc. 2015–13.

(5) *Additional requirements*. The taxpayer must complete the following statements and attach them to its Form 3115. If the taxpayer will use different methods for different inventory goods to which the change applies, the taxpayer must complete the statements for each of those different types of inventory goods.

(a) "The proposed method of identifying [*Insert description of inventory goods*] is the [*Insert method, as appropriate; that is, specific identification; FIFO; retail; etc.*] method."

(b) "The proposed method of valuing [*Insert description of inventory goods*] is [*Insert method, as appropriate; that is, cost; LCM; etc.*]."

(6) *Pool split and partial termination*. If a taxpayer must remove goods from a LIFO inventory pool because those goods are not within the scope of that pool (*for example*, removing resale goods from a manufacturing pool), and if the taxpayer wants to change from the LIFO inventory method for those removed goods, the taxpayer may split the pool pursuant to section 22.10 of this revenue procedure and then may change from the LIFO method pursuant to this section 22.01. *See* section 22.10(2) of this revenue procedure. The taxpayer must file a separate Form 3115 for each such change.

(7) *Section 481(a) adjustment required*.

(a) *General rule*. A taxpayer changing from a LIFO inventory method must compute a § 481(a) adjustment for the year of change. *See* section 7.02 of Rev. Proc. 2015–13.

(b) *Special rule for changes that would otherwise be implemented on a cut-off basis*. If a taxpayer is changing from the LIFO inventory method to a method of accounting that is implemented on a cut-off basis under another section of this revenue procedure (see, for example, sections 21.07, 21.08, and 21.14 of this revenue procedure), the taxpayer's § 481(a) adjustment is "the LIFO recapture amount" as defined in § 312(n)(4)(B) and (C). A taxpayer computing the § 481(a) adjustment under this special rule must then compute its ending inventory value for the year of change using the proposed method (that is, treat the deemed change from the first-in, first-out (FIFO) method to the proposed method on a cut-off basis).

(8) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 22.01 is "56."

(9) *Contact information*. For further information regarding a change under this section, contact Leo Nolan at (202) 317-7007 (not a toll-free call).

.02 *Determining current-year cost under the LIFO inventory method*.

(1) *Description of change*.

(a) *Applicability*. This change applies to a taxpayer using the LIFO inventory method that wants to change its method of determining current-year cost to:

(i) the actual cost of the goods most recently purchased or produced (most-recent-acquisitions method);

(ii) the actual cost of the goods purchased or produced during the taxable year in the order of acquisition (earliest-acquisitions method);

(iii) the average unit cost equal to the aggregate actual cost of all the goods purchased or produced throughout the taxable year divided by the total number of units so purchased or produced. *See* § 1.472–8(e)(2)(ii);

(iv) the specific identification method; or

(v) a rolling-average method if the taxpayer uses that rolling-average method in accordance with Rev. Proc. 2008–43, 2008–30 I.R.B. 186, as modified by Rev. Proc. 2008–52, 2008–36 I.R.B. 587 (*see* section 13).

(b) *Inapplicability*. This change does not apply to a taxpayer using the lower of cost or market method to determine current-year cost. A taxpayer using the lower of cost or market method that valued inventory below cost may not change to a proper cost valuation under this section 22.02.

(2) *Manner of making change*. This change is made using a cut-off basis and applies only to the computations of current-year cost after the beginning of the year of change. Accordingly, a § 481(a) adjustment is neither permitted nor required.

(3) *Concurrent change to a rolling-average method*. A taxpayer making both a change to a rolling-average method of determining current-year cost for its LIFO inventory under this section 22.02 and a change to a rolling-average method of accounting for non-LIFO inventories under Rev. Proc. 2008–43 (*see* section 21.14 of this revenue procedure) should file a single Form 3115 for both changes, in which case the taxpayer must enter the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115. See section 6.03(1)(b) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, for information on making concurrent changes.

(4) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 22.02 is "57."

(5) *Contact information*. For further information regarding a change under this

section, contact Leo Nolan at (202) 317-7007 (not a toll-free call).

.03 *Alternative LIFO inventory method for retail automobile dealers*.

(1) *Description of change*.

(a) *Applicability*. This change applies to a taxpayer engaged in the trade or business of retail sales of new automobiles or new light-duty trucks ("automobile dealer") that wants to change to the "Alternative LIFO method" described in section 4 of Rev. Proc. 97–36, 1997–2 C.B. 450, as modified by Rev. Proc. 2008–23, 2008–1 C.B. 664, for its LIFO inventories of new automobiles and new light-duty trucks. Light-duty trucks are trucks with a gross vehicle weight of 14,000 pounds or less, which also are referred to as class 1, 2, or 3 trucks.

(b) *Inapplicability*. This change does not apply to an automobile dealer that uses the inventory price index computation (IPIC) method for goods other than new automobiles, new light-duty trucks, parts and accessories, used automobiles, and used trucks.

(2) *Manner of making change*.

(a) *Cut-off basis*. This change is made using a cut-off basis and applies only to the computation of ending inventories after the beginning of the year of change. See section 5.03(6) of Rev. Proc. 97–36 for more information regarding a cut-off basis. Accordingly, a § 481(a) adjustment is neither permitted nor required.

(b) *Concurrent change from IPIC method*. An automobile dealer using the IPIC method that also has parts and accessories, used automobiles, or used light-duty trucks (other goods) inventory may incorporate a change, using a cut-off basis, from IPIC to another acceptable LIFO method for those other goods into this change. When changing from IPIC to a dollar-value LIFO method for its other goods, the automobile dealer must establish separate inventory pools for new automobiles and new light-duty trucks, unless the automobile dealer also concurrently changes to the Vehicle-Pool Method (*see* section 22.08 of this revenue procedure). Further, the automobile dealer must establish a separate inventory pool for the parts and accessories. See section 6.03(1)(b) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, for information on making concurrent changes.

(c) *Additional requirements*. An automobile dealer also must comply with the following:

(i) the conditions in section 5.03 of Rev. Proc. 97–36; and

(ii) for an automobile dealer changing from the IPIC method under this section 22.03, the automobile dealer also must attach to its Form 3115 a schedule setting forth the classes of goods for which the automobile dealer has elected to use the LIFO method and the accounting method changes being made under this section 22.03 for each class of goods.

(3) *Concurrent change to the Vehicle-Pool Method*. A taxpayer making both a change to the Alternative LIFO Method under this section 22.03 and a change to the Vehicle-Pool Method under Rev. Proc. 2008–23 (*see* section 22.08 of this revenue procedure) should file a single Form 3115 for both changes, in which case the taxpayer must enter the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115. See section 6.03(1)(b) of Rev. Proc. 2015–13 for information on making concurrent changes.

(4) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 22.03 is "58."

(5) *Contact information*. For further information regarding a change under this section, contact Leo Nolan at (202) 317-7007 (not a toll-free call).

.04 *Used vehicle alternative LIFO method*.

(1) *Description of change*. This change applies to a taxpayer that sells used automobiles and used light-duty trucks ("used vehicle dealers") that wants to change to the "Used Vehicle Alternative LIFO Method" as described in Rev. Proc. 2001–23, 2001–1 C.B. 784, as modified by Announcement 2004–16, 2004–1 C.B. 668, and Rev. Proc. 2008–23, 2008–1 C.B. 664.

(2) *Additional requirements*. A taxpayer making this change must comply with the additional conditions set forth in section 5.04 of Rev. Proc. 2001–23.

(3) *Manner of making change*.

(a) *Cut-off basis*. This change is made on a cut-off basis, which requires that the value of the taxpayer's used automobile and used light-duty truck inventory at the beginning of the year of change must be the same as the value of that inventory at the end of the preceding taxable year, plus cost restorations, if any, required by section 5.04(5) of Rev. Proc. 2001–23. Accordingly, a § 481(a) adjustment is neither permitted nor required.

(b) *Bargain purchase*. If the taxpayer has previously improperly accounted for a bulk bargain purchase, the taxpayer must, as part of this change, first change its method of accounting to comply with *Hamilton Industries, Inc. v. Commissioner*, 97 T.C. 120 (1991), and compute a § 481(a) adjustment for that part of the change. *See* Announcement 91–173, 1991–47 I.R.B. 29. Upon examination, if a taxpayer has properly changed under this section 22.04 except for complying with this section 22.04(3)(b), an examining agent may not deny the taxpayer the change. However, the taxpayer does not receive audit protection under section 8.01 of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, with respect to the improper method of accounting for the bargain purchase. *See* section 8.02(2) of Rev. Proc. 2015–13. Accordingly, the examining agent may make any necessary adjustments in any year for which the period of limitations on assessment and collection of tax is open to effect compliance with *Hamilton Industries, Inc*.

(c) *New base year*. In effecting a change to the Used Vehicle Alternative LIFO Method under this revenue procedure, the taxpayer must retain any LIFO inventory cost increments previously determined and the value of those increments. Instead of using the earliest taxable year for which the taxpayer adopted LIFO as the base year, the taxpayer must use the year of change as the new base year in determining the value of all existing LIFO cost increments for the year of change and later taxable years. (The cumulative index at the beginning of the year of change is 1.00). The taxpayer must restate the base-year cost of all LIFO cost increments at the beginning of the year of change in terms of new base-year costs, using the year of change as the new base year, and must recompute the indexes for previously determined inventory increments accordingly. The new base-year cost of a pool is equal to the total current-year cost of all the vehicles in the pool.

(d) *Form 3115*. A completed Form 3115 includes the completion of Part I of Schedule C.

(4) *Concurrent change from IPIC method*. A used vehicle dealer using the IPIC method that also has parts and accessories, new automobiles, or new light-duty trucks (other goods) inventory may incorporate a change, using a cut-off basis, from IPIC to another acceptable LIFO method for those other goods into this change. When changing from IPIC to a dollar-value LIFO method for its other goods, the used vehicle dealer must establish separate inventory pools for new automobiles and new light-duty trucks, unless the used vehicle dealer also concurrently changes to the Vehicle-Pool Method (*see* section 22.08 of this revenue procedure). Further, the used vehicle dealer must establish a separate inventory pool for the parts and accessories. See section 6.03(1)(b) of Rev. Proc. 2015–13 for information on making concurrent changes.

(5) *Concurrent change to the Vehicle-Pool Method*. A taxpayer making both a change to the Used Vehicle Alternative LIFO Method under this section 22.04 and a change to the Vehicle-Pool Method under Rev. Proc. 2008–23 (*see* section 22.08 of this revenue procedure) should file a single Form 3115 for both changes, in which case the taxpayer must enter the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115. See section 6.03(1)(b) of Rev. Proc. 2015–13 for information on making concurrent changes.

(6) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 22.04 is "59."

(7) *Contact information*. For further information regarding a change under this section, contact Leo Nolan at (202) 317-7007 (not a toll-free call).

.05 *Determining the cost of used vehicles purchased or taken as a trade-in*.

(1) *Description of change*.

(a) *Applicability*. This change applies to a taxpayer using the LIFO inventory method that wants to:

(i) determine the cost of used vehicles acquired by trade-in using the average wholesale price listed by an official used vehicle guide on the date of the trade-in. *See* Rev. Rul. 67–107, 1967–1 C.B. 115. The taxpayer must consistently use the official used vehicle guide selected unless the taxpayer receives permission to use a different guide;

(ii) use a different official used vehicle guide for determining the cost of used vehicles acquired by trade-in;

(iii) determine the cost of used vehicles purchased for cash using the actual purchase price of the vehicle; or

(iv) reconstruct the beginning-of-the-year cost of used vehicles purchased for cash using values computed by national auto auction companies based on vehicles purchased for cash. The national auto auction company selected must be consistently used.

(b) *Inapplicability*. This change does not apply to a taxpayer that adopted or changed to the Used Vehicle Alternative LIFO Method (*see* section 22.04 of this revenue procedure).

(2) *Manner of making change*. This change is made on a cut-off basis and applies only to used vehicles acquired on or after the beginning of the year of change. Accordingly, a § 481(a) adjustment is neither permitted nor required.

(3) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 22.05 is "60."

(4) *Contact information*. For further information regarding a change under this section, contact Leo Nolan at (202) 317-7007 (not a toll-free call).

.06 *Change to the inventory price index computation (IPIC) method*.

(1) *Description of change*. This change applies to a taxpayer that wants to change:

(a) from a non-IPIC LIFO inventory method to the IPIC method in accordance with all relevant provisions of § 1.472–8(e)(3); or

(b) from the IPIC method as described in T.D. 7814, 1982–1 C.B. 84, (March 15, 1982) (the old IPIC method) to the IPIC method as described in § 1.472–8(e)(3) (*see* T.D. 8976, 2002–1 C.B. 421, (January 8, 2002)) (the new IPIC method), which includes the following required changes (if applicable):

(i) from using 80% of the inventory price index (IPI) to using 100% of the IPI to determine the base-year cost and dollar-value of a LIFO pool(s);

(ii) from using a weighted arithmetic mean to using a weighted harmonic mean to compute an IPI for a dollar-value pool(s); and

(iii) from using a components-of-cost method to define inventory items to using a total-product-cost method to define inventory items.

(2) *Manner of making change*. This change is made on a cut-off basis and applies only to the computation of ending inventories after the beginning of the year of change. Accordingly, a § 481(a) adjustment is neither permitted nor required.

(3) *Bargain purchase*. If the taxpayer has previously improperly accounted for a bulk bargain purchase, the taxpayer must, as part of this change, first change its method of accounting to comply with *Hamilton Industries, Inc. v. Commissioner*, 97 T.C. 120 (1991), and compute a § 481(a) adjustment for that part of the change. *See* Announcement 91–173, 1991–47 I.R.B. 29. Upon examination, if a taxpayer has properly changed under this section 22.06 except for complying with section 22.06(3) of this revenue procedure, an examining agent may not deny the taxpayer the change. However, the taxpayer does not receive audit protection under section 8.01 of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, with respect to the improper method of accounting for the bargain purchase. *See* section 8.02(2) of Rev. Proc. 2015–13. Accordingly, the examining agent may make any necessary adjustments in any year for which the period of limitations on assessment and collection of tax is open to effect compliance with *Hamilton Industries, Inc.*

(4) *Concurrent automatic changes*.

(a) A taxpayer making this change and to change its method of determining current-year cost under section 22.02 of this revenue procedure for the same year of change may file a single Form 3115 for both changes, provided the taxpayer enters the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115. See section 6.03(1)(b) of Rev. Proc. 2015–13 for information on making concurrent changes.

(b) A taxpayer making this change and to change its method of pooling to IPIC-method pools described in § 1.472–8(b)(4) or § 1.472–8(c)(2) under section 22.07 of this revenue procedure for the same year of change may file a single Form 3115, provided the taxpayer enters the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115. See section 6.03(1)(b) of Rev. Proc. 2015–13 for information on making concurrent changes.

(c) A taxpayer making this change and to change its method of pooling under section 22.10 of this revenue procedure for the same year of change may file a single Form 3115, provided the taxpayer enters the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115. See section 6.03(1)(b) of Rev. Proc. 2015–13 for information on making concurrent changes.

(5) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 22.06 is "61."

(6) *Contact information*. For further information regarding a change under this section, contact Leo Nolan at (202) 317-7007 (not a toll-free call).

.07 *Changes within the inventory price index computation (IPIC) method*.

(1) *Description of change*. This change applies to a taxpayer using the IPIC method described in § 1.472–8(e)(3) as revised by T.D. 8976, 2002–1 C.B. 421, (new IPIC method) that wants to make one or more of the following changes:

(a) change from the double-extension IPIC method to the link-chain IPIC method, or vice versa. *See* § 1.472–8(e)(3)(iii)(E) for principles concerning the computation of the inventory price index under the double-extension IPIC method and the link-chain IPIC method;

(b) change to or from the 10 percent method. See § 1.472–8(e)(3)(iii)(C) for principles concerning the assignment of inventory items to Bureau of Labor Statistics (BLS) categories under the IPIC method;

(c) change to IPIC-method pools described in § 1.472–8(b)(4) or § 1.472–8(c)(2), including a change to begin or discontinue applying one or both of the 5 percent pooling rules;

(d) change to combine or separate pools as a result of the application of a 5 percent pooling rule described in § 1.472–8(b)(4) or § 1.472–8(c)(2);

(e) change its selection of BLS table from Table 3 (Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, detailed expenditure categories) of the monthly CPI Detailed Report to Table 9 (Producer price indexes (PPI) and percent changes for commodity and service groupings and individual items, not seasonally adjusted) of the monthly PPI Detailed Report (formerly, Table 6), or vice versa. *See* § 1.472–8(e)(3)(iii)(B)(2) for principles concerning the selection of a BLS table under the IPIC method;

(f) change the assignment of one or more inventory items to BLS categories under either Table 3 (CPI-U): U.S. City average, detailed expenditure categories) of the monthly CPI Detailed Report or Table 9 (PPI and percent changes for commodity and service groupings and individual items, not seasonally adjusted) of the monthly PPI Detailed Report (formerly, Table 6). See § 1.472–8(e)(3)(iii)(C) for principles concerning the assignment of inventory items to BLS categories under the IPIC method. As part of this change, a taxpayer may separate a reassigned item from an inappropriate pool and combine the reassigned item with items in an appropriate pool. See § 1.472–8(g)(2) for principles concerning the manner of combining and separating dollar-value pools;

(g) change the representative month when necessitated because of a change in taxable year or a change in method of determining current-year cost made pursuant to section 22.02 of this revenue procedure. See § 1.472–8(e)(3)(iii)(B) for principles concerning the determination of a representative month under the IPIC method. A change in method of determining current-year cost and a change of the representative month may be made using a single Form 3115, provided the taxpayer enters the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115;

(h) change from using preliminary BLS price indexes to using final BLS price indexes to compute an inventory price index, or *vice versa*. See § 1.472–8(e)(3)(iii)(D)(*2*) for principles concerning the selection of BLS price indexes under the IPIC method; and

(i) change from using a representative appropriate month to using an appropriate month. See § 1.472–8(e)(3)(iii)(B)(*3*) for principles concerning the selection of an appropriate month.

(2) *Certain eligibility rule inapplicable*. The eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, does not apply to the changes described in sections 22.07(1)(d), (f) in the case of a taxpayer using the 10 percent method described in § 1.472–8(e)(3)(iii)(C)(*2*), and (g) of this revenue procedure.

(3) *Manner of making change*.

(a) *Cut-off basis*. These changes are made on a cut-off basis and apply only to the computation of ending inventories after the beginning of the year of change. Accordingly, a § 481(a) adjustment is neither permitted nor required.

(b) *New base year*. A taxpayer that changes pursuant to sections 22.07(1)(a), (b), and (e) of this revenue procedure must establish a new base year in the year of change.

(4) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 22.07 is "62."

(5) *Contact information*. For further information regarding a change under this section, contact Leo Nolan at (202) 317-7007 (not a toll-free call).

.08 *Changes to the Vehicle-Pool Method*.

(1) *Description of change*. This change applies to a retail dealer or wholesale distributor ("reseller") of cars and light-duty trucks that wants to change to the

"Vehicle-Pool Method" as described in Rev. Proc. 2008–23, 2008–1 C.B. 664.

(2) *Manner of making change*.

(a) *Cut-off basis*. This change is made on a cut-off basis and applies only to the computation of ending inventories after the beginning of the year of change. Accordingly, a § 481(a) adjustment is neither permitted nor required. A reseller that changes its method of pooling under Rev. Proc. 2008–23 and this section 22.08 must comply with § 1.472–8(g).

(b) *New base year*. Instead of using the earliest taxable year for which the reseller adopted the LIFO method for any items in a pool, the reseller must use the year of change as the base year when determining the LIFO value of that pool for the year of change and subsequent taxable years (that is, the cumulative index at the beginning of the year of change is 1.00). The reseller must restate the base-year cost of all layers of increment in a pool at the beginning of the year of change in terms of new base-year cost. For an example of establishing a new base year, see § 1.472–8(e)(3)(iv)(B)(*1*)(*ii*).

(3) *Concurrent change to the Alternative LIFO Method or the Used Vehicle Alternative LIFO Method*. A reseller making both a change to the Vehicle-Pool Method under this section 22.08 and a change to the Alternative LIFO Method under Rev. Proc. 97–36 (*see* section 22.03 of this revenue procedure) or the Used Vehicle Alternative LIFO Method under Rev. Proc. 2001–23 (*see* section 22.04 of this revenue procedure) should file a single Form 3115 for both changes, in which case the taxpayer must enter the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115. *See* section 6.03(1)(b) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, for information on making concurrent changes.

(4) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 22.08 is "112."

(5) *Contact information*. For further information regarding a change under this section, contact Leo Nolan at (202) 317-7007 (not a toll-free call).

.09 *Changes within the used vehicle alternative LIFO method*.

(1) *Description of change*. This change applies to a taxpayer using the "Used Vehicle Alternative LIFO Method" as described in Rev. Proc. 2001–23, 2001–1 C.B. 784, as modified by Announcement 2004–16, 2004–1 C.B. 668, and Rev. Proc. 2008–23, 2008–1 C.B. 664, that wants to change the particular "official used vehicle guide" utilized by the taxpayer in connection with the Used Vehicle Alternative LIFO Method or any change in the precise manner of its utilization (for example, a change in the specific guide category that a taxpayer uses to represent vehicles of average condition for purposes of section 4.02(5)(a) of Rev. Proc. 2001–23).

(2) *Manner of making change*.

(a) *Cut-off basis*. This change is made on a cut-off basis and applies only to the computation of ending inventories after the beginning of the year of change. Accordingly, a § 481(a) adjustment is neither permitted nor required.

(b) *New base year*. A taxpayer that changes its method pursuant to this section 22.09 must establish a new base year in the year of change.

(3) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 22.09 is "140."

(4) *Contact information*. For further information regarding a change under this section, contact Leo Nolan at (202) 317-7007 (not a toll-free call).

.10 *Changes to dollar-value pools of manufacturers*.

(1) *Description of change*. This change applies to a manufacturer that:

(a) purchases goods for resale (resale goods) and, thus, must reassign resale goods from the pool(s) it maintains for the goods it manufactures to one or more resale pools;

(b) wants to change from using multiple pools described in § 1.472–8(b)(3) to using natural business unit (NBU) pools described in § 1.472–8(b)(1), or *vice versa*; or

(c) wants to reassign items in NBU pools described in § 1.472–8(b)(1) into the same number or a greater number of NBU pools.

(2) *Manner of making change*. This change is made on a cut-off basis and applies only to the computation of ending inventories after the beginning of the year of change. Accordingly, a § 481(a) adjustment is neither permitted nor required. A taxpayer that changes its method of pooling pursuant to this section 22.10 must combine or separate pools as required by § 1.472–8(g). If a taxpayer splits a pool into two or more permissible pools pursuant to this section 22.10, which must be implemented on a cut-off basis, the taxpayer then may file a separate Form 3115 to change from the LIFO inventory method for one or more of the resulting pools pursuant to section 22.01 of this revenue procedure, which must be implemented with a § 481(a) adjustment.

(3) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 22.10 is "141."

(4) *Contact information*. For further information regarding a change under this section, contact Leo Nolan at (202) 317-7007 (not a toll-free call).

SECTION 23. MARK-TO-MARKET ACCOUNTING METHOD (§ 475)

.01 *Commodities dealers, securities traders, and commodities traders electing to use the mark-to-market method of accounting under § 475(e) or (f)*.

(1) *Description of change*. This change applies to certain taxpayers that have elected to use the mark-to-market method of accounting under § 475(e) or (f). Under § 475(e) and (f) and Rev. Proc. 99–17, 1999–1 C.B. 503, if a taxpayer makes an election under § 475(e) or (f), then beginning with the first taxable year for which the election is effective (election year), mark to market is the only permissible method of accounting for securities or commodities subject to the election. Thus, if the electing taxpayer's method of accounting for its taxable year immediately preceding the election year is inconsistent with § 475, the taxpayer is required to change its method of accounting to comply with the election. A taxpayer that

makes a § 475(e) or (f) election but fails to change its method of accounting to comply with that election is using an impermissible method. *See* section 4 of Rev. Proc. 99–17.

(2) *Applicability*. This change applies to a taxpayer if all of the following conditions are satisfied:

(a) the taxpayer is a commodities dealer, securities trader, or commodities trader that has made a valid election under § 475(e) or (f) (*see* section 5.03(1) of Rev. Proc. 99–17) and that is required to change its method of accounting to comply with the election;

(b) the method of accounting to which the taxpayer changes is in accordance with its election under § 475(e) or (f); and

(c) the year of change is the election year.

(3) *Certain eligibility rule inapplicable*. The eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, does not apply to this change.

(4) *Election under Rev. Proc. 99–17*. In accordance with section 5.03(1) of Rev. Proc. 99–17, to make a § 475(e) or (f) election, a taxpayer must file a statement satisfying the requirements in section 5.04 of Rev. Proc. 99–17. The taxpayer must file the statement not later than the due date (without regard to any extension) of the original federal income tax return for the taxable year immediately preceding the election year and must attach the statement either to that return or, if applicable, to a request for an extension of time to file that return. For example, if a calendar year individual taxpayer wants to make a § 475(e) or (f) election for 2014 (the election year), the taxpayer must file the statement on or before April 15, 2014, with the taxpayer's timely filed (without regard to any extension) federal income tax return for 2013 or the taxpayer's timely filed request for an extension of time to file the 2013 federal income tax return. On the Form 3115 filed for the year of change, a taxpayer should indicate that the taxpayer has filed the statement in compliance with section 5.03(1) of Rev. Proc. 99–17.

(5) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 23.01 is "64."

(6) *Contact information*. For further information regarding a change under this section, contact Eric E. Boody at (202) 317-6945 (not a toll-free call).

.02 *Taxpayers requesting to change their method of accounting from the mark-to-market method of accounting described in § 475 to a realization method*.

(1) *Description of change*. This change applies to any taxpayer requesting permission to change its method of accounting for securities or commodities as defined in § 475 from the mark-to-market method of accounting described in § 475 to a realization method of accounting. For example, this section 23.02 applies when a taxpayer is required to change its method of accounting to a realization method after revoking an election under § 475(e), (f)(1), or (f)(2).

(2) *Exclusive procedure*. The procedure set forth in this section 23.02 is the exclusive procedure for changing a taxpayer's method of accounting from the mark-to-market method described in § 475 to a realization method. Thus, filing the Notification Statement described in section 23.02(6) of this revenue procedure is the exclusive manner of revoking a § 475(e), (f)(1), or (f)(2) election. Moreover, any taxpayer requesting permission to change to a realization method must follow the procedures described in this section 23.02 and other applicable provisions of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, to request consent to change its method of accounting for securities described in § 475(c)(2) (Section 475 Securities), commodities described in § 475(e)(2) (Section 475 Commodities), or both.

(3) *Applicability*. This change applies to a taxpayer if all of the following conditions in paragraphs (a) through (c) below are satisfied:

(a) the taxpayer is using, properly or improperly, the mark-to-market method of accounting described in § 475;

(b) the taxpayer is requesting permission to change to a realization method of accounting and report gains or losses from the disposition of Section 475 Securities, Section 475 Commodities, or both, under § 1001; and

(c) the taxpayer meets the requirements of this section 23.02, including the requirement that it timely file the Notification Statement described in section 23.02(6) of this revenue procedure.

(4) *Certain eligibility rules inapplicable*. The eligibility rules in sections 5.01(1)(d) and (f) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, do not apply to this change.

(5) *Manner of making change*. This change is made using a cut-off basis and applies only to Section 475 Securities, Section 475 Commodities, or both, that are accounted for using the mark-to-market method of accounting described in § 475 and for which a change in method is requested under this section 23.02. Accordingly, a § 481(a) adjustment is neither permitted nor required.

