INTERNAL REVENUE
BULLETIN

IRS

HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2018–34
August 20, 2018

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.

ADMINISTRATIVE

T.D. 9838, page 309.

These regulations finalize the removal of the 30-day automatic extension of time to file information returns that report wages and tax (the Form W-2 series), and also remove the 30-day automatic extension of time to file forms that report nonemployee compensation (currently Forms 1099–MISC with information in box 7). Businesses that compensate employees or third parties for services may be affected by these regulations.

EMPLOYMENT TAX

T.D. 9838, page 309.

These regulations finalize the removal of the 30-day automatic extension of time to file information returns that report wages and tax (the Form W-2 series), and also remove the 30-day automatic extension of time to file forms that report nonemployee compensation (currently Forms 1099–MISC with information in box 7). Businesses that compensate employees or third parties for services may be affected by these regulations.

Estate Tax

Rev. Rul. 2018–22, page 308.

Special Use Value: Farms: Interest Rates.

The 2018 interest rates to be used in computing the special use value of farm real property for which an election is made under section 2032A of the Code are listed for estate of decedents.

Exempt Organizations

NOT 2018–62, page 316.

This notice announces that the Treasury Department and the IRS intend to issue proposed regulations providing clarification regarding the new rules increasing the contribution limits to ABLE accounts from certain designated beneficiaries. In addition to the annual gift tax exclusion amount, a designated beneficiary who works may also contribute up to the lesser of these amounts: (1) the designated beneficiary's compensation for the tax year, or (2) the poverty line for a one-person household in the state in which the designated beneficiary lives. An employed designated beneficiary is not eligible for the increased contribution limit for the taxable year if any contribution is made on behalf of the employee to a 401(a) defined contribution plan or 403(a) annuity contract, a 403(b) annuity contract, or a 457(b) eligible deferred compensation plan.

Income Tax

T.D. 9838, page 309.

These regulations finalize the removal of the 30-day automatic extension of time to file information returns that report wages and tax (the Form W-2 series), and also remove the 30-day automatic extension of time to file forms that report nonemployee compensation (currently Forms 1099–MISC with information in box 7). Businesses that compensate employees or third parties for services may be affected by these regulations.

Notice 2018–63, page 318.

This notice amplifies and modifies Notice 2017–40, 2017–32 I.R.B. 190, to extend the application of the safe harbor method in that notice to homeowners participating in the Housing Finance Agency Innovation Fund for the Hardest Hit Housing Markets (HFA Hardest Hit Fund) who may be affected by the new limitation in § 164(b)(6)(B) on the amount of deductible real

Finding Lists begin on page ii.

property taxes. The safe harbor is modified to permit a participating taxpayer to allocate mortgage payments actually made during a taxable year first to deductible mortgage interest.

Rev. Proc. 2018–39, page 319.
This revenue procedure extends relief provided in Rev. Proc. 2015–57, 2015–51 I.R.B. 863 and Rev. Proc. 2017–24, 2017–7 I.R.B. 916, to taxpayers who took out private student loans to finance attendance at a school owned by Corinthian College, Inc. (CCI) or American Career Institutes, Inc. (ACI), and whose private student loans were discharged based on a settlement of a legal cause of action against CCI, ACI and certain private lenders. This revenue procedure also provides that the Internal Revenue Service will not assert that the creditor must file information returns and furnish payee statements as a result of discharging these loans.

Rev. Proc. 2018–40, page 320.
Section 13102 of "An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018," P.L. 115-97 (the "Act"), amended § 448 of the Internal Revenue Code to expand the number of small business taxpayers eligible to use the cash receipts and disbursements method of accounting. Section 13102 of the Act also amended the Code to exempt small business taxpayers from the requirements to capitalize costs, including for certain home construction contracts, under § 263A, to account for certain long-term contracts under § 460, and to account for inventories under § 471. This revenue procedure provides the procedures by which a small business taxpayer may obtain automatic consent to change its methods of accounting to reflect these statutory changes and requests comments containing suggestions for future guidance under §§ 263A, 447, 448, 460, and 471 to implement section 13102 of the Act.

The IRS Mission

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

Introduction

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

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

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

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

Section 2032A.—Valuation of Certain Farm, Etc., Real Property

26 CFR 20.2032A–4: Method of valuing farm real property.

Rev. Rul. 2018–22

This revenue ruling contains a list of the average annual effective interest rates on new loans under the Farm Credit System. This revenue ruling also contains a list of the states within each Farm Credit System Bank Territory.

Under § 2032A(e)(7)(A)(ii) of the Internal Revenue Code, rates on new Farm Credit System Bank loans are used in computing the special use value of real property used as a farm for which an election is made under § 2032A. The rates in Table 1 of this revenue ruling may be used by estates that value farmland under § 2032A as of a date in 2018.

Average annual effective interest rates, calculated in accordance with § 2032A(e)(7)(A) and § 20.2032A–4(e) of the Estate Tax Regulations, to be used under § 2032A(e)(7)(A)(ii), are set forth in the accompanying Table of Interest Rates (Table 1). The states within each Farm Credit System Bank Territory are set forth in the accompanying Table of Farm Credit System Bank Territories (Table 2).

Rev. Rul. 81–170, 1981–1 C.B. 454, contains an illustrative computation of an average annual effective interest rate. The rates applicable for valuation in 2017 are in Rev. Rul. 2017–16, 2017–35 I.R.B. 215. For rate information for years prior to 2017, see Rev. Rul. 2016–19, 2016–35 I.R.B. 273, and other revenue rulings that are referenced therein.

DRAFTING INFORMATION

The principal author of this revenue ruling is Lane Damazo of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Lane Damazo at (202) 317-4628 (not a toll-free number).

REV. RUL. 2018–22 TABLE 1

TABLE OF INTEREST RATES
(Year of Valuation 2018)

Farm Credit System Bank Servicing State in Which Property is Located	*Rate*
AgFirst, FCB	5.09
AgriBank, FCB	4.46
CoBank, ACB	4.14
Texas, FCB	4.76

REV. RUL. 2018–22 TABLE 2
TABLE OF FARM CREDIT SYSTEM BANK TERRITORIES

Farm Credit System Bank	Location of Property
AgFirst, FCB	Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, Pennsylvania, South Carolina, Virginia, West Virginia.
AgriBank, FCB	Arkansas, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Tennessee, Wisconsin, Wyoming.
CoBank, ACB	Alaska, Arizona, California, Colorado, Connecticut, Hawaii, Idaho, Kansas, Maine, Massachusetts, Montana, New Hampshire, New Jersey, New Mexico, New York, Nevada, Oklahoma, Oregon, Rhode Island, Utah, Vermont, Washington.
Texas, FCB	Alabama, Louisiana, Mississippi, Texas.

1.6081–8T; 1.6081–8

T.D. 9838

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Extension of Time to File Certain Information Returns

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations providing rules regarding the automatic and non-automatic extension of time to file certain information returns. These changes are being implemented to accelerate the filing of the Form W–2 series (except Form W–2G) and forms that report nonemployee compensation (currently Form 1099–MISC with information in box 7) so they are available earlier in the filing season for use in the IRS's identity theft and refund fraud detection processes. In addition, these final regulations update the list of information returns subject to the rules regarding extensions of time to file. These regulations affect filers requesting an extension of time to file the affected information returns.

DATES: *Effective date*: These regulations are effective on August 3, 2018.

Applicability date: For dates of applicability, see § 1.6081–8(g).

FOR FURTHER INFORMATION CONTACT: Jonathan R. Black, (202) 317-6845 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1 under section 6081 of the Internal Revenue Code (Code) regarding the extension of time to file certain information returns. On August 13, 2015, the IRS published in the **Federal Register** temporary regulations (TD 9730 (80 FR 48433)) under § 1.6081–8T removing the automatic 30-day extension of time to file the Form W–2 series (except Form W–2G, "Certain Gambling Winnings") and providing a single non-automatic 30-day extension of time to file these forms. The temporary regulations also updated the list of information returns eligible for an extension of time to file. The temporary regulations were applicable for requests for extension of time to file information returns due after December 31, 2016. The temporary regulations were set to expire August 10, 2018, but they are removed by this Treasury Decision.

A notice of proposed rulemaking (REG–132075–14 (80 FR 48472)) cross-referencing the temporary regulations was published in the **Federal Register** the same day the temporary regulations were published. The notice of proposed rulemaking contains proposed regulations that would remove the automatic 30-day extension of time to file all information returns subject to the rules formerly under § 1.6081–8 and provide a single non-automatic 30-day extension of time to file those information returns. The IRS received comments on the notice of proposed rulemaking, but no public hearing was requested or held. After consideration of the comments, this Treasury Decision adopts the proposed regulations only with respect to the removal of the automatic extension of time to file the Form W–2 series (except Form W–2G) and forms reporting nonemployee compensation (currently Form 1099–MISC, "Miscellaneous Income," with information in box 7). The automatic extension of time to file is retained for Form W–2G, Form 1042–S, "Foreign Person's U.S. Source Income Subject to Withholding," Form 1094–C, "Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns," Form 1095–B, "Health Coverage," Form 1095–C, "Employer-Provided Health Insurance Offer and Coverage," Form 3921, "Exercise of an Incentive Stock Option Under Section 422(b)," Form 3922, "Transfer of Stock Acquired Through an Employee Stock Purchase Plan Under Section 423(c)," and Form 8027, "Employer's Annual Information Return of Tip Income and Allocated Tips," the Form 1097 series, Form 1098 series, Form 1099 series (except forms reporting nonemployee compensation), and Form 5498 series.