Under the cut-off basis, a taxpayer must make a final mark of all Section 475 Securities, Section 475 Commodities, or both, that are being marked to market and that are the subject of the accounting method change being requested, on the last business day of the year preceding the year of change. As a result of the final mark, gain or loss attributable to those securities and commodities is also recognized on the last business day of the year preceding the year of change. In the case of any Section 475 Security or Section 475 Commodity that a taxpayer holds on the first day of the year of change, the taxpayer must make proper adjustment in the amount of any subsequently realized gain or loss to take into account adjustments for the gain or loss recognized prior to the first day of the year of change pursuant to the use of the mark-to-market method of accounting described in § 475 in order to prevent amounts from being duplicated or omitted. Any change in value on or after the first day of the year of change will be taken into account using a realization method of accounting unless section 23.02(7) of this revenue procedure permits the taxpayer to resume a mark-to-market method and the taxpayer resumes a mark-to-market method.

(6) *Notification Statement required*. In addition to filing the Form 3115 required under section 6.03(1) of Rev. Proc. 2015–13, to change to a realization method of accounting under this section 23.02, a taxpayer must also file a Notification Statement that satisfies the requirements in section 23.02(6) of this revenue procedure. The Notification Statement must be filed

not later than the due date (without regard to any extension) of the original federal income tax return for the taxable year immediately preceding the year of change and must be attached either to that return or, if applicable, to a request for an extension of time to file that return.

(a) *Notification Statement contents*. The Notification Statement must contain (1) the name of the taxpayer that will change its method of accounting (that is, the applicant), and, if applicable, the filer (for example, its parent corporation); (2) a statement that the taxpayer is requesting to change its method of accounting from the mark-to-market method of accounting described in § 475 to a realization method; (3) the year of change (both the beginning and ending dates); and (4) the types of instruments subject to the method change, that is, Section 475 Securities, Section 475 Commodities, or both. If a taxpayer has made an election under § 475(e), (f)(1), or (f)(2), the taxpayer must also include a statement revoking the taxpayer's section 475 election or elections for the Section 475 Securities, Section 475 Commodities, or both, for which a change in accounting method is sought.

(b) *Effect of filing Notification Statement*. Once the taxpayer files a Notification Statement for the year of change, a realization method of accounting is the only permissible method of accounting for Section 475 Securities, Section 475 Commodities, or both, described in the Notification Statement for the entire year of change and all subsequent years (unless section 23.02(7)(a) of this revenue procedure applies). A taxpayer that files the Notification Statement described in this section 23.02 but fails to change its method of accounting using the procedures described in Rev. Proc. 2015–13 and this section 23.02 is using an impermissible method.

(c) *Limited § 301.9100 relief*. Section 301.9100 relief for failure to comply with the requirements of this section 23.02(6) will be granted only in unusual and compelling circumstances.

(7) *Additional requirements*.

(a) *Resuming the mark-to-market method of accounting*. A taxpayer may not use the automatic change procedures in Rev. Proc. 2015–13 and section 23.01 of this revenue procedure to resume using the mark-to-market method of accounting described in § 475 for the Section 475 Securities, Section 475 Commodities, or both, that are the subject of the method change being requested using this section 23.02 during any of the five taxable years beginning with the year of change. To resume using the mark-to-market method of accounting described in § 475 during this 5-year period, a taxpayer must: (i) request the change using the non-automatic change procedures in Rev. Proc. 2015–13, (ii) request the change by the date an election for the year of change would be due under section 5.03 of Rev. Proc. 99–17, 1999–1 C.B. 503, and (iii) include a statement that satisfies all applicable requirements of section 5.04 of Rev. Proc. 99–17.

(b) *Copy of Notification Statement*. A taxpayer must attach a copy of the Notification Statement required in section 23.02(6) of this revenue procedure to its Form 3115 filed under this section 23.02.

(c) *No audit protection for valuation*. A taxpayer does not receive audit protection under section 8.01 of Rev. Proc. 2015–13 for the method of valuation used by the taxpayer to determine the fair market value of the taxpayer's Section 475 Securities, Section 475 Commodities, or both, for a taxable year prior to the year of change, or for a failure to comply with the requirements in Rev. Proc. 99–17 to properly elect the mark-to-market method. *See* section 8.02(2) of Rev. Proc. 2015–13.

(8) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 23.02 is "218".

(9) *Contact information*. For further information regarding a change under this section, contact Eric E. Boody at (202) 317-6945 (not a toll-free call).

SECTION 24. BANK RESERVES FOR BAD DEBTS (§ 585)

.01 *Changing from the § 585 reserve method to the § 166 specific charge-off method*.

(1) *Description of change*.

(a) *Applicability*. This change applies to a bank (as defined in § 581, including a bank for which a qualified subchapter S subsidiary (Qsub) election is filed) that wants to change its method of accounting for bad debts from the § 585 reserve method to the § 166 specific charge-off method.

(b) *Inapplicability*. This change does not apply to a large bank as defined in § 585(c)(2).

(2) *Certain eligibility rule inapplicable*. A bank that changed from the § 593 reserve method under § 593(g) to the § 585 reserve method is not prohibited under section 5.01(1)(f) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, from changing its method of accounting for bad debts under this section 24.01 solely because of the § 593(g) change. A bank for which a Qsub election is filed will not be prohibited under section 5.01(1)(f) of Rev. Proc. 2015–13 from changing its method of accounting for bad debts under this section 24.01 solely because of the deemed liquidation of the bank arising from a Qsub election.

(3) *Section 481(a) adjustment*. Generally, the amount of the § 481(a) adjustment for a change in method of accounting under this section 24.01 is the amount of the bank's reserve for bad debts as of the close of the taxable year immediately before the year of change. However, the amount of the § 481(a) adjustment does not include the amount of a bank's pre-1988 reserves (as described in § 593(g)(2)(A)(ii), without taking into account § 593(g)(2)(B)) if the bank changed in a prior year from the § 593 reserve method to the § 585 reserve method and § 593(g) applied to that change. The deemed liquidation of a bank occurring solely because its parent makes a Qsub election does not accelerate the § 481(a) adjustment. In accordance with section 7.03(4)(a) of Rev. Proc. 2015–13, a bank that ceases to be a bank under § 581 must accelerate its § 481(a) adjustment.

(4) *Change from § 585 required when electing S corporation status*.

(a) *General rule*. A bank electing S corporation status (or a bank for which a Qsub election is filed) cannot use the § 585 reserve method. The filing by a bank of a Form 2553, *Election by a Small Business Corporation*, or the filing by a bank's parent of Form 8869, *Qualified Subchapter S Subsidiary Election*, with respect to the bank will constitute an agreement by the bank to change its method of accounting for bad debts from the § 585 reserve method to the § 166 specific charge-off method effective as of the taxable year for which the S corporation election or Qsub election is effective (year of change) in accordance with all of the automatic change procedures of Rev. Proc. 2015–13 and this section 24.01. The resulting § 481(a) adjustment is recognized built-in gain under § 1374, unless the bank elects under § 1361(g) and section 24.01(4)(b) of this revenue procedure to take the § 481(a) adjustment into account in determining taxable income for the taxable year immediately preceding the year of change. *See* § 1.1374–4(d).

(b) *Election to include § 481(a) adjustment in taxable year immediately preceding the year of change*.

(i) *Election requirements*. A bank that changes its method of accounting for bad debts under this section 24.01, from the § 585 reserve method to the § 166 specific charge-off method for the first taxable year for which the bank's S corporation election is effective (year of change) may elect under § 1361(g) to take into account the amount of the resulting § 481(a) adjustment in determining taxable income for the taxable year immediately preceding the year of change. To make this election, a bank must (1) file an original and copy of Form 3115 under section 6.03(1) of Rev. Proc. 2015–13 (and any other copy required under section 6.03) for the year of change, (2) file an additional copy of the Form 3115 with its original (or amended) federal income tax return for the taxable year immediately preceding the year of change filed no later than the date the original Form 3115 is properly filed under section 6.03(1) of Rev. Proc. 2015–13 (and any other copy required under section 6.03) and (3) include the amount of the § 481(a) adjustment in gross income for the taxable year immediately preceding the year of change. The bank must attach a statement to the original and both copies of Form 3115 stating that the bank elects under § 1361(g) to take the § 481(a) adjustment into account in determining taxable income for the taxable year immediately preceding the year of change.

(ii) *Special rule for Qsub banks*. In the case of a Qsub bank, the S corporation parent must file an original and copy of Form 3115 under section 6.03(1) of Rev. Proc. 2015–13 for the year of change. The Qsub bank must file an additional copy of the Form 3115 with its original (or amended) federal income tax return for the taxable year immediately preceding the year of change filed no later than the date the original Form 3115 is properly filed under section 6.03(1) of Rev. Proc. 2015–13, and include the amount of the § 481(a) adjustment in gross income for the taxable year immediately preceding the year of change. In the case of a Qsub bank, the Form 3115 should indicate that the "filer" is the S corporation parent and the "applicant" is the Qsub bank.

(iii) The following example illustrates the principles of section 24.01(4)(b) of this revenue procedure.

Example. *X*, a calendar year taxpayer, is a calendar year bank as defined in § 581 and is not a large bank as defined in § 585(c)(2). For taxable years before 2015, *X* accounted for its bad debts under the § 585 reserve method. By March 15, 2015, *X* properly filed a Form 2553 electing to be an S corporation effective January 1, 2015. Pursuant to section 24.01(4)(a) of this revenue procedure, the filing of the Form 2553 constituted an agreement by *X* to change from the § 585 reserve method to the § 166 specific charge-off method for 2015 in accordance with all of the automatic change procedures of Rev. Proc. 2015–13, and the applicable provisions of this section 24.01. Thus, for example, *X* must file a Form 3115 for this 2015 change in duplicate, in accordance with section 6.03(1) of Rev. Proc. 2015–13, by attaching the original Form 3115 to *X*'s timely filed (including any extension) original federal income tax return for 2015 and filing a copy of the Form 3115 with the Covington, KY, office. The amount of *X*'s § 481(a) adjustment for the change is the amount of *X*'s bad debt reserve as of the close of December 31, 2014. *X* wishes to elect under § 1361(g) to include the § 481(a) adjustment in income in the taxable year ending December 31, 2014, the taxable year immediately preceding the year of change. To make this election, *X* must (1) file an original and copy of Form 3115 for the 2015 change under section 6.03(1) of Rev. Proc. 2015–13, (2) file an additional copy of that Form 3115 with its original (or amended) federal income tax return for 2014 filed no later than the date the original Form 3115 is properly filed under section 6.03(1) of Rev. Proc. 2015–13, and (3) include the amount of its § 481(a) adjustment in gross income in its return for 2014. *X* must attach a statement to the original and both copies of Form 3115 stating that *X* elects under § 1361(g) to take the § 481(a) adjustment into account in determining taxable income for 2014, the taxable year immediately preceding the year of change.

(5) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 24.01 is "66."

(6) *Contact information*. For further information regarding a change under this section, contact K. Scott Brown at (202) 317-6945, Laura Fields at (202) 317-6850 or Adrienne Mikolashek at (202) 317-6850 (not a toll-free call).

SECTION 25. INSURANCE COMPANIES (§§ 816, 832, 833)

.01 *Safe harbor method of accounting for premium acquisition expenses.*

(1) *Description of change*. Rev. Proc. 2002–46, 2002–2 C.B. 105, sets forth a safe harbor method of accounting for premium acquisition expenses of certain nonlife insurance companies. Under this method, an insurance company is permitted to treat as premium acquisition expenses incurred for the taxable year an amount equal to the sum of (a) the amount of premium acquisition expenses paid during the taxable year; (b) the difference between the unpaid premium acquisition expenses shown on the company's annual statement for the taxable year and the unpaid premium acquisition expenses shown on the company annual statement for the preceding taxable year; and (c) the difference between the amount of the insurance company's pro forma premium acquisition expenses at the end of the taxable year and the company's pro forma premium acquisition expenses at the end of the preceding taxable year. The amount taken into account as a net increase in the pro forma premium acquisition expenses, however, cannot exceed the insurance company's unearned premium reserve offset amount for that year. A special rule applies to premium acquisition expenses with respect to certain contracts with installment premiums. *See* Rev. Proc. 2002–46.

(2) *Applicability*. The automatic change in this section 25.01 applies to any insurance company that is subject to tax under § 831(a) and determines its premiums earned for insurance contracts during the taxable year under § 832(b)(4) in accordance with the provisions of § 1.832–4. The automatic change does not apply to an existing Blue Cross or Blue Shield organization or any other organization to which § 833 applies.

(3) *Certain eligibility rules inapplicable*. The eligibility rules in sections 5.01(1)(d) and (f) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, do not apply to this change.

(4) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 25.01 is "67."

(5) *Contact information*. For further information regarding a change under this section, contact Rebecca L. Baxter at (202) 317-6995 (not a toll-free call).

.02 *Certain changes in method of accounting for organizations to which § 833 applies*

(1) *Description of change*. This change applies to an existing Blue Cross or Blue Shield organization within the meaning of § 833(c)(2), or an organization described in § 833(c)(3), that is required to change its method of accounting for unearned premiums by reason of failing to meet the Medical Loss Ratio (MLR) requirements of § 833(c)(5), or by reason of meeting the MLR requirements of § 833(c)(5) after failing to meet those requirements in a prior year. *See* Notice 2011–4, 2011–2 I.R.B. 282.

(2) *Certain eligibility rules inapplicable*. The eligibility rules in sections 5.01(1)(d) and (f) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, do not apply to this change.

(3) *Accelerated § 481(a) adjustment period in certain situations*. In addition to the circumstances set forth in section 7.03(4) of Rev. Proc. 2015–13, the § 481 adjustment period provided in section 7.03 of Rev. Proc. 2015–13 will be accelerated in the event a taxpayer with a remaining balance of a § 481(a) adjustment that arose by reason of a change in method of accounting described in this section 25.02 is required to effect another change in method of accounting described in this section 25.02. Thus, for example, a taxpayer that fails to satisfy the requirements of § 833(c)(5) and as a result has a positive § 481(a) adjustment, is required to accelerate the remaining balance, if any, of that adjustment in a subsequent taxable year in which the taxpayer meets the requirements of § 833(c)(5).

(4) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 25.02 is "155."

(5) *Contact information*. For further information regarding this section, contact Rebecca L. Baxter at (202) 317-6995 (not a toll-free call).

.03 *Change in qualification as life/nonlife insurance company under § 816(a).*

(1) *Description of change*. This change applies to a taxpayer that changes its qualification under § 816(a) to move from a life insurance company taxable under part I of subchapter L to a non-life insurance company taxable under part II of subchapter L, or *vice versa*. Whether an insurance company is taxed under § 801 as a life insurance company is determined using the statutory requirements of § 816(a). This section requires that a company's life insurance reserves (as defined in § 816(b)), plus unearned premiums and unpaid losses on noncancellable life, accident, and health insurance contracts not included in life insurance reserves, be compared to its total reserves (as defined in § 816(c)). The comparison mandated by § 816(a) is referred to as the qualification fraction. An insurance company is a life insurance company if the sum of the life insurance reserves and unearned premiums and unpaid losses (whether or not ascertained) on noncancellable life, accident, or health policies not included in life insurance reserves comprise more than 50% of total reserves.

(2) *Certain eligibility rules inapplicable*. The eligibility rules in sections 5.01(1)(d) and (f) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, do not apply to this change.

(3) *No audit protection or ruling on qualification as a life insurance company*. The taxpayer does not receive either: (a) any audit protection under section 8.01 of Rev. Proc. 2015–13 or (b) ruling reliance under section 10 of Rev. Proc. 2015–13 in connection with the consent granted under section 9 of Rev. Proc. 2015–13 for a change under this section 25.03 regarding whether the taxpayer qualifies as a life insurance company. The director will ascertain whether the taxpayer qualifies as a life insurance company.

(4) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 25.03 is "219."

(5) *Contact information*. For further information regarding a change under this section, contact Rebecca L. Baxter at (202) 317-6995 (not a toll-free call).

SECTION 26. DISCOUNTED UNPAID LOSSES (§ 846)

.01 *Composite method for discounting unpaid losses*.

(1) *Description of change*. Section 846 defines "discounted unpaid losses" for purposes of computing the insurance company taxable income of certain insurance companies. Notice 88–100, 1988–2 C.B. 439, section V, sets forth a composite method for computing unpaid losses with respect to accident years not separately stated on the NAIC annual statement. Rev. Proc. 2002–74, 2002–2 C.B. 980, section 3.01, clarifies that the composite method of Notice 88–100, section V, is permitted, but not required; section 3.02 sets forth an alternative method for those taxpayers that do not use the composite method of section 3.01. An insurance company using a method provided in section 3.01 or 3.02 of Rev. Proc. 2002–74 to compute discounted unpaid losses, must use the same method to compute discounted estimated salvage recoverable. An insurance company that currently uses a permissible method of accounting for discounted unpaid losses may change its method of accounting to or from the composite method of Notice 88–100, section V, without the consent of the Commissioner. This change applies to insurance companies that are required to discount unpaid losses under § 846. *See* Rev. Proc. 2002–74.

(2) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 26.01 is "68."

(3) *Contact information*. For further information regarding a change under this section, contact Rebecca L. Baxter at (202) 317-6995 (not a toll-free call).

SECTION 27. REAL ESTATE MORTGAGE INVESTMENT CONDUIT (REMIC) (§§ 860A–860G)

.01 *REMIC inducement fees.*

(1) *Description of change*. A taxpayer that receives an inducement fee in connection with becoming the holder of a noneconomic residual interest in a REMIC must take that fee into account over the remaining expected life of the applicable REMIC in accordance with § 1.446–6. This change applies to a taxpayer that seeks to change from any method of accounting for such inducement fees to one of the safe harbor methods provided under § 1.446–6(e)(1)–(2). See Rev. Proc. 2004–30, 2004–1 C.B. 950, for additional guidance relating to this change.

(2) *Manner of making change*. A taxpayer making this change must identify the specific safe harbor method under § 1.446–6(e) to which the taxpayer is changing.

(3) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 27.01 is "79."

(4) *Contact information*. For further information regarding a change under this section, contact John W. Rogers, III at (202) 317-6895 (not a toll-free call).

SECTION 28. FUNCTIONAL CURRENCY (§ 985)

.01 *Change in functional currency.*

(1) *Description of change*. This change applies to a taxpayer that wants to change its functional currency or the functional currency of a qualified business unit (QBU) of the taxpayer. The preceding sentence does not apply to a QBU of a taxpayer described in § 1.985–1(b)(1)(iii).

(2) *Manner of making change*. A taxpayer making this change must make all necessary adjustments required by such change. *See* §§ 1.985–5, 1.985–8(c). A taxpayer must attach a statement to the Form 3115 representing that it has made the adjustments set forth in § 1.985–5 or § 1.985–8(c). The statement must also provide the amount of any unrealized exchange gain or loss required to be taken into account pursuant to § 1.985–5 or § 1.985–8(c) and the date on which a taxpayer took such amount into account. Finally, the statement must provide a detailed and complete description of any other adjustments required pursuant to § 1.985–5 or § 1.985–8(c).

(3) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 28.01 is "70."

(4) *Contact information*. For further information regarding a change under this section, contact Peter Merkel at (202) 317-4919 (not a toll-free call).

SECTION 29. ORIGINAL ISSUE DISCOUNT (§§ 1272, 1273)

.01 De minimis *original issue discount (OID).*

(1) *Description of change*. This change applies to a taxpayer that wants to change to the principal-reduction method of accounting described in section 5 of Rev. Proc. 97–39, 1997–2 C.B. 485. The principal-reduction method of accounting is an aggregate method of accounting for de minimis OID (discount) on certain loans originated by the taxpayer.

(2) *Certain eligibility rule inapplicable*. The eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, does not apply to this change.

(3) *Description*. The principal-reduction method of accounting is a permissible method for use by taxpayers to account for discount on one or more categories of loans described in section 4.02 or 4.03 of Rev. Proc. 97–39. If the principal-reduction method is used to account for any loans in a category of loans, the method must be used for the entire category of loans. The principal-reduction method applies only to loans described in section 3 of Rev. Proc. 97–39.

(4) *Manner of making change*.

(a) This change is made on a cut-off basis and applies only to loans described in section 3 of Rev. Proc. 97–39 that were acquired on or after the beginning of the year of change. Accordingly, a § 481(a) adjustment is neither permitted nor required.

(b) The taxpayer must maintain books and records sufficient to satisfy the director that old and new loans have been adequately segregated.

(5) *Additional requirements*. On a statement attached to the Form 3115, the taxpayer must:

(a) identify the categories of loans to which the proposed method will apply; and

(b) describe any "additional categories" permitted under section 4.03 of Rev. Proc. 97–39.

(6) *No audit protection*. A taxpayer does not receive audit protection under section 8.01 of Rev. Proc. 2015–13 in connection with this change. *See* section 8.02(2) of Rev. Proc. 2015–13.

(7) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 29.01 is "72."

(8) *Contact information*. For further information regarding a change under this section, contact William E. Blanchard at (202) 317-3900 (not a toll-free call).

.02 *Proportional method of accounting for OID on a pool of credit card receivables*.

(1) *Description of change*. This change applies to a taxpayer that wants to change to the proportional method of accounting for OID on a pool of credit card receivables as described in Rev. Proc. 2013–26, 2013–22 I.R.B. 1160.

(2) *Manner of making change*. This change is made on a cut-off basis. Accordingly, a § 481(a) adjustment is neither required nor permitted. The unaccrued OID for the pool as of the beginning of the first period in the year of change is equal to the unaccrued OID for the pool as of the end of the preceding year under the taxpayer's previous method of accounting for the pool.

(3) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 29.02 is "183."

(4) *Contact information*. For further information regarding this section, please contact Charles W. Culmer at (202) 317-6945 (not a toll-free call).

SECTION 30. MARKET DISCOUNT BONDS (§ 1278)

.01 *Revocation of § 1278(b) election.*

(1) *Description of change*. This change applies to a taxpayer that wants to change its method of accounting for market discount bonds by revoking its § 1278(b) election. Under § 1278(b), a taxpayer may elect a method of accounting under which market discount is currently included in gross income for the taxable years to which the discount is attributable. *See* Rev. Proc. 92–67, 1992–2 C.B. 429, for the procedures to make a § 1278(b) election (including a deemed § 1278(b) election). The procedures for revoking a § 1278 election were formerly provided in section 7 of Rev. Proc. 92–67.

(2) *Revocation of election*. The revocation of a § 1278(b) election applies to all market discount bonds that are held by the taxpayer on the first day of the first taxable year for which the revocation is effective (year of change), and to all market discount bonds that are subsequently acquired by the taxpayer. If a § 1278(b) election is revoked, then for purposes of § 1278(a), accrued market discount with respect to any bond previously subject to the election means accrued market discount as defined in § 1276(b) less any market discount included in income while the bond was subject to the § 1278(b) election.

(3) *Manner of making change*. This change is made on a cut-off basis and applies only to market discount accruing on or after the beginning of the year of change. Accordingly, a § 481(a) adjustment is neither permitted nor required. Market discount accruing on a bond prior to the year of change was currently included in income and market discount accruing on the bond on and after the first day of the year of change is included in income generally upon disposition of the bond. *See* § 1276(a). Because a cut-off basis is prescribed for this change, the basis of any bond, adjusted for amounts previously included in income during the period of the election, is not affected by the revocation.

(4) *Additional requirements*. On a statement attached to the Form 3115, the taxpayer must provide:

(a) the reason(s) for revoking the § 1278(b) election (or deemed § 1278(b) election);

(b) a description of the method by which, and the date on which, the taxpayer made the § 1278(b) election (or deemed § 1278(b) election) that is being revoked; and

(c) a statement that, after the revocation, the taxpayer will not make a constant interest rate election for any bond that has been subject to the § 1278(b) election (or deemed § 1278(b) election) being revoked and for which a constant interest rate election was not effective in the year of acquisition.

(5) *Audit protection*. A taxpayer may receive audit protection, as provided in section 8.01 of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, in connection with this change. Any audit protection applicable to this change under section 8.01 of Rev. Proc. 2015–13 does not preclude the Commissioner from examining the method used by the taxpayer to determine the amount of accrued market discount under § 1276(b) for a taxable year prior to the year of change.

(6) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 30.01 is "73."

(7) *Contact information*. For further information regarding a change under this section, contact William E. Blanchard at (202) 317-3900 (not a toll-free call).

SECTION 31. SHORT-TERM OBLIGATIONS (§ 1281)

.01 *Interest income on short obligations.*

(1) *Description of change.*

(a) This change applies to a taxpayer that wants to change its method of accounting to comply with § 1281 for interest income on short-term obligations.

(b) Under § 1281, a holder of certain short-term obligations, including a bank as defined in § 581, must include in gross income any accrued interest income on such obligations, regardless of the holder's overall method of accounting. Section 1281 applies to all types of interest income, including acquisition discount, original issue discount (OID), and stated interest. *See* S. Rep. No. 99–313, 99th Cong., 2d Sess. 903 (1986), 1986–3 (Vol. 3) C.B. 903.

(c) Section 1283(a)(1) generally defines a short-term obligation as any bond, debenture, note, certificate, or other evidence of indebtedness that matures in one year or less from its issue date.

(d) Under §§ 1281(a) and 1283(c), a holder of a short-term obligation subject to § 1281 must include in gross income an amount equal to the sum of the daily portions of the acquisition discount or OID, whichever is applicable, on the obligation for each day during the taxable year that the obligation is held by the holder. *See* § 1283(b), as modified by § 1283(c), to determine the daily portions of acquisition discount or OID. In addition, § 1281(a) requires the holder to include in gross income any stated interest that is payable on the short-term obligation (other than stated interest taken into account to determine the amount of the acquisition discount or OID) as it accrues.

(2) *Section 481(a) adjustment period*. A taxpayer must take the entire § 481(a) adjustment into account in computing taxable income for the year of change.

(3) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 31.01 is "74."

(4) *Contact information*. For further information regarding a change under this section, contact William E. Blanchard at (202) 317-3900 (not a toll-free call).

.02 *Stated interest on short-term loans of cash method banks.*

(1) *Description of change*. This change applies to a bank that uses the cash receipts and disbursements (cash) method of accounting as its overall accounting method and that wants to change its method of accounting from accruing stated interest on short-term loans made in the ordinary course of business to using the cash method for that interest. For example, *see Security State Bank v. Commissioner*, 214 F.3d 1254 (10th Cir. 2000), *aff'g* 111 T.C. 210 (1998), *acq*., 2001–1 C.B. xix; and *Security Bank Minnesota v. Commissioner*, 994 F.2d 432 (8th Cir. 1993), *aff'g* 98 T.C. 33 (1992), in which the courts held that § 1281 does not apply to short-term loans made by a cash

method bank in the ordinary course of its business.

(2) *Certain eligibility rule inapplicable*. The eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, does not apply to this change.

(3) *Section 481(a) adjustment period*. A taxpayer making this change must take the entire § 481(a) adjustment into account in computing taxable income for the year of change.

(4) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 31.02 is "75."

(5) *Contact information*. For further information regarding a change under this section, contact William E. Blanchard at (202) 317-3900 (not a toll-free call).

EFFECTIVE DATE

.01 *In general*. Except as otherwise provided under this EFFECTIVE DATE section, this revenue procedure is effective for a Form 3115 filed on or after May 5, 2016, for a year of change ending on or after September 30, 2015, that is filed under the automatic change procedures of 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, and as modified by Rev. Proc. 2016–1, 2016–1 I.R.B. 1.

.02 *Transition rules*. The following transition rules apply:

(1) *Limited time period to convert a Form 3115 filed under the non-automatic change procedures in Rev. Proc. 2015–13*. If before May 5, 2016, a taxpayer properly filed a Form 3115 under the non-automatic change procedures in Rev. Proc. 2015–13 requesting the Commissioner's consent for a change in method of accounting described in this revenue procedure, and the Form 3115 is pending with the national office on May 5, 2016, the taxpayer may choose to make the change in method of accounting under the automatic change procedures in Rev. Proc. 2015–13 if the taxpayer is otherwise eligible to use this revenue procedure and the automatic change procedures in Rev. Proc. 2015–13. The taxpayer must notify the national office contact person (if unknown, see section 9.08(6) of Rev. Proc. 2016–1, 2016–1 I.R.B. 1, 48 (or successor)) for the Form 3115 of the taxpayer's intent to make the change in method of accounting under the automatic change procedures in Rev. Proc. 2015–13 before the later of (a) June 6, 2016, or (b) the issuance of a letter ruling granting or denying consent for the change. The notification should indicate that the taxpayer chooses to convert the Form 3115 to the automatic change procedures in Rev. Proc. 2015–13. If the taxpayer timely notifies the national office that it chooses to convert the Form 3115 to the automatic change procedures in Rev. Proc. 2015–13, the national office will send a letter to the taxpayer acknowledging its request and will return the user fee submitted with the Form 3115.

A taxpayer converting a Form 3115 to the automatic change procedures in Rev. Proc. 2015–13 for a change in method of accounting described in this revenue procedure must resubmit a Form 3115 that conforms to the automatic change procedures, with a copy of the national office letter sent acknowledging the taxpayer's request attached, to the IRS in Covington, KY by the earlier of (a) the 30th calendar day after the date of the national office's letter acknowledging the taxpayer's request, or (b) the date the taxpayer is required to file the Duplicate copy of the Form 3115 under SECTION 6.03(1)(a)(i)(B) of Rev. Proc. 2015–13. See SECTION 6.03(3) of Rev. Proc. 2015–13 regarding additional required copies of Form 3115.

For purposes of the eligibility rules in SECTION 5 of Rev. Proc. 2015–13, the Duplicate copy of the timely resubmitted Form 3115 will be considered filed as of the date the taxpayer originally filed the converted Form 3115 under the non-automatic change procedures in Rev. Proc. 2015–13. This paragraph (1) does not extend the date the taxpayer must file the original (converted) Form 3115 under SECTION 6.03(1)(a)(i)(A) of Rev. Proc. 2015–13.

A Form 3115 filed under the non-automatic change procedures in Rev. Proc. 2015–13 before May 5, 2016, for a change in method of accounting described in this revenue procedure, will be disregarded for purposes of the prior five year change rules in SECTIONS 5.04 and 5.05 of Rev. Proc. 2015–13 if the taxpayer converts the Form 3115 pursuant to this paragraph (1).

(2) *Forms 3115 for changes in methods of accounting that can no longer be filed under the automatic change procedures*. The following transition rules apply to the changes in methods of accounting that can no longer be filed under the automatic change procedures in Rev. Proc. 2015–13. Such changes are described in subsection .01(1), (4), and (7) of the SIGNIFICANT CHANGES section of this revenue procedure.

(a) For changes described in subsection .01(1) and (4) of the SIGNIFICANT CHANGES section of this revenue procedure:

(i) If before May 5, 2016, a taxpayer properly filed the original, or the Duplicate copy, of a Form 3115 under the automatic change procedures in Rev. Proc. 2015–13 for a change in method of accounting described in subsection .01(1) or (4) of the SIGNIFICANT CHANGES section of this revenue procedure, the taxpayer may make that change under the automatic change procedures in Rev. Proc. 2015–13 for the year of change.

(ii) If before May 5, 2016, a taxpayer did not properly file the original, or the Duplicate copy, of a Form 3115 under the automatic change procedures in Rev. Proc. 2015–13 for a change in method of accounting described in subsection .01(1) or (4) of the SIGNIFICANT CHANGES section of this revenue procedure, the taxpayer must make that change under the non-automatic change procedures in Rev. Proc. 2015–13. Notwithstanding § 1.446–1(e)(3)(i), the taxpayer may file a Form 3115 to request the Commissioner's consent to change the method of accounting under the non-automatic change procedures in Rev. Proc. 2015–13 for the taxpayer's last taxable year ending before May 5, 2016, on or before the due date of the federal income tax return for that taxable year. Solely for purposes of this paragraph (2)(a)(ii), the due date of the taxpayer's federal income tax return includes extensions, notwithstanding that the taxpayer may not have extended the due date.

(b) For the change described in subsection .01(7) of the SIGNIFICANT CHANGES section of this revenue procedure:

(i) If before June 6, 2016, a taxpayer properly filed the original, or the Duplicate copy, of a Form 3115 under the automatic change procedures in Rev. Proc. 2015–13 for a change in method of accounting described in subsection .01(7) of the SIGNIFICANT CHANGES section of this revenue procedure, the taxpayer may make that change under the automatic change procedures in Rev. Proc. 2015–13 for the year of change.

(ii) If before June 6, 2016, a taxpayer did not properly file the original, or the Duplicate copy, of a Form 3115 under the automatic change procedures in Rev. Proc. 2015–13 for a change in method of accounting described in subsection .01(7) of the SIGNIFICANT CHANGES section of this revenue procedure, the taxpayer must make that change under the non-automatic change procedures in Rev. Proc. 2015–13. Notwithstanding § 1.446–1(e)(3)(i), the taxpayer may file a Form 3115 to request the Commissioner's consent to change the method of accounting under the non-automatic change procedures in Rev. Proc. 2015–13 for the taxpayer's last taxable year ending before June 6, 2016, on or before the due date of the federal income tax return for that taxable year. Solely for purposes of this paragraph (2)(b)(ii), the due date of the taxpayer's federal income tax return includes extensions, notwithstanding that the taxpayer may not have extended the due date.

EFFECT ON OTHER DOCUMENTS

.01 This revenue procedure amplifies and modifies Rev. Proc. 2015–14, 2015–5 I.R.B. 450, as modified by Rev. Proc. 2015–20, 2015–9 I.R.B. 694. Rev. Proc. 2015–14, as amplified and modified is superseded in part. The third sentence in the subsection .01 under the EFFECT ON OTHER DOCUMENTS section of Rev. Proc. 2015–14 remains in effect. All other sections of Rev. Proc. 2015–14 are superseded.

.02 Rev. Proc. 2011–46, 2011–42 I.R.B. 518, is modified as follows:

(1) Section 5.02(3)(a) is modified to remove the first two sentences in the Manner of Making Change section and to substitute the following three new sentences in its place:

(a) In accordance with § 1.446–1(e)(3)(ii), the requirement under § 1.446–1(e)(3)(i) to file a Form 3115 is waived and a statement in lieu of a Form 3115 is authorized for this change. Notwithstanding the definition of Form 3115 in section 3.07 of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, the statement in lieu of a Form 3115 that is permitted under this paragraph 5.02(3)(a) is considered a Form 3115 for purposes of the automatic consent procedures in Rev. Proc. 2015–13. However, the requirement to file the Duplicate copy, under section 6.03(1)(a) of Rev. Proc. 2015–13, is waived.

(2) Section 5.03(2)(a) is modified to remove the first two sentences in the Manner of Making Change section and to substitute the following three new sentences in its place:

(a) In accordance with § 1.446–1(e)(3)(ii), the requirement under § 1.446–1(e)(3)(i) to file a Form 3115 is waived and a statement in lieu of a Form 3115 is authorized for this change. Notwithstanding the definition of Form 3115 in section 3.07 of Rev. Proc. 2015–13, the statement in lieu of a Form 3115 that is permitted under this paragraph 5.03(2)(a) is considered a Form 3115 for purposes of the automatic consent procedures in Rev. Proc. 2015–13. However, the requirement to file the Duplicate copy, under section 6.03(1)(a) of Rev. Proc. 2015–13, is waived.

.03 Rev. Rul. 2004–62, 2004–1 C.B. 1072, is modified to remove the second sentence in the CHANGE IN METHOD OF ACCOUNTING section and to substitute the following new two sentences in its place:

A taxpayer that wants to change its method of accounting to comply with this revenue ruling must follow the automatic change procedures in Rev. Proc. 2015–13, 2015–5 I.R.B. 419, (or successor) if the taxpayer is eligible to request such consent under the automatic change procedures therein. The eligibility rules in section 5.01(1) of Rev. Proc. 2015–13 (or successor) apply to a change in method of accounting described in section 3.04 of Rev. Proc. 2016–29, 2016–21 I.R.B. 880 (or successor).

.04 Rev. Rul. 2000–7, 2000–9 C.B. 712, is modified to remove the fourth sentence of the paragraph in the APPLICATION section and to substitute the following new fourth sentence:

A taxpayer that wants to change its method of accounting to conform with the holding in this revenue ruling must follow the automatic change procedures in Rev. Proc. 2015–13, 2015–5 I.R.B. 419, (or successor) if the taxpayer is eligible to request such consent under the automatic change procedures therein, except that the eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015–13 (or successor) does not apply to a change described in section 11.03 of Rev. Proc. 2016–29, 2016–21 I.R.B. 880 (or successor).

.05 Rev. Rul. 2000–4, 2000–1 C.B. 331, is modified to remove the second sentence of the paragraph in the APPLICATION section, and to substitute the following two new sentences in that paragraph in its place:

A taxpayer that wants to change its method of accounting to conform with the holding in this revenue ruling must follow the automatic change procedures in Rev. Proc. 2015–13, 2015–5 I.R.B. 419, (or successor) if the taxpayer is eligible to request such consent under the automatic change procedures therein. The eligibility rules in section 5.01(1) of Rev. Proc. 2015–13 (or successor) apply to a change in method of accounting under section 3.02 of Rev. Proc. 2016–29, 2016–21 I.R.B. 880 (or successor).

.06 Rev. Proc. 2007–48, 2007–2 C.B. 110, is modified to remove section 5.06(1) and to substitute it with the following sentence:

The eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, (or successor) does not apply to a change in method of accounting described in section 5.06 of Rev. Proc. 2007–48, and made under section 21.09 of Rev. Proc. 2016–29, 2016–21 I.R.B. 880 (or successor).

PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1551. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this revenue procedure are in sections 3, 5, 6, 7, 8, 9, 11, 12, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 28, 29, and 30. This information is necessary and will be used to determine whether the taxpayer properly changed to a permitted method of accounting. The collections of information are required for the taxpayer to obtain consent to change its method of accounting. The likely respondents are the following: individuals, farms, business or other for-profit institutions, nonprofit institutions, and small businesses or organizations.

The estimated total annual reporting and/or recordkeeping burden is 30,580 hours.

The estimated annual burden per respondent/recordkeeper varies from 1/6 hour to 8 ½ hours, depending on individual circumstances, with an estimated average of 1 ¼ hours. The estimated number of respondents is 27,336. The estimated annual frequency of responses is on occasion.

SIGNIFICANT CHANGES

.01 Significant changes to the List of Automatic Changes in Rev. Proc. 2015–14 include:

(1) Section 6.01, relating to impermissible to permissible methods of depreciation or amortization, is amplified and modified to provide that a taxpayer can not make a change under this section for any property for which the taxpayer has claimed a federal income tax credit. This change in method of accounting must be made under the non-automatic change procedures in Rev. Proc. 2015–13. Previously, section 6.01 did not apply to property for which the taxpayer claimed the rehabilitation credit under § 47 and is reclassifying under § 168(e);

(2) Section 6.10, relating to late partial disposition elections under § 168, and section 6.12, relating to partial dispositions of tangible depreciable assets to which the IRS's adjustment pertains, are modified to remove all references to Prop. Reg. § 1.168(i)–8 because it is obsolete;

(3) Section 6.20, relating to the revocation of a partial disposition election under the remodel-refresh safe harbor described in Rev. Proc. 2015–56, 2015–49 I.R.B. 827, is modified to provide that such revocation must be made, and the eligibility rules in sections 5.01(1)(d) and (f) of Rev. Proc. 2015–13 do not apply, for any taxable year beginning after December 31, 2013, and ending before December 31, 2016. Previously, this revocation of the partial disposition election had to be made, and these eligibility rules did not apply for a change, under section 6.20 for the first or second taxable year beginning after December 31, 2013;

(4) Section 11.08, relating to changes for tangible property, is modified to provide that this section does not apply to amounts paid or incurred for repair and maintenance costs that the taxpayer is changing from capitalizing to deducting and for which the taxpayer has claimed a federal income tax credit or elected to apply § 168(k)(4). This change in method of accounting must be made under the non-automatic change procedures in Rev. Proc. 2015–13;

(5) Section 11.10, relating to the remodel-refresh safe harbor described in Rev. Proc. 2015–56, is modified to provide that the eligibility rules in sections 5.01(1)(d) and (f) of Rev. Proc. 2015–13 do not apply for any taxable year beginning after December 31, 2013, and ending before December 31, 2016. Previously, these eligibility rules did not apply for a change under section 11.10 for the first or second taxable year beginning after December 31, 2013;

(6) Section 13.01, relating to changes to comply with the requirements of § 267, is modified to provide that the eligibility rules in sections 5.01(1)(e) and (f) of Rev. Proc. 2015–13 do not apply to changes to comply with § 267(a)(3);

(7) Section 18.01 of Rev. Proc. 2015–14, relating to changes for long-term contracts to the percentage-of-completion method described in § 1.460–4(b), is removed from the revenue procedure in its entirety. This change in method of accounting must be made under the non-automatic change procedures in Rev. Proc. 2015–13;

(8) Section 21.05, relating to impermissible methods of identification and valuation of inventory, is amplified and modified to provide that a taxpayer can make a change under this section if the taxpayer is changing from an impermissible method of accounting under § 471. This change was previously limited to a taxpayer changing from an impermissible method of accounting described in §§ 1.471–2(f)(1) through (5);

(9) The following sections are added to the List of Automatic Changes in this revenue procedure to provide additional changes in method of accounting to be made under the automatic change procedures:

(a) Section 10.01, relating to changes for start-up expenditures under § 195;

(b) Section 12.14, relating to changes for interest capitalization under § 263A; and

(c) Section 21.17, relating to certain changes within the retail inventory method under § 471;

(10) The waiver of the eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015–13 is extended one year to any taxable year beginning before January 1, 2016, for the following sections:

(a) Section 6.13, relating to depreciation of leasehold improvements under § 1.167(a)–4;

(b) Section 6.14, relating to a change from a permissible to another permissible method of accounting for depreciation of MACRS property under §§ 1.168(i)–1, 1.168(i)–7, and 1.168(i)–8;

(c) Section 6.15, relating to dispositions of a building or structural component under § 1.168(i)–8;

(d) Section 6.16, relating to dispositions of tangible depreciable assets (other than a building or its structural components) under § 1.168(i)–8;

(e) Section 6.17, relating to dispositions of tangible depreciable assets in a general asset account under § 1.168(i)–1; and

(f) Section 11.08, relating to changes for tangible property under the final tangible property regulations; and

(11) The following sections of Rev. Proc. 2015–14 are obsolete and are removed from the revenue procedure in their entirety:

(a) Section 6.08, relating to depreciation of cable TV fiber optics under the safe harbor method of accounting provided in Rev. Proc. 2003–63, 2003–2 C.B. 304;

(b) Section 6.27, relating to depreciation of leasehold improvements under § 1.167(a)–4T;

(c) Section 6.28, relating to a change from a permissible to another permissible method of accounting for depreciation of MACRS property under §§ 1.168(i)–1T, 1.168(i)–7T, and 1.168(i)–8T, and Prop. Reg. §§ 1.168(i)–1, 1.168(i)–7, and 1.168(i)–8;

(d) Section 6.29, relating to dispositions of a building or structural component under § 1.168(i)–8T and Prop. Reg. § 1.168(i)–8;

(e) Section 6.30, relating to dispositions of tangible depreciable assets (other than a building or its structural components) under § 1.168(i)–8T and Prop. Reg. § 1.168(i)–8;

(f) Section 6.31, relating to dispositions of tangible depreciable assets in a general asset account under § 1.168(i)–1T and Prop. Reg. § 1.168(i)–1;

(g) Section 6.32, relating to general asset account elections under § 1.168(i)–1, § 1.168(i)–1T, and Prop. Reg. § 1.168(i)–1; and

(h) Section 10.11(3)(b), relating to changes for tangible property under the temporary tangible property regulations.

DRAFTING INFORMATION

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

For further information regarding a specific change in method of accounting in this revenue procedure, contact the individual listed in the "Contact Person(s)" section located at the end of each section of the revenue procedure (calls are not toll-free) or see the CONTACT LIST at the end of this revenue procedure. The contact person is with one of the following Offices of Associate Chief Counsel: Corporate (CORP), Financial Institutions and Products (FI&P), Income Tax & Accounting (IT&A), International (INTL), Passthroughs and Special Industries (P&SI), or Tax Exempt and Government Entities (TEGE).

LIST OF AUTOMATIC CHANGES CONTACT LIST

Section Number	Designated Automatic Accounting Change Number	Contact Name	Telephone Number	Office
1.01	91	William E. Blanchard	(202) 317-3900	FI&P
2.01	1	William Ruane	(202) 317-4718	IT&A
3.01	2	Peter Ford	(202) 317-7011	IT&A
3.02	3	Peter Ford	(202) 317-7011	IT&A
3.03	4	Peter Ford	(202) 317-7011	IT&A
3.04	86	Peter Ford	(202) 317-7011	IT&A
3.05	See § 11.08	See § 11.08	See § 11.08	IT&A
3.06	See § 11.08	See § 11.08	See § 11.08	IT&A
3.07	158	Lewis Saideman	(202) 317-5100	IT&A
3.08	159	Lewis Saideman	(202) 317-5100	IT&A
3.09	160	Lewis Saideman	(202) 317-5100	IT&A
3.10	182	Lewis Saideman	(202) 317-5100	IT&A
3.11	208, 209	Merrill Feldstein	(202) 317-5100	IT&A
4.01	5	Charles Gorham	(202) 317-7003	IT&A
4.02	211	K. Scott Brown	(202) 317-6945	FI&P
5.01	16	William E. Blanchard	(202) 317-3900	FI&P
5.02	212	Joseph Vetting	(202) 317-4960	INTL
6.01	7	Charles Magee	(202) 317-7005	IT&A
6.02	8	Charles Magee	(202) 317-7005	IT&A
6.03	10	Edward Schwartz	(202) 317-7006	IT&A
6.04	87	Elizabeth Binder	(202) 317-7005	IT&A
6.05	88	Elizabeth Binder	(202) 317-7005	IT&A
6.06	89	Bernard Harvey	(202) 317-7005	IT&A
6.07	107	Charles Magee	(202) 317-7005	IT&A
6.08	145	Elizabeth Binder	(202) 317-7005	IT&A
6.09	157	Charles Magee	(202) 317-7005	IT&A
6.10	196	Patrick Clinton	(202) 317-7005	IT&A
6.11	197	Patrick Clinton	(202) 317-7005	IT&A

Section Number	Designated Automatic Accounting Change Number	Contact Name	Telephone Number	Office
6.12	198	Patrick Clinton	(202) 317-7005	IT&A
6.13	199	Patrick Clinton	(202) 317-7005	IT&A
6.14	200	Patrick Clinton	(202) 317-7005	IT&A
6.15	205	Patrick Clinton	(202) 317-7005	IT&A
6.16	206	Patrick Clinton	(202) 317-7005	IT&A
6.17	207	Patrick Clinton	(202) 317-7005	IT&A
6.18		Summary of changes related to dispositions of MACRS property		
6.19	210	Charles Magee	(202) 317-7005	IT&A
6.20	221	Elizabeth Binder	(202) 317-7003	IT&A
7.01	17	Elizabeth Binder	(202) 317-7005	IT&A
8.01	152	Jennifer Bernardini	(202) 317-6853	P&SI
9.01	18	Charles Magee	(202) 317-7005	IT&A
10.01	223	Elizabeth Binder	(202) 317-7005	IT&A
11.01	19	Jason Kristall	(202) 317-7003	IT&A
11.02	20	Jason Kristall	(202) 317-7003	IT&A
11.03	21	Jason Kristall	(202) 317-7003	IT&A
11.04	47	Jason Kristall	(202) 317-7003	IT&A
11.05	78	Jason Kristall	(202) 317-7003	IT&A
11.06	109	Jason Kristall	(202) 317-7003	IT&A
11.07	121	Jason Kristall	(202) 317-7003	IT&A
11.08	184–193	Lewis Saideman	(202) 317-5100	IT&A
11.09	213	Charles Gorham	(202) 317-7003	IT&A
11.10	222	Merrill Feldstein	(202) 317-5100	IT&A
12.01	22	Natasha Mulleneaux	(202) 317-7007	IT&A
12.02	23	Natasha Mulleneaux	(202) 317-7007	IT&A
12.03	25	Natasha Mulleneaux	(202) 317-7007	IT&A
12.04	77	Sean Dwyer	(202) 317-7005	IT&A
12.05	92	Sean Dwyer	(202) 317-7005	IT&A
12.06	150, 151	Natasha Mulleneaux	(202) 317-7007	IT&A
12.07	181	Patrick Clinton	(202) 317-7005	IT&A
12.08	194	Natasha Mulleneaux	(202) 317-7007	IT&A
12.09	195	Sue-Jean Kim	(202) 317-7007	IT&A
12.10	201	Sean Dwyer	(202) 317-7005	IT&A
12.11	202	Sean Dwyer	(202) 317-7005	IT&A
12.12	214	Sean Dwyer	(202) 317-7005	IT&A
12.13	215	Sean Dwyer	(202) 317-7005	IT&A
12.14	224	Steven Gee	(202) 317-7007	IT&A
13.01	26	Steven Gee	(202) 317-7007	IT&A
		Joseph Vetting	(202) 317-4960	INTL
14.01	28	Maryellen Furr	(202) 317-5600	TEGE
14.02	29	David Zeigler	(202) 317-8629	EP
		Carlton Watkins	(202) 317-8631	EP
15.01	122, 123	Cheryl Oseekey	(202) 317-7007	IT&A
15.02	31	Timothy Azarchs	(202) 317-5100	IT&A

Section Number	Designated Automatic Accounting Change Number	Contact Name	Telephone Number	Office
15.03	32,33	Megan Kirmil	(202) 317-7007	IT&A
15.04	34, 35	Sean Dwyer	(202) 317-7005	IT&A
15.05	71	William E. Blanchard	(202) 317-3900	FI&P
15.06	85	Bernard Harvey	(202) 317-7005	IT&A
15.07	90	Rebecca L. Baxter	(202) 317-6995	FI&P
15.08	108	K. Scott Brown	(202) 317-6945	FI&P
15.09	124	Douglas Kim	(202) 317-7003	IT&A
15.10	125	Timothy Azarchs	(202) 317-5100	IT&A
15.11	126	Megan Kirmil	(202) 317-7007	IT&A
15.12	127	K. Scott Brown	(202) 317-6945	FI&P
15.13	128	Maxine Woo-Garcia	(202) 317-7011	IT&A
		Christina Glendening	(202) 317-7003	IT&A
15.14	129	David H. McDonnell	(202) 317-4137	P&SI
15.15	148	Charles W. Culmer	(202) 317-6945	FI&P
16.01	36	K. Scott Brown	(202) 317-6945	FI&P
16.02	37	Daniel Cassano	(202) 317-7011	IT&A
16.03	38	Sandra Cheston	(202) 317-7011	IT&A
16.04	39	Bill Ruane	(202) 317-4718	IT&A
16.05	80, 81	Kate Sleeth	(202) 317-7053	FI&P
16.06	82	Kate Sleeth	(202) 317-7053	FI&P
16.07	83, 84, 216	Peter Ford	(202) 317-7011	IT&A
16.08	94	Kate Sleeth	(202) 317-7053	FI&P
16.09	130, 217	Peter Cohn	(202) 317-7011	IT&A
16.10	153	Ronald Goldstein	(202) 317-7003	IT&A
17.01	131	William E. Blanchard	(202) 317-3900	FI&P
18.01	132	Patrick Clinton	(202) 317-7005	IT&A
19.01	42, 133, 134	Sandra Cheston	(202) 317-7011	IT&A
19.02	43	Kari Fisher	(202) 317-5100	IT&A
19.03	44	Kari Fisher	(202) 317-5100	IT&A
19.04	45, 113	Mon Lam	(202) 317-5100	IT&A
19.05	46	Mon Lam	(202) 317-5100	IT&A
19.06	106	Christina M. Glendening	(202) 317-7003	IT&A
19.07	135	Mon Lam	(202) 317-5100	IT&A
19.08	149	Daniel Cassano	(202) 317-7011	IT&A
19.09	154	Christina M. Glendening	(202) 317-7003	IT&A
19.10	156	Christina M. Glendening	(202) 317-7003	IT&A
19.11	161	Christina M. Glendening	(202) 317-7011	IT&A
19.12	220	David Christensen	(202) 317-7011	IT&A
20.01	136	William Ruane	(202) 317-4718	IT&A
21.01	48	Steven Gee	(202) 317-7007	IT&A
21.02	49	Steven Gee	(202) 317-7007	IT&A
21.03	50, 51	Natasha Mulleneaux	(202) 317-7007	IT&A
21.04	53	Steven Gee	(202) 317-7007	IT&A

Section Number	Designated Automatic Accounting Change Number	Contact Name	Telephone Number	Office
21.05	54	Natasha Mulleneaux	(202) 317-7007	IT&A
21.06	55	Andrew Braden	(202) 317-7007	IT&A
21.07	63	Andrew Braden	(202) 317-7007	IT&A
21.08	96	Andrew Braden	(202) 317-7007	IT&A
21.09	110	Jason Kristall	(202) 317-7003	IT&A
21.10	111	Steven Gee	(202) 317-7007	IT&A
21.11	137	Steven Gee	(202) 317-7007	IT&A
21.12	138	Andrew Braden	(202) 317-7007	IT&A
21.13	139	Andrew Braden	(202) 317-7007	IT&A
21.14	114	Leo Nolan	(202) 317-7007	IT&A
21.15	203	Sean Dwyer	(202) 317-7005	IT&A
21.16	204	Natasha M. Mulle-neaux	(202) 317-7007	IT&A
21.17	225	Natasha M. Mulle-neaux	(202) 317-7007	IT&A
22.01	56	Leo Nolan	(202) 317-7007	IT&A
22.02	57	Leo Nolan	(202) 317-7007	IT&A
22.03	58	Leo Nolan	(202) 317-7007	IT&A
22.04	59	Leo Nolan	(202) 317-7007	IT&A
22.05	60	Leo Nolan	(202) 317-7007	IT&A
22.06	61	Leo Nolan	(202) 317-7007	IT&A
22.07	62	Leo Nolan	(202) 317-7007	IT&A
22.08	112	Leo Nolan	(202) 317-7007	IT&A
22.09	140	Leo Nolan	(202) 317-7007	IT&A
22.10	141	Leo Nolan	(202) 317-7007	IT&A
23.01	64	Eric E. Boody	(202) 317-6945	FI&P
23.02	218	Eric E. Boody	(202) 317-6945	FI&P
24.01	66	K. Scott Brown	(202) 317-6945	FI&P
		Laura Fields	(202) 317-6850	P&SI
		Adrienne Mikolashek	(202) 317-6850	P&SI
25.01	67	Rebecca L. Baxter	(202) 317-6995	FI&P
25.02	155	Rebecca L. Baxter	(202) 317-6995	FI&P
25.03	219	Rebecca L. Baxter	(202) 317-6995	FI&P
26.01	68	Rebecca L. Baxter	(202) 317-6995	FI&P
27.01	79	John W. Rogers, III	(202) 317-6895	FI&P
28.01	70	Peter Merkel	(202) 317-4919	INTL
29.01	72	William E. Blanchard	(202) 317-3900	FI&P
29.02	183	Charles W. Culmer	(202) 317-6945	FI&P
30.01	73	William E. Blanchard	(202) 317-3900	FI&P
31.01	74	William E. Blanchard	(202) 317-3900	FI&P
31.02	75	William E. Blanchard	(202) 317-3900	FI&P

26 CFR 601.202: Closing agreements (Also Part I, §§ 446, 482, 7121; 1.446–1, 301.7121–1)

Rev. Proc. 2016–30

SECTION 1. PURPOSE

.01 This revenue procedure permits a taxpayer under the jurisdiction of the Large Business and International Division (LB&I) to request that the Service examine specific issues relating to tax returns before those returns are filed. This revenue procedure modifies and supersedes Rev. Proc. 2009–14, 2009–3 I.R.B. 324. This revenue procedure provides the framework within which a taxpayer and the Service may work together in a cooperative environment to resolve, after examination, issues accepted into the program. If the taxpayer and the Service are able to resolve the examined issues before the tax returns that they affect are filed, this revenue procedure authorizes the taxpayer and the Service to memorialize their agreement by executing an LB&I Pre-Filing Agreement (PFA).