I. *Extension of Time to File Information Returns*

Section 6081(a) generally provides that the Secretary may grant a reasonable extension of time, not to exceed 6 months, for filing any return, declaration, statement, or other document required by Title 26 or by regulation. The regulations under section 6081 generally provide rules for extensions of time to file returns. The regulations under § 1.6081–8 provide specific rules for extensions of time to file certain information returns.

For requests for extension of time to file information returns due before January 1, 2017, § 1.6081–8 provided that a person required to file certain information returns (the filer), or the person transmitting the return for the filer (the transmitter), could request an automatic 30-day extension of time to file those information returns by filing a Form 8809, "Application for Extension of Time to File Information Returns" on or before the due date of the information return. A filer or transmitter was not required to sign the Form 8809 or provide an explanation to request the automatic 30-day extension.

Prior to expiration of the automatic 30-day extension period, a filer or transmitter that obtained an automatic 30-day extension of time to file could request an additional non-automatic 30-day extension of time to file. Under § 1.6081–8, the IRS had the discretion to grant this request if the IRS determined that a further extension was warranted. Unlike a request to obtain an automatic extension, a request for a non-automatic extension was required to be signed by the filer or transmitter under penalties of perjury and include an explanation of why an additional extension of time to file was needed. No further extensions of time to file were permitted under § 1.6081–8.

II. *Temporary and Proposed Regulations*

Identity theft and refund fraud are persistent and evolving threats to the nation's tax system. They place an enormous burden on the tax system and taxpayers. Identity thieves and unscrupulous preparers often claim refunds by electronically filing fraudulent tax returns early in the tax filing season. The IRS uses third-party

information returns to increase voluntary compliance, verify accuracy of tax returns, improve collection of taxes, and combat fraud, including refund fraud committed by those using the stolen identities of legitimate taxpayers. Accelerating the receipt of third-party information returns is one way to better enable the IRS to identify and stop fraudulent refund claims before they are paid.

On August 13, 2015, temporary and proposed regulations under section 6081 were published in the **Federal Register** to improve the IRS's ability to use third-party information returns to combat identity theft and refund fraud. The temporary regulation under § 1.6081–8T, which replaced the regulation under § 1.6081–8 for requests for extension of time to file certain information returns due after December 31, 2016, removed information returns in the Form W–2 series (except Form W–2G) from the list of information returns eligible for the automatic 30-day extension of time to file and instead provided a single non-automatic 30-day extension of time to file those information returns.

Section 1.6081–8T(a) retained the rules under § 1.6081–8 for obtaining an automatic 30-day extension of time to file Form W–2G, Form 1042–S, Form 1095–B, Form 1095–C, Form 8027, the Form 1097 series, Form 1098 series, Form 1099 series, and Form 5498 series. It also retained the additional non-automatic 30-day extension of time to file these information returns.

In addition, the temporary regulations updated the list of information returns that are eligible for automatic and non-automatic extensions of time to file by adding Form 1094–C, Form 3921, and Form 3922 to the list in § 1.6081–8T(a). As explained in the preamble to the temporary regulations, the addition of these forms merely updated the list to reflect current practice at the time the temporary regulations were published.

The proposed regulations were broader than the temporary regulations. The notice of proposed rulemaking proposed to remove the automatic extension of time to file Forms 1042–S, 1094–C, 1095–B, 1095–C, 3921, 3922, and 8027; to remove the automatic extension of time to file the Form W–2 series (including Form W–2G), Form 1097 series, Form 1098 series, Form 1099 series, and Form 5498 series; and to allow only a single non-automatic 30-day extension of time to file all of these information returns. The proposed non-automatic extension would have been available on the same terms as the non-automatic extension for the Form W–2 series in the temporary regulations. The preamble to the proposed regulations provided that removal of the automatic extension would not apply to information returns (other than the Form W–2 series except Form W–2G) due any earlier than January 1, 2018. See 80 FR 48472.

III. *Statutory Changes to Due Dates and Penalties*

Section 201 of the Protecting Americans from Tax Hikes Act of 2015 (PATH Act), Public Law 114–113, Div. Q (129 Stat. 3040, 3076), enacted on December 18, 2015, amended section 6071 of the Code to change the due date for filing Form W–2, "Wage and Tax Statement," and any returns or statements required by the Secretary to report nonemployee compensation. Nonemployee compensation is currently reportable in box 7 of Form 1099–MISC. The amendments are effective for information returns for calendar years beginning after 2015.

Prior to enactment of the PATH Act, the Form W–2 was required to be filed by the last day of February (February 28 if amounts were not subject to the Federal Insurance Contribution Act), or March 31 if filed electronically. See § 1.6041–2(a)(3)(ii) and § 31.6071(a)–1(a)(3)(i) (as in effect until July 20, 2017). Also prior to the enactment of the PATH Act, the form reporting nonemployee compensation, Form 1099–MISC, was required to be filed by February 28, or March 31 if filed electronically. See § 1.6041–6 (as in effect until July 20, 2017).

As amended by the PATH Act, section 6071 provides that the due date for filing the Form W–2 and any returns or statements required by the Secretary to report nonemployee compensation is January 31 of the calendar year following the calendar year for which the information is being reported, regardless of whether these information returns are filed on paper or electronically. Section 31.6071(a)–1T(a)(3) provides this due date for the entire Form W–2 series (except Form W–2G). The due date for filing Form 1099–MISC that does not report nonemployee compensation was unchanged by the PATH Act amendment to section 6071, and it remains February 28, or March 31 if filed electronically.

Section 201 of the PATH Act also amended section 6402 to provide that no credit or refund of an overpayment may be made to a taxpayer before the fifteenth day of the second month following the close of the taxable year (February 15 for calendar year taxpayers) if the Additional Child Tax Credit (ACTC) under section 24(d) or the Earned Income Credit (EIC) under section 32 is allowed for such taxable year.

In addition, section 202 of the PATH Act amended sections 6721 and 6722 of the Code to generally provide a $100 de minimis error threshold ($25 for withholding) under which the penalties for failure to file and failure to furnish accurate information returns and payee statements do not apply. Payees, however, can still elect to receive accurate payee statements, in which case the de minimis threshold does not apply to the penalties for failure to file and furnish. See section 6722(c)(3)(B).

Summary of Comments

There were eleven written comments submitted in response to the notice of proposed rulemaking. They are available at *http://www.regulations.gov* or upon request.

I. *Comments Recommending Alternatives to Removing the Automatic Extension of Time to File Information Returns*

Comments stated that the automatic extension of time to file should not be removed for any information returns and instead alternative or complementary steps to reduce fraud should be taken. Those suggested steps include: (1) delay the start of the filing season or issue refunds only after the Social Security Administration (SSA) has transferred all Form W–2 information to the IRS; (2) require electronic filing of all information returns at issue; (3) reduce the threshold requirement for filing information returns electronically from 250 returns to five re-

turns; and (4) issue an identity protection personal identification number (IP PIN) to each known taxpayer.

Some of these steps have already been taken. For instance, the PATH Act amended section 6402 so that refunds cannot be issued before February 15 if the EIC or the ACTC is allowed for the taxable year. This amendment has the effect of allowing the IRS to receive more Form W–2 information with respect to these returns before issuing refunds. Other steps, such as requiring electronic filing of all information returns or reducing the electronic filing threshold, require legislation to implement.

Comments suggesting that the IRS delay the start of the filing season (without regard to the February 15 date if the EIC or the ACTC is allowed) or issue refunds only after receiving Form W–2 information from the SSA were not adopted. Taxpayers who rely on their tax refunds to pay bills for necessary expenses might be unduly burdened by such a delay. Additionally, when Congress amended section 6402 to prevent the IRS from issuing some refunds before February 15, it did not use a later date or delay refunds to all taxpayers, thus indicating a sensitivity to the negative effect that further delaying taxpayer refunds could have on certain taxpayers.

Regarding the comment that issuing an IP PIN to each known taxpayer would reduce fraud and identity theft and eliminate the need to accelerate receipt of certain information returns, the Treasury Department and the IRS disagree. While the IP PIN has been an effective tool for protecting taxpayers from subsequent refund fraud, it is not a holistic or sustainable solution that can be applied to the more than 150 million returns that are filed annually each year. See TIGTA report 2017–40–026, "Inconsistent Processes and Procedures Result in Many Victims of Identity Theft Not Receiving Identity Protection Personal Identification Numbers," 20–22. Additionally, even if the IRS implemented such a proposal, the IRS's efforts to reduce fraud and identity theft would be further enhanced by also accelerating receipt of information returns, such as Form W–2 and forms reporting nonemployee compensation. Accordingly, this suggestion has not been adopted.

Comments also suggested that the IRS extend the filing deadline for individual income tax returns to May 15, rather than limiting the availability of an automatic extension of time to file information returns. Taxpayers may already request an automatic six-month extension of time to file individual income tax returns under § 1.6081–4, effectively extending the filing deadline (but not the deadline by which to pay) as suggested by the comment. However, even if the IRS extended the filing deadline to May 15 for all individual taxpayers, that would do little to prevent fraud because fraudulent filers typically file early in the filing season so that their fraudulent returns are processed before legitimate taxpayers file their tax returns and before the IRS receives information returns.