.02 This revenue procedure outlines the procedures for resolving issues through pre-filing examinations. Taxpayers and the Service often resolve issues more effectively and efficiently through a pre-filing examination than a post-filing examination, because the taxpayer and the Service have more timely access to the records and personnel that are relevant to the issues. A pre-filing examination also provides the taxpayer with certainty regarding the examined issue at an earlier point than a post-filing examination. These procedures benefit both taxpayers and the Service by improving the quality of tax compliance while reducing costs, burdens, and delays. Unlike letter rulings and other forms of written advice provided by the Offices of the Associate Chief Counsels (see Rev. Proc. 2016–1, 2016–1 I.R.B. 1, or its successor), a PFA does not determine the tax treatment of prospective or future transactions or events, but only of completed transactions or events whose tax treatment has not yet been reported on a return.

SECTION 2. BACKGROUND

.01 In Rev. Proc. 2001–22, 2001–9 I.R.B. 745, the Service provided procedures for LB&I taxpayers to request an examination and resolve specific issues relating to returns that were neither due (taking into account any extensions of time to file) nor filed.

.02 Because Rev. Proc. 2001–22 limited the eligible years for the PFA program to current or prior taxable years for which tax returns were neither due nor filed, taxpayers and the Service could not resolve issues for multiple future taxable years or issues regarding appropriate methodologies for determining tax consequences that would affect future taxable years. In Rev. Proc. 2005–12, 2005–2 I.R.B. 311, the Service expanded the scope of the PFA program by allowing taxpayers and the Service to address certain issues over a limited number of future taxable years. In addition, the Service revised the domestic and international issues eligible for the PFA program.

.03 In Rev. Proc. 2007–17, 2007–4 I.R.B. 368, the Service renewed the PFA program with minimal changes, clarifying the procedures for processing a PFA request and updating the user fee requirements for a PFA. Section 12 of Rev. Proc. 2007–17 provided that the revenue procedure would remain in effect until December 31, 2008, unless sooner revoked, modified, or superseded.

.04 In Rev. Proc. 2009–14, the Service provided guidance which made the existing PFA program permanent.

.05 The objective of the PFA program remains to resolve, before returns are filed, issues that are likely to be disputed in post-filing audits. This revenue procedure clarifies and updates the procedures for filing a PFA request. Section 3.09(2) of this revenue procedure expands the scope of a PFA to include issues relating to changes in methods of accounting requested pursuant to the automatic change procedures. See 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. This revenue procedure also increases the user fee for requests submitted on or after June 3, 2016.

SECTION 3. SCOPE

.01 *Eligible taxpayers.* This revenue procedure applies to taxpayers under the jurisdiction of LB&I (or any successor operating division) that desire to resolve, through a PFA, issues that otherwise may be the subject of a post-filing examination.

.02 *Eligible taxable years.*

(1) *Current, past, and future taxable years.* An eligible taxpayer may request a PFA for the current taxable year, any prior taxable year for which the original tax return is not yet due (taking into account any extensions of time to file) and is not yet filed and, except in the case of a PFA provided under section 3.09(2), for a limited number of future taxable years.

(2) *Agreements for future taxable years.* Agreements for future taxable years are limited to four taxable years beyond the current taxable year and will only be considered as part of a request for a PFA for the current taxable year or a prior taxable year for which the original tax return is not yet due and is not yet filed.

.03 *Eligible issues generally.*

(1) *Factual issues and well-established law.* The Service will consider entering

into a PFA on any issue that requires either a determination of facts or the application of well-established legal principles to known facts.

(2) *Issues that involve a methodology.* The Service also will, in general, consider entering into a PFA regarding a methodology used by a taxpayer to determine the appropriate amount of an item of income, allowance, deduction, or credit.

(3) *Issues under the jurisdiction of other Service divisions*. The Service will consider entering into a PFA on an issue under the jurisdiction of an operating division of the Service other than LB&I, but only with the concurrence of that operating division.

.04 *Relationship of eligible issues to eligible taxable years*. An issue also must relate to an eligible taxable year or years in order to be an eligible issue.

.05 *Eligible domestic and eligible international issues requiring coordination and consultation with Associate Chief Counsel*. There is no list of eligible domestic and international issues. Any domestic or international issue that requires either a determination of facts or application of well-established legal principles to known facts and that is not excluded under section 3.08 or section 3.09 of this revenue procedure is likely suitable for a PFA.

The Service may, in its sole discretion, refuse to address an issue in a PFA based on considerations of sound tax administration. Before any decision is made to proceed with the taxpayer's request for a PFA, the Service must coordinate and consult with the Associate Chief Counsel having subject matter jurisdiction over any issue proposed to be determined by a PFA. As part of this coordination and consultation, the Associate Chief Counsel may consider whether the issue is more appropriately resolved by a letter ruling or other form of written advice from the appropriate Associate Chief Counsel office, as described in Rev. Proc. 2016–1, or its successor, and whether the issue is currently one with respect to which the Service will not, or will not ordinarily, issue a letter ruling. See Rev. Proc. 2016–3, 2016–1 I.R.B. 126, Rev. Proc. 2016–7, 2016–1 I.R.B. 239, and their successors.

.06 *Eligible international issues requiring Associate Chief Counsel (International) concurrence in execution*. This subsection lists specific international issues that are likely suitable for a PFA, but also require that the Associate Chief Counsel (International) concur with the acceptance of the issue into the PFA program and execution of the PFA. Even though an issue in a particular case appears on this list, the Service may, in its sole discretion, refuse to address that issue based on considerations of sound tax administration. The eligible issues are:

(1) whether a unit of the taxpayer's trade or business is a qualified business unit within the meaning of section 989(a) and the regulations promulgated under that section;

(2) whether the taxpayer is engaged in a trade or business within the United States (excluding questions under section 864(b)(2));

(3) the amount of gross income that is effectively connected with the conduct by the taxpayer of a trade or business within the United States (See Rev. Proc. 2015–41, 2015–35 I.R.B. 263 (Advance Pricing Agreement program));

(4) factual determinations concerning the extent to which, under section 882(c), deductions are connected with income that is effectively connected with the taxpayer's conduct of a trade or business within the United States; and

(5) whether the taxpayer has a permanent establishment in the United States for purposes of a bilateral income tax convention to which the United States is a party and, if so, what profits are attributable to that permanent establishment. See Rev. Proc. 2015–41.

.07 *Special provisions for requests on international issues*. The provisions of this section apply, in addition to the generally applicable provisions of this revenue procedure, to any request for a PFA on an issue having international implications.

(1) A PFA and any factual information contained in the background files is subject to exchange of information under income tax treaties or tax information exchange agreements in accordance with the terms of such treaties and agreements (including terms regarding relevancy, confidentiality, and the protection of trade secrets). In cases where the exchange of information would be discretionary, information may be exchanged to the extent consistent with sound tax administration and the practices of the relevant foreign competent authority.

(2) To minimize taxpayer and governmental uncertainty and administrative cost, taxpayers that seek a PFA on an international issue are encouraged to seek competent authority consideration under the mutual agreement procedure of any applicable United States income tax convention. This consideration will be given after the PFA is concluded, and the PFA may be modified to reflect the outcome of the mutual agreement procedure.

(3) A taxpayer may request a PFA for an international issue that is the subject of a previously submitted request for competent authority assistance. The consideration of this competent authority request will not be suspended during the PFA process. If the taxpayer requests a PFA and the previously submitted request for competent authority assistance is ongoing, if appropriate, the taxpayer also should make a request for the accelerated competent authority procedure as described in section 4.01 of Rev. Proc. 2015–40, 2015–35 I.R.B. 236.

.08 *Excluded domestic and international issues*. The Service will not enter into a PFA on the following types of issues:

(1) Transfer pricing issues. See Rev. Proc. 2015–41 and its successors;

(2) Except as provided in sections 3.09(2) and (3) of this revenue procedure, issues involving a change in accounting method. See Treas. Reg. § 1.446–1(e). This includes issues that are or have been the subject of a request by, or with respect to, the taxpayer for consent to change a method of accounting under procedures such as Rev. Proc. 2015–13, or its predecessors or successors. This also includes issues for which a change in accounting method is necessary to resolve the issue. A taxpayer must obtain consent to make an accounting method change by using applicable administrative procedures. See generally Rev. Proc. 2015–13, or its successors;

(3) Issues involving the annual accounting period. See Treas. Reg. § 1.442–1. This includes issues that are, or have been, the subject of a request by, or with respect to, the taxpayer for permission to adopt, change, or retain an annual accounting period under procedures such as Rev. Proc. 2002–39, 2002–22 I.R.B. 1046 (as clarified and modified by Notice

2002–72, 2002–46 I.R.B. 843, and as modified by Rev. Proc. 2003–34, 2003–18 I.R.B. 856), or an application filed under automatic procedures such as Rev. Proc. 2006–45, 2006–45 I.R.B. 851, as clarified and modified by Rev. Proc. 2006–46, 2006–45 I.R.B. 859, and Rev. Proc. 2007–64, 2007–42 I.R.B. 818, or their predecessors or successors. This also includes issues for which a ruling regarding an annual accounting period is necessary to resolve the issue;

(4) Issues of reasonable cause, due diligence, good faith, clear and convincing evidence, or any other similar standard under Subtitle F (Procedure and Administration) of the Internal Revenue Code;

(5) Issues involving the applicability of any penalty or criminal sanction;

(6) Issues that are, or will be, the subject of a pending or proposed request for a determination letter, technical advice memorandum, or letter ruling issued to, or regarding, the taxpayer;

(7) Issues for which the taxpayer proposes a resolution that is contrary to a letter ruling, determination letter, technical advice memorandum, or closing agreement previously issued to, or regarding, the taxpayer;

(8) Issues for which the taxpayer proposes a resolution that is contrary to a position proposed by the Service in response to a request for a letter ruling or determination letter that was withdrawn by the taxpayer;

(9) Issues that are the subject of pending litigation between the Service and the taxpayer for an earlier taxable year;

(10) Issues designated for litigation for an earlier taxable year of the taxpayer by the Office of Chief Counsel;

(11) Issues that involve a tax shelter described in section 6662(d)(2)(C)(ii);

(12) Issues that require the Service to determine whether the taxpayer, rather than another entity, is the common law employer; and

(13) Issues relating to transactions that have not yet occurred, regardless of whether the issue otherwise would qualify as one on which the Service will issue letter rulings or other forms of written guidance as described in Rev. Proc. 2016–1 and successor revenue procedures.

.09 *Methods of accounting*.

(1) A PFA may not be used to obtain consent to change a taxpayer's method of accounting. Section 3.09(2) of this revenue procedure provides when the Service may enter into a PFA for issues relating to a change in method of accounting. Section 3.09(3) of this revenue procedure provides what change in accounting method issues may be addressed in a PFA. A change in method of accounting generally includes a change in an overall plan of accounting or a change in the treatment of any material item, which is any item that involves the proper time for the inclusion of the item in income or the taking of the item as a deduction, or both. See Rev. Proc. 2015–13, section 2.

(2) *When a change in method of accounting issue may be eligible for a PFA.*

(a) If the Service has issued a letter ruling granting consent to make a non-automatic change under Rev. Proc. 2015–13, or its predecessor or successor, a taxpayer may request and the Service may enter into a PFA with respect to the approved change in method of accounting.

(b) If a taxpayer has timely filed the required copy of Form 3115 to request an automatic change under section 6.03(1)(a)(i)(B), 6.03(1)(a)(ii), or 6.03(1)(a)(iii) of Rev. Proc. 2015–13, or its predecessors or successors, the taxpayer may request, and the Service may enter into, a PFA with respect to the requested change in method of accounting.

(3) *What change in accounting method issues may be addressed in a PFA.*

(a) A PFA may include determinations described in section 12 of Rev. Proc. 2015–13 or a similar provision of its predecessor or successor. Thus, for example, a taxpayer may request and the Service may enter into a PFA with respect to the amount of the section 481(a) adjustment and the implementation of the change in method of accounting in accordance with all the applicable provisions for the change in method of accounting.

(b) A PFA under this provision may only apply to the taxable year of change and may not apply to any other taxable years, except that a determination of the amount of the section 481(a) adjustment under section 7.02 of Rev. Proc. 2015–13, or a similar provision of its predecessor or successor, shall apply to any other taxable year for which such amount is taken into account (*i.e*., any spread period).

.10 *Definition of taxpayer*. For purposes of section 3 of this revenue procedure, any reference to the taxpayer also includes a related taxpayer and any predecessor of the taxpayer or a related taxpayer. A related taxpayer is one related within the meaning of section 267 or a member of an affiliated group within the meaning of section 1504 that includes the taxpayer. A predecessor is an entity for whose tax liability the taxpayer or a related taxpayer is or was primarily or secondarily liable.

SECTION 4. REQUESTING A PRE-FILING AGREEMENT

.01 *Required information*. A request for a PFA must contain the following information:

(1) Names, addresses, telephone numbers, and taxpayer identification numbers of all interested parties;

(2) The name, title, address, and telephone number of a person to contact. If the person to contact is an authorized representative of the taxpayer, a properly executed Form 2848, *Power of Attorney and Declaration of Representative*, must accompany the request;

(3) The annual accounting period and the overall method of accounting (for example, cash receipts and disbursements or accrual) for maintaining the accounting books and filing the federal income tax returns of all interested parties;

(4) The location of the taxpayer's tax staff and records;

(5) A brief description of the taxpayer's business operations, including the principal business activity code used by the taxpayer on its last filed tax return;

(6) The taxable year(s) for which the PFA is sought, the last date on which the taxpayer may file (with extensions) a timely return for that year (or for the first of those taxable years), and, if earlier, the date on which the taxpayer intends to file that return; and

(7) The dollar amount of assets reflected on the most recently filed tax return.

.02 *Specific descriptions of issues*. A request for a PFA should also contain a separate written statement for each proposed issue that concisely:

(1) Describes the issue;

(2) Summarizes all the facts that are relevant and material to the issue and, in the case of agreements for future taxable years, any related factual assumptions that may be appropriate (See section 7.02(2), below);

(3) States whether the issue involves an item or transaction in which two or more persons may take contrary positions (a "whipsaw" issue);

(4) Summarizes all relevant legal authorities, including citations to specific sections of the Internal Revenue Code, income tax regulations, case law, tax treaties, and other authorities, and discusses why the issue is an eligible issue, as defined in section 3 of this revenue procedure;

(5) Summarizes and discusses the implications of any known authorities that may be contrary to the position advanced, such as legislation (or pending legislation), court decisions, regulations, revenue rulings, revenue procedures, notices (including notices of proposed rulemaking), or announcements;

(6) Discusses whether and how the PFA will affect taxable years before or after the taxable year for which the PFA is sought;

(7) Describes any proposed methodology to be used;

(8) Discusses whether the issue qualifies for mutual agreement procedure consideration under any United States income tax treaty, specifies the treaty, and states whether the taxpayer previously applied, or will apply, for competent authority assistance with respect to the issue for the year or years in question or any prior year;

(9) States whether the taxpayer has, for the current taxable year or any prior taxable year, requested a letter ruling (including a request for consent to a change in method of accounting or a request to adopt, change, or retain an annual accounting period), determination letter, or technical advice on the issue;

(10) Discusses whether the issue can reasonably be resolved by the earliest date on which the taxpayer intends to file any relevant tax return; and

(11) Describes the availability, organization, and location of the records and other information that substantiate the taxpayer's proposed position on the issue.

.03 *Perjury statement*. A request for a PFA, and any supplemental submissions (including additional documents), must include a declaration, signed by a person currently authorized to sign the taxpayer's federal income tax return, in the following form:

> Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of the request for the Pre-Filing Agreement are true, correct, and complete.

.04 *Agreement regarding examination or inspection of records*. The request for a PFA also must contain a statement by the taxpayer in the following form:

> The taxpayer agrees that the review of records and information under the PFA procedures does not constitute an inspection within the meaning of section 7605(b) and will not preclude or impede (under section 7605(b) or any administrative provisions adopted by the Service) the Service from later examining any return or inspecting any records. The taxpayer further agrees that procedural restrictions, such as providing notice under section 7605(b), do not apply to actions taken under the PFA procedures.

.05 *Signature*. The request for a PFA must be signed by the taxpayer or a representative properly authorized by the taxpayer in an accompanying Form 2848, Power of Attorney and Declaration of Representative.

.06 *Where to submit request*.

(1) In the case of a taxpayer whose tax return for any taxable year is currently under examination by LB&I, a request for a PFA should be submitted to the LB&I Team or Case Manager in charge of the examination; or

(2) In the case of a taxpayer who has no tax returns under examination for any taxable year, a request for a PFA should be sent by any of the following methods:

(a) mail to the following address:

Internal Revenue Service
Attn: LB&I: PFA Program Analyst
1111 Constitution Avenue, NW, Room 1137
Washington, DC 20224;

(b) facsimile transmission to the attention of the PFA Program Analyst at (855) 842-0364 (toll-free call); or

(c) electronic transmission to pfa.info@irs.gov.

SECTION 5. SELECTING TAXPAYERS FOR THE PFA PROGRAM

.01 *Jurisdiction of LB&I Practice Area Director and coordination and consultation with the Associate Chief Counsel*. The LB&I Practice Area Director (or any subsequently created equivalent position within the LB&I operating division) having jurisdiction over the taxpayer, after coordination and consultation with the Associate Chief Counsel having subject matter jurisdiction over any issue proposed to be determined by a PFA, will decide whether to accept the taxpayer's request for a PFA. (For purposes of this revenue procedure, the term "LB&I Practice Area Director" includes a duly authorized designee of an LB&I Practice Area Director.). In general, the Associate Chief Counsel will respond within 10 business days to a request for coordination and consultation to proceed with the PFA.

.02 *Criteria for selection*. The criteria for selecting taxpayers to participate in the PFA program include, but are not limited to:

(1) Whether the specific issue presented by the taxpayer's facts is an eligible issue under section 3 of this revenue procedure and is otherwise suitable for the PFA program;

(2) The direct or indirect impact of a PFA upon other years, issues, taxpayers, or related cases;

(3) Whether Service resources are available;

(4) Whether the taxpayer is willing and able to dedicate sufficient resources to the PFA process;

(5) Whether the PFA is likely to result in two or more persons taking contrary positions on an item or transaction (a "whipsaw" issue);

(6) The time remaining until the due date and expected filing date, if earlier than the due date, of the earliest return to which the PFA relates; and

(7) The overall probability of completing the process and entering into a PFA by

the proposed date for filing the earliest return to which the PFA relates.

Early submission of a request will facilitate completion of a PFA before any associated tax returns become due. As a result, early requests are more likely to be selected for the PFA program and the Service urges taxpayers to submit PFA requests as early as possible.

.03 *Notification*. A representative of LB&I will contact the taxpayer within 15 business days of actual receipt of the taxpayer's request for a PFA to acknowledge that the Service has received the request. After a PFA request is received, a representative of LB&I will inform the taxpayer in writing whether the request has been selected for the PFA program and the issues the Service will consider.

.04 *Requests not accepted*. A taxpayer may not appeal the Service's decision not to accept a request for a PFA. A taxpayer not selected for the PFA program remains eligible for other early issue resolution procedures, including the Accelerated Issue Resolution (AIR) program. See Rev. Proc. 94–67, 1994–44 I.R.B. 13.

SECTION 6. PROCESSING A REQUEST FOR A PFA

.01 *Planning*. If the Service accepts the taxpayer's request for a PFA, a representative of LB&I will contact the taxpayer and schedule an orientation meeting with the taxpayer and examination personnel to discuss the PFA process and explain the roles and responsibilities of each participant. Immediately after the orientation meeting, the taxpayer and the Service should meet to formulate a plan and timeline that will result in a thorough development of the facts and a successful resolution of the issues before any associated tax returns are due. During the planning phase and throughout the PFA process, the taxpayer must provide information requested by the Service and assist the Service in the timely and efficient resolution of the examined issues. If, at any time after a request for a PFA has been accepted, the facts that are relevant and material to the request for a PFA significantly change or, in the case of proposed agreements for future taxable years, any factual assumptions that may be appropriate significantly change, the taxpayer must promptly inform the Service through the examination team assigned to the PFA.

.02 *Continuing coordination*. After a request for a PFA has been accepted, the LB&I Practice Area Director having jurisdiction over the PFA request will, through the examination team and local counsel assigned to the PFA, coordinate and consult with the Associate Chief Counsel having subject matter jurisdiction over the issue proposed to be determined by the PFA to ensure that the issue remains suitable for a PFA. The LB&I Practice Area Director will, through the examination team and local counsel assigned to the PFA, inform the Associate Chief Counsel if, at any time after a request for a PFA has been accepted, the facts that are relevant and material to the issue significantly change or, in the case of agreements for future taxable years, any factual assumptions that may be appropriate significantly change.

.03 *Drafting*. After the development of the facts and issues, the Team or Case Manager will meet informally with the taxpayer to determine whether the parties agree on a PFA. If the parties reach agreement, the taxpayer will work with the Service to prepare the initial draft of the PFA. Except as provided in section 3.06, the Associate Chief Counsel having subject matter jurisdiction over the issue in the PFA need not execute or give final approval to the proposed PFA; however, upon execution of the PFA, the PFA Program Analyst will immediately forward a copy of the PFA to the office of that Associate Chief Counsel.

.04 *Return filing requirements*. The Service's acceptance of a taxpayer's request for a PFA does not suspend or waive the normal filing requirements for any tax returns that may be affected by the proposed PFA.

.05 *TEFRA taxpayers*. If the procedures set forth in sections 6221 through 6234 apply to the taxpayer requesting the PFA and the issue determined by the PFA is a partnership item as defined in section 6231, the PFA process will be terminated for that issue if no agreement is reached with all partners by the date that is 30 business days before the due date for the partnership return (taking into account any extensions of time to file that may be in effect).

.06 *Execution prior to filing*. If a PFA is executed before a tax return is filed, the taxpayer must report the issues determined by the PFA according to the terms and conditions of the PFA. A copy of the PFA must be attached to the tax return.

.07 *Execution after filing*. If the Service and the taxpayer do not reach agreement on an issue before the taxpayer files an associated tax return, the Service and the taxpayer may still attempt to resolve the issue and enter into a PFA. If the filed return is inconsistent with the terms and conditions of the contemplated PFA, the taxpayer must agree to file an amended return consistent with those terms and conditions. A post-filing PFA should state whether the taxpayer is required to file an amended return. It should further state that the Service may assess additional tax due, if any, if an amended return is not filed. The taxpayer must attach a copy of the PFA to any amended return.

SECTION 7. NATURE AND EFFECT OF A PFA

.01 *Criteria for issuance*. An authorized Service official may execute a PFA if that official determines that

(1) Entering into the PFA is consistent with the goals of the PFA program;

(2) The resolution of issues in the PFA reflects well-settled legal principles and correctly applies those principles to the facts established by the examination team;

(3) The issues determined by the PFA are eligible issues under section 3 of this revenue procedure;

(4) Any methodology approved for use by a taxpayer to determine the appropriate amount of an item of income, allowance, deduction, or credit has a documented factual basis; and

(5) There is an advantage in having the issues permanently and conclusively resolved for the taxable years covered by the PFA, or the taxpayer shows good and sufficient reasons for desiring a PFA and the United States will suffer no disadvantage if the agreement is executed.

.02 *Form and content*.

(1) A PFA that makes determinations for the current taxable year (and any prior taxable year for which a return is not yet due) is a closing agreement under section 7121. The form and content of this type of

PFA must comply with Rev. Proc. 68–16, 1968–1 C.B. 770.

(2) A PFA that makes a determination for one or more future taxable years as well as for the current taxable year (and any prior taxable year for which a return is not yet due) is a non-statutory agreement. Although not a closing agreement under section 7121, this type of PFA is a binding contract between the Service and a taxpayer. It is subject to any legislative enactment that is applicable to the taxable years to which the PFA relates. There is no prescribed format for such an agreement. The parties to a non-statutory agreement may, by mutual consent (and, if applicable, the further mutual agreement between the United States and any treaty partner that has entered into a mutual agreement that is a basis for the PFA), modify or terminate the agreement. A taxpayer who wants to modify or terminate a non-statutory agreement should submit a request to the office that originally processed the taxpayer's request for a PFA. The parties to a non-statutory agreement also may condition its determinations on the continuing validity of certain stated assumptions. A "stated assumption" is any fact (whether or not within the control of the taxpayer) related to the taxpayer, a third party, an industry, or business and economic conditions whose continued existence is material to the determinations of the PFA. A stated assumption might include, for example, a particular mode of conducting business operations. If a stated assumption is no longer valid, a non-statutory agreement conditioned on such stated assumption will terminate as of the first day of the taxable year in which the stated assumption is no longer valid.

(3) A PFA concerning international issues will not be subject to the special limitation of section 6.05(2), *Judicial Determinations and Litigation Settlements*, of Rev. Proc. 2015–40, which sets forth the effect of a closing agreement on the procedure for competent authority consideration under the mutual agreement procedure of United States income tax conventions.

.03 *Methods and periods of accounting*.

(1) A PFA does not constitute the consent of the Commissioner under section 446(e) to any change in method of accounting or the approval under section 442 of any adoption, change, or retention of an annual accounting period by the taxpayer.

(2) A PFA does not constitute a final determination regarding the adoption, change, or retention of an annual accounting period by the taxpayer,

(3) A PFA does not constitute a final determination regarding the methods of accounting of the taxpayer for any taxable year, except to the extent authorized by section 3.09.

(4) A PFA authorized under section 3.09 must include the following agreement:

Nothing in this agreement precludes the taxpayer from requesting, or the Service from requiring, a change in the taxpayer's method of accounting for years after the year of change.

SECTION 8. WITHDRAWAL

.01 At any time prior to the execution of the PFA, either the taxpayer or the Service may withdraw from consideration all or part of the request for a PFA. The withdrawal must be in writing and signed by the party initiating the withdrawal, i.e., the taxpayer or his authorized representative or the LB&I Practice Area Director.

.02 Notwithstanding the withdrawal by either the taxpayer or the Service of any or all the issues that are the subject of the request for a PFA, the taxpayer's agreement under section 4.04 of this revenue procedure will remain in effect.

SECTION 9. NO PFA EXECUTED

.01 *Post-filing procedures*. If the Service and the taxpayer do not agree upon and execute a PFA that resolves an issue, either before or after the filing of the tax return to which the PFA relates, and the Service subsequently disagrees with the taxpayer's treatment of the issue on the tax return, the taxpayer and the Service may continue their efforts to reach an agreement using post-filing procedures, such as the AIR procedures under Rev. Proc. 94–67. This continuation of the process does not require a new application.

.02 *Administrative appeals*. If the Service and the taxpayer are unable to resolve an issue by a PFA or an AIR agreement, the taxpayer may pursue an administrative appeal either by requesting an early referral to Appeals under the procedures set forth in Rev. Proc. 99–28, 1999–29 I.R.B. 109, or by protesting any proposed deficiency related to the issue.

SECTION 10. USER FEE

.01 *Taxpayers subject to fees*. Taxpayers are subject to a user fee only if they are selected to participate in the PFA program.

.02 *Amount of fee*. The user fee for taxpayers selected to participate in the PFA program is currently $50,000. See Rev. Proc. 2016–1, 2016–1 I.R.B. 1. The user fee will increase to $134,300 for PFA requests submitted on or after June 3, 2016, and to $218,600 for PFA requests submitted on or after January 1, 2017. A fee will be assessed for each separate and distinct issue. The orientation meeting or the first substantive meeting with the taxpayer to discuss the PFA issues will not take place until after the fee is received.

.03 *Time and method of payment*. Payment of the user fee must be made within 15 business days of notification that the issues have been selected for the PFA program. Payment must be made electronically by going to www.pay.gov. If pay.gov is unavailable or payment is being made from a foreign bank account, please contact the PFA Program Analyst at (202) 317-3157 (voice) (not a toll-free call) or (855) 842-0364 (fax) (toll-free call).

.04 *Withdrawal*. Notwithstanding the withdrawal by either the taxpayer or the Service of any or all of the issues in the request for a PFA after acceptance of the request, the user fee paid by the taxpayer generally will not be refundable. A refund or waiver of the user fee will not be entertained unless a hardship has occurred (for example, a disaster loss) or if other circumstances beyond the control of the taxpayer exist. The LB&I Practice Area Director has discretion in granting a request for a refund of a user fee based on considerations of sound tax administration.

SECTION 11. DISCLOSURE

PFAs are agreements described in section 6103(b)(2)(D). A PFA and the information generated or received by the Service during the PFA process constitute return information, which shall be confidential, except when disclosure is authorized by the Internal Revenue Code. Consistent with the restrictions of section 6103, the Service will continue to publish annual reports summarizing the operation of the PFA program. PFAs are not written determinations available for public inspection under section 6110. PFAs are exempt from disclosure to the public under the Freedom of Information Act.

SECTION 12. EFFECTIVE DATE AND DURATION OF PROCEDURE

This revenue procedure is effective for requests for PFAs received on or after May 4, 2016.

SECTION 13. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2009–14 is modified and superseded.

Rev. Proc. 2016–1 is modified by changing the PFA user fee in Appendix A (A)(7) from $50,000 to $134,300 for PFA requests submitted on or after June 3, 2016.

SECTION 14. RECORD-KEEPING REQUIREMENTS

.01 No aspect of the PFA process will affect the record-keeping requirements imposed by any section of the Internal Revenue Code.

.02 The taxpayer must maintain a copy of the PFA supporting documents and books of account and records to enable the Service to ensure the taxpayer's compliance with the PFA. These records may be specified in the PFA itself or in separate agreements.

SECTION 15. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under the control number 1545-1684.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The collections of information in this revenue procedure are in sections 4, 6, and 14. The information collected under section 4 is required to provide the Service with the information necessary to determine which taxpayers should be included in the PFA program. The information collected under section 6 will be used to resolve the taxpayer's issue and to support any PFA entered into between the taxpayer and the Service. The record-keeping requirements under section 14 will be used for tax administration. The collections of information under sections 4 and 6 are voluntary. Once a PFA is entered into, the record-keeping requirements under section 14 are mandatory. The likely respondents are businesses or other for-profit institutions.

The estimated total annual reporting and/or record-keeping burden is 13,134 hours.

The estimated annual burden per respondent varies from 5 hours to 1,092 hours, depending on whether a taxpayer applying to the PFA program is accepted into the program. The estimated annual burden per respondent for taxpayers who apply to the PFA program and are accepted is 1,092 hours. The estimated annual burden per respondent for taxpayers who apply to the PFA program and are not accepted is 5 hours. The estimated annual number of taxpayers who apply to the PFA program and are accepted is 12. The estimated annual number of taxpayers who apply to the PFA program and are not accepted is 6. The estimated total annual number of applicants and/or recordkeepers is 18.

The estimated annual frequency of responses is on occasion.

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

SECTION 16. DRAFTING INFORMATION

The principal author of this revenue procedure is Maria Del Pilar Puerto of the Office of Associate Chief Counsel (Procedure & Administration). For further information about this revenue procedure, contact Melanie Perrin, PFA Program Analyst, at (202) 317-3157 (voice) (not a toll-free call), (855) 842-0364 (fax) (toll-free call).

---

26 CFR § 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also: Part I, § 852)

Rev. Proc. 2016–31

SECTION 1. PURPOSE

This revenue procedure provides temporary relief for certain money market funds (MMFs) that receive contributions from their advisers as the MMFs transition to comply with Securities and Exchange Commission (SEC) rules that change how certain MMF shares are priced. *See* Money Market Fund Reform; Amendments to Form PF (79 FR 47736) (SEC MMF Reform Rules).

SECTION 2. BACKGROUND

.01 An MMF is a type of investment company registered under the Investment Company Act of 1940 (1940 Act) and regulated as an MMF under Rule 2a–7 under the 1940 Act (17 CFR 270.2a–7) (Rule 2a–7). (The SEC MMF Reform Rules amended Rule 2a–7.) MMFs have historically sought to keep stable (typically at $1.00) the prices at which their shares are distributed, redeemed, and repurchased. The securities that Rule 2a–7 permits an MMF to hold generally result in no more than minimal fluctuations in the MMF's net asset value per share (NAV).

.02 Before the SEC MMF Reform Rules amended Rule 2a–7, MMFs meeting the requirements of Rule 2a–7 were generally permitted to value all of their assets at acquisition cost, with certain adjustments (amortized cost valuation method), and to price their shares by rounding the resulting NAV to the nearest 1 percent (penny-rounding pricing). These methods have enabled MMFs to maintain stable share prices in almost all circumstances.

.03 The SEC MMF Reform Rules bar the use of the amortized cost valuation method and penny-rounding pricing for certain MMFs and require these MMFs to value their assets using market factors and to round their price per share to the nearest basis point, which is the fourth decimal place in the case of a fund with a $1.0000 share price. MMFs that value their assets in this way and round to this level of accuracy are called "floating-NAV MMFs." MMFs that invest 99.5 percent or more of their assets in government securities or repurchase agreements collateralized fully with government securities or cash items (government MMFs) or limit all of their beneficial owners to natural persons (retail MMFs) may continue to use the amortized cost valuation method and penny-rounding pricing (stable-NAV MMFs). An MMF that is not a government MMF or a retail MMF must convert to a floating-NAV MMF no later than October 14, 2016. An MMF converting to a floating NAV may receive (from, for example, the MMF's adviser) a contribution so that when the MMF transitions to a floating NAV all shareholders receive the same value per share at the time of the transition (a top up contribution).

.04 The Treasury Department and the Internal Revenue Service (Service) issued proposed regulations under sections 446 and 6045 of the Internal Revenue Code (Code) in 2014 (79 FR 43694) (the 2014 proposed regulations) providing a permissible, simplified method of accounting for gains and losses on shares in MMFs and clarifying reporting requirements for shares in MMFs. The Service received written comments responding to the 2014 proposed regulations. One commenter stated that it believes that sponsors of an MMF that will become a floating-NAV MMF may wish to make contributions to the MMF to raise the MMF's NAV to $1.0000 before the MMF's NAV begins to float. The commenter added that contributions may be made in other transitional contexts, such as the merger, conversion, or other reorganization of one or more MMFs, to facilitate compliance with the SEC MMF Reform Rules.

.05 In the preamble to the SEC MMF Reform Rules, the SEC provided exemptive relief for certain reorganizations and involuntary redemptions undertaken in connection with beginning to comply with the amendments to Rule 2a–7. Provided certain conditions are met, MMFs may therefore carry out these reorganizations and redemptions without seeking the separate exemptive relief from the SEC that would ordinarily be required. *See* 79 FR at 47798–99.

.06 Under the SEC MMF Reform Rules, an MMF must disclose the occurrence of certain events, including the provision to the fund by the fund's sponsor (or certain other persons) of "any form of financial support to the fund (including any (i) capital contribution, . . .)." 17 CFR 274.222. Specifically, if an MMF receives financial support from its sponsor, it must timely report this support on Form N-CR, "Current Report: Money Market Fund Material Events," and must disclose the support prominently on its website. *See* 17 CFR 270.30b1–8; 17 CFR 270.2a–7(h)(10)(v).

.07 The staff of the SEC Division of Investment Management has stated that it will not object if certain transactions that provide financial support are not reported on Form N-CR. In particular, if a top up contribution occurs as part of a transition for money market funds to implement the floating NAV reform before the October 14, 2016, compliance deadline, the staff has stated that it would not object if the transaction is not reported on Form N-CR, because such transactions are primarily intended to bring a fund into compliance with revised money market fund regulations in a way that avoids unfair results or dilution.[1]

.08 An MMF must meet distribution requirements to be taxed as a regulated investment company (RIC) under part 1 of subchapter M and to avoid the imposition of an excise tax under section 4982 of the Code. Section 852(b)(1) imposes a tax, computed under section 11, on a RIC's investment company taxable income (ICTI). Section 852(b)(2) defines ICTI as taxable income with several adjustments, including the exclusion of net capital gain and the allowance of a deduction for dividends paid. For an MMF to be taxed as a RIC, section 852(a)(1) requires the MMF's deduction for dividends paid (determined without regard to capital gain dividends) to equal or exceed the sum of 90 percent of the RIC's ICTI for the taxable year (determined without regard to the deduction for dividends paid) and 90 percent of the excess of the RIC's interest income excludable from gross income under section 103(a) over the RIC's deductions disallowed under sections 265 and 171(a)(2).

.09 Section 4982(a) imposes an excise tax on a RIC for each calendar year equal to 4 percent of the excess of the required distribution for the calendar year over the distributed amount for the calendar year. Under section 4982(b), a RIC's required distribution for a calendar year generally is the sum of 98 percent of the RIC's ordinary income for the calendar year, plus 98.2 percent of the RIC's capital gain net income for the 1-year period ending on October 31 of the calendar year.[2] Under section 4982(c), the distributed amount for a calendar year generally is the sum of the RIC's deductions for dividends paid during the calendar year and any amount on which tax is imposed under section 852(b)(1) or (b)(3)(A) for a taxable year ending in the calendar year.[3] Under section 4982(c)(4), if a RIC has an amount taxed under section 852(b)(1) or (b)(3)(A) for a taxable year and the RIC makes estimated tax payments on that amount during the calendar year in which the taxable year begins, the RIC may elect to include that amount in the RIC's distributed amount for that calendar year (instead of the calendar year in which the taxable year ends).

.10 If the distribution requirements in sections 852 and 4982 apply to an adviser contribution, it may be impossible or impractical for the advisers of some MMFs to make contributions that raise the MMFs' NAVs to $1.0000, so that shareholders will receive the same value per

[1]Top up contributions are discussed in a website posting entitled, "2014 Money Market Fund Reform Frequently Asked Questions." *See 2014 Money Market Fund Reform Frequently Asked Questions* (March 18, 2016, revision) *http://www.sec.gov/divisions/investment/guidance/2014-money-market-fund-reform-frequently-asked-questions.shtml*.

[2]Section 4982(b) also contains rules for increasing the required distribution for a calendar year that follows a calendar year in which there is a shortfall. Section 4982(e) defines the terms "ordinary income" and "capital gain net income" for purposes of section 4982 and provides additional rules.

[3]Section 4982(c) also contains rules for determining the dividends paid during a calendar year and for adjusting the distributed amount for a calendar year that follows a calendar year in which there is an overdistribution.

share both before and after the transition to a floating NAV. If contributions from an adviser are subject to the distribution requirements, then, to increase the value of an MMF's portfolio by a given amount, an adviser may need to contribute more than ten times that amount to "gross up" the contribution for both a 90-percent distribution requirement and tax on the undistributed amount. Comments submitted in response to the 2014 proposed regulations recommended guidance that would facilitate contributions to raise the MMF's NAV to $1.0000. Specifically, a commenter recommended that if a sponsor makes contributions to an MMF before October 14, 2016, the contributions would neither result in income or gain to the MMF nor reduce the basis of the MMF's assets.

.11 The Treasury Department and the Service believe that it is in the interest of sound tax administration to apply section 852 in a manner that will support the efforts of the staff of the SEC Division of Investment Management to facilitate a smooth transition to compliance with SEC MMF Reform Rules. The Treasury Department and the Service believe that excluding certain adviser contributions from ICTI for purposes of the distribution requirements in section 852(a) is important to facilitate those contributions but do not believe the contributions should be excluded from the RIC's income for other federal tax purposes.

SECTION 3. SCOPE

This revenue procedure applies to a top up contribution that is received by an MMF as part of a transition to implement the floating NAV reform before the October 14, 2016, compliance deadline, as described in section 2.07 of this revenue procedure.

SECTION 4. APPLICATION

If an MMF receives a contribution that is described in section 3 of this revenue procedure, the Service will not challenge the MMF's treatment of the contribution as an amount that is included in ICTI for purposes of section 852(b)(2) but is excluded from ICTI for purposes of section 852(a)(1). The treatment described in this section 4 applies only to contributions described in section 3 of this revenue procedure.

SECTION 5. EXAMPLE

The following example illustrates the operation of this revenue procedure.

(i) Fund is an MMF that uses a March 31 taxable year for federal income tax purposes. Fund has a stable NAV but is required under SEC MMF Reform Rules to become a floating-NAV MMF before October 14, 2016. As of April 22, 2016, Fund has 500 million outstanding shares and assets with a fair market value of $498,000,000. Fund's published NAV on April 22, 2016, is $1.00, but Fund's NAV determined using market factors and rounded to the nearest basis point is $0.9960. On April 25, 2016, Fund's investment adviser makes a $3,000,000 contribution to Fund that is described in section 3 of this revenue procedure. During its taxable year ending on March 31, 2017, Fund has $2,000,000 in ordinary income from securities in its portfolio and distributes $2,000,000 in ordinary dividends to its shareholders. Fund has no capital gains or losses and pays no capital gain dividends. Fund elects the application of section 4982(c)(4) for the 2016 calendar year. Consistent with that election, Fund makes an estimated tax payment of $1,020,000 during the 2016 calendar year with respect to Fund's taxable year ending on March 31, 2017. This amount reflects the tax under section 852(b)(1) on $3,000,000 of Fund's ICTI for that taxable year.

(ii) For its taxable year ending on March 31, 2017, Fund has ordinary income of $5,000,000. For purposes of section 852(b)(2), Fund's ICTI for that year is $3,000,000, because Fund has a $2,000,000 deduction for dividends paid. The tax on $3,000,000, computed under section 11, is $1,020,000, which was timely satisfied by the estimated tax payments that Fund made during 2016.

(iii) For purposes of section 852(a)(1), Fund treated its ICTI as being $2,000,000 (excluding the adviser contribution and disregarding the deduction for dividends paid). Because Fund distributed $2,000,000 of dividends in that taxable year, it distributed over 90 percent of the amount that it is treating for purposes of section 852(a) as its ICTI. Consistent with section 4 of this revenue procedure, the Service will not assert that Fund failed to satisfy the distribution requirement in section 852(a)(1).

(iv) Under section 4982(c)(4)(A)(i), Fund's distributed amount for 2016 is increased by the $3,000,000 with respect to which Fund made a $1,020,000 estimated tax payment. Thus, section 4982 does not impose an excise tax on Fund for 2016. Under section 4982(c)(4)(A)(ii), Fund's distributed amount for 2017 will be decreased by $3,000,000 to avoid double-counting.

(v) After payment of $1,020,000 of income taxes, the contribution of $3,000,000 increased the value of Fund's portfolio to $499,980,000. After this increase, Fund's NAV, rounded to the nearest basis point, is $1.0000.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for contributions that are described in section 3 of this revenue procedure. Section 3 of this revenue procedure does not describe any contribution made after certain MMFs are required to become floating-NAV MMFs.

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Grace Cho of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure contact Ms. Cho at (202) 317-6945 (not a toll-free number).

Part IV. Items of General Interest

Section 7428(c) Validation of Certain Contributions Made During Pendency of Declaratory Judgment Proceedings

Announcement 2016–20

This announcement serves notice to potential donors that the organization listed below has recently filed a timely declaratory judgment suit under section 7428 of the Code, challenging revocation of its status as an eligible donee under section 170(c)(2).

Protection under section 7428(c) of the Code begins on the date that the notice of revocation is published in the Internal Revenue Bulletin and ends on the date on which a court first determines that an organization is not described in section 170(c)(2), as more particularly set forth in section 7428(c)(1).

In the case of individual contributors, the maximum amount of contributions protected during this period is limited to $1,000.00, with a husband and wife being treated as one contributor. This protection is not extended to any individual who was responsible, in whole or in part, for the acts or omissions of the organization that were the basis for the revocation. This protection also applies (but without limitation as to amount) to organizations described in section 170(c)(2) which are exempt from tax under section 501(a). If the organization ultimately prevails in its declaratory judgment suit, deductibility of contributions would be subject to the normal limitations set forth under section 170.

Name of Organization	Date Suit Filed	Effective Date of Revocation	Location
Modest Needs Foundation	4/13/2016	1/1/2011	New York, N.Y.

Notice of Proposed Rulemaking and Notice of Proposed Rulemaking by Cross-reference to Temporary Regulations.

Certified Professional Employer Organizations; Notice of Proposed Rulemaking and Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations.

REG–127561–15

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations that set forth the federal employment tax liabilities and other obligations of persons certified by the IRS as certified professional employer organizations (CPEOs) in accordance with provisions enacted as part of The Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014. The proposed regulations also propose to adopt, by cross-reference, the text of temporary regulations in the Rules and Regulations section of this issue of the **Internal Revenue Bulletin**, which relate to the requirements for applying for, receiving, and maintaining certification as a CPEO. These proposed regulations will affect persons who apply to be treated as CPEOs and who are certified by the IRS as meeting the applicable requirements. In certain instances, the proposed regulations will also affect the federal employment tax liabilities and other obligations of customers of the CPEO.

DATES: Comments and requests for a public hearing must be received by August 4, 2016.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–127561–15), room 5203, Internal Revenue Service, P.O. 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–127561–15), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 or sent electronically, via the Federal eRulemaking Portal at *www.regulations.gov* (REG–127561–15).

FOR FURTHER INFORMATION CONTACT: Concerning these proposed regulations, Melissa L. Duce at (202) 317-6798; concerning submissions of comments or to request a public hearing, Oluwafunmilayo Taylor at (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, D.C. 20224. Comments on the collection of information should be received by July 5, 2016.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal

Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in the proposed regulations is in § 31.3511–1(g) and flows from section 3511(g) of the Internal Revenue Code (Code), which provides that the Secretary shall develop such reporting and recordkeeping rules, regulations, and procedures as the Secretary determines necessary or appropriate to ensure compliance by CPEOs with subtitle C of the Code. Section 31.3511–1(g)(1) clarifies that the reporting and recordkeeping requirements described in subtitle F of the Code that are currently applicable to employers apply to CPEOs that are treated as employers under § 31.3511–1(a), and § 31.3511–1(g)(3)(ii) specifically requires a CPEO to file on magnetic media Form 940, "Employer's Annual Federal Unemployment (FUTA) Tax Return," and Form 941, "Employer's QUARTERLY Federal Tax Return," along with all required schedules. The collection of information associated with complying with such reporting and recordkeeping requirements is reflected in the burden estimates for the relevant requirements under subtitle F. The collection of information associated with §§ 31.3511–1(g)(3)(i) and (ii), relating to information that CPEOs must report to the IRS regarding their customers, will be reflected in the burden estimates for new Form 8973, "Certified Professional Employer Organization/Customer Reporting Agreement," and in the amendments made to the applicable Schedules R of Forms 940 and 941. The collection of information associated with §§ 31.3511–1(g)(3)(iii) through (vi) relates to requirements imposed by § 301.7705–2T and are reflected in the burden estimates for that section. The collections of information associated with § 31.3511–1(g)(3)(vii) and (viii), relating to any information the IRS determines is necessary to promote compliance with respect to credits described in section 3511(d) and any other information the Commissioner may prescribe in further guidance, will be reflected in the future guidance requesting such information from CPEOs.

The collection of information in § 31.3511–1(g)(4) of the proposed regulations, regarding information a CPEO must provide to its customers, relates to: (1) an annual requirement to provide customers with the information necessary to claim specified credits for which the amount of the credit is determined by reference to the amount of employment tax wages or federal employment taxes; (2) a requirement to notify a customer of any transfers by the CPEO of the customer's contract meeting the requirements of section 7705(e)(2) (CPEO contract) or of any suspension or revocation of the CPEO's certification; and (3) if any covered employees are not or cease to be work site employees because they perform services at a location where the 85 percent threshold described in the definition of "work site employee" in § 301.7705–1(b)(17) is not met, a requirement to notify the customer that it may also be liable for federal employment taxes imposed on remuneration remitted by the CPEO to such covered employees. Similarly, § 31.3511–1(g)(5)(i) requires that any CPEO contract between a CPEO and a customer must: (1) contain the name and Employer Identification Number (EIN) of the CPEO fulfilling the federal employment tax obligations covered by the contract; (2) require the CPEO to provide the notices outlined in § 31.3511–1(g)(4); (3) describe the information that the CPEO will provide that is necessary for the customer to claim specified credits; and (4) specify that the CPEO must notify the customer that it may also be liable for federal employment taxes on remuneration remitted by the CPEO to any employees who are not work site employees. Further, any service agreement described in § 31.3504–2(b)(2) that is not a CPEO contract, must notify (or be accompanied by notification to) the client that the agreement does not alter the client's liability for federal employment taxes on remuneration remitted by the CPEO to the employees covered by the agreement. While a CPEO must provide customers with the information necessary to claim the specified credits annually and agree to provide customers and clients with the described notifications in each new CPEO contract or service agreement entered into during a particular taxable year, the remaining notification obligations outlined in §§ 31.3511–1(g)(4) and (5) relate to other events that are less predictable and may be infrequent – such as transfers of existing CPEO contracts, suspension or revocation of the CPEO's certification, or the reclassification of employees at a particular work site as non-work site employees. Moreover, the Department of the Treasury (Treasury Department) and the IRS expect that CPEOs participating in this voluntary program will be able to build upon preexisting systems and processes through which they communicate with their clients. With regard to the collections of information required in §§ 31.3511–1(g)(4) and (5), the Treasury Department and the IRS have reached the following reporting burden estimates for the expected recordkeepers (which are CPEOs): Estimated number of recordkeepers: 275.

Estimated average annual burden hours per recordkeeper: 6 hours.

Estimated total annual recordkeeping burden: 1650 hours.

Estimated frequency of collections of such information: Periodic.

The collection of information in the temporary regulations is in § 301.7705–2T and flows from sections 7705(b) and (c), which relate to the requirements that a person must satisfy to become and remain certified as a CPEO. The collection of information required to apply for and receive certification and to meet the requirements under § 301.7705–2T related to posting a security bond will be reflected in the burden estimates for Form 14737, "Request for Voluntary IRS Certification of a Professional Employer Organization"; Form 14737–A, "Responsible Individual Personal Attestation"; and Form 14751, "Certified Professional Employer Organization Surety Bond." The collection of information required by §§ 301.7705–2T(j) and (k), relating to periodic verification that the CPEO continues to meet the requirements of § 301.7705–2T and a CPEO's obligation to report any change that materially affects the continuing accuracy of any agreement or information that was previously made or provided to the IRS, will be published in a future revenue procedure that will prescribe the procedures related to these requirements.

Section 301.7705–2T(e) of the temporary regulations requires a CPEO to provide annually a copy of its annual audited financial statements and an opinion of a certified public accountant (CPA) regarding such financial statements. The collection of information required by § 301.7705–2T(f)(1)(i) relates to quarterly assertions that the CPEO has withheld and made deposits of all required federal employment taxes for the calendar quarter and examination level attestations from a CPA stating that such assertion is fairly stated in all material respects. In addition, § 301.7705–2T(f)(1)(ii) requires a quarterly statement signed by a responsible individual verifying that the CPEO has positive working capital with respect to the most recently completed fiscal quarter. While it is expected that CPEOs will generally maintain annual audited financial statements during the normal course of their business, rather than solely as a result of § 301.7705–2T(e), the Treasury Department and the IRS recognize that § 301.7705–2T(e) may impose new reporting requirements relating to underlying elements of those financial statements that will require additional time on the part of the CPEO and additional review by a CPA. In addition, § 301.7705–2T(f) requires CPEOs to submit statements regarding their working capital and assertions and exam level attestations related to their tax compliance on a quarterly basis. With respect to the collections of information required in §§ 301.7705–2T(e) and (f), the Treasury Department and the IRS have reached the following reporting burden estimates for CPEOs:

Estimated number of recordkeepers: 275.

Estimated average annual burden hours per recordkeeper: 60 hours.

Estimated total annual recordkeeping burden: 16,500 hours.

Estimated frequency of collections of such information: Quarterly.

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

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

Background

The Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (the ABLE Act), enacted on December 19, 2014, as part of the Tax Increase Prevention Act of 2014 (Pub. L. 113–295), added new sections 3511 and 7705 to the Code relating to the federal employment tax obligations and certification requirements of a "certified professional employer organization" (CPEO). Additionally, the ABLE Act made conforming amendments to sections 3302, 3303(a), 6053(c), 6652, and 7528 relating to obligations, requirements, and penalties applicable to a CPEO. This notice of proposed rulemaking contains proposed regulations under sections 3511 and 7705 regarding federal employment tax obligations of a CPEO and related definitions. This document also proposes to adopt, by cross-reference, temporary regulations under section 7705 published in the Rules and Regulations portion of this issue of the **Internal Revenue Bulletin**, which relate to the requirements for applying for, receiving, and maintaining certification as a CPEO. The preamble to the temporary regulations explains those regulations and the statutory provisions they are designed to implement.

Federal Employment Taxes

When an individual performs services for another person, an employer-employee relationship may exist. Generally, the Code provides that the existence of an employer-employee relationship is determined by applying the usual common law rules to the particular facts and circumstances of each case. *See* section 3121(d)(2). Under the common law rules, an employment relationship exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. *See* §§ 31.3121(d)–1(c), 31.3231(b)–1(a)(2), 31.3306(i)–1(b), and 31.3401(c)–1(b).

Employers generally are required to deduct and withhold federal income tax and Federal Insurance Contributions Act (FICA) taxes from wages paid to their employees under sections 3402(a) and 3102(a) and are separately liable for the employer's share of FICA taxes under section 3111. FICA taxes consist of the Old-Age, Survivors, and Disability Insurance (OASDI) tax and the Hospital Insurance (HI) tax (which includes the additional tax under section 3101(b)(2), known commonly as the Additional Medicare Tax (AdMT)). The amount of wages for OASDI purposes is limited to wages paid by an employer to an employee during a calendar year not exceeding the contribution and benefit base (as determined under section 230 of the Social Security Act), which is an annually adjusted amount. Thus, there is a ceiling on the wages subject to OASDI. Accordingly, once an employee's wages from an employer reach this annually adjusted amount, the OASDI portion of the FICA tax does not apply for the remainder of the calendar year.

In contrast, there is no ceiling on wages subject to the HI tax. *See* sections 3101, 3111, and 3121(a). However, under section 3102(f)(1), employers are only required to withhold AdMT from an employee's wages to the extent that those wages exceed $200,000 in a calendar year. Thus, there is a withholding threshold of $200,000 annually on wages subject to AdMT withholding.