II. *Comments Recommending Retention of the Automatic Extension of Time to File Information Returns with Low Risk of Fraud*

Comments suggested that the regulations retain the automatic extension of time to file forms other than Form W–2 and forms reporting nonemployee compensation, because the other forms, specifically Form 1099–INT, Form 1099–DIV, Form 1042–S, and the Form 1095 series, are not major sources of withholding or backup withholding information and are not relevant to preventing fraud. The comments cited GAO Report GAO–14–633, "Identity Theft, Additional Actions Could Help IRS Combat the Large, Evolving Threat of Refund Fraud," for the assertion that information return documents other than Form W–2 do not have a nexus to fraud. The comments also stated that Form 1042–S is not as susceptible to fraud because Form 1040–NR, "U.S. Nonresident Alien Income Tax Return," and Form 1120–F, "U.S. Income Tax Return of a Foreign Corporation," are already subject to an extensive review by the IRS.

In contrast, one comment stated that the burden on filers of removing the automatic extension of time to file was a worthwhile tradeoff, given the financial burdens on taxpayers whose refunds are stolen. This comment suggested that filers should be able to verify many of their records prior to the end of the tax year, and that it was their responsibility to maintain accurate records.

The Treasury Department and the IRS agree that accelerating the filing date for information returns reporting compensation will contribute more to the reduction of refund fraud than accelerating the filing date of other information returns would. This is because refund fraud is most prevalent on individual income tax returns reporting wages or self-employment income. Consistent with this, Congress enacted section 201 of the PATH Act as part of its program integrity measures included in the Consolidated Appropriations Act of 2016 to accelerate the date by which Form W–2 and statements reporting nonemployee compensation, but not other information returns, must be filed. In addition, § 31.6071(a)–1T(a)(3) provides that the due date implemented by the PATH Act for Form W–2 applies to the entire Form W–2 series (except Form W–2G). Therefore, the comment is adopted, and the final regulations only remove the automatic extension of time to file the Form W–2 series (except Form W–2G) and forms reporting nonemployee compensation (currently Form 1099–MISC with information in box 7). The IRS continues to study the appropriateness of the automatic extension for other information returns.

III. *Comments Regarding Increased Errors as a Result of Removal of the Automatic Extension of Time to File*

Comments stated that removing the automatic extension of time to file would compress the time between the date the payee statements are sent and the information returns are required to be filed with the IRS. This is particularly true in the case of Form 1099–B, "Proceeds from Broker and Barter Exchange Transactions," and Form 1099–MISC with information in boxes 8 or 14 only (relating to substitute dividends and tax-exempt interest payments reportable by brokers and gross proceeds paid to attorneys), because the due date to furnish statements to payees for those forms is February 15. Without the automatic extension, there is less time before the filing due date for recipients of the payee statements to discover

errors and communicate them to the filer, resulting in more errors on filed information returns and the need to file more corrected information returns.

Comments also stated that this compression is made more acute because the system for filing information returns electronically (FIRE) requires files be in a format different from the format many filers use to prepare the payee statements. Without the automatic extension of time to file there will be less time to accommodate these differences, which could lead to an increase in errors and the need to file corrected information returns.

The comments also stated that filers' necessary year-end audit practices with respect to information that is ultimately reported on information returns are time-consuming, and the automatic extension of time to file increases the accuracy of filed returns. Finally, the comments stated that removing the automatic extension further compresses the filing season, burdening accounting professionals who already work 60 to 80 hours per week in the months leading up to the filing deadlines.

One comment supported the proposed regulations generally, but opposed the removal of the automatic extension of time to file the Form 1099 series. The comment stated that the pressure to meet a rigid deadline would lead to more errors for small businesses without full-time bookkeepers and would have a financial impact on those businesses. Small startups would be disproportionately affected because they are more likely to use independent contractors, for which they have to file information returns in the Form 1099 series. The comment requested that the IRS conduct a regulatory flexibility analysis and make it available for public comment if these final regulations remove the automatic extension of time to file the Form 1099 series.

The comments supporting retention of the automatic extension of time to file most information returns are adopted in the final regulations. However, as discussed above in section II of this Summary of Comments, acceleration of the IRS's receipt of information relating to compensation is an important tool to reduce fraud and noncompliance. Further, the removal of the automatic extension of time to file the Form W–2 series (except Form W–2G) and forms reporting nonemployee compensation is consistent with section 201 of the PATH Act and its supporting regulations under § 31.6071(a)–1T(a)(3), which together accelerated the filing deadline for both the Form W–2 series (except Form W–2G) and forms reporting nonemployee compensation. Accordingly, the final regulations remove the automatic extension of time to file the Form W–2 series (except Form W–2G) and forms reporting nonemployee compensation.

With regard to the request for a regulatory flexibility analysis in the case of the removal of the automatic extension of time to file the Form 1099 series, the only affected forms are forms reporting nonemployee compensation. As certified in the Special Analyses section of this Treasury Decision, the Treasury Department and the IRS have concluded that these regulations will not have a significant economic impact on a substantial number of small entities. As a result of this certification, a regulatory flexibility analysis is not required.

With regard to Form 1094–C and the Form 1095 series, the comments stated that preserving the automatic extension of time to file would allow health insurers to maintain their current processes. The Treasury Department and the IRS agree with these comments and, therefore, the final regulations retain the automatic extension of time to file Form 1094–C, Form 1095–B, and Form 1095–C.

IV. *Comments About Forms W–2 and Reliance on Information or Actions by Third Parties*

Comments stated various reasons why the automatic 30-day extension of time to file Form W–2 should be retained. Comments stated that to prepare Form W–2, filers rely on third-party payment information from states on sickness and disability payments that is not due to the filers until January 15, and filers have no control over the timeliness and accuracy of this third-party information. The comments also stated that Form W–2 filers rely on third-party information that they receive after the end of the tax year for nonqualified moving expenses, prizes and awards, the value of company housing and travel, and non-cash fringe benefits.

As discussed under section II and reiterated under section III of this Summary of Comments, removal of the automatic extension of time to file the Form W–2 series (except Form W–2G) will contribute to the reduction of refund fraud and is consistent with section 201 of the PATH Act and its supporting regulations. The Treasury Department and the IRS understand that there may be some situations that will necessitate filers to seek a non-automatic extension of time to file; for instance, when a filer does not timely receive the statement of sick pay required under § 31.6051–3(a)(1). Removal of the automatic extension, however, will increase the number of Forms W–2 received by the IRS early enough in the filing season for the IRS to verify information and reduce payment of fraudulent refunds.

V. *Comments on Form 1042–S, Reclassification of Distributions, and Additional Burdens*

Comments stated that corrections are sometimes necessary after the statutory deadlines to file certain returns, such as Form 1042–S, because of reclassifications of distributions. Information regarding these reclassifications is not available until sometime between mid-January and the end of February. If Forms 1042–S must be filed without the benefit of an automatic extension of time to file, then it is more likely that they will have to be amended later based on the reclassification information. Comments added that software vendors typically release their software in late February for Form 1042–S, and that there is not enough time to format information and test the software prior to the March 15 statutory due date. Comments also mentioned that filers regularly seek extensions of time to furnish recipient statements for Form 1042–S in addition to extensions of time to file, and the comments advised that the IRS should expect an increase in the filing of both amended information returns and amended income tax returns as a result of the unavailability of the automatic extension, particularly for Form 1042–S. Comments further added that updates to the Form 1099 series resulting from the Foreign Account Tax Compliance Act, Public Law 111–147, Title V, Subtitle A (124 Stat. 71, 97), and sections

6050W and 6045B require year-end system upgrades and testing, which must be performed by the same people who otherwise implement the year-end compliance processes and therefore increase, rather than decrease, the time needed to file. Finally, the comments mentioned that information that flows from partnership returns or upstream withholding agents is not available until March 15.

As discussed previously under section II of this Summary of Comments, these final regulations do not remove the automatic extension of time to file information returns other than the Form W–2 series (except Form W–2G) and forms reporting nonemployee compensation. Therefore, the comment that Form 1042–S should remain eligible for the automatic extension of time to file has been adopted. However, the IRS continues to study the appropriateness of the automatic extension of time to file Form 1042–S.

VI. *Comments on Penalties*

One comment suggested that, given filers' potential inability to comply with the statutory filing dates, filers should have reassurances that the IRS will grant the non-automatic extension of time to file so that they do not face penalties. The comment therefore requested that specific criteria for granting the non-automatic extension should be published in the final regulation. The comment also stated that the proposed requirement to show extraordinary circumstances or catastrophe is too strict a standard to impose on the extension process. The comment further stated that penalties would be unreasonable where a request for an extension of time to file was not granted, and the process of seeking relief if penalties were imposed in these situations would be arduous. In addition, the comment stated that despite the new $100 de minimis error threshold exception for penalties, there would still be a substantial number of errors that would exceed the de minimis threshold and require correction. Also, comments noted that the increase in errors in information returns filed with the IRS as a result of not obtaining an extension of time to file might lead to more penalty notices, which would increase the burden on filers seeking relief under reasonable cause. This increase in penalty notices would also increase the burden on the IRS, which would have to handle many more requests for abatements or waivers of the penalty.

The Treasury Department and the IRS considered these comments and agree that it is appropriate to set forth the specific criteria under which the IRS will grant the non-automatic extension of time to file. Since publication of the temporary and proposed regulations in 2015, Form 8809 has been revised to provide specificity around the criteria for when a non-automatic extension will be granted. When Form 8809 allowed the filer or transmitter to provide a narrative explanation of the need for an extension, it was difficult to review the explanations in a timely manner because of the length of some of the explanations and the various ways that filers or transmitters would describe the reason for the extension request. To eliminate this issue, the form has been revised to provide checkboxes for the filer or transmitter to indicate the reason for the extension request.

The IRS intends to update Form 8809 in time for the 2019 filing season to provide that a non-automatic extension of time to file will be granted if and only if (1) the business suffered a catastrophic event in a Federally Declared Disaster Area that made the business unable to resume operations or made necessary records unavailable; (2) fire, casualty or natural disaster affected the operation of the business; (3) death, serious illness, or unavoidable absence of the individual responsible for filing the information returns affected the operation of the business; (4) the information return is being filed for the first year the business was established; or (5) the filer did not receive timely data on a third-party payee statement. This third-party payee statement might be a Schedule K-1, "Partner's Share of Current Year Income, Deductions, Credits and Other Items," Form 1042–S, or the statement of sick pay required under § 31.6051–3(a)(1). Additionally, the extension will be granted even if the filer receives the third-party payee statement by the statutory furnishing deadline, provided that the filer did not receive the statement in time to prepare an accurate information return.

These five criteria will all be set forth in checkboxes on Form 8809. The first four of these criteria are already present on the form, with non-substantive differences in phrasing, and were derived from the reasons for which the IRS would grant a non-automatic extension of time to file during recent years when a narrative explanation was permitted. The fifth criteria will be added to Form 8809 in response to comments about reliance on third-party information. The Treasury Department and the IRS request comments on these criteria and welcome comments suggesting additional criteria that should be added to Form 8809 as reasons to grant the non-automatic extension. Interested parties can address the existing criteria and suggest new criteria by submitting comments on Form 8809 at *http://www.irs.gov/FormsComments*.

Also, with regard to the comments about the potential increase in errors and penalty notices, penalty abatement may be available for filers who fail to file timely but do not receive an extension of time to file. Although requests for abatement may increase under the new rules, the IRS is prepared to consider those additional requests. The Treasury Department and the IRS request comments regarding how the IRS may reduce the burden on filers who request abatement.

Special Analyses

These regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Although the regulations may potentially affect a substantial number of small entities, the economic impact on these entities is not expected to be significant. If at least one of the criteria for granting an extension applies, a business may obtain a 30-day extension of time to file by properly completing Form 8809, so many businesses will still obtain an extension of time to file. Prior versions of § 1.6081–8 also required businesses to file Form 8809 to obtain an extension, so no additional

economic impact is associated with the requirement to file this form. For businesses that do not qualify for the extension, the regulations do not impose new information reporting requirements, but they do affect whether the filing due date may be extended. Although there may be some additional costs associated with ensuring that information returns filed by their statutory due date, as opposed to the extended due date, are accurate, those costs will not impose a significant economic impact on a substantial number of small entities.

In addition, statutory changes have minimized the benefit of the automatic extension of time to file. Prior to these changes, most filers had a due date (without regard to extensions) of March 31 for the information returns currently subject to the rule eliminating the automatic extension of time to file—the Form W–2 series (except Form W–2G) and Form 1099–MISC reporting nonemployee compensation. With the automatic extension, these filers generally had until April 30 to file these information returns. The PATH Act and the accompanying regulations accelerated the due date for the Form W–2 series (except Form W–2G) and Form 1099–MISC reporting nonemployee compensation from March 31 to January 31. Therefore, even if the automatic extension was still available, the Form W–2 series (except Form W–2G) and Form 1099–MISC reporting nonemployee compensation would be due much earlier than under prior law, so the statutory change under the PATH Act is the primary cause of any additional cost associated with having to file these forms earlier in the filing season. 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. No comments were received from the Small Business Administration.

Drafting Information

The principal author of these regulations is Jonathan R. Black of the Office of the Associate Chief Counsel (Procedure and Administration).

Statement of Availability of IRS Documents

The IRS Revenue Procedure cited in this document is published in the Internal Revenue Bulletin (or Cumulative Bulletin) and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *http://www.irs.gov*.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

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 1.6081–8 is revised to read as follows:

§ 1.6081–8 Extension of time to file certain information returns.

(a) *Certain information returns eligible for an automatic extension of time to file*—(1) *Automatic extension of time to file*. A person required to file an information return (the filer) on the forms or form series listed in Table 1 will be allowed one automatic 30-day extension of time to file the information return beyond the due date for filing, if the filer or the person transmitting the information return for the filer (the transmitter) files an application in accordance with paragraph (c)(1) of this section.

Table 1 to paragraph (a)(1)

Form or Form Series	*Name of Form*
Form W–2G	"Certain Gambling Winnings"
Form 1042–S	"Foreign Person's U.S. Source Income Subject to Withholding"
Form 1094–C	"Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns"
Form 1095–B	"Health Coverage"
Form 1095–C	"Employer-Provided Health Insurance Offer and Coverage"
Form 3921	"Exercise of an Incentive Stock Option Under Section 422(b)"
Form 3922	"Transfer of Stock Acquired Through an Employee Stock Purchase Plan Under Section 423(c)"
Form 8027	"Employer's Annual Information Return of Tip Income and Allocated Tips"
Form 1097 series	
Form 1098 series	
Form 1099 series (except forms reporting nonemployee compensation)	
Form 5498 series	

(2) *Non-automatic extension of time to file*. One additional 30-day extension of time to file an information return on a form listed in paragraph (a)(1) of this section may be allowed if the filer or transmitter submits a request for the additional extension of time to file before the expiration of the automatic 30-day extension of time to file. No extension of time to file will be granted under this paragraph (a)(2) unless the filer or transmitter has first obtained an automatic extension of time to file under paragraph (a)(1) of this section. To request the additional 30-day extension of time to file, the filer or transmitter must satisfy the requirements of paragraph (c)(2) of this section. No additional extension of time to file will be allowed for an information return on a form listed in paragraph (a)(1) of this section under § 1.6081–1 beyond the extensions of time to file provided by paragraph (a)(1) of this section and this paragraph (a)(2).

(b) *The Form W–2 series (except Form W–2G) or forms reporting nonemployee compensation*. Except as provided in paragraph (f) of this section, the filer or transmitter of an information return on the Form W–2 series (except Form W–2G) or a form reporting nonemployee compensation may only request one non-automatic 30-day extension of time to file the information return beyond the due date for filing it. To make such a request, the filer or transmitter must submit an application for an extension of time to file in accordance with paragraph (c)(2) of this section. No additional extension of time to file will be allowed for an information return on a form listed in this paragraph (b) under § 1.6081–1 beyond the 30-day extension of time to file provided by this paragraph (b).

(c) *Requirements*—(1) *Automatic extension of time to file*. To satisfy this paragraph (c)(1), an application must—

(i) Be submitted on Form 8809, "Request for Extension of Time to File Information Returns," or in any other manner as may be prescribed by the Commissioner; and

(ii) Be filed with the Internal Revenue Service office designated in the application's instructions on or before the due date for filing the information return.

(2) *Non-automatic extension of time to file*. To satisfy this paragraph (c)(2), a filer or transmitter must—

(i) Submit a complete application on Form 8809, or in any other manner prescribed by the Commissioner, indicating that at least one of the criteria set forth in the forms, instructions, or other guidance for granting an extension applies;

(ii) File the application with the Internal Revenue Service in accordance with forms, instructions, or other appropriate guidance on or before the due date for filing the information return (for purposes of paragraph (a)(2) of this section, determined with regard to the extension of time to file under paragraph (a)(1) of this section); and

(iii) Sign the application under penalties of perjury.

(d) *Penalties*. See sections 6652, 6693, and 6721 through 6724 of the Code for failure to comply with information reporting requirements on information returns described in this section.

(e) *No effect on time to furnish statements*. An extension of time to file an information return under this section does not extend the time for furnishing a statement to the person with respect to whom the information is required to be reported.

(f) *Form W–2 filed on expedited basis*. This section does not apply to an information return on a form in the W–2 series if the procedures authorized in Rev. Proc. 96–57 (1996–2 CB 389) (or a successor revenue procedure) allow an automatic extension of time to file the information return. See § 601.601(d)(2)(ii)(*b*) of this chapter.

(g) *Applicability date*. This section applies to requests for extensions of time to file information returns required to be filed after December 31, 2018. Section 1.6081–8T (as contained in 26 CFR part 1, revised April 1, 2018) applies to extensions of time to file information returns required to be filed before January 1, 2019.

§ 1.6081–8T [Removed]

Par. 3. Section 1.6081–8T is removed.

Kirsten Wielobob
Deputy Commissioner for Services and Enforcement.

Approved: July 13, 2018

David J. Kautter
Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on August 1, 2018, 4:15 p.m., and published in the issue of the Federal Register for August 3, 2018, 83 F.R. 38023)

Part III. Administrative, Procedural, and Miscellaneous

Guidance on the Contribution Limits Applicable to ABLE Accounts

Notice 2018–62

SECTION 1. PURPOSE

This notice announces that the Department of the Treasury (the Treasury Department) and the Internal Revenue Service (the IRS) intend to issue proposed regulations providing clarification regarding the contribution limits provided in § 529A(b)(2) of the Internal Revenue Code (Code).

SECTION 2. BACKGROUND

The Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (the "ABLE Act") was enacted on December 19, 2014, as part of The Tax Increase Prevention Amendments (P.L. 113–295). The ABLE Act added § 529A to the Code. Section 529A allows a State (or its agency or instrumentality) to establish and maintain a tax-advantaged savings program under which contributions may be made to an ABLE account for the purpose of paying for the qualified disability expenses of the designated beneficiary of the account. Section 529A was amended by "An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018," P.L. 115–97 (2017 Act), signed into law on December 22, 2017.