Instead of FICA taxes, railroad employers are required to deduct and withhold Railroad Retirement Tax Act (RRTA) taxes from their employees' compensation and are separately liable for the employer's share of RRTA taxes. RRTA taxes consist of tier 1 taxes and tier 2 taxes. Tier 1 taxes parallel the OASDI and HI taxes applicable to other employers and employees. Tier 2 taxes consist of employer and employee taxes on railroad compensation up to the tier 2 contribution base for the calendar year. *See* sections 3201(a), 3211(a), and 3221(a).

Under the Federal Unemployment Tax Act (FUTA), taxes are imposed on the first $7,000 of wages paid to a covered employee by an employer during the calendar year. *See* section 3301(2). An employer may take a credit against its FUTA tax liability for its contributions to a state unemployment fund and, in certain cases, an additional credit for contributions that would have been required if the employer had been subject to a higher contribution rate under state law. *See* section 3301 *et seq.*

All taxes imposed under subtitle C of the Code, including income tax withholding, FICA, RRTA, and FUTA taxes, are collectively referred to in this preamble as "federal employment taxes." The applicable contribution bases for FICA, RRTA, and FUTA taxes, collectively, are referred to in this preamble as the "annual wage base." Sections 31.3102–1(d), 31.3202–1(e), and 31.3403–1 establish that the employer is the person liable for the withholding and payment of federal employment taxes, whether or not amounts are actually withheld.

An employer must file an employment tax return reporting federal employment taxes for each employment tax return period. Generally, an employer files Form 941, "Employer's QUARTERLY Federal Tax Return," to report wages the employer paid during a quarter of a calendar year that are subject to federal income tax withholding and FICA taxes. Wages an employer pays that are subject to FUTA tax are reported annually on Form 940, "Employer's Annual Federal Unemployment Tax (FUTA) Return." Employers that pay compensation subject to the RRTA tax file Form CT–1, "Employer's Annual Railroad Retirement Tax Return," as well as Form 941, to report federal income tax withholding. All employers that pay wages or compensation subject to federal income tax withholding, FICA tax, or RRTA tax must file Forms W–2, "Wage and Tax Statement," and Form W–3, "Transmittal of Wage and Tax Statements," with the Social Security Administration (SSA) and furnish a Form W–2 to each employee.

Federal employment taxes generally apply to all remuneration for services performed by an employee for an employer. However, specific exceptions apply to particular types of remuneration and particular types of services, which may depend on the type of employer for whom services are performed or the nature of those services. For example, remuneration paid by an organization exempt from federal income tax under section 501(a) to an employee who is paid less than $100 in a calendar year is excluded from the definition of "wages" for FICA purposes, and services performed in the employ of certain tax-exempt organizations are excluded from the definition of "employment" for FUTA purposes. In addition, various definitions and special rules, relevant for purposes of computing the applicable annual wage base, apply to certain types of employers, employees, and employment relationships.

Furthermore, as noted earlier in this preamble, remuneration paid by an employer to an employee within any calendar year is excepted from the OASDI portion of FICA, the equivalent portion of tier 1 RRTA, and FUTA taxes to the extent it exceeds the applicable annual wage base. However, the annual wage base applies on an employer-by-employer basis, and, thus, only remuneration received during any calendar year by an employee from the same employer is considered in applying the annual wage bases for purposes of the remuneration paid by that employer. *See* §§ 31.3121(a)(1)–1(a)(3) and 31.3306(b)(1)–1(a)(3) for FICA and FUTA taxes, respectively. Similarly, the AdMT withholding threshold applies only with regard to remuneration received during any calendar year by an employee from the same employer.

Accordingly, if during a calendar year the employee receives remuneration from more than one employer, generally, both the annual wage base and withholding threshold apply separately to the remuneration that the employee received during that calendar year from each employer.[1] Consequently, if an employee works for multiple employers during a year, a separate annual wage base and withholding threshold generally apply in determining each employer's tax liability with respect to remuneration paid to the employee. However, if during any calendar year an employer (the "successor employer") acquires substantially all of the property used in a trade or business of another employer (the "predecessor employer") then, for purposes of the annual wage base, any remuneration with respect to employment paid to such individual by the predecessor employer during such calendar year and prior to the acquisition is considered as having been paid by the successor employer. *See* sections 3121(a)(1), 3231(e)(2)(C), and 3306(b)(1).

If a person (payor) pays wages or compensation to employees who are employed by one or more employers, the Secretary is authorized, in accordance with regulations prescribed by the Secretary under section 3504, to designate such payor to perform acts required of employers under the Code. Section 3504 further provides that, except as otherwise prescribed by the Secretary, all provisions of law (including penalties) applicable with respect to an employer are applicable to the payor so designated, but each employer for whom the payor acts remains subject to the provisions of the law (including penalties) applicable to the employer. Consequently, both an employer and the payor designated in accordance with regulations under section 3504 are liable for the federal employment taxes on wages or compensation paid by the payor. Section 31.3504–2 of the regulations provides circumstances under which a payor is designated to perform the acts required of an employer and is liable for federal employment taxes with respect to wages or compensation paid by the payor to individuals performing services for the payor's client pursuant to a service agreement between the payor and the client, as defined therein. Consistent with section 3504, § 31.3504–2 provides that the client remains liable for the federal employment

[1]In such case, remuneration received in any calendar year from each employer up to the amount of the applicable annual wage base constitutes wages and is subject to the OASDI portion of FICA tax and the equivalent portion of tier 1 RRTA tax. However, under section 6413(c), the employee may be entitled to a special credit or refund of a portion of the employee tax deducted from wages received during the calendar year. Thus, an employee is subject to OASDI or RRTA tax only with respect to remuneration up to the applicable wage base for a year, regardless of whether the employee works for only one employer or for more than one employer during the year. *See* § 31.6413(c)–1.

taxes on wages paid by the payor to employees of the client.

In addition to an employer's federal employment tax obligations, various tax credits are available to employers based on the amount of wages and federal employment taxes paid by the employer. For example, the amount of an employer's work opportunity credit is based on a portion of FUTA wages paid by the employer to employees who are members of certain specified groups. *See* section 51(c).

Certain reporting requirements relating to tips apply to large food or beverage establishments. In the case of such an establishment, an employer is generally required to report certain information relating to receipts and tips to the IRS each calendar year. Additionally, the employer must also provide employees with written statements showing certain information for each calendar year, including the amount of tips allocated to the employee for the year. *See* section 6053(c).

Professional Employer Organizations

A professional employer organization (PEO), sometimes referred to as an employee leasing company, is an entity that enters into an agreement with a client to perform some or all of the federal employment tax withholding, reporting, and payment functions related to workers performing services for the client. A PEO also may manage human resources, employee benefits, workers compensation claims, and unemployment insurance claims for the client. The terms of a PEO arrangement typically provide that the PEO is the employer or "co-employer" of the workers and is responsible for paying the workers and for the related federal employment tax compliance. Under this arrangement, the PEO remits the wages to the workers and typically files, under its name and EIN, Forms 940 and 941 and, where applicable, Form CT-1 to report the wages or compensation and employment taxes it paid. Additionally, the PEO files Forms W–2 and Form W–3 with the SSA and furnishes a Form W–2 to each worker.

The client typically pays the PEO a fee based on payroll costs plus an additional amount. In most cases, however, the workers working in the client's business are the employees of the client under the common law rules, and the client is legally responsible for federal employment tax compliance, even though the PEO may also be legally responsible for federal employment tax compliance under § 31.3504–2.

The ABLE Act of 2014

The ABLE Act requires the IRS to establish a voluntary certification program for PEOs. Section 7705(a) defines a CPEO as a person that applies to the Secretary of the Treasury (Secretary) to be treated as a CPEO for purposes of section 3511 and has been certified by the Secretary as meeting certain requirements. Those requirements are described in the temporary regulations under section 7705 published in the Rules and Regulations portion of this issue of the **Internal Revenue Bulletin**.

Under sections 3511(a)(1) and (c)(1), for purposes of federal employment taxes and other obligations under the federal employment tax rules, a CPEO is generally treated as the employer of any individual performing services for a customer of the CPEO and covered by a contract described in section 7705(e)(2) between the CPEO and the customer (CPEO contract), but only with respect to remuneration remitted to the individual by the CPEO. A contract meets the requirements of section 7705(e)(2) with respect to an individual performing services for the customer and, therefore, is a CPEO contract if the contract is in writing and provides that the CPEO will assume responsibility, without regard to the receipt or adequacy of payment from the customer, for: (1) payment of wages to the individual; (2) reporting, withholding, and payment of any federal employment taxes with respect to the individual's wages; and (3) any employee benefits that the contract may require the CPEO to provide to the individual. The CPEO must also assume responsibility in a CPEO contract for recruiting, hiring, and firing the individual (in addition to the customer's responsibility in that regard) and for maintaining employee records relating to the individual. Finally, the CPEO must agree in a CPEO contract to be treated as a CPEO for federal employment tax purposes with respect to the individual.

With respect to an individual covered by a CPEO contract who performs services for a customer at a work site meeting the requirements of section 7705(e)(3) (a work site employee), section 3511(a)(1) specifies that no person other than the CPEO is treated as the employer for federal employment tax purposes with respect to remuneration remitted by the CPEO to such individual. A work site meets the requirements of section 7705(e)(3) with respect to an individual if at least 85 percent of the individuals performing services for the customer at the work site where the individual performs services are subject to one or more CPEO contracts with the CPEO. For this purpose, individuals who are excluded employees within the meaning of section 414(q)(5) (such as newly hired or part-time employees) are not taken into account.

Sections 3511(a)(2) and (c)(2) provide that the exceptions, exclusions, definitions, and other rules that are based on type of employer and that would apply if the CPEO were not treated as the employer under sections 3511(a)(1) or (c)(1) of the provision continue to apply. Thus, for example, if services performed in the employ of a customer that is a tax-exempt organization would be excluded from employment for FUTA purposes, the fact that a CPEO is treated as the employer for federal employment tax purposes does not affect the application of the exclusion.

On entering into a CPEO contract with a customer with respect to a work site employee, section 3511(b) provides that a CPEO is treated as a successor employer and the customer is treated as a predecessor employer during the term of the CPEO contract. On termination of a CPEO contract with respect to a work site employee, the customer is treated as a successor employer and the CPEO is treated as a predecessor employer.

For purposes of various tax credits enumerated in section 3511(d) under which the amount of the credit is determined by reference to the amount of federal employment taxes or the amount of wages subject to federal employment taxes, the credit with respect to a work site employee performing services for a customer applies to the customer, not to the CPEO. Consequently, in determining the amount of the credit, the customer, and not the CPEO, is to take into account federal employment taxes and wages paid by the CPEO with respect to the work site employee and for which the CPEO receives payment from the customer. The CPEO is required to furnish the customer and the Secretary with any information necessary for the customer to claim the credit.

The CPEO provisions do not apply in the case of a customer which bears a relationship to a CPEO described in section 267(b) (relating to transactions between related taxpayers) or section 707(b) (relating to transactions between a partner and partnership). In the application of such sections, rules based on more than 50 percent ownership are applied by substituting 10 percent for 50 percent. *See* section 3511(e).

A CPEO has no federal employment tax liability under section 3511(a) or (c) with respect to remuneration paid by the CPEO to an individual that constitutes net earnings from self-employment to the individual. Specifically, section 3511(f) provides that an individual with net earnings from self-employment derived from a CPEO customer's trade or business, including a partner of a customer that is a partnership, is not a work site employee for federal employment tax purposes with respect to remuneration paid by a CPEO. In addition, section 3511(c) provides that, for purposes of its federal employment tax liability, a CPEO is not treated as the employer of any individual covered by a CPEO contract and described in section 3511(f) with respect to remuneration paid by the CPEO to the individual. Together, these two provisions relieve the CPEO of any federal employment tax liability under section 3511(a) or (c) with respect to such self-employed individuals.

Under section 3511(g), the Secretary is directed to develop such reporting and recordkeeping rules, regulations, and procedures as the Secretary determines necessary or appropriate to ensure compliance with the applicable federal employment tax provisions by CPEOs. Such rules are to address: (1) notification of the Secretary in the case of the commencement or termination of a service contract with a customer and the EIN of the customer; (2) information the Secretary determines is necessary for the customer to claim specified credits and the manner in which the information is to be provided; and (3) other information the Secretary determines is essential to promote compliance with respect to specified credits and FUTA credits under section 3302. Such rules are to be designed in a manner that streamlines, to the extent possible, the application of the requirements of sections 3511 and 7705, the exchange of information between a CPEO and its customers, and the reporting and recordkeeping obligations of the CPEO. Similarly, under section 3511(h), the Secretary is directed to prescribe such regulations as may be necessary or appropriate to carry out the purposes of section 3511.

In addition to adding new sections 3511 and 7705 to the Code, the ABLE Act made conforming amendments to sections 3302, 3303(a), 6053(c), 6652, and 7528 relating to obligations, requirements, and penalties applicable to a CPEO. If a CPEO, or a customer of a CPEO, makes a contribution to a state's unemployment fund with respect to wages paid to a work site employee, the CPEO is eligible for the credits available under section 3302 with respect to such contribution. *See* section 3302(h). Similarly, under section 3303(a)(4), a CPEO is allowed an additional credit under section 3302(b) with respect to any reduced rate of contributions permitted by a state law if the Secretary of Labor finds that under such law the CPEO is permitted to collect and remit contributions during the taxable year to the state unemployment fund with respect to a work site employee. The Treasury Department and the IRS recognize that section 3302(h) and section 3303(a)(4) apply exclusively with respect to wages paid to work site employees and request comments on the application of the respective credits with respect to wages paid to individuals covered by a CPEO contract who are not work site employees.

For purposes of reporting requirements relating to large food or beverage establishments, section 6053(c)(8) provides that, if a CPEO is treated as the employer of a work site employee under section 3511, the customer for whom the work site employee performs services is the employer for purposes of the applicable reporting requirements. However, the CPEO is required to furnish the customer and the Secretary with any information the Secretary prescribes as necessary to complete the required reporting.

Section 6652 provides for certain penalties for failure to file certain information returns, registration statements, and similar reports. The ABLE Act provided a new penalty in section 6652(n) specifically for failures to timely make a complete report required under sections 3511, 6053(c)(8), or 7705. In the case of such a failure, section 6652(n) imposes a penalty to be paid (on notice and demand by the Secretary and in the same manner as tax) by the CPEO in an amount equal to $50 for each report with respect to which there was such a failure. In the case of any failure due to negligence or intentional disregard, an amount equal to $100 for each report shall be paid.

Finally, section 7528(b)(4) provides that the fee charged in connection with the CPEO program shall be an annual fee not to exceed $1,000 per year per applicant.

Explanation of Provisions

1. *Applicable Definitions*

Section 7705 provides numerous statutory definitions related to the operation of section 3511. The proposed regulations incorporate these statutory definitions and clarify the following terms: customer, covered employee, work site employee, work site, and self-employed individual.

The proposed regulations define a "customer" as any person who enters into a CPEO contract (that is, a contract that meets the requirements of section 7705(e)(2), as described in the Background section of this preamble) with a CPEO. A provider of employment-related services that uses its own EIN for filing federal employment tax returns on behalf of its clients (or who used its own EIN immediately prior to entering into a CPEO contract with the CPEO) is specifically excluded from being a customer of a CPEO for purposes of section 3511, even if such provider has entered into a CPEO contract with the CPEO and would, but for this exclusion, be a customer of the CPEO.[2]

With respect to a customer, a "covered employee" is any individual (other than a self-employed individual, as described subsequently in this section of the preamble) who is covered by a CPEO contract with that customer. Consistent with section 7705(e), the proposed regulations define the term "work site employee" as a covered employee who performs services for a customer of a CPEO at a "work site" where at least 85 percent of the individuals performing services are subject to one or more CPEO contracts between the CPEO and the customer.

The proposed regulations generally define "work site" as a physical location at which an individual regularly performs services for a customer of a CPEO. If there is no such location, the work site is the location from which the customer assigns work to the individual. Thus, for example, the "work site" for a technician who performs assignments at various or changing locations is the location from which the technician is dispatched on each particular assignment. The work site may not be the individual's residence or a telework site unless the customer requires the individual to work at that site. In applying the term "work site," contiguous locations are treated as a single physical location and thus a single work site, and noncontiguous locations that are not reasonably proximate are treated as separate physical locations and thus separate work sites. However, the CPEO may treat noncontiguous locations that are reasonably proximate as a single physical location and thus a single work site. Any two work sites that are separated by 35 or more miles or that operate in a different industry or industries will not be treated as reasonably proximate. The Treasury Department and the IRS recognize that, under certain circumstances, the physical location at which an individual regularly performs services for a customer may be difficult to ascertain. Accordingly, comments are requested on the definition of work site as set forth in § 301.7705–1(b)(16) and any additional clarifications that would facilitate a determination of an individual's work site.

The proposed regulations also provide that a covered employee will be considered a work site employee for the entirety of a calendar quarter if he or she qualifies as a work site employee at any time during that quarter. Consequently, for any calendar quarter, a covered employee is either a work site employee or not a work site employee for the entire quarter and cannot be a work site employee for part of the quarter and a non-work site employee for the other part. On the other hand, a covered employee can be a work site employee for one or more calendar quarters of the year and a non-work site employee for other calendar quarters during the same year.

The proposed regulations provide that the determination of whether a covered employee is a work site employee is made separately with regard to each work site at which the covered employee regularly provides services and for each customer for which the covered employee is providing services. If, during the same calendar quarter, a covered employee regularly provides services at more than one work site for a single customer or more than one customer of a particular CPEO, that employee may be counted among the covered employees at each of those sites. In accordance with section 7705(e)(3), the proposed regulations provide that, in determining whether the 85 percent threshold is met, individuals who are excluded employees within the meaning of section 414(q)(5) (such as newly hired or part-time employees) are not taken into account as either covered employees or individuals performing services, although such individuals may otherwise be covered employees and work site employees under the proposed regulations.

Finally, the proposed regulations also clarify that, in determining whether at least 85 percent of the individuals performing services are subject to one or more CPEO contracts between the CPEO and the customer, a self-employed individual who would be a covered employee but for the exclusion of self-employed individuals from the definition of covered employee (as described in this section of the preamble) is taken into account. For this and other purposes, the proposed regulations define a "self-employed individual" as an individual with net earnings from self-employment (as defined in section 1402(a) and without regard to the exceptions thereunder) derived from providing services covered by a CPEO contract, whether such net earnings are derived from providing services as a non-employee to a customer of a CPEO, from the individual's own trade or business as a sole proprietor customer of the CPEO, or as a partner in a partnership that is a customer of the CPEO, but only with regard to such net earnings. Accordingly, a self-employed individual, whether an independent contractor to the customer, a sole proprietor customer of the CPEO, or a partner in a partnership customer of the CPEO, is not considered to be a work site employee under section 3511(f) with regard to such earnings. However, in the limited case in which such an individual also is paid wages by a CPEO under a CPEO contract with the customer, the individual may nevertheless be a work site employee with respect to such wages. In all cases, the self-employed individual covered by a CPEO contract is appropriately counted in determining whether the 85 percent threshold is met.

2. *CPEO as Employer of Covered Employees*

Consistent with sections 3511(a)(1) and (c)(1), the proposed regulations provide that, for purposes of federal employment taxes and other obligations under the federal employment tax rules, a CPEO is treated as the employer of any covered employee (whether or not a work site employee), but only with respect to remuneration remitted to the individual by the CPEO. Consistent with section 3511(a)(1), the proposed regulations also provide that, with respect to a covered employee who is a work site employee, no person other than the CPEO will be treated as the employer of the work site employee for federal employment tax purposes with respect to remuneration remitted by the CPEO to such work

[2]References in this preamble and the proposed regulations to "customers" are limited to those persons who have entered into a CPEO contract and any rules applicable to a customer apply only with respect to that contract. In contrast, the term "client" is used more broadly to include persons receiving services from a provider of employment-related services (that may or may not be a CPEO) in instances when those services are not covered by a CPEO contract.

site employee. In contrast, in the case of a covered employee who is not a work site employee, the proposed regulations provide that a person other than the CPEO is also treated as an employer of the employee for purposes of federal employment taxes imposed on remuneration remitted by the CPEO to the employee if such person is determined to be an employer of the employee without regard to the application of section 3511.

3. *Application of Federal Employment Tax Exemptions, Exclusions, Definitions, and Other Rules*

Under sections 3511(a)(2) and (c)(2), the exceptions, exclusions, definitions, and other rules that are based on the type of employer and that would apply if the CPEO were not treated as the employer under section 3511 continue to apply with respect to remuneration remitted by the CPEO. Thus, sections 3511(a)(2) and (c)(2) necessitate a determination of whether the CPEO, the customer, or a third party is the employer of a covered employee without regard to section 3511 for purposes of applying federal employment tax exemptions, exclusions, definitions, and other rules. Under the Code, the existence of an employer-employee relationship is generally determined by applying the common law rules to the particular facts and circumstances of each case. While the terms of a PEO arrangement typically provide that the PEO is the employer (or "co-employer") of the employees and is responsible for paying the employees and for the related federal employment tax compliance, in most instances the customer is actually the common law employer of such employees.

To avoid the need to make a common law employment determination for purposes of sections 3511(a)(2) and (c)(2), the proposed regulations provide that, for purposes of federal employment taxes, the exemptions, exclusions, definitions, and other rules that are based on type of employer and that apply to remuneration remitted by a CPEO to a covered employee are presumed to be based on the customer for whom the covered employee provides services. Additionally, if a covered employee provides services for more than one customer of the CPEO during the calendar year, the presumption applies separately to remuneration remitted by the CPEO to the covered employee with respect to each such customer. This presumption in the proposed regulations generally eliminates the need to make a determination as to which person is the employer (in the absence of section 3511) for purposes of the exceptions, exclusions, definitions, and other rules that are based on type of employer.

The proposed regulations also provide, however, that the presumption may be rebutted if the Commissioner determines, or the CPEO demonstrates by clear and convincing evidence, that the relationship between the customer and the covered employee is not the legal relationship of employer and employee. If the presumption is rebutted, the exemptions, exclusions, definitions, and other rules that are based on type of employer and which apply to remuneration remitted by a CPEO to a covered employee will be based on the person determined to be the employer of the covered employee without regard to the application of section 3511. The presumption can be rebutted by a demonstration that either the CPEO or a third party other than the customer is actually the employer for federal employment tax purposes and, therefore, the proper party on which to base the exceptions, exclusions, definitions, and other rules. In any event, the presumption does not create any inference with respect to who is an employer or employee or whether an employment relationship exists for other federal tax purposes or any other provision of law.

4. *Annual Wage Base and Withholding Threshold*

Under sections 3511(a) and (c), a CPEO is treated as the employer of any covered employee with respect to remuneration remitted to the individual by the CPEO. Thus, pursuant to section 3511, a CPEO has an employment relationship with the covered employee of a customer during the term of the CPEO contract with the customer that is separate from and independent of any employment relationship the customer may have with the employee. Consequently, during the calendar year in which a CPEO enters into a CPEO contract with a customer with respect to a covered employee, the covered employee may receive remuneration from more than one employer.

The proposed regulations provide that, except as provided with respect to successor and predecessor employers described in section 5 of this preamble, remuneration received by a covered employee from a CPEO for performing services for a customer of the CPEO within any calendar year is subject to a separate annual wage base and withholding threshold that are each computed with respect to such remuneration, without regard to any remuneration received by the covered employee during the calendar year from any other employer (including, if applicable, remuneration received directly from the customer receiving services from the employee). Thus, upon entering into a CPEO contract with a customer with respect to a covered employee, the CPEO starts a new annual wage base and withholding threshold with respect to the covered employee (unless the CPEO is treated as a successor or predecessor employer, as described in section 5 of this preamble). Additionally, any remuneration paid by the customer directly to a covered employee during the term of a CPEO contract is not paid by the CPEO and, consequently, is not included in the CPEO's annual wage base and withholding threshold with respect to the covered employee.

The proposed regulations also provide that if, during a calendar year, a covered employee receives remuneration from a CPEO for services performed by the covered employee for more than one customer of the CPEO, the annual wage base and withholding threshold do not apply to the aggregate remuneration received by the covered employee from the CPEO for services performed for all such customers. Rather, the annual wage base and withholding threshold apply separately to the remuneration received by the covered employee from the CPEO with respect to services performed for each customer. The maintenance of a separate annual wage base and withholding threshold with respect to each customer for which a covered employee performs services during a calendar year recognizes both the CPEO's status as an employer of the covered employee under section 3511 and the CPEO's responsibilities under a CPEO contract with respect to services performed by a covered employee for each individual customer. Additionally, a separate annual wage base and withholding threshold with respect to each customer for which a covered employee performs services is needed for purposes of applying some of the exemptions, exclusions, definitions, and other rules discussed in section 3 of this preamble and the treatment of some of the credits discussed in section 6 of this preamble. Thus, if a single employee receives remuneration under CPEO contracts with more than one customer, the CPEO must maintain a separate annual wage base and withholding threshold for the employee with respect to each customer.

5. *Successor Employer Status*

Consistent with section 3511(b), the proposed regulations also provide that, for purposes of computing the annual wage base, a CPEO and its customer are treated as: (1) a successor and predecessor employer, respectively, upon entering into a CPEO contract with respect to a work site employee who is performing services for the customer; and (2) a predecessor and successor employer, respectively, upon termination of the CPEO contract between the CPEO and the customer with respect to the work site employee. Consistent with the quarterly work site employee determination discussed in section 1 of this preamble, the determination of whether an employee is a work site employee for this purpose is made during the quarter in which the CPEO enters into (or terminates) the CPEO contract with respect to the employee. That is, an employee will be considered a work site employee for the entirety of a calendar quarter if he or she qualifies as a work site employee at any time during that quarter. Accordingly, a CPEO is a successor employer (or predecessor employer) with regard to any covered employee who is a work site employee at any point during the quarter in which the CPEO entered into (or terminated) the CPEO contract with respect to the employee. On the other hand, as also noted in section 1 of this preamble, a covered employee can be a work site employee for one or more calendar quarters of the year and a non-work site employee for other calendar quarters during the same year. Accordingly, the proposed regulations provide that a CPEO entering into a CPEO contract with a customer with respect to a covered employee who is not a work site employee at any time during that calendar quarter will not be treated as a successor employer regardless of whether, during the term of the CPEO contract, the covered employee subsequently becomes a work site employee. Similarly, a CPEO terminating a CPEO contract with a customer with respect to a covered employee who is not a work site employee at any time during that calendar quarter will not be treated as a predecessor employer regardless of whether, during the term of the CPEO contract, the covered employee had previously been a work site employee. The quarterly determination of work site employee status is utilized for purposes of the successor employer and predecessor employer determinations (as well as for other purposes under the proposed regulations) in order to have a consistent quarterly work site employee determination for all purposes and therefore assist with administrability.

6. *Treatment of Credits*

Section 3511(d) governs the treatment of various tax credits under which the amount of the credit is determined by reference to the amount of wages or federal employment taxes. Section 3511(d)(2) specifies these credits as the credits under section 41 (credit for increasing research activity), section 45A (Indian employment credit), section 45B (credit for portion of employer social security taxes paid with respect to employee cash tips), section 45C (clinical testing expenses for certain drugs for rare diseases or conditions), section 45R (employee health insurance expenses of small employers), section 51 (work opportunity credit), section 1396 (empowerment zone employment credit), and any other section as provided by the Secretary. Consistent with section 3511(d), the proposed regulations provide that any specified credit with respect to a work site employee performing services for a customer applies to the customer, not to the CPEO. Consequently, in determining the amount of the credit, the customer, and not the CPEO, takes into account wages and federal employment taxes paid by the CPEO with respect to the work site employee and for which the CPEO receives payment from the customer. As noted in the discussion of the annual wage base and withholding threshold in section 4 of this preamble, a CPEO must maintain a separate annual wage base and withholding threshold with respect to each customer for which a covered employee performs services during a calendar year. Consequently, with respect to a work site employee performing services for more than one customer of a CPEO during a calendar year, each customer for which the employee performs services takes into account wages and federal employment taxes paid by the CPEO only with respect to services performed by the work site employee for that customer in determining the treatment of credits by that customer. The proposed regulations also provide that, consistent with section 3511(d)(2)(H), the Commissioner may specify other credits subject to the treatment provided for under section 3511(d).

The proposed regulations do not specify any other credits, but the Treasury Department and the IRS request comments on whether other credits should be specified in these regulations or in other guidance. Additionally, the Treasury Department and the IRS recognize that the application of the specified tax credits to the customer under section 3511(d) applies exclusively with respect to work site employees. Accordingly, comments are also requested on the treatment of tax credits with respect to covered employees who are not work site employees.

7. *Special Rules Applicable to Related Customers, Self-Employed Individuals, and Other Circumstances*

Consistent with section 3511(e), the proposed regulations do not apply in the case of a customer that is related to the CPEO. For these purposes, the proposed regulations provide that a customer is related to a CPEO if that customer bears a relationship to a CPEO described in section 267(b) or section 707(b), except that "10 percent" will be substituted for "50 percent" wherever the latter term appears in those sections. For administrative purposes such as verifying correct CPEO employment tax reporting and determining whether successor employer rules apply, the IRS must know when a CPEO has entered into a CPEO contract with a customer. For this reason, the proposed regulations also exclude from section 3511 any customer that has commenced a service contract with a CPEO if the commencement of such service contract has not been reported to the IRS in accordance with the requirements described in § 31.3511–1(g)(3)(i) of the proposed regulations (discussed in section 8 of this preamble).

Consistent with section 3511(f), which provides that a self-employed individual is not a work site employee with respect to remuneration paid by a CPEO, and with section 3511(c), which provides that a CPEO is not treated as an employer of a self-employed individual, the proposed regulations provide that section 3511 does not apply to any self-employed individual. Nevertheless, as discussed in section 1 of this preamble, a self-employed individual may be counted as an employee covered by a CPEO contract for purposes of determining whether the 85 percent threshold for qualification of other covered employees as work site employees is met, as described in section 1 of this preamble.

Finally, the proposed regulations provide that section 3511 does not apply to any CPEO contract in which a CPEO enters while its certification has been suspended by the IRS or to a CPEO whose certification has been revoked or voluntarily terminated.

8. *Reporting and Recordkeeping Requirements*

Consistent with section 3511(g), the proposed regulations describe various recordkeeping and reporting requirements applicable to CPEOs that are designed to ensure compliance with the applicable federal employment tax provisions. Significantly, the proposed regulations provide that a CPEO that is treated as an employer of a covered employee pursuant to section 3511 must meet all reporting and recordkeeping requirements described in subtitle F of the Code that are applicable to employers in a manner consistent with such treatment. Additionally, a CPEO must file the returns required of all employers by subtitle F.

Moreover, a CPEO must file Forms 940 and 941, and all required accompanying schedules, on magnetic media unless the CPEO is provided a waiver by the Commissioner. The proposed regulations define magnetic media as electronic filing, as well as other media specifically permitted under the applicable regulations, revenue procedures, publications, forms, instructions, or other guidance.

a. *Reporting to the IRS by CPEOs*

Consistent with section 3511(g)(1), the proposed regulations provide that a CPEO must report information relating to the commencement or termination of any CPEO contract with a customer and the name and EIN of such customer.

The proposed regulations also provide that, with any Form 940 or Form 941 that a CPEO files, the CPEO must attach the applicable Schedule R (or any successor form) containing such information as the Commissioner may require about each of its customers under a CPEO contract and any clients under a service agreement described in § 31.3504–2(b)(2). As noted previously, a CPEO is also required to file Forms 940 and 941, including all required schedules, on magnetic media as a condition of certification.

So that the IRS can better reconcile the total amounts of wages and taxes reported on Forms 940 and 941 with the amounts of wages and taxes reported on the attached Schedule R, the proposed regulations provide that, in addition to providing information about each customer under a CPEO contract, a CPEO must also include such information as the Commissioner may require about each of its clients under a service agreement described in § 31.3504–2(b)(2) that is not a CPEO contract. To assist the IRS in verifying which entities reported on the Schedule R are customers under a CPEO contract, and which are clients under a service agreement described in § 31.3504–2(b)(2) that is not a CPEO contract, the proposed regulations require that a CPEO must also report information relating to the commencement or termination of a service agreement described in § 31.3504–2(b)(2) with a client, and the name and EIN of each such client.

In addition, the proposed regulations specify that a CPEO must provide periodic verification to the IRS that it continues to meet the CPEO certification requirements of the temporary regulations, as described in § 301.7705–2T(j), and report any change that materially affects the continuing accuracy of any agreement or information that was previously made or provided by the CPEO to the IRS, as described in § 301.7705–2T(k). The time and manner of this ongoing periodic verification will be specified in further guidance. Finally, the proposed regulations require that a CPEO provide: (1) a copy of its audited financial statements and an opinion of a certified public accountant regarding such financial statements, as described in § 301.7705–2T(e)(1); (2) the quarterly statements, assertions, and attestations regarding those assertions described in § 301.7705–2T(f); (3) any information that the IRS specifies in further guidance is necessary to promote compliance with respect to the credits described in § 31.3511–1(e)(2) of the proposed regulations and section 3302; and (4) any other information the Commissioner may prescribe in further guidance.

b. *Reporting to customers by CPEOs*

The proposed regulations require a CPEO to report certain information to its customers. Consistent with sections 3511(g)(2) and (3), a CPEO must provide each of its customers with the information necessary for the customer to claim the specified credits for which the amount of the credit is determined by reference to the amount of wages or federal employment taxes. The proposed regulations provide that a CPEO must also notify the customer if its CPEO contract has been transferred to another person (or if another person will report, withhold, or pay, under such other person's EIN, any applicable federal employment taxes with respect to the wages of any individuals covered by its CPEO contract), and provide the customer with the name and EIN of such other person. In addition, a CPEO must also notify each of its current customers of any suspension or revocation of the CPEO's certification. Finally, if any covered employees are not or cease to be work site employees with respect to a calendar quarter because they perform services at a location at which the 85 percent threshold described in section 1 of this preamble is no longer met, the proposed regulations provide that the CPEO must notify the customer that it may be liable for federal employment taxes imposed on remuneration remitted by the CPEO to such covered employees.

c. *Information and agreements in any contract or agreement between a CPEO and client*

The proposed regulations provide that any CPEO contract with a customer must: (1) contain the name and EIN of the CPEO reporting, withholding, and paying any applicable federal employment taxes with respect to any remuneration paid to individuals covered by the CPEO contract or service agreement; (2) require the CPEO to provide the customer with all of the notices and information described in section 8.b of this preamble; (3) describe the information that the CPEO will provide which is necessary for the customer to claim credits; and (4) specify that the CPEO must notify the customer that the customer may also be liable for federal employment taxes on remuneration remitted by the CPEO to covered employees if the sites at which they perform services do not (or ever cease to) meet the 85 percent threshold described in § 301.7705–1(b)(18). The proposed regulations also provide that if a service agreement described in § 31.3504–2(b)(2) is not a CPEO contract (and thus the employees covered by that service agreement are not covered employees), or if section 3511 does not otherwise apply to a contract as described in section 7 of this preamble, the service agreement or contract should be accompanied by a notification to the client explaining that the service agreement or contract is not covered by section 3511 and does not alter the client's liability for federal employment taxes on remuneration remitted by the CPEO to the individuals covered by the service agreement or contract.

9. *Penalties Applicable to CPEOs*

Although the ABLE Act provided the new penalty under section 6652(n) for failures to timely make required reports under sections 3511, 6053(c)(8), and 7705, the Treasury Department and the IRS note that many of the reports required under sections 3511 and 7705 are also subject to existing penalties and additions to tax. For example, because CPEOs are treated as employers of covered employees, CPEOs must meet the reporting requirements applicable to employers, including the filing of quarterly Forms 941. A CPEO that fails to file a Form 941 is subject to the addition to tax under section 6651(a)(1). Accordingly, the proposed regulations provide that a CPEO that is treated as an employer of a covered employee under section 3511 and that is required to meet the reporting requirements of an employer is subject to the same penalties and additions to tax as an employer with respect to such reporting requirements, including but not limited to penalties and additions to tax under sections 6651, 6656, 6672, 6721, 6722, and 6723.

The proposed regulations further clarify that the section 6652(n) penalty will apply to reports required under section 3511. The proposed regulations provide that a CPEO is subject to penalty under section 6652(n) for any failure to attach the applicable Schedule R (or any successor form) to Forms 940 or 941. The proposed regulations also provide that the CPEO is subject to penalty under section 6723 for any failure (including multiple failures within a single document) to include the EIN of each customer on Schedule R.

Finally, the proposed regulations clarify that, because the requirement to file Forms 940 and 941 on magnetic media is a condition of certification, any failure to file those forms, along with all required schedules, on magnetic media does not constitute a failure to file for the purposes of the section 6651(a)(1) addition to tax or failure to make a report for the purposes of the penalty under section 6652(n). The consequence of any failure to file these forms and associated schedules on magnetic media is the potential suspension or revocation of certification as a CPEO.

Proposed Effective/Applicability Dates

These regulations are proposed to be effective on and after the date these rules are published in the **Internal Revenue Bulletin** as final or temporary regulations. Taxpayers may rely on these proposed regulations beginning July 1, 2016, and until final or temporary regulations are published.

Availability of IRS Documents

IRS revenue procedures, revenue rulings, notices, and other guidance cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS Web site at http://www.irs.gov.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the regulations will not have a significant economic impact on a substantial number of small entities. The collection of information is in §§ 31.3511–1(g) and 301.7705–2T. The certification is based on the following:

The Treasury Department and the IRS anticipate that the organizations that choose to apply for this voluntary certification program are likely to be entities that already have many of the systems and processes in place that are needed to comply with these regulations. For example, it is expected that CPEOs will generally maintain annual audited financial statements during the normal course of their business, rather than solely as a result of § 301.7705–2T(e). Moreover, the requirements in §§ 301.7705–2T(e) and (f) for demonstrating positive working capital on an annual basis and for the quarterly assertions regarding employment tax compliance build upon requirements already reflected in many state PEO certification and registration laws, thereby minimizing the economic impact on those CPEO applicants already subject to the similar state law requirements.

In addition, many of the requirements in §§ 31.3511–1(g) and 301.7705–2T that impose a collection of information on CPEOs constitute one-time notifications to the IRS, customers, or clients or notifications that relate to events in the life cycle of a CPEO that are less predictable and may be infrequent – such as transfers of existing CPEO contracts, making material changes to agreements previously provided to the IRS, suspension or revocation of the CPEO's certification, or the reclassification of employees at a particular work site as non-work site employees – and thus will have a minimal economic impact on the CPEO. Moreover, the Treasury Department and the IRS expect that CPEOs participating in this voluntary program will be able to build upon preexisting systems and processes through which they already communicate with their clients.

For these reasons, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the "Addresses" heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at www.regulations.gov or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register.**

Drafting Information

The principal authors of these regulations are Melissa Duce, Andrew Holubeck, and Neil Shepherd of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the Treasury Department and the IRS participated in the development of these regulations.

List of Subjects

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social Security, Unemployment compensation.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 31 and 301 are proposed to be amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT THE SOURCE

Paragraph 1. The authority citation for part 31 is amended by adding an entry in numerical order to read in part as follows:

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

Section 31.3511–1 is also issued under 26 U.S.C. 3511(h).

* * * * *

Par. 2. Section 31.3511–1 is added to subpart F to read as follows:

§ 31.3511–1 Certified professional employer organization.

(a) *Treatment as employer*—(1) *In general*. For purposes of the federal employment taxes and other obligations imposed under chapters 21 through 25 of subtitle C of the Internal Revenue Code (federal employment taxes), a certified professional employer organization (CPEO) (as defined in § 301.7705–1T(b)(1) of this chapter) is treated as the employer of any covered employee (as defined in § 301.7705–1(b)(5) of this chapter), but only with respect to remuneration remitted by the CPEO to such covered employee.

(2) *Work site employee*. In the case of a covered employee who is a work site employee (as defined in § 301.7705–1(b)(17) of this chapter), no person other than the CPEO is treated as the employer of the work site employee for purposes of federal employment taxes imposed on remuneration remitted by the CPEO to the work site employee.

(3) *Non-work site employee*. In the case of a covered employee who is not a work site employee, a person other than the CPEO is also treated as an employer of the employee for purposes of federal employment taxes imposed on remuneration remitted by the CPEO to the employee if such person is determined to be an employer of the employee without regard to the application of this paragraph (a) and section 3511.

(b) *Exemptions, exclusions, definitions, and other rules*—(1) *In general*. Solely for purposes of federal employment taxes imposed on remuneration remitted by a CPEO to a covered employee, the application of exemptions, exclusions, definitions, and other rules that are based on the type of employer is presumed to be based on the type of employer of the customer of the CPEO for whom the covered employee performs services. If a covered employee performs services for more than one customer of the CPEO during the calendar year, the presumption described in the previous sentence applies separately to remuneration remitted by the CPEO to the covered employee for services performed with respect to each such customer.

(2) *Presumption rebutted*. The presumption set forth in paragraph (b)(1) of this section may be rebutted if either the Commissioner determines, or the CPEO demonstrates by clear and convincing evidence, that the relationship between the customer and the covered employee is not the legal relationship of employer and employee as set forth in § 31.3401(c)–1. If such a determination or demonstration is made, then, with respect to remuneration remitted by a CPEO to a covered employee, the application of exemptions, ex-

clusions, definitions, and other rules that are based on the type of employer will be based on the type of employer of the person determined by the Commissioner or demonstrated by the CPEO to be the common law employer of the covered employee in accordance with § 31.3401(c)–1.

(3) *No inference from presumption*. The presumption set forth in paragraph (b)(1) of this section does not create any inference with respect to the determination of who is an employer or employee or whether the legal relationship of employer and employee exists for federal tax purposes or for purposes of any other provision of law (other than for paragraph (b)(1) of this section).

(c) *Annual wage limitation, contribution base, and withholding threshold*—(1) *CPEO has separate taxable wage base, contribution base, and withholding threshold*. For purposes of applying the annual wage limitations under sections 3121(a)(1) and 3306(b)(1) (relating to the Federal Insurance Contributions Act and the Federal Unemployment Tax Act, respectively), the contribution base under section 3231(e)(2) (relating to the Railroad Retirement Tax Act), and the withholding threshold under section 3102(f)(1) (relating to the Additional Medicare Tax), remuneration received by a covered employee from a CPEO for performing services for a customer of the CPEO within any calendar year is subject to a separate annual wage limitation, contribution base, and withholding threshold that are each computed without regard to any remuneration received by the covered employee during the calendar year from any other employer (including, if applicable, remuneration received directly from the customer receiving services from the employee). Notwithstanding the preceding sentence, a CPEO is treated as a successor or predecessor employer for purposes of the annual wage limitations and contribution base upon entering into or terminating a CPEO contract (as defined in § 301.7705–1(b)(3) of this chapter) with respect to a work site employee, as described in paragraph (d) of this section.

(2) *Performance of services for more than one customer*. If, during a calendar year, a covered employee receives remuneration from a CPEO for services performed by the covered employee for more than one customer of the CPEO, the annual wage limitation, contribution base, and withholding threshold do not apply to the aggregate remuneration received by the covered employee from the CPEO for services performed for all such customers. Rather, the annual wage limitation, contribution base, and withholding threshold apply separately to the remuneration received by the covered employee from the CPEO with respect to services performed for each customer.

(d) *Successor employer status*—(1) *In general*. For purposes of sections 3121(a)(1), 3231(e)(2)(C), and 3306(b)(1), a CPEO and its customer are treated as—

(i) A successor and predecessor employer, respectively, upon entering into a CPEO contract with respect to a work site employee who is performing services for the customer; and

(ii) A predecessor and successor employer, respectively, upon termination of the CPEO contract between the CPEO and the customer with respect to the work site employee who is performing services for the customer.

(2) *Non-work site employee*. A CPEO entering into a CPEO contract with a customer during a calendar quarter with respect to a covered employee who is not a work site employee at any time during that calendar quarter will not be treated as a successor employer (and the customer will not be treated as a predecessor employer) for purposes of paragraph (d)(1)(i) of this section regardless of whether, during the term of the CPEO contract, the covered employee subsequently becomes a work site employee. Similarly, a CPEO terminating a CPEO contract with a customer during a calendar quarter with respect to a covered employee who is not a work site employee at any time during that calendar quarter will not be treated as a predecessor employer (and the customer will not be treated as a successor employer) for purposes of paragraph (d)(1)(ii) of this section regardless of whether, during the term of the CPEO contract, the covered employee had previously been a work site employee.

(e) *Treatment of credits*—(1) *In general*. For purposes of the credits specified in paragraph (e)(2) of this section—

(i) The credit with respect to a work site employee performing services for a customer applies to the customer, not to the CPEO; and

(ii) In computing the credit, the customer, and not the CPEO, is to take into account wages and federal employment taxes paid by the CPEO with respect to the work site employee and for which the CPEO receives payment from the customer.

(2) *Credits specified*. A credit is specified in this paragraph if such credit is allowed under—

(i) Section 41 (credit for increasing research activity);

(ii) Section 45A (Indian employment credit);

(iii) Section 45B (credit for portion of employer social security taxes paid with respect to employee cash tips);

(iv) Section 45C (clinical testing expenses for certain drugs for rare diseases or conditions);

(v) Section 45R (employee health insurance expenses for small employers);

(vi) Section 51 (work opportunity credit);

(vii) Section 1396 (empowerment zone employment credit); and

(viii) Any other section specified by the Commissioner in further guidance (as defined in § 301.7705–1T(b)(8) of this chapter).

(f) *Section not applicable to related customers, self-employed individuals, and other circumstances*. This section does not apply—

(1) In the case of any customer that—

(i) Has a relationship to a CPEO described in section 267(b) (including, by cross-reference, section 267(f)) or section 707(b), except that "10 percent" shall be substituted for "50 percent" wherever it appears in such sections; or

(ii) Has commenced a CPEO contract with the CPEO but such commencement has not been reported to the IRS as described in paragraph (g)(3)(i) of this section; or

(2) To remuneration paid by a CPEO to any self-employed individual (as defined in § 301.7705–1(b)(14) of this chapter);

(3) To any CPEO contract that a CPEO enters into while its certification has been suspended by the IRS; or

(4) To any CPEO whose certification has been revoked or voluntarily terminated.

(g) *Reporting and recordkeeping*—(1) *Reporting and recordkeeping for employers*. A CPEO that is treated as an employer of a covered employee pursuant to paragraph (a) of this section must meet all reporting and recordkeeping requirements described in subtitle F of the Code that are applicable to employers in a manner consistent with such treatment.

(2) *Reporting on magnetic media*—(i) *In general*. A CPEO must file on magnetic media any Form 940, "Employer's Annual Federal Unemployment (FUTA) Tax Return," and Form 941, "Employer's QUARTERLY Federal Tax Return," and all required accompanying schedules, as well as such other returns, schedules, and other required forms and documents as is required by further guidance.

(ii) *Waiver*. The Commissioner may waive the requirements of this paragraph (g)(2) in case of undue economic hardship. The principal factor in determining hardship will be the amount, if any, by which the cost of filing the return, schedule, or other required form or document on magnetic media in accordance with this paragraph (g)(2) exceeds the cost of filing on or by other media. A request for a waiver must be made in accordance with applicable guidance. The waiver will specify the type of filing (that is, the name of the form or schedule) and the period to which it applies. In addition, the waiver will be subject to such terms and conditions regarding the method of filing as may be prescribed by the Commissioner.

(iii) *Magnetic media*. The term magnetic media means any magnetic media permitted under applicable guidance. These generally include electronic filing, as well as other media specifically permitted under the applicable guidance.

(3) *Reporting to the IRS by CPEOs*. A CPEO must report the following to the IRS in such time and manner, and including such information, as the Commissioner may prescribe in further guidance:

(i) The commencement or termination of any CPEO contract (as defined in § 301.7705–1(b)(3) of this chapter) with a customer, or any service agreement described in § 31.3504–2(b)(2) with a client, and the name and employer identification number (EIN) of such customer or client.

(ii) With any Form 940 and Form 941 that it files, all required schedules, including but not limited to the applicable Schedule R (or any successor form), containing such information as the Commissioner may require about each of its customers under a CPEO contract (as defined in § 301.7705–1(b)(3) of this chapter) and each of its clients under a service agreement described in § 31.3504–2(b)(2). A CPEO must file Form 940 and Form 941, along with all required schedules, on magnetic media, unless the CPEO is granted a waiver by the Commissioner in accordance with paragraph (g)(2)(ii) of this section.

(iii) A periodic verification that it continues to meet the requirements of § 301.7705–2T of this chapter, as described in § 301.7705–2T(j).

(iv) Any change that materially affects the continuing accuracy of any agreement or information that was previously made or provided by the CPEO to the IRS, as described in § 301.7705–2T(k) of this chapter.

(v) A copy of its audited financial statements and an opinion of a certified public accountant regarding such financial statements, as described in § 301.7705–2T(e)(1) of this chapter.

(vi) The quarterly statements, assertions, and attestations regarding those assertions described in § 301.7705–2T(f)(1) of this chapter.

(vii) Any information the IRS determines is necessary to promote compliance with respect to the credits described in paragraph (e)(2) of this section and section 3302.

(viii) Any other information the Commissioner may prescribe in further guidance.

(4) *Reporting to customers by CPEOs*. A CPEO must meet the following reporting requirements with respect to its customers in such time and manner, and including such information, as the Commissioner may prescribe in further guidance:

(i) Provide each of its customers with the information necessary for the customer to claim the credits described in paragraph (e)(2) of this section.

(ii) Notify any customer if its CPEO contract has been transferred to another person (or if another person will report, withhold, or pay, under such other person's EIN, any applicable federal employment taxes with respect to the wages of any individuals covered by its CPEO contract) and provide the customer with the name and EIN of such other person.

(iii) If the CPEO's certification is suspended or revoked as described in § 301.7705–2T(n) of this chapter, notify each of its current customers of such suspension or revocation.

(iv) If any covered employees are not or cease to be work site employees because they perform services at a location at which the 85 percent threshold described in § 301.7705–1(b)(17) of this chapter is not met, notify the customer that it may also be liable for federal employment taxes imposed on remuneration remitted by the CPEO to such covered employees, as described in paragraph (a)(3) of this section.

(5) *Information and agreements in any contract or agreement between a CPEO and a customer or client*. Any CPEO contract (as defined in § 301.7705–1(b)(3) of this chapter) between a CPEO and a customer or service agreement described in § 31.3504–2(b)(2) between a CPEO and a client must—

(i) In the case of a contract that is a CPEO contract,—

(A) Contain the name and EIN of the CPEO reporting, withholding, and paying any applicable federal employment taxes with respect to any remuneration paid to individuals covered by the contract or agreement;

(B) Require the CPEO to provide to the customer the notices and information required by paragraph (g)(4) of this section;

(C) Describe the information that the CPEO will provide that is necessary for the customer to claim the credits specified in paragraph (e)(2) of this section; and

(D) Require the CPEO to notify the customer that the customer may also be liable for federal employment taxes on remuneration remitted by the CPEO to covered employees if the work sites at which they perform services do not (or ever cease to) meet the 85 percent threshold described in § 301.7705–1(b)(17) of this chapter; and

(ii) In the case of a service agreement described in § 31.3504–2(b)(2) that is not a CPEO contract (and thus the individuals covered by that contract are not covered employees), or if this section does not apply to the contract under paragraph (f) of this section, notify, or be accompanied by a notification to, the client that the service agreement or contract is not covered by section 3511 and does not alter the client's liability for federal employment taxes on remuneration remitted by the CPEO to the employees covered by the service agreement or contract.

(h) *Penalties*—(1) *In general*. A CPEO that is treated as an employer of a covered employee under this section and that is required to meet the reporting requirements of an employer is subject to the same penalties and additions to tax as an employer with respect to such reporting requirements, including but not limited to penalties and additions to tax under sections 6651, 6656, 6672, 6721, 6722, and 6723.

(2) *Failures to timely make reports required under section 3511*. CPEOs are subject to penalty under section 6652(n) with respect to reports required to be made to the IRS in paragraphs (g)(1) and (g)(3) of this section and reports required to be made to customers in paragraph (g)(4) of this section.

(3) *Failures to attach Schedule R*. A CPEO is subject to penalty under section 6652(n) for failure to attach Schedule R (or successor form) to Forms 941 or 940 as required by paragraph (g)(3)(ii) of this section. A CPEO is also subject to penalty under section 6723 for failure to include the EIN of each customer on Schedule R of Form 941 or 940. *See* § 301.6723–1 of this chapter for the application of the section 6723 penalty in the case of multiple failures on a single document.

(4) *Failures to file on magnetic media*. With respect to the requirement in paragraph (g)(3)(ii) of this section that a CPEO must file Forms 940 and 941, along with all required schedules, on magnetic media, a failure to file on magnetic media does not constitute a failure to file for purposes of section 6651(a)(1) nor does it constitute a failure to make a report for purposes of section 6652(n). Rather, the requirement to file Forms 940 and 941 on magnetic media is a condition of maintaining certification as a CPEO.

(i) *Effective/applicability date*. These rules are effective on and after the date of publication of the Treasury decision adopting these rules as final or temporary regulations. Taxpayers may rely on these rules beginning July 1, 2016, and until final or temporary regulations are published.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 3. The authority citation for part 301 is amended by adding entries in numerical order to read in part as follows:

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

Section 301.7705–1 also issued under 26 U.S.C. 7705(h).

Section 301.7705–2 also issued under 26 U.S.C. 7705(h).

* * * * *

Par. 4. Sections 301.7705–1 and 301.7705–2 are added to read as follows:

§ 301.7705–1 Certified professional employer organization.

(a) The definitions set forth in this section apply for purposes of this section, §§ 31.3511–1 and 301.7705–2, and sections 3302(h), 3303(a)(4), 6053(c)(8), and 7528(b)(4).

(b) [The text of proposed § 301.7705–1(b)(1) through (2) is the same as the text of § 301.7705–1T(b)(1) through (2) published elsewhere in this issue of the **Internal Revenue Bulletin**].

(3) *CPEO contract* means a service contract between a CPEO and a customer that is in writing and provides that, with respect to an individual providing services to the customer, the CPEO will—

(i) Assume responsibility for payment of wages to the individual, without regard to the receipt or adequacy of payment from the customer for the services;

(ii) Assume responsibility for reporting, withholding, and paying any applicable federal employment taxes with respect to the individual's wages, without regard to the receipt or adequacy of payment from the customer for the services;

(iii) Assume responsibility for any employee benefits that the service contract may require the CPEO to provide to the individual, without regard to the receipt or adequacy of payment from the customer for such benefits;

(iv) Assume responsibility for recruiting, hiring, and firing the individual in addition to the customer's responsibility for recruiting, hiring, and firing the individual;

(v) Maintain employee records relating to the individual; and

(vi) Agree to be treated as a CPEO for purposes of section 3511 with respect to the individual.

(4) [The text of proposed § 301.7705–1(b)(4) is the same as the text of § 301.7705–1T(b)(4) published elsewhere in this issue of the **Internal Revenue Bulletin**].

(5) *Covered employee* means, with respect to a customer, any individual (other than a self-employed individual, as defined in paragraph (b)(14) of this section) who performs services for the customer and who is covered by a CPEO contract between the CPEO and the customer.

(6) *Customer*—(i) *In general*. Except as provided in paragraph (b)(6)(ii) of this section, a customer is any person who enters into a CPEO contract with a CPEO.