Prior to amendment by the 2017 Act, § 529A(b)(2) stated that a program shall not be treated as a qualified ABLE program unless it provides that no contribution will be accepted unless it is in cash and if the contribution (other than a rollover contribution described in § 529A(c)(1)(C)) would not result in aggregate contributions from all contributors in excess of the amount of the § 2503(b) gift tax exclusion for the calendar year in which the designated beneficiary's taxable year begins. Under § 529A(b)(2), rules similar to the rules of § 408(d)(4) apply to permit the return of excess contributions (with any attributable net income) on or before the due date (including extensions) of the designated beneficiary's income tax return. In addition, under § 529A(b)(6), a qualified ABLE program must provide adequate safeguards to ensure that total contributions do not exceed the State's limit for aggregate contributions under its qualified tuition program as described in § 529(b)(6). A qualified tuition program under § 529 is a program established by a State or its agency or instrumentality that permits a person to prepay or contribute to a tax-favored savings account for a designated beneficiary's qualified higher education expenses (QHEEs) or a program established by an eligible educational institution that permits a person to prepay a designated beneficiary's QHEEs.

The Treasury Department and the IRS issued proposed regulations concerning qualified ABLE programs. These proposed regulations were released on June 19, 2015 and published in the Federal Register on June 22, 2015 (80 Fed. Reg. 35602). The proposed regulations provide rules by which states or state agencies or instrumentalities may establish and maintain a qualified ABLE program. Prop. Treas. Reg. § 1.529A–2(g)(4) would require a qualified ABLE program to return any excess contribution or excess aggregate contribution, including all net income attributable to that excess contribution or excess aggregate contribution, to the person or persons who made that contribution. The qualified ABLE program must use the rules set forth in § 1.408–11 for this purpose, treating an ABLE account the same way that an IRA is treated, and must return excess contributions or excess aggregate contributions in accordance with § 408(d)(4). To facilitate the proper tax treatment of returned excess contributions, Prop. Treas. Reg. § 1.529A–6(d) would require ABLE programs to collect the taxpayer identification number (TIN) of all contributors to an ABLE account.

The Treasury Department and the IRS issued Notice 2015–81, 2015–49 IRB 784 (Dec. 7, 2015), which, in response to comments on the proposed regulations, describes how the Treasury Department and the IRS intend to revise certain provisions of the proposed regulations under § 529A when those regulations are finalized. One of the provisions is the requirement under Prop. Treas. Reg. § 1.529A–6(d) to collect the TIN of each contributor to the ABLE account (if the program does not already have a record of the person's correct TIN). Notice 2015–81 states that it is anticipated that the final regulations will not require ABLE programs to request the TIN of ABLE contributors if the program has a system in place to identify and reject contributions that exceed the annual or cumulative limits. However, if an excess contribution is deposited into a designated beneficiary's ABLE account, the program must request the TIN of the contributor that made the excess contribution. Final regulations under § 529A are included on the 2017–2018 Priority Guidance Plan.

The contribution limits and other provisions of § 529A were modified by the 2017 Act. Specifically, the 2017 Act amended § 529A(b)(2)(B) to allow a designated beneficiary described in § 529A(b)(7) to contribute, prior to January 1, 2026, an additional amount in excess of the limit in § 529A(b)(2)(B)(i) (the annual gift tax exclusion amount in § 2503(b), formerly set forth in § 529A(b)(2)(B)). This additional amount is set forth in § 529A(b)(2)(B)(ii) and is equal to the lesser of (I) the designated beneficiary's compensation as defined by § 219(f)(1) for the taxable year, or (II) an amount equal to the poverty line for a one-person household for the calendar year preceding the calendar year in which the taxable year begins. The 2017 Act also amended the § 529A(b)(2) flush language by adding that the designated beneficiary, or a person acting on behalf of the designated beneficiary, is required to maintain adequate records to ensure, and is responsible for ensuring, that the requirements of § 529A(b)(2)(B)(ii) are met.

The 2017 Act added § 529A(b)(7)(A) to identify a designated beneficiary eligible to make such an additional contribution as one who is an employee (including a self-employed individual) with respect to whom there has been no contribution made for the taxable year to the following: a defined contribution plan meeting the requirements of §§ 401(a) or 403(a); an annuity contract described in § 403(b); or an eligible deferred contribution plan un-

der § 457(b). The 2017 Act also added § 529A(b)(7)(B) to the Code, which states that the term poverty line has the meaning given in section 673 of the Community Services Block Grant Act (42 U.S.C. 9902).

Finally, the 2017 Act amended § 529(c)(3)(C)(i)(III) (related to qualified tuition programs) to permit, before January 1, 2026, a limited rollover from a qualified tuition program to an ABLE account. Notice 2018–58, 2018–33 I.R.B. 305, addresses, among other things, the new rule under § 529(c)(3)(C)(i)(III).

SECTION 3. ADDITIONAL CONTRIBUTIONS BY AN EMPLOYED DESIGNATED BENEFICIARY

As amended by the 2017 Act, § 529A(b)(2) generally provides that a program is not treated as a qualified ABLE program unless it provides that contributions will not be accepted in excess of the sum of the contribution limits set forth in § 529A(b)(2)(B)(i) and (ii). Section 529A(b)(2)(B)(ii) allows an employed or self-employed designated beneficiary described in § 529A(b)(7) to contribute the lesser of his or her compensation for the taxable year or an amount equal to the poverty line for a one-person household for the calendar year preceding the calendar year in which the taxable year begins. Consistent with § 529A(b)(2), as amended by the 2017 Act, the Treasury Department and the IRS intend to issue proposed regulations that confirm that the employed designated beneficiary, or the person acting on his or her behalf, is solely responsible for ensuring that the requirements in § 529A(b)(2)(B)(ii) are met and for maintaining adequate records for that purpose. In addition, to minimize burdens for the designated beneficiary and the qualified ABLE program, the proposed regulations are expected to provide that ABLE programs may allow a designated beneficiary to certify under penalties of perjury that he or she is a designated beneficiary described in § 529A(b)(7) and that his or her contributions do not exceed the limit set forth in § 529A(b)(2)(B)(ii).

SECTION 4. APPLICABLE POVERTY LINE

Section 529A(b)(2)(B)(ii) bases the employed designated beneficiary's contribution limit, in part, on an amount equal to the poverty line for a one-person household for the preceding calendar year. Section 529A(b)(7)(B) provides that the term poverty line has the same meaning given such term by section 673 of the Community Services Block Grant Act (42 U.S.C. 9902). The Treasury Department and the IRS intend to issue proposed regulations to clarify that this reference to the poverty line means the poverty guidelines updated periodically in the *Federal Register* by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2). In addition, the poverty guidelines differ by geography; there are separate guidelines for (1) the 48 contiguous states and the District of Columbia, (2) Alaska, and (3) Hawaii. Because the poverty guideline that most closely relates to the designated beneficiary's cost of living appears to be the most relevant for the purpose of determining the contribution limit, the Treasury Department and the IRS anticipate that the proposed regulations will provide that a designated beneficiary's contribution limit should be determined using the poverty guideline applicable in the state of the designated beneficiary's residence, rather than the guideline applicable in the state in which the designated beneficiary's ABLE account is established, or elsewhere.

SECTION 5. EXCESS CONTRIBUTIONS FROM THE DESIGNATED BENEFICIARY

Section 529A(b)(2) provides that a program will not be treated as a qualified ABLE program if it accepts contributions that are not in cash or that exceed the contribution limits in § 529A(b)(2)(B). Because § 529A(b)(2) also provides that rules similar to § 408(d)(4) will apply to excess contributions to ABLE accounts, Prop. Treas. Reg. § 1.529A–2(g)(4) includes a requirement that a qualified ABLE program must return any excess contribution, including all net income attributable to that excess contribution, to the person or persons who made that contribution.

With the addition by the 2017 Act to allow certain contributions of the designated beneficiary's compensation income, the Treasury Department and the IRS intend to issue proposed regulations to also apply the proposed required return of excess contributions to any excess contributions of the designated beneficiary's compensation income. Specifically, the proposed regulations are expected to provide that the qualified ABLE program should use the rules set forth in § 1.408–11 to return any excess contribution, including any contributions in excess of the limit in § 529A(b)(2)(B)(ii). However, because § 529A(b)(2), as amended by the Act, imposes on the designated beneficiary (rather than on the qualified ABLE program) the responsibility for ensuring compliance with the limitation on the amount of the designated beneficiary's contributions of compensation income under § 529A(b)(2)(B)(ii), the proposed regulations are expected to provide that: (i) it will be the sole responsibility of the designated beneficiary (or the person acting on the designated beneficiary's behalf) to identify and request the return of any excess contribution of such compensation income; and (ii) for purposes of determining the limit on contributions made under § 529A(b)(2)(B)(ii), the qualified ABLE program may rely on self-certifications, made under penalties of perjury, of the designated beneficiary or the person acting on his or her behalf.

SECTION 6. TRANSITION RELIEF

The Treasury Department and the IRS are aware that, once final regulations are issued, qualified ABLE programs may need to adjust their systems and account documents to be in compliance with regulatory requirements. The Treasury Department and the IRS also are aware that, in some cases, a necessary change may require state legislative action. Therefore, the regulations are expected to provide transition relief with respect to any necessary changes to ensure that the state programs and accounts meet the requirements in the regulations, including providing sufficient time after issuance of the final regulations in order for changes to be implemented.

SECTION 7. RELIANCE

Before the issuance of the proposed regulations described in this notice, taxpayers, beneficiaries, and administrators of ABLE programs may rely on the rules described in sections 3, 4, and 5 of this notice.

SECTION 8. REQUEST FOR PUBLIC COMMENTS

The Treasury Department and the IRS request comments on the issues addressed in this notice, including any necessary transition relief.

Written comments may be submitted by November 1, 2018 to Internal Revenue Service, CC:PA:LPD:PR (Notice 2018–62), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044, or electronically to Notice.Comments@irscounsel.treas.gov (please include "Notice 2018–62" in the subject line). Alternatively, comments may be hand delivered between the hours of 8:00 a.m. and 4:00 p.m. Monday to Friday to CC:PA:LPD:PR (Notice 2018–62), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Comments will be available for public inspection and copying.

SECTION 9. DRAFTING INFORMATION

The principal author of this notice is Julia E. Parnell of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice, contact Ms. Parnell at 202-317-4086 (not a toll-free number).

Amplification and Modification of Safe Harbor Method for Participants in the HFA Hardest Hit Fund

Notice 2018–63

PURPOSE

This notice amplifies and modifies Notice 2017–40, 2017–32 I.R.B. 190, which applies to homeowners participating in the Treasury Department's Housing Finance Agency Innovation Fund for the Hardest Hit Housing Markets (HFA Hardest Hit Fund). Notice 2017–40 provides that a participating homeowner may use a safe harbor method for computing the amount of mortgage interest deductible under § 163 of the Internal Revenue Code (Code) and real property taxes deductible under § 164(a)(1) relating to the homeowner's principal residence. This notice extends application of a modified version of that safe harbor method to homeowners who may be affected by the new limitation in § 164(b)(6)(B) on the amount of deductible real property taxes. The modified safe harbor permits a participating homeowner to allocate mortgage payments actually made during a taxable year first to deductible mortgage interest.

BACKGROUND

Notice 2017–40 provides a safe harbor method for computing the deductions under §§ 163 and 164 on a principal residence for homeowners participating in a program designated by state housing finance agency (State HFA) using funds allocated from the HFA Hardest Hit Fund (State Program). Under Notice 2017–40, the safe harbor is available for the taxable year if the homeowner (1) meets the requirements to deduct all of the mortgage interest and real property taxes relating to the principal residence under §§ 163 and 164, respectively; and (2) participates in a State Program in which the program payments can be used to pay interest on the home mortgage. Notice 2017–40 provides that the safe harbor method is available for taxable years 2010 through 2021.

Section 164(b)(6)(B) provides that, in the case of an individual, for taxable years beginning after December 31, 2017, and before January 1, 2026, the aggregate amount of taxes taken into account under § 164(a)(1), (2), and (3) and § 164(b)(5) for any taxable year shall not exceed $10,000 ($5,000 in the case of an individual filing a separate return).

EXPLANATION OF SAFE HARBOR

This notice amplifies Notice 2017–40 to provide that the safe harbor, as modified, is available even if the limitation in § 164(b)(6)(B) precludes a homeowner from deducting all of the real property taxes imposed on the principal residence. The amplification thus preserves the availability of the safe harbor computation for most homeowners who participate in a State Program in which program payments can be used to pay interest on a home mortgage. This notice also assists homeowners by modifying the safe harbor method for taxable years 2018 through 2021 to permit a homeowner to allocate home mortgage payments that the homeowner actually makes during a taxable year first to deductible mortgage interest. This allocation will assist homeowners using the safe harbor in determining what portion, if any, of payments actually made is allocable to state and local property taxes and therefore subject to the limitation in § 164(b)(6)(B).

APPLICATION

For taxable years 2010 through 2021, a homeowner may deduct on his or her federal income tax return (subject to the limitation in § 164(b)(6)(B) for taxable years 2018 through 2021) the lesser of—

- The sum of all payments on the home mortgage that the homeowner actually makes during a taxable year to the mortgage servicer or the State HFA; and
- The sum of amounts shown on Form 1098, *Mortgage Interest Statement*, for mortgage interest received, real property taxes, and mortgage insurance premiums (if deductible for the taxable year under § 163(h)(3)(E)).

This safe harbor method of computing a homeowner's deduction applies for a taxable year if (1) the homeowner meets the requirements of § 163 to deduct all of the mortgage interest relating to the principal residence, (2) the homeowner meets the requirements of § 164(a)(1) for deducting all the real property taxes (determined without regard to § 164(b)(6)(B)), and (3) the homeowner participates in a State Program in which the program payments can be used to pay interest on the home mortgage.

If the homeowner's deduction, as provided above, is the sum of all payments made by the homeowner during a taxable year, then the homeowner may first allocate amounts paid to mortgage interest up to the amount shown on Form 1098. The homeowner may then use any reasonable method to allocate the remaining balance

of the payments to real property taxes, mortgage insurance premiums, home insurance premiums, and principal.

Regardless of how a homeowner determines the deductible amount under this safe harbor, any part of such amount that is allocated to state or local property taxes is subject to the limitation in § 164(b)(6)(B).

EFFECT ON OTHER DOCUMENTS

Notice 2017–40 is amplified and modified.

DRAFTING INFORMATION

The principal author of this notice is Lisa Mojiri-Azad of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this notice, contact Ms. Mojiri-Azad (202) 317-4718 (not a toll-free number).

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26 CFR 1.61–12: Income from discharge of indebtedness.

Rev. Proc. 2018–39

SECTION 1. PURPOSE

This revenue procedure amplifies Rev. Proc. 2015–57, 2015–51 I.R.B. 863, and Rev. Proc. 2017–24, 2017–7 I.R.B. 916, to extend relief to taxpayers who took out private student loans to finance attendance at a school owned by Corinthian College, Inc. (CCI) or American Career Institutes, Inc. (ACI).

SECTION 2. BACKGROUND

.01 Rev. Proc. 2015–57 and Rev. Proc. 2017–24 provide relief for taxpayers who took out Federal student loans to finance attendance at a school owned by CCI and ACI, respectively, and whose loans were discharged by the Department of Education under the "Defense to Repayment" or "Closed School" discharge process.

.02 Specifically, Rev. Proc. 2015–57 and Rev. Proc. 2017–24 provide the following relief: First, the Internal Revenue Service ("IRS") will not assert that these taxpayers must recognize gross income resulting from the discharge of these Federal student loans. Second, the IRS will not assert that these taxpayers must increase their gross income by the amount of certain tax credits or deductions related to the discharged Federal student loans. Third, the IRS will not assert that the creditors of these discharged loans must file information returns and furnish payee statements under section 6050P of the Internal Revenue Code as a result of discharging these Federal student loans.

.03 The Treasury Department and the IRS are aware that Federal and state governmental agencies have brought legal causes of action that have resulted in settlements resolving various allegations of unlawful business practices, including unfair, deceptive, and abusive acts and practices by CCI, ACI, and certain private lenders that made student loans to finance attendance at schools owned by CCI and ACI.

.04 Neither Rev. Proc. 2015–57 nor Rev. Proc. 2017–24 address the discharge of private student loans taken out to attend a school owned by CCI or ACI.

.05 The Treasury Department and the IRS have determined that it is appropriate to extend the relief provided in Rev. Proc. 2015–57 and Rev. Proc. 2017–24 to taxpayers who took out private student loans to finance attendance at a school owned by CCI or ACI where the private loans are discharged based on a settlement of a legal cause of action against CCI, ACI, and certain private lenders. As in Rev. Proc. 2015–57 and Rev. Proc. 2017–24, the Treasury Department and the IRS conclude that most private student loan borrowers would be able to exclude from gross income all or substantially all of the discharged amounts based on the insolvency exclusion; fraudulent or material misrepresentations made by CCI, ACI, or certain private lenders to the students; or another tax law authority.

SECTION 3. SCOPE

The treatment provided in section 4 of this revenue procedure applies to any taxpayer who took out private student loans to finance attendance at a school owned by CCI or ACI and whose private student loans are discharged based on a settlement of a legal cause of action against CCI, ACI and certain private lenders. This revenue procedure also applies to any applicable entity (as defined in section 6050P and the regulations thereunder) that discharges these loans.

SECTION 4. AMPLIFICATION OF REV. PROC. 2015–57 AND REV. PROC. 2017–24

Rev. Proc. 2015–57 and Rev. Proc. 2017–24 are amplified to provide as follows:

.01 *Discharge of indebtedness income*. The IRS will not assert that a taxpayer within the scope of this revenue procedure must recognize gross income as a result of the discharge of a private student loan taken out to finance attendance at a school owned by CCI or ACI.

.02 *Recapture of tax credits and tax benefit rule*. The IRS will not assert that a taxpayer within the scope of this revenue procedure must increase his or her taxes owed in the year of a discharge, or in a prior year, if he or she received an education credit under section 25A attributable to payments made with proceeds of the discharged loans, or claimed a deduction for the payment of interest under section 221 attributable to interest paid on a discharged loan, or claimed a deduction for the payment of qualified tuition and related expenses under section 222 attributable to payments made with proceeds of the discharged loan.

.03 *Information reporting*. The IRS will not assert that a creditor that is an applicable entity must file information returns and furnish payee statements pursuant to section 6050P for the discharge of any indebtedness within the scope of this revenue procedure.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2015–57 and Rev. Proc. 2017–24 are amplified.

SECTION 6. EFFECTIVE DATE

For private student loans taken out to finance attendance at schools owned by CCI, this revenue procedure will be treated as in effect as of the effective date of Rev. Proc. 2015–57 (taxable years beginning on or after January 1, 2015). For private student loans taken out to finance attendance at schools owned by ACI, this revenue procedure will be treated as in effect as of the effective date of Rev. Proc. 2017–24 (taxable years beginning on or after January 1, 2016). Taxpayers may

apply this revenue procedure in taxable years for which the period of limitation on claims for a credit or refund under section 6511 has not expired.