(ii) *Persons who are not customers*. A provider of employment-related services that uses its own EIN for filing federal employment tax returns on behalf of its clients (or who used its own EIN immediately prior to entering into a CPEO contract with the CPEO) is not a customer, even if it has entered into a CPEO contract with the CPEO.

(7) [The text of proposed § 301.7705–1(b)(7) through (13) is the same as the text of § 301.7705–1T(b)(7) through (13) published elsewhere in this issue of the **Internal Revenue Bulletin**].

(14) *Self-employed individual* means an individual with net earnings from self-employment (as defined in section 1402(a) and without regard to the exceptions thereunder) derived from providing services covered by a CPEO contract, whether such net earnings from self-employment are derived from providing services as a non-employee to a customer of the CPEO, from the individual's own trade or business as a sole proprietor customer of the CPEO, or as an individual who is a partner in a partnership that is a customer of the CPEO, but only with regard to such net earnings.

(15) [The text of proposed § 301.7705–1(b)(15) is the same as the text of § 301.7705–1T(b)(15) published elsewhere in this issue of the **Internal Revenue Bulletin**].

(16) *Work site* means a physical location at which an individual regularly performs services for a customer of a CPEO or, if there is no such location, the location from which the customer assigns work to the individual. A work site may not be the individual's residence or a telework site unless the customer requires the individual to work at that site. For purposes of this paragraph (b)(16), work sites that are contiguous locations will be treated as a single physical location and thus a single work site, and noncontiguous locations that are not reasonably proximate will be treated as separate physical locations and thus separate work sites. A CPEO may treat noncontiguous locations that are reasonably proximate as a single physical location and thus a single work site. Any two work sites that are separated by 35 or more miles or that operate in a different industry or industries will not be treated as reasonably proximate for purposes of this paragraph (b)(16).

(17) *Work site employee*—(i) *In general*. A work site employee means, with respect to a customer, a covered employee who performs services for such customer at a work site where at least 85 percent of the individuals performing services for the customer are covered employees of the customer.

(ii) *Self-employed individuals*. Solely for purposes of determining whether the 85 percent threshold described in paragraph (b)(17)(i) of this section is met, a self-employed individual described in paragraph (b)(14) of this section is treated as a covered employee if such individual would be a covered employee but for the exclusion of self-employed individuals from the definition of covered employee in paragraph (b)(5) of this section.

(iii) *Excluded employees*. In determining whether the 85 percent threshold described in paragraph (b)(17)(i) of this section is met, an individual that is an excluded employee described in section 414(q)(5) is not treated either as an individual providing services or a covered employee.

(iv) *Treatment for calendar quarter*. A covered employee will be considered a work site employee for the entirety of a calendar quarter if the employee qualifies as a work site employee at any time during that quarter.

(v) *Separate determination for each work site*. The determination of whether a covered employee is a work site employee is made separately with regard to each work site at which the covered employee regularly provides services and for each customer for which the covered employee is providing services. A covered employee may be determined to be a work site employee of more than one work site during a calendar quarter.

(c) [The text of proposed § 301.7705–1(c)(1) is the same as the text of § 301.7705–1T(c)(1) published elsewhere in this issue of the **Internal Revenue Bulletin**].

(2) *Definitions related to section 3511*. Paragraphs (b)(3), (5), (6), (14), (16), and (17) of this section are applicable on the date of publication of the Treasury decision adopting these rules as final or temporary regulations.

§ 301.7705–2 CPEO certification process.

[The text of proposed § 301.7705–2 is the same as the text of § 301.7705–2T published elsewhere in this issue of the **Internal Revenue Bulletin**].

Kirsten B. Wielobob,
Acting Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on May 4, 2016, 4:15 p.m., and published in the issue of the Federal Register for May 6, 2016, 81 F.R. 27360)

Notice of Proposed Rulemaking by Cross-reference to Temporary Regulations

Self-employment Tax Treatment of Partners in a Partnership that Owns a Disregarded Entity.

REG–114307–15

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 **Internal Revenue Bulletin**, the IRS is issuing temporary regulations that clarify the employment tax treatment of partners in a partnership that owns a disregarded entity. These regulations affect partners in a partnership that owns a disregarded entity. The text of those temporary regulations serves as the text of these proposed regulations.

DATES: Comments and requests for a public hearing must be received by August 2, 2016.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–114307–15), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–114307–15), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC 20224 or sent electronically, via the Federal eRulemaking Portal at http://www.regulations.gov/ (IRS REG–114307–15).

FOR FUTHER INFORMATION CONTACT:

Concerning the proposed regulations, Andrew K. Holubeck at (202) 317-4774; concerning submission of comments, or a request for a public hearing please contact Regina Johnson at (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 **Internal Revenue Bulletin** amend the Procedure and Administration Regulations (26 CFR part 301) relating to section 7701. The temporary regulations clarify that an entity disregarded as separate from its owner (a disregarded entity), that is treated as a corporation for purposes of employment taxes imposed under subtitle

C, is not treated as a corporation for purposes of employing its individual owner (who is treated as a sole proprietor) or for purposes of employing an individual that is a partner in a partnership that owns the disregarded entity. Rather, the entity is disregarded as an entity separate from its owner for this purpose. The partners are subject to the same self-employment tax rules as partners in a partnership that does not own an entity that is disregarded as separate from its owner. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analysis

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the "Addresses" heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at www.regulations.gov or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Andrew Holubeck of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

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

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

Par. 2. Section 301.7701–2 is amended by revising paragraph (c)(2)(iv)(C)(*2*) and adding paragraph (e)(8)(i) to read as follows:

§ 301.7701–2 Business entities; definitions

* * * * *

(c) * * *

(2) * * *

(iv) * * *

(C) * * *

(*2*) [The text of the proposed amendment to § 301.7701–2(c)(2)(iv)(C)(*2*) is the same as the text of § 301.7701–2T(c)(2)(iv)(C)(*2*) published elsewhere in this issue of the **Internal Revenue Bulletin**].

* * * * *

(e) * * *

(8)(i) [The text of the proposed amendments to § 301.7701–2(e)(8)(i) is the same as the text of § 301.7701–2T(e)(8)(i) published elsewhere in this issue of the **Internal Revenue Bulletin**].

John Dalrymple,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on May 3, 2016, 8:45 a.m., and published in the issue of the Federal Register for May 4, 2016, 81 F.R. 26763)

Notice of Proposed Rulemaking

Treatment of Certain Domestic Entities Disregarded as Separate From Their Owners as Corporations for Purposes of Section 6038A

REG–127199–15

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that would treat a domestic disregarded entity wholly owned by a foreign person as a domestic corporation separate from its owner for the limited purposes of the reporting, record maintenance and associated compliance requirements that apply to 25 percent foreign-owned domestic corporations under section 6038A of the Internal Revenue Code. These changes are intended to provide the IRS with improved access to information that it needs to satisfy its obligations under U.S. tax treaties, tax information exchange agreements and similar international agreements, as well as to strengthen the enforcement of U.S. tax laws.

DATES: Written or electronic comments and requests for a public hearing must be received by August 8, 2016.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–127199–15), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–127199–15), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC., or sent electronically, via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–127199–15).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Ronald M. Gootzeit, (202) 317-6937; concerning submissions of comments and/or requests for a hearing, Regina Johnson, (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-1191. The estimated average annual recordkeeping burden per recordkeeper is 10 hours. The estimated reporting burden is being reported under Form 5472 (OMB # 1545–0123).

The collection of information in this proposed regulation is in sections 1.6038A–1 through 1.6038A–3 and 1.6038A–5. This information is required in order to provide the IRS with improved access to information that it needs to satisfy its obligations under U.S. tax treaties, tax information exchange agreements, and similar international agreements, as well as to strengthen the enforcement of U.S. tax laws. The likely respondents are foreign-owned domestic entities that are disregarded as separate from their owners.

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

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

Background

Sections 301.7701–1 through 301.7701–3 ("the entity classification regulations") classify a business entity with two or more members as either a corporation or a partnership, and a business entity with a single owner as either a corporation or an entity disregarded as separate from its owner ("disregarded entity"). Certain domestic business entities, such as limited liability companies ("LLCs"), are classified by default as partnerships (if they have more than one member) or as disregarded entities (if they have only one owner) but are eligible to elect for federal tax purposes to be classified as corporations. Under special rules, an entity that is otherwise disregarded is not disregarded for certain excise and employment tax purposes. Section 301.7701–2(c)(2)(iv) and (v).

Some disregarded entities are not obligated to file a return or obtain an employer identification number ("EIN"). In the absence of a return filing obligation (and associated record maintenance requirements) or the identification of a responsible party as required in applying for an EIN, it is difficult for the United States to carry out the obligations it has undertaken in its tax treaties, tax information exchange agreements and similar international agreements to provide other jurisdictions with relevant information on U.S. entities with owners that are tax resident in the partner jurisdiction or otherwise have a tax nexus with respect to the partner jurisdiction.

Section 6001 of the Internal Revenue Code ("Code") provides that every person liable for any tax imposed by the Code, or for the collection thereof, shall keep such records, render such statements, make such returns and comply with such rules and regulations as the Secretary may from time to time prescribe, and that whenever in the judgment of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax. Thus, the Treasury Department and the IRS have broad authority under section 6001 of the Code to promulgate regulations to require the keeping of records and the reporting of information by persons who may be liable for any tax. The Code also requires many categories of persons to file returns, even if no tax is owed in a particular year. For example, all corporations organized in the United States must file annual income tax returns, which may include schedules requiring the identification of owners exceeding specified ownership thresholds. Moreover, foreign corporations engaged in a trade or business in the United States ("U.S. trade or business") must file annual income tax returns. Section 6012(a)(2); section 1.6012–2. Domestic partnerships must file information returns with schedules identifying each partner. Section 6031; section 1.6031(a)–1. In addition, domestic corporations that are at least 25% foreign-owned are subject to specific information reporting and record maintenance requirements. Section 6038A.

All entities, including disregarded entities, must have an EIN to file a required return. Section 6109(a)(1); *see* section 301.6109–1(a)(1)(ii)(C) and (b). An entity must also have an EIN in order to elect to change its classification. An entity that accepts its default classification and is not required to file a return need not obtain an EIN. Because a domestic single-member LLC is classified as a disregarded entity by default rather than by election and has no separate federal tax return filing requirements, there is typically no federal tax requirement for it to obtain an EIN. Other applicable federal or state laws may require an entity to obtain an EIN. For example, pursuant to federal law, financial institutions in the United States generally require an entity to have an EIN to open an account. *See* 31 CFR 1020.220(a)(1)(i)(A)(*4*).

An entity obtains an EIN by filing Form SS–4, Application for Employer Identification Number, in which the entity must identify a responsible party. The instructions to Form SS–4 define "responsible party" for an entity (including a disregarded entity) that is not traded on a public exchange or registered with the Securities and Exchange Commission as "the individual who has a level of control over, or entitlement to, the funds or assets in the entity that, as a practical matter, enables the individual, directly or indirectly, to control, manage, or direct the entity and the disposition of its funds and assets." The entity must also report any subsequent change in the responsible party. *See* section 301.6109–1(d)(2)(ii).

When an entity, such as an LLC, is classified as a corporation or a partnership for tax purposes, general ownership and accounting information is available to the IRS through the return filing and EIN application requirements. However, a disregarded entity is not subject to a separate income or information return filing requirement. Its owner is treated as owning directly the entity's assets and liabilities, and the information available with respect to the disregarded entity depends on the owner's own return filings, if any are required. For a disregarded entity that is formed in the United States and wholly owned by a foreign corporation, foreign partnership, or nonresident alien individual, generally no U.S. income or information return must be filed if neither the disregarded entity nor its owner received any U.S. source income or was engaged in a U.S. trade or business during the taxable year. Moreover, if a disregarded entity only receives certain types of U.S. source income, such as portfolio interest or U.S. source income that is fully withheld upon at source, its owner may not have a U.S. return filing requirement. Even in cases when the disregarded entity has an EIN, as well as in cases when income earned through a disregarded entity must be reported on its owner's return (for example, income from a U.S. trade or business), it may be difficult to associate the income with the disregarded entity based solely on the owner's return.

Although ownership and accounting information is generally available under the reporting requirements established by the U.S. federal tax system with respect to many types of domestic entities, the absence of specific return filing and associated recordkeeping requirements for foreign-owned, single-member domestic entities hinders law enforcement efforts and compliance with international standards of transparency and cooperation in the area of tax information exchange. These difficulties have been noted in reviews of the U.S. legal system by international organizations, including the Financial Action Task Force and the Global Forum on Transparency and Exchange of Information for Tax Purposes, which is affiliated with the Organisation for Economic Co-operation and Development. The lack of ready access to information on ownership of, and transactions involving, these entities also makes it difficult for the IRS to ascertain whether the entity or its owner is liable for any federal tax.

In general, section 6038A imposes reporting and recordkeeping requirements (together with certain procedural compliance requirements) on domestic corporations that are 25-percent foreign-owned. They are required to file an annual return on Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business (Under Sections 6038A and 6038C of the Internal Revenue Code), with respect to each related party with which the reporting corporation has had any "reportable transactions." *See* section 1.6038A–2. These corporations must keep the permanent books of account or records as required by section 6001 that are sufficient to establish the accuracy of the federal income tax return of the corporation, including information, documents, or records to the extent they may be relevant to determine the correct U.S. tax treatment of transactions with related parties. *See* section 1.6038A–3.

Explanation of Provisions

These proposed regulations would amend section 301.7701–2(c) to treat a domestic disregarded entity that is wholly owned by one foreign person as a domestic corporation separate from its owner for the limited purposes of the reporting and record maintenance requirements (including the associated procedural compliance requirements) under section 6038A. As with the existing special rules with respect to employment and excise taxes, these proposed regulations would not alter the framework of the existing entity classification regulations, including the treatment of certain entities as disregarded. These regulations are intended to provide the IRS with improved access to information that it needs to satisfy its obligations under U.S. tax treaties, tax information exchange agreements and similar international agreements, as well as to strengthen the enforcement of U.S. tax laws.

Because the proposed regulations would treat the affected domestic entities as foreign-owned domestic corporations for the specific purposes of section 6038A under the proposed regulations, and because such entities are foreign-owned, they would be reporting corporations within the meaning of section 6038A. Consequently, they would be required to file the Form 5472 information return with respect to reportable transactions between the entity and its foreign owner or other foreign related parties (transactions that would have been regarded under general U.S. tax principles if the entity had been, in fact, a corporation for U.S. tax purposes) and would also be required to maintain records sufficient to establish the accuracy of the information return and the correct U.S. tax treatment of such transactions. In addition, because these entities would have a filing obligation, they would be required to obtain an EIN by filing a Form SS–4 that includes responsible party information.

To ensure that such entities are required to report all transactions with foreign related parties, these regulations would specify as an additional reportable category of transaction for these purposes any transaction within the meaning of section 1.482–1(i)(7) (with such entities being treated as separate taxpayers for the purpose of identifying transactions and being subject to requirements under section 6038A) to the extent not already covered by another reportable category. The term "transaction" is defined in section 1.482–1(i)(7) to include any sale, assignment, lease, license, loan, advance, contribution, or other transfer of any interest in or a right to use any property or money, as well as the performance of any services for the benefit of, or on behalf of, another taxpayer. For example, under these proposed regulations, contributions and distributions would be considered reportable transactions with respect to such entities. Accordingly, a transaction between such an entity and its foreign owner (or another disregarded entity of the same owner) would be considered a reportable transaction for purposes of the section 6038A reporting and record maintenance requirements, even though, because it involves a disregarded entity, it generally would not be considered a transaction for other purposes, such as making an adjustment under section 482. The penalty provisions associated with failure to file the Form 5472 and failure to maintain records would apply to these entities as well.

The proposed regulations would also provide that the exceptions to the record maintenance requirements in section 1.6038A–1(h) and (i) for small corporations and *de minimis* transactions will not apply to these entities.

Consistent with the changes contemplated by these proposed regulations, the IRS is also considering modifications to corporate, partnership, and other tax or information returns (or their instructions) to require the filer of these returns to identify all the foreign and domestic disregarded entities it owns.

The proposed regulations would impose a filing obligation on a foreign-owned disregarded entity for reportable transactions it engages in even if its foreign owner already has an obligation to report the income resulting from those transactions—for example, transactions resulting in income effectively connected with the conduct of a U.S. trade or business. The Treasury Department and the IRS request comments on possible alternative methods for reporting the disregarded entity's transactions in such cases.

Proposed Effective/Applicability Date

The regulations are proposed to be applicable for taxable years ending on or after the date that is 12 months after the date these regulations are published as final regulations in the *Federal Register*.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This certification is based on the fact that these regulations will primarily affect a small number of foreign-owned domestic entities that do not themselves otherwise have a U.S. return filing requirement, and that the requirement to file a return for these entities will not impose a significant burden on them. 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 entities.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the "Addresses" heading. The Treasury Department and the IRS request comments on aspects of the proposed rules for which additional guidance is desired. All comments will be available at www.regulations.gov or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, then 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 Ronald M. Gootzeit, Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

* * * * *

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes,

Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by revising the entries for §§ 1.6038A–1 and 1.6038A–2 to read in part as follows:

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

* * * * *

Section 1.6038A–1 also issued under 26 U.S.C. 6001.

Section 1.6038A–2 also issued under 26 U.S.C. 6001.

* * * * *

Par. 2. Section 1.6038A–1 is amended as follows:

1. Paragraph (c)(1) is amended by adding a sentence at the end of the paragraph.
2. The first sentence of paragraph (h) is revised.
3. The first sentence of paragraph (i)(1) is revised.
4. Paragraph (n)(1) is amended by adding a sentence at the end of the paragraph.
5. Paragraph (n)(2) is amended by adding a sentence at the end of the paragraph.

The additions and revisions read as follows:

§ 1.6038A–1 General requirements and definitions.

* * * * *

(c) * * *

(1) * * * A domestic business entity that is wholly owned by one foreign person and that is otherwise classified under § 301.7701–3(b)(1)(ii) of this chapter as disregarded as an entity separate from its owner is treated as an entity separate from its owner and classified as a domestic corporation for purposes of section 6038A. *See* § 301.7701–2(c)(2)(vi) of this chapter.

* * * * *

(h) *Small corporation exception*. A reporting corporation (other than an entity that is treated as a reporting corporation by reason of § 301.7701–2(c)(2)(vi) of this chapter) that has less than $10,000,000 in U.S. gross receipts for a taxable year is not subject to §§ 1.6038A–3 and 1.6038A–5 for that taxable year.* * *

(i) *Safe harbor for reporting corporations with related party transactions of de minimis value*—(1) *In general*. A reporting corporation (other than an entity that is treated as a reporting corporation by reason of § 301.7701–2(c)(2)(vi) of this chapter) is not subject to §§ 1.6038A–3 and 1.6038A–5 for any taxable year in which the aggregate value of all gross payments it makes to and receives from foreign related parties with respect to related party transactions (including monetary, nonmonetary consideration, and the value of transactions involving less than full consideration) is not more than $5,000,000 and is less than 10 percent of its U.S. gross income.* * *

* * * * *

(n)* * *

(1) * * * The last sentence of paragraph (c)(1) of this section (relating to certain domestic business entities), the parenthetical language in paragraph (h) of this section (relating to entities that are treated as reporting corporations by reason of § 301.7701–2(c)(2)(vi) of this chapter), and the parenthetical language in paragraph (i)(1) of this section (relating to entities that are treated as reporting corporations by reason § 301.7701–2(c)(2)(vi) of this chapter) apply to taxable years of such entities ending on or after the date that is 12 months after the date of publication of the Treasury decision adopting these rules as final regulations in the *Federal Register***.**

(2) * * * Paragraphs (b)(3)(xi) and (b)(9) and the last sentence of paragraph (d) of § 1.6038A–2 apply to taxable years of the entities described in § 301.7701–2(c)(2)(vi) of this chapter ending on or after the date that is 12 months after the date of publication of the Treasury decision adopting these rules as final regulations in the *Federal Register*.

* * * * *

Par. 3. Section 1.6038A–2 is amended as follows:

1. In paragraph (b)(3)(ix), remove the word “and”.

2. In paragraph (b)(3)(x), remove the period at the end of the paragraph and add “; and” in its place.

3. Add paragraph (b)(3)(xi).

4. Add paragraph (b)(9).

5. Add a sentence at the end of paragraph (d).

The additions and revisions read as follows:

§ 1.6038A–2 Requirements of return.

* * * * *

(b) * * *

(3) * * *

(xi) With respect to an entity that is treated as a reporting corporation by reason of § 301.7701–2(c)(2)(vi) of this chapter, any other transaction as defined by § 1.482–1(i)(7), such as amounts paid or received in connection with the formation, dissolution, acquisition and disposition of the entity, including contributions to and distributions from the entity.

* * * * *

(9) *Examples*. The application of paragraph (b)(3) of this section may be illustrated by the following examples:

Example 1. (i) In year 1, W, a foreign corporation, forms and contributes assets to X, a domestic limited liability company that does not elect to be treated as a corporation under § 301.7701–3(c) of this chapter. In year 2, W contributes funds to X. In year 3, X makes a payment to W. In year 4, X, in liquidation, distributes its assets to W.

(ii) In accordance with § 301.7701–3(b)(1)(ii) of this chapter, X is disregarded as an entity separate from W. In accordance with § 301.7701–2(c)(2)(vi) of this chapter, X is treated as an entity separate from W and classified as a domestic corporation for purposes of section 6038A. In accordance with paragraphs (a)(2) and (b)(3) of this section, each of the transactions in years 1 through 4 is a reportable transaction with respect to X. Therefore, X has a section 6038A reporting and record maintenance requirement for each of those years.

Example 2. (i) The facts are the same as in *Example 1* of this paragraph (b)(9) except that in year 1 W also forms and contributes assets to Y, another domestic limited liability company that does not elect to be treated as a corporation under § 301.7701–3(c) of this chapter. In year 1, X and Y form and contribute assets to Z, another domestic limited liability company that does not elect to be treated as a corporation under § 301.7701–3(c) of this chapter. In year 2, X transfers funds to Z. In year 3, Z makes a payment to Y. In year 4, Z distributes its assets to X and Y in liquidation.

(ii) In accordance with § 301.7701–3(b)(1)(ii) of this chapter, Y and Z are disregarded as entities separate from each other, W, and X. In accordance with § 301.7701–2(c)(2)(vi) of this chapter, Y, Z and X are treated as entities separate from each other and W, and are classified as domestic corporations for purposes of section 6038A. In accordance with paragraph (b)(3) of this section, each of the transactions in years 1 through 4 involving Z is a reportable transaction with respect to Z. Similarly, the contribution to Y in year 1, the payment to Y in year 3, and the distribution to Y in year 4 are reportable transactions with respect to Y. Moreover, X’s funds transfer to Z in year 2 is a reportable transaction. Therefore, Z has a section 6038A reporting and record maintenance requirement for years 1 through 4, Y has a section 6038A reporting and record maintenance requirement for years 1, 3 and 4, and X has a section 6038A reporting and record maintenance requirement in year 2 in addition to its section 6038A reporting and record maintenance described in *Example 1 of this paragraph (b)(9)*.

(d) * * * In the case of an entity that is treated as a reporting corporation by reason of § 301.7701–2(c)(2)(vi) of this chapter, Form 5472 must be filed at such time and in such manner as the Commissioner may prescribe in forms or instructions.

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

Par. 4. The authority citation for part 301 continues in part to read as follows:

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

Par. 5. Section 301.7701–2 is amended by revising the last sentence of paragraph (a) and adding paragraphs (c)(2)(vi) and (e)(9) to read as follows:

§ 301.7701–2 Business entities; definitions.

(a) * * * But see paragraphs (c)(2)(iii) through (vi) of this section for special rules that apply to an eligible entity that is otherwise disregarded as an entity separate from its owner.

* * * * *

(c) * * *

(2) * * *

(vi) *Special rule for reporting under section 6038A*—(A) *In general*. An entity that is disregarded as separate from its owner for any purpose under this section is treated as an entity separate from its owner and classified as a corporation for purposes of section 6038A if—

(*1*) The entity is a domestic entity; and

(*2*) One foreign person has direct or indirect sole ownership of the entity.

(B) *Definitions*—(*1*) *Indirect sole ownership*. For purposes of paragraph (c)(2)(vi)(A)(*2*) of this section, indirect sole ownership means ownership by one person entirely through one or more entities disregarded as separate from their owners or through grantor trusts, regardless of whether any such disregarded entity or grantor trust is domestic or foreign.

(2) Entity disregarded as separate from its owner. For purposes of this paragraph (c)(2)(vi)(B), an entity disregarded as separate from its owner is an entity

described in paragraph (c)(2)(i) of this section, without regard to the exceptions provided in paragraphs (c)(2)(ii) though (vi) of this section.

(*3*) *Grantor trust*. For purposes of this paragraph (c)(2)(vi)(B), a grantor trust is any portion of a trust that is treated as owned by the grantor or another person under subpart E of subchapter J of chapter 1 of the Code.

* * * * *

(e) * * *

(9) *Reporting required under section 6038A*. Paragraph (c)(2)(vi) of this section applies to taxable years ending on or after the date that is 12 months after the date of publication of the Treasury decision adopting these rules as final regulations in the *Federal Register*.

John Dalrymple,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on May 6, 2016, 8:45 a.m., and published in the issue of the Federal Register for May 10, 2016, 81 F.R. 28784)

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 2016–21

Announcements:

Notices:

Proposed Regulations:

Revenue Procedures:

Revenue Rulings:

Revenue Rulings:—Continued

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 2016–21

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*

2007-59
Revoked by
Notice 2016-16, 2016-7 I.R.B. *318*

2013-54
Supplemented by
Notice 2016-17, 2016-9 I.R.B. *358*

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

2015-52
Supplemented by
Notice 2016-17, 2016-9 I.R.B. *358*

2015-87
Supplemented by
Notice 2016-17, 2016-9 I.R.B. *358*

Revenue Procedures:

1987-24
Superseded by
Rev. Proc. 2016-22, 2016-15 I.R.B. *577*

2003-36
Superseded by
Rev. Proc. 2016-19, 2016-13 I.R.B. *497*

2009-14
Modified by
Rev. Proc. 2016-30, 2016-21 I.R.B. *981*

2009-14
Superseded by
Rev. Proc. 2016-30, 2016-21 I.R.B. *981*

2014-56
Superseded by
Rev. Proc. 2016-20, 2016-13 I.R.B. *499*

2014-64
Supplemented by
Rev. Proc. 2016-18, 2016-17 I.R.B. *635*

Revenue Procedures:—Continued

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*

2015-14
Amplified by
Rev. Proc. 2016-29, 2016-21 I.R.B. *880*

2015-14
Modified by
Rev. Proc. 2016-29, 2016-21 I.R.B. *880*

2015-19
Amplified by
Rev. Proc. 2016-23, 2016-16 I.R.B. *581*

2015-19
Modified by
Rev. Proc. 2016-23, 2016-16 I.R.B. *581*

2015-22
Superseded by
Rev. Proc. 2016-8, 2016-01 I.R.B. *243*

2015-34
Modified by
Rev. Proc. 2016-27, 2016-19 I.R.B. *725*

2015-34
Supplemented by
Rev. Proc. 2016-27, 2016-19 I.R.B. *725*

Revenue Procedures:—Continued

2015-50
Supplemented by
Rev. Proc. 2016-18, 2016-17 I.R.B. *635*

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

2016-1
Modified by
Rev. Proc. 2016-30, 2016-21 I.R.B. *981*

Revenue Rulings:

2005-3
Modified by
Rev. Rul. 2016-8, 2016-11 I.R.B. *426*

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

Official Business
Penalty for Private Use, $300

INTERNAL REVENUE BULLETIN

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

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.