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Craig Wojay of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding discharge of indebtedness income and exclusions, contact Mr. Wojay at (202) 317-4718 (not a toll-free call), and for further information regarding information reporting, contact Elizer Mishory at (202) 317-6844.

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26 CFR 601.204: Changes in accounting periods and methods of accounting.
(Also Part I, §§ 162, 263A, 446, 447, 448, 460, 471, 481, 1001; 1.162–3, 1.263A–1, 1.446–1, 1.448–1T, 1.460–1, 1.471–1, 1.481–1, 1.481–4, 1.1001–1.)

Rev. Proc. 2018–40

SECTION 1. PURPOSE

Section 13102 of "An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018," P.L. 115–97 (the "Act"), amended § 448 of the Internal Revenue Code (Code) to expand the number of small business taxpayers eligible to use the cash receipts and disbursements method of accounting (cash method). Section 13102 of the Act also amended the Code to exempt small business taxpayers from the requirements to capitalize costs, including for certain home construction contracts, under § 263A, to account for certain long-term contracts under § 460, and to account for inventories under § 471. This revenue procedure provides the procedures by which a small business taxpayer may obtain automatic consent to change its methods of accounting to reflect these statutory changes and requests comments containing suggestions for future guidance under §§ 263A, 447, 448, 460, and 471 to implement section 13102 of the Act.

SECTION 2. BACKGROUND

.01 Section 13102 of the Act amended §§ 263A, 447, 448, 460, and 471 for small business taxpayers, increasing the gross receipts test amount for eligibility to use the cash method and providing an exemption from the requirements to apply certain method of accounting rules for inventories, cost capitalization, and long-term contracts. These amendments generally apply to taxable years beginning after December 31, 2017. The amendments to § 460 apply to contracts entered into after December 31, 2017, in taxable years ending after December 31, 2017.

.02 Except as otherwise expressly provided by the Code or the regulations, § 446(e) and § 1.446–1(e)(2) require a taxpayer to secure the consent of the Commissioner before changing a method of accounting for federal income tax purposes. Section 1.446–1(e)(3)(ii) authorizes the Commissioner to prescribe administrative procedures that provide the terms and conditions necessary for a taxpayer to obtain consent to a change in method of accounting. 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, as modified by Rev. Proc. 2016–1, 2016–1 I.R.B. 1, and as modified by Rev. Proc. 2017–59, 2017–48 I.R.B. 543, provides the general procedures by which a taxpayer may obtain automatic consent of the Commissioner to a change in method of accounting described in the List of Automatic Changes. Rev. Proc. 2018–31, 2018–22 I.R.B. 637, contains the List of Automatic Changes. Section 3 of this revenue procedure modifies Rev. Proc. 2018–31 to provide additional automatic changes in method of accounting and to modify existing automatic changes in method of accounting to assist taxpayers in conforming to the legislative changes to §§ 263A, 447, 448, 460, and 471.

.03 The Department of the Treasury (Treasury Department) and the Internal Revenue Service (the Service) also expect to publish future guidance to implement the legislative changes to §§ 263A, 447, 448, 460, and 471. Section 5 of this revenue procedure requests public comments for future guidance in this area.

SECTION 3. CHANGE IN METHOD OF ACCOUNTING

.01 *In general*. A taxpayer that wants to change to one or more of the methods of accounting described in this revenue procedure must, if eligible, use the automatic change procedures in Rev. Proc. 2015–13 and Rev. Proc. 2018–31 (or any successors), as modified by this revenue procedure.

.02 *Modifications to add new sections in Rev. Proc. 2018–31*.

(1) Section 15 of Rev. Proc. 2018–31 is modified to add a new section 15.18 to read as follows:

.18 *Small business taxpayer changing to overall cash method.*

(1) *Description of change*. This change applies to a small business taxpayer, as defined in section 15.18(5)(a) of this revenue procedure, that wants to change its overall method of accounting from an overall accrual method of accounting to the overall cash method of accounting for a trade or business, and is otherwise not prohibited from using the overall cash method or required to use another overall method of accounting. A small business taxpayer may be required to use a method of accounting (other than the cash method) for one or more items of income or expense under certain provisions of the Code or regulations, including, for example §§ 475 and 1272.

(2) *Applicability*. This section 15.18 is effective for taxable years beginning after December 31, 2017.

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

(a) *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.

(b) *Farmers changing to overall cash method*. This change does not apply to a farming business changing to the overall cash method. *See*, however, section 15.13 of this revenue procedure.

(4) *Special rules for open accounts receivables*. Notwithstanding § 1001 and the accompanying regulations, a small business taxpayer that uses the overall cash method for a trade or business includes amounts attributable to open accounts receivable (as defined in section 15.18(5)(c) of this revenue procedure) in income as

the amounts are actually or constructively received on the receivables.

(5) *Definitions*.

(a) *Small business taxpayer*. A small business taxpayer is a taxpayer, other than a tax shelter (as defined in § 448(d)(3)), that meets the § 448(c) gross receipts test.

(b) *Section 448(c) gross receipts test*. The § 448(c) gross receipts test is met if a taxpayer has average annual gross receipts for the three prior taxable years of $25,000,000 or less (adjusted for inflation).

(c) *Open accounts receivable*. For purposes of this section 15.18, an open accounts receivable is any receivable that is due in full in 120 days or less and that is not subject to § 475.

(6) *Certain eligibility rule temporarily inapplicable*. The eligibility rule in section 5.01(1)(e) of Rev. Proc. 2015–13 does not apply to this change for a taxpayer's first, second, or third taxable year beginning after December 31, 2017.

(7) *Reduced filing requirement*. A taxpayer 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 line 16;

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

(f) Schedule A, Part I, all lines except lines 3, 4, and 5.

(8) *Concurrent automatic changes*. A taxpayer making a change to the overall cash method under this section 15.18 and a change under sections 12.16 and/or 22.19 of this revenue procedure for the same year of change may file a single Form 3115 for all changes, provided the taxpayer enters the designated automatic accounting method change numbers for the changes on the appropriate line of Form 3115. *See* section 6.03(1)(b) of Rev. Proc. 2015–13 for information on making concurrent changes.

(9) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 15.18 is "233."

(10) *Contact information*. For further information regarding a change under this section, contact Anna Gleysteen at (202) 317-7007 (not a toll-free call).

(2) Section 12 of Rev. Proc. 2018–31 is modified to add a new section 12.16 to read as follows:

.16 *Small business taxpayer exception from requirement to capitalize costs under § 263A*.

(1) *Description of change*. This change applies to a small business taxpayer, as defined in section 15.18(5)(a) of this revenue procedure, that capitalizes costs under § 263A and wants to change to a method of accounting that no longer capitalizes costs under § 263A, including to self-constructed assets, pursuant to § 263A(i).

(2) *Applicability*. This change is effective for taxable years beginning after December 31, 2017.

(3) *Inapplicability*. This change does not apply to a small business taxpayer, as defined in section 15.18(5)(a) of this revenue procedure, that chooses to no longer capitalize costs under § 263A for home construction contracts, as defined in § 460(e)(1)(A). *See*, however, section 19.01 of this revenue procedure.

(4) *Certain eligibility rule temporarily inapplicable*. The eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015–13 does not apply for a taxpayer's first, second, or third taxable year beginning after December 31, 2017.

(5) *Reduced filing requirement*. A taxpayer 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 line 16; and

(e) Part IV, all lines except line 25.

(6) *Concurrent automatic changes*. A taxpayer making a change under this section 12.16 and a change under sections 15.18 and/or 22.19 of this revenue procedure for the same year of change may file a single Form 3115 for all changes, provided the taxpayer enters the designated automatic accounting method change numbers for the changes on the appropriate line of 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 under this section 12.16 is "234."

(8) *Contact information*. For further information regarding a change under this section, contact Natasha Mulleneaux at (202) 317-7007 (not a toll-free call).

(3) Section 22 of Rev. Proc. 2018–31 is modified to add a new section 22.19 to read as follows:

.19 *Small business taxpayer exception from requirement to account for inventories under § 471*.

(1) *Description of change*. This change applies to a small business taxpayer, as defined in section 15.18(5)(a) of this revenue procedure, that wants to change its § 471 method of accounting for inventory items to one of the following:

(a) treating inventory as non-incidental materials and supplies under § 1.162–3; or

(b) conforming to the taxpayer's method of accounting reflected in its applicable financial statements, as defined in § 451(b)(3), with respect to the taxable year, or if the taxpayer does not have an applicable financial statement for the taxable year, the books and records of the taxpayer prepared in accordance with the taxpayer's accounting procedures.

(2) *Applicability*. This change is effective for taxable years beginning after December 31, 2017.

(3) *Certain eligibility rule temporarily inapplicable*. The eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015–13 does not apply to this change for a taxpayer's first, second, or third taxable year beginning after December 31, 2017.

(4) *Reduced filing requirement*. A taxpayer 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 line 16; and

(e) Part IV, all lines except line 25.

(5) *No ruling on method of accounting used*. The consent granted under section 9 of Rev. Proc. 2015–13 for a change made under section 22.19(1)(b) of this revenue procedure is not a determination by the Commissioner that the proposed inventory method of accounting is permissible, and does not create any presumption that the proposed method is a permissible method of accounting under a provision of the Code. The director will ascertain whether the proposed method is permissible under the Code.

(6) *Concurrent automatic changes*. A taxpayer making a change under this section 22.19 and a change under sections 15.18 and/or 12.16 of this revenue procedure for the same year of change may file a single Form 3115 for all changes, provided the taxpayer enters the designated automatic accounting method change numbers for the changes on the appropriate line of 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 under this section 22.19 is "235."

(8) *Contact information*. For further information regarding a change under this section, contact Andrew Braden at (202) 317-7007 (not a toll-free call).

(4) Section 19 of Rev. Proc. 2018–31 is modified to add a new section 19.01 to read as follows:

.01 *Small business taxpayer exceptions from requirement to account for certain long-term contracts under § 460 or to capitalize costs under § 263A for certain home construction contracts*.

(1) *Description of Change*. This change applies to a taxpayer that, beginning in the year of change, qualifies as a small business taxpayer, as defined in section 15.18(5)(a) of this revenue procedure, and (a) wants to change its method of accounting for exempt long-term construction contracts described in § 460(e)(1)(B) from the percentage-of-completion method of accounting described in § 1.460–4(b) to an exempt contract method of accounting described in § 1.460–4(c), or (b) chooses to stop capitalizing costs under § 263A for home construction contracts defined in § 460(e)(1)(A).

(2) *Applicability*. This change applies to exempt long-term contracts described in § 460(e)(1) that are entered into after December 31, 2017, in taxable years ending after December 31, 2017.

(3) *Inapplicability*. A taxpayer can use a method of accounting for its exempt long-term contracts that is different from the method used for contracts that are not exempt. Thus, a taxpayer must use the percentage-of-completion method of accounting for nonresidential long-term construction contracts entered into in the first taxable year that the taxpayer fails the § 448(c) gross receipts test, but must continue to use its exempt contract method of accounting for its existing exempt long-term construction contracts. Similarly, in the taxable year that a taxpayer first meets the § 448(c) gross receipts test, the taxpayer can use a permissible exempt contract method of accounting for long-term construction contracts it expects to complete within two years. Rev. Rul. 92–28, 1992–1 C.B. 153. Accordingly, only a taxpayer who previously adopted the percentage-of-completion method of accounting for exempt long-term construction contracts and wants to change to another permissible exempt contract method of accounting is required to request consent to change under this section 19.01. Similarly, a taxpayer that meets the § 448(c) gross receipts test and enters into a home construction contract that it expects to complete within two years requires consent to change its method of accounting to not capitalize costs under § 263A only if the taxpayer has previously applied § 263A to home construction contracts exempt from the capitalization requirement under § 460(e)(1).

(4) *Manner of making change*. This change is made on a cut-off basis and applies only to long-term construction contracts entered into after December 31, 2017, in taxable years ending after December 31, 2017. Accordingly, a § 481(a) adjustment is neither permitted nor required.

(5) *Certain eligibility rule temporarily inapplicable*. The eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015–13 does not apply to this change for a taxpayer's first, second, or third taxable year ending after December 31, 2017.

(6) *Reduced filing requirement*. A taxpayer 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 line 16;

(e) Part IV, line 25; and

(e) Schedule D, Part I.

(7) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under this section 19.01 is "236."

(8) *Contact information*. For further information regarding changes under this section, contact Innessa Glazman at (202) 317-7006 (not a toll-free call).

.03 *Modifications to existing sections in Rev. Proc. 2018–31*.

(1) Section 12.01(1)(b)(v) of Rev. Proc. 2018–31 is modified to read as follows:

(v) *Certain change with limited applicability*. A small reseller, as defined in section 12.01(3)(b) of this revenue procedure, is not permitted to make a change in method of accounting described in section 12.01(1)(a)(i) of this revenue procedure for a taxable year beginning after December 31, 2017. *See*, however, section 12.16 of this revenue procedure for making a change in method of accounting not to apply § 263A and section 22.19 of this revenue procedure for making a change in method of accounting for inventories for taxable years beginning after December 31, 2017.

(2) Section 15.03(1)(b) of Rev. Proc. 2018–31 is modified to read as follows:

(b) *Inapplicability*. This change does not apply for any taxable year beginning after December 31, 2017. *See*, however, section 15.18 of this revenue procedure for making a change in method of accounting to the overall cash method for taxable years beginning after December 31, 2017.

(3) Section 15.13 of Rev. Proc. 2018–31 is modified to renumber existing paragraphs (3) through (5) as paragraphs (4) through (6), and add new paragraph (3) to read as follows:

(3) *Certain eligibility rule temporarily inapplicable*. The eligibility rule in section 5.01(1)(e) of Rev. Proc. 2015–13 does not apply to this change for a taxpayer's first, second, or third taxable year beginning after December 31, 2017.

(4) Section 22.03(1)(b) of Rev. Proc. 2018–31 is modified to read as follows:

(b) *Inapplicability*. This change does not apply for taxable years beginning after December 31, 2017. *See*, however, section 22.19 of this revenue procedure for making a change in method of accounting for inventories for taxable years beginning after December 31, 2017.

.04 *Existing § 481(a) adjustment*.

If a taxpayer is taking into account a § 481(a) adjustment resulting from a prior, but related, change in method of accounting at the time it changes its method of accounting described in section 3 of this revenue procedure, the taxpayer may account for the prior § 481(a) adjustment separately from the § 481(a) adjustment required by a change in method of accounting described in section 3 of this revenue procedure. For example, a taxpayer that changed from the cash method to an overall accrual method in a prior year and was required to take the relevant § 481(a) adjustment into account over four years could continue to take into account any remaining adjustment over the appropriate number of years even if the taxpayer changes to the cash method in the current year under section 3 of this revenue procedure. However, the taxpayer may also choose to combine or net the remaining portion of the prior § 481(a) adjustment with the § 481(a) adjustment required by the change in method of accounting made under section 3 of this revenue procedure. Any taxpayer choosing to combine or net the § 481(a) adjustments indicates this choice in the statement required on Line 26 on the Form 3115, *Application for Change in Accounting Method*, (Rev. December 2015) required to be filed to make the change(s) in method of accounting under section 3 of this revenue procedure.

SECTION 4. TRANSITION RULE

If before August 3, 2018, 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 section 3 of this revenue procedure, and the Form 3115 is pending with the national office on August 3, 2018, 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 for the Form 3115 (if unknown, *see* section 9.08(6) of Rev. Proc. 2018–1, 2018–1 I.R.B. 1, 50 (or any successor)) 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) September 4, 2018, 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 Service 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 section 4 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.

SECTION 5. REQUEST FOR COMMENTS AND CONTACT INFORMATION

The Treasury Department and the Service invite comments containing suggestions for future guidance under §§ 263A, 447, 448, 460, and 471 to implement section 13102 of the Act. In particular, comments are requested concerning the following issues: (1) how the § 448(c) gross receipts test applies to each trade or business of a taxpayer that is not a corporation or partnership; (2) how "books and records of the taxpayer prepared in accordance with the taxpayer's accounting procedures" should be interpreted in § 471(c)(1)(B); and (3) how to interpret § 460(e)(2)(B) in the context of Rev. Rul. 92–28, 1992–1 C.B. 153.

Comments may be submitted using one of the following methods:

- By Mail:

  Internal Revenue Service
  Attn: CC:PA:LPD:PR (Rev. Proc. 2018–40)
  Room 5203
  P.O. Box 7604
  Ben Franklin Station
  Washington, D.C. 20444
- By Hand or Courier Delivery: Submission may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to:

  Courier's Desk
  Internal Revenue Service
  Attn: CC:PA:LPD:PR
  (Rev. Proc. 2018–40)
  1111 Constitution Avenue, N.W.
  Washington, DC 20224
- Electronic: Alternatively, persons may submit comments electronically to *Revenue. Procedure.Comments@irscounsel.treas.gov*. Please include "Rev. Proc. 2018–40" in the subject line of any electronic communications.

All submissions will be available for public inspection and copying.

SECTION 6. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2018–31 is modified and amplified. Rev. Proc. 2002–28, 2002–18 I.R.B. 815, and Rev. Proc. 2001–10, 2001–2 I.R.B. 272, are obsoleted for taxable years beginning after December 31, 2017.

SECTION 7. EFFECTIVE DATE

Except as otherwise provided in this section, this revenue procedure is effective for taxable years beginning after December 31, 2017. For method changes described in section 3.02(4) of this revenue procedure, this revenue procedure is effective for exempt long-term contracts entered into after December 31, 2017, in taxable years ending after December 31, 2017.

DRAFTING INFORMATION

The principal authors of this revenue procedure are Kari Fisher and Anna Gleysteen of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Ms. Fisher at (202) 317-7007. For further information regarding the request for comments contained in this revenue procedure, contact Ms. Gleysteen at (202) 317-7007 (not a toll-free number).

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

Numerical Finding List[1]

Bulletin 2018–27 through 2018–34

Announcements:

Notices:

Proposed Regulations:

Revenue Procedures:

Revenue Rulings:

Treasury Decisions:

[1]A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2018–01 through 2018–26 is in Internal Revenue Bulletin 2018–26, dated June 27, 2018.

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

Bulletin 2018–27 through 2018–34

Revenue Procedures:

2015-57
Amplified by
Rev. Proc. 2018-39, 2018-34 I.R.B. *319*

2017-24
Amplified by
Rev. Proc. 2018-39, 2018-34 I.R.B. *319*

[1]A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2018–01 through 2018–26 is in Internal Revenue Bulletin 2018–26, dated June 27, 2018.

Internal Revenue Service
Washington, DC 20224

INTERNAL REVENUE BULLETIN

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

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